

RECORDING COVER PAGE

PER ORS 205.234

PLEASE FILL OUT
COMPLETE AND LEGIBLE

THIS COVER PAGE HAS BEEN PREPARED BY THE PERSON
PRESENTING THE ATTACHED INSTRUMENT FOR RECORDING.
ANY ERRORS IN THIS COVER PAGE **DO NOT AFFECT** THE
TRANSACTION(S) CONTAINED IN THE INSTRUMENT ITSELF.

2018-012140

Klamath County, Oregon

10/03/2018 02:29:01 PM

Fee: \$147.00

AFTER RECORDING RETURN TO:

NAME AND ADDRESS OF THE PERSON AUTHORIZED TO RECEIVE THE
INSTRUMENT AFTER RECORDING AS REQUIRED BY ORS 205.180(4)
AND ORS 205.238.

Newtek Small Business Finance, Inc.

1981 Marcus Avenue, Suite 130

Lake Success, NY 11042

Attn: Closing Department

1. NAME OF THE TRANSACTION (S), DESCRIBED IN THE ATTACHED INSTRUMENT(S) AND REQUIRED BY ORS 205.234(A).

NOTE: Transaction as defined by ORS 205.010 "means any action required or permitted by state law or rule federal law or regulation to be recorded including, but not limited to, any transfer encumbrance or release affecting title to or an interest in real property".

Assignment of Leases & Rents

2. Grantor/Direct (s) as described in ORS 205.160.

Throop Family Holdings, Inc.

3. Grantee/Indirect (s) as described in ORS 205.160.

Newtek Small Business Finance, LLC

4. TRUE AND ACTUAL CONSIDERATION PAID for instruments conveying or contracting to convey fee title to any real estate and all memoranda of such instruments, reference ORS 93.030.

N/A

5. UNTIL A CHANGE IS REQUESTED, All Tax Statements shall be sent to the following name and address:

for instruments conveying or contracting to convey fee title to any real estate reference ORS 93.260

N/A

6. SATISFACTION OF ORDER OR WARRANT ORS 205.234 (1) (f).

FULL _____ PARTIAL _____

7. LIEN DOCUMENTS: ORS 205.234 (1) (f). Amount of Lien \$ 2,575,000.00

Effective 09/07/2012

RECORDING COVER PAGE

PER ORS 205.234

PLEASE FILL OUT

COMPLETE AND LE

Jackson County Official Records **2018-030873**

R-ALR

Stn=10 SHINGLJS

10/03/2018 01:43:05 PM

\$60.00 \$10.00 \$5.00 \$8.00 \$11.00 \$60.00

\$158.00

\$4.00

I, Christine Walker, County Clerk for Jackson County, Oregon, certify that the instrument identified herein was recorded in the Clerk records.

Christine Walker - County Clerk

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NAME AND ADDRESS OF THE PERSON AUTHORIZED TO RECEIVE THE INSTRUMENT AFTER RECORDING AS REQUIRED BY ORS 205.180(4) AND ORS 205.238.

Newtek Small Business Finance, Inc.

1981 Marcus Avenue, Suite 130

Lake Success, NY 11042

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Throop Family Holdings, Inc.

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Newtek Small Business Finance, LLC

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FULL PARTIAL

7. LIEN DOCUMENTS: ORS 205.234 (1) (f). Amount of Lien \$ 2,575,000.00

Effective 09/07/2012

NSBF / RID No.: 135679 / 756509
SBA Loan No.: PLP 29431570-09

NSBF#: 135679
RID#: 756509
SBA LOAN #: PLP 29431570-09
ASSIGNOR: Throop Family Holdings, Inc.
ASSIGNEE: NEWTEK SMALL BUSINESS FINANCE, LLC
STATE OF: Oregon
COUNTY OF: Jackson (Parcel 1)
Klamath (Parcel 2)
STREET ADDRESS: 7072 Highway 62, Eagle Point, OR 97524 (Parcel 1)
2825 Broadmore Street, Klamath Falls, OR 97603 (Parcel 2)

ASSIGNMENT OF LEASES AND RENTS

After Recording Return To:
Newtek Small Business Finance, LLC
1981 Marcus Avenue, Suite 130
Lake Success, NY 11042
Attn: Closing Department

The Loan secured by this lien was made under a United States Small Business Administration (SBA) nationwide program which uses tax dollars to assist small business owners. If the United States is seeking to enforce this document, then under SBA regulations:

(a) When SBA is the holder of the Note, this document and all documents evidencing or securing this Loan will be construed in accordance with federal law.

(b) Lender or SBA may use local or state procedures for purposes such as filing papers, recording documents, giving notice, foreclosing liens, and other purposes. By using these procedures, SBA does not waive any federal immunity from local or state control, penalty, tax or liability. No Borrower or guarantor may claim or assert against SBA any local or state law to deny any obligation of Borrower, or defeat any claim of SBA with respect to this Loan.

Any clause in this document requiring arbitration is not enforceable when SBA is the holder of the Note secured by this instrument.

ASSIGNMENT OF LEASES AND RENTS

THIS ASSIGNMENT OF LEASES AND RENTS ("Assignment") made this 28th day of September, 2018 by **THROOP FAMILY HOLDINGS, INC.**, an Oregon corporation maintaining principal places of business at 7072 Highway 62, Eagle Point, OR 97524 and 2825 Broadmore Street, Klamath Falls, OR 97603 ("Assignor"), to **NEWTEK SMALL BUSINESS FINANCE, LLC**, a New York limited liability company having a place of business at, 1981 Marcus Avenue, Suite 130, Lake Success, NY 11042 ("Assignee").

RECITALS:

A. Assignor is the fee owner of the real property and improvements located at as 7072 Highway 62, Eagle Point, OR 97524 (Parcel 1) and 2825 Broadmore Street, Klamath Falls, OR 97603 (Parcel 2), more fully described in Schedule A attached hereto and made a part hereof (the "Property").

B. Assignor is the recipient of a loan made this date in the principal sum of Two Million Five Hundred Seventy-Five Thousand and 00/100 (\$2,575,000.00) Dollars with interest thereon computed from the date hereof (the "Loan"), as evidenced by that certain promissory note of even date herewith made payable to Assignee (the "Note"),

C. Assignor has secured the Note by a Mortgage covering the Property dated as of the date hereof and intended to be recorded contemporaneously herewith (the "Mortgage"), which Mortgage secures the obligations of Assignor under the Note, the Mortgage and this Assignment including without limitation, principal, interest, late charges, prepayment premiums and all other fees, charges and sums which may or shall become due under the Note and this Mortgage, and the performance of all the provisions hereof and of the Note and any renewals, extensions, modifications or replacements thereof (collectively, the "Obligations").

D. In order to induce the Assignee to make said loan and as additional security for the payment and performance of the Obligations, Assignor desires to transfer and assign to Assignee all of Assignor's right, title and interest in any and all leases, subleases, lettings and licenses of or affecting the Property that heretofore have been, or may hereafter be, entered into by Assignor (collectively, "Leases") and (i) all amendments, extensions, modifications, replacements or renewals thereof, (ii) the rents, income, issues and profits due, or to become due, thereunder and all rents, income, issues and profits (including all oil and gas or other mineral royalties and bonuses) from the use, enjoyment and occupancy of the Property, and (iii) the right to enforce, whether at law or in equity or by any other means, all provisions thereof, including, without limitation, any guarantees of the obligations owed Assignor thereunder (collectively, "Rents").

NOW, THEREFORE, for the consideration of \$10.00 and other good and valuable consideration, with intent to be legally bound hereby, and as an inducement for Assignee to make the loan evidenced by the Note and secured by the Mortgage, Assignor hereby transfers, sets over and assigns to Assignee as additional security and collateral for the payment and performance of the Obligations, all right, title and interest of Assignor in, to and under (i) the Leases and all amendments, extensions, modifications, replacements or renewals thereof and (ii) the Rents. This Assignment is intended to be and is an absolute present assignment from Assignor to Assignee and not the mere passage of a security interest; *provided, however*, that Assignor shall have a license to collect and disburse, except as hereinafter provided, the rents, income and profits accruing by virtue of the Leases as they respectively become due ("License"), but not more than one month in advance, and to enforce the agreements of the Leases, so long as there is no default under any of the terms, covenants or provisions of the Obligations, the Note, the Mortgage or this Assignment. Assignor covenants and agrees, however, that in exercising its License it shall hold any and all such Rents in trust and shall apply the same in payment of its Obligations.

Assignor further covenants and agrees as follows:

1. **Assignee as Creditor of Lessee.** Assignee, and not Assignor, shall be the creditor of the lessee under any Lease ("Lessee") in respect of assignments for the benefit of creditors and bankruptcy, reorganization, insolvency, dissolution or receivership proceedings affecting any such Lessee. Assignee, however, shall not be the party obligated to make timely filings of claims in such proceedings or to otherwise pursue creditor's rights therein. Assignee shall have the option to apply any moneys received by it as such creditor to the reduction of the principal of or the premium, if any, or interest on the Obligations.

2. **Default Remedies of Assignee.** If a default occurs under any of the Obligations, then so long as such default shall be continuing, the License of Assignor to collect the Rents shall cease and terminate and the following shall apply:

(a) Assignee shall thereupon be authorized, at its option and to the extent permitted by applicable law, without waiving such default, without notice and without regard to the adequacy of the security for the Obligations, either in person or by agent, with or without bringing any action or proceeding, or by a receiver appointed by a court, to enter and take possession of all or part of the Property, and to perform all acts necessary for the operation and maintenance of the Property in the same manner and to the same extent that Assignor might reasonably so act.

(b) Assignee shall be authorized, but under no obligation, with or without taking possession of the Property in its own name, to collect the rents, income and profits arising from the Leases, and to enforce performance of any other terms of the Leases including, but not limited to, Assignor's rights to fix or modify rents, sue for possession of the Property, relet all or part of the Property, and collect all rents, income and profits under such new leases with full power to make from time to time all alterations, renovations, repairs or replacements thereto or thereof as may seem proper to Assignee. Assignor promptly shall pay to Assignee (i) all rent prepayments and security or other deposits paid to Assignor pursuant to any Lease assigned hereunder and (ii) all charges for services or facilities or for escalation which have theretofore been paid pursuant to any such Lease to the extent allocable to any period from and after such default.

(c) Assignee may apply the Rents to the payment of the following in such order and proportion as Assignee in its sole discretion may determine:

(i) All expenses of managing and securing the Property, including, without limitation, the salaries, fees and wages of a managing agent and such other employees or agents as Assignee may deem necessary or desirable and all expenses of operating and maintaining the Property, including, without limitation, all taxes, charges, claims, assessments, water charges, sewer rents and any other liens, and premiums for all insurance which Assignee may deem necessary or desirable, and the cost of all alterations, renovations, repairs or replacements, and all expenses incident to taking and retaining possession of the Property; and

(ii) the Obligations, together with all costs and attorneys' fees.

(d) For purposes of this Section 2, Assignor hereby grants to Assignee its irrevocable power of attorney, coupled with an interest, to take any and all of the aforementioned actions and any and all other actions designated by Assignee for the proper management and preservation of the Property. The exercise by Assignee of the option granted it in this Section 2 and the collection of the Rents and the application thereof as herein provided shall not be considered a waiver of any default by Assignor under the Note, the Mortgage, the Leases or this Agreement.

3. **Termination of Assignment.** When Assignor pays Assignee the full amount of the indebtedness evidenced by the Note and performs all of the Obligations, this Assignment shall terminate and become void.

4. **Notice to Lessee of Assignor's Default.** Assignor hereby authorizes and directs each Lessee, upon receipt of notice from Assignee of Assignor's default under the Note, the Mortgage or this Assignment, to pay all rents, income and profits under the Leases to Assignee. Each Lessee shall have the right to rely upon any such notices of Assignee that Lessee shall pay all rents, income and profits to Assignee, without any obligation to inquire as to the actual existence of the default, notwithstanding any claim of Assignor to the contrary. Assignor shall have no claim against any Lessee for any rents paid by Lessee to Assignee. Upon the curing of all defaults caused by Assignor under the Obligations, the Mortgage or this Assignment, Assignee shall give each Lessee written notice of such cure and, thereafter, until further notice from Assignee, each Lessee shall pay the rents, incomes and profits to Assignor as the licensor under the License.

5. **Assignment of Defaulting Assignor's Interest in Lease.** If Assignor has defaulted under the Obligations, the Mortgage or this Assignment, Assignee shall then have the right to assign Assignor's right, title and interest in and to the Leases to any person or entity acquiring title to the Property through foreclosure or otherwise. Such assignee shall not be liable to account to Assignor for the rents, income, and profits thereafter accruing.

6. **Indemnification of Assignee.** Assignor hereby agrees to indemnify and hold Assignee harmless from any and all liability, loss or damage that Assignee may incur under the Leases or by reason of this Assignment. Such indemnification shall also cover any and all claims that may be asserted against Assignee under the Leases or this Assignment. Nothing in this Section 6 shall be construed to bind Assignee to the performance of any lease provisions, or to otherwise impose any liability upon Assignee including, without limitation, any liability under covenants of quiet enjoyment in the Leases in the event that any Lessee shall have been joined as party defendant in any action to foreclose the Mortgage and shall have been barred thereby of all right, title, interest, and equity of redemption in the Property or any part thereof; nor shall anything herein operate to place any obligation or liability for the control, care, management or repair of the Property upon Assignee or to make Assignee responsible or liable for any waste committed on the Property by the tenants or any other parties, or for any dangerous or defective condition of the Property, including, without limitation, the presence of any hazardous waste or substance, or for any negligence in the management, upkeep, repair or control of the Property resulting in loss, injury or death to any tenant, licensee, employee or stranger. This Assignment imposes no liability upon Assignee for the operation and maintenance of the Property or for carrying out the terms of any Lease before Assignee has entered and taken possession of the Property. Any loss or liability incurred by Assignee, by reason of actual entry and taking possession under any Lease or this Assignment or in the defense of any claims shall, at Assignee's request, be immediately reimbursed by Assignor. Such reimbursement shall include interest at the Default Rate (as such term is defined in the Mortgage), costs, expenses and attorneys' fees. Assignee may, upon entry and taking of possession, collect the rents, income and profits and apply them to reimbursement for any such loss or liability. The provisions of this Section 6 shall survive

satisfaction of the Obligations and any termination, satisfaction or foreclosure of this Assignment.

7. **Assignor's Possession After Default.** If Assignor is in possession of the Property or any portion(s) and is not required to surrender such possession hereunder in the event of a default on the Obligations or under the Mortgage or this Assignment, Assignor shall pay monthly in advance to Assignee, on Assignee's entry into possession pursuant to Section 2 hereof, or to any receiver appointed to collect the Rents, the fair and reasonable value for the use and occupancy of the Property or such portion(s) thereof as may be in the possession of Assignor. Upon default in any such payment, Assignor shall forthwith vacate and surrender such possession to Assignee or such receiver and, in default thereof, Assignor may be evicted by summary or any other proceedings or actions available to Assignee or the receiver at law or in equity.

8. **Quality of Assignor's Title to Leases.**

(a) Assignor represents that it has the sole absolute right and title to assign the Leases, and the rents, income and profits due or to become due thereunder. Assignor further represents that there are no outstanding assignments or pledges of Assignor's interests in the Leases or of the rents, income and profits due or to become due thereunder.

(b) Assignor will not, without the prior written consent and approval of Assignee in each instance, (i) execute an assignment of the Rents from the Property or any part thereof, or (ii) enter into any Leases. Assignor will not, without the prior written consent and approval of Assignee, in each instance, (i) amend, modify, terminate or consent to the cancellation or surrender of any Lease, now existing or hereafter to be made, or (ii) accept prepayments more than one month in advance of any installments of rents to become due under such Leases, except prepayments in the rents to become due under such Leases, except prepayments in the nature of security for the performance of the Lessees thereunder.

9. **Delivery of Necessary Instruments to Assignee.** Assignor shall execute and deliver to Assignee, and hereby irrevocably appoints Assignee, its successors and assigns, as its attorney-in-fact, to execute and deliver during the term of this Assignment all further instruments as Assignee may deem necessary to make this Assignment and any further assignment effective. Assignor shall, upon demand, pay to Assignee, or reimburse Assignee for the payment of, any and all costs and expenses (including attorneys' fees) incurred in connection with the preparation and recording of such instruments.

10. **Assignor to Ensure Continued Performance Under Leases.** Assignor shall not execute any other assignment or pledge of the Leases, of any interest therein, or of any Rents payable thereunder, without the prior written consent of Assignee. Assignor shall perform all of its covenants as lessor under the Leases, and shall not permit any release of liability of any Lessee or any withholding of rent payments by any Lessee. Assignor shall promptly deliver to Assignee copies of any and all notices of default Assignor has sent to any Lessee and copies of any and all notices and other communications received from any Lessee under any Lease. Assignor shall,

upon Assignee's request and at Assignor's expense, enforce the Leases and all remedies available to Assignor thereunder upon any Lessee's default. Assignor shall deliver to Assignee copies of all papers served in connection with any such enforcement proceeding and shall consult with Assignee, its agents and attorneys with respect to the conduct thereof.

11. **Changes in Obligation Terms.** Notwithstanding any variation of the terms of the Obligations and/or the Mortgage, including any increase or decrease in the principal amount thereof or in the rate of interest payable thereunder or any extension of time for payment thereunder or the release of any part of the Property subject to the Mortgage, the Leases and the benefits hereby assigned shall continue as additional security in accordance with the terms of this Assignment.

12. **Additions to and Replacement of Obligations.** Assignee may take security in addition to the security already given Assignee for the payments of the principal, premium and interest required to be paid in or by the Obligations or release such other security, and may release any party primarily or secondarily liable on the Obligations, may grant or make extensions, renewals, modifications or indulgences with respect to the Obligations or the Mortgage and replacements thereof, which replacements of the Obligations or the Mortgage may be on the same terms as, or on terms different from, the present terms of the Obligations or the Mortgage, and may apply any other security thereof held by it to the satisfaction of the Obligations, without prejudice to any of its rights hereunder.

13. **Exercise of Assignee's Rights.** Assignee's failure to avail itself of any of its rights under this Assignment for any period of time, or at any time or times, shall not constitute a waiver thereof. Assignee's rights and remedies hereunder are cumulative, and not in lieu of, but in addition to, any other rights and remedies Assignee has under the Obligations, the Note and the Mortgage. Assignee's rights and remedies hereunder may be exercised as often as Assignee deems expedient.

14. **Cumulative Rights and Remedies.** The rights and remedies of Assignee under this Assignment are cumulative and are not in lieu of, but are in addition to, any other rights or remedies which Assignee shall have under the Note, the Mortgage or any other instrument constituting security for the Obligations, or at law or in equity.

15. **Severability.** If any term of this Assignment, or the application hereof to any person or entity or set of circumstances, shall to any extent be invalid or unenforceable, the remainder of this Assignment, or the application of such provision or part thereof to persons or entities or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term of this Assignment shall be valid and enforceable to the fullest extent consistent with applicable law.

16. **Captions.** The captions or headings at the beginning of each paragraph hereof are for the convenience of the parties only and are not part of this Assignment.

17. **Notices.** Any notice, demand, consent, approval, direction, agreement or other communication required or permitted hereunder shall be in writing and shall be deemed

delivered (a) if delivered by hand delivery or by nationally recognized overnight courier service, when received, or (b) if sent by certified mail, postage prepaid, return receipt requested, on the date set forth on the return receipt, in each case to the intended recipient as follows:

- (a) If to Assignor:
Throop Family Holdings, Inc.
7072 Highway 62, Eagle Point, OR 97524
2825 Broadmore Street, Klamath Falls, OR 97603
- (b) If to Assignee:
Newtek Small Business Finance, LLC
1981 Marcus Avenue, Suite 130
Lake Success, New York 11042
Attn: Closing Department

Each party hereto shall have the right to specify, from time to time, as its address or addresses for purposes of this Assignment, any other address or addresses upon giving three (3) business days' notice thereof to the other party hereto, in accordance with the terms hereof.

18. **No Oral Change.** This Assignment and any provisions hereof may not be modified, amended, waived, extended, changed, discharged or terminated orally, or by any act or failure to act on the part of Assignor or Assignee, but only by an agreement in writing signed by the party against whom the enforcement of any modification, amendment, waiver, extension, change, discharge or termination is sought.

19. **Certain Definitions.** Unless the context clearly indicates a contrary intent or unless otherwise specifically provided herein, words used in this Assignment may be used interchangeably in singular or plural form and the word "Assignor" shall mean "each Assignor and any subsequent owner or owners of the Property or any part thereof or interest therein," the word "Assignee" shall mean "Assignee and any subsequent holder of the Note," the word "Note" shall mean "the Note and any other evidence of indebtedness secured by the Mortgage," the word "person" shall include an individual, corporation, partnership, trust, limited liability company, unincorporated association, government, governmental authority, and any other entity, and the word "Property" shall include any portion of the Property and any interest therein.

20. **No Mortgagee in Possession.** Nothing herein contained shall be construed as constituting Assignee a "mortgagee in possession" in the absence of the taking of actual possession of the Property by Assignee. In the exercise of the powers herein granted Assignee, no liability shall be asserted or enforced against Assignee, all such liability being expressly waived and released by Assignor.

21. **Binding Effect.** This Assignment, together with the covenants and warranties contained herein, shall inure to the benefit of Assignee and any subsequent holder of the Mortgage, and shall be binding upon Assignor, and its heirs, executors, administrators, successors and assigns, and any subsequent owner of the Property.

22. **Applicable Law.** This Assignment shall be governed by, and construed in accordance with the laws of the state in which Property is located, except when the United States Small Business Administration ("SBA") is the holder of the Note.

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

Throop Family Holdings, Inc.

By: 

Patrick John Throop, President

STATE OF OREGON }

COUNTY OF Jackson }

ss.:

This instrument was acknowledged before me on September 28, 2018 by Patrick John Throop as President of Throop Family Holdings, Inc.


Notary Public



Schedule A

**Legal Description of the Property
(See Attached)**

EXHIBIT "A"

246356AM

PARCEL 1:

Lot 10, Block 4 Agate Subdivision Extension No. 1, in Jackson County, Oregon.

PARCEL 2:

Parcel 2 of Land Partition 43-97, being a portion of Lot 2 in Block 4 of Tract 1080-Washburn Park Situated in SW1/4 SW1/4 of Section 3, Township 39 South, Range 9 East of the Willamette Meridian, Klamath County, Oregon.