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**NORVERGENCE AND ITS LENDING PARTNER,
THE LEASING INDUSTRY:
The Suspect Practice of Lease Flipping Goes Belly-Up**

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The small business owner victims of the Norvergence scam told their stories to every conceivable state and federal agency. The story is the same.

Norvergence, a telecommunications provider, found their names through D&B. Calling and writing small business targets with AAA credit, Norvergence salespeople explained that they were partners with Qwest and Nortel, that Norvergence was a pilot project, and that they were simplifying phone and Internet services into one discounted bill. Michael Green, Norvergence Class Action, Lead Attorney, states that the Norvergence web site and its salesperson “pitch script” cited promises to “reduce costs 20-40% all through a Nortel engineered proprietary technology, the ‘Matrix’ box. You just had to sign up for the Norvergence ‘Total Solutions Proposal’ with an agreement that bundled telecommunication services and equipment into a monthly fixed cost for 5 years.”

Searching for www.norvergence.com on the www.waybackmachine.org web site, one finds all copies of the Norvergence web sites going back to 2002 festooned with Nortel and Qwest “partnership program” logos of endorsement. Eleven thousand leases, 11,000 “lessee” victims, and \$200 million invested by leasing companies later, Norvergence’s bankruptcy June/July 04 completely halted the only phone and Internet services these

small businesses had. It frequently took months of being “down” before getting reconnected again with IT-T1 services.

Instead of paying one bill from the first invoiced month, as Norvergence promised, lessees paid two bills for the phone services that they, for the most part, received for one year. The cost was determined not by equipment but by the history of that small business’s phone bills. In my case, the Norvergence comparison of past monthly telecommunications costs and their offer created “0” savings. For me, the attractions were a consolidation of many service bills into one and the extra Internet bandwidth. (See illustration on page 267 of my ELA report).ⁱ

Why has the Norvergence Fraud Case gained such notoriety, as compared to other Leasing industry scandals? Andrew Alper (*Monitor*, April 2005) posits that the reason for this high profile coverage is “the involvement of the government authorities.”ⁱⁱ

Mr. Alper complains about the FTC’s “blurred distinction” between “commercial and consumer transactions,” which he states has “different statutes and laws.” However, if Mr. Alper had called Randy Brook, FTC attorney and author of the FTC document, Mr. Brook would have told him it is “the FTC Act,” the law that governs FTC, that “makes no distinction between the commercial and the consumer.”ⁱⁱⁱ He also would have explained that he and other government agencies got involved because “there were so many injured customers, and they were very vocal. All were small businesses, including: non-profits, churches, government entities, even a Girl Scout Troop have had lots of harm done.”^{iv}

Michael Green, Norvergence Class Counsel insists “it started with the collective voice of the lessees that in an exquisite example of modern-day grass root advocacy rose up from their 11,000 affected small businesses to uniquely find each other and be organized in a way only the Internet can now allow. This translated into dedicated online forums, lessee sponsored websites, attorney networks, government agency action and the filing of 6 class actions nationwide.”

My point is not to single out Mr. Alper or his article's errors and untested assumptions, but to cite him as an example of the industry's tendency to rely on documents and each other's counsel rather than speak directly to those with differing views. This phenomenon perpetuates errors and incomplete information. Embarrassing facts would be revealed by outsiders, not by those who purchased the Norvergence portfolio. The ancient dictum, "Keeping your enemies closer than your friends," apparently is not followed in the leasing industry.

Like miners' canaries, outsiders' complaints can provide lifesaving warnings and much needed information for the entire leasing industry—especially in a time of crisis. It is as an outsider that I approach the industry, having examined a thousand documents and spoken to over 100 experts, including industry authorities in FASB 13 lease accounting and insurance, and white collar crime investigators and enforcers.^v I examine the leasing companies' role in the Norvergence scandal through the lens of Bank Fraud, Accounting Fraud, and Insurance Fraud.

I. Bank Fraud: "Lease Flipping"

A senior IRS Criminal Investigator, a veteran from the 1980's Savings and Loan disaster, upon hearing the facts of the Norvergence Leasing case, said, "this sounds like bank fraud. Land Flipping. I'd call it Lease Flipping." With this interview, a new category of fraud was coined.

At the heart of a land or property flipping scheme is fraudulent valuations cited within paperwork that allows cheap land to be purchased and sold again, only days apart, at an extraordinary increase in price. The inflated value, of course, has nothing to do with real costs or appraised worth, but nonetheless is used as the basis for a bank's funding of a loan.

This same flipping structure that allows a banking transaction almost instantly to confer high value to property that was of little value two days beforehand, aptly describes what happened in the Norvergence scam.

Phone and Internet services, were fraudulently labeled “equipment.” Once masquerading as “equipment,” telecommunications services only then were able to be placed into a banking conveyance of five-year term “equipment leases” as Leasing Companies do not lease services. The fictional “equipment leases” were approved for funding by leasing companies officers, within the context of their larger vetting and acceptance of Norvergence as an “equipment” vendor. Leasing companies drafted these “partnership” or “master lease program” contracts, and often charged Norvergence fees to do their due diligence on Norvergence and the equipment.

Forget that the main named stockholder of Norvergence was part of a recent major telecommunications company bankruptcy, or that Norvergence was a telecommunications start-up company service provider, in which financials showed principals invested only a diminutive \$250,000 cash stake. The Leasing Company/Norvergence deal allowed unfunded Norvergence leases with equipment that cost \$200 to \$1550 to be flipped to leasing companies, or “assignees,” in two days at an increase *ten to one hundred times* the original equipment cost. Leasing Companies profited from the high volume of Norvergence “equipment lease sales” and their high interest rates.

Norvergence made no cash investment in any lease, and with \$1550 underlying the paper, almost instantly received from \$10,000 to \$200,000 per lease for identical equipment descriptions. What in reality was a portfolio of \$17 million maximum value, was funded and booked by leasing companies as over \$200 million, invoiced as “equipment cost.” As in the known land-flipping schemes, such a lease-flipping scheme that instantly ratchets up valuations, also without a basis, are bound to fail--leaving numerous lessee victims, as happened in Norvergence.

The Norvergence Lease Flipping Scheme Unfurled

The essence of the Leasing Company/Norvergence “vendor partnership programs” prescribed Norvergence to be a “straw-man” lessor with no investment in the lease and \$200 or \$1550 equipment underlying the paper valued from \$10,000 to \$340,000 only after the flipping to leasing companies portfolios. Once Leasing Companies checked a prospective lessee’s credit, a lessee credit approval or decline was issued to Norvergence.

The contract between Norvergence and Leasing Company next dictated, in most cases, that Norvergence in a “private label” agreement signed the Equipment Lease Agreement with lessees, in Norvergence’s own name, only *in behalf of leasing companies*.

This truly strange Leasing Company convention of “private label” contracts works diametrically opposite to the normal marketing concept. Instead of funding an arrangement where they buy a product and permanently “brand” it with their own name, as in a normal private label marketing device, in the equipment industry, the practice can be used to *hide* one’s name instead.

Leasing Companies here, only reserve the right to “brand” and keep the Norvergence name on the lease to cover the two days between the lessee and Norvergence’s signing of the lease (or the Leasing Companies, with power of attorney signing for Norvergence), and when, two business days later, Norvergence as lessor “assigns” the lease to Leasing Companies.

Leasing companies’ hidden ownership served to deceive Norvergence customers, who would have been alarmed to learn that the document they signed meant two payments per month instead of one, as promised, and that the lease was not with Norvergence, or their “partners” Nortel or Qwest, but contractually bound them to Norvergence’s vendor or master lease “partners,” mostly big leasing companies.^{vi}

This preplanned and contractual sequence of transactions from original lessor (Norvergence, who never funded the lease and only signed it in their name in behalf of leasing companies) to “assignee” (the leasing companies) placed leasing companies in the plum position of “holder-in-due course.” As holder in due course, leasing companies strategically position themselves in the ultimate status and power for collection from any defaults from lessees “come hell or high water.”

Most of these Leasing Company/Norvergence “Master Lease” contracts specify that Norvergence, who started the lessor transactions circle with ownership of a \$200 or \$1550 piece of equipment, buy back the boxes from the Leasing Company for \$1 or \$101 at the end of the 60 month term.

CHART

The Lease Flipping Steps: Norvergence as “Straw-Man” Lessor

1. Leasing Companies (LCs) and Norvergence sign vendor “partnership” or “Master Lease” agreements that stipulates due diligence of vendor and equipment, and Private Label Agreements. Conditions and steps to be taken by both parties are fully outlined. LCs are the drafting attorneys of the agreement. Norvergence is often required by LCs to pay them a fee for processing the LC/Norvergence Master Lease contract (for example, \$5,000, to be refunded only after the first million dollars in lease sales). Once LCs approves Norvergence’s credit, a monthly lease volume program target is set (for example \$1,000,000 per month, with a first year limit of \$12,000,000). The LCs in most cases take title of the equipment, and /or the contract specifies that Norvergence buy back the equipment (\$1 or \$101) from the Leasing Company at the end of the 5-year term. Norvergence, in one example, was able to track its “Vendor Portfolio” through “CIT Digital Edge” online service under a category, “Equipment Funding.”
2. Norvergence begins submitting to LCs lessee credit applications. LC processes all individual lessees’ credit applications for Norvergence and approves

or declines. A Norvergence service contract, with two Nortel logos at the top, is signed by the lessee. The service contract, in contrast to the ERA with its set 60-month “rental fee,” makes *no* mention of monies. The only exceptions are when cell phones are part of the service; a monthly cellular access fee (such as \$15.99 per handset per month) is then specified.

3. For approved applications, Norvergence has a 5-year “Equipment Rental Agreements” (ERA) signed by the Lessee, and signs themselves (or the leasing company, with power of attorney signs on Norvergence’s behalf). However, the Private Label Agreement stipulates that this lease is in Norvergence’s name only, and it is actually the LC’s lease. The “Norvergence Lease,” in name only, is unfunded except for Norvergence’s equipment cost of \$200 or \$1500.

4. Norvergence next sends LC: lessee signed Delivery and Acceptance Agreement (D + A), signed Equipment lease (ERA), equipment invoice and spec sheet at 10 to 100 times the cost. (For example, CCL’s due diligence report, done 10/03, confirms they knew the equipments’ inflated value on the ERAs was in steep contrast and had no relationship to the actual “Suggested Retail Price” [SPJ]).

5. According to most Master Lease or Vendor Partnership Agreements, a lease is required to be funded by LC within two business days of Norvergence’s submission of documents cited in #4 above. (For example, “Dolphin shall, upon satisfactory verification with lessee, pay to vendor the invoiced equipment cost of the lease transaction”). LC funds lease as 2nd leaseholder and “arms length,” 3rd party “assignee” at 10x – 100x original equipment cost. The lease flip makes the total 17 million dollar Norvergence portfolio worth over 200 million dollars on paper in less than 2 years.

6. FASB 13, EITF 00-21 requirement for proper valuation (using specified methods of Vendor Specific Objective Evidence [VSOE]), separate allocation of services versus equipment costs and correct timing of earnings, is not done either by Norvergence, or LCs as third parties. Insurance charges and profits, insurance loss claims; personal property tax billing, collection and payment; and sales tax collection and payments are all based upon fraudulent equipment valuations of

Norvergence equipment, its Matrix boxes. The monthly cost of the Equipment Rental Agreements was determined solely from the lessees' prior history of service costs for their monthly telecommunications service (e.g. landline phone, cell phone and Internet access). Phone, data and cable taxes for IT at the state and federal level are neither collected nor paid by Norvergence or Leasing Companies.

7. Most Norvergence /Leasing Company contracts describe a sequence of steps which form a closed loop. The steps started with Norvergence buying \$200 or \$1550 equipment, and now end here with Norvergence either still owning the equipment or with their buying back the equipment from LCs for \$1 or \$101 at the end of the 5-year lease term. ("Invoiced cost" for this same Norvergence equipment also "stepped up" its \$200 or \$1550 value to a range \$10K to \$200,000K plus, 2 business days after Norvergence's purchase).

Where is the bank fraud? Ada Focer, in her article, "Flip, Flip, Flip, Flop (Property Flipping and Mortgage Fraud)," (NHI: Shelterforce Online Sept./Oct. 2000), in a section titled, "Price versus Value," states that "flippers claim if someone is willing to pay this much. That is how much it must be worth."

However, truthful valuations in bank funding transactions are the basis for correct calculations of risk, and determine the amount of loan loss reserves. Front-loading 5 years of services, with only \$200 and \$1550 in equipment in leases and funded by LCs for 10K to well over 200K is a wholly different and greater level of risk than leases with equipment whose Fair Market Value (FMV) or Vendor Specific Objective Evidence (VSOE) value is 10K to 200K at lease inception.

Therefore, it is completely false for leasing companies to declare Norvergence Leases as "only a purchase of income streams," as if one income stream is simply neutral and interchangeable with another. Given a lessee with equal credit and interest rates, the income stream whose basis underlying the paper is "non-rendered services" that are

front-loaded 5 years ahead of delivery, is not the same income stream of a lease with real underlying equipment values at actual FMV or VSOE paid over a 5-year term.

Need I say, if it were Hoyle for banks to freely fund and book leases whose underlying equipment value is \$17 million, as if it were actually \$200 million in equipment value, then the entire banking industry would be at risk of collapse. This is why both the specific Norvergence case and this “lease flipping” generality are vital areas for IRS, SEC and banking regulators to examine.

II. Accounting Fraud: Unbundling Services and Equipment is Required

The Federal Accounting Standards Board (FASB) Statement 13 and Emergent Issues Task Force (EITF) 00-21 lease accounting rules require that companies do not assume services and equipment values, even if they are split into two separate contracts, as is the case with Norvergence.^{vii} Since Oct. 30, 2003, companies must rigorously seek out what is termed Vender Specific Objective Evidence (VSOE) for evaluating equipment and services’ equivalent market values, which are then required to be used for making allocations of separately booked and unbundled services and equipment.

EITF 00-21, Number 16, specifically states the criteria leasing companies need to use for the determination of FMV and VSOE in their leasing:

16. Contractually stated prices for individual products and/or services in an arrangement with multiple deliverables should *not* be presumed to be representative of fair value. The best evidence of fair value is the price of a deliverable when it is regularly sold on a standalone basis. Fair value evidence often consists of entity-specific or vendor-specific objective evidence (VSOE) of fair value. As discussed in paragraph 10 of SOP 97-2, VSOE of fair value is limited to (a) the price charged for a deliverable when it is sold separately or (b), for a deliverable not yet being sold separately, the price established by management having the relevant authority (it must be probable that the price, once established, will not change before the separate introduction of the deliverable into the marketplace). The use of VSOE of fair value is preferable in all circumstances in which it is available. Third-party evidence of fair value (for example, prices of the vendor's or any competitor's largely interchangeable products or services) is acceptable if VSOE of fair value is not available.

The Xerox Scandal, in which the SEC charged Xerox with accounting fraud in 2002, was a case strikingly similar to the Norvergence debacle.^{viii} Xerox had bundled services with their black box and booked both services and equipment in the first year as equipment alone. This booking of services as equipment resulted in revenues being booked years before they were actually earned. This created a distortion in their books. Instead of earnings gradually being earned over the 5-year lease, the first year booking shot the earnings way up that year; in the 4 years that followed, losses appeared.

Due to the Norvergence Portfolio charge-offs, auditing committees at leasing companies likely marched into management offices. I have been told by a retired partner at a Big 4 accounting firm and an expert in leasing, that contracts for services would have a “*much* reduced likelihood for collection.” The higher risks that LCs took in front-loading service leases would have required much higher loan loss reserves on their Balance Sheets than for equipment leases. Therefore, services, as the underlying basis for leases, were just “not acceptable in terms of collectibility.”

Did Leasing companies know the true values of the equipment?^{ix} Due Diligence reports and other documents acquired through the bankruptcy reports suggest yes. By October 2003, CCL had an “Asset Management Equipment Study” done, which revealed that nothing Norvergence offered was new. The report states, “Similar routers cost between \$1,000 and \$1,500 and with a set of programmed cards the total unit can cost between \$5,000 and \$6,000 .” The study also suggested a “\$101 buyout program to Norvergence.”

Upon receiving my call, Erv Paw, the Senior Consultant at InfoTech, the technology research firm that CIT hired to do a due diligence report, said, “I was waiting for someone to call me about this. You’re the first to call.” CIT had done a “Due Diligence” report in April 2004, three months before the Norvergence bankruptcy. In contrast with the CCL study, CIT and Norvergence surprisingly kept cost information in this 11th hour report from its due diligence expert, Erv Paw.

At a meeting of Norvergence, CIT and InfoTech and as represented in the final due diligence report, CIT and Norvergence would only say, to InfoTech's Senior Consultant, that the price of the Matrix box was "typically \$1,000 per unit." However, when still pursuing additional information about pricing, the Info Tech Consultant was told at the meeting that Norvergence would only discuss costs with CIT directly, claiming the information was "proprietary." Since the InfoTech Consultant signed a non-disclosure agreement, this did not make sense to him. Later, the CIT officer told him that CIT had cut off funding Norvergence leases by October 2004, a full 6 months before the due diligence report was ordered.

By booking \$200,000,000 in telecommunications services as "equipment," phone, data and cable taxes for IT at the state and federal level, to this day, have neither been collected nor paid by Leasing Companies or Norvergence. Leasing Companies improperly billed lessees for personal property taxes and other sales taxes based upon inflated and fictional "equipment" costs. At the same time, Leasing Companies through fraudulent book-keeping evaded all taxes required by Federal and State authorities for phone, data, cable services .

III. Insurance Fraud results from False Representations of Values

My study of the insurance fraud involved in the Norvergence case indicates illegal practices inside and outside the boundary of this one portfolio. Insurance fraud follows as both a consequence of the false valuation of equipment at the lease inception and a means for leasing companies (and their insurers) to generate additional profits.

To start off, insurance charges on fraudulently inflated equipment values have resulted in lessees paying excessive fees for insurance to the benefit and profit of Leasing Companies.

How it Worked

Since in their private label agreement, Norvergence only signed on behalf of the LCs and the LCs were to be assignees within two days, insurance was the sole involvement of LCs.

LCs, like CIT, would send a letter providing an “insured value” to be given to lessee’s insurer (which generally turned out to be the amount they funded upon receipt of the equipment invoice) and would also cite the insurance premium CIT would charge as a separate line item “reimbursement” for selecting their insurance program from Assurant.

One CIT lessee paid over \$65 a month, or approximately \$780 per year, to insure two Norvergence boxes for equipment whose replacement value was \$3,100 for the two boxes. Their total lease amount was a whopping \$130,000 for two Norvergence boxes worth only \$3,100. Assurant tells me they do not insure services, only equipment. Moreover, they believed the CIT’s Norvergence Leases and the “inventory amounts” listed for CIT policy were representations of actual equipment replacement values. CIT lessees paid these premiums ranging from \$22 to over \$65 per month without any disclosures about the exact amount of coverage lessees were receiving, or what the coverage was based upon.

The unfairness for lessees included the conceivable circumstance that upon discovery of the fraudulent insured values, insurers would refuse to pay upon a loss claim, regardless of the lessees having paid inflated premiums. It is also plausible that insurers went along with the deception and did not notify lessees of the fraud, for they were making money too, as is likely the case with Assurant. They as licensed underwriters have been notified by this writer that they and lessees were deceived by false valuations made by CIT, but lessees have yet to be informed by Assurant, or CIT. Assurant, CIT and other leasing companies have not refunded insurance charges. Assurant, likely, without skipping a beat, still insures CIT without penalty resulting from a breach of trust—at the expense of lessees.

Assurant provided me with the rate that CIT was paying for the Norvergence equipment. After doing the calculations, this rate turned out to have nothing to do with the premiums CIT charged lessees. One lessee with a lease signed in July 03 would pay \$32.84 per month for two boxes, for a \$22,655 insured value; another would pay \$24.11 for a \$21,902.00 “insured amount”; while yet another would pay \$29.03 for an insured value of \$35,569.00.

Despite the facts that the CIT leases were written in the same months, for the same equipment, using the same insurance company rate, none of CIT “insured values” and premium charges correlated. One can conclude, upon information and belief, that either; 1. CIT had its own separate valuations that it used, to base the insurance charge, but which they did not provide to their insurers or lessees; or else, 2. CIT, acted as if *they* were an insurance company, but acted so without being regulated and without a license. They did their own actuarial analysis, after buying insurance and listing leases on their policy, to determine the rates they charged lessees.

According to the FBI Insurance fraud web site, the fraudulent practice of “pocketing premiums” occurs when high premiums are charged based upon a high “insured value” given to customers, while a lower amount of coverage is actually purchased. The difference between the actual lower coverage listed in a policy and the higher premiums charged is “pocketed.” An underwriter at CIT’s insurer, Assurant, Maryanne Craig, reported to me that the “inventory amount” of my lease’s actual equipment replacement coverage was only \$8650, despite CIT informing me in writing that the “insured value” was \$22,650.

Another overt and troubling aspect of insurance is the collection upon loss of equipment using ten to one hundred times the true replacement value. Norvergence victim Jim Shepherd named Celtic Bank as loss payee through his own policy at The Hartford. After a robbery, he reported his loss of the Norvergence box. Upon the report of this loss, Celtic collected \$10,921.75 for the \$1,550 Norvergence box from The Hartford. Repeated

complaints and concerns from Mr. Shepherd regarding the fraudulent insured value which Celtic provided his insurer went unheeded, excepted for a letter a couple of months later, on Celtic letterhead: “Dear Mr. Shepherd , ...Celtic Bank Corp. has been paid in full with insurance proceeds from the stolen matrix box. No further payment is owed.”

ⁱ Rhonda Roland Shearer, “The Role of Leasing Companies in the Norvergence Fraud,” March 10,2005 Report Prepared For Equipment Leasing Association: The Fourth Annual Investors' Conference on Equipment Leasing Finance and Securitization, http://www.asrlab.org/temp/ELA_Report.pdf

ⁱⁱ In a phone interview, Mr. Alper told me his analysis was based entirely on the FTC’s Norvergence document

ⁱⁱⁱ Michael Scott Green, Class Counsel for Norvergence Victims, states, “The laws in the State of New Jersey, where Norvergence had its principal headquarters, likewise, makes no distinction between individual consumers and businesses, and affords all equal protection from fraud and misrepresentation.”

^{iv} Class Attorney, Mr. Green, has meticulously and vigorously pursued justice for the thousands of small businesses left in debt and without services—to the point where a Judge during proceedings advised “Mr. Green , this is a court case, not a crusade.” Mr. Green’s advice, data and other resources have proved an invaluable contribution for my own research.

^v The list includes: insurance company officers, ELA officers and members, attorneys for leasing companies, academic accounting and leasing experts, FASB staff, valuation experts, Big 4 accounting firm partners (retired and active), Asst. US Attorneys (retired + active), Major Crime Division Postal, FBI and IRS Criminal Investigations Units with varied expertise including bank, accounting and insurance fraud. Lawyers and insurance executive experts in insurance fraud, SEC attorneys and former enforcers (retired and active) are included on the list.

^{vi} Norvergence correspondence with leasing companies reveals that they mutually devised the language “Equipment Rental Agreement” instead of calling it a lease because Norvergence noted to leasing companies that a prominent reduction of sales occurred when the term “lease” was used.

^{vii} http://www.iasplus.com/resource/00-21_draft.pdf . This document is marked “draft.” However, the final EITF00-21 consensus is the same as the draft form regarding the requirements for unbundling multiple deliverables. Only the draft form is free and online.

^{viii} <http://www.sec.gov/news/headlines/xeroxsettles.htm>, the SEC press release, “Xerox Settles SEC Enforcement Action Charging Company with Fraud, Agrees to Pay \$10 Million Fine, Restate Its Financial Results and Conduct Special Review of Its Accounting Controls”

^{ix} I hired a licensed telecommunications expert and appraiser to do an appraisal of the two basis Norvergence boxes. This appraisal confirmed the values at approximately \$200 and \$1550 as has been widely cited as the prices paid by Norvergence to Adtran , the manufacturer. This full appraisal is included in my ELA report, cited above.

**PECC
ASSET MANAGEMENT EQUIPMENT STUDY**

Sales Associate: Bill McCormick *Vendor:* Norvergence

Qty	New/Used	Make	Model	Description	Leased Cost
				MATRIX (Merged Access Transport Intelligent Xchange) Hardware System	
<i>Total Leased Cost</i>					N/A

Purchase Option: \$101 - X FMV TRAC 1st Amendment
Term of 5 **years.**
CAP: N/A **EBO:** N/A

Expected Fair Market Value:	0 %	=	\$ 0
PECC Expected Resale Value (best case):	0 %	=	\$ 0
PECC Orderly Liquidation Value (worst case):	0 %	=	\$ 0
Asset's Proposed PECC Pricing Residual:	0 %	=	\$ 0

Term	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6
Liquidation Value - %						
Liquidation Value - \$					\$101	

Blended Values: N/A (Blend may be with softcost, discount or the lack of a discount)

Analysis: This is a \$101 buyout program to Norvergence.

0060

Norvergence is a new, private company founded in 2001 with estimated revenues of \$150 million. They are a telecommunications company that sells a phone system and services to small and medium businesses. The phone system is a patent pending design based on its Merged Access Transport Intelligent Xchange (MATRIX) Hardware Access System which provides voice and data applications on one high speed circuit.

In speaking with Norvergence, the Matrix Hardware System does not have a MSRP and the price per unit varies from \$8000 to as much as \$50,000 with each customer application depending on the number of phone lines and services provided. When speaking with asset managers and resellers, there is no historical data due to the newness of the product. The Matrix unit is basically a router that converts data and voice through programmed cards to identify the phones lines and services that will run through the

unit. Similar routers cost between \$1000 and \$1500 and with a set of programmed cards the total unit can cost between \$5000 and \$6000. This information was confirmed with independent sources including Emtec. Emtec is the firm used by PECC to install out telephone system. The technology incorporated in the system is the latest and is expected to have a considerable life. Without the programmed cards for the voice, data or internet services to be provided, the unit would have very little or no resale value in the secondary market as a standalone unit which was confirmed by Norvergence. The Matrix unit is a proprietary unit that requires the services of Norvergence. For this reason, we may want to consider a re-marketing agreement with Norvergence. Norvergence has indicated they would assist if we need to ever remarket a system. The payments on our lease are bundled with the service payments to Norvergence.

It is also noted that the lease is non-cancellable and the system is of critical use to the lessee. Without the system, the lessee has no telephone system. Our leases are spread out over a wide population of customer types. There is no customer or industry concentration. Our risk is basically with the credit risk of the lessee and not the equipment.

Based on the above information and with the structure of the program, we recommend all transactions be based on \$101 buyout and no residual position be considered.

Special Documentation Recommendations:

- ____ L/L Waiver + Fixture Filing - Reason: Equipment type is a fixture - designed to be permanently installed.
- ____ L/L Waiver - Reason: Equip. size/shape/weight requires heavy rigging to remove.
- ____ Special Additional Language Requirements (See Comments)
- ____ Standard Return Provisions which include standard maintenance and usage provisions (See Comments)
- ____ Assumes standard Master Lease agreement including Buy all/Return all/Renew all.
- ____ Assumes all equipment evaluated is a blended value and the numbers can not be used if the equipment is separated
- ____ Equipment inherently contains a higher degree of insurance liability during normal utilization

Comments. This is a \$101 buyout to Norvergence at end of term.

Approved PECC Pricing Residual: 0 % = \$ 0

Study Valid Through

12/31/03

MACRS:

Approvals: (1)

(2)

(3)

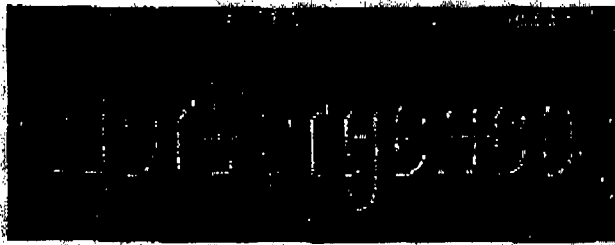
Date:

10/1/03

0061

Commerce
 **Commercial**
Leasing
 VENDORLEASE

**A Commercial Leasing Program Proposal
 Prepared Exclusively For Norvergence**



0023

P. 06/12

TO: 917136510220

COATS ROSE YALE RYAN, LEE

NOV-23-2004 11:29

NOV-23-2004 12:04 FROM: LESSERLY-2670604001

I. General Description

This program proposal outlines terms whereby Commerce Commercial Leasing VendorLease (CCL) will partner with Norvergencia, Inc. (Norvergencia) to provide equipment lease solutions to Norvergencia's end user customers.

II. Program Structure

The structure between Norvergencia and CCL will be a leasing program in which CCL will be entering into leases directly with Norvergencia's end user customers through referrals generated by Norvergencia's direct sales organization. CCL will set a limit for booked lease business through the program at \$ 400,000 per month (\$ 5 million total) for the first 12 months of the program. CCL will monitor the portfolio performance throughout the year to determine volume objectives after the first year of the program.

III. Equipment Type

The program is intended to include all new MATRIX system hardware and supporting technology that Norvergencia leases to its end user customers.

IV. Terms

Base terms provided by CCL to Norvergencia's customers will be 61 months (First payment at zero) with a \$ 101 end of term purchase option to Norvergencia.

V. Lessor

Commerce Commercial Leasing, VendorLease.

VI. Lessee

As determined by Norvergencia and CCL.

VII. Lease agreements

Lease (Rental) documents will be in Norvergencia's name and CCL will perform all billing and collecting services in its own name.

VIII. Base Lease Commencement Date

The first day of the month following the delivery and acceptance of all equipment.

IX. Commerce VendorLease Services Provided to Norvergencia

- ✓ CCL will support the program with Norvergencia by providing call center and telesales support.
- ✓ CCL will fund Norvergencia upon receiving a complete documentation package including but not limited to signed rental agreement, schedule, delivery and acceptance notice, and personal guarantee document when required.
- ✓ CCL will perform telephone verifications on all installs and will work with Norvergencia's operations team to deliver a consistent customer service message.
- ✓ CCL will provide Norvergencia's customers with a notice of assignment stating that the rental agreement has been assigned to Commerce.
- ✓ CCL will provide all credit processing.
- ✓ CCL will provide "Application Only" credit decisions for transactions up to \$ 75,000. Transactions over \$ 75,000 will need to have the last 2 years of financial statements and comparative interim statements provided to CCL by the end user for credit decisions.
- ◆ CCL will perform all billing and collecting services.
- ◆ CCL can provide Norvergencia's direct sales organization training on the benefits of leasing for end user customers.
- ◆ CCL can offer Norvergencia Leasing Sales Kits (Optional).

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X. Representations made by Norvergence to Commerce

- ✓ Norvergence will commit to providing CCL monthly lease volume at a rate of \$ 400,000 per month on average for the first year of the program.
- ✓ Norvergence will assign its reps and warranties on the equipment to CCL in the Program Agreement.
- ✓ CCL will require that Norvergence bill for facilities separately from the monthly equipment lease invoice sent to the end user customer by CCL.
- ✓ Norvergence will make available to Commerce its sales organization, operational personnel, finance personnel, and any other support function for the purposes of communication as it relates to successfully managing the Vendor Leasing Program.
- ✓ Norvergence will commit to repurchasing leases from CCL for First payment defaults. The rate for repurchase will be 1 and 1/2 % per month of the outstanding balance on the defaulted lease obligation for the first 1% of defaults on booked leases in a 12-month period. Beyond the initial 1% of default repurchases in a 12-month period, Norvergence will pay an additional \$ 500 fee per repurchase per month.

XI. Tax Benefits

For the account of the Lessor (CCL) or Lessee.

✓ **XII. Base Lease rate to Norvergence's end user customers**

- ◆ A lease rate is defined as the factor that Norvergence can use to calculate the monthly payment on a given transaction (less applicable taxes) for a given term.
- ◆ CCL will offer Norvergence a 61-month lease rate factor. The 61-month lease rate is based on receiving payments in arrears, with the first payment at zero and the remaining 60 payments at 0.2230.

XIII. Lease Agreements

The lease agreements will be "Triple-Net Leases" in which the lessee will be responsible for all expenses relating to the equipment including, but not limited to, equipment maintenance, insurance coverage, and all taxes (e.g. sales, use and personal property).

✓ **XIV. Documentation Fee**

Commerce charges a standard \$ 75 documentation fee to process transactions for end user customers.

XV. Insurance

Lessee shall bear all risk of loss, damage, and liability to the equipment and the lessee shall be responsible to keep the equipment insured in an amount and in a form acceptable to CCL. Commerce will accept a verbal communication from the end user customer that they have insurance and will ask the customer to provide proof of insurance within 30 days of the notice of assignment. If proof of insurance is not received within that 30-day period, Commerce can and will provide insurance at the customer's expense.

XVI. Warranties

Lessor shall lease the equipment to lessee without representation or warranty on an AS IS BASIS. However, lessor shall assign to lessee all warranties, guarantees, and services provided by the manufacturer(s) to the extent they are assignable.

XVII. Equipment specifications

With respect to the equipment, each lease transaction will not become final until, among other things, assignee verifies the equipment specifications including, but not limited to: Model number, serial number, number of units, and installation costs; and approves the final equipment configuration.

XVIII. Business Information

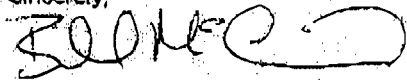
Norvergence will make available to CCL copies of its fiscal year end and Interim financial statements as well as other business information requested by CCL on a regular basis.

XIX. General information

This proposal is not intended and does not create any binding legal obligation on the part of either party. This proposal is not and should not be construed as a commitment by CCL or any affiliate to enter into the proposed vendor lease program; and CCL shall not be required to enter into the proposed vendor lease program partnership until the completion of all due diligence inquiries, receipt of approvals from all requisite parties, the execution and receipt of all necessary documentation, and the credit approval of Norvergence, Inc. by CCL.


If this proposal meets with your approval, kindly indicate your acceptance by countersigning where indicated below, and providing a commitment fee check in the amount of \$ 5,000 to cover the program set up costs which includes, but is not limited to, vendor qualification, credit and documentation legal review. CCL will reimburse the commitment fee of \$ 5,000 to Norvergence when \$ 1 million in lease volume is booked through the program. If the Program Agreement is not executed between our organizations the commitment fee will be promptly returned to Norvergence. All other terms and conditions notwithstanding; this proposal expires May 15, 2003, unless previously executed.

Sincerely,



Bill McCormick
Vice President
Commerce Commercial Leasing Vendor Lease

Norvergence, Inc.
Approved and Accepted:

By: 
Name: _____
Title: _____

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**NORVERGENCE
PROGRAM AGREEMENT**

This Program Agreement ("Agreement") is entered into as of 5/14/2003 by and between Norvergence, Inc. ("Vendor"), a New Jersey corporation, having a business office located at 30 Broad Street, Newark, NJ 07102 and Commerce Commercial Leasing Vendor Lease ("CCL"), having a lease processing center located at 110 Terry Drive, Newtown, PA 18940.

Recital of Facts. This Agreement is entered into in reference to the following facts:

a. Vendor is engaged in the retail sale of certain equipment and in connection therewith, desires to offer its customers the opportunity to rent such equipment (the "Equipment") and desires to offer CCL the opportunity to take assignment of such rental agreements (the "Rental Agreements") with such customers (the "Renters/Customers") for the Equipment. The Rental Agreements together with any guaranties, financing statements, schedules, and any and all agreements, instruments and other documents entered into and executed in connection therewith shall hereinafter be referred to, collectively, as "Contracts" and, individually, as a "Contract";

b. CCL agrees at its sole discretion to enter into Contracts with Renters/Customers, upon terms and conditions contained herein.

THEREFORE, in consideration of the mutual covenants and agreements contained in this Agreement, and for other valuable consideration received by Vendor, and intending to be legally bound, the parties hereby agree as follows:

SECTION ONE - CONDITIONS OF AGREEMENT

As conditions precedent to the effectiveness of this Agreement, Vendor and CCL shall deliver the following documents in form and substance satisfactory to each party:

- a. Duplicate originals of this Agreement duly executed by each party;
- b. A Secretary's Certificate executed by the Secretary or Assistant Secretary of each party certifying that the party is authorized to enter into this Agreement and that that individual executing this Agreement on behalf of the party is authorized to do so.

SECTION TWO - CUSTOMER REFERRALS

Vendor agrees that, subject to the provisions of Section 6.2 hereof, it shall refer current or future customers who may have an interest in renting Equipment to CCL for consideration of such customers as prospective Renters/Customers. The parties hereto agree that none of the prospective Renters/Customers as used herein a "Customer," is defined as an individual who incurs an obligation including but not limited to a rental obligation, primarily for personal, family, or household purposes.

SECTION THREE - CONTRACT APPLICATION ORIGINATOR

3.1 **Credit Review.** CCL requires complete credit and financial information on each prospective Renter/Customer in order to complete its credit review. For each proposed Contract application, Vendor shall provide CCL with or assist CCL in obtaining the following:

- a. A full and complete description of the Equipment;
- b. The economic terms of the proposed Contract;
- c. A complete and legible copy of the Contract application;
- d. All pertinent details and other such credit and financial data as CCL might require.
- e. CCL will provide "Application Only" credit decisions on transactions up to \$75,000.

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3.2 Rates. CCL will offer Rental rates terms for each Contract application of 61 months with first payment at zero and remaining payments at .02280 at program inception with payments in arrears which has been mutually agreed upon by both parties. CCL reserves the right to adjust the rental rates on a quarterly basis.

3.3 Documentation Fees. CCL shall receive a documentation fee of \$75 from the Renter/Customer in accordance with the terms of the Rental Agreement.

3.4 Contract Documentation

a. General

1. CCL shall be solely responsible for the review and approval of all documents, including any amendment and supplements memorializing or otherwise relating to each contract (collectively, the "Rental Documents").

2. Each Equipment invoice must have an Equipment cost equal to or greater than \$5,000.00 and the minimum monthly payment on any transaction must be \$50.00 or more.

3.5 Types of Contracts. Contracts offered to Renters/Customers will be fixed term non-cancelable rental Contracts.

a. Fixed Amount Purchase Option. Borrower can repurchase the equipment at the end of the original term of the contract for a \$101 disposition fee. The Renters/Customers do not have the option to purchase the equipment at the end of original term of the contract, nor do they own the equipment at the end of original term.

SECTION FOUR - ACCEPTANCE OF CONTRACTS

4.1 Conditions Precedent to Accept a Contract. The obligation of CCL to accept any Contract hereunder shall be subject to the satisfaction of the following conditions precedent:

- a. CCL recipient of all required credit information and all Rental Documents, duly executed by the Renter/Customer as may be deemed necessary by CCL in its sole and absolute discretion;
- b. CCL's verbal confirmation that the Renter/Customer has accepted the Equipment;
- c. CCL's credit approval for the Renter/Customer; and
- d. Vendor shall have performed and complied in all material respects with all covenants, agreements, and conditions contained in this Agreement, which are required to be performed or complied with by Vendor as on or prior to the date CCL accepts the Contract.

4.2 Funding

a. CCL will fund Vendor the Equipment cost up to one hundred percent (100%) of the full purchase price for the Equipment, plus up to 20% allowable soft costs. Soft costs may include sales tax.

b. Vendor will provide CCL with an original invoice for the Equipment and each invoice must itemize the Equipment, including the price of each item of Equipment.

SECTION FIVE - REPRESENTATIONS, WARRANTIES AND COVENANTS

5.1 Mutual Representations and Warranties. CCL and Vendor each represents and warrants to the other as follows:

a. The execution and delivery of this Agreement and the performance by it of the transactions contemplated hereby have been duly authorized by all necessary corporate action, and this Agreement constitutes a legal, valid and binding obligation enforceable in accordance with its terms and

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It has all governmental approvals, permits, certificates, inspections, consents and franchises necessary to conduct its respective business, substantially as now conducted, and to own, lease, finance and operate its properties as now owned, financed or operated by it, except where the failure to obtain any of the foregoing does not materially and adversely impair the ability of each to operate its business or to perform its obligations under this Agreement.

5.2 Representations and Warranties of Vendor. Vendor represents and warrants to CGL that as of the date each Contract is submitted for approval or assigned to CGL as follows:

a. Vendor is a duly organized and validly existing New Jersey Corporation and has full power to enter into this Agreement and to carry out the transactions contemplated hereby and is in good standing in the state of its organization.

b. To the best of Vendor's knowledge, the Contract and all related documents, including any Guaranty, have been duly authorized, executed and delivered. Vendor shall have no duty to make any inquiry or perform due diligence with respect to the authorization, execution, or delivery of a Contract or a Guaranty. There are no other agreements between Vendor and the Renter/Customer or any guarantor, which will modify, amend or waive any terms or conditions of the Contract or Guaranty. The only expressed or implied warranties or representations made by Vendor or its agents to the Renter/Customer are those contained in the manufacturer's standard product warranty or any maintenance agreement.

c. Vendor and its agents, and employees have not committed any fraudulent act or participated in any fraudulent act or activity in connection with the execution, delivery or assignment of the Contract or any Guaranty or the performance of this Agreement.

d. Ownership of the Equipment shall be vested in CGL upon its initial funding to Vendor, free and clear of any and all liens and encumbrances whatsoever and such sale shall vest CGL with full, complete and unencumbered title to the Equipment and unless otherwise set forth in the Contract, the Equipment shall be new and unused when it is delivered to the Renter/Customer.

e. Vendor will perform such maintenance and service and provide such supplies, other Soft Costs and warranties as agreed to by Vendor and Renter/Customer, for the Equipment and/or as required by the Contract.

f. To the best of Vendor's knowledge, all credit information concerning the Renter/Customer or Renter's guarantor, if any, given to Vendor and relative to CGL's evaluation of such contract application ("Contract Application"), has been disclosed to CGL (including information of any fact or circumstance which would constitute a default under a Contract).

g. All applicable sales, use or property taxes, which may apply to the value, sale or use of the Equipment other than those assessed or imposed at or after the time CGL acquires the Equipment, shall have been paid to the appropriate taxing authority and Vendor will provide CGL with proof of such payment as promptly as possible, but in any event, within one hundred twenty (120) days of acquisition of the Equipment by CGL.

h. To the best of Vendor's knowledge, the Renter/Customer has not been or is not currently in default under the Contract and there has been no event, which with the giving of notice or the passage of time, would constitute an event of default under the Contract.

i. Vendor has not received any payments, or other money from the Renter/Customer or any guarantor of the Contract, which by agreement belongs to CGL (collectively, the "Payments"), and will immediately remit such funds to CGL if any are received; all other Payments remain outstanding and unpaid.

j. To the best of Vendor's knowledge, Vendor's conduct in soliciting, arranging or consummating the Contract or in accepting any Guaranty has not violated in any material respect any federal or state law, rule, or regulation, which will result in the rescission of any Contract.

k. Vendor will not take any action or omit to take any action, which will cause the Contract or any related document, including any Guaranty, to become invalid, cancelable, or unenforceable.

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1. To the best of Vendor's knowledge, as of the date of CCL's acceptance of a Contract for funding, the Contract and all related documents, including any related Guaranty, will be valid and enforceable.

m. CCL shall not be liable for equipment shipped by Vendor to Renter/Customer, whereby CCL has not received and approved a completed document package and approved the renter/customer credit.

n. Vendor agrees to assign CCL any reps and warranties for the equipment purchased by CCL that are provided by the manufacturer, or to assign any equipment reps and warranties that are provided by Vendor so that CCL may pass those reps and warranties directly to the end user.

5.3 Representations and Warranties of CCL. CCL represents and warrants to Vendor that as of the date each Contract is accepted by CCL and thereafter as follows:

a. CCL is a duly organized and validly existing limited liability company and has full power to enter into this Agreement and to carry out the transactions contemplated hereby, and is in good standing in the state of its organization.

b. CCL and its agents and employees have not committed and will not commit to any fraudulent act or have not participated and will not participate in any fraudulent act or activity in connection with the execution and performance of the Contract, any related Guaranty, or this Agreement.

c. The conduct of CCL in processing any Contract Application, including the granting or denial of credit, and the servicing of the Contract, and any Guaranty whether in CCL's name or the name of Vendor, has not violated and will not violate in any material respect any federal or state law, rule or regulation.

d. CCL has not taken and will not take any action or omit to take any action that will cause the Contract and all related documents, including any Guaranty, or the collection of Payments due thereunder, to become invalid, or unenforceable.

e. CCL receives any funds that by this Agreement belonging to Vendor CCL will immediately remit such funds to Vendor.

f. CCL has and will conduct all of its activities relative to the Renter/Customer, any guarantor, and the Contract and any Guaranty, including without limitation, the collection of Payments due thereunder, reasonably, fairly, and in good faith.

5.4 Affirmative Covenants of Vendor

a. From the date hereof until the date on which all obligations of Renters/Customers under all Contracts have been fully paid and otherwise discharged, Vendor shall deliver to CCL the following, which shall be prepared in accordance with generally accepted accounting principles and practices, consistently applied:

1. As soon as available, but no later than ninety (90) days after the close of each of the first three (3) quarters of each fiscal year, Vendor's balance sheet as of the close of such quarter and Vendor's statement of income and retained earnings and of changes in financial position for such quarter and that portion of the fiscal year ending with such quarter, prepared on a consolidated basis and certified by a responsible officer of Vendor as being complete and correct and fairly representing Vendor's financial condition and results of operations;

2. As soon as available, but no later than ninety (90) days after the close of each fiscal year, a complete copy of Vendor's balance sheet as of the close of such year and Vendor's statement of income and retained earnings and changes in financial position for such year, prepared on a consolidated basis by an accounting firm of recognized standard.

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b. Vendor shall promptly fulfill and perform all obligations, covenants, liabilities, warranties and duties, if any, on its part to be fulfilled and performed in connection with a Contract and any other agreements or instruments executed by Vendor with respect to the installation, maintenance, or servicing by Vendor of the Equipment covered by a Contract. CCL or any subsequent assignee shall have no obligation or liability under a Contract and shall not be obligated to perform any of Vendor's obligations thereunder. Vendor's obligations under a Contract may be performed by CCL or any subsequent assignee, however, without releasing Vendor therefrom.

c. Vendor has advised or will advise each Renter/Customer of the availability of the service and maintenance agreements for Equipment covered under any Contract for a term not shorter than the remaining term of such Contract and on such terms and at rates determined by Vendor. Vendor will inform CCL promptly of any default by a Renter/Customer under such maintenance agreement or which Vendor becomes aware.

d. For the term of any Contract, Vendor shall promptly advise CCL of any matter of which Vendor has knowledge that may be detrimental to a Renter's/Customer's financial condition.

e. So long as this Agreement is in effect, Vendor will notify CCL of any change in the persons authorized to represent Vendor in the transactions contemplated hereby and in the event of any such change will provide CCL with updated evidence of authority and specimen signatures for each individual.

SECTION SIX - CONTRACT SERVICING

5.1 Service of Contracts. CCL shall provide general administrative services, including billing and collecting all Payments, fulfilling the obligations as Lessor or Owner under the Contracts, the enforcement of CCL's rights under the Contracts, including any Guaranty, and/or this Agreement and the taking of such other actions that may be necessary to protect CCL's rights and interest in and to the Contracts including any Guaranty and/or Equipment. CCL shall invoice each Renter/Customer for all amounts due under a Contract and will direct the Renter/Customer to make payments to the lockbox established in the name of CCL. CCL will provide a "Notice of Assignment" to all rental customers, whereby CCL has taken assignment from Vendor on a rental contract. CCL will service the program with Vendor by providing Telesales and Call Center Support from 8:30 AM to 5:30 PM (EST) Monday through Friday, except for CCL's designated holidays.

6.2 Preferred Source. Vendor designates CCL as a preferred source to provide the leasing services on any of Vendor's prospective transactions and Vendor shall inform its organization that CCL has been designated as a preferred source to provide the leasing services on any of Vendor's prospective transactions.

6.3 Service/Maintenance. Vendor agrees to provide all required service and/or maintenance (facilities) for the Equipment. CCL will require that Vendor bill for maintenance (facilities) separately from the monthly equipment rental invoice provided to the customer by CCL.

SECTION SEVEN - REPURCHASE OF CONTRACTS

7.1 Breach of Contracts. If (i) a Renter/Customer asserts against CCL any claim relating to a breach of warranty with respect to the equipment, (ii) the Renter/Customer rescinds a Contract upon a breach of representations, warranties or covenants made by Vendor, or (iii) Vendor breaches any of its representations, warranties or covenants contained in this Agreement, and as a result of such breach, a Contract becomes in default, Vendor shall have thirty (30) days after receipt of notice from CCL to cure such breach. If Vendor fails in this regard, then Vendor shall repurchase from CCL such Contract, within three (3) business days of the receipt of such a request from CCL for an amount as follows:

a. An amount equal to the sum of the aggregate amount of all amounts presently due; all future unpaid Payments to be made under the Contract until the expiration of the initial term of the Contract; plus the estimated fair market value (ONLY on those contracts that Vendor requests CCL to take an FMV position) of the Equipment at the end of the initial term of the Contract with all accelerated Payments and the estimated fair market value of the Equipment discounted to the date of default at six percent (6%) per year.

b. The amounts set forth in subparagraph a, above shall be referred to as "Unrecovered

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Investment." Upon receipt of the Uncovered Investment, CCL or, if applicable, its assignee shall deliver to Vendor, without recourse, on an "AS-IS, WHERE IS" basis, a bill of sale and assignment for the Equipment and associated Contract and, in the event that CCL shall have prior thereto repossessed the equipment, the possession of the equipment.

c. If a Renter/Customer defaults on the first Rental payment due, Vendor will, upon demand by CCL, repurchase the defaulted Rental Contracts from CCL. The rate for repurchase will be calculated at the Net Book Value plus One and one half percent (1 1/2%) per month on the defaulted rental obligation. Once Five (5) booked transactions are repurchased by CCL during a twelve (12) month period, the rate for repurchase will be calculated at the Net Book Value plus One and one half percent (1 1/2%) per month on the defaulted rental obligation, plus an additional \$500 fee. Upon receipt by CCL of the Repurchase amount, CCL will deliver to Vendor, without recourse, on an "AS-IS, WHERE IS" basis, a bill of sale and assignment for the Equipment and associated Contract and, in the event that CCL shall have prior thereto repossessed the equipment, the possession of the equipment.

SECTION EIGHT - INDEMNIFICATION AND LIMITATION OF LIABILITY

8.1 Indemnification

a. Vendor agrees to indemnify and hold harmless CCL and its affiliates, subsidiaries, employees, directors, officers, members, shareholders, and agents, and any participant from any and all losses, claims, liabilities, demands and expenses ("Losses") whatsoever (including without limitation reasonable attorneys' fees) arising in connection with or in any way related to the breach of any of its warranties and representations. This indemnification shall also apply to the assertion of any claims by the Renter/Customer or any third party based upon damage to the environment allegedly caused by the Equipment and/or the assertion of claims based upon a theory of product liability or strict liability and any claim asserted against CCL for United States patent, trademark or copyright infringement.

b. CCL agrees to indemnify and hold harmless Vendor and its current and future successors, assigns, affiliates, subsidiaries, employees, directors, officers, members, shareholders, and agents, and any participants from any Losses sustained by Vendor in connection with or in any way related to any breach by CCL of its representations or warranties.

8.2 Survival of Indemnity. All obligations under this section shall survive any expiration or termination of this Agreement and the termination of any Contract, but in no event longer than the applicable Statute of Limitations.

SECTION NINE - CONFIDENTIALITY

9.1 Confidentiality

a. Procedures. All documents transmitted by one party to the other during the existence of this Agreement and identified on their face by the transmitting party as confidential to the recipient shall not be disclosed to anyone other than employees or independent contractors of the recipient and/or any subsequent assignee of CCL in the case of any confidential documents or information transmitted by Vendor to CCL. The recipient shall undertake the following procedures to preserve the confidentiality of Confidential Documents:

1. It shall limit the access of Confidential Documents to those who have need to their access; and
2. It shall inform those who use Confidential Documents that they shall maintain such documents as confidential.

b. Excluded Information. Section 9.1 shall not apply to information contained in documents identified as confidential if such information is:

1. Known to the recipient, as shown by its written records, prior to the time of receipt of such information under this Agreement.

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- 2. Made publicly available by the transmitting party;
- 3. Made available to the recipient from a source under no duty of confidentiality to the transmitting party; or

SECTION TEN - GENERAL PROVISIONS

10.1 Independent Contractors. CCL and Vendor are separate entities, who have entered into this Agreement for independent business reasons. Neither CCL nor Vendor have acted, act, or shall be deemed to have acted or act, as an agent for the other, except with respect to those acts of CCL specifically permitted to be taken and actually taken pursuant to and in accordance with the terms hereunder.

10.2 Term and Termination. This Agreement shall be deemed effective upon execution by CCL and Vendor. CCL may immediately terminate the Agreement in the event Vendor fails to comply with any of the representations, warranties and/or covenants set forth herein. The term of this Agreement shall continue from such effective date for twelve (12) months and shall automatically renew for additional twelve-month periods unless earlier terminated by Vendor or CCL. CCL or Vendor may terminate this Agreement at any time by giving the other at least ninety (90) days written notice of such termination, whereupon the obligations of the parties with respect to Contracts not accepted prior to the expiration of such period shall terminate to the extent the same have not been performed or are not required to have been performed prior to such termination.

10.3 Accounting. CCL and Vendor shall cooperate with each other by furnishing, subject to each party's then-current internal policies, such records and supporting material relating to Payments under this Agreement or Payments under the Contracts as may be reasonably requested in the event either party is audited by any taxing authority.

10.4 Assignability. Vendor may not assign, sell, or otherwise transfer any of its rights or obligations without CCL's prior written consent. Notwithstanding the foregoing, Vendor acknowledges and agrees that CCL may, without prior notice to Vendor: (a) assign any and all of its rights and obligations, including, without limitations, any contracts entered into pursuant hereto, under this Agreement to a third party (hereinafter the "Assignee"), and (b) release any and all information received by CCL pursuant to this Agreement, including without limitation, any confidential documents or information that may have been received by CCL from Vendor, to such Assignee.

10.5 Notices. Notices under this Agreement shall be deemed to have been given if by Certified Mail to the other party at the address stated below or such other address as such party may have provided by written notice.

If to CCL:

Commerce Commercial Leasing Vendor Lease
110 Terry Drive - 6th Floor West Center Drive
Newtown, PA 18940
ATTN: Mary Budak
Fax: 215-962-4001

If to Vendor:

Harvergence, INC.
330 Broad Street
3rd Floor
Newark, NJ 07102
ATTN: Bob Wilcox
Fax: 773-292-0286

10.6 Miscellaneous. Paragraph headings appearing in this Agreement are for convenience of reference only and shall not modify, define, expand or limit any of the terms or provisions hereof. The parties agree that this Agreement has been executed and delivered in, and shall be construed in accordance with the laws of the Commonwealth of Pennsylvania. If, at any time, any provisions of this Agreement shall be held by any court of competent jurisdiction to be illegal, void or unenforceable, such provision shall be of no force and effect, but the illegality or unenforceability of such provision shall have no effect upon and shall not impair the enforceability of any provision of this Agreement. This Agreement constitutes the entire agreement between the parties concerning the subject matter hereof and incorporates all representations made in connection with negotiation of the same. The terms hereof may not be amended, supplemented or modified orally, but only by written agreement duly executed by each of the parties hereto. This Agreement and any amendments hereto shall be binding on and inure to the benefit of the parties hereto and their respective

permitted successors and assigns. This Agreement may be executed by two or more parties on any number of separate counterparts each of which counterparts shall be an original, but all of which when taken together shall be deemed to constitute one and the same instrument.

10.7 Jurisdiction and Venue. The parties hereto agree to the exclusive jurisdiction of the federal or state courts of the Commonwealth of Pennsylvania in any and all disputes, actions or proceedings arising hereunder. The proper venue for all such disputes, actions, or proceedings shall be Philadelphia County or any other county within the Commonwealth of Pennsylvania, in which either Vendor or CCL (or any of CCL's successors and assigns) or any of its property may be located.

10.8 Waiver of Jury Trial. The parties hereto (by acceptance of this Agreement) mutually hereby knowingly, voluntarily, and intentionally waive the right to a trial by jury in respect to any claim based hereon, arising out of, under or in connection with this Agreement or any other agreements or documents executed or contemplated to be executed in connection herewith, or any course of conduct, course of dealings, statements (whether verbal or written) or actions of any party, including, without limitation, any course of conduct, course of dealings, statements or actions of CCL, or any of its successors and assigns, relating to the administration or enforcement of the Contracts (collectively, "Actions" and singularly, an "Action"). Further, the parties hereto agree that in the event either party commences an Action, the losing party shall pay the costs and expenses, including, but not limited to, attorneys' fees, incurred the prevailing party in prosecuting or defending, as the case may be, such Action.

IN WITNESS WHEREOF, intending to be legally bound, the parties hereto have caused their duly authorized representatives to execute this Vendor Program Agreement on the date first set forth above.

VENDOR:

COMMERCE COMMERCIAL LEASING VENDOR LEASE

SIGNATURE:

[Handwritten Signature]

SIGNATURE:

[Handwritten Signature]

BY:

NOVERGENCE, INC.

BY:

COMMERCIAL LEASING VENDOR GROUP

PRINT NAME:

PETER J. SALZANO

PRINT NAME:

MARION F. BAKER

TITLE:

CEO

TITLE:

EVP

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EXQUISITE CATERERS, LLC, ET ALS. :
on behalf of themselves and all others similarly :
situated, :

Plaintiffs, :

v. :

POPULAR LEASING USA, INC., ET ALS. :
AND DOE CORPS. 1-40, :

Defendants. :

SUPERIOR COURT
OF NEW JERSEY
MONMOUTH COUNTY
LAW DIVISION
DOCKET NO.: L - 3686-04

CIVIL ACTION

STATE OF NEW YORK:

COUNTY OF YORK:

AFFIDAVIT OF RHONDA ROLAND SHEARER

I, Rhonda Roland Shearer, being duly sworn according to law, depose and state the following upon personal knowledge:

1. I am the Director of Art, Science, Research Laboratory (“ASRL”) in New York, New York, a 501(3)(c) not-for-profit.

2. ASRL is an academic interdisciplinary think-tank that uses scientific research methods to investigate inaccuracies in a variety of disciplines, including journalism, art and science. Its goal is to report this misinformation and correct

the historical record using advanced computer and Internet technologies. Scholars and students publish as they do their research, and their results too demonstrate to the public the power of critical thinking.

3. I am also the President of a for-profit entity, Turbo, Inc., that produces art, software, lectures and publications. And, I am also a former Norvergence customer whose Equipment Rental Agreement was assigned to CIT.

4. On or about, March 26, 2005, I received from Michael S. Green, Esq. a 10 page document entitled "CIT, Due Diligence Report on: Norvergence". The document is dated April 12, 2004.

5. Mr. Green is the Attorney for Plaintiffs in the New Jersey Norvergence Class Action, Exquisite Caterers, et al. v. Popular Leasing, et al. Docket No. MON-L-3686-04. Mr. Green told me the document was from the bankruptcy court documents seized from Norvergence.

6. On or about April 4, 2005, I called Erv Paw, Sr. Consultant from InfoTech, the drafter of the document to discuss his report in regards to an investigation I was doing for an article I am writing for the *Monitor*, an equipment leasing publication Paw said upon receiving my phone, "I was expecting someone to call. You are the first to call."

In an initial conversation of approximately one hour Mr. Paw related to me how the report came into existence and what were some of the limitations placed on him during the drafting of the report. Subsequent to this conversation, I spoke

again with Mr. Paw, on or about April 6, 2005. 7. Mr. Paw stated that the report was commissioned by CIT, a continuing client of InfoTech's. InfoTech is a company which evaluates technologies as a consultant for other companies. They have a website at www.infotech.com and are located in Parsippany, New Jersey.

8. Mr. Paw stated that shortly before April 12, 2004, he and a Vice-President of Sales of InfoTech went to a meeting of "officers" at the headquarters of Norvergence in Newark, New Jersey with a Director of CIT, Phil Hauser. At the meeting on behalf of Norvergence was CFO Robert Fein, Norvergence's Chief Technology Officer and Norvergence's Vice-President of Marketing and Operations. Also in attendance, were a former Nortel executive and one other Norvergence Officer (for a total of 3 Norvergence executives).

9. After inquiring about the costs of the equipment, Mr. Paw stated that he was charged to confine his report to the technology of the Norvergence system and told specifically at the meeting that he was not to write about the financial aspects of the Norvergence system. He was told to write a report as to what would happen to the equipment if Norvergence went bankrupt.

10. Mr. Paw stated that InfoTech wanted to know the costs of the Matrix and Matrix SOHO boxes but was specifically told that information was confidential and Fine would only discuss costs directly with CIT. Robert Fein, as agreed by Hauser, would not give them the information.

11. It was Mr. Paw's understanding that Mr. Hauser had that information in front of him at the meeting "on spread-sheets" and would not show him. Mr. Hauser agreed with Norvergence at the meeting that he should "stay away" from issues regarding costs. Fine was measurably disturbed when the questions pertained to costs as opposed to his other friendly demeanor when asked other kinds of questions by InfoTech. The Norvergence people present and in other phone conversations stated that that information was proprietary and they would only tell it directly to CIT. Paw protested this point, by stating that since he had signed a non-disclosure agreement too, he did not understand why Norvergence and CIT could not reveal costs. He told me this was highly unusual.
12. He was told by Fine and in agreement with CIT (Hauser) that the boxes in the lease were "typically priced at \$1,000 per unit." for the equipment.
13. Mr. Paw stated that CIT restricted him to approximately two days and it was based on a set fee arrangement. He explained that this was also highly unusual. It was not the way he typically worked as he needs further time to ask follow-up questions and probe over days which is then billed out per hour. The purpose of this per hour basis, he explained, was to be able to investigate things as they arose, and he needed the time, the amount of which could not be planned in advance. There were questions sent to Norvergence after the meeting from InfoTech that were not answered by Norvergence and this Norvergence demand met with CIT approval.
14. To Mr. Paw's knowledge this was the only due diligence report done by CIT.

15. Mr. Paw stated that Mr. Hauser later stated to InfoTech that CIT had stopped funding Norvergence's Equipment Rental Agreements in October of 2003 because they knew "something stunk" with Norvergence.
16. Paw thought the Norvergence lease agreement with lessees was highly unusual, unethical and unfair because at the end of the 5 year term, Norvergence would own the equipment instead of the lessee which is typically the case..

Dated: _____

RHONDA ROLAND SHEARER

Sworn and subscribed to
Before me on this

___ day of January, 2005

Notary Public