

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

APPLICATION BY CHAPTER 11 TRUSTEE TO EMPLOY REAL ESTATE BROKER
(124 WOODMOOR COURT)

To the Honorable Melvin S. Hoffman, Chief United States Bankruptcy Judge:

Stephen B. Darr, the duly appointed Chapter 11 trustee (the "Trustee") of the bankruptcy estates (the "Estates") of TelexFree, LLC, TelexFree, Inc., and TelexFree Financial, Inc. (collectively, the "Debtors" or "TelexFree"), respectfully requests authority to retain Terry Keller and Moecker Realty, Inc. ("Moecker") as real estate broker to market and sell the real property located at 124 Woodmoor Ct., Davenport, Florida (the "Real Property"). In support of this application, the Trustee states as follows:

Background

1. On April 13, 2014 (the "Petition Date"), the Debtors filed voluntary petitions for relief under Chapter 11 of the United States Bankruptcy Code ("Bankruptcy Code") with the United States Bankruptcy Court for the District of Nevada.
2. The Debtors initially operated as debtors-in-possession pursuant to Sections 1107 and 1108 of the Bankruptcy Code.



3. On the Petition Date, the Debtors filed a motion for joint administration of the cases, with TelexFree, LLC designated as the lead case. By order dated April 24, 2014, the motion for joint administration was approved.

4. On May 6, 2014, the Court allowed the motion by the Securities and Exchange Commission to change the venue of the cases to the United States Bankruptcy Court for the District of Massachusetts (the "Court"). The cases were transferred to the Court on May 9, 2014.

5. On May 30, 2014, this Court allowed the motion by the Office of the United States Trustee's to appoint a Chapter 11 trustee, and the Trustee was appointed on June 6, 2014.

6. On October 7, 2015, the Trustee filed his *Motion by Chapter 11 Trustee for Entry of Order Finding that Debtors Engaged in Ponzi and Pyramid Scheme and Related Relief* (the "Ponzi Motion"). By order dated November 25, 2015, as amended on December 21, 2015, the Court found the Debtors to have engaged in a Ponzi and pyramid scheme and that this finding was the law of the case.

7. On or about April 1, 2016, the Trustee commenced an action against a series of defendants for their involvement in the TelexFree scheme, including Sanderley Rodrigues [A.P. No. 16-4032].

8. On or about April 25, 2017, the Trustee filed a motion to approve a settlement reached involving Rodrigues and the Securities and Exchange Commission.

9. On or about May 17, 2017, the settlement was approved by the Court.

10. As part of the settlement, Rodrigues conveyed any right, title, and interest he and Five Star Investments & Properties, LLC had in the Real Property to the Trustee. The Real Property is an asset of the bankruptcy estates.

11. Upon information and belief, the Real Property is unencumbered.

Relief Requested

12. The Trustee now seeks to retain Moecker to market and sell the Real Property. Moecker is a licensed brokerage firm in the State of Florida with extensive experience in selling residential real property in the Davenport area.

13. Pursuant to Section 327 of the Bankruptcy Code, the Trustee may employ professionals to assist in the administration of the cases.

14. The Trustee proposes to employ Moecker pursuant to the terms of the retention agreement which is attached to this motion as Exhibit A (the "Listing Agreement").¹ In accordance with the Listing Agreement, the Trustee grants to Moecker, subject to the approval of the Court, the exclusive right to list and sell the Real Property for a period of approximately six months. The Listing Agreement provides, among other things, that:

- a. The listing price for the Real Property shall be \$475,000;
- b. Upon the closing of a sale of the Real Property, Moecker shall be entitled to a commission equal to six percent (6%) of the purchase price of the Real Property, as set forth in the sale motion, plus a \$295 transaction fee, as well as a commission equal to three percent (3%) of any increase in the purchase price as a result of the bankruptcy counteroffer process ("Commission");
- c. The Commission shall be payable if the Real Property is sold within five (5) months following the termination of the Listing Agreement, if the Real Property is sold, leased or exchanged to a party that was introduced to the Real Property through Moecker.

15. Any cooperating broker or facilitator acting on behalf of the buyer of the Real Property may be entitled to a share of any commission, to be paid by Moecker from its commission.

¹ The description of the Listing Agreement in this application is for summary purposes only. In the event of a discrepancy between the description in this motion and the Listing Agreement, the terms of the Listing Agreement shall control.

16. Any commission to Moecker shall be payable solely from the proceeds of a sale and upon the closing of such sale as may be applicable. The Trustee seeks authority to pay Moecker the Commission pursuant to the Listing Agreement and this Application without further authority of this Court.

17. The retention of Moecker is necessary and appropriate under the circumstances.

DISINTERESTEDNESS OF MOECKER

18. In connection with this application, Moecker has prepared and the Trustee has filed the *Affidavit of Terry Keller in support of the Application by Chapter 11 Trustee to Employ Real Estate Broker* (the "Affidavit"), in accordance with Federal Rules of Bankruptcy Procedure 2014 and 2016, and MLBR 2014-1 and 2016-1, and has agreed to supplement such Affidavit as is necessary.

19. To the best of Moecker's knowledge, neither Mr. Keller nor Moecker has represented, nor does either now represent, any interest adverse to the Trustee or the estates with respect to the matters on which Moecker is to be retained. Mr. Keller and Moecker are otherwise disinterested persons with respect to the Trustee, as that term is defined in the Bankruptcy Code.

20. Mr. Keller will further amend or supplement the Affidavit to any extent necessary.

WHEREFORE, the Trustee respectfully requests that the Court enter an order:

- a. Authorizing the Trustee to retain Moecker as a real estate broker to market and sell the Real Property;
- b. Authorizing the Trustee to pay Moecker the Commission, without further order of the Court, upon consummation of a sale of the Real Property; and
- c. Providing such other and further relief as may be just.

STEPHEN B. DARR, CHAPTER 11 TRUSTEE,
By his attorneys,

/s/ Andrew G. Lizotte

Harold B. Murphy (BBO #362610)

Andrew G. Lizotte (BBO #559609)

Murphy & King, Professional Corporation

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Boston, MA 02108

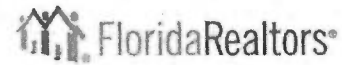
Telephone: (617) 423-0400

Facsimile: (617) 423-0498

Email: ALizotte@murphyking.com

Dated: August 30, 2017
732131

Exclusive Brokerage Listing Agreement



This Exclusive Brokerage Listing Agreement ("Agreement") is between

STEPHEN DARR, as Chapter 11 Trustee of Telexfree, LLC, Telexfree, Inc., and Telexfree Financial, Inc. ("Seller")

and Moecker Realty, Inc. ("Broker").

1. Authority to Sell Property: Seller gives Broker the right to be the EXCLUSIVE BROKER in the sale of the real and personal property (collectively "Property") described below, at the price and terms described below, beginning August 29, 2017 and terminating at 11:59 p.m. on February 29, 2018 ("Termination Date"). Seller reserves the right to sell the Property directly to a buyer without the assistance of any real estate licensee and, if successful, does not owe Broker a commission. Upon full execution of a contract for sale and purchase of the Property, all rights and obligations of this Agreement will automatically extend through the date of the actual closing of the sales contract. Seller and Broker acknowledge that this Agreement does not guarantee a sale. This Property will be offered to any person without regard to race, color, religion, sex, handicap, familial status, national origin, or any other factor protected by federal, state, or local law. Seller certifies and represents that she/he/it is legally entitled to convey the Property and all improvements.

2. Description of Property:

(a) **Street Address:** 124 WOODMOOR CT, DAVENPORT, FL 33837

Legal Description: CHELSEA WOODS AT PROVIDENCE PB 132 PGS 3-7 LOT 36

☐ See Attachment

(b) **Personal Property, including appliances:**

☐ See Attachment

(c) **Occupancy:**

Property ☐ is ☒ is not currently occupied by a tenant. If occupied, the lease term expires

3. Price and Terms: The property is offered for sale on the following terms or on other terms acceptable to Seller:

(a) **Price:** \$475,000.00

(b) **Financing Terms:** ☒ Cash ☒ Conventional ☒ VA ☒ FHA ☐ Other (specify)

☐ **Seller Financing:** Seller will hold a purchase money mortgage in the amount of \$ with the following terms:

☐ **Assumption of Existing Mortgage:** Buyer may assume existing mortgage for \$ plus an assumption fee of \$. The mortgage is for a term of years beginning in

at an interest rate of % ☐ fixed ☐ variable (describe) Lender approval of assumption ☐ is required ☐ is not required ☐ unknown. **Notices to Seller:** (1) You may remain liable for an assumed mortgage for a number of years after the Property is sold. Check with your lender to determine the extent of your liability. Seller will ensure that all mortgage payments and required escrow deposits are current at the time of closing and will convey the escrow deposit to the buyer at closing. (2) Extensive regulations affect Seller financed transactions. It is beyond the scope of a real estate licensee's authority to determine whether the terms of your Seller financing agreement comply with all applicable laws or whether you must be registered and/or licensed as a loan originator before offering Seller financing. You are advised to consult with a legal or mortgage professional to make this determination.

(c) **Seller Expenses:** Seller will pay mortgage discount or other closing costs not to exceed % of the purchase price and any other expenses Seller agrees to pay in connection with a transaction.

4. Broker Obligations: Broker agrees to make diligent and continued efforts to sell the Property until a sales contract is pending on the Property.

5. Multiple Listing Service: Placing the Property in a multiple listing service (the "MLS") is beneficial to Seller because the Property will be exposed to a large number of potential buyers. As a MLS participant, Broker is obligated to timely deliver this listing to the MLS. This listing will be promptly published in the MLS unless Seller directs Broker otherwise in writing. Seller authorizes Broker to report to the MLS this listing information and price, terms, and financing information on any resulting sale for use by authorized Board / Association members and MLS participants and subscribers unless Seller directs Broker otherwise in writing.

Seller () () and Broker/Sales Associate (TK) () acknowledge receipt of a copy of this page, which is Page 1 of 4.

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Serial#: 036756-000150-4098602

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- (c) 6% (\$ 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, with the assistance of any real estate licensee. (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 150 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 Broker or any other 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 0% (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: (check whichever applies) Broker will ☒ act as a transaction broker, ☐ act as a single agent of Seller, ☐ act as a single agent of Seller with consent to transition to transaction broker, or ☐ have no brokerage relationship with Seller.

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 \$_____ 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.

14. Additional Terms: Unit is sold as is.

Sale subject to Bankruptcy Court approval.

Disputes subject to exclusive jurisdiction of Bankruptcy Court for Dist. of Massachusetts.

Fee conditioned on sale closing.

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

Seller (_____) (_____) and Broker/Sales Associate (_____) (_____) acknowledge receipt of a copy of this page, which is Page 3 of 4.

162* Seller's Signature: _____ Date: _____
163* Home Telephone: _____ Work Telephone: _____ Facsimile: _____
164* Address: _____ c/o Murphy & King, P.C., One Beacon Street. 21st Fl, Boston, MA 02108
165* Email Address: _____
166* Seller's Signature: _____ Date: _____
167* Home Telephone: _____ Work Telephone: _____ Facsimile: _____
168* Address: _____
169* Email Address: _____
170* Authorized Sales Associate or Broker: *W. C. Filer* Date: 8-30-17
171* Brokerage Firm Name: _____ Moecker Realty, Inc. Telephone: 954-252-2893
172* Address: _____ 1883 Marina Mile Blvd., Suite 106, Fort Lauderdale, FL 33315

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

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Seller (____) (____) and Broker/Sales Associate (TE) (____) acknowledge receipt of a copy of this page, which is Page 4 of 4.

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UNITED STATES BANKRUPTCY COURT
DISTRICT OF MASSACHUSETTS

In Re:)	
)	
)	Chapter 11
)	
TELEXFREE, LLC ,)	Case No. 14-40987-MSH
TELEXFREE, INC.,)	Case No. 14-40988-MSH
TELEXFREE FINANCIAL, INC.,)	Case No. 14-40989-MSH
)	
Debtors.)	Jointly Administered
)	

**AFFIDAVIT OF TERRY KELLER IN SUPPORT OF APPLICATION OF
TRUSTEE TO EMPLOY REAL ESTATE BROKER**

I, Terry Keller, hereby depose and state as follows:

1. I am a licensed real estate broker in the State of Florida with Moecker Realty, Inc. ("Moecker"). 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.

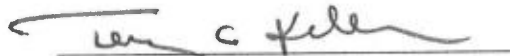
3. To the best of my knowledge, neither myself, nor my firm has no connection to the Debtors, the Trustee, the estates, the United States Trustee or any person employed in the office of the United States Trustee.

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.


Terry Keller

DATED: August 30, 2017

732155

**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, Terry Keller, hereby declare under penalty of perjury that all of the information contained in the *Affidavit of Terry Keller 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 30, 2017

Signed: _____

Terry Keller

732153

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MASSACHUSETTS
CENTRAL DIVISION

In Re:)	
)	
)	Chapter 11
)	
TELEXFREE, LLC ,)	Case No. 14-40987-MSH
TELEXFREE, INC.,)	Case No. 14-40988-MSH
TELEXFREE FINANCIAL, INC.,)	Case No. 14-40989-MSH
)	
Debtors.)	Jointly Administered
)	

CERTIFICATE OF SERVICE

I, Andrew G. Lizotte, hereby certify that on August 30, 2017, I caused to be served a copy of the *Application by Chapter 11 Trustee to Employ Real Estate Broker (124 Woodmoor Court)* via operation of this Court's CM/ECF System, by electronic mail and/or by first class mail, postage prepaid to the attached service list as indicated.

/s/ Andrew G. Lizotte
Andrew G. Lizotte (BBO #559609)
Murphy & King, Professional Corporation
One Beacon Street
Boston, MA 02108
Telephone: (617) 423-0400
Facsimile: (617) 423-0498
Email: ALizotte@murphyking.com

Dated: August 30, 2017
732172

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