



FORM 10-Q

NEWTEK BUSINESS SERVICES INC – NEWT

Filed: July 14, 2006 (period: March 31, 2006)

Quarterly report which provides a continuing view of a company's financial position

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

FORM 10-Q

(Mark One)

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

For the quarterly period ended March 31, 2006

OR

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

Commission File Number: 001-16123

NEWTEK BUSINESS SERVICES, INC.

(Exact name of registrant as specified in its charter)

New York

(State or other jurisdiction of incorporation or organization)

11-3504638

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

462 Seventh Avenue, 14th floor, New York, NY

(Address of principal executive offices)

10018

(Zip Code)

Registrant's telephone number, including area code: (212) 356-9500

Indicate by checkmark whether the registrant has (1) filed all documents and reports required to be filed by Section 13 or 15(d) of the Exchange Act during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past ninety days.

Yes ☐ No ☒

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, or a non accelerated filer. See definition of "accelerated filer and large accelerated filer" in Rule 12b-2 of the Exchange Act.

Large Accelerated Filer ☐

Accelerated Filer ☐

Non-Accelerated Filer ☒

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act).

Yes ☐ No ☒

As of July 12, 2006, there were 35,872,247 of the Company's Common Shares issued and outstanding.

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Item 1. Financial Statements

NEWTEK BUSINESS SERVICES, INC., AND SUBSIDIARIES
CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS (UNAUDITED)
FOR THE THREE MONTHS ENDED MARCH 31, 2006 AND 2005
(In Thousands, except for Per Share Data)

	<u>2006</u>	<u>2005</u>
Revenue:		
Electronic payment processing	\$ 9,432	\$ 6,011
Web hosting	3,164	2,249
Interest income	1,413	1,073
Income from tax credits	1,258	1,061
Premium income	614	363
Servicing fee income	499	450
Insurance commissions	244	221
Other income	1,538	1,883
Total revenue	<u>18,162</u>	<u>13,311</u>
Expenses:		
Electronic payment processing costs	6,907	4,481
Interest	4,347	3,697
Consulting, payroll and benefits	4,139	4,097
Professional fees	2,120	1,739
Depreciation and amortization	1,415	1,089
Insurance	902	721
Provision for loan losses	119	651
Other	2,483	1,960
Total expenses	<u>22,432</u>	<u>18,435</u>
Loss before minority interest and benefit for income taxes	(4,270)	(5,124)
Minority interest	<u>174</u>	<u>260</u>
Loss before benefit for income taxes	(4,096)	(4,864)
Benefit for income taxes	<u>1,368</u>	<u>1,489</u>
Net loss	<u>\$ (2,728)</u>	<u>\$ (3,375)</u>
Weighted average common shares outstanding:		
Basic	34,834	33,892
Diluted	34,834	33,892
Net loss per share :		
Basic	\$ (.08)	\$ (.10)
Diluted	\$ (.08)	\$ (.10)

See accompanying notes to these unaudited condensed consolidated financial statements

NEWTEK BUSINESS SERVICES, INC., AND SUBSIDIARIES
CONDENSED CONSOLIDATED BALANCE SHEETS
MARCH 31, 2006 AND DECEMBER 31, 2005
(In Thousands, except for Per Share Data)

	March 31, 2006	December 31, 2005
	Unaudited	(Note 1)
<u>ASSETS</u>		
Cash and cash equivalents	\$ 35,248	\$ 23,940
Restricted cash	14,065	20,067
Certificates of deposit	2,200	4,000
U.S. Treasury notes	3,184	4,449
Marketable securities	700	10,350
Credits in lieu of cash	106,467	109,475
SBA loans receivable (net of reserve for loan losses of \$2,134 and \$2,304, respectively)	31,917	32,028
Accounts receivable (net of allowance of \$66 and \$50, respectively)	2,154	2,109
SBA loans held for sale	2,765	1,155
Accrued interest receivable	416	416
Investments in qualified businesses – cost method investments	150	150
Investments in qualified businesses – held to maturity debt investments	3,859	3,596
Structured insurance product	3,394	3,377
Prepaid insurance	16,199	16,946
Prepaid expenses and other assets (net of accumulated amortization of deferred financing costs of \$976 and \$805, respectively)	7,602	7,036
Servicing assets (net of accumulated amortization of \$1,157 and \$952, respectively)	3,250	3,197
Fixed assets (net of accumulated depreciation and amortization of \$2,926 and \$2,302, respectively)	6,689	6,587
Customer accounts (net of accumulated amortization of \$3,478 and \$3,020, respectively)	5,394	5,818
Intangible assets (net of accumulated amortization of \$498 and \$437, respectively)	1,418	879
Goodwill	9,438	9,438
Total assets	<u>\$ 256,509</u>	<u>\$ 265,013</u>
<u>LIABILITIES AND SHAREHOLDERS' EQUITY</u>		
Liabilities:		
Accounts payable and accrued expenses	\$ 8,758	\$ 10,313
Notes payable – certified investors	3,969	3,947
Notes payable – insurance	9,250	9,250
Notes payable – other	6,156	9,880
Bank notes payable	23,080	21,287
Deferred revenue	1,594	1,459
Notes payable in credits in lieu of cash	91,128	92,048
Deferred tax liability	22,819	24,271
Total liabilities	<u>166,754</u>	<u>172,455</u>
Minority interest	<u>4,814</u>	<u>5,033</u>
Commitments and contingencies		
Shareholders' equity:		
Preferred stock (par value \$0.02 per share; authorized 1,000 shares, no shares issued and outstanding)	—	—
Common stock (par value \$0.02 per share; authorized 54,000 shares, issued and outstanding 34,856 and 34,809 not including 583 shares held in escrow)	697	696
Additional paid-in capital	53,388	53,737
Unearned compensation	—	(492)
Retained earnings	30,856	33,584
Total shareholders' equity	<u>84,941</u>	<u>87,525</u>
Total liabilities and shareholders' equity	<u>\$ 256,509</u>	<u>\$ 265,013</u>

See accompanying notes to these unaudited condensed consolidated financial statements

NEWTEK BUSINESS SERVICES, INC., AND SUBSIDIARIES
CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS (UNAUDITED)
FOR THE THREE MONTHS ENDED MARCH 31, 2006 AND 2005
(In Thousands)

	<u>2006</u>	<u>2005</u>
Cash flows from operating activities:		
Net loss	\$ (2,728)	\$ (3,375)
Adjustments to reconcile net loss to net cash used in operating activities:		
Amortization of deferred loan origination fees, net	(37)	(112)
Capitalization of servicing assets	(258)	(220)
Income from tax credits	(1,258)	(1,061)
Deferred income taxes	(1,368)	(1,555)
Depreciation and amortization	1,415	1,089
Provision for loan losses	119	651
Accretion of interest income	(4)	(40)
Accretion of interest expense	3,343	3,034
Equity in earnings of investee	(95)	—
Stock-based compensation	158	414
Minority interest	(174)	(260)
Changes in assets and liabilities, net of the effect of business acquisitions:		
SBA loans originated for sale	(7,879)	(8,851)
Proceeds from sale of SBA loans held for sale	6,269	5,657
Prepaid insurance	747	661
Prepaid expenses, accounts receivable, receivable from bank and other assets	(1,070)	(7,366)
Accounts payable, accrued expenses and deferred revenues	<u>1,205</u>	<u>(2,974)</u>
Net cash used in operating activities	<u>(1,615)</u>	<u>(14,308)</u>
Cash flows from investing activities:		
Investments in qualified businesses	(5,551)	(438)
Return of investments in qualified businesses	5,288	338
Purchase of fixed assets	(623)	(1,342)
SBA loans originated for investment	(2,407)	(2,819)
Payments received on SBA loans	2,222	1,212
Change in restricted cash	3,291	4,701
Proceeds from sale of U.S. Treasury notes, certificates of deposit	13,314	—
Other investments	<u>(34)</u>	<u>(38)</u>
Net cash provided by investing activities	<u>15,500</u>	<u>1,614</u>

NEWTEK BUSINESS SERVICES, INC., AND SUBSIDIARIES
CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS (UNAUDITED)
FOR THE THREE MONTHS ENDED MARCH 31, 2006 AND 2005 (CONTINUED)

	<u>2006</u>	<u>2005</u>
Cash flows from financing activities:		
Repayments of note payable—bank and other	(4,024)	(80)
Principal repayments of note payable—insurance	—	(692)
Proceeds from note payable and other	300	8,000
Change in restricted cash relating to NSBF financing	—	301
Net proceeds on SBA bank notes payable	1,792	7,240
Distribution to minority member	(45)	—
Net cash (used in) provided by financing activities	<u>(1,977)</u>	<u>14,769</u>
Net increase in cash and cash equivalents	11,908	2,075
Cash and cash equivalents – beginning of period	<u>23,940</u>	<u>29,540</u>
Cash and cash equivalents – end of period	<u>\$ 35,848</u>	<u>\$ 31,615</u>
Supplemental disclosure of cash flow activities:		
Reduction of credits in lieu of cash and notes payable in credits in lieu of cash balances due to delivery of tax credits to Certified Investors	<u>\$ 4,265</u>	<u>\$ 4,165</u>
CrystalTech Web Hosting, Inc. final purchase price allocations to goodwill		
Additions to customer accounts	\$ —	\$ 2,082
Additions to intangibles	—	560
Additions to furniture and fixtures	—	375
Deductions to goodwill	—	(3,258)
Net additions to assets and liabilities	<u>—</u>	<u>241</u>
Net effect on purchase price	<u>\$ —</u>	<u>\$ —</u>

See accompanying notes to these unaudited condensed consolidated financial statements

NEWTEK BUSINESS SERVICES, INC. AND SUBSIDIARIES
NOTES TO UNAUDITED CONDENSED CONSOLIDATED FINANCIAL STATEMENTS

NOTE 1 – SIGNIFICANT ACCOUNTING POLICIES:

Basis of presentation and description of business

The unaudited condensed consolidated financial statements of Newtek Business Services, Inc. and Subsidiaries (the “Company” or “Newtek”) included herein have been prepared by the Company in accordance with accounting principles generally accepted in the United States of America and include all wholly and majority owned subsidiaries, and several portfolio companies in which the certified capital companies (“Capco” or “Capcos”) own non-controlling minority interest in, or those of which Newtek is considered to be the primary beneficiary. All inter-company balances and transactions have been eliminated in consolidation. The minority interests are held by members of limited liability companies, which are non-tax paying entities. Accordingly, the minority interest is calculated before income taxes.

The accompanying notes to condensed consolidated financial statements should be read in conjunction with Newtek's 2005 Annual Report on Form 10-K. These financial statements have been prepared in accordance with instructions to Form 10-Q and Article 10 of Regulations S-X and, therefore, omit or condense certain footnotes and other information normally included in the financial statements prepared in accordance with accounting principles generally accepted in the United States. The results of operations for an interim period may not give true indication of the results for the entire year.

Currently, the Company is absorbing losses attributable to certain of its minority interest holders. Once these entities return to profitability, the losses will be restored to the Company prior to allocation of profits to the minority holders.

Newtek is engaged in the business of providing financial products and business services to small- and medium-sized businesses through ownership and/or operation of specific primary lines of business as well as organizing certified Capco and investing funds made available under the Capco programs in small businesses.

The unaudited condensed consolidated financial statements of Newtek reflect, in the opinion of management, all adjustments necessary to present fairly the financial position of Newtek at March 31, 2006 and their results of operations and cash flows for the three months ended March 31, 2006. All adjustments are of a normal recurring nature.

The following is a summary of each Capco or Capco fund, state or jurisdiction of certification and date of certification:

<u>Capco</u>	<u>State/Jurisdiction of Certification</u>	<u>Date of Certification</u>
WA	New York	May 1998
WP	Florida	December 1998
WI	Wisconsin	October 1999
WLA	Louisiana	October 1999
WA II	New York	April 2000
WNY III	New York	December 2000
WC	Colorado	December 2001
WAP	Alabama	November 2003
WDC	District of Columbia	November 2004
WNY IV	New York	December 2004
WTX I	Texas	June 2005
WNY V	New York	November 2005

In general, the Capcos issue debt and equity instruments (“Certified Capital”) to insurance company investors (“Certified Investors”). The Capcos then make targeted investments (“Investments in Qualified Businesses”, as defined under the respective state statutes, or, “Qualified Businesses”) with the Certified Capital raised, which in many cases may be majority-owned or primarily controlled by the Capcos after the investments are consummated (excluding investments made by the Louisiana Capco). Participation in each Capco program legally entitles the Capco to receive (or earn) tax credits from the state upon satisfying quantified, defined investment percentage thresholds and time requirements. In order for the Capcos to maintain their state-issued certifications, the Capcos must make Investments in Qualified Businesses in accordance with these requirements. These state requirements are mirrored in the limitations agreed to by each Capco in its written agreements with its Certified Investors and limit the activities of the Capcos to conducting the business of a Capco. Each Capco also has separate, legal contractual arrangements with the Certified Investors obligating the Capco to refrain from unauthorized activities, to use the proceeds from the notes only for Capco-authorized (i.e., “qualified”) investments, to limit fees for professional services related to making, buying or selling investments; and to pay interest on the aforementioned debt instruments whether or not it meets the statutory requirements for Investments in Qualified Businesses.

The Capco can satisfy the interest payment, at the Capco's discretion, by delivering tax credits in lieu of paying cash. The Capcos legally have the right to deliver the tax credits to the Certified Investors. The Certified Investors legally have the right to receive and use the tax credits and would, in turn, use these tax credits to reduce their respective state tax liabilities in an amount usually equal to 100% (WLA, WLP II, and WLP III – 110%) of their certified investment. The tax credits can be utilized over a four to ten-year period at an annual percentage rate established by each separate Capco legislation, and in some instances are transferable and can be carried forward.

Restricted Cash

Under the terms of the agreement between Newtek Small Business Finance, Inc. (“NSBF”), a wholly owned subsidiary of the Company, and General Electric Capital Corporation (“GE”), all payments received from NSBF's borrowers are transferred into a restricted bank account. NSBF uses these funds to pay required principal and interest to GE, amounts due to third party participants and certain other required payments. As of March 31, 2006 and December 31, 2005, NSBF restricted cash was \$1,327,000 and \$4,038,000, respectively.

The cash held by the Capcos is restricted for use in managing and operating the Capcos, making qualified investments and for the payment of income taxes. Total restricted cash held by the Capcos as of March 31, 2006 and December 31, 2005 was \$12,613,000 and \$15,904,000, respectively.

Under the terms of the processing agreement between Universal Processing Services of WI, LLC (d/b/a Newtek Merchant Solutions of WI, “NMS-WI”), and its primary processing bank, NMS-WI maintains a cash account as a reserve against chargeback losses. As processing fees are received by the processing banks, a certain percentage is allocated to the cash reserve account. Total restricted cash held at the processing bank at March 31, 2006 and December 31, 2005 totaled \$125,000, respectively.

Stock – Based Compensation

Prior to January 1, 2006, the Company applied the disclosure-only provisions of SFAS 123, "Accounting for Stock-Based Compensation" ("SFAS 123"). In accordance with the provisions of SFAS 123, the Company applied APB 25, "Accounting for Stock Issued to Employees" ("APB 25") and related interpretations in accounting for stock-based compensation plans and, accordingly, did not recognize compensation expense for stock options because we issued options at exercise prices equal to the market value at date of grant.

Effective January 1, 2006, the Company adopted SFAS 123 (revised 2004), "Share-Based Payment" ("SFAS 123R"), which revises SFAS 123 and supersedes APB 25. SFAS 123R requires all share-based payments to employees to be recognized in the financial statements based on their fair values using an option-pricing model at the date of grant. The Company has elected to use the modified prospective method for adoption, which requires compensation expense to be recorded for all unvested stock options and restricted shares beginning in the first quarter of adoption, based on the fair value at the original grant date. Prior year financial statements have not been restated.

In November 2005, the FASB issued FASB Staff Position No. FAS 123R-3, "Transition Election Related to Accounting for the Tax Effects of Share-Based Payment Awards." The Company has elected to adopt the alternative transition method provided in the FASB Staff Position for calculating the tax effects of share-based compensation pursuant to SFAS 123R. The alternative transition method includes a simplified method to establish the beginning balance of the additional paid-in capital pool related to the tax effects of employee share-based compensation, which is available to absorb tax deficiencies subsequent to the adoption of SFAS 123R.

The Newtek Business Services, Inc. 2000 Stock Incentive and Deferred Compensation Plan, as amended in 2002 (the "2000 Plan"), currently provides for the issuance of awards of restricted shares or options for up to a maximum of 4,250,000 common shares. All restricted shares or options have been issued at the fair market value on the date of grant. Options issued generally have a maximum term that ranges from 2 to 10 years and vesting provisions that range from 0 to 3 years.

The Newtek Business Services, Inc. 2003 Stock Incentive Plan (the "2003 Plan") currently provides for the issuance of awards of restricted shares or options for up to a maximum of 1,000,000 common shares. All restricted shares or options have been issued at the fair market value on the date of grant. Options issued generally have a maximum term that ranges from 2 to 10 years and vesting provisions that range from 0 to 3 years.

A summary of stock option activity under the 2000 and 2003 Plans as of March 31, 2006 and changes during the period then ended is presented below:

Stock Options	Shares (in thousands)		Weighted Average Exercise Price	Weighted Average Remaining Term (in years)		Aggregate Intrinsic Value (in Thousands)
Outstanding December 31, 2005	2,067	\$	3.23			
Granted	—		—			
Exercised	—		—			
Cancelled	(78)		4.96			
Outstanding March 31, 2006	1,989	\$	3.16	4.79	\$	0
Exercisable March 31, 2006	1,939	\$	3.20	4.85	\$	0

There were no options granted during the three months ended March 31, 2006. The weighted average fair market value of options granted during the three months ended March 31 2005, estimated as of the grant date using the Black Scholes Model, was \$1.07. There were no options exercised during the three months ended March 31, 2006 and 2005.

The fair value of each option granted was estimated using the Black-Scholes Model in 2005 with the following assumptions: expected volatility of 43–85%, risk-free interest rate of 1.61% to 6.15%, respectively, expected dividends of \$0 and expected terms of 1–6 years.

A summary of the status of Newtek's non-vested restricted shares as of March 31, 2006 and changes during the period then ended is presented below:

Non-vested Restricted Shares	Number of Shares (in thousands)	Weighted Average Grant Date Fair Value
Non-vested at December 31, 2005	179	\$ 4.22
Granted	30	\$ 1.97
Exercised	(47)	\$ 2.72
Forfeited	(2)	\$ 4.13
Non-vested at March 31, 2006	160	\$ 4.24

As of March 31, 2006, there were \$385,000 of total unrecognized compensation costs related to non-vested share-based compensation arrangements granted under the Plans. That cost is expected to be recognized ratably through the year ending December 31, 2009. The total fair market value of restricted shares vested during the three months ended March 31, 2006 and 2005 was \$128,000 and \$191,000, respectively.

The adoption of SFAS 123R during the first quarter of 2006 did not have a material impact, as all options were fully vested by December 31, 2005, except for one option grant which yielded \$12,000 of share-based compensation expense for the three months ended March 31, 2006.

The net loss for the three months ended March 31, 2005 does not include any compensation charges related to options granted to employees. The following table illustrates the proforma effect on Net Loss and Loss per share assuming the Company had applied the fair value recognition provisions of SFAS 123 instead of the intrinsic value method under APB 25 to stock - based employee compensation for the three months ended March 31, 2005:

	Three Months Ended March 31, 2005
As reported	
Net loss	\$ (3,375)
Add: Total stock-based employee compensation expense recognized, net of related tax effects	236
Deduct: Total stock based employee compensation expense determined under fair value based method for all awards, net of related tax effects	<u>(330)</u>
Pro forma net loss	<u>\$ (3,469)</u>
Loss per share:	
Basic - as reported	<u>\$ (0.10)</u>
Diluted - as reported	<u>\$ (0.10)</u>
Diluted - pro forma	<u>\$ (0.10)</u>

Use of Estimates

The preparation of financial statements in conformity with accounting principles generally accepted in the United States of America requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosures of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenue and expense during the reporting period. The level of uncertainty in estimates and assumptions increases with the length of time until the underlying transactions are complete. The most significant estimates are with respect to valuation of investments in qualified businesses, asset impairment valuation, allowance for loan losses, valuation of servicing asset and tax valuation allowances. Actual results could differ from those estimates.

Fair value of financial instruments

SFAS No. 107, "Disclosures about Fair Value of Financial Instruments," ("SFAS 107") requires the disclosure of the estimated fair values of financial instruments. Excluding property and equipment, substantially all of the Company's assets and liabilities are considered financial instruments as defined by SFAS 107. Fair value is defined as the price at which a financial instrument could be liquidated in an orderly manner over a reasonable time period under present market conditions. Fair value estimates are subjective in nature and are dependent on a number of significant assumptions associated with each instrument or group of similar instruments, including estimates of discount rates, risks associated with specific financial instruments, estimates of future cash flows and relevant available market information. Fair value information is supposed to represent estimates of the amounts at which financial instruments could be exchanged in current transactions between willing buyers and sellers engaging in exchange transactions. However, since there are no established trading markets for a significant portion of the Company's financial instruments, the Companies may not be able to settle their financial instruments immediately; as such, the fair values are not necessarily indicative of the amounts that could be realized through immediate settlements. In addition, the majority of the Company's financial instruments, such as loans receivable held for investment and bank notes payable, are held to maturity and are realized or paid according to the contractual agreements with the customers or counterparties.

SFAS 107 requires that, where available, quoted market prices be used to estimate fair values. However, because of the nature of the Company's financial instruments, in many instances quoted market prices are not available. Accordingly, the Companies have estimated fair values on the basis of other valuation techniques permitted by SFAS 107, such as discounting estimated future cash flows at rates commensurate with the risks involved, or other acceptable methods. Fair values are required to be estimated without regard to any premium or discount that may result from concentrations of ownership of a financial instrument, possible income tax ramifications, or estimated transaction costs. Fair values are also estimated at a specific point in time and are based on interest rates and other assumptions at that date. As the assumptions underlying these estimates change, the fair values of financial instruments will change.

Because SFAS 107 permits many alternative calculation techniques and because numerous assumptions have been used to estimate the Company's fair values, reasonable comparisons of the Company's fair value information with other financial institutions' fair value information cannot necessarily be made.

The methods and assumptions used to estimate fair values are set forth in the following paragraphs for each major grouping of the Companies' financial instruments.

The carrying values of the following balance sheet items approximate their fair values primarily due to their liquidity and short-term or adjustable yield nature:

- Cash and Cash Equivalents
- Bank Notes Payable
- Accrued Interest Receivable and Payable

The carrying values of accounts payable and accrued expenses approximate fair value because of the short term maturity of these instruments. The carrying value of investments in qualified businesses, loans receivable, structured insurance product, notes and loans payable, credits in lieu of cash, and notes payable in credits in lieu of cash approximate fair value based on management's estimates.

New Accounting Pronouncements

In March 2006, the FASB issued Statement of Financial Accounting Standard No. 156 "Accounting for Servicing of Financial Assets—an amendment of FASB Statement No. 140 ("SFAS 156") which amends FASB Statement No. 140, "Accounting for Transfers and Servicing of Financial Assets and Extinguishments of Liabilities," with respect to the accounting for separately recognized servicing assets and servicing liabilities. SFAS 156 requires an entity to recognize a servicing asset or servicing liability each time it undertakes an obligation to service a financial asset by entering into a servicing contract in certain situations, requires all separately recognized servicing assets and servicing liabilities to be initially measured at fair value, if practicable, and permits an entity to choose subsequent measurement methods for each class of separately recognized servicing assets and servicing liabilities. SFAS 156 also requires separate presentation of servicing assets and servicing liabilities subsequently measured at fair value in the balance sheet and additional disclosures for all separately recognized servicing assets and servicing liabilities. The Company is currently evaluating the impact of adoption, which is required to be adopted January 1, 2007.

Reclassifications

Certain prior period amounts have been reclassified to conform to the current period presentation.

NOTE 2 – COMMON STOCK:

In the first quarter of 2006, Newtek issued 50,196 common shares to the board of directors and employees. Newtek also granted one employee 3,428 shares of restricted stock valued at \$7,400 during the quarter ended March 31, 2006. The fair market value was determined using the fair value of the underlying common stock at the grant date. Half of the restricted shares vest immediately and the other half will vest in the 4th quarter of 2006. The restricted shares are forfeitable upon early voluntary or involuntary termination of the employee. Upon vesting, the grantee will receive one share of common stock for each restricted share vested.

NOTE 3—INVESTMENTS IN QUALIFIED BUSINESSES:

The various interests that the Company acquires in its qualified investments are accounted for under two methods: consolidation and cost method. The applicable accounting method is generally determined based on the Company's voting interest, or the economics of the transaction if the investee is determined to be a variable interest entity.

Consolidation Method. Investments in which the Company directly or indirectly owns more than 50% of the outstanding voting securities, those the Company has effective control over, or those deemed to be a variable interest entity in which the Company is the primary beneficiary under the provisions of FIN 46R are generally accounted for under the consolidation method of accounting. Under this method, an investment's financial position and results of operations are reflected within the Company's Consolidated Balance Sheets and Consolidated Statements of Operations. All significant inter-company accounts and transactions, including returns of principal, dividends, interest received and investment redemptions have been eliminated. The results of operations and cash flows of a consolidated operating entity are included through the latest interim period in which the Company owned a greater than 50% direct or indirect voting interest, exercised control over the entity for the entire interim period or was otherwise designated as the primary beneficiary. Upon dilution of control below 50%, or upon occurrence of a triggering event requiring reconsideration as to the primary beneficiary of a variable interest entity, the accounting method is adjusted to the equity or cost method of accounting, as appropriate, for subsequent periods.

Equity Method. Investees that are not consolidated, but over which the Company exercises significant influence, are accounted for under the equity method of accounting. Whether or not the Company exercises significant influence with respect to an investee depends on an evaluation of several factors including, among others, representation on the investee's Board of Directors and ownership level, which is generally a 20% to 50% interest in the voting securities of the investee, including voting rights associated with the Company's holdings in common, preferred and other convertible instruments in the investee.

Under the equity method of accounting, an investee's accounts are not reflected within the Company's Consolidated Balance Sheets and Consolidated Statements of Income; however, the Company's share of the earnings or losses of the investee is reflected in the caption "Other income" in the Consolidated Statements of Operations.

Cost Method. Investees not accounted for under the consolidation or the equity method of accounting are accounted for under the cost method of accounting. Under this method, the Company's share of the earnings or losses of such companies is not included in the Consolidated Balance Sheets and Consolidated Statements of Operations. However, cost method impairment charges are recognized, as necessary, in the Consolidated Statement of Operations. If circumstances suggest that the value of the investee has subsequently recovered, such recovery is not recorded until realized.

The Company's debt and equity investments have substantially been made with funds available to Newtek through the Capco programs. These programs generally require that each Capco meet a minimum investment benchmark within 5 years of initial funding. The investments listed below qualify for this purpose. In addition, any funds received by a Capco as a result of a debt repayment or equity return may, under the terms of the Capco programs, be reinvested and this will be counted towards the Capcos' minimum investment benchmarks.

In accordance with the provisions of Statement of Financial Accounting Standards No. 115 "Accounting for Certain Investments in Debt and Equity Securities," the Company classifies its debt investments as held-to-maturity and such investments are initially recorded at amortized cost. The Company considers several factors in determining whether an impairment exists on the investment, such as the investee's net book value, cash flow, revenue growth and net income. In addition, the Investment Committee considers other factors, such as the economy and the investee company's industry, to determine if an other than temporary decline in value exists in the Company's investment.

HELD TO MATURITY DEBT INVESTMENTS—Summary (In thousands)

	<u>Total</u>
Principal Outstanding at December 31, 2005	\$ 3,596
Debt investments made in 2006	5,551
Return of principal —2006	(5,288)
Other than temporary decline in value of investments—2006	—
Principal Outstanding at March 31, 2006	<u>\$ 3,859</u>

COST INVESTMENTS--Summary (In thousands)

Total cost investments at December 31, 2005	\$ 150
Cost investments made in 2006	---
Other than temporary decline in value of investments--2006	---
Total cost investments at March 31, 2006	<u>\$ 150</u>

The Company has not guaranteed any obligation of these investees, and the Company is not otherwise committed to provide further financial support for the investees. However, from time-to-time, the Company may decide to provide such additional financial support which, as of March 31, 2006 was zero. Should the Company determine that an impairment exists upon its periodic review, and it is deemed to be other than temporary, the Company will write down the recorded value of the asset to its estimated fair value and record a corresponding charge in the Consolidated Statements of Operations.

NOTE 4 – LOANS RECEIVABLE (NON-CAPCO):

Loans receivable are generated by NSBF and are primarily related to entities in the Eastern region of the United States with concentrations in the restaurant and hotel and motel industries.

Below is a summary of the activity in the SBA loan receivable balance, net of SBA loan loss reserves for the three months ended March 31, 2006: (In thousands)

Balance at December 31, 2005	\$ 32,028
SBA loans originated for investment	2,559
Payments received in 2006	(2,222)
Loans foreclosed into real estate owned	(215)
Provision for SBA loan losses	(119)
Discount on loan originations, net	(114)
Balance at March 31, 2006	<u>\$ 31,917</u>

Below is a summary of the activity in the reserve for loan losses balance for the three months ended March 31, 2006: (In thousands)

Balance at December 31, 2005	\$ 2,304
SBA Loan loss provision charged in 2006	119
Recoveries	10
Loan charge-offs	(299)
Balance at March 31, 2006	<u>\$ 2,134</u>

Below is a summary of the activity in the SBA loans held for sale for the three months ended March 31, 2006: (In thousands)

Balance at December 31, 2005	\$ 1,155
Loan originations for sale	7,879
Loans sold	(6,269)
Balance at March 31, 2006	<u>\$ 2,765</u>

All loans are priced at the prime interest rate plus approximately 2.75% to 3.75%. The only loans with a fixed interest rate are defaulted loans of which the guaranteed portion sold is repurchased from the secondary market by the SBA, while the unguaranteed portion of the loans still remains with NSBF. As of March 31, 2006 and December 31, 2005, NSBF loans receivable held for investment with adjustable interest rates amounted to \$31,847,000 and \$34,200,000, respectively.

For the three months ended March 31, 2006 and 2005, NSBF funded approximately \$10,438,000 and \$11,814,000 in loans and sold approximately \$6,269,000 and \$5,657,000 of the guaranteed portion of the loans, respectively.

The GE credit line is collateralized by all the loans receivable held for investment and held for sale, in addition to all assets of NSBF.

The outstanding balances of loans past due ninety days or more and still accruing interest as of March 31, 2006 and December 31, 2005 amounted to \$0 and \$7,300, respectively.

At March 31, 2006 and December 31, 2005, total impaired nonaccrual loans amounted to \$4,458,000 and \$3,693,000, respectively. Approximately \$711,000 and \$907,000 of the allowance for loan losses were allocated against such impaired nonaccrual loans, respectively, in accordance with SFAS 114, "Accounting by Creditors for Impairment of a Loan—An Amendment of FASB No. 5 and 43".

The following is a summary of Loans Receivable (in thousands) at:

	<u>March 31, 2006</u>	<u>December 31, 2005</u>
Due in one year or less	\$ 29	\$ 24
Due between one and five years	2,091	1,807
Due after five years	<u>33,674</u>	<u>34,129</u>
Total	35,794	35,960
Less : Allowance for loan losses	(2,134)	(2,304)
Less: Deferred origination fees, net	<u>(1,743)</u>	<u>(1,628)</u>
Balance (net)	<u>\$ 31,917</u>	<u>\$ 32,028</u>

NOTE 5—SERVICING ASSETS

NSBF reviews capitalized servicing rights for impairment. This review is performed based on risk strata, which are determined on a disaggregated basis given the predominant risk characteristics of the underlying loans. The predominant risk characteristics are loan term and year of loan origination.

The following summarizes the activity pertaining to servicing assets for the three months ended March 31, 2006 (in thousands):

Balance at December 31, 2005	\$ 3,376
Servicing assets capitalized	258
Servicing assets amortized	<u>(205)</u>
Balance at March 31, 2006	<u>3,429</u>
Reserve for impairment of servicing assets:	
Balance at December 31, 2005	(179)
Additions	<u>(0)</u>
Balance at March 31, 2006	<u>(179)</u>
Balance at March 31, 2006 (net of reserve)	<u>\$ 3,250</u>

For the three months ended March 31, 2006 and 2005, servicing fees received amounted to \$499,000 and \$450,000, respectively

The estimated fair value of capitalized servicing rights was \$3,250,000 and \$3,197,000 at March 31, 2006 and December 31, 2005, respectively. The estimated fair value of servicing assets at both balance sheet dates was determined using a discount rate of 13.5%, weighted average prepayment speeds ranging from 1% to 19%, weighted average life of 3.9 years, and an average default rate of 3%.

The unpaid principal amount of loans serviced for others of approximately \$174,447,000 and \$175,982,000 at March 31, 2006 and December 31, 2005, respectively, is not included on the accompanying consolidated balance sheets.

Amortization of servicing assets for the year ended December 31, 2005 on the accompanying Condensed Consolidated Statements of Operations included a cumulative adjustment of approximately \$184,000 (a reduction of amortization expenses) due to a change in NSBF's amortization method. Although this adjustment relates to prior periods, the amount of the adjustment attributable to any prior year would not have been material to the Company's or NSBF's financial condition or results of operations as reported for that year.

NOTE 6 – EARNINGS PER SHARE:

Basic earnings per share is computed based on the weighted average number of common shares outstanding during the period. The dilutive effect of common share equivalents is included in the calculation of diluted earnings per share only when the effect of their inclusion would be dilutive.

The calculations of Net loss per share were:

(In thousands, except for Per Share Data)		
	Three Months Ended March 31, 2006	Three Months Ended March 31, 2005
Numerator:		
Numerator for basic and diluted EPS – loss available to common shareholders	\$ (2.728)	\$ (3.375)
Denominator:		
Denominator for basic and diluted EPS – weighted average shares	34,834	33,892
EPS: Basic	\$ (0.08)	\$ (0.10)
EPS: Diluted	\$ (0.08)	\$ (0.10)

The amount of anti-dilutive shares/units excluded from above is as follows:

	Three Months Ended March 31, 2006	Three Months Ended March 31, 2005
Stock options and restricted stock	1,990	746
Warrants	216	216
Contingently issuable shares	861	1,283

NOTE 7 – NOTES PAYABLE–OTHER:

In March 2006, CrystalTech Web Hosting, Inc. (“CrystalTech”), a wholly owned subsidiary of the Company, prepaid \$4,000,000 of the note payable to Technology Investment Capital Corp. (“TICC”). In conjunction with the prepayment, CrystalTech paid \$127,000 in additional interest and revised the principal payments to \$2,000,000 due in March 2008 and \$2,000,000 due in March 2009.

NOTE 8—SBA LINE OF CREDIT:

In February 2006, GE and NSBF entered into a First Amendment to the GE Line of Credit Agreement. The amendment made adjustments to various financial covenants, including a net-worth maintenance level that NSBF had breached. GE has waived, upon the effectiveness of the amendment, specific defaults that would have resulted from the terms of the original agreement.

NOTE 9 – SEGMENT REPORTING:

Operating segments are organized internally primarily by the type of services provided, and in accordance with SFAS 131, “Disclosures About Segments of an Enterprise and Related Information,” the Company has aggregated similar operating segments into six reportable segments: SBA lending, electronic payment processing, web hosting, Capcos, corporate activities and all other.

Effective in the fourth quarter of 2005, the Company increased the number of operating segments from four to six. Historically a substantial amount of resources were dedicated to new Capcos and the investment of the proceeds in qualified businesses and the managing of these businesses. Since management does not anticipate any new Capcos in the foreseeable future, the Company has changed its internal reporting to better evaluate and manage the existing Capco business, its corporate activities and its portfolio of small businesses included in the all other segment. The segment previously called Capco and other, which Management previously evaluated as one integrated segment, is now being evaluated as three segments—Capcos, corporate activities and all other. The segment information for prior periods has been restated to conform to the current disclosure.

The SBA lending segment is NSBF, a licensed, U. S. Small Business Administration (SBA) lender that originates, sells and services loans to qualifying small businesses, which are partially guaranteed by the SBA.

As an SBA lender, NSBF generates revenues from sales of loans, servicing income for those loans retained to service by NSBF and interest income earned on the loans themselves. The lender also generates expenses such as interest, professional fees, payroll and consulting, depreciation and amortization, and provision for loan losses, all of which are included in the respective caption on the condensed consolidated statement of operations. NSBF also has expenses such as loan recovery expenses, loan processing costs, and other expenses that are all included in the other expenses caption on the condensed consolidated statements of operations.

The electronic payment processing segment is a marketer of credit card and check approval services to the small business market. Revenue generated from electronic payment processing is included on the condensed consolidated statements of income as a separate line item. Expenses include direct costs (included in a separate line captioned electronic payment processing direct costs), professional fees, payroll and consulting, and other expenses, all of which are included in the respective caption on the condensed consolidated statements of operations.

The web hosting segment consists of CrystalTech, acquired in July 2004. CrystalTech's revenues are derived primarily from web hosting services and set up fees. CrystalTech generates expenses such as professional fees, payroll and consulting, and depreciation and amortization, which are included in the respective caption on the accompanying condensed consolidated statements of operations, as well as licenses and fees, rent, and general office expenses, all of which are included in other expenses in the respective caption on the condensed consolidated statements of operations.

The Capco segment, which consists of the fifteen Capcos, generates non-cash income from tax credits, interest income and gains from investments in qualified businesses which are included in other income. Expenses primarily include non-cash interest and insurance expense, professional fees consisting of management fees paid to Newtek, legal and auditing fees and losses from investments in qualified businesses.

The all other segment includes revenue and expenses from businesses formed from qualified investments made through the Capco programs which cannot be aggregated with other operating segments.

Corporate activities represent revenue and expenses not allocated to our segments. Revenue includes interest income and management fees earned from Capcos. Expenses primarily include corporate operations related to broad-based sales and marketing, legal, finance, information technology, corporate development and additional costs associated with administering the Capcos.

Management has considered the following characteristics when making its determination of its operating and reportable segments:

- the nature of the product and services,
- the type or class of customer for their products and services,
- the methods used to distribute their products or provide their services, and
- the nature of the regulatory environment, for example, banking, insurance, or public utilities.

The accounting policies of the segments are the same as those described in the summary of significant accounting policies.

	For the three months ended March 31, 2006	For the three months ended March 31, 2005
	(in thousands)	
Third Party Revenue		
SBA lending	\$ 2,122	\$ 2,222
Electronic payment processing	9,476	6,011
Web hosting	3,203	2,249
Capcos	1,568	1,324
All other	1,891	1,350
Corporate activities	<u>1,263</u>	<u>1,315</u>
Total reportable segments	19,523	14,471
Eliminations	<u>(1,361)</u>	<u>(1,160)</u>
Consolidated Total	<u>18,162</u>	<u>13,311</u>
Inter Segment Revenue		
SBA lending	\$ —	\$ —
Electronic payment processing	84	66
Web hosting	15	—
Capcos	320	142

	For the three months ended March 31, 2006	For the three months ended March 31, 2005
All other	189	162
Corporate activities	<u>531</u>	<u>555</u>
Total reportable segments	1,139	925
Eliminations	<u>(1,139)</u>	<u>(925)</u>
Consolidated Total	<u>\$ —</u>	<u>\$ —</u>
Income (loss) before provision (benefit) for income taxes		
SBA lending	\$ (56)	\$ (656)
Electronic payment processing	414	(46)
Web hosting	1,003	943
Capcos	(4,142)	(3,681)
All other	(300)	(567)
Corporate activities	<u>(1,015)</u>	<u>(857)</u>
Total	<u>\$ (4,096)</u>	<u>\$ (4,864)</u>
Depreciation and Amortization		
SBA lending	\$ 396	\$ 398
Electronic payment processing	284	187
Web hosting	558	357
Capcos	5	—
All other	133	112
Corporate activities	<u>39</u>	<u>35</u>
Total	<u>\$ 1,415</u>	<u>\$ 1,089</u>

	As of March 31, 2006	As of December 31, 2005
Identifiable assets		
SBA lending	\$ 45,306	\$ 46,501
Electronic payment processing	10,060	9,664
Web hosting	14,012	17,101
Capcos	154,543	156,216
All other	26,912	28,845
Corporate activities	5,676	6,686
Consolidated total	\$ 256,509	\$ 265,013

In February 2006, in connection with the signing of the First Amendment to the GE Line of Credit Agreement, the board of NSBF authorized the issuance of 300 shares of a newly designated Series B Preferred Stock. The shares, valued at \$10,000 each, were issued in exchange for the cancellation of \$3,000,000 of subordinated debt owed to Newtek. The Company assessed the fair value of the Preferred Stock based on the fair value of the intercompany note extinguished since the transaction was not executed with a third party on an arms length basis. Accordingly, no gain or loss on extinguishment is included in the segment data.

Note 10 – Subsequent Events

On April 13, 2006, Summit Systems & Design, LLC, a Texas limited liability company, doing business as Newtek Merchant Solutions (“Summit”), which is an investment of WTXI, a Texas Capco, purchased a merchant processing credit card portfolio with 3,100 customers from Midwest Transaction Group, L.L.C., for a purchase price of \$2,500,000. This portfolio has annual processing volume of approximately \$240 million.

In June 2006, CrystalTech prepaid an additional \$2,100,000 of the note payable to TICC. In conjunction with the prepayment the remaining principal payment of \$1,900,000 is due in March 2008.

In June and July of 2006, the Company entered employment agreements with 3 officers. The agreements provide for aggregate annual base compensation of \$875,000 as well as participation in future bonus plans and all executive benefit programs available to Company executives. All three agreements expire December 31, 2007.

Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operation.

The following discussion of our financial condition and results of operations should be read together with our consolidated financial statements and the related notes thereto included in another part of this Quarterly Report. This discussion contains certain forward-looking statements within the meaning of the Private Securities Litigation Reform Act of 1995, that involve substantial risks and uncertainties. When used in this report the words "anticipate," "believe," "estimate," "expect" and similar expressions as they relate to our management or us are intended to identify such forward-looking statements. Our actual results, performance or achievements could differ materially from those expressed in, or implied by, these forward-looking statements. Historical operating results are not necessarily indicative of the trends in operating results for any future period.

Our Capcos operate under a different set of rules in each of the 8 jurisdictions and these place varying requirements on the structure of our investments. In some cases, particularly in Louisiana, we don't control the equity or management of a qualified business although at times we don't always make that distinction.

We are a holding company for several wholly- and majority owned subsidiaries, including 15 certified capital companies which we refer to as Capcos, and several portfolio companies in which the Capcos own non-controlling minority interests. We are a direct distributor of business services to the small and medium sized business market. Our target market represents a very significant marketplace in the US GDP, since approximately 51% of the GDP in the United States comes from small to medium size businesses, and nine out of ten businesses in the United States fit into this market segment. As of March 31, 2006, we had over 60,000 small and medium sized businesses in our portfolio. We use state of the art Web-based proprietary technology to be a low cost provider of products and services to our small and medium size business clients. We partner with Merrill Lynch, UBS, Citibank, the Credit Union National Association with its 9,100 credit unions and 8 million members, the Navy Federal Credit Union with 2.5 million members, General Motors Minority Dealers Association, The Veterans Corporation, National Physician's Care, Inc. and the US Women's Chamber of Commerce who have elected to outsource their business services and financial products to us rather than try to provide it for their customers themselves. We are a holding company for several wholly- and majority owned subsidiaries, including 15 Capcos, and several portfolio companies in which the Capcos own non-controlling minority interests. We are deemphasizing our Capco business in favor of growing our operating businesses.

The Company's reportable business segments are:

SBA Lending: Newtek Small Business Finance, a licensed, U.S. Small Business Administration lender that originates, sells and services loans to qualifying small businesses, which are partially guaranteed by the SBA.

Electronic Payment Processing: A marketer of credit card processing and check approval services to the small- and medium-sized business market.

Web Hosting: CrystalTech Web Hosting, Inc. which offers shared and dedicated web hosting to the small- and medium-sized business market.

Capcos: Fifteen certified capital companies which invest in small- and medium-sized businesses. They generate non-cash income from tax credits and non-cash interest and insurance expenses.

All Other: Includes results from businesses formed from qualified investments made through Capco programs which can not be aggregated with other operating segments.

Corporate Activities: Revenue and expenses not allocated to our other segments, including interest income, Capco management fee income and corporate operations expenses.

Business Segments:

SBA Lending:

Revenues decreased slightly compared to the prior year corresponding period and were primarily affected by a decrease of \$475,000 related to a one-time recovery of loan liquidation costs in 2005; partially offset by a \$251,000 increase in premium income.

Loss before income taxes was \$56,000, compared to a loss of \$656,000 in the corresponding period of 2005 and was primarily affected by:

- A \$532,000 decrease in the provision for loan losses which in 2005 included a \$550,000 increase in the provision to cover losses associated with the Commercial Capital Corporation portfolio acquired in 2002, partially offset by:
- A net reduction of \$438,000 in recoveries of loan liquidation costs.

Electronic Payment Processing:

Revenues increased \$3,465,000, or 58%, compared to the prior year corresponding period and were primarily affected by:

- A 45% growth in customers from 7,300 to 10,600 as a result of our marketing efforts;
- Merchant portfolios, which included approximately 1,000 customers, purchased in 2005 which generated \$142,000 of additional revenue in 2006.

Income before income taxes was \$414,000, compared to a loss of \$46,000 in the corresponding period in 2005 and was primarily affected by a substantial increase in revenue and the leverage of fixed costs.

Web Hosting:

Revenues increased \$954,000, or 42%, compared to the corresponding period in the prior year and were primarily affected by:

- An increase in customers from 37,000 to 48,000.
- An increase in dedicated hosting customers which generate higher revenue per customer.

Income before income taxes increased \$60,000, or 6% compared to the corresponding period and was primarily affected by:

- An increase in revenues, partially offset by:
- A decrease in the revenue per shared web hosting customer due to competitive pressures;
- Increased payroll necessary to service the increased base of customers;
- Increased depreciation due to capital invested in additional servers to support the growth in shared and dedicated web hosting customers, and
- A \$267,000 increase in interest expense due to an increase in borrowings during the period.

Capcos:

Revenues increased slightly due to income from tax credits from two additional Capcos (WTX1 and WNY5) compared to the corresponding period in 2005.

Loss before income taxes was \$4,142,000, compared to a loss of \$3,681,000 in the corresponding period of 2005 and was primarily affected by an increase in revenue offset by an increase in interest expense, insurance expense and management fees associated with the two additional Capcos.

All Other:

Revenues increased \$541,000 or 40% compared to the prior year corresponding period and were primarily affected by:

- An increase in lodging revenue totaling \$1,016,000 derived from an investment in the fourth quarter of 2005 in Phoenix Development Group, a hotel in New Orleans; partially offset by:
- A decrease in revenue from Exponential Business Development, Inc. of \$719,000.

The loss before income taxes of \$300,000 as compared with a loss of \$567,000 in the corresponding period of the prior year was primarily affected by:

- A profit of \$534,000 in Phoenix Development Group; and
- A net reduction in losses for a number of smaller investments; partially offset by:
- A \$524,000 loss in Where Eagles Fly, a Washington D.C. investment; and
- A decrease in profit of \$719,000 from Exponential Business Development, Inc.

Corporate Activities:

Revenues decreased slightly due to management fee income from two additional Capcos (WTX1 and WNY5) compared to the prior year corresponding period and an increase in interest income, offset by a decrease in other income.

The loss before income taxes was \$1,015,000, compared to a loss of \$857,000 in the corresponding period of the prior year.

Comparison of the three months ended March 31, 2006 and March 31, 2005

Revenues increased by \$4,851,000, or 36%, to \$18,162,000 for the three months ended March 31, 2006, from \$13,311,000 for the three months ended March 31, 2005.

Electronic payment processing revenue increased by \$3,421,000, or 57%, to \$9,432,000 for the three months ended March 31, 2006 from \$6,011,000 for the three months ended March 31, 2005 due to the increase in electronic payment processing customers. At March 31, 2006, we provided our payment services to over 10,600 customers across the United States, compared to 7,300 customers at March 31, 2005, an increase of 45%. Gross total processing volume increased by 31% to \$423,000,000 for the three months ended March 31, 2006 from \$323,000,000 for the three months ended March 31, 2005.

Web hosting income increased by \$915,000, or 41%, to \$3,164,000 for the three months ended March 31, 2006 from \$2,249,000 for the three months ended March 31, 2005. The increase is due to the number of customers the Company provided services to and an increase in dedicated hosting customers which generate higher revenue per customer. At March 31, 2006 and 2005, CrystalTech was providing services to 48,000 and 37,000 customers, respectively.

Interest is generated from SBA lending activities, excess cash balances that are invested in money market accounts, U.S. Treasury notes, federal government backed securities mutual funds, non-cash accretions of structured insurance product and on held to maturity investments. The following table details the changes in these different forms of interest income:

(In thousands)	2006	2005	Change
NSBF activities	\$ 843	\$ 838	\$ 5
Non-cash accretions	4	40	(36)
Qualified investments	75	10	65
Treasury and other	491	185	306
	<u>\$ 1,413</u>	<u>\$ 1,073</u>	<u>\$ 340</u>

The increase in interest income in Treasury and other is generally due to an increase in interest rates on investments for the three months ended March 31, 2006 compared to the same period in 2005.

Income from tax credits increased by \$197,000 to \$1,258,000 for the three months ended March 31, 2006 from \$1,061,000 for the three months ended March 31, 2005, due to two additional Capcos in the current three month period in 2006 compared to the same period in 2005.

Premium income increased by \$251,000 to \$614,000 for the three months ended March 31, 2006 from \$363,000 for the three months ended March 31, 2005. The increase in premium income was attributable to NSBF selling 24 guaranteed loans in the three months ended March 31, 2006, aggregating \$6,269,000 as compared to 35 loans sold aggregating \$5,657,000 in the same period for the prior year. The premiums recognized in connection with these sales were \$614,000 for the three months ended March 31, 2006 as compared with \$474,000 in the same period for the prior year, offset by \$111,000 of premiums being returned due to defaults or prepayments within 90 days of sale.

Servicing fee income related to SBA loans increased by \$49,000 to \$499,000 for the three months ended March 31, 2006 from \$450,000 for the three month period ended March 31, 2005. The increase in servicing fee income was attributable to the servicing portfolio's growth year over year. The portfolio in which we earn servicing fee income at March 31, 2006 aggregated \$151,245,000 as compared with \$127,679,000 at March 31, 2005.

Other income decreased by \$345,000 to \$1,538,000 for the three months ended March 31, 2006 from \$1,883,000 for the three months ended March 31, 2005. Other income for the three months ended March 31, 2006 included \$1,016,000 of lodging revenues from Phoenix Development Group, a subsidiary that operates a hotel in Louisiana. For the three months ended March 31, 2005, other income included \$820,000 of income received by Exponential Business Development, L.P., on the sale of a portfolio company, as well as approximately \$475,000 of other income from the reimbursement of loan recovery costs from the SBA.

Electronic payment processing direct costs increased by \$2,426,000 to \$6,907,000 for the three months ended March 31, 2006 from \$4,481,000 for the three months ended March 31, 2005, an increase of 54%, which correlates to the significant increase in this business.

Changes in interest expense are summarized as follows:

(In thousands)	2006	2005	Change
Capco interest expense	\$ 3,343	\$ 3,034	\$ 309
NSBF (SBA Lender) interest expense	512	452	60
Other interest expense	492	211	281
	<u>\$ 4,347</u>	<u>\$ 3,697</u>	<u>\$ 650</u>

The increase in Capco expense relates to the two new Capcos formed in June and December 2005 (WTXI and WNYS) which had a full three months of expense in 2006 compared to zero in the three months ended March 31, 2005. The approximately \$60,000 increase in SBA interest expense is attributable to the increase in the prime rate as well as an increase in the lending rate. Under the previous lines of credit with Deutsche Bank and Banco Popular, NSBF's lending rate was prime minus 50 basis points and prime, respectively. Under the current credit agreement with GE, the lending rate is prime plus 50 basis points or Base LIBOR plus 2.75 basis points. These increases were offset by the decrease in the outstanding lines of credit from \$35,227,000 at March 31, 2005 to \$23,080,000 at March 31, 2006. The \$281,000 increase in other interest expense is primarily related to the interest on the TICC note of \$267,000.

Consulting, payroll and benefits increased by \$42,000 to \$4,139,000 for the three months ended March 31, 2006 from \$4,097,000 for the three months ended March 31, 2005.

Professional fees increased by \$381,000 to \$2,120,000 for the three months ended March 31, 2006 from \$1,739,000 for the three months ended March 31, 2005.

Depreciation and amortization expense increased by \$326,000 to \$1,415,000 for the three months ended March 31, 2006 from \$1,089,000 for the three months ended March 31, 2005. This is due to the purchase of \$623,000 of fixed assets in the three months ended March 31, 2006.

Insurance expense increased by \$181,000 to \$902,000 for the three months ended March 31, 2006 from \$721,000 for the three months ended March 31, 2005. This increase is primarily due to the additional insurance relating to the new Capcos formed in June and December 2005 (WTXI and WNYS, respectively), totaling \$144,000.

Provision for loan losses decreased by \$532,000 to \$119,000 for the three months ended March 31, 2006 from \$651,000 for the three months ended March 31, 2005. This decrease was due to NSBF experiencing significant charge-offs in the first quarter of 2005, which required management to establish an additional provision in order to maintain its allowance for loan losses at a level which management believed adequately covered inherent losses in the existing loan portfolio. NSBF's charges-offs, in both the acquired CCC portfolio as well as newly originated loans, were \$299,000 in the three months ended March 31, 2006 as compared to \$763,000 in the comparable period in 2005. The higher amount in 2005 was due to the completion of the liquidation process on certain loans from the acquired CCC portfolio and unexpected credit events from the acquired portfolio and newly originated loans.

Management's ongoing estimates of the allowance for loan losses are particularly affected by the changing composition of the loan portfolio over the last few years. The loans acquired from CCC in December 2002, which are more seasoned than those originated by NSBF, comprise 31% of total loans held for investment as of March 31, 2006. Other portfolio characteristics, such as industry concentrations and loan collateral, which also impacts management's estimates of the allowance for loan losses, have also changed since the acquisition. The changing nature of the portfolio and the limited past loss experience on the newly originated portfolio has resulted in management's estimates of the allowance for loan losses being based more on subjective factors and less on empirically derived loss rates. Such estimates could differ from actual results, which may have a material effect on the Company's results of operations or financial condition.

Other expenses increased by \$523,000 to \$2,483,000 for the three months ended March 31, 2006 from \$1,960,000 for the three months ended March 31, 2005.

The effective tax benefit for the three months ended March 31, 2006 and 2005 were 33% and 31%, respectively. In both years no tax benefit was recorded for the taxable losses of NSBF as it is not included in the consolidated tax group. There were no material permanent differences in either year.

Net loss decreased by \$647,000 to \$2,728,000 for the three months ended March 31, 2006 from \$3,375,000 for the three months ended March 31, 2005, due to the increases in revenue of \$4,851,000 and total expenses of \$3,997,000 discussed above, offset by the decrease in the tax benefit of \$121,000, and in minority interest of \$86,000.

Our operating businesses are dependent on the health of the small- and medium-sized segments of the U.S. economy. The continuing rise in interest rates, along with the rise in gas and commodity prices, could have a negative impact on consumer spending which could adversely impact our small business customers. This could also negatively impact the value of commercial and residential real estate, which could adversely impact the loan portfolio of our SBA Lending segment.

Critical Accounting Policies and Estimates:

The Company's significant accounting policies are described in Note 1 of the Notes to Consolidated Financial Statements included in its Form 10-K for the fiscal year ended December 31, 2005. A discussion of the Company's critical accounting policies, and the related estimates, are included in Management's Discussion and Analysis of Results of Operations and Financial Position in its Form 10-K for the fiscal year ended December 31, 2005. There have been no significant changes in the Company's existing accounting policies or estimates since its fiscal year ended December 31, 2005.

Liquidity and Capital Resources

(Dollars in thousands)

	For the Three Months Ended March 31,	
	2006	2005
Net cash used in operating activities	\$ (1,615)	\$ (14,308)
Net cash provided by investing activities	15,500	1,614
Net cash (used in) provided by financing activities	(1,977)	14,769
Net increase in cash and cash equivalents	11,908	2,075
Cash and cash equivalents, beginning of period	23,940	29,540
Cash and cash equivalents, end of period	<u>\$ 35,848</u>	<u>\$ 31,615</u>

Cash requirements and liquidity needs are primarily funded through our capacity to borrow from our \$75 million GE line of credit to originate and warehouse the guaranteed and unguaranteed portion of loans of our SBA lending unit and available cash and cash equivalents. The availability of the lending facility is subject to the compliance with certain covenants and collateral requirements as set forth in the agreement. At March 31, 2006, our unused sources of liquidity consisted of unrestricted cash and cash equivalents of \$35,848,000 and \$2,513,000 available through the lending facility.

In addition, the Company held \$2,200,000 in Certificates of Deposit, \$3,184,000 in U.S. Treasury Notes and \$100,000 in Marketable Securities which are classified as held for sale and could be converted to cash and cash equivalents. Restricted cash totaling \$12,613,000 which is held in Capcos can be used in managing and operating the Capcos, making qualified investments, to repay debt obligations and for the payment of income taxes.

Net cash used in operating activities is affected by noncash revenues and expenses associated with our Capco segments. In the period ended March 31, 2006 noncash interest accretion associated with notes payable in credits in lieu of cash totaled \$3,343,000 while the noncash expensing of insurance purchased at the time Capcos were formed totaled \$747,000. This offset noncash income from tax credits of \$1,258,000, thereby generating a noncash loss of \$2,832,000. In 2005, interest accretion totaled \$3,034,000, the expensing of insurance totaled \$661,000 and income from tax credits totaled \$1,061,000, thereby generating a noncash loss of \$2,634,000.

Net cash provided by investing activities primarily includes investments and repayments of qualified debt investments made by our Capcos, activity regarding the unguaranteed portions of SBA loans, the purchase of fixed assets and changes in our restricted cash and investments. During 2006 we increased our net investment in Capco investments by \$263,000, our net investment in unguaranteed loans by \$185,000 and purchased \$623,000 of fixed assets primarily to support increased customers in our web hosting segment. In the first three months of 2006 we had \$13,314,000 in net redemptions in our Certificates of Deposit, U. S. Treasury Notes and Marketable Securities and a reduction of \$3,291,000 in our restricted cash held by Capcos.

Net cash used in financing activities primarily includes changes in notes payable – insurance, the proceeds of which were used to finance Capco activities, notes payable – other which were funds borrowed by CrystalTech Web Hosting, Inc. from TICC and the GE line of credit which is the lending facility for our SBA lending operation.

In 2005, \$692,000 of notes payable–insurance were repaid. In 2005, the Company borrowed \$8,000,000 from TICC, \$4,000,000 of which was prepaid through March 31, 2006. The Company prepaid an additional \$2,100,000 on June 30, 2006. The GE line of credit payable decreased by \$1,792,000 in 2006 and increased by \$7,240,000 in 2005.

Historically Newtek has funded its operations through the issuance of notes to insurance companies through the Capco programs. We do not believe there are any new Capco programs currently being formed and as such are not anticipating any cash flow from new Capco programs for the foreseeable future.

We believe our operating cash flow, available borrowing capacity, existing cash and cash equivalents and other investments should provide adequate funds for continuing operations, investments required under our Capco programs and principal and interest payments on our debt.

FORWARD-LOOKING STATEMENTS

This Quarterly Report on Form 10-Q contains forward-looking statements. Additional written or oral forward-looking statements may be made by Newtek from time to time in filings with the Securities and Exchange Commission or otherwise. The words "believe," "expect," "seek," and "intend" and similar expressions identify forward-looking statements, which speak only as of the date the statement is made. Such forward-looking statements are within the meaning of that term in Section 27A of the Securities Act of 1933, as amended, and Section 21E of the Securities Exchange Act of 1934, as amended. Such statements may include, but are not limited to, projections of income or loss, expenditures, acquisitions, plans for future operations, financing needs or plans relating to our services, as well as assumptions relating to the foregoing. Forward-looking statements are inherently subject to risks and uncertainties, some of which cannot be predicted or quantified. Future events and actual results could differ materially from those set forth in, contemplated by or underlying the forward-looking statements.

Newtek does not undertake, and specifically disclaims, any obligation to publicly release the results of revisions which may be made to forward-looking statements to reflect the occurrence of anticipated or unanticipated events or circumstances after such statements.

Item 3. Quantitative and Qualitative Disclosure About Market Risk.

All of our business activities contain elements of risk. We consider the principal types of risk to be fluctuations in interest rates and loan portfolio valuations. We consider the management of risk essential to conducting our businesses. Accordingly, risk management systems and procedures are designed to identify and analyze our risks, to set appropriate policies and limits and to continually monitor these risks and limits by means of reliable administrative and information systems and other policies and programs.

Because Newtek Small Business Finance, Inc., our SBA lender, borrows money to make loans and investments, our net operating income is dependent upon the difference between the rate at which we borrow funds and the rate at which we invest these funds. The Company had approximately \$23,080,000 at March 31, 2006 outstanding on the GE line of credit. Interest rates on such notes are variable at prime plus 0.50 or base LIBOR plus 2.75%. As a result, there can be no assurance that a significant change in market interest rates will not have a material adverse effect on our interest income. In periods of sharply rising interest rates, our cost of funds would increase, which would reduce our net operating income. We have analyzed the potential impact of changes in interest rates on interest income net of interest expense. Assuming that the balance sheet were to remain constant and no actions were taken to alter the existing interest rate sensitivity, a hypothetical immediate 1% change in interest rates would have the effect of a net increase (decrease) in assets by less than 1% for the first quarter of 2006. Although management believes that this measure is indicative of our sensitivity to interest rate changes, it does not adjust for potential changes in credit quality, size and composition of the assets on the balance sheet, and other business developments that could effect a net increase (decrease) in assets. Accordingly, no assurances can be given that actual results would not differ materially from the potential outcome simulated by this estimate.

Additionally, we do not have significant exposure to changing interest rates on invested cash and cash equivalents, U.S. Treasury notes and marketable securities which was approximately \$55,397,000 and \$62,506,000 at March 31, 2006 and December 31, 2005, respectively. Newtek invests cash mainly in money market accounts and other investment-grade securities and does not purchase or hold derivative financial instruments for trading purposes.

Item 4. Controls and Procedures.

As of the three months ended March 31, 2006, an evaluation of our disclosure controls and procedures was carried out under the supervision and with the participation of our Chief Executive Officer (“CEO”) and Chief Financial Officer (“CFO”). As a result of the material weakness identified below, management has concluded that our disclosure controls and procedures were not effective as of March 31, 2006.

As defined under applicable Securities and Exchange Commission (“SEC”) rules the term “disclosure controls and procedures” are designed to ensure that information required to be disclosed in the reports that an issuer files under the Securities Exchange Act of 1934, as amended, is recorded, processed, summarized and reported within the time periods specified in the SEC rules. Disclosure controls and procedures include normal internal controls designed to ensure that information required to be disclosed is accumulated and communicated to the issuer management including the CEO and CFO to allow timely decisions regarding required disclosure. Disclosure controls include internal controls that are designed to provide reasonable assurance that transactions are properly recorded and reported. A material weakness in disclosure controls would be a control deficiency or combination of control deficiencies that results in a more than remote likelihood that information required to be disclosed is not recorded, processed, summarized and reported within the time periods specified by the SEC.

As of March 31, 2006, we did not maintain effective controls over the financial reporting process and the preparation, review, presentation and disclosure of our consolidated financial statements which contributed to our inability to file timely this Quarterly Report. Specifically, we did not maintain a sufficient complement of financial personnel with adequate training and experience in accounting and financial reporting commensurate with our financial reporting requirements. Accordingly, management has determined that this control deficiency constitutes a material weakness. The determination by our management also noted that the weakness related to the non-timely manner in which the procedures were implemented and not to any weakness related to the accuracy of the financial reporting; no restatements of any previously reported results are called for.

We have placed significant emphasis on remediation of this disclosure weakness and have undertaken to increase the number of qualified staff available to assist in the assembly and preparation of financial statements and to supplement the training of existing personnel. On June 28, 2006 we announced the hiring of three key employees to be added to our accounting and finance staff.

PART II – OTHER INFORMATION

Item 4. Submission of Matters To a Vote of Security Holders.

(a) On June 23, 2006, subsequent to the conclusion of the period covered by this quarterly report on Form 10–Q, for the period ended March 31, 2006, we held our annual meeting of shareholders, at which there were present in person or by proxy 31,072,567, or 86.68%, of the outstanding common shares.

(b) All seven of the incumbent directors were reelected for one, two or three year terms with votes as follows:

	<u>FOR</u>	<u>WITHHELD</u>
David C. Beck (Two–year term)	30,419,026	653,541
Salvatore F. Mulia (One–year term)	30,897,188	175,379
Christopher G. Payan (Three–year term)	30,419,026	653,541
Jeffrey G. Rubin (One–year term)	30,899,083	173,484
Michael A. Schwartz (Three–year term)	30,418,276	654,291
Jeffrey M. Schottenstein (Two–year term)	30,895,038	177,529
Barry Sloane (Three–year term)	30,901,558	171,099

(c) In addition to the election of directors, shareholders voted upon and approved an amendment to the Certificate of Incorporation to create a classified board of directors, with three classes to serve for three year terms following a transition period. The vote was:

For:	18,420,078 votes
Against:	2,111,908 votes
Abstained:	27,512 votes

(d) The shareholders also voted for and approved the ratification of the selection of J. H. Cohn LLP as our Independent Registered Public Accounting Firm for the Company for the year ending December 31, 2006. The vote was:

For:	30,911,240 votes
Against:	129,065 votes
Abstained:	32,262 votes

Item 5. Other Information

On July 13, 2006, the Registrant appointed Craig J. Brunet as Executive Vice President –Strategic Planning and Marketing. Mr. Brunet has previously served as Chairman and Chief Executive Officer of the Company's Harvest Strategies subsidiary, since June 1, 2001. Mr. Brunet is 58 years old.

From 1984 – 1989, Mr. Brunet served as Director of Strategic Planning for ATT, where he managed all special development and modifications to standard AT&T products to include non–standard pricing, terms and conditions, hardware and software strategic initiatives, FCC Tariffs, as well as joint venture and/or integration requirements for the top 50 AT&T accounts. In 1989, Mr. Brunet joined Entergy Corporation as Executive Vice President of Entergy Corporation responsible for managing and directing the overall Entergy System retail and wholesale marketing effort including strategy development, policy preparation and administration, market development and market analysis and research. During his tenure with Entergy he served as Chairman of the Strategic Planning Committee of the Electric Power Research Institute (EPRI) and served on the Board of Directors of Entergy Enterprises guiding decisions on unregulated activities including strategic acquisition and investments in generation, distribution and new technology assets domestically and internationally. From 1993 – 1996, Mr. Brunet served as Chairman, CEO and President of First Pacific Networks, a leader in the initial development and deployment of broadband technologies in the United States and Europe. During this period he was also Chairman of the Board of Credit Depot Corporation, a publicly traded multi–state mortgage company and served as Chairman of both the Audit Committee and Compensation Committee.

Mr. Brunet entered into an employment agreement with the Company which provides for annual base compensation of \$240,000 plus participation in future bonus plans and all executive benefit programs available to Company executives. The term of the agreement is for 18 months through December 31, 2007.

On July 13, 2006, the Registrant issued a press release entitled “Newtek Reports Earnings and EBITDA from Primary Segments for Q1” regarding its results of operations for the first quarter of 2006. (See: Exhibit 99.1)

Item 6. Exhibits

<u>Exhibit No.</u>	<u>Description</u>
10.1	Employment Agreement dated June 30, 2006 between Registrant and Barry Sloane
10.2	Employment Agreement dated June 30, 2006 between Registrant and Jeffrey G. Rubin
10.3	Employment Agreement dated July 13, 2006 between Registrant and Craig J. Brunet
10.4	Lease Agreement dated June 24, 2006 between CrystalTech Web Hosting, Inc. and LaPour Deer Valley, LLC for Phoenix office space
31.1	Certification of the Chief Executive Officer, pursuant to Section 302 of the Sarbanes–Oxley Act of 2002.
31.2	Certification of the Chief Financial Officer, pursuant to Section 302 of the Sarbanes–Oxley Act of 2002.
32.1	Certification of the Chief Executive Officer and Chief Financial Officer pursuant to Section 906 of the Sarbanes–Oxley Act of 2002.
99.1	Press Release dated July, 13, 2006 entitled “Newtek Reports Earnings and EBITDA from Primary Segments for Q1.”
99.2	Presentation dated July 13, 2006 entitled "2006 First Quarter Shareholder Conference Call"

SIGNATURES

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

NEWTEK BUSINESS SERVICES, INC.

Date: July 14, 2006

By: /s/ Barry Sloane

Barry Sloane
Chairman of the Board, Chief Executive Officer and
Secretary

Date: July 14, 2006

By: /s/ Michael J. Holden

Michael J. Holden, Treasurer,
Chief Financial Officer, Chief Accounting Officer

NEWTEK BUSINESS SERVICES, INC.

Employment Agreement with

Barry Sloane

PREAMBLE. This Agreement entered into this 30th day of June 2006, by and between Newtek Business Services, Inc. (the “Company”) and Barry Sloane (the “Executive”), effective immediately.

WHEREAS, the Executive is to be employed by the Company as an executive officer; and

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

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 50% or more of the Company's voting stock, (ii) the acquisition of the ability to control the election of a majority of the Company's directors, (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 of Directors of the Company (the “Existing Board”) cease for any reason to constitute at least one half 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 this paragraph only, 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.

(c) “*Code*” shall mean the Internal Revenue Code of 1986, as amended from time to time, and as interpreted through applicable rulings and regulations in effect from time to time.

(d) “*Code §280G Maximum*” shall mean the product of 2.99 and the Executive’s “base amount” as defined in Code §280G(b)(3).

(e) “*Company*” shall mean Newtek Business Services, Inc., and any successor to its interest.

(f) “*Common Stock*” shall mean common stock of the Company.

(g) “*Effective Date*” shall mean the date of execution referenced in the Preamble of this Agreement.

(h) “*Executive*” shall mean Barry Sloane.

(i) “*Good Reason*” shall mean any of the following events, which has not been consented to in advance by the Executive in writing: (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 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 materially different from those associated with his position on the Effective Date; (v) a failure to elect or reelect the Executive to the Board of Directors of the Company; (vi) a material diminution or reduction in the Executive’s responsibilities or authority (including reporting responsibilities) in connection with his employment with the Company.

(j) “*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 he has acted, or failed to act, with an absence of good faith and without a reasonable belief that his action or failure to act was in the best interests of the Company.

(k) “*Protected Period*” shall mean the period that begins on the date six months before a Change in Control and ends on the earlier of six months following the Change in Control or the expiration date of this Agreement.

(l) “*Trigger Event*” shall mean (i) the Executive’s voluntary termination of employment either for any reason within the 30-day period beginning on the date of a Change in Control, or within 90 days of an event that both occurs during the Protected Period and constitutes Good Reason, or (ii) the termination by the Company or its successor(s) in interest, of the Executive’s employment for any reason other than Just Cause during the Protected Period.

2. Employment. The Executive is employed as Chief Executive Officer of the Company. The Executive shall render such administrative and management services for the Company and its subsidiaries as set forth in the attached Position Description and as requested by the Board, as are currently rendered and as are customarily performed by persons situated in a similar executive capacity and consistent with the duties of the Chief Executive Officer as set forth in the bylaws of the Company. 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 Board may from time to time reasonably direct, including normal duties as an officer of the Company.

3. 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. Additionally, the Board shall review, not less often than annually, the rate of the Executive's salary and may decide to further increase his salary.

4. Cash Bonuses; Incentive Compensation.

(a) The Board shall determine the Executive's right to receive incentive compensation in the form of cash bonuses and other awards. No other compensation provided for in this Agreement shall be deemed a substitute for such incentive compensation. Cash bonuses shall be awarded pursuant to the terms of the Company's Annual Cash Bonus Plan, if one has been adopted by the Board and if not, then by action of the Board.

(b) Incentive bonus: in addition to all other compensation payable hereunder, the Executive shall be entitled to participate in consideration for a cash bonus out of a pool to be established for this purpose by the Board. The amount of the Executive's bonus participation shall be fixed by the Compensation Committee of the Board if it finds the Executive's performance to have been a major contributing factor to the success of the Company.

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.

(c) *Split-Dollar Life Insurance*. The Company shall provide the Executive with split-dollar life insurance coverage. The coverage shall be provided under a separate Split-Dollar Life Insurance Agreement (the "Split-Dollar Agreement") entered into between the Executive and the Company, the terms of which shall include the following:

(i) Amount of Insurance. The Company shall obtain an insurance policy (the "Policy") in the face amount of \$2 million on the life of the Executive.

(ii) Ownership. The Company shall be the sole owner of the Policy.

(iii) Payment of Premiums. The Company shall pay all premiums for each Policy year.

(iv) Death Benefits. Upon the death of the Executive, the death benefit payable under the Policy shall be paid to the Company in an amount equal to the lesser of (i) the aggregate premiums paid by the Company and (ii) the cash surrender value of the Policy. The balance shall be paid to the Executive's designated beneficiary or, if none is validly designated, his estate.

(v) Dividends. All dividends on the Policy shall be used to purchase additions to insurance issued by the insurer.

(vi) Termination of Employment. Upon termination of Executive's employment for any reason, the Executive may elect, by written notice to the Company within 30 days of such termination, to purchase the Policy and assume all premium obligations there under from the Company by paying the lesser of (i) the total premiums paid by the Company or (ii) the cash surrender value of the Policy.

6. Term. The Company hereby employs the Executive, and the Executive hereby accepts such employment under this Agreement, for the period commencing on the Effective Date and ending on December 31, 2007 or such earlier date as is determined in accordance with Section 11 (the "Term").

7. Loyalty; Noncompetition.

(a) During the period of his employment hereunder and except for illnesses, reasonable vacation periods, and reasonable leaves of absence, the Executive shall devote substantially all his full business time, attention, skill, and efforts to the faithful performance of his 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 affiliates, nor unfavorably affect the performance of Executive's duties pursuant to this Agreement, nor violate any applicable statute or regulation. "Full business time" is hereby defined as that amount of time usually devoted to like companies by similarly situated executive officers. During the Term of his 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.

8. Standards. The Executive shall perform his duties under this Agreement in accordance with such reasonable standards as the Board 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 as the Board shall in its discretion permit, 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 Board 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 Board.

(c) In addition to the aforesaid paid vacations, the Executive shall be entitled without loss of pay, 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 Board may in its discretion determine. Further, the Board may grant to the Executive a leave or leaves of absence, with or without pay, at such time or times and upon such terms and conditions as such Board in its discretion may determine.

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

10. Indemnification. The Company shall 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 (including any liability he may ever incur under Code § 4999, or a successor, as the result of severance benefits he 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 Board 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 Board may, by written notice to the Executive, immediately terminate his employment for a reason other than Just Cause, in which case the Executive shall be paid an amount equal to the balance of the compensation provided for by Sections 3 and 4 hereof for the balance of the Term.

(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 following compensation and benefits: (i) the salary and cash bonus provided pursuant to Sections 3 and 4 hereof, up to the expiration date (the "Expiration Date") of the Term, including any renewal term, of this Agreement, and (ii) the cost to the Executive of obtaining all health, life, disability and other benefits which the Executive would have been eligible to participate in through the Expiration Date based upon the benefit levels substantially equal to those that the Company provided for the Executive at the date of termination of employment. Said payment shall be made in a lump sum payment within 10 days after his termination of employment.

(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 Board of Directors, in which case the Executive shall receive only his compensation, vested rights, and Executive benefits up to the date of his termination of employment.

(e) *Retirement, Death, or Disability.* If the Executive's employment terminates during the Term of this Agreement due to his death, a disability that results in his collection of any long-term disability benefits, or retirement at or after age 62, the Executive (or the beneficiaries of his 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) *Termination or Non-Renewal Payment.* If the Executive's employment hereunder is terminated pursuant to subsections (b), without Just Cause, or (c), with Good Reason, or if the Term of this Agreement is not extended for at least one additional year, the Executive shall be entitled to compensation and benefits equal to six (6) months compensation and benefits under Sections 3 and 4 hereof, provided, however, that the Company shall have the option of paying such compensation over a twelve (12) month period.

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 herein to the contrary, if a Trigger Event occurs during the Protected Period, the Executive shall be paid an amount equal to the Code § 280G Maximum. Said sum shall be paid in one lump sum within ten (10) days of such termination.

14. 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 judgment 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.

15. 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.

16. 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.

17. 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.

18. 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.

19. 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.

20. 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 supersede all previous agreements with respect to such matters.

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

Witnessed by:

NEWTEK BUSINESS SERVICES, INC.

/s/ Myria Morris

By: /s/ Jeffrey G. Rubin
Its President

Witnessed by:

/s/ Myria Morris

By: /s/ Barry Sloane
Barry Sloane

NEWTEK BUSINESS SERVICES, INC.

Employment Agreement with

Jeffrey G. Rubin

PREAMBLE. This Agreement entered into this 30th day of June 2006, by and between Newtek Business Services, Inc. (the “Company”) and Jeffrey G. Rubin (the “Executive”), effective immediately.

WHEREAS, the Executive is to be employed by the Company as an executive officer; and

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

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 50% or more of the Company's voting stock, (ii) the acquisition of the ability to control the election of a majority of the Company's directors, (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 of Directors of the Company (the “Existing Board”) cease for any reason to constitute at least one half 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 this paragraph only, 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.

(c) “*Code*” shall mean the Internal Revenue Code of 1986, as amended from time to time, and as interpreted through applicable rulings and regulations in effect from time to time.

(d) “*Code §280G Maximum*” shall mean the product of 2.99 and the Executive’s “base amount” as defined in Code §280G(b)(3).

(e) “*Company*” shall mean Newtek Business Services, Inc., and any successor to its interest.

(f) “*Common Stock*” shall mean common stock of the Company.

(g) “*Effective Date*” shall mean the date of execution referenced in the Preamble of this Agreement.

(h) “*Executive*” shall mean Jeffrey Rubin.

(i) “*Good Reason*” shall mean any of the following events, which has not been consented to in advance by the Executive in writing: (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 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 materially different from those associated with his position on the Effective Date; (v) a failure to elect or reelect the Executive to the Board of Directors of the Company; (vi) a material diminution or reduction in the Executive’s responsibilities or authority (including reporting responsibilities) in connection with his employment with the Company.

(j) “*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 he has acted, or failed to act, with an absence of good faith and without a reasonable belief that his action or failure to act was in the best interests of the Company.

(k) “*Protected Period*” shall mean the period that begins on the date six months before a Change in Control and ends on the earlier of six months following the Change in Control or the expiration date of this Agreement.

(l) “*Trigger Event*” shall mean (i) the Executive’s voluntary termination of employment either for any reason within the 30-day period beginning on the date of a Change in Control, or within 90 days of an event that both occurs during the Protected Period and constitutes Good Reason, or (ii) the termination by the Company or its successor(s) in interest, of the Executive’s employment for any reason other than Just Cause during the Protected Period.

2. Employment. The Executive is employed as President of the Company. The Executive shall render such administrative and management services for the Company and its subsidiaries as set forth in the attached Position Description and at the request of the Board as are currently rendered and as are customarily performed by persons situated in a similar executive capacity and consistent with the duties of the President as set forth in the bylaws of the Company. 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 Company's Chief Executive Officer may from time to time reasonably direct, including normal duties as an officer of the Company.

3. Base Compensation. The Company agrees to pay the Executive during the term of this Agreement a salary at the rate of \$285,000 per annum, payable in cash not less frequently than monthly. Additionally, the Board shall review, not less often than annually, the rate of the Executive's salary and may decide to further increase his salary.

4. Cash Bonuses; Incentive Compensation.

(a) The Board shall determine the Executive's right to receive incentive compensation in the form of cash bonuses and other awards. No other compensation provided for in this Agreement shall be deemed a substitute for such incentive compensation. Cash bonuses shall be awarded pursuant to the terms of the Company's Annual Cash Bonus Plan if one has been adopted by the Board and if not, then by action of the Board.

(b) Incentive bonus: in addition to all other compensation payable hereunder, the Executive shall be entitled to participate in consideration for a cash bonus out of a pool to be established for this purpose by the Board. The amount of the Executive's bonus participation shall be fixed by the Compensation Committee following consultation with the Chief Executive Officer of the Board if it finds the Executive's performance to have been a major contributing factor to the success of the Company.

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.

(c) *Split-Dollar Life Insurance*. The Company shall provide the Executive with split-dollar life insurance coverage. The coverage shall be provided under a separate Split-Dollar Life Insurance Agreement (the "Split-Dollar Agreement") entered into between the Executive and the Company, the terms of which shall include the following:

(i) Amount of Insurance. The Company shall obtain an insurance policy (the "Policy") in the face amount of \$2 million on the life of the Executive.

(ii) Ownership. The Company shall be the sole owner of the Policy.

(iii) Payment of Premiums. The Company shall pay all premiums for each Policy year.

(iv) Death Benefits. Upon the death of the Executive, the death benefit payable under the Policy shall be paid to the Company in an amount equal to the lesser of (i) the aggregate premiums paid by the Company and (ii) the cash surrender value of the Policy. The balance shall be paid to the Executive's designated beneficiary or, if none is validly designated, his estate.

(v) Dividends. All dividends on the Policy shall be used to purchase additions to insurance issued by the insurer.

(vi) Termination of Employment. Upon termination of Executive's employment for any reason, the Executive may elect, by written notice to the Company within 30 days of such termination, to purchase the Policy and assume all premium obligations there under from the Company by paying the lesser of (i) the total premiums paid by the Company or (ii) the cash surrender value of the Policy.

6. Term. The Company hereby employs the Executive, and the Executive hereby accepts such employment under this Agreement, for the period commencing on the Effective Date and ending on December 31, 2007 or such earlier date as is determined in accordance with Section 11 (the "Term").

7. Loyalty; Noncompetition.

(a) During the period of his employment hereunder and except for illnesses, reasonable vacation periods, and reasonable leaves of absence, the Executive shall devote substantially all his full business time, attention, skill, and efforts to the faithful performance of his 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 affiliates, nor unfavorably affect the performance of Executive's duties pursuant to this Agreement, nor violate any applicable statute or regulation. "Full business time" is hereby defined as that amount of time usually devoted to like companies by similarly situated executive officers. During the term of his 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.

8. Standards. The Executive shall perform his duties under this Agreement in accordance with such reasonable standards as the Board 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 as the Board shall in its discretion permit, 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 Board 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 Board.

(c) In addition to the aforesaid paid vacations, the Executive shall be entitled without loss of pay, 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 Board may in its discretion determine. Further, the Board may grant to the Executive a leave or leaves of absence, with or without pay, at such time or times and upon such terms and conditions as such Board in its discretion may determine.

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

10. Indemnification. The Company shall 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 director (including any liability he may ever incur under Code § 4999, or a successor, as the result of severance benefits he 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 Board 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 Board may, by written notice to the Executive, immediately terminate his employment for a reason other than Just Cause, in which case the Executive shall be paid an amount equal to the balance of compensation provided for by Sections 3 and 4 hereof for the balance of the Term.

(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 following compensation and benefits: (i) the salary and cash bonus provided pursuant to Sections 3 and 4 hereof, up to the expiration date (the "Expiration Date") of the Term, including any renewal term, of this Agreement, and (ii) the cost to the Executive of obtaining all health, life, disability and other benefits which the Executive would have been eligible to participate in through the Expiration Date based upon the benefit levels substantially equal to those that the Company provided for the Executive at the date of termination of employment. Said payment shall be made in a lump sum payment within 10 days after his termination of employment.

(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 Board of Directors, in which case the Executive shall receive only his compensation, vested rights, and Executive benefits up to the date of his termination of employment.

(e) *Retirement, Death, or Disability.* If the Executive's employment terminates during the Term of this Agreement due to his death, a disability that results in his collection of any long-term disability benefits, or retirement at or after age 62, the Executive (or the beneficiaries of his 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) *Termination or Non-Renewal Payment.* If the Executive's employment hereunder is terminated pursuant to subsections (b), without Just Cause, or (c), with Good Reason, or if the Term of this Agreement is not extended for at least one additional year, the Executive shall be entitled to compensation and benefits equal to six (6) months compensation and benefits under Sections 3 and 4 hereof, provided, however, that the Company shall have the option of paying such compensation over a twelve (12) month period.

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 herein to the contrary, if a Trigger Event occurs during the Protected Period, the Executive shall be paid an amount equal to the Code § 280G Maximum. Said sum shall be paid in one lump sum within ten (10) days of such termination.

14. 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 judgment 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.

15. 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.

16. 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.

17. 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.

18. 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.

19. 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.

20. 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 supersede all previous agreements with respect to such matters.

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

Witnessed by:

NEWTEK BUSINESS SERVICES, INC.

/s/ Myria Morris

By /s/ Barry Sloane
Its: Chairman & Chief Executive Officer

Witnessed by:

JEFFREY G. RUBIN

/s/ Myria Morris

By: /s/ Jeffrey G. Rubin

NEWTEK BUSINESS SERVICES, INC.

Employment Agreement with

Craig J. Brunet

PREAMBLE. This Agreement entered into this 13th day of July 2006, by and between Newtek Business Services, Inc. (the “Company”) and Craig J. Brunet (the “Executive”), effective immediately.

WHEREAS, the Executive is to be employed by the Company as an Executive Vice President; and

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

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 50% or more of the Company's voting stock, (ii) the acquisition of the ability to control the election of a majority of the Company's directors, (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 of Directors of the Company (the “Existing Board”) cease for any reason to constitute at least one half 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 this paragraph only, 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.

(c) “*Code*” shall mean the Internal Revenue Code of 1986, as amended from time to time, and as interpreted through applicable rulings and regulations in effect from time to time.

(d) “*Code §280G Maximum*” shall mean the product of 2.99 and the Executive's “base amount” as defined in Code §280G(b)(3).

(e) “*Company*” shall mean Newtek Business Services, Inc., and any successor to its interest.

(f) “*Effective Date*” shall mean the date of execution referenced in the Preamble of this Agreement.

(g) “*Executive*” shall mean Craig J. Brunet.

(h) “*Good Reason*” shall mean any of the following events, which has not been consented to in advance by the Executive in writing: (1) the requirement that the Executive perform his principal executive functions on a permanent and regular basis more than seventy five (75) miles from his primary office (New York, NY) as of the Effective Date; (2) a material reduction in the Executive's base compensation as the same may be increased from time to time; (3) 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; (4) the assignment to the Executive of duties and responsibilities materially different from those associated with his position on the Effective Date; and (5) a material diminution or reduction in the Executive's responsibilities or authority in connection with his employment with the Company, except for the well-being of the Company in the judgment of the Board.

(i) “*Just Cause*” shall mean the Executive's (1) willful misconduct, (2) breach of fiduciary duty, (3) intentional failure to perform stated duties, conviction of a felony, (4) conviction of a misdemeanor punishable by imprisonment of not less than 6 months, (5) performance of duties in a negligent or reckless manner, (6) material breach of any provision of this Agreement.

2. Employment. The Executive is employed as an Executive Vice President of Strategic Planning and Marketing of the Company. The Executive shall render such management services for the Company and its affiliates as are customarily performed by persons situated in a similar executive capacity and which are consistent with the duties of a senior executive manager. The Executive shall report to the Chief Executive Officer. The Executive shall, with respect to all matters to which he devotes attention, meet with and communicate regularly with other senior management of the Company and its subsidiaries. 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 Company's Chief Executive Officer may from time to time reasonably direct, including normal duties as an officer of the Company, participation on an executive management committee of the Company for so long as so constituted by the Chief Executive Officer, and election and/or appointment as a board member or officer of the Company's current and future principal business subsidiaries.

3. Base Compensation. The Company agrees to pay the Executive during the term of this Agreement a salary at the rate of \$240,000 per annum, payable in cash not less frequently than monthly. Additionally, the Board shall review, not less often than annually, the rate of the Executive's salary and may decide to further increase his salary.

4. 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, including the Company's Employee Handbook and Code of Conduct.

5. Term. The Company hereby employs the Executive, and the Executive hereby accepts such employment under this Agreement, for the period commencing on the Effective Date and ending on December 31, 2007 or such earlier date as is determined in accordance with Section 10 (the "Term").

6. Loyalty; Non-competition.

(a) During the period of his employment hereunder and except for illnesses, reasonable vacation periods, and reasonable leaves of absence, the Executive shall devote substantially all his full business time, attention, skill, and efforts to the faithful performance of his 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 affiliates, nor unfavorably affect the performance of Executive's duties pursuant to this Agreement, nor violate any applicable statute, regulation or the CPR. "Full business time" is hereby defined as that amount of time usually devoted to like companies by similarly situated executive officers. During the term of his 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 to the pertinent laws, rules, and regulations of the United States of America, and the State of New York.

(b) Nothing contained in this Section 6 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.

7. Standards. The Executive shall perform his duties under this Agreement in accordance with (a) such reasonable standards as the Board may establish from time to time, (b) the Company's Code of Conduct, (c) the Company's Employee Handbook, and (d) the laws, rules and regulations of the United States of America and the State of New York. The Company will provide Executive with the working facilities and staff customary for similar executives and necessary for him to perform his duties. The Executive shall at all times remain a member in good standing of the bar of the State of New York. All determinations of reasonableness to be made by the Board under this Agreement are to be made in the reasonable and good faith judgment of the Board.

8. Vacation and Sick Leave. At such reasonable times as the Board shall in its discretion permit, 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 Board periodically establishes for senior management Executives of the Company, but in no event less than three weeks per annum.

(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 without loss of pay, 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 Board may in its discretion determine. Further, the Board may grant to the Executive a leave or leaves of absence, with or without pay, at such time or times and upon such terms and conditions as such Board in its discretion may determine.

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

9. Indemnification. The Company shall 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 director (including any liability he may ever incur under Code § 4999, or a successor, as the result of severance benefits he may collect pursuant to Sections 10 or 11) during the full Term of this Agreement and shall at all times maintain adequate insurance for such purposes. However, the Company will not indemnify or hold harmless Executive (a) from any and all loss, expense, or liability that he may incur due to Executive's intentional misconduct, recklessness, dereliction of duty, gross negligence, or negligence, (b) arising from or related to Executive's employment or representations as an attorney prior to his commencement of employment with Company or (c) arising from or related to conflicts of interest between Company and clients that Executive represented in his prior employment or representations as an attorney prior to Executive's commencement of employment with Company. This indemnification shall be in addition to the obligations assumed by the Company to provide indemnification to Executive owed to him by Harvest Strategies, LLC in his role as officer and manager of that company prior to the acquisition of the assets and liabilities of Harvest Strategies, LLC.

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

(a) *Just Cause*. The Board, based on a good faith determination and upon written notice, can immediately terminate at any time for just cause the Executive's employment. 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 Board, upon written notice, can immediately terminate Executive's employment for a reason other than Just Cause, in which case the Executive shall be paid an amount equal to the balance of compensation provided for by Section 3 hereof for the balance of the Term.

(c) *Resignation by Executive with Good Reason*. The Executive may at any time upon written notice to the Company, immediately terminate employment for Good Reason, in which case the Executive shall be entitled to receive the following compensation and benefits: (1) the salary provided pursuant to Section 3 of this Agreement, up to the expiration date (the "Expiration Date") of the Term, including any renewal term, of this Agreement, and (2) the cost to the Executive of obtaining all health, life, disability and other benefits which the Executive would have been eligible to participate in through the Expiration Date based upon the benefit levels substantially equal to those that the Company provided for the Executive at the date of termination of employment. Said payment shall be made in monthly payments but shall cease once the Executive accepts new full time employment.

(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 Board of Directors, in which case the Executive shall receive only his compensation, vested rights, and Executive benefits up to the date of his resignation without Good Reason.

(e) *Retirement, Death, or Disability*. If the Executive's employment terminates during the Term of this Agreement due to his death, a disability that results in his collection of any long-term disability benefits, or retirement at or after age 62, the Executive (or the beneficiaries of his 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 termination without Good Reason.

(f) *Termination Related to Change in Control*. In the event this Agreement is terminated as described in subsections (1) or (2) below, Executive shall be entitled to the greater of (x) the balance of the compensation due him under this Agreement for the full Term or (y) base compensation for a six (6) month period:

(1) termination by the Company within the period beginning three (3) months preceding a Change in Control and ending six (6) months following a Change in Control for any reason; or

(2) termination by the Executive within the 6 month period following a Change in Control for Good Reason.

11. 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.

12. Trade Secrets; Confidences and Secrets. During the course of Executive's employment, Executive will come into contact with the Company's confidential business information, confidential proprietary information, and trade secrets (collectively, the "Trade Secrets"). During the Term of this Agreement and thereafter Executive will maintain the Trade Secrets in confidence and will take no action that will in any way lessen or diminish the Trade Secrets' confidential and proprietary nature. Executive will in all events protect and preserve the confidential and proprietary nature of the Trade Secrets, whether during the Term of this Agreement or thereafter. Whether during or after the Term of this Agreement or thereafter, Executive will upon reasonable notice account for any and all Trade Secrets in his possession or control, and will, upon reasonable request, (a) turn-over any and all such Trade Secrets in Executive's possession or control, (b) provide a sworn statement of such Trade Secrets in Executive's possession or control, (c) provide the Company such access to computers, web-sites, electronic mail boxes and web pages that Executive may possess and/or control in order for the Company to ascertain the extent to which Executive is in possession of the Trade Secrets, and/or (4) provide the Company with a sworn statement that Executive is not in possession or control of such Trade Secrets.

13. 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.

14. 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.

15. 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.

16. Applicable Law. The validity, interpretation, and performance of this Agreement shall be governed by and construed in accordance with the substantive law of the State of New York, without giving effect to conflict of law principles. Any action, lawsuit, demand, claim or counterclaim shall be resolved by a judge alone, and both parties hereby expressly waive and forever disclaim the right to a trial before a civil jury.

17. 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.

18. 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 supersede all previous agreements with respect to such matters.

19. Counterparts. This Agreement may be executed by either of the parties hereto in counterparts, each of which shall be deemed to be an original, but all such counterparts shall together constitute one and the same instrument.

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

Witnessed by:

NEWTEK BUSINESS SERVICES, INC.

/s/ Jeffrey G. Rubin

By /s/ Barry Sloane
Its: Chairman, CEO

Witnessed by:

/s/ Michael J. Holden

/s/ Craig J. Brunet
Craig J. Brunet



**STANDARD INDUSTRIAL/COMMERCIAL MULTI-TENANT LEASE – NET
AMERICAN INDUSTRIAL REAL ESTATE ASSOCIATION**

1 Basic Provisions (“Basic Provisions”).

1.1 **Parties:** This Lease (“Lease”), dated for reference June 23, 2006, is made
purposes only,
by and between LaPour Deer Valley, LLC, an Arizona Limited Liability Company
 (“**Lessor**”)
and Crystal Tech Web Hosting, Inc. a New York Corporation
 (“**Lessee**”), (collectively the “**Parties**”, or individually a “**Party**”).

1.2(a) **Premises:** That certain portion of the Project (as defined below), including all improvements therein or to be provided by Lessor under the
terms of
this Lease commonly known by the street address of 1125 W. Pinnacle Peak Rd, Bldg 1, Suites 100–103 and a portion of 104, Located in the City of Phoenix
County of Maricopa State of Arizona with zip code 85027 as outlined on Exhibit A
Attached hereto (“**Premises**”) and generally described as :
Approximately 15,000 sf of Rentable Area consisting of 100% project standard office located within the Project commonly known as Pinnacle Park Business Center,
Phase I. The project totaling 123,752 sf.

In addition to Lessee's rights to use and occupy the Premises as hereinafter specified, Lessee shall have non-exclusive rights to the Common Areas (as defined in
Paragraph 2.7 below) as hereinafter specified, but shall not have any rights to the roof, exterior walls or utility raceways of the building containing the Premises
 (“**Building**”) or to any other buildings in the Project. The Premises, the Building, the Common Areas, the land upon which they are located, along with all other
buildings and improvements thereon, are herein collectively referred to as the “**Project**.” (See also Paragraph 2)

1.2(b) **Parking:** Seventy –five (75) Unreserved vehicle parking spaces (“**Unreserved Parking Spaces**”); and
Zero (0) Reserved vehicle parking spaces (“**Reserved Parking Spaces**”). (See also Paragraph 2.6).

1.3
Term: Five (5) Years and One (1) months (**Original Term**) commencing January 1, 2007
 (“**Expiration Date**”). (See also Paragraph
 (“**Commencement Date**”) and ending January 31, 2012 ³⁾

1.4 **Early Possession:** December 1, 2006 (See Also Addendum One) (“**Early Possession Date**”)
(See also Paragraphs 3.2 and 3.3)

1.5 **Base Rent:** \$19,650.00 Per month (“**Base Rent**”), payable on the First(1st) day of
each month commencing February 1, 2007 (See also Paragraph 4)
If this box is checked, there are provisions in this Lease for the Base Rent to be adjusted.

1.6 **Lessee's Share of Common Area Operating Expenses:** Twelve and **Percent** (12.12%) (“**Lessee's**
12/100 **Share**”).

1.7 Base Rent and Other Monies Paid Upon Execution:

(a) **Base Rent:** \$19,650 for the 2/1/07 – 2/28/07
period

(b) **Common Area Operating Expenses:** \$2,550 for the period 12/1/06–12/31/06

(c) **Security Deposit:** \$22,200 (“**Security Deposit**”). (See also Due upon execution
Paragraph 5)

(d) **Other:** \$43,264.13 Estimated Tenant Improvement Overage (See Addendum One and
for Exhibit “C”)

(e) **Total Due Upon Execution of this Lease:** \$87,664.13

1.8 **Agreed Use:** Administration, sales and technical support related to internet website hosting and other lawfully related uses.
(See also Paragraph 6)

1.9 **Insuring Party:** Lessor is the “**Insuring Party**” unless otherwise stated herein. (See also Paragraph 8)

1.10 **Real Estate Brokers:** (See also Paragraph 15)

(a) **Representation:** The following real estate brokers (the “**Brokers**”) and brokerage relationships exist in this transaction (check applicable boxes):

<input checked="" type="checkbox"/>	Cushman & Wakefield (Steve Sayre & Lindsay Erickson)
<input checked="" type="checkbox"/>	Cushman & Wakefield (Mike Sayre)
<input type="checkbox"/>	

represents Lessor exclusively (“**Lessor’s Broker**”);
represents Lessee exclusively (“**Lessee’s Broker**”); or
represents both Lessor and Lessee (“**Dual Agency**”).

(b) **Payment to Brokers:** Upon execution and delivery of this Lease by both Parties, Lessor shall pay to the Brokers the Brokerage fee agreed to in a separate written agreement

1.11 **Guarantor.** The obligations of the Lessee under this Lease are to be guaranteed by None
 (“**Guarantor**”). (See also paragraph 37)

1.12 **Attachments:** Attached hereto are the following, all of which constitute a part of this Lease: _____

<input checked="" type="checkbox"/>	an Addendum consisting of Paragraphs <u>50</u> through <u>61</u> ;
<input checked="" type="checkbox"/>	a site plan depicting the Project;
<input checked="" type="checkbox"/>	a floor plan depicting the Premises;
<input checked="" type="checkbox"/>	Building Standards and Specifications;
<input checked="" type="checkbox"/>	a current set of the Rules and Regulations for the Project;
<input checked="" type="checkbox"/>	signage criteria for the project;
<input type="checkbox"/>	Guaranty of Lease;
<input type="checkbox"/>	other (specify):

2. **Premises.**

2.1 **Letting.** Lessor hereby leases to Lessee, and Lessee hereby leases from Lessor, the Premises, for the term, at the rental, and upon all of the terms, covenants and conditions set forth in this Lease. Unless otherwise provided herein, any statement of size set forth in this Lease, or that may have been used in calculating Rent, is an approximation which the Parties agree is reasonable and any payments based thereon are not subject to revision whether or not the actual size is more or less.

2.2 **Condition.** Lessor shall deliver that portion of the Premises contained within the Building (“**Unit**”) to Lessee broom clean and free of debris on the Commencement Date or the Early Possession Date, whichever first occurs (“**Start Date**”), and, so long as the required service contracts described in Paragraph 7.1(b) below are obtained by Lessee and in effect within thirty days following the Start Date, warrants that the existing electrical, plumbing, fire sprinkler, lighting, heating, ventilating and air conditioning systems (“**HVAC**”), loading doors, if any, and all other such elements in the Unit, other than those constructed by Lessee, shall be in good operating condition on said date and that the structural elements of the roof, bearing walls and foundation of the Unit shall be free of material defects. If a non-compliance with such warranty exists as of the Start Date, or if one of such systems or elements should malfunction or fail within the appropriate warranty period, Lessor shall, as Lessor's sole obligation with respect to such matter, except as otherwise provided in this Lease, promptly after receipt of written notice from Lessee setting forth with specificity the nature and extent of such non-compliance, malfunction or failure, rectify same at Lessor's expense. The warranty periods shall be as follows: (i) 1 year from the date of installation as to the HVAC systems, and (ii) 30 days as to the remaining systems and other elements of the Unit. If Lessee does not give Lessor the required notice within the appropriate warranty period, correction of any such non-compliance, malfunction or failure shall be the obligation of Lessee at Lessee's sole cost and expense (except for the repairs to the fire sprinkler systems, roof, foundations, and/or bearing walls – see Paragraph 7).

2.3 Compliance. Lessor warrants that the improvements on the Premises and the Common Areas comply with the building codes that were in effect at the time that each such improvement, or portion thereof, was constructed, and also with all applicable laws, covenants or restrictions of record, regulations, and ordinances in effect on the Start Date ("**Applicable Requirements**"). Said warranty does not apply to the use to which Lessee will put the Premises or to any Alterations or Utility Installations (as defined in Paragraph 7.3(a)) made or to be made by Lessee. **NOTE: Lessee is responsible for determining whether or not the Applicable Requirements, and especially the zoning, are appropriate for Lessee's intended use, and acknowledges that past uses of the Premises may no longer be allowed.** If the Premises do not comply with said warranty, Lessor shall, except as otherwise provided, promptly after receipt of written notice from Lessee setting forth with specificity the nature and extent of such non-compliance, rectify the same at Lessor's expense. If Lessee does not give Lessor written notice of a non-compliance with this warranty within 6 months following the Start Date, correction of that non-compliance shall be the obligation of Lessee at Lessee's sole cost and expense. If the Applicable Requirements are hereafter changed so as to require during the term of this Lease the construction of an addition to or an alteration of the Unit, Premises and/or Building, the remediation of any Hazardous Substance, or the reinforcement or other physical modification of the Unit, Premises and/or Building ("**Capital Expenditure**"), Lessor and Lessee shall allocate the cost of such work as follows:

(a) Subject to Paragraph 2.3(c) below, if such Capital Expenditures are required as a result of the specific and unique use of the Premises by Lessee as compared with uses by tenants in general, Lessee shall be fully responsible for the cost thereof, provided, however that if such Capital Expenditure is required during the last 2 years of this Lease and the cost thereof exceeds 6 months' Base Rent, Lessee may instead terminate this Lease unless Lessor notifies Lessee, in writing, within 10 days after receipt of Lessee's termination notice that Lessor has elected to pay the difference between the actual cost thereof and the amount equal to 6 months' Base Rent. If Lessee elects termination, Lessee shall immediately cease the use of the Premises which requires such Capital Expenditure and deliver to Lessor written notice specifying a termination date at least 90 days thereafter. Such termination date shall, however, in no event be earlier than the last day that Lessee could legally utilize the Premises without commencing such Capital Expenditure.

(b) If such Capital Expenditure is not the result of the specific and unique use of the Premises by Lessee (such as, governmentally mandated seismic modifications), then Lessor and Lessee shall allocate the obligation to pay for the portion of such costs reasonably attributable to the Premises pursuant to the formula set out in Paragraph 7.1(d); provided, however, that if such Capital Expenditure is required during the last 2 years of this Lease or if Lessor reasonably determines that it is not economically feasible to pay its share thereof, Lessor shall have the option to terminate this Lease upon 90 days prior written notice to Lessee unless Lessee notifies Lessor, in writing, within 10 days after receipt of Lessor's termination notice that Lessee will pay for such Capital Expenditure. If Lessor does not elect to terminate, and fails to tender its share of any such Capital Expenditure, Lessee may advance such funds and deduct same, with Interest, from Rent until Lessor's share of such costs have been fully paid. If Lessee is unable to finance Lessor's share, or if the balance of the Rent due and payable for the remainder of this Lease is not sufficient to fully reimburse Lessee on an offset basis, Lessee shall have the right to terminate this Lease upon 30 days written notice to Lessor.

(c) Notwithstanding the above, the provisions concerning Capital Expenditures are intended to apply only to non-voluntary, unexpected, and new Applicable Requirements. If the Capital Expenditures are instead triggered by Lessee as a result of an actual or proposed change in use, change in intensity of use, or modification to the Premises then, and in that event, Lessee shall be fully responsible for the cost thereof, and Lessee shall not have any right to terminate this Lease.

2.4 Acknowledgements. Lessee acknowledges that: (a) it has been advised by Lessor and/or Brokers to satisfy itself with respect to the condition of the Premises (including but not limited to the electrical, HVAC and fire sprinkler systems, security, environmental aspects, and compliance with Applicable Requirements and the Americans with Disabilities Act), and their suitability for Lessee's intended use, (b) Lessee has made such investigation as it deems necessary with reference to such matters and assumes all responsibility therefor as the same relates to its occupancy of the Premises, and (c) neither Lessor, Lessor's agents, nor Brokers have made any oral or written representations or warranties with respect to said matters other than as set forth in this Lease. In addition, Lessor acknowledges that: (i) Brokers have made no representations, promises or warranties concerning Lessee's ability to honor the Lease or suitability to occupy the Premises, and (ii) it is Lessor's sole responsibility to investigate the financial capability and/or suitability of all proposed tenants.

2.5 Lessee as Prior Owner/Occupant. The warranties made by Lessor in Paragraph 2 shall be of no force or effect if immediately prior to the Start Date Lessee was the owner or occupant of the Premises. In such event, Lessee shall be responsible for any necessary corrective work.

2.6 Vehicle Parking. Lessee shall be entitled to use the number of Unreserved Parking Spaces and Reserved Parking Spaces specified in Paragraph 1.2(b) on those portions of the Common Areas designated from time to time by Lessor for parking. Lessee shall not use more parking spaces than said number. Said parking spaces shall be used for parking by vehicles no larger than full-size passenger automobiles or pick-up trucks, herein called "**Permitted Size Vehicles.**" Lessor may regulate the loading and unloading of vehicles by adopting Rules and Regulations as provided in Paragraph 2.9. No vehicles other than Permitted Size Vehicles may be parked in the Common Area without the prior written permission of Lessor.

(a) Lessee shall not permit or allow any vehicles that belong to or are controlled by Lessee or Lessee's employees, suppliers, shippers, customers, contractors or invitees to be loaded, unloaded, or parked in areas other than those designated by Lessor for such activities.

(b) Lessee shall not service or store any vehicles in the Common Areas.

(c) If Lessee permits or allows any of the prohibited activities described in this Paragraph 2.6, then Lessor shall have the right, without notice, in addition to such other rights and remedies that it may have, to remove or tow away the vehicle involved and charge the cost to Lessee, which cost shall be immediately payable upon demand by Lessor.

2.7 Common Areas – Definition. The term "**Common Areas**" is defined as all areas and facilities outside the Premises and within the exterior boundary line of the Project and interior utility raceways and installations within the Unit that are provided and designated by the Lessor from time to time for the general non-exclusive use of Lessor, Lessee and other tenants of the Project and their respective employees, suppliers, shippers, customers, contractors and invitees, including parking areas, loading and unloading areas, trash areas, roadways, walkways, driveways and landscaped areas.

2.8 Common Areas – Lessee's Rights. Lessor grants to Lessee, for the benefit of Lessee and its employees, suppliers, shippers, contractors, customers and invitees, during the term of this Lease, the non-exclusive right to use, in common with others entitled to such use, the Common Areas as they exist from time to time, subject to any rights, powers, and privileges reserved by Lessor under the terms hereof or under the terms of any rules and regulations or restrictions governing the use of the Project. Under no circumstances shall the right herein granted to use the Common Areas be deemed to include the right to store any property, temporarily or permanently, in the Common Areas. Any such storage shall be permitted only by the prior written consent of Lessor or Lessor's designated agent, which consent may be revoked at any time. In the event that any unauthorized storage shall occur then Lessor shall have the right, without notice, in addition to such other rights and remedies that it may have, to remove the property and charge the cost to Lessee, which cost shall be immediately payable upon demand by Lessor.

2.9 Common Areas – Rules and Regulations. Lessor or such other person(s) as Lessor may appoint shall have the exclusive control and management of the Common Areas and shall have the right, from time to time, to establish, modify, amend and enforce reasonable rules and regulations ("**Rules and Regulations**") for the management, safety, care, and cleanliness of the grounds, the parking and unloading of vehicles and the preservation of good order, as well as for the convenience of other occupants or tenants of the Building and the Project and their invitees. Lessee agrees to abide by and conform to all such Rules and Regulations, and to cause its employees, suppliers, shippers, customers, contractors and invitees to so abide and conform. Lessor shall not be responsible

to Lessee for the non-compliance with said Rules and Regulations by other tenants of the Project.

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2.10 **Common Areas – Changes.** Lessor shall have the right, in Lessor's sole discretion, from time to time:

- (a) To make changes to the Common Areas, including, without limitation, changes in the location, size, shape and number of driveways, entrances, parking spaces, parking areas, loading and unloading areas, ingress, egress, direction of traffic, landscaped areas, walkways and utility raceways;
- (b) To close temporarily any of the Common Areas for maintenance purposes so long as reasonable access to the Premises remains available;
- (c) To designate other land outside the boundaries of the Project to be a part of the Common Areas;
- (d) To add additional buildings and improvements to the Common Areas;
- (e) To use the Common Areas while engaged in making additional improvements, repairs or alterations to the Project, or any portion thereof; and
- (f) To do and perform such other acts and make such other changes in, to or with respect to the Common Areas and Project as Lessor may, in the exercise of sound business judgment, deem to be appropriate.

3. Term.

3.1 **Term.** The Commencement Date, Expiration Date and Original Term of this Lease are as specified in Paragraph 1.3.

3.2 **Early Possession.** If Lessee totally or partially occupies the Premises prior to the Commencement Date, the obligation to pay Base Rent shall be abated for the period of such early possession. All other terms of this Lease (including but not limited to the obligations to pay Lessee's Share of Common Area Operating Expenses, Real Property Taxes and insurance premiums and to maintain the Premises) shall, however, be in effect during such period. Any such early possession shall not affect the Expiration Date.

3.3 **Delay In Possession.** Lessor agrees to use its best commercially reasonable efforts to deliver possession of the Premises to Lessee by the Commencement Date. If, despite said efforts, Lessor is unable to deliver possession as agreed, Lessor shall not be subject to any liability therefor, nor shall such failure affect the validity of this Lease. Lessee shall not, however, be obligated to pay Rent or perform its other obligations until it receives possession of the Premises. If possession is not delivered within 60 days after the Commencement Date, Lessee may, at its option, by notice in writing within 10 days after the end of such 60 day period, cancel this Lease, in which event the Parties shall be discharged from all obligations hereunder. If such written notice is not received by Lessor within said 10 day period, Lessee's right to cancel shall terminate. Except as otherwise provided, if possession is not tendered to Lessee by the Start Date and Lessee does not terminate this Lease, as aforesaid, any period of rent abatement that Lessee would otherwise have enjoyed shall run from the date of delivery of possession and continue for a period equal to what Lessee would otherwise have enjoyed under the terms hereof, but minus any days of delay caused by the acts or omissions of Lessee. If possession of the Premises is not delivered within 4 months after the Commencement Date, this Lease shall terminate unless other agreements are reached between Lessor and Lessee, in writing.

3.4 **Lessee Compliance.** Lessor shall not be required to tender possession of the Premises to Lessee until Lessee complies with its obligation to provide evidence of insurance (Paragraph 8.5). Pending delivery of such evidence, Lessee shall be required to perform all of its obligations under this Lease from and after the Start Date, including the payment of Rent, notwithstanding Lessor's election to withhold possession pending receipt of such evidence of insurance. Further, if Lessee is required to perform any other conditions prior to or concurrent with the Start Date, the Start Date shall occur but Lessor may elect to withhold possession until such conditions are satisfied. **Such conditions are limited to those in this Lease Agreement, Addendum One and all exhibits attached hereto and any future Addendums.**

4. Rent.

4.1 **Rent Defined.** All monetary obligations of Lessee to Lessor under the terms of this Lease (except for the Security Deposit) are deemed to be rent ("Rent").

4.2 **Common Area Operating Expenses.** Lessee shall pay to Lessor during the term hereof, in addition to the Base Rent, Lessee's Share (as specified in Paragraph 1.6) of all Common Area Operating Expenses, as hereinafter defined, during each calendar year of the term of this Lease, in accordance with the following provisions:

(a) "**Common Area Operating Expenses**" are defined, for purposes of this Lease, as all costs incurred by Lessor relating to the ownership and operation of the Project, including, but not limited to, the following:

- (i) The operation, repair and maintenance, in neat, clean, good order and condition of the following:
 - (aa) The Common Areas and Common Area improvements, including parking areas, loading and unloading areas, trash areas, roadways, parkways, walkways, driveways, landscaped areas, bumpers, irrigation systems, Common Area lighting facilities, fences and gates, elevators, roofs, and roof drainage systems.
 - (bb) Exterior signs and any tenant directories.
 - (cc) Any fire detection and/or sprinkler systems.
- (ii) The cost of water, gas, electricity and telephone to service the Common Areas and any utilities not separately metered.
- (iii) Trash disposal, pest control services, property management, security services, and the costs of any environmental inspections.
- (iv) Reserves set aside for maintenance and repair of Common Areas.
- (v) Real Property Taxes (as defined in Paragraph 10).
- (vi) The cost of the premiums for the insurance maintained by Lessor pursuant to Paragraph 8.
- (vii) Any deductible portion of an insured loss concerning the Building or the Common Areas.

(viii)The cost of any Capital Expenditure to the Building or the Project not covered under the provisions of Paragraph 2.3 provided; however, that Lessor shall allocate the cost of any such Capital Expenditure over a 12 year period and Lessee shall not be required to pay more than Lessee's Share of 1/144th of the cost of such Capital Expenditure in any given month.

(ix) Any other services to be provided by Lessor that are stated elsewhere in this Lease to be a Common Area Operating Expense.

The following are specifically excluded from the definition of Common Operating Expenses:

- Advertising expenses, including the cost of maintaining a web site;
- Breach of lease – costs incurred because any party breaches any lease;
- Any costs reimbursed by insurance proceeds, (or would have been if Lessor carried customary insurance), a condemnation award, or indemnification by a third party;
- The costs to correct initial construction defects;
- Any charitable or political contributions made by Lessor;
- Management fees in excess of 5% of gross rents receivable of the Project during such calendar year.
- Executive salaries for those above the level of building manager;
- Fines and penalties the Lessor must pay as a result of failure to comply with municipal codes, ordinances and the like;
- Any costs for a service not provided to Lessee or caused by the act or omission of other Lessees;
- Ownership related costs such as ground rent, mortgage interest, principal and transaction costs, build-out of Lessee space; clean-up of Lessor's construction projects of any kind and general administrative expenses (overhead);
- Payments to affiliates for allowable expenses in excess of market rates;
- Brokerage fees and commissions; legal fees and expenses to negotiate and enforce leases.

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(c) The inclusion of the improvements, facilities and services set forth in Subparagraph 4.2(a) shall not be deemed to impose an obligation upon Lessor to either have said improvements or facilities or to provide those services unless the Project already has the same, Lessor already provides the services, or Lessor has agreed elsewhere in this Lease to provide the same or some of them.

(d) Lessee's Share of Common Area Operating Expenses shall be payable by Lessee within 10 days after a reasonably detailed statement of actual expenses is presented to Lessee. At Lessor's option, however, an amount may be estimated by Lessor from time to time of Lessee's Share of annual Common Area Operating Expenses and the same shall be payable monthly or quarterly, as Lessor shall designate, during each 12 month period of the Lease term, on the same day as the Base Rent is due hereunder. Lessor shall deliver to Lessee within 60 days after the expiration of each calendar year a reasonably detailed statement showing Lessee's Share of the actual Common Area Operating Expenses incurred during the preceding year. If Lessee's payments under this Paragraph 4.2(d) during the preceding year exceed Lessee's Share as indicated on such statement, Lessor shall credit the amount of such over-payment against Lessee's Share of Common Area Operating Expenses next becoming due. If Lessee's payments under this Paragraph 4.2(d) during the preceding year were less than Lessee's Share as indicated on such statement, Lessee shall pay to Lessor the amount of the deficiency within 10 days after delivery by Lessor to Lessee of the statement.

(e) **"Lessee shall have the one time right annually, at Lessee's sole cost, within 90 days following Lessee's receipt of the year end reconciliation of Common Area Operating Expenses from Lessor to have a third party accountant, mutually agreed upon by Lessee and Lessor, examine Lessor's books and records from which such statement was prepared at Lessor's accounting office. The pendency of an examination shall not of itself alter the amounts due or extend the time for payments; however, should the third party accountant factually determine that Lessor has overstated its statement of Common Area Operating Expenses, then Lessor shall refund any overpayment made by Lessee. Lessee shall pay for all costs of the third party accountant unless the Common Area Operating Expenses were misstated by ten percent (10%) or more in which case Lessor shall pay the reasonable fee of the third party accountant within thirty (30) days after receipt of written demand from Lessee."**

4.3 Payment. Lessee shall cause payment of Rent to be received by Lessor in lawful money of the United States, without offset or deduction (except as specifically permitted in this Lease) **and without demand from Lessor**, on or before the day on which it is due. Rent for any period during the term hereof which is for less than one full calendar month shall be prorated based upon the actual number of days of said month. Payment of Rent shall be made to Lessor at its address stated herein or to such other persons or place as Lessor may from time to time designate in writing. Acceptance of a payment which is less than the amount then due shall not be a waiver of Lessor's rights to the balance of such Rent, regardless of Lessor's endorsement of any check so stating. In the event that any check, draft, or other instrument of payment given by Lessee to Lessor is dishonored for any reason, Lessee agrees to pay to Lessor the sum of \$25 in addition to any late charges which may be due.

5. Security Deposit. Lessee shall deposit with Lessor upon execution hereof the Security Deposit as security for Lessee's faithful performance of its obligations under this Lease. If Lessee fails to pay Rent, or otherwise Defaults under this Lease, Lessor may use, apply or retain all or any portion of said Security Deposit for the payment of any amount due Lessor or to reimburse or compensate Lessor for any liability, expense, loss or damage which Lessor may suffer or incur by reason thereof. If Lessor uses or applies all or any portion of the Security Deposit, Lessee shall within 10 days after written request therefor deposit monies with Lessor sufficient to restore said Security Deposit to the full amount required by this Lease. If the Base Rent increases during the term of this Lease, Lessee shall, upon written request from Lessor, deposit additional monies with Lessor so that the total amount of the Security Deposit shall at all times bear the same proportion to the increased Base Rent as the initial Security Deposit bore to the initial Base Rent. Should the Agreed Use be amended to accommodate a material change in the business of Lessee or to accommodate a sublessee or assignee, Lessor shall have the right to increase the Security Deposit to the extent necessary, in Lessor's reasonable judgment, to account for any increased wear and tear that the Premises may suffer as a result thereof. If a change in control of Lessee occurs during this Lease and following such change the financial condition of Lessee is, in Lessor's reasonable judgment, significantly reduced, Lessee shall deposit such additional monies with Lessor as shall be sufficient to cause the Security Deposit to be at a commercially reasonable level based on such change in financial condition. Lessor shall not be required to keep the Security Deposit separate from its general accounts. Within 14 days after the expiration or termination of this Lease, if Lessor elects to apply the Security Deposit only to unpaid Rent, and otherwise within 30 days after the Premises have been vacated pursuant to Paragraph 7.4(c) below, Lessor shall return that portion of the Security Deposit not used or applied by Lessor. No part of the Security Deposit shall be considered to be held in trust, to bear interest or to be prepayment for any monies to be paid by Lessee under this Lease.

6. Use.

6.1 Use. Lessee shall use and occupy the Premises only for the Agreed Use, or any other legal use which is reasonably comparable thereto, and for no other purpose. Lessee shall not use or permit the use of the Premises in a manner that is unlawful, creates damage, waste or a nuisance, or that disturbs occupants of or causes damage to neighboring premises or properties. Lessor shall not unreasonably withhold or delay its consent to any written request for a modification of the Agreed Use, so long as the same will not impair the structural integrity of the improvements on the Premises or the mechanical or electrical systems therein, and/or is not significantly more burdensome to the Premises. If Lessor elects to withhold consent, Lessor shall within 7 days after such request give written notification of same, which notice shall include an explanation of Lessor's objections to the change in the Agreed Use.

6.2 Hazardous Substances.

(a) **Reportable Uses Require Consent.** The term **"Hazardous Substance"** as used in this Lease shall mean any product, substance, or waste whose presence, use, manufacture, disposal, transportation, or release, either by itself or in combination with other materials expected to be on the Premises, is either: (i) potentially injurious to the public health, safety or welfare, the environment or the Premises, (ii) regulated or monitored by any governmental authority, or (iii) a basis for potential liability of Lessor to any governmental agency or third party under any applicable statute or common law theory. Hazardous Substances shall include, but not be limited to, hydrocarbons, petroleum, gasoline, and/or crude oil or any products, by-products or fractions thereof. Lessee shall not engage in any activity in or on the Premises which constitutes a Reportable Use of Hazardous Substances without the express prior written consent of Lessor and timely compliance (at Lessee's expense) with all Applicable Requirements. **"Reportable Use"** shall mean (i) the installation or use of any above or below ground storage tank, (ii) the generation, possession, storage, use, transportation, or disposal of a Hazardous Substance that requires a permit from, or with respect to which a report, notice, registration or business plan is required to be filed with, any governmental authority, and/or (iii) the presence at the Premises of a Hazardous Substance with respect to which any Applicable Requirements requires that a notice be given to persons entering or occupying the Premises or neighboring properties. Notwithstanding the foregoing, Lessee may use any ordinary and customary materials reasonably required to be used in the normal course of the Agreed Use, so long as such use is in compliance with all Applicable Requirements, is not a Reportable Use, and does not expose the Premises or neighboring property to any meaningful risk of contamination or damage or expose Lessor to any liability therefor. In addition, Lessor may condition its consent to any Reportable Use upon receiving such additional assurances as Lessor reasonably deems necessary to protect itself, the public, the Premises and/or the environment against damage, contamination, injury and/or liability, including, but not limited to, the installation (and removal on or before Lease expiration or termination) of protective modifications (such as concrete encasements) and/or increasing the Security Deposit.

(b) **Duty to Inform Lessor.** If Lessee knows, or has reasonable cause to believe, that a Hazardous Substance has come to be located in, on, under or about the Premises, other than as previously consented to by Lessor, Lessee shall immediately give written notice of such fact to Lessor, and provide Lessor with a copy of any report, notice, claim or other documentation which it has concerning the presence of such Hazardous Substance.

(c) **Lessee Remediation.** Lessee shall not cause or permit any Hazardous Substance to be spilled or released in, on, under, or about the Premises (including through the plumbing or sanitary sewer system) and shall promptly, at Lessee's expense, take all investigatory and/or remedial action reasonably recommended, whether or not formally ordered or required, for the cleanup of any contamination of, and for the maintenance, security and/or monitoring of the

Premises or neighboring properties, that was caused or materially contributed to by Lessee, or pertaining to or involving any Hazardous Substance brought onto the Premises during the term of this Lease, by or for Lessee, or any third party.

(d) **Lessee Indemnification.** Lessee shall indemnify, defend and hold Lessor, its agents, employees, lenders and ground lessor, if any, harmless from and against any and all loss of rents and/or damages, liabilities, judgments, claims, expenses, penalties, and **reasonable** attorneys' and consultants' fees arising out of or involving any Hazardous Substance brought onto the Premises by or for Lessee, or any third party **on Lessee's behalf** (provided, however, that Lessee shall have no liability under this Lease with respect to underground migration of any Hazardous Substance under the Premises from areas outside of the Project). Lessee's obligations shall include, but not be limited to, the effects of any contamination or injury to person, property or the environment created or suffered by Lessee, and the cost of investigation, removal, remediation, restoration and/or abatement, and shall survive the expiration or termination of this Lease. No termination, cancellation or release agreement entered into by Lessor and Lessee shall release Lessee from its obligations under this Lease with respect to Hazardous Substances, unless specifically so agreed by Lessor in writing at the time of such agreement.

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(e) **Lessor Indemnification.** Lessor and its successors and assigns shall indemnify, defend, reimburse and hold Lessee, its employees and lenders, harmless from and against any and all environmental damages, including the cost of remediation, which existed as a result of Hazardous Substances on the Premises prior to the Start Date or which are caused by the gross negligence or willful misconduct of Lessor, its agents or employees. Lessor's obligations, as and when required by the Applicable Requirements, shall include, but not be limited to, the cost of investigation, removal, remediation, restoration and/or abatement, and shall survive the expiration or termination of this Lease.

(f) **Investigations and Remediations.** Lessor shall retain the responsibility and pay for any investigations or remediation measures required by governmental entities having jurisdiction with respect to the existence of Hazardous Substances on the Premises prior to the Start Date, unless such remediation measure is required as a result of Lessee's use (including "Alterations", as defined in paragraph 7.3(a) below) of the Premises, in which event Lessee shall be responsible for such payment. Lessee shall cooperate fully in any such activities at the request of Lessor, including allowing Lessor and Lessor's agents to have reasonable access to the Premises at reasonable times in order to carry out Lessor's investigative and remedial responsibilities.

(g) **Lessor Termination Option.** If a Hazardous Substance Condition (see Paragraph 9.1(e)) occurs during the term of this Lease, unless Lessee is legally responsible therefor (in which case Lessee shall make the investigation and remediation thereof required by the Applicable Requirements and this Lease shall continue in full force and effect, but subject to Lessor's rights under Paragraph 6.2(d) and Paragraph 13), Lessor may, at Lessor's option, either (i) investigate and remediate such Hazardous Substance Condition, if required, as soon as reasonably possible at Lessor's expense, in which event this Lease shall continue in full force and effect, or (ii) if the estimated cost to remediate such condition exceeds 12 times the then monthly Base Rent or \$100,000, whichever is greater, give written notice to Lessee, within 30 days after receipt by Lessor of knowledge of the occurrence of such Hazardous Substance Condition, of Lessor's desire to terminate this Lease as of the date 60 days following the date of such notice. In the event Lessor elects to give a termination notice, Lessee may, within 10 days thereafter, give written notice to Lessor of Lessee's commitment to pay the amount by which the cost of the remediation of such Hazardous Substance Condition exceeds an amount equal to 12 times the then monthly Base Rent or \$100,000, whichever is greater. Lessee shall provide Lessor with said funds or satisfactory assurance thereof within 30 days following such commitment. In such event, this Lease shall continue in full force and effect, and Lessor shall proceed to make such remediation as soon as reasonably possible after the required funds are available. If Lessee does not give such notice and provide the required funds or assurance thereof within the time provided, this Lease shall terminate as of the date specified in Lessor's notice of termination.

6.3 Lessee's Compliance with Applicable Requirements. Except as otherwise provided in this Lease, Lessee shall, at Lessee's sole expense, fully, diligently and in a timely manner, materially comply with all Applicable Requirements, the requirements of any applicable fire insurance underwriter or rating bureau, and the recommendations of Lessor's engineers and/or consultants which relate in any manner to the Premises, without regard to whether said requirements are now in effect or become effective after the Start Date. Lessee shall, within 10 days after receipt of Lessor's written request, provide Lessor with copies of all permits and other documents, and other information evidencing Lessee's compliance with any Applicable Requirements specified by Lessor, and shall immediately upon receipt, notify Lessor in writing (with copies of any documents involved) of any threatened or actual claim, notice, citation, warning, complaint or report pertaining to or involving the failure of Lessee or the Premises to comply with any Applicable Requirements.

6.4 Inspection; Compliance Lessor and Lessor's "Lender" (as defined in Paragraph 30) and consultants shall have the right to enter into Premises at any time, in case of an emergency, and otherwise at reasonable times upon prior notice for the purpose of inspecting the condition of the Premises and for verifying compliance by Lessee with this Lease. The cost of any such inspections shall be paid by Lessor, unless a violation of Applicable Requirements by Lessee, or a contamination caused by Lessee is found to exist or be imminent, or the inspection is requested or ordered by a governmental authority due to acts or omissions of Lessee. In such case, Lessee shall upon request reimburse Lessor for the cost of such inspection, so long as such inspection is reasonably related to the violation or contamination.

7. Maintenance; Repairs, Utility Installations; Trade Fixtures and Alterations.

7.1 Lessee's Obligations.

(a) **In General.** Subject to the provisions of Paragraph 2.2 (Condition), 2.3 (Compliance), 6.3 (Lessee's Compliance with Applicable Requirements), 7.2 (Lessor's Obligations), 9 (Damage or Destruction), and 14 (Condemnation), Lessee shall, at Lessee's sole expense, keep the Premises, Utility Installations (intended for Lessee's exclusive use, no matter where located), and Alterations in good order, condition and repair (whether or not the portion of the Premises requiring repairs, or the means of repairing the same, are reasonably or readily accessible to Lessee, and whether or not the need for such repairs occurs as a result of Lessee's use, any prior use, the elements or the age of such portion of the Premises), including, but not limited to, all equipment or facilities, such as plumbing, HVAC equipment, electrical, lighting facilities, boilers, pressure vessels; fixtures, interior walls, interior surfaces of exterior walls, ceilings, floors, windows, doors, plate glass, and skylights but excluding any items which are the responsibility of Lessor pursuant to Paragraph 7.2. Lessee, in keeping the Premises in good order, condition and repair, shall exercise and perform good maintenance practices, specifically including the procurement and maintenance of the service contracts required by Paragraph 7.1(b) below. Lessee's obligations shall include restorations, replacements or renewals when necessary to keep the Premises and all improvements thereon or a part thereof in good order, condition and state of repair.

(b) **Service Contracts.** Lessee shall, at Lessee's sole expense, procure and maintain contracts, with copies to Lessor, in customary form and substance for, and with contractors specializing and experienced in the maintenance of the following equipment and improvements, if any, if and when installed on the Premises: (i)-HVAC equipment, (ii) boiler and pressure vessels, (iii) clarifiers, and (iv) any other equipment, if reasonably required by Lessor. However, Lessor reserves the right, upon notice to Lessee, to procure and maintain any or all of such service contracts, **on commercially reasonable terms**, and if Lessor so elects, Lessee shall reimburse Lessor, upon demand, for the cost thereof.

(c) **Failure to Perform.** If Lessee fails to perform Lessee's obligations under this Paragraph 7.1, Lessor may enter upon the Premises after 10 days' prior written notice to Lessee (except in the case of an emergency, in which case no notice shall be required), perform such obligations on Lessee's behalf, and put the Premises in good order, condition and repair, and Lessee shall promptly reimburse Lessor for the cost thereof.

(d) **Replacement.** Subject to Lessee's indemnification of Lessor as set forth in Paragraph 8.7 below, and without relieving Lessee of liability resulting from Lessee's failure to exercise and perform good maintenance practices, if an item described in Paragraph 7.1(b) cannot be repaired other than at a cost which is in excess of 50% of the cost of replacing such item, then such item shall be replaced by Lessor, and the cost thereof shall be prorated between the Parties and Lessee shall only be obligated to pay, each month during the remainder of the term of this Lease, on the date on which Base Rent is due, an amount equal to the product of multiplying the cost of such replacement by a fraction, the numerator of which is one, and the denominator of which is 144 (ie. 1/144th of the cost per month). Lessee shall pay interest on the unamortized balance at a rate that is commercially reasonable in the judgment of Lessor's accountants. Lessee may, however, prepay its obligation at any time.

7.2 Lessor's Obligations. Subject to the provisions of Paragraphs 2.2 (Condition), 2.3 (Compliance), 4.2 (Common Area Operating Expenses), 6 (Use), 7.1 (Lessee's Obligations), 9 (Damage or Destruction) and 14 (Condemnation), Lessor, subject to reimbursement pursuant to Paragraph 4.2, shall keep in good order, condition and repair the foundations, exterior walls, structural condition of interior bearing walls, exterior roof, fire sprinkler system, Common Area fire alarm and/or smoke detection systems, fire hydrants, parking lots, walkways, parkways, driveways, landscaping, fences, signs and utility systems serving the Common Areas and all parts thereof, as well as providing the services for which there is a Common Area Operating Expense pursuant to Paragraph 4.2. Lessor shall not be obligated to paint the exterior or interior surfaces of exterior walls nor shall Lessor be obligated to maintain, repair or replace windows, doors or plate glass of the Premises. Lessee expressly waives the benefit of any statute now or hereafter in effect to the extent it is inconsistent with the terms of this Lease.

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7.3 Utility Installations; Trade Fixtures; Alterations.

(a) **Definitions.** The term "**Utility Installations**" refers to all floor and window coverings, air lines, power panels, electrical distribution, security and fire protection systems, communication systems, lighting fixtures, HVAC equipment, plumbing, and fencing in or on the Premises. The term "**Trade Fixtures**" shall mean Lessee's machinery and equipment that can be removed without doing material damage to the Premises. The term "**Alterations**" shall mean any modification of the improvements, other than Utility Installations or Trade Fixtures, whether by addition or deletion. "**Lessee Owned Alterations and/or Utility Installations**" are defined as Alterations and/or Utility Installations made by Lessee that are not yet owned by Lessor pursuant to Paragraph 7.4(a).

(b) **Consent.** Lessee shall not make any Alterations or Utility Installations to the Premises without Lessor's prior written consent. Lessee may, however, make non-structural Utility Installations to the interior of the Premises (excluding the roof) without such consent but upon notice to Lessor, as long as they are not visible from the outside, do not involve puncturing, relocating or removing the roof or any existing walls, and the cumulative cost thereof during this Lease as extended does not exceed a sum equal to 3 month's Base Rent in the aggregate or a sum equal to one month's Base Rent in any one year. Notwithstanding the foregoing, Lessee shall not make or permit any roof penetrations and/or install anything on the roof without the prior written approval of Lessor. Lessor may, as a precondition to granting such approval, require Lessee to utilize a contractor chosen and/or approved by Lessor. Any Alterations or Utility Installations that Lessee shall desire to make and which require the consent of the Lessor shall be presented to Lessor in written form with detailed plans. Consent shall be deemed conditioned upon Lessee's: (i) acquiring all applicable governmental permits, (ii) furnishing Lessor with copies of both the permits and the plans and specifications prior to commencement of the work, and (iii) compliance with all conditions of said permits and other Applicable Requirements in a prompt and expeditious manner. Any Alterations or Utility Installations shall be performed in a good workmanlike manner with good and sufficient materials. Lessee shall promptly upon completion furnish Lessor with as-built plans and specifications. For work which costs an amount in excess of one month's Base Rent, Lessor may condition its consent upon Lessee providing a lien and completion bond in an amount equal to 150% of the estimated cost of such Alteration or Utility Installation and/or upon Lessee's posting an additional Security Deposit with Lessor.

(c) **Indemnification.** Lessee shall pay, when due, all claims for labor or materials furnished or alleged to have been furnished to or for Lessee at or for use on the Premises, which claims are or may be secured by any mechanic's or materialman's lien against the Premises or any interest therein. Lessee shall give Lessor not less than 10 days notice prior to the commencement of any work in, on or about the Premises, and Lessor shall have the right to post notices of non-responsibility. If Lessee shall contest the validity of any such lien, claim or demand, then Lessee shall, at its sole expense defend and protect itself, Lessor and the Premises against the same and shall pay and satisfy any such adverse judgment that may be rendered thereon before the enforcement thereof. If Lessor shall require, Lessee shall furnish a surety bond in an amount equal to 150% of the amount of such contested lien, claim or demand, indemnifying Lessor against liability for the same. If Lessor elects to participate in any such action, Lessee shall pay Lessor's attorneys' fees and costs.

7.4 Ownership; Removal; Surrender; and Restoration.

(a) **Ownership.** Subject to Lessor's right to require removal or elect ownership as hereinafter provided, all Alterations and Utility Installations made by Lessee shall be the property of Lessee, but considered a part of the Premises. Lessor may, at any time, elect in writing to be the owner of all or any specified part of the Lessee Owned Alterations and Utility Installations. Unless otherwise instructed per paragraph 7.4(b) hereof, all Lessee Owned Alterations and Utility Installations shall, at the expiration or termination of this Lease, become the property of Lessor and be surrendered by Lessee with the Premises.

(b) **Removal.** By delivery to Lessee of written notice from Lessor not earlier than 90 and not later than 30 days prior to the end of the term of this Lease, Lessor may require that any or all Lessee Owned Alterations or Utility Installations be removed by the expiration or termination of this Lease. Lessor may require the removal at any time of all or any part of any Lessee Owned Alterations or Utility Installations made without the required consent.

(c) **Surrender; Restoration.** Lessee shall surrender the Premises by the Expiration Date or any earlier termination date, with all of the improvements, parts and surfaces thereof broom clean and free of debris, and in good operating order, condition and state of repair, ordinary wear and tear excepted. "Ordinary wear and tear" shall not include any damage or deterioration that would have been prevented by good maintenance practice. Notwithstanding the foregoing, if this Lease is for 12 months or less, then Lessee shall surrender the Premises in the same condition as delivered to Lessee on the Start Date with NO allowance for ordinary wear and tear. Lessee shall repair any damage occasioned by the installation, maintenance or removal of Trade Fixtures, Lessee owned Alterations and/or Utility Installations, furnishings, and equipment as well as the removal of any storage tank installed by or for Lessee. Lessee shall also completely remove from the Premises any and all Hazardous Substances brought onto the Premises by or for Lessee, or any third party (except Hazardous Substances which were deposited via underground migration from areas outside of the Project) even if such removal would require Lessee to perform or pay for work that exceeds statutory requirements. Trade Fixtures shall remain the property of Lessee and shall be removed by Lessee. The failure by Lessee to timely vacate the Premises pursuant to this Paragraph 7.4(c) without the express written consent of Lessor shall constitute a holdover under the provisions of Paragraph 26 below.

8. Insurance; Indemnity.

8.1 **Payment of Premiums.** The cost of the premiums for the insurance policies required to be carried by Lessor, pursuant to Paragraphs 8.2(b), 8.3(a) and 8.3(b), shall be a Common Area Operating Expense. Premiums for policy periods commencing prior to, or extending beyond, the term of this Lease shall be prorated to coincide with the corresponding Start Date or Expiration Date.

8.2 Liability Insurance.

(a) **Carried by Lessee.** Lessee shall obtain and keep in force a Commercial General Liability policy of insurance protecting Lessee and Lessor as an additional insured against claims for bodily injury, personal injury and property damage based upon or arising out of the ownership, use, occupancy or maintenance of the Premises and all areas appurtenant thereto. Such insurance shall be on an occurrence basis providing single limit coverage in an amount not less than \$1,000,000 per occurrence with an annual aggregate of not less than \$2,000,000, an "Additional Insured Managers or Lessors of Premises Endorsement" and contain the "Amendment of the Pollution Exclusion Endorsement" for damage caused by heat, smoke or fumes from a hostile fire. The policy shall not contain any intra-insured exclusions as between insured persons or organizations, but shall include coverage for liability assumed under this Lease as an "**insured contract**" for the performance of Lessee's indemnity obligations under this Lease. The limits of said insurance shall not, however, limit the liability of Lessee nor relieve Lessee of any obligation hereunder. All insurance carried by Lessee shall be primary to and not contributory with any similar insurance carried by Lessor, whose insurance shall be considered excess insurance only.

(b) **Carried by Lessor.** Lessor shall maintain liability insurance as described in Paragraph 8.2(a), in addition to, and not in lieu of, the insurance required to be maintained by Lessee. Lessee shall not be named as an additional insured therein.

8.3 Property Insurance – Building, Improvements and Rental Value.

(a) **Building and Improvements.** Lessor shall obtain and keep in force a policy or policies of insurance in the name of Lessor, with loss payable to Lessor, any ground-lessor, and to any Lender insuring loss or damage to the Premises. The amount of such insurance shall be equal to the full replacement cost of the Premises, as the same shall exist from time to time, or the amount required by any Lender, but in no event more than the commercially reasonable and available insurable value thereof. Lessee Owned Alterations and Utility Installations, Trade Fixtures, and Lessee's personal property shall be insured by Lessee under Paragraph

8.4. If the coverage is available and commercially appropriate, such policy or policies shall insure against all risks of direct physical loss or damage (except the perils of flood and/or earthquake unless required by a Lender), including coverage for debris removal and the enforcement of any Applicable Requirements requiring the upgrading, demolition, reconstruction or replacement of any portion of the Premises as the result of a covered loss. Said policy or policies shall also contain an agreed valuation provision in lieu of any coinsurance clause, waiver of subrogation, and inflation guard protection causing an increase in the annual property insurance coverage amount by a factor of not less than the adjusted U.S. Department of Labor Consumer Price Index for All Urban Consumers for the city nearest to where the Premises are located. If such insurance coverage has a deductible clause, the deductible amount shall not exceed \$1,000 per occurrence.

(b) **Rental Value.** Lessor shall also obtain and keep in force a policy or policies in the name of Lessor with loss payable to Lessor and any Lender, insuring the loss of the full Rent for one year with an extended period of indemnity for an additional 180 days ("Rental Value insurance"). Said insurance shall contain an agreed valuation provision in lieu of any coinsurance clause, and the amount of coverage shall be adjusted annually to reflect the projected Rent otherwise payable by Lessee, for the next 12 month period.

(c) **Adjacent Premises.** Lessee shall pay for any increase in the premiums for the property insurance of the Building and for the Common Areas or other buildings in the Project if said increase is caused by Lessee's acts, omissions, use or occupancy of the Premises.

(d) **Lessee's Improvements.** Since Lessor is the Insuring Party, Lessor shall not be required to insure Lessee Owned Alterations and Utility Installations unless the item in question has become the property of Lessor under the terms of this Lease.

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8.4 Lessee's Property; Business Interruption Insurance.

(a) **Property Damage.** Lessee shall obtain and maintain insurance coverage on all of Lessee's personal property, Trade Fixtures, and Lessee Owned Alterations and Utility Installations. Such insurance shall be full replacement cost coverage with a deductible of not to exceed \$1,000 per occurrence. The proceeds from any such insurance shall be used by Lessee for the replacement of personal property, Trade Fixtures and Lessee Owned Alterations and Utility Installations. Lessee shall provide Lessor with written evidence that such insurance is in force.

(b) **Business Interruption.** Lessee shall obtain and maintain loss of income and extra expense insurance in amounts as will reimburse Lessee for direct or indirect loss of earnings attributable to all perils commonly insured against by prudent lessees in the business of Lessee or attributable to prevention of access to the Premises as a result of such perils.

(c) **No Representation of Adequate Coverage.** Lessor makes no representation that the limits or forms of coverage of insurance specified herein are adequate to cover Lessee's property, business operations or obligations under this Lease.

8.5 Insurance Policies. Insurance required herein shall be by companies duly licensed or admitted to transact business in the state where the Premises are located, and maintaining during the policy term a "General Policyholders Rating" of at least B+, V, as set forth in the most current issue of "Best's Insurance Guide", or such other rating as may be required by a Lender. Lessee shall not do or permit to be done anything which invalidates the required insurance policies. Lessee shall, prior to the Start Date, deliver to Lessor certified copies of policies of such insurance or certificates evidencing the existence and amounts of the required insurance. No such policy shall be cancelable or subject to modification except after 30 days prior written notice to Lessor. Lessee shall, at least 30 days prior to the expiration of such policies, furnish Lessor with evidence of renewals or "insurance binders" evidencing renewal thereof, or Lessor may order such insurance and charge the cost thereof to Lessee, which amount shall be payable by Lessee to Lessor upon demand. Such policies shall be for a term of at least one year, or the length of the remaining term of this Lease, whichever is less. If either Party shall fail to procure and maintain the insurance required to be carried by it, the other Party may, but shall not be required to, procure and maintain the same.

8.6 Waiver of Subrogation. Without affecting any other rights or remedies, Lessee and Lessor each hereby release and relieve the other, and waive their entire right to recover damages against the other, for loss of or damage to its property arising out of or incident to the perils required to be insured against herein. The effect of such releases and waivers is not limited by the amount of insurance carried or required, or by any deductibles applicable hereto. The Parties agree to have their respective property damage insurance carriers waive any right to subrogation that such companies may have against Lessor or Lessee, as the case may be, so long as the insurance is not invalidated thereby.

8.7 Indemnity. Except for Lessor's gross negligence or willful misconduct, Lessee shall indemnify, protect, defend and hold harmless the Premises, Lessor and its agents, Lessor's master or ground lessor, partners and Lenders, from and against any and all claims, loss of rents and/or damages, liens, judgments, penalties, attorneys' and consultants' fees, expenses and/or liabilities arising out of, involving, or in connection with, the use and/or occupancy of the Premises by Lessee. If any action or proceeding is brought against Lessor by reason of any of the foregoing matters, Lessee shall upon notice defend the same at Lessee's expense by counsel reasonably satisfactory to Lessor and Lessor shall cooperate with Lessee in such defense. Lessor need not have first paid any such claim in order to be defended or indemnified.

Lessor agrees to indemnify, protect, defend and hold harmless Lessee from and against any and all claims, loss, damage or expense, including reasonable attorneys' fees, with respect to any claim of damage or injury to persons or property at the Premises, caused by the gross negligence or intentional acts of Lessor or its authorized agents or employees.

8.8 Exemption of Lessor from Liability. Lessor shall not be liable for injury or damage to the person or goods, wares, merchandise or other property of Lessee, Lessee's employees, contractors, invitees, customers, or any other person in or about the Premises, whether such damage or injury is caused by or results from fire, steam, electricity, gas, water or rain, or from the breakage, leakage, obstruction or other defects of pipes, fire sprinklers, wires, appliances, plumbing, HVAC or lighting fixtures, or from any other cause, whether the said injury or damage results from conditions arising upon the Premises or upon other portions of the Building, or from other sources or places. Lessor shall not be liable for any damages arising from any act or neglect of any other tenant of Lessor nor from the failure of Lessor to enforce the provisions of any other lease in the Project. Notwithstanding Lessor's negligence or breach of this Lease, Lessor shall under no circumstances be liable for injury to Lessee's business or for any loss of income or profit therefrom.

9. Damage or Destruction.

9.1 Definitions.

(a) **"Premises Partial Damage"** shall mean damage or destruction to the improvements on the Premises, other than Lessee Owned Alterations and Utility Installations, which can reasonably be repaired in 3 months or less from the date of the damage or destruction, and the cost thereof does not exceed a sum equal to 6 month's Base Rent. Lessor shall notify Lessee in writing within 30 days from the date of the damage or destruction as to whether or not the damage is Partial or Total.

(b) **"Premises Total Destruction"** shall mean damage or destruction to the improvements on the Premises, other than Lessee Owned Alterations and Utility Installations and Trade Fixtures, which cannot reasonably be repaired in 3 months or less from the date of the damage or destruction and/or the cost thereof exceeds a sum equal to 6 month's Base Rent. Lessor shall notify Lessee in writing within 30 days from the date of the damage or destruction as to whether or not the damage is Partial or Total.

(c) **"Insured Loss"** shall mean damage or destruction to improvements on the Premises, other than Lessee Owned Alterations and Utility Installations and Trade Fixtures, which was caused by an event required to be covered by the insurance described in Paragraph 8.3(a), irrespective of any deductible amounts or coverage limits involved.

(d) **"Replacement Cost"** shall mean the cost to repair or rebuild the improvements owned by Lessor at the time of the occurrence to their condition existing immediately prior thereto, including demolition, debris removal and upgrading required by the operation of Applicable Requirements, and without deduction for depreciation.

(e) **"Hazardous Substance Condition"** shall mean the occurrence or discovery of a condition involving the presence of, or a contamination by, a Hazardous Substance as defined in Paragraph 6.2(a), in, on, or under the Premises.

9.2 Partial Damage – Insured Loss. If a Premises Partial Damage that is an Insured Loss occurs, then Lessor shall, at Lessor's expense, repair such damage (but not Lessee's Trade Fixtures or Lessee Owned Alterations and Utility Installations) as soon as reasonably possible and this Lease shall continue in full force and effect; provided, however, that Lessee shall, at Lessor's election, make the repair of any damage or destruction the total cost to repair of which is \$5,000 or less, and, in such event, Lessor shall make any applicable insurance proceeds available to Lessee on a reasonable basis for that purpose. Notwithstanding the foregoing, if the

required insurance was not in force or the insurance proceeds are not sufficient to effect such repair, the Insuring Party shall promptly contribute the shortage in proceeds as and when required to complete said repairs. In the event, however, such shortage was due to the fact that, by reason of the unique nature of the improvements, full replacement cost insurance coverage was not commercially reasonable and available, Lessor shall have no obligation to pay for the shortage in insurance proceeds or to fully restore the unique aspects of the Premises unless Lessee provides Lessor with the funds to cover same, or adequate assurance thereof, within 10 days following receipt of written notice of such shortage and request therefor. If Lessor receives said funds or adequate assurance thereof within said 10 day period, the party responsible for making the repairs shall complete them as soon as reasonably possible and this Lease shall remain in full force and effect. If such funds or assurance are not received, Lessor may nevertheless elect by written notice to Lessee within 10 days thereafter to: (i) make such restoration and repair as is commercially reasonable with Lessor paying any shortage in proceeds, in which case this Lease shall remain in full force and effect, or (ii) have this Lease terminate 30 days thereafter. Lessee shall not be entitled to reimbursement of any funds contributed by Lessee to repair any such damage or destruction. Premises Partial Damage due to flood or earthquake shall be subject to Paragraph 9.3, notwithstanding that there may be some insurance coverage, but the net proceeds of any such insurance shall be made available for the repairs if made by either Party.

9.3 Partial Damage – Uninsured Loss. If a Premises Partial Damage that is not an Insured Loss occurs, unless caused by a negligent or willful act of Lessee (in which event Lessee shall make the repairs at Lessee's expense), Lessor may either: (i) repair such damage as soon as reasonably possible at Lessor's expense, in which event this Lease shall continue in full force and effect, or (ii) terminate this Lease by giving written notice to Lessee within 30 days after receipt by Lessor of knowledge of the occurrence of such damage. Such termination shall be effective 60 days following the date of such notice. In the event Lessor elects to terminate this Lease, Lessee shall have the right within 10 days after receipt of the termination notice to give written notice to Lessor of Lessee's commitment to pay for the repair of such damage without reimbursement from Lessor. Lessee shall provide Lessor with said funds or satisfactory assurance thereof within 30 days after making such commitment. In such event this Lease shall continue in full force and effect, and Lessor shall proceed to make such repairs as soon as reasonably possible after the required funds are available. If Lessee does not make the required commitment, this Lease shall terminate as of the date specified in the termination notice.

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9.4 Total Destruction. Notwithstanding any other provision hereof, if a Premises Total Destruction occurs, this Lease shall terminate 60 days following such Destruction. If the damage or destruction was caused by the gross negligence or willful misconduct of Lessee, Lessor shall have the right to recover Lessor's damages from Lessee, except as provided in Paragraph 8.6.

9.5 Damage Near End of Term. If at any time during the last 6 months of this Lease there is damage for which the cost to repair exceeds one month's Base Rent, whether or not an Insured Loss, Lessor may terminate this Lease effective 60 days following the date of occurrence of such damage by giving a written termination notice to Lessee within 30 days after the date of occurrence of such damage. Notwithstanding the foregoing, if Lessee at that time has an exercisable option to extend this Lease or to purchase the Premises, then Lessee may preserve this Lease by, (a) exercising such option and (b) providing Lessor with any shortage in insurance proceeds (or adequate assurance thereof) needed to make the repairs on or before the earlier of (i) the date which is 10 days after Lessee's receipt of Lessor's written notice purporting to terminate this Lease, or (ii) the day prior to the date upon which such option expires. If Lessee duly exercises such option during such period and provides Lessor with funds (or adequate assurance thereof) to cover any shortage in insurance proceeds, Lessor shall, at Lessor's commercially reasonable expense, repair such damage as soon as reasonably possible and this Lease shall continue in full force and effect. If Lessee fails to exercise such option and provide such funds or assurance during such period, then this Lease shall terminate on the date specified in the termination notice and Lessee's option shall be extinguished.

9.6 Abatement of Rent; Lessee's Remedies.

(a) **Abatement.** In the event of Premises Partial Damage or Premises Total Destruction or a Hazardous Substance Condition for which Lessee is not responsible under this Lease, the Rent payable by Lessee for the period required for the repair, remediation or restoration of such damage shall be abated in proportion to the degree to which Lessee's use of the Premises is impaired, but not to exceed the proceeds received from the Rental Value insurance. All other obligations of Lessee hereunder shall be performed by Lessee, and Lessor shall have no liability for any such damage, destruction, remediation, repair or restoration except as provided herein.

(b) **Remedies.** If Lessor shall be obligated to repair or restore the Premises and does not commence, in a substantial and meaningful way, such repair or restoration within 90 days after such obligation shall accrue, Lessee may, at any time prior to the commencement of such repair or restoration, give written notice to Lessor and to any Lenders of which Lessee has actual notice, of Lessee's election to terminate this Lease on a date not less than 60 days following the giving of such notice. If Lessee gives such notice and such repair or restoration is not commenced within 30 days thereafter, this Lease shall terminate as of the date specified in said notice. If the repair or restoration is commenced within such 30 days, this Lease shall continue in full force and effect. "Commence" shall mean either the unconditional authorization of the preparation of the required plans, or the beginning of the actual work on the Premises, whichever first occurs.

9.7 Termination; Advance Payments. Upon termination of this Lease pursuant to Paragraph 6.2(g) or Paragraph 9, an equitable adjustment shall be made concerning advance Base Rent and any other advance payments made by Lessee to Lessor. Lessor shall, in addition, return to Lessee so much of Lessee's Security Deposit as has not been, or is not then required to be, used by Lessor.

9.8 Waive Statutes. Lessor and Lessee agree that the terms of this Lease shall govern the effect of any damage to or destruction of the Premises with respect to the termination of this Lease and hereby waive the provisions of any present or future statute to the extent inconsistent herewith.

10. Real Property Taxes.

10.1 Definition. As used herein, the term "**Real Property Taxes**" shall include any form of assessment; real estate, general, special, ordinary or extraordinary, or rental levy or tax (other than inheritance, personal income or estate taxes); improvement bond; and/or license fee imposed upon or levied against any legal or equitable interest of Lessor in the Project, Lessor's right to other income therefrom, and/or Lessor's business of leasing, by any authority having the direct or indirect power to tax and where the funds are generated with reference to the Project address and where the proceeds so generated are to be applied by the city, county or other local taxing authority of a jurisdiction within which the Project is located. The term "Real Property Taxes" shall also include any tax, fee, levy, assessment or charge, or any increase therein, imposed by reason of events occurring during the term of this Lease, including but not limited to, a change in the ownership of the Project or any portion thereof or a change in the improvements thereon. In calculating Real Property Taxes for any calendar year, the Real Property Taxes for any real estate tax year shall be included in the calculation of Real Property Taxes for such calendar year based upon the number of days which such calendar year and tax year have in common.

10.2 Payment of Taxes. Lessor shall pay the Real Property Taxes applicable to the Project, and except as otherwise provided in Paragraph 10.3, any such amounts shall be included in the calculation of Common Area Operating Expenses in accordance with the provisions of Paragraph 4.2.

10.3 Additional Improvements. Common Area Operating Expenses shall not include Real Property Taxes specified in the tax assessor's records and work sheets as being caused by additional improvements placed upon the Project by other lessees or by Lessor for the exclusive enjoyment of such other lessees. Notwithstanding Paragraph 10.2 hereof, Lessee shall, however, pay to Lessor at the time Common Area Operating Expenses are payable under Paragraph 4.2, the entirety of any increase in Real Property Taxes if assessed solely by reason of Alterations, Trade Fixtures or Utility Installations placed upon the Premises by Lessee or at Lessee's request.

10.4 Joint Assessment. If the Building is not separately assessed, Real Property Taxes allocated to the Building shall be an equitable proportion of the Real Property Taxes for all of the land and improvements included within the tax parcel assessed, such proportion to be determined by Lessor from the respective valuations assigned in the assessor's work sheets or such other information as may be reasonably available. Lessor's reasonable determination thereof, in good faith, shall be conclusive.

10.5 Personal Property Taxes. Lessee shall pay prior to delinquency all taxes assessed against and levied upon Lessee Owned Alterations and Utility Installations, Trade Fixtures, furnishings, equipment and all personal property of Lessee contained in the Premises. When possible, Lessee shall cause its Lessee Owned Alterations and Utility Installations, Trade Fixtures, furnishings, equipment and all other personal property to be assessed and billed separately from the real property of Lessor. If any of Lessee's said property shall be assessed with Lessor's real property, Lessee shall pay Lessor the taxes attributable to Lessee's property within 10 days after receipt of a written statement setting forth the taxes applicable to Lessee's property.

11. Utilities. Lessee shall pay for all water, gas, heat, light, power, telephone, trash disposal and other utilities and services supplied to the Premises, together with any taxes thereon. Notwithstanding the provisions of Paragraph 4.2, if at any time in Lessor's sole judgment, Lessor determines that Lessee is using a disproportionate amount of water, electricity or other commonly metered utilities, **in comparison to other tenants**, or that Lessee is generating such a large volume of trash as to require an increase in the size of the dumpster and/or an increase in the number of times per month that the dumpster is emptied, then Lessor may increase Lessee's Base Rent by an amount equal to such increased costs.

12. Assignment and Subletting.

12.1 Lessor's Consent Required.

Lessee shall not voluntarily or by operation of law assign, transfer, mortgage or encumber (collectively, "assign or assignment") or sublet all or any part of Lessee's interest in this Lease to a third party or in the Premises without Lessor's prior written consent, which shall not be unreasonably withheld or delayed. Lessee may sublet all or a portion of the Premises to an affiliate under common control of Lessee upon notice to Lessor, so long as the use is consistent with the original use and sublessee or assignee is of equal or greater net worth. For purposes of this provision, the term "Affiliate" shall mean any corporation other entity controlling, controlled by or under common control with (directly or indirectly) Lessee, including, without limitation, any parent corporation controlling Lessee or any subsidiary that Lessee controls. The term "control" as used herein shall mean the power to direct or cause the direction of the management and policies of the controlled entity through the ownership of more than fifty percent (50%) of the voting securities in said controlled entity.

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(b) A change in the control of Lessee shall constitute an assignment requiring consent. The transfer, on a cumulative basis, of 25% or more of the voting control of Lessee shall constitute a change in control for this purpose.

(c) The involvement of Lessee or its assets in any transaction, or series of transactions (by way of merger, sale, acquisition, financing, transfer, leveraged buy-out or otherwise), whether or not a formal assignment or hypothecation of this Lease or Lessee's assets occurs, which results or will result in a reduction of the Net Worth of Lessee by an amount greater than 25% of such Net Worth as it was represented at the time of the execution of this Lease or at the time of the most recent assignment to which Lessor has consented, or as it exists immediately prior to said transaction or transactions constituting such reduction, whichever was or is greater, shall be considered an assignment of this Lease to which Lessor may withhold its consent. "**Net Worth of Lessee**" shall mean the net worth of Lessee (excluding any guarantors) established under generally accepted accounting principles.

(d) An assignment or subletting without consent shall, at Lessor's option, be a Default curable after notice per Paragraph 13.1(c), or a noncurable Breach without the necessity of any notice and grace period. If Lessor elects to treat such unapproved assignment or subletting as a noncurable Breach, Lessor may either: (i) terminate this Lease, or (ii) upon 30 days written notice, increase the monthly Base Rent to 110% of the Base Rent then in effect. Further, in the event of such Breach and rental adjustment, (i) the purchase price of any option to purchase the Premises held by Lessee shall be subject to similar adjustment to 110% of the price previously in effect, and (ii) all fixed and non-fixed rental adjustments scheduled during the remainder of the Lease term shall be increased to 110% of the scheduled adjusted rent.

(e) Lessee's remedy for any breach of Paragraph 12.1 by Lessor shall be limited to compensatory damages and/or injunctive relief.

12.2 Terms and Conditions Applicable to Assignment and Subletting.

(a) Regardless of Lessor's consent, no assignment or subletting shall: (i) be effective without the express written assumption by such assignee or sublessee of the obligations of Lessee under this Lease, (ii) release Lessee of any obligations hereunder, or (iii) alter the primary liability of Lessee for the payment of Rent or for the performance of any other obligations to be performed by Lessee.

(b) Lessor may accept Rent or performance of Lessee's obligations from any person other than Lessee pending approval or disapproval of an assignment. Neither a delay in the approval or disapproval of such assignment nor the acceptance of Rent or performance shall constitute a waiver or estoppel of Lessor's right to exercise its remedies for Lessee's Default or Breach.

(c) Lessor's consent to any assignment or subletting shall not constitute a consent to any subsequent assignment or subletting.

(d) In the event of any Default or Breach by Lessee, Lessor may proceed directly against Lessee, any Guarantors or anyone else responsible for the performance of Lessee's obligations under this Lease, including any assignee or sublessee, without first exhausting Lessor's remedies against any other person or entity responsible therefore to Lessor, or any security held by Lessor.

(e) Each request for consent to an assignment or subletting shall be in writing, accompanied by information relevant to Lessor's determination as to the financial and operational responsibility and appropriateness of the proposed assignee or sublessee, including but not limited to the intended use and/or required modification of the Premises, if any, together with a fee of \$1,000 or 10% of the current monthly Base Rent applicable to the portion of the Premises which is the subject of the proposed assignment or sublease, whichever is greater, as consideration for Lessor's considering and processing said request. Lessee agrees to provide Lessor with such other or additional information and/or documentation as may be reasonably requested.

(f) Any assignee of, or sublessee under, this Lease shall, by reason of accepting such assignment or entering into such sublease, be deemed to have assumed and agreed to conform and comply with each and every term, covenant, condition and obligation herein to be observed or performed by Lessee during the term of said assignment or sublease, other than such obligations as are contrary to or inconsistent with provisions of an assignment or sublease to which Lessor has specifically consented to in writing.

(g) Lessor's consent to any assignment or subletting shall not transfer to the assignee or sublessee any Option granted to the original Lessee by this Lease unless such transfer is specifically consented to by Lessor in writing. (See Paragraph 39.2)

12.3 Additional Terms and Conditions Applicable to Subletting. The following terms and conditions shall apply to any subletting by Lessee of all or any part of the Premises and shall be deemed included in all subleases under this Lease whether or not expressly incorporated therein:

(a) Lessee hereby assigns and transfers to Lessor all of Lessee's interest in all Rent payable on any sublease, and Lessor may collect such Rent and apply same toward Lessee's obligations under this Lease; provided, however, that until a Breach shall occur in the performance of Lessee's obligations, Lessee may collect said Rent. Lessor shall not, by reason of the foregoing or any assignment of such sublease, nor by reason of the collection of Rent, be deemed liable to the sublessee for any failure of Lessee to perform and comply with any of Lessee's obligations to such sublessee. Lessee hereby irrevocably authorizes and directs any such sublessee, upon receipt of a written notice from Lessor stating that a Breach exists in the performance of Lessee's obligations under this Lease, to pay to Lessor all Rent due and to become due under the sublease. Sublessee shall rely upon any such notice from Lessor and shall pay all Rents to Lessor without any obligation or right to inquire as to whether such Breach exists, notwithstanding any claim from Lessee to the contrary.

(b) In the event of a Breach by Lessee, Lessor may, at its option, require sublessee to attorn to Lessor, in which event Lessor shall undertake the obligations of the sublessor under such sublease from the time of the exercise of said option to the expiration of such sublease; provided, however, Lessor shall not be liable for any prepaid rents or security deposit paid by such sublessee to such sublessor or for any prior Defaults or Breaches of such sublessor.

(c) Any matter requiring the consent of the sublessor under a sublease shall also require the consent of Lessor.

(d) No sublessee shall further assign or sublet all or any part of the Premises without Lessor's prior written consent.

(e) Lessor shall deliver a copy of any notice of Default or Breach by Lessee to the sublessee, who shall have the right to cure the Default of Lessee within the grace period, if any, specified in such notice. The sublessee shall have a right of reimbursement and offset from and against Lessee for any such Defaults cured by the sublessee.

13. Default; Breach; Remedies.

13.1 Default; Breach. A "**Default**" is defined as a failure by the Lessee to comply with or perform any of the terms, covenants, conditions or Rules and Regulations under this Lease. A "**Breach**" is defined as the occurrence of one or more of the following Defaults, and the failure of Lessee to cure such Default within any applicable grace period:

(a) The abandonment of the Premises; or the vacating of the Premises without providing a commercially reasonable level of security, or where the coverage of the property insurance described in Paragraph 8.3 is jeopardized as a result thereof, or without providing reasonable assurances to minimize potential vandalism.

(b) The failure of Lessee to make any payment of Rent or any Security Deposit required to be made by Lessee hereunder, whether to Lessor or to a third party, when due, to provide reasonable evidence of insurance or surety bond, or to fulfill any obligation under this Lease which endangers or threatens life or property, where such failure continues for a period of 3 business days following written notice to Lessee.

(c) The failure by Lessee to provide (i) reasonable written evidence of compliance with Applicable Requirements, (ii) the service contracts, (iii) the rescission of an unauthorized assignment or subletting, (iv) an Estoppel Certificate, (v) a requested subordination, (vi) evidence concerning any guaranty and/or Guarantor, (vii) any document requested under Paragraph 41 (easements), or (viii) any other documentation or information which Lessor may reasonably require of Lessee under the terms of this Lease, where any such failure continues for a period of 10 days following written notice to Lessee.

(d) A Default by Lessee as to the terms, covenants, conditions or provisions of this Lease, or of the rules adopted under Paragraph 2.9 hereof, other than those described in subparagraphs 13.1(a), (b) or (c), above, where such Default continues for a period of 30 days after written notice; provided, however, that if the nature of Lessee's Default is such that more than 30 days are reasonably required for its cure, then it shall not be deemed to be a Breach if Lessee commences such cure within said 30 day period and thereafter diligently prosecutes such cure to completion.

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(e) The occurrence of any of the following events: (i) the making of any general arrangement or assignment for the benefit of creditors; (ii) becoming a "**debtor**" as defined in 11 U.S.C. § 101 or any successor statute thereto (unless, in the case of a petition filed against Lessee, the same is dismissed within 60 days); (iii) the appointment of a trustee or receiver to take possession of substantially all of Lessee's assets located at the Premises or of Lessee's interest in this Lease, where possession is not restored to Lessee within 30 days; or (iv) the attachment, execution or other judicial seizure of substantially all of Lessee's assets located at the Premises or of Lessee's interest in this Lease, where such seizure is not discharged within 30 days; provided, however, in the event that any provision of this subparagraph (e) is contrary to any applicable law, such provision shall be of no force or effect, and not affect the validity of the remaining provisions.

(f) The discovery that any financial statement of Lessee or of any Guarantor given to Lessor was materially false.

(g) If the performance of Lessee's obligations under this Lease is guaranteed: (i) the death of a Guarantor, (ii) the termination of a Guarantor's liability with respect to this Lease other than in accordance with the terms of such guaranty, (iii) a Guarantor's becoming insolvent or the subject of a bankruptcy filing, (iv) a Guarantor's refusal to honor the guaranty, or (v) a Guarantor's breach of its guaranty obligation on an anticipatory basis, and Lessee's failure, within 60 days following written notice of any such event, to provide written alternative assurance or security, which, when coupled with the then existing resources of Lessee, equals or exceeds the combined financial resources of Lessee and the Guarantors that existed at the time of execution of this Lease.

13.2 Remedies. If Lessee fails to perform any of its affirmative duties or obligations, within 10 days after written notice (or in case of an emergency, without notice), Lessor may, at its option, perform such duty or obligation on Lessee's behalf, including but not limited to the obtaining of reasonably required bonds, insurance policies, or governmental licenses, permits or approvals. The costs and expenses of any such performance by Lessor shall be due and payable by Lessee upon receipt of invoice therefor. If any check given to Lessor by Lessee shall not be honored by the bank upon which it is drawn, Lessor, at its option, may require all future payments to be made by Lessee to be by cashier's check. In the event of a Breach, Lessor may, with or without further notice or demand, and without limiting Lessor in the exercise of any right or remedy which Lessor may have by reason of such Breach:

(a) Terminate Lessee's right to possession of the Premises by any lawful means, in which case this Lease shall terminate and Lessee shall immediately surrender possession to Lessor. In such event Lessor shall be entitled to recover from Lessee: (i) the unpaid Rent which had been earned at the time of termination; (ii) the worth at the time of award of the amount by which the unpaid rent which would have been earned after termination until the time of award exceeds the amount of such rental loss that the Lessee proves could have been reasonably avoided; (iii) the worth at the time of award of the amount by which the unpaid rent for the balance of the term after the time of award exceeds the amount of such rental loss that the Lessee proves could be reasonably avoided; and (iv) any other amount necessary to compensate Lessor for all the detriment proximately caused by the Lessee's failure to perform its obligations under this Lease or which in the ordinary course of things would be likely to result therefrom, including but not limited to the cost of recovering possession of the Premises, expenses of reletting, including necessary renovation and alteration of the Premises, reasonable attorneys' fees, and that portion of any leasing commission paid by Lessor in connection with this Lease applicable to the unexpired term of this Lease. The worth at the time of award of the amount referred to in provision (iii) of the immediately preceding sentence shall be computed by discounting such amount at the discount rate of the Federal Reserve Bank of the District within which the Premises are located at the time of award plus one percent. Efforts by Lessor to mitigate damages caused by Lessee's Breach of this Lease shall not waive Lessor's right to recover damages under Paragraph 12. If termination of this Lease is obtained through the provisional remedy of unlawful detainer, Lessor shall have the right to recover in such proceeding any unpaid Rent and damages as are recoverable therein, or Lessor may reserve the right to recover all or any part thereof in a separate suit. If a notice and grace period required under Paragraph 13.1 was not previously given, a notice to pay rent or quit, or to perform or quit given to Lessee under the unlawful detainer statute shall also constitute the notice required by Paragraph 13.1. In such case, the applicable grace period required by Paragraph 13.1 and the unlawful detainer statute shall run concurrently, and the failure of Lessee to cure the Default within the greater of the two such grace periods shall constitute both an unlawful detainer and a Breach of this Lease entitling Lessor to the remedies provided for in this Lease and/or by said statute.

(b) Continue the Lease and Lessee's right to possession and recover the Rent as it becomes due, in which event Lessee may sublet or assign, subject only to reasonable limitations. Acts of maintenance, efforts to relet, and/or the appointment of a receiver to protect the Lessor's interests, shall not constitute a termination of the Lessee's right to possession.

(c) Pursue any other remedy now or hereafter available under the laws or judicial decisions of the state wherein the Premises are located. The expiration or termination of this Lease and/or the termination of Lessee's right to possession shall not relieve Lessee from liability under any indemnity provisions of this Lease as to matters occurring or accruing during the term hereof or by reason of Lessee's occupancy of the Premises.

13.3 Inducement Recapture. Any agreement for free or abated rent or other charges, or for the giving or paying by Lessor to or for Lessee of any cash or other bonus, inducement or consideration for Lessee's entering into this Lease, all of which concessions are hereinafter referred to as "**Inducement Provisions**", shall be deemed conditioned upon Lessee's full and faithful performance of all of the terms, covenants and conditions of this Lease. Upon Breach of this Lease by Lessee, any such Inducement Provision shall automatically be deemed deleted from this Lease and of no further force or effect, and any rent, other charge, bonus, inducement or consideration theretofore abated, given or paid by Lessor under such an Inducement Provision shall be immediately due and payable by Lessee to Lessor, notwithstanding any subsequent cure of said Breach by Lessee. The acceptance by Lessor of rent or the cure of the Breach which initiated the operation of this paragraph shall not be deemed a waiver by Lessor of the provisions of this paragraph unless specifically so stated in writing by Lessor at the time of such acceptance.

13.4 Late Charges. Lessee hereby acknowledges that late payment by Lessee of Rent will cause Lessor to incur costs not contemplated by this Lease, the exact amount of which will be extremely difficult to ascertain. Such costs include, but are not limited to, processing and accounting charges, and late charges which may be imposed upon Lessor by any Lender. Accordingly, if any Rent shall not be received by Lessor within 5 **business** days after such amount shall be due, then, without any requirement for notice to Lessee, Lessee shall pay to Lessor a one-time late charge equal to 10% of each such overdue amount or \$100, whichever is greater. The parties hereby agree that such late charge represents a fair and reasonable estimate of the costs Lessor will incur by reason of such late payment. Acceptance of such late charge by Lessor shall in no event constitute a waiver of Lessee's Default or Breach with respect to such overdue amount, nor prevent the exercise of any of the other rights and remedies granted hereunder. In the event that a late charge is payable hereunder, whether or not collected, for 3 consecutive installments of Base Rent, then notwithstanding any provision of this Lease to the contrary, Base Rent shall, at Lessor's option, become due and payable quarterly in advance.

13.5 Interest. Any monetary payment due Lessor hereunder, other than late charges, not received by Lessor, when due as to scheduled payments (such as Base Rent) or within 30 days following the date on which it was due for non-scheduled payment, shall bear interest from the date when due, as to scheduled payments, or the 31st day after it was due as to non-scheduled payments. The interest ("**Interest**") charged shall be equal to the prime rate reported in the Wall Street Journal as published closest prior to the date when due plus 4%, but shall not exceed **12%**. Interest is payable in addition to the potential late charge provided for in Paragraph 13.4.

13.6 Breach by Lessor.

(a) **Notice of Breach.** Lessor shall not be deemed in breach of this Lease unless Lessor fails within a reasonable time to perform an obligation required to be performed by Lessor. For purposes of this Paragraph, a reasonable time shall in no event be less than 30 days after receipt by Lessor, and any Lender whose name and address shall have been furnished Lessee in writing for such purpose, of written notice specifying wherein such obligation of Lessor has not been performed; provided, however, that if the nature of Lessor's obligation is such that more than 30 days are reasonably required for its performance, then Lessor shall not be in breach if performance is commenced within such 30 day period and thereafter diligently pursued to completion.

(b) **Performance by Lessee on Behalf of Lessor.** In the event that neither Lessor nor Lender cures said breach within 30 days after receipt of said notice, or if having commenced said cure they do not diligently pursue it to completion, then Lessee may elect to cure said breach at Lessee's expense and offset from Rent an amount equal to the greater of one month's Base Rent or the Security Deposit, and to pay an excess of such expense under protest, reserving Lessee's right to reimbursement from Lessor. Lessee shall document the cost of said cure and supply said documentation to Lessor.

14. **Condemnation.** If the Premises or any portion thereof are taken under the power of eminent domain or sold under the threat of the exercise of said power (collectively "**Condemnation**"), this Lease shall terminate as to the part taken as of the date the condemning authority takes title or possession, whichever first occurs. If more than 10% of the floor area of the Unit, or more than 25% of Lessee's Reserved Parking Spaces, is taken by Condemnation, Lessee may, at Lessee's option, to be exercised in writing within 10 days after Lessor shall have given Lessee written notice of such taking (or in the absence of such notice, within 10 days after the condemning authority shall have taken possession) terminate this Lease as of the date the condemning authority takes such possession. If Lessee does not terminate this Lease in accordance with the foregoing, this Lease shall remain in full force and effect as to the portion of the Premises remaining, except that the Base Rent shall be reduced in proportion to the reduction in utility of the Premises caused by such Condemnation. Condemnation awards and/or payments shall be the property of Lessor, whether such award shall be made as compensation for diminution in value of the leasehold, the value of the part taken, or for severance damages; provided, however, that Lessee shall be entitled to any compensation for Lessee's relocation expenses, loss of business goodwill and/or Trade Fixtures, without regard to whether or not this Lease is terminated pursuant to the provisions of this Paragraph. All Alterations and Utility Installations made to the Premises by Lessee, for purposes of Condemnation only, shall be considered the property of the Lessee and Lessee shall be entitled to any and all compensation which is payable therefor. In the event that this Lease is not terminated by reason of the Condemnation, Lessor shall repair any damage to the Premises caused by such Condemnation.

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15. Brokerage Fees.

15.1 Additional Commission. In addition to the payments owed pursuant to Paragraph 1.10 above, and unless Lessor and the Brokers otherwise agree in writing, Lessor agrees that: (a) if Lessee exercises any Option, (b) if Lessee acquires from Lessor any rights to the Premises or other premises owned by Lessor and located within the Project, (c) if Lessee remains in possession of the Premises, with the consent of Lessor, after the expiration of this Lease, or (d) if Base Rent is increased, whether by agreement or operation of an escalation clause herein, then, Lessor shall pay Brokers a fee in accordance with the schedule of the Brokers in effect at the time of the execution of this Lease.

15.2 Assumption of Obligations. Any buyer or transferee of Lessor's interest in this Lease shall be deemed to have assumed Lessor's obligation hereunder. Brokers shall be third party beneficiaries of the provisions of Paragraphs 1.10, 15, 22 and 31. If Lessor fails to pay to Brokers any amounts due as and for brokerage fees pertaining to this Lease when due, then such amounts shall accrue Interest. In addition, if Lessor fails to pay any amounts to Lessee's Broker when due, Lessee's Broker may send written notice to Lessor and Lessee of such failure and if Lessor fails to pay such amounts within 10 days after said notice, Lessee shall pay said monies to its Broker and offset such amounts against Rent. In addition, Lessee's Broker shall be deemed to be a third party beneficiary of any commission agreement entered into by and/or between Lessor and Lessor's Broker for the limited purpose of collecting any brokerage fee owed.

15.3 Representations and Indemnities of Broker Relationships. Lessee and Lessor each represent and warrant to the other that it has had no dealings with any person, firm, broker or finder (other than the Brokers, if any) in connection with this Lease, and that no one other than said named Brokers is entitled to any commission or finder's fee in connection herewith. Lessee and Lessor do each hereby agree to indemnify, protect, defend and hold the other harmless from and against liability for compensation or charges which may be claimed by any such unnamed broker, finder or other similar party by reason of any dealings or actions of the indemnifying Party, including any costs, expenses, attorneys' fees reasonably incurred with respect thereto.

16. Estoppel Certificates.

(a) Each Party (as "**Responding Party**") shall within 10 days after written notice from the other Party (the "**Requesting Party**") execute, acknowledge and deliver to the Requesting Party a statement in writing in form similar to the then most current "**Estoppel Certificate**" form published by the American Industrial Real Estate Association, plus such additional information, confirmation and/or statements as may be reasonably requested by the Requesting Party.

(b) If the Responding Party shall fail to execute or deliver the Estoppel Certificate within such 10 day period, the Requesting Party may execute an Estoppel Certificate stating that: (i) the Lease is in full force and effect without modification except as may be represented by the Requesting Party, (ii) there are no uncured defaults in the Requesting Party's performance, and (iii) if Lessor is the Requesting Party, not more than one month's rent has been paid in advance. Prospective purchasers and encumbrances may rely upon the Requesting Party's Estoppel Certificate, and the Responding Party shall be estopped from denying the truth of the facts contained in said Certificate.

(c) If Lessor desires to finance, refinance, or sell the Premises, or any part thereof, Lessee and all Guarantors shall deliver to any potential lender or purchaser designated by Lessor such financial statements as may be reasonably required by such lender or purchaser, including but not limited to Lessee's financial statements for the past 3 years. All such financial statements shall be received by Lessor and such lender or purchaser in confidence and shall be used only for the purposes herein set forth.

17. Definition of Lessor. The term "**Lessor**" as used herein shall mean the owner or owners at the time in question of the fee title to the Premises, or, if this is a sublease, of the Lessee's interest in the prior lease. In the event of a transfer of Lessor's title or interest in the Premises or this Lease, Lessor shall deliver to the transferee or assignee (in cash or by credit) any unused Security Deposit held by Lessor. Except as provided in Paragraph 15, upon such transfer or assignment and delivery of the Security Deposit, as aforesaid, the prior Lessor shall be relieved of all liability with respect to the obligations and/or covenants under this Lease thereafter to be performed by the Lessor. Subject to the foregoing, the obligations and/or covenants in this Lease to be performed by the Lessor shall be binding only upon the Lessor as hereinabove defined. Notwithstanding the above, and subject to the provisions of Paragraph 20 below, the original Lessor under this Lease, and all subsequent holders of the Lessor's interest in this Lease shall remain liable and responsible with regard to the potential duties and liabilities of Lessor pertaining to Hazardous Substances as outlined in Paragraph 6.2 above.

18. Severability. The invalidity of any provision of this Lease, as determined by a court of competent jurisdiction, shall in no way affect the validity of any other provision hereof.

19. Days. Unless otherwise specifically indicated to the contrary, the word "**days**" as used in this Lease shall mean and refer to calendar days.

20. Limitation on Liability. Subject to the provisions of Paragraph 17 above, the obligations of Lessor under this Lease shall not constitute personal obligations of Lessor, the individual partners of Lessor or its or their individual partners, directors, officers or shareholders, and Lessee shall look to the Premises, and to no other assets of Lessor, for the satisfaction of any liability of Lessor with respect to this Lease, and shall not seek recourse against the individual partners of Lessor, or its or their individual partners, directors, officers or shareholders, or any of their personal assets for such satisfaction.

21. Time of Essence. Time is of the essence with respect to the performance of all obligations to be performed or observed by the Parties under this Lease.

22. No Prior or Other Agreements; Broker Disclaimer. This Lease contains all agreements between the Parties with respect to any matter mentioned herein, and no other prior or contemporaneous agreement or understanding shall be effective. Lessor and Lessee each represents and warrants to the Brokers that it has made, and is relying solely upon, its own investigation as to the nature, quality, character and financial responsibility of the other Party to this Lease and as to the use, nature, quality and character of the Premises. Brokers have no responsibility with respect thereto or with respect to any default or breach hereof by either Party. The liability (including court costs and attorneys' fees), of any Broker with respect to negotiation, execution, delivery or performance by either Lessor or Lessee under this Lease or any amendment or modification hereto shall be limited to an amount up to the fee received by such Broker pursuant to this Lease; provided, however, that the foregoing limitation on each Broker's liability shall not be applicable to any gross negligence or willful misconduct of such Broker.

23. Notices.

23.1 Notice Requirements. All notices required or permitted by this Lease or applicable law shall be in writing and may be delivered in person (by hand or by courier) or may be sent by regular, certified or registered mail or U.S. Postal Service Express Mail, with postage prepaid, or by facsimile transmission, and shall be deemed sufficiently given if served in a manner specified in this Paragraph 23. The addresses noted adjacent to a Party's signature on this Lease shall be that Party's address for delivery or mailing of notices. Either Party may by written notice to the other specify a different address for notice, except that upon Lessee's taking possession of the Premises, the Premises shall constitute Lessee's address for notice. A copy of all notices to Lessor shall be concurrently transmitted to such party or parties at such addresses as Lessor may from time to time hereafter designate in writing.

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23.2 Date of Notice. Any notice sent by registered or certified mail, return receipt requested, shall be deemed given on the date of delivery shown on the receipt card, or if no delivery date is shown, the postmark thereon. If sent by regular mail the notice shall be deemed given 48 hours after the same is addressed as required herein and mailed with postage prepaid. Notices delivered by United States Express Mail or overnight courier that guarantee next day delivery shall be deemed given 24 hours after delivery of the same to the Postal Service or courier. Notices transmitted by facsimile transmission or similar means shall be deemed delivered upon telephone confirmation of receipt (confirmation report from fax machine is sufficient), provided a copy is also delivered via delivery or mail. If notice is received on a Saturday, Sunday or legal holiday, it shall be deemed received on the next business day.

24. Waivers. No waiver by Lessor of the Default or Breach of any term, covenant or condition hereof by Lessee, shall be deemed a waiver of any other term, covenant or condition hereof, or of any subsequent Default or Breach by Lessee of the same or of any other term, covenant or condition hereof. Lessor's consent to, or approval of, any act shall not be deemed to render unnecessary the obtaining of Lessor's consent to, or approval of, any subsequent or similar act by Lessee, or be construed as the basis of an estoppel to enforce the provision or provisions of this Lease requiring such consent. The acceptance of Rent by Lessor shall not be a waiver of any Default or Breach by Lessee. Any payment by Lessee may be accepted by Lessor on account of moneys or damages due Lessor, notwithstanding any qualifying statements or conditions made by Lessee in connection therewith, which such statements and/or conditions shall be of no force or effect whatsoever unless specifically agreed to in writing by Lessor at or before the time of deposit of such payment.

25. Disclosures Regarding The Nature of a Real Estate Agency Relationship.

(a) When entering into a discussion with a real estate agent regarding a real estate transaction, a Lessor or Lessee should from the outset understand what type of agency relationship or representation it has with the agent or agents in the transaction. Lessor and Lessee acknowledge being advised by the Brokers in this transaction, as follows:

(i) Lessor's Agent. A Lessor's agent under a listing agreement with the Lessor acts as the agent for the Lessor only. A Lessor's agent or subagent has the following affirmative obligations: To the Lessor: A fiduciary duty of utmost care, integrity, honesty, and loyalty in dealings with the Lessor. To the Lessee and the Lessor: (a) Diligent exercise of reasonable skills and care in performance of the agent's duties. (b) A duty of honest and fair dealing and good faith. (c) A duty to disclose all facts known to the agent materially affecting the value or desirability of the property that are not known to, or within the diligent attention and observation of, the Parties. An agent is not obligated to reveal to either Party any confidential information obtained from the other Party which does not involve the affirmative duties set forth above.

(ii) Lessee's Agent. An agent can agree to act as agent for the Lessee only. In these situations, the agent is not the Lessor's agent, even if by agreement the agent may receive compensation for services rendered, either in full or in part from the Lessor. An agent acting only for a Lessee has the following affirmative obligations. To the Lessee: A fiduciary duty of utmost care, integrity, honesty, and loyalty in dealings with the Lessee. To the Lessor and the Lessee: (a) Diligent exercise of reasonable skills and care in performance of the agent's duties. (b) A duty of honest and fair dealing and good faith. (c) A duty to disclose all facts known to the agent materially affecting the value or desirability of the property that are not known to, or within the diligent attention and observation of, the Parties. An agent is not obligated to reveal to either Party any confidential information obtained from the other Party which does not involve the affirmative duties set forth above.

(iii) Agent Representing Both Lessor and Lessee. A real estate agent, either acting directly or through one or more associate licenses, can legally be the agent of both the Lessor and the Lessee in a transaction, but only with the knowledge and consent of both the Lessor and the Lessee. In a dual agency situation, the agent has the following affirmative obligations to both the Lessor and the Lessee: (a) A fiduciary duty of utmost care, integrity, honesty and loyalty in the dealings with either Lessor or the Lessee. (b) Other duties to the Lessor and the Lessee as stated above in subparagraphs (i) or (ii). In representing both Lessor and Lessee, the agent may not without the express permission of the respective Party, disclose to the other Party that the Lessor will accept rent in an amount less than that indicated in the listing or that the Lessee is willing to pay a higher rent than that offered. The above duties of the agent in a real estate transaction do not relieve a Lessor or Lessee from the responsibility to protect their own interests. Lessor and Lessee should carefully read all agreements to assure that they adequately express their understanding of the transaction. A real estate agent is a person qualified to advise about real estate. If legal or tax advice is desired, consult a competent professional.

(b) Brokers have no responsibility with respect to any default or breach hereof by either Party. The liability (including court costs and attorneys' fees), of any Broker with respect to any breach of duty, error or omission relating to this Lease shall not exceed the fee received by such Broker pursuant to this Lease; provided, however, that the foregoing limitation on each Broker's liability shall not be applicable to any gross negligence or willful misconduct of such Broker.

(c) Buyer and Seller agree to identify to Brokers as "Confidential" any communication or information given Brokers that is considered by such Party to be confidential.

26. No Right To Holdover. Lessee has no right to retain possession of the Premises or any part thereof beyond the expiration or termination of this Lease. In the event that Lessee holds over, then the Base Rent shall be increased to 130% of the Base Rent applicable immediately preceding the expiration or termination. Nothing contained herein shall be construed as consent by Lessor to any holding over by Lessee.

27. Cumulative Remedies. No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity.

28. Covenants and Conditions; Construction of Agreement. All provisions of this Lease to be observed or performed by Lessee are both covenants and conditions. In construing this Lease, all headings and titles are for the convenience of the Parties only and shall not be considered a part of this Lease. Whenever required by the context, the singular shall include the plural and vice versa. This Lease shall not be construed as if prepared by one of the Parties, but rather according to its fair meaning as a whole, as if both Parties had prepared it.

29. Binding Effect; Choice of Law. This Lease shall be binding upon the parties, their personal representatives, successors and assigns and be governed by the laws of the State in which the Premises are located. Any litigation between the Parties hereto concerning this Lease shall be initiated in the county in which the Premises are located.

30. Subordination; Attornment; Non-Disturbance.

30.1 Subordination. This Lease and any Option granted hereby shall be subject and subordinate to any ground lease, mortgage, deed of trust, or other hypothecation or security device (collectively, "**Security Device**"), now or hereafter placed upon the Premises, to any and all advances made on the security thereof, and to all renewals, modifications, and extensions thereof. Lessee agrees that the holders of any such Security Devices (in this Lease together referred to as "**Lender**") shall have no liability or obligation to perform any of the obligations of Lessor under this Lease. Any Lender may elect to have this Lease and/or any Option granted hereby superior to the lien of its Security Device by giving written notice thereof to Lessee, whereupon this Lease and such Options shall be deemed prior to such Security Device, notwithstanding the relative dates of the documentation or recordation thereof.

30.2 **Attornment.** In the event that Lessor transfers title to the Premises, or the Premises are acquired by another upon the foreclosure or termination of a Security Device to which this Lease is subordinated (i) Lessee shall, subject to the non-disturbance provisions of Paragraph 30.3, attorn to such new owner, and upon request, enter into a new lease, containing all of the terms and provisions of this Lease, with such new owner for the remainder of the term hereof, or, at the election of such new owner, this Lease shall automatically become a new Lease between Lessee and such new owner, upon all of the terms and conditions hereof, for the remainder of the term hereof, and (ii) Lessor shall thereafter be relieved of any further obligations hereunder and such new owner shall assume all of Lessor's obligations hereunder, except that such new owner shall not: (a) be liable for any act or omission of any prior lessor or with respect to events occurring prior to acquisition of ownership; (b) be subject to any offsets or defenses which Lessee might have against any prior lessor, (c) be bound by prepayment of more than one month's rent, or (d) be liable for the return of any security deposit paid to any prior lessor.

30.3 **Non-Disturbance.** With respect to Security Devices entered into by Lessor after the execution of this Lease, Lessee's subordination of this Lease shall be subject to receiving a commercially reasonable non-disturbance agreement (a "**Non-Disturbance Agreement**") from the Lender which Non-Disturbance Agreement provides that Lessee's possession of the Premises, and this Lease, including any options to extend the term hereof, will not be disturbed so long as Lessee is not in Breach hereof and attorns to the record owner of the Premises. Further, within 60 days after the execution of this Lease, Lessor shall use its commercially reasonable efforts to obtain a Non-Disturbance Agreement from the holder of any pre-existing Security Device which is secured by the Premises. In the event that Lessor is unable to provide the Non-Disturbance Agreement within said 60 days, then Lessee may, at Lessee's option, directly contact Lender and attempt to negotiate for the execution and delivery of a Non-Disturbance Agreement.

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30.4 Self-Executing. The agreements contained in this Paragraph 30 shall be effective without the execution of any further documents; provided, however, that, upon written request from Lessor or a Lender in connection with a sale, financing or refinancing of the Premises, Lessee and Lessor shall execute such further writings as may be reasonably required to separately document any subordination, attornment and/or Non-Disturbance Agreement provided for herein.

31. Attorneys' Fees. If any Party or Broker brings an action or proceeding involving the Premises whether founded in tort, contract or equity, or to declare rights hereunder, the Prevailing Party (as hereafter defined) in any such proceeding, action, or appeal thereon, shall be entitled to reasonable attorneys' fees. Such fees may be awarded in the same suit or recovered in a separate suit, whether or not such action or proceeding is pursued to decision or judgment. The term, "**Prevailing Party**" shall include, without limitation, a Party or Broker who substantially obtains or defeats the relief sought, as the case may be, whether by compromise, settlement, judgment, or the abandonment by the other Party or Broker of its claim or defense. The attorneys' fees award shall not be computed in accordance with any court fee schedule, but shall be such as to fully reimburse all attorneys' fees reasonably incurred. In addition, Lessor shall be entitled to attorneys' fees, costs and expenses incurred in the preparation and service of notices of Default and consultations in connection therewith, whether or not a legal action is subsequently commenced in connection with such Default or resulting Breach (\$200 is a reasonable minimum per occurrence for such services and consultation).

32. Lessor's Access; Showing Premises; Repairs. Lessor and Lessor's agents shall have the right to enter the Premises at any time, in the case of an emergency, and otherwise at reasonable times for the purpose of showing the same to prospective purchasers, lenders, or tenants, and making such alterations, repairs, improvements or additions to the Premises as Lessor may deem necessary. All such activities shall be without abatement of rent or liability to Lessee. Lessor may at any time place on the Premises any ordinary "**For Sale**" signs and Lessor may during the last 6 months of the term hereof place on the Premises any ordinary "**For Lease**" signs. Lessee may at any time place on the Premises any ordinary "**For Sublease**" sign.

33. Auctions. Lessee shall not conduct, nor permit to be conducted, any auction upon the Premises without Lessor's prior written consent. Lessor shall not be obligated to exercise any standard of reasonableness in determining whether to permit an auction.

34. Signs. Except for ordinary "For Sublease" signs which may be placed only on the Premises, Lessee shall not place any sign upon the Project without Lessor's prior written consent. All signs must comply with all Applicable Requirements.

35. Termination; Merger. Unless specifically stated otherwise in writing by Lessor, the voluntary or other surrender of this Lease by Lessee, the mutual termination or cancellation hereof, or a termination hereof by Lessor for Breach by Lessee, shall automatically terminate any sublease or lesser estate in the Premises; provided, however, that Lessor may elect to continue any one or all existing subtenancies. Lessor's failure within 10 days following any such event to elect to the contrary by written notice to the holder of any such lesser interest, shall constitute Lessor's election to have such event constitute the termination of such interest.

36. Consents. Except as otherwise provided herein, wherever in this Lease the consent of a Party is required to an act by or for the other Party, such consent shall not be unreasonably withheld or delayed. Lessor's actual reasonable costs and expenses (including but not limited to architects', attorneys', engineers' and other consultants' fees) incurred in the consideration of, or response to, a request by Lessee for any Lessor consent, including but not limited to consents to an assignment, a subletting or the presence or use of a Hazardous Substance, shall be paid by Lessee upon receipt of an invoice and supporting documentation therefor. Lessor's consent to any act, assignment or subletting shall not constitute an acknowledgment that no Default or Breach by Lessee of this Lease exists, nor shall such consent be deemed a waiver of any then existing Default or Breach, except as may be otherwise specifically stated in writing by Lessor at the time of such consent. The failure to specify herein any particular condition to Lessor's consent shall not preclude the imposition by Lessor at the time of consent of such further or other conditions as are then reasonable with reference to the particular matter for which consent is being given. In the event that either Party disagrees with any determination made by the other hereunder and reasonably requests the reasons for such determination, the determining party shall furnish its reasons in writing and in reasonable detail within 10 business days following such request.

37. Guarantor.

37.1 Execution. The Guarantors, if any, shall each execute a guaranty in the form most recently published by the American Industrial Real Estate Association, and each such Guarantor shall have the same obligations as Lessee under this Lease.

37.2 Default. It shall constitute a Default of the Lessee if any Guarantor fails or refuses, upon request to provide: (a) evidence of the execution of the guaranty, including the authority of the party signing on Guarantor's behalf to obligate Guarantor, and in the case of a corporate Guarantor, a certified copy of a resolution of its board of directors authorizing the making of such guaranty, (b) current financial statements, (c) an Estoppel Certificate, or (d) written confirmation that the guaranty is still in effect.

38. Quiet Possession. Subject to payment by Lessee of the Rent and performance of all of the covenants, conditions and provisions on Lessee's part to be observed and performed under this Lease, Lessee shall have quiet possession and quiet enjoyment of the Premises during the term hereof.

39. Options. If Lessee is granted an option, as defined below, then the following provisions shall apply.

39.1 Definition. "Option" shall mean: (a) the right to extend the term of or renew this Lease or to extend or renew any lease that Lessee has on other property of Lessor; (b) the right of first refusal or first offer to lease either the Premises or other property of Lessor; (c) the right to purchase or the right of first refusal to purchase the Premises or other property of Lessor.

39.2 Options Personal To Original Lessee. Any Option granted to Lessee in this Lease is personal to the original Lessee, and cannot be assigned or exercised by anyone other than said original Lessee and only while the original Lessee is in full possession of the Premises and, if requested by Lessor, with Lessee certifying that Lessee has no intention of thereafter assigning or subletting.

39.3 Multiple Options. In the event that Lessee has any multiple Options to extend or renew this Lease, a later Option cannot be exercised unless the prior Options have been validly exercised.

39.4 Effect of Default on Options.

(a) Lessee shall have no right to exercise an Option: (i) during the period commencing with the giving of any notice of Default and continuing until said Default is cured, (ii) during the period of time any Rent is unpaid (without regard to whether notice thereof is given Lessee), (iii) during the time Lessee is in Breach of this Lease, or (iv) in the event that Lessee has been given 3 or more notices of separate Default, whether or not the Defaults are cured, during the 12 month period immediately preceding the exercise of the Option.

(b) The period of time within which an Option may be exercised shall not be extended or enlarged by reason of Lessee's inability to exercise an Option because of the provisions of Paragraph 39.4(a).

(c) An Option shall terminate and be of no further force or effect, notwithstanding Lessee's due and timely exercise of the Option, if, after such exercise and prior to the commencement of the extended term, (i) Lessee fails to pay Rent for a period of 30 days after such Rent becomes due (without any necessity of Lessor to give notice thereof), (ii) Lessor gives to Lessee 3 or more notices of separate Default during any 12 month period, whether or not the Defaults are cured, or (iii) if Lessee commits a Breach of this Lease.

40. **Security Measures.** Lessee hereby acknowledges that the Rent payable to Lessor hereunder does not include the cost of guard service or other security measures, and that Lessor shall have no obligation whatsoever to provide same. Lessee assumes all responsibility for the protection of the Premises, Lessee, its agents and invitees and their property from the acts of third parties.

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41. **Reservations.** Lessor reserves the right: (i) to grant, without the consent or joinder of Lessee, such easements, rights and dedications that Lessor deems necessary, (ii) to cause the recordation of parcel maps and restrictions, and (iii) to create and/or install new utility raceways, so long as such easements, rights, dedications, maps, restrictions, and utility raceways do not unreasonably interfere with the use of the Premises by Lessee. Lessee agrees to sign any documents reasonably requested by Lessor to effectuate such rights.

42. **Performance Under Protest.** If at any time a dispute shall arise as to any amount or sum of money to be paid by one Party to the other under the provisions hereof, the Party against whom the obligation to pay the money is asserted shall have the right to make payment "under protest" and such payment shall not be regarded as a voluntary payment and there shall survive the right on the part of said Party to institute suit for recovery of such sum. If it shall be adjudged that there was no legal obligation on the part of said Party to pay such sum or any part thereof, said Party shall be entitled to recover such sum or so much thereof as it was not legally required to pay.

43. **Authority.** If either Party hereto is a corporation, trust, limited liability company, partnership, or similar entity, each individual executing this Lease on behalf of such entity represents and warrants that he or she is duly authorized to execute and deliver this Lease on its behalf. Each party shall, within 30 days after request, deliver to the other party satisfactory evidence of such authority.

44. **Conflict.** Any conflict between the printed provisions of this Lease and the typewritten or handwritten provisions shall be controlled by the typewritten or handwritten provisions.

45. **Offer.** Preparation of this Lease by either party or their agent and submission of same to the other Party shall not be deemed an offer to lease to the other Party. This Lease is not intended to be binding until executed and delivered by all Parties hereto.

46. **Amendments.** This Lease may be modified only in writing, signed by the Parties in interest at the time of the modification. As long as they do not materially change Lessee's obligations hereunder, Lessee agrees to make such reasonable non-monetary modifications to this Lease as may be reasonably required by a Lender in connection with the obtaining of normal financing or refinancing of the Premises.

47. **Multiple Parties.** If more than one person or entity is named herein as either Lessor or Lessee, such multiple Parties shall have joint and several responsibility to comply with the terms of this Lease.

48. **Waiver of Jury Trial.** The Parties hereby waive their respective rights to trial by jury in any action or proceeding involving the Property or arising out of this Agreement.

49. **Mediation and Arbitration of Disputes.** An Addendum requiring the Mediation and/or the Arbitration of all disputes between the Parties and/or Brokers arising out of this Lease 3 is 3 is not attached to this Lease.

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LESSOR AND LESSEE HAVE CAREFULLY READ AND REVIEWED THIS LEASE AND EACH TERM AND PROVISION CONTAINED HEREIN, AND BY THE EXECUTION OF THIS LEASE SHOW THEIR INFORMED AND VOLUNTARY CONSENT THERETO. THE PARTIES HEREBY AGREE THAT, AT THE TIME THIS LEASE IS EXECUTED, THE TERMS OF THIS LEASE ARE COMMERCIALY REASONABLE AND EFFECTUATE THE INTENT AND PURPOSE OF LESSOR AND LESSEE WITH RESPECT TO THE PREMISES.

ATTENTION: NO REPRESENTATION OR RECOMMENDATION IS MADE BY THE AMERICAN INDUSTRIAL REAL ESTATE ASSOCIATION OR BY ANY BROKER AS TO THE LEGAL SUFFICIENCY, LEGAL EFFECT, OR TAX CONSEQUENCES OF THIS LEASE OR THE TRANSACTION TO WHICH IT RELATES. THE PARTIES ARE URGED TO:

1. SEEK ADVICE OF COUNSEL AS TO THE LEGAL AND TAX CONSEQUENCES OF THIS LEASE.

2. RETAIN APPROPRIATE CONSULTANTS TO REVIEW AND INVESTIGATE THE CONDITION OF THE PREMISES. SAID INVESTIGATION SHOULD INCLUDE BUT NOT BE LIMITED TO: THE POSSIBLE PRESENCE OF HAZARDOUS SUBSTANCES, THE ZONING OF THE PREMISES, THE STRUCTURAL INTEGRITY, THE CONDITION OF THE ROOF AND OPERATING SYSTEMS, COMPLIANCE WITH THE AMERICANS WITH DISABILITIES ACT AND THE SUITABILITY OF THE PREMISES FOR LESSEE'S INTENDED USE.

WARNING: IF THE PREMISES ARE LOCATED IN A STATE OTHER THAN CALIFORNIA, CERTAIN PROVISIONS OF THE LEASE MAY NEED TO BE REVISED TO COMPLY WITH THE LAWS OF THE STATE IN WHICH THE PREMISES ARE LOCATED.

The parties hereto have executed this Lease at the place and on the dates specified above their respective signatures.

Executed at _____
on: _____

Executed at: _____
on: _____

By LESSOR:

By LESSEE:

LaPour Deer Valley, LLC, an Arizona Limited Liability Company

Crystal Tech Web Hosting, Inc. New York Corporation

By: _____
Name Printed: Jeffrey S. LaPour
Title: Manager
Address: 5525 S. Decatur Blvd. Suite 101
Las Vegas, NV. 89118
Telephone/Facsimile: 702.222.3022/ 702.222.0961
Federal ID No. 76-0773443

By: _____
Name Printed: _____
Title: _____
Address: _____
Telephone/Facsimile: _____
Federal ID No. _____

BROKER:

BROKER:

Cushman & Wakefield of Arizona Inc.

Cushman & Wakefield of Arizona Inc.

Attn: Steve Sayre
Title: Director
Address: 2525 E. Camelback Road, Suite 1000
Phoenix, AZ. 85016
Telephone/Facsimile: 602-229-5928
Federal ID No. _____

Attn: Mike Sayre
Title: Director
Address: 2525 E. Camelback Road, Suite1000
Phoenix, AZ. 85016
Telephone/Facsimile: 602-229-5928
Federal ID No. _____

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Addendum One

ADDENDUM ONE to and Exhibits thereto (this "Addendum"), as an attachment to that certain Lease dated May 4, 2006 (the "Lease") and is made by and between LaPour Deer Valley, LLC, an Arizona limited liability company ("Lessor") and Crystal Tech Web Hosting, Inc., a New York Corporation ("Lessee").

TERMS

In consideration of the mutual promises, provisions, terms, and conditions herein contained, the Parties hereby agree to the following additional provisions of said Lease:

50. Base Rent Schedule –

Month 01	The Base Rent shall be as follows:
Month 02 through 12:	Free of Base Rent (NNN expenses shall apply)
Month 13 through 24:	\$19,650 per month (NNN)
Month 25 through 36:	\$20,240 per month (NNN)
Month 37 through 48:	\$20,847 per month (NNN)
Month 49 through 60:	\$21,472 per month (NNN)
Month 61:	\$22,116 per month (NNN)
	\$22,780 per month (NNN)

As illustrated in the Base Rent Schedule above, the Base Rent shall be increased on the first day of the thirteenth (13th) month of the Lease Term and every twelve (12) months thereafter by an approximate fixed rate of three percent (3.0%) per annum.

51. Early Possession – Lessor shall provide Lessee with one (1) month of early occupancy of the Premises to commence December 1, 2006. Lessee shall be subject to all terms and conditions of this Lease and is required to pay for the common Area Operating Expenses during the Early Occupancy Period. Lessee shall be required to provide Lessor a certificate of insurance consistent with the insurance requirements of the Lease prior to Lessee being granted access to the Premises.

52. Commencement Date/Expiration Date – As per Section 1.3 Term, the Commencement Date shall be immediately following the Early Possession period and the Expiration Date shall be sixty-one (61) months thereafter. The Commencement Date is estimated as January 1, 2007.

53. Estimated Common Area Operating Expenses – As referenced in Section 1.6 & 4.2(d) Common Area Operating Expenses: Lessor's budget for the Common Area Operating Expenses is currently estimated to be \$0.17 per square foot per month which equates to \$2,550 monthly.

54. Miscellaneous Expenses – Lessor currently does not provide security services, pest control within the Common Area Operating Expenses. In the event Lessor elects to provide such services (at Lessor's reasonable election), Lessor reserves the right to include the expenses as part of the Common Area Operating Expense.

55. Right of First Refusal – If Landlord receives an offer for any contiguous space within Tenant's building, Landlord will provide a copy of the offer to Tenant. Tenant shall have the option to lease the space upon the same terms and conditions stated in the offer. Tenant will have five (5) business days to accept or deny said offer after which if no response has been received from Tenant, Landlord will pursue the other offer.

56. Lessee Improvements

Office Improvements – Lessor shall construct approximately 15,000 square feet of Project Standard office space, (the "Office Improvements") consistent with the Approved Floor Plan for the Premises attached hereto as Exhibit "B" (subject to any required code modifications) (the "Approved Floor Plan"), which shall be constructed in accordance with Lessor's Building Standards And Specifications (attached hereto as Exhibit "D"). Lessor shall provide Lessee with a maximum Office Improvement Allowance of Six Hundred Thousand and no/100 Dollars (\$600,000.00), to be used in the design, planning, permitting and construction of Lessee's Office Improvements within the Premises (the "Office Improvement Allowance"). In the event that the cost of Lessee's Office Improvements exceeds the Office Improvement Allowance, Lessee shall be solely responsible for such excess costs, which estimated costs shall be paid for by Lessee upon execution of this lease and any difference between the estimated cost and the actual cost shall be payable prior to Tenant's occupancy. Lessee shall be fully responsible for the cost of any additional Lessee Upgrades or any cost associated with modifications required for any Lessee Upgrades.

A full set of construction documents shall be bid by three (3) separate contractors, the bids shall be reviewed by both Tenant and Landlord and the contractor shall be mutually agreed upon by both parties.

- a. **Changes to Approved Floor Plan and Change Orders** – In the event that Lessee requires changes to the Approved Floor Plan or any construction change order(s), Lessor shall evaluate the cost thereof and any delay such change or change order would have on the substantial completion of the Lessee Improvements and shall advise Lessee of the amount of delay and the cost to implement such change or change order. If Lessee elects to cause the change or change order after reviewing Lessor's cost and rental payable due to the delay, then the Lessee shall pay the sum of the cost and rental payable due to the delay, as set forth by Lessor, to Lessor within three (3) business days after Lessee elects to move forward with the change or change order. Said cost shall include, but not be limited to, all architectural, engineering and permit fees, construction change order costs, processing costs and the corresponding amount of Base Rent and Common Area Operating Expenses lost due to the delay. In the event Lessee does not pay the cost and rental payable due to the delay within the three (3) business day period as set forth above, then the Lessor shall continue building the Lessee Improvements according to the original plan and Lessee agrees to accept the Premises as though the change or change order was never requested. Lessee understands that certain requested changes or change orders will require design work prior to Lessor being able to estimate the costs for the change or change order and in this case, the Lessee agrees to pay for the design costs in advance so that the Lessor can provide a reliable cost to Lessee for the change or change order.
- b. **Lessee's Representative** – Lessee has designated _____ ("Lessee's Representative") as its sole representative with respect to the Lessee Improvements. Lessee's Representative shall have full authority to act on behalf of Lessee for all purposes with respect to the Lessee Improvements.

57. Usable Area and Rentable Area – The term "Usable Area" shall be the entire area included within the Premises, being the area bounded by the exterior surface of any glass walls (or the outside surface of the permanent exterior walls where there is no glass) of the building bounding such Premises, the inside surface of the exterior walls separating such Premises from other public corridors, utility rooms, or such other public areas on such floor, and the centerline of all walls separating such Premises from other areas leased or to be leased to other Lessees on such floor. The term "Rentable Area" shall mean the computation of multiplying the Usable Area of the Premises by the quotient of the division of the Rentable Area of the floor (the area of the floor to the drip line of any colonnade or outside surface of the dominant portion of the permanent outer walls, and the proportionate share of any utility rooms) by the Usable Area of the floor.

58. Signage – Lessor shall allow Lessee to install one (1) sign of the building subject to Lessor's approval and in accordance with the Signage Criteria set forth in the Lease. Lessee shall be responsible for all costs related to the design, fabrication, installation, maintenance and removal of Lessee's signage. Lessee agrees to remove its sign from the Premises prior to the termination date; and Lessee shall make all required repairs to the Premises at Lessee's sole cost (see Exhibit "F" attached to this Lease).

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59. Additional HVAC Maintenance – Notwithstanding the provisions set forth in Section 7.1(b), Service Contracts, Lessee shall provide Lessor, within a period of forty-five (45) days of its occupancy of the Premises, with evidence that it has entered into a preventative maintenance contract with a licensed heating and air conditioning contractor. As a minimum, said contractor shall maintain the evaporative coolers and HVAC systems within the Premises twice per year for the duration of the Lease Term, or any extension thereof. Lessee agrees to change the filters for the office HVAC system every thirty (30) days in order to prevent damage to the units.

60. Rent Payments – The payment of Rent (Base Rent & Common Area Operating Expenses) is due on the first day of each month *without notice* from Lessor.

61. Returned Rent Checks/Non-Sufficient Funds – Notwithstanding the provisions set forth in Section 13.4, Late Charges, and Section 13.5, Interest on past due obligations of the Lease, In the event that Lessee's monthly rent check is returned to Lessor due to non-sufficient funds, Lessee shall be required, for the remainder of the Lease Term; to pay Lessor said monthly rent in the form of a cashiers check.

62. Not an Offer – Preparation of this Lease by Lessor or Lessor's agent and submission of same to Lessee shall not be deemed an offer to Lessee to lease. This Lease shall become effective and binding upon the parties hereto only upon mutual execution by both parties. Lessee shall be aware that Lessor's customary practice is not to reserve the space, which is the subject of this Lease until such time as this Lease has been fully executed by both parties. As a result, Lessor may have made or subsequently may make other proposals on the space, which is the subject of this Lease.

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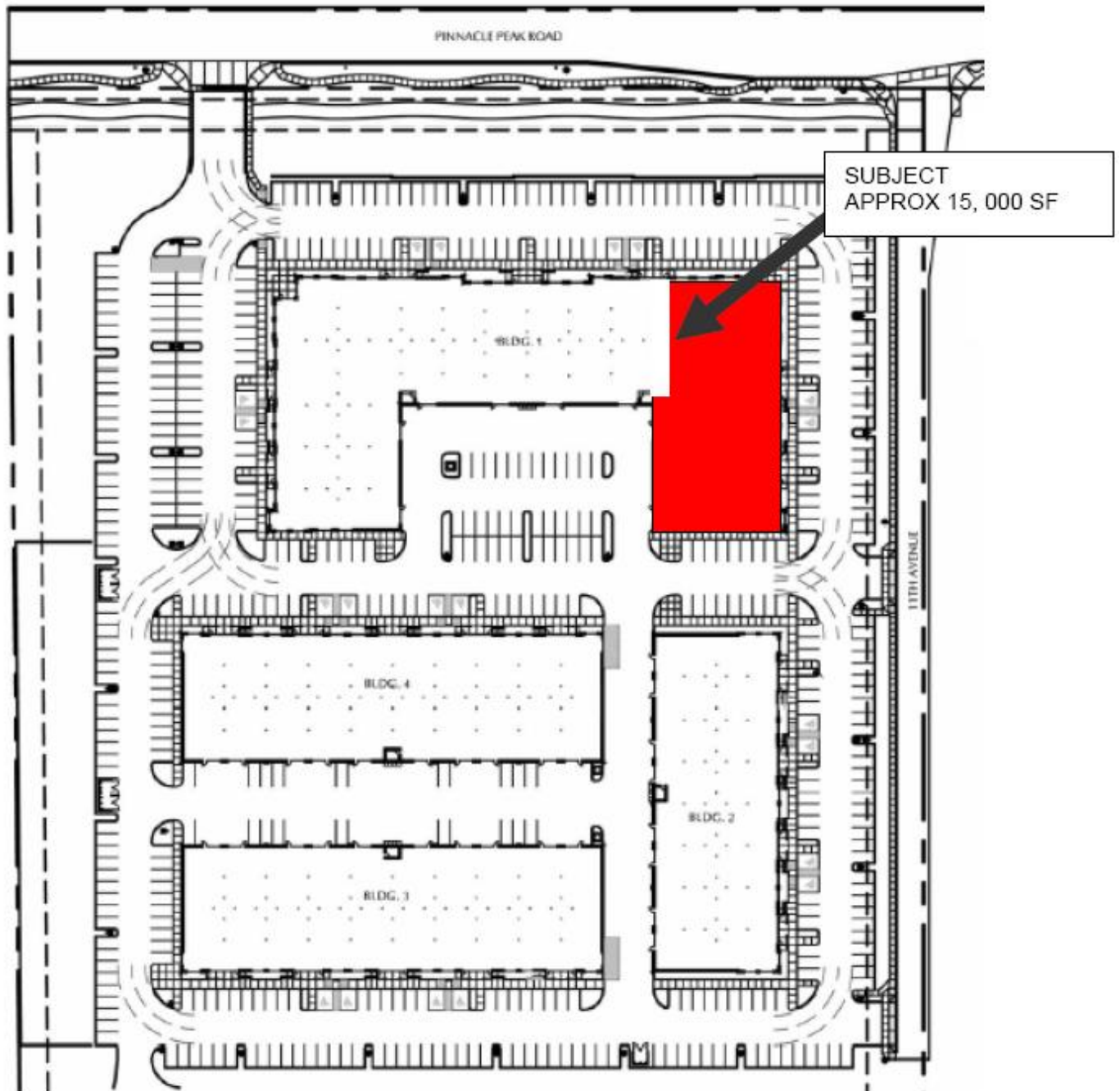
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Exhibit "A"

SITE PLAN



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Exhibit “B”

Approved Floor Plan

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Exhibit “C”

Preliminary Construction Bid

LaPour Partners

Project: Pinnacle Park PH 1

Client: Crystal Tech

Project Address:

Suite: Bldg. 100

Date: 5-09-06 REVISED

Approved By: _____

Dated: _____

Crystal Tech T.I.***This is a preliminary budget number ONLY!***

Cost Code	Construction Element	Office/Showroom	Warehouse	Total
		Cost	Cost	Cost
01-410	Temporary Toilets	\$ 1,500.00	\$ -	\$ 1,500.00
01-260	Dumpsters	\$ 2,345.00	\$ -	\$ 2,345.00
01-230	General & Final Construction Clean-up	\$ 1,680.00	\$ -	\$ 1,680.00
01-260	Blueprinting	\$ 1,200.00	\$ -	\$ 1,200.00
02-075	Sawcutting & Concrete Removal	\$ 3,500.00	\$ -	\$ 3,500.00
03-350	Concrete Pour Back	\$ 2,500.00	Excluded	\$ 500.00
06-100	Rough Carpentry (Roof openings)	\$ 2,450.00	\$ -	\$ 2,450.00
06-220	Millwork Allowance (breakroom cabinets, Recp. Desk and restroom vanity tops)	\$ 16,340.00	Excluded	\$ 1,200.00
07-210	Insulation	\$ 8,730.00	\$ -	\$ 8,730.00
07-510	Built-up Roofing (Roof Patch)	\$ 15,000.00	\$ -	\$ 15,000.00
08-200	Doors / Frames / Hardware	\$ 10,210.00	\$ -	\$ 10,210.00
08-800	Glass & Glazing (end wall caps)	Excluded	Excluded	Excluded
09-250	Drywall & Metal Stud Framing	\$ 40,917.00	\$ 7,925.00	\$ 48,842.00
09-250-1	Drywall & Metal Stud Framing @ 60" A.F.F. Low Walls	Excluded		Excluded
09-510	Acoustical Ceilings	\$ 23,776.00	\$ -	\$ 23,776.00
09-680	Flooring	\$ 30,850.00	\$ -	\$ 30,850.00
09-920	Painting	\$ 12,160.00	\$ -	\$ 12,160.00
09-970	FRP (Fiberglass Wainscot) @ Restroom	\$ 3,360.00	\$ -	\$ 3,360.00
10-440	Signage (Restroom Doors)	\$ 70.00	\$ -	\$ 70.00
10-520	Fire Extinguishers	\$ 500.00	\$ -	\$ 500.00
10-800	Toilet Accessories	\$ 5,550.00	\$ -	\$ 5,550.00
12-500	Window Blinds	Excluded	Excluded	Excluded
15-400	Plumbing	\$ 48,700.00	\$ -	\$ 48,700.00
15-300	Fire Sprinkler System	\$ 23,275.00	\$ -	\$ 23,275.00
15-500	HVAC	\$ 77,375.00	\$ -	\$ 77,375.00
16-000	Electrical	\$ 105,950.00	\$ -	\$ 105,950.00
19-000	Construction Contingency	\$ 18,000.00		\$ 18,000.00
00-000	Acoustical Oper. Walls - Folding Partitions	\$ 32,200.00		\$ 32,200.00
Subtotal		\$ 488,138.00	\$ 7,925.00	\$ 478,923.00
98-000	General Conditions	\$ 33,469.66	\$ 990.63	\$ 34,460.29
99-000	Contractors Fee	\$ 39,905.40	\$ 624.09	\$ 40,529.49
99-125	General Liability Insurance	\$ 4,136.35	\$ 95.40	\$ 4,231.75
99-130	Arizona Sales Tax @ 5.27%	\$ 29,282.72	\$ 507.77	\$ 29,790.49
01-780	Sanitation District Sewer Fixture Fees	\$ 13,500.00	\$ -	\$ 13,500.00
01-785	Plan Check Fees	\$ 4,062.00	\$ -	\$ 4,062.00
01-790	Building Permit Fees	\$ 6,770.00	\$ -	\$ 6,770.00
01-845	Architectural Design	\$ 24,000.00	\$ -	\$ 24,000.00
Total Construction Cost		\$ 643,264.13	\$ 9,635.12	\$ 636,267.02
Construction Cost per Square Foot		\$ 42.88	\$ 0.64	
Square Foot Area		@ 15003 SF	@ 15003 SF	

This budget is based on a construction start date within 30 days***Construction material cost increases are beyond Landlord's control.******Any time delays could effect the total price.***

Attached is the updated pricing for Crystal Tech, per the revised sketch and your e-mail of 05.03.06. Systems furniture – and installation of same - and associated power-poles and/or whip connections are to be provided by tenant, systems are assumed to be electrified, and I have assumed four (4) circuits per section of cubicles. Systems furniture is assumed to be 60" in height (as were low drywall partitions); full height systems will impact exit requirements, along with exit lighting requirements. All power and phone/data (by Tenant) is assumed to be overhead; no underground feeds are included. Please call with any questions. Thanks - JDC

Exhibit "D"

BUILDING STANDARDS and SPECIFICATIONS

These Lessee Improvement Building Standards must be adhered to in completing the work. In the event of special circumstances, it will be the Lessor's decision as to whether or not a deviation from the Standards will be allowed.

CONCRETE

Any removal and replacement of the concrete slab shall meet the requirements of the existing slab. Backfill and sub-grade shall be compacted to 95% of maximum dry density determined in accordance with ASTM 0-1557. Dowel the new concrete patch to the existing slab with ½ inch steel dowels, extending a minimum of 8 inch into slab at 18 inches o.c.; secured with epoxy. Use 4,000 p.s.i. (at 28 days) concrete for the pour back. All trench patching in the warehouse area shall have a 1/8 inch radius edge. Prior to pouring concrete, stone the existing saw cut edge with an abrasive brick to approximate a 1/8 inch radius edge.

INSULATION

R-11 unfaced batt insulation in all exterior office walls (9'-0") includes portion of demising wall that borders the office space.

R-11 unfaced batt insulation for interior partition walls (9'-0") where required by code.

R-11 unfaced batt insulation in all concrete furred walls and restroom walls.

R-19 unfaced batt insulation laid on all office ceilings.

R-19 batt insulation installed under the roof deck throughout warehouse.

CABINETRY

Not standard in lessee improvements.

ROOFING

The contractor shall use the building shell-roofing contractor, Western Roofing, to patch all roof penetrations. Hot mop-in the new penetrations such that the existing roof warranty is maintained. Pipe and conduit penetrations at the roof shall receive lead pipe flashing with screw clamp and elastomeric sealant and shall also be hot asphalt patched with 4-ply roofing.

DOORS, FRAMES & HARDWARE

All doors 3' x 7' solid core Legacy Oak doors, in Timely frames (black or brown) for all offices and restrooms.

On all doors leading from the office to the warehouse 3' x 7' solid core Legacy Oak door(s) with a Norton closer, smoke seal and threshold. Door will be provided with a Schlage "AL" series lever style Rhodes lockset. Doors shall include necessary fire rating label if required by code.

Schlage "AL" series lever style Rhodes passage lock on all office doors.

Privacy locksets provided for the restrooms.

Entry and warehouse doors are treated as existing.

All hardware is to be brushed chrome.

Includes handicap ADA restroom signs.

Interior windows, of any kind, are not part of the standard lessee improvement.

METAL STUDS/DRYWALL/ACT

Interior partitions shall penetrate through ceiling grid. The finish height of the interior walls (and ceiling) in office areas are 9'-0" above finish floor. All office walls are 3 5/8" - 25 gauge metal studs at 24" on center.

Plumbing walls are a minimum 6" - 20 gauge metal studs spaced at 24" on center with 5/8" type "X" moisture resistant green-board.

One (1) new demising wall to be constructed using 6" - 18 gauge metal studs at 24" on center when wall is less than 28'-0" high. If wall exceeds 28'-0" high, UBC Code and/or steel stud manufacture will require decreasing stud spacing to 16" on center. It is the contractor's responsibility to verify all framing requirements. All demising walls shall be constructed using deep leg deflection track. Demising wall shall be constructed as rated firewalls if required by code. All penetrations through demising walls including: pipes, conduit, ducts, etc. shall be properly sealed.

All office walls are 3 5/8" - 25 gauge metal studs at 16" on center.

All drywall is 5/8" type "X" gypsum board.

Light "orange peel" or "knockdown" texture on all interior office/restroom walls other side of walls to be tape finished only. Warehouse side of walls to be tape finished only.

Standard 15/16" white USG ceiling grid with 2' x 4' USG #2742 Radar Illusion Two tiles. Standard ceiling height is 9' -0" above finish floor.

Source: NEWTEK BUSINESS SERV, 10-Q, July 14, 2006

FLOORING

Carpet shall be Designweave, Shaw or approved equal loop graphic, solution dyed 100% nylon 26 OZ. Carpet shall be installed using the glued-direct method installation method. Color to be selected from manufactures standard colors U.N.O.

Provide 12"x12" Armstrong or equal VCT in all restrooms.

Provide 12"x12" Armstrong or equal VCT in all break areas.(if applicable-not part of the standard improvements)

Color to be selected from manufactures standard colors.

Provide 6" Johnsonite or equal vinyl wall base in all restrooms and break areas and 4" Johnsonite or equal vinyl base in all carpeted areas. Color to be selected from manufactures standard colors.

No finish flooring in warehouse area.

PAINT

Seal interior drywall with PVA sealer prior to texture.

Finish coat to cover all interior office walls with "eggshell" enamel paint.

Finish coat to cover all interior restroom walls & ceilings with "semi-gloss" enamel paint.

No finish painting in the warehouse

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FIBERGLASS REINFORCED PANELS (FRP WAINSCOT)

FRP includes from corner to corner on all four walls in restrooms. Panels are 4'-0" in height; color is white.

SPECIALTIES

TOILET ACCESSORIES:

Paper Towel Dispenser: Bobrick B-369

Toilet Paper Holder: Bobrick B-686 double toilet paper holder.

Grab Bars: Bobrick No. B6806-36 and B6806-42 stainless steel per ADA.

Mirror: Furnish and install 18" x 36" mirror over sink.

SIGNAGE: Furnish and install all handicap and exit signage as required by code.

PLUMBING

GENERAL: All plumbing piping, equipment, etc. shall be installed as close to the structure as possible to allow for the highest possible ceiling location. Wherever possible, such items shall be installed above the bottom chord of trusses, bar joists, etc.

Provide complete design-build system, with engineered plans and permits. The design-build plumbing contractor shall furnish and install a complete and operative plumbing system to meet all local and state codes. Provide plumbing plans for Lessor's review.

Sewer Lines: Sewer, soil and waste lines within the building below the finished floor elevation shall be schedule 40 ABS plastic or schedule 40 PVC plastic pipe.

Evaporative cooler water to evaporative cooler(s) unit connected through roof, and includes shut off valve and drain

Provide for one (1) 6 gallon hot water heater located in the warehouse. Under-sink instantaneous, tank-less water heaters may be substituted.

Provide for one (1) 12" x 12" floor sink for PRV valve, drain downs and condensate, if required by code.

PIPE MATERIAL: All pipe materials shall be subject to the requirements of the City and/or governing body. All domestic water, condensate and smitty pan drain lines must be copper.

PLUMBING FIXTURES AND TRIM:

Wall-hung lavatory: American Standard, "Lucerne", model 0355.012, white, wall mounted lavatory or equal with a Delta Model 523 WF HDF single lever type faucet assembly with a grid strainer and bright chrome finish. Furnish and install a Handy-Shield Drain Cover #3011 White by Plumbex Specialty Products under each lavatory.

Water closet: ADA Compliant, tank type gravity flush, elongated bowl, open front seat less cover, with trip lever on access side.

Water heater: If a water heater is provided instead of the under-sink instantaneous tank-less water heater as referenced above, the water heater shall be A.O. Smith, State or approved equal sized to meet the demand. It shall be located on the warehouse floor in a smitty pan draining into a hub drain with a trap primer. The location shall be as located by the architect or approved by the Lessor. All plumbing connections shall be made with dielectric unions.

CONDENSATE DRAINS: Furnish and install copper condensate drainage lines with proper venting for all HVAC equipment. The lines shall drain into the building sewage system. Condensation lines shall not drain over the roof or any other portion of the roof. The lines shall be no smaller than 3/4" diameter and shall be located under the roof unless prohibited by code. PVC condensate line may not be used.

SHUT-OFF VALVE: Furnish and install a water line shut-off valve for the Restrooms in the toilet room wall, not above the ceiling, with an 8" x 8" stainless steel access panel.

MAIN WATER LINE: If a main domestic water line is not existing above the Lessee space, furnish and install a 2" diameter copper water line at the roof installed above the bottom cord of the trusses, properly braced to avoid movement. At each future Lessee space that the line crosses, install a 2" "T" with 2" gate valve (one valve per storefront door). Extend the water line through the Lessee demising wall into the "down stream" adjacent Lessee space with a 2" diameter gate valve. Furnish and install a 2" pressure reducing valve with an access panel at the water service entrance.

CLEAN-OUTS: Furnish and install a brass floor clean-out cover at the proper finished elevation as required. If the clean-out is in the warehouse area, furnish and install a traffic rated cover.

HVAC

GENERAL: All HVAC ducting, conduit, equipment, etc. shall be installed as close to the structure as possible to allow for the highest possible ceiling location. Wherever possible, such items shall be installed above the bottom chord of trusses, bar joists, etc.

DESIGN BUILD: Unless engineered HVAC system drawings are included in the bid documents, the HVAC work shall be performed on a design-build basis.

The design-build HVAC contractor shall furnish and install a complete and operative HVAC system to meet all local and state codes.

PLANS: Provide HVAC plans for Lessor's review.

Provide complete design build system, includes plans and permits.

Provide for evaporative coolers in the warehouse, size and number to be determined by Lessor based on the warehouse size.

Provide for duct detectors and remote enunciators as required by code.

Exhaust fans for restrooms.

WARRANTY AND SERVICE: All work shall include a one year parts and labor warranty from the date of project completion.

Source: NEWTEK BUSINESS SERV, 10-Q, July 14, 2006

DESIGN TEMPERATURES: The HVAC system shall maintain 75 degrees indoors, on a 113 degree outdoor day or local ASHRAE standards and code requirements, whichever is more stringent.

UNITS: The HVAC units shall be electric, bottom discharge, as manufactured by Carrier, Trane, York, or equal. Units shall be installed on a leveled, manufactured curb. All rooftop equipment shall be seismically fastened to the structure. Side discharge units may not be used. Commercial grade heat pumps by Carrier (model TJQ), or Trane (model WCD) only may only be used. When heat pumps are used, they must be installed with auxiliary strip heaters and single point wiring kits. Furnish and install economizers on all units larger than five tons and whenever required by the energy code.

UNIT LOCATIONS: HVAC and evaporative cooler units (when used) shall be located on roof, adjacent to a glu-lam beam or girder, at or near a structural column, set back from building edge to hide them from sight. Framing for roof penetrations and supports for all roof-top equipment must be reviewed, approved and stamped by a structural engineer. Low profile units and curbs shall be utilized if the height at top of the unit will exceed the parapet height. In such cases, the unit shall be located as low on the roof as feasible.

EVAPORATIVE COOLER: Evaporative coolers when specified as a customer upgrade shall provide a minimum of four air changes per hour U.O.N. The coolers shall be United Metal Products "Slimline" units or approved equals. Provide adequate relief venting to allow all doors within the Lessee space to close properly. The plenums, water supply lines and drain lines shall not encroach into the building's clear space U.O.N.

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CURBS/SLEEPERS: All mechanical units (HVAC units, evaporative coolers, and relief vents) shall be located on roof and shall be installed with a self flashing, leveled, factory curb. Furnish and install 4 inch leg cant strips around all curbs. Absolutely no wood or metal sleepers may be used without Lessor's written permission.

CONTROLS: The HVAC system shall be connected to a 7-day skip-a-day time clock and include a bypass timer at each thermostat. All thermostats shall be mounted at 48" A.F.F. and shall have an automatic change-over feature and a locking cover.

EXHAUST FANS: Furnish and install an exhaust fan in each toilet room and shower room (if applicable). Install a supply air grille in the toilet rooms or a transfer grille from the toilet/shower room ceiling to the adjacent conditioned space.

DUCTING: All ducting may be flexible, pre-insulated or galvanized spiral, insulated with 1-1/2" wrap and vapor barrier or duct board. Any exposed duct in a conditioned warehouse area must be galvanized spiral sheet metal. Final connections to the registers shall be made with a minimum 5' soft flex duct for sound attenuation. All plenums shall be fabricated from insulated galvanized sheet metal of appropriate gauge for low pressure use. Plenums shall extend from the unit to the level of the horizontal branches. No ducting or plenum drops may be installed over warehouse space. Spray paint flat black any ducting visible through the grille. If the project is a remodel of an existing system, all abandoned ducting shall be removed.

FITTINGS: All wye branch fittings shall have volume dampers with locking quadrant in main and branch ducts. The dampers shall be tagged for easy recognition.

GRILLES: All conditioned areas shall have a supply register and a ducted return register. Transfer grills are not permitted. Supply and return air registers shall be white baked enamel 2'x 2' with a perforated face, flush mounted. Supply air registers shall have a 4-way blow.

FILTERS: Filters shall be located at the unit not at the return register

FIRE SPRINKLERS

GENERAL: All fire sprinkler piping, conduit, equipment, etc. shall be installed as close to the structure as possible to allow for the highest possible ceiling location. Wherever possible, such items shall be installed above the bottom chord of trusses, bar joists, etc.

DESIGN BUILD: The fire protection work shall be performed on a design-build basis. The design-build fire protection contractor shall furnish and install all modifications to the existing fire sprinkler system to meet all applicable local and state fire code requirements. Sprinkler heads shall be dropped into all suspended ceiling areas. Upgrade of existing system shall conform to class IV occupancy

Provide semi-recessed chrome pendant heads with 280-degree sprinkler heads, for all office areas (one sprinkler per 100 square feet, or what is required by code).

Provide two-piece canopy chrome head for the restrooms

PIPE MATERIAL: All fire sprinkler piping shall be standard schedule 40 pipe U.O.N

SPRINKLER HEADS: The fire sprinkler heads in areas with ceilings shall be chrome, semi-recessed, with white escutcheons. When "second look" acoustical ceiling tiles are used, sprinkler heads shall be centered on the half tile.

HYDRAULIC TESTING: The contractor shall include the cost of any required hydraulic testing of the fire sprinkler system.

FIRE EXTINGUISHERS: Fire extinguishers shall be furnished and installed per city fire code and may be wall hung.

ELECTRICAL

GENERAL: All electrical piping, equipment, etc. shall be installed as close to the structure as possible to allow for the highest possible ceiling location. Wherever possible, such items shall be installed above the bottom chord of trusses, bar joists, etc.

DESIGN BUILD: Unless engineered electrical system drawings are included in the bid documents, the electrical work shall be performed on a design-build basis. The design-build electrical contractor shall furnish and install a complete and operative electrical system to meet all local and state codes.

PLANS: Provide electrical plans for Lessor's review

ENERGY CALCS: Provide energy compliance code lighting calculations if required

METER SECTION: Furnish and install an electrical meter section "bussed for future" sections if not existing.

PANELS AND TRANSFORMERS: The locations of the 120/208 volt electrical panel and the transformer shall be approved by the Lessor. Typically these should be located on the office/warehouse wall adjacent to the toilet rooms. The electrical panels and transformer shall be sized to allow for a 25% increase in the number of circuits in the future.

OFFICE LIGHTING: Furnish and install 2'x4' three lamp lay-in fluorescent light fixtures with standard acrylic lens and T-12 low watt type lamps U.O.N., 75 foot candles minimum at 3' A.F.F. or as permitted by code but no less than two (2) fixtures per office. Wire one (1) light fixture near the exit doors to provide 24 hour lighting.

TOILET ROOM LIGHTING: Furnish and install 1'x4' surface mounted fluorescent light fixtures with a wrap around acrylic lenses. In toilet rooms with lavatory tops, install a 2'-0" wide light soffit with an egg-crate lens at 7'-0" A.F.F. above the lavatory top in addition to the wrap around fixtures.

WAREHOUSE LIGHTING: Wire a minimum of one (1) light fixture near each of the exit doors and office/warehouse doors to provide 24 hour lighting. All fixtures shall be hung on chain a minimum of 8" above the bottom chord of the joists U.O.N. Whenever the chains are hung from eye hooks, the hooks must be installed in the sides of the structural member, not the bottom; all fixtures shall be installed with 6 feet of flex conduit

OUTLET BOXES: All outlet boxes for wall switches, wall receptacles, telephone, etc. shall be galvanized steel or cast type boxes.

RECEPTACLES: Furnish and install four (4) 110 volt duplex receptacles and one (1) telephone "ring and string" in each office.

Source: NEWTEK BUSINESS SERV, 10-Q, July 14, 2006

GFI RECEPTACLES: Provide one GFI electrical outlet in each toilet room. Install GFI receptacles wherever required by code.

WAREHOUSE SWITCHING: The warehouse lighting must be controlled from light switches at the office/warehouse door or other Lessor approved location, not at the electrical panel.

ELECTRICAL CONDUIT/CONDUCTOR MATERIAL: All conduit shall be EMT. All conductors must be copper.

CONDUIT INSTALLATION: All conduits in areas without ceilings shall be installed at or above the bottoms of the trusses or beams. All conduits shall be run at 90 degrees or parallel to structural members, walls floors and ceilings. No conduit may be installed below the slab or on top of the roof without the Lessor's written permission.

TELEPHONE CONDUIT: Furnish and install a 2" diameter metal conduit for phone system from the building telephone service entrance to a telephone board within the Lessee space.

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TELEPHONE BOARD: Furnish and install one APA C-D plugged (paint grade) fire retardant plywood telephone backboard with dedicated 110 volt duplex outlet for mounting Lessee's electrical or telephone equipment.

TRIM COLOR: All light switches, outlets and electrical trim shall be white

Provide complete design build electrical system, including plans and permits

Provide standard 2 x 4 lay-ins for the ceiling.

Provide switches for evaporative coolers (include separate switching for the pumps and motors).

Provide for switching in all offices.

Provide for WP roof top receptacles, by code

Show window receptacles if required by code.

One (1) night light circuit for the offices

Emergency and exit lighting as required by code.

Provide for a standard receptacle layout.

Provide a standard telephone/data layout.

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Exhibit "E"

**RULES AND REGULATIONS
Pinnacle Park Business Center – Phase I**

The following items will be strictly enforced by the management for the referenced Premises on a "fine" basis, if violated. The fines will be assessed at One Hundred Dollars and 00/100 (\$100.00) per day, if Lessee is found in violation, with no notice required, and if violations are not corrected, it will be considered a material Default under the Lease and Lessor reserves all rights under said Lease, in addition to the \$100 per day penalty, related to a Lessee Default. The Lessor reserves the right to add or remove any additional Rule and Regulations as it deems necessary.

General Rules

1. Lessee shall not suffer or permit the obstruction of any Common Areas, including driveways and walkways.
2. Lessor reserves the right to refuse access to any persons which Lessor, in good faith, judges to be a threat to the safety, reputation, or property of the Project and its occupants.
3. Lessee shall perform all daily work activities with the roll-up door(s) closed to abate any excessive noise pollution.
4. Lessee shall not make or permit any noise or odors that annoy or interfere with other Lessees or persons having business within the Project.
5. Lessee shall not keep animals or birds within the Project and shall not bring bicycles, motorcycles or other vehicles into areas not designated as authorized for same.
6. Lessee shall not store any materials or debris outside of the unit at any time.
7. Lessee shall not make, suffer or permit litter except in appropriate receptacles for that purpose.
8. Lessee shall have signage rights upon Lessor's approval, which shall not be unreasonably withheld or delayed. Lessee shall be responsible for all costs related to Lessee Signage.
9. Lessor will furnish Lessee, free of charge, with two keys to each door in the Premises. Lessor may charge a reasonable fee for any additional keys. Lessee shall be responsible for changing any lock or installing new or additional locks or any bolts on any door of the Premises.
10. Lessee shall not deface the walls, partitions or other surfaces of the Premises or Project.
11. Lessee shall not employ any service or contractor for services or work to be performed in the Building, except as reasonably approved in advance by Lessor.
12. Lessee shall return all keys at the termination of its tenancy and shall be responsible for the cost of replacing any keys that are lost.
13. Lessee shall not use or keep in the Premises or the Building any kerosene, gasoline, or flammable or combustible fluid or material, or use any method of heating or air conditioning other than as are typically found in projects of similar quality in the **Phoenix** area.
14. The Premises shall not be used for Commercial lodging, manufacturing, cooking, or food preparation.
15. Lessee shall comply with all safety, fire protection and evacuation regulations established by Lessor or any applicable governmental agency.
16. The wash room partitions, mirrors, wash basins and other plumbing fixtures shall not be used for any purpose other than those for which they were constructed, and no sweeping, rubbish, rags or other substances shall be thrown therein. All damage resulting from any misuse of the fixtures shall be borne by the Lessee who, or whose servants, employees, agents, visitors, or licensees, shall have caused the same.
17. Lessee shall not disturb, solicit, or canvass any occupant of the Building and shall cooperate to prevent same.
18. Without the written consent of Lessor, Lessee shall not use the name of the Building in connection with or in promoting or advertising the business of Lessee except as Lessee's address.
19. Lessee assumes all risk from theft or vandalism and agrees to keep its Premises locked as may be required.
20. Lessee shall not suffer or permit anything in or around the Premises or Building that causes excessive vibration in any part of the Project.
21. Lessee shall be responsible for any damage to the Project and/or Premises arising from such activity as moving of furniture, freight and equipment.
22. No window tinting, window coverings, shades or awnings shall be installed by Lessee without prior written consent of Lessor.
23. Lessee shall not suffer or permit smoking or carrying of lighted cigars or cigarettes in areas reasonably designated by Lessor or by applicable governmental agencies as non-smoking areas.
24. Lessee shall not install, maintain, or operate any vending machines upon the Premises without Lessor's written consent.
25. If Lessee requires burglar alarm or similar services, it shall first obtain, and comply with, Lessor's instructions in their installation.
26. Lessor reserves the right to waive any one of these rules and regulations and/or to any particular Lessee, and any such waiver shall not constitute a waiver of any other rule or regulation or any subsequent application thereof to such Lessee.
27. Lessor reserves the right to make such other reasonable rules and regulations as it may from time to time deem necessary for the appropriate operation and safety of the Project and its occupants. Lessee agrees to abide by these and such other rules and regulations.

28. Trash dumpsters, if provided by Lessor as part of the Common Area Maintenance, are to be used for normal office refuse only. No Equipment, production materials, or any other discards are to be placed in the dumpsters or dumpster enclosures. Any cardboard boxes shall be cut up and/or flattened and placed in the dumpster utilizing as little space as possible. If the dumpster is full, waste will be stored in Lessee's lease space until the dumpster is emptied. In the event Lessee's disposal needs exceed normal office refuse, Lessee will be required to furnish their own dumpster at Lessee's expense. Said dumpster shall be stored in Lessee's lease space at all times except on pick-up days.

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PARKING RULES

1. Users of the parking area will obey all posted signs and park only in the areas designated for vehicle parking.
2. The maintenance, washing, waxing or cleaning of vehicles in the parking area or common area is prohibited.
3. Lessee shall be responsible for seeing that all of its employees, agents and invitees comply with the applicable parking rules, regulations, laws and agreements.
4. Parking areas shall be used only for parking by vehicles no longer than full size, passenger automobiles herein called "Permitted Size Vehicles". Vehicles other than Permitted Size Vehicles are herein referred to as "Oversized Vehicles". No unauthorized parking of recreational vehicles, motor homes, boats and/or trailers, is permitted within the Project.
5. Lessee's service vehicles, if any, shall be parked within Lessee's warehouse **or Lessee's loading areas** at night.
6. Unless otherwise instructed, every person using the parking area is required to park and lock his own vehicle. Lessor will not be responsible for any damage to vehicles, injury to persons or loss of property, all of which risks are assumed by the party using the parking area.
7. Lessor reserves the right to modify these rules and/or adopt such other reasonable and non-discriminatory rules and regulations as it may deem necessary for the proper operation of the parking area.

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Exhibit "F"

SIGNAGE CRITERIA

LESSEE APPROVAL PROCEDURE:

All Lessee signs installed or displayed on the premises of Pinnacle Park Business Center must have written approval by the Lessor. The aesthetic characteristics of the signs (e.g. placement, size, proportion, color, texture, method of fabrication, location of transformers, installation method and graphics) are subject to the discretionary approval of the Lessor, within the context of the sign criteria. Within thirty (30) days of receipt of Lessor's plans and specifications, Lessee must submit two (2) color sets of professionally executed drawings which meet the submittal standards.

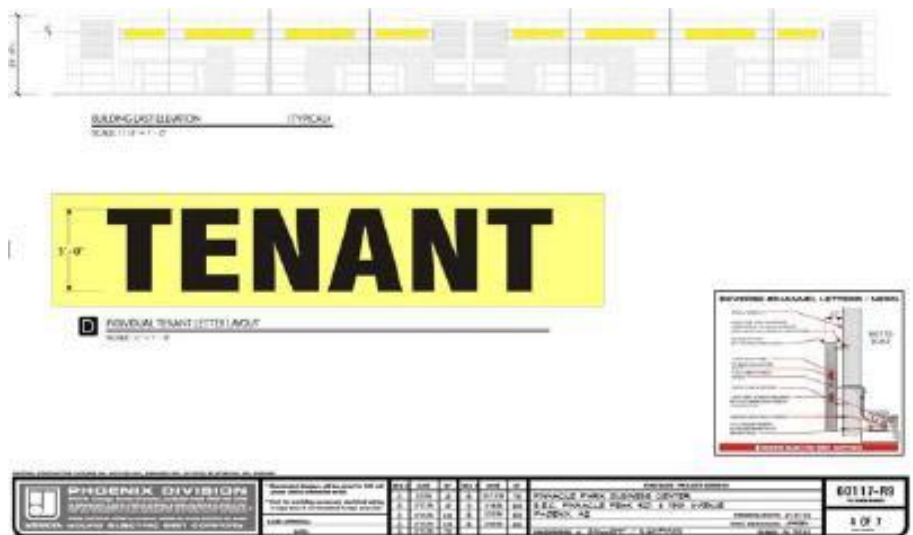
DRAWINGS MUST:

1. Depict sign on building elevation showing position on fascia.
2. Include all specifications for installation, size, color, materials and illumination details. These drawings must be submitted to the Lessor for review and written approval. After approval by Lessor, Lessee is responsible for submitting the drawings to the preferred sign contractor and the City of Phoenix Building Department and obtaining the required approval(s) and permits.

This criteria has been designed to give Lessee a degree of flexibility and allowing for maximum creativity in sign design. Conformance to the criteria will be strictly enforced. In the interest of the center, any installed, non-conforming or unapproved signs shall be brought into conformance at the expense of the Lessee.

SAMPLE DRAWING ONLY:

Drawing illustrates sign band area and sign placement location of typical store front. Signage to be no greater than 60% of leased building frontage. Signage must be centered above main entrance.



INDIVIDUAL LESSEE SIGN & I.D. REQUIREMENTS:

WALL SIGNAGE: This is a sign displayed upon or against the wall or parapet of a structure where the exposed face of the sign is in the plane parallel to the plane of the wall and extends not more than 6" from the face of the wall.

1. Lessee sign shall include only its business name and established logo symbol (if applicable). Service descriptions and/or product names are not allowed.
2. Maintenance of each sign is the responsibility of each individual Lessee. Letter forms, letter faces, burned out lamps or penetration holes which require repair will be replaced or repaired within thirty (30) days of damage. If signage is not fixed within the thirty (30) day period, Lessor may repair the sign at the expense of the Lessee.
3. Signs are not to contain labels or manufacturer's advertising, with the exception of code requirements.
4. Roof mounted signs are not permitted.
5. No sign will be painted directly on the wall surface of any portion of the building.
6. Refer to the section "Fabrication, Installation & Design Standards" for additional information.
7. Lessees with nationally or regionally recognized logo graphics may use their business identity graphics and color scheme subject to approval of Lessor.
8. Sale signs, special announcements, posters, banners, trailer signs, etc., are not permitted.
9. Signs are to be positioned so as to appear visually horizontally centered, within the allowed sign band area above their leased area.
10. No animation of signs will be permitted.
11. Lessee's storefront sign shall be installed and complete within thirty (30) days of Lessee opening for business.
12. All signs shall be constructed, installed and maintained at Lessee's expense.

13.Storefront sign letters will remain the property of Lessee. Lessee shall remove their sign from storefront and patch and paint holes and scarring of fascia or wall to match surrounding areas upon expiration of their occupancy at their expense, including the painting of the band(s) between architectural reveals.

FABRICATION, INSTALLATION & DESIGN STANDARDS:

GENERAL REQUIREMENTS:

1. The width of the Lessee signs shall not exceed the width of the Sign Band (as delineated on the exterior elevations). Lettering shall be centered on the demised premises directly above lessee's main entrance, unless otherwise approved by the Lessor.
2. Signage installation is to be vertically centered over the continuous ¾" x 3" wide reveal running horizontally through the sign band area. Each individual Lessee signage is to be further centered horizontally as per Lessors approval. A minimum 5' buffer must exist between signage.
3. Lessee shall be allowed a minimum of 18" and a maximum of 36" letter height and/or logo height. Maximum height of single line or stacked copy shall not exceed 36".
4. All signs shall consist of individual letters. No sign cabinets shall be permitted. No script is permitted on the signs unless it is part of an established trademark of the Lessee which is used at other locations.
5. Lessee shall be allowed two (2) signs per leased area. One (1) sign on the front elevation and one (1) on the rear elevation.
6. Maximum length of signage shall not exceed the width of sign band area. In the event Lessee has leased multiple bays the sign must be centered above lessee's main entrance only.
7. If an accompanying logo/symbol or larger leading capital letter is used on Lessees sign, it must not exceed 36".
8. All penetrations of the exterior fascia are to be sealed watertight, then painted to match the existing fascia color.
9. Lessee and/or Lessee sign contractor shall not, in the course of sign installation or removal, damage any of the buildings exterior or structure and if damage occurs Lessee will be responsible for the cost of repair. Signage installation is to be vertically centered over the continuous ¾" x 3" wide reveal running horizontally through the sign band area. Each individual Lessee signage is to be further centered horizontally as per Lessors approval. A minimum 5' buffer must exist between signage.
- 10.Lessee shall be allowed a maximum letter and logo height of 36". Maximum height of single line or stacked copy shall not exceed 36".

ILLUMINATED SIGNS:

INDIVIDUAL LESSEE SIZE & PLACEMENT:

- | | |
|---|--|
| <ul style="list-style-type: none">• Letter Type:• Color: | <p>Reverse Pan Channel individual letters fabricated of aluminum with 5" deep returns.
Based on Lessor approval.</p> |
|---|--|

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- Installation: Flush or stand-off mounted to building fascia centered in tenants sign band area with minimum 5' buffer between signage.
- Logo Size: 36" maximum & 18" minimum
- Letter Height: 36" maximum & 18" minimum
- Letter Style: Based on Lessor approval
- Illumination: 30 m.a. neon internally illuminated.
- Signage Area: 60% of leased building frontage, centered horizontally within sign band area. In the event Lessee has leased multiple bays the sign must be centered above lessee's main entrance only.
- Approvals: All signage is to be approved by the Lessor in writing prior to manufacturing. All signage is to be approved by the City of Phoenix Building Department.

The following standards further specify the design and production requirements for Lessee storefront signs (illuminated only).

1. Illuminated Lessee identification signs must be fabricated as individually mounted illuminated channel letters.
2. All Lessee signs are to be illuminated connecting to assigned J-boxes which must be controlled by a dedicated time clock and have a disconnect switch within visual proximity to the sign.
3. In no case will there be any exposed electrical raceways, conduit, transformers, junction boxes, conductors, or crossovers. All exposed hardware will be finished in a manner consistent with quality fabrication practices.
4. Pan channel letter and logo forms are to be fabricated from minimum 24 gauge sheet metal or .063 aluminum formed into a pan channel configuration with a five (5") inch deep return. Each letter must have a minimum of (2) 1/4" diameter holes for drainage. Insides of letters are to be painted white. Logo and letter faces are to be formed from 1/8" thick (minimum) acrylic and be attached to a metal return with 3/4" wide trim cap. Internal illumination to be 30 m.a. neon tubing, manufactured, labeled and installed in accordance with U/L (Underwriters Laboratory) standards.
5. Reverse channel letters shall be pinned 2" off building wall. Return depth shall be no greater than 2 1/2", all metal construction, with Lexan backs, on posts (no edge clips) and no trim cap. Double tube neon shall be used where width of letter stroke exceeds 3".
6. Open channel letter depth shall not exceed 2 1/2". All hardware, tube supports, screw heads, double backs, boots and housings inside open channel letters shall be painted to match interior letter. Tubing shall be flush with front edges of open channel. Letter interior shall be painted with a matte finish colored similar to neon illumination color.

NON-ILLUMINATED SIGNS:

FABRICATION, INSTALLATION, AND DESIGN STANDARDS:

The following standards further specify the design and production requirements for Lessee storefront building type signs (non-illuminated only).

- Letter Type : Reverse Pan Channel individual letters fabricated of aluminum with 3" deep returns and/or 3/4" high density foam letters.
- Color: Based on Lessor approval.
- Installation: Letters mounted flush or stand-off to building fascia centered in tenants sign band area with minimum 5' buffer between signage.
- Logo Size: 36" maximum height & 18" minimum height.
- Letter Height: 36" maximum height & 18" minimum height.
- Letter Style: Based on Lessor approval.
- Illumination: Non-illuminated.
- Signage Area: 60% of leased building frontage, centered horizontally within sign band area. In the event Lessee has leased multiple bays the sign must be centered above lessee's main entrance only.
- Approvals: All signage is to be approved by the Lessor in writing prior to manufacturing. All signage is to be approved by the City of Phoenix Building & Zoning Department.

LESSEE SUITE NUMBER AND INFORMATION AREA

1. Lessee vinyl suite numbers to be provided by the Lessor.
2. There shall be no sandwich boards or freestanding signs permitted in the common areas including, but not limited to sidewalks, driveways, landscaping, parking stalls and building aprons.
3. There shall be no signs, banners, pennants, balloons or window painting permitted on or in front of bay doors or any windows.
4. Each occupant is allowed one (1) information copy area at the entry to its store. The copy for this sign is limited to store name and pertinent business information such as store hours, telephone numbers, emergency information or other business instruction. Maximum letter height is one inch (1").
5. Credit card decals and similar types of information shall be limited to a size of 3" x 5".

Initials

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CERTIFICATION

I, Barry Sloane, Chief Executive Officer of Newtek Business Services, Inc., certify that:

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

Dated: July 14, 2006

/s/ Barry Sloane
Barry Sloane
Chief Executive Officer

CERTIFICATION

I, Michael J. Holden, Chief Financial Officer of Newtek Business Services, Inc., certify that:

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

Dated: July 14, 2006

/s/ Michael J. Holden

Michael J. Holden
Chief Financial Officer

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

In connection with the Quarterly Report on Form 10–Q for the period ended March 31, 2006 (the “Report”) of Newtek Business Services, Inc. (the “Company”), as filed with the Securities and Exchange Commission on the date hereof, Barry Sloane as Chief Executive Officer and Michael J. Holden as Chief Financial Officer of the Company, each hereby certifies, pursuant to 18 U.S.C. §1350, as adopted pursuant to §906, that, to each officer's knowledge:

- (1) the Report fully complies with the requirements of section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended; and
- (2) the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of Newtek as of and for the periods covered in the Report.

/s/ Barry Sloane
Barry Sloane, Chief Executive Officer

/s/ Michael J. Holden
Michael J. Holden, Chief Financial Officer

Dated: July 14, 2006

Newtek Reports Earnings and EBITDA from Primary Segments for Q1

New York, N.Y. – July 13, 2006 – Newtek Business Services, Inc. (NASDAQ: NKBS) (www.newtekbusinessservices.com), a provider of business services and financial products to the small business market, announced today that it has reported earnings for the first quarter in line with previously announced guidance. Newtek reported revenues of \$18.2 million and an after tax loss of \$2.7 million or (\$.08) in loss per share. Newtek's 3 primary operating business segments of web hosting, small business lending and electronic payment processing generated \$1.4 million in pretax net income for the first quarter. These segments also generated \$14.8 million in revenues up 41% from \$10.5 million in the first quarter of 2005. Newtek's three principal segments generated EBITDA in the first quarter of 2006 of \$3.4 million, up 112% from \$1.6 million in the same period of 2005. We closed out our first quarter with \$1.59 per share in cash, cash equivalents and treasuries.

CEO and Chairman Barry Sloane said, "We are pleased with the continued progress that the Company is making in its web hosting and electronic payment processing segments. We have grown our revenues in these segments by 42% and 58% in Q1 06 versus Q1 05 and our EBITDA by 38% in web hosting and 600% in merchant processing over the first quarter of 2005. Our overall customer count continues to grow as over 65,000 clients are using one or more Newtek products. Our business model continues to develop. Our company is forecasting positive cash flow from operations for 2006 up from a negative \$5.8 million in 2005. This will be a first time in history. Also, over time, the diminishing impact of the CAPCO segment on our balance sheet and income statement will become more apparent to the investment community. We believe that our ability to grow our customer base and mature our high quality brand of Newtek Business Service products should create greater shareholder value. Recent hires in our legal and accounting department should also enhance our ability to continue our growth, as well as report and comply with all regulatory requirements on timely basis. We anticipate filing our 2006 1st Quarter Form 10-Q on July 14th. This will bring us back into compliance with all requirements for continued listing on the NASDAQ Global Market (formerly the NASDAQ National Market), subject to confirmation from the NASDAQ Listing Qualification Panel."

Newtek also confirmed its previous forecast for all of the next three quarters and all of 2006. It is forecasting EBITDA of \$15.8 million to \$17 million for its 3 primary business segments for 2006. Newtek has posted a PowerPoint presentation on its website, www.newtekbusinessservices.com which will help investors follow along at the shareholder conference call scheduled for 4:15 p.m. on July 13, 2006.

The conference call will be accessible via a toll free number by dialing 1-800-599-9816 and providing the pass code 96845853. Listeners are encouraged to ask any questions that they may have during the call. The conference call will also be broadcast over the Internet through Newtek's website at www.newtekbusinessservices.com. To listen to the live please go to Newtek's website approximately 15 minutes prior to the call to download any audio software which may be necessary. For those who miss the live broadcast, a replay will be available on the website approximately one hour after the call. The online archive of the web cast will be available for ninety days following the call.

Newtek Business Services, Inc. is a direct distributor of business services and financial products to the small to medium-sized business market. According to the SBA, there are over 23 million small businesses in the United States which in total represent 99.7% of all employers, generate 60 – 80 percent of all new jobs annually and generate more than 50% of non-farm GDP. Since 1999, Newtek has helped these business owners realize their potential by providing them with the essential tools needed to manage and grow their businesses. Newtek focuses on providing its 60,000 customers with access to financial, management and technological resources that enable them to better grow and compete in today's marketplace. Newtek's products and services include:

- ***Newtek Small Business Finance***: U.S. government-guaranteed small business lending services;
- ***Newtek Merchant Solutions***: electronic merchant payment processing solutions;
- ***Newtek Insurance Agency***: commercial and personal insurance;
- ***Newtek Web Hosting***: domain registration, hosting, web design and development;
- ***Newtek Data Storage Services***: data backup, archival and retrieval services;
- ***Newtek Financial Information Systems***: outsourced digital bookkeeping; and
- ***Newtek Tax Services***: tax filing, preparation and advisory services.

Statements in this press release including statements regarding Newtek's beliefs, expectations, intentions or strategies for the future, may be "forward-looking statements" under the Private Securities Litigation Reform Act of 1995. 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>.

Contacts:

Newtek Business Services

Barry Sloane

Chairman of the Board & CEO

212-356-9500

bsloane@newtekbusinessservices.com

2006 Segment Actual Results First Quarter

(In millions of dollars except E.P.S.)

	<u>Revenue</u>	<u>Pretax Net Income</u>	<u>EBITDA</u>
<u>Electronic Payment Processing</u>	9.5	.4	.7
<u>Web Hosting</u>	3.2	1.0	1.8
<u>SBA Lending</u>	2.1	(.1)	.9
<u>CAPCO</u>	1.6	(4.1)	
<u>All Other</u>	1.9	(.3)	
<u>Corporate Activities</u>	1.3	(1.0)	
Interco Eliminations	(1.4)		
<u>Total</u>	18.2	(4.1)	
<u>E.P.S.</u> (per share)		(.08)	

2006 Segment Guidance Second Quarter

(In millions of dollars except E.P.S. guidance)

	<u>Revenue</u>	<u>Pretax Net Income</u>	<u>EBITDA</u>
<u>Electronic Payment Processing</u>	10.1–10.5	.7–.8	1.1–1.2
<u>Web Hosting</u>	3.1–3.3	.7–.9	1.5–1.6
<u>SBA Lending</u>	2.3–2.5	.0–.1	1.0–1.1
<u>CAPCO</u>	2.1	(3.4)–(3.3)	
<u>All Other</u>	1.0	(.3)–(.2)	
<u>Corporate Activities</u>	1.5	(.9)–(.8)	
<u>Interco Eliminations</u>	(1.2)		
<u>Total</u>	18.9–19.7	(3.2)–(2.5)	
<u>E.P.S. Guidance (per share)</u>		(.06)–(.04)	

2006 Segment Guidance Third Quarter

(In millions of dollars except E.P.S. guidance)

	<u>Revenue</u>	<u>Pretax Net Income</u>	<u>EBITDA</u>
<u>Electronic Payment Processing</u>	11.6–12.0	1.0–1.1	1.7–1.8
<u>Web Hosting</u>	3.2–3.4	.7–.8	1.5–1.6
<u>SBA Lending</u>	3.3–3.5	.0–.1	1.1–1.2
<u>CAPCO</u>	3.8	(1.7)–(1.6)	
<u>All Other</u>	1.0	(.6)–(.5)	
Corporate Activities	1.5	(1.0)–(.9)	
<u>Interco Eliminations</u>	(1.2)		
<u>Total</u>	23.2–24.0	(1.6)–(1.0)	
<u>E.P.S. Guidance (per share)</u>		(.03)–(.02)	

2006 Segment Guidance Fourth Quarter

(In millions of dollars except E.P.S. guidance)

	<u>Revenue</u>	<u>Pretax Net Income</u>	<u>EBITDA</u>
<u>Electronic Payment Processing</u>	12.9–13.3	1.3–1.4	2.0–2.1
<u>Web Hosting</u>	3.3–3.5	.6–.8	1.5–1.6
<u>SBA Lending</u>	2.3–2.5	.3–.4	1.3–1.4
<u>CAPCO</u>	9.5	4.0–4.0	
<u>All Other</u>	1.0	(.5)–(.4)	
<u>Corporate Activities</u>	1.5	(1.0)–(.9)	
<u>Interco Eliminations</u>	(1.2)		
<u>Total</u>	29.3–30.1	4.7–5.3	
<u>E.P.S. Guidance (per share)</u>		.08–.09	

2006 Annual Segment Guidance

(In millions of dollars except for E.P.S. guidance)

	<u>Revenue</u>	<u>Pretax Net Income</u>	<u>EBITDA</u>
<u>Electronic Payment Processing</u>	43.9–45.5	3.4–3.8	5.4–5.8
<u>Web Hosting</u>	12.7–13.5	2.8–3.4	6.1–6.5
<u>SBA Lending</u>	9.9–10.7	0.2–0.6	4.3–4.7
<u>CAPCO</u>	17.0	(5.0)–(4.6)	
<u>All Other</u>	4.5	(2.0)–(1.6)	
<u>Corporate Activities</u>	6.0	(3.8)–(3.4)	
<u>Interco Eliminations</u>	(4.8)		
<u>Total</u>	89.2–92.4	(4.4)–(1.8)	
<u>After Tax Net Income</u>		(2.6)–(1.1)	
<u>E.P.S Guidance (per share)</u>		(.08)–(.03)	



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2006 First Quarter Shareholder
Conference Call

July 13, 2006

Barry Sloane – CEO/Chairman

Michael J. Holden - CFO



Safe Harbor Statement

The statements in this slide presentation including statements regarding anticipated future financial performance, Newtek's beliefs, expectations, intentions or strategies for the future, may be "forward-looking statements" under the Private Securities Litigation Reform Act of 1995. 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>

Also we need to point out that our Capcos operate under a different set of rules in each of the 8 jurisdictions and that these place varying requirements on the structure of our investments. In some cases, particularly in Louisiana, we don't control the equity or management of a qualified business, but that cannot always be presented orally or in written presentations.

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Newtek Business Services Financial Highlights for 2005

- Web Hosting revenue increased by 42% Q1 05 – Q1 2006
- Electronic Payment Processing revenue increased by 58% Q1 05 – Q1 06
- Web Hosting EBITDA increased by 38% 05- 06
- Electronic Payment Processing EBITDA increased 600% '05-06
- Total Non-Capco revenue increased by 38% Q1 05 vs. Q1 06
- Cash per share of 1.59
 - * cash = cash, cash equivalents and treasuries
- Our 10Q Filing for 2006 Q1 July 14, 2006

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Newtek Business Services Financial Strength

- As of 3/31/06 55 million in cash, cash equivalents, and short term treasuries
- As of 3/31/06 85 million in shareholders equity
- As of 3/31/06 \$2.43 in book value per share

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Is Newtek Over Leveraged?

Assets as of 3/31/06

Tax Credit Receivable \$106 million

Small Business Loans \$31.9 million

Liabilities as of 3/31/06

Notes payable in credits in lieu of cash
\$91.2 million

GE/CIT/Signature Bank Facility \$23
million

Shareholder Equity as of 3/31/06

\$84.9 million

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What is Newtek?

- It is a major play into owning a distribution company whose target is the national small to medium-sized business market place
 - 23 million potential clients
 - 51% of GDP
 - 9 out of 10 U.S. businesses
- It is achieving it's goals and quickly becoming the premier provider of business services and financial products with 65,000 clients
- It is a low cost provider of products and services
- It is a low cost acquirer of SMB customers

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How is Newtek Accomplishing its Goal?

- By utilizing state of the art web-based proprietary technology
- Web-based referral systems
 - Allow referrals from alliance partners giving them a window into our back office operation
- Web-based applications as an in house tool to make our employees and associates efficient, smart & productive
 - High quality service - our clients don't type in data or hand write applications, nor do we require our alliance partners to
 - Operations modeled after Progressive and Geico Insurance

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Who Uses Our Technology? Who Has Endorsed Its Use?

- Merrill Lynch
- CUNA – 9,600 credit unions
- NAVY Federal Credit Union
- UBS
- US WCC
- Citibank
- National Physicians Health Care
- GM Auto Minority Dealers Association

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New Technology Launches

- New Website Launch
- Our Virtual Salesforce Offering
- www.cusmallbusiness.com

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Who Are Our Future Users?

- Independent Agents
- Virtual Franchise

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Segment Explanation

- I. Small Business Lending
- II. Electronic Payment Processing
- III. Web Hosting
- IV. CAPCO
- V. ALL Other
- VI. Corporate Activities

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Operations Cash Flow

- Positive cash flow forecast for 2006
- CAPCO is a Non-Contributor

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Web Hosting Highlights

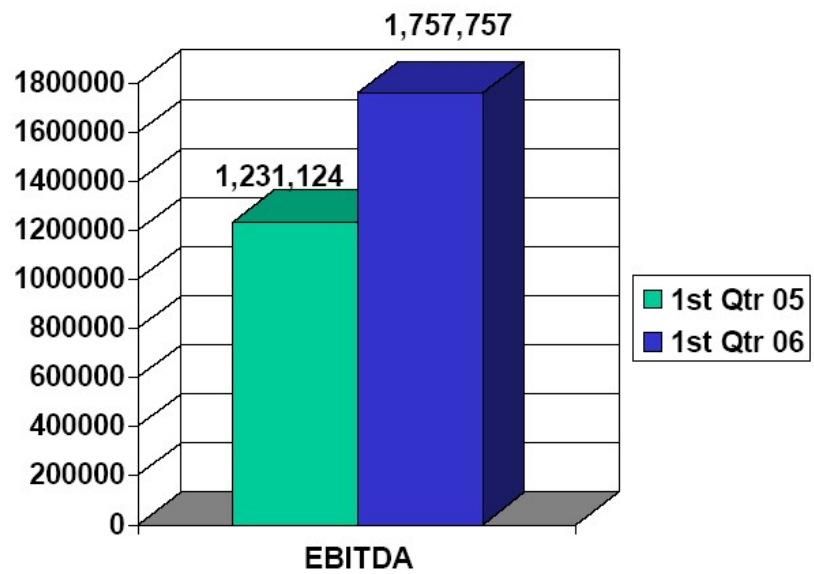
- Strong revenue growth
- Strong EBITDA growth
- Roll out Linux
- Roll out data storage
- Roll out Newtek Web Hosting and Newtek Data Storage Brand
- Strong Customer growth and increase in revenue per customer high due to sales in dedicated web hosting

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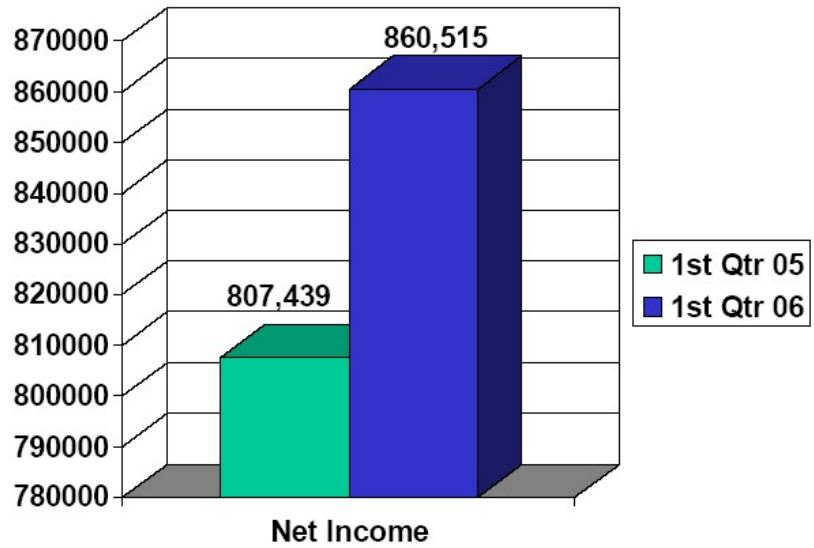
Web Hosting - EBITDA



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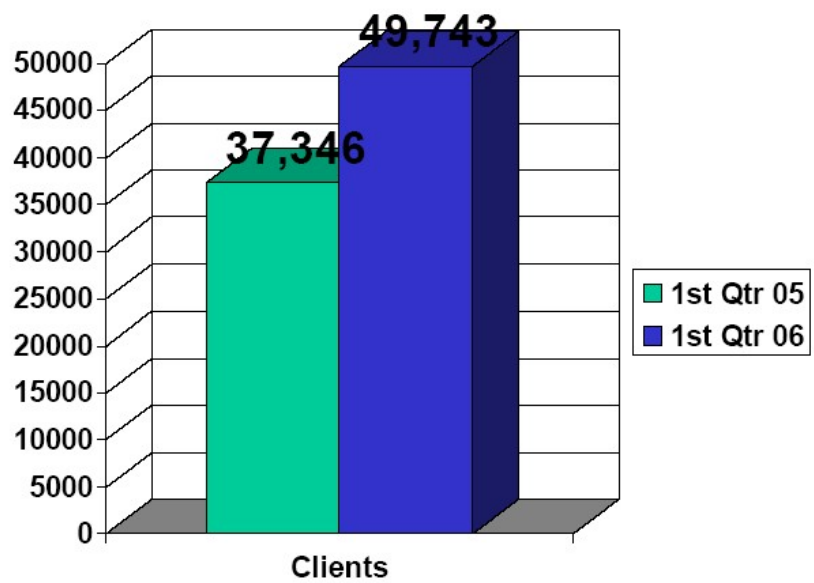
Web Hosting-Net Income



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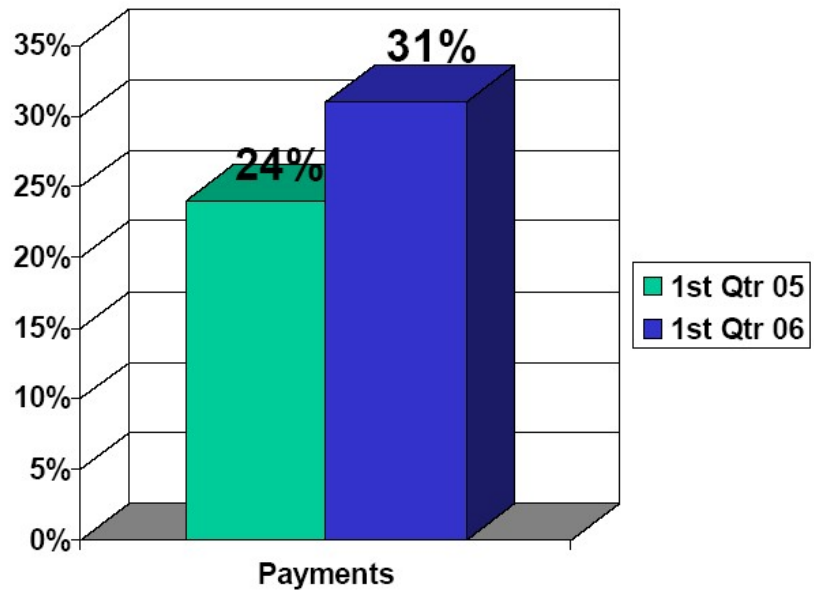
Web Hosting Clients



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Web Hosting – Dedicated Payments as a % of total payments



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Electronic Payment Processing Highlights

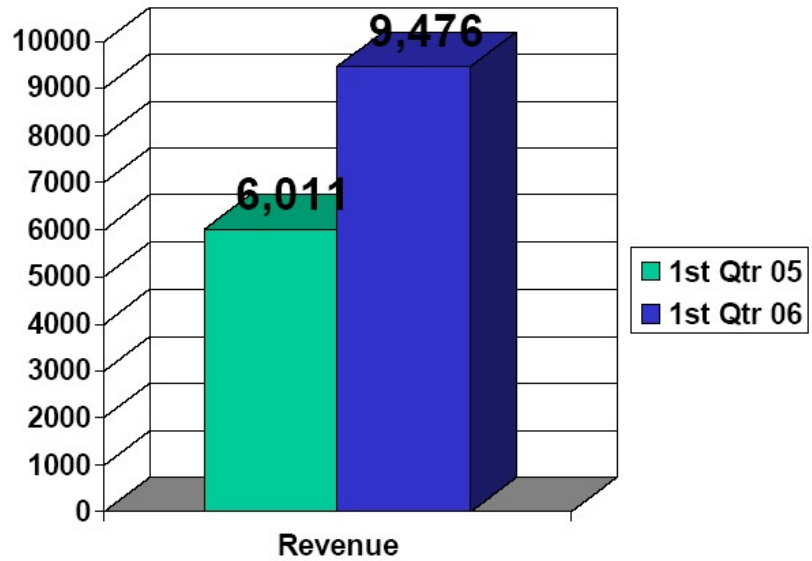
- 2.5 mm – Portfolio acquisition closed in 2nd Quarter
- 7.5 mm – Portfolio had anticipated 6/30/06 close date
- Big revenue growth
- Great operating leverage and capacity to grow with capital or capex

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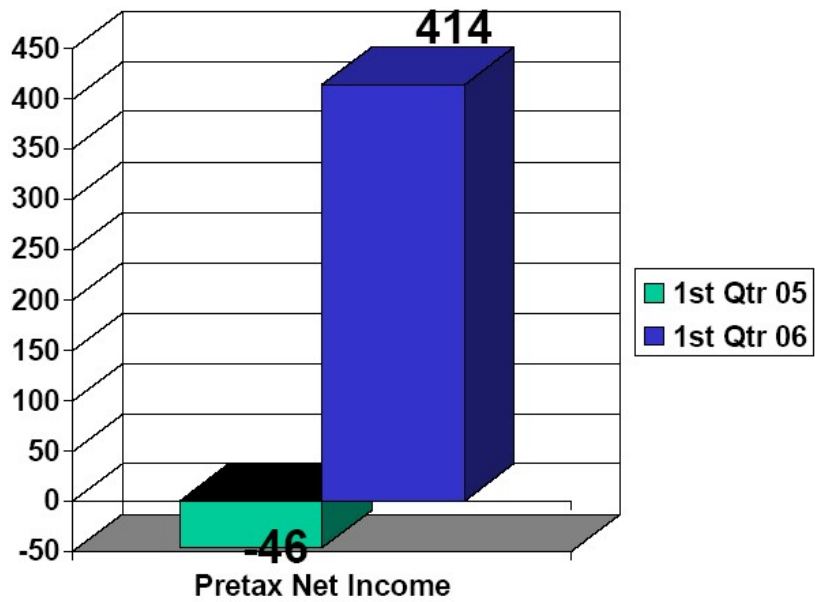
Electronic Payment Processing



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Electronic Payment Processing



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Lending Highlights

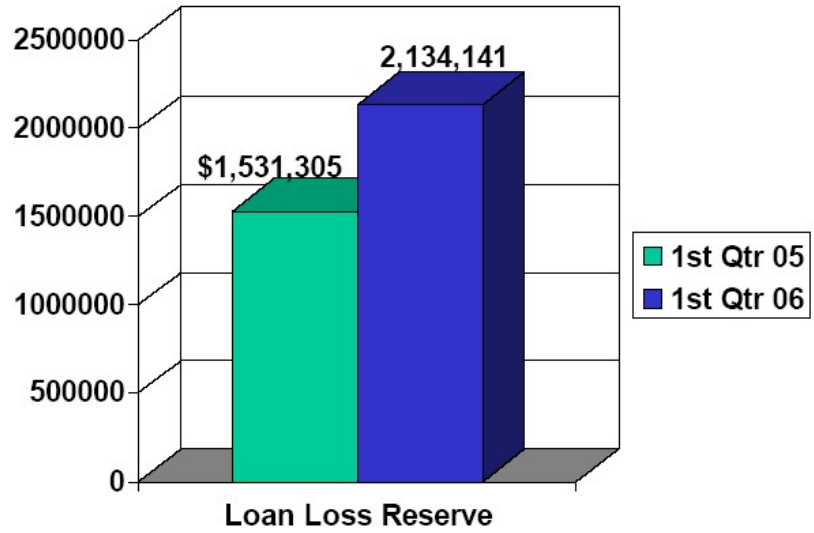
- Servicing portfolio grows
- Originations are down but break even rate is lower
- Average loan size is down and company is more efficient at processing
- Referrals are up and the lender is more selective
- Great operating leverage exists
- Cost of capital needs to improve

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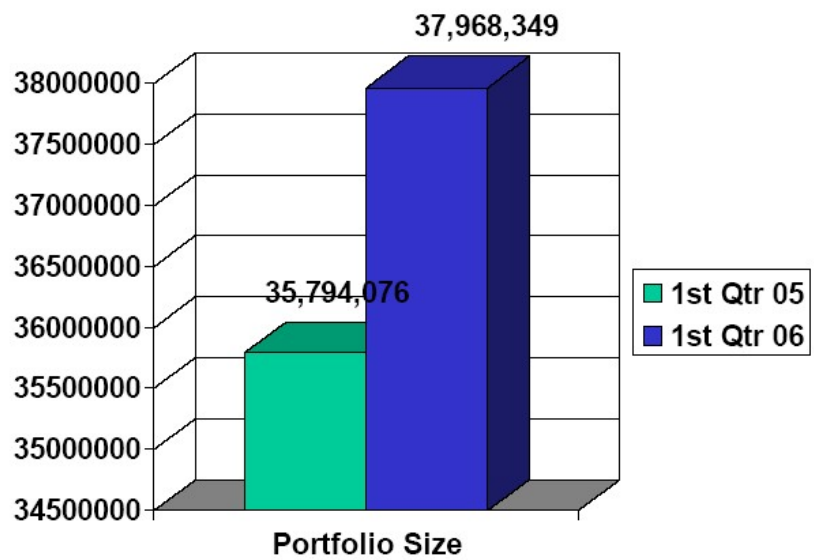
Loan Loss Reserve



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Newtek Retained Portfolio



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Newtek Highlights

- New Hires
- Great transition to cash flow positive operating model
- Great technology creates low cost producer
- Expanding customer base 65,000 current clients
- High growth business 1600 new clients net of attrition
- Simplify balance sheet and income statement
- Centralize operations vs. decentralized historic structure
- Pay down limited debt outstanding

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Newtek Summary

- The business model in transition is an investment opportunity
- The small to Medium size business Market is valuable
- A Direct Distributor of products and services into the SMB market
 - Which acquires and processes business at a low cost is and will become increasingly valuable

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2006 Segment Actual 1st Quarter Results

(in millions of dollars)

	<u>Revenue</u>	<u>Pretax Net Income</u>	<u>EBITDA</u>
<u>Merchant Processing</u>	9.5	.4	.7
<u>Web Hosting</u>	3.2	1.0	1.8
<u>SBA Lending</u>	2.1	(.1)	.9
<u>CAPCO</u>	1.6	(4.1)	
<u>All Other</u>	1.9	(.3)	
<u>Corporate Activities</u>	1.3	(1.0)	
<u>Interco Eliminations</u>	(1.4)		
<u>Total</u>	18.2	(4.1)	

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2006 Segment Guidance Second Quarter

(in millions of dollars)

	<u>Revenue</u>	<u>Pretax Net Income</u>	<u>EBITDA</u>
Merchant Processing	10.1-10.5	.7-.8	1.1-1.2
Web Hosting	3.1-3.3	.7-.9	1.5-1.6
SBA Lending	2.3-2.5	.0-.1	1.0-1.1
CAPCO	2.1	(3.4)-(3.3)	
All Other	1.0	(.3) –(.2)	
Corporate Activates	1.5	(.9)-(.8)	
Interco Eliminations	(1.2)		
Total	18.9-19.7	(3.2)-(2.5)	

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2006 Segment Guidance Third Quarter

(in millions of dollars)

	<u>Revenue</u>	<u>Pretax Net Income</u>	<u>EBITDA</u>
<u>Merchant Processing</u>	11.6 -12.0	1.0-1.1	1.7 -1.8
<u>Web Hosting</u>	3.2 - 3.4	.7-.8	1.5 -1.6
<u>SBA Lending</u>	3.3 - 3.5	.0-.1	1.1-1.2
<u>CAPCO</u>	3.8	(1.7) - (1.6)	
<u>All Other</u>	1.0	(.6) - (.5)	
<u>Corporate Activities</u>	1.5	(1.0) - (.9)	
<u>Interco Eliminations</u>	1.2		
<u>Total</u>	23.2 -24.0	(1.6) – (1.0)	

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2006 Segment Guidance Fourth Quarter

(in millions of dollars)

	<u>Revenue</u>	<u>Pretax Net Income</u>	<u>EBITDA</u>
<u>Merchant Processing</u>	12.9-13.3	1.3-1.4	2.0-2.1
<u>Wed Hosting</u>	3.3-3.5	.6-.8	1.5-1.6
<u>SBA Lending</u>	2.3-2.5	.3-.4	1.3-1.4
<u>CAPCO</u>	9.5	4.0-4.0	
<u>All Other</u>	1.0	(.5)-(.4)	
<u>Corporate Activities</u>	1.5	(1.0)-(.9)	
<u>Interco Eliminations</u>	(1.2)		
<u>Total</u>	29.3-30.1	4.7-5.3	

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2006 Annual Segment Guidance

(in millions of dollars)

	<u>Revenue</u>	<u>Pretax Net Income</u>	<u>EBITDA</u>
<u>Merchant Processing</u>	43.9-45.5	3.4-3.8	5.4-5.8
<u>Web Hosting</u>	12.7-13.5	2.8-3.4	6.1-6.5
<u>SBA Lending</u>	9.9-10.7	0.2-0.6	4.3-4.7
<u>CAPCO</u>	17.0	(5.0)-(4.6)	
<u>All Other</u>	4.5	(2.0)-(1.6)	
<u>Corporate Activities</u>	6.0	(3.8)-(3.4)	
<u>Interco Eliminations</u>	(4.8)		
<u>Total</u>	89.2-92.4	(4.4)-(1.8)	

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Michael J. Holden - CFO

Management Discussion and Analysis

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Questions & Answers

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