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 CLAIMS PROCEDURE ORDER AND STAY EXTENSION ORDER

(Motion returnable September 16, 2020)

### **GOODMANS LLP**

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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

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** 

NOTICE OF MOTION

(returnable September 16, 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"), will make a motion before Justice Hainey of the Ontario Superior Court of Justice (Commercial List) (the "Court") on September 16, 2020, at 10:00 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 <a href="mailto:aharmes@goodmans.ca">aharmes@goodmans.ca</a>.

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

### THE MOTION IS FOR:

- 1. An Order (the "Claims Procedure Order"), in substantially the form attached at Tab 3 of the Motion Record dated September 9, 2020 (the "Motion Record"), among other things, establishing a process for the identification, quantification and resolution of claims against Metro 360 and the Partners, the present and former directors of the Partners (the "Directors"), and the present and former officers of the Partners and Metro 360 (the "Officers");
- 2. An Order (the "**Stay Extension Order**"), in substantially the form attached at Tab 4 of the Motion Record, among other things, extending the Stay Period (as defined below) until and including December 11, 2020; and
- 3. Such further and other relief as counsel may request and this Court may permit.

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

### Overview

- 4. 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").
- 5. 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,

<sup>&</sup>lt;sup>1</sup> Capitalized terms used but not defined herein have the meaning given to them in the affidavit of Daniel P. Shapiro sworn September 9, 2020 (the "**Shapiro Affidavit**").

to initiate proceedings (the "**Proposal Proceedings**") to implement the sale of the Literature Business (the "**TNG Transaction**") to Great Pacific Enterprises Inc. dba TNG.

- 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. 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**").
- 8. 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 (the "Stay of Proceedings") 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"). The Stay Period was subsequently extended by further order of this Court to September 18, 2020.
- 9. The Partners and Metro 360 are seeking approval of the Claims Procedure Order and the Stay Extension Order in connection with their efforts to advance restructuring efforts and work towards the development and implementation of a restructuring plan that is in the best interests of the Partners, Metro 360 and their various stakeholders.

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

### Claims Procedure Order

- 10. The Claims Procedure Order establishes a comprehensive process (the "Claims Process") to solicit, identify and determine claims against the Partners, Metro 360, and the Directors and Officers, and has been developed in consultation with the Monitor and its counsel.
- 11. 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 their restructuring efforts.
- 12. The proposed Claims Procedure provides for a Claim Bar Date of October 30, 2020 for the filing of Proofs of Claim, except with respect to Restructuring Period Claims for which the Restructuring Period Claims Bar Date is the later of the Claims Bar Date and 35 days after the date on which the CCAA Entities or the Monitor sends a Proof of Claim Document Package to the relevant creditor.
- 13. To streamline the Claims Process for employees whose employment was terminated on or after the Filing Date (in each case, a "**Terminated Employee**"), the Claims Process includes a "negative notice" process for Terminated Employees in which the Partners and Metro 360, within ten business days of the granting of the Claims Procedure Order, will cause a Termination Claim Statement to be sent to each Terminated Employee setting out such Terminated Employee's individual Termination Claim, as determined by the Partners and Metro 360 in consultation with the Monitor.
- 14. If a Terminated Employee agrees with the Termination Claim as set out in its Termination Claim Statement, no further action is required.

- 15. If a Terminated Employee wishes to dispute the Termination Claim as set out in its Termination Claim Statement, the Terminated Employee is required to file a Notice of Dispute with the Monitor by the Terminated Employee Claims Bar Date, which is the later of the Claims Bar Date and 35 days after the date on which the CCAA Entities or the Monitor sends an Employee Claims Package to such Terminated Employee.
- 16. The proposed Claims Procedure Order also contemplates the appointment of The Honourable Frank Newbould, Q.C., as claims officer to adjudicate unresolved claims and provides the Monitor sole discretion on referring a disputed claim to the claims officer for adjudication.
- 17. The proposed Claims Process is a fair and reasonable process for the determination of claims against the Partners, Metro 360 and the Directors and Officers, and is a necessary and important steps in these CCAA proceedings and the efforts of the Partners and Metro 360 to advance a restructuring plan.
- 18. The Monitor has indicated that it supports the Claims Process and the approval of the proposed Claims Procedure Order.

### Stay Extension Order

- 19. The Stay Period currently expires on September 18, 2020.
- 20. The Partners and Metro 360 are seeking an extension of the Stay Period to and including December 11, 2020 pursuant to the proposed Stay Extension Order.

- 21. 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, in particular, have largely been focused on stabilizing and growing Metro 360's remaining operating businesses while completing the wind-down of the Literature Business. 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, implementing the Claims Process, and developing a value-maximizing restructuring plan that can be presented to creditors.
- 22. The Partners and Metro 360 are requesting an extension of the Stay Period to and including December 11, 2020 in order 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.
- 23. Creditors will not suffer any material prejudice if the Stay Period is extended.
- 24. The extension of the Stay Period to and including December 11, 2020 is supported by the Monitor.

### General

- 25. The provisions of the CCAA, including s. 11.02 and the Court's equitable and statutory jurisdiction thereunder.
- 26. 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.

- 27. 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.
- 28. Changes to Commercial List Operations in light of COVID-19 dated March 16, 2020.
- 29. 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:

- 30. The Shapiro Affidavit, and the exhibits attached thereto;
- 31. The First Report Monitor and the appendices attached thereto; and
- 32. Such further and other materials as counsel may advise and this Court may permit.

September 9, 2020

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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.

### To join meeting using a computer:

https://us02web.zoom.us/j/82225830286?pwd=TzFPU0p0QUk2d3lkR1F5Tk9NbVlqdz09

Meeting ID: 822 2583 0286

Passcode: 268578

### To join meeting by phone:

One tap mobile

+16475580588,, 82225830286#,,,,,0#,,268578# Canada +16473744685,, 82225830286#,,,,,0#,,268578# Canada

### OR Dial by your location

+1 778 907 2071 Canada

+1 438 809 7799 Canada

+1 587 328 1099 Canada

+1 647 374 4685 Canada

+1 647 558 0588 Canada

Meeting ID: 822 2583 0286

Passcode: 268578

Find your local number: https://zoom.us/u/aeaLmcB9q8

# 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

## ONTARIO SUPERIOR COURT OF JUSTICE (COMMERCIAL LIST)

Proceeding commenced at Toronto

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

## GOODMANS LLP

Barristers & Solicitors

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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

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

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.

- 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"), 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.

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

- 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

- 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.ksvadisory.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;

- (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.

### <u>Procedure for Determining and Adjudicating Disputes</u>

- 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>

<sup>&</sup>lt;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.

<sup>&</sup>lt;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.

On May 12, 2020, Well Juicery Canada Ltd. ("Well Juicery"), the wholly-owned 40. 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 Filing 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

<sup>&</sup>lt;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

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.

### 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 Harmes

Daniel P. Shapiro

### THIS IS EXHIBIT "A" TO THE AFFIDAVIT OF DANIEL P. SHAPIRO SWORN BEFORE ME OVER VIDEOCONFERENCE THIS 9th DAY OF SEPTEMBER, 2020

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

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ONTARIO
SUPERIOR COURT OF JUSTICE
(IN BANKRUPTCY AND INSOLVENCY)
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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

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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

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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

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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

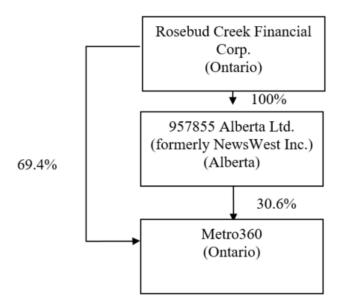
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approval of the Proposal Trustee. This affidavit is sworn in support of the Partners' motion seeking the foregoing relief.

### **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.

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- 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.

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### (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

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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

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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>

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

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- (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;
- 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

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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.

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### 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;

<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.

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- (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

- 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:

AMOREW HARMES

Daniel P. Shapiro

## 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

Estate / Court File No.: 31-2636843 Estate / Court File No.: 31-2636818

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

AFFIDAVIT OF DANIEL P. SHAPIRO

(Sworn April 6, 2020)

Proceeding commenced at Toronto

### GOODMANS LLP

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THIS IS EXHIBIT "B"
TO THE AFFIDAVIT OF DANIEL P. SHAPIRO
SWORN BEFORE ME OVER VIDEOCONFERENCE
THIS 9<sup>th</sup> DAY OF SEPTEMBER, 2020

Commissioner for Taking Affidavits

Estate / Court File No.: 31-2636843

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

IN THE MATTER OF THE PROPOSAL OF METRO 360 GENERAL PARTNERSHIP AND THE PARTNERS THEREOF

AFFIDAVIT OF DANIEL P. SHAPIRO (sworn June 10, 2020)

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Estate / Court File No.: 31-2636843

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

IN THE MATTER OF THE PROPOSAL OF METRO 360 GENERAL PARTNERSHIP AND THE PARTNERS THEREOF

AFFIDAVIT OF DANIEL P. SHAPIRO (sworn June 10, 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"). 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 the Partners' motion for an Order (the "Initial Order"), among other things, taking up and continuing the Proposal Proceedings (as defined below) under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCAA"). While Metro 360 is not a party to the Proposal Proceedings (except to the extent that certain protections afforded to the Partners in the Proposal Proceedings were extended to Metro 360) and is not proposed to be an applicant in the CCAA proceedings, the Partners request that this Court exercise its jurisdiction to extend the stay of proceedings and certain other protections under the proposed Initial Order to Metro 360 as it is through Metro 360 that the Partners conduct their business operations. Both Alberta HoldCo and Rosebud HoldCo are holding companies which do not conduct any active business other than as acting as a partner of Metro 360, or holding investments in certain other operating entities. The only reason that Metro 360 is not an applicant in the CCAA proceedings is that it is a partnership, and thus incapable of being an applicant under that legislation.
- 3. Unless otherwise indicated, monetary references in this affidavit are references to Canadian dollars.

### II. OVERVIEW

4. Metro 360 is a general partnership established under the laws of Ontario which operates a multi-faceted business that, prior to completing the TNG Transaction (as defined and described below), was focused primarily on the wholesale distribution of books, magazines and newspapers to various single-copy retail customers across Canada (the "Literature Business").

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- 5. In my affidavit sworn on April 6, 2020 in these proceedings (the "April 6 Affidavit"), a copy of which (without exhibits) is attached hereto as Exhibit "A", I provided considerable detail on Metro 360, the Partners, the Literature Business and the issues which were facing it at the time, the options considered by Metro 360 and the reason why the sale of the Literature Business (the "TNG Transaction") to Great Pacific Enterprises Inc. dba TNG ("TNG") was the only viable option and was of benefit to the stakeholders of Metro 360 and the Partners. I do not repeat herein the detailed background information on these matters which was contained in the April 6 Affidavit.<sup>1</sup>
- 6. On April 6, 2020, the Partners filed notices of intention to make a proposal (each, an "NOI" and together, the "Proposal Proceedings") pursuant to section 50.4 of the *Bankruptcy and Insolvency Act* (Canada) (the "BIA") to initiate proceedings to implement the TNG Transaction. The April 6 Affidavit was sworn in support of the approval of the TNG Transaction, which was also supported by KSV Kofman Inc. ("KSV"), in its capacity as the proposal trustee in the Proposal Proceedings (in such capacity, the "Proposal Trustee"). Copies of the NOIs are attached to this affidavit as Exhibits "B" and "C". This Court granted an Approval and Vesting Order on April 7, 2020 approving the TNG Transaction, a copy of which is attached hereto as Exhibit "D", and the TNG Transaction closed the next day on April 8, 2020.
- 7. As was detailed in the April 6 Affidavit and at the April 7, 2020 hearing, Metro 360 and the Partners believe that the sale of the Literature Business pursuant to the TNG Transaction, in conjunction with the collection of accounts receivable and the return of unsold inventory,

<sup>1</sup> Capitalized terms used in this affidavit that are not otherwise defined have the meaning given to such terms in the April 6 Affidavit.

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combined with the continuation of Metro 360's other business operations, would maximize value in the circumstances and assist Metro 360 in its efforts to eventually develop and advance a restructuring plan that would result in full repayment to its creditors. Since part of that restructuring plan will depend upon the performance of Metro 360's other businesses and investments, and in light of current economic conditions in the pandemic, it is likely that any such plan will take more than 6 months to formulate.

- 8. In consultation with their professional advisors and the Proposal Trustee, Metro 360 and the Partners have determined that the CCAA provides the most appropriate forum for them to develop a restructuring plan that will maximize value and hopefully repay Metro 360's creditors in full. As referenced above, Metro 360 has other operating businesses and investments which can generate revenue and returns to assist with the debt repayment over time. Metro 360 and the Partners require the flexibility and stability afforded by the CCAA to enable Metro 360 to continue to operate its remaining businesses and afford additional time for its business investments to generate more value for the benefit of Metro 360's stakeholders. I believe that the CCAA is the most appropriate forum for Metro 360 and the Partners to pursue their restructuring, as the potential additional time which it affords will provide Metro 360 and the Partners with the best opportunity to develop and advance a restructuring plan that will further the stated intention of repaying Metro 360's creditors in full.
- 9. Accordingly, the Partners are seeking the proposed Initial Order to convert and take up the Proposal Proceedings under the CCAA.
- 10. The Partners are also requesting that certain protections and authorizations under the proposed Initial Order, including a stay of proceedings, be extended for the benefit of Metro 360.

The Partners believe that such relief is appropriate in the circumstances as Metro 360 is the entity though which their partnership's operating business is conducted. While Metro 360 did not file a NOI in anticipation of this motion to convert the Proposal Proceedings to proceedings under the CCAA, the stay of proceedings and certain other protections provided in the Proposal Proceedings were extended to Metro 360 pursuant to an order of this Court granted on April 7, 2020 (the "Procedure Order"), a copy of which is attached hereto as Exhibit "E". It would be detrimental to Metro 360's operating businesses and overall restructuring efforts, and to the stakeholders of Metro 360, if it does not continue to benefit from a stay of proceedings following the conversion of the Proposal Proceedings to proceedings under the CCAA. The granting of the requested Initial Order will maintain stability for Metro 360's operating businesses while a restructuring plan is advanced under the CCAA, thereby providing the best opportunity for an orderly restructuring and a value-maximizing outcome for the benefit of Metro 360's stakeholders.

### III. METRO 360'S OTHER BUSINESS INTERESTS

11. As part of Metro 360's efforts to diversify its activities, Metro 360 has invested in a number of emerging businesses. As shown on the corporate chart attached as Exhibit "F" to this affidavit, Metro 360 has investments in the following businesses: Well Ventures Corp. ("Well Ventures"); Handfuel Inc. ("Handfuel"); All Day Nutritionals Canada Ltd. ("All Day Nutritionals Canada") and All Day Nutritionals Inc. ("All Day Nutritionals U.S." and, together with All Day Nutritionals Canada, "Swift Work Wellness"); Spectral Agriventures Inc. ("Spectral Agriventures"); and Retail Support Services (Canada) Ltd. ("RS2").

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- 12. Details of Metro 360's emerging business investments are as follows:
  - (a) Well Ventures: Well Ventures, through its wholly-owned subsidiary Well Juicery Canada Ltd., is a Canadian health drink company. Well Ventures manufactures and distributes a variety of cold pressed juices, nutrient infused lemonades and kombucha drinks under the brand name "Well" to retailers and restaurants across Canada, and also develops and supplies private label drink brands. Well Ventures has also recently launched an organic vodka infused lemonade line of products that is currently sold in liquor stores in Ontario and Western Canada, and is expected to be distributed in the United States through an arrangement with a significant American national grocery retailer. Metro 360 holds an approximately 14% interest in Well Ventures.<sup>2</sup>
  - (b) <u>Handfuel</u>: Handfuel is a Canadian healthy snack company which is focused on manufacturing flavourful and nutritious snack products for health conscious consumers. Handfuel has retail listings at a number of nationally recognized grocers and restaurants in Canada, and its product is also expected to be distributed in the United States beginning in late 2020 or early 2021. Metro 360 holds a 50% interest in Handfuel.
  - (c) <u>Swift Work Wellness</u>: Swift Work Wellness produces a liquid supplement designed to support immune system health, enhance focus and improve energy. Swift Work Wellness' liquid supplement is dispensed through a cooler system

<sup>&</sup>lt;sup>2</sup> Rosebud HoldCo also holds a 9.7% interest Well Ventures.

and is marketed towards use in workplace break rooms as a means of improving workplace wellness and overall employee performance. Metro 360's interest in Swift Work Wellness consists of a 27% holding in All Day Nutritionals U.S., the U.S. parent, and a 45% interest in All Day Nutritionals Canada, the Canadian subsidiary.

- (d) Spectral Agriventures: Spectral Agriventures has developed a cost-efficient turnkey greenhouse model which has the potential to reposition how Canadian grocery retailers source produce and leafy greens. In particular, Spectral Agriventures' turnkey greenhouse model allows for produce to be grown and distributed within Canada on a cost-efficient basis, ensuring freshness, and a reduced carbon footprint, and maintaining price competitiveness against international growers. Metro 360 directly holds an approximately 8% interest in Spectral Agriventures and also has a 36% interest in Spectral Agriventures indirectly through Well Ventures.
- (e) RS2: RS2 has developed a methodology to collect, organize, analyze and sell retail sales data, with a specific focus on magazines. RS2 also owns, manages and sells a cover analyzer database to publishers which allows publisher to assess the performance of their own and competing titles. Metro 360 holds a 37% interest in RS2, with the Jim Pattison Group (which is also the ultimate owner of TNG, the purchaser of the Literature Business) owning the remaining interest.

13. Well Ventures, Handfuel, Swift Work Wellness, Spectral Agriventures and RS2 are not applicants in the proposed CCAA proceedings.<sup>3</sup>

### IV. UPDATE ON MATTERS SINCE THE COMMENCEMENT OF THE PROPOSAL PROCEEDINGS

14. Since commencing the Proposal Proceedings, Metro 360 and the Partners, in consultation with and with the assistance of the Proposal Trustee, have been working diligently to, among other things, implement the TNG Transaction, facilitate the return of unsold Literature Business inventory for credit and a reduction of the Metro 360 payables, collect the outstanding accounts receivable related to the Literature Business, maintain the stability of its remaining operating businesses (with a focus on its consumer packaged goods businesses) and continue to grow its business investments, manage relationships with key stakeholders, and begin the process of working towards developing and advancing a restructuring plan that maximizes value for the benefit of creditors and other stakeholders, as discussed further in this affidavit.

### A. Activities Since the Commencement of the Proposal Proceedings

- 15. Metro 360's activities since the April 7 hearing include the following:
  - (a) As referenced above and described further below, Metro 360 completed the TNG Transaction on April 8, 2020 in accordance with the Approval and Vesting Order. In connection with the implementation of the TNG Transaction, representatives of Metro 360 have engaged with its major retail customers and hundreds of its

<sup>3</sup> Rosebud HoldCo, in addition to being a Partner of Metro 360, also owns a 50% interest in United Library Services Inc. ("ULS"), a wholesale distributor of books to schools and libraries primarily in Western Canada. Metro 360 does not hold any interest in ULS.

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smaller retail customers in an effort to assist with the transition of the Literature Business to TNG;

- (b) Metro 360 has been working diligently since the closing of the TNG Transaction to facilitate the return and processing of unsold Literature Business inventory (which is discussed further below) and to collect its outstanding accounts receivable;
- (c) Metro 360 and the Partners have undertaken efforts following the implementation of the TNG Transaction to eliminate or reduce certain redundant expenses and have also commenced efforts, where applicable, to market certain remaining surplus assets in order to generate additional proceeds and in this regard has sold certain vehicles generating recoveries of \$31,119.47 (plus HST), in accordance with the terms of the Procedure Order;
- (d) Metro 360 and its counsel have been in discussions with certain creditors and their representatives to provide information and responses with respect to various inquiries regarding the Proposal Proceedings;
- (e) Metro 360 has reduced its employee headcount by approximately 335 employees following the sale of the Literature Business (the majority of such employees being offered employment with TNG as part of the TNG Transaction) and has also implemented a temporary 20 percent wage cut for its management employees;

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- (f) Metro 360 has continued paying its remaining employees and personnel and has remitted pension contributions in the ordinary course in accordance with existing practices and, as discussed in further detail below, has developed a key employee retention plan (discussed further below) in an effort to retain the services of selected key employees and prevent their departures; and
- (g) Metro 360 has continued paying suppliers for goods and services that were contracted for and provided to Metro 360 after the commencement of the Proposal Proceedings.
- 16. Senior management of Metro 360 and the Partners have met regularly with their counsel and with the Proposal Trustee to provide ongoing updates with respect to Metro 360's remaining business operations, interactions with stakeholders, and other developments during the Proposal Proceedings. I understand that the Proposal Trustee will be filing a report in connection with this motion (the "Second Report") that will further detail the activities of Metro 360 and of the Proposal Trustee since the commencement of the Proposal Proceedings.

### B. Implementation of the TNG Transaction and Collection and Return of Unsold Inventory

17. As referenced above, the TNG Transaction closed on April 8, 2020. The first installment of the \$925,000 purchase price, in the amount of \$185,000, was paid to Metro 360 at closing, and the second purchase price installment of \$185,000 was made in May. There are three monthly purchase price installments which remain to be paid to Metro 360 pursuant to the terms of the

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Purchase Agreement, including the June payment which Metro 360 expects to receive in short order.

- 18. In connection with the closing of the TNG Transaction, 23 of Metro 360's 70 salaried employees and 268 of its approximately 300 hourly employees were offered employment with TNG. Metro 360 currently has a staff of 43 employees to assist, among other things, with the wind-down of the Literature Business, the collection of outstanding accounts receivable and the operation of Metro 360's ongoing business activities. Those Metro 360 employees who were not offered employment with TNG and whose services were no longer required as a result of the sale of the Literature Business were advised following completion of the TNG Transaction that their employment with Metro 360 was being terminated.
- 19. As advised in the April 6 Affidavit, at that time, Metro 360 had approximately \$35 million of refundable Literature Business inventory at retail accounts and with its logistics provider. Pursuant to the TNG Transaction and the terms of the Purchase Agreement, TNG agreed to retrieve and return all of Metro 360's unsold Literature Business inventory at TNG's sole cost and expense. Following the closing of the TNG Transaction, representatives of Metro 360 and TNG worked together to develop a detailed standard operating procedure to facilitate the retrieval and processing of this unsold Literature Business inventory.
- 20. As at May 23, 2020, approximately \$25.8 million of the inventory that had been with Metro 360's retail accounts and with Metro 360's logistics provider, has been returned to suppliers and processed for refund through Metro 360's software system. The process of retrieving Metro 360's significant amount of unsold Literature Business inventory is a

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considerable undertaking, particularly in the current COVID-19 environment, and Metro 360 estimates that the process will take until at least the end of October 2020 to complete.

21. Metro 360, in consultation with the Proposal Trustee, has been working diligently with TNG to facilitate the retrieval and return of Metro 360 inventory in a timely manner and will continue to do so following the conversion of these Proposal Proceedings to proceedings under the CCAA.

### C. Discussions with BNS

- 22. I am advised by Goodmans LLP ("Goodmans"), counsel to Metro 360 and the Partners, that in advance of the hearing to approve the TNG Transaction, Goodmans conducted searches of the personal property registry systems in respect of Metro 360 in the provinces in which it operates in order to determine whether there were any secured parties that required advance notice pursuant to the BIA, and that such searches did not reveal any registrations against Metro 360. I am also advised by Goodmans that further searches were performed in respect of the Partners shortly before the sale hearing, which searches showed a registration in Ontario in favour of the Bank of Nova Scotia ("BNS") against Rosebud HoldCo relating to Rosebud HoldCo's guarantee of a non-revolving credit facility made available by BNS to me personally pursuant to a commitment letter dated December 21, 2018. Although there was no registration in respect of Metro 360, notice of the sale hearing and the relief being sought, along with copies of the relevant materials, were provided to representatives of BNS on the morning of such hearing.
- 23. Following the hearing, Goodmans engaged with counsel to BNS. During this time, it was determined that Metro 360 had also provided a guarantee, although no security interest was

registered against Metro 360. BNS amended its registration after the NOI filing to add Metro 360 as a debtor. Following discussions amongst counsel, the parties agreed that reasonable notice would be provided to BNS in respect of any sale outside of the ordinary course of business, and that BNS would be added to the service list in these proceedings.

### D. Disposal of Redundant or Non-Material Assets

- 24. As referenced in the April 6 Affidavit, at the time of the sale hearing, the Court was advised that Metro 360 was 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 TNG Transaction (the "Non-Material Residual Assets"). The Procedure Order authorized Metro 360 to enter into and complete any transaction for the Non-Material Residual Assets for proceeds not exceeding \$200,000 in any one transaction or \$400,000 in the aggregate.
- 25. In this regard, Metro 360 has sold certain vehicles generating recoveries of \$31,119.47 (plus HST), and is currently in the process of pursuing and considering various other options with respect to its Non-Material Residual Assets.

### V. FINANCIAL SITUATION

26. As referenced above, Alberta HoldCo and Rosebud HoldCo are both holding companies and it is Metro 360 that is the principal operating entity through which the Partners conduct their business operations. Accordingly, the discussion in this section is focused on Metro 360's financial situation.

### A. Financial Statements

- 27. A copy of Metro 360's reviewed financial statements as of December 31, 2019 is attached as Exhibit "G" to this affidavit. These are the most recent set of annual reviewed financial statements prepared by Metro 360's auditor.
- 28. In addition, a copy of Metro 360's unaudited balance sheet and fiscal year-to-date income statement for the period ended May 23, 2020 is attached as Exhibit "H" to this affidavit.
- As at May 23, 2020, Metro 360 had total consolidated assets with a net book value of approximately \$32.5 million, and total consolidated liabilities of approximately \$34.9 million. The book value of Metro 360's assets includes illiquid assets, such as intercompany receivables and its business investments. It should also be noted that, after and as a result of the TNG Transaction, no borrowings are outstanding or permitted under the Credit Agreement dated as of October 17, 2012 between Metro 360 and the Toronto Dominion Bank ("TD"), as described in the April 6 Affidavit.

### **B.** Unsecured Creditors

- 30. As at May 23, 2020, Metro 360 had approximately \$32.6 million in outstanding accounts payable due to trade creditors.
- 31. As referenced above and described in greater detail in the April 6 Affidavit, the disruption caused by COVID-19 left Metro 360 in significant arrears to its supplier base, with approximately \$65 million in current liabilities owed to unsecured creditors at the time of the sale hearing, approximately \$51 million of which was owed to trade creditors. Through the TNG

Transaction and the sale, retrieval and return of approximately \$25.8 million of Metro 360's unsold inventory to date, Metro 360 has been able to significantly reduce the amount of outstanding accounts payable currently due to trade creditors.

### C. Cash Position

- 32. As at June 4, 2020, Metro 360's cash balance was approximately \$11.1 million.
- 33. Metro 360, with the assistance of the Proposal Trustee, has prepared a 13-week cash flow forecast (the "Cash-Flow Forecast") as required by the CCAA. I understand that the Cash-Flow Forecast will be attached as an appendix to the Second Report.

### VI. CONTINUATION OF THE PROPOSAL PROCEEDINGS UNDER CCAA

- 34. The Partners seek to continue the Proposal Proceedings under the CCAA pursuant to Section 11.6 of the CCAA. The CCAA is the best forum for these proceedings and presents the best possible chance of maximizing value for all stakeholders of Metro 360, including its creditors.
- 35. I am advised by counsel that pursuant to the BIA, Metro 360 is required to file with the Proposal Trustee a proposal, which would be acceptable to creditors, within a maximum of six months from the commencement of the Proposal Proceedings. Metro 360 has been focused in the Proposal Proceedings on maintaining the stability of its remaining operating businesses following the completion of the TNG Transaction and facilitating the wind-down of the Literature Business, and it requires additional time in the current economic environment to develop a restructuring plan that can be presented to creditors. In addition, Metro 360's other

business investments are advancing, but require further runway for maximum value to be realized as these are early stage businesses. Converting the Proposal Proceedings to proceedings under the CCAA will afford Metro 360 greater flexibility and additional time to focus on growing its ongoing business and investments, thereby maximizing value for stakeholders.

- 36. In addition, I am also advised by counsel that if the Proposal Proceedings continue and Metro 360 fails to make a proposal or if such a proposal is rejected by its creditors, or if Metro 360 fails to meet certain statutory timelines under the Proposal Proceedings, the Partners, and thus Metro 360, will be automatically deemed bankrupt.
- 37. I am advised that KSV, as the Proposal Trustee, supports the Partners' motion to continue the Proposal Proceedings under the CCAA and consents to its appointment as Monitor in the proposed CCAA proceedings.

### VII. CCAA PROCEEDINGS AND THE RELIEF SOUGHT

### A. Objective of the CCAA Filing

38. As described above and in further detail in the April 6 Affidavit, as a result of the general decline in the print market and the unprecedented challenges impacting Metro 360 and the Literature Business in connection with the COVID-19 pandemic, Metro 360 sought protection from its creditors under the BIA in order to facilitate the TNG Transaction in respect of the Literature Business so that the value remaining in such business could be preserved, creditor claims could be reduced through the going concern continuation of the Literature Business (which facilitates the retrieval and return of unsold Literature Business inventory and the

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collection of outstanding accounts receivable), and the jobs of hundreds of employees could be protected. The TNG Transaction has been completed, but Metro 360 continues to require protection from its creditors as Metro 360 is currently unable to satisfy in full its obligations to creditors and is therefore insolvent. Continued creditor protection will maintain stability for Metro 360's remaining operating businesses (including its consumer packaged goods businesses) and provide additional time for its business investments to mature so that a value maximizing restructuring plan can be presented to creditors.

- 39. As part of Metro 360's restructuring strategy, while under CCAA protection, it intends, among other things, to:
  - (a) use the time and stability afforded by the CCAA to continue to manage the remaining Metro 360 operating businesses and further develop Metro 360's emerging business investments;
  - (b) continue to collect outstanding accounts receivable related to the Literature

    Business and work with TNG to complete the retrieval and return of unsold

    Literature Business inventory;
  - (c) continue to explore opportunities for the sale of Non-Material Residual Assets and enter into and complete transactions in respect thereof in accordance with the proposed Initial Order (which contains the same asset-disposition thresholds as are set out in the Procedure Order);

- (d) continue to grow Metro 360's ongoing business operations (including its consumer packaged goods businesses) and investments and enable such businesses and investments time to develop; and
- (e) develop a plan of compromise or arrangement within the CCAA proceedings that can be presented to Metro 360's creditors,

in each case with a view to maximizing value for Metro 360's creditors and eventually having Metro 360 emerge from creditor protection.

40. The flexibility afforded by the CCAA will allow Metro 360 time to continue to carry on its business operations in the normal course and undertake to wind-down the Literature Business while concurrently advancing a restructuring plan, thereby preserving going concern value and enabling its emerging business investments time to develop. Metro 360 believes that the continuation of the Proposal Proceedings under the CCAA will provide the best opportunity for Metro 360 to complete an orderly restructuring and achieve a value-maximizing outcome for all stakeholders.

### B. Relief Sought

- (i) Stay of Proceedings and Extension of Relief to Metro 360
- 41. Metro 360 requires continued protection from its creditors. In the present circumstances, Metro 360 is currently unable to satisfy all of its liabilities as they become due and is therefore insolvent. Without the benefit of continued creditor protection, there could be an immediate and significant erosion of value to the detriment of stakeholders.

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- 42. Although Metro 360 is not an applicant to these proceedings (since it is a general partnership rather than a "company" to which the CCAA applies), the Partners are requesting that the benefit of certain protections and authorizations of the Initial Order in favour of Alberta HoldCo and Rosebud HoldCo, 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. It is essential that Metro 360 benefit from CCAA protection given that:
  - (a) the stay of proceedings under the BIA and the restriction under the BIA on the ability of contract counterparties to terminate or amend pre-filing agreements due to insolvency have both been extended in the Proposal Proceedings to Metro 360 pursuant to the Procedure Order;
  - (b) Metro 360 is the entity through which the Partners conduct their business operations as the Partners are holding companies that do not conduct any active business in the ordinary course, and it would be extremely detrimental to the Partners, to Metro 360, and to Metro 360's business operations and stakeholders if a stay of proceedings under the CCAA was not extended to Metro 360;
  - it would also be extremely detrimental if any of Metro 360's customers, suppliers or service providers ceased performing under existing agreements or tightened terms as a result of the conversion of the Proposal Proceedings to proceedings under the CCAA;

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- (d) if any enforcement proceedings were commenced against Metro 360, it would cause significant disruption to the Partners and defeat the purpose of obtaining CCAA protection to preserve the stability of, and provide additional time to, Metro 360 and its business; and
- (e) any impairment or disruption of Metro 360's ongoing business will adversely impact its ability to file a plan of compromise or arrangement for consideration by its creditors.
- 43. In the absence of extending CCAA protection to Metro 360, the management team of Metro 360 would be required to expend considerable time and effort addressing the foregoing risks rather than working to address Metro 360's efforts to pursue a value maximizing restructuring plan. The extension of CCAA protection to Metro 360 will provide stability for its business operations and enable management to pursue a value-maximizing restructuring in an orderly manner. Having regard to the circumstances, and in an effort to preserve and maximize value for the benefit of Metro 360's stakeholders, I believe that granting a stay of proceedings and extending the stay and certain related relief to Metro 360 is in the best interests of Metro 360 and all stakeholders thereof.
- 44. I am advised by Goodmans that, in accordance with recent amendments to the CCAA, the proposed Initial Order provides that the stay of proceedings granted thereunder can only be effective for up to 10 days, or until June 26, 2020 (the "Stay Period"). However, given that the Proposal Proceedings have been ongoing for more than 60 days, that the Proposal Trustee has already provided notice of the Proposal Proceedings pursuant to the BIA to all of Metro 360's creditors who were owed more than \$250 at the date of the NOI filing, and that this motion to

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convert the Proposal Proceeding will be served 7 days prior to the hearing date, the Partners and Metro 360 intend to ask the Court to assist in permitting a path to extend the Stay Period, beyond the initial 10-day Stay Period, for an additional 90 days without the cost of an additional attendance. I understand that KSV, as the proposed Monitor, is supportive of the assistance to be sought from the Court in this regard.

### (ii) Payments During the CCAA Proceedings

- 45. During the course of the CCAA proceedings, Metro 360 intends to make payments for goods and services supplied after the issuance of the Initial Order in the ordinary course as set out in the Cash Flow Forecast (as defined below) and as permitted by the proposed Initial Order.
- 46. The Partners are seeking authorization pursuant to the proposed Initial Order to pay all reasonable expenses incurred by Metro 360 in carrying on its business in the ordinary course after the date of the Initial Order, and to pay certain expenses, whether incurred prior to, on or after the date of the Initial Order, in respect of:
  - (a) outstanding and future wages, salaries, commissions, compensation, employee benefits, pension contributions, vacation pay and expenses (including, without limitation, payroll and benefits processing and servicing expenses) payable on or after the date of this Order, in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements;
  - (b) the fees and disbursements of any consultants, agents, experts, accountants, counsel, investment bankers and financial advisors and such other persons

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retained or employed by Metro 360 in respect of the CCAA proceedings at their standard rates or charges; and

- (c) amounts owing for goods or services supplied or to be supplied to Metro 360 that:

  (i) were incurred during the Proposal Proceedings or pertain to such period; or

  (ii) pertain to the period prior to the commencement of the Proposal Proceedings

  if, in the opinion of Metro 360 and with the consent of the Monitor, the supplier

  of the applicable good or service is critical to the operation or preservation of

  Metro 360's business.
- 47. Metro 360's remaining operating businesses require the commitment and support of employees and the continued supply of goods and services from key vendors and service providers during these CCAA proceedings. Metro 360 has maintained long-term relationships with key suppliers and service providers, including certain logistics or supply chain providers which are critical to the operation of Metro 360's remaining business operations. Preserving these services on an uninterrupted basis is essential to maintaining the stability of Metro 360's remaining operations, as discontinuance could have an adverse impact on the operation and value of such businesses and the development and implementation of a value maximizing restructuring plan.

### (i) KERP

48. Metro 360 has been working diligently since the closing of the TNG Transaction to winddown the Literature Business, including to facilitate the return and processing of unsold - 25 -

Literature Business inventory and to collect outstanding accounts receivable related to the Literature Business.

- 49. In an effort to ensure that Metro 360 employees who are integral to the wind-down of the Literature Business continue their employment with Metro 360 in the circumstances, Metro 360, in consultation with the Proposal Trustee, has developed a key employee retention program (the "KERP") for three key employees in the 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, are expected to maximize recoveries for the benefit of Metro 360's creditors.
- 50. Pursuant to the terms of the KERP, and subject to Metro 360 obtaining Court approval of the KERP, each of the KERP Participants would be 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. In addition, each KERP Participant would be entitled to receive their wages to the end of their employment and, consistent with the treatment of other employees, would be entitled to file a claim for their unused vacation pay. As a condition to receiving this treatment, each KERP Participant had to sign a form of letter agreement, acknowledging these and other terms, and deliver a signed release of Metro 360 from all other claims related to their employment. In addition, a KERP Participant forfeits their entitlement to the KERP Payment if, among other things, they resign or their employment is terminated with cause prior to the Termination Date.

- 51. The KERP Participants have been and will continue to be essential to the success of the wind-down of the Literature Business, and in particular, the collection of outstanding accounts receivable related to the Literature Business and the accounting of significant amounts returned Literature Business inventory. Their continued commitment is key to Metro 360's efforts in this regard, and is expected to have a direct and substantial effect on enhancing creditor recoveries. The KERP Participants are long term employees of Metro 360 and their experience and expertise cannot be easily replicated or replaced within a reasonable period of time.
- 52. I understand that the letter agreements for each of the KERP Participants which set out the terms of the KERP will be included in a confidential appendix to the Second Report.<sup>4</sup> If approved by the Court, the maximum amount of KERP Payments pursuant to the KERP is approximately \$180,000. It is contemplated that amounts owing under the KERP would be secured by a court-ordered charge (the "**KERP Charge**") in the amount of \$180,000 over the assets, property and undertaking of Metro 360.

### (ii) Proposed Monitor

53. It is proposed that KSV, who was appointed as the Proposal Trustee in the Proposal Proceedings, will act as monitor in the CCAA proceedings (in such capacity, the "Monitor") if the proposed Initial Order is granted. KSV has consented to act as the Court-appointed Monitor in the proposed CCAA proceedings. A copy of KSV's consent is attached to this affidavit as Exhibit "I".

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54. KSV became involved with Metro 360 in early March 2020 and was appointed as the Proposal Trustee in the Proposal Proceedings. The professionals of KSV who will have carriage over KSV's involvement in the CCAA proceedings as Monitor are the same as those who were involved in the Proposal Proceedings in KSV's role as Proposal Trustee, and therefore have knowledge of Metro 360, its operating businesses and investments, its financial circumstances and its restructuring efforts to date. I believe that KSV is in the best position to continue to assist Metro 360's restructuring efforts as Monitor in the proposed CCAA proceedings.

### (iii) Administration Charge

- Administration Charge") in favour of the Proposal Trustee, legal counsel to the Proposal Trustee, and Goodmans, as legal counsel to Metro 360 and the Partners, in an aggregate amount not to exceed \$300,000, securing the fees and reasonable disbursements of these parties. The Proposal Administration Charge ranked ahead of all Encumbrances (as defined in the Procedure Order) in favour of any creditors of the Partners or Metro 360.
- 56. Pursuant to the proposed Initial Order, the Partners are requesting that this Court continue the Proposal Administration Charge in the CCAA proceedings with the same priority as set out in the Procedure Order. For greater certainty, the proposed Initial Order provides that the Monitor, counsel to the Monitor and Goodmans will be entitled to the benefit of the Proposal Administration Charge as security for their professional fees and disbursements incurred in

<sup>4</sup> Metro 360 is requesting that this confidential appendix be sealed as it contains private and confidential personal compensation information regarding the KERP Participants who have a reasonable expectation that their personal compensation information will not be publicly disclosed. In addition, disclosure of the specific KERP details could be harmful to Metro 360's commercial interests.

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connection with services rendered both before and after the commencement of the CCAA proceedings.

- 57. It is contemplated that each of the aforementioned parties: (i) will have extensive involvement during the CCAA proceedings; (ii) have contributed and will continue to contribute to the restructuring of Metro 360; and (iii) will ensure that there is no unnecessary duplication of roles among the parties.
- 58. I understand that the Proposal Trustee is of the view that it is reasonable and appropriate in the circumstances to continue the Proposal Administration Charge in the CCAA proceedings.

### (iv) Directors' Charge

- 59. The directors and officers of the Partners (the "Directors and Officers") have been actively involved in efforts to address the current challenges circumstances facing Metro 360, including efforts with respect to the identification and negotiation of the TNG Transaction, the commencement of the Proposal Proceedings, discussions with key stakeholders regarding the Proposal Proceedings and the sale of the Literature Business, and initial efforts with respect to the development of a value maximizing restructuring plan. The Directors and Officers have been mindful of their duties with respect to their supervision and guidance of Metro 360 in connection with the Proposal Proceedings and the potential continuation thereof under the CCAA pursuant to the proposed Initial Order.
- 60. It is my understanding, based on advice from counsel, that in certain circumstances, directors and officers can be held personally liable for certain corporate obligations, including in connection with salaries, wages, payroll remittances, vacation pay, harmonized sales taxes, and

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certain other corporate obligations. However, the Partners do not maintain an insurance policy to cover the Directors and Officers for liabilities they may incur as directors or offices of the Partners.

- 61. The Directors and Officers have expressed their desire for certainty with respect to potential personal liability if they continue in their current capacities. The Partners require the active and committed involvement of the Directors and Officers during the CCAA proceedings as they seek to develop and advance a restructuring plan to address Metro 360's current circumstances.
- Accordingly, the Partners request a Court-ordered charge in the amount of \$300,000 over the assets, properties and undertaking of Metro 360 and the Partners (the "Directors' Charge") to secure the indemnity of the Directors and Officers in the Initial Order in respect of obligations and liabilities that they may incur during the CCAA proceedings in their capacities as directors and officers. The amount of the Directors' Charge has been calculated based on the estimated potential exposure of the Directors and Officers, has been reviewed with KSV as the proposed Monitor, and will be detailed in the Second Report.

### (v) Priority of Charges

- 63. It is contemplated pursuant to the proposed Initial Order that the priorities of the Proposal Administration Charge, the Directors' Charge and the KERP Charge (collectively, the "Charges"), as among them, will be as follows:
  - (a) First the Proposal Administration Charge (up to a maximum amount of \$300,000);

- (b) Second the Directors' Charge (up to a maximum of \$300,000); and
- (c) Third the KERP Charge (up to a maximum of \$180,000).
- 64. Consistent with the "model order", the proposed Initial Order provides for the Charges to rank in priority to all other security interests, trusts, liens, charges, encumbrances and claims of secured creditors, statutory or otherwise (collectively, the "Encumbrances") in favour of any person, except for the security interest of any secured creditor of Metro 360 who did not receive notice of this motion. However, I am advised by Goodmans that this motion will be served on every party named in the service list for the Proposal Proceedings, which includes both TD and BNS, the only parties who we believe could have a secured claim in respect of Metro 360 or the Partners, as well as upon representatives of the federal government and the Ontario provincial tax authorities. Accordingly, the Partners and Metro 360 believe that the Charges should have priority over all Encumbrances.

### VIII. FUNDING METRO 360 DURING THE INITIAL CCAA PERIOD

65. As indicated in the Cash Flow Forecast to be appended to the Second Report, it is expected that Metro 360 will have sufficient cash resources during the 13-week period following the commencement of the proposed CCAA proceedings to continue to operate and grow its businesses and other investments, work towards completion of the remaining wind-down activities related to the TNG Transaction and the sale of the Literature Business, seek to complete additional value maximizing transactions in respect of the Non-Material Residual Assets, and develop a restructuring plan that can be presented to creditors, among other things.

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For all of these reasons, Metro 360 and the Partners are not seeking the approval of any financing arrangements or any charges related thereto.

### IX. CONCLUSION

- 66. In spite of the significant challenges facing Metro 360 as a result of the COVID-19 pandemic, Metro 360 has been able to complete the TNG Transaction and significantly reduce amounts outstanding to its trade creditors.
- 67. While Metro 360 has made significant progress to date in the Proposal Proceedings, Metro 360 requires the flexibility and stability afforded by the CCAA to continue to operate its remaining businesses and complete the wind-down of the Literature Business, including the collection of outstanding accounts receivable and retrieval and return of unsold inventory, and also allow its business investments time to advance and mature. Accordingly, the Partners are requesting that this Court grant the proposed Initial Order to convert and take up the Proposal Proceedings under the CCAA.

68. I believe that the relief sought by the Partners in the proposed Initial Order is in the best interests of Metro 360 and its stakeholders as it will provide Metro 360 with the best opportunity to develop and advance a restructuring plan that will further Metro 360's intention of repaying creditors in full.

SWORN BEFORE ME by two-way videoconference on June 10, 2020

A Commissioner for taking affidavits Name:

ANDREW HARMES

paniel P. Shapiro

# IN THE MATTER OF THE PROPOSAL OF METRO 360 GENERAL PARTNERSHIP AND THE PARTNERS THEREOF

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

Proceeding commenced at Toronto

## AFFIDAVIT OF DANIEL P. SHAPIRO (Sworn June 10, 2020)

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

7065976

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

## ONTARIO SUPERIOR COURT OF JUSTICE (COMMERCIAL LIST)

Proceeding commenced at Toronto

## AFFIDAVIT OF DANIEL P. SHAPIRO (Sworn September 9, 2020)

### **GOODMANS LLP**

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

### ONTARIO SUPERIOR COURT OF JUSTICE COMMERCIAL LIST

THE HONOURABLE	)	WEDNESDAY, THE 16 <sup>TH</sup>
	)	
JUSTICE HAINEY	)	DAY OF SEPTEMBER, 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** 

### **CLAIMS PROCEDURE 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 via videoconference at Toronto, Ontario.

**ON READING** the affidavit of Daniel P. Shapiro sworn September 9, 2020, including the exhibits thereto and the First Report of KSV Restructuring Inc., in its capacity as monitor of the Applicants (the "Monitor"), dated September •, 2020, 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 September •, 2020:

### **SERVICE AND DEFINITIONS**

- 1. **THIS COURT ORDERS** that the time and method for service and notice of this Motion is hereby abridged and validated and this Motion is properly returnable today without further service or notice thereof.
- 2. **THIS COURT ORDERS** that, for the purposes of this Order (the "Claims Procedure Order"), in addition to terms defined elsewhere herein, the following terms shall have the following meanings:
  - (a) "Assessments" means Claims of Her Majesty the Queen in Right of Canada or of any Province or Territory or Municipality or any other taxation authority in any Canadian or foreign jurisdiction, including, without limitation, amounts which may arise or have arisen under any notice of assessment, notice of reassessment, notice of objection, notice of appeal, audit, investigation, demand or similar request from any taxation authority;

<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.

- (b) "Business Day" means a day, other than a Saturday or a Sunday or a statutory holiday, on which banks are generally open for business in Toronto, Ontario;
- (c) "CCAA Proceedings" means the CCAA proceedings commenced by the Applicants in the Court under Court File No. CV-20-00642783-00CL;

### (d) "Claim" means:

any right or claim of any Person against the CCAA Entities, whether or not (i) asserted, in connection with any indebtedness, liability or obligation of any kind of the CCAA Entities in existence on the Filing Date, including any interest thereon or costs payable in respect thereof, whether or not such right or claim is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, unsecured, perfected, unperfected, present, future, known, unknown, by guarantee, by surety or otherwise, and whether or not such right is executory or anticipatory in nature, including any Assessment and any right or ability of any Person to advance a claim for contribution or indemnity or otherwise with respect to any matter, action, cause or chose in action, whether existing at present or commenced in the future, which indebtedness, liability or obligation is based in whole or in part on facts that existed prior to the Filing Date and any other claims that would have been claims provable in bankruptcy had any of the CCAA Entities become bankrupt on the Filing Date, including for greater certainty any Equity Claim and any claim against the CCAA Entities for indemnification by any Director or Officer in respect of

- a D&O Claim (but excluding any such claim for indemnification that is covered by the Directors' Charge (as defined in the Initial Order)), in each case, where such monies remain unpaid as of the date hereof (each, a "Prefiling Claim", and collectively, the "Prefiling Claims");
- (ii) any right or claim of any Person against the CCAA Entities in connection with any indebtedness, liability or obligation of any kind whatsoever owed by 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, lease or other agreement or arrangement whether written or oral (each, a "Restructuring Period Claim", and collectively, the "Restructuring Period Claims"); and
- (iii) any right or claim of any Person against one or more of the Directors and/or Officers, howsoever arising, whether or not such right or claim is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, unsecured, perfected, unperfected, present, future, known, or unknown, by guarantee, surety or otherwise, and whether or not such right is executory or anticipatory in nature, including any Assessments and any right or ability of any Person to advance a claim for contribution, indemnity or otherwise against any of the Directors and/or Officers with respect to any matter, action, cause or chose in action, whether existing at present or arising or commenced in the future, 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 (each a "D&O Claim", and collectively, the "D&O Claims");

provided however that in any case "Claim" shall not include an Excluded Claim, but for greater certainty, shall include any Claim arising through subrogation against any CCAA Entity or any Director or Officer;

- (e) "Claims Bar Date" means 5:00 p.m. on October 30, 2020, or such later date as may be ordered by the Court;
- (f) "Claims Officer" means the individual(s) designated by the Court pursuant to paragraph 31 of this Claims Procedure Order;
- (g) "Claims Procedure" means the procedures outlined in this Claims Procedure Order in connection with the assertion of Claims against the CCAA Entities or the Directors or Officers or any of them, as amended or supplemented by further order of the Court;
- (h) "Court" means the Ontario Superior Court of Justice (Commercial List);
- (i) "Creditor" means any Person having or asserting a Claim;
- (j) "D&O Claim Instruction Letter" means the letter containing instructions for completing the D&O Proof of Claim form, substantially in the form attached as Schedule "H" hereto;
- (k) "D&O Indemnity Claim" means any existing or future right of any Director or Officer against any of the CCAA Entities which arose or arises as a result of any

Person filing a D&O Claim for which such Director or Officer is entitled to be indemnified by a CCAA Entity;

- (l) "D&O Proof of Claim" means the proof of claim referred to herein to be filed by Creditors in connection with any D&O Claim, substantially in the form attached as Schedule "I" hereto, which shall include all available supporting documentation in respect of such D&O Claim;
- (m) "**Directors**" means all current and former directors (or their estates) of the Applicants, in such capacity, or anyone who may be deemed to be or have been, whether by statute, operation of law or otherwise, a director or *de facto* director of the Applicants, and "**Director**" means any one of them;
- (n) "Disputed Claim" means a Claim or such portion thereof which is not barred by any provision of this Claims Procedure Order, which has not been allowed as a Claim, which is disputed for voting and/or distribution purposes in accordance with this Claims Procedure Order, and which remains subject to adjudication for voting and/or distribution purposes in accordance with this Claims Procedure Order;
- (o) "Employee" means anyone who is or was or may be deemed to be or have been, whether by statute, operation of law or otherwise, a current or former employee of any CCAA Entity, whether on a full-time, part-time or temporary basis, other than a Director or Officer, including any individuals on disability leave, parental leave or other absence;

- (p) "Employee Claim Package" means the document package which shall be disseminated by the Monitor to any Terminated Employee in accordance with the terms of this Claims Procedure Order and shall consist of the Termination Claim Statement, a Notice of Dispute form, and such other materials as the Monitor, in consultation with the CCAA Entities, may consider appropriate;
- (q) "**Equity Claim**" has the meaning set forth in Section 2(1) of the CCAA;
- (r) "Excluded Claim" means any Claim secured by any of the Charges (as that term is defined in the Initial Order);
- (s) "Filing Date" means April 6, 2020;
- (t) "Initial Order" means the Initial Order under the CCAA dated June 17, 2020, as amended, restated or varied from time to time;
- (u) "Intercompany Claim" means any Claim that may be asserted against any of the CCAA Entities by any affiliated company, partnership, or other corporate entity of any of the CCAA Entities;
- (v) "Intercompany Claimant" means a Person asserting an Intercompany Claim;
- (w) "Instruction Letter" means the instruction letter to Creditors, in substantially the form attached as Schedule "A" hereto, regarding completion by Creditors of the Proof of Claim and the Notice of Dispute;
- (x) "Known Creditors" means any Person known to any of the CCAA Entities as having a potential Claim against any of the CCAA Entities based on the books and records of

the CCAA Entities, including, without limitation, the Intercompany Claimants, any party that commenced a legal proceeding against the CCAA Entities, including the Directors and/or Officers, and any party who has contacted the Monitor during the CCAA Proceedings about amounts that may be owing to them by the CCAA Entities and/or the process in which they may file a claim;

- (y) "Meeting" means a meeting of the Creditors of the CCAA Entities or of any one or more of them, called for the purpose of considering and voting in respect of a Plan;
- (z) "Monitor's Website" means https://www.ksvadisory.com/insolvency-cases/case/metro360;
- (aa) "Notice of Dispute" means the notice, substantially in the form attached as Schedule"E" hereto, which may be delivered to the Monitor by a Terminated Employeedisputing a Termination Claim Statement, with reasons for its dispute;
- (bb) "Notice of Dispute of Revision or Disallowance" means the notice, substantially in the form attached as Schedule "G" hereto, which may be delivered to the Monitor by a Creditor disputing a Notice of Revision or Disallowance received by such Creditor;
- (cc) "Notice of Revision or Disallowance" means the notice, substantially in the form attached as Schedule "F" hereto, which may be delivered by the Monitor (a) to a Terminated Employee in respect of a Notice of Dispute delivered by such Terminated Employee to the Monitor pursuant to paragraph 15 hereof, or (b) to a Creditor revising or disallowing, in part or in whole, a Claim submitted by such a Creditor in a Proof of Claim for voting and/or distribution purposes;

- (dd) "Notice to Creditors" means the notice to Creditors for publication by the Monitor as described in paragraph 13 herein, substantially in the form attached as Schedule "B" hereto;
- (ee) "Officers" means all current and former officers (or their estates) of the CCAA Entities, in such capacity, or anyone who may be deemed to be or have been, whether by statute, operation of law or otherwise, an officer or *de facto* officer of the CCAA Entities, and "Officer" means any one of them;
- "Person" means any individual, partnership, limited partnership, joint venture, trust, corporation, unincorporated organization, government or agency or instrumentality thereof, or any other corporate, executive, legislative, judicial, regulatory or administrative entity howsoever designated or constituted, including, without limitation, any present or former shareholder, supplier, customer, employee, agent, client, contractor, lender, lessor, landlord, sub-landlord, tenant, sub-tenant, licensor, licensee, partner or advisor;
- (gg) "Plan" means a plan of compromise or arrangement or plan of reorganization filed by or in respect of one or more of the CCAA Entities;
- (hh) "**Prefiling Period**" means the period prior to the Filing Date;
- (ii) "Proof of Claim" means the proof of claim referred to herein to be filed by any Creditor in respect of any Prefiling Claim and Restructuring Period Claim (other than in respect of any Termination Claim set out in a Termination Claim Statement),

- substantially in the form attached as Schedule "C" hereto, which shall include all available supporting documentation in respect of such Claim;
- (jj) "Proof of Claim Document Package" means the document package which shall be disseminated by the CCAA Entities or the Monitor in accordance with the terms of this Claims Procedure Order, and shall consist of the Instruction Letter, a Proof of Claim form, a D&O Proof of Claim form, a D&O Claim Instruction Letter, and such other materials as the Monitor, in consultation with the CCAA Entities, may consider appropriate or desirable;
- (kk) "Restructuring Period" means the period after the Filing Date, but before the Restructuring Period Claims Bar Date;
- (II) "Restructuring Period Claims Bar Date" means, in respect of a Restructuring Period Claim, 5:00 p.m. on the day that is the later of (i) the Claims Bar Date and (ii) thirty-five (35) days after the date on which the CCAA Entities or the Monitor sends a Proof of Claim Document Package with respect to a Restructuring Period Claim or a D&O Claim relating to the Restructuring Period to a Creditor;
- (mm) "Terminated Employee" means any Employee of any one of the CCAA Entities on or after the Filing Date who received notice of termination of employment on or after the Filing Date or whose employment with any of the CCAA Entities was otherwise terminated on or after the Filing Date;

- (nn) "Terminated Employee Claims Bar Date" means 5:00 p.m. on the day that is the later of (i) the Claims Bar Date and (ii) thirty-five (35) days after the date on which the CCAA Entities or the Monitor sends an Employee Claims Package;
- (oo) "Termination Claim" means the Claim of any Terminated Employee in respect of the termination of such Terminated Employee's employment, whether under contract, common law, statute or otherwise, including for termination and severance pay, which for the purposes of this Claims Procedure Order will be calculated by the CCAA Entities in consultation with the Monitor and set out in a Termination Claim Statement; and
- (pp) "Termination Claim Statement" means the claim statement prepared by the CCAA Entities, in consultation with the Monitor, to be disseminated by the Monitor to all Terminated Employees, which notice shall state the amount of such Terminated Employee's Termination Claim for voting and distribution purposes, and which notice shall be substantially in the form attached as Schedule "D" hereto.

## **GENERAL PROVISIONS**

3. **THIS COURT ORDERS** that all references to time herein shall mean Toronto Time and any reference to an event occurring on a Business Day shall mean prior to 5:00 p.m. on such Business Day unless otherwise indicated herein, and any reference to an event occurring on a day that is not a Business Day shall mean the next following day that is a Business Day.

- 4. **THIS COURT ORDERS** that all references to the word "including" shall mean "including without limitation", all references to the singular herein include the plural, the plural include the singular, and any gender includes all genders.
- 5. **THIS COURT ORDERS** that the Claims Procedure and the forms of Notice to Creditors, Instruction Letter, Proof of Claim, Termination Claim Statement, Notice of Dispute, Notice of Revision or Disallowance, Notice of Dispute of Revision or Disallowance, D&O Claim Instruction Letter and D&O Proof of Claim are hereby approved. Notwithstanding the foregoing, the Monitor may, from time to time, make non-substantive changes to the forms as the Monitor, in its sole discretion, may consider necessary or desirable.
- 6. THIS COURT ORDERS that the Monitor, in consultation with the CCAA Entities and the applicable Directors and Officers in respect of any D&O Claims, is hereby authorized to use reasonable discretion as to the adequacy of compliance with respect to the manner in which forms delivered hereunder are completed and executed, and the time in which they are submitted, and may, where the Monitor, in consultation with the CCAA Entities and the applicable Directors and Officers in respect of any D&O Claims, is satisfied that a Claim has been adequately proven, waive strict compliance with the requirements of this Claims Procedure Order, including in respect of the completion, execution and time of delivery of such forms and to request any further documentation from a Creditor that the Monitor, the CCAA Entities and the applicable Directors and Officers in respect of any D&O Claims, may require.
- 7. **THIS COURT ORDERS** that all Claims shall be denominated in Canadian dollars. Any Claims denominated in a foreign currency shall be converted to Canadian dollars at the Bank of

Canada daily average exchange rate on the Filing Date, which for the United States dollar is USD\$1:CAD\$1.4127.

- 8. **THIS COURT ORDERS** that there shall be no presumption of validity or deeming of the amount due in respect of amounts claimed in any Assessment.
- 9. **THIS COURT ORDERS** that copies of all forms delivered hereunder, as applicable, shall be maintained by the Monitor.

# **ROLE OF THE MONITOR**

- 10. **THIS COURT ORDERS** that the Monitor, in addition to its prescribed rights, duties, responsibilities and obligations under the CCAA and under the Initial Order, and any other orders of the Court in the CCAA Proceedings, shall assist the CCAA Entities in the administration of the Claims Procedure provided for herein and is hereby directed and empowered to take such other actions and fulfill such other roles as are contemplated by this Claims Procedure Order.
- 11. **THIS COURT ORDERS** that the Monitor shall (i) have all protections afforded to it by the CCAA, this Claims Procedure Order, the Initial Order, any Orders of the Court in these proceedings and other applicable law in connection with its activities in respect of this Claims Procedure Order, including the stay of proceedings in its favour provided pursuant to the Initial Order; (ii) incur no liability or obligation as a result of carrying out the provisions of this Claims Procedure Order, other than in respect of gross negligence or wilful misconduct; (iii) shall be entitled to rely on the books and records of the CCAA Entities and any information provided by the CCAA Entities, all without independent investigation; (iv) shall not be liable for any claims or damages resulting from any errors or omissions in such books, records or information; and (v) may seek such

assistance as may be reasonably required to carry out its duties and obligations pursuant to this Claims Procedure Order from the CCAA Entities.

12. **THIS COURT ORDERS** that the CCAA Entities, the Officers, the Directors and their respective employees, agents and representatives and any other Person given notice of this Claims Procedure Order shall fully cooperate with the Monitor in the exercise of its powers and the discharge of its duties and obligations under this Claims Procedure Order.

# NOTICE TO CREDITORS

# 13. **THIS COURT ORDERS** that:

- (a) the CCAA Entities shall, as soon as practicable, but no later than ten (10) Business

  Days following the granting of the Claims Procedure Order, cause an Employee

  Claim Package to be sent to every Terminated Employee, as evidenced by the books
  and records of the CCAA Entities, at their respective last known municipal or e-mail
  address as recorded in the CCAA Entities' books and records;
- (b) the CCAA Entities shall, as soon as practicable, but no later than ten (10) Business

  Days following the granting of the Claims Procedure Order, cause a Proof of Claim

  Document Package to be sent to every Known Creditor, as evidenced by the books
  and records of the CCAA Entities, at their respective last known municipal or e-mail
  address as recorded in the CCAA Entities' books and records;
- (c) the Monitor shall cause the Notice to Creditors to be published for at least two (2)

  Business Days in *The Globe and Mail* (National Edition) as soon as practicable after the date of this Claims Procedure Order;

- (d) the Monitor shall post a copy of the Notice to Creditors, this Claims Procedure Order, and a Proof of Claim Document Package on the Monitor's Website as soon as practicable after the date of this Claims Procedure Order;
- the CCAA Entities or the Monitor, as applicable, shall deliver as soon as reasonably possible following receipt of a request therefor, a copy of the Proof of Claim Document Package to any Person claiming to be a Creditor and requesting such material in writing;
- up the termination of any Employee following the date on which the Employee Claim Packages are distributed in accordance with paragraph 13(a) of this Claims Procedure Order (such Employee upon their employment being terminated becoming a Terminated Employee), the CCAA Entities, or the Monitor upon becoming aware of any such termination, shall, either concurrent with such Employee's termination or as soon as possible thereafter, deliver an Employee Claim Package to such Employee. For greater certainty, any Employee Claim Package delivered pursuant to this paragraph 13(f) shall include a Termination Claim Statement; and
- any notices of disclaimer or resiliation delivered to Creditors by any of the CCAA

  Entities or the Monitor after the date of this Claims Procedure Order shall be accompanied by a Proof of Claim Document Package and the CCAA Entities or the Monitor shall, upon becoming aware of any other circumstance giving rise to a Restructuring Period Claim, send a Proof of Claim Document Package to such Creditor or may direct such Creditor to the applicable documents posted on the Monitor's Website in respect of such a Restructuring Period Claim.

14. **THIS COURT ORDERS** that the sending of the Employee Claim Package and the Proof of Claim Document Package to the applicable Persons as described above, and the publication of the Notice to Creditors, each in accordance with this Claims Procedure Order, and the completion of the other requirements of this Claims Procedure Order, shall constitute good and sufficient service and delivery of notice of this Claims Procedure Order, the Claims Bar Date and the Restructuring Period Claims Bar Date on all Persons who may be entitled to receive notice and who may wish to assert a Claim, and no other notice or service need be given or made and no other document or material need be sent to or served upon any Person in respect of this Claims Procedure Order.

# **CLAIMS PROCESS FOR TERMINATED EMPLOYEES**

- 15. **THIS COURT ORDERS** that, if a Terminated Employee wishes to dispute the amount and/or nature of the Termination Claim set forth in the Termination Claim Statement delivered to such Terminated Employee or to assert an additional Claim in relation to the CCAA Entities other than the Termination Claim set forth in the Termination Claim Statement, the Terminated Employee shall deliver a Notice of Dispute to the Monitor so that it is actually received by the Monitor by no later than the Terminated Employee Claims Bar Date. Such Terminated Employee shall specify in the Notice of Dispute the details of the dispute with respect to the Termination Claim set forth in the Termination Claim Statement or the additional Claim, as applicable.
- 16. **THIS COURT ORDERS** that if a Terminated Employee does not deliver to the Monitor a completed Notice of Dispute such that it is received by the Monitor by the Terminated Employee Claims Bar Date disputing the Termination Claim as set out in the Termination Claim

Statement, then such Terminated Employee shall be deemed to have accepted the valuation and/or nature of the Termination Claim as set forth in the Termination Claim Statement.

- Statement is initially delivered to a Terminated Employee, the Monitor, in consultation with the CCAA Entities, determines that it is appropriate to change the amount or nature of the Termination Claim set forth in such Termination Claim Statement, the Monitor shall cause an amended Termination Claim Statement (an "Amended Termination Claim Statement") to be delivered to such Terminated Employee, which Amended Termination Claim Statement and the revised Termination Claim specified therein shall thereafter supersede any previous Termination Claim Statement delivered to such Terminated Employee. If the Terminated Employee wishes to dispute the amount and/or nature of the Termination Claim set forth in the Amended Termination Claim Statement, such Terminated Employee shall be required to deliver a Notice of Dispute so that it is actually received by the Monitor on or before the later of (i) the Terminated Employee Claims Bar Date and (ii) thirty (30) days after the date on which the Amended Termination Claim Statement is deemed to be delivered to the Terminated Employee.
- Notice of Dispute in respect of a Termination Claim Statement or an Amended Termination Claim Statement, if applicable, pursuant to paragraphs 16 and 17, as applicable, shall be forever barred from disputing the amount or nature of the Termination Claim set forth in the Termination Claim Statement or Amended Termination Claim Statement, as applicable, and any Claim of a different classification or nature or in excess of the amount specified in the Termination Claim Statement or Amended Termination Claim Statement, as applicable, shall be forever barred and extinguished.

## PROOFS OF CLAIM

# A. Prefilling Claims and D&O Claims

19. **THIS COURT ORDERS** that any Creditor (other than a Terminated Employee in respect of the Termination Claim as set out in a Termination Claim Statement) that intends to assert a Prefiling Claim or a D&O Claim relating to the Prefiling Period shall file a Proof of Claim or a D&O Proof of Claim, including supporting documentation, as applicable, with the Monitor so that it is actually received by the Monitor on or before the Claims Bar Date.

# **B.** Restructuring Period Claims

- 20. **THIS COURT ORDERS** that upon becoming aware of a circumstance giving rise to a Restructuring Period Claim, the CCAA Entities or the Monitor shall send a Proof of Claim Document Package to the Creditor in respect of such Restructuring Period Claim in the manner provided for herein.
- 21. **THIS COURT ORDERS** that any Creditor that intends to assert a Restructuring Period Claim or a D&O Claim relating to the Restructuring Period shall file a Proof of Claim or D&O Proof of Claim, as applicable, with the Monitor on or before the Restructuring Period Claims Bar Date.

# C. D&O Indemnity Claims

22. **THIS COURT ORDERS** that to the extent that any D&O Claim is filed in accordance with this Claims Procedure, a corresponding D&O Indemnity Claim shall be deemed to have been timely filed in respect of each D&O Claim. For the avoidance of doubt, Directors and

Officers shall not be required to take any action or to file any Proof of Claim in respect of such D&O Indemnity Claim.

# **CLAIMS BARRED**

- 23. **THIS COURT ORDERS** that any Creditor (other than a Terminated Employee in respect of the Termination Claim as set out in a Termination Claim Statement) that does not deliver a Proof of Claim or D&O Proof of Claim in respect of a Claim in the manner required by this Claims Procedure Order such that it is actually received by the Monitor on or before the Claims Bar Date or the Restructuring Period Claims Bar Date, as applicable:
  - (a) shall not be entitled to attend or vote at a Meeting in respect of such Claim;
  - (b) shall not be entitled to receive any distribution in respect of such Claim pursuant to a Plan or otherwise;
  - (c) shall not be entitled to any further notice in the CCAA Proceedings (unless it has otherwise sought to be included on the service list); and
  - (d) shall be and is hereby forever barred from making or enforcing such Claim against the CCAA Entities, or the Directors or Officers or any of them, and such Claim shall be and is hereby extinguished without any further act or notification.

For greater certainty, this paragraph shall not apply to Excluded Claims and the rights of any Person (including the CCAA Entities, the Directors and Officers) with respect to Excluded Claims are expressly reserved.

## ADJUDICATION AND RESOLUTION

- 24. **THIS COURT ORDERS** that the Monitor, in consultation with the CCAA Entities, shall review all Notices of Dispute, Proofs of Claim and D&O Proofs of Claim received on or before the Claims Bar Date or Restructuring Period Claims Bar Date, as applicable, and shall accept, revise or reject each Claim set out therein for voting and/or distribution purposes. With respect to a D&O Claim set out in a D&O Proof of Claim, the Monitor shall, in consultation with the CCAA Entities and the applicable Directors and Officers named in respect of such D&O Claim, accept, revise or reject such D&O 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 the Court.
- 25. **THIS COURT ORDERS** that if the Monitor disagrees with the classification, amount and/or nature of the Claim as set out in any Notice of Dispute, Proof of Claim or D&O Proof of Claim filed in accordance with this Claims Procedure Order, the Monitor shall, in consultation with the CCAA Entities and the applicable Directors and Officers, attempt to resolve such dispute and settle the purported Claim with the Creditor for voting and/or distribution purposes.
- 26. **THIS COURT ORDERS** that 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 that has been filed in accordance with this Claims Procedure Order, the Monitor shall notify the Creditor who has delivered such Notice of Dispute, Proof of Claim or D&O Proof of Claim, as applicable, that such Claim has been revised or rejected for voting and/or distribution purposes and the reasons therefor, by sending a Notice of Revision or Disallowance. The Monitor, in consultation with the CCAA Entities, may allow a Claim for voting purposes and may revise or disallow the Claim for distribution purposes provided that it does so in the Notice of Revision or Disallowance.

- 27. **THIS COURT ORDERS** that any Creditor who intends to dispute a Notice of Revision or Disallowance sent pursuant to paragraph 26 above shall deliver a completed 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, to the Monitor such that it is received by the Monitor by no later than twenty-one (21) days after the date on which the Creditor is deemed to receive the Notice of Revision or Disallowance. A Creditor may accept a determination of a Claim for voting purposes as set out in the Notice of Revision or Disallowance and may dispute the determination of the Claim for distribution purposes, provided that it does so in its Notice of Dispute of Revision or Disallowance and such Notice of Dispute of Revision or Disallowance is received by the Monitor in accordance with this paragraph 27 A determination of a Claim for voting purposes does not in any way affect and is without prejudice to the process to determine such Claim for distribution purposes.
- 28. **THIS COURT ORDERS** that, where a Creditor that receives a Notice of Revision or Disallowance pursuant to paragraph 26 above does not file a Notice of Dispute of Revision or Disallowance by the time set out in paragraph 27 above, then such Creditors' Claim shall be deemed to be as determined in the Notice of Revision or Disallowance and any and all of the Creditors' rights to dispute the Claim as determined in the Notice of Revision or Disallowance or to otherwise assert or pursue such Claim other than as determined in the Notice of Revision or Disallowance shall be forever extinguished and barred without further act or notification.
- 29. **THIS COURT ORDERS** that upon receipt of a Notice of Dispute of Revision or Disallowance in respect of a Claim, the Monitor, in consultation with the CCAA Entities (including, without limitation, by providing the CCAA entities and/or their counsel with copies of all Notices of Dispute of Revision or Disallowance received), shall attempt to resolve such dispute and settle the

purported Claim with the Creditor, and 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 CCAA Entities and the applicable Directors and 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 a Claims Officer for adjudication.

30. **THIS COURT ORDERS** that the Monitor, in consultation with the CCAA Entities and the applicable Directors and Officers in respect of any D&O Claim, may refer any Claim to a Claims Officer for adjudication at its election by sending written notice to the applicable parties at any time.

# **CLAIMS OFFICERS**

- 31. **THIS COURT ORDERS** that The Honourable Frank Newbould, Q.C., and such other Persons as may be appointed by the Court from time to time on a motion by the CCAA Entities or the Monitor, be and are hereby appointed as the Claims Officers for the Claims Procedure.
- 32. **THIS COURT ORDERS** that the decision as to whether a Disputed Claim should be adjudicated by a Claims Officer shall be in the sole discretion of the Monitor.
- 33. THIS COURT ORDERS that a Claims Officer shall determine the classification, amount and/or nature of Disputed Claims in accordance with this Claims Procedure Order and to the extent necessary may determine whether any Claim or part thereof constitutes an Excluded Claim and shall provide written reasons. A Claims Officer shall determine all procedural matters which may arise in respect of his or her determination of these matters, including the manner in which any evidence may be adduced. A Claims Officer shall have the discretion to mediate any dispute that is

referred to such Claims Officer at its election. A Claims Officer shall also have the discretion to determine by whom and to what extent the costs of any hearing or mediation before a Claims Officer shall be paid.

- 34. **THIS COURT ORDERS** that the Monitor, the Creditor, the CCAA Entities and/or the applicable Directors and Officers in respect of any D&O Claim may, within ten (10) days of such party receiving notice of a Claims Officer's determination of the classification, amount and/or nature of a Creditor's Claim, appeal such determination or any other matter determined by the Claims Officer in accordance with paragraph 33 or otherwise to the Court by filing a notice of appeal, and the appeal shall, subject to the availability of the Court, be initially returnable for scheduling purposes within ten (10) days of filing such notice of appeal.
- 35. **THIS COURT ORDERS** that if no party appeals the determination of the classification, amount and/or nature of a Claim by a Claims Officer within the time set out in paragraph 34 above, the decision of the Claims Officer in determining the classification, amount and/or nature of the Creditor's Claim shall be final and binding upon the CCAA Entities, the applicable Directors and Officers in respect of any D&O Claim, the Monitor and the Creditor, and there shall be no further right of appeal, review or recourse to the Court from the Claims Officer's final determination of a Claim.

# **SET-OFF**

36. **THIS COURT ORDERS** that nothing in this Claims Procedure Order shall affect any right of set-off which the CCAA Entities may have against any Creditor.

## TRANSFER OF CLAIMS

- 37. **THIS COURT ORDERS** that if the holder of a Claim transfers or assigns the whole of such Claim to another Person, neither the Monitor nor the CCAA Entities shall be obligated to give notice or otherwise deal with the transferee or assignee of such Claim in respect thereof unless and until written notice of such transfer or assignment, together with satisfactory evidence of such transfer or assignment, has been received by the Monitor and the Monitor has provided written confirmation acknowledging the transfer or assignment of such Claim, and thereafter such transferee or assignee shall for the purposes hereof constitute the "Creditor" in respect of such Claim. Any such transferee or assignee of a Claim shall be bound by any notices given or steps taken in respect of such Claim in accordance with this Claims Procedure Order prior to receiving written confirmation by the Monitor acknowledging such assignment or transfer. After the Monitor has delivered a written confirmation acknowledging the notice of the transfer or assignment of a Claim, the CCAA Entities and the Monitor shall thereafter be required only to deal with the transferee or assignee and not the original holder of the Claim. A transferee or assignee of a Claim takes the Claim subject to any rights of set-off to which the CCAA Entities may be entitled with respect to such Claim. For greater certainty, a transferee or assignee of a Claim is not entitled to set-off, apply, merge, consolidate or combine any Claims assigned or transferred to it against or on account or in reduction of any amounts owing by such Person to the CCAA Entities. Reference to transfer in this Claims Procedure Order includes a transfer or assignment whether absolute or intended as security.
- 38. **THIS COURT ORDERS** that if a Creditor or any subsequent holder of a Claim, who in any such case has previously been acknowledged by the CCAA Entities and the Monitor as the holder of the Claim, transfers or assigns the whole of such Claim to more than one Person or part of such Claim to another Person, such transfers or assignments shall not create separate Claims and

such Claims shall continue to constitute and be dealt with as a single Claim notwithstanding such transfers or assignments. The CCAA Entities and the Monitor shall not, in each case, be required to recognize or acknowledge any such transfers or assignments and shall be entitled to give notices to and to otherwise deal with such Claim only as a whole and then only to and with the Person last holding such Claim, provided such Creditor may, by notice in writing delivered to the Monitor, direct that subsequent dealings in respect of such Claim, but only as a whole, shall be dealt with by a specified Person and in such event, such Person shall be bound by any notices given or steps taken in respect of such Claim with such Creditor or in accordance with the provisions of this Claims Procedure Order.

## SERVICE AND NOTICE

39. **THIS COURT ORDERS** that the CCAA Entities and the Monitor may, unless otherwise specified by this Claims Procedure Order, serve and deliver or cause to be served and delivered the Employee Claim Package, the Proof of Claim Document Package, and any letters, notices or other documents to Creditors or any other interested Person by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery, facsimile transmission or email to such Persons or their counsel at the physical or electronic address, as applicable, last shown on the books and records of the CCAA Entities or, where applicable, as set out in such Creditor's Proof of Claim or D&O Proof of Claim. Any such service and delivery shall be deemed to have been received: (i) if sent by ordinary mail, on the third Business Day after mailing within Canada, and the fifth Business Day after mailing internationally; (ii) if sent by courier or personal delivery, on the next Business Day following dispatch; and (iii) if delivered by facsimile transmission or email by 5:00 p.m. on a

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Business Day, on such Business Day and if delivered after 5:00 p.m. or other than on a Business

Day, on the following Business Day.

40. THIS COURT ORDERS that any notice or communication required to be provided

or delivered by a Creditor to the Monitor under this Claims Procedure Order shall be in writing in

substantially the form, if any, provided for in this Claims Procedure Order and will be sufficiently

given only if delivered by prepaid registered mail, courier, personal delivery or email addressed to:

KSV Restructuring Inc., Court-Appointed CCAA Monitor of 957855

Alberta Ltd. (formerly NewsWest Inc.) and Rosebud Creek Financial

Corp., in respect of Metro 360 General Partnership

150 King Street West, Suite 2308

Toronto, Ontario M5H 1J9

Attention:

Murtaza Tallat

Telephone:

(416) 932-6031

E-mail:

mtallat@ksvadvisory.com

Any such notice or communication delivered by a Creditor shall be deemed to be received upon

actual receipt thereof before 5:00 p.m. on a Business Day or if delivered outside of normal business

hours, the next Business Day.

41. THIS COURT ORDERS that in the event that this Claims Procedure Order is

subsequently amended by further Order of the Court, the Applicants shall serve notice of such

amendment on the service list in these proceedings and the Monitor shall post such further Order on

the Monitor's Website and such posting shall constitute adequate notice to all Persons of such

amended Claims Procedure Order.

## **GENERAL**

- 42. **THIS COURT ORDERS** that notwithstanding any other provisions of this Claims Procedure Order, the solicitation by the Monitor or the CCAA Entities of Proofs of Claim and D&O Proofs of Claim, the delivery of Employee Claim Packages and Proof of Claim Document Packages to the applicable Persons as described above, and the filing by any Person of any Notice of Dispute, Proof of Claim and/or D&O Proof of Claim shall not, for that reason only, grant any Person any standing in the CCAA Proceedings or rights under a Plan.
- 43. THIS COURT ORDERS that nothing in this Claims Procedure Order shall prejudice the rights and remedies of any Directors or Officers or other Persons under the Directors' Charge or any applicable insurance policy or prevent or bar any Person from seeking recourse against or payment from the CCAA Entities' insurance and any Director's or Officer's liability insurance policy or policies that exist to protect or indemnify the Directors or Officers or other Persons, whether such recourse or payment is sought directly by the Person asserting a Claim from the insurer or derivatively through the Director or Officer or the CCAA Entities; provided, however, that nothing in this Claims Procedure Order shall create any rights in favour of such Person under any policies of insurance nor shall anything in this Claims Procedure Order limit, remove, modify or alter any defence to such Claim available to the insurer pursuant to the provisions of any insurance policy or at law; and further provided that any Claim or portion thereof for which the Person receives payment directly from, or confirmation that the Person is covered by, the CCAA Entities' insurance or any Director's or Officer's liability insurance or other liability insurance policy or policies that exist to protect or indemnify the Directors or Officers or other Persons shall not be recoverable as against the CCAA Entities or Director or Officer, as applicable.

- 44. **THIS COURT ORDERS** that nothing in this Claims Procedure Order shall constitute or be deemed to constitute an allocation or assignment of Claims into particular classes for the purpose of the Plan and, for greater certainty, the treatment of Claims, or any other claims and the classification of Creditors for voting and distribution purposes, shall be subject to the terms of a Plan or further Order of this Court.
- 45. **THIS COURT ORDERS** that the Applicants or the Monitor may from time to time apply to this Court to amend, vary, supplement or replace this Claims Procedure Order or for advice and directions concerning the discharge of their respective powers and duties under this Claims Procedure Order or the interpretation or application of this Claims Procedure Order.
- 46. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada, the United States or outside any other foreign jurisdiction, to give effect to this Claims Procedure Order and to assist the CCAA Entities, the Monitor and their respective agents in carrying out the terms of this Claims Procedure 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 Claims Procedure 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 Claims Procedure Order.
- 47. **THIS COURT ORDERS** that this Claims Procedure Order and all of its provisions are effective as of 12:01 a.m. (Toronto Time) on the date of this Claims Procedure Order.

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#### SCHEDULE A

## INSTRUCTION LETTER FOR THE CLAIMS PROCEDURE OF:

957855 Alberta Ltd. (formerly NewsWest Inc.), Rosebud Creek Financial Corp., (together, the "Applicants") and Metro 360 General Partnership (together with the Applicants, the "CCAA Entities") and/or the Directors or Officers of the CCAA Entities

## A. CLAIMS PROCEDURE

By Order of the Ontario Superior Court of Justice (Commercial List) made on September 16, 2020, (the "Claims Procedure Order"), the Court-appointed Monitor of the Applicants, KSV Restructuring Inc. (the "Monitor"), has been authorized to assist the CCAA Entities in conducting a claims procedure (the "Claims Procedure") with respect to claims against the CCAA Entities and the CCAA Entities' present or former Directors and Officers ("Directors/Officers") in accordance with the terms of the Claims Procedure Order.

Unless otherwise defined, all capitalized terms used herein shall have the meanings given to those terms in the Claims Procedure Order.

The Claims Procedure Order governs all Claims related to the CCAA Entities.

This letter provides instructions for completing the Proof of Claim. Reference should be made to the Claims Procedure Order for a complete description of the Claims Procedure. The Claims Procedure Order, the Proof of Claim Document Package, additional Proofs of Claim and related materials may be accessed from the Monitor's Website at: https://www.ksvadisory.com/insolvency-cases/case/metro360.

The Claims Procedure is intended for any Person with any Claims against the CCAA Entities or the Directors/Officers, whether liquidated, unliquidated, contingent or otherwise. Please review the enclosed material for the complete definitions of "Claim", "Prefiling Claim", "Restructuring Period Claim" and "D&O Claim" to which the Claims Procedure applies.

All notices and enquiries with respect to the Claims Procedure should be addressed to:

KSV Restructuring Inc., Court-Appointed CCAA Monitor of 957855 Alberta Ltd. (formerly NewsWest Inc.) and Rosebud Creek Financial Corp., in respect of Metro 360 General Partnership 150 King Street West, Suite 2308 Toronto, Ontario M5H 1J9

Attention: Murtaza Tallat Telephone: (416) 932-6031 E-mail:mtallat@ksvadvisory.com

# B. SUBMITTING A PROOF OF CLAIM

Unless you are an Employee, if you believe that you have a Claim against the CCAA Entities or the Directors or Officers, you must file a Proof of Claim or a D&O Proof of Claim with the Monitor.

All **Proofs of Claim for Prefiling Claims** (i.e. Claims against the CCAA Entities arising prior to the Filing Date) and all D&O Proofs of Claim relating to the period prior to the Filing Date must be received by the Monitor **before 5:00 p.m.** (**Toronto Time**) **on October 30, 2020** (the "Claims Bar Date").

All Proofs of Claim for Restructuring Period Claims (i.e. Claims against the CCAA Entities arising on or after the Filing Date) and all D&O Proofs of Claim relating to the period after the Filing Date must be received by the Monitor before 5:00 p.m. (Toronto Time) on the date that is the later of (i) the Claims Bar Date and (ii) thirty-five (35) days after the date on which the CCAA Entities or the Monitor sends to you a Proof of Claim Document Package with respect to a Restructuring Period Claim or a D&O Claim relating to the period after the Filing Date in accordance with the Claims Procedure Order (the "Restructuring Period Claims Bar Date").

PROOFS OF CLAIM AND D&O PROOFS OF CLAIM CAN BE FILED WITH THE MONITOR BY E-MAILING THEM TO THE ATTENTION OF MURTAZA TALAT AT: mtallat@ksvadvisory.com

PROOFS OF CLAIM AND D&O PROOFS OF CLAIM MUST BE RECEIVED BY THE CLAIMS BAR DATE OR RESTRUCTURING PERIOD CLAIMS BAR DATE, AS APPLICABLE, OR THE APPLICABLE CLAIM WILL BE FOREVER BARRED AND EXTINGUISHED.

All Claims denominated in foreign currency shall be converted to Canadian dollars at the Bank of Canada daily average exchange rate on April 6, 2020.

Additional Proof of Claim forms can be obtained by contacting the Monitor at the telephone number and address indicated above and providing particulars as to your name, address and facsimile number or email mail address. Additional Proofs of Claim and related materials may be accessed from the Monitor's website at https://www.ksvadisory.com/insolvency-cases/case/metro360.

# C. FOR TERMINATED EMPLOYEES

Any Employee who was employed by a CCAA Entity as at the Filing Date but whose employment has since been terminated (a "**Terminated Employee**"), will receive a Termination Claim Statement specifying the amount and nature of their Termination Claim as determined by the CCAA Entities, in consultation with the Monitor.

Any Terminated Employee who receives a Termination Claim Statement and does not dispute the amount or nature of the Termination Claim stated therein, is not required to take any further action.

Any Terminated Employee who wishes to dispute the amount and/or nature of the Termination Claim as set forth in their Termination Claim Statement or wishes to assert an additional Claim in relation to the CCAA Entities other than the Termination Claim set forth in their

Termination Claim Statement, is required to deliver a Notice of Dispute to the Monitor so that it is received by the Monitor before 5:00 p.m. (Toronto Time) on the date that is the later of (i) the Claims Bar Date, and (ii) thirty-five (35) days after the date on which the CCAA Entities or the Monitor sends to you an Employee Claims Package (the "Terminated Employee Claims Bar Date").

If a completed Notice of Dispute is not received by the Monitor by the Terminated Employee Claims Bar Date, the Terminated Employee will be forever barred from disputing the amount or nature of the Termination Claim set forth in their Termination Claim Statement and any Claim of a different nature or in excess of the amount specified in the Notice of Claim shall be forever barred and extinguished.

DATED at Toronto, Ontario this	day of	, 2020
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KSV Restructuring Inc., solely in its capacity as Court-Appointed CCAA Monitor of 957855 Alberta Ltd. (formerly NewsWest Inc.) and Rosebud Creek Financial Corp., in respect of Metro 360 General Partnership, and not in its personal or corporate capacity.

#### SCHEDULE B

# NOTICE TO CREDITORS OF 957855 ALBERTA LTD. (FORMERLY NEWSWEST INC.), ROSEBUD CREEK FINANCIAL CORP. AND METRO 360 GENERAL PARTNERSHIP

# RE: NOTICE OF CLAIMS PROCEDURE

PLEASE TAKE NOTICE that on September 16, 2020, the Ontario Superior Court of Justice (Commercial List) (the "Court") issued an Order (the "Claims Procedure Order") in the Companies' Creditors Arrangement Act proceedings of 957855 Alberta Ltd. (formerly NewsWest Inc.) and Rosebud Creek Financial Corp (together, the "Applicants") in respect of Metro 360 General Partnership (together with the Applicants, the "CCAA Entities"). Capitalized terms used in this notice and not otherwise defined have the meaning ascribed to them in the Claims Procedure Order. Reference should be made to the Claims Procedure Order for the complete definitions of "Claim", "Prefiling Claim", "Restructuring Period Claim" and "D&O Claim" to which the Claims Procedure applies.

The Claims Procedure Order requires that all Persons who assert a Claim against the CCAA Entities, whether unliquidated, contingent or otherwise, and all Persons who assert a claim against the Directors and/or Officers of the CCAA Entities, other than any Terminated Employee in respect of the Termination Claim as set out in any Termination Claim Statement, must file a Proof of Claim (with respect to Claims against the CCAA Entities) or a D&O Proof of Claim (with respect to D&O Claims) with KSV Restructuring Inc., the Court-appointed Monitor of the Applicants (the "Monitor"), by sending the Proof of Claim or D&O Proof of Claim to the Monitor by prepaid ordinary mail, registered mail, courier, personal delivery or electronic transmission at the following address:

KSV Restructuring Inc., Court-Appointed CCAA Monitor of 957855 Alberta Ltd. (formerly NewsWest Inc.) and Rosebud Creek Financial Corp., in respect of Metro 360 General Partnership 150 King Street West, Suite 2308 Toronto, Ontario M5H 1J9

Attention: Murtaza Tallat Telephone: (416) 932-6031 E-mail:mtallat@ksvadvisory.com

Pursuant to the Claims Procedure Order, the CCAA Entities or the Monitor will send Employee Claim Packages to all Terminated Employees, which Employee Claim Packages will contain a Termination Claim Statement that specifies each Terminated Employee's Termination Claim as determined by the CCAA Entities, in consultation with the Monitor.

The CCAA Entities or the Monitor will also send a Proof of Claim Document Package (that will include the form of Proof of Claim and D&O Proof of Claim) to any Person claiming to be a Creditor and requesting such material in writing. Creditors may also obtain the Claims Procedure Order and the Proof of Claim Document Package from the Monitor's Website at https://www.ksvadisory.com/insolvency-cases/case/metro360 or by contacting the Monitor at mtallat@ksvadvisory.com.

**THE CLAIMS BAR DATE**, with respect to all Prefiling Claims and all D&O Proofs of Claim relating to the period prior to the Filing Date, is 5:00 p.m. (Toronto Time) on October 30, 2020, or such later date as may be ordered by the Court. It is your responsibility to ensure that the Monitor receives your Proof of Claim or D&O Proof of Claim by the Claims Bar Date.

FOR TERMINATED EMPLOYEES THAT HAVE RECEIVED A TERMINATION CLAIM STATEMENT, your Termination Claim will be deemed to be accepted at the amount stated therein for voting and distribution purposes, and you do not need to take any further steps unless you disagree with the amount specified therein. If you wish to dispute the amount and/or nature of your Termination Claim as specified in your Termination Claim Statement or to assert an additional Claim in relation to the CCAA Entities, you must file a Notice of Dispute with the Monitor so that it is received by the Monitor before 5:00 p.m. (Toronto Time) on the date that is the later of (i) the Claims Bar Date, and (ii) thirty-five (35) days after the date on which the CCAA Entities or the Monitor sends to you an Employee Claims Package (the "Terminated Employee Claims Bar Date"). It is your responsibility to ensure that the Monitor receives your Notice of Dispute by the Terminated Employee Claims Bar Date.

THE RESTRUCTURING PERIOD CLAIMS BAR DATE, for Restructuring Period Claims and all D&O Proofs of Claim relating to the period after the Filing Date, is 5:00 p.m. (Toronto Time) on the date that is the later of (i) the Claims Bar Date and (ii) thirty-five (35) days after the date on which the CCAA Entities or the Monitor sends to you a Proof of Claim Document Package with respect to a Restructuring Period Claim or a D&O Claim relating to the period after the Filing Date in accordance with the Claims Procedure Order.

NOTICES OF DISPUTE, PROOFS OF CLAIM AND D&O PROOFS OF CLAIM MUST BE RECEIVED BY THE MONITOR BY THE TERMINATED EMPLOYEE CLAIMS BAR DATE, THE CLAIMS BAR DATE OR THE RESTRUCTURING PERIOD CLAIMS BAR DATE, AS APPLICABLE, OR THE CLAIMS WILL BE FOREVER BARRED AND EXTINGUISHED.

DATED at Toronto	o, Ontario this	day of	, 2020

KSV Restructuring Inc., solely in its capacity as Court-Appointed CCAA Monitor of 957855 Alberta Ltd. (formerly NewsWest Inc.) and Rosebud Creek Financial Corp., in respect of Metro 360 General Partnership, and not in its personal or corporate capacity.

# **SCHEDULE C**

# PROOF OF CLAIM FOR CLAIMS AGAINST

957855 Alberta Ltd. (formerly NewsWest Inc.), Rosebud Creek Financial Corp., AND Metro 360 General Partnership (The "DEBTORS")

Please read carefully the enclosed Instruction Letter for completing this Proof of Claim.

1A.	Original C	reditor (the "Creditor'	<b>'</b> )	
Legal N Creditor			Name of Contact	
Address	S		Title	
			Phone #	
			Fax #	
		Prov		
City		/State	Email	
Postal/Z Code	Zip 			
<b>1B.</b> A	Assignee, if	claim has been assigne	d	
Legal N Assigne			Name of Contact	
Address	S		Title	
			Phone #	
			Fax #	
		Prov		
City		/State	Email	
Postal/Z	Zip			

# 2. Amount of Claim

The Debtor(s) was and still is indebted to the Creditor as follows:

	Classification of Claim (Prefiling Claim, Restructuring Period Claim)	Applicable Debtor (957855 Alberta Ltd. (formerly NewsWest Inc.), Rosebud Creek Financial Corp., Metro 360 General Partnership)	Amount of Claim (CAD)*	Unsecured Claim	Secured Claim
1.			\$		
2.			\$		
3.			\$		
4.			\$		
5.			\$		
	TOTAL AMOUNT OF CLAIM(S) \$				

<sup>\*</sup>Claims in a foreign currency are to be converted to Canadian Dollars at the Bank of Canada daily average exchange rate for April 6, 2020.

# 3. Documentation

Provide all particulars of the Claim and all available supporting documentation, including amount, and description of transaction(s) or agreement(s), or legal breach(es) giving rise to the Claim, including any claims assignment/transfer agreement or similar document, if applicable, and amount of invoices, particulars of all credits, discounts, etc., claimed, description of the security, if any, granted by any of the Debtors to the Creditor and estimated value of such security.

4. Certification				
I hereby certify that:				
1. I am the Creditor or an authorized representat	I am the Creditor or an authorized representative of the Creditor.			
2. I have knowledge of all the circumstances con	I have knowledge of all the circumstances connected with this Claim.			
3. The Creditor asserts this Claim against the De				
4. All available documentation in support of this	s Claim is attached.			
	Witness:			
Signature:				
	(signature)			
Name:				
Title:	(print)			
Dated at this day of_	, 2020.			

# 5. Filing of Claim

For **Prefiling Claims**, this Proof of Claim must be received by the Monitor **before 5:00 p.m.** (Toronto Time) on October 30, 2020 (the "Claims Bar Date").

For Restructuring Period Claims, this Proof of Claim must be received by the Monitor before 5:00 p.m. (Toronto Time) on the date that is the later of: (i) the Claims Bar Date and (ii) thirty-five (35) days after the date on which the CCAA Entities or the Monitor sends to you a Proof of Claim Document Package with respect to a Restructuring Period Claim (the "Restructuring Period Claims Bar Date").

In both cases, completed forms must be delivered by prepaid ordinary mail, courier, personal delivery or electronic transmission at the following address:

KSV Restructuring Inc., Court-Appointed CCAA Monitor of 957855 Alberta Ltd. (formerly NewsWest Inc.) and Rosebud Creek Financial Corp., in respect of Metro 360 General Partnership 150 King Street West, Suite 2308 Toronto, Ontario M5H 1J9

Attention: Murtaza Tallat Telephone: (416) 932-6031

E-mail: mtallat@ksvadvisory.com

FOR GREATER CERTAINTY, PROOFS OF CLAIM CAN BE FILED WITH THE MONITOR BY E-MAILING THEM TO THE ATTENTION OF MURTAZA TALAT AT: mtallat@ksvadvisory.com

For more information see https://www.ksvadvisory.com/insolvency-cases/case/metro360 or contact the Monitor at mtallat@ksvadvisory.com.

#### SCHEDULE D

# TERMINATION CLAIM STATEMENT

**TO:** [•] (the "**Terminated Employee**")

**FROM:** Metro 360 General Partnership ("**Metro 360**")

**CC:** KSV Restructuring Inc.

**RE:** CCAA Proceedings of 957855 Alberta Ltd. (formerly NewsWest Inc.) and Rosebud

Creek Financial Corp. (the "Applicants"), in respect of Metro 360 (collectively, the

"CCAA Entities") (Court File: CV-CV-20-00642783-00CL)

As you know, the Applicants were granted creditor protection under the Companies' Creditors Arrangement Act (Canada) (the "CCAA"), pursuant to an order (the "Initial Order") of the Ontario Superior Court of Justice (Commercial List) (the "CCAA Proceedings"). The Initial Order, among other things, (i) converted the Applicants' proceedings commenced under Part III of the Bankruptcy and Insolvency Act (Canada) to proceedings under the CCAA, (ii) appointed KSV Restructuring Inc. as monitor of the Applicants to, among other things, oversee the CCAA Proceedings (in such capacity and not in its personal or corporate capacity, the "Monitor"), and (iii) extended the CCAA stay of proceedings to Metro 360. A copy of the Initial Order and other information relating to the **Proceedings** https://www.ksvadvisory.com/insolvency-**CCAA** has been posted to cases/case/metro360 (the "Monitor's Website").

The purpose of this Termination Claim Statement is to inform you about your claim in the claims procedure (the "Claims Procedure") approved pursuant to the Claims Procedure Order issued on September 16, 2020 (the "Claims Procedure Order"), a copy of which is available on the Monitor's Website. The Claims Procedure governs the process for the identification and quantification of certain claims against the CCAA Entities and their directors and officers, as applicable. All terms used but not defined in this Termination Claim Statement shall have the meanings ascribed thereto in the Claims Procedure Order. In the event of any inconsistency between the terms of this Termination Claim Statement and the terms of the Claims Procedure Order, the terms of the Claims Procedure Order will govern.

# **Claims Procedure**

Under the Claims Procedure Order, the CCAA Entities or the Monitor, as applicable, are required to send a notice to each Terminated Employee outlining the quantum of their Termination Claim which is to be allowed for voting and distribution purposes in the Claims Procedure.

This Termination Claim Statement contains the full amount of your Termination Claim against the CCAA Entities which is to be allowed as an accepted Claim for voting and distribution purposes in the Claims Procedure.

Your Termination Claim has been assessed by the CCAA Entities, in consultation with the Monitor, as follows:

Termination Pay for Lost Wages:	\$
Other Applicable Remuneration (i.e. annual bonus, car allowance):	\$
Unpaid Vacation Pay:	\$
TOTAL TERMINATION CLAIM:	\$

Your Termination Claim has been calculated based on the sum of your Severance Pay Period (as defined below), multiplied by your average hourly wage rate/salary, and also includes any other applicable remuneration, such as vacation pay.

The "Severance Pay Period" is the longest notice period out of those provided by: (1) applicable employment standards legislation; (2) any contractual agreement you may have with any of the CCAA Entities; or (3) common law.<sup>2</sup> For the purposes of determining a Terminated Employee's applicable Severance Pay Period, the CCAA Entities and the Monitor have used the following information:

Full Legal Name	
Date of Birth	
Employment Status	
(e.g. part-time or full-time)	
Job Level	
Employment Start Date	
Employment End Date	
Average Hourly Rate/Salary	
Jurisdiction of Employment	
Duration of Working Notice	
(if applicable)	
Termination Status	[Without case]/[For cause]/[Resigned]

If you agree with this assessment of your Termination Claim, you need not take any further action.

# IF YOU WISH TO DISPUTE THE ASSESSMENT OF YOUR TERMINATION CLAIM, YOU MUST TAKE THE STEPS OUTLINED BELOW.

<sup>&</sup>lt;sup>2</sup> The common law notice period is determined based on a Terminated Employee's position, years of service and age, among other factors.

# **Disagreement with Assessment:**

If you disagree with the assessment of the Termination Claim set out in this Termination Claim Statement, you must complete and return to the Monitor a completed Notice of Dispute asserting a claim in a different amount supported by appropriate documentation and/or reasons. A blank Notice of Dispute form is enclosed. The Notice of Dispute with supporting documentation and/or reasons disputing the within assessment of your Termination Claim must be received by the Monitor by 5:00 p.m. (Toronto Time) on the date 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 to you an Employee Claims Package (the "**Terminated Employee Claims Bar Date**").

If no such Notice of Dispute is received by the Monitor by 5:00 p.m. on the Terminated Employee Claims Bar Date, the amount of your Termination Claim will be, subject to further order of the Court, conclusively deemed to be as shown in this Termination Claim Statement for voting and distribution purposes.

The Notice of Dispute should be delivered by registered mail, personal delivery, courier, facsimile transmission or email (in PDF format) to:

KSV Restructuring Inc., Court-Appointed CCAA Monitor of 957855 Alberta Ltd. (formerly NewsWest Inc.) and Rosebud Creek Financial Corp., in respect of Metro 360 General Partnership 150 King Street West, Suite 2308 Toronto, Ontario M5H 1J9

Attention: Murtaza Tallat Telephone: (416) 932-6031

E-mail: mtallat@ksvadvisory.com

If you do not file a Notice of Dispute by the Terminated Employee Claims Bar Date, you will have no further right to dispute the Termination Claim set out in this Termination Claim Statement, and you will be barred from filing any such dispute in the future.

# **More Information:**

If you have questions regard mtallat@ksvadvisory.com.	ing the forego	oing, you may o	contact the M	Ionitor at (4)	16) 932-6031 or
DATED at	this	day of		, 2020.	
KSV RESTRUCTURING 957855 Alberta Ltd. (forme Metro 360 General Partnersh	rly NewsWes	st Inc.) and Ro	osebud Creek	Financial (	
Per:					

## **SCHEDULE E**

# NOTICE OF DISPUTE FOR TERMINATED EMPLOYEES

With respect to 957855 Alberta Ltd. (formerly NewsWest Inc.), Rosebud Creek Financial Corp., and Metro 360 General Partnership

Capitalized terms not defined herein have the meanings given to them in the Order of the Ontario Superior Court of Justice (Commercial List) in the CCAA Proceedings of 957855 Alberta Ltd. (formerly NewsWest Inc.) and Rosebud Creek Financial Corp., in respect of Metro 360 General Partnership, dated September 16, 2020 (the "Claims Procedure Order") or the Termination Claim Statement.

# I. PARTICULARS OF TERMINATED EMPLOYEE

Full Legal Name:		
Full Mailing Address		
Telephone Number		
E-mail Address		
Attention (Contact Person)		
Have you acquired this Claim	by assignment?	
Yes: □	No: □ (if yes, attach documents evidencing assignment)	
If Yes, Full Legal Name of the Terminated Employee(s):		
II. DISPUTE OF CLAIM SI	ET OUT IN TERMINATION CLAIM STATEMENT	
	ereby disputes the amount and/or nature of the Termination Claim set Statement and asserts the following Termination Claim:	
Termination Claim:	\$	

# III. REASONS FOR DISPUTE

the Termination Claim Statement, including the mas stated above and why your proposed methodol of your Termination Claim against the CCAA Ent	the dispute of the Termination Claim as set out in the thodology for arriving at your Termination Claim logy would more appropriately represent the value tities. Please provide all supporting documentation. provide all such particulars on a separate schedule.
	Witness:
Signature:	
Name:	(signature)
Title:	(print)
Dated at this day o	f, 2020.

This Notice of Dispute MUST be delivered to the Monitor at the below address such that it is received by the Monitor by 5:00 p.m. (Toronto Time) on the date 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 to you an Employee Claims Package (the "Terminated Employee Claims Bar Date").

KSV Restructuring Inc., Court-Appointed CCAA Monitor of 957855 Alberta Ltd. (formerly NewsWest Inc.) and Rosebud Creek Financial Corp. in respect of Metro 360 General Partnership 150 King Street West, Suite 2308 Toronto, Ontario M5H 1J9

Attention: Murtaza Tallat Telephone: (416) 932-6031

E-mail: mtallat@ksvadvisory.com

If a completed Notice of Dispute is not received by the Monitor by the Terminated Employee Claims Bar Date, the Terminated Employee shall be forever barred from disputing the amount or nature of the Termination Claim set out in the applicable Termination Claim Statement and any Claim of a different classification or nature or in excess of the amount specified in the Termination Claim Statement shall be forever barred and extinguished. IF A NOTICE OF DISPUTE IS NOT RECEIVED BY THE MONITOR WITHIN THE PRESCRIBED TIME PERIOD, THE TERMINATION CLAIM AS SET OUT IN THE TERMINATION CLAIM STATEMENT WILL BE DEEMED TO BE YOUR CLAIM AND WILL BE FINAL AND BINDING ON YOU FOR ALL PURPOSES.

### **SCHEDULE F**

### NOTICE OF REVISION OR DISALLOWANCE

With respect to Claims against 957855 Alberta Ltd. (formerly NewsWest Inc.),
Rosebud Creek Financial Corp., (together, the "Applicants") and
Metro 360 General Partnership (together with the Applicants, the "CCAA Entities"), and/or
D&O Claims against the Directors and/or Officers of the CCAA Entities

Claims Referer	nce Number:			
To:		(the "Credito	<u>r")</u>	
to them in the C 2020 (the "C Companies' Cr Pursuant to the Notice of Disp of your purpor	Order of the Ontario laims Procedure reditors Arrangemente Claims Procedure ute, Proof of Claim eted Claim set out the	Superior Court of Jo Order") granted in t Act.  Order, the Monitor or D&O Proof of Conerein for voting an	ustice (Commercial Listin the Applicants' p r gives you notice that laim and has revised o	e the meaning ascribed at) dated September 16, roceedings under the tit has reviewed your r disallowed all or part uses. Subject to further all be as follows:
	Amount as submitted	Applicable Debtor	Amount allowed by Monitor for voting purposes:	Amount allowed by Monitor for distribution purposes:
A. Unsecured	\$		\$	\$
B. Secured	\$		\$	\$
C. D&O Claim	\$		\$	\$
D. Total Claim	\$		\$	\$
Reasons for R	evision or Disallowa	ance:		

### SERVICE OF NOTICE OF DISPUTE OF REVISION OR DISALLOWANCE

If you intend to dispute your Claim specified in this Notice of Revision or Disallowance, you must, no later than 5:00 p.m. (Toronto time) on the day that is twenty-one (21) calendar days after this Notice of Revision or Disallowance is deemed to have been received by you (in accordance with the Claims Procedure Order), deliver a Notice of Dispute of Revision or Disallowance to the Monitor by ordinary prepaid mail, registered mail, courier, personal delivery, facsimile transmission or email to the following address:

KSV Restructuring Inc., Court-Appointed CCAA Monitor of 957855 Alberta Ltd. (formerly NewsWest Inc.) and Rosebud Creek Financial Corp., in respect of Metro 360 General Partnership 150 King Street West, Suite 2308 Toronto, Ontario M5H 1J9

Attention: Murtaza Tallat Telephone: (416) 932-6031

E-mail: mtallat@ksvadvisory.com

In accordance with the Claims Procedure Order, notices shall be deemed to be received by the Monitor upon <u>actual receipt</u> thereof by the Monitor during normal business hours on a Business Day, or if delivered outside of normal business hours, on the next Business Day.

The form of Notice of Dispute of Revision or Disallowance is enclosed and can also be accessed on the Monitor's Website at: https://www.ksvadisory.com/insolvency-cases/case/metro360.

IF YOU FAIL TO FILE A NOTICE OF DISPUTE OF REVISION OR DISALLOWANCE WITHIN THE PRESCRIBED TIME PERIOD, THIS NOTICE OF REVISION OR

DISALLOWANCE WILI	L BE BIND	ING UPON YOU	FOR DISTRIBUTI	ON PURPOSES.
DATED at	this	day of	, 2020.	
KSV RESTRUCTURING 957855 Alberta Ltd. (form Metro 360 General Partners	erly NewsV	West Inc.) and Ro	sebud Creek Financia	
Per:				

For more information see https://www.ksvadisory.com/insolvency-cases/case/metro360, or contact the Monitor by telephone at (416) 932-6031.

### **SCHEDULE G**

### NOTICE OF DISPUTE OF REVISION OR DISALLOWANCE

With respect to Claims against 957855 Alberta Ltd. (formerly NewsWest Inc.), Rosebud Creek Financial Corp., (together, the "Applicants") and Metro 360 General Partnership (together with the Applicants, the "CCAA Entities") and/or D&O Claims against the Directors and/or Officers of the CCAA Entities

Claims Reference Number:
1. Particulars of Creditor:
Full Legal Name of Creditor (include trade name, if different)
(the "Creditor")
(the Creator)
Full Mailing Address of the Creditor:
Other Contact Information of the Creditor:
Telephone Number:
Email Address:
Facsimile Number:
Attention (Contact Person):
Particulars of original Creditor from whom you acquired the Claim or D&O Claim (if applicable):
Have you acquired this purported Claim by assignment?
Yes: □ No: □

If yes and if not already provided, atta	ch documents evidencing assignment.
Full Legal Name of original Creditor(s	s):
Dispute of Revision or Disallowance	of Claim:
	te on additional pages if required - note also that you are ispute of Revision or Disallowance all relevant supporting ort of your Claim(s))
Signature of Creditor:	Witness:
(signature)	(signature)
Name:	Name:
(print)	(print)
Title:	Title:
DATED at Toronto, Ontario this	day of . 2020.

### SERVICE OF NOTICE OF DISPUTE OF REVISION OR DISALLOWANCE

In accordance with the Order of the Ontario Superior Court of Justice (Commercial List) dated September 16, 2020 (the "Claims Procedure Order") granted in the Applicants' proceedings under the Companies' Creditors Arrangement Act, this Notice of Dispute of Revision or Disallowance must be delivered to the Monitor by ordinary prepaid mail, registered mail, courier, personal delivery, facsimile transmission or email to the following address by no later than 5:00 p.m. on the day that is twenty-one (21) calendar days after the date on which you are deemed to have received the Notice of Revision or Disallowance (in accordance with the Claims Procedure Order):

KSV Restructuring Inc., Court-Appointed CCAA Monitor of 957855 Alberta Ltd. (formerly NewsWest Inc.) and Rosebud Creek Financial Corp., in respect of Metro 360 General Partnership 150 King Street West, Suite 2308 Toronto, Ontario M5H 1J9

Attention: Murtaza Tallat Telephone: (416) 932-6031

E-mail: mtallat@ksvadvisory.com

In accordance with the Claims Procedure Order, if you do not deliver a Notice of Dispute of Revision or Disallowance by the prescribed deadline set out in the Claims Procedure Order, your Claim for voting and distribution purposes will be deemed to be as set out in the Notice of Revision or Disallowance, such determination shall be final and binding in all respects, and all of your rights to dispute the Claim as determined in the Notice of Revision or Disallowance or to otherwise assert or pursue such Claim other than as determined in the Notice of Revision or Disallowance shall be forever extinguished and barred without further act or notification.

### SCHEDULE H

### INSTRUCTION LETTER FOR COMPLETING THE D&O PROOF OF CLAIM FORM FOR CLAIMS AGAINST DIRECTORS AND/OR OFFICERS OF 957855 ALBERTA LTD. (FORMERLY NEWSWEST INC.), ROSEBUD CREEK FINANCIAL CORP. AND/OR METRO 360 GENERAL PARTNERSHIP

This instruction letter has been prepared to assist Creditors in filling out the D&O Proof of Claim form for Claims against the Directors and/or Officers of 957855 Alberta Ltd. (formerly NewsWest Inc.) and Rosebud Creek Financial Corp. (the "**Applicants**") and/or Metro 360 General Partnership (together with the Applicants, the "**CCAA Entities**"). If you have any additional questions regarding completion of the D&O Proof of Claim, please consult the Monitor's Website at https://www.ksvadvisory.com/insolvency-cases/case/metro360 or contact the Monitor, whose contact information is set out below.

The D&O Proof of Claim form is ONLY for Creditors asserting a Claim against any of the Directors and/or Officers of the CCAA Entities, and NOT for claims against the CCAA Entities. For Claims against the CCAA Entities, please use the form titled "Proof of Claim for Claims Against 957855 Alberta Ltd. (formerly NewsWest Inc.), Rosebud Creek Financial Corp., and Metro 360 General Partnership", which is available on the Monitor's Website referenced above.

Additional copies of the D&O Proof of Claim form may also be found at the Monitor's Website.

Please note that this instruction letter is a guide only, and that in the event of any inconsistency between the terms of this instruction letter and the terms of the Claims Procedure Order made on September 16, 2020 (the "Claims Procedure Order"), the terms of the Claims Procedure Order will govern. Capitalized terms used and not otherwise defined have the meaning ascribed to them in the Claims Procedure Order, a copy of which is available on the Monitor's Website.

### **SECTION 1. DEBTOR**

1. The full name of all of the CCAA Entities' Directors or Officers against whom the Claim is asserted must be listed.

### SECTION 2. A. ORIGINAL CREDITOR

- 2. A separate D&O Proof of Claim must be filed by each legal entity or person asserting a claim against the CCAA Entities' Directors or Officers.
- 3. The Creditor shall include any and all D&O Claims that it asserts against the CCAA Entities' Directors or Officers in a single D&O Proof of Claim.
- 4. The full legal name of the Creditor must be provided.
- 5. If the Creditor operates under a different name or names, please indicate this in a separate schedule in the supporting documentation.

- 6. If the Claim has been assigned or transferred to another party, Section 2B, described below, must also be completed.
- 7. Unless the Claim is assigned or transferred, all future correspondence, notices, etc., regarding the Claim will be directed to the address and contact indicated in this section.

### SECTION 2. B. ASSIGNEE

- 8. If the Creditor has assigned or otherwise transferred its Claim, then Section 2B must be completed.
- 9. The full legal name of the Assignee must be provided.
- 10. If the Assignee operates under a different name or names, please indicate this in a separate schedule in the supporting documentation.
- 11. If the Monitor, in consultation with the Applicants, is satisfied that an assignment or transfer has occurred, all future correspondence, notices, etc., regarding the Claim will be directed to the Assignee at the address and contact indicated in this section.

### SECTION 3. AMOUNT OF CLAIM OF CREDITOR

- 12. Indicate the amount the Director(s) and/or Officer(s) was/were and still is/are indebted to the Creditor in the Amount of Claim column, including interest, if applicable, up to and including April 6, 2020.
- 13. If necessary, currency will be converted in accordance with the Claims Procedure Order.

### **SECTION 4. DOCUMENTATION**

14. Attach to the D&O Proof of Claim form all particulars of the Claim and all available supporting documentation, including amount and description of transaction(s) or agreement(s) or legal breach(es) giving rise to the Claim.

### **SECTION 5. CERTIFICATION**

- 15. The person signing the D&O Proof of Claim should:
  - (a) be the Creditor or an authorized representative of the Creditor;
  - (b) have knowledge of all of the circumstances connected with this Claim;
  - (c) assert the Claim against the Director(s) and/or Officer(s) as set out in the D&O Proof of Claim and certify all available supporting documentation is attached; and
  - (d) have a witness to its certification.
- 16. By signing and submitting the D&O Proof of Claim, the Creditor is asserting the Claim against the Debtor(s) specified therein.

### **SECTION 6. FILING OF CLAIM**

For **D&O** Claims relating to the period prior to the Filing Date, the D&O Proof of Claim must be received by the Monitor before 5:00 p.m. (Toronto Time) on October 30, 2020 (the "Claims Bar Date").

For D&O Claims relating to the period after the Filing Date, the D&O Proof of Claim must be received by the Monitor before 5:00 p.m. (Toronto Time) on the date that is the later of: (i) the Claims Bar Date and (ii) thirty-five (35) days after the date on which the CCAA Entities or the Monitor sends a Proof of Claim Document Package with respect to a D&O Claim relating to the period after the Filing Date in accordance with the Claims Procedure Order (the "Restructuring Period Claims Bar Date").

In both cases, completed forms must be delivered by prepaid ordinary mail, courier, personal delivery or electronic transmission at the following address:

KSV Restructuring Inc., Court-Appointed CCAA Monitor of 957855 Alberta Ltd. (formerly NewsWest Inc.) and Rosebud Creek Financial Corp., in respect of Metro 360 General Partnership 150 King Street West, Suite 2308 Toronto, Ontario M5H 1J9

Attention: Murtaza Tallat Telephone: (416) 932-6031

E-mail: mtallat@ksvadvisory.com

Failure to file your D&O Proof of Claim so that it is <u>actually received</u> by the Monitor on or before 5:00 p.m. on the Claims Bar Date or the Restructuring Period Claims Bar Date, as applicable, will result in your claim being barred and you will be prevented from making or enforcing a claim against the Directors and Officers of the CCAA Entities.

For more information see https://www.ksvadvisory.com/insolvency-cases/case/metro360 or contact the Monitor at mtallat@ksvadvisory.com.

### **SCHEDULE I**

### PROOF OF CLAIM FOR CLAIMS AGAINST DIRECTORS OR OFFICERS OF 957855 ALBERTA LTD. (FORMERLY NEWSWEST INC.), ROSEBUD CREEK FINANCIAL CORP., AND METRO 360 GENERAL PARTNERSHIP

This form is to be used only by Creditors asserting a claim against any Directors and/or Officers of 957855 Alberta Ltd. (formerly NewsWest Inc.), Rosebud Creek Financial Corp. and/or Metro 360 General Partnership (the "CCAA Entities") and NOT for claims against the CCAA Entities themselves. For claims against the CCAA Entities, please use the form titled "Proof of Claim for Claims Against 957855 Alberta Ltd. (formerly NewsWest Inc.), Rosebud Creek Financial Corp., and Metro 360 General Partnership", which is available on the Monitor's Website at https://www.ksvadvisory.com/insolvency-cases/case/metro360.

IA. Original Cr	ealtor (the "Crealtor"	<b>()</b>	
Legal Name of Creditor:		Name of Contact	
Address		Title	
		Phone #	
		Fax #	
	Prov		
City	/State	Email	
Postal/Zip Code  1B. Assignee, if c	laim has been assigne	e <b>d</b>	
Legal Name of Assignee:		Name of Contact	
Address		Title Phone #	
		Fax #	
City	Prov /State	Email	
Postal/Zip Code			

^	A .	e		•
•	Amount	Λt	l lo	ım
4.	Amount	VI.	Cia	ш

Name(s) of Director(s) and/or Officer(s)	Amount of Claim

### 3. Documentation

Provide all particulars of the Claim and all available supporting documentation, including any claim assignment/transfer agreement or similar document, if applicable, and including amount and description of transaction(s) or agreement(s) or legal breach(es) giving rise to the Claim.

### 4. Certification

I hereby certify that:

- 1. I am the Creditor or an authorized representative of the Creditor.
- 2. I have knowledge of all the circumstances connected with this Claim.
- 3. The Creditor asserts this Claim against the Director(s) and/or Officer(s) as set out above.
- 4. All available documentation in support of this Claim is attached.

Signature of	of Creditor:		Witness	:	
(signature)			(signatur	e)	
Name:			Name:		
	(print)			(print)	
Title:			Title:		
DATED at '	Toronto, Ontario this	day of		, 2020.	

### 5. Filing of Claim

This D&O Proof of Claim must be received by the Monitor **before 5:00 p.m.** (**Toronto Time**) **on October 30, 2020** (the "**Claims Bar Date**"), or in the case of a D&O Claim relating to the period after the Filing Date before 5:00 p.m. (Toronto Time) on the date that is the later of: (i) the Claims Bar Date and (ii) thirty-five (35) days after the date on which the CCAA Entities or the Monitor sends a Proof of Claim Document Package with respect to a D&O Claim relating to the period after the Filing Date in accordance with the Claims Procedure Order (the "**Restructuring Period Claims Bar Date**"), as applicable, by prepaid ordinary mail, courier, personal delivery or electronic transmission at the following address:

KSV Restructuring Inc., Court-Appointed CCAA Monitor of 957855 Alberta Ltd. (formerly NewsWest Inc.) and Rosebud Creek Financial Corp., in respect of Metro 360 General Partnership 150 King Street West, Suite 2308 Toronto, Ontario M5H 1J9

Attention: Murtaza Tallat Telephone: (416) 932-6031

E-mail: mtallat@ksvadvisory.com

FOR GREATER CERTAINTY, D&O PROOFS OF CLAIM CAN BE FILED WITH THE MONITOR BY E-MAILING THEM TO THE ATTENTION OF MURTAZA TALAT AT: mtallat@ksvadvisory.com

For more information see https://www.ksvadvisory.com/insolvency-cases/case/metro360 or contact the Monitor at mtallat@ksvadvisory.com.

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

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

# ONTARIO SUPERIOR COURT OF JUSTICE (COMMERCIAL LIST)

Proceeding commenced at Toronto

## CLAIMS PROCEDURE 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

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

### ONTARIO SUPERIOR COURT OF JUSTICE COMMERCIAL LIST

)	WEDNESDAY, THE $16^{TH}$
)	
,	DAY OF SEPTEMBER, 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 via videoconference at Toronto, Ontario.

**ON READING** the affidavit of Daniel P. Shapiro sworn September 9, 2020, including the exhibits thereto and the First Report of KSV Restructuring Inc.,¹ in its capacity as the monitor of the Applicants under the CCAA (the "**Monitor**"), dated September ●, 2020, and on hearing the submissions of counsel for the CCAA Entities, counsel for the Monitor, and such

<sup>&</sup>lt;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.

other counsel as were present, no one else appearing although duly served as appears from the affidavit of service of • sworn September •, 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 December 11, 2020, and that all other terms of the Initial Order shall remain in full force and effect during the Stay Period.

### **GENERAL**

4. **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.

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

## 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

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

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

(COMMERCIAL LIST)
Proceeding commenced at Toronto

### **MOTION RECORD**

(Motion returnable September 16, 2020)

### GOODMANS LLP

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

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

**Andrews 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