Docket #0001 Date Filed: 3/7/2016

**UNITED STATES BANKRUPTCY COURT**
**DISTRICT OF MASSACHUSETTS**
**CENTRAL DIVISION**

| | |
|---|---|
| In re:<br><br>TELEXFREE, LLC,<br>TELEXFREE, INC. and<br>TELEXFREE FINANCIAL, INC.,<br><br>Debtors. | Chapter 11 Cases<br><br>14-40987-MSH<br>14-40988-MSH<br>14-40989-MSH<br><br>Jointly Administered |
| STEPHEN DARR AS HE IS THE TRUSTEE OF THE CHAPTER 11 ESTATES OF TELEXFREE, LLC, TELEXFREE, INC. and TELEXFREE FINANCIAL, INC.,<br><br>Plaintiff,<br><br>v.<br><br>TELEXELECTRIC, LLLP,<br>TELEXELECTRIC LP,<br>SUNWIND ENERGY DOYLE NORTH LLC,<br>SUNWIND ENERGY SOLUTIONS DOYLE NORTH, LLC, SUNWIND ENERGY SOLUTIONS LLLP, and SUNWIND ENERGY GROUP LLLP,<br><br>Defendants,<br><br>and<br><br>SUNWIND ENERGY DOYLE NORTH LLC,<br>SUNWIND ENERGY SOLUTIONS DOYLE NORTH, LLC, SUNWIND ENERGY SOLUTIONS LLLP, and SUNWIND ENERGY GROUP LLLP,<br><br>Reach and Apply/Trustee Defendants. | Adversary Proceeding No. |

**COMPLAINT WITH PRAYERS**
**FOR INJUNCTIVE RELIEF**



## Introduction

Stephen Darr is the duly appointed and acting Trustee (the "Trustee") of the Chapter 11 Estates of TelexFree, Inc., TelexFree, LLC and TelexFree Financial, Inc. (collectively, "TelexFree" or the "Debtors").

As Trustee, Mr. Darr brings this adversary proceeding to recover money lent by the Debtors to the Defendants or, alternatively, property fraudulently transferred by the Debtors to the Defendants. The Trustee further seeks to reach and apply monies due from the Reach and Apply/Trustee Defendants to the Defendants in satisfaction of obligations owed by the Defendants to the Debtors.

## Preliminary Statement

1. This bankruptcy case involves a massive Ponzi-pyramid scheme operated by TelexFree, Inc., TelexFree Financial, Inc. and TelexFree, LLC. The Debtors while purportedly a "multi-level marketing" company in the business of selling telephone service plans that use "voice over internet" ("VoIP") technology, in fact were in the business of recruiting participants on the promise of substantial returns. From approximately April 2012 to April 2014, the Debtors and their two owners, James Merrill and Carlos Wanzeler, assisted by various company insiders and promoters, raised hundreds of millions of dollars from hundreds of thousands of victims worldwide, including many members of the Brazilian and Dominican immigrant communities in Massachusetts, through a Ponzi-pyramid scheme.

2. On April 13, 2014, faced with investigations by state and federal authorities in Massachusetts, the Debtors filed for bankruptcy in Nevada under Chapter 11. Subsequently, on May 6, 2014, the Debtors' cases were transferred to the United States Bankruptcy Court for the District of Massachusetts.

3. On May 30, 2014, this Court allowed the motion of the United States Trustee for the appointment of a Chapter 11 trustee. The Trustee was appointed on June 6, 2014.

4. In late 2013 and early 2014, the Debtors caused $2,612,829.00 to be transferred to TelexElectric LLLP ("TelexElectric") for the purpose of TelexElectric making loans to or investments in the Sunwind Energy entities. TelexElectric is owned by the principals of TelexFree, James Merrill and Carlos Wanzeler, along with Carlos Costa, also a principal or former principal of the Debtors. Joe Craft, the Debtors' former Chief Financial Officer, is believed to have an interest in the Sunwind Entities. It is these transfers the Trustee seeks to recover.

**Jurisdiction**

5. This adversary proceeding is brought pursuant to §§ 544, 547, 548, 550 and 551 of Title 11 of the United States Code and the Massachusetts Fraudulent Conveyance Act for the recovery of loans to or money had and received by TelexElectric and Sunwind.

6. This Court has jurisdiction over the adversary proceeding pursuant to 28 U.S.C. § 1334, 28 U.S.C. § 157, this adversary proceeding being a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A)(F)(H) and (O).

7. Venue in this district is proper under 28 U.S.C. § 1409.

**Plaintiff**

8. The Plaintiff is Stephen Darr as he is the duly appointed and acting Trustee of the Chapter 11 Estates of the Debtors, having been so appointed on June 6, 2014. The Trustee has a principal place of business in Boston, Massachusetts.

**Defendant**

9. The Defendant TelexElectric LP is a limited partnership formed under the laws of the State of Nevada, having had a principal place of business at 3960 Howard Hughes Parkway, Suite 500, Las Vegas, Nevada. Its general partners are believed to be James Merrill, Carlos Wanzeler and Carlos Costa.

10. The Defendant TelexElectric LLLP is a limited liability limited partnership formed under the laws of the State of Nevada, having had a principal place of business at 3960 Howard Hughes Parkway, Suite 500, Las Vegas, Nevada. Wanzeler, Merrill and Costa are each believed to hold a 33% interest in TelexElectric LLLP. (TelexElectric LP and TelexElectric LLLP are collectively referred to as "TelexElectric."). TelexElectric, LLLP was formed by Joseph H. Craft.

11. The Defendant and Reach and Apply Defendant Sunwind Energy Doyle North LLC is a limited liability corporation formed under the laws of the State of Kansas, having a principal place of business at 825 E. Main Street, Boonville, Indiana, c/o Joe H. Craft.

12. The Defendant and Reach and Apply Defendant Sunwind Energy Solutions Doyle North LLC is a limited liability corporation formed under the laws of the State of Kansas, having a principal place of business at 825 E. Main Street, Boonville, Indiana, c/o Joseph H. Craft.

13. The Defendant and Reach and Apply Defendants Sunwind Energy Solutions LLLP and Sunwind Energy Group LLLP are a limited liability partnership formed under the laws of the State of Nevada having a principal place of business at 825 E. Main Street, Boonville, Indiana, c/o Joe H. Craft. (Sunwind Energy Doyle North LLC, Sunwind Energy Solutions Doyle North LLC, Sunwind Energy Solutions LLLP, and Sunwind Energy Group LLLP are collectively referred to as the "Sunwind Entities.")

## Debtors

14. TelexFree, Inc. is a Massachusetts corporation with its principal place of business in Marlborough, Massachusetts.

15. TelexFree, LLC is a Nevada limited liability company with its principal place of business in Marlborough, Massachusetts. It was formed by Merrill, Wanzeler and Carlos Costa (a resident of Brazil) in July 2012, and it registered to do business in Massachusetts in April 2013 with its principal place of business in Marlborough, Massachusetts.

16. TelexFree Financial, Inc. is a corporation organized under the laws of the State of Florida with its principal place of business also in Marlborough, Massachusetts.

## Statement of Facts

### Background

17. The Debtors were an illegal Ponzi-pyramid scheme. The basic features of the Debtors' scheme had all the hallmarks of a Ponzi-pyramid scheme, such as: (1) members were promised unusually high returns – over 200% per year – for doing virtually nothing (except posting meaningless internet ads); (2) members were promised bonuses if they recruited new members, who would do virtually nothing except post ads and recruit new members (and so on and so on); and (3) there was an actual VoIP service, but members did not have to sell the service in order to get paid. Because members were strongly encouraged to recruit new members and were not required to sell the VoIP service, the inescapable inference is that TelexFree was using funds from later members to pay earlier members.

18. On November 25, 2015, the Court on motion by the Trustee entered an Order, as amended on December 21, 2015, finding that the Debtors were engaged in a Ponzi scheme and that ruling was the law of the case in each of the jointly administrated cases.

**Loans to the Sunwind Energy Entities**

19. In the fall of 2013, TelexFree LLC entered into discussions with Sunwind Energy Group LLLP in relation to TelexFree LLC making a loan to or equity investment in the Sunwind Entities in the approximate amount of two million five hundred thousand dollars ($2,500,000.00).

20. The discussions were reflected in a document captioned "AGREEMENT" and dated November 4, 2013, a copy of which is annexed as Exhibit 1.

21. At some time after November 4, 2013, TelexElectric LLLP was formed and the terms of the Agreement were changed so that TelexFree LLC would advance monies to TelexElectric LLLP, an entity that Messrs. Wanzeler and Merrill and Costa owned and controlled. The revised Agreement provided TelexElectric would make the loan to the Sunwind Entities.

22. The terms of the advances by TelexElectric to the Sunwind Entities are reflected in a document captioned Summary of Principal Loan Terms and Conditions, a copy of which is annexed as Exhibit 2. Consistent with the Agreement, forms of a Loan Agreement and a Note were prepared and dated as of November 7, 2013. While the Trustee has obtained an unsigned copy of the Loan Agreement and Note, the Trustee has been unable to determine if the Loan Agreement, Note and related documents were executed. A copy of the unsigned Loan Agreement, Note and Schedule is annexed hereto as Exhibit 3.

23. The Trustee has obtained a document captioned Sunwind Entities consisting of a balance sheet dated November 30, 2013, a copy of which is annexed as Exhibit 4, reflecting an investment by TelexFree LLC in the Sunwind Entities of $360.000.00.

24. The Trustee has also obtained a document captioned Sunwind Energy Doyle North LLC's general ledger, a copy of which is annexed as Exhibit 5, reflecting monies due TelexElectric aggregating two million eighteen thousand three hundred fifty-nine dollars ($2,018,359.00) as of December 31, 2013.

25. Based on the information available to the Trustee, TelexElectric LLLP had no assets, and money lent by TelexElectric LLLP to the Sunwind Entities was provided from funds transferred to TelexElectric by the Debtors.

26. The Trustee has been unable to locate any loan agreements or other documents between the Debtors and TelexElectric LLLP documenting the terms of the loan between the Debtors and TelexElectric LLLP. The Trustee, however, has obtained a document captioned TelexFree LLC Balance Sheet as of December 31, 2013, a copy of which is annexed as Exhibit 6, which reflects a loan to TelexElectric LLLP in the amount of two million twenty-two thousand three hundred twenty-nine dollars ($2,022,329.00).

27. Based upon information obtained by the Trustee, on February 5, 2014, TelexElectric advanced $390,000 to the Sunwind Entities. On February 19, 2014, TelexElectric advanced $200,500 to the Sunwind Entities. A copy of the document evidencing the transfer is annexed as Exhibit 7.

28. On information and belief, the funds advanced by TelexElectric to the Sunwind Entities on February 5, 2014 and February 19, 2014 were from funds advanced by TelexFree LLC to TelexElectric LLLP.

**TelexFree LLC's Investment in the Sunwind Entities**

29. In addition to the loan from TelexFree LLC to TelexElectric to fund TelexElectric's loan to the Sunwind Entities, TelexFree either paid money directly to the

Sunwind Entities to acquire an interest in the Sunwind Entities of approximately 26% or advanced money to TelexElectric for TelexElectric to acquire a 26% interest in the Sunwind Entities.

30. The Sunwind Entities balance sheet dated as of November 30, 2013 (Exhibit 4 annexed), reflects an "Equity Contribution" from TelexFree LLC in the amount of $360,000.

31. Further, the document captioned "Agreement" dated November 4, 2013, between TelexFree LLC and the Sunwind Entities (Exhibit 1 annexed), reflects an agreement to grant TelexFree a 25% equity interest in the project.

32. The Trustee has obtained a copy of an unexecuted document captioned Purchase Agreement, dated December 2, 2013, which the Trustee believes was executed by a representative of the Sunwind Entities, reflecting the purchase by TelexElectric of 26.572188% of all issued and outstanding shares of the Sunwind Entities. A copy of the document is annexed as Exhibit 8.

**COUNT ONE**

**TelexFree LLC Loan to TelexElectric LLLP**

33. The Trustee realleges and repeats the allegations contained in paragraphs 1 through 32 above and by reference incorporates them herein.

34. TelexElectric LLLP owes TelexFree LLC the sum of $2,612,329 as a result of a loan made by TelexFree LLC to TelexElectric LLLP.

**COUNT TWO**

**Money Had and Received Due from TelexElectric LLLP to TelexFree LLC**

35. The Trustee realleges and repeats the allegations contained in paragraphs 1 through 34 above and by reference incorporates them herein.

36. TelexElectric LLLP owes TelexFree LLC the sum of $2,612,329 for money had and received by TelexElectric LLLP from TelexFree LLC.

**COUNT THREE**

**Money Due on Account Annexed**

37. The Trustee realleges and repeats the allegations contained in paragraphs 1 through 36 above and by reference incorporates them herein.

38. TelexElectric LLLP owes TelexFree LLC the sum of $2,612,329 according to the account annexed as Exhibit A.

**COUNT FOUR**

**Fraudulent Transfer – 11 U.S.C. §§ 548, 550 and 551 –
Against TelexElectric LLLP for Funds Transferred from TelexFree LLC**

39. The Trustee realleges and repeats the allegations contained in paragraphs 1 through 38 above and by reference incorporates them herein.

40. Each of the transfers identified on Exhibit A annexed hereto were made on or within two years before the commencement of these Chapter 11 cases.

41. Each of the transfers identified on Exhibit A annexed hereto were made with the actual intent to hinder, delay or defraud some or all of TelexFree LLC's then existing and/or future creditors.

42. Each of the transfers identified on Exhibit A constitutes a fraudulent transfer avoidable by the Trustee pursuant to § 548(a)(1)(A) of the Bankruptcy Code and recoverable from the Defendant pursuant to § 550(a) of the Bankruptcy Code.

43. As a result of the foregoing, pursuant to §§ 548(a)(1)(A), 550(a) and 551 of the Bankruptcy Code, the Trustee is entitled to a judgment against TelexElectric: (a) avoiding and preserving the transfers identified on Exhibit A, (b) directing that the transfers identified on

Exhibit A be set aside, and (c) recovering the transfers identified on Exhibit A, or the value thereof, from TelexElectric for the benefit of the TelexFree estates.

**COUNT FIVE**

**Fraudulent Transfer – 11 U.S.C. §§ 548(a)(1)(B) and 551 – Against TelexElectric LLLP for Funds Transferred from TelexFree LLC**

44. The Trustee realleges and repeats the allegations contained in paragraphs 1 through 43 above and by reference incorporates them herein.

45. Each of the transfers identified on Exhibit A annexed hereto were made on or within two years before the commencement of these Chapter 11 cases.

46. TelexFree LLC received less than reasonably equivalent value in exchange for each of the transfers identified on Exhibit A.

47. At the time of each of the transfers identified on Exhibit A, TelexFree LLC was insolvent.

48. At the time of each of the transfers identified on Exhibit A, TelexFree LLC was engaged in a business or transactions for which any property remaining with TelexFree LLC was unreasonably small capital.

49. At the time of each of the transfers identified on Exhibit A, TelexFree LLC had incurred, was intending to incur or believed that it would incur debts beyond its ability to pay them as the debts matured.

50. Each of the transfers identified on Exhibit A constitute fraudulent transfers avoidable by the Trustee pursuant to § 548(a)(1)(B) of the Bankruptcy code and recoverable from the Defendant pursuant to § 550(a) of the Bankruptcy Code.

51. As a result of the foregoing, pursuant to §§ 548(a)(1)(B) of the Bankruptcy Code, the Trustee is entitled to a judgment against the Defendant: (a) avoiding and preserving the

transfers identified on Exhibit A, (b) directing that the transfers identified on Exhibit A be set aside, and (c) recovering the transfers identified on Exhibit A, or the value thereof, from TelexElectric for the benefit of TelexFree LLC's estates.

## COUNT SIX

**Fraudulent Transfer – Massachusetts G.L. c. 109A § 5 –
Against TelexElectric LLLP for Funds Transferred from TelexFree LLC**

52. The Trustee realleges and repeats the allegations contained in paragraphs 1 through 51 above and by reference incorporates them herein.

53. The Trustee has powers accorded him by § 544 of the Bankruptcy Code, including the rights and powers of a creditor to avoid any transfer of a property of the Debtor that is voidable by a hypothetical creditor who extends credit to the Debtor at the commencement of the case.

54. Each of the transfers identified on Exhibit A annexed hereto were made on or within two years before the commencement of these Chapter 11 cases.

55. Each of the transfers identified on Exhibit A annexed hereto were made with the actual intent to hinder, delay or defraud some or all of TelexFree's then existing and/or future creditors.

56. Each of the transfers identified on Exhibit A constitutes a fraudulent transfer avoidable by the Trustee pursuant to M.G.L. c. 109A § 5(a)(1) and recoverable from TelexElectric pursuant to § 550(a) of the Bankruptcy Code.

57. As a result of the foregoing, pursuant to M.G.L. c. 109A § 5(a)(1), §§ 544, 550(a) and 551 of the Bankruptcy Code, the Trustee is entitled to a judgment against TelexElectric: (a) avoiding and preserving the transfers identified on Exhibit A, (b) directing that the transfers

identified on Exhibit A be set aside, and (c) recovering the transfers identified on Exhibit A, or the value thereof, from TelexElectric for the benefit of the TelexFree estates.

**COUNT SEVEN**

**Fraudulent Conveyance – Massachusetts G.L. c. 109A § 5(a)(2) – Against TelexElectric LLLP for Funds Transferred from TelexFree LLC**

58. The Trustee realleges and repeats the allegations contained in paragraphs 1 through 57 above and by reference incorporates them herein.

59. Each of the transfers identified on Exhibit A annexed hereto were made on or within two years before the commencement of these Chapter 11 cases.

60. TelexFree LLC received less than reasonably equivalent value in exchange for each of the transfers identified on Exhibit A.

61. At the time of each of the transfers identified on Exhibit A, TelexFree LLC was insolvent.

62. At the time of each of the transfers identified on Exhibit A TelexFree LLC was engaged in a business or transactions for which any property remaining with TelexFree LLC was unreasonably small capital.

63. At the time of each of the transfers identified on Exhibit A, TelexFree LLC had incurred, was intending to incur or believed that it would incur debts beyond its ability to pay them as the debts matured.

64. Each of the transfers identified on Exhibit A constitute fraudulent transfers avoidable by the Trustee pursuant to M.G.L. c. 109A § 5(a)(2) and recoverable from TelexElectric pursuant to § 550(a) of the Bankruptcy Code.

65. As a result of the foregoing, pursuant to M.G.L. c 109A § 5(a)(2) and §§ 544, 550, 551 of the Bankruptcy Code, the Trustee is entitled to a judgment against TelexElectric:

(a) avoiding and preserving the transfers identified on Exhibit A, (b) directing that the transfers identified on Exhibit A be set aside, and (c) recovering the transfers identified on Exhibit A, or the value thereof, from TelexElectric for the benefit of the TelexFree estates.

## COUNT EIGHT

### Fraudulent Conveyance – 11 U.S.C. §§ 548, 550 and 551 – Against Sunwind Energy

66. The Trustee realleges and repeats the allegations contained in paragraphs 1 through 65 above and by reference incorporates them herein.

67. The Sunwind Entities are, individually and jointly, immediate or mediate transferees of TelexElectric of the transfers identified on Exhibit A.

68. By reason of Joseph Craft's position with TelexFree LLC and the Sunwind Entities and his intimate knowledge of the business of TelexFree and its financial condition, the Sunwind Entities have knowledge of the voidability of the transfers by TelexFree LLC to TelexElectric LLLP and otherwise did not receive the transfers in good faith.

69. Pursuant to § 550 of the Bankruptcy Code, the Trustee may recover the transfers identified on Exhibit A from the Sunwind Entities.

## COUNT NINE

### For Declaratory Judgment

70. The Trustee realleges and repeats the allegations contained in paragraphs 1 through 69 above and by reference incorporates them herein.

71. TelexFree LLC asserts an equity interest in the Sunwind Entities which is contested by the Sunwind Entities

72. An actual controversy exists between TelexFree LLC and the Sunwind Entities as to TelexFree's equity interest.

73. TelexFree is entitled to a declaration determining its equity interest in the Entities.

## COUNT TEN

### Reach and Apply Sunwind Debt to TelexElectric

74. The Trustee realleges and repeats the allegations contained in paragraphs 1 through 73 above and by reference incorporates them herein.

75. The Sunwind Entities owe TelexElectric the sum of $2,612,829 plus interest, which obligation may be reached by TelexFree LLC and applied by TelexFree LLC to TelexElectric's obligation to TelexFree LLC.

## COUNT ELEVEN

### Reach and Apply TelexElectric's Equity Interest

76. The Trustee realleges and repeats the allegations contained in paragraphs 1 through 75 above and by reference incorporates them herein.

77. To the extent that TelexFree is not the holder of an equity interest in the Sunwind Entities, the interest is held by TelexElectric, that interest may be reached and applied by TelexFree in partial satisfaction of TelexElectric's obligation to TelexFree LLC.

## COUNT TWELVE

### Injunctive Relief Against TelexElectric LLLP and Sunwind Energy Group LLP

78. The Trustee realleges and repeats the allegations contained in paragraphs 1 through 77 above and by reference incorporates them herein.

79. The Trustee has been advised that the Sunwind Entities are seeking to pay TelexElectric the monies owed by it to TelexElectric.

80. The Trustee, on information and belief, asserts that TelexElectric has no assets other than the monies due it from the Sunwind Entities and is otherwise insolvent.

81. The Trustee further asserts that under the circumstances, any monies paid by TelexElectric are likely to be dissipated or not otherwise used to repay its obligations to TelexFree LLC.

82. Accordingly, the Trustee will suffer immediate and irreparable harm unless the Sunwind Entities is enjoined and restrained from failing to immediately pay the money owed to TelexElectric to the Court to be held pending a final judgment in this action.

WHEREFORE, Stephen Darr as he is the Trustee of the Chapter 11 Estates of TelexFree, Inc., TelexFree, LLC and TelexFree Financial, Inc. respectfully prays that the Court enter judgment for him against the Defendants as follows:

1. Enter Judgment for the Trustee under Count One, Two or Three against TelexElectric LLLP in the amount of two million six hundred twelve thousand eight hundred twenty-nine dollars ($2,612,829.00) plus interest and cost.

2. On Count Four, pursuant to 548(a)(1)A), 550(a) and 551 of the Bankruptcy Code: (a) avoiding and preserving the transfers identified on Exhibit A, (b) directing the transfers identified on Exhibit A be set aside and (c) recovering the transfers identified on Exhibit A, or the value thereof, from the Defendant TelexElectric LLLP for the benefit of the Debtors' estates.

3. On Count Five, pursuant to 548(a)(1)A), 550(a) and 551 of the Bankruptcy Code: (a) avoiding and preserving the transfers identified on Exhibit A, (b) directing the transfers identified on Exhibit A be set aside and (c) recovering the transfers identified on Exhibit A, or the value thereof, from the Defendant TelexElectric LLLP for the benefit of the Debtors' estates.

4. On Count Six, pursuant to M.G.L. c. 109A § 5: (a) avoiding and preserving the transfers identified on Exhibit A, (b) directing the transfers identified on Exhibit A be set aside

and (c) recovering the transfers identified on Exhibit A, or the value thereof, from the Defendant TelexElectric LLLP for the benefit of the Debtors' estates.

5. On Count Seven, pursuant to M.G.L. c. 109A § 5: (a) avoiding and preserving the transfers identified on Exhibit A, (b) directing the transfers identified on Exhibit A be set aside and (c) recovering the transfers identified on Exhibit A, or the value thereof, from the Defendant TelexElectric LLLP for the benefit of the Debtors' estates.

6. On Count Eight, pursuant to 11 U.S.C. §§ 548, 550 and 551, against the Sunwind Entities in the amount of two million six hundred twelve thousand eight hundred twenty-nine dollars ($2,612,829.00) plus interest and cost.

7. On Count Nine, declare that TelexFree LLC is the holder of 26.572188% of all issued and outstanding shares of the Sunwind Entities.

8. On Count Ten, enter judgment for TelexFree LLC to reach the obligations of the Sunwind Entities to TelexElectric LLLP and apply those monies to the obligation of TelexElectric LLLP to TelexFree LLC.

9. On Count Eleven, enter judgment for TelexFree to reach the interest held by TelexElectric LLLP in any Sunwind Entities and liquidate that interest and apply the proceeds from the liquidation to the obligation of TelexElectric to TelexFree LLC.

10. On Count Twelve, the Court enter a temporary restraining order and after notice, a preliminary injunction restraining and enjoining the Sunwind Entities or affiliates, and anyone acting in concert with it from paying any money to TelexElectric or any third party with respect to any monies transferred by TelexElectric to any Sunwind Entities and from failing to pay into Court the sum of $2,612,829.00 pending final judgment.

11. Continue the Temporary Restraining Order as a Preliminary Injunction and as a Permanent Injunction after trial.

12. And for such other and further relief as this Court deems just and proper.

STEPHEN DARR AS HE IS THE TRUSTEE OF THE CHAPTER 11 ESTATES OF TELEXFREE, LLC, TELEXFREE, INC. and TELEXFREE FINANCIAL, INC.

By his attorneys,

/s/ Charles R. Bennett, Jr.

Charles R. Bennett, Jr. (BBO #037380)
Harold B. Murphy (BBO #326610
Murphy & King, Professional Corporation
One Beacon Street
Boston, MA 02108
(617) 423-0400
CBennett@murphyking.com
HMurphy@murphyking.com

Dated: March 3, 2016

673394

| **ADVERSARY PROCEEDING COVER SHEET** (Instructions on Reverse) | **ADVERSARY PROCEEDING NUMBER** (For Court Use Only) |
|---|---|

| **PLAINTIFFS** | **DEFENDANTS** |
|---|---|
| STEPHEN DARR AS HE IS THE TRUSTEE OF THE CHAPTER 11 ESTATES OF TELEXFREE, LLC, TELEXFREE, INC. and TELEXFREE FINANCIAL, INC. | TELEXELECTRIC, LLLP, TELEXELECTRIC LP, SUNWIND ENERGY DOYLE NORTH LLC, SUNWIND ENERGY SOLUTIONS DOYLE NORTH, LLC, SUNWIND ENERGY SOLUTIONS LLLP, and SUNWIND ENERGY GROUP LLLP |
| **ATTORNEYS** (Firm Name, Address, and Telephone No.)<br>**Charles R. Bennett, Jr. 037380**<br>**Murphy & King, Professional Corporation**<br>**One Beacon Street**<br>**Boston, MA 02108**<br>**(617) 423-0400 Fax: (617) 423-0498** | **ATTORNEYS** (If Known)<br>**Bruce A. Singal**<br>**Donoghue Barrett & Singal PC**<br>**One Beacon Street**<br>**Boston, MA 02108** |
| **PARTY** (Check One Box Only)<br>☐ Debtor ☐ U.S. Trustee/Bankruptcy Admin<br>☐ Creditor ☐ Other<br>☒ Trustee | **PARTY** (Check One Box Only)<br>☐ Debtor ☐ U.S. Trustee/Bankruptcy Admin<br>☐ Creditor ☒ Other<br>☐ Trustee |

**CAUSE OF ACTION** (WRITE A BRIEF STATEMENT OF CAUSE OF ACTION, INCLUDING ALL U.S. STATUES INVOLVED)
As Trustee, Stephen Darr brings this adversary proceeding to recover money lent by the Debtors to the Defendants or, alternatively, property fraudulently transferred by the Debtors to the Defendants. The Trustee further seeks to reach and apply monies due from the Reach and Apply/Trustee Defendants to the Defendants in satisfaction of obligations owed by the Defendants to the Debtors.

## NATURE OF SUIT

(Number up to five (5) boxes starting with lead cause of action as 1, first alternative cause as 2, second alternative cause as 3, etc.)

**FRBP 7001(1) - Recovery of Money/Property**
- [X] 11-Recovery of money/property - §542 turnover of property
- [ ] 12-Recovery of money/property - §547 preference
- [X] 13-Recovery of money/property - §548 fraudulent transfer
- [ ] 14-Recovery of money/property - other

**FRBP 7001(2) - Validity, Priority or Extent of Lien**
- [ ] 21-Validity, priority or extent of lien or other interest in property

**FRBP 7001(3) - Approval of Sale of Property**
- [ ] 31-Approval of sale of property of estate and of a co-owner - §363(h)

**FRBP 7001(4) - Objection/Revocation of Discharge**
- [ ] 41-Objection / revocation of discharge - §727(c),(d),(e)

**FRBP 7001(5) - Revocation of Confirmation**
- [ ] 51-Revocation of confirmation

**FRBP 7001(6) - Dischargeability**
- [ ] 66-Dischargeability - §523(a)(1),(14),(14A) priority tax claims
- [ ] 62-Dischargeability - §523(a)(2), false pretenses, false representation, actual fraud
- [ ] 67-Dischargeability - §523(a)(4), fraud as fiduciary, embezzlement, larceny

**(continued next column)**

**FRBP 7001(6) - Dischargeability (continued)**
- [ ] 61-Dischargeability - §523(a)(5), domestic support
- [ ] 68-Dischargeability - §523(a)(6), willful and malicious injury
- [ ] 63-Dischargeability - §523(a)(8), student loan
- [ ] 64-Dischargeability - §523(a)(15), divorce or separation obligation (other than domestic support)
- [ ] 65-Dischargeability - other

**FRBP 7001(7) - Injunctive Relief**
- [ ] 71-Injunctive relief - imposition of stay
- [ ] 72-Injunctive relief - other

**FRBP 7001(8) Subordination of Claim or Interest**
- [ ] 81-Subordination of claim or interest

**FRBP 7001(9) Declaratory Judgment**
- [ ] 91-Declaratory judgment

**FRBP 7001(10) Determination of Removed Action**
- [ ] 01-Determination of removed claim or cause

**Other**
- [ ] SS-SIPA Case - 15 U.S.C. §§78aaa *et.seq.*
- [ ] 02-Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy case)

| | |
|---|---|
| ☐ Check if this case involves a substantive issue of state law | ☐ Check if this is asserted to be a class action under FRCP 23 |
| ☐ Check if a jury trial is demanded in complaint | Demand $ |
| Other Relief Sought | |

| BANKRUPTCY CASE IN WHICH THIS ADVERSARY PROCEEDING ARISES | | |
|---|---|---|
| NAME OF DEBTOR<br>TELEXFREE, LLC,<br>TELEXFREE, INC. and<br>TELEXFREE FINANCIAL, INC. | | BANKRUPTCY CASE NO.<br>14-40987, 14-40988, 14-40989<br>(Jointly Administered) |
| DISTRICT IN WHICH CASE IS PENDING<br>**District of Massachusetts** | DIVISION OFFICE<br>**Central Division** | NAME OF JUDGE<br>**Hoffman** |

| RELATED ADVERSARY PROCEEDING (IF ANY) | | |
|---|---|---|
| PLAINTIFF | DEFENDANT | ADVERSARY PROCEEDING NO. |
| DISTRICT IN WHICH ADVERSARY IS PENDING | DIVISION OFFICE | NAME OF JUDGE |

SIGNATURE OF ATTORNEY (OR PLAINTIFF)

/s/ Charles R. Bennett, Jr.

**Charles R. Bennett, Jr. 037380**

| DATE | PRINT NAME OF ATTORNEY (OR PLAINTIFF) |
|---|---|
| 3/7/2016 | **Charles R. Bennett, Jr. 037380** |

## INSTRUCTIONS

The filing of a bankruptcy case creates an "estate" under the jurisdiction of the bankruptcy court which consists of all of the property of the debtor, wherever that property is located. Because the bankruptcy estate is so extensive and the jurisdiction of the court so broad, there may be lawsuits over the property or property rights of the estate. There also may be lawsuits concerning the debtor's discharge. If such a lawsuit is filed in a bankruptcy court, it is called an adversary proceeding.

A party filing an adversary proceeding must also must complete and file Form 104, the Adversary Proceeding Cover Sheet, unless the party files the adversary proceeding electronically through the court's Case Management/Electronic Case Filing system (CM/ECF). (CM/ECF captures the information on Form 104 as part of the filing process.) When completed, the cover sheet summarizes basic information on the adversary proceeding. The clerk of court needs the information to process the adversary proceeding and prepare required statistical reports on court activity.

The cover sheet and the information contained on it do not replace or supplement the filing and service of pleadings or other papers as required by law, the Bankruptcy Rules, or the local rules of court. The cover sheet, which is largely self-explanatory, must be completed by the plaintiff's attorney (or by the plaintiff if the plaintiff is not represented by an attorney). A separate cover sheet must be submitted to the clerk for each complaint filed.

**Plaintiffs and Defendants.** Give the names of the plaintiffs and defendants exactly as they appear on the complaint.

**Attorneys.** Give the names and addresses of the attorneys, if known.

**Party.** Check the most appropriate box in the first column for the plaintiffs and the second column for the defendants.

**Demand.** Enter the dollar amount being demanded in the complaint.

**Signature.** This cover sheet must be signed by the attorney of record in the box on the second page of the form. If the plaintiff is represented by a law firm, a member of the firm must sign. If the plaintiff is pro se, that is, not represented by an attorney, the plaintiff must sign.

# EXHIBIT 1

AGREEMENT

November 4, 2013

Parties: TelexFree, LLC and Sunwind Energy Group, LLLP

Financing: $1,000,000 immediately; $1,000,000 on January 2, 2014; estimated $500,000 to be needed over the first few months of 2014

Terms of loan: $2,500,000 plus 10% interest to be repaid out of the receipt of the tax credit investor equity or the debt financing whichever is available first which is expected to be repaid in the latter half of 2014.

Other terms: $3,750,000 of Production Tax Credits to be given to TelexFree, LLC or its successor which may be used to reduce income tax. 25% of the available equity in the project to be given to TelexFree LLC or its successor after major equity investor, investment banker and other investor's shares are taken out. (Currently estimated to be 5.65%) This currently is expected to yield $26.6 million in cash distributions over a 20 year period plus $16.978 million share of terminal value after Power Purchasing Agreement ends after 20 years under current estimates. TelexFree, LLC will be afforded the opportunity to invest in future wind farm projects with Sunwind Energy.

Mortgage against leasehold interests of 25% of the project will be secured after payment of the $1 million due to developer January 2, 2014.

More formal agreement to follow.

# EXHIBIT 2

**SUMMARY OF PRINCIPAL LOAN TERMS AND CONDITIONS**

| | |
|---|---|
| Borrower: | Sunwind Energy Doyle North, LLC, a Kansas limited liability company. |
| Lender: | TelexElectric, LLLP, a Nevada limited liability limited partnership. |
| Amount: | $2,500,000, of which $2,018,389 is currently outstanding. The loans currently outstanding are set forth on the Schedule to the Promissory Note, attached to the Loan Agreement. |
| Purpose: | [General corporate purposes]. |
| Availability: | Until May 31, 2014. Any principal amount that is repaid or prepaid may not be reborrowed. |
| Mandatory Repayment: | December 31, 2014. |
| Optional Prepayment: | Borrower may, upon at least three Business Days' notice to Lender, prepay the Note in whole or in part with accrued interest to the date of such prepayment on the amount prepaid, provided that each partial prepayment shall be in a principal amount not less than $25,000. |
| Mandatory Prepayment: | Borrower shall immediately prepay the Note in whole and the accrued interest to the date of such prepayment upon (a) the closing of a transaction pursuant to which Borrower monetizes the value of anticipated Production Tax Credits determined under 26 U.S.C. § 45 or Energy Tax Credits determined under 26 U.S.C. § 48 through a joint venture (in the form of a partnership or limited liability company or any other form), a sale-leaseback, a lease-leaseback, or any other form of transaction, or (b) the consummation of the sale and issuance by Borrower of limited liability company interests or other equity of Borrower or indebtedness of Borrower, or any combination of the foregoing, for aggregate gross proceeds to Borrower of not less than [$100,000,000)]. |
| Interest: | 10% per annum on the outstanding balance, payable at maturity. |
| Collateral Security: | First priority perfected security interests in (a) all of Borrower's assets, and (b) all of SunWind Energy Solutions LLLP's limited liability company interests of Borrower. |
| Guaranties: | Each of Joe Craft and Lee Bowen unconditionally and irrevocably guarantees the full and prompt payment when due of the outstanding and unpaid balance of all Loans up to an individual maximum of $625,000, and accrued interest thereon |

| | |
|---|---|
| | (and, collectively, severally and not jointly, unconditionally and irrevocably guarantee the full and prompt payment when due of the outstanding and unpaid balance of all Loans up to a maximum of $1,250,000, and accrued interest thereon). |
| Deliverables to Lender upon Loan Agreement Execution: | Duly executed:<br>(a) Promissory Note;<br>(b) Security Agreement, and filed UCC-1 Financing Statements;<br>(c) Guaranty; and<br>(d) Pledge Agreement, and filed UCC-1 Financing Statements. |
| Conditions Precedent to Additional Borrowings: | The following statements shall be true and Lender shall have received a certificate from an officer of Borrower stating (a) the representations and warranties contained in Article IV of the Loan Agreement, in Section 4 of the Security Agreement and in Section 5 of the Pledge Agreement are correct on and as of the date of such Loan as though made on and as of such date; and (b) no Default or Event of Default has occurred and is continuing, or would result from such Loan. |
| Representations and Warranties: | Customary, including confirmation of company status and authority; execution, delivery and performance of Loan Documents do not violate law or existing agreements; binding effect and enforceability of the Loan Documents; the accuracy and completeness of financial statements; no labor disputes or acts of God; no restrictions that could have a material adverse effect on Borrower; no defaults under material contracts or outstanding judgments or orders; the absence of any material legal proceedings and governmental action; ownership of real and personal property; no subsidiaries; compliance in all material respects with applicable laws; possession of all necessary licenses and permits; payment of all taxes and other tax matters; no other indebtedness; and absence of environmental problems. |
| Affirmative Covenants: | Customary, including maintenance of existence, records and properties; continuation of business; maintenance of insurance; compliance with laws, including environmental laws; right of Lender to inspect property and books and records; notices of material litigation, defaults, environmental matters and other matters at the request of Lender. |
| Negative Covenants: | Customary, including limitations on liens; indebtedness; mergers or other corporate transactions; leases; sales and lease backs; dividends and redemptions; asset sales; investments; guaranties; transactions with affiliates and formation of subsidiaries, other than in connection with a Qualified Institutional Financing. |
| Financial Covenants: | None. |

| | |
|---|---|
| Events of Default: | Customary, including failure to make a payment when due; breach of representations and warranties; default in any covenant or agreement set forth in the Loan Documents; cross-default with respect to other indebtedness; events of bankruptcy; the occurrence of one or more material judgments; any of the guaranties or other security documents shall cease to be in full force and effect or any person shall so assert; or certain environmental defaults.<br><br>Upon Event of Default, Lender may, among other things, declare its obligation to make Loans to be terminated, declare the Note, all interest thereon, and all other amounts payable to be due and payable, and exercise rights under the Security Agreement, the Pledge Agreement, the Guaranty and applicable law. |
| Costs, Expenses and Taxes: | Borrower agrees to pay on demand all costs and expenses incurred by Lender in connection with the preparation, execution, delivery, filing, and administration of the Loan Documents, and of any amendment, modification, or supplement to the Loan Documents, including, without limitation, the fees and out-of-pocket expenses of counsel for Lender incurred in connection with advising Lender as to its rights and responsibilities. Borrower also agrees to pay all such costs and expenses, including court costs, incurred in connection with enforcement of the Loan Documents, or any amendment, modification, or supplement thereto, whether by negotiation, legal proceedings, or otherwise. In addition, Borrower shall pay any and all stamp and other taxes and fees payable or determined to be payable in connection with the execution, delivery, filing, and recording of any of the Loan Documents and the other documents to be delivered under any such Loan Documents, and agrees to hold Lender harmless from and against any and all liabilities with respect to or resulting from any delay in paying or omission to pay such taxes and fees. |
| Indemnity: | Borrower agrees to defend, indemnify, and hold Lender harmless from and against any and all claims, damages, judgments, penalties, costs, and expenses arising directly or indirectly from the activities of Borrower, its predecessors in interest, or third parties with whom it has a contractual relationship, or arising directly or indirectly from the violation of any environmental protection, health, or safety law, whether such claims are asserted by any governmental agency or any other person. |
| Governing Law: | State of Kansas. |

Note: Borrower, SunWind Energy Solutions LLLP, a Nevada limited liability limited partnership, and Bright Lite Future, LLC shall enter into a First Amended and Restated Limited Liability Company Agreement of Borrower concurrently with the execution of the Loan Documents.

# EXHIBIT 3

# LOAN AGREEMENT

This Loan Agreement, dated effective as of November 7, 2013, is by and between Sunwind Energy Doyle North, LLC, a Kansas limited liability company ("Borrower"), and TelexElectric, LLLP, a Nevada limited liability limited partnership ("Lender").

## RECITALS

WHEREAS, Borrower and Lender previously entered into an oral agreement, effective November 7, 2013, whereby Lender agreed to make certain loans to Borrower, and Borrower agreed to sell and issue certain limited liability company interests of Borrower to Bright Lite Future, LLC, a New Mexico limited liability company ("Bright Lite") and an affiliate of Lender (the "Oral Agreement");

WHEREAS, concurrently with the execution and delivery of this Agreement, Borrower and Bright Lite are entering into a Limited Liability Company Agreement of Borrower (the "LLC Agreement"), pursuant to which certain limited liability company interests of Borrower will be issued to Bright Lite; and

WHEREAS, Borrower and Lender now desire to memorialize all of the terms and conditions of, and make certain changes to, the Oral Agreement, and to evidence all borrowings that have occurred since the date of the Oral Agreement, in this Agreement and the LLC Agreement.

## AGREEMENT

NOW, THEREFORE, in consideration of the foregoing Recitals which by this reference are incorporated herein as if set forth in full, and of the mutual covenants, conditions and obligations on the part of each party to be kept and performed, it is hereby agreed as follows:

### Article I

### DEFINITIONS AND ACCOUNTING TERMS

**Section 1.01. Defined Terms.** As used in this Agreement, the following terms have the following meanings (terms defined in the singular to have the same meaning when used in the plural and vice versa):

"Affiliate" means any Person (1) which directly or indirectly controls, or is controlled by, or is under common control with Borrower; (2) which directly or indirectly beneficially owns or holds five percent or more of the limited liability company interests of Borrower; or (3) five percent or more of the voting securities of which is directly or indirectly beneficially owned or held by Borrower. The term "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract, or otherwise.

"Agreement" means this Loan Agreement, as amended, supplemented, or modified from time to time.

"Business Day" means any day other than a Saturday, Sunday, or other day on which commercial banks in Kansas are authorized or required to close under the laws of the State of Kansas.

"Code" means the Internal Revenue Code of 1986, as amended from time to time, and the regulations and published interpretations thereof.

"Commitment" means Lender's obligation to make Loans to Borrower pursuant to Section 2.01 in the amount referred to therein.

"Debt" means (1) indebtedness or liability for borrowed money; (2) obligations evidenced by bonds, debentures, notes, or other similar instruments; (3) obligations for the deferred purchase price of property or services (including trade obligations); (4) obligations as lessee under capital leases; (5) current liabilities in respect of unfunded vested benefits under plans covered by the Employee Retirement Income Security Act of 1974, as amended; (6) obligations under letters of credit; (7) obligations under acceptance facilities; (8) all guaranties, endorsements (other than for collection or deposit in the ordinary course of business), and other contingent obligations to purchase, to provide funds for payment, to supply funds to invest in any Person or entity, or otherwise to assure a creditor against loss; and (9) obligations secured by any Liens, whether or not the obligations have been assumed.

"Default" means any of the events specified in Section 7.01, whether or not any requirement for the giving of notice, the lapse of time, or both, or any other condition, has been satisfied.

"Event of Default" means any of the events specified in Section 7.01, provided that any requirement for the giving of notice, the lapse of time, or both, or any other condition, has been satisfied.

"GAAP" means generally accepted accounting principles in the United States.

"Guarantor" means Joe Craft and Lee Bowen.

"Guaranty" means the Guaranty in substantially the form of Exhibit C to be delivered by Guarantor under the terms of this Agreement.

"Lien" means any mortgage, deed of trust, pledge, security interest, hypothecation, assignment, deposit arrangement, encumbrance, lien (statutory or other), or preference, priority, or other security agreement or preferential arrangement, charge, or encumbrance of any kind or nature whatsoever (including, without limitation, any conditional sale or other title retention agreement, any financing lease having substantially the same economic effect as any of the foregoing, and the filing of any financing statement under the Uniform Commercial Code or comparable law of any jurisdiction to evidence any of the foregoing).

"Loan" shall have the meaning assigned to such term in Section 2.01.

"Loan Documents" means this Agreement, the Note, the Security Agreement, the Guaranty, and the Pledge Agreement.

"Note" shall have the meaning assigned to such term in Section 2.05.

"Person" means an individual, partnership, corporation, business trust, joint stock company, trust, unincorporated association, joint venture, governmental authority, or other entity of whatever nature.

"Pledge Agreement" means the Pledge Agreement in substantially the form of Exhibit D to be delivered by SES under the terms of this Agreement.

"Principal Office" means Lender's office at 225 Cedar Hill Street, Marlborough, MA 01752.

"Security Agreement" means the Security Agreement in substantially the form of Exhibit B to be delivered by Borrower under the terms of this Agreement.

"SES" means SunWind Energy Solutions LLLP, a Nevada limited liability limited partnership.

"Subsidiary" means, as to Borrower, an entity of which shares having ordinary voting power (other than equity having such power only by reason of the happening of a contingency) to elect a majority of the board of directors or other managers of such entity are at the time owned, or the management of which is otherwise controlled, directly or indirectly through one or more intermediaries, or both, by Borrower.

"Termination Date" means May 31, 2014.

**Section 1.02. Accounting Terms.** All accounting terms not specifically defined herein shall be construed in accordance with GAAP consistent with those applied in the preparation of the Financial Statements referred to in Section 4.04.

## Article II

## AMOUNT AND TERMS OF THE LOANS

**Section 2.01. Credit.** Lender agrees on the terms and conditions hereinafter set forth, to make loans (the "Loans") to Borrower from time to time during the period from the date of this Agreement up to but not including the Termination Date in an aggregate principal amount not to exceed at any time outstanding Two Million Five Hundred Thousand Dollars ($2,500,000), as such amount may be reduced pursuant to Section 2.02 (the "Commitment"). Each Loan which shall not utilize the Commitment in full shall be in an amount not less than Twenty Five Thousand Dollars ($25,000). Within the limits of the Commitment, Borrower may borrow and prepay pursuant to Section 2.06. Any principal amount of the Loans which is repaid or prepaid may not be reborrowed.

**Section 2.02. Reduction of Commitment**. Borrower shall have the right, upon at least three Business Days' notice to Lender, to terminate in whole or reduce in part the unused portion of the Commitment, provided that each partial reduction shall be in the amount of at least Twenty Five Thousand Dollars ($25,000), and provided further that no reduction shall be permitted if, after giving effect thereto, and to any prepayment made therewith, the outstanding and unpaid principal amount of the Loans shall exceed the Commitment. The Commitment once reduced or terminated may not be reinstated. The Commitment shall be permanently reduced immediately and without further action on the date of each borrowing of the Loans in an amount equal to the amount of such Loan funded.

**Section 2.03 Notice and Manner of Borrowing.** Borrower shall give Lender at least three Business Days' notice of any Loans under this Agreement, specifying the date and amount thereof. Not later than 5:00 p.m., Eastern time, on the date of such Loan and upon fulfillment of the applicable conditions set forth in Article III, Lender will make such Loan available to Borrower in immediately available funds by crediting the amount thereof to the account specified by Borrower.

**Section 2.04. Interest.** Borrower shall pay interest to Lender on the outstanding and unpaid principal amount of the Loans made hereunder at a rate per annum equal to ten percent (10%). Interest shall be calculated on the basis of a year of 365 days for the actual number of days elapsed. Interest shall be paid in immediately available funds at maturity at the Principal Office. Any principal or interest amount not paid when due, whether at stated maturity, by acceleration, or otherwise, shall bear interest from the date when due until said principal or interest amount is paid in full, payable on demand, at a rate per annum equal at all times to ten percent (10%).

**Section 2.05. Note.** All Loans made by Lender under this Agreement shall be evidenced by, and repaid with interest in accordance with, a single promissory note of Borrower in substantially the form of Exhibit A, duly completed, in the principal amount of Two Million Five Hundred Thousand Dollars ($2,500,000), dated the date of this Agreement, payable to Lender, and maturing as to principal and interest on December 31, 2014 (the "Note"). Lender is hereby authorized by Borrower to endorse on the schedule attached to the Note the amount of each Loan and of each payment of principal received by Lender on account of the Loans, which endorsement shall, in the absence of manifest error, be conclusive as to the outstanding balance of the Loans made by Lender; provided, however, that the failure to make such notation with respect to any Loan or payment shall not limit or otherwise affect the obligations of Borrower under this Agreement or the Note.

**Section 2.06. Permissible and Mandatory Prepayments.** Borrower may, upon at least three Business Days' notice to Lender, prepay the Note in whole or in part with accrued interest to the date of such prepayment on the amount prepaid, provided that each partial prepayment shall be in a principal amount not less than Twenty Five Thousand Dollars ($25,000). Borrower shall immediately prepay the Note in whole and the accrued interest to the date of such prepayment upon (a) the closing of a transaction pursuant to which Borrower monetizes the value of anticipated Production Tax Credits determined under 26 U.S.C. § 45 or Energy Tax Credits determined under 26 U.S.C. § 48 through a joint venture (in the form of a partnership or limited liability company or any other form), a sale-leaseback, a lease-leaseback, or any other form of transaction, or (b) the consummation of the sale and issuance by

Borrower of limited liability company interests or other equity of Borrower or indebtedness of Borrower, or any combination of the foregoing, for aggregate gross proceeds to Borrower of not less than [$100,000,000)] (a "Qualified Institutional Financing").

**Section 2.07. Method of Payment.** Borrower shall make each payment under this Agreement and under the Note not later than 5:00 p.m., Eastern time, on the date when due in lawful money of the United States to Lender at its Principal Office in immediately available funds. Whenever any payment to be made under this Agreement or under the Note shall be stated to be due on a day other than a Business Day, such payment shall be made on the next succeeding Business Day, and such extension of time shall in such case be included in the computation of the payment of interest.

**Section 2.08. Use of Proceeds.** The proceeds of the Loans hereunder shall be used by Borrower to [*Any restrictions on use of proceeds?*].

## Article III

## INITIAL LOANS; CONDITIONS PRECEDENT

**Section 3.01. Initial Loans.** The outstanding and unpaid principal balance, and the respective dates upon which each Loan was made to Borrower prior to the date of execution of this Agreement, is as set forth on the Schedule to the Note. Concurrent with the execution and delivery of this Agreement, Lender shall receive each of the following:

(1) **Note.** The Note duly executed by Borrower;

(2) **Security Agreement.** The Security Agreement duly executed by Borrower together with acknowledgment copies of the Financing Statements (UCC-1) duly filed under the Uniform Commercial Code of all jurisdictions necessary or, in the opinion of Lender, desirable to perfect the security interest created by the Security Agreement;

(3) **Guaranty.** The Guaranty duly executed by Guarantor; and

(4) **Pledge Agreement.** The Pledge Agreement duly executed by SES together with acknowledgment copies of the Financing Statements (UCC-1) duly filed under the Uniform Commercial Code of all jurisdictions necessary or, in the opinion of Lender, desirable to perfect the security interest created by the Pledge Agreement.

**Section 3.02. Conditions Precedent to Further Loans.** The obligation of Lender to make any Loan was and shall be subject to the conditions precedent that on the date of such Loan:

(1) The following statements shall be true and Lender shall have received a certificate signed by a duly authorized officer of Borrower dated the date of such Loan, stating that:

(a) The representations and warranties contained in Article IV of this Agreement, in Section 4 of the Security Agreement and in Section 5 of the Pledge Agreement are correct on and as of the date of such Loan as though made on and as of such date; and

(b) No Default or Event of Default has occurred and is continuing, or would result from such Loan; and

(2) Lender shall have received such other approvals, opinions, or documents as Lender may reasonably request.

## Article IV

## REPRESENTATIONS AND WARRANTIES

Borrower represents and warrants to Lender that:

**Section 4.01. Organization, Good Standing, and Due Qualification.** Borrower is a limited liability company duly organized, validly existing, and in good standing under the laws of the jurisdiction of its organization; has the power and authority to own its assets and to transact the business in which it is now engaged or proposed to be engaged in; and is duly qualified as a foreign limited liability company and in good standing under the laws of each other jurisdiction in which such qualification is required.

**Section 4.02 Corporate Power and Authority.** The execution, delivery, and performance by Borrower of the Loan Documents to which it is a party have been duly authorized by all necessary company action and do not and will not (1) require any consent or approval of its members; (2) contravene its organizational documents; (3) violate any provision of any law, rule, regulation, order, writ, judgment, injunction, decree, determination, or award presently in effect having applicability to it; (4) result in a breach of or constitute a default under any indenture or loan or credit agreement or any other agreement, lease, or instrument to which it is a party or by which it or its properties may be bound or affected; (5) result in, or require, the creation or imposition of any Lien, upon or with respect to any of the properties now owned or hereafter acquired by it; or (6) cause it to be in default under any such law, rule, regulation, order, writ, judgment, injunction, decree, determination, or award or any such indenture, agreement, lease, or instrument.

**Section 4.03 Legally Enforceable Agreement.** This Agreement is, and each of the other Loan Documents when delivered under this Agreement will be, legal, valid, and binding obligations of Borrower or Guarantor, as the case may be, enforceable against Borrower or Guarantor, as the case may be, in accordance with their respective terms, except to the extent that such enforcement may be limited by applicable bankruptcy, insolvency, and other similar laws affecting creditors' rights generally.

**Section 4.04. Financial Statements.** The most recent unaudited balance sheet of Borrower (the "Balance Sheet"), fairly presents the financial position of Borrower as of its date, and the most recent unaudited income statements of Borrower (the "Income Statement"), fairly present the results of operations of Borrower as of their dates, and both have been prepared in accordance with GAAP, consistently applied (subject to year-end adjustments). The Balance Sheet and the Income Statement are referred to collectively in this Agreement as the "Financial Statements." Except as contemplated by or permitted under this Agreement, there are no adjustments that would be required on audit of the Financial Statements that would, individually or in the aggregate, have a material adverse effect on Borrower's financial condition or results of operations.

**Section 4.05. Labor Disputes and Acts of God.** Neither the business nor the properties of Borrower are affected by any fire, explosion, accident, strike, lockout or other labor dispute, drought, storm, hail, earthquake, embargo, act of God or of the public enemy, or other casualty (whether or not covered by insurance) materially and adversely affecting such business or properties or the operation of Borrower.

**Section 4.06. Other Agreements.** Neither Borrower nor Guarantor is a party to any indenture, loan, or credit agreement, or to any lease or other agreement or instrument, or subject to any charter or company restriction which could have a material adverse effect on the business, properties, assets, operations, or conditions, financial or otherwise, of Borrower, or the ability of Borrower or Guarantor to carry out its obligations under the Loan Documents to which it is a party. Borrower is not in default in any respect in the performance, observance, or fulfillment of any of the obligations, covenants, or conditions contained in any agreement or instrument material to its business to which it is a party.

**Section 4.07. Litigation.** There is no pending or threatened action or proceeding against or affecting Borrower or Guarantor before any court, governmental agency, or arbitrator which may, in any one case or in the aggregate, materially adversely affect the financial condition, operations, properties, or business of Borrower or the ability of Borrower or Guarantor to perform its obligation under the Loan Documents to which it is a party.

**Section 4.08. No Defaults on Outstanding Judgments or Orders.** Borrower and Guarantor have satisfied all judgments and neither Borrower nor Guarantor is in default with respect to any

judgment, writ, injunction, decree, rule, or regulation of any court, arbitrator, or federal, state, municipal, or other governmental authority, commission, board, bureau, agency or instrumentality, domestic or foreign.

**Section 4.09. Ownership and Liens.** Borrower has title to, or valid leasehold interests in, all of its properties and assets, real and personal (other than any properties or assets disposed of in the ordinary course of business), and none of the properties and assets owned by Borrower and none of its leasehold interests is subject to any Lien, except such as may be permitted pursuant to Section 6.01.

**Section 4.10. Subsidiaries.** There are no existing Subsidiaries of Borrower.

**Section 4.11. Compliance With Laws.** Borrower is in compliance in all material respects with all laws, rules, regulations and orders applicable to it or any of its properties.

**Section 4.12. Operation of Business.** Borrower possesses all licenses, permits, franchises, patents, copyrights, trademarks, and trade names, or rights thereto, to conduct its business substantially as now conducted and as presently proposed to be conducted, and Borrower and Guarantor are not in violation of any valid rights of others with respect to any of the foregoing.

**Section 4.13. Taxes.** Borrower and Guarantor have filed all tax returns (federal, state, and local) required to be filed and have paid all taxes, assessments, and governmental charges and levies thereon to be due, including interest and penalties.

**Section 4.14. Debt.** Except for this Agreement, there are no credit agreements, indentures, guaranties, capital leases, and other investments, agreements, and arrangements presently in effect providing for or relating to extensions of credit (including agreements and arrangements for the issuance of letters of credit or for acceptance financing) in respect of which Borrower is in any manner directly or contingently obligated.

**Section 4.15. Environment.** Borrower has duly complied with, and its business, operations, assets, equipment, property, leaseholds, or other facilities are in compliance with, the provisions of all federal, state, and local environmental, health, and safety laws, codes and ordinances, and all rules and regulations promulgated thereunder. Borrower has been issued and will maintain all required federal, state, and local permits, licenses, certificates, and approvals relating to (1) air emissions; (2) discharges to surface water or groundwater; (3) noise emissions; (4) solid or liquid waste disposal; (5) the use, generation, storage, transportation, or disposal of toxic or hazardous substances or wastes (intended hereby and hereafter to include any and all such materials listed in any federal, state, or local law, code or ordinance and all rules and regulations promulgated thereunder as hazardous or potentially hazardous); or (6) other environmental, health, or safety matters. Borrower has not received notice of, nor knows of, or suspects facts which might constitute any violations of any federal, state, or local environmental, health, or safety laws, codes or ordinances, and any rules or regulations promulgated thereunder with respect to its businesses, operations, assets, equipment, property, leaseholds, or other facilities. There has been no emission, spill, release, or discharge into or upon (1) the air; (2) soils; or any improvements located thereon; (3) surface water or groundwater; or (4) the sewer, septic system or waste treatment, storage or disposal system servicing the premises of any toxic or hazardous substances or wastes at or from the premises; and accordingly the premises of Borrower and its Subsidiaries are free of all such toxic or hazardous substances or wastes. There has been no complaint, order, directive, claim, citation, or notice by any governmental authority or any person or entity with respect to (1) air emissions; (2) spills, releases or discharges to soils or improvements located thereon, surface water, groundwater or the sewer, septic system or waste treatment, storage or disposal systems servicing the premises; (3) noise emissions; (4) solid or liquid waste disposal; (5) the use, generation, storage, transportation, or disposal of toxic or hazardous substances or waste; or (6) other environmental, health, or safety matters affecting Borrower or its business, operations, assets, equipment, property, leaseholds, or other facilities. Borrower has no indebtedness, obligation, or liability, absolute or contingent, matured or not matured, with respect to the storage, treatment, cleanup, or disposal of any solid wastes, hazardous wastes or other toxic or hazardous substances.

## Article V

## AFFIRMATIVE COVENANTS

So long as the Note shall remain unpaid or Lender shall have any Commitment under this Agreement, Borrower will:

**Section 5.01. Maintenance of Existence.** Preserve and maintain its company existence and good standing in the jurisdiction of its organization, and qualify and remain qualified, as a foreign limited liability company in each jurisdiction in which such qualification is required.

**Section 5.02. Maintenance of Records.** Keep adequate records and books of account, in which complete entries will be made in accordance with GAAP consistently applied, reflecting all financial transactions of Borrower.

**Section 5.03. Maintenance of Properties.** Maintain, keep, and preserve all of its properties (tangible and intangible) necessary or useful in the proper conduct of its business in good working order and condition, ordinary wear and tear excepted.

**Section 5.04. Conduct of Business.** Continue to engage in an efficient and economical manner in a business of the same general type as conducted by it on the date of this Agreement.

**Section 5.05. Maintenance of Insurance.** Maintain insurance with financially sound and reputable insurance companies or associations in such amounts and covering such risks as are usually carried by companies engaged in the same or a similar business and similarly situated, which insurance may provide for reasonable deductibility from coverage thereof.

**Section 5.06. Compliance With Laws.** Comply in all respects with all applicable laws, rules, regulations, and orders, such compliance to include, without limitation, paying before the same become delinquent all taxes, assessments, and governmental charges imposed upon it or upon its property.

**Section 5.07. Right of Inspection.** At any reasonable time and from time to time, permit Lender or any agent or representative thereof to examine and make copies of and abstracts from the records and books of account of, and visit the properties of, Borrower, and to discuss the affairs, finances, and accounts of Borrower with any of its officers and managers and Borrower's independent accountants.

**Section 5.08. Reporting Requirements.** Furnish to Lender:

(1) **Notice of litigation.** Promptly after the commencement thereof, notice of all actions, suits, and proceedings before any court or governmental department, commission, board, bureau, agency, or instrumentality, domestic or foreign, affecting Borrower, which, if determined adversely to Borrower, could have a material adverse effect on the financial condition, properties, or operations of Borrower;

(2) **Notice of Defaults and Events of Default.** As soon as possible and in any event within three Business Days after the occurrence of each Default or Event of Default, a written notice setting forth the details of such Default or Event of Default and the action which is proposed to be taken by Borrower with respect thereto;

(3) **Reports to other creditors.** Promptly after the furnishing thereof, copies of any statement or report furnished to any other party pursuant to the terms of any indenture, loan, credit, or similar agreement and not otherwise required to be furnished to Lender pursuant to any other clause of this Section 5.08; and

(4) **General information.** Such other information respecting the condition or operations, financial or otherwise, of Borrower as Lender may from time to time reasonably request.

**Section 5.09. Environment.** Be and remain in compliance with the provisions of all federal, state, and local environmental, health, and safety laws, codes and ordinances, and all rules and regulations issued thereunder; notify Lender immediately of any notice of a hazardous discharge or environmental complaint received from any governmental agency or any other party; notify Lender immediately of any hazardous discharge from or affecting its premises; immediately contain and remove the same, in compliance with all applicable laws; promptly pay any fine or penalty assessed in connection therewith; permit Lender to inspect the premises, to conduct tests thereon, and to inspect all books, correspondence, and records pertaining thereto; and at Lender's request, and at Borrower's expense, provide a report of a qualified environmental engineer, satisfactory in scope, form, and content to Lender, and such other and further assurances reasonably satisfactory to Lender that the condition has been corrected.

## Article VI

## NEGATIVE COVENANTS

So long as the Note shall remain unpaid or Lender shall have any Commitment under this Agreement, Borrower will not (other than upon consummation of a Qualified Institutional Financing):

**Section 6.01. Liens.** Create, incur, assume, or suffer to exist any Lien upon or with respect to any of its properties, now owned or hereafter acquired, except:

(1) Liens in favor of Lender;

(2) Liens for taxes or assessments or other government charges or levies if not yet due and payable or, if due and payable, if they are being contested in good faith by appropriate proceedings and for which appropriate reserves are maintained;

(3) Liens imposed by law, such as mechanics', materialmen's, landlords', warehousemen's, and carriers' Liens, and other similar Liens, securing obligations incurred in the ordinary course of business which are not past due for more than 30 days or which are being contested in good faith by appropriate proceedings and for which appropriate reserves have been established;

(4) Liens under workers' compensation, unemployment insurance, Social Security, or similar legislation;

(5) Liens, deposits, or pledges to secure the performance of bids, tenders, contracts (other than contracts for the payment of money), leases (permitted under the terms of this Agreement), public or statutory obligations, surety, stay, appeal, indemnity, performance, or other similar bonds, or other similar obligations arising in the ordinary course of business;

(6) Judgment and other similar Liens arising in connection with court proceedings, provided the execution or other enforcement of such Liens is effectively stayed and the claims secured thereby are being actively contested in good faith and by appropriate proceedings;

(7) Easements, rights-of-way, restrictions, and other similar encumbrances which, in the aggregate, do not materially interfere with the occupation, use, and enjoyment by Borrower of the property or assets encumbered thereby in the normal course of its business or materially impair the value of the property subject thereto; and

(8) Purchase-money Liens on any property hereafter acquired or the assumption of any Lien on property existing at the time of such acquisition (and not created in contemplation of such acquisition), or a Lien incurred in connection with any conditional sale or other title retention agreement or a capital lease; provided that

(a) Any property subject to any of the foregoing is acquired by Borrower in the ordinary course of its business and the Lien on any such property attaches to such asset concurrently or within 90 days after the acquisition thereof;

(b) The obligation secured by any Lien so created, assumed, or existing shall not exceed the lesser of the cost or the fair market value as of the time of acquisition of the property covered thereby to Borrower acquiring the same;

(c) Each such Lien shall attach only to the property so acquired and fixed improvements thereon; and

(d) The Debt secured by such Lien is permitted by the provisions of Section 6.02.

**Section 6.02. Debt.** Create, incur, assume, or suffer to exist any Debt, except:

(1) Debt of Borrower under this Agreement or the Note;

(2) Debt of Borrower subordinated on terms satisfactory to Lender to Borrower's obligation under this Agreement and the Note;

(3) Accounts payable to trade creditors for goods or services which are not aged more than 90 days from the billing date and current operating liabilities (other than for borrowed money) which are not more than 90 days past due, in each case incurred in the ordinary course of business, as presently conducted, and paid within the specified time, unless contested in good faith and by appropriate proceedings; and

(4) Debt of Borrower secured by purchase-money Liens permitted by Section 6.01(8).

**Section 6.03. Mergers, Etc.** Wind up, liquidate or dissolve itself, reorganize, merge or consolidate with or into, or convey, sell, assign, transfer, lease, or otherwise dispose of (whether in one transaction or in a series of transactions) all or substantially all of its assets (whether now owned or hereafter acquired) to any Person, or acquire all or substantially all of the assets or the business of any Person.

**Section 6.04. Leases.** Create, incur, assume, or suffer to exist any obligation as lessee for the rental or hire of any real or personal property, except: (1) capital leases permitted by Section 6.01(8); (2) leases existing on the date of this Agreement and any extensions or renewals thereof; and (3) leases (other than capital leases) which do not in the aggregate require Borrower to make payments (including taxes, insurance, maintenance, and similar expenses which Borrower is required to pay under the terms of any lease) in any fiscal year of Borrower in excess of Twenty Five Thousand Dollars ($25,000).

**Section 6.05. Sale and Leaseback.** Sell, transfer, or otherwise dispose of, any real or personal property to any Person and thereafter directly or indirectly lease back the same or similar property.

**Section 6.06 Dividends.** Declare or pay any dividends; or purchase, redeem, retire, or otherwise acquire for value any of its limited liability company interests now or hereafter outstanding; or make any distribution of assets to its members as such whether in cash, assets, or obligations of Borrower; or allocate or otherwise set apart any sum for the payment of any dividend or distribution on, or for the purchase, redemption, or retirement of any shares of its limited liability company interests; or make any other distribution by reduction of capital or otherwise in respect of any limited liability company interests.

**Section 6.07. Sale of Assets.** Sell, lease, assign, transfer, or otherwise dispose of, any of its now owned or hereafter acquired assets (including, without limitation, receivables, and leasehold interests), except: (1) inventory disposed of in the ordinary course of business; and (2) the sale or other disposition of assets no longer used or useful in the conduct of its business.

**Section 6.08. Investments.** Make any loan or advance to any Person, or purchase or otherwise acquire, any capital stock, assets, obligations, or other securities of, make any capital contribution to, or otherwise invest in or acquire any interest in any Person, or participate as a partner or joint venturer with

any other Person, except: (1) direct obligations of the United States or any agency thereof with maturities of one year or less from the date of acquisition; (2) commercial paper of a domestic issuer rated at least "A-1" by Standard & Poor's Corporation or "P-1" by Moody's Investors Service, Inc.; (3) certificates of deposit with maturities of one year or less from the date of acquisition issued by any commercial bank; and (4) stock, obligations, or securities received in settlement of debts (created in the ordinary course of business) owing to Borrower.

**Section 6.09. Guaranties, Etc.** Assume, guaranty, endorse, or otherwise be or become directly or contingently responsible or liable (including, without limitation, an agreement to purchase any obligation, stock, assets, goods, or services, or to supply or advance any funds, assets, goods, or services, or an agreement to maintain or cause such Person to maintain a minimum working capital or net worth, or otherwise to assure the creditors of any Person against loss) for obligations of any Person, except guaranties by endorsement of negotiable instruments for deposit or collection or similar transactions in the ordinary course of business.

**Section 6.10 Transactions With Affiliates; Subsidiaries.** Enter into any transaction, including, without limitation, the purchase, sale, or exchange of property or the rendering of any service, with any Affiliate, except in the ordinary course of and pursuant to the reasonable requirements of Borrower's business and upon fair and reasonable terms no less favorable to Borrower than it would obtain in a comparable arm's-length transaction with a Person not an Affiliate, or create, incorporate or organize a Subsidiary of Borrower.

## Article VII

## EVENTS OF DEFAULT

**Section 7.01. Events of Default.** If any of the following events shall occur:

(1) Borrower fails to pay the principal of, or interest on, the Note, as and when due and payable;

(2) Any representation or warranty made or deemed made by Borrower in this Agreement or the Security Agreement, by Guarantor in the Guaranty, or by SES in the Pledge Agreement, or which is contained in any certificate, document, opinion, or financial or other statement furnished at any time under or in connection with any Loan Document shall prove to have been incorrect, incomplete, or misleading in any material respect on or as of the date made or deemed made;

(3) Borrower or Guarantor shall fail to perform or observe any term, covenant, or agreement contained in Articles V or VI hereof;

(4) Borrower or Guarantor shall (a) fail to pay any indebtedness for borrowed money (other than the Note) of Borrower or Guarantor, as the case may be, or any interest or premium thereon, when due (whether by scheduled maturity, required prepayment, acceleration, demand, or otherwise), or (b) fail to perform or observe any term, covenant, or condition on its part to be performed or observed under any agreement or instrument relating to any such indebtedness, when required to be performed or observed, if the effect of such failure to perform or observe is to accelerate, or to permit the acceleration of, after the giving of notice or passage of time, or both, the maturity of such indebtedness, whether or not such failure to perform or observe shall be waived by the holder of such indebtedness; or any such indebtedness shall be declared to be due and payable, or required to be prepaid (other than by a regularly scheduled required prepayment), prior to the stated maturity thereof;

(5) Borrower or Guarantor (a) shall generally not pay, or shall be unable to pay, or shall admit in writing its inability to pay its debts as such debts become due; or (b) shall make an assignment for the benefit of creditors, or petition or apply to any tribunal for the appointment of a custodian, receiver, or trustee for it or a substantial part of its assets; or (c) shall commence any proceeding under any bankruptcy, reorganization, arrangement, readjustment of debt, dissolution, or liquidation law or statute of any jurisdiction, whether now or hereafter in effect; or (d) shall have had any

such petition or application filed or any such proceeding commenced against it in which an order for relief is entered or an adjudication or appointment is made, and which remains undismissed for a period of 90 days or more; or (e) shall take any action indicating its consent to, approval of, or acquiescence in any such petition, application, proceeding, or order for relief or the appointment of a custodian, receiver, or trustee for all or any substantial part of its properties; or (f) shall suffer any such custodianship, receivership, or trusteeship to continue undischarged for a period of 90 days or more;

(6) One or more judgments, decrees, or orders for the payment of money in excess of Fifty Thousand Dollars ($50,000) in the aggregate shall be rendered against Borrower and such judgments, decrees, or orders shall continue unsatisfied and in effect for a period of 90 consecutive days without being vacated, discharged, satisfied, or stayed or bonded pending appeal;

(7) The Security Agreement shall at any time after its execution and delivery and for any reason cease (a) to create a valid and perfected first priority security interest in and to the property purported to be subject to such Security Agreement; or (b) to be in full force and effect or shall be declared null and void, or the validity or enforceability thereof shall be contested by Borrower, or Borrower shall deny it has any further liability or obligation under the Security Agreement, or Borrower shall fail to perform any of its obligations under the Security Agreement;

(8) The Guaranty shall at any time after its execution and delivery and for any reason cease to be in full force and effect or shall be declared null and void, or the validity or enforceability thereof shall be contested by Guarantor or Guarantor shall deny it has any further liability or obligation under, or shall fail to perform its obligations under, the Guaranty;

(9) The Pledge Agreement shall at any time after its execution and delivery and for any reason cease (a) to create a valid and perfected first priority security interest in and to the property purported to be subject to such Pledge Agreement; or (b) to be in full force and effect or shall be declared null and void, or the validity or enforceability thereof shall be contested by SES, or SES shall deny it has any further liability or obligation under the Pledge Agreement, or SES shall fail to perform any of its obligations under the Pledge Agreement; or

(10) If Lender receives its first notice of a hazardous discharge or an environmental complaint from a source other than Borrower, and Lender does not receive notice (which may be given in oral form, provided same is followed with all due dispatch by written notice given by Certified Mail, Return Receipt Requested) of such hazardous discharge or environmental complaint from Borrower within 24 hours of the time Lender first receives said notice from a source other than Borrower; or if any federal, state, or local agency asserts or creates a Lien upon any or all of the assets, equipment, property, leaseholds, or other facilities of Borrower by reason of the occurrence of a hazardous discharge or an environmental complaint; or if any federal, state, or local agency asserts a claim against Borrower and/or its assets, equipment, property, leaseholds, or other facilities for damages or cleanup costs relating to a hazardous discharge or an environmental complaint; provided, however, that such claim shall not constitute a default if, within three Business Days of the occurrence giving rise to the claim, (a) Borrower can prove to Lender's satisfaction that Borrower has commenced and is diligently pursuing either: (i) a cure or correction of the event which constitutes the basis for the claim, and continues diligently to pursue such cure or correction to completion or (ii) proceedings for an injunction, a restraining order, or other appropriate emergent relief preventing such agency or agencies from asserting such claim, which relief is granted within 10 Business Days of the occurrence giving rise to the claim and the injunction, order, or emergent relief is not thereafter resolved or reversed on appeal; and (b) in either of the foregoing events, Borrower has posted a bond, letter of credit, or other security satisfactory in form, substance, and amount to both Lender and the agency or entity asserting the claim to secure the proper and complete cure or correction of the event which constitutes the basis for the claim;

then, and in any such event, Lender may, by notice to Borrower, (1) declare its obligation to make Loans to be terminated, whereupon the same shall forthwith terminate, and (2) declare the Note, all interest thereon, and all other amounts payable under this Agreement to be forthwith due and payable, whereupon

the Note, all such interest, and all such amounts shall become and be forthwith due and payable, without presentment, demand, protest, or further notice of any kind, all of which are hereby expressly waived by Borrower.

Upon the occurrence and during the continuance of any Event of Default, Lender is hereby authorized at any time and from time to time, without notice to Borrower (any such notice being expressly waived by Borrower), to set off and apply any and all indebtedness at any time owing by Lender to or for the credit or the account of Borrower against any and all of the obligations of Borrower now or hereafter existing under this Agreement or the Note or any other Loan Document, irrespective of whether or not Lender shall have made any demand under this Agreement or the Note or such other Loan Document and although such obligations may be unmatured. Lender agrees promptly to notify Borrower after any such setoff and application, provided that the failure to give such notice shall not affect the validity of such setoff and application. The rights of Lender under this Section 7.01 are in addition to other rights and remedies (including, without limitation, other rights of setoff) which Lender may have.

## Article VIII

## MISCELLANEOUS

**Section 8.01. Amendments, Etc.** No amendment, modification, termination, or waiver of any provision of any Loan Document to which Borrower is a party, nor consent to any departure by Borrower from any Loan Document to which it is a party, shall in any event be effective unless the same shall be in writing and signed by Lender, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given.

**Section 8.02. Notices, Etc.** All notices and other communications provided for under this Agreement and under the other Loan Documents to which Borrower is a party shall be in writing (including telegraphic, telex, and facsimile transmissions) and mailed or transmitted or delivered, if to Borrower, at its address at 825 E. Main Street, Suite B, P.O. Box 749, Boonville, IN 47601 or facsimile number 812-641-0478, with a copy to Farmer & Wright, PLLC, Attention Todd Farmer, 4975 Alben Barkley Drive, Suite 1, Paducah, KY 42001 or facsimile number [*add number*], and if to Lender, at its address at 225 Cedar Hill Street, Marlborough, MA 01752 Attention: James Merrill or facsimile number [*add number*], with a copy to Lane Powell PC, Attention Kenneth R. Haglund, Jr., 601 SW Second Avenue, Suite 2100, Portland, OR 97204 or facsimile number 503-778-2200; or, as to each party, at such other address as shall be designated by such party in a written notice to the other party complying as to delivery with the terms of this Section 8.02. Except as otherwise provided in this Agreement, all such notices and communications shall be effective when deposited in the mails or delivered to the telegraph company, or sent, answerback received, respectively, addressed as aforesaid, except that notices to Lender pursuant to the provisions of Article II shall not be effective until received by Lender.

**Section 8.03. No Waiver.** No failure or delay on the part of Lender in exercising any right, power, or remedy hereunder shall operate as a waiver thereof; nor shall any single or partial exercise of any such right, power, or remedy preclude any other or further exercise thereof or the exercise of any other right, power, or remedy hereunder. The rights and remedies provided herein are cumulative, and are not exclusive of any other rights, powers, privileges, or remedies, now or hereafter existing, at law or in equity or otherwise.

**Section 8.04. Successors and Assigns.** This Agreement shall be binding upon and inure to the benefit of Borrower and Lender and their respective successors and assigns, except that Borrower may not assign or transfer any of its rights under any Loan Document to which Borrower is a party without the prior written consent of Lender.

**Section 8.05. Costs, Expenses, and Taxes.** Borrower agrees to pay on demand all costs and expenses incurred by Lender in connection with the preparation, execution, delivery, filing, and administration of the Loan Documents, and of any amendment, modification, or supplement to the Loan Documents, including, without limitation, the fees and out-of-pocket expenses of counsel for Lender

incurred in connection with advising Lender as to its rights and responsibilities hereunder. Borrower also agrees to pay all such costs and expenses, including court costs, incurred in connection with enforcement of the Loan Documents, or any amendment, modification, or supplement thereto, whether by negotiation, legal proceedings, or otherwise. In addition, Borrower shall pay any and all stamp and other taxes and fees payable or determined to be payable in connection with the execution, delivery, filing, and recording of any of the Loan Documents and the other documents to be delivered under any such Loan Documents, and agrees to hold Lender harmless from and against any and all liabilities with respect to or resulting from any delay in paying or omission to pay such taxes and fees. This provision shall survive termination of this Agreement.

**Section 8.06. Integration.** This Agreement, the Loan Documents and the LLC Agreement contain the entire agreement between the parties relating to the subject matter hereof and supersede all oral statements (including the Oral Agreement) and prior writings with respect thereto.

**Section 8.07. Indemnity.** Borrower hereby agrees to defend, indemnify, and hold Lender harmless from and against any and all claims, damages, judgments, penalties, costs, and expenses (including attorneys' fees and court costs now or hereafter arising from the aforesaid enforcement of this clause) arising directly or indirectly from the activities of Borrower, its predecessors in interest, or third parties with whom it has a contractual relationship, or arising directly or indirectly from the violation of any environmental protection, health, or safety law, whether such claims are asserted by any governmental agency or any other person. This indemnity shall survive termination of this Agreement.

**Section 8.08 Governing Law**. This Agreement and the Note shall be governed by, and construed in accordance with, the laws of the State of Kansas.

**Section 8.09. Severability of Provisions.** Any provision of any Loan Document which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions of such Loan Document or affecting the validity or enforceability of such provision in any other jurisdiction.

**Section 8.10. Headings; Gender.** Article and Section headings in the Loan Documents are included in such Loan Documents for the convenience of reference only and shall not constitute a part of the applicable Loan Documents for any other purpose. All pronouns and any variations thereof shall be deemed to refer to the masculine, feminine or neuter gender thereof or to the plurals of each, as the identity of the person or persons or the context may require.

**Section 8.11. Jury Trial Waiver.** LENDER AND BORROWER HEREBY WAIVE TRIAL BY JURY IN ANY ACTION, PROCEEDING, CLAIM, OR COUNTERCLAIM, WHETHER IN CONTRACT OR TORT, AT LAW OR IN EQUITY, ARISING OUT OF OR IN ANY WAY RELATED TO THIS AGREEMENT OR THE OTHER LOAN DOCUMENTS. NO OFFICER OF LENDER HAS AUTHORITY TO WAIVE, CONDITION, OR MODIFY THIS PROVISION.

**Section 8.12. Legal Representation.** The parties to this Agreement have had sufficient opportunity to seek independent legal advice prior to the execution and delivery of this Agreement. The failure to obtain or receive adequate independent legal advice shall not be used as a defense to the enforcement of the terms of this Agreement. The parties to this Agreement and their counsel have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the parties and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any provisions of this Agreement.

***[This space intentionally left blank; execution page follows]***

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their respective officers thereunto duly authorized, as of the date first above written.

Sunwind Energy Doyle North, LLC

By: Sun & Wind Energy Management Corporation
Its: Manager

By: _____
Joe Craft, President

TelexElectric, LLLP

By: _____
James Merrill, General Partner

Exhibit A

**PROMISSORY NOTE**

$2,500,000

November 7, 2013

FOR VALUE RECEIVED, the undersigned, Sunwind Energy Doyle North, LLC, a Kansas limited liability company ("Borrower"), HEREBY PROMISES TO PAY to the order of TelexElectric, LLLP, a Nevada limited liability limited partnership ("Lender"), at its Principal Office located at 225 Cedar Hill Street, Marlborough, MA 01752, in lawful money of the United States and in immediately available funds, the principal amount of Two Million Five Hundred Thousand Dollars ($2,500,000) or the aggregate unpaid principal amount of all Loans made to Borrower by Lender, whichever is less, on December 31, 2014, and to pay interest (computed on the basis of a year of 365 days for the actual number of days elapsed) from the date of this Promissory Note on the unpaid principal amount of this Promissory Note, in like money, at said office, at a rate per annum equal to ten percent (10%), on December 31, 2014. Any amount of principal or interest which is not paid when due, whether at stated maturity, by acceleration, or otherwise, shall bear interest from the date when due until said amount is paid in full, payable on demand, at a rate per annum equal at all times to ten percent (10%).

Borrower hereby authorizes Lender to endorse on the Schedule annexed to this Promissory Note all Loans made to Borrower and all payments of principal amounts in respect of such Loans, which endorsements shall, in the absence of manifest error, be conclusive as to the outstanding principal amount of all Loans; provided, however, that the failure to make such notation with respect to any Loan or payment shall not limit or otherwise affect the obligations of Borrower under the Loan Agreement or this Note.

If any payment is to be made on a day other than a Business Day, the maturity thereof shall be extended to the next succeeding Business Day, and the interest shall be payable thereon at the rate herein specified during such extension.

This Promissory Note is the Note referred to in the Loan Agreement dated effective as of November 7, 2013, between Borrower and Lender (the "Loan Agreement"). Terms used herein which are defined in the Loan Agreement shall have their defined meanings when used herein. The Loan Agreement, among other things, contains provisions for acceleration of the maturity of this Promissory Note upon the happening of certain stated events and also for prepayments on account of the principal and interest of this Promissory Note prior to the maturity of the Promissory Note upon the terms and conditions specified in the Loan Agreement. This Promissory Note is secured by a Security Agreement and a Pledge Agreement referred to in the Loan Agreement, reference to which is hereby made for a description of the collateral provided for under the Security Agreement and the Pledge Agreement and the rights of Borrower and Lender with respect to such collateral.

This Promissory Note shall be governed by the laws of the State of Kansas.

***[This space intentionally left blank; execution page follows]***

IN WITNESS WHEREOF, Borrower has executed this Promissory Note effective as of the date first set forth above.

BORROWER:

Sunwind Energy Doyle North, LLC

By: Sun & Wind Energy Management Corporation
Its: Manager

By: _____
Joe Craft, President

ACKNOWLEDGEMENT OF LENDER:

TelexElectric, LLLP

By: _____
James Merrill, General Partner

**SCHEDULE TO ~~PROMISSORY NOTE~~**

| *Date* | *Amount of ~~Loan~~* | *Amount of Principal Prepaid* | *Unpaid Principal Balance of Promissory Note* | *Name of Person Making Notation* |
|---|---|---|---|---|
| 11/07/2013 | $60,000 | $0 | $60,000 | James Merrill |
| 11/20/2013 | $300,000 | $0 | $360,000 | James Merrill |
| 12/03/2013 | $171,389 | $0 | $531,389 | James Merrill |
| 12/11/2013 | $266,000 | $0 | $797,389 | James Merrill |
| 12/19/2013 | $1,000,000 | $0 | $1,797,389 | James Merrill |
| 12/26/2013 | $221,000 | $0 | $2,018,389 | James Merrill |
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Exhibit B

**SECURITY AGREEMENT**

[See attached pages]

Exhibit C

**GUARANTY**

[See attached pages]

Exhibit D

**PLEDGE AGREEMENT**

[See attached pages]

# EXHIBIT 4

# Sunwind Energy Group LLLP
## Balance Sheet

As of November 30, 2013

| | Total |
|---|---|
| ASSETS | |
| Current Assets | |
| Bank Accounts | |
| Banterra CTS 2 Escrow | 12.90 |
| Banterra CTS Escrow ~ 5519 | 5,256.49 |
| Banterra ~ 6715 closed (deleted) | 0.00 |
| Wells Fargo Checking ~ 3297 NEW | 107.46 |
| Wells Fargo Savings ~ 4431 NEW | 0.00 |
| WF ~ 2104 closed (deleted) | 0.00 |
| WF ~ 9621 Closed (deleted) | 0.00 |
| WF ~ 9624 Closed (deleted) | 0.00 |
| Total Bank Accounts | $5,376.85 |
| Other current assets | |
| Deposited Retainer with Attorneys | 0.00 |
| Interconnect Agreement | 150,000.00 |
| Loan ~ Oak Leaf Consulting | 0.00 |
| Loan ~ Sunwind Energy Solutions LLLP | 300.00 |
| Option Consideration | 230,680.00 |
| Total Other current assets | $380,980.00 |
| Total Current Assets | $386,356.85 |
| Fixed Assets | |
| Accumulated Depreciation | -2,350.19 |
| Office Equipment | 2,783.18 |
| Office Space | 0.00 |
| Sodar Tower | 7,000.00 |
| Total Fixed Assets | $7,432.99 |
| Other Assets | |
| Construction in Progress | 290,460.00 |
| Total Other Assets | $290,460.00 |
| TOTAL ASSETS | $684,249.84 |
| LIABILITIES AND EQUITY | |
| Liabilities | |
| Current Liabilities | |
| Other Current Liabilities | |
| Loan ~ BWFC Processing, LLC | 1,000.00 |
| Loan ~ CFS | 682.46 |
| Loan ~ East 50th Management | 1,000.00 |
| Loan ~ Jacqueline Bowen | 0.00 |

Print Balance Sheet

| | |
|---|---|
| Loan ~ Joe Craft | 0.00 |
| Loan ~ Richard Meinzer | 25,000.00 |
| Loan ~ Total Cost Involved | 5,200.00 |
| Total Other Current Liabilities | $32,882.46 |
| Total Current Liabilities | $32,882.46 |
| Total Liabilities | $32,882.46 |
| Equity | |
| Equity Contribution | |
| Biedeli International, LLC | 50,000.00 |
| Cathy Baskins IRA | 50,000.00 |
| Cathy Praamsma IRA | 9,000.00 |
| Costa Del Norte Corporation | 50,000.00 |
| Debbie Odom IRA | 50,000.00 |
| Design Developers, Inc | 41,000.00 |
| Eagle Mountain International LLC | 50,000.00 |
| Eagle Plastics Company, LLC | 50,000.00 |
| Full Measure International (deleted) | 0.00 |
| Gilbert Ray IRA | 50,000.00 |
| Honey, LLC | 50,000.00 |
| Isla Esmeralda LLC | 50,000.00 |
| Jon Kocheran IRA | 50,000.00 |
| Julie Spinuzzi IRA | 50,000.00 |
| Nathaniel Merrick IRA | 50,000.00 |
| PCB Capital Management Corp | 50,000.00 |
| Richard Deshone IRA | 50,000.00 |
| Rosenthal's | 150,000.00 |
| Silverline Group Corp | 50,000.00 |
| Sue Wilkins Benefield | 50,000.00 |
| Telexfree LLC | 360,000.00 |
| Wellsprings Holding, Inc. | 49,995.00 |
| Western Suzie Travels, LLC | 50,000.00 |
| Young Universe Investment | 49,970.00 |
| Total Equity Contribution | 1,509,965.00 |
| Retained Earnings | -28,628.99 |
| Net Income | -829,968.63 |
| Total Equity | $651,367.38 |
| TOTAL LIABILITIES AND EQUITY | $684,249.84 |

Sunday, Dec 01, 2013 10:46:02 AM PST GMT-8 - Cash Basis

# EXHIBIT 5

# Sunwind Energy Doyle North LLC
## General Ledger
### As of December 31, 2013

| Type | Date | Num | Name | Memo | Split | Amount | Balance |
|---|---|---|---|---|---|---|---|
| **CTS Escrow** | | | | | | | 0.00 |
| Check | 11/07/2013 | | Windborne Energy, I... | | Option Consid... | -25,000.00 | -25,000.00 |
| Check | 11/07/2013 | | Banterra | Windborne | Bank Service C... | -15.00 | -25,015.00 |
| Check | 11/07/2013 | | Banterra | Telexfree | Bank Service C... | -5.00 | -25,020.00 |
| Deposit | 11/07/2013 | | TelexElectric | Deposit | TelexElectric | 60,000.00 | 34,980.00 |
| Check | 11/08/2013 | | Eric Thayer | | Consulting Fees | -5,028.33 | 29,951.67 |
| Check | 11/08/2013 | | Banterra | Merrigan | Bank Service C... | -15.00 | 29,936.67 |
| Check | 11/08/2013 | | Banterra | Superna | Bank Service C... | -15.00 | 29,921.67 |
| Check | 11/08/2013 | | Banterra | Eric Thayer | Bank Service C... | -15.00 | 29,906.67 |
| Check | 11/08/2013 | | Merrigan Energy Co... | | Consulting Fees | -15,000.00 | 14,906.67 |
| Check | 11/08/2013 | | Superna Energy LLC | | Consulting Fees | -2,754.00 | 12,152.67 |
| Check | 11/08/2013 | | East 50th Managem... | | Consulting Fees | -15,550.31 | -3,397.64 |
| Check | 11/19/2013 | | Banterra | Telefree | Bank Service C... | -5.00 | -3,402.64 |
| Deposit | 11/19/2013 | | TelexElectric | Deposit | TelexElectric | 300,000.00 | 296,597.36 |
| Check | 11/20/2013 | | Baseline Renewable... | | Consulting Fees | -5,800.00 | 290,797.36 |
| Check | 11/20/2013 | | Banterra | Baseline | Bank Service C... | -15.00 | 290,782.36 |
| Check | 11/20/2013 | | Banterra | Mortenson | Bank Service C... | -15.00 | 290,767.36 |
| Check | 11/20/2013 | | MA Mortenson Com... | | Construction in... | -290,400.00 | 367.36 |
| Deposit | 12/03/2013 | | TelexElectric | Deposit | TelexElectric | 171,389.00 | 171,756.36 |
| Check | 12/03/2013 | | Banterra | Telexfree | Bank Service C... | -5.00 | 171,751.36 |
| Check | 12/04/2013 | | Windborne Energy, I... | | Option Consid... | -25,000.00 | 146,751.36 |
| Check | 12/04/2013 | | East 50th Managem... | | Consulting Fees | -10,000.00 | 136,751.36 |
| Check | 12/04/2013 | | MA Mortenson Com... | | Construction in... | -24,350.00 | 112,401.36 |
| Check | 12/04/2013 | | Merrigan Energy Co... | | Consulting Fees | -15,000.00 | 97,401.36 |
| Check | 12/04/2013 | | Callahorn Consulting... | | Investment Ba... | -1,028.33 | 96,373.03 |
| Check | 12/04/2013 | | Banterra | 8 @ $15 fees | Bank Service C... | -120.00 | 96,253.03 |
| Check | 12/04/2013 | | Bradley Woods & Co... | | Investment Ba... | -9,255.01 | 86,998.02 |
| Check | 12/04/2013 | | Windborne Energy, I... | | Option Consid... | -20,000.00 | 66,998.02 |
| Check | 12/04/2013 | | Baseline Renewable... | | Consulting Fees | -4,600.00 | 62,398.02 |
| Check | 12/04/2013 | | InfoLawGroup | | Legal Fees | -3,000.00 | 59,398.02 |
| Check | 12/06/2013 | | Windborne Energy, I... | | Option Consid... | -50,000.00 | 9,398.02 |
| Check | 12/09/2013 | | Banterra | Superna | Bank Service C... | -15.00 | 9,383.02 |
| Check | 12/09/2013 | | Superna Energy LLC | | Consulting Fees | -714.00 | 8,669.02 |
| Check | 12/13/2013 | | Farmer & Wright | | Legal Fees | -936.00 | 7,733.02 |
| Check | 12/13/2013 | | Banterra | Farmer & Wri... | Bank Service C... | -15.00 | 7,718.02 |
| Check | 12/16/2013 | | | | Construction in... | -5,100.00 | 2,618.02 |
| Check | 12/19/2013 | | Banterra | Telexfree | Bank Service C... | -5.00 | 2,613.02 |
| Deposit | 12/19/2013 | | TelexElectric | Deposit | TelexElectric | 1,000,000.00 | 1,002,613.02 |
| Check | 12/19/2013 | | Deluxe | | Office Expenses | -154.18 | 1,002,458.84 |
| Check | 12/20/2013 | | Windborne Energy, I... | | Option Consid... | -240,000.00 | 762,458.84 |
| Check | 12/20/2013 | | Banterra | Windborne | Bank Service C... | -15.00 | 762,443.84 |
| Check | 12/26/2013 | | Banterra | Windborne | Bank Service C... | -15.00 | 762,428.84 |
| Check | 12/26/2013 | | Banterra | Telefree | Bank Service C... | -5.00 | 762,423.84 |
| Deposit | 12/26/2013 | | TelexElectric | Deposit | TelexElectric | 221,000.00 | 983,423.84 |
| Check | 12/26/2013 | | East 50th Managem... | | Consulting Fees | -10,000.00 | 973,423.84 |
| Check | 12/26/2013 | | Bradley Woods & Co... | | Investment Ba... | -54,000.00 | 919,423.84 |
| Check | 12/26/2013 | | Callahorn Consulting... | | Investment Ba... | -6,000.00 | 913,423.84 |
| Check | 12/27/2013 | | Grant Thornton LLP | | Legal Fees | -10,000.00 | 903,423.84 |



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# Sunwind Energy Doyle North LLC
## General Ledger
### As of December 31, 2013

| Type | Date | Num | Name | Memo | Split | Amount | Balance |
|---|---|---|---|---|---|---|---|
| Check | 12/27/2013 | | Windborne Energy, I... | | Option Consid... | -660,000.00 | 243,423.84 |
| Check | 12/27/2013 | | MA Mortenson Com... | | Construction in... | -89,100.00 | 154,323.84 |
| Check | 12/27/2013 | 1011 | Sherman, Hoffman ... | | Legal Fees | -80.00 | 154,243.84 |
| Check | 12/27/2013 | | Callahorn Consulting... | | Investment Ba... | -1,326.00 | 152,917.84 |
| Check | 12/27/2013 | | | | Consulting Fees | -15,000.00 | 137,917.84 |
| Check | 12/27/2013 | | Banterra | 6 @ $15 wire ... | Bank Service C... | -90.00 | 137,827.84 |
| Check | 12/27/2013 | | Bradley Woods & Co... | | Investment Ba... | -11,934.00 | 125,893.84 |
| Total CTS Escrow | | | | | | 125,893.84 | 125,893.84 |
| **WF Checking ~ 3382** | | | | | | | 0.00 |
| Deposit | 12/11/2013 | | TelexElectric | Deposit | TelexElectric | 265,970.00 | 265,970.00 |
| Check | 12/11/2013 | | Wells Fargo | | Bank Service C... | -15.00 | 265,955.00 |
| Check | 12/16/2013 | | Travel Services | | Travel Expenses | -10.00 | 265,945.00 |
| Check | 12/16/2013 | | Travel Services | | Travel Expenses | -10.00 | 265,935.00 |
| Check | 12/16/2013 | | Travel Services | | Travel Expenses | -10.00 | 265,925.00 |
| Check | 12/16/2013 | | MyFunLife | | Travel Expenses | -235.52 | 265,689.48 |
| Deposit | 12/17/2013 | | MyFunLife | Deposit | Travel Expenses | 5.50 | 265,694.98 |
| Check | 12/18/2013 | | Travel Services | | Travel Expenses | -344.36 | 265,350.62 |
| Check | 12/18/2013 | | American Airlines | | Airfare | -747.60 | 264,603.02 |
| Check | 12/18/2013 | | Travel Services | | Travel Expenses | -4.99 | 264,598.03 |
| Total WF Checking ~ 3382 | | | | | | 264,598.03 | 264,598.03 |
| **WF Savings ~ 5956** | | | | | | | 0.00 |
| Total WF Savings ~ 5956 | | | | | | | 0.00 |
| **Option Consideration** | | | | | | | 0.00 |
| Check | 11/07/2013 | | Windborne Energy, I... | | CTS Escrow | 25,000.00 | 25,000.00 |
| Check | 12/04/2013 | | Windborne Energy, I... | | CTS Escrow | 25,000.00 | 50,000.00 |
| Check | 12/04/2013 | | Windborne Energy, I... | | CTS Escrow | 20,000.00 | 70,000.00 |
| Check | 12/06/2013 | | Windborne Energy, I... | | CTS Escrow | 50,000.00 | 120,000.00 |
| Check | 12/20/2013 | | Windborne Energy, I... | | CTS Escrow | 240,000.00 | 360,000.00 |
| Check | 12/27/2013 | | Windborne Energy, I... | | CTS Escrow | 660,000.00 | 1,020,000.00 |
| Total Option Consideration | | | | | | 1,020,000.00 | 1,020,000.00 |
| **Contruction In Progress** | | | | | | | 0.00 |
| General Journal | 12/31/2013 | 1 | | journal entry p... | | 408,950.00 | 408,950.00 |
| Total Contruction in Progress | | | | | | 408,950.00 | 408,950.00 |
| **Lease Acquisition** | | | | | | | 0.00 |
| Total Lease Acquisition | | | | | | | 0.00 |
| **Payroll Liabilities** | | | | | | | 0.00 |
| Total Payroll Liabilities | | | | | | | 0.00 |
| **Capital Stock** | | | | | | | 0.00 |
| Total Capital Stock | | | | | | | 0.00 |



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# Sunwind Energy Doyle North LLC
## General Ledger
### As of December 31, 2013

| Type | Date | Num | Name | Memo | Split | Amount | Balance |
|---|---|---|---|---|---|---|---|
| **Dividends Paid** | | | | | | | 0.00 |
| Total Dividends Paid | | | | | | | 0.00 |
| **Equity Contribution** | | | | | | | 0.00 |
| **TelexElectric** | | | | | | | 0.00 |
| Deposit | 11/07/2013 | | TelexElectric | Deposit | CTS Escrow | -60,000.00 | -60,000.00 |
| Deposit | 11/19/2013 | | TelexElectric | Deposit | CTS Escrow | -300,000.00 | -360,000.00 |
| Deposit | 12/03/2013 | | TelexElectric | Deposit | CTS Escrow | -171,389.00 | -531,389.00 |
| Deposit | 12/11/2013 | | TelexElectric | Deposit | WF Checking ... | -265,970.00 | -797,359.00 |
| Deposit | 12/19/2013 | | TelexElectric | Deposit | CTS Escrow | -1,000,000.00 | -1,797,359.00 |
| Deposit | 12/26/2013 | | TelexElectric | Deposit | CTS Escrow | -221,000.00 | -2,018,359.00 |
| Total TelexElectric | | | | | | -2,018,359.00 | -2,018,359.00 |
| **Equity Contribution - Other** | | | | | | | 0.00 |
| Total Equity Contribution - Other | | | | | | | 0.00 |
| Total Equity Contribution | | | | | | -2,018,359.00 | -2,018,359.00 |
| **Opening Balance Equity** | | | | | | | 0.00 |
| Total Opening Balance Equity | | | | | | | 0.00 |
| **Partner Investment** | | | | | | | 0.00 |
| Total Partner Investment | | | | | | | 0.00 |
| **Retained Earnings** | | | | | | | 0.00 |
| Total Retained Earnings | | | | | | | 0.00 |
| **Bank Service Charges** | | | | | | | 0.00 |
| Check | 11/07/2013 | | Banterra | Windborne | CTS Escrow | 15.00 | 15.00 |
| Check | 11/07/2013 | | Banterra | Telexfree | CTS Escrow | 5.00 | 20.00 |
| Check | 11/08/2013 | | Banterra | Merrigan | CTS Escrow | 15.00 | 35.00 |
| Check | 11/08/2013 | | Banterra | Superna | CTS Escrow | 15.00 | 50.00 |
| Check | 11/08/2013 | | Banterra | Eric Thayer | CTS Escrow | 15.00 | 65.00 |
| Check | 11/19/2013 | | Banterra | Telefree | CTS Escrow | 5.00 | 70.00 |
| Check | 11/20/2013 | | Banterra | Baseline | CTS Escrow | 15.00 | 85.00 |
| Check | 11/20/2013 | | Banterra | Mortenson | CTS Escrow | 15.00 | 100.00 |
| Check | 12/03/2013 | | Banterra | Telexfree | CTS Escrow | 5.00 | 105.00 |
| Check | 12/04/2013 | | Banterra | 8 @ $15 fees | CTS Escrow | 120.00 | 225.00 |
| Check | 12/09/2013 | | Banterra | Superna | CTS Escrow | 15.00 | 240.00 |
| Check | 12/11/2013 | | Wells Fargo | | WF Checking ... | 15.00 | 255.00 |
| Check | 12/13/2013 | | Banterra | Farmer & Wri... | CTS Escrow | 15.00 | 270.00 |
| Check | 12/19/2013 | | Banterra | Telexfree | CTS Escrow | 5.00 | 275.00 |
| Check | 12/20/2013 | | Banterra | Windborne | CTS Escrow | 15.00 | 290.00 |
| Check | 12/26/2013 | | Banterra | Windborne | CTS Escrow | 15.00 | 305.00 |
| Check | 12/26/2013 | | Banterra | Telefree | CTS Escrow | 5.00 | 310.00 |
| Check | 12/27/2013 | | Banterra | 6 @ $15 wire ... | CTS Escrow | 90.00 | 400.00 |
| Total Bank Service Charges | | | | | | 400.00 | 400.00 |



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# Sunwind Energy Doyle North LLC
## General Ledger
### As of December 31, 2013

| Type | Date | Num | Name | Memo | Split | Amount | Balance |
|---|---|---|---|---|---|---|---|
| **Construction in Progress** | | | | | | | 0.00 |
| Check | 11/20/2013 | | MA Mortenson Com... | | CTS Escrow | 290,400.00 | 290,400.00 |
| Check | 12/04/2013 | | MA Mortenson Com... | | CTS Escrow | 24,350.00 | 314,750.00 |
| Check | 12/16/2013 | | | | CTS Escrow | 5,100.00 | 319,850.00 |
| Check | 12/27/2013 | | MA Mortenson Com... | | CTS Escrow | 89,100.00 | 408,950.00 |
| General Journal | 12/31/2013 | 1 | | journal entry p... | | -408,950.00 | 0.00 |
| Total Construction in Progress | | | | | | 0.00 | 0.00 |
| **Consulting Fees** | | | | | | | 0.00 |
| Check | 11/08/2013 | | Eric Thayer | | CTS Escrow | 5,028.33 | 5,028.33 |
| Check | 11/08/2013 | | Merrigan Energy Co... | | CTS Escrow | 15,000.00 | 20,028.33 |
| Check | 11/08/2013 | | Superna Energy LLC | | CTS Escrow | 2,754.00 | 22,782.33 |
| Check | 11/08/2013 | | East 50th Managem... | | CTS Escrow | 15,550.31 | 38,332.64 |
| Check | 11/20/2013 | | Baseline Renewable... | | CTS Escrow | 5,800.00 | 44,132.64 |
| Check | 12/04/2013 | | East 50th Managem... | | CTS Escrow | 10,000.00 | 54,132.64 |
| Check | 12/04/2013 | | Merrigan Energy Co... | | CTS Escrow | 15,000.00 | 69,132.64 |
| Check | 12/04/2013 | | Baseline Renewable... | | CTS Escrow | 4,600.00 | 73,732.64 |
| Check | 12/09/2013 | | Superna Energy LLC | | CTS Escrow | 714.00 | 74,446.64 |
| Check | 12/26/2013 | | East 50th Managem... | | CTS Escrow | 10,000.00 | 84,446.64 |
| Check | 12/27/2013 | | | | CTS Escrow | 15,000.00 | 99,446.64 |
| Total Consulting Fees | | | | | | 99,446.64 | 99,446.64 |
| **Investment Banking Fees** | | | | | | | 0.00 |
| Check | 12/04/2013 | | Callahorn Consulting... | | CTS Escrow | 1,028.33 | 1,028.33 |
| Check | 12/04/2013 | | Bradley Woods & Co... | | CTS Escrow | 9,255.01 | 10,283.34 |
| Check | 12/26/2013 | | Bradley Woods & Co... | | CTS Escrow | 54,000.00 | 64,283.34 |
| Check | 12/26/2013 | | Callahorn Consulting... | | CTS Escrow | 6,000.00 | 70,283.34 |
| Check | 12/27/2013 | | Callahorn Consulting... | | CTS Escrow | 1,326.00 | 71,609.34 |
| Check | 12/27/2013 | | Bradley Woods & Co... | | CTS Escrow | 11,934.00 | 83,543.34 |
| Total Investment Banking Fees | | | | | | 83,543.34 | 83,543.34 |
| **Legal Fees** | | | | | | | 0.00 |
| Check | 12/04/2013 | | InfoLawGroup | | CTS Escrow | 3,000.00 | 3,000.00 |
| Check | 12/13/2013 | | Farmer & Wright | | CTS Escrow | 936.00 | 3,936.00 |
| Check | 12/27/2013 | | Grant Thornton LLP | | CTS Escrow | 10,000.00 | 13,936.00 |
| Check | 12/27/2013 | 1011 | Sherman, Hoffman ... | | CTS Escrow | 80.00 | 14,016.00 |
| Total Legal Fees | | | | | | 14,016.00 | 14,016.00 |
| **Office Expenses** | | | | | | | 0.00 |
| Check | 12/19/2013 | | Deluxe | | CTS Escrow | 154.18 | 154.18 |
| Total Office Expenses | | | | | | 154.18 | 154.18 |
| **Payroll Expenses** | | | | | | | 0.00 |
| Total Payroll Expenses | | | | | | | 0.00 |
| **suspense** | | | | | | | 0.00 |
| Total suspense | | | | | | | 0.00 |



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# Sunwind Energy Doyle North LLC
## General Ledger
### As of December 31, 2013

| Type | Date | Num | Name | Memo | Split | Amount | Balance |
|---|---|---|---|---|---|---|---|
| **Travel Expenses** | | | | | | | 0.00 |
| **Airfare** | | | | | | | 0.00 |
| Check | 12/18/2013 | | American Airlines | | WF Checking ... | 747.60 | 747.60 |
| Total Airfare | | | | | | 747.60 | 747.60 |
| **Travel Expenses - Other** | | | | | | | 0.00 |
| Check | 12/16/2013 | | Travel Services | | WF Checking ... | 10.00 | 10.00 |
| Check | 12/16/2013 | | Travel Services | | WF Checking ... | 10.00 | 20.00 |
| Check | 12/16/2013 | | Travel Services | | WF Checking ... | 10.00 | 30.00 |
| Check | 12/16/2013 | | MyFunLife | | WF Checking ... | 235.52 | 265.52 |
| Deposit | 12/17/2013 | | MyFunLife | Deposit | WF Checking ... | -5.50 | 260.02 |
| Check | 12/18/2013 | | Travel Services | | WF Checking ... | 344.36 | 604.38 |
| Check | 12/18/2013 | | Travel Services | | WF Checking ... | 4.99 | 609.37 |
| Total Travel Expenses - Other | | | | | | 609.37 | 609.37 |
| Total Travel Expenses | | | | | | 1,356.97 | 1,356.97 |
| **No accnt** | | | | | | | 0.00 |
| Total no accnt | | | | | | | 0.00 |
| **TOTAL** | | | | | | **0.00** | **0.00** |



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# EXHIBIT 6

TelexFree, LLC

Financial Statements

For the Year Ended December 31, 2013

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| Financial Statements | 1 |
| **Accountants' Compilation Report** | 2 |
| **Financial Statements** | 4 |
| Balance Sheet | |
| Statement of Income | |

CRAFT
FINANCIAL SOLUTIONS

Accountant's Compilation Report

To the Members
TelexFree, LLC
Marlborough, MA

We have compiled the accompanying balance sheet of TelexFree, LLC (a C Corporation) as of December 31, 2013 and the related statements of income for the year then ended, in accordance with Statements on Standards for Accounting and Review Services issued by the American Institute of Certified Public Accountants.

A compilation is limited to presenting in the form of financial statements information that is the representation of management. I have not audited or reviewed the accompanying financial statements and, accordingly do not express an opinion or any other form of assurance on them.

Management has elected to omit substantially all the disclosures and the statements of members' capital and cash flows as required by generally accepted accounting principles. If the omitted disclosures and statements were included in the financial statements, they might influence the user's conclusion about the Company's financial position and results of operations. Accordingly, these financial statements are not designed for those who are not informed about such matters.

Craft Financial Solutions, LLC

CRAFT FINANCIAL SOLUTIONS, LLC
Boonville, Indiana
March 15, 2014

# Telextree LLC
## Balance Sheet
### As of December 31, 2013

| | Total |
|---|---|
| ASSETS | |
| Current Assets | |
| Bank Accounts | |
| 100103 ProPay | 98,463.24 |
| 100104 TD Bank 2808 | 0.00 |
| 100105 TD Bank 0334 | 0.00 |
| 100106 TD Bank 8409 | 295,921.23 |
| 100107 Citizens Bank | 73,434.96 |
| 100109 Fidelity Bank 3842 | -200.00 |
| 100110 Fidelity Bank Sweep 7884 | 2,041.16 |
| 100111 e-Wallet | 31,640,192.30 |
| 100113 Middlesex Savings | 5,467,660.06 |
| Total Bank Accounts | $ 37,577,512.95 |
| Other current assets | |
| Loan to TelexElectric, LLLP | 2,022,329.00 |
| Loan to Telexfree Financial Inc | 3,800,475.30 |
| Loan to Telexfree Inc | 0.00 |
| Loan to TelexMobile | 500,870.00 |
| Loan to Ympactus - Current | 0.00 |
| Propay Reserve | 4,468,411.11 |
| Total Other current assets | $ 10,792,085.41 |
| Total Current Assets | $ 48,369,598.36 |
| Fixed Assets | |
| Accumulated Depreciation | -9,575.10 |
| Equipment | 86,541.68 |
| Total Fixed Assets | $ 76,966.58 |
| Other Assets | |
| Citizens Bank Investment | 0.00 |
| Fidelity Investment | 18,068,960.59 |
| Middlesex Savings Acc 0260 | 2,000,000.00 |
| Organizational Costs | 3,475.00 |
| Receivable from Ympactus - Noncurrent | 0.00 |
| Security Deposits | 5,944.00 |
| Software | 97,948.56 |
| Waddell and Reed, Inc | 7,299,408.73 |
| Total Other Assets | $ 27,475,736.88 |
| TOTAL ASSETS | $ 75,922,301.82 |
| LIABILITIES AND EQUITY | |
| Liabilities | |
| Current Liabilities | 0.00 |
| Credit Cards | |
| American Express | |

| | | |
|---|---|---|
| Bank of America Braz Help 0033 | | 0.00 |
| Bank of America Telexfree 2658 | | 0.00 |
| Total Credit Cards | $ | 0.00 |
| Other Current Liabilities | | |
| Commissions Payable | | 7,642,550.42 |
| Craft Trust Financial | | 0.00 |
| Federal Income Taxes Payable | | 19,964,028.60 |
| Loan from Telexfree Inc. | | 5,390,753.49 |
| Payable to Brazilian Help, Inc | | 2,671.76 |
| Shareholder Loan | | 50.00 |
| State/Local Income Tax Payable | | 3,812,939.50 |
| Telecom taxes payable | | 23,403.93 |
| Total Other Current Liabilities | $ | 36,836,397.70 |
| Total Current Liabilities | $ | 36,836,397.70 |
| Total Liabilities | $ | 36,836,397.70 |
| Equity | | |
| Retained Earnings | | 8,588,915.83 |
| Net Income | | 30,496,988.29 |
| Total Equity | $ | 39,085,904.12 |
| TOTAL LIABILITIES AND EQUITY | $ | 75,922,301.82 |

Tuesday, Feb 25, 2014 01:09:49 PM PST GMT-6 - Cash Basis

# Telextree LLC
## Profit & Loss
### January - December 2013

| | Total |
|---|---|
| Income | |
| Income | |
| Income - paid through bank | 119,468,920.12 |
| Income - paid through system | 572,240,960.21 |
| Income from Ympactus | 174,183,644.66 |
| Total Income | $ 865,893,524.99 |
| Total Income | $ 865,893,524.99 |
| Cost of Goods Sold | |
| Direct Inbound Dial & Access Numbers | 15,256.18 |
| Telecom & Database Network Expense | 397,322.12 |
| Termination | 1,850,898.35 |
| Total Cost of Goods Sold | $ 2,263,476.65 |
| Gross Profit | $ 863,630,048.34 |
| Expenses | |
| Advertising | 16,568.75 |
| Agent Commission - paid through bank | 50,670,290.64 |
| Agent Commission - paid through system | 571,917,743.23 |
| Bad Debts | 186,344,897.61 |
| Bank Charges | 255,369.15 |
| Charitable Contributions | 7,500.00 |
| Credit Card Fees | 16.10 |
| Depreciation | 9,575.10 |
| Events | 109,454.62 |
| Filing and regsitered agent fees | 1,579.00 |
| Income tax expense | |
| Federal Income Tax Expense | 16,025,349.00 |
| State income and franchise taxes | 2,969,510.80 |
| Total Income tax expense | $ 18,994,859.80 |
| Interest Expense | 14,127.09 |
| Meals and Entertainment | 2,861.52 |
| Merchant Fees | 1,038,788.45 |
| Miscellaneous | 33,151.36 |
| Office Expenses | 13,408.21 |
| Office Rental | 10,603.92 |
| Office Supplies | 1,956.33 |
| Payroll Expenses | |
| Payroll Fees | 545.10 |

| | | |
|---|---|---|
| Payroll Reimbursement Expense | | 58,006.04 |
| Payroll Salaries | | 3,507.21 |
| Payroll Tax Expense | | 2,951.97 |
| Total Payroll Expenses | $ | 65,010.32 |
| Personnel | | 18,750.00 |
| Postage & Delivery | | 113.77 |
| Product Development | | 6,000.00 |
| Professional Fees | | 225,256.49 |
| Accounting | | 43,289.38 |
| Attorney | | 162,801.09 |
| Total Professional Fees | $ | 431,346.96 |
| Promotion Expense | | 110,893.86 |
| Refund | | 733,638.50 |
| Chargebacks | | 666,390.91 |
| Charged Twice | | 46,353.20 |
| Fraud | | 646,292.90 |
| Total Refund | $ | 2,092,675.51 |
| Small Items Not Capitalized | | 728.16 |
| Software Development | | 81,287.50 |
| Subcontractor | | 50,524.82 |
| Technology Consultant | | |
| Professional Consultant IT | | 440,682.36 |
| Total Technology Consultant | $ | 440,682.36 |
| Telecom tax expense | | 23,403.93 |
| Travel | | 135,569.09 |
| Travel Meals | | 21.99 |
| Website Domain | | 649.81 |
| Total Expenses | $ | 832,900,408.96 |
| Net Operating Income | $ | 30,729,639.38 |
| Other Income | | |
| Interest Earned | | 2,731.65 |
| Total Other Income | $ | 2,731.65 |
| Other Expenses | | |
| Loss on Investment | | 48,662.88 |
| Other Expenses | | 0.00 |
| Penalties & Settlements | | 186,719.86 |
| Total Other Expenses | $ | 235,382.74 |
| Net Other Income | -$ | 232,651.09 |
| Net Income | $ | 30,496,988.29 |

# EXHIBIT 7

**Sunwind/TelexElectric Document Review**

1) There have been 2 additional advances - $390,000 on 2/5/14 and $200,500 on 2/19/14 to bring the amount borrowed to $2,608,889.
2) OA - 4.2(g) – we need the right to borrow amounts greater than $50k from other parties
3) Current model shows tax credits of $212 million, $50+ million of debt and $90+ million of equity needed to raise – 4.2(h) makes reference to $100 million threshold so this may need to be adjusted
4) Sunwind Energy Group has 2 old debts that are owed – Richard Meinzer $25,000 and Total Cost Involved $5,200 before I got involved. Need to except from the default provisions.
5) Promissory Note – section 2.08 is blank
6) Guaranties – we agreed we would liquidate the leasehold interests before pursuing collection on the guaranties
7) Mandatory repayment date needs to be 4/1/15
8) Collateral – can assign the leaseholds; I will email that paperwork
9) Lane Powell fees not payable until loan is repaid (section 8.05)
10) Note that TelexElectric was not in existence as of 11/7/13 (date of Loan agreement)
11) Loan agreement – section 4.12 – 'proposed to be conducted' – we are securing additional land now which will go through the permitting process
12) Section 4.13 – this is not true with respect to the Guarantors – needs to be removed
13) Todd Farmer's fax number is 270-443-4631 Need to ask what fax number to use for Jim Merrill's
14) Pledge agreement – need to discuss
15) Guaranty agreement – discuss 3d and 3e, 4.5
16) Operating agreement – cannot set SES's capital account to $0 at beginning because of capital invested from SES of approximately $1.25 million; I need to better understand section 2.5; section 7.3 should say plus extensions; section 7.6.4 – need to ask Steve

# EXHIBIT 8

# PURCHASE AGREEMENT

THIS PURCHASE AGREEMENT ("Agreement"), dated as of December 2, 2013, is entered into between Telex Electric, LLLP (hereinafter "Buyer") and Sunwind Energy Doyle North, LLC (hereinafter cumulatively referred to as "Seller") with both Buyer and Seller cumulatively referred to as the "Parties."

WHEREAS, Seller is an energy development company, which is a for profit limited liability company incorporated under the laws of the state of Kansas, and,

WHEREAS, the Seller holds outstanding but unissued membership units, and,

WHEREAS, Seller wish to sell to Buyer and Buyer wishes to purchase from Seller, an ownership interest in the business of Seller.

NOW, THEREFORE, in consideration of the premises and of the mutual agreements, representations, warranties, provisions and covenants herein contained, the sufficiency of which is hereby acknowledged, the parties hereto, each intending to be bound hereby, agree as follows:

## ARTICLE 1
## PURCHASE OF SELLER'S STOCK

1.1 Shares to be Purchased. At the Closing (as hereinafter defined), the Sellers shall sell and deliver to Buyer, membership units equal to 26.572188% of all issued and outstanding shares of Seller and shall cause its books and records including its operating agreement to be amended to reflect this purchase. Buyer acknowledges that its ownership percentage is subject to dilution as additional investors invest in Seller. Buyer and Seller both warrant that Buyer's membership interest cannot be diluted below 6.0% without the written consent of Buyer.

1.2 Consideration. The consideration for the transfer of this membership interest to the Buyer shall be extension credit by Buyer to Seller of a Revolving Promissory Note dated the same date herewith to Seller and the assignment of Production Tax Credits to Buyer from Seller in an amount not less than Three Million Seven Hundred Fifty Thousand Dollars ($3,750,000.00).

## ARTICLE 2
## CLOSING TIME AND PLACE

The closing of the transaction contemplated herein (the "Closing") shall take place at a date and time to be agreed upon by Buyer and Sellers, but in no event later than three (3) days after the effective date of this Agreement (the "Closing Date"). At the Closing, Buyer and Sellers shall deliver to each other the documents, instruments and other items necessary to effectuate this Agreement.

## ARTICLE 3
## REPRESENTATIONS AND WARRANTIES OF BUYER AND SELLER

The Sellers represent and warrant that each of the following representations and warranties is true as of the Closing Date with respect to the Seller, as the case may be, and agrees that such representations and warranties shall survive the Closing.

3.1. All Units Being Acquired. The membership units being acquired by Buyer hereunder constitutes shares that are free and clear of all liens, security interests, claims, equitable interests and encumbrances.

3.2. Authority for Agreement. Seller has full right, power and authority to enter into this Agreement and to perform their obligations hereunder. This Agreement has been duly and validly executed and delivered by the Sellers and Buyer, subject to the due authorization, execution and delivery by Sellers, constitutes the legal, valid and binding obligation of the parties, enforceable against each other.

## ARTICLE 4
## CLOSING DELIVERIES

At the Closing, the respective parties will make the deliveries indicated:

4.1. Buyer Deliveries.

4.1.1. Buyer shall deliver to the Seller a fully executed Revolving Promissory Note as required to be delivered on the Closing Date pursuant to Section 1.2.

4.2 Sellers Deliveries.

4.2.1. The Seller shall deliver to Buyer certificates representing or other documents acceptable to Buyer evidencing its ownership interest in Seller free and clear of all liens, security interests, claims and encumbrances, accompanied by stock powers duly executed in blank.

## ARTICLE 5
## ADDITIONAL COVENANTS OF BUYER AND SELLER

5.1. Further Assurances and Additional Conveyances.

Following the Closing, the Seller and Buyer shall each deliver or cause to be delivered at such times and places as shall be reasonably agreed upon such additional instruments as Seller and Buyer may reasonably request for the purpose of carrying out this Agreement. The Seller will cooperate with Buyer on and after the Closing Date in furnishing information, evidence, testimony and other assistance in connection with any actions, proceedings or disputes of any nature with respect to matters pertaining to all periods

prior to the Closing Date.

5.2. Indemnification by Seller.

Seller hereby agrees to fully indemnify and hold Buyer harmless for any liabilities to Buyer arising as a result of Buyer purchasing Seller's shares if Buyer is harmed as a result of the purchase subject to this Agreement.

Buyer is not agreeing to assume any liabilities as a result of this transaction.

## ARTICLE 6
## OTHER POST-CLOSING COVENANTS OF BUYER AND SELLER

6.1 Compliance with Governing Law.

Buyer and Seller agree that the governing law may require Buyer and Sellers to execute additional documents to make this agreement effective under the laws of the Kansas. Buyer and Sellers further agree that any portion of this Agreement found null and void it shall not render the remainder of the Agreement null and void.

6.2 Rights and Remedies Upon Breach.

If the Seller breach, or threaten to commit a breach of, any of the provisions herein, Buyer shall have the following rights and remedies, each of which rights and remedies shall be independent of the others and severally enforceable, and each of which is in addition to, and not in lieu of, any other rights and remedies available to Buyer at law or in equity:

6.2.1. Specific Performance. The right to have Seller issue membership certificates of Sunwind Energy Doyle North, LLC. It is agreed that any breach or threatened breach of Article 4.2 would cause irreparable injury to Buyers and that money damages would not provide an adequate remedy to Buyers.

6.2.2. Attorney's Fees. In the event of any dispute or controversy between Buyer and Seller relating to the interpretation of this Agreement or to the transactions contemplated hereby, the prevailing party shall be entitled to recover from the other party reasonable attorneys' fees and expenses incurred by the prevailing party. Such award shall include post-judgment attorney's fees and costs.

## ARTICLE 7
## GENERAL

7.1. Assignment.

This Agreement shall be binding upon and shall inure to the benefit of the parties hereto, the successors or assigns of Sellers and the successors or assigns of Buyer provided, however, that any such assignment shall be subject to the terms of this Agreement and shall not relieve the assignor of its or his responsibilities under this Agreement.

7.2. Counterparts; Facsimile Signatures.

This Agreement may be executed in two or more counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument. Counterparts may be executed by facsimile and any counterpart so executed shall be deemed an original.

7.3. Notices.

All notices, requests, demands and other communications hereunder shall be deemed to have been duly given if in writing and either delivered personally, sent by facsimile transmission or by air courier service, or mailed by postage prepaid registered or certified U.S. mail, return receipt requested, to the addresses designated below or such other addresses as may be designated in writing by notice given hereunder, and shall be effective upon personal delivery or facsimile transmission thereof or upon delivery by registered or certified U.S. mail or one business day following deposit with an air courier service:

If to the Seller:

Sunwind Energy Doyle North, LLC
Joe Craft
825 East Main Street, Suite B
Boonville, IN 47601-1885
Telefax: 812-641-0478
Telephone: 812-641-0477

If to the Buyers:

Telex Electric, LLLP
Attn: James Merrill
225 Cedar Hill
Marlborough, MA 01752

7.4 Applicable Law.

This Agreement shall be governed by and construed in accordance with the laws of the State of Kansas without regard to its conflict of laws provisions.

7.5 Captions.

The captions in this Agreement are for convenience only and shall not be considered a part hereof or affect the construction or interpretation of any provisions of this Agreement.

7.6 Number and Gender of Words; Corporation.

Whenever the singular number is used herein, the same shall include the plural where appropriate, and shall apply to all of such number, and to each of them, jointly and severally, and words of any gender shall include each other gender where appropriate.

7.7 Entire Agreement.

This Agreement and the other documents delivered pursuant hereto constitute the entire Agreement and understanding between the Buyer and Seller and supersedes any prior agreement and understanding relating to the subject matter of this Agreement. This Agreement may be modified or amended only by a written instrument executed by the Buyer and Seller.

7.8 Waiver.

No waiver by any party hereto at any time of any breach of, or compliance with, any condition or provision of this Agreement to be performed by any other party hereto may be deemed a waiver of similar or dissimilar provisions or conditions at the same time or at any prior or subsequent time.

7.9 Construction.

The language in all parts of this Agreement must be in all cases construed simply according to its fair meaning and not strictly for or against any party.

Witness the signatures of the parties effective on the date first written above.

**BUYER:**

_____

**Telex Electric, LLLP**
**By: James Merrill, Managing Partner**

**SELLER:**

_____

**Sunwind Energy Doyle North, LLC**
**By: Joe Craft, Managing Partner**

# EXHIBIT A

# EXHIBIT A

## Statement of Account (Transfers)

| *Date* | *Amount of Loan* | *Amount of Principal Prepaid* | *Unpaid Principal Balance of Promissory Note* | *Name of Person Making Notation* |
|---|---|---|---|---|
| 11/07/2013 | $60,000 | *$0* | *$60,000* | James Merrill |
| 11/20/2013 | $300,000 | *$0* | *$360,000* | James Merrill |
| 12/03/2013 | $171,389 | *$0* | *$531,389* | James Merrill |
| 12/11/2013 | $266,000 | *$0* | *$797,389* | James Merrill |
| 12/19/2013 | $1,000,000 | *$0* | *$1,797,389* | James Merrill |
| 12/26/2013 | $221,000 | *$0* | *$2,018.389* | James Merrill |
| 02/05/2014 | $390,000 | *$0* | *$2,408,389* | |
| 02/19/2014 | $200,500 | *$0* | *$2,608,889* | |

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