

NO. 2004 - 65357

STATE OF TEXAS
Plaintiff,

V.

NORVERGENCE, INC.
Defendant.

§ IN THE DISTRICT COURT
§
§
§ 270th JUDICIAL DISTRICT
§
§
§ OF HARRIS COUNTY, TEXAS

**MOTION TO HOLD PREFERRED CAPITAL, INC. IN CONTEMPT AND FOR
SHOW-CAUSE ORDER FOR FAILURE TO OBEY A LAWFUL ORDER OF THE
COURT**

1. *Parties.* Movant is Kuumba House, Inc., a victim of the NorVergence scandal, who moves that Respondent, Preferred Capital Inc., as a partner of Defendant and a purported assignee of NorVergence leases, be held in contempt of court for disobeying this Court's order halt efforts to enforce, collect and attempting to collect monies purportedly owed under NorVergence rental agreements. Respondent may be served with process at the address of the receiver for Preferred Capital: **Kathryn A. Belfance, One Cascade Plaza, 20th Floor, Suite 2100, Akron, Ohio 44308.**

2. *Facts.* This Court's judgment of April 29, 2005 (**EXHIBIT A**) contained a permanent injunction that read in pertinent part:

It is therefore ordered, adjudged and decreed that [NorVergence, Inc.], its officers, agents, servants, employees, and attorneys, and any other person in active concert or participation with [NorVergence] shall be permanently enjoined from engaging in the following acts or practices:

1. Engaging in any commerce in the state of Texas, including, but not limited to, the business of advertising, offering for sale, selling, and providing telecommunications service and related telecommunications equipment and charging Texas consumers for, or causing them to be charged for, the same.

3. Enforcing, attempting to enforce, collecting or attempting to collect any monies purportedly owed under any NorVergence equipment rental agreement from any Texas consumer, business or entity.

Preferred Capital Inc. is a partner of NorVergence, The two companies entered into a Master Program Agreement under which Preferred allowed NorVergence to create purported leases under a private label program. As a part of that agreement, Preferred agreed to violate its own credit procedures to facilitate NorVergence's ability to obtain signatures from the victims of their scheme, including the Movant in this motion. The Master Program Agreement between Preferred Capital and NorVergence is attached as part of the suit filed in Ohio against Kuumba House **(EXHIBIT B)**.

Preferred Capital entered into receivership and was placed under the control of a receiver, Kathryn A. Belfance. The receiver for Preferred Capital has declared in affidavits that her receivership is not bound by the judgment against NorVergence and its cohorts **(EXHIBIT C)**.

3. *Grounds.* Under rule 308 of the Texas Rules of Civil Procedure, Preferred's refusal to comply with this Court's order is a contempt of court. Respondent should be admonished to obey said order of the court and, should Preferred continue to ignore the lawful order of this court, should be subject to fine and imprisonment.


4. *Attorney's Fees.* As a result of Respondent's failure to obey the order of this Court entered on April 29th, 2005, Movant has brought this Motion to Hold Preferred in Contempt. Under rule 127 and 131 of the Texas Rules of Civil Procedure, Movant is entitled to reasonable expenses and attorney's fees incurred in bringing this motion.

5. *Prayer.* Movant prays that-

- a. the Court set this matter for hearing;
- b. Respondent be ordered to appear and show cause why Respondent should not

- be held in contempt of court for refusing to comply with the Court's order;
- c. Respondent, after notice and hearing, be held in contempt of Court;
 - d. a writ of attachment be issued for Respondent;
 - e. Respondent be fined an amount deemed appropriate by this Court;
 - f. Respondent be confined in jail if they continue to violate the order of this Court and thereafter until Respondent purges himself of contempt by complying with the orders of this Court.
 - g. Respondent be ordered to pay all court costs of this proceeding;
 - i. Respondent be required to pay reasonable expenses incurred by Movant in making this motion and obtaining an order for contempt;
 - j. Respondent be required to pay reasonable attorney's fees incurred by Movant in making this motion and obtaining an order for contempt; and
 - k. Movant be granted all further relief to which Movant may be entitled.

Respectfully submitted,

By: 
Donald Scott Mackenzie
State Bar No. 24030088
9603 White Rock Trail, Suite 324
Dallas, Texas 75238
214/245-4625 (fax) 214/764-0780
Attorney for Movant
Kuumba House

ORDER

It is ORDERED that the clerk issue notice to Respondent, Preferred Capital, Inc., to appear, and Respondent is hereby ordered to appear before this Court on _____ at _____ . m., in the 270th District Court of Harris County, Texas, to show cause why Respondent should not be held in contempt for disobedience of this Court's order as alleged in the attached Motion to Hold Preferred Capital, Inc. in Contempt.

SIGNED on _____, 2006.

JUDGE PRESIDING

EXHIBIT

A

box P.6
5

CAUSE No. 2004-65357

STATE OF TEXAS,
Plaintiff,

v.

NORVERGENCE, INC.
Defendant.

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IN THE DISTRICT COURT

HARRIS COUNTY, TEXAS

270th JUDICIAL DISTRICT

DEFAULT JUDGMENT AGAINST DEFENDANT NORVERGENCE, INC.

On this day came on to be heard the above-entitled and numbered cause wherein THE STATE OF TEXAS is Plaintiff and NORVERGENCE, INC. is the Defendant. The Plaintiff appeared in person by its attorney of record and announced ready for trial. The Defendant, although having been duly and legally cited to appear and answer, failed to appear and answer, and wholly made default.

Citation was served according to law and return of service was made to the clerk where it remained on file for the time required by law. The Court has read the pleadings and the papers on file, has heard and considered the testimony and evidence presented by Plaintiff, and is of the opinion that the allegations of Plaintiff's Petition have been sufficiently proven.

FINDINGS

This court, based upon the testimony and evidence presented, makes the following findings:

1. Plaintiff filed a petition in this cause pursuant to the provisions of the Texas Deceptive Trade Practices Act ("DTPA"), the allegations of which the court takes notice.
2. The Texas Attorney General is charged with, among other things, the responsibility of enforcing the DTPA on behalf of the public interest.

3. NORVERGENCE is a corporation organized under New Jersey law with its principal place of business located at 550 Broad Street, Newark, New Jersey.
4. At all times relevant to this matter, NORVERGENCE did business from its principal place of business located at 550 Broad Street, Newark, New Jersey and from various offices in the State of Texas.
5. On or about June 30, 2004, creditors of NORVERGENCE filed an involuntary bankruptcy petition in U.S. Bankruptcy Court for the District of New Jersey.
6. NORVERGENCE currently is in Chapter 7 bankruptcy in the U.S. Bankruptcy Court for the District of New Jersey (Docket 04-32079-RG).
7. A trustee, Charles Forman, has been appointed to act in the stead of NORVERGENCE. The plaintiff does not allege that the trustee is involved in any of the wrongdoing alleged to have been committed by NORVERGENCE.
8. NORVERGENCE, at all times relevant hereto, engaged in trade and commerce within the meaning of the DTPA in the State of Texas, to wit: advertising, offering for sale, selling, and providing telecommunications service and related telecommunications equipment, and charging Texas consumers for, or causing them to be charged for, the same.
9. NORVERGENCE has engaged in unfair and deceptive acts or practices in the conduct of trade and commerce, in violation of the DTPA because it materially misrepresented the nature of its telecommunications services to all Texas consumers who contracted for same.
10. The NORVERGENCE rental agreements for Matrix and Matrix Soho routers and firewalls and related equipment were part of a unified agreement under which NORVERGENCE promised to provide telecommunications services in exchange for consumers' payments.

These services have not been provided at least since a time early in the NORVERGENCE bankruptcy case and in some cases have never been provided.

11. All Equipment Rental Agreements or other contracts procured between NORVERGENCE and Texas consumers or between finance companies and Texas consumers as a result of a NORVERGENCE solicitation directed to any Texas consumer are the result of deceptive and unfair practices and fraud on the part of NORVERGENCE and, therefore, are declared void *ab initio* and are unenforceable.
12. All of the unfair and deceptive acts or practices alleged in Plaintiff's petition constitute the basis for the execution and filing of this Default Judgment.
13. Any references to the acts and practices of NORVERGENCE shall mean that such acts and practices are by and through the acts of said corporation's officers, agents, servants, employees, attorneys, and representatives; all other persons or entities directly or indirectly under their control, wholly or partially; and all other persons or entities in active concert or participation with them who receive actual notice of this Default Judgment by personal service or otherwise.
14. This Court has jurisdiction over the subject matter of the complaint having been filed herein and over the parties to this Default Judgment.
15. The court finds that 1,020 Texas small businesses and consumers were victims of NorVergence's fraud and deceptive acts and practices and that a civil fine and penalty should be awarded to the State of Texas for each such victim.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that Defendant, its officers, agents, servants, employees, and attorneys, and any other person in active concert or

participation with Defendant shall be permanently enjoined from engaging in the following acts or practices:

1. Engaging in any commerce in the State of Texas, including, but not limited to, the business of advertising, offering for sale, selling, and providing telecommunications service and related telecommunications equipment, and charging Texas consumers for, or causing them to be charged for, the same.
2. Assigning any NorVergence equipment rental agreement (or any part thereof) where a Texas business, consumer, person, or entity is a party thereto, to any other person, entity or finance company.
3. Enforcing, attempting to enforce, collecting or attempting to collect any monies purportedly owed under any NorVergence equipment rental agreement from any Texas consumer, business or entity.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that all contracts or agreements between NorVergence and Texas consumers, businesses or persons are hereby declared void *ab initio* and unenforceable.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that any consumer financing agreements owned or held in whole or part by NorVergence shall be deemed void and uncollectible by any person or entity.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that any NorVergence consumer financing agreements transferred or assigned to any third party after those contracts were rejected in the Bankruptcy Case pursuant to 11 U.S.C. § 365 shall be deemed void and uncollectible by any person or entity.

IT IS ALSO ORDERED that to the extent that NorVergence has a residual, contingent, or similar right to any consumer financing agreement not currently owned or held by NorVergence, those agreements shall be deemed void and uncollectible as of the time that NorVergence's residual, contingent, or similar right matures.

IT IS ALSO ORDERED that NorVergence shall notify each consumer affected by this section that their consumer financing agreement has been deemed uncollectible and void, either immediately or in the future, as applicable.

IT IS FURTHER ORDERED that Plaintiff, State of Texas, have Judgment and recover from Defendant NorVergence, the sum of \$ 162,000.⁰⁰ for reimbursement of attorney fees and investigative costs which were incurred on behalf of the Plaintiff and which do not constitute an antecedent debt with respect to this litigation.

IT IS FURTHER ORDERED that Plaintiff, State of Texas, have Judgment and recover from Defendant NorVergence, the sum of \$ 10,000.⁰⁰ for civil fines and penalties and which do not constitute an antecedent debt with respect to this litigation.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, to the extent not prohibited by bankruptcy law :

1. Defendant shall make payment of all amounts due herein to the Plaintiff by delivery of a cashier's check or money order to the Office of the Attorney General, Consumer Protection Division, 300 West 15th Street, 9th Floor, William Clements Building, Austin, Texas 78701. Such check or money order shall be made payable to the Office of the Attorney General.
2. All costs of court incurred in this case are taxed against Defendant.
3. Defendant shall pay pre-judgment and post-judgment interest on all monetary awards set

forth in this judgment as provided by law.

4. The State of Texas have all writs and processes as may be necessary in the enforcement and collection of this judgment.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that all relief not expressly granted herein is denied.

SIGNED this 29th day of April 2005.

F I L E D
CHARLES MACARISSE
District Clerk

APR 29 2005

By B. Battine 10:25
Deputy


JUDGE PRESIDING

EXHIBIT

B

**SUMMONS IN A CIVIL ACTION COURT OF COMMON PLEAS, CUYAHOGA COUNTY JUSTICE CENTER
CLEVELAND, OHIO 44113**

CASE NO.
CV05561438

D2 CM

SUMMONS NO.
8733078

PREFERRED CAPITAL, INC.
VS
KUUMBA HOUSE, INC., ET AL

PLAINTIFF

DEFENDANT

Rule 4 (B) Ohio

Rules of Civil
Procedure

SUMMONS

You have been named defendant in a complaint (copy attached hereto) filed in Cuyahoga County Court of Common Pleas, Cuyahoga County Justice Center, Cleveland, Ohio 44113, by the plaintiff named herein.

You are hereby summoned and required to answer the complaint within 28 days after service of this summons upon you, exclusive of the day of service.

Said answer is required to be served on Plaintiff's Attorney (Address denoted by arrow at left.)

Your answer must also be filed with the court within 3 days after service of said answer on plaintiff's attorney.

If you fail to do so, judgment by default will be rendered against you for the relief demanded in the complaint.

Said answer is required to be served on:



Plaintiff's Attorney

TAMARA A. O'BRIEN
1500 ONE CASCADE PLAZA
AKRON, OH 44308-0000

Case has been assigned to Judge::

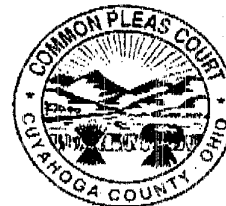
FRANCIS E SWEENEY
Do not contact judge. Judge's name is given for attorney's reference only.

DATE
Jul 19, 2006

By

Deputy

GERALD E. FUERST
Clerk of the Court of Common Pleas



COMPLAINT FILED 04/27/2005



IN THE COMMON PLEAS COURT
CUYAHOGA COUNTY, OHIO

PREFERRED CAPITAL, INC.,
6860 West Snowville Road
Brecksville, OH 44141

Plaintiff,

vs.

KUUMBA HOUSE INC.,
c/o Lindi Yeni
2522 Southmore
Houston, TX 77004

and

LINDI YENI SULAIMAN,
3001 Cleburne
Houston, TX 77288

Defendants.

CASE NO. SD 05-075869

JUDGE RICHARD McMONAGLE
JUSTICE FRANCIS SWEENEY

Judge: MICHAEL P DONNELLY

CV 05 561438

**COMPLAINT: BREACH OF
LEASE AGREEMENT**

Now comes the Plaintiff, Preferred Capital, Inc., by and through counsel, and submits the Complaint as follows:

JURISDICTION AND VENUE

1. Preferred Capital, Inc. is a company licensed to do business in Ohio and doing business at 6860 West Snowville Road, Suite 110, Brecksville, Cuyahoga County, Ohio 44141.
2. That the Defendant, Kuumba House, Inc., is an entity with an address of 3001 Cleburne, Houston, TX.
3. That the Defendant, Lindi Yeni Sulaiman, is an individual with an address of 3001 Cleburne, Houston, TX.

4. That on or about September 12, 2003, the Defendant did enter into a Rental Lease Agreement. (See Exhibit A, attached hereto).

- a. That, on or about the 13th day of October, 2003, the Rental Lease Agreement was assigned from NorVergence, Inc. to Plaintiff Preferred Capital, Inc. (See Exhibit B).
- b. That, on or about the 14th day of October, 2003, NorVergence sent a Notice of Assignment to Defendants. (See Exhibit C).
- c. That, as part of the Rental Lease Agreement, Defendants did agree:
 - i. "to rent from [Plaintiff] the Equipment listed" on the Rental Lease Agreement;
 - ii. "to pay [Plaintiff] the Rental Payments" under the terms of the Rental Lease Agreement; and
 - iii. "to all the terms and conditions shown [on the Rental Lease Agreement], those terms and conditions are a complete and exclusive statement of [the Rental Lease Agreement] and that they may be modified only by written agreement between [Plaintiff and Defendant]."

5. That Defendant signed the agreement on the 12th day of September 2003, agreeing to monthly rental payments of \$192.86 per month for 60 months. (See Exhibit A).

6. That Defendant accepted the equipment and the terms of the Rental Lease Agreement. (See Exhibit D).

- a. That, further, the Rental Lease Agreement provides:

RENT/TERM OF RENTAL: You agree to pay us the amount specified in this Rental as the Rental Payment (plus any applicable taxes) when each payment is due. Your acceptance of the Equipment will be conclusively and irrevocably established upon the receipt by us of your confirmation (verbal or written) of such acceptance. However, if you have not provided us with confirmation of acceptance or provided us with written notice of non-acceptance of the Equipment, in either case, within 10 days after delivery of the Equipment, you

will be deemed to have inspected and irrevocably accepted the Equipment and to have authorized us to pay for the Equipment
(See Exhibit A).

7. That the Defendant, Lindi Yeni Sulaiman, did sign a Personal Guaranty on the aforementioned Rental Lease Agreement (Exhibit A).

a. That the Defendant, Lindi Yeni Sulaiman, as part of the Personal Guaranty did "unconditionally, jointly and severally guarantee that the Renter [a.k.a. Defendant] will make all payments and pay all the other charges required under [the Rental Lease Agreement] and under any other agreement now or hereafter entered into between the Renter and [me] when they are due and will perform all other obligations under the agreement(s) fully and promptly."

(See Exhibit A).

8. That the Defendant and Plaintiff agreed that a default under the Rental Lease Agreement would be the Defendant's failure "to pay any Rental Payment or any other payment when due." (See Exhibit A).

9. That Defendant agreed the Rental Lease Agreement "shall be governed by, construed and enforced in accordance with the laws of the State in which . . . if this Lease is assigned by Renter, the State in which the assignee's principal offices are located, without regard to such State's choice of law considerations and all legal actions relating to this Lease shall be venued exclusively in a state or federal court located within that State" (See Exhibit A).

10. That Defendant agreed:

YOUR DUTY TO MAKE THE RENTAL PAYMENTS IS UNCONDITIONAL
DESPITE EQUIPMENT FAILURE, DAMAGE, LOSS OR ANY OTHER
PROBLEM. RENTER IS RENTING THE EQUIPMENT "AS IS", WITHOUT
ANY WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WARRANTIES

OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE IN CONNECTION WITH THIS AGREEMENT. (See Exhibit A).

COUNT ONE: BREACH OF LEASE AGREEMENT

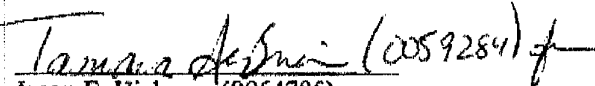
11. That on or about August 29, 2004, Defendants did default on their obligations under the terms of the Rental Lease Agreement, by virtue of their failure to pay their monthly rental obligation.

12. That as a result of the default of the Defendants, Kuumba House, Inc. and Lindi Yeni Sulaiman, Defendants jointly and severally have damaged the Plaintiff, Preferred Capital, Inc. in the amount of \$9,490.71 together with costs, interest, attorney fees and such further relief as this Court deems appropriate.

WHEREFORE, Plaintiff does demand judgment against the Defendants, Kuumba House, Inc. and Lindi Yeni Sulaiman, jointly and severally, in the amount of Nine Thousand Four Hundred Ninety and 71/100 Dollars (\$9,490.71) together with costs, interest, attorney fees and such further relief as this Court deems appropriate.

Respectfully submitted,

RODERICK LINTON LLP

 (0059284) f

Jason E. Hickman (0064785)

David S. Nichol (0072194)

One Cascade Plaza, 15th Floor

Akron, OH 44308-1108

Telephone No. (330) 434-3000

Facsimile No. (330) 434-9220

E-mail addresses: dnichol@rodericklinton.com

and jhickman@rodericklinton.com

Attorneys for Plaintiff

Equipment Rental Agreement		NorVergence		EXHIBIT A		Rental Number 728899000	
Renter (Full Legal Name) NorVergence, Inc.				Renter (Full Legal Name) Kuumba House Inc			
Address 550 Broad St 3rd Floor				Address 3001 Cleburne			
City Newark	State NJ	County Essex	Zip Code 07102	City Houston	State TX	County Harris	Zip Code 77288
Telephone Number 973-247-7580				Telephone Number 713-524-1079			
				Federal Tax ID Number 76007921			
				State of Organization TX			
<p>Dear Customer: We've written this Equipment Rental Agreement (the "Rental") in simple and easy-to-read language because we want you to understand its terms. Please read this Rental carefully and feel free to ask us any questions you may have about it. We use the words you and you to mean the Renter indicated above. The we, us, and our refer to the Renter indicated herein.</p> <p>Rental Agreement: We agree to rent to you and you agree to rent from us the Equipment listed below (the "Equipment"). You promise to pay us the Rental Payments shown below, according to the payment schedule below:</p>							
Quantity	Equipment Model & Description			Serial Number			
1	Matrix Solo			D30E3757			
<p>Equipment to be new unless otherwise noted: <input type="checkbox"/> Used <input type="checkbox"/> Reconditioned <input type="checkbox"/></p> <p>Equipment Location (if different from Renter's address above) Address</p>							
City	State	County	Zip Code	Renter Contact Name	Telephone Number		
<p>Transaction Terms: Rental Payment \$ 102.80* (plus applicable taxes) RENTAL TERM Months 60 Security Deposit \$:</p> <p><input checked="" type="checkbox"/> If checked the first payment is due approximately 60 days after date of acceptance.</p> <p>Your payments shown above may not include any applicable tax. If any taxes are due, you authorize us to pay the tax when it is due and agree to reimburse us by adding a charge to your Rental Payment. You authorize us to insert or correct, missing or incorrect information on the Rental we will send you notice of such changes. Payments will be applied first to past due balance, taxes, late and late charges, and then to the current amount due.</p> <p>You agree to all the terms and conditions shown above and the reverse side of this Rental, that these terms and conditions are a complete and exclusive statement of our agreement and that they may be modified only by written agreement between you and us. Terms or oral promises which are not contained in this written Rental may not be legally enforced. You also agree that the Equipment will not be used for personal, family or household purposes. You acknowledge receipt of a copy of this Rental. Your obligations to make all Rental Payments for the entire term are not subject to set off, with holding or deduction for any reason whatsoever.</p> <p>This Rental is not binding on us until we accept it by signing below. You authorize us to record a UCC-1 financing statement or similar instrument, and appoint us as your attorney-in-fact to execute and deliver such instrument, in order to show our interest in the Equipment.</p> <p>THIS RENTAL MAY NOT BE CANCELLED OR TERMINATED EARLY.</p>							
Renter: NorVergence, Inc.				Renter: Kuumba House Inc			
By: X [Signature]				By: X [Signature]			
Accepted on behalf of Renter on: 9/23/03				Name (print): LINDI YENI SULAIMAN			
				Date/Time: 9-12-03 President			
You agree that a facsimile copy of this Rental bearing signatures may be treated as an original.							
<p>Guaranty: In this guaranty, you mean the person(s) making the guaranty, and we, us, and our refer to the Renter indicated above. You will unconditionally, jointly and severally guarantee that the Renter will make all payments and pay all the other charges required under this Rental and under any other agreement now or hereafter entered into between the Renter and us (the "agreement(s)") when they are due and will perform all other obligations under the agreement(s) fully and promptly. You also agree that we may make other arrangements with the Renter and you will still be responsible for those payment and other obligations.</p> <p>We do not have to notify you if the Renter is in default, or the Renter defaults, you will immediately pay in accordance with the default provisions of this Rental all sums due under the terms of this Rental and you will perform all other obligations of the Renter under this Rental. It is not necessary for us to proceed first against the Renter before enforcing this guaranty. You will reimburse us for all the expenses we incur in enforcing and of our claims against the Renter or you, including attorney fees. THE SAME STATE LAW AS THE RENTAL WILL GOVERN THIS GUARANTY. YOU AGREE TO JURISDICTION AND VENUE AS STATED IN THE PARAGRAPH TITLED APPLICABLE LAW OF THE RENTAL.</p>							
Personal Guaranty:				Personal Guaranty:			
By: X (sign) [Signature]				By: X (sign) [Signature]			
Name (print)				Name (print)			
				LINDI YENI SULAIMAN			

EXHIBIT B*"Drastically Reducing Your Telecommunications Costs"*

550 Broad Street
3rd Floor
Newark, NJ 07102
Tel# (973) 242-7500
Fax# (973) 242-7414

Date: 10/13/2003

Invoice#: 17007

Contact: Ed Lucas x7066
Lynn Fredrickson X129

INVOICE

<u>Item Description</u>	<u>Quantity</u>	<u>Price</u>
Matrix Soho	1	\$7,475.19

TOTAL**7,475.19**

Ship to: Kuumba House Inc
P.O. Box 870
Houston, TX 77288

Bill to: Preferred Capital Inc.
6860 West Snowville Road, Suite 110
Brecksville, Ohio 44141

Location: 3001 Cleburne Street
Houston TX 77004

All Payment Should Be Sent To: First Union National Bank 550 Broad Street Newark, NJ 07102 Wire Routing
Number: 031201467 Account Number: 200001102277 Account Name: NorVergence, Inc.

PLEASE ACH ALL PAYMENTS A.S.A.P.

MASTER PROGRAM AGREEMENT**EXHIBIT B**

This Agreement made this 30th day September, 2003, by and between NorVergence, Inc. a New Jersey corporation having its principal place of business at 550 Broad Street, Newark, New Jersey 07102 ("you" or "NorVergence") and Preferred Capital, Inc. an Ohio corporation, having its principal place of business at 6860 West Snowville Road, Suite 110, Brecksville, Ohio ("us" or "Preferred").

WHEREAS, NorVergence, in the ordinary course of its business, has entered into or may hereafter enter into certain rentals of personal property ("Rental Agreements") providing for the payment of money to NorVergence, arising out of NorVergence's rental of equipment described in such Rental Agreements ("Equipment") to users thereof ("Customer" or "Customers") and may desire, from time to time, to assign to Preferred its right, title, and interest in and to such Rental Agreements and Equipment; and,

WHEREAS, Preferred may, at its sole discretion, accept the assignment of such Rental Agreements as are acceptable to it, and, if so accepted, shall pay NorVergence therefor.

NOW THEREFORE, in consideration of the covenants, undertakings, warranties, representations, and agreements hereinafter set forth and for other good and valuable consideration, upon Preferred's approval of any Rental Agreement and receipt from NorVergence of all necessary documents, the terms and conditions of this Master Program Agreement ("Agreement") shall govern and apply to all such assignments and Preferred hereby accepts assignment of such Rental Agreements.

1. CREDIT PROCEDURES. From time to time during the term of this Agreement, NorVergence may submit to Preferred applications for renting from Customers, together with such financial and other pertinent credit information ("Information") as is available and reasonably requested by Preferred. Preferred may accept or reject a proposed Customer or Rental Agreement in its sole discretion. Preferred shall use its best efforts to accept or reject each such application, and notify NorVergence of its determination, within one business day after receipt by Preferred of all Information reasonably requested by Preferred. NorVergence acknowledges that Preferred intends to rely on any Information supplied by NorVergence to Preferred to determine whether, within Preferred's sole discretion, Preferred will accept assignment of said Rental Agreement. NorVergence acknowledges that Preferred shall not conduct a Customer interview during the credit approval process, which is contrary to Preferred's standard credit policy. NorVergence warrants and represents to Preferred that the Information provided to Preferred shall be the same information as provided to NorVergence from the source providing the Information, the Information shall be true and factual, and that NorVergence has fully disclosed all Information to Preferred. In the event of a violation of this representation and warranty, NorVergence shall be required to repurchase the Rental Agreement in accordance with Paragraph 6 herein.

2. ASSIGNMENT OF RENTAL AGREEMENTS. Upon Preferred's approval of a Rental Agreement, NorVergence hereby assigns to Preferred all its rights, title and interest in and to the Rental Agreement and Equipment including all monies due and to become due under the Rental Agreement, but none of its obligations under the Rental Agreement ("Assigned Rental Agreement"). The assignment price for each Assigned Rental Agreement shall be sales price of the Equipment established individually and evidenced by NorVergence's invoice to Preferred ("Assignment Price").

Assigned Rental Agreements may be written to include 60 days with no payments by the Customer. NorVergence does not require any advance rental payments to secure the Rental Agreement. Preferred shall not obtain any confirmation of delivery other than the signed Delivery & Acceptance notice provided by NorVergence. The Assignment Price for each Assigned Rental Agreement shall be paid to NorVergence by Preferred within 24 hours after Preferred's receipt of a properly executed original Delivery & Acceptance Certificate together with the original Rental Agreement documentation as set

forth in Exhibit A ("Closing"). In the event any Customer defaults in the payment of the first rental where an actual payment of money is due, and such default is not cured within 30 days, then NorVergence shall repurchase said defaulted Assigned Rental Agreement from Preferred for the dollar amount originally advanced by Preferred plus an administrative fee of \$250 for each Assigned Rental Agreement that is repurchased.

Any and all Assigned Rental Agreements executed by NorVergence shall be expressly subject to and in accordance with the terms and conditions of this Agreement. All of the terms and conditions of this Agreement are hereby incorporated into each Rental Agreement executed by NorVergence as if the terms and conditions were expressly set forth in the Rental Agreement.

3. END OF TERM RESIDUAL PURCHASE. At the end of the original term of any Assigned Rental Agreement which Preferred enter into pursuant to this Agreement, if the Customer is not in default and has otherwise performed all of its obligations under the terms of the Rental Agreement, Preferred shall grant to NorVergence the exclusive right to repurchase from Preferred the Equipment covered by the Assigned Rental Agreement, as well as any rights to future rental payments for any renewal term after the termination of the original Assigned Rental Agreement term, for the sum of One Dollar (\$1.00), plus any applicable taxes or, and any accrued late charges (the "Residual Purchase Price"). Preferred shall invoice NorVergence for the Residual Purchase Price then shall debit NorVergence's bank account 15 days after our invoice to you.

Upon NorVergence's repurchase of the Equipment, Preferred shall forward to NorVergence a Bill of Sale for the Equipment and shall WITHOUT RECOURSE OR WARRANTY, assign, set over and transfer to NorVergence all of Preferred's right, title, and interest in and to the Equipment. NorVergence understands and agrees that any end of rental residual purchase shall be on an AS-IS and WHERE-IS basis, that it will be solely responsible for determining the location and condition of the Equipment, and that Preferred makes NO WARRANTIES as to the Equipment, including NO WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

If NorVergence does not repurchase the Equipment at the end of the original Assigned Rental Agreement term, Preferred will have the right (but not the obligation) (i) to offer to sell the Equipment to the Customer for any price which Preferred deem appropriate, in its sole discretion; or (ii) to renew the Assigned Rental Agreement term for an additional period according to the terms of the Assigned Rental Agreement; or (iii) to require the Customer to return the Equipment to Preferred. If NorVergence does not repurchase the Equipment, NorVergence shall have no rights or interest in the Equipment or in any of the proceeds of any sale or other disposal of the Equipment or of any renewal of the Rental Agreement term.

4. REPRESENTATIONS AND WARRANTIES. NorVergence hereby represents and warrants with respect to each Assigned Rental Agreement that:

- (a) it is valid, binding, and enforceable in accordance with its terms and represents a non-cancelable obligation of a bona fide Customer having legal capacity to contract;
- (b) the form, terms, and execution thereof are in compliance with all applicable State and Federal laws and regulations affecting the same;
- (c) Customer's signature and guarantor(s) signature, if applicable, are genuine in all respects;
- (d) the amount(s) stated as due in the Assigned Rental Agreement are due and payable at the time(s) provided therein;
- (e) that the Assigned Rental Agreement is, at the time of the transfer to Preferred, and will remain, free and clear of all defenses, set-offs, counterclaims, liens, and encumbrances of every kind and nature against NorVergence;

- (f) the description of the Equipment in the Assigned Rental Agreement is accurate and unless otherwise specified at the time of credit submission, the Equipment is new and unused;
- (g) no part of any down payment has been advanced directly to Customer by NorVergence;
- (h) at the time any Assigned Rental Agreement was assigned to Preferred, title in and to the Equipment was vested in NorVergence free and clear of all liens, claims, and encumbrances;
- (i) each and every item of Equipment listed on any Rental Agreement had been delivered to and unconditionally accepted by Customer. Preferred shall not be obligated to make any independent confirmation of such delivery and NorVergence shall be solely responsible for its representation that the Equipment has been accepted by Customer.
- (j) no dispute or claim by Customer of which NorVergence has been notified was pending at the time of assignment;
- (k) no agreement or instrument other than the Assigned Rental Agreement has been entered into with Customer which would change the terms and conditions of the Assigned Rental Agreement or impair Preferred's rights to collect the proceeds of the Assigned Rental Agreement;
- (l) all Equipment will be used solely for business or commercial purposes, and will not be used for personal, family, or household purposes;

Except for the aforesaid, NorVergence agrees that it is still required to comply with and is bound by all representations and warranties herein.

5. ADDITIONAL REPRESENTATION AND WARRANTIES OF NORVERGENCE.

NorVergence further represents and warrants that:

- (a) it is validly organized, existing and in good standing in its State of Incorporation and is duly qualified to do business in each State in which, because of the nature of its business or the Rental Agreement it owns, qualification is required;
- (b) it has the power and authority to enter into and perform this Agreement;
- (c) it will not grant a security interest in any Assigned Rental Agreement or any Equipment thereunder; it will promptly fulfill all obligations on its part to be fulfilled and performed in accordance with any agreement with Customer with respect to the Equipment;
- (d) NorVergence will indemnify and hold Preferred harmless from and against any demand, claim, action, cost, loss, liability, damage, or expense of any kind, including attorney's fees and costs, arising from or in connection with the breach of any warranty or representation contained in this Agreement and arising from or in connection with any breach by NorVergence of any provision of any Rental Agreement assigned to Preferred.

6. REPURCHASE OBLIGATIONS. NorVergence hereby agrees to repurchase from Preferred within ten (10) days after Preferred's demand any Assigned Rental Agreement with respect to which any representation or warranty of NorVergence contained in this Agreement or Rental Agreement is untrue, incorrect, or is breached by NorVergence. The Repurchase Price shall be the amount equal to: (i) all amount then due under the Rental, plus (ii) all unpaid Rental Payments for the remainder of the term discounted to present value at a rate of 8% per annum, (iii) plus all out-of-pocket expenses incurred by Preferred in connection with collection or attempted collection of such Rental Agreement, including but not limited to attorney's fees and costs as a consequence of litigation whether by or against Preferred, and, if applicable, the expenses of retaking, storing, and disposing of the equipment. If the Repurchase Price is not paid within ten (10) days of demand, in addition to the Repurchase Price, NorVergence shall also be liable for and pay to Preferred all expenses incurred by Preferred in connection with collection or attempted collection of the Repurchase Price (including attorney's fee, litigation expenses, and, if applicable, expenses related to the repossession and sale of the equipment), plus interest on the Repurchase Price at a rate of 1 1/2 percent per month until paid but not in excess of the maximum amount permitted by law.

7. **UNIFORM COMMERCIAL CODE FILING.** NorVergence hereby authorizes Preferred to file and record appropriate Uniform Commercial Code Financing Statements ("UCC") naming each Customer as Debtor and Preferred as secured party. In the event NorVergence files a UCC against a Customer, NorVergence hereby grants to Preferred the right, in the name of NorVergence, to amend such UCC to evidence the assignment to Preferred.

8. **COLLECTIONS.** Preferred shall bill the Customers for payments to be made under the Rental Agreement, including any applicable sales, personal property or use tax, and have the sole right to make collections on any Assigned Rental Agreement and to exercise any and all rights, powers, and remedies thereunder. Preferred's failure to attempt to collect or to take any action regarding a delinquent Assigned Rental Agreement shall not relieve NorVergence of any obligation it may have for breach of representation or warranty or breach of any Rental Agreements. NorVergence hereby appoints Preferred and each of its officers as NorVergence's limited attorney-in-fact, without any right of revocation and full power of substitution to endorse, without recourse, NorVergence's name upon any and all notes, checks, drafts, or other instruments for the payment of money received by Preferred which are payable to NorVergence with respect to an Assigned Rental Agreement, which payments are owed to Preferred by a Customer. Both Preferred and NorVergence agree to deliver any sums received by either of them to the party entitled to such sums.

9. **INDEPENDENT CONTRACTORS.** NorVergence and Preferred hereby acknowledge that they are separate entities, each of which has entered into this Agreement for independent business reasons and that none has acted, acts, or shall be deemed to have acted or acts, as an agent for the other except as expressly provided for in this Agreement. NorVergence shall have no right or authority to, and will not attempt to, accept collections, repossess or consent to return of the Equipment or modify the terms of any Assigned Contract unless agreed to by Preferred.

10. **TERMINATION.** This Agreement may be terminated by either party at any time upon thirty (30) days prior written notice to the other. Termination shall not affect the rights of the parties with respect to any transaction entered into before termination and Preferred shall retain all rights under any such assigned Rental Agreement.

11. **GENERAL PROVISIONS.**

a) Notices. All notices, demands, consents, approvals and similar communications shall be in writing and delivered in person, by telecopy, by overnight courier or by prepaid certified mail, addressed to the party for which it is intended as follows:

If to Preferred:
Preferred Capital, Inc.
6860 West Snowville Road
Breckville, Ohio 44141
Attn: Alan J. Veloria
Telecopy No. (440) 546-7406

If to NorVergence:
NorVergence, Inc.
550 Broad Street
Newark, New Jersey 07102
Attn: Edward Lucas
Telecopy No. (973) 242-7414

Notices shall be deemed delivered on the day of actual receipt. Any party may change its address for the receipt of notices by written instrument duly given to the other party.

b) Additional Documents And Mutual Cooperation. The parties agree to cooperate from time to time for purposes of:

(i) Preparation of forms, including notices to Customers.

- (ii) In the execution of such other documents as may be necessary or proper to fulfill the intent or effectuate the purposes of this Agreement or any Assignment, and
- (iii) In the furnishing, subject to each party's then current internal procedures, of records and supporting material relating to this Agreement, Payments, Equipment and Purchased Contracts as may be reasonably requested or needed by any party for internal or tax audits or otherwise.
- c) Successors And Assigns. This Agreement shall inure to the benefit of and be binding upon NorVergence and Preferred and their respective successors and permitted assigns. Any party may assign the benefits inuring to it under this Agreement but may not assign any duty, obligation or undertaking without the prior written consent of the other, which may be given or withheld at the sole discretion of such party.
- d) Waiver. No delay or omissions on the part of any party in exercising any right, remedy, option, or notice of default, except as any pertinent statute of limitations which may apply, on any one occasion, shall be construed as a bar or waiver of any other default, right, remedy, or option, or the same default, right, remedy, or option on any future occasion.
- e) Survival. The respective indemnities, representations, warranties and agreements of NorVergence contained in this Agreement or any Assignment or made by or on behalf of NorVergence pursuant to this Agreement or any Assignment shall remain in full force and effect, regardless of any termination or cancellation of this Agreement.
- f) Entire Agreement. This Agreement, including any exhibits, schedules and attachments hereto and delivered in connection herewith, constitutes the entire agreement among the parties concerning the subject matter hereof and incorporates all representations made and recourse undertaken in connection with negotiation of the same. The express terms hereof may not be terminated, amended or modified orally, but only by an instrument duly authorized by the parties hereto.
- g) Headings: Unenforceability. Headings appearing in this Agreement are for convenience of reference and reading only and shall not be construed to modify, expand or limit the express terms of any provision hereof. The parties to this Agreement agree that each has significant bargaining capacity with respect to the terms hereof and that none of the parties shall be deemed the drafter for purposes of provisions being construed strictly against such party. If any provision of this Agreement shall be deemed to be unenforceable, such provision shall have no effect upon and shall not impair the enforceability of any other provision of this Agreement.
- h) Limited Power of Attorney. NorVergence hereby grants Preferred an irrevocable power of attorney, with full power of substitution, coupled with an interest, to take in the name of Preferred all lawful steps necessary or advisable to execute, endorse (without recourse to NorVergence), negotiate or otherwise realize on any writing, negotiable instrument, or other right of any kind held or owned by NorVergence or transmitted to or received by Preferred (whether or not from NorVergence or any Customer) in connection with any Assigned Rental Agreement.

12. Governing Law, Jurisdiction and Venue. The parties agree that this Agreement shall be deemed to be fully executed and performed in the State of Ohio and shall be governed by, construed and enforced in accordance with the laws of the State of Ohio and Cuyahoga County, Ohio. The parties agree that this Agreement shall be treated as though executed and performed in Brecksville, Ohio and any legal actions relating to this Agreement must be instituted in the courts of Cuyahoga County, Ohio or the United States District Court for the Northern District of Ohio, which shall have exclusive jurisdiction. The parties hereby waive right to a trial by jury in any lawsuit in any way relating to this Agreement. The prevailing party shall be awarded its reasonable attorney's fees and costs in any litigation to enforce this Agreement.

PREFERRED CAPITAL, INC.

By: 

Title: President

NORVERGENCE, INC.

By: 

Title: CEO

EXHIBIT A

CONTRACT DOCUMENTATION

1. The original of each of the following documents in accordance with NorVergence's representations and warranties set out in the Master Program Agreement:
 - a) Rental Agreement, in form and substance satisfactory to Preferred as and when so delivered; and
 - b) all documentation related to such Rental Agreement including, but not limited to, amendments, supplements, exhibits, letters, schedules thereto including schedules referred to in any Rental Agreement as constituting a separate rental transaction; and
 - c) Customer acceptances; and
 - d) guarantees, additional collateral agreements, or supplier warranty agreements; and
 - e) any recourse or Equipment buyback arrangements; and
 - f) NorVergence's invoice.
2. Any additional documents as may have been entered into in connection with any Purchased Contract or as may be provided for in any Commitment Letter pertaining to one or more Purchased Contract.

EXHIBIT B
NOTICE OF ASSIGNMENT

[Customer Name]
[Customer Address]

Re: Agreement No. _____ dated _____

We appreciate serving you as a valued NorVergence customer and would like to advise you that the above referenced agreement has been transferred to Preferred Capital, Inc. All terms and conditions remain unchanged with the exception that beginning with your first rental payment due you are to make your contract payments to Preferred Capital, Inc. as follows:

Preferred Capital, Inc.
6860 West Snowville Road
Brecksville, Oh 44141-3214

This letter confirms that the agreement commenced on _____ and is for a term of _____ months. There are _____ monthly payments remaining each in the amount of \$ _____, plus applicable taxes.

In addition please update your insurance to reflect Preferred Capital, Inc. as loss payee and additional insured and forward a certificate of insurance to:

Preferred Capital Inc.
6860 West Snowville Road
Brecksville, Oh. 44141
ATTN: Insurance Dept.

If you have any questions, please do not hesitate to call.

Sincerely,

NorVergence, Inc.

(Name)
(Title)



Drastically Reducing Telecommunications Costs

Corporate Headquarters

NorVergence Inc.
550 Broad Street
3rd floor
Irving, N.J. 07102
voice 866 848 6678
fax 866 742 6678
www.NorVergence.com

Field Offices:
New York
Los Angeles
Chicago
Washington D.C.
Atlanta
Philadelphia
Houston
Detroit
Boston
Dallas
Miami
Tampa
St. Louis
Pittsburgh
Oakland
San Francisco
Riverside
Cleveland
Orlando
Kansas City
Charlotte
San Jose
Ft. Worth
Columbus
Cincinnati
Indianapolis
New Orleans
Sacramento
Nashville
Greensboro
Raleigh
Milwaukee
Jacksonville
Austin
San Antonio
Salt Lake City
Memphis
Louisville

NOTICE OF ASSIGNMENT

KUUMBA HOUSE INC
2503 HOLMAN STREET
HOUSTON, TX 77004

Re: Agreement No. N28899.000, dated September 30, 2003

We appreciate serving you as a valued NorVergence customer and would like to advise you that the above referenced agreement has been transferred to Preferred Capital, Inc. All terms and conditions remain unchanged with the exception that beginning with your first rental payment due you are to make your contract payments to Preferred Capital, Inc. as follows:

Preferred Capital, Inc.
6860 West Snowville Road
Suite 110
Brecksville, OH 44141-3214

This letter confirms that the agreement commenced on 09/29/2003, and is for a term of 60 months. There are 60 monthly payments remaining each in the amount of \$ 192.86, plus applicable taxes.

In addition please update your insurance to reflect Preferred Capital, Inc. as loss payee and additional insured and forward a certificate of insurance to:

Preferred Capital, Inc.
6860 West Snowville Road
Suite 110
Brecksville, OH 44141
ATTN: Insurance Dept.

If you have any questions, please do not hesitate to call.

Sincerely,

NorVergence, Inc.

Delivery and Acceptance Certificate

EXHIBIT D

The undersigned certifies that it has received and accepted all the Equipment described in the Equipment Rental Agreement between NorVergence, Inc. (Renter), and the undersigned KUUMBA HOUSE INC (Renter) dated 9/12/03. The Equipment conforms with our requirements. There are no side agreements or cancellation clauses given outside the Equipment Rental Agreement.

I have reviewed and I understand all of the terms and conditions of the Equipment Rental Agreement. I AGREE THAT THE RENTAL PAYMENT UNDER THE EQUIPMENT RENTAL AGREEMENT WILL BEGIN 60 DAYS FROM THE DATE OF THIS DELIVERY AND ACCEPTANCE CERTIFICATE AND SHALL CONTINUE THEREAFTER FOR THE FULL LENGTH OF THE STATED INITIAL TERM OF THE EQUIPMENT RENTAL AGREEMENT AND IN ACCORDANCE WITH ITS TERMS AND CONDITIONS. I was not induced to sign this by any assurances of the Renter or anyone else. I have had a reasonable opportunity to inspect the goods.

Renter: KUUMBA HOUSE INCDate: 9-29-03By: LINDA YENI SULAIMAN

(Print Name)

X [Signature]

(Signature)

Title: PRESIDENTSerial # D30E3757

EXHIBIT

C

NO. 05-10143-K

TEXTON, INC.,

Plaintiff,

vs.

PREFERRED CAPITAL, INC.,

Defendant.

§
§
§
§
§
§
§
§
§

IN THE COUNTY COURT AT LAW

NUMBER 2

OF DALLAS COUNTY, TEXAS

AFFIDAVIT OF KATHRYN A. BELFANCE

STATE OF OHIO §
§
COUNTY OF SUMMIT §

Before me, the undersigned notary public, personally appeared Kathryn A. Belfance, who after being duly sworn by me upon her oath deposed and stated as follows:

1. My name is Kathryn A. Belfance. I am over 18 years of age and legally competent to make this affidavit and provide testimony in this matter. I have personal knowledge of the matters stated herein and each of those facts is true and correct.

2. I am an attorney licensed to practice law in the State of Ohio. On April 14, 2005, I was appointed by the Court of Common Pleas for Summit County, Ohio, as the receiver of all assets of Preferred Capital, Inc. A true and correct copy of the Order appointing me as receiver is attached hereto as Exhibit A. That Order of appointment includes specific direction that I collect the leases payable to Preferred Capital, Inc. (see ¶3.3).

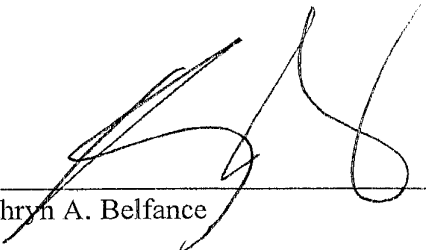
3. Preferred Capital continues to own the equipment lease signed by the Plaintiff here, Texton, Inc. Preferred Capital is the proper party to bring this action to collect the lease from Texton, Inc.

4. I understand that Texton has raised a claim in the above styled lawsuit that Preferred Capital is bound by a default judgment dated April 29, 2005, taken by the Texas Attorney General against only NorVergence. It is my understanding that the Texas Attorney General did not file that suit in Harris County against NorVergence until approximately November of 2004, six months after Preferred had purchased the subject equipment finance lease signed by Texton, Inc.

5. The Texas Attorney General did not file suit against Preferred, nor to the best of my knowledge ever provided Preferred with notice of the described lawsuit filed against NorVergence. Preferred Capital and subsequently the receivership of Preferred Capital did not participate or take any role in the lawsuit which was filed by the Texas Attorney General against only NorVergence.

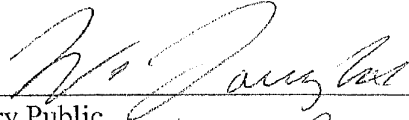
6. NorVergence has been in bankruptcy since June of 2004. Preferred did not control the actions of NorVergence before or after that bankruptcy and specifically did not control its defense or lack of defense in the Harris County lawsuit brought by the Texas Attorney General. As I understand it, NorVergence took no actions to represent or defend its interests in the Harris County lawsuit and therefore certainly was not representing Preferred in connection with that matter or anything else.

7. I do not understand the Texas default judgment to in any way affect the leases owned by Preferred, which are some of the assets for which I have been appointed as the Receiver.



Kathryn A. Belfance

Subscribed and sworn to before me this 17th day of July, 2006, to certify which witness my hand and official seal.



Notary Public
Name (print): Wes Douglas
My commission expires: _____

WESLEY DOUGLAS, Notary Public
Residence - Summit County
State Wide Jurisdiction, Ohio
My Commission Expires Nov. 4, 2007

DIANA ZALESKI
 IN THE COURT OF COMMON PLEAS
 SUMMIT COUNTY, OHIO
 2005 APR 14 AM 11:50

CHAMPAIGN NATIONAL BANK, COUNTY)
 OF COURTS)

CASE NO CV 2005-03-1651

Plaintiff,

JUDGE BOND

vs.

ORDER FOR APPOINTMENT
OF RECEIVER

PREFERRED CAPITAL, INC.,)

Defendant.)

This matter is before the Court upon the Motion of Plaintiff for the appointment of a receiver. The Court has met in conference with counsel for the parties as well as representatives of certain other secured creditors of defendant Preferred Capital, Inc. ("PCI"). The Court is further informed that, in addition to the Plaintiff, various other banks and financial institutions have judgments against, and/or are secured creditors of, PCI (each individually, a "Secured Creditor"; and, collectively, including the Plaintiff, the "Secured Creditors"). The Plaintiff and PCI have stipulated to the appointment of a receiver, both parties being satisfied that a receiver is the best and most appropriate way to effectuate the orderly administration and disposition of its assets in accordance with applicable law.

It is therefore ORDERED that:

1. **Appointment.** Kathryn A. Belfance (the "Receiver") is hereby appointed the Receiver for all assets of PCI, including, but not limited to, all real and personal property, general intangibles, and other assets of PCI of whatever kind or nature (collectively, the "Assets"), and the Receiver shall have all authority and power of a Receiver under Ohio law and as ordered by this Court.

EXHIBIT A

2. **Bond and Oath.** Before entering upon the duties of such trust, the Receiver shall obtain and file a bond payable to the Clerk of this Court in the sum of One Hundred Dollars (\$100.00) with a corporate surety to be approved by this Court, conditioned upon the faithful discharge of her duties as Receiver, and the Receiver thereupon shall take an oath faithfully to perform her duties as Receiver. The cost of such bond should be reimbursable to the Receiver from any Assets collected by the Receiver.

3. **Powers and Duties.** The Receiver shall have exclusive control over all Assets with the power and authority to preserve, protect and liquidate them for the benefit of whomever the Court may determine to be entitled to such Assets or their proceeds (after giving proper notice to all Secured Creditors and other affected persons, whether or not they are parties to this action, and after opportunity for a hearing). Except as otherwise limited by this Order or rules of Court, the Receiver may do all things that can be done by PCI. The Receiver is vested with all of the powers, rights and duties of Receivers appointed under Ohio law, including, without limitation, the following rights, powers and duties:

3.1 **Possession of Books and Records.** The Receiver shall take immediate possession, control, management and charge of any and all of PCI's books and records, including, but not limited to, PCI's master lease files, the "Infolease" data tape (plus the predecessor system tape) and accounting books and records of whatever nature and wherever located, including all information regarding the assets, liabilities, equity, income and expenses of PCI. The Receiver shall take immediate possession, control, management and charge of all of PCI's financial statements, ledgers and journals, balance

sheets, trial balances, statements of cash flows, income statements, statements of retaining earnings, accounting journals and books of original entry, including, but not limited to: (1) accounts receivable agings and any other documentation which indicate the amounts owing from customers or lessees on accounts receivable and from whom such amounts are or were owing and when any amounts were collected and deposited; (2) fixed asset ledgers, schedules or records documentation and/or appraisals of PCI's equipment, motor vehicles, accessories, furniture inventory, furnishings, and supplies; (3) inventory listings or other detail; (4) all lists, schedules or records pertaining to PCI's stocks, bonds, shares or interests in any mutual fund, proprietorship, general or limited partnership, or corporation, all notes or other instruments owing to PCI, and information regarding any other intangible of PCI; (5) all information and documentation which relates or pertains to any checking, saving, banking and money management accounts of any kind or nature of PCI or into which any proceeds of the collection or sale of any asset of PCI have been deposited; (6) all accounts payable documentation and information and all correspondence or written documents regarding negotiations with current accounts or proposed accounts; (7) all information, of whatever type of nature, regarding the payroll and benefits of the employees of PCI, including wage or salary information, medical insurance information, child support payments or other employee deductions withheld or to be withheld, and all information regarding trust fund or withholding taxes, whether federal, state or local, and any information regarding any and all of the employer matching obligations or the employer payroll tax obligations; (8) all information and documentation regarding the federal, state and local tax liabilities of PCI, including any and all federal, state and local tax returns filed or unfiled, and any documents generated

during the preparation and filing of tax returns; (9) all contracts and leases to which PCI is a party; (10) all information and documentation of any other financial transaction or interest in and to any Assets of PCI which may be necessary or pertinent to the Receiver's liquidation of PCI's Assets; and (11) any documentation that relates or pertains to PCI and is or was kept in the ordinary course of its business in connection with the record-keeping or accounting. The documents and information described in this subparagraph shall hereinafter be referred to as the "Books and Records."

3.2 **Possession of Assets.** The Receiver shall have the right to take and keep possession of all Assets, during the pendency of the above-captioned action, subject to further Order of the Court. The Receiver is further authorized to collect any and all rent, issues, profits, income, revenues, accounts, and lease payments now due and hereafter becoming due for, or on account of, PCI; subject however, to any claims, liens or security interests therein of any Secured Creditors. The Receiver may open PCI's mail, negotiate and endorse checks and instruments, and cause the proceeds of such checks and instruments to be deposited into accounts maintained by the Receiver for the benefit of the Secured Creditors asserting liens or security interests in such proceeds. Notwithstanding the foregoing, the Receiver shall have no obligation to collect or preserve Assets which have been surrendered by PCI to a Secured Creditor prior to the Receiver's appointment, provided that the Receiver has reviewed the circumstances of that surrender and is satisfied that the Secured Creditor to which such Assets (or their proceeds) were surrendered was entitled to them and that such Assets or proceeds are not claimed by another Secured Creditor holding a prior and superior lien or security interest therein. The Receiver's determinations in regard to any such surrender(s) shall be subject

to review and approval of the Court (after giving proper notice to all affected Secured Creditors, whether or not they are parties to this action, and after opportunity for a hearing).

3.3 Collection of Accounts. The Receiver shall immediately begin collection of PCI's accounts receivable, lease payments and any other amounts payable to PCI. If the Receiver deems it appropriate, the Receiver may commence legal action to pursue collection of any account receivable or lease payments owed to PCI without prior Court approval.

3.4 Asset Sales. Notwithstanding Local Rule 9.02, the Receiver may sell, liquidate or otherwise dispose of the Assets owned by PCI, for the fair value thereof, only after first obtaining the express consent and authorization of the Secured Creditors who have or may have liens or security interests therein and further Order of the Court. The Receiver shall promptly provide to the Secured Creditors and to other persons entitled to notice under this Order written summaries of all communications by or to the Receiver regarding potential sales of Assets for more than \$1,000. Each summary shall include a description of the subject Assets, the price offered and the proposed time of closing. Any Order approving a sale of any Assets shall provide that the proceeds of such sale shall be impressed with any and all liens or security interests encumbering such Assets to the same extent, validity and priority as such liens or security interests attached to the Assets sold. Without further Order of the Court, all such proceeds shall be segregated in a federally insured bank account and shall not be used without the express consent and authorization of the Secured Creditors who have or may have liens or security interests therein and further Order of the Court. Subject to further Order of the

Court, the Receiver's rights, powers and authority, including its rights and custody, control and sale of Assets, shall not impair, diminish, or otherwise prejudice valid and enforceable liens, security interests or claims in or to PCI's Assets (or any of them).

3.5 Application of Revenues and Proceeds of Receivership. The Receiver shall pay all collections, income, revenues, profits and proceeds derived from the Assets to the holders of valid and enforceable secured obligations, liens, and claims, encumbering such Assets and proceeds thereof, including the Secured Creditors, in order of the priority and amount of such security interests, liens and claims and then, if and to extent any excess remains, on a pro rata basis to pay the unsecured obligations of PCI. Except as provided in the preceding sentence, the Receiver may not pay any pre-receivership unsecured debts to any creditor without first obtaining a further Order of this Court (after giving notice to all Secured Creditors, whether or not they are parties to this action, and after opportunity for a hearing). Any such payment of pre-receivership unsecured debts shall be made only if the Receiver, in its reasonable business judgment, determines that such payment is necessary to preserve the Assets or their value and the Court approves. The Receiver may apply to the Court for further orders relating to claims procedures, distribution of Assets, and related issues.

3.6 Contracts and Employees. The Receiver may employ such persons as the Receiver reasonably deems appropriate to assist in the liquidation of the Assets. The Receiver shall be free at all times to discharge any such person from the Receiver's employ, with or without cause. The Receiver shall charge for no more than 40 hours per week of any such person's time, unless notice is provided to all Secured Creditors in advance.

3.7 No Obligation to Complete Tax Returns. Notwithstanding any other provision hereof, the Receiver shall be under no obligation to complete or file tax returns on behalf of PCI for income or other taxes arising before the date of this Order.

While acting as receiver, the Receiver shall comply with all applicable laws and regulations relating to tax reporting requirements. The Receiver shall furnish officers of PCI with such access to Books and Records within the Receiver's custody or control as reasonably may be necessary in order for PCI to complete and file tax returns on its own behalf.

3.8 Prosecution of Collection Actions. The Receiver is authorized to continue to prosecute, and to institute, prosecute, or intervene in, any lawsuit or proceeding against any other person(s) or entity(ies) to collect preserve and/or maximize the value of the Assets or the receivership estate or to obtain possession of any of the Assets unlawfully in the possession of third parties. The Receiver may not abandon, settle, compromise, dismiss, assign or otherwise dispose of any claims that now or hereafter are the subject of lawsuits or proceedings in the name of PCI (or the Receiver) unless: (a) the Receiver first gives written notice of intended action (a "Notice of Intended Action") to all Secured Creditors claiming any interest in such affected claims, lawsuits or proceedings, which Notice of Intended Action sets forth in reasonable detail the action(s) the Receiver proposes with respect to such claim(s), lawsuit(s), or proceeding(s), and none of those Secured Creditors delivers to the Receiver a written objection to (or a request for a hearing on) the Notice of Intended Action within five (5) business days after such Notice of Intended Action is received; or (b), if a written objection or a request for a hearing is delivered to the Receiver within such five (5)

business days, the Court so orders after an actual hearing (after giving proper notice of such hearing to all affected Secured Creditors, whether or not they are parties to this action).

3.9 Defense of Actions. The Receiver is authorized, but not required, to defend actions against PCI and may incur expenses to defend such actions to the extent that she believes, in her reasonable discretion, that it will protect and preserve the Assets or the receivership estate.

3.10 Pre-Receivership Taxes and Utilities. Notwithstanding Section 3.7, the Receiver and the receivership estate shall not be liable for the payment of taxes, assessments or utility charges pre-dating the date of this Order. Any individual or entity receiving a copy of this Order is hereby enjoined and restrained from discontinuing service to the Receiver or the receivership estate based upon the non-payment of such taxes or utilities prior to the date of this Order and from attempting to collect taxes and utility charges from the Receiver pre-dating the date of this Order.

3.11 No Appraisal Required. Unless the Receiver determines in its reasonable business judgment that it is necessary or desirable to do so, and notwithstanding Local Rule 9.02, the Receiver is excused from seeking or obtaining an appraisal of the Assets. The Receiver may rely on appraisals provided by PCI or any other party, or other means of valuation where the Receiver determines in its reasonable judgment that the appraisal or other means of valuation contains adequate indicia of reliability to be used.

3.12 Care of Property. The Receiver shall maintain real and tangible personal property owned by PCI in the condition similar to that at the time received, ordinary wear and tear excepted, during the pendency of this action.

3.13 Standard of Care. The Receiver shall at all times exercise ordinary care in employing its business judgment to liquidate and administer the Assets.

3.14 Licenses and Permits. The Receiver may acquire or renew all governmental licenses, permits or other authorizations, either in the Receiver's name or in the name of PCI, pertaining to the Assets or any business associated therewith and to do all other things necessary or appropriate to liquidate or sell the Assets in accordance with the provisions and limitations in this Order.

3.15 Cooperation With Receiver. PCI, its attorneys, and all of the officers, directors, shareholders, managers, agents and employees of PCI (a) shall cooperate with the Receiver in connection with its liquidation of the Assets, (b) shall relinquish and deliver possession of the Assets to the Receiver upon demand, (c) shall turn over to the Receiver all Books and Records as the Receiver upon demand, and (d) are enjoined from interfering with the possession, control and liquidation of the Assets by the Receiver.

4. Turnover of Cash. PCI, its attorneys, and all of the officers, directors, shareholders, managers, agents and employees of PCI, shall turn over to the Receiver, within three (3) days from the date of this Order, all sums in existence on the date hereof that are related or pertain to, or derived from, the Assets, including, but not limited to: (a) all cash on hand; (b) all cash equivalents and negotiable instruments (such as checks, notes, drafts or other related documents or instruments); and (c) all sums held in accounts

in any financial institutions, including, but not limited to, all sums of any kind relating to the use, enjoyment, possession, improvement or occupancy of all or any portion of the Assets (collectively, the "Funds"). [The Receiver shall account to the Court and to the Secured Creditors for all Funds, and for all rent, issues, profits, income, revenues, accounts and lease payments collected or received by the Receiver during the pendency of this action.]

5. **Receiver Compensation.** The Receiver and her agents, including any counsel and accountants that are appointed by the Court, shall be entitled to reasonable compensation for services rendered and reimbursement for expenses incurred which are: (a) related to the Receiver's duties, rights and obligations under this Order or any future Orders of the Court and applicable law; (b) related to the administration, management, protection or liquidation of the Assets; or (c) related to the defense or prosecution of any claim, lawsuit or proceeding brought by or against PCI or by or against the Receiver. The Receiver and her agents, counsel and accountants shall apply to the Court for approval of compensation. All such applications shall conform to, and shall contain the information required by, Local Rule 9.02(f), and such applications (and notice of the hearings thereon) shall be given to all Secured Creditors (whether or not they are parties to this action) and all other persons as required by Local Rule 9.02(f). The compensation of the Receiver and her agents, counsel and accountants that is approved by the Court shall be paid from rents, issues, profits, income, revenues, accounts and lease payments collected or received by the Receiver, and the apportionment of such approved compensation among the Secured Creditors shall be subject to further agreement among the Secured Creditors or, if they do not agree, further Order of this Court (after giving

proper notice to all Secured Creditors, whether or not they are parties to this action, and after opportunity for a hearing).

6. **Hourly Rate.** The Receiver shall be compensated at a billing rate of \$260.00 per hour, and the Receiver shall be reimbursed for all reasonable and necessary out of pocket costs and expenses.

7. **Access to Assets.** The Receiver shall have full and unrestricted access to all of the Assets, and PCI and its officers, directors, shareholders, managers, employees and agents, and any other parties, are directed to take all steps necessary to give the Receiver access to PCI's premises and to give the Receiver all keys to PCI's premises.

8. **Administration.** The Receiver is authorized to employ the following procedures and case administration:

8.1 **Bank Accounts.** The Receiver may establish bank accounts with any federally insured financial institution with offices in Cleveland or Akron, Ohio, for the purpose of receiving and disbursing funds derived from the collection or liquidation of the Assets, or may continue to use PCI's existing accounts.

8.2 **Professional Services.** The Receiver may contract for professional services, including, but not limited to, such legal and accounting services as are reasonably required for the Receiver to discharge her duties in relation to PCI. Employment of professionals shall require approval of this Court. The Receiver also shall cooperate reasonably with any accountant, forensic accountant, or appraiser who is retained by any Secured Creditor. Such cooperation shall include access to all of PCI's Books and Records at reasonable times and on such terms and conditions as the Receiver reasonably may require.

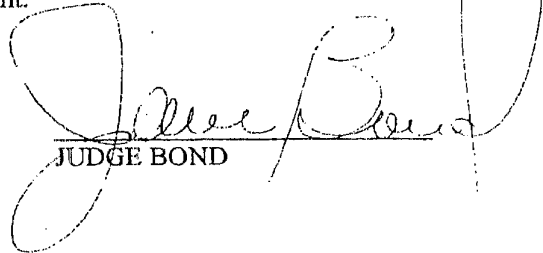
8.3 **Court Approval; Procedure.** Any motion by the Receiver for Court approval of any act of the Receiver requiring Court approval (including any proposed sale of Assets, disposition of claims, lawsuits or proceedings, modification of this Order, or requests for instructions) shall be served on each party hereto, all of the Secured Creditors, and all other persons who have filed and served on the Receiver a request for special notice; provided, however, that such requests filed by any person shall not be deemed as a consent by such person to the jurisdiction of this Court. In addition to service by mail or personal service, service may be made by telefacsimile.

8.4 **Notice.** The Receiver shall provide notice by mail or personal service or confirmed by telefacsimile not less than five (5) days in advance of any hearing or as otherwise may be approved by the Court. The Receiver shall be deemed to have provided adequate notice if she complies with Section 8.3 and 8.4.

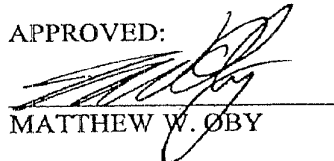
8.5 **Reporting.** As provided in the Local Rules of this Court, the Receiver shall give notice of her appointment to all known creditors of PCI and, within sixty days of the date of this Order, the Receiver shall file a report with the Court with respect to the Assets under the Receiver's control and her determination as to any and all claims, liens, and security interests of PCI's Secured Creditors. Thereafter, the Receiver shall submit to the Court each month an accounting as to all of the Receiver's receipts and expenditures.

8.6 **Further Instructions.** The Receiver may at any time apply to this Court for further or other instructions, or for a modification of this Order, or for further powers necessary to enable the Receiver properly to perform her duties, or for termination of the Receiver's appointment.

SO ORDERED.


JUDGE BOND

APPROVED:


MATTHEW W. OBY

Attorney for the Plaintiff, Champaign National Bank

APPROVED:


HOWARD E. MENTZER

Attorney for the Defendant, Preferred Capital, Inc.

Per telephone approval 4/13/05
KATHRYN BELFANCE