

Exclusive Right of Sale Listing Agreement



- 1 This Exclusive Right of Sale Listing Agreement ("Agreement") is between
2* Stephen Darr, Chapter 11 Trustee in Bankruptcy of Telexfree Financial Inc, Telexfree Inc, Telexfree LLC ("Seller")
3* and Blue to Green Realty ("Broker").
- 4 **1. Authority to Sell Property:** Seller gives Broker the EXCLUSIVE RIGHT TO SELL the real and personal
5 property (collectively "Property") described below, at the price and terms described below, beginning
6* 09/01/17 and terminating at 11:59 p.m. on 03/01/18 ("Termination Date"). Upon
7 full execution of a contract for sale and purchase of the Property, all rights and obligations of this Agreement will
8 automatically extend through the date of the actual closing of the sales contract. Seller and Broker acknowledge
9 that this Agreement does not guarantee a sale. This Property will be offered to any person without regard to race,
10 color, religion, sex, handicap, familial status, national origin, or any other factor protected by federal, state, or local
11 law. Seller certifies and represents that she/he/it is legally entitled to convey the Property and all improvements.
- 12 **2. Description of Property:**
13* (a) **Street Address:** 5600 N Flagler Dr #307, West Palm Beach, FL 33407
14
15* Legal Description: 74-43-43-04-25-000-3070 PALM BEACH HOUSE COND UNIT 307
16* ☐ See Attachment
- 17* (b) **Personal Property, including appliances:** washer, dryer, hot water heater, central ac, refrigerator stove, dishwasher,
18* ☐ See Attachment
- 19 (c) **Occupancy:**
20* Property ☐ is ☒ is not currently occupied by a tenant. If occupied, the lease term expires NA
- 21 **3. Price and Terms:** The property is offered for sale on the following terms or on other terms acceptable to Seller:
22* (a) **Price:** \$169,900
23* (b) **Financing Terms:** ☒ Cash ☒ Conventional ☐ VA ☐ FHA ☐ Other (specify) _____
24* ☐ Seller Financing: Seller will hold a purchase money mortgage in the amount of \$NA
25* with the following terms:
26* ☐ Assumption of Existing Mortgage: Buyer may assume existing mortgage for \$NA plus
27* an assumption fee of \$_____ The mortgage is for a term of _____ years beginning in
28* _____, at an interest rate of _____% ☐ fixed ☐ variable (describe) _____.
29* Lender approval of assumption ☐ is required ☐ is not required ☐ unknown. **Notice to Seller:** (1) You may
30 remain liable for an assumed mortgage for a number of years after the Property is sold. Check with your
31 lender to determine the extent of your liability. Seller will ensure that all mortgage payments and required
32 escrow deposits are current at the time of closing and will convey the escrow deposit to the buyer at closing.
33 (2) Extensive regulations affect Seller financed transactions. It is beyond the scope of a real estate licensee's
34 authority to determine whether the terms of your Seller financing agreement comply with all applicable laws or
35 whether you must be registered and/or licensed as a loan originator before offering Seller financing. You are
36 advised to consult with a legal or mortgage professional to make this determination.
- 37* (c) **Seller Expenses:** Seller will pay mortgage discount or other closing costs not to exceed _____% of the
38 purchase price and any other expenses Seller agrees to pay in connection with a transaction.
- 39 **4. Broker Obligations:** Broker agrees to make diligent and continued efforts to sell the Property until a sales
40 contract is pending on the Property.
- 41 **5. Multiple Listing Service:** Placing the Property in a multiple listing service (the "MLS") is beneficial to Seller
42 because the Property will be exposed to a large number of potential buyers. As a MLS participant, Broker is
43 obligated to timely deliver this listing to the MLS. This listing will be promptly published in the MLS unless Seller
44 directs Broker otherwise in writing. Seller authorizes Broker to report to the MLS this listing information and price,
45 terms, and financing information on any resulting sale for use by authorized Board / Association members and
46 MLS participants and subscribers unless Seller directs Broker otherwise in writing.

Seller ☐ and Broker/Sales Associate ☒ acknowledge receipt of a copy of this page, which is Page 1 of 4.
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6. **Broker Authority:** Seller authorizes **Broker** to:

- (a) Advertise the Property as **Broker** deems advisable including advertising the Property on the Internet unless limited in (6)(a)(i) or (6)(a)(ii) below.

(Seller opt-out) (Check one if applicable)

- (i) ☐ Display the Property on the Internet except the street address.
(ii) ☐ Seller does not authorize **Broker** to display the Property on the Internet.

Seller understands and acknowledges that if Seller selects option (ii), consumers who search for listings on the Internet will not see information about the Property in response to their search.

☐ Initials of Seller

- (b) Place appropriate transaction signs on the Property, including "For Sale" signs and "Sold" signs (once Seller signs a sales contract) and use Seller's name in connection with marketing or advertising the Property.
(c) Obtain information relating to the present mortgage(s) on the Property.
(d) Provide objective comparative market analysis information to potential buyers.
(e) (Check if applicable) ☒ Use a lock box system to show and access the Property. A lock box does not ensure the Property's security. Seller is advised to secure or remove valuables. Seller agrees that the lock box is for Seller's benefit and releases **Broker**, persons working through **Broker**, and **Broker's** local Realtor Board / Association from all liability and responsibility in connection with any damage or loss that occurs.
☐ Withhold verbal offers. ☐ Withhold all offers once Seller accepts a sales contract for the Property.
(f) Act as a transaction broker.
(g) **Virtual Office Websites:** Some real estate brokerages offer real estate brokerage services online. These websites are referred to as Virtual Office Websites ("VOWs"). An automated estimate of market value or reviews and comments about a property may be displayed in conjunction with a property on some VOWs. Anyone who registers on a VOW may gain access to such automated valuations or comments and reviews about any property displayed on a VOW. Unless limited below, a VOW may display automated valuations or comments and reviews about this Property.
☐ Seller does not authorize an automated estimate of the market value of the listing (or a hyperlink to such estimate) to be displayed in immediate conjunction with the listing of this Property.
☐ Seller does not authorize third parties to write comments or reviews about the listing of the Property (or display a hyperlink to such comments or reviews) in immediate conjunction with the listing of this Property.

7. **Seller Obligations:** In consideration of **Broker's** obligations, Seller agrees to:

- (a) Cooperate with **Broker** in carrying out the purpose of this Agreement, including referring immediately to **Broker** all inquiries regarding the Property's transfer, whether by purchase or any other means of transfer.
(b) Provide **Broker** with keys to the Property and make the Property available for **Broker** to show during reasonable times.
(c) Inform **Broker** before leasing, mortgaging, or otherwise encumbering the Property.
(d) Indemnify **Broker** and hold **Broker** harmless from losses, damages, costs, and expenses of any nature, including attorney's fees, and from liability to any person, that **Broker** incurs because of (1) Seller's negligence, representations, misrepresentations, actions, or inactions; (2) the use of a lock box; (3) the existence of undisclosed material facts about the Property; or (4) a court or arbitration decision that a broker who was not compensated in connection with a transaction is entitled to compensation from **Broker**. This clause will survive **Broker's** performance and the transfer of title.
(e) Perform any act reasonably necessary to comply with FIRPTA (Section 1445 of the Internal Revenue Code).
(f) Make all legally required disclosures, including all facts that materially affect the Property's value and are not readily observable or known by the buyer. ~~Seller certifies and represents that Seller knows of no such material facts (local government building code violations, unobservable defects, etc.) other than the following:~~

Seller will immediately inform **Broker** of any material facts that arise after signing this Agreement.

- (g) Consult appropriate professionals for related legal, tax, property condition, environmental, foreign reporting requirements, and other specialized advice.

8. **Compensation:** Seller will compensate **Broker** as specified below for procuring a buyer who is ready, willing, and able to purchase the Property or any interest in the Property on the terms of this Agreement or on any other terms acceptable to Seller. Seller will pay **Broker** as follows (plus applicable sales tax):

- (a) 6 % of the total purchase price plus \$289.00 Trans Fee OR \$, no later than the date of closing specified in the sales contract. ~~However, closing is not a prerequisite for Broker's fee being earned.~~
(b) ~~NA (\$ or %) of the consideration paid for an option, at the time an option is created. If the option is exercised, Seller will pay Broker the Paragraph 8(a) fee, less the amount Broker received under this subparagraph.~~

Seller ☐ and Broker/Sales Associate ☐

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- (c) 10 (\$ or %) of gross lease value as a leasing fee, on the date **Seller** enters into a lease or agreement to lease, whichever is earlier. This fee is not due if the Property is or becomes the subject of a contract granting an exclusive right to lease the Property.
- (d) **Broker's** fee is due in the following circumstances: (1) If any interest in the Property is transferred, whether by sale, lease, exchange, governmental action, bankruptcy, or any other means of transfer, regardless of whether the buyer is secured by **Seller**, **Broker**, or any other person. (2) If **Seller** refuses or fails to sign an offer at the price and terms stated in this Agreement, defaults on an executed sales contract, or agrees with a buyer to cancel an executed sales contract. (3) If, within 180 days after Termination Date ("Protection Period"), **Seller** transfers or contracts to transfer the Property or any interest in the Property to any prospects with whom **Seller**, **Broker**, or any real estate licensee communicated regarding the Property before Termination Date. However, no fee will be due **Broker** if the Property is relisted after Termination Date and sold through another broker.
- (e) **Retained Deposits:** As consideration for **Broker's** services, **Broker** is entitled to receive Zero % (50% if left blank) of all deposits that **Seller** retains as liquidated damages for a buyer's default in a transaction, not to exceed the Paragraph 8(a) fee.

9. **Cooperation with and Compensation to Other Brokers: Notice to Seller:** ~~The buyer's broker, even if compensated by Seller or Broker, may represent the interests of the buyer. Broker's office policy is to cooperate with all other brokers except when not in Seller's best interest and to offer compensation in the amount of~~ ☒ 3 % of the purchase price or \$_____ to a single agent for the buyer; ☒ 3 % of the purchase price or \$_____ to a transaction broker for the buyer; and ☒ 3 % of the purchase price or \$_____ to a broker who has no brokerage relationship with the buyer. ☐ None of the above. (If this is checked, the Property cannot be placed in the MLS.)

10. **Brokerage Relationship:** **Broker** will act as a transaction broker. **Broker** will deal honestly and fairly; will account for all funds; will use skill, care, and diligence in the transaction; will disclose all known facts that materially affect the value of the residential property which are not readily observable to the buyer; will present all offers and counteroffers in a timely manner unless directed otherwise in writing; and will have limited confidentiality with **Seller** unless waived in writing.

11. **Conditional Termination:** ~~At Seller's request, Broker may agree to conditionally terminate this Agreement. If Broker agrees to conditional termination, Seller must sign a withdrawal agreement, reimburse Broker for all direct expenses incurred in marketing the Property, and pay a cancellation fee of \$289.00 plus applicable sales tax. Broker may void the conditional termination, and Seller will pay the fee stated in Paragraph 8(a) less the cancellation fee if Seller transfers or contracts to transfer the Property or any interest in the Property during the time period from the date of conditional termination to Termination Date and Protection Period, if applicable.~~

Massachusetts

12. **Dispute Resolution:** This Agreement will be construed under ~~Florida law. All controversies, claims, and other matters in question between the parties arising out of or relating to this Agreement or the breach thereof will be settled by first attempting mediation under the rules of the American Mediation Association or other mediator agreed upon by the parties. If litigation arises out of this Agreement, the prevailing party will be entitled to recover reasonable attorney's fees and costs, unless the parties agree that disputes will be settled by arbitration as follows:~~ **Arbitration:** By initialing in the space provided, **Seller** Sales Associate and **Broker** agree that disputes not resolved by mediation will be settled by neutral binding arbitration in the county in which the Property is located in accordance with the rules of the American Arbitration Association or other arbitrator agreed upon by the parties. Each party to any arbitration (or litigation to enforce the arbitration provision of this Agreement or an arbitration award) will pay its own fees, costs, and expenses, including attorney's fees, and will equally split the arbitrator's fees and administrative fees of arbitration.

13. **Miscellaneous:** This Agreement is binding on **Seller's** and **Broker's** heirs, personal representatives, administrators, successors, and assigns. **Broker** may assign this Agreement to another listing office. This Agreement is the entire agreement between **Seller** and **Broker**. No prior or present agreements or representations will be binding on **Seller** or **Broker** unless included in this Agreement. Electronic signatures are acceptable and will be binding. Signatures, initials, and modifications communicated by facsimile will be considered as originals. The term "buyer" as used in this Agreement includes buyers, tenants, exchangors, optionees, and other categories of potential or actual transferees.

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157* **14. Additional Terms:** Unit sold As Is

158 All arrears owed to PBH to be paid out of proceeds of sale (if any)

159 Unit includes one parking space (uncovered) #59 and storage bin #166

160 Sale subject to Bankruptcy Court approval

161 Disputes subject to exclusive jurisdiction of Bankruptcy Court for District of Massachusetts

162 Fee conditional on sale closing

163 Broker fee of 3% on any price increase from bankruptcy counteroffer process.

164 _____

165 _____

166 _____

167 _____

168 _____

169 _____

170* **Seller's Signature:** _____ **Date:** _____

171* Home Telephone: _____ Work Telephone: _____ Facsimile: _____

172* Address: _____


173* Email Address: _____

174* **Seller's Signature:** _____ **Date:** _____

175* Home Telephone: _____ Work Telephone: _____ Facsimile: _____

176* Address: _____

177* Email Address: _____

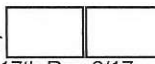
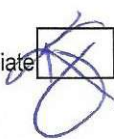

178* **Authorized Sales Associate or Broker:**  **Date:** 8/18/17

179* Brokerage Firm Name: Blue to Green Realty Telephone: 561.707.3773

180* Address: 500 Australian Ave, #600, West Palm Beach, FL 33407

181* Copy returned to **Seller** on _____ by ☐ email ☐ facsimile ☐ mail ☐ personal delivery.

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UNITED STATES BANKRUPTCY COURT
DISTRICT OF MASSACHUSETTS

In Re:

TELEXFREE, LLC ,
TELEXFREE, INC.,
TELEXFREE FINANCIAL, INC.,

Debtors.

Chapter 11

Case No. 14-40987-MSH

Case No. 14-40988-MSH

Case No. 14-40989-MSH

Jointly Administered

DECLARATION REGARDING ELECTRONIC FILING

I, Kim Fatta, hereby declare under penalty of perjury that all of the information contained in the *Affidavit of Kim Fatta in Support of Application of Trustee to Employ Real Estate Broker*, filed electronically is true and correct. I understand that this DECLARATION is to be filed with the Clerk of Court electronically concurrently with the electronic filing of the Affidavit. I understand that failure to file this DECLARATION may cause the Affidavit to be struck and any request contained or relying thereon to be denied, without further notice.

I further understand that pursuant to the Massachusetts Electronic Filing Local Rule (MEFLR)-7(a) all paper documents containing original signatures executed under the penalties of perjury and filed electronically with the Court are the property of the bankruptcy estate and shall be maintained by the authorized CM/ECF Registered User for a period of five (5) years after the closing of this case.

Dated: August 15, 2017

Signed: _____

Kim Fatta

731437

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MASSACHUSETTS

In Re:

TELEXFREE, LLC ,
TELEXFREE, INC.,
TELEXFREE FINANCIAL, INC.,

Debtors.

Chapter 11

Case No. 14-40987-MSH

Case No. 14-40988-MSH

Case No. 14-40989-MSH

Jointly Administered

**AFFIDAVIT OF KIM FATTA IN SUPPORT OF APPLICATION OF
TRUSTEE TO EMPLOY REAL ESTATE BROKER**

I, Kim Fatta, hereby depose and state as follows:

1. I am a licensed real estate broker in the State of Florida with Blue to Green Realty (“B2G Realty”). I make this affidavit in support of the *Application by Chapter 11 Trustee to Employ Real Estate Broker* (the “Application”) and pursuant to Bankruptcy Code §327 and MLBR 2014-1, which requires that professionals employed by a trustee represent, to the best of his or her knowledge, no interest adverse to the estate concerning matters upon which they are to be engaged.

2. To the best of my knowledge, neither I nor any member of my firm, represents any interest adverse to TelexFree, LLC, TelexFree, Inc., TelexFree Financial, Inc. or Stephen Darr as Chapter 11 Trustee.

3. To the best of my knowledge, neither myself, nor my firm has no connection to the Debtors, the Trustee, the estates, the United States Trustee or any person employed in the office of the United States Trustee.

4. To the best of my knowledge, my firm and I are disinterested persons within the meaning of §101(14) of the Bankruptcy Code.

5. It is customary in a co-brokerage agreement to equally divide any commission or other compensation earned between the co-brokers. Except as may be required under any co-brokerage agreement, any compensation, fee or allowance which may be claimed by me or my company will belong wholly to my firm, and will not be divided, shared or pooled, directly or indirectly, with any other person or business.

6. I shall amend this statement immediately upon learning that (a) any of the within representations are incorrect, or (b) there is any change of circumstances thereto.

I declare under penalty of perjury that the foregoing is true and correct.

DATED: August 14¹⁸, 2017



Kim Fatta

731204