

**AGREEMENT OF VOLUNTARY COMPLIANCE AS TO  
LYON FINANCIAL SERVICES, INC., d/b/a U.S. BANCORP BUSINESS EQUIPMENT  
FINANCE GROUP**

The STATE OF FLORIDA, DEPARTMENT OF LEGAL AFFAIRS, OFFICE OF THE ATTORNEY GENERAL (hereinafter "Attorney General"), has investigated certain alleged violations of Chapter 501, Part II, Florida Statutes, Florida's Deceptive and Unfair Trade Practices Act (FDUTPA) by, and now enters into this Agreement of Voluntary Compliance (AVC) with, LYON FINANCIAL SERVICES, INC., d/b/a U.S. BANCORP BUSINESS EQUIPMENT FINANCE GROUP ("USB"). The investigation relates to USB's acquisition and enforcement of certain Equipment Rental Agreements ("Rental Agreements") from NorVergence, Inc. ("NorVergence"). USB denies that it has violated the law, including FDUTPA, and that FDUTPA applies to it.

The Attorney General, by the signature of his Deputy, affixed hereto, does in this matter accept this AVC in termination of this investigation.

**1. JURISDICTION AND VENUE**

1.1. The Attorney General believes he has authority to investigate USB's activities in connection with the Rental Agreements, and to file suit against USB in connection therewith, pursuant to his authority under the provisions of Chapter 501, Florida Statutes. USB believes that, as an operating subsidiary of a national bank, (i) it is subject to the Office of the Comptroller of the Currency's exclusive visitorial jurisdiction, (ii) certain state laws are preempted, and (iii) FDUTPA by its terms does not apply to USB. The Attorney General and USB are entering into this AVC without waiver of or prejudice to their respective rights to argue

that USB is or is not subject to the Attorney General's investigatory and enforcement powers, FDUPTA, or any other Florida statute, in connection with any matter other than the NorVergence investigation.

1.2. USB and the Attorney General agree that the Circuit Court of the Second Judicial Circuit in and for Leon County, Florida shall have jurisdiction over USB, solely for the limited purpose of enforcing this AVC.

1.3. Leon County, Florida shall be the sole venue for any matter arising out of or relating to this AVC.

1.4. The Second Judicial Circuit, State of Florida shall be sole jurisdiction for any matter arising out of or relating to this AVC.

## **2. SETTLEMENT TERMS**

2.1. USB agrees that, because of the alleged injury to certain Florida businesses caused by the conduct of the now bankrupt telecommunications company NorVergence, USB will afford Florida businesses an opportunity, subject to the terms and conditions described below, to be released from any continuing obligations under the Rental Agreements that those businesses executed with NorVergence to rent NorVergence telecommunications equipment, and which NorVergence subsequently assigned to USB. These Florida businesses will be referred to as USB's "NorVergence customers" or as "customers." Certain NorVergence customers have entered into settlement agreements or releases prior to the date of this AVC (the "Existing Settlements") with USB. Because those NorVergence customers have already been released from any continuing obligations under the Rental Agreements, there

is no need for USB to offer an additional release to such NorVergence customers. A list of the NorVergence customers who have not entered into an Existing Settlement is attached hereto as Exhibit A.

2.2. Each of USB's Florida NorVergence customers listed on Exhibit A will be offered the settlement terms described in this AVC. USB will engage in collection activities as to Florida NorVergence customers only as consistent with this AVC.

### **3. TERMS FOR RELEASE FROM RENTAL AGREEMENT**

3.1. Within thirty (30) days of the execution of this AVC by the Attorney General and USB, USB will offer each of its Florida NorVergence customers listed on Exhibit A, by U.S. mail, a termination of the lease for the NorVergence equipment so long as the customer makes all payments due on its Rental Agreement through January 31, 2005. This offer will be referred to as the "Release From Rental Agreement" offer, and will be made by a letter from USB to each NorVergence customer. To obtain the release the customer must make the required payments and must execute a General Release that releases USB from any claim that the customer may have against USB in connection with the lease of NorVergence equipment.

3.2. USB will afford each NorVergence customer thirty (30) days from receipt of the offer to accept the Release From Rental Agreement offer. Acceptance of the USB offer must be effectuated by notarized signature of the customer on the Acceptance Form and General Release to be provided by USB. Any customer who accepts the Release From Rental Agreement offer shall, as a condition to the effectiveness thereof, dismiss with prejudice any claims or legal action it has commenced or participated in against USB, and upon payment of all amounts to

make that acceptance effective, USB shall dismiss, with prejudice, any claims or legal action it has brought against any accepting customer.

3.3. Each customer who accepts the offer will have thirty (30) days from Acceptance to bring lease payments current through January 31, 2005 and dismiss any claims or legal action pending against USB, in order to make its acceptance of the Release From Rental Agreement offer effective. Any late fees or penalties on the customer's account which were charged after July 15, 2004, will be forgiven by USB and any amount actually collected by USB on account of such post-July 15, 2004 late fees will be credited against the customer's obligation to bring lease payments current through January 31, 2005 or refunded to the customer if the customer is current. All other amounts due under the terms of the Rental Agreement must be paid within the time frame specified to obtain the Release From Rental Agreement. This Agreement does not preclude USB and the customer from agreeing to mutually acceptable terms by which any required payment can be made in installments.

3.4. Upon the customer's payment of all amounts required to effectuate the Release From Rental Agreement offer through January 31, 2005 and dismissal of any pending litigation against USB, USB will notify the customer in writing that the Rental Agreement has been terminated. In the event that any customer does not accept the Release from Rental Agreement offer from USB or does not satisfy the acceptance requirements described above, this Agreement will have no impact on any of the terms of the Rental Agreement contract between USB and the customer, and each shall be free to pursue its rights and remedies thereunder.

3.5. Models of the Release From Rental Agreement offer letter to be sent by USB, the Acceptance and General Release to be executed by the customer, and the final notice of Release From Rental Agreement are appended as Exhibits B, C and D.

3.6. For a period of six months from the Effective Date of the AVC, the Attorney General reserves the right to request inspection of USB records as is reasonably necessary to monitor compliance with this AVC.

3.7. In consideration of the fulfillment of the Release From Rental Agreement terms set forth above, no Chapter 501 penalties or remedies are to be imposed under this AVC. However, the Attorney General reserves the right to seek Chapter 501 penalties against USB should USB in the future violate Chapter 501, and USB reserves its right to argue that Chapter 501 does not apply to it. Additionally, the Attorney General reserves the right to seek its attorneys' fees and costs upon default of this AVC, or upon any future noncompliance with Chapter 501 and/or this AVC.

#### **4. TERMINATION OF INVESTIGATION**

4.1. Upon execution of this AVC, the Office of the Attorney General agrees to close its investigation into the activities of USB concerning the following issues: whether the Rental Agreements assigned to USB are void and unenforceable, or whether USB engaged in any violation of Florida law with respect to the Rental Agreements or the NorVergence customers at any time up to and including the date that this AVC is executed. Any other contracts and leases held by USB fall outside the scope of this AVC. This AVC does not otherwise impact the current business practices of USB and the AVC may not be cited as proof or indication that any of USB's business practices violate or violated Florida law. It is the intent of the parties that this

AVC shall have the same effect on their respective rights regarding the Rental Agreements and the NorVergence customers as would have arisen had USB been named as a defendant in State of Florida v. Commerce Commercial Leasing, LLC, et al, Case No. 2004 CA 002515, currently pending in the Circuit Court of the Second Judicial Circuit in and for Leon County, Florida, and had that matter been dismissed with prejudice as to USB by stipulation between the parties.

## **5. GENERAL TERMS**

5.1. The parties further agree that future violations of this AVC may subject USB to any and all civil penalties and sanctions as provided by law.

5.2. Nothing herein shall be construed as a waiver of any private rights, causes of action or remedies of any private person against USB. Nor does this Agreement impact the rights of USB to enforce the terms of any of its Rental Agreements or Existing Settlements, or to alter any of its current business practices, other than as specifically described herein.

Notwithstanding the foregoing, NorVergence customers and any guarantors who accept the Release From Rental Agreement offer from USB will be bound by the terms of the Release From Rental Agreement as described herein.

5.3. The parties jointly participated in the negotiations of the terms which are articulated within this AVC. No provision of this AVC shall be construed for or against either party on the grounds that one party or another was more heavily involved in the preparation of the AVC.

5.4. All notices required hereunder shall be sufficient if given as follows:

**As to the Attorney General**

Office of the Attorney General  
Attn: Lisa M. Raleigh  
Senior Assistant Attorney General  
Complex Litigation Unit  
The Capitol PL-01  
Tallahassee, Florida 32399-1050

**As to USB**

Joseph H. Andersen  
Deputy General Counsel  
U.S. Bancorp  
U.S. Bancorp Center, BC-MN-H21R  
800 Nicollet Mall  
Minneapolis, Minnesota 55402

This AVC shall become effective after its execution by all persons whose signatures appear below when all exhibits referenced above are attached to this AVC and copies of the fully executed documents are provided to USB. This AVC is entered into solely for the purpose of settlement of disputed claims, and to avoid the expense, uncertainty, delay and inconvenience that would be associated with continued investigation, and possible litigation, of the issues and action being resolved hereby. This AVC does not constitute any admission, by any party, of any liability or wrongdoing, or the absence or lack thereof, or the existence or non-existence of any facts that would or might lead to, cause, or constitute any violation of law. Neither the existence of, nor the terms of this AVC nor of any offer to any customer made pursuant hereto shall, in any future proceeding other than for enforcement, default or breach of this AVC, be referred to or offered in evidence, for any purpose, by any party hereto. USB enters into this AVC without any admission that it has violated the law, and indeed denies the same and only enters into this AVC for the purpose of settling the Attorney General's investigation of this matter. USB disputes the

Attorney General's allegations related to the Rental Agreements and the NorVergence customers, and this AVC may not be cited, referred to or offered in evidence for any purpose (other than enforcement of the AVC or in an action for breach thereof) as proof or indication that any of USB's business practices violate or violated Florida law.

IN WITNESS WHEREOF, the Attorney General and USB have caused this AVC to be executed as a true act and deed, this 12th day of January, 2005.

State of Florida  
Charles J. Crist, Jr.  
Attorney General

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George LeMieux, FL Bar No. 016403  
Deputy Attorney General  
Office of the Attorney General  
PL-01 The Capitol  
Tallahassee, FL 32399

LYON FINANCIAL SERVICES, INC.,  
d/b/a U.S. BANCORP BUSINESS EQUIPMENT  
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By: Joseph H. Andersen  
Title: Vice President and Deputy General Counsel