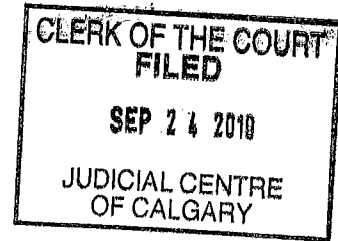


District of: Alberta  
 Division No. 02 - Calgary  
 Court No. 25-2483059  
 Estate No. 25-2483059



FORM 40  
 Report of Trustee on Proposal  
 (Section 59(1) and paragraph 58(d) of the Act)

In the matter of the proposal of  
 Commerx Corporation  
 of the City of Calgary, in the Province of Alberta

We, Hardle & Kelly Inc., the trustee acting in the proposal of Commerx Corporation ("Commerx"), hereby report to the Court as follows:

1. That a proposal was filed with us on the 16th day of August 2019 a copy of which is attached and marked as Exhibit "A", and that we filed a copy of the proposal with the official receiver on the 16th day of August 2019.
2. That on the 22nd day of August 2019, we gave notice to the debtor, to the division office and to every known creditor affected by the proposal, whose names and addresses are shown in Exhibit "B" to this report, of the calling of a meeting of creditors to be held on the 6th day of September 2019 to consider the proposal.
3. That with the notice was included a condensed statement of the assets and liabilities of the debtor, a list of the creditors affected by the proposal who have claims of \$250 or more and showing the amounts of their claims, a copy of the proposal, a form of proof of claim and proxy in blank and a voting letter. Copies of the notice and the condensed statement of assets and liabilities are attached and marked as Exhibits "C1" and "C2" respectively.
4. That prior to the meeting of creditors we made a detailed and careful inquiry into the liabilities of the debtor, the debtor's assets and their value, the debtor's conduct and the causes of the debtor's insolvency.
5. That the meeting of creditors was held on the 6th day of September 2019, and was presided over by the Trustee. At the meeting of creditors, Commerx tabled an amended proposal (Attached as Exhibit "C3") which included compliance language requested by Canada Revenue Agency but otherwise had no effect on the proposed treatment of unsecured creditors.
6. That the amended proposal was accepted by the required majority of creditors.
7. That a copy of the minutes of the meeting is attached and marked as Exhibit "D".
8. That we are of the opinion that:
  - (a) the assets of the debtor and their fair realizable value are as follows:

Property Name	Estimated \$	Realizable \$
Business Assets - Shares of Subsidiaries	0.00	0.00
Cash on hand - Cash in bank	100,428.00	61,826.12
Debts Due - Business - Lotus/Halycon	477,569.00	296,810.00
Debts Due - Business - Trade receivables	343,000.00	0.00
Furniture - Office furniture and equipment	3,106.00	3,106.00
Other - Development Costs	0.00	0.00
Other - Prepaid expenses and deposits	0.00	0.00
<b>Total Property Value:</b>	<b>924,103.00</b>	<b>361,742.12</b>

- (b) the liabilities of the debtor are as follows:

## FORM 40 --- Continued

Creditor Name	Secured \$		Preferred \$		Unsecured \$	
	SOA	Discrepancies	SOA	Discrepancies	SOA	Discrepancies
642111 ALBERTA INC.	0.00	0.00	0.00	0.00	11,303.22	-11,303.22
ADMIRAL LAW	0.00	0.00	0.00	0.00	2,881.80	0.00
ANIXTER CANADA	0.00	0.00	0.00	0.00	935.18	935.18
BALINHARD CAPITAL CORPORATION	523,759.00	523,759.00	0.00	0.00	0.00	0.00
BENNETT JONES LLP	0.00	0.00	0.00	0.00	11,939.36	0.00
BENNETT, PERRY	0.00	0.00	0.00	0.00	100,918.33	100,918.33
CALGARY POLICE SERVICE	0.00	0.00	0.00	0.00	20.00	20.00
CERYX INC	0.00	0.00	0.00	0.00	139.24	139.24
CRA - Tax - Prairies - 86528 3790 RP0001	17,415.75	17,415.75	0.00	0.00	0.00	-25,141.71
CRA - Tax - Prairies - 86528 3790 RT0001	0.00	0.00	0.00	0.00	24,014.71	-1,109.31
CRA - Tax - Prairies - 86528 3790 RP0002	21,186.13	21,186.13	0.00	0.00	0.00	-16,782.73
Desjardins Card Services - 4530941717771000	0.00	0.00	0.00	0.00	680.50	-20.66
GRAINGER	0.00	0.00	0.00	0.00	5,156.84	5,156.84
HOFFMAN DOECHIK LLP	0.00	0.00	0.00	0.00	253.75	253.75
KULHAWY, ROBERT	0.00	0.00	0.00	0.00	246,041.60	46,512.10
MEMORY EXPRESS	0.00	0.00	0.00	0.00	1,107.11	1,107.11
OXFORD TECH	0.00	0.00	0.00	0.00	860.92	860.92
PRIMUS ELECTRONICS	0.00	0.00	0.00	0.00	1,875.93	1,875.93
RICOH CANADA INC	0.00	0.00	0.00	0.00	716.47	716.47
RODPREST CLEANERS	0.00	0.00	0.00	0.00	7,182.00	0.00
Rogers Retail Bankruptcies c/o FCT Default Solutions - 794598326	0.00	0.00	0.00	0.00	1,883.97	-392.74
SUNLIFE FINANCIAL	0.00	0.00	0.00	0.00	16,349.41	16,349.41
Telus Mobility Services	0.00	0.00	0.00	0.00	114.99	114.99
Telus Residential/Business Services	0.00	0.00	0.00	0.00	1,199.80	1,199.80
THOMAS PRENDERGAST	0.00	0.00	0.00	0.00	16,891.42	16,891.42
TRAGICALLY VITAL	0.00	0.00	0.00	0.00	1,419.09	0.00
TRANT, PETER - Court File. 1701-14364	0.00	0.00	0.00	0.00	157,777.84	0.00
URBANCORE CLEANING	0.00	0.00	0.00	0.00	1,622.25	1,622.25
VAN HOUTTE	0.00	0.00	0.00	0.00	52.50	52.50
WASTE CONNECTIONS	0.00	0.00	0.00	0.00	1,351.70	1,351.70

FORM 40 --- Continued

Creditor Name	Secured \$		Preferred \$		Unsecured \$	
	SOA	Discrepancies	SOA	Discrepancies	SOA	Discrepancies
WHITE PAPER	0.00	0.00	0.00	0.00	1,714.45	1,714.45
<b>Total :</b>	<b>562,360.88</b>	<b>562,360.88</b>	<b>0.00</b>	<b>0.00</b>	<b>616,404.38</b>	<b>143,042.02</b>

9. That we are also of the opinion that:

(a) the causes of the insolvency of the debtor are as follows:

Mr. Robert Kulhawy is the President and CEO of Commerx and currently holds, directly and indirectly, approximately 25% of the voting shares of Commerx. Commerx Holdings LLC ("CHL") currently holds 51% of the voting common shares of Commerx which it acquired from Mr. Kulhawy in December 2016 (the "Share Transaction"). Lotus Innovations Private Equity Fund ("Lotus") is the parent of CHL. The Share Transaction is the subject of an ongoing dispute between Mr. Kulhawy and CHL/Lotus (the "Lotus Dispute"). Commerx began experiencing serious liquidity issues in the summer of 2018 due in part to the Lotus Dispute. Mr. Kulhawy has advised that this was precipitated by CHL defaulting under the terms of the Share Transaction and a Shareholder Agreement dated December 30, 2016 (the "Shareholder Agreement") as the Shareholder Agreement contemplated that CHL would take certain steps to facilitate the availability of working capital for Commerx. Mr. Kulhawy advises that CHL failing to fully comply with the terms of the Shareholder Agreement was a cause of Commerx's liquidity crisis. In December, 2018, Justice Feehan of the Court found that there was sufficient prima facie evidence of oppressive conduct carried out by CHL relating to commitments not being met under the agreements to justify the granting of an interim funding order for Commerx, as requested by Mr. Kulhawy. In early 2019, Mr. Kulhawy discovered that CHL/Lotus had permitted a third party (the "Third Party") to secure a charge over Commerx's assets; however, while this charge limited Commerx's ability to source financing, Commerx did not receive the benefit of any of the US \$1.5 Million advanced by the Third Party. As a result of the foregoing, Commerx filed the NOI in an effort to attempt to stabilize its financial situation.

(b) the conduct of the debtor is subject to censure in the following respects:

N/A

(c) the following facts, mentioned in section 173 of the Act, may be proved against the debtor:

N/A

10. That we are further of the opinion that the debtor's proposal is an advantageous one for the creditors, for the following reasons:

Although there is inherent business and economic risk associated with Commerx being able to achieve its financial projections, the Proposal contemplates that the general body of unsecured creditors will receive 100% of their proven claims with 17 of the 28 unsecured creditors forecasted to be paid in full upon the initial payment contemplated in December 2019 and the remaining creditors to be paid in full within two years or less.

11. The morning of the meeting of creditors, Fortitude Financial Investments Inc. ("Fortitude") filed an unsecured claim in the amount of \$2,366,658.79. The Trustee had been aware that a claim may be advanced by Fortitude as it had had discussions with Commerx and Fortitude in advance of the meeting of creditors. Fortitude is of the position that its Class "F" preferred shares were to have been redeemed by Commerx such that it has a debt claim for the redemption amount. Commerx disputes this position and takes the view that Fortitude has an equity interest and not a debt claim and the proposal was advanced on that basis as no payments to Fortitude are contemplated.

The Trustee concurs with Commerx's position that Fortitude's claim is one of equity rather than debt and had verbally advised Fortitude of its position prior to Fortitude filing its proof of claim. At the meeting of creditors, the Trustee advised Fortitude that its claim, a copy of which is attached as Exhibit "E", was being disallowed in its entirety with the formal Notice of Disallowance to be issued. Consequently Fortitude was not permitted to vote at the meeting of creditors. The Trustee's legal counsel issued the formal Notice of Disallowance by way of email to Fortitude's legal counsel on September 11, 2019 a copy of which communication is attached as Exhibit "F".

On September 17, 2019, legal counsel for Fortitude advised the Trustee's counsel that it could not provide instructions to waive the requirement to serve the Notice of Disallowance by way of registered mail. Consequently, the Trustee also issued the Notice of Disallowance to Fortitude's legal counsel by way of registered mail on September 18, 2019. A copy of proof of the mailing is attached as Exhibit "G".

The Trustee will be serving Fortitude with notice of the application for Court approval of the amended proposal.

12. That we forwarded a copy of this report to the official receiver on this day.

Dated at the City of Calgary in the Province of Alberta, this 23rd day of September 2019.

Hardie & Kelly Inc., Licensed Insolvency Trustee

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110, 5800 2nd Street SW  
Calgary AB T2H 0H2  
Phone: (403) 777-9999 Fax: (403) 640-0591

List of Creditors with claims of \$250 or more.			
Creditor	Address	Account#	Claim Amount
642111 ALBERTA INC.	4424 MANILLA ROAD SE Calgary AB T2G 4B7		11,303.22
ADMIRAL LAW	301, 522 - 11 AVE. SW Calgary AB T2R 0C8		2,881.80
ANIXTER CANADA	200 FOSTER CRESCENT Misgauge ON L5R 3Y5		935.18
BALINHARD CAPITAL CORPORATION David LeGeyt	c/o Burnet, Duckworth & Palmer LLP 2400, 525 - 8th Ave SW Calgary AB T2P 1G1		523,759.00
BENNETT JONES LLP	4500, 855 - 2ND STREET SW Calgary AB T2P 4K7		11,939.36
BENNETT, PERRY	C/O COMMERX CORPORATION 4428 MANILLA ROAD SE Calgary AB T2G 4B7		100,918.33
CRA - Tax - Prairies	Surrey National Verification and Collection Centre 9755 King George Blvd Surrey BC V3T 5E1	86528 3790 RP0001	17,415.75
CRA - Tax - Prairies	Surrey National Verification and Collection Centre 9755 King George Blvd Surrey BC V3T 5E1	86528 3790 RT0001	24,014.71
CRA - Tax - Prairies	Surrey National Verification and Collection Centre 9755 King George Blvd Surrey BC V3T 5E1	86528 3790 RP0002	21,186.13
Desjardins Card Services	c/o FCT Default Solutions PO Box 2514 Stn B London ON N6A 4G9	4530941717771000	680.50
GRAINGER	100 Grainger Pkwy Lake Forrest IL 60045 USA		5,156.84
HOFFMAN DOECHIK LLP	600, 5920 MACLEOD TRAIL SOUTH Calgary AB T2H 0K2		253.75
KULHAWY, ROBERT	C/O COMMERX CORPORATION 4428 MANILLA ROAD SE Calgary AB T2G 4B7		246,041.60
MEMORY EXPRESS	3333 34TH AVE NE Calgary AB T1Y 6H2		1,107.11
OXFORD TECH	37047 MAYLAND HTS. Calgary AB T2E 9A7		860.92
PRIMUS ELECTRONICS	4180 E Sand Ridge Road Morris IL 60450 USA		1,875.93
RICOH CANADA INC	PO BOX 1600 STREETSVILLE RPO Mississauga ON L5M 0M6		716.47
RODPREST CLEANERS	229 CHAPALINA MEWS SE Calgary AB T2X 0A7		7,182.00

## FORM 40 --- Concluded

## List of Creditors with claims of \$250 or more.

Creditor	Address	Account#	Claim Amount
Rogers Retail Bankruptcies c/o FCT Default Solutions Insolvency Department	PO Box 2514 Stn B London ON N6A 4G9	794598326	1,883.97
SUNLIFE FINANCIAL	PO BOX 11010 STATION A Montreal PE H3C 4T9		16,349.41
Telus Residential/Business Services Rick Wan	3rd Fl - 4519 Canada Way Burnaby BC V5G 4S4		1,199.80
THOMAS PRENDERGAST John H. Yach	c/o Yach & Associates 68 Chamberlain Avenue Ottawa ON K1S 1V9		16,891.42
TRAGICALLY VITAL	4, 2807 - 107TH AVE SE Calgary AB T2Z 4M2		1,419.09
TRANT, PETER KEITH D. MARLOWE	C/O BLAKE, CASSELS & GRAYDON LLP 3500, 855 - 2ND STREET SW Calgary AB T2P 4J8	Court File. 1701-14364	157,777.84
URBANCORE CLEANING	2632 24TH ST. SW Calgary AB T2T 5H9		1,622.25
WASTE CONNECTIONS	285122 BLUEGRASS DRIVE Rocky View AB T1X 0P5		1,351.70
WHITE PAPER	9990 RIVER WAY Delta BC V4G 1M9		1,714.45
<b>Total</b>			<b>1,178,438.53</b>

# EXHIBIT "A"

COURT OF QUEEN'S BENCH OF ALBERTA  
IN BANKRUPTCY AND INSOLVENCY

IN THE MATTER OF THE PROPOSAL OF  
COMMERX CORPORATION

PROPOSAL

COMMERX CORPORATION, the above-named debtor, hereby submits the following Proposal (the "**Proposal**") to its creditors pursuant to the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 (the "**Act**").

**PART 1  
BACKGROUND**

1. COMMERX CORPORATION is a private company incorporated pursuant to the Laws of Alberta.
2. COMMERX CORPORATION is involved in the telecommunication project services, digital technology consulting and telecommunication staffing business in Calgary and elsewhere in the Province of Alberta.
3. COMMERX CORPORATION is presently insolvent and unable to pay its debts as they become due. On March 7, 2019, COMMERX CORPORATION filed a Notice of Intention to make a Proposal to its creditors under the Act.

**PART 2  
INTERPRETATION**

4. In this Proposal, capitalized terms shall have the following meanings:

"**Act**" means the *Bankruptcy and Insolvency Act*, as it may be amended from time to time;

"**Approval Order**" means an Order of the Court approving this Proposal to be granted pursuant to the provisions of the Act, the appeal period having expired and no appeal having been filed, or any appeal therefrom having been dismissed and such dismissal having become final;

"**Assets**" means the assets, undertakings and property of COMMERX CORPORATION;

"**Business Day**" means a day, other than Saturday or Sunday or a day observed as a holiday pursuant to the laws of the Province of Alberta or the federal laws of Canada, on which banks are generally open for business;



"**Claim**" means any indebtedness, liability, action, cause of action, suit, debt, due, account, bond, covenant, contract, counterclaim, demand, claim, right and obligation of any nature whatsoever of COMMERX CORPORATION to any Person whether liquidated, unliquidated, fixed, contingent, matured, legal, equitable, secured, unsecured, present, future, known or unknown, and whether by guarantee, surety or otherwise, incurred or arising or relating to the period prior to the Filing Date, or based in whole or in part on facts, contracts or arrangements which occurred or existed prior to the Filing Date, together with any other claims provable in bankruptcy on the Filing Date, including without limitation, claims arising from the repudiation, disclaimer or termination of any lease, license, contract, arrangement or contract of employment prior to the Filing Date, providing that all such claims shall be allowed without allowance for interest after the Filing Date and without allowance for penalties and net of any normal discounts. All Claims must be converted to Canadian Dollars at the Bank of Canada Daily Foreign Exchange Rate at the Filing Date;

"**Court**" means the Court of Queen's Bench of Alberta, In Bankruptcy and Insolvency;

"**CRA**" means the Canada Revenue Agency;

"**Creditor**" means any Person having a Claim, and may, if the context requires, mean a trustee, receiver, receiver-manager or other Person acting on behalf or in the name of such Person;

"**Creditors' Meeting**" means the meeting of Creditors called for the purpose of considering and voting upon the Proposal;

"**Effective Date**" means the date on which this Proposal is approved by the Court, after being approved by the requisite majority of COMMERX CORPORATION Creditors;

"**Filing Date**" means March 7, 2019;

"**Official Receiver**" shall have the meaning ascribed thereto by the Act;

"**Person**" means any individual, partnership, joint venture, trust, corporation, unincorporated organization, government or any agency or any other entity however designated or constituted;

"**Proposal**" means this Proposal made pursuant to the Act, as further amended or supplemented from time to time;

"**Proven Claim**" means the amount claimed by a Creditor and approved by the Proposal Trustee and COMMERX CORPORATION or as may otherwise be allowed by the Court;

"**Proposal Trustee**" means Hardie & Kelly Inc. or its duly appointed successor or successors;

"**Unaffected Claims**" means Claims that are not affected by this Proposal being the fees and disbursements of the Proposal Trustee, its counsel and secured creditors in relation to this Proposal;

"**Unaffected Creditors**" means the Proposal Trustee its legal counsel and secured creditors in relation to this Proposal

"**Unsecured Creditor**" means any Creditor who has no security against any assets of COMMERX CORPORATION with respect to its Claim, including landlords and excluding the Unaffected Creditors.

### **Headings**

5. The divisions of this Proposal into parts, paragraphs and subparagraphs, and the insertion of headings herein is for convenience of reference only and is not to affect the construction or interpretation of this Proposal.

### **Numbers, etc.**

6. In this Proposal, where the context requires, a word importing the singular number will include the plural and vice versa and a word or words importing gender will include all genders.

### **Date for Action**

7. In the event that any date on which any action is required to be taken hereunder is not a Business Day, such action will be required to be taken on the next succeeding day that is a Business Day.

### **Time**

8. All times expressed herein are in local time in Calgary, Alberta, Canada unless otherwise stipulated. Where the time for anything pursuant to the Proposal on a particular date is unspecified herein, the time shall be deemed to be 5:00 p.m. local time in Calgary, Alberta, Canada.

### **Successors and Assigns**

9. This Proposal will be binding upon and will enure to the benefit of the heirs, administrators, executors, personal representatives, successors and assigns of all persons named or referred to herein.

### **Currency**

10. All references to currency in this Proposal are to lawful money of Canada ("**Canadian Dollars**").

### **Accounting Principles**

11. Accounting terms not otherwise defined have the meanings assigned to them in accordance with Canadian generally-accepted accounting principles.

### **Director Claims**

12. Any Claims that arose before the Filing Date regardless of the date of crystallization of such Claim and that relate to the obligations of COMMERX CORPORATION, where the current or former directors of COMMERX CORPORATION are by law liable in their capacity as directors for payments of such obligations, shall be deemed to be fully satisfied and discharged by the terms of this Proposal and shall not be enforceable against any of such current or former directors of COMMERX CORPORATION at law or in equity.

### **Statutory References**

13. Except as otherwise provided herein, any reference in the Proposal to a statute including all regulations and amendments made under that statute or regulation(s) in force from time to time and any statute or regulation that supplements or supersedes such statute or regulation(s).

**PART 3  
OVERVIEW OF THE PROPOSAL**

**Purpose of the Proposal**

14. The purpose of this Proposal is to effect a compromise and arrangement of all Claims as against COMMERX CORPORATION, other than the Unaffected Claims, with a view to increasing the recovery for all stakeholders (excluding claims owing to the Unaffected Creditors) while reducing the uncertainties, risks, costs, delays and possible losses for all Creditors that will otherwise occur. COMMERX CORPORATION has concluded, and the Proposal Trustee agrees, that the general body of creditors will obtain a greater and/or sooner return on their Claims if this Proposal is approved than would result from a forced liquidation of its Assets.
15. Further, the Proposal will allow COMMERX CORPORATION to continue operations so as to avoid or minimize any adverse impact on current customers and to allow COMMERX CORPORATION the opportunity to retain and refer business to its established network of suppliers and contractors.
16. Creditors should review this Proposal before voting to accept or reject this Proposal. The transactions contemplated by this Proposal are to be implemented under the Act.

**Effect of the Proposal**

17. This Proposal restructures the affairs of COMMERX CORPORATION and amends the terms of any and all agreements between COMMERX CORPORATION and the Creditors, excluding the Unaffected Creditors, existing as at the Effective Date and provides the essential terms on which all Claims will be fully and finally resolved and settled. All Creditors will be stayed, excluding Unaffected Creditors, from commencing or continuing any proceeding or remedy against COMMERX CORPORATION or any of its property or Assets in respect of a Claim including, without limitation, any proceeding or remedy to recover payment of any monies owing to Creditors, to recover to enforce any judgment against COMMERX CORPORATION in respect of a Claim or to commence any formal proceedings against it other than as provided for under this Proposal.
18. For greater certainty, any and all Claims by the Unaffected Creditors remain valid and outstanding and shall not be compromised as part of the Proposal or affected in any way.
19. This Proposal, if approved, will, as of the Effective Date, be binding on COMMERX CORPORATION and the Unsecured Creditors.

**PART 4  
CLASSIFICATION AND TREATMENT OF CLAIMS**

**Classes of Creditors**

20. There will be one class of creditor voting on the Proposal:  
Class 1 – All Unsecured Creditors with Proven Claims.

### **Amendments to Agreements**

21. Notwithstanding the terms and conditions of all agreements or other arrangements with Creditors entered into before the Filing Date, all such agreements or other arrangements will be deemed to be amended to the extent necessary as of the Effective Date to give effect to all the terms and conditions of this Proposal. In the event of any conflict or inconsistency between the terms of such agreements or arrangements and the terms of this Proposal, the terms of this Proposal will govern. All Creditors will provide such acknowledgements, agreements, discharges or other documentation as may be necessary to give effect to the intent of this Proposal.

### **Treatment of Claims**

22. For the purposes of this Proposal, each Unsecured Creditor will receive the treatment provided for in this Proposal on account of such Claim. During the Proposal Period, and provided COMMERX CORPORATION is not in default hereunder, each Creditor will be stayed from commencing or continuing any proceeding or remedy against COMMERX CORPORATION or its property based upon a Claim existing on or before the Filing Date, including, without limitation, any proceeding or remedy to recover payment of such Claim, to realize against any security granted in respect of such Claim, to recover or enforce a judgment against COMMERX CORPORATION in respect of such Claim or to initiate any proceedings against it in respect of such Claim, other than an application or proceeding in connection with this Proposal.

### **Claims Bar Date**

23. The Proposal Trustee shall consider any Claims lodged by a Creditor up to the date and time of the Creditors' Meeting ("**Claims Bar Date**") to consider the Proposal after which no further Claims shall be allowed in the Proposal. In the event a Claim is not filed with the Proposal Trustee prior to the Claims Bar Date, the Claim shall be forever barred and shall not be considered for acceptance as a Proven Claim forming part of this Proposal, or at all, subject to any order of the Court allowing such Claim.
24. For greater certainty, only Claims filed with the Proposal Trustee of COMMERX CORPORATION prior to the commencement of the Creditors' Meeting shall be considered as Claims by COMMERX CORPORATION and the Proposal Trustee.

### **Valuation and Treatment of Claims**

25. COMMERX CORPORATION and the Proposal Trustee reserve the right to seek the assistance of the Court in valuing the Claim of any Creditor, if required, to ascertain the result of any vote on the Proposal or the amount payable or to be distributed to such Creditor under the Proposal, as the case may be
26. CRA claims for employee source deductions (but not GST or income tax payable claims generally) which are proven, will be paid in full without interest or penalty within 6 months of Court approval of the Proposal as required by S. 60(1.1) of the Act.

27. Upon the Approval Order being made, all amounts owing by COMMERX CORPORATION to Unsecured Creditors shall be settled and extinguished as per the following payment schedule:
- (a) Unsecured Creditors with Proven Claims will receive 100% of their Proven Claim, paid as follows:
    - (i) By December 1, 2019, all Unsecured Creditors with Proven Claims will receive an initial payment equal to the lesser of: 100% of their Proven Claims or \$2,000.00; and
    - (ii) Quarterly prorated payments starting March 1, 2020 over a two year period in respect of the balance of Unsecured Creditors' Proven Claims not satisfied from the initial payment above. Payoff could be sooner if positive cash flow allows. There will be no costs or interest accruing after the Filing Date payable to Unsecured Creditors.

#### **Effect of Payment**

28. The Unsecured Creditors will accept payment provided for in this Proposal in complete satisfaction of all their claims, certificates of pending litigation, execution or any similar charges or actions or proceedings in respect of such Claims will have no effect in law or equity against the property, Assets and undertakings of COMMERX CORPORATION. Upon the making of all payments provided for in the Proposal, any and all such certificates of pending litigation, executions or other similar charges or actions will be discharged, dismissed or vacated without costs to COMMERX CORPORATION.

#### **Superintendent's Levy**

29. The Superintendent's levy of 5% will be paid as required pursuant to s. 147 and 60(4) of the Act on all distributions to Unsecured Creditors under this Proposal.

#### **Payment of Fees**

30. All proper fees and expenses of the Proposal Trustee and reasonable legal and other professional fees on and incidental to the proceedings arising out of this Proposal and in connection with the preparation of this Proposal and in the administration of this Proposal, including advice to COMMERX CORPORATION in connection therewith, will be paid in priority to all claims of Unsecured Creditors.

### **PART 5 PROPOSAL TRUSTEE**

#### **Confirmation of Appointment**

31. The Proposal Trustee is acting in its capacity as Proposal Trustee and not in its personal capacity and no officer, director, employee or agent of the Proposal Trustee shall incur any obligations or liabilities in connection with this Proposal or in connection with the business or liabilities of COMMERX CORPORATION.

### **Meeting of Creditors**

32. The Creditors' Meeting will be held at 11:00 a.m. on Friday, September 6, 2019 at the office of Bennett Jones LLP located at 4500 Bankers Hall East, 855 – 2nd Street SW, Calgary, Alberta unless adjourned by the Proposal Trustee. The Proposal Trustee shall preside as the chair of the Creditors' Meeting and will decide all matters relating to the conduct of the Creditors' Meeting. The only persons entitled to attend the Creditors' Meeting are those persons, including the holders of proxies, entitled to vote at the Creditors' Meeting. Any other person may be admitted on invitation of the Proposal Trustee or with the consent of the Creditors.

### **Proofs of Claim**

33. All Creditors will be required to submit a proof of claim to the Proposal Trustee and the face amount thereof will govern for the purpose of voting at the Meeting of Creditors to be held to consider this Proposal, unless otherwise disputed or disallowed by the chair of the meeting. After the Creditors' Meeting, the Proposal Trustee will examine all proofs of claim and may require further evidence and support of the Claim or the security therefore. The provisions of s.135 of the Act will apply to all proofs of claim submitted by Creditors.

### **Conditions Precedent**

34. As provided for in the Act, the payments and arrangements set out in this Proposal will not take effect unless the conditions set forth below are substantially satisfied on or before the Effective Date:
- a. All approvals and consents to the Proposal that may be required have been obtained;
  - b. The Approval Order has been issued; and
  - c. No order or decree restraining or enjoining the consummation of the transactions contemplated by this Proposal will have been issued.

### **Application for Approval Order**

35. The Proposal Trustee will apply forthwith to the Court for the Approval Order upon approval by the Unsecured Creditors of this Proposal.

### **Discharge of Proposal Trustee**

36. For greater certainty, the Proposal Trustee will not be responsible or liable for funding any payments contemplated herein nor for any obligations of COMMEX CORPORATION and will be exempt from any personal liability in fulfilling any duties or exercising any powers conferred upon it by this Proposal unless such acts have been carried out in bad faith and constitute a wilful or wrongful act or default. The Proposal Trustee will monitor and report upon the various payments to creditors required herein and shall be entitled to its discharge upon COMMEX CORPORATION making its final payment required herein.

**PART 6  
RELEASE**

37. On the Effective Date, COMMERX CORPORATION including the officers and directors shall be released and discharged from any and all demands, claims, actions, causes of action, counterclaims, suits, debts, sums of money, accounts, covenants, damages, judgments, expenses, executions, and other recoveries on account of any liability, obligation, demand or cause of action owing to or held by any of the Creditors or any Claims by the Creditors.

**PART 7  
SUPPORT AGREEMENTS**

38. COMMERX CORPORATION has reviewed the terms of this Proposal with numerous of its Unsecured Creditors and has obtained numerous binding Support Agreements to vote in favour of the terms of this Proposal.

**PART 8  
MISCELLANEOUS**

**Modification**

39. COMMERX CORPORATION may propose amendments to the Proposal at any time prior to the conclusion of the Creditors' Meeting provided that any such amendment, in the opinion of COMMERX CORPORATION, does not reduce the rights and benefits given to Creditors pursuant to the Proposal before such amendment and that any and all amendments shall be deemed to be a part of and incorporated into the Proposal.

**Further Actions**

40. COMMERX CORPORATION and the Creditors will execute and deliver all such documents and instruments and do all such acts and things as may be necessary or desirable to carry out the full intent and meaning of this Proposal and to give effect to the transactions contemplated hereby.

**Performance**

41. All obligations of COMMERX CORPORATION under this Proposal will commence as of the Effective Date. All terms of this Proposal will take effect as of the Effective Date.

**Binding Effect**

42. The provisions of this Proposal will be binding on the Creditors and COMMERX CORPORATION and their respective heirs, executors, administrators, successors and assigns, upon issuance of the Approval Order after all appeal periods have expired.

**Compromise Effective for all Purposes**

43. The payment, compromise or other satisfaction of any Claim under this Proposal shall be binding upon such Creditor, its heirs, executors, administrators, successors and assigns, for all purposes and shall also be effective to relieve any third party directly or indirectly liable for such indebtedness, whether as guarantor, indemnitor, tenant, director, joint covenantor, principal or otherwise.

**Fraudulent Conveyance**

44. Section 91 through and including s. 101 of the BIA do not apply to this Proposal

**Governing Law**

45. This Proposal will be governed by and construed in accordance with the laws of the Province of Alberta and the laws of Canada applicable therein.
46. Any notice, certificate, consent, determination or other communication required or permitted to be given or made under this Proposal shall be in writing and shall be effectively given and made if (i) delivered personally; (ii) sent by prepaid courier service; or (iii) sent by email transmission, in each case to the applicable address set out below:

(a) if to COMMERX CORPORATION:

robert.kulhawy@commerx.com and restructure@commerx.com

(b) if to the Proposal Trustee:

Hardie & Kelly Inc.  
110, 6800 – 2<sup>nd</sup> Street SW  
Calgary, AB, T2H 0H2  
mkelly@insolvency.net  
Attention: Marc Kelly

DATED at Calgary, in the Province of Alberta, this 16<sup>th</sup> day of August, 2019.

COMMERX CORPORATION

Per:

  
Robert Kulhawy  
President & CEO

"I have the authority to bind the corporation"



# **EXHIBIT "B"**

CANADA  
Province of Alberta  
District of: Alberta  
Division No. 02 - Calgary  
Court No. 25-2483059  
Estate No. 25-2483059

Affidavit of Mailing

In the matter of the proposal of  
Commerx Corporation  
of the City of Calgary, in the Province of Alberta

I, Wanda Templeton, of the Trustee's office of Hardie & Kelly Inc., 110, 5800 2nd Street SW, Calgary, AB, T2H 0H2, hereby make oath (or solemnly affirm) and say:

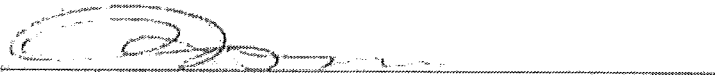
That on the 22nd day of August 2019, I did cause to be sent by prepaid ordinary mail to everyone on the attached mailing list, whose names and addresses appear on the paper writing marked exhibit "A" annexed hereto, a copy of: Proof of Claim and Proxy and Voting letter and Statement of affairs (Business bankruptcy) and Notice of proposal to creditors and the Proposal and the Trustee's Report on the Proposal.

And that, on the 21st day of August 2019, I mailed to the debtor a copy of the same.



Wanda Templeton  
Phone: (403) 777-9999  
Fax: (403) 640-0591

SWORN (or SOLEMNLY DECLARED) before me in the City of Calgary in  
the Province of Alberta, this 21st day of August 2019.



Tamara Hanson, Commissioner of Oaths  
For the Province of Alberta  
Expires November 29, 2021

Robert Kuhawy  
4228 Manila Road SE  
Calgary AB T2G 4B7

642111 ALBERTA INC.  
4428 MANILLA ROAD SE  
Calgary AB T2G 4B7

ADMIRAL LAW  
301, 522 - 11 AVE. SW  
Calgary AB T2R 0C8

ANIXTER CANADA  
200 FOSTER CRESCENT  
Missauga ON L5R 3Y5

BALNHARD CAPITAL  
CORPORATION  
David LeGeyt  
c/o Burnet, Duckworth & Palmer L.L.P  
2400, 525 - 8th Ave SW  
Calgary AB T2P 1G1

BENNETT JONES LLP  
4500, 855-2ND STREET SW  
Calgary AB T2P 4K7

BENNETT, PERRY  
C/O COMMERX CORPORATION  
4428 MANILLA ROAD SE  
Calgary AB T2G 4B7

CALGARY POLICE SERVICE  
ALARM BY-LAW UNIT #609  
Calgary AB T3J 3R2

CERYX INC  
5000 YONGE STREET SUITE 1503  
Toronto ON M2N 7E9

CRA - Tax - Prairies  
Surrey National Verification and  
Collection Centre  
9755 King George Blvd  
Surrey BC V3T 5E1

CRA - Tax - Prairies  
Surrey National Verification and  
Collection Centre  
9755 King George Blvd  
Surrey BC V3T 5E1

CRA - Tax - Prairies  
Surrey National Verification and  
Collection Centre  
9755 King George Blvd  
Surrey BC V3T 5E1

Desjardins Card Services  
c/o FCT Default Solutions  
PO Box 2514 Stn B  
London ON N6A 4G9

GRAINGER  
100 Grainger Pkwy  
Lake Forrest IL 60045 USA

HOFFMAN DOECHIK LLP  
600, 5920 MACLEOD TRAIL SOUTH  
Calgary AB T2H 0K2

KULHAWY, ROBERT  
C/O COMMERX CORPORATION  
4428 MANILLA ROAD SE  
Calgary AB T2G 4B7

MEMORY EXPRESS  
3333 34TH AVE NE  
Calgary AB T1Y 6H2

OXFORD TECH  
37047 MAYLAND HTS.  
Calgary AB T2E 9A7

PRIMUS ELECTRONICS  
4180 E Sand Ridge Road  
Morris IL 60450 USA

RICOH CANADA INC  
PO BOX 1600 STREETSVILLE RPO  
Mississauga ON L5M 0M6

RODPREST CLEANERS  
229 CHAPALINA MEWS SE  
Calgary AB T2X 0A7

ROGERS  
PO Box 8878, Stn Terminal  
Vanouver BC V6B 0H6

SUNLIFE FINANCIAL  
PO BOX 11010 STATION A  
Montreal PE H3C 4T9

Telus Mobility Services  
Rick Wan  
8th Fl - 3777 Kingsway  
Burnaby BC V5H 3Z7

Telus Residential/Business Services  
Rick Wan  
3rd Fl - 4519 Canada Way  
Burnaby BC V5G 4S4

THOMAS PRENDERGAST  
John H. Yach  
c/o Yach & Associates  
68 Chamberlain Avenue  
Ottawa ON K1S 1V9

TRAGICALLY VITAL  
4, 2807 - 107TH AVE SE  
Calgary AB T2Z 4M2

TRANT, PETER  
KEITH D. MARLOWE  
C/O BLAKE, CASSELS & GRAYDON  
LLP  
3500, 855 - 2ND STREET SW  
Calgary AB T2P 4J8

URBANCORE CLEANING  
2632 24TH ST. SW  
Calgary AB T2T 5H9

VAN HOUTTE  
8215, 17TH AVENUE  
Montreal QC H1Z 4J9

WASTE CONNECTIONS  
285122 BLUEGRASS DRIVE  
Rocky View AB T1X 0P5

WHITE PAPER  
9990 RIVER WAY  
Delta BC V4G 1M9

# **EXHIBIT “C1”**

District of: Alberta  
Division No. 02 - Calgary  
Court No. 25-2483059  
Estate No. 25-2483059

FORM 92  
Notice of Proposal to Creditors  
(Section 51 of the Act)

In the matter of the proposal of  
Commerx Corporation  
of the City of Calgary, in the Province of Alberta

Take notice that Commerx Corporation of the City of Calgary in the Province of Alberta has lodged with us a proposal under the Bankruptcy and Insolvency Act.

A copy of the proposal, a condensed statement of the debtor's assets, and liabilities, and a list of the creditors affected by the proposal and whose claims amount to \$250 or more are enclosed herewith.

A general meeting of the creditors will be held at the office of Bennett Jones LLP, at 4500 Bankers Hall East, 855 - 2nd Street SW, Calgary, AB on the 6th day of September 2019 at 11:00 AM.

The creditors or any class of creditors qualified to vote at the meeting may by resolution accept the proposal either as made or as altered or modified at the meeting. If so accepted and if approved by the court the proposal is binding on all the creditors or the class of creditors affected.

Proofs of claim, proxies and voting letters intended to be used at the meeting must be lodged with us prior to the commencement of the meeting.

Dated at the City of Calgary in the Province of Alberta, this 21st day of August 2019.

Hardie & Kelly Inc. - Licensed Insolvency Trustee

110, 5800 2nd Street SW  
Calgary AB T2H 0H2  
Phone: (403) 777-9999 Fax: (403) 640-0591

(A form of proof of claim, a form of proxy and a voting letter should be enclosed with each notice.)

# EXHIBIT "C2"

District of: Alberta  
 Division No. 02 - Calgary  
 Court No. 25-2483059  
 Estate No. 25-2483059

Original  Amended

-- Form 78 --  
 Statement of Affairs (Business Proposal) made by an entity  
 (Subsection 49(2) and Paragraph 158(d) of the Act / Subsections 50(2) and 62(1) of the Act)

In the matter of the proposal of  
 Commerx Corporation  
 of the City of Calgary, in the Province of Alberta

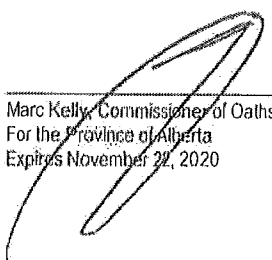
To the debtor:

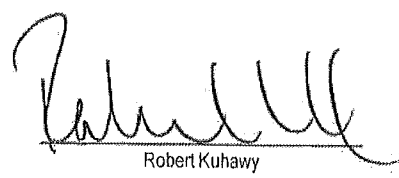
You are required to carefully and accurately complete this form and the applicable attachments showing the state of your affairs on the date of the filing of your proposal (or notice of intention, if applicable), on the 7th day of March 2019. When completed, this form and the applicable attachments will constitute the Statement of Affairs and must be verified by oath or solemn declaration.

LIABILITIES (as stated and estimated by the officer)	ASSETS (as stated and estimated by the officer)
1. Unsecured creditors as per list "A" .....	1. Inventory .....
616,404.38	0.00
Balance of secured claims as per list "B" .....	2. Trade fixtures, etc. ....
0.00	0.00
Total unsecured creditors .....	3. Accounts receivable and other receivables, as per list "E"
616,404.38	Good .....
2. Secured creditors as per list "B" .....	820,569.00
562,360.88	Doubtful .....
3. Preferred creditors as per list "C" .....	0.00
0.00	Bad .....
4. Contingent, trust claims or other liabilities as per list "D"	0.00
estimated to be reclaimable for .....	Estimated to produce .....
0.00	820,569.00
Total liabilities .....	4. Bills of exchange, promissory note, etc., as per list "F" .....
1,178,765.26	0.00
Surplus .....	5. Deposits in financial institutions .....
NIL	0.00
	6. Cash .....
	100,428.00
	7. Livestock .....
	0.00
	8. Machinery, equipment and plant .....
	0.00
	9. Real property or immovable as per list "G" .....
	0.00
	10. Furniture .....
	3,106.00
	11. RRSPs, RRIFs, life insurance, etc. ....
	0.00
	12. Securities (shares, bonds, debentures, etc.) .....
	0.00
	13. Interests under wills .....
	0.00
	14. Vehicles .....
	0.00
	15. Other property, as per list "H" .....
	0.00
	If debtor is a corporation, add:
	Amount of subscribed capital .....
	0.00
	Amount paid on capital .....
	0.00
	Balance subscribed and unpaid .....
	0.00
	Estimated to produce .....
	0.00
	Total assets .....
	924,103.00
	Deficiency .....
	254,662.26

I, Robert Kuhawy, of the City of Calgary in the Province of Alberta, do swear (or solemnly declare) that this statement and the attached lists are to the best of my knowledge, a full, true and complete statement of my affairs on the 16th day of August 2019 and fully disclose all property of every description that is in my possession or that may devolve on me in accordance with the Act.

SWORN (or SOLEMNLY DECLARED)  
 before me at the City of Calgary in the Province of Alberta, on this 16th day of August 2019.

  
 \_\_\_\_\_  
 Marc Kelly, Commissioner of Oaths  
 For the Province of Alberta  
 Expires November 22, 2020

  
 \_\_\_\_\_  
 Robert Kuhawy



District of: Alberta  
 Division No. 02 - Calgary  
 Court No. 25-2483059  
 Estate No. 25-2483059


FORM 78 -- Continued

List "A"  
 Unsecured Creditors  
 Commerx Corporation

No.	Name of creditor	Address	Unsecured claim	Balance of claim	Total claim
1	642111 ALBERTA INC.	4428 MANILLA ROAD SE Calgary AB T2G 4B7	11,303.22	0.00	11,303.22
2	ADMIRAL LAW	301, 522 - 11 AVE. SW Calgary AB T2R 0C8	2,881.80	0.00	2,881.80
3	ANIXTER CANADA	200 FOSTER CRESCENT Missauga ON L5R 3Y5	935.18	0.00	935.18
4	BENNETT JONES LLP	4500, 855 -2ND STREET SW Calgary AB T2P 4K7	11,939.36	0.00	11,939.36
5	BENNETT, PERRY	C/O COMMERX CORPORATION 4428 MANILLA ROAD SE Calgary AB T2G 4B7	100,918.33	0.00	100,918.33
6	CALGARY POLICE SERVICE	ALARM BYLAW UNIT #609 Calgary AB T3J 3R2	20.00	0.00	20.00
7	CERYX INC	5000 YONGE STREET SUITE 1503 Toronto ON M2N 7E9	139.24	0.00	139.24
8	CRA - Tax - Prairies 86528 3790 RT0001	Surrey National Verification and Collection Centre 9755 King George Blvd Surrey BC V3T 5E1	24,014.71	0.00	24,014.71
9	Desjardins Card Services	c/o FCT Default Solutions PO Box 2514 Stn B London ON N6A 4G9	680.50	0.00	680.50
10	GRAINGER	100 Grainger Pkwy Lake Forrest IL 60045 USA	5,156.84	0.00	5,156.84
11	HOFFMAN DOECHIK LLP	600, 5920 MACLEOD TRAIL SOUTH Calgary AB T2H 0K2	253.75	0.00	253.75
12	KULHAWY, ROBERT	C/O COMMERX CORPORATION 4428 MANILLA ROAD SE Calgary AB T2G 4B7	246,041.60	0.00	246,041.60
13	MEMORY EXPRESS	3333 34TH AVE NE Calgary AB T1Y 6H2	1,107.11	0.00	1,107.11
14	OXFORD TECH	37047 MAYLAND HTS. Calgary AB T2E 9A7	860.92	0.00	860.92
15	PRIMUS ELECTRONICS	4180 E Sand Ridge Road Morris IL 60450 USA	1,875.93	0.00	1,875.93
16	RICOH CANADA INC	PO BOX 1600 STREETSVILLE RPO Mississauga ON L5M 0M6	716.47	0.00	716.47
17	RODPREST CLEANERS	229 CHAPALINA MEWS SE Calgary AB T2X 0A7	7,182.00	0.00	7,182.00
18	ROGERS	PO Box 8878, Stn Terminal Vanouwer BC V6B 0H6	1,883.97	0.00	1,883.97
19	SUNLIFE FINANCIAL	PO BOX 11010 STATION A Montreal PE H3C 4T9	16,349.41	0.00	16,349.41
20	Telus Mobility Services Attr: Rick Wan	8th Fl - 3777 Kingsway Burnaby BC V5H 3Z7	114.99	0.00	114.99
21	Telus Residential/Business Services Attr: Rick Wan	3rd Fl - 4519 Canada Way Burnaby BC V5G 4S4	1,199.80	0.00	1,199.80
22	THOMAS PRENDERGAST Attr: John H. Yach	c/o Yach & Associates 68 Chamberlain Avenue Ottawa ON K1S 1V9	16,891.42	0.00	16,891.42

16-Aug-2019

Date

  
 Robert Kulhawy

District of: Alberta  
 Division No. 02 - Calgary  
 Court No. 25-2483059  
 Estate No. 25-2483059

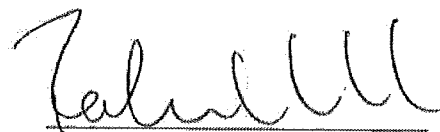
FORM 78 -- Continued

List "A"  
 Unsecured Creditors  
 Commerx Corporation

No.	Name of creditor	Address	Unsecured claim	Balance of claim	Total claim
23	TRAGICALLY VITAL	4, 2807 - 107TH AVE SE Calgary AB T2Z 4M2	1,419.09	0.00	1,419.09
24	TRANT, PETER Attr: KEITH D. MARLOWE	C/O BLAKE, CASSELS & GRAYDON LLP 3500, 855 - 2ND STREET SW Calgary AB T2P 4J8	157,777.84	0.00	157,777.84
25	URBANCORE CLEANING	2632 24TH ST. SW Calgary AB T2T 5H9	1,622.25	0.00	1,622.25
26	VAN HOUTTE	8215, 17TH AVENUE Montreal QC H1Z 4J9	52.50	0.00	52.50
27	WASTE CONNECTIONS	285122 BLUEGRASS DRIVE Rocky View AB T1X 0P5	1,351.70	0.00	1,351.70
28	WHITE PAPER	9990 RIVER WAY Delta BC V4G 1M9	1,714.45	0.00	1,714.45
Total:			616,404.38	0.00	616,404.38

16-Aug-2019

Date



Robert Kuhawy

District of: Alberta  
 Division No. 02 - Calgary  
 Court No. 25-2483059  
 Estate No. 25-2483059

FORM 78 -- Continued

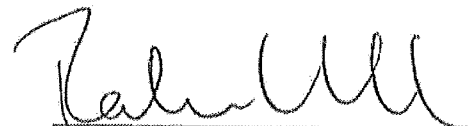
List "B"  
 Secured Creditors

Commerx Corporation

No.	Name of creditor	Address	Amount of claim	Particulars of security	When given	Estimated value of security	Estimated surplus from security	Balance of claim
1	BALINHARD CAPITAL CORPORATION Attn: David LeGeyt	c/o Burnet, Duckworth & Palmer LLP 2400, 525 - 8th Ave SW Calgary AB T2P 1G1	523,759.00	Debts Due - Business - Trade receivables	11-Jan-2019	343,000.00		
				Debts Due - Business - Lotus/Halycon	11-Jan-2019	180,759.00	296,810.00	
				Cash on Hand - Cash in bank	11-Jan-2019	0.00	61,826.12	
2	CRA - Tax - Prairies 86528 3790 RP0001	Surrey National Verification and Collection Centre 9755 King George Blvd Surrey BC V3T 5E1	17,415.75	Cash on Hand - Cash in bank	01-Jan-2018	17,415.75		
3	CRA - Tax - Prairies 86528 3790 RP0002	Surrey National Verification and Collection Centre 9755 King George Blvd Surrey BC V3T 5E1	21,186.13	Cash on Hand - Cash in bank	01-Jan-2018	21,186.13		
<b>Total:</b>			<b>562,360.88</b>			<b>562,360.88</b>	<b>358,636.12</b>	<b>0.00</b>

16-Aug-2019

Date



Robert Kuhawy

District of: Alberta  
Division No. 02 - Calgary  
Court No. 25-2483059  
Estate No. 25-2483059

FORM 78 -- Continued

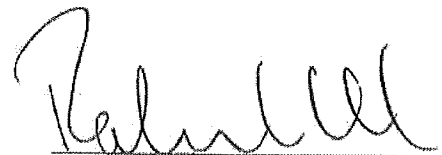
List "C"  
Preferred Creditors for Wages, Rent, etc.

Commerx Corporation

No.	Name of creditor	Address and occupation	Nature of claim	Period during which claim accrued	Amount of claim	Amount payable in full	Difference ranking for dividend
Total:					0.00	0.00	0.00

16-Aug-2019

Date



Robert Kuhawy

District of: Alberta  
Division No. 02 - Calgary  
Court No. 25-2483059  
Estate No. 25-2483059

FORM 78 -- Continued

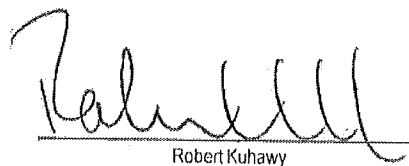
List "D"  
Contingent or Other Liabilities

Commerx Corporation

No.	Name of creditor or claimant	Address and occupation	Amount of liability or claim	Amount expected to rank for dividend	Date when liability incurred	Nature of liability
Total:			0.00	0.00		

16-Aug-2019

Date

  
Robert Kuhaw

District of: Alberta  
 Division No. 02 - Calgary  
 Court No. 25-2483059  
 Estate No. 25-2483059

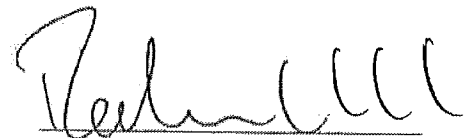
FORM 78 -- Continued

List "E"  
 Debts Due to the Debtor  
 Commerx Corporation

No.	Name of debtor	Address and occupation	Nature of debt	Amount of debt (good, doubtful, bad)	Folio of ledgers or other book where particulars to be found	When contracted	Estimated to produce	Particulars of any securities held for debt
1	Lotus/Halycon	4428 AB	Funding	477,569.00 0.00 0.00		31-Dec-2016	477,569.00	Deemed trust
2	Trade receivables	4428 AB	Trade receivables	343,000.00 0.00 0.00		15-Aug-2019	343,000.00	Deemed trust
Total:				820,569.00 0.00 0.00			820,569.00	

16-Aug-2019

Date

  
 Robert Kuhawy

District of: Alberta  
Division No. 02 - Calgary  
Court No. 25-2483059  
Estate No. 25-2483059

FORM 78 -- Continued

List "F"

Bills of Exchange, Promissory Notes, Lien Notes, Chattel  
Mortgages, etc., Available as Assets

Commerx Corporation

No.	Name of all promissory, acceptors, endorsers, mortgagors, and guarantors	Address	Occupation	Amount of bill or note, etc.	Date when due	Estimated to produce	Particulars of any property held as security for payment of bill or note, etc.
				Total: 0.00		0.00	

16-Aug-2019

Date



Robert Kulhawy

District of: Alberta  
Division No. 02 - Calgary  
Court No. 25-2483059  
Estate No. 25-2483059

FORM 78 -- Continued

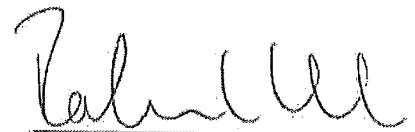
List "G"  
Real Property or Immovables Owned by Debtor

Commerx Corporation

Description of property	Nature of debtor interest	In whose name does title stand	Total value	Particulars of mortgages, hypothecs, or other encumbrances (name, address, amount)	Equity or surplus
Total:			0.00		0.00

16-Aug-2019

Date



Robert Kuhawy



District of: Alberta  
 Division No. 02 - Calgary  
 Court No. 25-2483059  
 Estate No. 25-2483059

FORM 78 -- Concluded

List "H"  
 Property

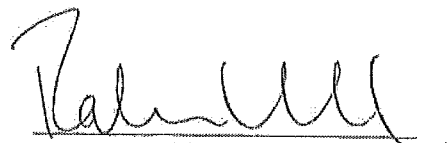
Commerx Corporation

FULL STATEMENT OF PROPERTY

Nature of property	Location	Details of property	Original cost	Estimated to produce
(a) Stock-in-trade			0.00	0.00
(b) Trade fixtures, etc.			0.00	0.00
(c) Cash in financial institutions			0.00	0.00
(d) Cash on hand		Cash on hand	100,428.00	100,428.00
(e) Livestock			0.00	0.00
(f) Machinery, equipment and plant			0.00	0.00
(g) Furniture		Office furniture and equipment	0.00	3,106.00
(h) Life insurance policies, RRSPs, etc.			0.00	0.00
(i) Securities			0.00	0.00
(j) Interests under wills, etc.			0.00	0.00
(k) Vehicles			0.00	0.00
(l) Taxes			0.00	0.00
(m) Other		Shares of Subsidiaries	0.00	0.00
		Prepaid expenses and deposits	91,704.00	0.00
		Development Costs	155,036.00	0.00
<b>Total:</b>				<b>103,534.00</b>

16-Aug-2019

Date

  
 Robert Kuhawy

# EXHIBIT "C3"

COURT OF QUEEN'S BENCH OF ALBERTA  
IN BANKRUPTCY AND INSOLVENCY

IN THE MATTER OF THE AMENDED PROPOSAL OF  
COMMERX CORPORATION

PROPOSAL

COMMERX CORPORATION, the above-named debtor, hereby submits the following Proposal (the "**Proposal**") to its creditors pursuant to the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 (the "**Act**").

**PART 1  
BACKGROUND**

1. COMMERX CORPORATION is a private company incorporated pursuant to the Laws of Alberta.
2. COMMERX CORPORATION is involved in the telecommunication project services, digital technology consulting and telecommunication staffing business in Calgary and elsewhere in the Province of Alberta.
3. COMMERX CORPORATION is presently insolvent and unable to pay its debts as they become due. On March 7, 2019, COMMERX CORPORATION filed a Notice of Intention to make a Proposal to its creditors under the Act.

**PART 2  
INTERPRETATION**

4. In this Proposal, capitalized terms shall have the following meanings:

"**Act**" means the *Bankruptcy and Insolvency Act*, as it may be amended from time to time;

"**Approval Order**" means an Order of the Court approving this Proposal to be granted pursuant to the provisions of the Act, the appeal period having expired and no appeal having been filed, or any appeal therefrom having been dismissed and such dismissal having become final;

"**Assets**" means the assets, undertakings and property of COMMERX CORPORATION;

"**Business Day**" means a day, other than Saturday or Sunday or a day observed as a holiday pursuant to the laws of the Province of Alberta or the federal laws of Canada, on which banks are generally open for business;

"**Claim**" means any indebtedness, liability, action, cause of action, suit, debt, due, account, bond, covenant, contract, counterclaim, demand, claim, right and obligation of any nature whatsoever of COMMERX CORPORATION to any Person whether liquidated, unliquidated, fixed, contingent, matured, legal, equitable, secured, unsecured, present, future, known or unknown, and whether by guarantee, surety or otherwise, incurred or arising or relating to the period prior to the Filing Date, or based in whole or in part on facts, contracts or arrangements which occurred or existed prior to the Filing Date, together with any other claims provable in bankruptcy on the Filing Date, including without limitation, claims arising from the repudiation, disclaimer or termination of any lease, license, contract, arrangement or contract of employment prior to the Filing Date, providing that all such claims shall be allowed without allowance for interest after the Filing Date and without allowance for penalties and net of any normal discounts. All Claims must be converted to Canadian Dollars at the Bank of Canada Daily Foreign Exchange Rate at the Filing Date;

"**Court**" means the Court of Queen's Bench of Alberta, In Bankruptcy and Insolvency;

"**CRA**" means the Canada Revenue Agency;

"**Creditor**" means any Person having a Claim, and may, if the context requires, mean a trustee, receiver, receiver-manager or other Person acting on behalf or in the name of such Person;

"**Creditors' Meeting**" means the meeting of Creditors called for the purpose of considering and voting upon the Proposal;

"**Effective Date**" means the date on which this Proposal is approved by the Court, after being approved by the requisite majority of COMMERX CORPORATION Creditors;

"**Filing Date**" means March 7, 2019;

"**Official Receiver**" shall have the meaning ascribed thereto by the Act;

"**Person**" means any individual, partnership, joint venture, trust, corporation, unincorporated organization, government or any agency or any other entity however designated or constituted;

"**Proposal**" means this Proposal made pursuant to the Act, as further amended or supplemented from time to time;

"**Proven Claim**" means the amount claimed by a Creditor and approved by the Proposal Trustee and COMMERX CORPORATION or as may otherwise be allowed by the Court;

"**Proposal Trustee**" means Hardie & Kelly Inc. or its duly appointed successor or successors;

"**Unaffected Claims**" means Claims that are not affected by this Proposal being the fees and disbursements of the Proposal Trustee, its counsel and secured creditors in relation to this Proposal;

"**Unaffected Creditors**" means the Proposal Trustee its legal counsel and secured creditors in relation to this Proposal.

"**Unsecured Creditor**" means any Creditor who has no security against any assets of COMMERX CORPORATION with respect to its Claim, including landlords and excluding the Unaffected Creditors.

#### **Headings**

5. The divisions of this Proposal into parts, paragraphs and subparagraphs, and the insertion of headings herein is for convenience of reference only and is not to affect the construction or interpretation of this Proposal.

#### **Numbers, etc.**

6. In this Proposal, where the context requires, a word importing the singular number will include the plural and vice versa and a word or words importing gender will include all genders.

#### **Date for Action**

7. In the event that any date on which any action is required to be taken hereunder is not a Business Day, such action will be required to be taken on the next succeeding day that is a Business Day.

#### **Time**

8. All times expressed herein are in local time in Calgary, Alberta, Canada unless otherwise stipulated. Where the time for anything pursuant to the Proposal on a particular date is unspecified herein, the time shall be deemed to be 5:00 p.m. local time in Calgary, Alberta, Canada.

#### **Successors and Assigns**

9. This Proposal will be binding upon and will enure to the benefit of the heirs, administrators, executors, personal representatives, successors and assigns of all persons named or referred to herein.

#### **Currency**

10. All references to currency in this Proposal are to lawful money of Canada ("**Canadian Dollars**").

#### **Accounting Principles**

11. Accounting terms not otherwise defined have the meanings assigned to them in accordance with Canadian generally-accepted accounting principles.

#### **Director Claims**

12. Any Claims that arose before the Filing Date regardless of the date of crystallization of such Claim and that relate to the obligations of COMMERX CORPORATION, where the current or former directors of COMMERX CORPORATION are by law liable in their capacity as directors for payments of such obligations, shall be deemed to be fully satisfied and discharged by the terms of this Proposal and shall not be enforceable against any of such current or former directors of COMMERX CORPORATION at law or in equity

#### **Statutory References**

13. Except as otherwise provided herein, any reference in the Proposal to a statute including all regulations and amendments made under that statute or regulation(s) in force from time to time and any statute or regulation that supplements or supersedes such statute or regulation(s).

### **PART 3**

## OVERVIEW OF THE PROPOSAL

### Purpose of the Proposal

14. The purpose of this Proposal is to effect a compromise and arrangement of all Claims as against COMMERX CORPORATION, other than the Unaffected Claims, with a view to increasing the recovery for all stakeholders (excluding claims owing to the Unaffected Creditors) while reducing the uncertainties, risks, costs, delays and possible losses for all Creditors that will otherwise occur. COMMERX CORPORATION has concluded, and the Proposal Trustee agrees, that the general body of creditors will obtain a greater and/or sooner return on their Claims if this Proposal is approved than would result from a forced liquidation of its Assets.
15. Further, the Proposal will allow COMMERX CORPORATION to continue operations so as to avoid or minimize any adverse impact on current customers and to allow COMMERX CORPORATION the opportunity to retain and refer business to its established network of suppliers and contractors.
16. Creditors should review this Proposal before voting to accept or reject this Proposal. The transactions contemplated by this Proposal are to be implemented under the Act.

### Effect of the Proposal

17. This Proposal restructures the affairs of COMMERX CORPORATION and amends the terms of any and all agreements between COMMERX CORPORATION and the Creditors, excluding the Unaffected Creditors, existing as at the Effective Date and provides the essential terms on which all Claims will be fully and finally resolved and settled. All Creditors will be stayed, excluding Unaffected Creditors, from commencing or continuing any proceeding or remedy against COMMERX CORPORATION or any of its property or Assets in respect of a Claim including, without limitation, any proceeding or remedy to recover payment of any monies owing to Creditors, to recover to enforce any judgment against COMMERX CORPORATION in respect of a Claim or to commence any formal proceedings against it other than as provided for under this Proposal.
18. For greater certainty, any and all Claims by the Unaffected Creditors remain valid and outstanding and shall not be compromised as part of the Proposal or affected in any way.
19. This Proposal, if approved, will, as of the Effective Date, be binding on COMMERX CORPORATION and the Unsecured Creditors.

## PART 4 CLASSIFICATION AND TREATMENT OF CLAIMS

### Classes of Creditors

20. There will be one class of creditor voting on the Proposal:  
Class 1 - All Unsecured Creditors with Proven Claims.

### **Amendments to Agreements**

21. Notwithstanding the terms and conditions of all agreements or other arrangements with Creditors entered into before the Filing Date, all such agreements or other arrangements will be deemed to be amended to the extent necessary as of the Effective Date to give effect to all the terms and conditions of this Proposal. In the event of any conflict or inconsistency between the terms of such agreements or arrangements and the terms of this Proposal, the terms of this Proposal will govern. All Creditors will provide such acknowledgements, agreements, discharges or other documentation as may be necessary to give effect to the intent of this Proposal.

### **Treatment of Claims**

22. For the purposes of this Proposal, each Unsecured Creditor will receive the treatment provided for in this Proposal on account of such Claim. During the Proposal Period, and provided COMMERX CORPORATION is not in default hereunder, each Creditor will be stayed from commencing or continuing any proceeding or remedy against COMMERX CORPORATION or its property based upon a Claim existing on or before the Filing Date, including, without limitation, any proceeding or remedy to recover payment of such Claim, to realize against any security granted in respect of such Claim, to recover or enforce a judgment against COMMERX CORPORATION in respect of such Claim or to initiate any proceedings against it in respect of such Claim, other than an application or proceeding in connection with this Proposal.

### **Claims Bar Date**

23. The Proposal Trustee shall consider any Claims lodged by a Creditor up to the date and time of the Creditors' Meeting ("**Claims Bar Date**") to consider the Proposal after which no further Claims shall be allowed in the Proposal. In the event a Claim is not filed with the Proposal Trustee prior to the Claims Bar Date, the Claim shall be forever barred and shall not be considered for acceptance as a Proven Claim forming part of this Proposal, or at all, subject to any order of the Court allowing such Claim.
24. For greater certainty, only Claims filed with the Proposal Trustee of COMMERX CORPORATION prior to the commencement of the Creditors' Meeting shall be considered as Claims by COMMERX CORPORATION and the Proposal Trustee.

### **Valuation and Treatment of Claims**

25. COMMERX CORPORATION and the Proposal Trustee reserve the right to seek the assistance of the Court in valuing the Claim of any Creditor, if required, to ascertain the result of any vote on the Proposal or the amount payable or to be distributed to such Creditor under the Proposal, as the case may be.
26. CRA claims for employee source deductions (but not GST or income tax payable claims generally) which are proven, will be paid in full without including interest or and penalties calculated through to the Filing Date within 6 months of Court approval of the Proposal as required by S. 60(1.1) of the Act. Notwithstanding the foregoing, COMMERX CORPORATION will make regular monthly payments in satisfaction thereof over the six month period following Court approval. COMMERX CORPORATION further agrees to comply with prescribed filing and remittance requirements over the term of the Proposal.

27. Upon the Approval Order being made, all amounts owing by COMMERX CORPORATION to Unsecured Creditors shall be settled and extinguished as per the following payment schedule:
- (a) Unsecured Creditors with Proven Claims will receive 100% of their Proven Claim, paid as follows:
    - (i) By December 1, 2019, all Unsecured Creditors with Proven Claims will receive an initial payment equal to the lesser of: 100% of their Proven Claims or \$2,000.00; and
    - (ii) Quarterly prorated payments starting March 1, 2020 over a two year period in respect of the balance of Unsecured Creditors' Proven Claims not satisfied from the initial payment above. Payoff could be sooner if positive cash flow allows. There will be no costs or interest accruing after the Filing Date payable to Unsecured Creditors.

#### **Effect of Payment**

28. The Unsecured Creditors will accept payment provided for in this Proposal in complete satisfaction of all their claims, certificates of pending litigation, execution or any similar charges or actions or proceedings in respect of such Claims will have no effect in law or equity against the property, Assets and undertakings of COMMERX CORPORATION. Upon the making of all payments provided for in the Proposal, any and all such certificates of pending litigation, executions or other similar charges or actions will be discharged, dismissed or vacated without costs to COMMERX CORPORATION.

#### **Superintendent's Levy**

29. The Superintendent's levy of 5% will be paid as required pursuant to s. 147 and 60(4) of the Act on all distributions to Unsecured Creditors under this Proposal.

#### **Payment of Fees**

30. All proper fees and expenses of the Proposal Trustee and reasonable legal and other professional fees on and incidental to the proceedings arising out of this Proposal and in connection with the preparation of this Proposal and in the administration of this Proposal, including advice to COMMERX CORPORATION in connection therewith, will be paid in priority to all claims of Unsecured Creditors.

### **PART 5 PROPOSAL TRUSTEE**

#### **Confirmation of Appointment**

31. The Proposal Trustee is acting in its capacity as Proposal Trustee and not in its personal capacity and no officer, director, employee or agent of the Proposal Trustee shall incur any obligations or liabilities in connection with this Proposal or in connection with the business or liabilities of COMMERX CORPORATION.



### **Meeting of Creditors**

32. The Creditors' Meeting will be held at 11:00 a.m. on Friday, September 6, 2019 at the office of Bennett Jones LLP located at 4500 Bankers Hall East, 855 – 2nd Street SW, Calgary, Alberta unless adjourned by the Proposal Trustee. The Proposal Trustee shall preside as the chair of the Creditors' Meeting and will decide all matters relating to the conduct of the Creditors' Meeting. The only persons entitled to attend the Creditors' Meeting are those persons, including the holders of proxies, entitled to vote at the Creditors' Meeting. Any other person may be admitted on invitation of the Proposal Trustee or with the consent of the Creditors.

### **Proofs of Claim**

33. All Creditors will be required to submit a proof of claim to the Proposal Trustee and the face amount thereof will govern for the purpose of voting at the Meeting of Creditors to be held to consider this Proposal, unless otherwise disputed or disallowed by the chair of the meeting. After the Creditors' Meeting, the Proposal Trustee will examine all proofs of claim and may require further evidence and support of the Claim or the security therefore. The provisions of s.135 of the Act will apply to all proofs of claim submitted by Creditors.

### **Conditions Precedent**

34. As provided for in the Act, the payments and arrangements set out in this Proposal will not take effect unless the conditions set forth below are substantially satisfied on or before the Effective Date:
- a. All approvals and consents to the Proposal that may be required have been obtained;
  - b. The Approval Order has been issued; and
  - c. No order or decree restraining or enjoining the consummation of the transactions contemplated by this Proposal will have been issued.

### **Application for Approval Order**

35. The Proposal Trustee will apply forthwith to the Court for the Approval Order upon approval by the Unsecured Creditors of this Proposal.

### **Discharge of Proposal Trustee**

36. For greater certainty, the Proposal Trustee will not be responsible or liable for funding any payments contemplated herein nor for any obligations of COMMERX CORPORATION and will be exempt from any personal liability in fulfilling any duties or exercising any powers conferred upon it by this Proposal unless such acts have been carried out in bad faith and constitute a wilful or wrongful act or default. The Proposal Trustee will monitor and report upon the various payments to creditors required herein and shall be entitled to its discharge upon COMMERX CORPORATION making its final payment required herein.

**PART 6  
RELEASE**

37. On the Effective Date, COMMERX CORPORATION including the officers and directors shall be released and discharged from any and all demands, claims, actions, causes of action, counterclaims, suits, debts, sums of money, accounts, covenants, damages, judgments, expenses, executions, and other recoveries on account of any liability, obligation, demand or cause of action owing to or held by any of the Creditors or any Claims by the Creditors.

**PART 7  
SUPPORT AGREEMENTS**

38. COMMERX CORPORATION has reviewed the terms of this Proposal with numerous of its Unsecured Creditors and has obtained numerous binding Support Agreements to vote in favour of the terms of this Proposal.

**PART 8  
MISCELLANEOUS**

**Modification**

39. COMMERX CORPORATION may propose amendments to the Proposal at any time prior to the conclusion of the Creditors' Meeting provided that any such amendment, in the opinion of COMMERX CORPORATION, does not reduce the rights and benefits given to Creditors pursuant to the Proposal before such amendment and that any and all amendments shall be deemed to be a part of and incorporated into the Proposal.

**Further Actions**

40. COMMERX CORPORATION and the Creditors will execute and deliver all such documents and instruments and do all such acts and things as may be necessary or desirable to carry out the full intent and meaning of this Proposal and to give effect to the transactions contemplated hereby.

**Performance**

41. All obligations of COMMERX CORPORATION under this Proposal will commence as of the Effective Date. All terms of this Proposal will take effect as of the Effective Date

**Binding Effect**

42. The provisions of this Proposal will be binding on the Creditors and COMMERX CORPORATION and their respective heirs, executors, administrators, successors and assigns, upon issuance of the Approval Order after all appeal periods have expired.

**Compromise Effective for all Purposes**

43. The payment, compromise or other satisfaction of any Claim under this Proposal shall be binding upon such Creditor, its heirs, executors, administrators, successors and assigns, for all purposes and shall also be effective to relieve any third party directly or indirectly liable for such indebtedness, whether as guarantor, indemnitor, tenant, director, joint covenantor, principal or otherwise.

**Fraudulent Conveyance**

44. Section 91 through and including s. 101 of the BIA do not apply to this Proposal

**Governing Law**

45. This Proposal will be governed by and construed in accordance with the laws of the Province of Alberta and the laws of Canada applicable therein.
46. Any notice, certificate, consent, determination or other communication required or permitted to be given or made under this Proposal shall be in writing and shall be effectively given and made if (i) delivered personally; (ii) sent by prepaid courier service; or (iii) sent by email transmission, in each case to the applicable address set out below:

(a) if to COMMERC CORPORATION:

robert.kulhawy@commerx.com and restructure@commerx.com

(b) if to the Proposal Trustee:

Hardie & Kelly Inc.  
110, 5800 – 2<sup>nd</sup> Street SW  
Calgary, AB, T2H 0H2  
mkelly@insolvency.net  
Attention: Marc Kelly

DATED at Calgary, in the Province of Alberta, this 46<sup>th</sup>-~~6th~~ day of August~~September~~, 2019.

COMMERC CORPORATION

Per:

  
Robert Kulhawy  
President & CEO

"I have the authority to bind the corporation"

# EXHIBIT "D"

District of Alberta  
Division No. 2  
Court No. 25-2483059  
Estate No. 25-2308628

**In the Matter of the Proposal of  
Commerx Corporation  
of the City of Calgary, in the Province of Alberta**

Minutes of the Meeting of Creditors (the "Meeting") of Commerx Corporation ("Commerx" or the "Company") held on September 6, 2019 at:

Bennett Jones LLP  
4500 Bankers Hall East  
855 2 Street SW  
Calgary, Alberta  
T2P 4K7

CHAIRPERSON: Charla Smith, Hardie & Kelly Inc.

PRESENT: Attendance list attached as Appendix "A",

The Meeting was called to order at 11:13 a.m.

The Chairman introduced herself as well as the following individuals:

- Robert Kulhawy – Commerx
- Chris Simard – Bennett Jones LLP (estate counsel)

The Chairman advised that there was a quorum present being at least one creditor entitled to vote.

PURPOSE OF MEETING

The Chairman advised that the purpose of the Meeting is to consider the terms of the proposal of the Company filed on August 16, 2019 (the "Proposal"), to potentially appoint Inspectors and to give such direction to the Proposal Trustee as the creditors may see fit with reference to the administration of the estate.

The following documents were tabled

- Notice to Creditors of Proposal;
- Statement of Affairs;
- Proposal;
- Amended Proposal;
- *Report of Proposal Trustee on Proposal* dated August 16, 2019 (the "Proposal Trustee's Report");
- Affidavit of Mailing;
- Proofs of Claim filed to date

## PROPOSAL

The Chairman advised that creditors had, prior to the meeting, been sent a copy of the Proposal as well as the Proposal Trustee's Report. The Trustee noted that the only material potential change to the information contained in the Proposal Trustee's Report was the quantum of the amount owing to Fortitude Financial Investments Inc. ("Fortitude Financial"), which had submitted a claim for approximately \$2.4 million CAD compared to the Company's records which showed an amount owing to Fortitude Financial of \$1.4 million.

The Chairman also advised that the Company was tabling an amended Proposal (attached as Appendix "B") which contains an amendment to paragraph 26 of the Proposal requested by Canada Revenue Agency which does not otherwise effect the practical terms of the Proposal such that Paragraph 26 now reads as follows:

***CRA claims for employee source deductions (but not GST or income tax payable claims generally) which are proven, will be paid in full including interest and penalties calculated through to the Filing Date within 6 months of Court approval of the Proposal as required by S.60(1.1) of the Act. Notwithstanding the foregoing, Commerx Corporation will make regular monthly payments in satisfaction thereof over the six month period following Court approval. Commerx Corporation further agrees to comply with prescribed filing and remittance requirements over the term of the Proposal.***

The Trustee advised that in its view this amendment has no practical effect on creditors other than CRA, who had requested the change.

The Trustee reviewed the terms of the Amended Proposal and its recommendations as set out in the Proposal Trustee's Report.

The Chairman explained the requirements for creditor approval of the proposal and advised that if the creditors approved the proposal the Trustee would make an application to Court seeking the further approval of the Court, and creditors would be provided notice thereof.

## QUESTION PERIOD

There were no questions asked.

## VOTE

The Chairman advised that there had been 11 creditors who had proven claims prior to the start of the meeting, and that it had received voting letters from seven of those creditors. The Chairman also advised that the Trustee had received two other claims which the Trustee had determined it would not be allowing the parties to vote:

- One claim of a minor amount from a party that had not submitted sufficient documentation to prove its claim prior to the meeting;
- One claim from Fortitude Financial which the Trustee had determined it would be disallowing in its entirety on the basis that it constitutes an equity claim and not an unsecured claim subject to the Proposal. Therefore, for clarity the

Chairman advised that Fortitude Financial, which was in attendance at the meeting by way of a proxy, would not be allowed to vote on the Proposal.

The Chairman then asked that those creditors with proven claims who were in attendance and had not provided a voting letter indicate their vote. Perry Bennett and Robert Kulhawy indicated their votes were FOR the Amended Proposal.

The Chairman advised that, as a result, the proven creditors who had voted on the Proposal, as amended, either in person or by way of voting letter had voted unanimously to approve the Amended Proposal. A copy of the *detailed voting results* is attached as Appendix "C" and is summarized as follows:

Unsecured Creditors

	<u>Number of Votes</u>	<u>%</u>	<u>Dollar Value</u>	<u>%</u>
<b>For</b>	9	100.0	553,682.86	100.0
<b>Against</b>	0	0.0	0.00	0.0
<b>TOTAL</b>	9	100.0	\$553,682.86	100.0

The Chairman advised that the statutory requirements to approve the Amended Proposal were met by both classes of creditors and declared the Amended Proposal approved by the creditors.

The Chairman advised that an application to the Court of Queen's Bench of Alberta to approve the Amended Proposal will be scheduled and creditors will receive notice of same.

INSPECTORS

A general discussion was held regarding the role of Inspectors in the scenario of a Proposal versus a bankruptcy proceeding.

The Chairman asked if any party wished to make a motion for the appointment of an Inspector. There being no such motion, no Inspectors were appointed.

ADJOURNMENT:

The Chairman asked those in attendance if there was any further business they wished to discuss prior to adjournment of the meeting.

Charlotte Blumenshein, in attendance for Fortitude Financial, asked for clarification as to the Trustee's disallowance of its claim. Mr. Simard explained that the Trustee had determined that Fortitude Financial's claim was an equity claim according to the *Bankruptcy and Insolvency Act*. The Trustee also pointed out that it would be issuing a formal Notice of Disallowance that would set out the reasons and that Fortitude would have the option of appealing the disallowance of its claim.

Ms. Blumenshein also asked that the Trustee change the filed Proposal documents to reflect the revision to the amount Fortitude Financial was owed, as reflected in the claim filed by Fortitude Financial. The Trustee clarified that the filed documents were based on known information at that time and were not typically amended when new information became available. Instead, new information was reflected in any new documents filed by the Trustee, such as the report the Trustee would file with the Court in relation to an application to approve the Proposal.

Ms. Blumenshein also asked to make a motion that Fortitude Financial be recognized to allow it to bring a motion for adjournment of the meeting. Given that Fortitude Financial was not a proven creditor, the Chairman determined that it could not bring such a motion.

There being no further business, the Chairman called for a motion to adjourn the meeting. Moved by Mr. Robert Kulhawy. Seconded by Mr. Tiro Clark, proxy for Admiral Law. All in favour.

Meeting adjourned at 11:25 a.m.

A handwritten signature in cursive script, appearing to read "Charla Smith", with a stylized flourish at the end.

---

Charla Smith, Chairman





COURT OF QUEEN'S BENCH OF ALBERTA  
IN BANKRUPTCY AND INSOLVENCY

IN THE MATTER OF THE AMENDED PROPOSAL OF  
COMMERX CORPORATION

PROPOSAL

COMMERX CORPORATION, the above-named debtor, hereby submits the following Proposal (the "Proposal") to its creditors pursuant to the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 (the "Act").

PART 1  
BACKGROUND

1. COMMERX CORPORATION is a private company incorporated pursuant to the Laws of Alberta.
2. COMMERX CORPORATION is involved in the telecommunication project services, digital technology consulting and telecommunication staffing business in Calgary and elsewhere in the Province of Alberta.
3. COMMERX CORPORATION is presently insolvent and unable to pay its debts as they become due. On March 7, 2019, COMMERX CORPORATION filed a Notice of Intention to make a Proposal to its creditors under the Act.

PART 2  
INTERPRETATION

4. In this Proposal, capitalized terms shall have the following meanings:

"Act" means the *Bankruptcy and Insolvency Act*, as it may be amended from time to time;

"Approval Order" means an Order of the Court approving this Proposal to be granted pursuant to the provisions of the Act, the appeal period having expired and no appeal having been filed, or any appeal therefrom having been dismissed and such dismissal having become final;

"Assets" means the assets, undertakings and property of COMMERX CORPORATION;

"Business Day" means a day, other than Saturday or Sunday or a day observed as a holiday pursuant to the laws of the Province of Alberta or the federal laws of Canada, on which banks are generally open for business;

"**Claim**" means any indebtedness, liability, action, cause of action, suit, debt, due, account, bond, covenant, contract, counterclaim, demand, claim, right and obligation of any nature whatsoever of COMMERX CORPORATION to any Person whether liquidated, unliquidated, fixed, contingent, matured, legal, equitable, secured, unsecured, present, future, known or unknown, and whether by guarantee, surety or otherwise, incurred or arising or relating to the period prior to the Filing Date, or based in whole or in part on facts, contracts or arrangements which occurred or existed prior to the Filing Date, together with any other claims provable in bankruptcy on the Filing Date, including without limitation, claims arising from the repudiation, disclaimer or termination of any lease, license, contract, arrangement or contract of employment prior to the Filing Date, providing that all such claims shall be allowed without allowance for interest after the Filing Date and without allowance for penalties and net of any normal discounts. All Claims must be converted to Canadian Dollars at the Bank of Canada Daily Foreign Exchange Rate at the Filing Date;

"**Court**" means the Court of Queen's Bench of Alberta, In Bankruptcy and Insolvency;

"**CRA**" means the Canada Revenue Agency;

"**Creditor**" means any Person having a Claim, and may, if the context requires, mean a trustee, receiver, receiver-manager or other Person acting on behalf or in the name of such Person;

"**Creditors' Meeting**" means the meeting of Creditors called for the purpose of considering and voting upon the Proposal;

"**Effective Date**" means the date on which this Proposal is approved by the Court, after being approved by the requisite majority of COMMERX CORPORATION Creditors;

"**Filing Date**" means March 7, 2019;

"**Official Receiver**" shall have the meaning ascribed thereto by the Act;

"**Person**" means any individual, partnership, joint venture, trust, corporation, unincorporated organization, government or any agency or any other entity however designated or constituted;

"**Proposal**" means this Proposal made pursuant to the Act, as further amended or supplemented from time to time;

"**Proven Claim**" means the amount claimed by a Creditor and approved by the Proposal Trustee and COMMERX CORPORATION or as may otherwise be allowed by the Court;

"**Proposal Trustee**" means Hardie & Kelly Inc. or its duly appointed successor or successors;

"**Unaffected Claims**" means Claims that are not affected by this Proposal being the fees and disbursements of the Proposal Trustee, its counsel and secured creditors in relation to this Proposal;

"**Unaffected Creditors**" means the Proposal Trustee its legal counsel and secured creditors in relation to this Proposal.

"**Unsecured Creditor**" means any Creditor who has no security against any assets of COMMERX CORPORATION with respect to its Claim, including landlords and excluding the Unaffected Creditors.

#### **Headings**

5. The divisions of this Proposal into parts, paragraphs and subparagraphs, and the insertion of headings herein is for convenience of reference only and is not to affect the construction or interpretation of this Proposal.

#### **Numbers, etc.**

6. In this Proposal, where the context requires, a word importing the singular number will include the plural and vice versa and a word or words importing gender will include all genders.

#### **Date for Action**

7. In the event that any date on which any action is required to be taken hereunder is not a Business Day, such action will be required to be taken on the next succeeding day that is a Business Day.

#### **Time**

8. All times expressed herein are in local time in Calgary, Alberta, Canada unless otherwise stipulated. Where the time for anything pursuant to the Proposal on a particular date is unspecified herein, the time shall be deemed to be 5:00 p.m. local time in Calgary, Alberta, Canada.

#### **Successors and Assigns**

9. This Proposal will be binding upon and will enure to the benefit of the heirs, administrators, executors, personal representatives, successors and assigns of all persons named or referred to herein.

#### **Currency**

10. All references to currency in this Proposal are to lawful money of Canada ("Canadian Dollars")

#### **Accounting Principles**

11. Accounting terms not otherwise defined have the meanings assigned to them in accordance with Canadian generally-accepted accounting principles.

#### **Director Claims**

12. Any Claims that arose before the Filing Date regardless of the date of crystallization of such Claim and that relate to the obligations of COMMERX CORPORATION, where the current or former directors of COMMERX CORPORATION are by law liable in their capacity as directors for payments of such obligations, shall be deemed to be fully satisfied and discharged by the terms of this Proposal and shall not be enforceable against any of such current or former directors of COMMERX CORPORATION at law or in equity.

#### **Statutory References**

13. Except as otherwise provided herein, any reference in the Proposal to a statute including all regulations and amendments made under that statute or regulation(s) in force from time to time and any statute or regulation that supplements or supersedes such statute or regulation(s)

### **PART 3**

## OVERVIEW OF THE PROPOSAL

### Purpose of the Proposal

14. The purpose of this Proposal is to effect a compromise and arrangement of all Claims against COMMERX CORPORATION, other than the Unaffected Claims, with a view to increasing the recovery for all stakeholders (excluding claims owing to the Unaffected Creditors) while reducing the uncertainties, risks, costs, delays and possible losses for all Creditors that will otherwise occur. COMMERX CORPORATION has concluded, and the Proposal Trustee agrees, that the general body of creditors will obtain a greater and/or sooner return on their Claims if this Proposal is approved than would result from a forced liquidation of its Assets.
15. Further, the Proposal will allow COMMERX CORPORATION to continue operations so as to avoid or minimize any adverse impact on current customers and to allow COMMERX CORPORATION the opportunity to retain and refer business to its established network of suppliers and contractors.
16. Creditors should review this Proposal before voting to accept or reject this Proposal. The transactions contemplated by this Proposal are to be implemented under the Act.

### Effect of the Proposal

17. This Proposal restructures the affairs of COMMERX CORPORATION and amends the terms of any and all agreements between COMMERX CORPORATION and the Creditors, excluding the Unaffected Creditors, existing as at the Effective Date and provides the essential terms on which all Claims will be fully and finally resolved and settled. All Creditors will be stayed, excluding Unaffected Creditors, from commencing or continuing any proceeding or remedy against COMMERX CORPORATION or any of its property or Assets in respect of a Claim including, without limitation, any proceeding or remedy to recover payment of any monies owing to Creditors, to recover to enforce any judgment against COMMERX CORPORATION in respect of a Claim or to commence any formal proceedings against it other than as provided for under this Proposal.
18. For greater certainty, any and all Claims by the Unaffected Creditors remain valid and outstanding and shall not be compromised as part of the Proposal or affected in any way.
19. This Proposal, if approved, will, as of the Effective Date, be binding on COMMERX CORPORATION and the Unsecured Creditors.

## PART 4

### CLASSIFICATION AND TREATMENT OF CLAIMS

#### Classes of Creditors

20. There will be one class of creditor voting on the Proposal:  
Class 1 – All Unsecured Creditors with Proven Claims

### Amendments to Agreements

21. Notwithstanding the terms and conditions of all agreements or other arrangements with Creditors entered into before the Filing Date, all such agreements or other arrangements will be deemed to be amended to the extent necessary as of the Effective Date to give effect to all the terms and conditions of this Proposal. In the event of any conflict or inconsistency between the terms of such agreements or arrangements and the terms of this Proposal, the terms of this Proposal will govern. All Creditors will provide such acknowledgements, agreements, discharges or other documentation as may be necessary to give effect to the intent of this Proposal.

### Treatment of Claims

22. For the purposes of this Proposal, each Unsecured Creditor will receive the treatment provided for in this Proposal on account of such Claim. During the Proposal Period, and provided COMMEX CORPORATION is not in default hereunder, each Creditor will be stayed from commencing or continuing any proceeding or remedy against COMMEX CORPORATION or its property based upon a Claim existing on or before the Filing Date, including, without limitation, any proceeding or remedy to recover payment of such Claim, to realize against any security granted in respect of such Claim, to recover or enforce a judgment against COMMEX CORPORATION in respect of such Claim or to initiate any proceedings against it in respect of such Claim, other than an application or proceeding in connection with this Proposal.

### Claims Bar Date

23. The Proposal Trustee shall consider any Claims lodged by a Creditor up to the date and time of the Creditors' Meeting ("Claims Bar Date") to consider the Proposal after which no further Claims shall be allowed in the Proposal. In the event a Claim is not filed with the Proposal Trustee prior to the Claims Bar Date, the Claim shall be forever barred and shall not be considered for acceptance as a Proven Claim forming part of this Proposal, or at all, subject to any order of the Court allowing such Claim.
24. For greater certainty, only Claims filed with the Proposal Trustee of COMMEX CORPORATION prior to the commencement of the Creditors' Meeting shall be considered as Claims by COMMEX CORPORATION and the Proposal Trustee.

### Valuation and Treatment of Claims

25. COMMEX CORPORATION and the Proposal Trustee reserve the right to seek the assistance of the Court in valuing the Claim of any Creditor, if required, to ascertain the result of any vote on the Proposal or the amount payable or to be distributed to such Creditor under the Proposal, as the case may be.
26. CRA claims for employee source deductions (but not GST or income tax payable claims generally) which are proven, will be paid in full without including interest or and penalties calculated through to the Filing Date within 6 months of Court approval of the Proposal as required by S. 60(1.1) of the Act. Notwithstanding the foregoing, COMMEX CORPORATION will make regular monthly payments in satisfaction thereof over the six month period following Court approval. COMMEX CORPORATION further agrees to comply with prescribed filing and remittance requirements over the term of the Proposal.

27. Upon the Approval Order being made, all amounts owing by COMMERX CORPORATION to Unsecured Creditors shall be settled and extinguished as per the following payment schedule:
- (a) Unsecured Creditors with Proven Claims will receive 100% of their Proven Claim, paid as follows:
    - (i) By December 1, 2019, all Unsecured Creditors with Proven Claims will receive an initial payment equal to the lesser of: 100% of their Proven Claims or \$2,000.00; and
    - (ii) Quarterly prorated payments starting March 1, 2020 over a two year period in respect of the balance of Unsecured Creditors' Proven Claims not satisfied from the initial payment above. Payoff could be sooner if positive cash flow allows. There will be no costs or interest accruing after the Filing Date payable to Unsecured Creditors.

#### **Effect of Payment**

28. The Unsecured Creditors will accept payment provided for in this Proposal in complete satisfaction of all their claims, certificates of pending litigation, execution or any similar charges or actions or proceedings in respect of such Claims will have no effect in law or equity against the property, Assets and undertakings of COMMERX CORPORATION. Upon the making of all payments provided for in the Proposal, any and all such certificates of pending litigation, executions or other similar charges or actions will be discharged, dismissed or vacated without costs to COMMERX CORPORATION.

#### **Superintendent's Levy**

29. The Superintendent's levy of 5% will be paid as required pursuant to s. 147 and 60(4) of the Act on all distributions to Unsecured Creditors under this Proposal.

#### **Payment of Fees**

30. All proper fees and expenses of the Proposal Trustee and reasonable legal and other professional fees on and incidental to the proceedings arising out of this Proposal and in connection with the preparation of this Proposal and in the administration of this Proposal, including advice to COMMERX CORPORATION in connection therewith, will be paid in priority to all claims of Unsecured Creditors.

### **PART 5 PROPOSAL TRUSTEE**

#### **Confirmation of Appointment**

31. The Proposal Trustee is acting in its capacity as Proposal Trustee and not in its personal capacity and no officer, director, employee or agent of the Proposal Trustee shall incur any obligations or liabilities in connection with this Proposal or in connection with the business or liabilities of COMMERX CORPORATION.

### Meeting of Creditors

32. The Creditors' Meeting will be held at 11:00 a.m. on Friday, September 6, 2019 at the office of Bennett Jones LLP located at 4500 Bankers Hall East, 855 – 2nd Street SW, Calgary, Alberta unless adjourned by the Proposal Trustee. The Proposal Trustee shall preside as the chair of the Creditors' Meeting and will decide all matters relating to the conduct of the Creditors' Meeting. The only persons entitled to attend the Creditors' Meeting are those persons, including the holders of proxies, entitled to vote at the Creditors' Meeting. Any other person may be admitted on invitation of the Proposal Trustee or with the consent of the Creditors.

### Proofs of Claim

33. All Creditors will be required to submit a proof of claim to the Proposal Trustee and the face amount thereof will govern for the purpose of voting at the Meeting of Creditors to be held to consider this Proposal, unless otherwise disputed or disallowed by the chair of the meeting. After the Creditors' Meeting, the Proposal Trustee will examine all proofs of claim and may require further evidence and support of the Claim or the security therefore. The provisions of s.135 of the Act will apply to all proofs of claim submitted by Creditors.

### Conditions Precedent

34. As provided for in the Act, the payments and arrangements set out in this Proposal will not take effect unless the conditions set forth below are substantially satisfied on or before the Effective Date:
- a. All approvals and consents to the Proposal that may be required have been obtained;
  - b. The Approval Order has been issued; and
  - c. No order or decree restraining or enjoining the consummation of the transactions contemplated by this Proposal will have been issued.

### Application for Approval Order

35. The Proposal Trustee will apply forthwith to the Court for the Approval Order upon approval by the Unsecured Creditors of this Proposal.

### Discharge of Proposal Trustee

36. For greater certainty, the Proposal Trustee will not be responsible or liable for funding any payments contemplated herein nor for any obligations of COMMERCIAL CORPORATION and will be exempt from any personal liability in fulfilling any duties or exercising any powers conferred upon it by this Proposal unless such acts have been carried out in bad faith and constitute a wilful or wrongful act or default. The Proposal Trustee will monitor and report upon the various payments to creditors required herein and shall be entitled to its discharge upon COMMERCIAL CORPORATION making its final payment required herein.



**PART 6  
RELEASE**

37. On the Effective Date, COMMERX CORPORATION including the officers and directors shall be released and discharged from any and all demands, claims, actions, causes of action, counterclaims, suits, debts, sums of money, accounts, covenants, damages, judgments, expenses, executions, and other recoveries on account of any liability, obligation, demand or cause of action owing to or held by any of the Creditors or any Claims by the Creditors.

**PART 7  
SUPPORT AGREEMENTS**

38. COMMERX CORPORATION has reviewed the terms of this Proposal with numerous of its Unsecured Creditors and has obtained numerous binding Support Agreements to vote in favour of the terms of this Proposal.

**PART 8  
MISCELLANEOUS**

**Modification**

39. COMMERX CORPORATION may propose amendments to the Proposal at any time prior to the conclusion of the Creditors' Meeting provided that any such amendment, in the opinion of COMMERX CORPORATION, does not reduce the rights and benefits given to Creditors pursuant to the Proposal before such amendment and that any and all amendments shall be deemed to be a part of and incorporated into the Proposal.

**Further Actions**

40. COMMERX CORPORATION and the Creditors will execute and deliver all such documents and instruments and do all such acts and things as may be necessary or desirable to carry out the full intent and meaning of this Proposal and to give effect to the transactions contemplated hereby.

**Performance**

41. All obligations of COMMERX CORPORATION under this Proposal will commence as of the Effective Date. All terms of this Proposal will take effect as of the Effective Date.

**Binding Effect**

42. The provisions of this Proposal will be binding on the Creditors and COMMERX CORPORATION and their respective heirs, executors, administrators, successors and assigns, upon issuance of the Approval Order after all appeal periods have expired

**Compromise Effective for all Purposes**

43. The payment, compromise or other satisfaction of any Claim under this Proposal shall be binding upon such Creditor, its heirs, executors, administrators, successors and assigns, for all purposes and shall also be effective to relieve any third party directly or indirectly liable for such indebtedness, whether as guarantor, indemnitor, tenant, director, joint covenantor, principal or otherwise

**Fraudulent Conveyance**

44. Section 91 through and including s. 101 of the BIA do not apply to this Proposal

**Governing Law**

45. This Proposal will be governed by and construed in accordance with the laws of the Province of Alberta and the laws of Canada applicable therein.
46. Any notice, certificate, consent, determination or other communication required or permitted to be given or made under this Proposal shall be in writing and shall be effectively given and made if (i) delivered personally; (ii) sent by prepaid courier service; or (iii) sent by email transmission, in each case to the applicable address set out below:

(a) if to COMMERX CORPORATION:

robert.kulhawy@commerx.com and restructure@commerx.com

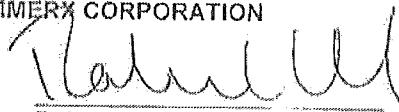
(b) if to the Proposal Trustee:

Hardie & Kelly Inc.  
110, 5800 – 2<sup>nd</sup> Street SW  
Calgary, AB, T2H 0H2  
mkelly@insolvency.net  
Attention: Marc Kelly

DATED at Calgary, in the Province of Alberta, this ~~16<sup>th</sup>~~6<sup>th</sup> day of August~~September~~, 2019.

COMMERX CORPORATION

Per:



Robert Kulhawy  
President & CEO

"I have the authority to bind the corporation"



# **EXHIBIT "E"**

Hardie & Kelly Inc  
110, 5800 2nd Street SW  
Calgary AB T2H 0L2  
Phone: (403) 777-9999 Fax: (403) 640-0391  
E-mail: claims@insolvency.net

District of: Alberta  
Division No. 02 Calgary  
Court No. 25 2483059  
Estate No. 25-2483059

FORM 31  
Proof of Claim  
(Sections 50.1, 81.5, 81.6, Subsections 65.2(4), 81.2(1), 81.3(8), 81.4(8), 102(2), 124(2), 128(1),  
and Paragraphs 51(1)(e) and 66.14(b) of the Act)

In the matter of the proposal of  
Commerx Corporation  
of the City of Calgary, in the Province of Alberta

All notices or correspondence regarding this claim must be forwarded to the following address:

c/o Burnet, Duckworth & Palmer LLP- 2400, 525 8th Avenue SW, Calgary, AB T2P 1G1

In the matter of the proposal of Commerx Corporation of the City of Calgary in the Province of Alberta and the claim of  
Fortitude Financial Investments Inc., creditor.

I, Rob Follows (name of creditor or representative of the creditor), of the city of Bridgetown in the province of  
Barbados, do hereby certify:

1. That I am a creditor of the above named debtor (or I am a Director (position/title) of Fortitude Financial Investments Inc.  
creditor)

2. That I have knowledge of all the circumstances connected with the claim referred to below.

3. That the debtor was, at the date of the filing of a Notice of a Notice of Intention to Make a Proposal, namely the 7th day of March 2019, and  
still is, indebted to the creditor in the sum of \$ 1,789,060.58 USD, as specified in the statement of account (or affidavit) attached and marked  
Schedule "A", after deducting any counterclaims to which the debtor is entitled. (The attached statement of account or affidavit must specify the  
vouchers or other evidence in support of the claim.)

4. (Check and complete appropriate category.)

A. UNSECURED CLAIM OF \$ 1,789,060.58 USD / 2,366,658.79 CAD

(other than as a customer contemplated by Section 262 of the Act)

That in respect of this debt, I do not hold any assets of the debtor as security and  
(Check appropriate description.)

Regarding the amount of \$ \_\_\_\_\_ I claim a right to a priority under section 136 of the Act.

Regarding the amount of \$ \_\_\_\_\_ I do not claim a right to a priority.  
(Set out on an attached sheet details to support priority claim.)

B CLAIM OF LESSOR FOR DISCLAIMER OF A LEASE \$ \_\_\_\_\_

That I hereby make a claim under subsection 65.2(4) of the Act, particulars of which are as follows:

(Give full particulars of the claim, including the calculations upon which the claim is based.)

C SECURED CLAIM OF \$ \_\_\_\_\_

That in respect of this debt, I hold assets of the debtor valued at \$ \_\_\_\_\_ as security, particulars of which are as follows:  
(Give full particulars of the security, including the date on which the security was given and the value at which you assess the security, and  
attach a copy of the security documents.)

D CLAIM BY FARMER, FISHERMAN OR AQUACULTURIST OF \$ \_\_\_\_\_

That I hereby make a claim under subsection 81.2(1) of the Act for the unpaid amount of \$ \_\_\_\_\_  
(Attach a copy of sales agreement and delivery receipts.)

E. CLAIM BY WAGE EARNER OF \$ \_\_\_\_\_

That I hereby make a claim under subsection 81.3(8) of the Act in the amount of \$ \_\_\_\_\_

That I hereby make a claim under subsection 81.4(B) of the Act in the amount of \$ \_\_\_\_\_

F. CLAIM BY EMPLOYEE FOR UNPAID AMOUNT REGARDING PENSION PLAN OF \$ \_\_\_\_\_

That I hereby make a claim under subsection 81.5 of the Act in the amount of \$ \_\_\_\_\_

That I hereby make a claim under subsection 81.6 of the Act in the amount of \$ \_\_\_\_\_

G. CLAIM AGAINST DIRECTOR S \_\_\_\_\_

*(To be completed when a proposal provides for the compromise of claims against directors.)*

That I hereby make a claim under subsection 50(13) of the Act, particulars of which are as follows:

*(Give full particulars of the claim, including the calculations upon which the claim is based.)*

H. CLAIM OF A CUSTOMER OF A BANKRUPT SECURITIES FIRM \$ \_\_\_\_\_

That I hereby make a claim as a customer for net equity as contemplated by section 262 of the Act, particulars of which are as follows:

*(Give full particulars of the claim, including the calculations upon which the claim is based.)*

5. That, to the best of my knowledge, ~~\_\_\_\_\_ is/are not/are~~ the above-named creditor is not (is/is not) related to the debtor within the meaning of section 4 of the Act, and has not (have/has/have not/has not) dealt with the debtor in a non-arm's-length manner.

6. That the following are the payments that I have received from, and the credits that I have allowed to, and the transfers at undervalue within the meaning of subsection 2(1) of the Act that I have been privy to or a party to with the debtor within the three months (or, if the creditor and the debtor are related within the meaning of section 4 of the Act or were not dealing with each other at arm's length, within the 12 months) immediately before the date of the initial bankruptcy event within the meaning of Section 2 of the Act: (Provide details of payments, credits and transfers at undervalue.)

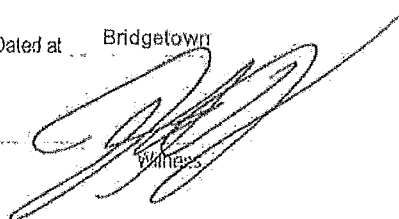
7. (Applicable only in the case of the bankruptcy of an individual.)

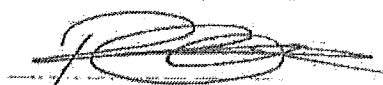
Whenever the trustee reviews the financial situation of a bankrupt to redetermine whether or not the bankrupt is required to make payments under section 68 of the Act, I request to be informed, pursuant to paragraph 68(4) of the Act, of the new fixed amount or of the fact that there is no longer surplus income.

I request that a copy of the report filed by the trustee regarding the bankrupt's application for discharge pursuant to subsection 170(1) of the Act be sent to the above address.

Dated at Bridgetown

this 5th day of September 2019

  
Witness

  
Fofitude Financial Investments Inc.  
Creditor

Phone Number: \_\_\_\_\_  
Fax Number: \_\_\_\_\_  
E-mail Address: rob@stscapital.com

NOTE If an affidavit is attached, it must be sworn to by the creditor or modified to take affidavits

WARNINGS A trustee may pursuant to subsection 172(1) of the Act require a security on payment to the secured creditor of the debt or the value of the security as assessed in a proof of security by the secured creditor:

Subsection 28(1) of the Act provides that a creditor may require a security for a claim, proof, declaration or statement of account

## SCHEDULE "A"

Fortitude Financial Investments Inc. ("**Fortitude**") contingent claim in the matter of the proposal of Commerx Corporation ("**Commerx**") (Estate No. 25-2483059).

Fortitude understands that, concurrent with these proposal proceedings, Commerx has entered into a mediation (the "**Mediation**") with Lotus Innovations Private Equity Fund also known as Lotus Innovations LLC ("**Lotus**"). Fortitude further understands that Commerx's goal is to have the following transaction unwound, which Fortitude understands was not ever fully completed:

- (a) the purchase by Lotus of 51% of the Class "A" voting shares in the capital of Commerx from Robert Kulhawy for USD\$2,000,000;
- (b) the extension by Lotus of a USD\$3,000,000 working line of credit to Commerx; and
- (c) the investment of additional equity into Commerx,

(collectively, the "**Lotus Transaction**").

Commerx and Robert Kulhawy seek to have the Lotus Transaction unwound without fully including and advising Fortitude despite Fortitude entering into the agreements appended hereto in support of Commerx and Kulhawy's efforts to complete the Lotus Transaction. Further, Fortitude understands that the success of the Mediation may be tied to the renegotiation of the amounts owing to Fortitude.

In the event that Lotus Transaction is unwound, the agreements appended hereto ought to also be unwound such that Fortitude is effectively Commerx's largest unsecured creditor.

Fortitude seeks to have its claim included in the Proposal so that it can continue to be a patient and supportive creditor of Commerx.

	18%	
	to Jun 30/17	
<b>Start Date</b>		
5-Jan-16	\$	1,000,000.00
<b>Interest Earned</b>		
5-Feb-16	\$	15,000.00
5-Mar-16	\$	15,000.00
5-Apr-16	\$	15,000.00
5-May-16	\$	15,000.00
5-Jun-16	\$	15,000.00
5-Jul-16	\$	15,000.00
5-Aug-16	\$	15,000.00
5-Sep-16	\$	15,000.00
5-Oct-16	\$	15,000.00
5-Nov-16	\$	15,000.00
5-Dec-16	\$	15,000.00
5-Jan-17	\$	17,475.00
5-Feb-17	\$	17,475.00
5-Mar-17	\$	17,475.00
5-Apr-17	\$	17,475.00
5-May-17	\$	17,475.00
5-Jun-17	\$	17,475.00
30-Jun-17	\$	14,562.50
	\$	284,412.50
<b>Interest Paid</b>		
22-Jan-16	\$	40.00
1-Feb-16	\$	12,076.75
24-Feb-16	\$	14,980.00
29-Mar-16	\$	14,980.00
27-Apr-16	\$	14,980.00
31-May-16	\$	14,980.00
29-Jun-16	\$	14,980.00
	\$	87,016.75
<b>Total</b>	\$	1,197,395.75

	24%	
	after Jun 30/17	
<b>Start Date</b>		
	\$	1,197,395.75
<b>Interest Earned</b>		
1-Aug-17	\$	23,947.92
1-Sep-17	\$	23,947.92
1-Oct-17	\$	23,947.92
1-Nov-17	\$	23,947.92
1-Dec-17	\$	23,947.92
1-Jan-18	\$	23,947.92
1-Feb-18	\$	23,947.92
1-Mar-18	\$	23,947.92
1-Apr-18	\$	23,947.92
1-May-18	\$	23,947.92
1-Jun-18	\$	23,947.92
1-Jul-18	\$	29,216.46
1-Aug-18	\$	29,216.46
1-Sep-18	\$	29,216.46
1-Oct-18	\$	29,216.46
1-Nov-18	\$	29,216.46
1-Dec-18	\$	29,216.46
1-Jan-19	\$	29,216.46
1-Feb-19	\$	29,216.46
1-Mar-19	\$	29,216.46
7-Mar-19	\$	5,654.80
	\$	532,029.97
	\$	4,728.92
	\$	12,340.63
	\$	42,565.31
	\$	59,634.86
<b>Total</b>	\$	1,789,060.58

BDP inv #203426932 - paid Mar 26/19  
BDP inv #203437987 - paid Mar 26/19  
DS Lawyers paid May 9/19



## LOAN AGREEMENT

This Loan Agreement ("Agreement"), dated as of January 5<sup>th</sup>, 2016 and is made between **COMMERX CORPORATION**, an Alberta corporation, as borrower ("Borrower") and **FORTITUDE FINANCIAL INVESTMENTS INC.**, as lender ("Lender")

### RECITALS:

WHEREAS Lender has agreed to provide Borrower with a loan in the amount of **ONE MILLION UNITED STATES DOLLARS (US\$1,000,000.00)** pursuant to the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the making of the Loan (as defined below) and of these premises and other good and valuable consideration, the adequacy and receipt of which are hereby acknowledged by the parties, Lender and Borrower covenant and agree as follows:

### ARTICLE 1 DEFINITIONS

The following terms when used in this Agreement, shall have the meanings indicated in this Article:

- 1.1 "Change of Control" means the Guarantor shall cease to beneficially, directly or indirectly, hold or exercise control or direction over and/or have the right to hold or exercise control or direction over (whether such right is exercisable immediately or only after the passage of time) more than 50% of the issued and outstanding voting shares of Borrower.
- 1.2 "Closing Date" means the date on which the conditions precedent set forth in Article IV have been satisfied or waived by Lender.
- 1.3 "Effective Date" means the date first written above.
- 1.4 "Events of Default" are defined in Article V.
- 1.5 "Governmental Authority" means any applicable local, provincial, state, commonwealth, federal, foreign, territorial, or other judicial or governmental department, commission, board, bureau, agency, authority or instrumentality.
- 1.6 "Guarantee" means the Unconditional Guarantee dated on or about the date hereof, given by Guarantor to Lender, as additional security for the Loan.
- 1.7 "Guarantor" means Robert E Kulhawy.
- 1.8 "Indebtedness" means all present and future obligations and indebtedness of a Person, whether direct or indirect, absolute or contingent, including all indebtedness for borrowed money, all obligations which are due and payable in respect of swap or hedging arrangements and all other liabilities which in accordance with GAAP would appear on the liability side of a balance sheet (other than items of capital, retained earnings and surplus or deferred tax reserves).
- 1.9 "Laws" means all means all applicable provisions of federal, provincial, state or local laws, statutes, rules, regulations, official directives and orders of any level of any Governmental Authority.

- 1.10 **"Loan Documents"** means this Agreement, the Guarantee, the Security Agreement, and any and all other agreements, documents, financing statements, and instruments executed and delivered pursuant to the terms of this Agreement, and any future amendments hereto, or restatements hereof, together with any and all renewals, extensions, and restatements of, and amendments and modifications to, any such agreements, documents, and instruments.
- 1.11 **"Material Adverse Effect"** means a material adverse effect on the condition (financial or otherwise), property, assets, operations, business or prospects of the Obligors taken as a whole, or a material adverse effect on the ability of the Obligors taken as a whole to repay the Obligations or on the ability of an Obligor to perform its obligations under any of this Agreement or any other Loan Document to which it is a party.
- 1.12 **"Maturity Date"** means the date falling eighteen months after the Effective Date.
- 1.13 **"Obligations"** means all obligations, indebtedness, liabilities, covenants, agreements, and undertakings of Borrower to Lender (including but not limited to principal, interest and all costs on a full indemnity basis) incurred pursuant to or in connection with the Loan Documents.
- 1.14 **"Obligors"** means Borrower and the Guarantor.
- 1.15 **"Person"** means any natural person, corporation, firm, joint venture, partnership, corporation, association, enterprise, trust or other entity or organization, or any government or political subdivision or any agency, department or instrumentality thereof.
- 1.16 **"Security Agreements"** means a mortgage duly registered in each applicable jurisdiction, over real property situated at:
- Calgary:  
107 Pump Hill Cres SW, Calgary AB T2V 4P4  
Legal Description: 7510392;32;3
- Sicamous:  
703, 326 Mara Lake Lane, Sicamous BC V0E 2V1  
Strata Lot 53, Unit 703, Strata Plan EPS104, D.L. 496, Kamloops Division Yale District
- to be given by Guarantor to Lender as security for its obligations under the Guarantee.
- 1.17 **"Security Interest"** means a mortgage, charge, floating charge, pledge, hypothec, assignment, lien, interest claim, encumbrance, conditional sale agreement or other title retention agreement or other security interest or arrangement of any kind intended to create a security interest in substance, regardless of whether the Person creating the interest retains an equity of redemption, and any agreement to provide or enter into at any time or on the happening of any event such a security interest or arrangement.
- 1.18 **"Taxes"** means all taxes, assessments, fees, levies, imposts, duties, deductions, withholdings or other charges of any nature whatsoever from time to time or at any time imposed by any Laws or by any Governmental Authority.

**ARTICLE 2**  
**LOAN: TERMS OF PAYMENT**

- 2.1 **Loan.** By and subject to the terms of this Agreement, Lender agrees to lend to Borrower and Borrower agrees to borrow from Lender the principal sum of **ONE MILLION UNITED STATES DOLLARS (US\$1,000,000.00)** (the "**Loan**"). The obligations of Borrower under the Loan will be guaranteed in whole or in part by pursuant to the Guarantee. Amounts disbursed to or on behalf of Borrower pursuant to the Loan shall be used to finance general corporate purposes of Borrower.
- 2.2 **Loan Interest.** The amount of the Loan outstanding at any time, and from time to time, and any overdue interest, shall bear interest at the rate of 18% per annum, both before and after maturity, demand and judgment. If an Event of Default has occurred, then for and during the duration of any such Event of Default, then the Loan outstanding, and any overdue interest, shall bear interest at the rate of 24% per annum. Borrower and Lender agree that such interest is a payment of liquidated damages, which are a genuine pre-estimate of the damages which Lender will suffer or incur as a result of an Event of Default, and Borrower irrevocably waives any right it may have to raise as a defence that any such liquidated damages are excessive or punitive or a penalty.
- 2.3 **Loan Repayment.** Principal and accrued interest on the Loan shall be all due and payable on the Maturity Date. The Loan and all accrued interest shall, if demanded by Lender, be immediately due and payable prior to maturity, upon the occurrence of an Event of Default.
- 2.4 **Loan Documents.** Borrower shall deliver to Lender concurrently with this Agreement the Security Agreement, the Guarantee and any other Loan Documents.
- 2.5 **Interest Act Canada.** Each interest rate which is calculated under this Agreement on any basis other than a full calendar year (the "**Deemed Interest Period**") is, for the purposes of the *Interest Act* (Canada), equivalent to a yearly rate calculated by dividing such interest rate by the actual number of days in the Deemed Interest Period, then multiplying such result by the actual number of days in the calendar year (365 or 366).
- 2.6 **Maximum Returns.** In the event that any provision of this Agreement would oblige Borrower to make any payment of interest or any other payment which is construed by a court of competent jurisdiction to be interest in an amount or calculated at a rate which would be prohibited by law or would result in a receipt by Lender of interest at a criminal rate (as such terms are construed under the *Criminal Code* (Canada)), then notwithstanding such provision, such amount or rate shall be deemed to have been adjusted *nunc pro tunc* to the maximum amount or rate of interest, as the case may be, as would not be so prohibited by law or so result in a receipt by Lender, of interest at a criminal rate.
- 2.7 **Prepayment.** The Loan may be prepaid in whole or in part (subject to the notice periods provided hereunder) only upon payment of an amount (which Lender and Borrower agree is a genuine pre-estimate of damages and not a penalty) equal to three (3) months' interest calculated on the amount prepaid provided that in connection with any prepayment of the Loan at any time prior to six (6) months after the advance thereof, Borrower shall pay to Lender such additional amount (which Lender and Borrower agree is a genuine pre-estimate of damages and not a penalty) equal to the aggregate amount of cash interest that Borrower would have been required to pay under the Loan with respect to the principal amount of the Loan prepaid during the period from the date of such prepayment to and including the date falling six (6) months after the advance thereof if such principal had not been so repaid.

2.8 Conditions Precedent. Lender's obligation to make the disbursement of the Loan shall be subject to satisfaction of each of the following conditions precedent:

- (a) Lender shall have received fully executed originals of all Loan Documents, including the Guarantee and any other documents, instruments, policies, and other materials requested by Lender under the terms of this Agreement or any of the other Loan Documents provided that Borrower shall have sixty (60) days from the date of this Agreement to provide the Security Agreements in form and substance satisfactory to Lender with all registrations in all applicable jurisdictions and legal opinions respecting such Security Agreements as Lender may reasonably require.
- (b) There shall exist no Event of Default as defined in this Agreement or any of the other Loan Documents or any event, omission or failure of condition which would constitute a Default after notice or lapse of time, or both.
- (c) The representations and warranties contained in the Loan Documents are and will continue to be true and correct in every material respect as if made by each Obligor contemporaneously with the advance of the Loan.
- (d) All priority agreements, Personal Property Security Act acknowledgments, comfort letters or estoppel certificates from other secured creditors of the Obligors, that Lender may reasonably require will have been duly executed and unconditionally delivered by all parties thereto.
- (e) Lender will have completed and be satisfied with the results of its financial, business, legal and other due diligence enquiries including the corporate, capital, tax, legal and management structure and cash management systems of the Obligors, and will be satisfied, in its sole judgment, with the nature and status of all securities, environmental, health and safety matters, organizational and capital structure matters involving or affecting the Obligors.
- (f) Lender will have received any financial statements, reports and other information relating to the Obligors, that it will have reasonably requested.
- (g) An event or circumstance having a Material Adverse Effect will not have occurred.
- (h) Lender will have received payment in full of all fees and out of pocket expenses paid by or incurred by Lender in connection with the Loan Documents (including reasonable fees and expenses of legal counsel to Lender).
- (i) STS Capital Services Inc. will have received, duly executed and in form and substance satisfactory to it a retainer agreement with respect to the proposed sale of all or part of the Guarantor's shares in the capital of Newterra Ltd. or any of its affiliates;
- (j) Lender will have received, duly executed and in form and substance satisfactory to it:
  - (i) a copy of the constating documents, partnership agreement and borrowing by laws, as applicable, of each Obligor, and a copy of the resolutions of the board of directors of each Obligor authorizing the execution, delivery and performance of the Loan Documents, certified in each case by a senior officer of such Obligor

and ratified where necessary by its respective shareholders or partners, as applicable;

- (ii) a certificate as to general corporate or partnership, as applicable, information and other matters for each Obligor, which will contain a statement of the names of the officers and directors of each Obligor and the specimen signatures of those officers who will execute and deliver the Loan Documents on behalf of such Obligor to Lender; and
- (iii) any additional supporting documents that Lender or its counsel may reasonably request.

### ARTICLE 3 REPRESENTATIONS AND WARRANTIES

Borrower represents and warrants to Lender, as follows:

- 3.1 **Organization and Standing.** Borrower is a corporation duly incorporated and validly subsisting under the laws of the Province of Alberta. Borrower has full corporate power and authority to conduct its business as presently conducted, and Borrower has the full power and authority to enter into and perform its obligations under the Loan Documents and to carry out the transactions contemplated hereby and thereby.
- 3.2 **Authority.** The execution, delivery and performance by Borrower of the Loan Documents to which it is a party, and the consummation by Borrower of the transactions contemplated by the Loan Documents to which it is a party, have been duly authorized by Borrower. The Loan Documents to which Borrower is a party have been duly executed and delivered by, and constitute valid and binding obligations of Borrower enforceable against it in accordance with their respective terms, subject as to enforcement of remedies to applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting generally the enforcement of creditors' rights and subject to a court's discretionary authority with respect to the granting of a decree ordering specific performance or other equitable remedies.
- 3.3 **Noncontravention.** The execution of and performance of the transactions contemplated by the Loan Documents to which Borrower is a party and compliance with the provisions hereof by Borrower will not (a) conflict with or violate any provision of the organizational documents of Borrower, (b) require on the part of Borrower any filing with, or any permit, authorization, consent or approval of, any court, arbitrational Governmental Authority, administrative agency or commission or other Governmental Authority, (c) conflict with, result in a breach of, constitute (with or without due notice or lapse of time or both) a default under, result in the acceleration of, create in any party the right to accelerate, terminate, modify or cancel, or require any notice, consent or waiver under, any contract, lease, sublease, license, sublicense, franchise, permit, indenture, agreement or mortgage for borrowed money, instrument of indebtedness, Security Interest or other arrangement to which Borrower is a party or by which Borrower is bound or to which its assets are subject, (d) result in the imposition of any Security Interest upon any assets of Borrower other than in favor of Lender or (e) violate any order, writ, injunction, decree, statute, rule or regulation applicable to Borrower or any of its properties or assets.
- 3.4 **Governmental Consents.** No consent, approval, order or authorization of, or registration, qualification, designation, declaration or filing with, any Governmental Authority is required on the part of Borrower in connection with the execution and delivery of the Loan Documents.

- 3.5 **Compliance.** Borrower has, in all material respects, complied with all laws, regulations and orders applicable to its present and proposed business and has all material permits and licenses required thereby.
- 3.6 **Litigation.** Except as disclosed to Lender in writing, there are no claims, actions, suits, or proceedings pending, or to Borrower's knowledge threatened, against any Obligor.
- 3.7 **Tax Returns, Payments and Elections.** Borrower has filed all tax returns and reports as required by law. These returns and reports are true and correct in all material respects.
- 3.8 **Financial Condition.** All financial statements and information heretofore and hereafter delivered to Lender by Borrower, including, without limitation, information relating to the financial condition of Borrower, the partners, joint venturers or members of Borrower, and/or Guarantor, fairly and accurately represent the financial condition of the subject thereof and have been prepared (except as noted therein) in accordance with generally accepted accounting principles consistently applied. Borrower acknowledges and agrees that Lender may request and obtain additional information from third parties regarding any of the above, including, without limitation, credit reports.
- 3.9 **Disclosure.** Neither this Agreement nor any other statements, documents or certificates made or delivered in connection herewith or therewith contains any untrue statement of a material fact or omits to state a material fact necessary to make the statements herein or therein not misleading.
- 3.10 **Continuing Nature of Representations and Warranties.** Each of the representations and warranties of Borrower contained in this Agreement shall survive the execution of the Loan Agreement, and shall be continuing until such time as all Obligations shall have been fully paid.

#### ARTICLE 4 AFFIRMATIVE COVENANTS OF BORROWER

While this Agreement is in effect, Borrower covenants and agrees as follows unless Lender shall otherwise have consented in writing (such consent not to be unreasonably withheld or delayed):

- 4.1 **Taxes.** Borrower shall promptly pay, or cause to be paid, when due and payable, any and all Taxes assessed against Borrower, or which are or become payable by Borrower, as and when due and payable, except those taxes which it contests in good faith and for which adequate reserves have been established.
- 4.2 **Changes in Facts or Circumstances.** Borrower shall promptly notify Lender of any material change in any fact or circumstance represented or warranted by Borrower in this Agreement or any of the Loan Documents.
- 4.3 **Further Assurances.** Upon Lender's request and at Borrower's sole cost and expense, Borrower shall, and shall cause any person or entity affiliated with Borrower to, execute, acknowledge and deliver any other instruments, including replacement promissory notes, guaranties or other loan documents, and perform any other acts necessary, desirable or proper, as determined by Lender, to correct clerical errors or omissions in any loan closing documentation, to replace any lost or destroyed loan closing documentation, or to carry out the purposes of this Agreement and the other Loan Documents or to perfect and preserve any liens and security titles created by the Loan Documents. This obligation shall survive any foreclosure or sale of any of the collateral for the Loan.

- 4.4 **Assignment.** Without the prior written consent of Lender, Borrower shall not assign Borrower's interest under any of the Loan Documents, or in any monies due or to become due thereunder, and any assignment without such consent shall be void. In this regard, Borrower acknowledges that Lender would not make this Loan except in reliance on Borrower's expertise, reputation, prior experience in developing and constructing real property, Lender's knowledge of Borrower, and Lender's understanding that this Agreement is more in the nature of an agreement involving personal services than a standard loan where Lender would rely on security which already exists.
- 4.5 **Indemnity.** Borrower hereby agrees to defend, indemnify and hold harmless Lender, its directors, officers, employees, agents, successors and assigns for, from and against any and all losses, damages, liabilities, claims, actions, judgments, court costs and legal or other expenses (including, without limitation, attorneys' fees and expenses) which Lender may incur as a direct or indirect consequence of: (a) the purpose to which borrower applies the Loan proceeds; (b) the failure of Borrower to perform any obligations as and when required by this Agreement or any of the other Loan Documents; (c) any failure at any time of any of Borrower's representations or warranties to be true and correct; or (d) any act or omission by Borrower, any constituent partner or member of Borrower. The foregoing indemnitees shall be entitled to appear in any action or proceeding with counsel of their own choice, and/or to settle or compromise any claim asserted against them. Borrower shall immediately pay to any indemnitee upon demand any amounts owing under this indemnity, together with interest from the date the indebtedness arises until paid at the rate of interest applicable to the principal balance of the note. Borrower's duty and obligations to defend, indemnify and hold harmless the indemnitees described herein shall survive cancellation of the Loan Agreement and repayment of the Obligations.
- 4.6 **Notice of Default.** Borrower shall promptly notify Lender in writing of any condition or event known to Borrower which constitutes an Event of Default under this Agreement, or any of the other Loan Documents or which, with or without the giving of notice or the lapse of time or both, would constitute any such Event of Default, and of any litigation or threatened litigation.
- 4.7 **Loan Documents.** Each Obligor shall abide by, perform and be governed and restricted by, each and every one of the terms and provisions of the Loan Documents and any supplement or amendment thereto or any instrument which may, at any time or from time to time, be executed by one or more of the parties hereto. Each of the Loan Documents shall be in form and substance acceptable to Lender.
- 4.8 **Additional Covenants.**
- (a) Borrower will pay to Lender when due all amounts (whether principal, interest or other sums) owing by it to Lender from time to time.
  - (b) Borrower will maintain its valid existence as a corporation or partnership, as the case may be, and in all material respects, will maintain all licenses and authorizations required from regulatory or governmental authorities or agencies to permit it to carry on its business, including, without limitation, any licenses, certificates, permits and consents for the protection of the environment.
  - (c) Borrower will maintain its books of account and records relative to the operation of its business and financial condition in accordance with GAAP.
  - (d) Borrower will provide any information regarding its assets, operations and financial condition that Lender may from time to time reasonably require.

- (e) Borrower will maintain and defend title to all of its property and assets, will maintain, repair and keep in good working order and condition all of its property and assets and will continuously carry on and conduct its business in a proper, efficient and businesslike manner.
- (f) Borrower will maintain types and amounts of insurance satisfactory to Lender with Lender shown as first loss payee on any property insurance covering any assets on which Lender has security and additional insured, as its interest may appear, on all liability insurance, and promptly advise Lender in writing of any significant loss or damage to its property, and each Loan Party will provide evidence of insurance to Lender:
  - i) in situations where Lender has taken a fixed charge on an asset or property whether on real property or personal property; and
  - ii) in all other situations, on request.

Lender reserves the right to conduct an independent review of Borrower's insurance coverage, at the reasonable expense of Borrower.
- (g) Borrower will permit Lender, by its officers or authorized representatives at any reasonable time and on reasonable prior notice, to enter its premises and to inspect its plant, machinery, equipment and other real and personal property and their operation, and to examine and copy all of its relevant books of accounts and records.
- (h) Borrower will not create or permit to exist any mortgage, charge, lien, encumbrance or other security interest on any of its present or future assets, other than as permitted by Lender.
- (i) Borrower will not create, incur, assume or allow to exist any Indebtedness other than:
  - i) trade payables incurred in the ordinary course of business;
  - ii) any Indebtedness secured by a Security Interest approved by Lender; and
  - iii) any Indebtedness owing to Lender.
- (j) Borrower will not sell, assign, transfer, convey, lease (as lessor), contribute or otherwise dispose of, or grant options, warrants or other rights with respect to any assets except:
  - i) inventory sold, leased or disposed of in the ordinary course of business, and
  - ii) obsolete equipment which is being replaced with equipment of an equivalent value.
- (k) Borrower will not provide financial assistance (by means of a loan, guarantee or otherwise) to any Person other than as permitted under clause (i) above.
- (l) Borrower will not pay any amount to or for the benefit of shareholders or Persons associated with shareholders (within the meaning of the *Business Corporations Act* (Alberta)), whether by way of salaries, bonuses, dividends, management fees, repayment of loans or otherwise:



- i) following the occurrence of and during the continuance of any event which constitutes a breach of any provision hereof or an Event of Default; or
- ii) if making such payment would reasonably be expected to result in a breach of any provision hereof or an Event of Default.
- (m) Borrower will not redeem, purchase or otherwise acquire, retire or pay out any of its present or future share capital.
- (n) Borrower will not consent to or facilitate a Change of Control other than as consented to in writing by Lender.
- (o) Borrower will comply with all Laws.
- (p) Borrower will not enter into any transactions with its subsidiaries or affiliates for goods or services unless entered into on commercially reasonable terms.

#### ARTICLE 5 EVENTS OF DEFAULT

Borrower shall be in default of this Agreement if any one or more of the following events (each an, "Events of Default") shall occur for any reason whatsoever (whether such occurrence shall be voluntary or involuntary or come about or be affected by operation of law or pursuant to or in compliance with any judgment, decree, order, rule or regulation of any Governmental Authority) and such event shall remain uncured for fifteen (15) calendar days after Borrower has received written notice of such default from Lender:

- 5.1 If there shall occur a default under this Agreement due to a failure to make payment(s) of principal or interest as provided for herein;
- 5.2 If an Obligor shall fail or refuse to punctually and properly perform, observe and comply with any covenant, term, agreement, obligation or condition contained in this Agreement or other Loan Document to which it is a party;
- 5.3 If any statement, representation or warranty in this Agreement or any of the Loan Documents or in any writing in any other communication delivered to Lender pursuant to the Loan Documents is false, misleading or erroneous in any material respect at the time made or thereafter;
- 5.4 If any default shall have occurred and is continuing in respect of any Indebtedness of an Obligor (other than Indebtedness owing to Lender) which results in the acceleration of the payment of such Indebtedness or which permits the holder thereof to accelerate the payment of such Indebtedness and if there is a grace period applicable thereto arising under contract or otherwise, such default continues beyond the expiry of such grace period or if any lender shall demand repayment of any Indebtedness owed to it by such Obligor which is repayable on demand and such Indebtedness shall not be paid on or before the date specified by such lender for payment, and the aggregate principal amount of all such Indebtedness is at least \$100,000;
- 5.5 If any other creditor of any Obligor takes collection steps against such Obligor or all or a material part of its assets;

- 5.6 If final judgment or judgments should be entered against any Obligor for the payment of any amount of money exceeding \$100,000, and the judgment or judgments are not discharged within 30 days after entry;
- 5.7 If a Change of Control has occurred;
- 5.8 If an order is made, an effective resolution passed, or a petition is filed for the winding up the affairs of any Obligor or if a receiver or liquidator of any Obligor or any part of its assets is appointed;
- 5.9 If any Obligor is unable to pay its debts as they become due or makes a general assignment for the benefit of its creditors or an assignment in bankruptcy or files a proposal or notice of intention to file a proposal under the Bankruptcy and Insolvency Act or otherwise acknowledges its insolvency or if a bankruptcy petition is filed or receiving order is made against any Obligor and is not being disputed in good faith;
- 5.10 If any Obligor ceases or threatens to cease to carry on its business;
- 5.11 If any of the licences, permits or approvals granted by any Governmental Authority or agency and material to the business of any Obligor is withdrawn, cancelled, suspended or adversely amended;
- 5.12 If any event or circumstance occurs which has or would reasonably be expected to have a Material Adverse Effect;
- 5.13 If any provision of any Loan Document for any reason ceases to be valid, binding and enforceable in accordance with its terms, or an Obligor asserts in writing that this has happened; or any Security Interest created under any Security Agreement ceases to be a valid and perfected security interest having a first priority ranking in any of the property purported to be covered by that security interest, which is not rectified or otherwise dealt with to the satisfaction of Lender within a period of 10 days.

#### ARTICLE 6

#### RIGHTS OF LENDER UPON THE OCCURRENCE OF AN EVENT OF DEFAULT

- 6.1 **Remedies for an Event of Default.** On the occurrence of an Event of Default, Lender may exercise any or all of the following rights and remedies as Lender may deem necessary or appropriate in its absolute discretion:
  - (a) Lender may declare immediately due and payable the outstanding balance of the Loan and all other Obligations, as defined in the Loan Documents, and all monies advanced to or for the account of Borrower pursuant to this Agreement and/or any other of the Loan Documents, which are then unpaid, and Lender may accelerate payment thereof notwithstanding any contrary terms of payment stated therein;
  - (b) Lender may foreclose or otherwise enforce any and all liens granted to Lender to secure the payment and performance of the Loan Agreement and the other Obligations;
  - (c) Lender may set off any and all amounts due by any Obligor against any indebtedness or obligation of Lender to any Obligor;

(d) Lender may exercise any and all of Lender's other rights and remedies under any of the Loan Documents or applicable law.

6.2 **Waivers.** No waiver by Lender of any Event of Default shall be deemed to be a waiver of any other then-existing or subsequent Event of Default. No delay or omission by Lender in exercising any right, power or remedy of Lender under any of the Loan Documents shall impair such right, remedy or power or be construed as a waiver thereof, and no single or partial exercise of any such right, remedy or power shall preclude any other or further exercise thereof, or the exercise of any other right, remedy or power under the Loan Documents or otherwise.

6.3 **Cumulative Rights and Remedies.** The rights, remedies and powers provided to Lender in this Agreement and the Loan Documents shall be cumulative of and not in substitution for any other right, remedy or power provided to Lender under this Agreement, the other Loan Documents or at law or in equity, all of which rights, remedies and powers are specifically reserved by Lender. The failure or refusal of Lender to exercise any right, remedy or power herein provided shall not preclude the resort to any other right, remedy or power available to Lender or prevent the subsequent or concurrent resort to any other right, remedy or power which by law or equity shall be vested in Lender for the recovery of damages or otherwise in the event of the occurrence of any Event of Default under any of the Loan Documents.

#### ARTICLE 7 MISCELLANEOUS

7.1 **Headings.** The headings and captions used in any of the Loan Documents are for convenience only and shall not be deemed to limit, amplify or modify the terms and conditions of the Loan Documents or affect the meaning thereof.

7.2 **Additional Documents.** Borrower agrees to execute, acknowledge and deliver to Lender such other and further assurances and documents as Lender shall require to cure or eliminate any omission, mistake or ambiguity in any or all of the Loan Documents. Failure to enumerate in this Agreement any documents or other items required shall not be deemed to be a waiver of the requirement that such documents or items be furnished to Lender.

7.3 **Number and Gender of Words.** For the purposes of this Agreement, the singular shall be deemed to include the plural, and the neuter shall be deemed to include the masculine and the feminine as the context may require.

7.4 **Notices.** Whenever this Agreement requires or permits any consent, approval, notice, request or demand from one party to another, such consent, approval, notice, request or demand must be in writing to be effective and shall be deemed to have been given by the sending party and received by the receiving party when hand delivered to the person(s) designated below for the receiving party, sent by recognized overnight carrier service such as Federal Express or UPS, or when mailed to the receiving party at the address(es) stated below (or at such other address as may be designated by written notice), postage prepaid, by certified mail of the United States, return receipt requested. The address of each party for the purposes hereof is as follows:

**BORROWER:** [Insert address]

**LENDER:** Fortitude Financial Investments Inc.  
4 Robert Specks Parkway Suite 1500

Mississauga ON L42151  
Canada

- 7.5 **Form and Number of Documents.** Each agreement, document, instrument or other writing to be furnished to Lender under any provision of this Agreement must be in form and substance and in such number of counterparts as may be satisfactory to Lender.
- 7.6 **Survival.** All covenants, agreements, undertakings, representations and warranties made in any of the Loan Documents shall survive all closings under the Loan Documents.
- 7.7 **Governing Law.** This Agreement shall be governed by the laws of Alberta. Each of the Obligors and Lender irrevocably and unconditionally agree that any suit, action or other legal proceeding (collectively, a "Suit") instituted by Lender and arising out of this Agreement shall be brought and adjudicated only in Alberta, and each Obligor waives and agrees not to assert by way of motion, as a defence or otherwise at any such Suit, any claim that such Obligor is not subject to the jurisdiction of the above courts, that such Suit is brought in an inconvenient forum or that the venue of such Suit is improper.
- 7.8 **Attorneys' Fees.** If any attorney is engaged by Lender to enforce or defend any provision of this Agreement, any of the other Loan Documents or as a consequence of any Event of Default, with or without the filing of any legal action or proceeding, and including, without limitation, any fees and expenses incurred in any bankruptcy proceeding or in connection with any appeal of a lower court decision, then Borrower shall immediately pay to Lender, upon demand, the amount of all attorneys' fees and expenses and all costs incurred by Lender in connection therewith. In the event of legal proceedings, court costs and attorneys' fees shall be set by the court and shall be included in any judgment obtained by Lender.
- 7.9 **No Joint Venture.** Borrower and Lender do not intend, and neither this Agreement nor any of the other Loan Documents shall be construed, to create a partnership or a joint venture relationship between Borrower and Lender
- 7.10 **Invalid Provisions.** If any covenant, term or condition of any of the Loan Documents is held to be illegal, invalid or unenforceable under any present or future Laws effective during the term thereof, such covenant, term or condition shall be fully severable; such Loan Document shall be construed and enforced as if such illegal, invalid or unenforceable covenant, term or condition had never comprised a part thereof; and the remaining covenants, terms and conditions in such Loan Document shall remain in full force and effect and shall not be affected by the illegal, invalid or unenforceable covenant, term or condition or by its severance therefrom.
- 7.11 **Entirety and Amendments.** This Agreement, together with the other written instruments referred to herein, embody the entire agreement between the parties relating to the subject matter hereof, supersedes all prior agreements and understandings, if any, relating to the subject matter hereof, and may be amended only by an instrument in writing executed jointly by Borrower and Lender and supplemented only by documents delivered or to be delivered in accordance with the express terms hereof.
- 7.12 **Joint and Several Liability.** If Borrower consists of more than one natural persons and/or entities, the liability of each of them for Borrower's obligations under this Agreement and the Loan Documents shall be joint and several.

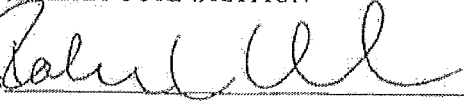
- 7.13 **Multiple Counterparts.** This Agreement may be executed in counterparts, each of which constitutes an original and all of which constitute, collectively, one agreement; but in making proof of this Agreement, it shall not be necessary for Borrower or Lender to produce or account for more than one (1) such counterpart.
- 7.14 **Parties Bound.** This Agreement shall be binding upon and inure to the benefit of Borrower, Lender and their respective successors and assigns; provided that Borrower may not, without the prior written consent of Lender, assign this Agreement or any of its rights, duties, or obligations hereunder, such consent to be granted in Lender's sole discretion and will not release Borrower from its obligations under the Loan Documents. No term or provision of this Agreement shall inure to the benefit of any entity other than Borrower, Lender and their respective successors and assigns; consequently, no entity other than Borrower, Lender and their respective successors and assigns shall be entitled to rely upon, or to raise as a defense, in any manner whatsoever, the failure of Borrower or Lender to perform, observe or comply with any such term or provision.
- 7.15 **Time.** Time is of the essence of each and every term of this Agreement.
- 7.16 **No Third Parties Benefited.** No person other than Lender and Borrower and their permitted successors and assigns shall have any right of action under any of the Loan Documents.
- 7.17 **Actions.** Borrower agrees that Lender, in exercising the rights, duties or liabilities of Lender or Borrower under the Loan Documents, may commence, appear in or defend any action or proceeding purporting to affect the Project or the Loan Documents and Borrower shall immediately reimburse Lender upon demand for all such expenses so incurred or paid by Lender, including, without limitation, attorneys' fees and expenses and court costs

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK; SIGNATURES APPEAR ON THE FOLLOWING PAGES]

IN WITNESS WHEREOF, Borrower and Lender have duly executed this Agreement as of the day and year first above written.

**BORROWER:**

**COMMERX CORPORATION**

By:  \_\_\_\_\_

[SIGNATURES CONTINUE ON THE FOLLOWING PAGE]

[SIGNATURES CONTINUED FROM THE PREVIOUS PAGE]

LENDER:

FORTITUDE FINANCIAL INVESTMENTS INC.

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT (this "Agreement") is made as of the 30th day of December, 2016;

BETWEEN:

ROBERT E. KULHAWY  
("Kulhawy")

- and -

COMMERX CORPORATION  
("Commerx")

- and -

FORTITUDE FINANCIAL INVESTMENTS INC.  
("Fortitude")

- and -

STS CAPITAL PARTNERS INC.  
("STS")

- and -

COMMERX HOLDINGS LLC  
("Lotus")

WHEREAS:

- A. Commerx and Fortitude are parties to a loan agreement dated as of January 5, 2016 (the "Loan Agreement"), pursuant to which Commerx is currently indebted to Fortitude in the aggregate amount of USD\$1,148,380.51, representing the principal amount borrowed by Commerx and the unpaid interest thereon as at the date hereof (the "Loan");
- B. as a condition to the availability of the Loan under the Loan Agreement, Kulhawy executed and delivered a personal guarantee in favour of Fortitude dated as of January 5, 2016 (the "Fortitude Guarantee"), whereby Kulhawy agreed to unconditionally and irrevocably guarantee to Fortitude full and prompt payment of all indebtedness, liabilities and obligations of Commerx under the Loan Agreement;
- C. Commerx and STS are parties to a specific transaction fee agreement dated on or about July 29, 2016, a copy of which is attached hereto as Schedule A (the "Non-Exclusive Retainer Agreement"), whereby STS agreed, on a non-exclusive basis, to provide investment banking and other services to Commerx, including services relating to the sale of a portion of the shares of Commerx or a refinancing, capitalization, recapitalization, restructuring transaction or other similar transaction or transactions;



- D. Commerx and STS are parties to a specific transaction fee agreement dated on or about July 29, 2016, a copy of which is attached as Schedule B (the "Exclusive Retainer Agreement") whereby STS agreed, on an exclusive basis, to provide investment banking and other services to Commerx including services relating to the sale of Commerx;
- E. in connection with the services provided by STS under the Non-Exclusive Retainer Agreement, Kulhawy and Commerx have entered into a stock purchase agreement dated as of the date hereof (the "Stock Purchase Agreement") with Lotus, whereby Lotus has agreed, among other things, to: (a) purchase 51% of the Class "A" voting shares in the capital of Commerx ("Class "A" Shares") from Kulhawy for USD\$2,000,000; (b) extend a USD\$3,000,000 working line of credit to Commerx; and (c) invest additional equity into Commerx (collectively, the "Lotus Transaction");
- F. in connection with the Lotus Transaction, Lotus has requested that Fortitude convert all principal and accrued interest payable under the Loan Agreement (the "Fortitude Loan Conversion") into redeemable non-voting preferred shares of Commerx;
- G. Fortitude has agreed to the Fortitude Loan Conversion on the condition that Kulhawy provide a personal guarantee in favour of Fortitude pursuant to which Kulhawy shall guarantee Commerx's obligations in respect of the redemption of the shares to be issued to Fortitude pursuant to the Fortitude Loan Conversion;
- H. Commerx and STS have agreed to certain amendments of the terms and conditions of the Non-Exclusive Retainer Agreement in respect of the amounts and methods of payments of certain of the fees payable to STS thereunder, as provided for herein;
- I. Commerx and STS have agreed to certain amendments of the terms and conditions of the Exclusive Retainer Agreement; and
- J. STS has requested that Kulhawy execute and deliver a personal guarantee in favour of STS (the "STS Guarantee") pursuant to which Kulhawy shall guarantee to STS full and prompt payment of all cash fees payable by Commerx pursuant to the Non-Exclusive Retainer Agreement.

NOW THEREFORE, this Agreement witnesses that, in consideration of the covenants and agreements herein contained and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto covenant and agree as follows:

*Fortitude Matters*

1. In connection with the Fortitude Loan Conversion, on the date hereof Commerx and Fortitude shall execute and deliver the debt conversion agreement in the form attached hereto as Schedule C (the "Debt Conversion Agreement"), pursuant to which Commerx shall issue 1,148,381 Class "F" Preferred Shares (the "Fortitude Class "F" Shares") in the capital of Commerx to Fortitude in full and final settlement of all amounts outstanding under the Loan Agreement.
2. As soon as reasonably practicable following closing of the Lotus Transaction, and in any event not later than January 31, 2017, Commerx shall hold a special meeting of its shareholders for the purpose of, among other things, amending the articles of incorporation of Commerx to change the rights, privileges, restrictions and conditions attached to the Class "A" Shares, the Class "B" Shares, the Class "C" Shares, the Class "D" Shares, the Class "E" Preferred Shares, the Class "F" Preferred Shares and the Class "G" Preferred Shares of Commerx to those set forth in Schedule D hereto.

Immediately following the approval of the amendment to the articles of incorporation (the "Amended Articles") by the Commerx shareholders, Commerx shall cause to be filed the amended articles of incorporation with the Alberta Corporate Registry.

3. For a period commencing effective as of the date hereof until the earlier of: (i) the filing of the Amended Articles with the Alberta Corporate Registry; and (ii) January 31, 2017; Fortitude agrees that it shall not issue a redemption notice to Commerx in respect of the Fortitude Class "F" Shares.
4. Commerx, Fortitude and Lotus hereby agree and acknowledge that, on June 30, 2017 (the "Redemption Date"), Commerx shall, and Lotus shall cause Commerx to, redeem the Fortitude Class "F" Shares in their entirety by paying to Fortitude the aggregate redemption amount plus all accrued and unpaid dividends payable in connection therewith. In addition to the foregoing, Commerx shall have the right, at its sole discretion, to redeem all or any portion of the Fortitude Class "F" Shares prior to the Redemption Date by paying to Fortitude the redemption amount in respect of the shares it wishes to redeem plus all accrued and unpaid dividends payable in connection therewith. Lotus and Commerx hereby acknowledge and agree that in the event that Commerx does not redeem the Fortitude Class "F" Shares in their entirety on or before the Redemption Date, the cumulative dividend rate applicable to any such unredeemed shares shall increase from 6.0% per annum to 24.0% per annum until such shares are redeemed by Commerx, as prescribed in the share terms applicable to the Class "F" Preferred Shares upon filing of the Amended Articles.
5. As a condition to Fortitude's agreement to enter into the Debt Conversion Agreement, Kulhawy has agreed to execute and deliver to Fortitude, on the date hereof, the guarantee in the form attached hereto as Schedule E (the "Fortitude Guarantee"), pursuant to which Kulhawy shall guarantee to Fortitude payment of all amounts payable in connection with the redemption of the Fortitude Class "F" Shares (the "Fortitude Guaranteed Amount") in the event that Commerx defaults on its obligation to redeem the Fortitude Class "F" Shares in accordance with their terms and with the terms of this Agreement.

#### *STS Matters*

6. The Non-Exclusive Retainer Agreement provides, among other things, that in the event of a successful transaction for which STS is responsible, Commerx shall issue to STS warrants (the "Broker Warrants") to purchase Class "A" Shares. Notwithstanding such provision of the Non-Exclusive Retainer Agreement, Commerx, STS and Kulhawy hereby agree that Commerx's obligation to issue the Broker Warrants under the Non-Exclusive Retainer Agreement shall be satisfied by the sale to STS, for nominal consideration, of 600,000 of Kulhawy's Class "A" Shares pursuant to the terms and conditions of the share purchase agreement in the form attached hereto as Schedule F. Upon completion of the sale of such Class "A" Shares to STS, STS hereby agrees that Commerx shall be irrevocably released and discharged from its obligation to issue the Broker Warrants to STS under the Non-Exclusive Retainer Agreement.
7. STS, Commerx, Kulhawy and Lotus hereby agree and acknowledge that, as of the date hereof, STS has earned, and shall be entitled to receive from Commerx, an aggregate fee in the amount of USD\$385,500 (the "STS Fee") in connection with services performed under the Non-Exclusive Retainer Agreement.
8. STS, Commerx, Kulhawy and Lotus hereby agree and acknowledge that Kulhawy shall be responsible for satisfying (a) USD\$100,000 of the STS Fee (the "Kulhawy Proceeds Fee") from the proceeds that Kulhawy receives from the sale of his Class "A" Shares to Lotus pursuant to the

terms, including Section 2.2(a), of the Stock Purchase Agreement; and (b) an additional fee of USD\$22,500 in connection with the salary earned Kulhawy during the three year period following the date hereof (the "Kulhawy Salary Fee").

9. In connection with the closing of the Lotus Transaction, Commerx hereby directs that USD\$142,750 of the USD\$1,200,000 amount payable by Lotus to Commerx on the date hereof pursuant to the terms of the Stock Purchase Agreement be delivered to STS in satisfaction of a portion of the STS Fee.
10. In connection with the payment of the deferred payment amount of USD\$770,000 (the "**Commerx Deferred Payment Amount**") which is to be paid by Lotus to Commerx pursuant to the Stock Purchase Agreement by no later than January 31, 2017, Commerx hereby directs Lotus to deliver: (a) USD\$142,750 of the Commerx Deferred Payment Amount to STS in satisfaction of a portion of the STS Fee; and (b) CAD\$98,000, plus GST, if applicable, to Burnet, Duckworth & Palmer LLP ("**BDP**") (subject to Commerx's review and approval of the invoices issued by BDP in connection with such amount) in satisfaction of legal fees incurred by Fortitude in connection with the transactions contemplated herein.
11. In connection with the payment of the deferred payment amount of USD\$500,000 (the "**Kulhawy Deferred Payment Amount**") which is to be paid by Lotus to Kulhawy pursuant to the Stock Purchase Agreement by no later than January 31, 2017, Kulhawy hereby directs Lotus to deliver USD\$100,000 of the Kulhawy Deferred Payment Amount to STS in satisfaction of the Kulhawy Proceeds Fee.
12. In satisfaction of the Kulhawy Salary Fee, Kulhawy hereby directs Commerx to deliver to STS an amount equal to USD\$7,500 of Kulhawy's annual salary per year for each of the three years following the date hereof which amounts shall be paid by Commerx to STS on the date which is thirty days following the anniversary of the date upon which Kulhawy and Commerx execute a written employment agreement; *provided, however*, that if Kulhawy ceases to be employed by Commerx as at any such anniversary date, no such fee shall be payable to STS by Kulhawy or Commerx.
13. Upon receipt by STS of the payments provided for in Sections 9, 10 and 11, above, STS hereby agrees and acknowledges that the STS Fee shall have been paid in full and Commerx and Kulhawy shall be released and discharged of any further obligations arising in connection with the STS Fee and the Non-Exclusive Retainer Agreement other than those obligations and liabilities that survive the termination of the Non-Exclusive Retainer Agreement pursuant to its terms.
14. As a condition to STS agreeing to receive the STS Fee in multiple tranches, as described above, on the date hereof, Kulhawy shall execute and deliver the guarantee in the form attached hereto as Schedule G (the "**STS Guarantee**"), pursuant to which Kulhawy shall guarantee to STS payment of Commerx's portion of the STS Fee, being USD\$285,500 (the "**STS Guaranteed Amount**"), in the event that Lotus has advanced the prescribed funds to Commerx as provided in Section 2.3(a) and Section 2.3(c)(ii) of the Stock Purchase Agreement, and Commerx defaults on its obligation use a portion of such funds to pay and satisfy its portion of the STS Fee.
15. If (a) Lotus fails to comply with its obligation to pay to Kulhawy the amount of USD\$1,500,000 (the "**Subsequent Payment**") on or before November 30, 2018 in respect of the purchase of Kulhawy's shares as provided for in the Stock Purchase Agreement (a "**Lotus Default**"); and (b) the Lotus Default does not arise out of, in connection with, as a result of or is not attributable to any claim by Lotus in respect of any act or omission of or by Kulhawy or any breach of any

representation, warranty or covenant by Kulhawy of the terms of the Stock Purchase Agreement, including any set off or attempted set off by Lotus of the Subsequent Payment against any amounts owing by Kulhawy to Lotus thereunder, then STS hereby grants to Kulhawy the option (the "Repurchase Option") to purchase from STS for an aggregate purchase price of USD\$10.00 up to 150,000 Class "A" Shares from STS. The number of Class "A" Shares which shall be subject to the Repurchase Option shall be equal to the product of (x) the amount of the Lotus Default, divided by (y) USD\$1,500,000, multiplied by (z) 150,000 (the product of such calculation, the "Repurchased Shares"). Kulhawy shall have the right, acting in his sole discretion, to exercise the Repurchase Option immediately following the expiration of a period of thirty (30) days following a Lotus Default. If at any time following the transfer of the Repurchased Shares from STS to Kulhawy pursuant to the Repurchase Option, Lotus pays all or any part of the outstanding balance of the Subsequent Payment, Kulhawy shall sell back to STS, for USD\$10.00, all, or such portion of, the Repurchased Shares on a pro rata basis subject to the amount of the Subsequent Payment which has been satisfied by Lotus.

*Kulhawy Security and Satisfaction and Extinguishment of Kulhawy's Obligations*

16. As security for the Fortitude Guaranteed Amount and the STS Guaranteed Amount, Kulhawy hereby grants the following security (the "Security"):
- (a) a pledge to Fortitude of all Class "A" Shares held by Kulhawy in accordance with the share pledge agreement in the form attached hereto as Schedule H;
  - (b) a pledge to STS of all Class "A" Shares held by Kulhawy in accordance with the share pledge agreement in the form attached hereto as Schedule I;
  - (c) concurrently herewith, Kulhawy shall deliver to Newterra Ltd. ("Newterra") a request (the "Request") that Newterra deliver to BDP, c/o Michael Martin, those share certificates of Newterra (the "Newterra Share Certificates") representing those shares of Newterra which are registered in Kulhawy's name, or the name of any entities owned or controlled by Kulhawy (the "Newterra Shares"). In the event that (a) Kulhawy has not delivered the Request by December 31, 2016; or (b) if the Newterra Share Certificates have not been delivered to BDP within 90 days following the date of the Request, BDP shall be entitled to communicate directly with Newterra on behalf of Kulhawy and Kulhawy hereby authorizes and directs BDP to take any steps required to obtain the Newterra Share Certificates. Upon receipt of the Newterra Share Certificates, BDP shall hold such certificates in trust until the Fortitude Guaranteed Amount and the STS Guaranteed Amount have been satisfied in full either by Commerx or by Kulhawy pursuant to the Fortitude Guarantee and/or the STS Guarantee;
  - (d) prior to the date hereof, Kulhawy shall have delivered a direction to Newterra requesting, among other things, that any amounts which are payable to Kulhawy in connection with the sale of Kulhawy's shares to Newterra be delivered to BDP, c/o Michael Martin;
  - (e) an assignment of receivables in favour of Fortitude in respect of any amounts that are due and payable to Kulhawy in respect of the future sale of the sale of the Newterra Shares, in the form attached hereto as Schedule J;
  - (f) an assignment of receivables in favour of STS in respect of any amounts that are due and payable to Kulhawy in respect of the future sale of the sale of the Newterra Shares, in the form attached hereto as Schedule K;

- (g) a direction from Kulhawy to Commerx, in the form attached hereto as Schedule L, providing that, until the Fortitude Guaranteed Amount and the STS Guaranteed Amount have been paid and satisfied in full, any dividends payable to Kulhawy from Commerx shall be delivered to BDP, in trust, to be used to satisfy the Fortitude Guaranteed Amount and the STS Guaranteed Amount;
  - (h) a direction from Kulhawy to Commerx, in the form attached hereto as Schedule M, providing that, until the Fortitude Guaranteed Amount and the STS Guaranteed Amount have been paid and satisfied in full, any amounts payable to Kulhawy in respect of salary or bonuses to the extent that Kulhawy's quarterly aggregate salary and bonus from Commerx exceeds USD\$75,000 on a quarterly basis, shall be delivered to BDP, in trust, to be used to satisfy the Fortitude Guaranteed Amount and the STS Guaranteed Amount; and
  - (i) a direction from Kulhawy to Lotus, in the form attached hereto as Schedule N, providing that the Subsequent Payment shall be delivered to BDP, in trust, to be used to satisfy the Fortitude Guaranteed Amount and the STS Guaranteed Amount.
17. In the event that cash amounts are delivered to BDP in connection with the Security, Fortitude and STS agree and acknowledge that such amounts received by BDP shall only be used to satisfy the STS Guaranteed Amount and the Fortitude Guaranteed Amount, and for no other purpose whatsoever, and such amounts shall be applied as follows:
- (a) first, STS, Fortitude and Kulhawy shall jointly direct BDP that cash amounts received by BDP be delivered to STS to satisfy such portion of the STS Guaranteed Amount which is payable by Kulhawy in accordance with Section 14, above, until the entirety of the STS Guaranteed Amount has been paid in full; and
  - (b) second, STS, Fortitude and Kulhawy shall jointly direct BDP that cash amounts received by BDP be delivered to Fortitude in consideration of the purchase, by Kulhawy, of Fortitude Class "F" Shares for the redemption amount, plus accrued and unpaid dividends in respect of such shares as of the date of purchase by Kulhawy. Any such share purchases shall be completed at the end of each month during the period commencing on the date hereof until such time as the Fortitude Guaranteed Amount is paid and satisfied in full and Fortitude hereby agrees to execute and deliver any and all documents and instruments as may be reasonably required in order to evidence and complete such transfer of shares to Kulhawy.

BDP shall only release cash amounts delivered to BDP in connection with the Security in accordance with a joint written direction duly executed by STS, Fortitude and Kulhawy.

18. If Kulhawy and Fortitude concurrently own any Class "F" Preferred Shares in the capital of Commerx ("Class "F" Shares"), then Commerx hereby agrees that it shall not cause the redemption or repurchase of any Class "F" Shares held by Kulhawy until either: (i) all Class "F" Shares held by Fortitude have been redeemed or repurchased by Commerx pursuant to their terms; or (ii) all Class "F" Shares held by Fortitude have been purchased and transferred to Kulhawy pursuant to the terms and conditions hereof; and Kulhawy hereby agrees that he shall not issue a redemption notice in respect of any Class "F" Shares held thereby until Fortitude no longer owns any Class "F" Shares.
19. It is agreed and acknowledged by Kulhawy, Fortitude and STS that the Newterra Share Certificates are being delivered to BDP to be held in trust pending a potential sale of the Newterra Shares,

whether by Kulhawy individually or in connection with a sale of Newterra shares by Kulhawy in conjunction with other Newterra shareholders (a "Newterra Sale"). By no later than ten days prior to the consummation of a Newterra Sale, STS, Fortitude and Kulhawy shall jointly direct BDP to deliver the Newterra Share Certificates to counsel for the purchaser of the Newterra Shares, in order that the sale of the Newterra Shares can be completed.

20. If: (a) Commerx defaults on its obligations to redeem the Fortitude Class "F" Shares in accordance with their terms and the terms of this Agreement and Kulhawy is required to pay any or all of such obligations, whether directly under the terms of the Fortitude Guarantee or indirectly through the exercise of the Security; and (b) the entirety of the STS Guaranteed Amount has been paid in full; then Fortitude shall transfer and deliver to Kulhawy, for no additional consideration, that number of Fortitude Shares in respect of which Commerx has failed to pay the redemption amounts, plus accrued and unpaid dividends, in respect of such shares and which amounts are fully paid and satisfied by Kulhawy, and Fortitude hereby agrees to execute and deliver any and all documents and instruments as may be reasonably required in order to evidence and complete such transfer of shares to Kulhawy.
21. Upon the satisfaction, in full, of the Fortitude Guaranteed Amount and the STS Guaranteed Amount, it is agreed and acknowledged by Fortitude and STS that: (a) Kulhawy, STS and Fortitude shall jointly direct BDP to release to Kulhawy, or his nominee, all cash and other trust property, including without limitation the Newterra Share Certificates, being held by BDP which have been received in connection with the Security; and (b) Kulhawy, STS and Fortitude shall jointly direct Commerx, Newterra and Lotus that no further amounts owing to Kulhawy shall be delivered to BDP; and (c) all directions issued herein or pursuant to this Agreement or the Stock Purchase Agreement which authorize the direction of funds to BDP to satisfy the Fortitude Guaranteed Amount and the STS Guaranteed Amount shall be automatically terminated and of no further force or effect.

#### *Notices*

22. Any notice, consent, waiver, direction or other communication required or permitted to be given under this Agreement by a party hereto to any other party hereto shall be in writing and shall be delivered by hand delivery, facsimile transmission, email or (provided that the mailing party does not know and should not reasonably have known of any disruption or anticipated disruption of postal service which might affect delivery of the mail) by registered mail (postage prepaid), addressed to the party to whom the notice is to be given, at its address for service herein. Any notice, consent, waiver, direction or other communication aforesaid shall, if hand delivered or delivered by facsimile transmission, or email, be deemed to have been given and received on the date on which it was hand delivered or delivered by facsimile transmission or email to the address provided herein (if a Business Day and, if not, the next succeeding Business Day) and if sent by registered mail be deemed to have been given and received on the third Business Day at the point of delivery following the date on which it was so sent.
23. The address for service for Kulhawy is:

Robert Kulhawy  
4428 Manilla Road SE  
Calgary, AB T2G 4B7

Facsimile: (403) 398-0755  
Email: robert.kulhawy@commerx.com

24. The address for service for Commerx is:

Commerx Corporation  
4428 Manilla Road SE  
Calgary, AB T2G 4B7

Attention: President  
Facsimile: (403) 398-0755  
Email: robert.kulhawy@commerx.com

25. The address for service for Fortitude is:

Fortitude Financial Investments Inc.  
STS Corporate Centre  
Suite 9, Haggatt Hall  
St. Michael, Barbados

Attention: Rob Follows  
Facsimile: \_\_\_\_\_  
Email: rob@stscapital.com

26. The address for service for STS is:

STS Capital Partners Inc.  
STS Corporate Centre  
Suite 9, Haggatt Hall  
St. Michael, Barbados

Attention: Rob Follows  
Facsimile: \_\_\_\_\_  
Email: rob@stscapital.com

27. The address for service for Lotus is:

Commerx Holdings LLC  
c/o Lotus Innovations Fund II, L.P.  
5151 California Avenue, Suite 250  
Irvine, CA 92617

Attention: Christian Mack  
Facsimile: \_\_\_\_\_  
Email: christian@lotus-innovations.com

28. Any party may change its address, facsimile number or email address for service by notice to the Corporation, and such changed address for service thereafter shall be effective for all purposes of this Agreement.

29. Any party delivering a notice pursuant to this Agreement, shall also send a copy, which shall not constitute notice, to:

Bennett Jones LLP

4500, 855 – 2nd Street S.W.  
Calgary, Alberta T2P 4K7

Attention: Kristos Iatridis  
Facsimile: (403) 265-7219  
Email: iatridisk@bennettjones.com

*General*

30. The parties hereto each covenant and agree that if, at any time after the execution of this Agreement, any of the parties hereto shall reasonably consider and be advised that any further actions, assignments or assurances are necessary or desirable to carry out the intent and accomplish the purposes of this Agreement, according to its terms, all the other parties will take such actions, execute and make all such assignments and assurances and do all things necessary or desirable to carry out the intent and accomplish the purposes of this Agreement or otherwise consummate the transactions contemplated by this Agreement according to its terms.
31. No party hereto shall assign this Agreement, in whole or in part, to any other party without the prior written consent of all of the parties hereto.
32. This Agreement shall be binding upon and enure to the benefit of the parties hereto and their respective successors and permitted assigns, as the case may be. Nothing herein, express or implied, is intended to confer upon any person, other than the parties hereto and their respective successors and permitted assigns, any rights, remedies, obligations or liabilities under or by reason of this Agreement.
33. This Agreement and the Schedules referred to herein constitute the entire agreement between the parties hereto and, except as otherwise stipulated herein, supersedes all prior agreements, representations, warranties, statements, promises, information, arrangements and understandings, whether oral or written, express or implied, with respect to the subject matter hereof.
34. Any party hereto which is entitled to the benefits of this Agreement may, and has the right to, waive any term or condition hereof at any time; *provided, however*, that such waiver shall be evidenced by written instrument duly executed on behalf of such party.
35. Each of the provisions contained in this Agreement is distinct and severable and a declaration of invalidity or unenforceability of any such provision or part thereof by a court of competent jurisdiction shall not affect the validity or enforceability of any other provision hereof.
36. This Agreement shall be governed by and construed in accordance with the laws of the Province of Alberta and the federal laws of Canada applicable therein.
37. The parties hereto shall, from and after the date hereof, do all such further acts and things and execute and deliver such further instruments, documents, matters, papers and assurances as may be reasonably requested by the other parties hereto to more effectually carry out the true intent and meaning of this Agreement.
38. This Agreement may be executed in any number of counterparts and by different parties on separate counterparts, each of which, when executed and delivered, shall constitute an original and all of which, when taken together, shall constitute one and the same agreement. Delivery of an executed



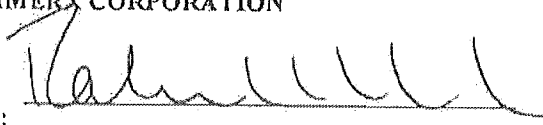
counterpart of this Agreement by facsimile transmission or in portable document format shall constitute delivery of an executed counterpart of this Agreement.

*[Remainder of this page has been intentionally left blank]*

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the date first written above.

**COMMERX CORPORATION**

Per: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_



**FORTITUDE FINANCIAL INVESTMENTS INC.**

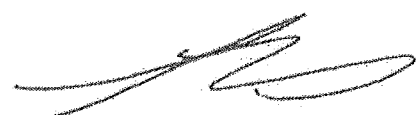
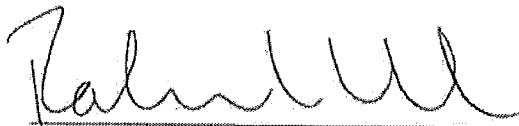
Per: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**STS CAPITAL PARTNERS INC.**

Per: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**COMMERX HOLDINGS LLC**

Per: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

  
\_\_\_\_\_  
WITNESS  
\_\_\_\_\_  
ROBERT E. KULHAWY

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the date first written above

COMMERX CORPORATION

Per: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

FORTITUDE FINANCIAL INVESTMENTS INC.

~~Per: \_\_\_\_\_~~  
Name: ROBERT FOLLOIS  
Title: CHAIRMAN

STSC CAPITAL PARTNERS INC.

Per: Audrey Mae Fox  
Name: Audrey Mae Fox  
Title: Contracts Manager

COMMERX HOLDINGS LLC

Per: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

WITNESS

ROBERT E. KULHAWY

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the date first written above.

**COMMERX CORPORATION**

Per: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_


**FORTITUDE FINANCIAL INVESTMENTS INC.**

Per: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**STS CAPITAL PARTNERS INC.**

Per: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**COMMERX HOLDINGS LLC**

Per:  \_\_\_\_\_  
Name: philip Jones  
Title: Managing Director

\_\_\_\_\_  
WITNESS

\_\_\_\_\_  
ROBERT E. KULHAWY

District of: Alberta  
Division No. 02 - Calgary  
Court No. 25-2483059  
Estate No. 25-2483059

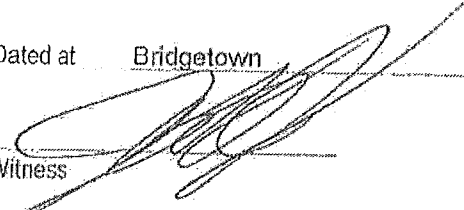
FORM 36  
Proxy  
(Subsection 102(2) and paragraphs 51(1)(e) and 66.15(3)(b) of the Act)

In the matter of the proposal of  
Commerx Corporation  
of the City of Calgary, in the Province of Alberta

I, Fortitude Financial Investments Inc., of Bridgetown, BB, a creditor in the above matter, hereby  
appoint Charlotte Blumenshein, of Saskatoon, SK, to be  
my proxyholder in the above matter, except as to the receipt of dividends, with (with or without)  
power to appoint another proxyholder in his or her place.

Dated at Bridgetown, this 5th day of September, 2019.

Witness

  
Jennifer Jones  
Witness President  
Fortitude Financial Investments Inc.

Individual Creditor

Fortitude Financial Investments Inc.  
Name of Corporate Creditor

Per

  
Name and Title of Signing Officer  
Rob Follows, Director

Return To:

Hardie & Kelly Inc. - Licensed Insolvency Trustee  
110, 5800 2nd Street SW  
Calgary AB T2H 0H2  
Phone: (403) 777-9999 Fax: (403) 640-0591  
E-mail: claims@insolvency.net

# EXHIBIT "F"

**Marc Kelly**

---

**From:** Chris Simard [SimardC@bennettjones.com]  
**Sent:** Wednesday, September 11, 2019 3:35 PM  
**To:** Ryan Algar  
**Subject:** Commerx Corporation - Claim of Fortitude Financial  
**Attachments:** Fortitude Financial Notice of Disallowance of Claim.pdf

Ryan,

Attached is the Trustee's disallowance of Fortitude's claim. The BIA requires the Trustee to send this to your client by registered mail. Can you please waive that requirement on behalf of Fortitude? Thanks



**Chris Simard**  
**Bennett Jones LLP**

4500 Bankers Hall East, 855 - 2nd Street SW, Calgary, AB, T2P 4K7  
T. 403 298 4485 | F. 403 265 7219  
E. simardc@bennettjones.com



District of: Alberta  
Division No. 02 - Calgary  
Court No. 25-2483059  
Estate No. 25-2483059

FORM 77  
Notice of Disallowance of Claim, Right to Priority or Security or Notice of Valuation of Claim  
(Subsection 135(3) of the Act)

In the matter of the proposal of  
Commerx Corporation  
of the City of Calgary, in the Province of Alberta

Fortitude Financial Investments Inc.  
c/o Burnet, Duckworth & Palmer LLP  
2400, 525 8<sup>th</sup> Avenue SW  
Calgary, AB T2P 1G1

Take notice that:

As trustee (the "Trustee") acting in the matter of the proposal of Commerx Corporation ("Commerx"), we have disallowed your claim (or your right to a priority or your security on the property) in whole, pursuant to subsection 135(2) of the Bankruptcy and Insolvency Act (the "Act"), for the following reasons:

Your claim is disallowed in its entirety. As at March 7, 2019, the day on which Commerx filed its Notice of Intention to Make a Proposal, you had a claim pursuant to the December 30, 2016 Settlement Agreement for the redemption payment for your Class "F" Preferred Shares that Commerx was obligated to pay to you on June 30, 2017, but did not pay. That claim is an equity claim pursuant to section 2 of the Act. The Proposal of Commerx only compromises and offers consideration to unsecured creditors of Commerx, not equity claimants.

You have provided no explanation of the legal basis on which the Settlement Agreement ought to be "unwound" and your claim that the January 5, 2016 Loan Agreement and the Settlement Agreement could or should be unwound does not change the fact that, as at March 7, 2019, your claim was an equity claim.

Notwithstanding the above, we note that the amount owing to you as an equity claim appears to be significantly lower than the amount you have claimed for the following reasons:

- You calculated \$653,605.60 USD in interest owing from January 5, 2017 to Mar 7, 2019, whereas Commerx calculates that you earned \$362,269.01 USD in dividends during that time based on the terms of the Settlement Agreement;
- You have included \$59,643.86 USD in legal fees paid to your legal counsel for which there does not appear to be any legal requirement for Commerx to pay;
- Commerx has advised that there was an agreement to set off certain unearned transaction fees paid by Commerx to STS Capital Partners Inc. against any amounts owed by Commerx to Fortitude Financial Investments Inc.

And further take notice that if you are dissatisfied with our decision in disallowing your claim in whole or in part (or a right to rank or your security or valuation of your claim), you may appeal to the court within the 30-day period after the day on which this notice is served, or within any other period that the court may, on application made within the same 30-day period, allow.



Dated at the City of Calgary in the Province of Alberta, this 11 day of September 2019.

Hardie & Kelly Inc. - Licensed Insolvency Trustee

A handwritten signature in cursive script, appearing to read "Chala", followed by a horizontal flourish.

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110, 5800 2nd Street SW  
Calgary AB T2H 0H2  
Phone: (403) 777-9999 Fax: (403) 640-0591

# EXHIBIT "G"

District of: Alberta  
Division No. 02 - Calgary  
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REGISTERED  
DOMESTIC  
CUSTOMER RECEIPT

RECOMMANDÉ  
RÉGIME INTÉRIEUR  
REÇU DU CLIENT



Attention: Ryan Algar  
Fortitude Financial Investments Inc.  
c/o Burnet, Duckworth & Palmer LLP  
2400, 525 8th Avenue SW  
Calgary AB T2P 1G1

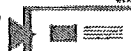


Tracking Number Numéro de repérage de la GCP  
RN 433 137 170 CA

REGISTERED  
Fragile and perishable articles  
are not indemnified against  
damage. Indemnity and fees  
information is available on  
request at your postal outlet.

- Instructions
- 1) Complete any declared value on receipt, tear on perforated line, date stamp on reverse and give receipt to customer.
  - 2) Remove label from tracking document and apply the label to front of item addressed to addressee.

Apply label here  
Vous les placez  
l'étiquette ici



RECOMMANDÉ  
Aucune indemnité ne sera versée  
pour l'avarie d'un objet fragile ou  
périssable. Des renseignements  
sur les indemnités et les droits  
sont disponibles à votre comptoir  
postal.

- Instructions
- 1) Indiquer la valeur déclarée dans la section des déclarations à l'endroit approprié, arracher le timbre à date au verso et remettre le reçu au client.
  - 2) Retirer la présente étiquette (s'il la région indiquée) de l'expédition. Appliquez l'étiquette sur le devant de l'envoi, près de l'adresse.

