

Court File No.: CV-20-00642783-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

**IN THE MATTER OF THE *COMPANIES' CREDITORS  
ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED**

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR  
ARRANGEMENT OF 957855 ALBERTA LTD.  
(FORMERLY NEWSWEST INC.) AND ROSEBUD CREEK  
FINANCIAL CORP. IN RESPECT OF METRO 360  
GENERAL PARTNERSHIP**

Applicants

**MOTION RECORD  
STAY EXTENSION ORDER**  
(Motion returnable December 4, 2020)

**GOODMANS LLP**  
Barristers & Solicitors  
Bay Adelaide Centre  
333 Bay Street, Suite 3400  
Toronto, Canada M5H 2S7

**L. Joseph Latham** LSO#: 32326A  
jlatham@goodmans.ca

**Andrew Harmes** LSO#: 73221A  
aharmes@goodmans.ca  
Tel: 416.979.2211  
Fax: 416.979.1234

Lawyers for 957855 Alberta Ltd. (formerly  
NewsWest Inc.), Rosebud Creek Financial Corp.,  
and Metro 360 General Partnership.

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**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

**IN THE MATTER OF THE *COMPANIES' CREDITORS  
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FINANCIAL CORP. IN RESPECT OF METRO 360  
GENERAL PARTNERSHIP**

Applicants

**NOTICE OF MOTION**

(returnable December 4, 2020)

957855 Alberta Ltd. (formerly NewsWest Inc.) ("**Alberta HoldCo**") and Rosebud Creek Financial Corp. ("**Rosebud HoldCo**" and, together with Alberta HoldCo, the "**Partners**"), as the partners of the Metro 360 General Partnership ("**Metro 360**" and, together with the Partners, the "**CCAA Entities**"), will make a motion before Justice Hainey of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") on December 4, 2020, at 9:30 a.m. or as soon thereafter as the motion can be heard by videoconference call in light of the COVID-19 crisis. Please refer to the videoconference details attached at Schedule "A" hereto in order to attend the motion and advise if you intend to join the motion by emailing Andrew Harmes at [aharmes@goodmans.ca](mailto:aharmes@goodmans.ca).

**PROPOSED METHOD OF HEARING:** The motion is to be heard by videoconference.

**THE MOTION IS FOR:**

1. An Order (the “**Stay Extension Order**”), in substantially the form attached at Tab 3 of the Motion Record dated November 27, 2020 (the “**Motion Record**”), among other things:
  - (a) abridging and validating the time for service of this Notice of Motion and the Motion Record and dispensing with further service thereof;
  - (b) extending the Stay Period (as defined in the Initial Order, defined below) to and including March 31, 2021;
  - (c) approving the Report of the Proposed Monitor dated June 10, 2020, the First Report of the Monitor dated September 9, 2020 and the Second Report of the Monitor dated November 27, 2020 (the “**Second Report**”), and approving the activities and conduct of the Monitor as reported therein; and
  - (d) approving the fees and disbursements of the Monitor and its counsel in these proceedings;
2. Such further and other relief as counsel may request and this Court may permit.

**THE GROUNDS FOR THE MOTION** are as follows:

3. The Partners are holding companies that together hold 100% of the interests of Metro 360, which operates a multi-faceted business that, prior to completing the TNG Transaction (as

defined below), was focused primarily on the wholesale distribution across Canada of books, magazines and newspapers (the “**Literature Business**”).<sup>1</sup>

4. On April 6, 2020, the Partners filed notices of intention to make a proposal pursuant to section 50.4 of the *Bankruptcy and Insolvency Act* (Canada), R.S.C., 1985, c. B-3, as amended, to initiate proceedings (the “**Proposal Proceedings**”) to implement the sale of the Literature Business (the “**TNG Transaction**”) to Great Pacific Enterprises Inc. dba TNG.

5. On April 7, 2020, this Court granted an Approval and Vesting Order, among other things, approving the TNG Transaction. The TNG Transaction closed the next day on April 8, 2020.

6. On June 17, 2020, the Partners continued the Proposal Proceedings under the *Companies’ Creditors Arrangement Act*, R.S.C., 1985, c. C-36, as amended (the “**CCAA**”), pursuant to an Initial Order of the Court (the “**Initial Order**”).

7. The Initial Order, among other things, (i) took up and continued the Proposal Proceedings under the CCAA, (ii) appointed KSV Restructuring Inc. as the Monitor of the CCAA Entities (the “**Monitor**”),<sup>2</sup> and (iii) granted a stay of proceedings under the CCAA in respect of the Partners and Metro 360 until and including June 26, 2020 or such later date as the Court may order (the “**Stay Period**”) in order to provide the Partners and Metro 360 with stability for Metro 360’s remaining businesses and the time and framework within which the Partners and Metro 360 could advance a value-maximizing restructuring plan for the benefit of the Partners,

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<sup>1</sup> Capitalized terms used but not defined herein have the meaning given to them in the affidavit of Daniel P. Shapiro sworn November 27, 2020 (the “**Shapiro Affidavit**”).

<sup>2</sup> Effective August 31, 2020, the name of KSV Kofman Inc. was changed to KSV Restructuring Inc.

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Metro 360 and their various stakeholders. The Stay Period was subsequently extended by further orders of this Court to December 11, 2020.

8. On September 16, 2020, this Court granted a Claims Procedure Order approving a process (the “**Claims Process**”) for the identification, quantification and resolution of claims against Metro 360 and the Partners, as well as the present and former officers and directors of the Partners and Metro 360.

9. The Partners and Metro 360 have been working diligently to advance the Claims Process pursuant to the terms of the Claims Procedure Order and, with the assistance of the Monitor, are in the process of reviewing all Proofs of Claim and Notices of Dispute received in connection with the Claims Process in order to determine whether to accept, revise or reject each claim set forth therein.

10. In addition, the Metro 360 and its management has been supporting the operation and growth of Metro 360’s remaining operating businesses.

11. The Partners and Metro 360 are requesting an extension of the Stay Period to and including March 31, 2021 pursuant to the Stay Extension Order.

12. Since the commencement of the Proposal Proceedings, the Partners and Metro 360 have been working diligently and in good faith in respect of all matters relating to these proceedings. The Partners and Metro 360, have worked diligently to, among other things, complete the wind-down of the Literature Business, stabilize and seek to grow Metro 360’s remaining operating businesses as such businesses navigate the challenges associated with the COVID-19 pandemic, and advance the Claims Process.



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13. The Partners and Metro 360 are requesting an extension of the Stay Period to and including March 31, 2021 in order to provide the Partners and Metro 360 with the time needed to, among other things, work to complete their review of the Proofs of Claim and Notices of Dispute received in connection with the Claims Process, attempt to resolve any disputed claims that may exist, and advance a value-maximizing restructuring plan that can be presented to creditors. Metro 360's objective is to finalize and present a plan of arrangement and compromise in advance of the end of the requested Stay Period extension.

14. Creditors will not suffer any material prejudice if the Stay Period is extended.

15. The extension of the Stay Period to and including March 31, 2021 is supported by the Monitor.

16. The provisions of the CCAA, including s. 11.02 and the Court's equitable and statutory jurisdiction thereunder.

17. Rules 1.04, 1.05, 2.03, 3.02, 16 and 37 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended.

18. The Consolidated Notice to the Profession, Litigants, Accused Persons, Public and the Media regarding Expanded Operations of Ontario Superior Court of Justice dated May 13, 2020.

19. Changes to Commercial List Operations in light of COVID-19 dated March 16, 2020.

20. Such further and other grounds as counsel may advise and this Court may permit.

**THE FOLLOWING DOCUMENTARY EVIDENCE** will be used at the hearing of the motion:

21. The Shapiro Affidavit, and the exhibits attached thereto;

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22. The Second Report and the appendices attached thereto; and
23. Such further and other materials as counsel may advise and this Court may permit.

November 27, 2020

**GOODMANS LLP**  
Barristers & Solicitors  
333 Bay Street, Suite 3400  
Toronto, Canada M5H 2S7

**L. Joseph Latham** LSO#: 32326A  
jlatham@goodmans.ca

**Andrew Harmes** LSO#: 73221A  
aharmes@goodmans.ca

Tel: 416.979.2211  
Fax: 416.979.1234

Lawyers for 957855 Alberta Ltd. (formerly  
NewsWest Inc.), Rosebud Creek Financial Corp.,  
and Metro 360 General Partnership

## SCHEDULE “A”

### Videoconference Details

Please advise if you intend to join the hearing of the motion by emailing Andrew Harmes at [aharmes@goodmans.ca](mailto:aharmes@goodmans.ca).

**To Join Meeting:**

<https://us02web.zoom.us/j/87628560186?pwd=NIBBMzhPVm9wSGpldVViK0dNRlk3Zz09>

Meeting ID: 876 2856 0186

Passcode: 261191

One tap mobile

+14388097799,,87628560186#,,,,,0#,,261191# Canada

+15873281099,,87628560186#,,,,,0#,,261191# Canada

Dial by your location

+1 438 809 7799 Canada

+1 587 328 1099 Canada

+1 613 209 3054 Canada

+1 647 374 4685 Canada

+1 647 558 0588 Canada

+1 778 907 2071 Canada

+1 204 272 7920 Canada

Meeting ID: 876 2856 0186

Passcode: 261191

Find your local number: <https://us02web.zoom.us/j/87628560186?pwd=NIBBMzhPVm9wSGpldVViK0dNRlk3Zz09>

**IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c.  
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**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF 957855  
ALBERTA LTD. (FORMERLY NEWSWEST INC.) AND ROSEBUD CREEK FINANCIAL  
CORP. IN RESPECT OF METRO 360 GENERAL PARTNERSHIP**

Court File No.: CV-20-00642783-00CL

Applicants

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**  
Proceeding commenced at Toronto

**NOTICE OF MOTION  
(returnable September 16, 2020)**

**GOODMANS LLP**

Barristers & Solicitors  
333 Bay Street, Suite 3400  
Toronto, Canada M5H 2S7

**L. Joseph Latham** LSO#: 32326A  
jlatham@goodmans.ca

**Andrew Harmes** LSO#: 73221A  
aharmes@goodmans.ca

Tel: (416) 979-2211  
Fax: (416) 979-1234

Lawyers for 957855 Alberta Ltd. (formerly  
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Court File No. CV-20-00642783-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

**IN THE MATTER OF THE COMPANIES' CREDITORS  
ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED**

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CORP. IN RESPECT OF METRO 360 GENERAL  
PARTNERSHIP**

Applicants

**AFFIDAVIT OF DANIEL P. SHAPIRO  
(sworn November 27, 2020)**

I, Daniel P. Shapiro, of the City of Toronto, in the Province of Ontario, **MAKE OATH  
AND SAY:**

1. I am the President of 957855 Alberta Ltd. (formerly NewsWest Inc.) (“**Alberta HoldCo**”) and the President of Rosebud Creek Financial Corp. (“**Rosebud HoldCo**” and, together with Alberta HoldCo, the “**Partners**”). Accordingly, I have personal knowledge of the matters to which I depose in this affidavit. Where I do not possess personal knowledge, I have stated the source of my information and, in all such cases, believe it to be true.<sup>1</sup>

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<sup>1</sup> Capitalized terms not defined in this affidavit shall have the meaning given to them in the April Affidavit or the September Affidavit (each as defined below), as applicable. Unless otherwise indicated, monetary references in this affidavit are references to Canadian dollars.

## I. OVERVIEW

2. The Partners are holding companies that together hold 100% of the interests of Metro 360 General Partnership (“**Metro 360**”). Metro 360 operates a multi-faceted business that, prior to completing the TNG Transaction (as defined below), was focused primarily on the wholesale distribution across Canada of books, magazines and newspapers (the “**Literature Business**”). Metro 360 also has other business interests, including a consumer-packaged goods distribution business and investments in various emerging businesses.

3. On April 6, 2020, the Partners filed notices of intention to make a proposal pursuant to section 50.4 of the *Bankruptcy and Insolvency Act* (Canada) in order to initiate proceedings (the “**Proposal Proceedings**”) to implement the sale of the Literature Business to Great Pacific Enterprises Inc. dba TNG (the “**TNG Transaction**”). This Court granted an Approval and Vesting Order on April 7, 2020, among other things, approving the TNG Transaction, and the TNG Transaction was completed the next day on April 8, 2020. Additional information with respect to the Literature Business, the issues leading to the TNG Transaction and the reasons why the TNG Transaction was the only viable option at the time to preserve and maximize the value of the Literature Business for the benefit of Metro 360, the Partners and their respective stakeholders, is set out in detail in my affidavit sworn on April 6, 2020 (the “**April Affidavit**”) in connection with the commencement of the Proposal Proceedings, a copy of which is attached (without exhibits) as Exhibit “A” to this affidavit.

4. On June 17, 2020, the Partners continued the Proposal Proceedings under the *Companies’ Creditors Arrangement Act* (Canada) (the “**CCAA**”) pursuant to an Initial Order of the Court (the “**Initial Order**”). The Initial Order, in addition to taking up and continuing the proposal Proceedings under the CCAA, among other things, appointed KSV Restructuring Inc. as the

Monitor of the CCAA Entities (the “**Monitor**”) and granted a stay of proceedings under the CCAA (the “**Stay of Proceedings**”) in respect of the Partners and Metro 360 in order to provide the Partners and Metro 360 with stability for Metro 360’s remaining businesses and the time and framework within which the Partners and Metro 360 could advance a value-maximizing restructuring plan for the benefit of the Partners, Metro 360 and their various stakeholders.

5. On September 16, 2020, this Court granted an Order (the “**Claims Procedure Order**”) approving a process (the “**Claims Process**”) for the identification, quantification and resolution of claims against Metro 360 and the Partners, as well as the present and former officers and directors of the Partners and Metro 360.

6. This affidavit is sworn in support of a motion for an Order (the “**Stay Extension Order**”), among other things, extending the Stay Period (as defined below) to March 31, 2021. The Stay of Proceedings currently expires on December 11, 2020 (the “**Stay Period**”). The Partners and Metro 360 are seeking an extension of the Stay Period to enable them to continue to advance the Claims Process and work towards developing a restructuring plan that will maximize value and hopefully repay Metro 360’s creditors in full. Metro 360’s objective is to finalize a plan of arrangement and compromise before the end of the requested stay extension deadline.

## **II. UPDATE ON THE CCAA PROCEEDINGS AND RECENT ACTIVITIES**

### **A. The Claims Process**

7. Since the issuance of the Claims Procedure Order on September 16, 2020, the Partners and Metro 360, with the assistance of the Monitor, have worked diligently to advance the Claims Process pursuant to the terms of the Claims Procedure Order. More specifically, the following



table sets out the steps required under the Claims Procedure Order to provide notice of the Claims Process and the actions taken to satisfy those requirements:

<b>Step Required by the Claims Procedure Order</b>	<b>Deadline</b>	<b>Status</b>
Monitor to post a copy of the Notice to Creditors, the Claims Procedure Order, and a Proof of Claim Document Package on the Monitor's Website.	As soon as practicable following the issuance of the Claims Procedure Order.	All documents were posted to the Monitor's Website on September 17, 2020.
Monitor to cause the Notice to Creditors to be published in <i>The Globe and Mail</i> (National Edition) for at least two business days.	As soon as practicable following the issuance of the Claims Procedure Order.	The Notice to Creditors was published in <i>The Globe and Mail</i> (National Edition) on September 21, 2020 and September 28, 2020.
The CCAA Entities to cause an Employee Claim Package to be sent to every Terminated Employee at their respective last known municipal or e-mail address as recorded in the CCAA Entities' books and records.	September 30, 2020.	Sent via regular mail on or before September 30, 2020.
The CCAA Entities to cause a Proof of Claim Document Package to be sent to every Known Creditor at their respective last known municipal or e-mail address as recorded in the CCAA Entities' books and records.	September 30, 2020.	Sent via regular mail on or before September 30, 2020.

8. As of October 30, 2020, which was the Claims Bar Date, the Monitor had received 958 Proofs of Claim from arms' length creditors which, together with 84 Termination Claims of Terminated Employees, total approximately \$17.1 million in claims against the Partners and Metro 360 (including a "placeholder" claim filed by the CRA (as defined below)). In addition, three related party claims were filed for approximately \$10.9 million. The Monitor received six Notices of Dispute in respect of Termination Claims of Terminated Employees. The Monitor did not receive any D&O Proofs of Claim or any secured claims.

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9. The Partners and Metro 360, with the assistance of the Monitor, are in the process of reviewing all Proofs of Claim and Notices of Dispute received in connection with the Claims Process in order to determine whether to accept, revise or reject each claim set forth therein.

10. Pursuant to paragraph 26 of the Claims Procedure Order, if the Monitor intends to revise or reject a Proof of Claim or a Notice of Dispute that has been filed in accordance with the Claims Procedure Order, it will send a Notice of Revision or Disallowance along with its reasons for doing so. The Claims Procedure Order does not impose any deadline for the Monitor to provide a Notice of Revision or Disallowance in order to provide the Monitor with greater flexibility and control over when to trigger the dispute resolution process contemplated in the Claims Procedure Order. To date, the Partners and Metro 360, with the assistance of the Monitor, have made significant progress in resolving a great number of the claims filed against the Partners and Metro 360 pursuant to the Claims Process, and intend to continue to work to resolve any outstanding and disputed claims. Most of the claims have been resolved on a basis consistent with Metro 360's books and records. To date, the Monitor has issued two Notices of Revision or Disallowance adjusting two claims by approximately \$56,000 and \$12,000, respectively. The Monitor has received confirmation from one creditor that it is in agreement with the Notice of Revision or Disallowance reducing its claim by \$56,000, and is awaiting confirmation from the other creditor who has received a Notice of Revision or Disallowance.

11. I understand that the Second Report of the Monitor (the "**Monitor's Second Report**"), which is to be filed in connection with this motion, will provide further information with respect to the status of the Claims Process, including the activities of the Monitor in connection therewith.

**B. CRA Matters**

12. The Canada Revenue Agency (the “**CRA**”) has filed a “placeholder” Proof of Claim against the Partners and Metro 360 with no specified amount, and could relate to any type of tax liability. In this regard, the CRA did issue certain re-assessments to Metro 360 on or about October 16, 2020 in respect of certain HST matters. These re-assessments issued by the CRA have two principal components: (i) certain specific instances where additional information is required by CRA, and (ii) a reversal of input tax credits (“**ITCs**”) totalling almost \$4.5 million claimed by Metro 360 over the past 18 months. I am advised by Joseph Latham of Goodmans, and believe, that the reversal of ITCs by the CRA is common when there has been a bankruptcy or receivership and unsecured creditors suffer a loss on their claims. Since this is not the case for Metro 360, as Metro 360 continues to intend to repay its creditors in full, the Partners and Metro 360 are hopeful that the CRA claim can be resolved. The Partners and Metro 360, with the assistance of their counsel and the Monitor, have held various discussions with the CRA in the hopes of resolving these matters for the benefit of all creditors.

**C. Collection and Return of Unsold Inventory**

13. As explained in the April Affidavit and my other affidavits provided in connection with the Proposal Proceedings and these CCAA proceedings, including my affidavit sworn on September 9, 2020 (the “**September Affidavit**”) in connection with the most recent Court attendance, a copy of which is attached (without exhibits) as Exhibit “B” to this affidavit, the retrieval of and return of unsold Literature Business inventory for credit and reduction of the Metro 360 payables was a key component of the TNG Transaction. The Partners and Metro 360, in consultation and with the assistance of the Monitor, have continued to work diligently to facilitate the collection and return of unsold Literature Business inventory and have substantially completed

this process. Overall, approximately \$38 million of refundable unsold Literature Business has been collected and processed for credit, thereby significantly reducing the amount of supplier claims that exist as against Metro 360. The Partners and Metro 360 expect to process Literature Business inventory returns for an additional approximately \$500,000 in credits in the near term, which will complete the Literature Business inventory return process.

**D. Key Employee Retention Plan**

14. Pursuant to the Initial Order, the Court approved the key employee retention program (the “**KERP**”) for three key employees in Metro 360’s receivable and accounting groups (the “**KERP Participants**”) whose continued efforts with respect to the collection of accounts receivable and the overseeing of the return and processing of unsold Literature Business were expected to maximize recoveries for the benefit of Metro 360’s creditors. The Initial Order also granted a Court-ordered charge securing the amounts owing pursuant to the KERP.

15. Pursuant to the terms of the KERP, KERP Participants are entitled to receive a specified amount (the “**KERP Payment**”) in one lump sum installment with payment of their final pay following September 30, 2020 (the “**Termination Date**”). In each case, the KERP Payment would be in full and final satisfaction of any and all claims the KERP Participant might have had for severance or termination pay under statute or common law, provided that a KERP Participant may file a claim for its unused vacation pay. A KERP Participant would forfeit its entitlement to the KERP Payment if, among other things, the KERP Participant resigned or its employment was terminated with cause prior to the Termination Date.

16. Metro 360 has made payment of the KERP Payments to the KERP Participants pursuant to the terms of the KERP as part of their final pay in September of 2020.

**E. Sale of Residual Assets**

17. Pursuant to the Initial Order, the Partners and Metro 360 have the authority to dispose of redundant or non-material assets for proceeds not exceeding \$200,000 in any one transaction or \$400,000 in the aggregate. In this regard, on September 15, 2020, Metro 360 (through the Alberta HoldCo) entered into an asset purchase agreement with Roltek International Inc. (“**Roltek**”) for the sale to Roltek of Metro 360’s Ontario newspaper division, which was not included as part of the TNG Transaction, for consideration of \$75,000 payable in cash and through the set-off of amounts owing by Metro 360 to Roltek. The transaction closed on November 2, 2020 and the first tranche of the purchase price in the amount of \$30,000 has been paid to Metro 360.

18. Court approval of the transaction was not required as the proceeds from the sale were less than the \$200,000 threshold set out in the Initial Order.

**F. Update on Recent Financial Performance and Business Operations**

19. Metro 360 and the Partners have continued to focus on completing the wind-down of the Literature Business, while also maintaining the stability of Metro 360’s remaining operating businesses and investments, as well as focusing on the growth of each. Metro 360’s remaining operating businesses and investments are integral to the success of any plan involving Metro 360.

20. In particular, a key focus of Metro 360 and its management has been supporting the operation and growth of Well Ventures Corp. (“**Well Ventures**”) – of which Metro 360 currently owns an approximately 17% interest, on a fully diluted basis<sup>2</sup> – and its health drink and spirits business. As explained further in the September Affidavit, Metro 360 recently participated in a

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<sup>2</sup> Rosebud HoldCo also holds a 4.22% interest in Well Ventures, on a fully diluted basis.

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\$1.1 million private placement of Well Ventures by acquiring 5.00% second lien convertible debentures issued by Well Ventures due 2022 in the aggregate principal amount of approximately \$310,360 and also acquired 107,557 common shares of Well Ventures at an average price of \$1.76 per share for a total investment of \$500,000. The private placement was intended to provide Well Ventures with working capital to meet anticipated sales growth expected to result from certain new contractual arrangements, including a contract with a significant American national grocer that is expected to increase Well Ventures' sales in the United States. In addition, as also explained in the September Affidavit, Metro 360 has advanced certain funds to Well Ventures to finance Well Ventures' purchase and installation of a new high-speed fill line for its core juice products, a high-speed labeler and a case labeler.

21. Well Ventures' restaurant and hospitality wholesale business has slowed significantly on a year over year basis as a result of the global COVID-19 pandemic and the various government restrictions imposed in connection therewith, and its cash position has been impacted by challenges in collecting accounts receivables with retailers seeking to stretch payment terms. However, despite these and various other challenges resulting from the COVID-19 pandemic, Well Ventures' grocery business is positioned for substantial growth. Well Ventures experienced strong sales in October 2020 with approximately \$600,000 in gross sales and projects to reach approximately \$8 million in total sales for its fiscal year ending 2021, representing growth of approximately \$2 million as compared to fiscal 2020 total sales. As referenced above and explained further in the September Affidavit, Well Ventures has recently secured an arrangement with a significant American national grocery retailer and expects to begin shipping product to the United States in the near term, thereby resulting in additional sales growth. Well Ventures has also secured additional retail listings for its product, including at Loblaws, Walmart and Farm Boy, and is

continuing to develop and advance various new and innovative products to supplement its current offerings.

22. Overall, Well Ventures has developed a strong market presence for its “Well” branded health drinks and line of spirits and continues to project to be a high-growth business that will be central in efforts to maximize recoveries for creditors of Metro 360.

### **III. EXTENSION OF THE STAY PERIOD**

23. The Stay of Proceedings in respect of the CCAA Entities expires on December 11, 2020. The Partners and Metro 360 are seeking an extension of the Stay Period to and including March 31, 2021 pursuant to the proposed Stay Extension Order.

24. The Partners and Metro 360 continue to act diligently and in good faith in respect of all matters relating to these proceedings. The Partners and Metro 360 have worked diligently to, among other things, complete the wind-down of the Literature Business, stabilize and seek to grow Metro 360’s remaining operating businesses as such businesses navigate the challenges associated with the COVID-19 pandemic, and advance the Claims Process.

25. During the requested extension of the Stay Period, the Partners and Metro 360 intend to, among other things, work to complete their review of the Proofs of Claim and Notices of Dispute received in connection with the Claims Process, attempt to resolve any disputed claims that may exist, and advance a value-maximizing restructuring plan that can be presented to creditors. Metro 360’s objective is to finalize and present a plan of arrangement and compromise in advance of the end of the requested Stay Period extension. As discussed further in my other affidavits provided in connection with the Proposal Proceedings and these CCAA proceedings, the Partners and Metro 360 believe that the development and implementation of a restructuring plan that preserves the

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value of Metro 360 and its business is in the best interests Metro 360 and the Partners, as well as their respective stakeholders. Accordingly, the extension of the Stay Period is necessary to provide the Partners and Metro 360 with the time needed to further advance the Claims Process and work towards developing and implementing a restructuring solution that is in the best interests of the Partners, Metro 360, and their various stakeholders.

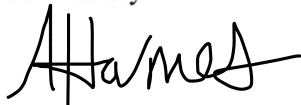
26. I do not believe that any creditor will suffer any material prejudice as a result of the proposed extension of the Stay Period.

27. I understand that an updated cash flow forecast will be included in the Monitor's Second Report. I also understand that the Monitor is supportive of the proposed extension of the Stay Period pursuant to the proposed Stay Extension Order to and including March 31, 2021.

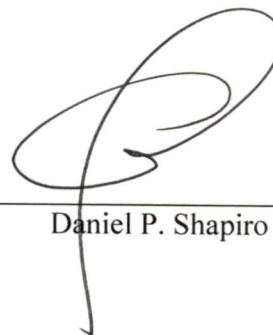
#### IV. CONCLUSION

28. For the reasons described above, the Partners and Metro 360 believe that the relief requested in the proposed Stay Extension Order is in the best interests of the Partners and Metro 360, as well as their respective stakeholders. Accordingly, I swear this affidavit in support of the relief sought and for no other or improper purpose.

SWORN BEFORE ME over  
videoconference by Daniel P. Shapiro stated  
as being located in the City of Toronto in the  
Province of Ontario, before me at the City of  
Toronto in the Province of Ontario, on  
November 27, 2020, in accordance with O.  
Reg 431/20, Administering Oath or  
Declaration Remotely



A Commissioner for taking affidavits  
Name: Andrew Harmes



Daniel P. Shapiro



A

**THIS IS EXHIBIT "A"**  
**TO THE AFFIDAVIT OF DANIEL P. SHAPIRO**  
**SWORN BEFORE ME OVER VIDEOCONFERENCE**  
**THIS 27<sup>th</sup> DAY OF NOVEMBER, 2020**



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Commissioner for Taking Affidavits

Estate / Court File No.: 31-2636843

Estate / Court File No.: 31-2636818

***ONTARIO***  
**SUPERIOR COURT OF JUSTICE**  
**(IN BANKRUPTCY AND INSOLVENCY)**  
**COMMERCIAL LIST**

**IN THE MATTER OF THE NOTICES OF INTENTION TO  
MAKE A PROPOSAL OF 957855 ALBERTA LTD.  
(FORMERLY NEWSWEST INC.) AND ROSEBUD CREEK  
FINANCIAL CORP. IN RESPECT OF METRO 360  
GENERAL PARTNERSHIP**

**AFFIDAVIT OF DANIEL P. SHAPIRO**  
**(sworn April 6, 2020)**

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Estate / Court File No.: 31-2636843

Estate / Court File No.: 31-2636818

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
**(IN BANKRUPTCY AND INSOLVENCY)**  
**COMMERCIAL LIST**

**IN THE MATTER OF THE NOTICES OF INTENTION TO  
MAKE A PROPOSAL OF 957855 ALBERTA LTD.  
(FORMERLY NEWSWEST INC.) AND ROSEBUD CREEK  
FINANCIAL CORP. IN RESPECT OF METRO 360  
GENERAL PARTNERSHIP**

**AFFIDAVIT OF DANIEL P. SHAPIRO**  
**(sworn April 6, 2020)**

I, Daniel P. Shapiro, of the City of Toronto, in the Province of Ontario, **MAKE OATH**  
**AND SAY:**

**I. INTRODUCTION**

1. I am the President of 957855 Alberta Ltd. (formerly NewsWest Inc.) (“**Alberta HoldCo**”) and the President of Rosebud Creek Financial Corp. (“**Rosebud HoldCo**” and together, with the Alberta HoldCo, the “**Partners**”). The Partners are holding companies which together hold 100% of the interests of Metro 360 General Partnership (“**Metro 360**” or the “**Partnership**”), a multi-faceted marketer of information and entertainment products, including magazines, books, newspapers, audio and visual media, and consumer packaged goods. Accordingly, I have personal knowledge of the matters to which I depose in this affidavit. Where I do not possess personal knowledge, I have stated the source of my information and, in all such

cases, believe it to be true. Neither the Partners nor the Partnership waive or intend to waive any applicable privilege by any statement herein.

2. Earlier today, on April 6, 2020, the Partners filed notices of an intention to make a proposal (each, an “**NOI**” and together, the “**NOIs**”) pursuant to section 50.4 of the *Bankruptcy and Insolvency Act* (Canada) (the “**BIA**”). KSV Kofman Inc. is named as the proposal trustee under the NOIs (“**KSV**” or the “**Proposal Trustee**”).

3. As further described below, the Partners filed the NOIs in response to significant financial challenges which Metro 360 began to face many years ago but have accelerated in light of recent global developments, including the COVID-19 pandemic and, in particular, to implement a sale transaction in respect of Metro 360’s magazine and book wholesale distribution business (the “**Literature Business**”). Book sales have declined generally and significantly during the pandemic; and magazine sales have been declining generally and have now experienced immediate and exponential sales declines as retailers have either been forced to temporarily close or in some cases have elected not to receive or display magazines. In addition, many of Metro 360’s store-level employees have elected not to work during the COVID-19 pandemic and, as a result, the magazine and book products are not being displayed at many of Metro 360’s larger retail accounts. Metro 360’s supply and distribution lines have been brought to a complete standstill, leading to most significant suppliers having already terminated key contracts with Metro 360 or simply refusing to ship new product.

4. These events have collectively and significantly exacerbated certain existing business and financial challenges related to the broader industry in which Metro 360 and the Literature Business operate, and caused a significant erosion of value to the Literature Business to the point

where this portion of Metro 360's business is days from being completely discontinued. It is critical that Metro 360 and the Partners take immediate action to preserve the value that remains in the Literature Business and protect hundreds of jobs through the closing of the proposed sale transaction discussed below.

5. While Metro 360 has undertaken efforts to address these unprecedented challenges, including investing significant capital into the business in the months leading up to the COVID-19 pandemic, the Literature Business has reached a critical point in these circumstances. The unexpected market shut-down has left the Literature Business in significant arrears to its supplier base, with approximately \$65 million in current liabilities owed to unsecured creditors. Needing an urgent solution to stabilize the Literature Business, the Partnership began exploring potential options for an expedited sale of the Literature Business.

6. Fortunately, these sale efforts have culminated in a sale agreement that, subject to the approval of this Court and satisfaction of the other closing conditions, will see Great Pacific Enterprises Inc. dba TNG ("**TNG**" or the "**Purchaser**") acquire, among other things: (i) all customer and title records of Metro 360; (ii) any and all magazine racks at Metro 360 customer locations; and (iii) the goodwill of Metro 360 in respect of its Canadian customers (the "**Transaction**"). In addition to these assets, the Purchaser will make offers of employment to almost 300 of Metro 360's employees and assume certain key customer contracts, for the significant direct benefit of those employees and contract-counterparties of Metro 360, all as more fully discussed below.

7. The Transaction is an important step for the Partnership and its stakeholders in the circumstances. As further discussed below, I understand that the Paperback and Periodical

Distributors Act (as defined and discussed below) makes Canadian ownership a condition for the registration of any businesses engaged in the distribution of paperback and periodical publications, effectively limiting the market of prospective purchasers for the Literature Business to only TNG, which is a Canadian operation. The only businesses in this industry in Canada are TNG and Metro 360. Based on such ownership restrictions and overall timing and market conditions, the Partnership and the Partners decided, in consultation with KSV, that an extensive sales process is not practical or appropriate in the circumstances, and elected to focus solely on approaching TNG to develop a potential sale transaction in respect of the Literature Business in real time.

8. Despite the limited market, the Partnership believes that the Transaction represents the only available transaction in the unique circumstances of this market. The Transaction provides value for the Literature Business and will see the Literature Business continue on a going concern basis for the benefit of customers, suppliers, and close to 300 employees. The Partnership, with the assistance of its professional advisors and KSV, has determined that the sale of the Literature Business pursuant to the Transaction, in conjunction with the collection of accounts receivable and the return of unsold inventory at retail locations, combined with the continuation of the Partnership's other business operations, represents the best available alternative in the circumstances and will allow the Partnership to work towards presenting a restructuring plan to Metro 360's creditors at a later time that will maximize value and recoveries to them. As a result, the Partners are seeking approval to proceed with the Transaction at this time, with the full support of KSV, as the Proposal Trustee.

9. While the purchase price being paid for the limited set of assets being sold under the Transaction (which are, essentially, customer lists, certain equipment and goodwill) is not overly



significant in the larger context of Metro 360's liabilities, the Transaction presents a series of other valuable benefits beyond just the purchase price:

- (a) the Transaction does maximize value for the purchased assets, such as they are;
- (b) the Transaction offers employment to a significant number of employees;
- (c) the Transaction involves the assumption of certain key customer contracts by the Purchaser, which is the largest player in Canada in this market, for the direct benefit of those contract-counterparties;
- (d) the Transaction represents the only reasonable opportunity for Metro 360 to access unsold or dated products, which represent a significant amount of refundable inventory (in the approximate amount of \$37 million), as TNG has agreed under the Transaction to retrieve all unsold inventory from retail accounts serviced by Metro 360 and process such returns for Metro 360's account. If successful, the retrieval and return of Metro 360's unsold inventory through TNG will significantly reduce the amount of supplier claims that will exist against the Metro 360 estate as this product is returnable for full credit;
- (e) the Transaction will improve Metro 360's ability to collect a significant amount of receivables that are owed to it (in the approximate amount of \$13 million), as the continuation of product flow to Metro 360's historic customers from TNG and the retrieval by TNG of Metro 360's unsold inventory will help Metro 360 to settle its customer accounts and reduce the risk that customers will assert set-off claims resulting from a disruption in supply; and

- (f) with the benefit of time, the Transaction will give Metro 360 a continuing ability to raise and realize value for its creditors through the above activities, the continuation of Metro 360's other business interests and the disposition of other assets of Metro 360 at the appropriate time, all keeping in mind the timing considerations that may exist and are likely material in light of the COVID-19 pandemic and related market disruption.

10. All of these benefits taken together establish, in my view, that the Transaction maximizes value for the assets being sold, and realizes several other material benefits referenced above that will serve to continue employment, significantly reduce creditor claims against Metro 360, and maximize Metro 360's ability to realize effectively on refunds and collections. Taken together, these benefits are material and significant to Metro 360 and its creditors and enhance the long-term viability of Metro 360, which will also allow it to formulate a restructuring plan for the benefit of its creditors.

11. In addition to seeking approval of the Transaction, the Partners are also seeking an Order, among other things: (i) administratively consolidating the proceedings related to the Partners' NOIs since the filing of such NOIs relate to Metro 360 and its business operations; (ii) approving a first priority administration charge in the aggregate amount of \$300,000; (iii) extending the stay of proceedings and other basic BIA protections resulting from the NOIs to Metro 360; (iv) approving the granting of an extension of the time to file a proposal and the corresponding stay of proceedings; and (v) authorizing Metro 360 and/or the Partners to complete the sale of redundant or non-material assets without further order of this Court for proceeds not exceeding \$200,000 in any one transaction or \$400,000 in the aggregate, in each case with the prior

approval of the Proposal Trustee. This affidavit is sworn in support of the Partners' motion seeking the foregoing relief.

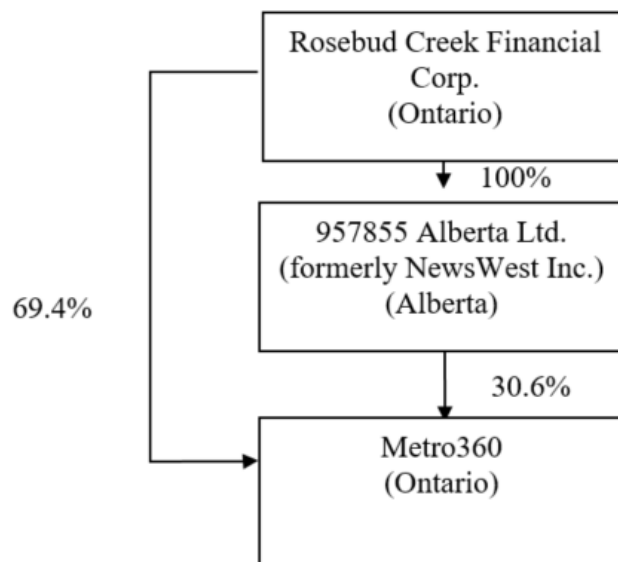
## II. METRO 360

### A. Overview of Corporate Structure

12. A corporate chart showing the organizational structure of the Partnership (and its other interests) is attached as Exhibit "A" to this affidavit.

#### (i) Metro 360

13. Metro 360 is a general partnership established under the laws of Ontario. As shown below, its partners are Alberta HoldCo and Rosebud HoldCo.



14. Metro 360 is the entity through which the Literature Business is operated, and including its predecessor entities, is approximately 100 years old. Metro 360 represents the consolidation of at least fourteen predecessor companies with roots in Alberta, Saskatchewan, Manitoba,

Ontario and Quebec. The consolidation of Metro 360 and its predecessor entities over the years was driven by significant contraction in the paperback and periodical print and distribution industry, largely due to the emergence of the internet and social media platforms. Density, sales volumes and cost reductions through consolidation were required for wholesalers and distributors to remain viable. Today, there are only two magazine and book wholesalers in Canada of any substance, being Metro 360 and the Purchaser.

15. As discussed further below, Metro 360 is also a wholesale distributor of various food brands, music (both compact discs and vinyl records), consumer electronic accessories and a line of “As Seen on TV” items, and provides various merchandising services to third parties. All of these other businesses of Metro 360 are in addition to the Literature Business. Further details concerning these other business operations of Metro 360 are provided below.

16. Metro 360’s principal liabilities consist of the trade liabilities related to the Literature Business and its other business operations. Metro 360 is also the borrower under a credit agreement dated as of October 17, 2012 between Metro 360, as borrower, and the Toronto Dominion Bank (“**TD**”), as lender (the “**Credit Agreement**”), pursuant to which TD has made available to Metro 360 a revolving credit facility in the aggregate amount of \$4 million. However, Metro 360 has not currently drawn any amounts under the Credit Agreement, and as such, it does not have any secured debt obligations outstanding. Notice of this motion was given to TD in any event.

(ii) *Alberta HoldCo*

17. Alberta HoldCo is a company incorporated under laws of Alberta. The registered office of Alberta HoldCo is in Calgary and its physical address is located in Scarborough, Ontario.

18. Alberta HoldCo is a holding company and owns a 30.6% interest in Metro 360.

19. Alberta HoldCo does not conduct any active business in the ordinary course other than acting as a partner of Metro 360, and, as a pure holding company with only an interest in Metro 360, does not have any cash, third-party creditors or other interests or investments.

*(iii) Rosebud HoldCo*

20. Rosebud HoldCo is a company amalgamated pursuant to the laws of Ontario. The registered office and physical address of Rosebud HoldCo are both located in Scarborough, Ontario.

21. Rosebud HoldCo is a holding company and owns a 69.4% interest in Metro 360, with the other 30.6% interest in Metro 360 being held by Alberta HoldCo. Rosebud HoldCo also holds a number of illiquid investments in other businesses.

22. Rosebud HoldCo does not conduct any active business in the ordinary course other than (i) acting as a partner of Metro 360, and (ii) holding illiquid investments and interests in various other operating entities. As a pure holding company, Rosebud HoldCo does not have any cash or third-party creditors.

**B. Metro 360's Business Operations**

23. Metro 360 operates a multi-faceted business employing a total of approximately 350 full and part-time employees which is focused primarily on the wholesale distribution of books, newspapers, audio and visual media, consumer electronic accessories and consumer packaged goods. Although a recent diversification effort has expanded Metro 360's business operations, its

core business is the Literature Business. A detailed corporate chart showing Metro 360's various business interests is attached as Exhibit "A" to this affidavit.

(i) *The Literature Business*

24. The Literature Business consists of the wholesale distribution of books, magazines and newspapers to various single-copy retail customers across Canada. Metro 360 receives product in bulk from its publishing partners, and through its logistics providers, delivers such product to more than 4,500 retailers from Alberta to the Quebec/New Brunswick border. Metro 360 has thousands of magazine and book titles available, covering a wide array of genres. The Literature Business is a legacy business of Metro 360, having been commenced by the Shapiro family in the early 1940s.

25. The Literature Business uses a relatively complex and proprietary software system to manage product allocations specific to each store size and the demographic profile of the shoppers in the area to optimize sales in every region of Canada. To my knowledge, the Purchaser is the only other entity operating in Canada with a system of this kind, which, as discussed further below, also makes the Purchaser the only logical and practical buyer for Metro 360's Literature Business.

26. This software system is also used to manage reverse logistics to account for the removed unsold product from retailers, as Metro 360, through a highly customized system, returns such unsold product to its publisher suppliers for full credit and simultaneously applies a credit to its retail customers. In connection with the Transaction, Metro 360 and the Purchaser will be able to work together to maximize Metro 360's ability to return inventory and thereby minimize, to the greatest extent possible, the amount of creditor claims that will exist against Metro 360.

(ii) *Customers*

27. The Literature Business services an expansive retail customer base of approximately 4,500 locations across Canada. Customers of the Literature Business mostly consist of independent retailers, regional grocery chains, convenience and drug retailers, and gas service stations. Generally speaking, customers in this space that are not serviced by Metro 360 in Canada, are serviced by the Purchaser.

(iii) *Suppliers*

28. As a wholesale distribution focused business, Metro 360 has many suppliers that are critical to its operations. With respect to the Literature Business, Metro 360 provides publishers with a route to market and sell their product, and accordingly, has maintained long-term relationships with a number of key publishers and literary suppliers.

29. As discussed further below, Metro 360 is currently in significant arrears with its supplier base and most key suppliers have already halted further supply. This discontinuance has had a significant and essentially terminal impact on Metro 360's ability to continue the Literature Business and it is only through the Transaction that Metro 360 will be able to re-establish a supply line to Metro 360's existing retail customer contracts .

(iv) *Employees*

30. Metro 360 currently employs approximately 350 employees, comprised of 70 salaried employees and approximately 300 hourly employees. Approximately 20 employees have been recently subject to a temporary layoff. None of Metro 360's employees are unionized.

31. Metro 360's employees are spread across the provinces of Alberta, Saskatchewan, Manitoba, Ontario and Quebec, with approximately 60 percent located in Ontario.

32. Metro 360's salaried employees are paid semi-monthly (24 pay periods per year), and its hourly employees are paid weekly. Prior to the COVID-19 pandemic, Metro 360's monthly payroll obligation was approximately \$370,000. This has recently been reduced as all management employees have accepted a 20% temporary salary reduction.

33. Metro 360's Ontario-based employees participate in a defined contribution pension plan administered through the Partners (originally established by Metro News East), pursuant to which employees are required to contribute a certain percentage of their earnings, with Metro 360 matching such contributions on a dollar-for-dollar basis (the "**Pension Plan**"). Benefits for employees under the Pension Plan used to be provided on a defined benefit basis but the defined benefit portion of the Pension Plan has been wound up.

34. Metro 360 contributed of approximately \$261,000 in 2019 to the Pension Plan. As at April 1, 2020, the Pension Plan is fully funded.

(v) *Other Business Operations of Metro 360*

35. As shown on the corporate chart attached as Exhibit "A" to this affidavit, Metro 360 also has a variety of other business operations and interests. Metro 360 has developed a presence in the consumer packaged goods space, both as a wholesale distributor for a variety of established consumer packaged goods brands, including food brands, music (both compact discs and vinyl records), consumer electronic accessories and a line of "As Seen on TV" items, and as an investor in three emerging consumer packaged goods businesses. Metro 360's consumer packaged goods investments include: (i) an approximately 14% interest in Well Ventures Corp., a cold pressed juice and kombucha company; (ii) a 50% interest in Handfuel Inc., which is a snack business that has retail listings at a number of nationally recognized grocers; (iii) a 45%



interest in All Day Nutritionals Canada Ltd. and a 27% interest in its parent, Swift Work Wellness, which is a U.S.-based producer of a liquid supplement designed for immunity support and marketed towards workplace break rooms; and (iv) certain direct and indirect interests in Spectral Agriventures Inc., which has developed a cost-efficient turnkey greenhouse model. These investments, among others, are advancing but require further runway for value to be realized.

36. Further, Metro 360 also leverages its expertise in the retail industry by offering merchandising services to third parties, which services include, among other things, maintaining retail display shelving and performing “mystery shopping” services to measure the quality of sales and service.

### **III. MATTERS LEADING UP TO THE NOI FILINGS**

#### **A. Business and Financial Challenges**

37. Although Metro 360 and its predecessor entities have been servicing the Canadian paperback and periodical distribution industry for approximately 100 years, the Partnership has been impacted over the last number of years by challenging market conditions and changing consumer trends which are moving away from print mediums and toward online and other digital platforms. The recent proliferation of smartphones and social sharing, in particular, has impacted consumer behaviour and led to declines in the single-copy newsstand industry that Metro 360 services. Illustrative of the challenges facing Metro 360 and the broader industry in which the Literature Business operates is the fact that there are currently only two magazine and book wholesalers in Canada of any substance: Metro 360 and the Purchaser (TNG). There were as

many as 33 industry participants prior to a prolonged and significant period of consolidation where scale was used to combat the disruption caused by the emergence of alternative platforms.

38. Metro 360 had been able to survive in this increasingly challenging market environment through its own acquisition and consolidation efforts, however, the Literature Business' sales have been declining at an average annual rate over the last decade of approximately 10 percent. Net sales for Metro 360 overall were approximately \$120 million in 2019 (approximately \$103 million of which was attributable to the Literature Business), down from approximately \$470 million at its peak 12 years ago. The significant decline in sales revenue has had a negative impact on the overall business of Metro 360 and, although it has no secured debt outstanding, the Partnership has made only marginal profits over the last number of years.

39. Over the last approximately six months, Rosebud HoldCo and Alberta HoldCo, as Metro 360's partners, along with myself personally and a third-party investor, have invested approximately \$6.7 million of capital into Metro 360 in an effort to improve its overall financial and liquidity position. In addition, Rosebud HoldCo recently sold its interest in a joint venture company for approximately \$1 million to one of Metro 360's service providers, which in turn agreed to satisfy the purchase price through a corresponding reduction in the payables owing to it from the Partnership. It was management's intent that the foregoing cash funding and accounts payable reduction would provide sufficient runway for Metro 360 to continue its diversification efforts and also potentially pursue and complete a sale process for the Literature Business in due course.

40. However, the overall financial position of the Literature Business, while affected by difficult market conditions over the last number of years, has now been effectively brought to a

crippling halt by the COVID-19 pandemic. The outbreak has led to over 350 retail customers of the Literature Business temporarily closing, while many others are either not accepting deliveries or are removing their magazines due to the perception that magazines are touched by many people prior to their eventual sale, and to focus on other products deemed to be more essential in the circumstances. Supply channels have also been disrupted as delivery drivers at Metro 360's logistics provider have been unable to work, leaving new product stranded and Metro 360 unable to complete deliveries to its retail customers that remain open and receiving new product. Metro 360's merchandiser field force has also been impacted as many such employees have elected not to work in the field due to COVID-19 concerns and, as a result, Metro 360 has been forced to halt shipments to at least 14 of its best performing accounts.

41. With old product stranded at retailers, new product stranded with the logistics provider, magazine sales having nearly evaporated and book sales lagging, year over year sales in March 2020 for the Partnership were down by approximately 30 percent. It is also currently projected that April 2020 sales will be down approximately 50 to 60 percent as compared to April 2019. In these circumstances, Metro 360 fell into significant arrears to its supplier base and was unable to make certain supplier payments which became due and payable at the end of March 2020. This led to several key suppliers, which in the aggregate provide approximately 75 to 80 percent of Metro 360's product, halting further supply. This in turn means that, with no supply, Metro 360 will also very soon be in material breach of its retail customer agreements, at which time the value of its customer lists, which are included as a purchased asset to be sold to the Purchaser in the Transaction, will lose value, and its accounts receivable will be increasingly difficult to collect. Indeed, the purchase price under the Transaction reflects the stress on the business and will be reduced further or will evaporate if the Transaction is not completed as soon as

practically possible, as reflected in the closing conditions to the Transaction, which are summarized below.

**B. Strategic Alternative Efforts**

42. Despite the Partnership's efforts to date to manage the unprecedented economic circumstances and significant financial challenges facing Metro 360 and the Literature Business more particularly, it became apparent that an urgent solution was needed to manage supplier, customer and employee relationships and otherwise stabilize the Literature Business. In such circumstances, the Partnership began exploring potential options for an expedited sale of the Literature Business to a third-party purchaser that would be able to quickly take over and transition such business, most likely within an existing wholesale distribution network, so that the value of the Literature Business could be preserved. In this regard, KSV began working with Metro 360 approximately one month ago in order to consider restructuring alternatives and options available for Metro 360 and its stakeholders.

43. Complicating such sale efforts, however, is the fact that the market for potential purchasers of the Literature Business is restricted both by protectionist legislation and the results of consolidation. With respect to protectionist legislation, I am advised by Goodmans LLP ("**Goodmans**"), legal counsel to Metro 360 and the Partners, and understand that the *Paperback and Periodical Distributors Act, 1971* (the "**Paperback and Periodical Distributors Act**") requires that businesses engaged in the distribution of paperback and periodical publications in Ontario meet certain Canadian ownership requirements. As for consolidation, the widespread consolidation over the last 30 or so years has left very few remaining market participants that could be targeted as a potential strategic buyer. Outside of Metro 360, the only other significant

player in the Canadian paperback and periodical distribution business is the Purchaser, TNG. In fact, for this reason, Metro 360 has for some time had viewed TNG as the only real and viable potential transaction counterparty and therefore focused its sale efforts mainly on TNG, including since prior to the onset of the COVID-19 crisis.

44. Another further complicating factor to the potential sale of the Literature Business is the software system that is used to manage all product allocations and to manage reverse logistics. It is my view that a third-party purchaser (other than TNG) without experience with and access to such systems would face significant challenges in integrating the Literature Business and would likely not, as a result, offer the same value that TNG has offered.

45. In light of such circumstances, and based on overall timing and market conditions, the Partnership decided, in consultation with KSV, that an extensive sales process would not be a constructive use of time and resources, and elected instead to focus solely and squarely on approaching TNG to seek to negotiate a transaction on an expedited basis that could preserve the value of the Literature Business. These negotiations ultimately resulted in the Transaction.

### **C. Development of the Transaction**

46. Once it became apparent that a transaction – or more specifically, a transaction that could be completed on an expedited timeline – was necessary in the circumstances and that TNG was in fact likely the only prospective third-party purchaser that could execute such a transaction given the legislative restrictions and limited market, Metro 360, in consultation with its professional advisors and KSV, engaged with TNG to discuss a potential transaction whereby TNG would acquire the Literature Business. Following initial discussions, the parties developed a non-binding term sheet which set out the principal terms on which TNG would acquire certain

assets of the Literature Business, including the book and magazine customer list, goodwill, and such other assets as the parties may agree.

47. Following further review, discussion and negotiation, the Partnership, with the assistance of its professional advisors and in consultation with KSV, and in the exercise of its business judgement, determined that the Partnership should proceed with the Transaction as the best available option in the circumstances and Metro 360 and TNG proceeded to finalize and execute the Purchase Agreement (as defined below).

48. In the extraordinary circumstances facing Metro 360 and the Literature Business, the Partnership believes that the Transaction, in conjunction with the collection of accounts receivable and the return of unsold or dated inventory, which will be facilitated by the completion of the Transaction, combined with the continuation of the Partnership's other business operations, represents the best (and only) available alternative in the circumstances and will allow the Partnership at a later time to present a restructuring plan to Metro 360's creditors that will maximize value and support the Partnership's intention of repaying its creditors in full. Of note, the Transaction will see the going concern sale of the Literature Business, which otherwise would likely be required to cease operations and be liquidated, for cash value payable upon closing of the Transaction that will form the base of a creditor pool to be used to advance an eventual restructuring plan. Additional benefits of the proposed Transaction include:

- (a) TNG making offers of employment to 23 of Metro 360's 70 salaried employees and 268 of its approximately 300 hourly employees;<sup>1</sup>

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<sup>1</sup> Two of Metro 360's salaried employees will only be receiving a six month contract offer from TNG.

- (b) TNG assuming and agreeing to perform certain of Metro 360's retail customer contracts, thereby facilitating the continued distribution and delivery of literature product for the benefit of such customers;
- (c) although TNG is not assuming any of Metro 360's supplier agreements, TNG has existing relationships with the majority of Metro 360's suppliers and is therefore expected to come to arrangements with such suppliers for increased supply, as appropriate;
- (d) TNG is not acquiring any of Metro 360's accounts receivable, leaving Metro 360 to collect outstanding accounts receivable. The Partnership estimates that there is approximately \$13 million in outstanding accounts receivable to be collected. Completion of the Transaction is expected to help facilitate Metro 360's accounts receivable collections given that product will continue to flow to these customers from TNG as a result of the Transaction, and disruption in supply should be minimized or non-existent. Further, with TNG agreeing to retrieve and return all of Metro 360's unsold inventory, Metro 360 will be better able to settle its customer accounts as customers in this industry deduct returns from their payments;
- (e) TNG is not acquiring any of Metro 360's inventory. Metro 360 estimates that it has approximately \$22 million of inventory currently with retail customers and an additional \$15 million with its logistics provider, all of which is fully returnable for a corresponding dollar-for-dollar reduction in amounts owed to suppliers. TNG has agreed pursuant to the Transaction to facilitate the pickup and return of

Metro 360's unsold inventory for processing at its sole cost and expense, which will greatly assist the refund process and directly cause a reduction of claims that would and could otherwise be made against Metro 360's estate; and

- (f) TNG has agreed to enter into a services agreement with CMMI Canadian Mass Media Inc. ("CMMI"), a company related to Metro 360, pursuant to which TNG will provide certain services to CMMI that have historically been performed by Metro 360, including services relating to billing and collections, customer service and in-field merchandising.

49. In addition, the Transaction is principally focused on the Literature Business. As referenced above and discussed further below, Metro 360 has other business interests which can assist in generating revenues to facilitate debt repayment over time.

50. As discussed above, the Proposal Trustee has been involved and kept informed of key developments regarding the Transaction as negotiations have progressed. I understand that the Proposal Trustee supports and approves of the proposed Transaction and will be filing a report with the Court in respect of same.

51. I am also advised by Goodmans that, in accordance with the requirements of section 65.13(8) of the BIA related to the approval of sale transactions in BIA proceedings, Metro 360 can and will make payments (or satisfactory arrangements therefor), if any, that are required under sections 60(1.3)(a) and (1.5)(a) of the BIA. In particular, Metro 360 has paid and continues to pay all employee wages and compensation referred to in Section 60(1.3)(a) of the BIA.



#### IV. THE PROPOSED TRANSACTION AND THE PURCHASE AGREEMENT

52. The terms of the Transaction are set forth in the asset purchase agreement dated as of April 3, 2020 between Metro 360 (by Alberta HoldCo as a partner of Metro 360) and TNG (the “**Purchase Agreement**”), a partially redacted copy of which is attached as Exhibit “A” to this affidavit. An unredacted copy of the Purchase Agreement will be provided to the Court in a confidential supplement to the first report of the Proposal Trustee. The unredacted Purchase Agreement contains certain sensitive commercial information (including Metro 360’s customer list, the customer contracts that are being assumed by TNG and the specific components of the purchase price, as well as the names and salary information of transferred employees) that, if disclosed prior to closing of the Transaction, could adversely impact the interests of the Partnership and its stakeholders, and the go-forward interests of TNG, as Purchaser. Accordingly, the Partners are requesting that this Court order that the confidential supplement be sealed.

53. The material terms of the Transaction are summarized below:<sup>2</sup>

- (a) TNG will acquire the Assets in exchange for cash consideration of \$925,000, payable in five equal monthly installments with the first such payment occurring on the Closing Date and each subsequent payment being made monthly thereafter;
- (b) the Assets include:
  - (i) all customer and title records of Metro 360;

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<sup>2</sup> Capitalized terms used in this section that are not otherwise defined herein shall have the meaning given to such terms in the Purchase Agreement. The following constitutes a summary only; reference should be made to the Purchase Agreement for a complete understanding of its terms.

- (ii) any and all magazine racks located in customer locations; and
  - (iii) the goodwill of Metro 360 for customers located in Canada that relates to the distribution and sale of books and magazines;
- (c) the Assets are being purchased on an “as is, where is” basis;
- (d) Excluded Assets under the Transaction include Metro 360’s accounts receivable and inventory;
- (e) TNG making offers of employment to 23 of Metro 360’s 70 salaried employees and 268 of its approximately 300 hourly employees;
- (f) TNG will assume certain specified contractual liabilities of Metro 360, consisting of certain retail customer contracts; and
- (g) the Transaction is subject to certain customary closing conditions, including (i) this Court issuing the Approval Order within three business days of the commencement of these BIA proceedings, and (ii) the closing of the Transaction occurring within two business days of the Approval Order being issued by the Court. The Purchase Agreement provides that these deadlines can be extended with the consent of the Purchaser, however given market conditions and timing as discussed above, Metro 360 has no assurance that any such deadlines would be extended by the Purchaser, or even if so, on what terms.

## V. ADDITIONAL RELIEF BEING SOUGHT

### A. Extension of the Stay of Proceedings and Related Relief to Metro 360

54. The NOIs filed in connection with these proceedings are only in respect of the Partners. Metro 360 has not filed a notice of intention to make a proposal under the BIA as it is anticipated that these BIA proceedings may be converted to proceedings under the *Companies' Creditors Arrangement Act* (the "CCAA") due to the limited six month timeline contained in the BIA within which a proposal must be filed and presented to creditors. Converting to a CCAA proceeding will afford Metro 360 additional time to realize value for its creditors, which may take more than six months. In addition, I am advised by Goodmans and understand that a partnership cannot apply for relief under the CCAA, and so filing that Partnership in a BIA proceeding could mean that the Partnership becomes stuck within the BIA if filed, and thereby limited to only the six month window. By not filing the Partnership in the BIA, I am advised by Goodmans that the Partnership will have greater flexibility to potentially access the greater than six month window available as part of a CCAA proceeding to realize value for its creditors, if needed.

55. In these circumstances, the Partnership is requesting that protections provided under the BIA in favour of Alberta HoldCo and Rosebud HoldCo granted by the filing of the NOIs, including the stay of proceedings and the restriction on the ability of contract counterparties to terminate or amend pre-filing agreements due to insolvency, be extended for the benefit of Metro 360. Metro 360 is the entity through which the Literature Business is operated and so it would be extremely detrimental to the Partners, the Partnership and its business operations and stakeholders, if a stay of proceedings is not extended to Metro 360. It would also be extremely detrimental if Metro 360's customers, suppliers or service providers ceased performing under

existing agreements or tightened terms as a result of the NOIs and the commencement of these proceedings. I am advised by Goodmans that the extension of these protections to the Partnership is consistent with the *Lehndorff* principles, as discussed by Goodmans in its factum filed in support of this motion.

**B. Disposal of Redundant or Non-Material Assets**

56. Metro 360 is in the process of considering and pursuing a number of other potential transactions with respect to non-material assets and/or businesses not included within the scope of the Transaction (the “**Non-Material Residual Assets**”) in order to maximize value for the benefit of its creditors.

57. Metro 360 is seeking authorization to continue exploring opportunities for the sale of its Non-Material Residual Assets and, with the prior approval of the Proposal Trustee, to enter into and complete any transaction for Non-Material Residual Assets for not exceeding \$200,000 in any one transaction or \$400,000 in the aggregate. Metro 360 will still be required to seek Court approval for any transaction for proceeds in excess of the aforementioned thresholds.

**VI. COMPETITION ACT MATTERS**

58. Based on advice from Goodmans, I understand that the requirement to provide notice to the Commissioner of Competition before the Transaction is completed, pursuant to Part IX of the *Competition Act* (Canada) (the “**Competition Act**”), does not apply to the Transaction as the Transaction does not meet the requirements of that Part of the Competition Act for review or notice thereunder (as neither the aggregate value of the assets being acquired, nor the gross revenues from sales in or from Canada generated from those assets, is expected to exceed \$96 million, which is the monetary threshold under the Competition Act).

## VII. CONCLUSION

59. Despite Metro 360's best efforts to manage the general decline in the print market and the unprecedented challenges arising as a result of the COVID-19 pandemic, its Literature Business is facing a significant and rapid erosion as both its supply and distribution networks have stalled, leaving Metro 360 product stranded and the Partnership in risk of breaching its customer arrangements and in significant payment arrears with its supplier base.

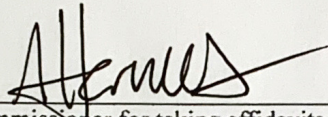
60. In such circumstances, Metro 360 began exploring potential sale options for the Literature Business and, with the assistance of its professional advisors, has determined that the Transaction is the best alternative in the circumstances. Metro 360 believes that completing the Transaction (which will realize value for the Literature Business, save the jobs of almost 80 percent of the Partnership's employees and will maintain supplier and customer relationships), in conjunction with the collection of accounts receivable and the return of inventory (which collectively are estimated to result in realizations of up to \$50 million), and the continuation of the Partnership's other business operations, represents the best available alternative in the circumstances. Metro 360 believes that this approach will maximize value for its creditors over time and assist the Partnership in its efforts to develop a restructuring plan that will result in full repayment to creditors.

61. Recent events have caused material reductions in the purchase price offered by TNG in the negotiations for the assets to be sold in the Transaction (which are mainly customer lists and associated goodwill) and it is critical that the Transaction be approved and implemented, with an Order from this Court to protect the Purchaser, in the immediate near-term to maintain the value offered by TNG in the executed Purchase Agreement. In my view, it is crystal clear that if TNG

does not acquire these assets through the Transaction, there will be no other buyer for like value for these assets.

62. In the circumstances, I believe that the approval of the Transaction and the other relief requested on the within motion are in the best interests of the Partnership and its stakeholders.

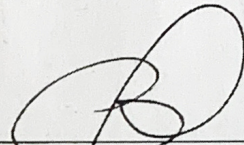
SWORN BEFORE ME at the City of Toronto, in the Province of Ontario, on April 6, 2020



A Commissioner for taking affidavits  
Name:

ANDREW HARRIES



  
\_\_\_\_\_  
Daniel P. Shapiro

B

**THIS IS EXHIBIT "B"**  
**TO THE AFFIDAVIT OF DANIEL P. SHAPIRO**  
**SWORN BEFORE ME OVER VIDEOCONFERENCE**  
**THIS 27<sup>th</sup> DAY OF NOVEMBER, 2020**



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Commissioner for Taking Affidavits



Court File No. CV-20-00642783-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

**IN THE MATTER OF THE COMPANIES' CREDITORS  
ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED**

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR  
ARRANGEMENT OF 957855 ALBERTA LTD. (FORMERLY  
NEWSWEST INC.) AND ROSEBUD CREEK FINANCIAL  
CORP. IN RESPECT OF METRO 360 GENERAL  
PARTNERSHIP**

Applicants

**AFFIDAVIT OF DANIEL P. SHAPIRO  
(sworn September 9, 2020)**

I, Daniel P. Shapiro, of the City of Toronto, in the Province of Ontario, **MAKE OATH  
AND SAY:**

**I. INTRODUCTION**

1. I am the President of 957855 Alberta Ltd. (formerly NewsWest Inc.) ("**Alberta HoldCo**") and the President of Rosebud Creek Financial Corp. ("**Rosebud HoldCo**") and together, with the Alberta HoldCo, the "**Partners**"). The Partners are holding companies that together hold 100% of the interests of Metro 360 General Partnership ("**Metro 360**"). Accordingly, I have personal knowledge of the matters to which I depose in this affidavit. Where I do not possess personal knowledge, I have stated the source of my information and, in all such cases, believe it to be true. Neither the Partners nor Metro 360 waive or intend to waive any applicable privilege by any statement herein.

2. This affidavit is sworn in support of a motion for:
  - (a) an Order (the “**Claims Procedure Order**”), among other things, establishing a process for the identification, quantification and resolution of claims against Metro 360 and the Partners, and their present and former directors and officers, as applicable (the “**Claims Process**”), as further described below; and
  - (b) an Order (the “**Stay Extension Order**”), among other things, extending the Stay Period (as defined below) until and including December 11, 2020.
  
3. Capitalized terms used but not defined herein have the meanings ascribed to them in my affidavit sworn on April 6, 2020 (the “**April Affidavit**”) in connection with the commencement by the Partners of proceedings (the “**Proposal Proceedings**”) under Part III of the *Bankruptcy and Insolvency Act* (Canada) (the “**BIA**”) or my affidavit sworn on June 10, 2020 (the “**June Affidavit**”) in connection with the conversion of the Proposal Proceedings to proceedings under the *Companies’ Creditors Arrangement Act* (Canada) (the “**CCAA**”). Copies of the April Affidavit and the June Affidavit are attached, without exhibits, to this affidavit as Exhibits “A” and “B” respectively.

## II. OVERVIEW

4. As referenced above, the Partners are holding companies that together hold 100% of the interests of Metro 360, which operates a multi-faceted business that, prior to completing the TNG Transaction (as defined below), was focused primarily on the wholesale distribution across Canada of books, magazines and newspapers (the “**Literature Business**”). Metro 360 also has other business interests, including a consumer packaged goods distribution business and investments in emerging businesses.

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5. On April 6, 2020, the Partners filed notices of intention to make a proposal pursuant to section 50.4 of the BIA to initiate the Proposal Proceedings in order to implement the Literature Business (the “**TNG Transaction**”) to Great Pacific Enterprises Inc. dba TNG (“**TNG**”). Additional information with respect to the Literature Business, the issues leading to the TNG Transaction and the reasons why the TNG Transaction was the only viable option at the time to preserve and maximize the value of the Literature Business for the benefit of Metro 360, the Partners and their respective stakeholders, is set out in detail in the April Affidavit.

6. On April 7, 2020, this Court granted an Approval and Vesting Order, among other things, approving the TNG Transaction. The TNG Transaction closed the next day on April 8, 2020.

7. The Partners continued the Proposal Proceedings under the CCAA pursuant to an Order (the “**Initial Order**”) of this Court granted on June 17, 2020. The Initial Order, among other things, (i) took up and continued the Proposal Proceedings under the CCAA, (ii) appointed KSV Restructuring Inc. as the Monitor of the CCAA Entities (the “**Monitor**”),<sup>1</sup> and (iii) granted a stay of proceedings under the CCAA (the “**Stay of Proceedings**”) in respect of the Partners and Metro 360 until and including June 26, 2020. Consistent with the Order of this Court granted in the Proposal Proceedings on April 7, 2020 that, among other things, extended the automatic stay of proceedings under the BIA and certain other protections provided in the Proposal Proceedings to Metro 360, the Stay of Proceedings was extended to Metro 360. As explained in the April Affidavit and the June Affidavit, the Partners are holding companies that do not conduct any active business other than acting as the partners of Metro 360, or holding investments in certain other operating entities. It is through Metro 360 that the Partners conduct their business operations.

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<sup>1</sup> Effective August 31, 2020, the name of KSV Kofman Inc. was changed to KSV Restructuring Inc.

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8. As set out in detail in the June Affidavit, the Proposal Proceedings were converted to these CCAA proceedings in order to provide Metro 360 and the Partners the flexibility and stability needed to enable Metro 360 to continue operating its remaining businesses, complete the wind-down process related to the TNG Transaction, and afford additional time for Metro 360's business investments to generate more value, in each case with a view to Metro 360 and the Partners developing and advancing a restructuring plan that would maximize value and hopefully repay Metro 360's creditors in full.

9. On June 26, 2020, the Stay of Proceedings was subsequently extended by an Order of this Court until and including September 18, 2020.

10. Metro 360 and the Partners have been working diligently since the conversion of the Proposal Proceedings to these CCAA proceedings to advance restructuring efforts, and are seeking approval of the proposed Claims Procedure Order at this time in connection with such efforts. The Partners and Metro 360 are mindful that it will be necessary to definitively ascertain creditor claims against Metro 360 and the Partners for the purposes of potentially voting on a CCAA plan of compromise or arrangement, and as a result, believe that it is prudent to proceed with the Claims Process at this time. By commencing the Claims Process and identifying the universe of claims against Metro 360 and the Partners, as well as any claims against the Directors and Officers (as defined below), Metro 360 and the Partners will be in a better position to engage with their stakeholders with respect to the development of a restructuring plan.

11. As referenced above, the Stay of Proceedings granted by the Court, as extended, currently expires on September 18, 2020 (the "**Stay Period**"). The Partners and Metro 360 seek an extension of the Stay Period to December 11, 2020 to provide the Partners and Metro 360 with the time needed to advance the Claims Process and work towards developing and implementing a

restructuring plan that is in the best interests of the Partners, Metro 360, and their various stakeholders.

### III. PROPOSED CLAIMS PROCESS

12. The Partners and Metro 360 are seeking authorization to undertake the Claims Process to solicit, identify and determine claims against the Partners and Metro 360, the present and former directors of the Partners (the “**Directors**”), and the present and former officers of the Partners and Metro 360 (the “**Officers**”). The Claims Process will enable the Partners and Metro 360 to ascertain the scope of potential claims against the Partners and Metro 360, and their potential impact on restructuring efforts. The Partners and Metro 360 believe that the Claims Process is a fair, efficient, and reasonable process for the determination of claims, including claims against the Directors and/or Officers (“**D&O Claims**”). The Claims Process has been developed in consultation with the Monitor and its counsel, and I am informed by the Monitor that it supports the Claims Process and the approval of the proposed Claims Procedure Order.

13. Below is a summary of the key features of the Claims Process, as more fully set out in the proposed Claims Procedure Order to be submitted to the Court. This summary is based in part on my discussions with Goodmans LLP, counsel to Metro 360 and the Partners. Capitalized terms used but not otherwise defined in this Section III have the meaning ascribed to them, as the context indicates, in the draft Claims Procedure Order.

#### Affected Claims

14. The Claims Process is intended to solicit and quantify the following types of Claims:

- (a) *Prefiling Claims*: any right or claim of any Person against any of the CCAA Entities, whether or not asserted, in connection with any indebtedness, liability or

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obligation of any kind of any of the CCAA Entities to such Person, that was in existence on the Filing Date;

- (b) *Restructuring Period Claims*: any right or claim of any Person against any of the CCAA Entities in connection with any indebtedness, liability or obligation of any kind of any of the CCAA Entities to such Person arising out of the restructuring, disclaimer, resiliation, termination or breach by the CCAA Entities on or after the Filing Date of any contract or other agreement; and
- (c) *D&O Claims*: any right or claim of any Person against one or more of the Directors and/or Officers, howsoever arising, for which any Director or Officer is alleged to be, by statute or otherwise by law or equity, liable to pay in his or her capacity as a Director or Officer.

15. The Claims Process does not apply to any Claim secured by any of the Charges (as defined in the Initial Order).

*Notice of the Claims Process*

16. The Claims Procedure Order provides for the CCAA Entities, within ten business days of the granting of the Claims Procedure Order, to cause an Employee Claim Package to be sent to every Terminated Employee (as defined below), and a Proof of Claim Document Package to be sent to every Known Creditor (which includes any Intercompany Claimants).

17. As discussed further below, an Employee Claim Package will contain a Termination Claim Statement in substantially the form attached as Schedule “D” to the Claims Procedure Order, a Notice of Dispute in substantially the form attached as Schedule “E” to the Claims Procedure

Order, and such other materials as the Monitor, in consultation with the Partners and Metro 360, may consider appropriate.

18. A Proof of Claim Document Package will contain:

- (a) an Instruction Letter in substantially the form attached as Schedule “A” to the Claims Procedure Order;
- (b) a Proof of Claim form in substantially the form attached as Schedule “C” to the Claims Procedure Order;
- (c) a D&O Proof of Claim form in substantially the form attached as Schedule “I” to the Claims Procedure Order; and
- (d) a D&O Claim Instruction Letter in substantially the form attached as Schedule “H” to the Claims Procedure Order.

19. The Instruction Letter directs Creditors to the Monitor’s website (<https://www.ksvadvisory.com/insolvency-cases/case/metro360>) for a copy of the Claims Procedure Order, additional Proofs of Claim, and any other materials related to the Claims Process and these CCAA proceedings.

20. The Claims Procedure Order also provides that the following actions shall be taken in order to provide notice of the Claims Process to persons who may have Claims against the Partners and Metro 360 or any of the Directors and/or Officers:

- (a) the Monitor shall cause the Notice to Creditors to be published in *The Globe and Mail* (National Edition) for at least two business days as soon as practicable following the issuance of the proposed Claims Procedure Order;

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- (b) the Monitor shall post a copy of the Notice to Creditors, the Claims Procedure Order, and a Proof of Claim Document Package on the Monitor's Website;
- (c) the CCAA Entities or the Monitor, as applicable, shall deliver a Proof of Claim Document Package to any person claiming to be a creditor and requesting such material in writing;
- (d) the CCAA Entities or the Monitor, as applicable, shall include a Proof of Claim Document Package with any notices of disclaimer or resiliation delivered by any of the CCAA Entities or the Monitor; and
- (e) the CCAA Entities or the Monitor, as applicable, shall provide a Proof of Claim Document Package to any person upon becoming aware of any other circumstance giving rise to a Restructuring Period Claim.

*Claims Bar Date and Procedure for Filing Proofs of Claim and D&O Proofs of Claim*

21. Any person asserting a Prefiling Claim or a D&O Claim relating to the Prefiling Period (other than a Terminated Employee in respect of its Termination Claim as set out in a Termination Claim Statement, as discussed below) must file the applicable proof of claim form with the Monitor by 5:00 p.m. (Toronto time) on October 30, 2020 (the "**Claims Bar Date**"). The Partners and Metro 360 believe that a Claims Bar Date of October 30, 2020 is reasonable in that it provides sufficient time from the date of this motion for potential creditors to evaluate and submit any Claim they may have against the Partners, Metro 360 or the Directors and Officers. The Claims Procedure Order provides for the delivery of the Proof of Claim Document Package to Known Creditors within ten business days of the granting of the proposed Claims Procedure Order, and given that creditors will be able to deliver their Proof of Claim or D&O Proof of Claim by email,



the Partners and Metro 360 believe that creditors will have sufficient time to complete and submit a Proof of Claim or D&O Proof of Claim, as applicable. I understand that the Monitor is supportive of the proposed Claims Bar Date.

22. Any creditor that does not file a Proof of Claim or a D&O Proof of Claim, as applicable, before the Claims Bar Date, is forever barred from making or enforcing any such Prefiling Claim against the Partners or Metro 360 or any such D&O Claim relating to the Prefiling Period against the Directors and Officers.

23. Any person asserting a Restructuring Period Claim or a D&O Claim relating to the Restructuring Period must file the applicable proof of claim form with the Monitor by the later of (i) the Claims Bar Date, and (ii) 5:00 p.m. (Toronto time) on the date that is 35 days after the date on which the CCAA Entities or the Monitor sends a Proof of Claim Document Package with respect to that Restructuring Period Claim or that D&O Claim relating to the Restructuring Period to that person (the “**Restructuring Period Claims Bar Date**”). The Partners and Metro 360 believe that a 35-day period is reasonable in that it provides sufficient time from the date a Proof of Claim Document Package is sent to allow such creditor to evaluate and submit any Restructuring Period Claim they may have against the Partners or Metro 360, or any D&O Claim relating to the Restructuring Period against the Directors and Officers.

24. Any creditor that does not file a Proof of Claim or a D&O Proof of Claim, as applicable, before the Restructuring Period Claims Bar Date, is forever barred from making or enforcing any such Restructuring Period Claim against the Partners or Metro 360 or any such D&O Claim relating to the Restructuring Period against the Directors and Officers.

Process for Terminated Employees

25. The proposed Claims Procedure Order provides for a separate track to address the claims of employees whose employment was terminated on or after the Filing Date (in each case, a **“Terminated Employee”**).

26. The Claims Procedure provides for a “negative notice” process that will govern all claims related to the termination of employment (including claims for termination and severance pay). The CCAA Entities, in consultation with the Monitor and with the assistance of legal counsel, have calculated the various Termination Claims by deeming each Terminated Employee’s notice period to be the greater of the Terminated Employee’s entitlement (i) under applicable employment standards legislation, (ii) any contractual arrangement in effect between any of the CCAA Entities and the Terminated Employee, and (iii) common law severance, calculated based on a Terminated Employee’s position, years of service and age, among other factors. The CCAA Entities will provide a Termination Claim Statement to each Terminated Employee that will set out such Terminated Employee’s individual Termination Claim, as well as the Terminated Employee’s personal information as recorded by the CCAA Entities and used in the calculation of the Termination Claim.

27. No further action is required by a Terminated Employee if they agree with the quantum of their Termination Claim as set out in a Termination Claim Statement. On the other hand, if a Terminated Employee disagrees with the determination of their Termination Claim as stated in the Termination Claim Statement and wishes to dispute the amount and/or nature of the Termination Claim, the Terminated Employee is required deliver a Notice of Dispute, the form of which is attached as Schedule “E” to the proposed Claims Procedure Order, to the Monitor on or before 5:00 p.m. (Toronto time) on the day that is the later of (i) the Claims Bar Date of October 30, 2020,

and (ii) thirty-five (35) days after the date on which the CCAA Entities or the Monitor sends an Employee Claims Package to such Terminated Employee.

28. The intention in providing for a “negative notice” process to govern claims related to the termination of employment is to streamline the process for Terminated Employees in a fair and efficient manner, while using a consistent methodology to determine each employee claim.

*Procedure for Determining and Adjudicating Disputes*

29. The proposed Claims Procedure Order contemplates that the Monitor, in consultation with the Partners and Metro 360, will review each Notice of Dispute and Proof of Claim submitted in accordance with the Claims Procedure Order and received before the Claims Bar Date or the Restructuring Period Claims Bar Date, as applicable, and shall accept, revise or reject each Claim set out therein for voting and/or distribution purposes. In addition, with respect to a D&O Claim set out in a D&O Proof of Claim, the Monitor will, in consultation with the Partners and Metro 360, and the applicable Directors and Officers named in respect of such D&O Claim, accept, revise or reject each Claim, provided that the Monitor shall not accept or revise any portion of a D&O Claim absent consent of the applicable Directors and Officers or further Order of this Court.

30. If the Monitor intends to revise or reject a Claim set out in any Notice of Dispute, Proof of Claim or D&O Proof of Claim, the Monitor will notify the creditor in writing by sending a Notice of Revision or Disallowance, and set out the reasons for why the Claim has been revised or disallowed. The Claims Procedure Order does not impose any deadline for the Monitor to provide a Notice of Revision or Disallowance in order to provide the Monitor with greater flexibility and control over when to trigger the dispute resolution process contemplated in the Claims Procedure Order. The CCAA Entities believe that this will maximize the possibility of consensual resolutions for any disputes regarding such Claims.

31. Any creditor who intends to dispute a Notice of Revision or Disallowance must send written notice to the Monitor by completing a Notice of Dispute of Revision or Disallowance, which specifies whether it disputes the determination of its Claim for voting and/or distribution purposes, as applicable, and provides the reasons for its dispute. The Notice of Dispute of Revision or Disallowance must be received by the Monitor within 21 days after the date on which the creditor is deemed to receive the Notice of Revision or Disallowance. Any creditor that receives a Notice of Revision or Disallowance and does not file a completed Notice of Dispute of Revision or Disallowance within the time period set out in the proposed Claims Procedure Order will be deemed to have accepted the amount and determination as set out in the Notice of Revision or Disallowance, and such creditor will have no further right to dispute the same.

32. The proposed Claims Procedure Order also contemplates the appointment of a claims officer to adjudicate unresolved claims (“**Claims Officer**”). The proposed Claims Procedure Order would appoint The Honourable Frank Newbould, Q.C., as a Claims Officer and would allow the Partners and Metro 360 or the Monitor to apply to the Court for the appointment of others, if necessary.

33. In the event that a dispute raised in a Notice of Dispute of Revision or Disallowance is not settled within a time period or in a manner satisfactory to the Monitor, in consultation with the Partners and Metro 360 (and the applicable Directors and/or Officers in respect of any D&O Claim), the Monitor shall, at its election, refer the dispute raised in the Notice of Dispute of Revision or Disallowance to any Claims Officer for adjudication.

34. Any Claims Officer will have the discretion to mediate any dispute that is referred to such Claims Officer at its election. Where a Claims Officer determines a claim, the Monitor, the claimant, the Partners and Metro 360, or the applicable Directors and/or Officers in respect of any

D&O Claim, may file a notice of appeal with the Court within 10 days of such party receiving notice of the Claims Officer's determination. Subject to the availability of the Court, the appeal will be initially returnable for scheduling purposes within 10 days of filing such notice of appeal.

Summary of Claims Process

35. In summary, the Partners and Metro 360 believe that the Claims Process provides for an appropriate and effective process to solicit, identify and determine potential claims in respect of the Partners and Metro 360, and the Directors and Officers. The completion of the Claims Process is a necessary and important step in these CCAA proceedings and will enable the Partners and Metro 360 to ascertain the scope of claims that will need to be addressed in its restructuring efforts. The Partners and Metro 360 and its legal counsel have worked closely with the Monitor and its counsel in the development of the Claims Process and the Claims Procedure Order, and will work closely with the Monitor in the implementation of the Claims Process.

**IV. UPDATE ON RECENT ACTIVITIES**

**A. Payment of the Purchase Price in Respect of the TNG Transaction**

36. As referenced in the April Affidavit, the purchase price in respect of the TNG Transaction was payable by TNG in five equal monthly installments, with the first such payment occurring on the closing of the TNG Transaction and each subsequent payment installment being made monthly thereafter. Metro 360 received the fifth and final payment installment in August, and therefore has now received the full amount of the \$925,000 cash consideration payable by TNG in respect of the TNG Transaction.<sup>2</sup>

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<sup>2</sup> Unless otherwise indicated, monetary references in this affidavit are references to Canadian dollars.

**B. Collection and Return of Unsold Inventory**

37. As described in the June Affidavit, Metro 360 and the Partners, in consultation with and with the assistance of the Monitor, have been working diligently since the closing of the TNG Transaction to facilitate the return of and processing of unsold Literature Business inventory for credit and a reduction of the Metro 360 payables. These efforts have continued and since the June Affidavit, substantial Literature Business inventory has been returned to suppliers and processed for refund through Metro 360's software system. The total amount of returned and processed inventory is approximately \$34 million, in the aggregate.<sup>3</sup>

38. As explained in the June Affidavit, the process of retrieving the significant amount of unsold Literature Business inventory, the facilitation of which was a key component of the TNG Transaction, is a considerable undertaking. At the time of the June Affidavit, it was estimated that the retrieval and return process would take until at least the end of October 2020 to complete. Metro 360 and the Partners have made considerable progress to date, as evidenced by the fact that almost 99% of the approximately \$35 million of refundable Literature Business inventory estimated to be at retail accounts and with Metro 360's logistics provider at the time of the commencement of the Proposal Proceedings has been sold or collected, processed and returned. Metro 360 and the Partners are working towards completing this process in the near term.

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<sup>3</sup> Returns processed for credit from publishers represent a combination of inventory owned by Metro 360 and inventory sold by Metro 360 on consignment.

**C. Agreement with the Province of Ontario and Secured Intercompany Loan**

39. As referenced in further detail in the June Affidavit, Metro 360 owns an approximately 17% interest in Well Ventures Corp. (“**Well Ventures**”),<sup>4</sup> a Canadian health drink company that manufactures and distributes a variety of cold pressed juices, nutrient infused lemonades and kombucha drinks under the “Well” brand name.

40. On May 12, 2020, Well Juicery Canada Ltd. (“**Well Juicery**”), the wholly-owned subsidiary of Well Ventures through which Well Ventures operates its business, entered into a Canadian Agricultural Partnership Processor Agreement with Her Majesty the Queen in Right of Ontario, as represented by the Minister of Agriculture, Food and Rural Affairs (the “**Province**”) which is effective February 12, 2020 (the “**Cost-Sharing Agreement**”). Pursuant to the Cost-Sharing Agreement, the Province agreed, among other things, to provide funding to Well Juicery of up to \$100,000 on a 25% cost-share funding percentage for the purpose of enabling Well Juicery to purchase and install a new high speed fill line for its core juice products, a high speed labeler and a case labeler (the “**Filling Line**”). The 25% cost-share funding percentage means that the Province will pay 25% of Well Juicery’s incurred and paid eligible costs (i.e., costs with respect to items specifically listed in the Cost-Sharing Agreement as being necessary for the completion of the Filling Line) up to \$100,000, being the maximum amount payable by the Province under the Cost-Sharing Agreement. Under the Cost-Sharing Agreement, Well Ventures is to submit intermittent progress reports and claim statements to the Province upon incurring and paying eligible costs, and the Province is to reimburse Well Juicery for such eligible costs incurred and

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<sup>4</sup> As discussed below, Metro 360 recently participated in the Well Private Placement and acquired Well Convertible Debentures (each as defined below) which, upon conversion, will increase Metro 360’s equity interest to this amount.

paid by Well Juicery during the term of the Cost-Sharing Agreement, up to the maximum amount of \$100,000.

41. Due to the funding structure of the Cost-Sharing Agreement, Metro 360 agreed to lend Well Ventures \$202,722 in exchange for a secured interest-bearing promissory note in the same principal amount (the “**Promissory Note**”). The Promissory Note has a maturity date of June 19, 2021 (being one year from the effective date), and provides for Well Ventures, within two business days following its receipt of any funds pursuant to the Cost-Sharing Agreement, to transfer all such funds to Metro 360 as a payment in respect of amounts owing under the Promissory Note. Interest is payable to Metro 360 under the Promissory Note at the rate of 4% per annum, payable semi-annually on March 31 and September 30 of each year while the Promissory Note is outstanding.

#### **D. Well Convertible Debentures**

42. Well Ventures recently completed a non-brokered private placement (the “**Well Private Placement**”) of convertible secured subordinated debentures (the “**Well Convertible Debentures**”) pursuant to a convertible debenture agreement dated August 17, 2020 (the “**Convertible Debenture Agreement**”) for aggregate gross proceeds of approximately \$1.1 million. The Well Private Placement is intended to provide Well Ventures with sufficient working capital to meet the sales growth that management expects will materialize in the near term as a result of Well Ventures entering into certain new contractual arrangements for the supply of its health drinks, including a contract with a significant American national grocer which is expected to result in increased sales in the United States.

43. The Well Convertible Debentures mature on the date that is two years from the Issue Date (as defined in the Convertible Debenture Agreement) and bear interest at a rate of 5.00% per annum, payable in full upon maturity. Holders of the Well Convertible Debentures have the right



to convert the Well Convertible Debentures at any time prior to 4:00 p.m. on the business day preceding the maturity date, to convert all or a portion of the Well Convertible Debentures in excess of \$1.00 into Class “A” common shares of Well Ventures at the conversion price of \$3.50 per common share, as such conversion price may be adjusted pursuant to the terms of the Convertible Debenture Agreement.

44. The Well Convertible Debentures are direct, secured obligations of Well Ventures, subordinated to any senior indebtedness of either Well Ventures or Well Juicery. Both Well Ventures and Well Juicery have entered into a general security agreement in favour of the holders of the Well Convertible Debentures.

45. Consistent with Well Venture’s prior financing raises, Metro 360 participated in the Well Private Placement by acquiring Well Convertible Debentures in the aggregate principal amount of approximately \$310,360. The Well Private Placement was completed on favourable terms and Metro 360’s participation therein allows Metro 360 to increase its ownership interest in Well Ventures. In addition, Metro 360 was also allocated founder options and warrants in connection with the Well Private Placement which were exercised on closing of the Well Private Placement for 107,556 common shares of Well Ventures.

#### **E. Recent Financial Performance**

46. Since the commencement of the Proposal Proceedings and the continuation thereof under the CCAA, a key focus of Metro 360 and the Partners has remained on maintaining the stability of Metro 360’s remaining operating businesses while completing the wind-down of the Literature Business.

47. Since the commencement of the Proposal Proceedings on April 6, 2020, Metro 360 has secured three new consumer packaged goods clients whose products include beverages and healthy snacks. In addition, Metro 360 has secured a number of new retail listings for many of its consumer packaged goods clients, including several key Canadian retailers such as Loblaws, Sobeys, Circle K, Choices Markets, and SaveOn Foods. Metro 360 is well positioned to serve a meaningful niche in the consumer packaged goods wholesale distribution space given its retailer relationships, extensive managerial skill sets and strong track record, and has made significant progress in restructuring its business since the commencement of these proceedings

**F. Cash Flow Forecast**

48. As at September 9, 2020, Metro 360's cash balance exceeds \$11.8 million.

49. Metro 360, with the assistance of the Monitor, has prepared an updated cash flow forecast (the "**Updated Cash Flow Forecast**"), which will cover the period until December 11, 2020. I understand that the Updated Cash Flow Forecast will be attached as an appendix to the Monitor's first report to be filed by the Monitor in connection with this motion.

**V. EXTENSION OF THE STAY PERIOD**

50. The Stay of Proceedings in respect of the CCAA Entities expires on September 18, 2020. The Partners and Metro 360 are seeking an extension of the Stay Period, at this time, to and including December 11, 2020 pursuant to the proposed Stay Extension Order.

51. The Partners and Metro 360 continue to act diligently and in good faith in respect of all matters relating to these proceedings. Since the commencement of the Proposal Proceedings and the continuation thereof under the CCAA, the Partners and Metro 360 have been largely focused on stabilizing and growing Metro 360's remaining operating businesses while completing the

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wind-down of the Literature Business. More specifically, efforts of the Partners and Metro 360 have been particularly focused on Well Ventures and its subsidiaries as its “Well” brand of health drinks has developed a strong market presence and is likely to be central in efforts to maximize value and overall recoveries for creditors. With the wind-down of the Literature Business being well advanced, the Partners and Metro 360 expect to work towards fully completing the inventory return process, supporting and growing Metro 360’s business investments (including Well Ventures and its business), implementing the Claims Process, and developing a value-maximizing restructuring plan that can be presented to creditors.

52. The development and implementation of a restructuring plan that preserves the value of Metro 360 and its business investments is in the best interests Metro 360 and the Partners, as well as their respective stakeholders. Accordingly, the extension of the Stay Period is necessary to provide the Partners and Metro 360 with the time needed to advance the Claims Process and work towards developing and implementing a restructuring solution that is in the best interests of the Partners, Metro 360, and their various stakeholders.

53. I do not believe that any creditor will suffer any material prejudice as a result of the proposed extension of the Stay Period.

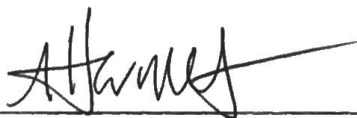
54. I understand that the Monitor is supportive of the proposed extension of the Stay Period pursuant to the proposed Stay Extension Order to and including December 11, 2020.

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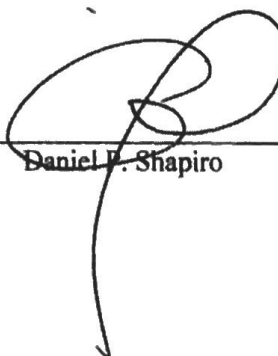
**VI. CONCLUSION**

55. For the reasons described above, the Partners and Metro 360 believe that the relief requested in the proposed Claims Procedure Order and the proposed Stay Extension Order is in the best interests of the Partners and Metro 360, as well as their respective stakeholders. Accordingly, I swear this affidavit in support of the relief sought and for no other or improper purpose.

SWORN BEFORE ME over  
videoconference by Daniel P. Shapiro stated  
as being located in the City of Toronto in the  
Province of Ontario, before me at the City of  
Toronto in the Province of Ontario, on  
September 9, 2020, in accordance with O.  
Reg 431/20, Administering Oath or  
Declaration Remotely



A Commissioner for taking affidavits  
Name: Andrew Harnes



Daniel P. Shapiro

**IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED  
AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF 957855 ALBERTA LTD. (FORMERLY NEWSWEST INC.) AND ROSEBUD CREEK FINANCIAL CORP. IN RESPECT OF METRO 360 GENERAL PARTNERSHIP**

Court File No. CV-20-00642783-00CL

Applicants

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**  
Proceeding commenced at Toronto

**AFFIDAVIT OF DANIEL P. SHAPIRO  
(Sworn November 27, 2020)**

**GOODMANS LLP**  
Barristers & Solicitors  
333 Bay Street, Suite 3400  
Toronto, Canada M5H 2S7

**L. Joseph Latham** LSO#: 32326A  
jlatham@goodmans.ca

**Andrew Harmes** LSO#: 73221A  
aharmes@goodmans.ca

Tel: (416) 979-2211  
Fax: (416) 979-1234

Lawyers for 957855 Alberta Ltd. (formerly NewsWest Inc.), Rosebud Creek Financial Corp., and Metro 360 General Partnership

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Court File No.: CV-20-00642783-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE MR.	)	FRIDAY, THE 4 <sup>TH</sup>
	)	
JUSTICE HAINEY	)	DAY OF DECEMBER, 2020

**IN THE MATTER OF THE *COMPANIES' CREDITORS  
ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED**

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR  
ARRANGEMENT OF 957855 ALBERTA LTD.  
(FORMERLY NEWSWEST INC.) AND ROSEBUD CREEK  
FINANCIAL CORP. IN RESPECT OF METRO 360  
GENERAL PARTNERSHIP**

Applicants

**STAY EXTENSION ORDER**

**THIS MOTION**, made by 957855 Alberta Ltd. (formerly NewsWest Inc.) (“**Alberta HoldCo**”) and Rosebud Creek Financial Corp. (“**Rosebud HoldCo**” and, together with Alberta HoldCo, the “**Applicants**”), being the partners of the Metro 360 General Partnership (“**Metro 360**” and, together with the Applicants, the “**CCAA Entities**”), pursuant to the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”), was heard this day by judicial videoconference due to the COVID-19 pandemic.

**ON READING** the affidavit of Daniel P. Shapiro sworn November 27, 2020, including the exhibits thereto and the Second Report of KSV Restructuring Inc.,<sup>1</sup> in its capacity as the

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<sup>1</sup> Effective August 31, 2020, the name of KSV Kofman Inc. (“**Kofman**”) was changed to KSV Restructuring Inc. (“**Restructuring**”). All Kofman mandates are now being performed by Restructuring.

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monitor of the CCAA Entities under the CCAA (the “**Monitor**”), dated November ●, 2020, including the affidavit of David Sieradzki sworn November ●, 2020 (the “**KSV Affidavit**”) and the affidavit of Sean Zweig sworn November ●, 2020 (the “**Bennett Jones Affidavit**”) attached thereto, and on hearing the submissions of counsel for the CCAA Entities, counsel for the Monitor, and such other counsel as were present, no one else appearing although duly served as appears from the affidavit of service of ● sworn ●, 2020:

### **SERVICE AND DEFINITIONS**

1. **THIS COURT ORDERS** that the time and method for service of this Motion is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.
2. **THIS COURT ORDERS** that capitalized terms used herein and not otherwise defined have the meanings given to them in the Initial Order of this Court made in the within proceedings dated June 17, 2020 (as amended, the “**Initial Order**”).

### **EXTENSION OF THE STAY PERIOD**

3. **THIS COURT ORDERS** that the Stay Period be and is hereby extended to and including 11:59 p.m. (Toronto time) on March 31, 2021, and that all other terms of the Initial Order shall remain in full force and effect during the Stay Period.

### **APPROVAL OF MONITOR’S REPORTS, ACTIVITIES AND FEES**

4. **THIS COURT ORDERS** that the Report of the Proposed Monitor dated June 10, 2020, the First Report of the Monitor dated September 9, 2020 and the Second Report, and the activities and conduct of the Monitor described in each of the foregoing reports, be and are



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hereby approved; provided, however, that only the Monitor, in its personal capacity and only with respect to its own personal liability, shall be entitled to rely upon or utilize in any way such approvals.

5. **THIS COURT ORDERS** that the professional fees and disbursements of the Monitor, as set out in the KSV Affidavit, are hereby approved.

6. **THIS COURT ORDERS** that the professional fees and disbursements of Bennett Jones LLP, legal counsel to the Monitor, as set out in the Bennett Jones Affidavit, are hereby approved.

#### **GENERAL**

7. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada, the United States or any other foreign jurisdiction, to give effect to this Order and to assist the CCAA Entities, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the CCAA Entities and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the CCAA Entities and the Monitor and their respective agents in carrying out the terms of this Order.

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**IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED**  
**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF 957855 ALBERTA LTD. (FORMERLY NEWSWEST INC.) AND ROSEBUD CREEK FINANCIAL CORP. IN RESPECT OF METRO 360 GENERAL PARTNERSHIP**

Court File No.: CV-20-00642783-00CL

Applicants

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
**(COMMERCIAL LIST)**  
Proceeding commenced at Toronto

**STAY EXTENSION ORDER**

**GOODMANS LLP**  
Barristers & Solicitors  
333 Bay Street, Suite 3400  
Toronto, Canada M5H 2S7

**L. Joseph Latham** LSO#: 32326A  
jlatham@goodmans.ca

**Andrew Harmes** LSO#: 73221A  
aharmes@goodmans.ca

Tel: (416) 979-2211  
Fax: (416) 979-1234

Lawyers for 957855 Alberta Ltd. (formerly NewsWest Inc.), Rosebud Creek Financial Corp., and Metro 360 General Partnership.

**IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985,  
c. C-36, AS AMENDED**

Court File No.: CV-20-00642783-00CL

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF 957855  
ALBERTA LTD. (FORMERLY NEWSWEST INC.) AND ROSEBUD CREEK FINANCIAL  
CORP. IN RESPECT OF METRO 360 GENERAL PARTNERSHIP**

Applicants

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

Proceeding commenced at Toronto

**MOTION RECORD**

(Motion returnable December 4, 2020)

**GOODMANS LLP**

Barristers & Solicitors

333 Bay Street, Suite 3400

Toronto, Canada M5H 2S7

**L. Joseph Latham** LSO#: 32326A

jlatham@goodmans.ca

**Andrews Harmes** LSO#: 73221A

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