

**SETTLEMENT AGREEMENT**

This Settlement Agreement ("Agreement") is made and entered into as of the \_\_\_\_ day of June, 2016 ("Effective Date"), by and among Stephen Darr as he is the duly appointed and acting Trustee ("Trustee") of the Chapter 11 Estates of TelexFree, LLC; TelexFree, Inc.; and TelexFree Financial, Inc. (collectively, "TelexFree") and Sunwind Energy Doyle North LLC; Sunwind Energy Solutions LLLP; and Sunwind Energy Group LLLP (collectively, "Sunwind") (Trustee, TelexFree, and Sunwind are collectively, "Parties").

**RECITALS:**

WHEREAS, in the fall of 2013, Sunwind approached TelexFree regarding a business opportunity relating to a wind farm being developed by Sunwind in Kansas;

WHEREAS, following the initial discussion, TelexFree agreed to make advances to Sunwind;

WHEREAS, prior to December 31, 2013, TelexFree, directly or through its conduit TelexElectric, LLLP ("TelexElectric") advanced in the aggregate \$2,018,359 to Sunwind;

WHEREAS, On February 5, 2014, TelexFree advanced an additional \$390,000 to Sunwind;

WHEREAS, on February 19, 2014, TelexFree advanced an additional \$200,500 to Sunwind;

WHEREAS, Sunwind has acknowledged owing to TelexFree the principal sum of \$2,608,889 plus accrued interest through April 1, 2016 of \$423,497.35, which principal continues to accrue interest at a rate of 5% per annum (the "Obligation");



WHEREAS, Sunwind has disputed owing TelexFree and/or the Trustee any additional monies, any ownership interest in Sunwind claimed by TelexFree and/or the Trustee, and any other relief sought in the Adversary Proceeding brought by the Trustee against Sunwind other than the Obligation

WHEREAS, on March 3, 2016, the Trustee commenced an Adversary Proceeding against Sunwind, among others, seeking to recover the Obligation styled *Stephen Darr, Trustee of the Chapter 11 Estates of TelexFree, LLC, TelexFree, Inc. and TelexFree Financial, Inc. v. TelexElectric LLLP, et al.*, Adv. Pro. No. 16-04019, (the “Advesary Proceeding”); and

WHEREAS, Sunwind and the Trustee seek to resolve their disputes and provide for an opportunity for Sunwind to enter into a transaction the proceeds of which are to pay, among other items, the Obligation,

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

ACKNOWLEDGMENT OF OBLIGATION

1. Sunwind acknowledges that it is obligated to TelexFree for the Obligation. Sunwind will assent to the entry of a judgment for the Trustee in the amount of the Obligation in the Adversary Proceeding styled *Stephen Darr, Trustee of the Chapter 11 Estates of TelexFree, LLC, TelexFree, Inc. and TelexFree Financial, Inc. v. TelexElectric LLLP, et al.*, Adv. Pro. No. 16-04019, and the issuance of an Execution thereon.

FORBEARANCE

1. The Trustee shall forbear from exercising his right to enforce the Execution until the earlier of (a) occurrence of an Event of Default or (b) April 30, 2017.

WAIVER OF CLAIMS AND RELEASES

1. Sunwind hereby acknowledges and agrees that as of the date hereof, it has no offsets, defenses, claims or counterclaims against TelexFree or any of its successors or assigns, including but not limited to TelexElectric LLLP and the Trustee, with respect to the Outstanding Obligations or otherwise, and that if Sunwind now has, or ever did have, any offsets, defenses, claims or counterclaims against TelexFree or TelexElectric, or its predecessors, successors or assigns, whether known or unknown, at law or in equity, from the beginning of the world through this date and through the time of the execution of this Settlement Agreement, then all of them are hereby expressly WAIVED AND SUNWIND HEREBY RELEASES THE TRUSTEE, TELEXFREE AND TELEXELECTRIC AND THEIR PREDECESSORS, SUCCESSORS AND ASSIGNS FROM ANY LIABILITY THEREOF. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING RELEASE, AS OF THE DATE HEREOF, SUNWIND ITS SUCCESSORS, ASSIGNS, PARENTS, SUBSIDIARIES, AFFILIATES, PREDECESSORS, EMPLOYEES, HEIRS, EXECUTORS AS APPLICABLE, JOINTLY AND SEVERALLY, RELEASE AND FOREVER DISCHARGE THE TRUSTEE, TELEXFREE AND TELEXELECTRIC AND THEIR SUBSIDIARIES, AFFILIATES, SUCCESSORS AND ASSIGNS OF AND FROM ANY AND ALL MANNER AND ACTIONS, CAUSES, AND CAUSES OF ACTION, SUITS, DEBTS, CONTROVERSIES, DAMAGES, JUDGMENTS, EXECUTIONS, CLAIMS AND DEMANDS WHATSOEVER, ASSERTED OR UNASSERTED, IN LAW OR IN EQUITY, WHICH AGAINST THE TRUSTEE, TELEXFREE AND/OR TELEXELECTRIC AND/OR ANY OF THEIR PREDECESSORS, SUCCESSORS, ASSIGNS, SUBSIDIARIES, AFFILIATES, BOTH PRESENT AND FORMER, EVER HAD OR NOW HAVE UPON OR BY REASON OF ANY MANNER, CAUSE, CAUSES OR

THINGS WHATSOEVER, INCLUDING WITHOUT LIMITATION ANY PRESENTLY EXISTING CLAIMS OR DEFENSES, WHETHER OR NOT PRESENTLY SUSPECTED, CONTEMPLATED OR ANTICIPATED.

2. TelexFree, TelexElectric, and the Trustee hereby acknowledge and agree that as of the date hereof, other than the Obligation acknowledged above, they have no other claims against Sunwind or any of its successors or assigns. TelexFree, TelexElectric, and the Trustee and any of their successors or assigns hereby release Sunwind from any and all other claims, including but not limited to the claims asserted in the Adversary Proceeding other than the Obligation acknowledged above, that TelexFree, TelexElectric, or the Trustee or their successors or assigns now has, or ever did have, any offsets, defenses, claims or counterclaims against Sunwind, or its predecessors, successors or assigns, whether known or unknown, at law or in equity, from the beginning of the world through this date and through the time of the execution of this Settlement Agreement, then all of them are hereby expressly WAIVED AND THE TRUSTEE, TELEXFREE AND TELEXELECTRIC HEREBY RELEASES SUNWIND AND THEIR PREDECESSORS, SUCCESSORS AND ASSIGNS FROM ANY LIABILITY THEREOF. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING RELEASE, AS OF THE DATE HEREOF, THE TRUSTEE, TELEXFREE AND TELEXELECTRIC THEIR SUCCESSORS, ASSIGNS, PARENTS, SUBSIDIARIES, AFFILIATES, PREDECESSORS, EMPLOYEES, HEIRS, EXECUTORS AS APPLICABLE, JOINTLY AND SEVERALLY, RELEASE AND FOREVER DISCHARGE SUNWIND AND ITS SUBSIDIARIES, AFFILIATES, SUCCESSORS AND ASSIGNS OF AND FROM ANY AND ALL MANNER AND ACTIONS, CAUSES, AND CAUSES OF ACTION, SUITS, DEBTS, CONTROVERSIES, DAMAGES, JUDGMENTS, EXECUTIONS, CLAIMS AND DEMANDS WHATSOEVER, ASSERTED OR UNASSERTED, IN LAW OR IN EQUITY, WHICH AGAINST SUNWIND AND/OR ANY OF ITS PREDECESSORS, SUCCESSORS, ASSIGNS, SUBSIDIARIES, AFFILIATES, BOTH PRESENT AND FORMER, EVER HAD OR NOW HAVE UPON OR BY REASON OF ANY MANNER, CAUSE, CAUSES OR THINGS WHATSOEVER, INCLUDING WITHOUT LIMITATION ANY PRESENTLY EXISTING CLAIMS OR DEFENSES, WHETHER OR NOT PRESENTLY SUSPECTED, CONTEMPLATED OR ANTICIPATED.

#### REPRESENTATIONS AND WARRANTIES

2. Sunwind represents and warrants to the Trustee as follows:

(a) Organization

(i) Each Sunwind entity described in the introductory paragraph is, and will continue to be, duly organized and validly existing and in good standing of the laws of the state of its organization;

(ii) Each of Sunwind is duly qualified and in good standing in every state in which it does business; and

(iii) Each Sunwind entity has the power to execute and deliver this Agreement to TelexFree;

(b) Execution and Delivery

The execution, delivery and performance of this Agreement:

(i) Have been duly authorized by all requisite actions of Sunwind;

(ii) Will not violate any provisions of law applicable to Sunwind, any government regulations, or organizational documents, or operating agreements, or any order of any court or agency or government binding on Sunwind, or any indenture, agreement, or other instrument to which Sunwind is a party, or by which any of them or any of their property is bound; and

(iii) Will not be in conflict with, result in a breach of, or constitute (with due notice and/or laps of time) a default under, any such indenture, agreement or other instrument. No authorization, consent, approval, license exemption of or filing or registration with any court or governmental department, commission, board, bureau, agency or instrumentality, domestic or foreign, is or will be necessary to the valid execution, delivery or performance by Sunwind under this Agreement.

(c) Recitals set forth above and incorporated herein are accurate and true.

REPORTING

3. Sunwind agrees as follows:

(a) Reporting: No later than ten (10) days following the end of each calendar quarter, Sunwind shall provide to the Trustee the following:

(i) Quarterly financial statements, including profit and loss, and balance sheets.

(ii) Status of sale of Sunwind or development of the project.

(iii) Sunwind shall permit the Trustee or his designee, upon ten (10) days' notice to Sunwind access to inspect the books and records of any and all of the Sunwind entities, and Sunwind shall cooperate with the Trustee or his designee in connection with the examining, copying, abstracting of any of the information on Sunwind's books, records, files and/or electronically stored data.

#### NEGATIVE COVENANT

1. Sunwind shall not without the express consent of the Trustee, which will not be unreasonably withheld:

(a) Incur any debt outside the ordinary course of business or grant any lien on any of their respective assets to secure any existing debt to any creditor;

(b) Enter into an agreement to sell its assets

(c) Enter into any agreement of merger;

(d) Enter into any agreement that result in a change of control; or

(e) Make distributions to any holder of any equity interest in Sunwind.

#### PAYMENT

(f) Upon release of the funds seized by the Securities Exchange Commission in the amount of \$235,211.30 ("Banterra Bank Funds"), which are proceeds from the advances constituting a portion of the Obligation, Sunwind shall cause those Banterra Bank Funds to be paid to the Trustee to be applied in reduction of the Obligation.

(g) Unless otherwise agreed, the Obligation shall be paid in full, along with all accrued interest, upon the occurrence of any of the following:

(a) Sale of an asset or assets of Sunwind, when sufficient funds are paid to Sunwind to satisfy the Obligation in accordance with the payment schedule for the asset sale

(b) Lease or sublease of Sunwind assets

(c) An assignment of any lease or license or permit held by Sunwind

(d) Sunwind entering into a financing transaction, or

(e) Change of control.

#### EVENT OF DEFAULT

(h) The occurrence of one or more of the following events shall constitute an event of default (hereinafter, "Event of Default") under this Agreement, whereupon the Trustee's obligation to forbear from exercising his rights and remedies to enforce the Execution shall immediately cease:

(a) The failure of Sunwind to promptly, punctually or faithfully perform any of the terms and conditions of this Agreement;

(b) The filing of a bankruptcy petition, whether voluntary or involuntary, which is not dismissed within thirty (30) days of its commencement;

(c) The appointment of a Receiver over Sunwind or Sunwind making an assignment for the benefit of creditors or any other out-of-court restructuring agreement;

(d) Failure to pay the Obligation in full by April 30, 2017, or at a time mutually agreed by the Parties as a reasonable extension.

#### REMEDIES

(i) Upon the occurrence of a Termination Event without prior notice or demand, each of which is hereby expressly WAIVED BY SUNWIND, the Trustee's agreement to forbear as set forth in this Agreement shall automatically terminate, and the Trustee may immediately commence enforcing its rights and remedies, at law or in equity, to enforce the Execution.

#### JURISDICTION

(j) Consent to Jurisdiction. The Parties expressly acknowledge that this Agreement shall be executed in counterparts, each of which when so executed and delivered shall be an original, but all of the counterparts taken together shall constitute one and the same instrument. This Agreement shall be governed by and construed in accordance with the internal laws of the Commonwealth of Massachusetts, without regard to conflicts of law principles. Sunwind expressly consents to the jurisdiction of the United States Bankruptcy Court for the District of Massachusetts as the exclusive jurisdiction for resolving any disputes or controversies between the Parties.

#### MISCELLANEOUS

(k) Further assurances. The Parties hereby agree that contemporaneously with the execution of this Agreement and at any times thereafter, upon the request by a Party, the other Party shall execute and deliver all documents, instruments and agreements as required to do all things reasonably necessary or reasonably requested by the Party to assure the other Party that the intent of the Party in entering into this Agreement and the specific terms and conditions are effectuated.

#### NOTICE

(l) All notices, requests, demands and other communications hereunder shall be in writing and directed to the applicable Party at the address indicated below.

If to the Trustee, to:

Stephen B. Darr, Trustee

Huron Consulting Group  
125 Summer Street #1805  
Boston, Massachusetts 02110  
Telephone: 617-226-5500

Email: sdarr@huronconsultinggroup.com

with a copy to:



Harold B. Murphy, Esq.

Charles Bennett, Esq

Murphy & King, P.C.

One Beacon Street

Boston, MA 02108

Telephone: (617) 423-0400

Fax: (617) 423-0498

Email: hmurphy@murphyking.com

If to Sunwind, to:

Joe Craft

825 Main Street, Suite B

Boonville, IN 47601-1885

Telephone: (270) 564-2372

Fax: (812) 641-0478

Email: jcraft@sweglllp.com

with a copy to:

Lauren Dwyer, Esq.

Donoghue Barrett & Singal

One Beacon Street, Suite 1320

Boston, MA 02108

Telephone: (617) 720-5090

Fax: (617) 720-5092

Email: ldwyer@dbslawfirm.com

or at such other addresses as the Parties to whom such notices are directed may have been designated in writing to the other Parties hereto. Each such notice, demand, request, consent, approval, declaration or other communication shall be deemed to have been validly served, given or delivered if the same is served, given or delivered to the relevant Party at the applicable address referenced above by first-class mail, email, or express mail.

#### DESIGNATION OF PARTY FOR ACCEPTANCE OF SERVICE

(m) Sunwind hereby designates Joe Craft, 825 Main Street, Suite B, Boonville, IN 47601-1885 as its agent for service of process, and Sunwind expressly acknowledges that service of process upon Joe Craft is valid and perfected and appropriate notice.

#### COUNSEL

(n) The Parties acknowledge and agree that they have had ample opportunity to consult with counsel of their choice regarding this transaction, have had ample opportunity to review with counsel the terms and provisions of this Agreement, understand and assent to the obligations imposed by this Agreement, and knowingly and willingly enter into this Agreement.

#### SUCCESSORS

(o) Successors to this Agreement shall inure to the benefit of and shall be binding upon the Parties and their respective successors, assigns and legal representatives.

#### INDEMNIFICATION

(p) Sunwind shall indemnify, defend and hold the Trustee harmless of and from any claims brought or threatened against the Trustee by any third party, including without limitation

any trustee or agent acting on behalf of Sunwind, as well as from attorneys' reasonable fees and expenses in connection therewith on account of TelexFree's relationship with Sunwind. In connection therewith, the Trustee may select counsel of his own choice.

WAIVER OF JURY TRIAL

(q) Sunwind makes the following waiver knowingly, voluntarily and intentionally, and understands that the Trustee, in entering into this Agreement, is relying thereon. Sunwind, to the extent otherwise entitled thereto, hereby irrevocably waives any present or future right of Sunwind to a jury in any trial of any case or controversy in which the Trustee is or becomes a party, whether such case or controversy is initiated by or against the Trustee or in which the Trustee is joined as a party litigant, which case or controversy arises out of or is in respect of any relationship between Sunwind and TelexFree and the Trustee.

BANKRUPTCY COURT APPROVAL

(r) The Parties acknowledge that this Settlement Agreement is subject to approval by the United States Bankruptcy Court.

[SIGNATURE PAGE NEXT PAGE]

This Agreement is executed as a sealed instrument as of the date first set forth above.

SUNWIND ENERGY DOYLE  
NORTH, LLC

Witness:

By:

Joe H. Craft  
Name Joe H. Craft  
Title President of General  
Partner

Katherine Knapp  
Print Name: Katherine Knapp

SUNWIND ENERGY SOLUTIONS LLLP

Witness:

By:

Joe H. Craft  
Name Joe H. Craft  
Title President of General  
Partner

Katherine Knapp  
Print Name: Katherine Knapp

SUNWIND ENERGY GROUP LLLP

Witness:

By:

Joe H. Craft  
Name Joe H. Craft  
Title President of General  
Partner

Katherine Knapp  
Print Name: Katherine Knapp


TELEXFREE, LLC,

TELEXFREE, INC, and

STEPHEN B. DARR, AS TRUSTEE

Witness:

By:

  
Stephen Darr as Trustee of the  
Chapter 11 Estates of TelexFree, LLC  
and TelexFree, Inc.

  
Tracy Genzale