



**Third Report to Court of
KSV Restructuring Inc.
as Receiver of
First Swiss Mortgage Corp.**

June 14, 2024

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COURT FILE NO. CV-23-00696362-00CL

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

B E T W E E N:

**CHIEF EXECUTIVE OFFICER OF THE FINANCIAL SERVICES
REGULATORY AUTHORITY OF ONTARIO**

APPLICANT

- AND -

FIRST SWISS MORTGAGE CORP.

RESPONDENT

**APPLICATION UNDER SECTION 37 OF THE *MORTGAGE BROKERAGES, LENDERS
AND ADMINISTRATORS ACT, 2006, S.O. 2006, C. 29, AS AMENDED, AND SECTION 101
OF THE *COURTS OF JUSTICE ACT, R.S.O. 1990, C.C.43, AS AMENDED****

**THIRD REPORT OF KSV RESTRUCTURING INC.
AS RECEIVER**

JUNE 14, 2024

1.0 Introduction

1. Pursuant to an application (the “Application”) by the Chief Executive Officer of the Financial Services Regulatory Authority of Ontario (“FSRA”) under section 37 of the *Mortgage Brokerages, Lenders and Administrators Act, 2006, S.O. 2006, c. 29, as amended* (the “MBLAA”), and section 101 of the *Courts of Justice Act, R.S.O. 1990, c. C.43, as amended*, the Ontario Superior Court of Justice (Commercial List) (the “Court”) made an order dated March 17, 2023 (the “Appointment Order”) appointing KSV Restructuring Inc. as the receiver (the “Receiver”) without security, of all of the assets, undertakings and properties of First Swiss Mortgage Corp. (the “Company”) acquired for, or used in relation to a business carried on by the Company, including all proceeds thereof and any assets or property held by the Company in trust for any third party, and including all property vested in any trustee in bankruptcy of the Company (the “Property”).
2. The Appointment Order was made subsequent to the Company’s assignment in bankruptcy, which occurred on March 15, 2023. Goldhar & Associates Ltd. was appointed as the licensed insolvency trustee of the Company’s bankrupt estate (the “Trustee”), as affirmed at the first meeting of creditors held on April 4, 2023 and continued on April 20, 2023.

3. The Appointment Order was amended and restated pursuant to an Order dated May 19, 2023 (the “Amended Appointment Order”) that, among other things:
 - a) approved a loan agreement entered into between the Receiver and certain of the parties that had advanced funds to the Company in respect of mortgage investments (“Investors”) and certain related relief (the “Loan Agreement”); and
 - b) granted the Receiver certain additional powers typically granted in receivership proceedings that were not included in the Appointment Order given the Receiver's limited initial investigatory mandate.
4. A copy of the Amended Appointment Order is provided as Appendix “A” and the Endorsements of Justice Steele related to the Appointment Order and Amended Appointment Order are provided as Appendix “B”.
5. The Receiver’s activities in these proceedings have been funded by: (i) recoveries from the mortgage portfolio; (ii) funds advanced pursuant to the Loan Agreement; and (iii) a loan made to the Receiver by FSRA (the “FSRA Loan”).
6. The principal purposes of the receivership proceeding were to allow the Receiver to:
 - a) investigate allegations of wrongdoing against the Company and/or its principals by the Investors; and
 - b) take possession and control of the Property in order to maximize recoveries for the Investors and the Company’s other creditors.
7. Pursuant to paragraph 25 of the Appointment Order, the Receiver was to file a report with the Court regarding its findings and recommendations in advance of a hearing that was held on April 3, 2023. In connection therewith, the Receiver issued its First Report to the Court on March 31, 2023 (the “First Report”), which summarized the Receiver’s preliminary findings and views related to, among other things, the allegations of wrongdoing and potential next steps subject to funding being made available to the Receiver. A copy of the First Report is provided as Appendix “C”, without appendices.
8. The Receiver subsequently filed its Second Report to Court dated May 12, 2023 (the “Second Report”) and two supplements to the Second Report which, among other things, provided the bases for relief sought by the Receiver to advance its investigation into the allegations against the Company, its principals and the Company’s auditor, Syed A. Raza Professional Corporation (the “Auditor”). A copy of the Second Report and the two supplemental reports is provided as Appendix “D”, without appendices.

1.1 Purposes of this Report

1. The purposes of this report (the “Report”) are to:
 - a) provide background information about this proceeding;
 - b) summarize a recommended sale (the “Transaction”) by the Receiver to Zayoun Group Inc. (“Zayoun”) pursuant to an agreement of purchase and sale dated March 10, 2024 (the “APS”) for a property located at 8457 Highway 17, Rockland, Ontario (the “Rockland Property”) over which the Company holds a first mortgage;

- c) summarize the claims process carried out by the Receiver and the Receiver's recommended distributions to creditors (the "Distributions"), including for the fees and disbursements of legal counsel to certain Investors as contemplated in paragraph 31 of the Amended Appointment Order;
- d) provide information with respect to the Receiver's activities since the Second Report;
- e) summarize the fees and disbursements of the Receiver and those of Bennett Jones LLP ("Bennett Jones"), the Receiver's counsel, from May 1, 2023 to May 31, 2024; and
- f) recommend that this Court issue the following Orders:
 - i. an Approval and Vesting Order (the "AVO"):
 - approving the APS and authorizing the Receiver to complete the Transaction;
 - vesting the Property (as defined in the AVO) in Zayoun, free and clear of encumbrances other than the Permitted Encumbrances (as defined in the AVO), upon execution and delivery of a certificate by the Receiver confirming completion of the Transaction;
 - ii. an Ancillary Order (the "Second Ancillary Order"):
 - approving the Distributions as set out in Section 5.2 below;
 - approving the fees and disbursements of the Receiver and Bennett Jones plus an accrual of \$100,000, plus HST and disbursements, for fees incurred or to be incurred by the Receiver and Bennett Jones to the completion of these proceedings (the "Fee Accrual");
 - approving this Report and the Receiver's activities, as set out in this Report; and
 - discharging the Receiver upon the filing of a certificate after the Distributions have been made (a "Certificate").

1.2 Restrictions

1. In preparing this Report, the Receiver has relied upon, among other things:
 - a) discussions with and information provided by Reza Nezami-Nia, the Company's sole named director, and his legal counsel;
 - b) discussions with and information provided by Patrick Dookram, the Company's former Vice President of Trading and Portfolio Management, including an Excel spreadsheet which is discussed in Section 5 below;
 - c) discussions with representatives of FSRA and its legal counsel;
 - d) discussions with, and documents provided by, various stakeholders in this proceeding, including certain Investors and/or their legal representatives;

- e) the Company's audited financial statements for the year ended August 31, 2022 (the "Audited Statements");
 - f) information provided by the Auditor;
 - g) the Company's limited books and records, including its accounting records in Quickbooks;
 - h) information provided by Shinhan Bank Canada ("Shinhan"), which the Receiver understands to have been the bank where the Company and 6807771 Canada Corp. ("680"), the Company's sole shareholder, most recently held their accounts; and
 - i) the Application materials (collectively, the "Information").
2. While the Receiver has relied on the Information and the sources of the Information for purposes of preparing this Report, the Receiver acknowledges that certain of the Information may be inaccurate in whole or in part.
 3. The Receiver has not audited or otherwise attempted to verify the accuracy or completeness of the Information in a manner that complies with Canadian Auditing Standards ("CAS") pursuant to the Chartered Professional Accountants of Canada Handbook and, accordingly, the Receiver expresses no opinion or other form of assurance as contemplated under the CAS in respect of the Information. Any party wishing to place reliance on the Information should perform its own diligence and the Receiver accepts no responsibility for any reliance placed on the Information in this Report by any party.

2.0 Background

1. The Company was incorporated on September 16, 2004 under the *Canada Business Corporations Act*, R.S.C. 1985, c. C-44 and, until May 4, 2023, was registered under the MBLAA (at which time its mortgage brokerage license was revoked).
2. The Audited Statements describe the Company's business as being a "non-bank lender providing residential real estate finance and also administers mortgage [sic] on behalf of its investors".
3. The Receiver understands that the Company was a mortgage lender. The Company assessed applications for mortgages in Ontario and British Columbia. In almost all cases, the mortgages registered in favour of the Company were second mortgages on residential properties, although as discussed further below, there was at least one instance of a first mortgage registered on a commercial property. If the applications were approved, the Company would raise funds from one or more Investors, and in some cases advance the funds to the borrower and register a mortgage on the subject property. The Company earned an upfront fee and/or a spread on the interest charges on each of the mortgages.
4. The Company's office was located at 7191 Yonge St., Suite 911, Thornhill, Ontario (the "Office"). The Company vacated the Office following its assignment in bankruptcy with assistance from the Trustee. The Receiver understands that the Company was not the tenant referenced in the Office lease; however, the Company's representatives were unable to locate a copy of the lease.

5. The Receiver was advised by Mr. Nezami-Nia that the Office, which is a commercial condominium unit, was owned as at the date of the Appointment Order by a party related to Mr. Nezami-Nia. The Receiver noted at the date of the Appointment Order that the commercial condominium unit was owned by 10013536 Canada Corp., and that Mr. Nezami-Nia is listed as the Chief Officer or Manager of the owner of the property on such company's Ontario Profile Report.
6. The Receiver was advised that as of the date of bankruptcy, the Company employed three individuals, being Mr. Nezami-Nia, Mr. Dookram and Yana Papanyan, the Company's former Lead Underwriter.
7. The application to appoint a Receiver was precipitated by complaints made to FSRA by certain Investors, including allegations that:
 - a) the Company did not make registrations on title in connection with certain funds Investors advanced for specific mortgages;
 - b) the Company discharged mortgages Investors had funded, without their knowledge, and without such funds being paid to them; and
 - c) the Company was not current in making interest payments to Investors.
8. As noted in the Application materials, in the Company's 2021 Annual Information Return (which was filed with FSRA on or around March 31, 2022), the Company stated that it had 34 mortgages under administration (29 in Ontario), with a total value of \$3.21 million. Based on the complaints that FSRA received as of the date of the Appointment Order, certain Investors that contacted FSRA had received statements from the Company which referenced an aggregate mortgage balance of approximately \$13 million.
9. Based on additional information that the Receiver reviewed and significant efforts to reconcile the total amount of the Company's mortgage portfolio compiled by an *ad hoc* committee comprised of representatives from five large Investors (the "Investor Advisory Committee"), the Receiver now understands that the Company was representing to Investors that it held an aggregate mortgage balance of at least approximately \$26 million and had been making regular interest payments to Investors based on a mortgage portfolio of that size. A schedule reconciling the actual mortgage portfolio as of the date of the Appointment Order to the mortgage portfolio that the Company had been representing to Investors is provided as Appendix "E".
10. Additional background information regarding this proceeding and the reasons that FSRA sought the appointment of the Receiver are provided in the affidavit of Cameron Clark, Investigator with FSRA, affirmed on March 15, 2023 (the "Clark Affidavit"), which was filed by FSRA in support of the Application. A copy of the Clark Affidavit and other Court materials filed in this proceeding are available on the Receiver's website (the "Receiver's Website") at: <https://www.ksvadvisory.com/experience/case/firstswiss>.

3.0 Rockland Property

1. The Rockland Property is a 1.5 acre commercial lot located in Rockland, east of Ottawa. The Rockland Property had been operated as a gas station, restaurant and convenience store but was abandoned in approximately 2018, with multiple below ground storage tanks remaining onsite.
2. Environmental and other reports reviewed by the Receiver, including a Phase II Environmental Site Assessment Report prepared for the Receiver by LRL Associates Ltd., describe the poor condition of the Rockland Property and the presence of mould and other environmental concerns. Accordingly, the value of the Rockland Property is limited to the land it occupies.
3. The Company has a first mortgage registered on title to the Rockland Property with a principal balance owing of approximately \$643,000, before accrued interest. The Receiver understands that the borrower, 2412379 Ontario Inc. (the "Property Owner"), has not serviced the mortgage for several years. Realty taxes are also in arrears in the approximate amount of \$179,000.

3.1 Sale Process

1. As the Rockland Property mortgage was not being serviced, the Receiver, on behalf of the Company, commenced a power of sale proceeding pursuant to the *Mortgages Act*, R.S.O. 1990, c. M.40. Pursuant to the power of sale, the Rockland Property was listed for sale on an "as is, where is" basis. The Receiver retained Royal LePage Team Realty ("Royal LePage"), a realtor with an office located near the Rockland Property and experience selling commercial properties in that market, to carry out a sale process.
2. Based on comparable listings, recent sales and a site inspection, Royal LePage recommended that the Rockland Property be listed with an asking price of \$649,000.
3. Royal LePage prepared an offering summary (the "Offering Summary"), a copy of which is provided as Appendix "F". Royal LePage distributed the Offering Summary on December 7, 2023 to an extensive list of prospective purchasers, including local and national builders, developers and investors. The acquisition opportunity was also listed on the Multiple Listing Service and a large "for sale" sign was placed in front of the property.
4. Royal LePage's marketing report regarding its listing of the Rockland Property is provided as Appendix "G".
5. The Receiver reduced the listing price to \$599,00 on January 24, 2024 as no offers were received at the initial listing price.
6. On March 10, 2024, Zayoun made an initial offer for \$500,000 conditional on, among other things, further diligence. The Receiver and Zayoun negotiated the purchase price and, following several extensions of the diligence period, Zayoun agreed to waive its conditions on May 22, 2024. As such, the Receiver and Zayoun executed the APS on that date.

3.2 The Transaction

1. A summary of the APS is as follows¹:
 - a) Purchaser: Zayoun, a local developer which is arm's length to the Company and its principals.
 - b) Property: All of the Property Owner's right, title and interest in the Rockland Property.
 - c) Purchase price: \$565,000. The purchase price is to be adjusted on closing for adjustments standard for a real estate transaction, including property taxes.
 - d) Deposit: \$20,000, which has been paid.
 - e) Closing date: Contemplated to be August 6, 2024, provided that the Court grants the AVO.
 - f) Material condition: the Receiver shall have obtained the AVO and there shall not be any notice of appeal with respect to the AVO, or any notice of any application, motion or proceedings seeking to set aside or vary the AVO or to enjoin, restrict or prohibit the transaction contemplated by the APS, that in each case has not been finally dismissed by a court of competent jurisdiction or abandoned by the moving party.
2. A copy of the APS is attached as Appendix "H".

3.3 Recommendation

1. The Receiver recommends that the Court approve the Transaction for the following reasons:
 - a) in the Receiver's view, the sale process undertaken by the Receiver was commercially reasonable and conducted in a similar manner to comparable real estate sale processes in insolvency contexts;
 - b) the listing price was based on Royal LePage's market research and considered, among other things, recent local transactions and the condition of the Rockland Property;
 - c) the Receiver and Royal LePage are of the view the Transaction is the best available in the circumstances;
 - d) Royal LePage has extensive experience selling commercial and residential properties in and around the Ottawa area and widely canvassed the market for prospective purchasers for approximately five months;
 - e) the APS maximizes recoveries for this property in the circumstances;
 - f) the Receiver does not believe that further time spent marketing the property will result in a superior transaction;

¹ Capitalized terms not otherwise defined are defined in the APS.

- g) Zayoun paid a deposit of \$20,000 and the transaction is unconditional except for Court approval; and
- h) completion of the transaction will result in approximately \$350,000² being made available for distribution to the Company's creditors.

4.0 Loan Agreement and Funding

1. As referenced above, the Court approved the Loan Agreement between the Receiver and Investors who chose to advance funding to the Receiver for the administration of the receivership proceeding, including the fees and disbursements of the Receiver and its counsel to continue investigating, among others, the Company's principals, the Auditor and other parties.
2. The terms of the Loan Agreement were summarized in Section 3 of the Second Report and approved by the Court pursuant to the Amended Appointment Order. The Loan Agreement is secured by the Receiver's Borrowing Charge (as defined in the Amended Appointment Order).
3. Pursuant to the Loan Agreement, the Receiver was advanced a total of approximately \$341,000 from 30 Investors in June 2023. These funds were in addition to an interest-free advance of \$50,000 advanced by FSRA to the Receiver in March 2023.
4. The Receiver met and corresponded regularly with the representatives of the Investor Advisory Committee on all matters related to the receivership, including:
 - the Receiver's review of the Company's limited records, such as statements of account issued by the Company, loan documentation, appraisals and email correspondence between the Investors and representatives of the Company;
 - the monetization efforts in respect of the Rockland Property;
 - the Company's professional liability insurance and the Receiver's claims against the Company's mortgage brokers;
 - the actions of the Auditor and the statement of claim filed by the Receiver against the Auditor for, among other things, negligence and breach of contract. A copy of the statement of claim is provided as Appendix "I";
 - the Company's active mortgage portfolio and the Receiver's dealings with the Company's borrowers;
 - the Receiver's review of the Company's bank accounts and those of 680;
 - the Receiver's examination of Mr. Nezami-Nia and disclosures he provided to the Receiver;

² Represents the purchase price net of a 5% commission (plus HST) owing to Royal LePage and payment of outstanding property taxes.

- the Receiver’s attempts to examine Ms. Papanyan and her lack of cooperation with the Receiver; and
 - the Receiver’s interactions with FSRA and Toronto Police Services.
5. As the receivership progressed, 21 of the initial mortgages were fully or partially repaid and other borrowers made periodic interest payments. As reflected in the Receiver’s statement of receipts and disbursements provided as Appendix “J”, mortgage repayments have totaled approximately \$1.9 million since the date of the Appointment Order.
 6. Following the Receiver’s discussions with the Investor Advisory Committee related to the funds in the Receiver’s trust account, the Receiver repaid in March 2024 to the Investors the amounts they had funded pursuant to the Loan Agreement, plus interest, and repaid amounts owing pursuant to the FSRA Loan. As of the date of this Report, the Receiver holds approximately \$736,000 in its trust account.

5.0 Claims Process

1. The Receiver discussed with the Investor Advisory Committee its views on the use of the remaining funds held by the Receiver following repayment of the amounts advanced under the Loan Agreement and the FSRA Loan, including to further advance the Receiver’s investigative efforts, pursue litigation, or distribute funds to the Company’s creditors. Based on those discussions and differing views expressed by members of the Investor Advisory Committee as well as views shared by other Investors, the Receiver determined that it would be appropriate to distribute the remaining funds and those to be received upon closing of the Transaction, net of a reserve for incremental professional fees, to the Company’s creditors.
2. The Receiver, in consultation with the Investor Advisory Committee, developed a process whereby the claims of each Investor would be identified and each Investor would have an opportunity to dispute such amount, with evidence supporting its objections.
3. On April 8, 2024, the Receiver issued letters to each Investor (the “Claims Letter”) that indicated, among other things, that:

The Receiver is now preparing to make a distribution to the Company’s creditors, which will be subject to Court approval. In that regard, the Receiver and the IAC [the Investor Advisory Committee] have prepared a schedule based on the Company’s books and records of the balances owing to the parties that provided funds to the Company for the specific purpose of placing mortgages (the “Investors”). The schedule was prepared using a consistent methodology to calculate principal owing to March 17, 2023 (the “Schedule”), being the date of the Receivership Order. The methodology assumes that all Investors are treated equally, regardless of whether: a) the funds advanced were actually used to fund a mortgage; and b) a mortgage was registered on title to a residential property in respect of funds advanced by an Investor as at the date of the Receivership Order. The Receiver previously summarized its position that the Company did not manage its funds or operate on a basis that would meet the legal requirements for a trust, and that Investors should therefore be treated equally, in Section 9.0 of the Receiver’s Second Report to Court dated May 12, 2023.

4. A sample of the Claims Letter, including the form of dispute notice that was required to be returned by May 24, 2024 (the “Dispute Deadline”), is provided as Appendix “K”. No disputes were issued on or after the Dispute Deadline.
5. References to the Schedule in paragraph 3 above are to a schedule based on:
 - a) an Excel spreadsheet provided to the Receiver by Mr. Dookram with tabs corresponding with monthly mortgage balance reconciliations that included amounts owing to each Investor from April 2011 to February 2023. The tab for February 2023 reflected a total mortgage balance of \$26.3 million; and
 - b) Monthly account statements issued by the Company to Investors which appear to correspond with the balance reflected in the spreadsheet.
6. The Receiver has previously set out its view, based on the Receiver’s review of the Schedule, the Company’s mortgage documentation and transactions in the Company’s bank accounts as detailed in Sections 5 and 6 of the First Report, that the Company did not operate its bank accounts or manage funds it received in a way that would meet any characteristics or legal requirements of a trust. The Receiver’s reasons, as detailed in the First Report and the Second Report, include that as of the date of the Appointment Order:
 - a) certain Investors had no mortgages registered on title on the investments they funded while other Investors had up to all of their investments reflected as being active mortgages. There did not appear to be any consistency or rationale for the percentage of actual mortgages any Investor held;
 - b) the Investors who would stand to benefit from trust principles were not more diligent than the other Investors; they were simply the relatively lucky ones for whom the funds provided to the Company were appropriately used;
 - c) certain funds that had been advanced by Investors were never advanced to a borrower. Similarly, various funds that were repaid to the Company when a mortgage was repaid were not provided to the Investor that funded the mortgage with no apparent consistent or rationale;
 - d) the bank accounts had not been used in a manner that would be consistent with a trust. The Receiver traced several situations where funds were advanced by an Investor to the Broker Account³ for a mortgage to be placed with such funds instead being used either to pay monthly interest to Investors from the Admin Account⁴ or to pay expenses or make transfers from the Operating Account⁵. Funds were also transferred frequently between the accounts. The Company also often managed Investor funds advanced or funds repaid from borrowers in a single pooled trust account; and

³ The purpose of this account was to receive advances from Investors to fund mortgages.

⁴ The purpose of this account was to receive payments from borrowers, including monthly interest and principal when a mortgage was discharged, and to make monthly interest payments to Investors.

⁵ The purpose of this account was as a general/operating account, which was to fund the Company’s payroll, office expenses and overhead.

- e) to the extent the strict rules of a trust did exist – which was certainly not the case in many circumstances – the Receiver is aware of case law providing that the application of strict legal rules has been set aside in favour of rateable sharing in certain circumstances, including the existence of a Ponzi scheme.
7. As reflected in Section 5.2 below, the Receiver recommends that a distribution be made pro rata to the Investors and the Company's other creditors.
8. Regardless of whether the strict rules of trust exist, the Receiver is of the view that it would be patently unfair to prefer the Investors who invested in a mortgage that was correctly placed over the many Investors whose funds were misused. Given the misconduct described above and in the Receiver's prior reports, it is clear that the Company was not operating as a legitimate business enterprise. This is not a situation where some Investors stand to suffer because their legitimate investments performed poorly – instead, most Investors would suffer significant losses through no fault of their own because the mortgage that they believed to have invested in never existed, was discharged, or was allocated to multiple Investors.
9. In addition to the claims by Investors, the Receiver has corresponded with the Trustee regarding claims filed in the bankruptcy estate by other creditors. In total, four creditors filed proofs of claim in the aggregate of approximately \$473,000⁶.

5.1 Pre-Appointment Order Legal Fees and Disbursements

1. Pursuant to paragraph 31 of the Amended Appointment Order, the Court ordered that:

the Applicant [FSRA] and any other parties who contributed evidence in support of the Order appointing the Receiver dated March 17, 2023 (the "Appointment Order") shall have their costs of that application, up to and including entry and service of the Appointment Order, on a substantial indemnity basis, to be paid by the Receiver from the Debtor's estate with such priority and at such time as this Court may determine.
2. The Receiver and Bennett Jones corresponded with the Investors who contributed evidence to FSRA leading up to the Appointment Order and were provided with the invoices they received from their respective legal counsel (the "Invoices"). The Invoices, totalling just under \$160,000, are summarized below:

⁶ The claims are as follows: Canada Revenue Agency ("CRA") - \$411,796 (per a letter sent by CRA to the Receiver dated October 11, 2023); FSRA - \$44,159; Shinhan - \$13,857 (claim of \$40,000 net of a setoff of \$26,143); and Veranova Properties Limited - \$3,215.

Investor	Firm	Fees (incl. HST)	Disbursements (incl. HST)	Total
			(\$)	
Lorne Rose & Brian Kremer	Aird & Berlis LLP	27,096.34	1,075.04	28,171.83
Dancap Private Equity Inc.	Goodmans LLP	33,562.70	179.50	33,742.20
	Halpern Stockhamer	5,059.58	4,695.99	9,755.57
Winrep Holdings Inc., Winick Realty Corp. and 2780925 Ontario Inc.	Marciano Beckensteins LLP	31,075.00	3,328.06	34,403.06
Daniel Baum	Stikeman Elliott LLP	52,156.51	1,651.71	53,808.22
				<u>159,880.88</u>

- Based on its review of the invoices, it is the Receiver's view that the fees and disbursements referenced above would qualify for the reimbursement contemplated in the Amended Appointment Order.

5.2 Distribution

- The Receiver recommends that the Court authorize it to make a Distribution, subsequent to closing the Transaction, with the proceeds then in the Receiver's trust account and net of any outstanding and accrued professional fees, as follows:
 - First, to the Investors identified in the table in Section 5.1, paragraph 2, for the full amount of the Invoices; and
 - Second, pro rata, to the Investors and four creditors referenced in Section 5, paragraph 8.
- The Investor Advisory Committee has advised the Receiver that it does not oppose the Distribution as set out above.

6.0 Receiver's Activities

- In addition to the activities described above, the Receiver's activities since last reported on to the Court have included, among other things, the following:
 - corresponding with FSRA and its counsel, Chaitons LLP, and Bennett Jones regarding this proceeding;
 - attending at Court on May 19, 2023 in respect of the motion to amend the Appointment Order and other ancillary relief;
 - reviewing a notice by FSRA to Mr. Nezami-Nia regarding the revocation of his mortgage license;
 - reviewing certain of the Company's books and records;

- e) corresponding extensively with Investors regarding, among other things, the balances owing to them and the Loan Agreement;
- f) performing property and corporate searches and working with borrowers to discharge mortgages that were still registered after being repaid;
- g) corresponding and meeting with Canada Revenue Agency (“CRA”) regarding the Company’s payroll and sales tax accounts;
- h) reviewing a claim by CRA for approximately \$150,000 regarding unremitted source deductions and making a payment to CRA for such amount;
- i) updating Toronto Police Services regarding the Investor complaints, the Receiver’s findings and the information in the Mortgage Schedule;
- j) providing regular updates to the Investor Advisory Committee;
- k) dealing with Shinhan and Bank of Montreal regarding the Company’s accounts;
- l) drafting the Second Report, including the two supplements to the Second Report, and reviewing the motion materials related to same;
- m) drafting and issuing the statement of claim against the Auditor; and
- n) drafting this Report.

7.0 Professional Fees

1. The fees of the Receiver and Bennett Jones from May 1, 2023 to May 31, 2024 total \$238,148 and \$445,179, respectively, excluding disbursements and HST. Fee affidavits and accompanying invoices for the Receiver and Bennett Jones are provided as Appendices “L” and “M”, respectively.
2. The activities of the Receiver are detailed in the Receiver’s invoices, in this Report and in the Second Report.
3. The average hourly rate for the Receiver and Bennett Jones for the referenced billing period was \$503 and \$751, respectively.
4. The Receiver believes that the Fee Accrual is sufficient and necessary to cover its fees and the fees of Bennett Jones to the completion of these proceedings.
5. The Receiver is of the view that Bennett Jones’ hourly rates are consistent with the rates charged by other law firms practising in the area of restructuring and insolvency in the Toronto market, and that its fees are reasonable and appropriate in the circumstances.

8.0 Receiver’s Discharge

1. As discussed above, the Receiver has, to the extent reasonably possible (including from a cost efficiency perspective), monetized the Property. Accordingly, in the Receiver’s view, it is appropriate for it now to seek its discharge.

2. The Receiver recommends that the Court issue an order discharging KSV as Receiver, subject to the filing of a Certificate with the Court confirming that Distributions have been made.
3. The draft discharge order also contemplates that:
 - a) the Receiver shall remain Receiver for the performance of such incidental duties as may be required to complete the administration of this proceeding; and
 - b) the Receiver shall continue to have the benefit of the provisions of all Orders made in this proceeding, including all approvals, protections and stays of proceedings in favour of the Receiver.
4. After filing the Certificate, the remaining Property, including the mortgages that have not yet been repaid and the Company's causes of action against, among others, the Company's principals and the Auditor, will vest in the Trustee. The Receiver understands that the Investor Advisory Committee has discussed with the Trustee its views regarding the continued administration of the Property, including the litigation.

9.0 Conclusion and Recommendation

1. Based on the foregoing, the Receiver believes the relief sought is fair and reasonable in the circumstances and respectfully recommends that this Court grant the AVO and the Second Ancillary Order.

* * *

All of which is respectfully submitted,

KSV Restructuring Inc.

**KSV RESTRUCTURING INC.,
SOLELY IN ITS CAPACITY AS RECEIVER OF
FIRST SWISS MORTGAGE CORP.
AND NOT IN ITS PERSONAL OR IN ANY OTHER CAPACITY**

Appendix “A”

Court File No. CV-23-00696362-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE) FRIDAY, THE 19TH
)
JUSTICE STEELE) DAY OF MAY, 2023
)

**CHIEF EXECUTIVE OFFICER OF THE FINANCIAL SERVICES
REGULATORY AUTHORITY OF ONTARIO**

Applicant

- and -

FIRST SWISS MORTGAGE CORP.

Respondent

APPLICATION UNDER SECTION 37 OF THE *MORTGAGE BROKERAGES, LENDERS AND ADMINISTRATORS ACT, 2006*, S.O. 2006, c. 29, AS AMENDED, AND SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990, c.C.43, AS AMENDED

**ORDER
(Amending and Restating Appointment Order dated March 17, 2023)**

THIS MOTION, made by KSV Restructuring Inc. (“KSV”) as receiver (in such capacity, the “**Receiver**”) without security, of all of the assets, undertakings and properties of First Swiss Mortgage Corp. (the “**Debtor**”) acquired for, or used in relation to a business carried on by the Debtor, for an Order amending and restating the Order appointing KSV as the Receiver issued by this Court on March 17, 2023 pursuant to section 37 of the *Mortgage Brokerages, Lenders and Administrators Act, 2006*, S.O. 2006, c. 29, as amended (the “**MBLAA**”), and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the “**CJA**”), was heard this day by judicial videoconference via Zoom.

ON READING the Motion Record of the Receiver dated May 12, 2023, including the Second Report of the Receiver dated May 12, 2023 and on hearing the submissions of counsel for the Receiver and such other parties in attendance at the hearing of this application, and on reading the consent of KSV to act as the Receiver,

SERVICE

1. THIS COURT ORDERS that the time for service of the Motion Record of the Receiver is hereby abridged and validated, and service is hereby validated, so that this Motion is properly returnable today, and hereby dispenses with further service thereof.

APPOINTMENT

2. THIS COURT ORDERS that pursuant to section 37 of the MBLAA and section 101 of the CJA, KSV's appointment as Receiver, without security, of all of the assets, undertakings and properties of the Debtor acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof and any assets or property held by the Debtor in trust for any third party, and including all property vested in any trustee in bankruptcy of the Debtor (the "Property") shall continue until further Order of this Court in accordance with the provisions of this Amended and Restated Appointment Order.

RECEIVER'S POWERS

3. THIS COURT ORDERS that the Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Property and, without in any way limiting the generality of the foregoing, the Receiver is hereby expressly empowered and authorized, but not obligated, to do any of the following where the Receiver considers it necessary or desirable:

- (a) to take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;
- (b) to receive, preserve, and protect the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security

personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;

- (c) to enter into the Debtor's business premises during regular business hours and examine and make copies of any document or record, in paper or electronic format;
- (d) to have access to all electronic storage and record databases, including but not limited to, icloud, email inboxes, dropbox, and to examine and make copies of any document or record contained therein;
- (e) to review and investigate the books, records, and financial affairs in electronic form or otherwise, including without limitation, banking and investment records, of the Debtor;
- (f) to review and investigate all monies flowing in and out of the Debtor, including but not limited to, all receipts and disbursements, all accounts payable and receivable of the Debtor;
- (g) to deliver notices of examination to and examine any person (including, without limitation, Reza Nezami, Patrick Dookram, and any other officer, director, or employee of the Debtor) under oath who has knowledge of the business and affairs of the Debtor;
- (h) in consultation with the Applicant, to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including without limitation those conferred by this Order;
- (i) to receive and collect all monies and accounts now owed or hereafter owing to the Debtor and, in consultation with the Applicant, to exercise all remedies of the Debtor in collecting such monies, including, without limitation, to enforce any security held by the Debtor;

- (j) to settle, extend or compromise any indebtedness owing to the Debtor;
- (k) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Debtor, the Property or the Receiver, and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;
- (l) to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate;
- (m) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business,
 - (i) without the approval of this Court in respect of any transaction not exceeding \$250,000, provided that the aggregate consideration for all such transactions does not exceed \$1,000,000; and
 - (ii) with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause;

and in each such case notice under subsection 63(4) of the Ontario *Personal Property Security Act*, or section 31 of the Ontario *Mortgages Act*, as the case may be, shall not be required, and in each case the Ontario *Bulk Sales Act* shall not apply.

- (n) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate on all matters relating to the Property and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;

- (o) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;
- (p) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought desirable by the Receiver, in the name of the Debtor;
- (q) to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtor, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Debtor;
- (r) to exercise any shareholder, partnership, joint venture or other rights which the Debtor may have; and
- (s) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations.

and in each case where the Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons (as defined below), including the Debtor, and without interference from any other Person.

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

4. THIS COURT ORDERS that (i) the Debtor, (ii) all of its current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on its instructions or behalf, (iii) any trustee in bankruptcy of the Debtor, and (iv) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being “**Persons**” and each being a “**Person**”) shall forthwith advise the Receiver of the existence of any Property in such Person's possession or control, shall grant immediate and continued access to the Property to the Receiver, and shall deliver all such Property to the Receiver upon the Receiver's request. Without limiting the generality of the foregoing, any landlord of premises leased by the Debtor shall grant access to such premises to the Receiver to recover books and records and other Property of the Debtor.

5. THIS COURT ORDERS that all Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Debtor, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the “**Records**”) in that Person's possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 5 or in paragraph 6 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

6. THIS COURT ORDERS that if any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Receiver for the purpose of allowing the Receiver to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Receiver with all such assistance in gaining immediate access to the information in the Records as the Receiver may in its discretion require including providing the Receiver with instructions on the use of any computer or other system and providing the Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information.

NO PROCEEDINGS AGAINST THE RECEIVER

7. THIS COURT ORDERS that no proceeding or enforcement process in any court or tribunal (each, a “**Proceeding**”), shall be commenced or continued against the Receiver except with the written consent of the Receiver or with leave of this Court.

NO PROCEEDINGS AGAINST THE DEBTOR OR THE PROPERTY

8. THIS COURT ORDERS that no Proceeding against or in respect of the Debtor or the Property shall be commenced or continued except with the written consent of the Receiver or with leave of this Court and any and all Proceedings currently under way against or in respect of the Debtor or the Property are hereby stayed and suspended pending further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

9. THIS COURT ORDERS that all rights and remedies against the Debtor, the Receiver, or affecting the Property, are hereby stayed and suspended except with the written consent of the Receiver or leave of this Court, provided however that this stay and suspension does not apply in respect of any “eligible financial contract” as defined in the BIA, and further provided that nothing in this paragraph shall (i) empower the Receiver or the Debtor to carry on any business which the Debtor is not lawfully entitled to carry on, (ii) exempt the Receiver or the Debtor from compliance with statutory or regulatory provisions relating to health, safety or the environment, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

NO INTERFERENCE WITH THE RECEIVER

10. THIS COURT ORDERS that no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Debtor, without written consent of the Receiver or leave of this Court.

CONTINUATION OF SERVICES

11. THIS COURT ORDERS that all Persons having oral or written agreements with the Debtor or statutory or regulatory mandates for the supply of goods and/or services, including without limitation, all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Receiver are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Receiver, and that the Receiver shall be entitled to the continued use of the Debtor's current telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Receiver in accordance with normal payment practices of the Debtor or such other practices as may be agreed upon by the supplier or service provider and the Receiver, or as may be ordered by this Court.

RECEIVER TO HOLD FUNDS

12. THIS COURT ORDERS that all funds, monies, cheques, instruments, and other forms of payments received or collected by the Receiver from and after the making of this Order from any source whatsoever, including without limitation the sale of all or any of the Property and the collection of any accounts receivable in whole or in part, whether in existence on the date of this Order or hereafter coming into existence, shall be deposited into one or more new accounts to be opened by the Receiver (the “**Post Receivership Accounts**”) and the monies standing to the credit of such Post Receivership Accounts from time to time, net of any disbursements provided for herein, shall be held by the Receiver to be paid in accordance with the terms of this Order or any further Order of this Court.

EMPLOYEES

13. THIS COURT ORDERS that all employees of the Debtor shall remain the employees of the Debtor until such time as the Receiver, on the Debtor's behalf, may terminate the employment of such employees. The Receiver shall not be liable for any employee-related liabilities, including any successor employer liabilities as provided for in section 14.06(1.2) of the *Bankruptcy and Insolvency Act* (the “**BIA**”), other than such amounts as the Receiver may specifically agree in writing to pay.

LIMITATION ON ENVIRONMENTAL LIABILITIES

14. THIS COURT ORDERS that nothing herein contained shall require the Receiver to occupy or to take control, care, charge, possession or management (separately and/or collectively, “**Possession**”) of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the “**Environmental Legislation**”), provided however that nothing herein shall exempt the Receiver from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Receiver shall not, as a result of this Order or anything done in pursuance of the Receiver's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

LIMITATION ON THE RECEIVER'S LIABILITY

15. THIS COURT ORDERS that the Receiver shall incur no liability or obligation as a result of its appointment or the carrying out the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part, including under the MBLAA. Nothing in this Order shall derogate from the protections afforded the Receiver by section 14.06 of the BIA or by any other applicable legislation.

RECEIVER'S ACCOUNTS

16. THIS COURT ORDERS that the Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges unless otherwise ordered by the Court on the passing of accounts, and that the Receiver and counsel to the Receiver shall be entitled to and are hereby granted a charge (the "**Receiver's Charge**") on the Property, as security for such fees and disbursements, both before and after the making of this Order in respect of these proceedings, and that the Receiver's Charge shall form a first charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person.

17. THIS COURT ORDERS that the Receiver and its legal counsel shall pass its accounts from time to time, and for this purpose the accounts of the Receiver and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

18. THIS COURT ORDERS that prior to the passing of its accounts, the Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including legal fees and disbursements, incurred at the standard rates and charges of the Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

FUNDING OF THE RECEIVERSHIP

19. THIS COURT ORDERS that the loan agreement (the “**Loan Agreement**”) entered into between the Receiver and certain of the Debtor’s investors (the “**Investors**”) pursuant to a term sheet appended to a letter to the investors of the Debtor dated April 25, 2023 be and is hereby approved, as amended by paragraph 20 hereof.

20. THIS COURT ORDERS that the amounts advanced to the Receiver by the Investors pursuant to the Loan Agreement shall be secured by the Receiver’s Borrowings Charge (as defined below) and that (i) the principal amount advanced pursuant to the Loan Agreement shall rank *pari passu* with the Receiver’s prior borrowings secured by the Receiver’s Borrowing Charge (together, the “**Pari Passu Amounts**”); and (ii) the interest accrued pursuant to the Loan Agreement shall rank immediately subordinate to the Pari Passu Amounts.

21. THIS COURT ORDERS that the Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$450,000.00 (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the “**Receiver’s Borrowings Charge**”) as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Receiver’s Charge

22. THIS COURT ORDERS that neither the Receiver’s Borrowings Charge nor any other security granted by the Receiver in connection with its borrowings under this Order shall be enforced without leave of this Court.

23. THIS COURT ORDERS that the Receiver is at liberty and authorized to issue certificates substantially in the form annexed as Schedule “A” hereto (the “**Receiver’s Certificates**”) for any amount borrowed by it pursuant to this Order.

24. THIS COURT ORDERS that the monies from time to time borrowed by the Receiver pursuant to this Order or any further order of this Court and any and all Receiver's Certificates evidencing the same or any part thereof shall rank on a *pari passu* basis, unless otherwise agreed to by the holders of any prior issued Receiver's Certificates.

SERVICE AND NOTICE

25. THIS COURT ORDERS that the E-Service Protocol of the Commercial List (the "**Protocol**") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/e-service-protocol/>) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL '<https://www.ksvadvisory.com/experience/case/firstswiss>'.

26. THIS COURT ORDERS that if the service or distribution of documents in accordance with the Protocol is not practicable, the Receiver is at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile transmission to the Debtor's creditors or other interested parties at their respective addresses as last shown on the records of the Debtor and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

GENERAL

27. THIS COURT ORDERS that the Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.


28. THIS COURT ORDERS that nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Debtor.

29. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its 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 Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

30. THIS COURT ORDERS that the Receiver be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Receiver is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

31. THIS COURT ORDERS that (i) the Applicant and any other parties who contributed evidence in support of the Order appointing the Receiver dated March 17, 2023 (the "**Appointment Order**") shall have their costs of that application, up to and including entry and service of the Appointment Order, on a substantial indemnity basis, to be paid by the Receiver from the Debtor's estate with such priority and at such time as this Court may determine; and (ii) Winrep Holdings Inc., Winick Realty Corp., and 2780925 Ontario Inc. shall have the costs of their counsel, Marciano Beckenstein LLP, up to and including March 27, 2023, on a substantial indemnity basis, paid by the Receiver from the Debtor's estate with such priority and at such time as this Court may determine.

32. THIS COURT ORDERS that any interested party may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to the Receiver and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

 Digitally signed
by Jana Steele
Date: 2023.05.29
11:59:39 -04'00'

SCHEDULE “A”
RECEIVER CERTIFICATE

CERTIFICATE NO. _____

AMOUNT \$ _____

1. THIS IS TO CERTIFY that KSV Restructuring Inc., the receiver (the “**Receiver**”) of the assets, undertakings and properties First Swiss Mortgage Corporation (the “**Debtor**”) acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof (collectively, the “**Property**”) appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) dated the ___ day of _____, 2023 (the “**Order**”) made in an action having Court file number __-CL-_____, has received as such Receiver from the holder of this certificate (the “**Lender**”) the principal sum of \$ _____, being part of the total principal sum of \$ _____ which the Receiver is authorized to borrow under and pursuant to the Order.

2. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded [daily][monthly not in advance on the _____ day of each month] after the date hereof at a notional rate per annum equal to the rate of _____ per cent above the prime commercial lending rate of Bank of _____ from time to time.

3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property, in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order, and the right of the Receiver to indemnify itself out of such Property in respect of its remuneration and expenses.

4. All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at Toronto, Ontario.

5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.

6. The charge securing this certificate shall operate so as to permit the Receiver to deal with the Property as authorized by the Order and as authorized by any further or other order of the Court.

7. The Receiver does not undertake, and it is not under any personal liability, to pay any sum in respect of which it may issue certificates under the terms of the Order.

DATED the ____ day of _____, 20__.

KSV Restructuring Inc., solely in its capacity as
Receiver of the Property, and not in its personal
capacity

Per: _____
Name:
Title:

CHIEF EXECUTIVE OFFICER OF THE FINANCIAL SERVICES REGULATORY AUTHORITY OF ONTARIO and **FIRST SWISS MORTGAGE CORP.**

Applicant

Respondent

Court File No.: CV-23-00696362-00CL

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

Proceedings commenced in Toronto

**AMENDED AND RESTATED
APPOINTMENT ORDER
(May 19, 2023)**

BENNETT JONES LLP
One First Canadian Place, Suite 3400
P.O. Box 130
Toronto, ON M5X 1A4

Sean Zweig (LSO#: 573071)
Tel: (416) 777-6254
Email: zwiegs@bennettjones.com

Thomas Gray (LSO#: 82473H)
Tel: (416) 777-7924
Email: grayt@bennettjones.com

Lawyers for the Receiver

Appendix “B”



SUPERIOR COURT OF JUSTICE

ENDORSEMENT

COURT FILE NO.: CV-23-00696362-00CL DATE: May 29, 2023

NO. ON LIST: 6

TITLE OF PROCEEDING: CHIEF EXECUTIVE OFFICER V FIRST SWISS MORT CORP

BEFORE: **Madam Justice STEELE**

PARTICIPANT INFORMATION

For Plaintiff, Applicant, Moving Party:

Name of Person Appearing	Name of Party	Contact Info
Sean Zweig / Thomas Gray	Lawyers for the Receiver	zweigs@bennettjones.com / grayt@bennettjones.com

For Defendant, Respondent, Responding Party:

Name of Person Appearing	Name of Party	Contact Info
Cullen, Laura	Lawyer for FSRA	LauraC@chaitons.com
Mitch Vininsky, Nisan Thurairatnam	KSV Restructuring Inc.	mvininsky@ksvadvisory.com; NThurairatnam@ksvadvisory.com
Mark Adilman	Lawyer for Winnick Realty Corp. and Winrep Holdings Inc.	madilman@mblaw.ca
Yana Papanyan	Former lead underwriter of First Swiss	yana.pa2021@gmail.com

For Other, Self-Represented:

Name of Person Appearing	Name of Party	Contact Info
Kyriazakos, George	represents an investor, Cedric Daley	George@gklawfirmmpc.com

ENDORSEMENT

[1] This is a motion (heard May 19, 2023 via Zoom) by KSV Restructuring Inc. ("KSV"), in its capacity as the receiver of all of the assets of First Swiss Mortgage Corp. ("First Swiss") for:

- An order (the "Ancillary Order"), among other things:
 - i. directing each borrower with an active mortgage registered in favour of the Company (collectively, the "Borrowers") to pay to the Receiver (and not any other party) all principal, interest and other payments as and when due under such Borrower's mortgage;
 - ii. directing Shinhan Bank Canada ("Shinhan"), which the Receiver understands to have been the bank where the Company and 6807771 Canada Corp. ("680"), the Company's sole shareholder, most recently held their accounts, to provide certain information requested by the Receiver as it relates to the Company's accounts and those of 680;
 - iii. directing Bank of Montreal ("BMO") (i) to provide the Receiver with all available information regarding the Company's and 680's historical accounts with BMO since January 1, 2014, and (ii) to advise the Receiver whether account 00022/1565844 is owned or controlled by Reza Nezami-Nia, the Company's sole named director, or one of the Company's other principals, and if so, to provide the Receiver with account statements for the last 12 months, or such longer period as the Receiver may request;
 - iv. directing Mr. Nezami-Nia, 680, and the Company's auditor, Syed A. Raza Professional Corporation (the "Auditor"), to provide the Receiver with all nonprivileged books and records in their possession related to the Company and 680;
 - v. directing that Mr. Nezami-Nia, the Auditor and any other party having in its possession or control books or records relating to the period since January 1, 2014 (the "Relevant Time"), for any entity in which Mr. Nezami-Nia is or was during the Relevant Time, whether directly or indirectly, a director, officer, majority shareholder, partner, or controlling mind of any kind, subject to privilege exceptions;
 - vi. directing Mr. Nezami-Nia to (i) provide any electronic devices (including any cellphone and laptop) he used in connection with the Company's business to Kroll Consulting Canada Co. ("Kroll") or another third party information technology specialist agreed upon between the Receiver and Mr. Nezami-Nia to allow for both devices to be imaged and the data (the "Data") uploaded to Relativity or another ediscovery platform acceptable to the Receiver and Mr. Nezami-Nia; and (ii) provide the Data to the Receiver, except for any correspondence with a lawyer or law firm;
 - vii. directing Mr. Nezami-Nia, Patrick Dookram (the Company's former Vice President of Trading and Portfolio Management), Yana Papayan (the Company's former Lead Underwriter) and/or any other parties with information relevant to this proceeding to attend for an examination, with or without counsel, if served with a Notice of Examination

- by the Receiver, and to provide the Receiver at such examination with any non-privileged information requested by the Receiver related in any way to the Company and/or 680;
- viii. directing Mr. Nezami-Nia to prepare and provide to the Receiver a sworn net worth statement and submit to examinations under oath in respect of same;
 - ix. declaring that the Investors do not have trust claims against the Company, including in respect of mortgages registered by the Company;
 - x. approving the fees of the Receiver and its counsel, Bennett Jones LLP ("Bennett Jones"); and
 - xi. approving the Receiver's activities as set out in the Second Report of the Receiver dated May 12, 2023 and the First Report of the Receiver dated March 31, 2023. 2.
- An order (the "Amended Appointment Order"), among other things:
 - i. approving the loan agreement entered into between the Receiver and certain Investors (the "Loan Agreement"), and certain related relief;
 - ii. amending paragraph 30 of the Appointment Order to include the fees and disbursements of Marciano Beckenstein LLP ("Marciano"), counsel to one of the Investors, incurred up to March 27, 2023; and
 - iii. granting the Receiver certain additional typical powers that were removed from the Appointment Order to limit the Receiver's initial mandate.

[2] At the outset, the Receiver advised that certain issues pertaining to Mr. Nezami-Nia have been adjourned on consent. The schedule for those items is set out below.

Amended Appointment Order

[3] There was no objection raised to the relief sought with regard to the amendment of the appointment order. Among other things, the Receiver asks that certain powers that were not included when the appointment order was granted, which are typical in receiverships, be included. Given that the Receiver's role has expanded, it is appropriate to include the powers that are typically granted.

[4] The Receiver indicated that following the last Court attendance, Dancap, the largest investor, formed an ad hoc investor advisory committee which consists of a representative from Dancap and representatives from four other large investors (the "Advisory Committee"). The Receiver worked with the Advisory Committee to prepare a loan agreement, which was provided to all known investors to present the opportunity and allow them to participate. It provides for a loan of up to \$400,000 at a 15% interest rate, compounded semi annually, and payable on maturity. The loan obligations are to be secured by the Receiver's borrowing charge and the loan principal will rank senior to all other creditors (*pari passu* with FSRA's loan), other than the Receiver's charge for fees. The interest of the loan will rank immediately following the loan principal/FSRA loan.

[5] The Receiver advised that it has received approx. \$335,000 of the \$400,000 from about 30 lenders.

[6] The Receiver recommends that the Court approve the loan agreement for numerous reasons, including:

- The Loan Agreement was developed with and is supported by the Investor Advisory Committee:
- All known Investors were provided the opportunity to participate in the Loan; and
- The Loan will allow the Receiver to further advance this proceeding.

[7] I am satisfied that the Loan Agreement is appropriate.

Ancillary Order

[8] The relief sought (other than the adjourned relief) in the Ancillary Order is generally unopposed other than the direction for Yana Papanyan to attend at an examination with or without counsel if served with a Notice of Examination and to provide any non-privileged materials. This is discussed below. I also requested additional information from the Receiver regarding the request for a declaration that investors do not have trust claims against the company, which is also addressed below.

[9] The Receiver seeks for greater certainty language in the Order to make it easier for borrowers to understand who they are to pay. In the circumstances, where there are multiple borrowers confused as to who they should be paying, this is an appropriate order to make.

[10] The Receiver seeks information from Shinhan Bank and BMO in respect of certain accounts. No person, including Mr. Nezami-Nia, opposes this relief.

Attendance at Examinations/production of information

[11] Under the *Mortgage Brokers, Lenders and Administrators Act, 2006*, S.O. 2006, c. 29, at s. 37(2), the Court may impose such conditions as the court considers appropriate.

[12] Under the initial appointment order, the Receiver was given broad powers, including the power:

3(d) to have access to all electronic storage and record databases, including but not limited to, icloud, email inboxes, dropbox, and to examine and make copies of any document or record contained therein;

3(g) to deliver notices of examination to and examine any person (including, without limitation, Reza Nezami, Patrick Dookram, and any other officer, director, or employee of the Debtor) under oath who has knowledge of the business and affairs of the Debtor;

[13] The initial order gives the Receiver the power to examine any person under oath, who has knowledge of the business and affairs of the Debtor, which would include Yana Papanyan. The Receiver wants further clarity in the Order regarding the requirement to attend at examinations where a Notice of Examination is served, whether with or without counsel. As noted above, Yana Papanyan, has indicated that she will not attend an examination without counsel.

[14] Ms. Papanyan did not provide any legitimate basis for her refusal to attend at an examination.

[15] The Receiver, in its Second Report, notes that there is a significant discrepancy between the active mortgage registrations held by the Company compared to the value of the mortgages that the Company had been reporting. Further, the Receiver states that there have been inconsistencies related to the information

provided by Mr. Nezami-Nia compared with the information provided by Mr. Dookram. Accordingly, the Receiver considers it appropriate to examine parties under oath.

[16] Ms. Papayan has informed the Receiver that she cannot afford to retain counsel and she did not qualify for legal aid. Ms. Papayan asks that the estate pay for her counsel. The Receiver's position is that this is not a cost that ought to be borne by the estate.

[17] I agree with the Receiver that this is not a cost that the estate should be required to cover.

Declaration re Trust Claims

[18] The Receiver asks the Court to grant declaratory relief in respect of the non-existence of trust claims and seeks the following order:

This court orders and declares that the parties that advanced funds to the Debtor in respect of intended mortgage investments do not have valid trust claims against the Debtor, including in respect of any mortgages registered by the Debtor.

[19] I requested additional submissions from the Receiver regarding its request to include this relief. The Receiver states that it is not uncommon for courts to grant declaratory relief in the context of insolvency proceedings, and cites the following examples:

- Declaring that certain claims against a debtor company were "equity claims" [*Sino-Forest Corp., Re*, 2012 ONSC 4377; Order dated July 27, 2012, *Sino-Forest Corp., Re*, Court File No. CV-12-9667-00CL].
- Declaring that certain directors subject to litigation had the benefit of certain releases [*Fraser Papers Inc., Re*, 2012 ONSC 4882].
- Declaring that receiver's demand on a performance bond was proper and declaring that the performance bond obliged the counterparty to elect one of four options in the performance bond [Order dated September 25, 2019, *In the Matter of the Receivership of 2423402 Ontario Inc.*, Court File No. CV-18-610236-00CL].

[20] The Receiver did not provide the Court with an example of another matter where declaratory relief such as that sought in respect of the potential trust claims has been previously granted.

[21] The Receiver submits that similar to the *Sino-Forest* case, (i) it has been clear since the outset of these proceedings that this issue – whether the claims of Investors would be considered trust claims – would have to be determined, and (ii) no party can be said to be prejudiced if this threshold issue is determined at this time because the threshold issue does not depend upon a determination of quantification of any claim.

[22] However, *Sino-Forest* is different. *Sino-Forest* was proceeding under the *Creditors' Companies Arrangement Act* ("CCAA"). The company sought an order directing that certain claims, resulting from the ownership of an equity interest in SFC, were "equity claims" as defined in s. 2 of the CCAA. The Court was essentially asked to make a determination whether certain claims were creditor claims or equity claims. This issue was put squarely before the Court with a full record. That is not the case here.

[23] The Receiver states that granting this declaratory relief will provide certainty regarding the use of funds repaid by borrowers, avoid potential costly disputes in the future, and allow the Receiver to focus its efforts on its investigation and recovery for the benefit of the Investors and other creditors.

[24] While I understand that a declaration of the type requested may be desirable, based the record before me I am unable to grant this declaration. Whether a trust exists at law is determined based on whether the three certainties have been met. If there is a trust relationship, the beneficiary of the trust would presumably have certain rights. There are documents that have previously been provided to the Court that suggest there may have been an intention to create one or more trust relationships (see, for example exhibit A to the affidavit of Rose Baum, dated March 15, 2023, exhibit C to the affidavit of Daniel Baum, dated March 15, 2023, exhibit A to the affidavit of Jared Green, dated March 15, 2023, exhibit A to the affidavit of Elias Toby, dated March 15, 2023). Paragraph 12 of the affidavit of Daniel Baum states: “Pursuant to the terms of the mortgage loan servicing agreement and the trust and beneficial owner agreement dated April 18, 2011 ..., I was the beneficial owner of the Heatherleigh Mortgage. These terms reflect First Swiss’ representations that investors fully owned the mortgages which they invested in.”

[25] The Receiver’s First Report and Second Report notes that “the accounts were not used in a manner that would be consistent with a trust.” There may be issues of breaches of trust related to the handling of trust funds (including funds being improperly applied or transferred between accounts), but that does not negate a trust relationship if one exists.

[26] The First Report of the Receiver provides in section 6.3(d) (and the Second Report in section 9(3)(e)) that “to the extent that strict rules of a trust did exist ... the Receiver is aware of case law providing that the application of strict legal rules has been set aside in favour of rateable sharing in certain circumstances, including the existence of a Ponzi scheme.” This case law may be of assistance to the Court.

[27] At the very least, it is premature for the Court to make this declaration and, it certainly cannot be made on the record before me.

Receiver’s Fees and Expenses

[28] The Receiver seeks approval of its fees and expenses and those of its counsel. The fees of the Receiver and Bennett Jones from the commencement of the proceeding to April 30, 2023 total \$126,766 and \$141,292, respectively, plus disbursements and HST. Fee affidavits have been provided.

[29] Under s. 37(7) of the *Mortgage Brokers, Lenders and Administrators Act, 2006*, S.O. 2006, c. 29 the receiver’s fees and expenses are in the discretion of the Court.

[30] In determining whether to approve the fees and disbursements in a receivership under the *Bankruptcy and Insolvency Act*, the Court should consider whether the fees incurred in carrying out the receivership were fair and reasonable taking into consideration, among other things, the factors set out in *Bank of Nova Scotia v. Diemer*, 2014 ONCA 851, at paras. 33 and 45. These factors include the nature, extent and value of the assets, the complications and difficulties encountered, the Receiver’s knowledge and skill, the responsibilities assumed and the result of the Receiver’s efforts. In my view, these factors ought to similarly apply to a receivership under the MBLAA.

[31] There was no opposition raised to this relief. I note that Ms. Papanayan referred to the quantum of the legal costs of the Receiver and its counsel when making her request for payment of legal fees out of the estate.

[32] The Receiver is of the view that Bennett Jones' hourly rates are consistent with the rates charged by other law firms practicing in the restructuring area in Toronto. The Receiver is of the view that its fees are reasonable and appropriate in the circumstances.

[33] I am satisfied that the fees and expenses are fair and reasonable.

Adjournment of Certain Relief

[34] The Receiver and Mr. Nezami-Nia have agreed to adjourn the following relief that was originally sought by the Receiver as part of the Ancillary Order (collectively, the "Adjourned Relief"):

(a) directing that Mr. Nezami-Nia, the Auditor and any other party having in its possession or control books or records relating to the period since January 1, 2014 (the "Relevant Time"), for any entity in which Mr. Nezami-Nia is or was during the Relevant Time, whether directly or indirectly, a director, officer, majority shareholder, partner, or controlling mind of any kind, to provide those books and records to the Receiver, subject to privilege exceptions;

(b) directing Mr. Nezami-Nia to (i) provide any electronic devices (including any cellphone and laptop) he used in connection with the Company's business to Kroll Consulting Canada Co. ("Kroll") or another third party information technology specialist agreed upon between the Receiver and Mr. Nezami-Nia to allow for both devices to be imaged and the data (the "Data") uploaded to Relativity or another e-discovery platform acceptable to the Receiver and Mr. Nezami-Nia; and (ii) provide the Data to the Receiver, except for any correspondence with a lawyer or law firm;

(c) directing Mr. Nezami-Nia to attend for an examination, with or without counsel, if served with a Notice of Examination by the Receiver, and to provide the Receiver at such examination with any non-privileged information requested by the Receiver related in any way to the Company and/or 680;


(d) directing Mr. Nezami-Nia to prepare and provide to the Receiver a sworn net worth statement and submit to examinations under oath in respect of same.

[35] The Receiver and Mr. Nezami-Nia have agreed to the following timetable for the return of the motion in respect of the Adjourned Relief:

- Responding materials of Mr. Nezami-Nia - May 31 by 5:00 p.m.
- Reply materials of the Receiver, if any - June 5
- Cross-examination of affiant(s) by counsel to the Receiver - June 7
- Submission of written interrogatories to Receiver on its Reports - June 7 [should the Receiver's reply materials include affidavit evidence, counsel to Mr. Nezami-Nia reserves the right to cross examine on any such affidavit on June 7]
- Receiver's responses to written interrogatories - June 12
- Written follow up questions regarding Receiver's responses to written interrogatories - June 15

- Factum of the Receiver - June 16
- Receiver's written response to follow up questions - June 19
- Factum of Mr. Nezami-Nia - June 23
- Reply factum of the Receiver, if any - June 27
- Hearing of motion for Adjourned Relief – **July 27 at 10 am (2 hours)**; provided that if that date is not acceptable to the parties, they may reach out to the trial coordinator to reschedule.

[36] Orders attached.



Madam Justice STEELE

Date: May 29, 2023

Appendix “C”



**First Report to Court of
KSV Restructuring Inc.
as Receiver of
First Swiss Mortgage Corp.**

March 31, 2023

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COURT FILE NO. CV-23-00696362-00CL

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

B E T W E E N:

**CHIEF EXECUTIVE OFFICER OF THE FINANCIAL SERVICES
REGULATORY AUTHORITY OF ONTARIO**

APPLICANT

- AND -

FIRST SWISS MORTGAGE CORP.

RESPONDENT

**APPLICATION UNDER SECTION 37 OF THE *MORTGAGE BROKERAGES, LENDERS
AND ADMINISTRATORS ACT, 2006, S.O. 2006, C. 29, AS AMENDED, AND SECTION 101
OF THE *COURTS OF JUSTICE ACT, R.S.O. 1990, C.C.43, AS AMENDED****

**FIRST REPORT OF KSV RESTRUCTURING INC.
AS RECEIVER**

MARCH 31, 2023

1.0 Introduction

1. Pursuant to an application (the "Application") by the Chief Executive Officer of the Financial Services Regulatory Authority of Ontario ("FSRA") under section 37 of the *Mortgage Brokerages, Lenders and Administrators Act, 2006, S.O. 2006, c. 29, as amended* (the "MBLAA"), and section 101 of the *Courts of Justice Act, R.S.O. 1990, c. C.43, as amended*, the Ontario Superior Court of Justice (Commercial List) (the "Court") made an order dated March 17, 2023 (the "Receivership Order") appointing KSV Restructuring Inc. ("KSV") as the receiver (the "Receiver") without security, of all of the assets, undertakings and properties of First Swiss Mortgage Corp. (the "Company") acquired for, or used in relation to a business carried on by the Company, including all proceeds thereof and any assets or property held by the Company in trust for any third party, and including all property vested in any trustee in bankruptcy of the Company (the "Property"). A copy of the Receivership Order is provided as Appendix "A" and the Endorsement of Justice Steele is provided as Appendix "B".
2. The Receivership Order was made subsequent to the Company's assignment in bankruptcy, which occurred on March 15, 2023. Goldhar & Associates Ltd. was appointed as the trustee of the Company's bankrupt estate (the "Trustee"), subject to affirmation at the first meeting of creditors scheduled for April 4, 2023.

3. The principal purposes of the receivership proceeding are to allow the Receiver to:
 - a) investigate allegations of wrongdoing against the Company and/or its principals by parties that advanced funds to the Company in respect of mortgage investments (the “Investors”); and
 - b) take possession and control of the Property in order to maximize recoveries for the Company’s creditors.
4. Pursuant to paragraph 25 of the Receivership Order, the Receiver is to file a report with the Court regarding its findings and recommendations (the “Report”) in connection with a hearing to take place on April 3, 2023.

1.1 Purposes of this Report

1. The purposes of this Report are to:
 - a) provide background information about this proceeding;
 - b) summarize the Receiver’s interviews with certain of the Company’s principals;
 - c) discuss the Receiver’s communications with Syed A. Raza Professional Corporation, the Company’s auditor (the “Auditor”);
 - d) summarize the information (the “Banking Information”) provided to the Receiver by Shinhan Bank Canada (“Shinhan”), which the Receiver understands to have been the bank where the Company most recently held its accounts;
 - e) summarize the Receiver’s communications with Investors and the Company’s borrowers, and provide the Receiver’s preliminary observations regarding potential trust claims that may be asserted by certain Investors over the mortgages;
 - f) summarize the Receiver’s activities since the date of the Receivership Order; and
 - g) summarize potential next steps in this proceeding, subject to the Receiver having sufficient funding to pursue some or all of such steps.

1.2 Restrictions

1. In preparing this Report, the Receiver has relied upon: discussions with Reza Nezami-Nia, the Company’s sole named director, and his legal counsel; discussions with Patrick Dookram, the Company’s former Vice President of Trading and Portfolio Management; discussions with representatives of FSRA and its legal counsel; discussions with the Auditor; discussions with, and documents provided by, various stakeholders (including certain Investors) in this proceeding (including their legal representatives); the Company’s audited financial statements for the year ended August 31, 2022 (the “Audited Statements”); the Banking Information; and the Application materials (collectively, the “Information”). While the Receiver has relied on the Information and the sources of the Information for purposes of preparing this Report, the Receiver acknowledges that certain of the Information may be inaccurate in whole or in part.

2. The Receiver has not audited or otherwise attempted to verify the accuracy or completeness of the Information in a manner that complies with Canadian Auditing Standards (“CAS”) pursuant to the Chartered Professional Accountants of Canada Handbook and, accordingly, the Receiver expresses no opinion or other form of assurance as contemplated under the CAS in respect of the Information. Any party wishing to place reliance on the Information should perform its own diligence and the Receiver accepts no responsibility for any reliance placed on the Information in this Report by any party.

2.0 Background

1. The Company was incorporated on September 16, 2004 under the *Canada Business Corporations Act*, R.S.C. 1985, c. C-44 and is registered under the MBLAA.
2. The Audited Statements describe the Company’s business as being a “non-bank lender providing residential real estate finance and also administers mortgage [sic] on behalf of its investors”.
3. The Receiver understands that the Company was a mortgage lender. The Company assessed applications for second mortgages on residential properties in Ontario and British Columbia. If the applications were approved, the Company would raise funds from one or more Investors, and in some cases advance the funds to the borrower and register a mortgage on the subject property. The Company earned an upfront fee and/or a spread on the interest charges on each of the mortgages.
4. The Company’s office was located at 7191 Yonge St., Suite 911, Thornhill, Ontario. The Company vacated this office following its assignment in bankruptcy with assistance from the Trustee. The Receiver was advised by Mr. Nezami-Nia that this office, which is a commercial condominium unit, is owned by a party related to Mr. Nezami-Nia. The Receiver notes that the property is owned by 10013536 Canada Corp., and that Mr. Nezami-Nia is listed as the Chief Officer or Manager of the owner of the property on such company’s Ontario Profile Report, a copy of which is provided at Appendix “C”.
5. The Receiver was advised that as of the date of bankruptcy, the Company employed three individuals, being Mr. Nezami-Nia, Mr. Dookram and Yana Papanyan, Lead Underwriter.
6. The application to appoint a Receiver was precipitated by complaints made to FSRA by certain Investors, including allegations that:
 - a) the Company did not make registrations on title in connection with certain funds Investors advanced for a specific mortgage;
 - b) the Company discharged mortgages Investors had funded, without their knowledge, and without such funds being paid to them; and
 - c) the Company was not current in making interest payments to Investors.
7. The Application materials reference that in the Company’s 2021 Annual Information Return (which was filed on or around March 31, 2022), the Company stated that it had 34 mortgages under administration (29 in Ontario), with a total value of \$3.21 million. Based on the complaints that FSRA received as of the date of the Receivership Order, Investors had received statements from the Company which referenced an aggregate mortgage balance of approximately \$13 million (for the specific Investors that had contacted FSRA).

8. Additional background information regarding this proceeding and the reasons that FSRA sought the appointment of the Receiver are provided in the affidavit of Cameron Clark, Investigator with FSRA, affirmed on March 15, 2023 (the "Clark Affidavit"). A copy of the Clark Affidavit and other Court materials filed in this proceeding are available on the Receiver's website (the "Receiver's Website") at: <https://www.ksvadvisory.com/experience/case/firstswiss>.

3.0 Interviews

1. The Receiver met separately with Mr. Nezami-Nia and Mr. Dookram. The information they provided is summarized below.
2. The Receiver also spoke and corresponded with Ms. Papayan but has not yet interviewed her as she advised that she requires counsel to represent her and she cannot afford to retain counsel. Ms. Papayan further advised that legal aid is not available to represent her, and that she will only meet with the Receiver if the Receiver pays for her legal counsel. The Receiver has not yet served Ms. Papayan with a Notice of Examination but is considering doing so if Ms. Papayan does not voluntarily meet with the Receiver.

3.1 Mr. Nezami-Nia

1. Representatives of the Receiver and its counsel, Bennett Jones LLP ("Bennett Jones"), met on March 20, 2023 with Mr. Nezami-Nia and his counsel, Karrass Law. Mr. Nezami-Nia advised the Receiver that, among other things:
 - a) the Company's business has operated for approximately 18 years, with Mr. Dookram being responsible for most operational matters over the last ten years when Mr. Nezami-Nia became less involved;
 - b) Mr. Dookram was the main contact for Investors and borrowers;
 - c) the business has been underperforming and the mortgage portfolio size has been decreasing in recent years, which accelerated with the onset of the Covid-19 pandemic. The underperformance led Mr. Nezami-Nia to conclude that the business would need to be wound up, which he recently communicated to Mr. Dookram;
 - d) the Company held three accounts at Shinhan (the "Accounts"): a broker account, which was to receive advances from Investors to fund mortgages (the "Broker Account"); an administrator account, which was to receive payments from borrowers, including monthly interest and principal when a mortgage was discharged, and to make monthly interest payments to Investors (the "Admin Account"); and a general/operating account, which was to fund the Company's payroll, office expenses and overhead (the "Operating Account");
 - e) the Accounts were not maintained or operated as trust accounts. Mr. Nezami-Nia also advised that he did not review bank statements;
 - f) he and Mr. Dookram were the authorized signatories on the Accounts, with both of them being required to approve most transactions;
 - g) Mr. Dookram initiated most bank transactions, including advances to borrowers and payments to Investors;

- h) the Company mainly relied on counsel representing its borrowers when placing and discharging mortgages and did not regularly retain its own counsel;
 - i) he has not been on the payroll for approximately five years and has not received any money from the business for several years, nor have any parties related to him (other than rent payment to a related-party landlord);
 - j) Mr. Dookram dealt with the Auditor and also prepared (or arranged to prepare) Investor tax forms, including T5s;
 - k) the Company is covered under an errors and omissions insurance policy with a limit of \$5 million, which has a \$1 million fraud endorsement and a \$100,000 endorsement for directors and officers insurance (the "Insurance Policy"). Mr. Nezami-Nia provided a copy of the Insurance Policy to the Receiver¹;
 - l) he did not know the Company's mortgage portfolio size at its peak or presently, nor could he explain the discrepancy between what Investors were claiming was reported to them by the Company compared to the actual mortgage portfolio balance of approximately \$2 million based on the Audited Statements;
 - m) as soon as he learned of the Investor complaints, he alerted Toronto Police Services ("Toronto Police"), FSRA and the insurer; and
 - n) he wants to be fully cooperative but is unable to explain how the substantial Investor losses occurred. He attributes the losses to Mr. Dookram, with whom he has not communicated since becoming aware of the Investor allegations.
2. At the conclusion of the meeting, the Receiver requested that Mr. Nezami-Nia provide it with his mobile phone to be imaged and then returned to him. Mr. Nezami-Nia advised that he used his phone mainly for personal use and that it contained limited data associated with the Company. His counsel offered to investigate how to export text messages between Mr. Nezami-Nia and parties related to the Company rather than providing a full image of the phone. Mr. Nezami-Nia also exported his correspondence with Mr. Dookram on WhatsApp, a messaging application. A copy of the WhatsApp correspondence is provided as Appendix "D".
3. The Receiver reviewed the WhatsApp correspondence following its meeting with Mr. Nezami-Nia and noted that his communications in 2019 and 2020 appeared to contradict comments he made about not being involved in the business or being aware of Investor complaints, including the following.

"[2019-03-18, 5:03:43 PM] Patrick Dookram: Sending you 2 spreadsheets for the audit

- 1. Investor Funds List
- 2. Borrower List Details

The Swan mortgage which FSMC funded has been left out

Any deals which we received funding for and didn't close has been left off both lists

Mortgages discharged which have not been paid out are included in both list

¹ Defense costs are not limited under the Insurance Policy and such costs do not erode the limits of insurance.

Have not included 2 discharged mortgages which were split between several investors and where a portion was paid out

Have a look and let me know if ok

[2019-03-18, 5:05:49 PM] W: Ok thanks

I will review and ask Eugene to review too before sending to accountants

Thanks”

4. The Receiver has requested that Mr. Nezami-Nia provide the Receiver with the laptop computer he used at the Company’s office and his personal bank statements for the last five years. Mr. Nezami-Nia advised that the computer was mainly for personal use but would investigate how to provide the data related to the Company. Mr. Nezami-Nia has not responded to the Receiver’s request for bank statements.
5. As of the date of this Report, the Receiver has not discussed with Mr. Nezami-Nia the correspondence set out above, nor its other findings summarized in this Report. In the Receiver’s view, that discussion should be in the format of an examination under oath. The prospect of this examination is discussed further below in Section 8.

3.2 Mr. Dookram

1. Representatives of the Receiver met with Mr. Dookram, without counsel, on March 21, 2023. The information provided by Mr. Dookram at that meeting is summarized below:
 - a) Mr. Dookram joined the Company approximately 12 years ago and was the primary contact for Investors. He did not have a prior background in lending and had no prior relationship with Mr. Nezami-Nia;
 - b) Mr. Dookram and Ms. Papanyan were responsible for the Company’s day-to-day activities;
 - c) Mr. Dookram never had access to the Accounts and had no involvement with bank transfers; according to him, this was all managed by Mr. Nezami-Nia, with Ms. Papanyan’s assistance;
 - d) Mr. Dookram initially claimed to have become aware of Investor complaints in late 2022 when interest payments were not made. After the Receiver presented his messaging over WhatsApp with Mr. Nezami-Nia and referenced details in certain Investor complaints made to FSRA, he admitted to being “complicit” in:
 - i. allowing mortgages to be discharged without funds being paid to the corresponding Investors;
 - ii. allowing Investor funds to be advanced for a mortgage without those funds being transferred to a borrower for a mortgage; and
 - iii. preparing monthly schedules of payments to be made to Investors based on what was reported to them as their active mortgages – a portfolio size he estimated to be approximately \$25 million compared to the \$2 million reported in the Audited Statements, which he claimed to have never seen;

- e) Mr. Dookram estimated that monthly interest payments to Investors have been approximately \$270,000 and acknowledged that the source of funds used to pay that interest included discharged mortgages where the Investor was not paid and funds advanced by Investors for mortgages that were never advanced to the borrowers;
- f) the Receiver advised Mr. Dookram that Mr. Nezami-Nia claimed no knowledge or involvement in the scheme by the Company and attributed it to him. Mr. Dookram denied benefitting financially from the scheme and claimed that Mr. Nezami-Nia orchestrated and coordinated it, starting as far back as 2014, being at the same time or shortly after Mr. Nezami-Nia's divorce proceeding. Mr. Dookram advised that his total annual compensation was \$136,000, comprised of a \$100,000 base annual salary and \$3,000 a month in cash;
- g) Mr. Dookram could not account for the discrepancy in Investor funds or who benefitted other than to repeat that neither he nor any relatives of his benefited. Subsequent to the meeting, Mr. Dookram provided copies of his personal bank statements for the last five years as support for his statement that he did not receive funds from the Company other than what he disclosed. Based solely on the Receiver's preliminary review of those statements, Mr. Dookram's comments appear to have been accurate;
- h) Mr. Dookram prepared T5s for Investors based on the Interest they received but denied having any contact with the Auditor; and
- i) Mr. Dookram's primary communications with Mr. Nezami-Nia were in person. He provided the Receiver with his mobile phone to be imaged, which was returned to him the next day. The Receiver has not yet reviewed the contents of Mr. Dookram's phone.

4.0 Auditor

1. The Receiver obtained a copy of the Audited Statements, which include the Company's results for the years ended August 31, 2021 and 2022. Those results are summarized below.

(Audited; \$000)	August 31, 2021	August 31, 2022	Total
Revenue	146	148	294
Expenses	214	278	492
Income/(Loss)	(68)	(130)	(198)

2. The Audited Statements also reflect that, as at August 31, 2022, the Company reported total assets of approximately \$61,000, liabilities of \$507,000 and a shareholders' deficit of \$446,000. A copy of the Audited Statements, which are not qualified but include a going-concern note, is provided in Appendix "E".

3. The Receiver discussed with the Auditor its interactions with representatives of the Company. The Auditor advised that it has been the Company's accountant for approximately 10 years and, contrary to what Mr. Nezami-Nia advised the Receiver, it had principally dealt with Mr. Nezami-Nia and Tariq Shaikh, who had been the Company's bookkeeper. The Auditor also advised that:
 - a) in the last few years, it had raised concerns with Mr. Nezami-Nia regarding the Company's mortgage portfolio size which, based on the disclosures in the Audited Statements, declined from approximately \$2.1 million as of August 31 2021 to \$1.9 million as of August 31, 2022, as well as the Company's losses;
 - b) it raised concerns with Mr. Nezami-Nia related to the Company's internal controls as Mr. Nezami-Nia was the only authorized party regarding the Accounts;
 - c) the Company took approximately six months to assemble the information for the Auditor to commence its review;
 - d) it was not aware of the Investor allegations and could not explain the level of activity in the Accounts (as discussed below) compared to the mortgage portfolio size as reported in the Audited Statements; and
 - e) it has \$1 million of insurance coverage, which the Receiver has not independently verified.
4. The Receiver requested that the Auditor provide information, including its correspondence with the Company and the documents that the Company prepared for the Auditor. The Receiver's correspondence with the Auditor in this regard is included as Appendix "F".
5. On March 28, 2023, the Auditor responded to the Receiver's information requests. The Receiver is presently reviewing the responses. Portions of the responses are included as Appendix "G". Based on this information, the Receiver has concerns regarding the Auditor's scope of work and level of diligence as, among other things:
 - a) the millions of dollars of transactions in the Accounts, which are discussed below, bear no relationship to the size of the Company's business as reported in the Audited Statements;
 - b) no bank reconciliations appear to have been reviewed;
 - c) no cheque images appear to have been reviewed to verify banking activity; and
 - d) no information requests appear to have been made to explain the transfers to the 6254 Account (also discussed below).

5.0 Banking Information

1. The Receiver has been dealing with Shinhan since its appointment and received, among other things, statements for the Accounts from January 1, 2020 to March 22, 2023 (the "Period"). The Receiver has also corresponded with Bank of Montreal, where the Company held accounts until 2018, although it has not yet received statements for those accounts.

2. The Company's banking activity for the Period, excluding transfers between the Accounts, is summarized in the table below:

(unaudited; \$)	Amount
Receipts	
Investors	8,395,724
Mortgage Interest and Mortgage Repayments	10,085,797
Sundry/Unknown	1,249,716
Total Receipts	19,731,237
Disbursements	
Operating expenses	440,148
Payment of Investor interest or principal	11,684,655
Transfers to 6254 Account	5,936,534
Sundry/Unknown	1,670,995
Total Disbursements	19,732,332
Opening Cash Balance	1,428
Net Cash Flow	(1,095)
Closing Cash Balance	333

3. As presented above:

- a) approximately \$19.7 million was deposited into the Accounts (of which \$311,000 was deposited into the Operating Account) during the Period, with approximately \$5.9 million being transferred from those accounts to the 6254 Account. The 6254 Account is defined and discussed below in Section 5.1; and
- b) as the Receiver does not presently have copies of cancelled cheques or a cheque ledger, it cannot identify certain receipts or disbursements.

4. The Company made a significant number of transfers between the Accounts during the Period, as summarized in the table below:

(unaudited; \$)		
From	To	Amount
Broker	Operating	2,547,123
Operating	Broker	70,189
Net (Broker to Operating)		<u>2,476,934</u>
Broker	Admin	4,300,258
Admin	Broker	1,532,513
Net (Broker to Admin)		<u>2,767,745</u>
Admin	Operating	4,884,398
Operating	Admin	1,078,549
Net (Admin to Operating)		<u>3,805,849</u>

5. The Accounts do not appear to have been used in a manner that would be consistent with a trust. The Receiver traced several situations where funds were advanced by:

- a) an Investor to the Broker Account for a mortgage to be placed, with such funds instead being either: i) transferred to the Admin Account and used to pay monthly interest to Investors; or ii) transferred to the Operating Account and used to pay expenses or transferred to the 6254 Account. This activity is described further in Section 6 of this Report; and

- b) a borrower to the Admin Account for repayment of a mortgage, with such funds being used to either: i) pay interest to Investors; ii) pay the principal balance owing to an Investor (the intended purpose); or iii) transfer to the Operating Account and used to pay expenses and/or transfer to the 6254 Account.
6. The Receiver has requested that Shinhan provide statements for the Accounts for as far back as records are available and that it also confirm the authorized signatories on the Accounts. On March 29, 2023, Shinhan advised the Receiver that the “authorized signatory of the account is William Nezami only”. The Receiver believes that William Nezami refers to Mr. Nezami-Nia. The Receiver has not yet been provided with account statements before the Period.

5.1 6254 Account

1. The Receiver identified that a net amount of approximately \$5.9 million was transferred during the Period from the Operating Account to another account at Shinhan ending in 6254 (the “6254 Account”). In accordance with the Receivership Order, the Receiver requested that Shinhan identify the holder of the 6254 Account given the substantial funds transferred to it and particularly since the Company’s total reported annual expenses are less than \$300,000.
2. Shinhan advised the Receiver that the 6254 Account is held by 6807771 Canada Corp. (“680”), the Company’s sole shareholder. Mr. Nezami-Nia is listed as 680’s sole director based on a profile search. A copy of the profile search is provided as Appendix “H”.
3. In addition to identifying 680 as the holder of the 6254 Account, Shinhan provided the Receiver with account statements for the Period, although the Receiver did not request that it do so. Based on the Receiver’s review of the 6254 Account statements, the Receiver identified numerous personal expenses, including several credit cards, private school tuition, life insurance, aviation equipment, vehicle lease payments and other payments made in the aggregate of \$3.6 million which only reference a cheque number without any corresponding detail.
4. As of March 22, 2023, the balance in the 6254 Account was \$22.
5. As referenced above, the source of the majority of the funding to the 6254 Account during the Period was from the Operating Account. Accordingly, the Receiver believes that it would be appropriate for the purposes of its investigation and to identify potential sources of recovery for the Company’s creditors for it to obtain additional details from Shinhan regarding the 6254 Account, including statements prior to the Period, cheque images and details regarding payees and deposits. This is discussed further in Section 8.

6.0 Investors and Borrowers

1. The Receiver’s dealings with the Investors and borrowers are set out below.

6.1 Investors

1. The Receiver has corresponded with several of the Investors, including certain Investors that attended the hearing to appoint the Receiver and other Investors who were directed by the Trustee to contact the Receiver.

2. The Receiver has reviewed, among other materials, statements of account issued by the Company, loan documentation, appraisals and email correspondence between the Investors and representatives of the Company (mainly Mr. Dookram). Based on this information, the Receiver prepared schedules listing the active mortgages that these Investors understood had been registered on their behalf compared to the actual registration status as reflected in real property searches.² A summary of the schedule is presented below.³ The figures below are based on the information that has been reviewed to date by the Receiver and Bennett Jones. Investors are continuing to provide information and, accordingly, the amounts referenced below represent the Receiver's findings to date and are subject to change.

(unaudited; \$)					
Investor	Active		Non-registered		Total
	# of Mortgages	Amount	# of Mortgages	Amount	
A	6	741,383	52	5,773,791	6,515,174
B	-	-	11	960,442	960,442
C	1	54,995	14	883,875	938,870
D	2	259,406	9	591,808	851,214
E	3	309,072	7	520,253	829,325
F (unidentified Investors)	11	654,057	-	-	654,057
G	1	76,993	8	565,905	642,898
H	1	57,745	5	335,066	392,810
I	1	219,980	2	130,388	350,368
J	1	54,995	7	281,024	336,019
K	-	-	5	301,380	301,380
L	1	43,996	2	208,981	252,977
M	2	140,787	2	101,191	241,978
N	-	-	2	241,978	241,978
O	1	57,992	4	223,471	281,463
P	1	213,821	-	-	213,821
Q	2	54,995	2	136,388	191,383
R	-	-	4	191,383	191,383
S	-	-	2	179,484	179,484
T	1	125,988	1	49,596	175,584
U	-	-	2	170,485	170,485
V	-	-	1	161,985	161,985
W	2	160,985	-	-	160,985
X	-	-	1	148,487	148,487
Y	-	-	3	122,787	122,787
Z	-	-	2	120,989	120,989
AA	1	30,000	3	102,596	132,596
AB	-	-	2	98,316	98,316
AC	-	-	1	93,492	93,492
AD	-	-	1	87,992	87,992
AE	-	-	1	85,792	85,792
AF	-	-	1	60,495	60,495
AG	-	-	1	52,495	52,495
AH	-	-	1	36,297	36,297
AI	-	-	1	27,498	27,498
AJ	-	-	1	27,498	27,498
Subtotal, before duplicates/triplicate	37	3,257,189	161	13,073,602	16,330,791

² The schedule presents as "non-registered" the three situations where borrowers provided evidence to the Receiver that they paid out the full amount of their mortgages.

³ Registration status is based on property searches performed by the Receiver's counsel, as well as property searches that were provided to the Receiver or its counsel by certain Investors and their counsel. In some cases, Investors have indicated to the Receiver that they are not claiming for the full amount of the charge registered on title – in those cases, the chart reflects the amount claimed by the Investor. Investor O and Investor AA have active mortgages, the total of which match the amount registered on title. The subtotal has been adjusted accordingly.

3. As reflected above:
- there is a difference of \$13.1 million between the mortgages as reported to the group of Investors that, to date, have provided their information to the Receiver compared to the registrations on title in favour of the Company for the properties corresponding with this group of Investors; and
 - there appears to be no consistency or rationale for the percentage of actual mortgages in favour of an Investor, meaning that certain Investors have no actual mortgages registered on title on the investments they funded while other Investors have up to 100% of active mortgages (two Investors, for a combined total of three properties).
4. The Receiver identified situations where more than one Investor funded the same mortgage:

(unaudited; \$)					
Investor	Property	Claim Amount	Active	Amount	Notes
X	1565 Binbrook Road	64,894	No		
G	1565 Binbrook Road	64,894	No		
		129,788	No		
J	170 Ashley Crescent	32,997	No		
AK	170 Ashley Crescent	32,997	No		
		64,994			
O	28 Greybeaver Trail	109,990	Yes		
S	28 Greybeaver Trail	109,990	Yes	109,990	
A	28 Greybeaver Trail	109,990	Yes		
		329,970			
A	327 Dolman Street	60,495	No		
M	327 Dolman Street	60,495	No		
		120,990			
E	345 Royal West Drive	98,991	No		1
AL	345 Royal West Drive	48,991	No		1
		147,982			
H	55 Creekbank Road	35,000	No		1
X	55 Creekbank Road	30,000	No		1
		65,000			
Y	4245 Limestone Road	30,000	No		1
I	4245 Limestone Road	57,578	No		1
		87,578			
Total		947,302			

Note 1: It is unclear if the Investors partially funded these mortgages.

5. In the seven situations summarized above, only one of the mortgages is presently registered. In that situation (property on Greybeaver Trail), the Company registered a mortgage on title to the property on November 10, 2022 and reported this mortgage on the account statements of the three unrelated Investors. Copies of those statements are provided in Appendix "I". The Receiver traced the funds to the Accounts from these three Investors, which show that the funds from two of the three Investors were used to make interest payments to Investors rather than to fund a mortgage. The Receiver also identified many other cases where Investor funds were not used for their intended purposes. Three examples are presented in Appendix "J".
6. As discussed further below, the Receiver has also become aware that three mortgages were repaid to the Company without the knowledge of Investors, and without the mortgages being discharged from title. Therefore, although property searches show 41 active mortgages (38 active mortgages after adjusting for the three that likely should have been discharged), certain of these loans may be fully paid off. The Receiver is continuing to investigate this matter.

6.2 Borrowers

1. Pursuant to letters dated March 22, 2023, the Receiver directed the borrowers with active registrations by the Company on title to their properties to remit interest payments to the Receiver's office.
2. As of the date of this Report: a) one of the borrowers advised the Receiver that it intends to imminently refinance its mortgage and would pay the balance owing to the Company⁴; and b) three of the borrowers advised the Receiver that they had repaid their mortgages and provided evidence of such repayment, including reporting letters issued by their counsel, to support that discharges should have been registered. The Receiver has traced funds from two of the borrowers to the Accounts regarding these repayments. Payment from the third borrower was made prior to the Period and therefore the Receiver does not presently have the bank statements to trace the funds.

6.3 Preliminary Views Regarding Trust Claims by Investors

1. The Receiver reviewed the Company's loan documentation which, among other things, provides that the Company would act as a nominee and hold registered mortgages in trust on behalf of Investors.
2. However, based on the information available, the Receiver's preliminary view is that any trust claim in respect of the mortgages ought to fail. Among other reasons:
 - a) as noted above, certain Investors have no actual mortgages registered on title on the investments they funded while other Investors have up to all of their investments presently reflected as being active mortgages. There does not appear to be any consistency or rationale for the percentage of actual mortgages any Investor holds;

⁴ The Receiver notes that counsel to the Investor related to this property registered a caution on title to the property, which created an issue for the borrower to refinance the mortgage. The Receiver has agreed with that counsel that, on a without prejudice basis, it would consent to the mortgage being discharged and the funds being held in trust subject to agreement between the Receiver and the Investor or further Order of the Court. The Receiver has advised such counsel that the proceeds from the mortgage are included as Property as defined in the Receivership Order and therefore ought to be paid to the Receiver.

- b) the Investors who would stand to benefit from trust principles were not more diligent than the other Investors; they were simply the relatively lucky ones for whom the funds provided to the Company were appropriately used;
- c) as noted above, the Accounts were not used in a manner that would be consistent with a trust. The Receiver traced several situations where funds were advanced by an Investor to the Broker Account for a mortgage to be placed with such funds instead being used either to pay monthly interest to Investors from the Admin Account or to pay expenses or make transfers from the Operating Account. Funds were also transferred frequently between the Accounts; and
- d) to the extent the strict rules of a trust did exist – which was certainly not the case in many circumstances – the Receiver is aware of case law providing that the application of strict legal rules has been set aside in favour of rateable sharing in certain circumstances, including the existence of a Ponzi scheme.

7.0 Receiver's Activities

1. In addition to the activities described above, the Receiver's activities have included, among other things, the following:
 - a) corresponding extensively with FSRA and its counsel, Chaitons LLP, and Bennett Jones regarding all matters in this proceeding;
 - b) providing regular updates to FSRA;
 - c) corresponding with a representative of the Company's insurance broker;
 - d) reviewing certain of the Company's books and records;
 - e) imaging the Company's computers;
 - f) dealing with the Trustee regarding the information it was provided by the Company;
 - g) performing a significant number of property and corporate searches;
 - h) attending a call with representatives of FSRA and Toronto Police to discuss the Investor complaints and the Receiver's preliminary findings;
 - i) preparing a Notice of Receiver as required under the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3;
 - j) registering cautions on title against the real property the Company claimed to own on its Statement of Affairs (according to the Property Identification Numbers, the Company only has a mortgage against the property); and
 - k) drafting this Report.

8.0 Next Steps and Funding

1. The Receiver has borrowed \$50,000 on an interest-free basis from FSRA pursuant to a Receiver's Certificate to partially fund the fees and costs incurred to-date related to the receivership. Additional funding is required to advance the receivership, including to:
 - a) File a claim under the Insurance Policy, which would require the Receiver to provide tracing and support documentation to prove the Company's losses along with the reasons that such losses are covered by the Insurance Policy;
 - b) Review additional information from the Auditor and consider whether there is a basis to make a credible claim against the Auditor;
 - c) Examine Mr. Nezami-Nia under oath, and potentially others including Mr. Shaikh (the bookkeeper) and Ms. Papanyan (Lead Underwriter);
 - d) Consider potential claims against the Company's representatives and the assets they may have to satisfy such claims;
 - e) Continue tracing the Accounts, including account statements available before the Period and details regarding the 6254 Account, in order to identify any other potential sources of recovery;
 - f) Deal with borrowers regarding their monthly interest payments and mortgage maturities; and
 - g) Correspond with Toronto Police regarding its investigation.
2. The Receiver has had a preliminary discussion with the largest Investor regarding the possibility of it funding the Receiver, and is awaiting its response. The Receiver also intends to have similar discussions with other large Investors.

* * *

All of which is respectfully submitted,

KSV Restructuring Inc.

**KSV RESTRUCTURING INC.,
SOLELY IN ITS CAPACITY AS RECEIVER OF
FIRST SWISS MORTGAGE CORP.
AND NOT IN ITS PERSONAL OR IN ANY OTHER CAPACITY**

Appendix “D”



**Second Report to Court of
KSV Restructuring Inc.
as Receiver of
First Swiss Mortgage Corp.**

May 12, 2023

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COURT FILE NO. CV-23-00696362-00CL

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

B E T W E E N:

**CHIEF EXECUTIVE OFFICER OF THE FINANCIAL SERVICES
REGULATORY AUTHORITY OF ONTARIO**

APPLICANT

- AND -

FIRST SWISS MORTGAGE CORP.

RESPONDENT

**APPLICATION UNDER SECTION 37 OF THE *MORTGAGE BROKERAGES, LENDERS
AND ADMINISTRATORS ACT, 2006, S.O. 2006, C. 29, AS AMENDED, AND SECTION 101
OF THE *COURTS OF JUSTICE ACT, R.S.O. 1990, C.C.43, AS AMENDED****

**SECOND REPORT OF KSV RESTRUCTURING INC.
AS RECEIVER**

MAY 12, 2023

1.0 Introduction

1. Pursuant to an application (the "Application") by the Chief Executive Officer of the Financial Services Regulatory Authority of Ontario ("FSRA") under section 37 of the *Mortgage Brokerages, Lenders and Administrators Act, 2006, S.O. 2006, c. 29, as amended* (the "MBLAA"), and section 101 of the *Courts of Justice Act, R.S.O. 1990, c. C.43, as amended*, the Ontario Superior Court of Justice (Commercial List) (the "Court") made an order dated March 17, 2023 (the "Appointment Order") appointing KSV Restructuring Inc. as the receiver (the "Receiver") without security, of all of the assets, undertakings and properties of First Swiss Mortgage Corp. (the "Company") acquired for, or used in relation to a business carried on by the Company, including all proceeds thereof and any assets or property held by the Company in trust for any third party, and including all property vested in any trustee in bankruptcy of the Company (the "Property"). A copy of the Appointment Order is provided as Appendix "A" and the Endorsement of Justice Steele is provided as Appendix "B".
2. The Appointment Order was made subsequent to the Company's assignment in bankruptcy, which occurred on March 15, 2023. Goldhar & Associates Ltd. was appointed as the licensed insolvency trustee of the Company's bankrupt estate (the "Trustee"), as affirmed at the first meeting of creditors held on April 4, 2023 and continued on April 20, 2023.

3. The principal purposes of the receivership proceeding are to allow the Receiver to:
 - a) investigate allegations of wrongdoing against the Company and/or its principals by parties that advanced funds to the Company in respect of mortgage investments (the “Investors”); and
 - b) take possession and control of the Property in order to maximize recoveries for the Investors and the Company’s other creditors.
4. Pursuant to paragraph 25 of the Appointment Order, the Receiver was to file a report with the Court regarding its findings and recommendations in connection with a hearing that was held on April 3, 2023. A copy of the First Report to the Court dated March 31, 2023 (the “First Report”), which summarized the Receiver’s preliminary findings and views related to, among other things, the allegations of wrongdoing and potential next steps subject to funding being made available to the Receiver, is provided as Appendix “C”, without appendices.

1.1 Purposes of this Report

1. The purposes of this report (the “Report”) are to:
 - a) provide background information about this proceeding;
 - b) provide information with respect to the Receiver’s activities since the First Report;
 - c) provide this Court with information on the Receiver’s motion for:
 - i. an order (the “Ancillary Order”), among other things:
 - directing each borrower with an active mortgage registered in favour of the Company (collectively, the “Borrowers”) to pay to the Receiver (and not any other party) all principal, interest and other payments as and when due under such Borrower’s mortgage;
 - directing Shinhan Bank Canada (“Shinhan”), which the Receiver understands to have been the bank where the Company and 6807771 Canada Corp. (“680”), the Company’s sole shareholder, most recently held their accounts, to provide certain information requested by the Receiver as it relates to the Company’s accounts and those of 680;
 - directing Bank of Montreal (“BMO”), which the Receiver understands to have been the bank where the Company and possibly 680 held their accounts before they were moved to Shinhan, to: a) to provide certain information requested by the Receiver as it relates to the Company’s accounts and those of 680; and b) advise the Receiver whether account 00022/1565844 is owned or controlled by Reza Nezami-Nia, the Company’s sole named director, or one of the Company’s other principals, and if so, to provide the Receiver with account statements for the last 12 months, or such longer period as the Receiver may request;

- directing Mr. Nezami-Nia and the Company's auditor, Syed A. Raza Professional Corporation (the "Auditor"), to provide the Receiver with all non-privileged books and records in their possession related to the Company and 680;
 - directing Mr. Nezami-Nia, Patrick Dookram (the Company's former Vice President of Trading and Portfolio Management), Yana Papanyan (the Company's former Lead Underwriter) and any other parties with information relevant to this proceeding to attend for an examination, with or without counsel, if served with a Notice of Examination by the Receiver, and to provide the Receiver at such examination with any non-privileged information requested by the Receiver related in any way to the Company and/or 680;
 - directing Mr. Nezami-Nia to (i) provide any electronic devices (including any cellphone and laptop) he used in connection with the Company's business to Kroll Consulting Canada Co. ("Kroll") or another third party information technology specialist agreed upon between the Receiver and Mr. Nezami-Nia to allow for both devices to be imaged and the data (the "Data") uploaded to Relativity or another e-discovery platform acceptable to the Receiver and Mr. Nezami-Nia; and (ii) provide the Data to the Receiver, except for any correspondence with a lawyer or law firm;
 - declaring that the Investors do not have trust claims against the Company, including in respect of mortgages registered by the Company;
 - approving the fees of the Receiver and Bennett Jones LLP ("Bennett Jones"), the Receiver's counsel, as set out in Section 12; and
 - approving the Receiver's activities as set out in this Report and the First Report; and
- ii. an amended Appointment Order (the "Amended Appointment Order"), among other things:
- approving the loan agreement entered into between the Receiver and certain Investors (the "Loan Agreement") and certain related relief;
 - amending paragraph 30 of the Appointment Order to include the fees and disbursements of Marciano Beckenstein LLP ("Marciano"), counsel to one of the Investors, incurred up to March 27, 2023; and
 - granting the Receiver certain additional typical powers that were removed from the Appointment Order to limit the Receiver's initial mandate.

1.2 Restrictions

1. In preparing this Report, the Receiver has relied upon, among other things: discussions with and information provided by Mr. Nezami-Nia and his legal counsel; discussions with and information provided by Mr. Dookram; discussions with representatives of FSRA and its legal counsel; discussions with, and documents provided by, various stakeholders (including certain Investors) in this proceeding (including their legal representatives); the Company's audited financial statements for the year ended August 31, 2022 (the "Audited Statements"); information provided by Shinhan; and the Application materials (collectively, the "Information"). While the Receiver has relied on the Information and the sources of the Information for purposes of preparing this Report, the Receiver acknowledges that certain of the Information may be inaccurate in whole or in part.
2. The Receiver has not audited or otherwise attempted to verify the accuracy or completeness of the Information in a manner that complies with Canadian Auditing Standards ("CAS") pursuant to the Chartered Professional Accountants of Canada Handbook and, accordingly, the Receiver expresses no opinion or other form of assurance as contemplated under the CAS in respect of the Information. Any party wishing to place reliance on the Information should perform its own diligence and the Receiver accepts no responsibility for any reliance placed on the Information in this Report by any party.

2.0 Background

1. The Company was incorporated on September 16, 2004 under the *Canada Business Corporations Act*, R.S.C. 1985, c. C-44 and is registered under the MBLAA.
2. The Audited Statements describe the Company's business as being a "non-bank lender providing residential real estate finance and also administers mortgage [sic] on behalf of its investors".
3. The Receiver understands that the Company was a mortgage lender. The Company assessed applications for second mortgages on residential properties in Ontario and British Columbia. If the applications were approved, the Company would raise funds from one or more Investors, and in some cases advance the funds to the borrower and register a mortgage on the subject property. The Company earned an upfront fee and/or a spread on the interest charges on each of the mortgages.
4. The Company's office was located at 7191 Yonge St., Suite 911, Thornhill, Ontario (the "Office"). The Company vacated the Office following its assignment in bankruptcy with assistance from the Trustee.
5. The Receiver was advised by Mr. Nezami-Nia that the Office, which is a commercial condominium unit, is owned by a party related to Mr. Nezami-Nia. The Receiver notes that the property is owned by 10013536 Canada Corp., and that Mr. Nezami-Nia is listed as the Chief Officer or Manager of the owner of the property on such company's Ontario Profile Report.
6. The Receiver was advised that as of the date of bankruptcy, the Company employed three individuals, being Mr. Nezami-Nia, Mr. Dookram and Ms. Papanayan.

7. The application to appoint a Receiver was precipitated by complaints made to FSRA by certain Investors, including allegations that:
 - a) the Company did not make registrations on title in connection with certain funds Investors advanced for a specific mortgage;
 - b) the Company discharged mortgages Investors had funded, without their knowledge, and without such funds being paid to them; and
 - c) the Company was not current in making interest payments to Investors.
8. The Application materials reference that in the Company's 2021 Annual Information Return (which was filed on or around March 31, 2022), the Company stated that it had 34 mortgages under administration (29 in Ontario), with a total value of \$3.21 million. Based on the complaints that FSRA received as of the date of the Appointment Order, Investors had received statements from the Company which referenced an aggregate mortgage balance of approximately \$13 million (for the specific Investors that had contacted FSRA). As discussed further below, based on additional information that the Receiver has reviewed, it now understands that the Company was representing to Investors that it held an aggregate mortgage balance of at least approximately \$26 million.
9. Additional background information regarding this proceeding and the reasons that FSRA sought the appointment of the Receiver are provided in the affidavit of Cameron Clark, Investigator with FSRA, affirmed on March 15, 2023 (the "Clark Affidavit"). A copy of the Clark Affidavit and other Court materials filed in this proceeding are available on the Receiver's website (the "Receiver's Website") at: <https://www.ksvadvisory.com/experience/case/firstswiss>.

3.0 Loan Agreement

1. As referenced above, the First Report summarized the Receiver's preliminary findings regarding information provided by, among others, the Company's principals, the Auditor, Shinhan, and certain Investors, and included a list of potential next steps that could lead to recoveries for Investors subject to funding being available to the Receiver to pursue some or all of such steps.
2. The Receiver discussed the contents of the First Report and its findings with several Investors, including Dancap Private Equity Inc. ("Dancap"), the largest Investor with a balance owing of approximately \$6 million as of the date of the Appointment Order. The Receiver's discussions with Dancap led to Dancap forming an *ad hoc* committee comprised of Dancap and representatives from four other large Investors (the "Investor Advisory Committee")¹. The purpose of the Investor Advisory Committee is to, among other things, streamline communications between the Investors and the Receiver going forward. The Investor Advisory Committee was collectively owed approximately \$10.4 million as of the date of the Appointment Order.

¹ The members of the Investor Advisory Committee are Elias Toby, Lorne Rose, Cindy Smith, Jared Green and Upkar Arora.

3. Following discussions regarding actions to be taken by the Receiver for the benefit of the Investors and the Company's other creditors, and the Receiver's funding needs in that regard, the Receiver and the Investor Advisory Committee prepared the Loan Agreement. The opportunity to participate in the funding was made available to all known Investors, as described in a letter dated April 25, 2023 that the Receiver sent to each known Investor, a copy of which is provided as Appendix "D". The terms of the Loan Agreement were agreed to by the Receiver and the Investor Advisory Committee pursuant to a term sheet appended to the Receiver's letter to the Investors. The key terms are summarized below:

- **Lenders:** all Investors that advance to the Receiver their *pro rata* share of \$400,000² (the "Loan") based on the amount owed to the Investor in outstanding mortgages³ (regardless of whether the mortgages ever existed), rounded to the nearest \$1,000. All known Investors were provided the opportunity to participate.
- **Borrower:** the Receiver.
- **Interest:** 15%, compounded semi-annually, payable on the Maturity Date (as defined below).
- **Maturity Date:** the Loan matures when there are proceeds sufficient to repay the Loan, including principal and interest, at the discretion of the Receiver and the Investor Advisory Committee, or upon Court Order.
- **Security and Priority:** the obligations of the Borrower are to be secured by the Receiver's Borrowings Charge (as defined in the Appointment Order), and as set out pursuant to a Receiver's Certificate, the form of which is attached as Schedule "A" to the Loan Agreement. The obligations of the Borrower are to rank subordinate to the Receiver's Charge (as defined in the Appointment Order) and *pari passu* with the \$50,000 previously advanced to the Receiver by FSRA in accordance with the Appointment Order. A Receiver's Certificate in the aggregate of the amount of the Loan is to be issued by the Receiver to the Investor Advisory Committee on behalf of the Lenders upon Court approval of the Loan Agreement.
- **Use of Funds:** the Loan is to be used to fund the administration of the receivership proceedings from and after April 1, 2023, including the fees and disbursements of the Receiver and its counsel incurred from and after such date.

² Represents the maximum principal amount, with the minimum amount being \$250,000.

³ The outstanding mortgages were estimated to be approximately \$19.4 million based on Investors that had corresponded with the Receiver and/or Dancap. For example, if an Investor has \$100,000 of outstanding mortgages, the calculation would be as follows: $(\$100,000 / \$19,400,000) * \$400,000 = \$2,061$; rounded to the nearest \$1,000 therefore \$2,000 should be funded for \$100,000 in outstanding investments.

4. All Investors that participate in the Loan are treated equally. There are no differences in the economics for the Investor Advisory Committee or any individual Investor.
5. As at the date of this Report, the Receiver has received an aggregate of approximately \$334,000 from 30 Lenders.

3.1 Recommendation

1. The Receiver recommends that the Court approve the Loan Agreement for the following reasons:
 - a) the Loan Agreement was developed with and is supported by the Investor Advisory Committee;
 - b) the opportunity to participate in the Loan was made available to all known Investors;
 - c) the Loan will allow the Receiver to further advance this proceeding and pursue opportunities to recover proceeds for the Company's creditors;
 - d) FSRA has consented to the Loan ranking *pari passu* with its prior \$50,000 interest-free advance to the Receiver; and
 - e) the terms of the Loan are commercially reasonable, including the applicable rate of interest (15% per annum), and the Receiver does not believe that any stakeholders will be prejudiced by the approval of the Loan Agreement.

4.0 Borrowers

1. The Receiver has sent correspondence to all known Borrowers with active registrations by the Company on title to their properties (39 in total) to: a) advise them of the Receiver's appointment; and b) direct them to remit principal and interest payments to the Receiver in accordance with the Appointment Order. A form of the Receiver's correspondence sent to Borrowers is provided as Appendix "E".
2. As of the date of this Report, several Borrowers have not responded to the Receiver or remitted their interest payments when due. Borrowers that have not met their debt service obligations have been reminded of their obligations to remit payment to the Receiver and advised that the Receiver may take enforcement steps without further notice if payment is not received forthwith. A form of letter from Bennett Jones to Borrowers in this regard is provided as Appendix "F".
3. As there might be uncertainty for certain Borrowers as to who to remit principal and interest payments, the Receiver is requesting that the Court include in the Ancillary Order a direction that the Receiver is exclusively entitled to such payments.

5.0 Banking

1. The Receiver summarized its correspondence with Shinhan and BMO in the First Report. A brief update is provided below.

5.1 Shinhan

1. The Receiver understands that Shinhan was the primary bank where the Company held its accounts. The Receiver did not locate banking records in the contents removed from the Office.
2. Shinhan provided the Receiver with statements from January 1, 2020 to April 11, 2023 (the "Period") corresponding with three accounts (the "Accounts"): a broker account, which was to receive advances from Investors to fund mortgages (the "Broker Account"); an administrator account, which was to receive payments from borrowers, including monthly interest and principal when a mortgage was discharged, and to make monthly interest payments to Investors (the "Admin Account"); and a general/operating account, which was to fund the Company's payroll, office expenses and overhead (the "Operating Account").
3. As presented in the First Report, approximately \$19.7 million was deposited into the Accounts (of which \$311,000 was deposited into the Operating Account) during the Period, with approximately \$5.9 million being transferred from those accounts to another account at Shinhan ending in 6254 (the "6254 Account") held by 680. Mr. Nezami-Nia is listed as 680's sole director based on a profile search.
4. As noted in the First Report, in addition to identifying 680 as the holder of the 6254 Account, Shinhan provided the Receiver with account statements for the Period, although the Receiver did not request that it do so. Based on the Receiver's review of the 6254 Account statements, the Receiver identified numerous personal expenses, including several credit cards, private school tuition, life insurance, aviation equipment, vehicle lease payments and other payments made in the aggregate of \$3.6 million which only reference a cheque number without any corresponding detail.
5. The Receiver also reported that the source of the majority of the funding to the 6254 Account during the Period was from the Operating Account.
6. Given the significant sums transferred among the Accounts and from the Accounts to the 2654 Account, the Receiver believes that it is appropriate for the purposes of its investigation and to identify potential sources of recovery for the Company's creditors for the Court to direct 680 and Shinhan to provide additional details regarding the Accounts and the 6254 Account. The information that the Receiver requires includes statements prior to the Period, cheque images and details regarding payees and deposits.

7. The Appointment Order provides the Receiver with the power to investigate the books and records, including the Company's banking records, and to review and investigate monies flowing in and out of the Company. The purpose of these investigatory powers is to better understand any wrongdoing and to recover funds on behalf of the Company's creditors. The investigation thus far has indicated that 680 may be directly connected to significant wrongdoing. While 680 is not subject to the Appointment Order, the Receiver believes it appropriate to direct 680 and Shinhan to provide information in connection with the 6254 Account given that:
 - a) the provision of this information will assist the Receiver's investigation for the benefit of the Investors and the Company's other creditors;
 - b) 680 was the largest recipient of funds during the Period;
 - c) 680 is not arm's length to the Company – it is the Company's sole shareholder and Mr. Nezami-Nia is the sole director of both the Company and 680;
 - d) the Receiver is not aware of any legitimate reason why 680 would have received millions of dollars from the Company, and no reason has been provided to the Receiver by Mr. Nezami-Nia since the First Report;
 - e) there is urgency to investigate 680's financial position in order to determine whether it has assets to satisfy the apparent millions of dollars it likely owes to the Company; and
 - f) the Receiver believes that this direction is appropriately tailored and is connected to its investigatory powers that were already approved by this Court.

5.2 BMO

1. The Receiver was advised by Mr. Nezami-Nia and certain Investors that the Company held accounts at BMO prior to it transitioning in late 2018 to Shinhan. On March 21, 2023, the Receiver requested that BMO provide it with all information related to those accounts (the "BMO Accounts"), including historical statements. BMO responded that it needed to retrieve records from its archives. As of the date of this Report, the Receiver has not been provided with such information.
2. The Receiver was also advised by an Investor that it received an interest payment in January 2023 which the Investor's bank traced to an account at BMO under the name "Swiss Mortgage Corp", referenced as 00022/1565844 (the "5844 Account"). The Receiver requested that BMO provide information related to this account. BMO responded that "Account mentioned below do not belong to First Swiss Mortgage Corp. Unable to provide more details". The Receiver's counsel ran corporate searches for the name "Swiss Mortgage Corp", but was not able to identify any existing company.
3. Similar to the direction that the Receiver recommends be made to 680 and Shinhan, in order to assist with the Receiver's ongoing investigation, the Receiver believes it is appropriate to direct BMO to provide all available information to the Receiver regarding the BMO Accounts (including accounts held by the Company and 680) and also to identify the holder of the 5844 Account. If the holder of the 5844 Account is owned or controlled by Mr. Nezami-Nia or any other principal of the Company or their relatives, the Receiver requests that BMO also be directed to provide account statements for the last 12 months (or such longer period of time as the Receiver may request) in respect of such account.

6.0 Examinations

1. As noted in the First Report, the Receiver separately interviewed Mr. Nezami-Nia and Mr. Dookram on March 20 and 21, 2023, respectively, with respect to the Company's operations and the Investors' allegations. Those interviews were summarized in Section 3 of the First Report.
2. The Receiver requested that Ms. Papanyan attend at its offices for an interview but Ms. Papanyan advised that she required counsel to represent her, she could not afford to retain counsel, she did not qualify for legal aid, and that she would therefore only meet with the Receiver if the Receiver paid for her legal counsel.
3. The Receiver has obtained significant additional information since it interviewed Mr. Nezami-Nia and Mr. Dookram, including the banking information referenced above and documents from Investors regarding the mortgage statements issued by the Company.
4. Given the significant discrepancy between the active mortgage registrations held by the Company as of the date of the Appointment Order compared to the value of the mortgages that the Company had been reporting, as well as the inconsistencies related to the information provided by Mr. Nezami-Nia compared to that provided by Mr. Dookram, the Receiver considers it appropriate for it to examine parties under oath.
5. Pursuant to the Appointment Order, the Receiver was given the power to examine any person under oath who has knowledge of the business and affairs of the Company. In connection with these powers, the Receiver now recommends that, as part of the Ancillary Order, the Court direct Mr. Nezami-Nia, Mr. Dookram, Ms. Papanyan and any other party that the Receiver considers relevant to the investigation to attend for an examination, regardless of whether they are represented by counsel, upon the Receiver serving such party with a Notice of Examination. The Receiver further recommends that, for the same reasons as those set out in Section 5.1 above, the Order direct such parties to provide all non-privileged information in their possession or control on the Company, 680 and any other recipient of payments by the Company.

7.0 Books and Records of 680

1. As set out above, the Company transferred significant funds to 680 without any apparent justification. Accordingly, the Receiver believes it is appropriate for this Court to direct Mr. Nezami-Nia and the Auditor to provide the Receiver with all of the non-privileged books and records related to 680 in their possession or control, including but not limited to all financial statements and tax returns.
2. The Receiver is of the view that the provision of this information from 680 will assist with its investigation for the benefit of the Company's creditors, and that this request is not overly broad, as it relates only to a specific company directed by Mr. Nezami-Nia that received significant funds from the Company prior to this proceeding.

8.0 Imaging of Mr. Nezami-Nia's Electronic Devices

1. Upon the Receiver's appointment, Bennett Jones advised Karrass Law, counsel to Mr. Nezami-Nia ("Karrass") that the Receiver would like to image the laptop and mobile phone used by Mr. Nezami-Nia (the "Devices"). Karrass indicated that Mr. Nezami-Nia was prepared to image the Devices but was concerned that their contents may contain privileged information. Bennett Jones suggested on March 22, 2023, that a third-party firm image the Devices and hold the images in trust pending further order of the Court. Karrass agreed with the suggestion. The Receiver understands that the laptop has been imaged, but the mobile phone has not. Karrass reviewed the mobile phone data and provided certain limited information to the Receiver. The email exchange between Karrass and Bennett Jones is attached as Appendix "G".
2. On May 9, 2023, Bennett Jones followed-up with Karrass to advise that the Receiver wanted access to the data on both of the Devices, subject to maintaining any applicable privilege. Bennett Jones suggested that Mr. Nezami-Nia provide the Devices to Kroll, which could run searches to ensure that any communications between legal counsel and Mr. Nezami-Nia would not be provided to the Receiver. Karrass responded that Mr. Nezami-Nia is not required to produce information that may be privileged and asserted that the Receiver and Kroll had a "business relationship" such that it would be inappropriate to provide Kroll with the opportunity to access the Devices. Bennett Jones suggested that Karrass provide the name of an alternative third-party firm and asked whether there was any issue with the process proposed, to which no response has been received to date. The May 9th email exchange is attached as Appendix "H".
3. The Appointment Order required all persons to advise the Receiver of the existence of any books, documents or other records related to the business or affairs of the Company in the Person's possession or control, and to provide the Receiver with access to that information (subject to privilege). As the principal of the Company, it is reasonable to believe that Mr. Nezami-Nia has information that would assist the Receiver understand the wrongdoing and potentially recover funds for Investors. Mr. Nezami-Nia would be minimally prejudiced given that a third-party would review the images and filter out any privileged information before providing same to the Receiver. The Receiver therefore believes that the process for imaging the Devices and any other electronic devices used in connection with the business is fair and reasonable in the circumstances.

9.0 Mortgage Administration

1. As referenced above, the Company reported to FSRA in its 2021 Annual Information Return (which was filed on or around March 31, 2022), that it had 34 mortgages under administration (29 in Ontario), with a total value of \$3.21 million. The Company also reported in the Audited Statements a \$1.9 million balance in "principle [sic] due from borrowers" as of August 31, 2022.

2. The mortgage balances that the Company reported to FSRA and in its Audited Statements are inconsistent with what it reported to the Investors based on the following information provided to the Receiver:
 - a) Mr. Dookram provided an Excel spreadsheet with tabs corresponding with monthly mortgage balance reconciliations that included amounts owing to each Investor from April 2011 to February 2023 (the “Mortgage Schedule”). The tab for February 2023 reflected a total mortgage balance of \$26.3 million. The rows on each schedule were also colour coded for each investment made by an Investor to identify, among other things: a) mortgages that were discharged without the proceeds being repaid to the Investor; b) mortgages with current registrations; and c) funds advanced by an Investor which were not loaned to a borrower; and
 - b) Monthly account statements issued by the Company to each Investor which appear to correspond with the balance reflected in the Mortgage Schedule⁴.
3. Based on the Receiver’s review of the Mortgage Schedule, the Company’s mortgage documentation and the transactions in the Accounts as detailed in Sections 5 and 6 of the First Report, the Receiver remains of the view that the Company did not operate the Accounts or manage funds it received in a way that would meet any characteristics or legal requirements of a trust. The Receiver’s reasons, as detailed in the First Report, include:
 - a) certain Investors have no mortgages registered on title on the investments they funded while other Investors have up to all of their investments presently reflected as being active mortgages. There does not appear to be any consistency or rationale for the percentage of actual mortgages any Investor holds;
 - b) the Investors who would stand to benefit from trust principles were not more diligent than the other Investors; they were simply the relatively lucky ones for whom the funds provided to the Company were appropriately used;
 - c) certain funds advanced by Investors were never advanced to a borrower. Similarly, various funds that were repaid to the Company when a mortgage was repaid were not provided to the Investor that funded the mortgage;
 - d) the Accounts were not used in a manner that would be consistent with a trust. The Receiver traced several situations where funds were advanced by an Investor to the Broker Account for a mortgage to be placed with such funds instead being used either to pay monthly interest to Investors from the Admin Account or to pay expenses or make transfers from the Operating Account. Funds were also transferred frequently between the Accounts; and
 - e) to the extent the strict rules of a trust did exist – which was certainly not the case in many circumstances – the Receiver is aware of case law providing that the application of strict legal rules has been set aside in favour of rateable sharing in certain circumstances, including the existence of a Ponzi scheme.

⁴ The Receiver is continuing to obtain copies of such account statements.

4. The Receiver recommends that, as part of the Ancillary Order, this Court declare that the proceeds from mortgages registered by the Company do not constitute trust funds and are not impressed with a trust. In the Receiver's view, such a declaration will provide clarity to the Investors and ensure that they are treated equally when funds become available for distribution to creditors. Additionally, such funds should be used to advance the Receiver's investigation and recovery efforts rather than being set aside for a later date.

9.1 Borrower Repayment

1. In Section 6.2 of the First Report, the Receiver reported that one of the Borrowers advised the Receiver that it intended to imminently refinance its mortgage and would pay the balance owing to the Company. The Receiver further noted that it had agreed on a without prejudice basis with counsel to the Investor related to this property that it would consent to the mortgage being discharged and the funds being held in trust subject to agreement between the Receiver and the Investor or further Order of the Court.
2. Prior to the receivership proceeding, counsel to the Investor in respect of this property, Marciano, registered a caution on the property. The Borrower associated with the mortgage referenced above repaid the balance owing of approximately \$223,000 on April 18, 2023. The funds are presently being held in trust with Marciano.
3. The Receiver and Marciano have agreed that, subject to Court approval, given Marciano's efforts in ensuring these funds were preserved prior to the receivership, it would be appropriate for the fees incurred by Marciano up to March 27, 2023 to be treated the same way as the legal fees incurred by other Investors that resulted in the Appointment Order being made. This treatment was set out in paragraph 30 of the Appointment Order as follows "the Applicant and any other parties who contributed evidence in support of this Order shall have their costs of this application, up to and including entry and service of this Order, on a substantial indemnity basis, to be paid by the Receiver from the Debtor's estate with such priority and at such time as this Court may determine".
4. The Receiver has discussed this agreement with Dancap and understands that the Investor Advisory Committee supports this relief. Accordingly, the Receiver recommends that the Court amend the Appointment Order such that it includes Marciano's fees until March 27, 2023 in the approximate amount of \$35,000 in the scope of paragraph 30.

10.0 Expansion of the Receiver's Powers

1. At the time the Receiver was appointed, its primary mandate was to conduct an initial investigation, and the Appointment Order was therefore tailored to only provide the Receiver with powers necessary for this purpose. Now that the Receiver has had time to investigate and has a credible path forward for funding, it is appropriate to expand the Receiver's powers. As these proceedings progress, it may be appropriate for the Receiver to take steps to monetize the mortgages held by the Company. Further, it may be necessary for the Receiver to commence actions on behalf of the Company. As such, the Receiver believes it is appropriate to amend the Appointment Order to include the following powers, each of which are found in the Commercial List's Model Receiver Appointment Order:
 - a) to settle, extend or compromise any indebtedness owing to the Company;

- b) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Company, the Property or the Receiver, and to settle or compromise any such proceedings;
 - c) to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate;
 - d) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business; and
 - e) to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property.
2. As discussed above, these powers are routinely granted to receivers by this Court and the Receiver does not believe that this expansion of power will prejudice any stakeholder.

11.0 Receiver's Activities

1. In addition to the activities described above, the Receiver's activities have included, among other things, the following:
- a) corresponding with FSRA and its counsel, Chaitons LLP, and Bennett Jones regarding this proceeding;
 - b) reviewing an order from FSRA revoking the Company's mortgage license;
 - c) reviewing a notice by FSRA to the Company's insurer regarding a potential claim under the Company's errors & omissions insurance policy;
 - d) reviewing certain of the Company's books and records;
 - e) corresponding extensively with Investors regarding, among other things, the balances owing to them and the Loan Agreement;
 - f) performing property and corporate searches;
 - g) meeting with Mr. Dookram to discuss the Mortgage Schedule and other Company records;
 - h) corresponding and speaking with the Company's former bookkeeper and performing a preliminary review of the Company's internal accounting records;
 - i) updating Toronto Police Services regarding the Investor complaints, the Receiver's findings and the information in the Mortgage Schedule;
 - j) providing regular updates to Dancap and the Investor Advisory Committee;
 - k) considering potential steps to increase recoveries for the Investors and the Company's creditors, and taking certain initial steps in connection therewith;

- l) corresponding with a realtor regarding an abandoned property in a state of neglect subject to a first mortgage registered by the Company to understand the condition of the property and considerations to list it for sale⁵;
- m) continuing to deal with Shinhan and BMO regarding the Company's accounts;
- n) drafting the First Report; and
- o) drafting this Report.

12.0 Professional Fees

1. The fees of the Receiver and Bennett Jones from the commencement of this proceeding to April 30, 2023 total \$126,766 and \$141,292, respectively, excluding disbursements and HST. Fee affidavits and accompanying invoices for the Receiver and Bennett Jones are provided as Appendices "I" and "J", respectively.
2. The activities of the Receiver are detailed in the Receiver's invoices, in this Report and in the First Report.
3. The average hourly rate for the Receiver and Bennett Jones for the referenced billing period was \$518 and \$685, respectively.
4. The Receiver is of the view that Bennett Jones' hourly rates are consistent with the rates charged by other law firms practising in the area of restructuring and insolvency in the Toronto market, and that its fees are reasonable and appropriate in the circumstances.

13.0 Conclusion and Recommendation

1. Based on the foregoing, the Receiver respectfully recommends that this Court make the orders granting the relief set out in Section 1.1(1)(c) of this Report.

* * *

All of which is respectfully submitted,

KSV Restructuring Inc.

**KSV RESTRUCTURING INC.,
SOLELY IN ITS CAPACITY AS RECEIVER OF
FIRST SWISS MORTGAGE CORP.
AND NOT IN ITS PERSONAL OR IN ANY OTHER CAPACITY**

⁵ The Company claimed that it owned this property on its Statement of Affairs sworn in the bankruptcy proceeding. According to the Property Identification Numbers, the Company has a mortgage against the property; it does not own the property.

Appendix “E”

First Swiss Mortgage Portfolio Summary (as of 06/06/24)

Legend	Description	# Mortgages	# Investors	Number of Unique Investors*	(\$; unaudited)
Active Mortgage Portfolio					
A	Active mortgage pool (excluding property in Rockland, Ottawa area; Legend B)	8	9		512,296
B	Rockland, Ottawa property - active mortgage	1	6		673,960
C	Mortgages fully or partially repaid to Receiver since March 15, 2023.	20	23		1,736,340
D	Duplicates - active mortgages (1 of 2 or 1 of 3)	1	1		100,988
E	Duplicates - mortgages fully or partially repaid to Receiver since March 15, 2023 (1 of 2 or 1 of 3)	1	1		124,990
F	Defaulted mortgages, no recovery (borrower sold house for price below the first mortgage)	1	1		164,985
G	Total Active Mortgages	32	41		3,313,559
Other Mortgages					
H	Mortgages discharged - funds never returned to the investor	225	276		16,934,305
I	Investor funds received but never registered or advanced to a borrower	50	61		5,024,210
J	Duplicates - not active mortgage**	0	10		562,005
K	Duplicates - active mortgages fully or partially repaid to Receiver since March 15, 2023 (2 of 2 & 2 or 3 of 3)	0	1		109,990
L	Duplicates - active mortgages (2 of 2 or 2 & 3 of 3)	0	2		251,976
M	Total Other Mortgages	275	350		22,882,486
N	Total of All Mortgages	307	391	88	26,196,045

*Number of Unique Investors is only provided for the entire portfolio and not each category given that many investors funded mortgages that fell into more than one category.

**Duplicates that were either mortgages discharged but the funds were never returned to the investor, or investor funds were received, but never registered or advanced to a borrower.

*** The sum of C + E represents the total principle repayments to the Receiver (\$1,861,330, before interest).

Appendix “F”



Status: **Sold**
 Dist/Neigh: **607- Clarence-Rockland Twp**
 Municipality: **Clarence-Rockland**
 Neigh Name: **Rockland**
 Site Area:
 Lot Size: **324.53 ' x ' Irregular**
 Zoning:
 Zoning Desc: **CH-Hwy Commercial**
 Ind Type:
 Occupancy: **Vacant**
 Title: **Freehold**
 Possession: **TBD**

List Price: **\$599,900.00**
 Lease Rate:
 Trans Type: **Sale**
 Sub Type: **Commercial Land**
 Lease Type:
 Fronting: **South**
 # Acres: **1.500**
 Bldg Sqft:
 Total Sqft:

Legal: **PT LT 18 CON 1 OS CLARENCE AS IN RR166835; CLARENCE-ROCKLAND PIN 690560028, ROLL#031601602117900. See attachment for full legal desc.**

Directions/Remarks

Directions: **Head east on Hwy 17 from Ottawa. Property on right side of highway on east side of Rockland.**

Public Remarks: **1.5 acre prime commercial lot located in the diverse & thriving community of Rockland, just 30 minutes east of Ottawa on a highly visible corner of the Highway 17 corridor. Within 90 minutes to Montreal. This prime location is ready for you to bring your vision and business ideas! Highway Commercial (CH) zoning permits a multitude of opportunities including; retail, service commercial uses such as a bar, restaurant, veterinary clinic, entertainment, rental establishment, employment uses, institutional, motor vehicle uses...just to name a few. With a rapidly growing population & new residential developments already under way in the area, this parcel of land offers an incredible opportunity for serious investors & developers who want to get in early before prices skyrocket! Property is being sold for land value only. 24 hr irrevocable on all offers.**

General/Industrial/Warehouse

NOI:	Ann Gross Inc:	Op Cost/Yr:	Oth Cost Yr:
Year Built:	Unit of Measure:	Master Record:	
RentSqft:	OfficeSqft:	Warehs Sqft:	Retail Sqft:
UsableSqft:	OtherSqft:	VacSqft:	Sign:
Tenancy:	Parking:	Add Cost:	Esc/Yr%:
Power:	Ceiling Height:	Loading:	
Lease Option:	Existing Improv:		
Ten Inducements:			
Fire Retrofit:	Enviro Assess: ESA Report Phase 2	Fire Protection:	
Management Co:		Manage Phone:	

Apartment/MultiFamily

#Stores:	Tot # Units:	# Bach Units:	1 Bedrm Units:	2 Bedrm Units:	3 Bedrm Units:
#Oth Units:	Tot # Park:	# Surf Park:	# Under Park:	# Deck Park:	# Elevators:
Rooming Lic:					
Management:	Supply:	Rental Inc:	Vac Loss:		
Prop Taxes: \$10,554	Advertising:	Parking Inc:	ADS:		
Insurance:	Security:	Other Inc:	Cash Flow:		
Water/Sewage:	Lawn/Snow:		Vacancy %:		
Heat:	Elevators:				
Hydro:	Maintenance:	Annual Gross Income:			
Cable TV:	Wage:	Total Expenses (TOE):			
Garbage:	Other:	Gross Operating Income:			
Legal:		Net Operating Income:			

Business

Bus Type:	Hosp Type:	Name:
#FT/PT:	# of Parking:	Rent Details:
Lease Exp:	Lease Option:	
Bus Taxes/Year:	Gross Sales/Yr:	Hrs of Op:
Inventory:		Size Prem:

Land

Serv:	Pot Use:
Exist Improv:	# Acres: 1.500

Other Information

Taxes/Yr: \$10,554.00/2023	Assmt/Yr:	Survey/Yr:
Lease:		
Multimedia URL: https://checkitout.bethandandrew.ca/8457CountyRd17		
Alt Feature Sheet: https://checkitout.bethandandrew.ca/8457CountyRd17		
Addl Images URL: https://www.myvisuallistings.com/vt/343340		

Office Information

List Office #1: **ROYAL LEPAGE TEAM REALTY, Brokerage**

Conditional/Sold/Other Information

FD:	PR:	CD:
DOM: 167	SD: 2024-05-22	SP: \$565,000.00
SRD: 2024-05-22		

Appendix “G”

Property Report



8457 COUNTY RD 17 RD

June 2024

Prepared for :
KSV Restructuring Inc.

The First 30 Days

8457 County Road 17 Rd. was listed on our local Agent MLS portal on **December 7, 2023**, for **\$649,900**.



\$649,000

MLS # 1357321

8457 COUNTY RD 17 RD

Rockland, ON

K4K 1K7

In the first 14 days of being listed, the property was sent to approximately **65 potential** Buyers who had an automated search set up for properties like this, by their agent. **72** agents also emailed this property to their Buyers whom they felt the property suited based on their search criteria. The property received **512** views on Realtor.ca

Your property received a total of **16,819** views across all featured platforms through our paid advertising campaigns. An additional **15,807** views/clicks/interactions were generated from our website with **32,626** views/clicks/interactions across all website and platforms within the first 30 days of being listed.

Although the property was generating a fair amount of views, due to the moderate interest in seeing the property, and lack of a serious buyer, it was decided that a price adjustment would be best move at this time.

On January 24, 2024, the price was adjusted to \$599,900.



Post Price Adjustment



\$599,900

MLS # 1357321

8457 COUNTY RD 17 RD

Rockland, ON

K4K 1K7

In the first week after adjusting the price, the property received a total of **246** views across all featured platform through our paid advertising campaigns. An additional **2,160** views/clicks/interactions were generated from our website, totalling **2,406** views/clicks/interactions across all websites and platforms.

We received approximately 10 quite interested parties in the property between January 24 - March 10, when we received an offer on the property. Interested parties were either phone calls to the listing agent for further information, or showings scheduled to see the property. After negotiations on **March 15, 2024**, the offer of **\$565,000** was accepted and the property was marked conditionally sold. During the conditional period, we received approximately 6 additional interested parties looking for further information. Three additional very interested Buyers expressed interest in the property, but ultimately did not submit offers.

On April 26, 2024, an amendment to the agreement of purchase and sale was processed to extend the conditional due date to May 17, 2024, and the condition was changed to a first refusal, so that the Seller could continue to offer the property for sale, and could entertain other offers. If another satisfactory offer was accepted, the Seller could provide notice to the first buyer to remove their condition, or let the property go to a subsequent buyer.

On May 17, 2024, an amendment to the agreement of purchase and sale was processed to extend the conditional due date to May 22, 2024, maintaining it as a first refusal, as there were other interested parties sitting in the sidelines.

On May 22, 2024, an amendment to the agreement of purchase and sale was processed removing the condition and updating the closing date to August 3, 2024, making the purchase a firm deal. On May 23, 2024 a final amendment to the agreement of purchase and sale was processed updating the closing date to August 6, 2024.





BethBonvie
Broker
613.762.1048

8457 County Rd 17
Rockland, Ontario
June 2024

Prepared for :
KSV Restructuring Inc.

Appendix “H”



Agreement of Purchase and Sale Commercial

Form 500

for use in the Province of Ontario

This Agreement of Purchase and Sale dated this 10 day of March, 2024

BUYER: Zayoun Group Inc
(Full legal names of all Buyers), agrees to purchase from

SELLER: KSV Restructuring Inc., Court-appointed Receiver of First Swiss Mortgage Corp
(Full legal names of all Sellers), the following

REAL PROPERTY:

Address 8457 COUNTY RD 17 Road

fronting on the South side of County Road 17

in the Township of Clarence-Rockland

and having a frontage of see schedule A more or less by a depth of see schedule A more or less

and legally described as see schedule A

(Legal description of land including easements not described elsewhere) MV (the "property")

PURCHASE PRICE: and fifty Eighty Five Sixty-Five Five Hundred Thousand Dollars (CDN\$) \$565,000.00
~~\$585,000~~ ~~\$550,000.00~~ ~~500,000.00~~

DEPOSIT: Buyer submits Twenty Thousand Dollars (CDN\$) 20,000.00
~~Five Thousand~~ ~~5,000.00~~
(Herewith/Upon Acceptance/as otherwise described in this Agreement)

by negotiable cheque payable to Royal Lepage Team Realty "Deposit Holder"
to be held in trust pending completion or other termination of this Agreement and to be credited toward the Purchase Price on completion. For the purposes of this Agreement, "Upon Acceptance" shall mean that the Buyer is required to deliver the deposit to the Deposit Holder within 24 hours of the acceptance of this Agreement. The parties to this Agreement hereby acknowledge that, unless otherwise provided for in this Agreement, the Deposit Holder shall place the deposit in trust in the Deposit Holder's non-interest bearing Real Estate Trust Account and no interest shall be earned, received or paid on the deposit.

Buyer agrees to pay the balance as more particularly set out in Schedule A attached.

SCHEDULE(S) A B BUYER seller buyer attached hereto form(s) part of this Agreement.

1. IRREVOCABILITY: This offer shall be irrevocable by seller buyer until 7:59 pm on 11 15th day of March, 2024, after which time, if not accepted, this offer shall be null and void and the deposit shall be returned to the Buyer in full without interest.

2. COMPLETION DATE: This Agreement shall be completed by no later than 6:00 p.m. on the 11 day of June, 2024 Upon completion, vacant possession of the property shall be given to the Buyer unless otherwise provided for in this Agreement. See Schedule B

INITIALS OF BUYER(S): CZ

INITIALS OF SELLER(S): MV

3. NOTICES: The Seller hereby appoints the Listing Brokerage as agent for the Seller for the purpose of giving and receiving notices pursuant to this Agreement. Where a Brokerage (Buyer's Brokerage) has entered into a representation agreement with the Buyer, the Buyer hereby appoints the Buyer's Brokerage as agent for the purpose of giving and receiving notices pursuant to this Agreement. **The Brokerage shall not be appointed or authorized to be agent for either the Buyer or the Seller for the purpose of giving and receiving notices where the Brokerage represents both the Seller and the Buyer (multiple representation) or where the Buyer or the Seller is a self-represented party.** Any notice relating hereto or provided for herein shall be in writing. In addition to any provision contained herein and in any Schedule hereto, this offer, any counter-offer, notice of acceptance thereof or any notice to be given or received pursuant to this Agreement or any Schedule hereto (any of them, "Document") shall be deemed given and received when delivered personally or hand delivered to the Address for Service provided in the Acknowledgement below, or where a facsimile number or email address is provided herein, when transmitted electronically to that facsimile number or email address, respectively, in which case, the signature(s) of the party (parties) shall be deemed to be original.

FAX No.:
(For delivery of Documents to Seller)

FAX No.:
(For delivery of Documents to Buyer)

Email Address: **beth@bethandandrew.ca**
(For delivery of Documents to Seller)

Email Address: **greg@bennettpros.com**
(For delivery of Documents to Buyer)

4. CHATELS INCLUDED:
none

Unless otherwise stated in this Agreement or any Schedule hereto, Seller agrees to convey all fixtures and chattels included in the Purchase Price free from all liens, encumbrances or claims affecting the said fixtures and chattels.

5. FIXTURES EXCLUDED:
none

6. RENTAL ITEMS (Including Lease, Lease to Own): The following equipment is rented and **not** included in the Purchase Price. The Buyer agrees to assume the rental contract(s), if assumable:
none

The Buyer agrees to co-operate and execute such documentation as may be required to facilitate such assumption.

7. HST: If the sale of the property (Real Property as described above) is subject to Harmonized Sales Tax (HST), then such tax shall be in addition to the Purchase Price. The Seller will not collect HST if the Buyer provides to the Seller a warranty that the Buyer is registered under the Excise Tax Act ("ETA"), together with a copy of the Buyer's ETA registration, a warranty that the Buyer shall self-assess and remit the HST payable and file the prescribed form and shall indemnify the Seller in respect of any HST payable. The foregoing warranties shall not merge but shall survive the completion of the transaction. If the sale of the property is not subject to HST, Seller agrees to certify on or before closing, that the transaction is not subject to HST. Any HST on chattels, if applicable, is not included in the Purchase Price.

INITIALS OF BUYER(S):



INITIALS OF SELLER(S):





PL MV 12

April

~~May~~

2024

8. TITLE SEARCH: Buyer shall be allowed until 6:00 p.m. on the ~~30~~ day of ~~May~~, 2024, (Requisition Date) to examine the title to the property at his own expense and until the earlier of: (i) thirty days from the later of the Requisition Date or the date on which the conditions in this Agreement are fulfilled or otherwise waived or; (ii) five days prior to completion, to satisfy himself that there

are no outstanding work orders or deficiency notices affecting the property, that its present use (vacant land) may be lawfully continued and that the principal building may be insured against risk of fire. Seller hereby consents to the municipality or other governmental agencies releasing to Buyer details of all outstanding work orders and deficiency notices affecting the property, and Seller agrees to execute and deliver such further authorizations in this regard as Buyer may reasonably require.

9. FUTURE USE: Seller and Buyer agree that there is no representation or warranty of any kind that the future intended use of the property by Buyer is or will be lawful except as may be specifically provided for in this Agreement.

10. TITLE: Provided that the title to the property is good and free from all registered restrictions, charges, liens, and encumbrances except as otherwise specifically provided in this Agreement and save and except for (a) any registered restrictions or covenants that run with the land providing that such are complied with; (b) any registered municipal agreements and registered agreements with publicly regulated utilities providing such have been complied with, or security has been posted to ensure compliance and completion, as evidenced by a letter from the relevant municipality or regulated utility; (c) any minor easements for the supply of domestic utility or telecommunication services to the property or adjacent properties; and (d) any easements for drainage, storm or sanitary sewers, public utility lines, telecommunication lines, cable television lines or other services which do not materially affect the use of the property. If within the specified times referred to in paragraph 8 any valid objection to title or to any outstanding work order or deficiency notice, or to the fact the said present use may not lawfully be continued, or that the principal building may not be insured against risk of fire is made in writing to Seller and which Seller is unable or unwilling to remove, remedy or satisfy or obtain insurance save and except against risk of fire (Title Insurance) in favour of the Buyer and any mortgagee, (with all related costs at the expense of the Seller), and which Buyer will not waive, this Agreement notwithstanding any intermediate acts or negotiations in respect of such objections, shall be at an end and all monies paid shall be returned without interest or deduction and Seller, Listing Brokerage and Co-operating Brokerage shall not be liable for any costs or damages. Save as to any valid objection so made by such day and except for any objection going to the root of the title, Buyer shall be conclusively deemed to have accepted Seller's title to the property.

11. CLOSING ARRANGEMENTS: Where each of the Seller and Buyer retain a lawyer to complete the Agreement of Purchase and Sale of the property, and where the transaction will be completed by electronic registration pursuant to Part III of the Land Registration Reform Act, R.S.O. 1990, Chapter L4 and the Electronic Registration Act, S.O. 1991, Chapter 44, and any amendments thereto, the Seller and Buyer acknowledge and agree that the exchange of closing funds, non-registrable documents and other items (the "Requisite Deliveries") and the release thereof to the Seller and Buyer will (a) not occur at the same time as the registration of the transfer/deed (and any other documents intended to be registered in connection with the completion of this transaction) and (b) be subject to conditions whereby the lawyer(s) receiving any of the Requisite Deliveries will be required to hold same in trust and not release same except in accordance with the terms of a document registration agreement between the said lawyers. The Seller and Buyer irrevocably instruct the said lawyers to be bound by the document registration agreement which is recommended from time to time by the Law Society of Ontario. Unless otherwise agreed to by the lawyers, such exchange of Requisite Deliveries shall occur by the delivery of the Requisite Deliveries of each party to the office of the lawyer for the other party or such other location agreeable to both lawyers.

12. DOCUMENTS AND DISCHARGE: Buyer shall not call for the production of any title deed, abstract, survey or other evidence of title to the property except such as are in the possession or control of Seller. If requested by Buyer, Seller will deliver any sketch or survey of the property within Seller's control to Buyer as soon as possible and prior to the Requisition Date. If a discharge of any Charge/Mortgage held by a corporation incorporated pursuant to the Trust And Loan Companies Act (Canada), Chartered Bank, Trust Company, Credit Union, Caisse Populaire or Insurance Company and which is not to be assumed by Buyer on completion, is not available in registrable form on completion, Buyer agrees to accept Seller's lawyer's personal undertaking to obtain, out of the closing funds, a discharge in registrable form and to register same, or cause same to be registered, on title within a reasonable period of time after completion, provided that on or before completion Seller shall provide to Buyer a mortgage statement prepared by the mortgagee setting out the balance required to obtain the discharge, and, where a real-time electronic cleared funds transfer system is not being used, a direction executed by Seller directing payment to the mortgagee of the amount required to obtain the discharge out of the balance due on completion.

13. INSPECTION: Buyer acknowledges having had the opportunity to inspect the property and understands that upon acceptance of this offer there shall be a binding agreement of purchase and sale between Buyer and Seller.

14. INSURANCE: All buildings on the property and all other things being purchased shall be and remain until completion at the risk of Seller. Pending completion, Seller shall hold all insurance policies, if any, and the proceeds thereof in trust for the parties as their interests may appear and in the event of substantial damage, Buyer may either terminate this Agreement and have all monies paid returned without interest or deduction or else take the proceeds of any insurance and complete the purchase. No insurance shall be transferred on completion. If Seller is taking back a Charge/Mortgage, or Buyer is assuming a Charge/Mortgage, Buyer shall supply Seller with reasonable evidence of adequate insurance to protect Seller's or other mortgagee's interest on completion.

INITIALS OF BUYER(S):

PL

INITIALS OF SELLER(S):

MV

- 15. PLANNING ACT:** This Agreement shall be effective to create an interest in the property only if Seller complies with the subdivision control provisions of the Planning Act by completion and Seller covenants to proceed diligently at his expense to obtain any necessary consent by completion.
- 16. DOCUMENT PREPARATION:** The Transfer/Deed shall, save for the Land Transfer Tax Affidavit, be prepared in registrable form at the expense of Seller, and any Charge/Mortgage to be given back by the Buyer to Seller at the expense of the Buyer. If requested by Buyer, Seller covenants that the Transfer/Deed to be delivered on completion shall contain the statements contemplated by Section 50(22) of the Planning Act, R.S.O.1990.
- 17. RESIDENCY:** (a) Subject to (b) below, the Seller represents and warrants that the Seller is not and on completion will not be a non-resident under the non-residency provisions of the Income Tax Act which representation and warranty shall survive and not merge upon the completion of this transaction and the Seller shall deliver to the Buyer a statutory declaration that Seller is not then a non-resident of Canada;
(b) provided that if the Seller is a non-resident under the non-residency provisions of the Income Tax Act, the Buyer shall be credited towards the Purchase Price with the amount, if any, necessary for Buyer to pay to the Minister of National Revenue to satisfy Buyer's liability in respect of tax payable by Seller under the non-residency provisions of the Income Tax Act by reason of this sale. Buyer shall not claim such credit if Seller delivers on completion the prescribed certificate.
- 18. ADJUSTMENTS:** Any rents, mortgage interest, realty taxes including local improvement rates and unmetered public or private utility charges and unmetered cost of fuel, as applicable, shall be apportioned and allowed to the day of completion, the day of completion itself to be apportioned to Buyer.
- 19. TIME LIMITS:** Time shall in all respects be of the essence hereof provided that the time for doing or completing of any matter provided for herein may be extended or abridged by an agreement in writing signed by Seller and Buyer or by their respective lawyers who may be specifically authorized in that regard.
- 20. PROPERTY ASSESSMENT:** The Buyer and Seller hereby acknowledge that the Province of Ontario has implemented current value assessment and properties may be re-assessed on an annual basis. The Buyer and Seller agree that no claim will be made against the Buyer or Seller, or any Brokerage, Broker or Salesperson, for any changes in property tax as a result of a re-assessment of the property, save and except any property taxes that accrued prior to the completion of this transaction.
- 21. TENDER:** Any tender of documents or money hereunder may be made upon Seller or Buyer or their respective lawyers on the day set for completion. Money shall be tendered with funds drawn on a lawyer's trust account in the form of a bank draft, certified cheque or wire transfer using the Lynx high value payment system as set out and prescribed by the *Canadian Payments Act (R.S.C., 1985, c. C-21)*, as amended from time to time.
- 22. FAMILY LAW ACT:** Seller warrants that spousal consent is not necessary to this transaction under the provisions of the Family Law Act, R.S.O.1990 unless the spouse of the Seller has executed the consent hereinafter provided.
- ~~**23. UFFI:** Seller represents and warrants to Buyer that during the time Seller has owned the property, Seller has not caused any building on the property to be insulated with insulation containing urea formaldehyde, and that to the best of Seller's knowledge no building on the property contains or has ever contained insulation that contains urea formaldehyde. This warranty shall survive and not merge on the completion of this transaction, and if the building is part of a multiple unit building, this warranty shall only apply to that part of the building which is the subject of this transaction.~~
- 24. LEGAL, ACCOUNTING AND ENVIRONMENTAL ADVICE:** The parties acknowledge that any information provided by the brokerage is not legal, tax or environmental advice, and that it has been recommended that the parties obtain independent professional advice prior to signing this document.
- 25. CONSUMER REPORTS:** The Buyer is hereby notified that a consumer report containing credit and/or personal information may be referred to in connection with this transaction.
- 26. AGREEMENT IN WRITING:** If there is conflict or discrepancy between any provision added to this Agreement (including any Schedule attached hereto) and any provision in the standard pre-set portion hereof, the added provision shall supersede the standard pre-set provision to the extent of such conflict or discrepancy. This Agreement including any Schedule attached hereto, shall constitute the entire Agreement between Buyer and Seller. There is no representation, warranty, collateral agreement or condition, which affects this Agreement other than as expressed herein. For the purposes of this Agreement, Seller means vendor and Buyer means purchaser. This Agreement shall be read with all changes of gender or number required by the context.
- 27. ELECTRONIC SIGNATURES:** The parties hereto consent and agree to the use of electronic signatures pursuant to the *Electronic Commerce Act, 2000, S.O. 2000, c17* as amended from time to time with respect to this Agreement and any other documents respecting this transaction.
- 28. TIME AND DATE:** Any reference to a time and date in this Agreement shall mean the time and date where the property is located.

MV



INITIALS OF BUYER(S):

INITIALS OF SELLER(S):

29. SUCCESSORS AND ASSIGNS: The heirs, executors, administrators, successors and assigns of the undersigned are bound by the terms herein. SIGNED, SEALED AND DELIVERED in the presence of: IN WITNESS whereof I have hereunto set my hand and seal:

Witness lines for Carmine Zayoun (Buyer/Authorized Signing Officer) and another witness, including dates and seals.

I, the Undersigned Seller, agree to the above offer. I hereby irrevocably instruct my lawyer to pay directly to the brokerage(s) with whom I have agreed to pay commission, the unpaid balance of the commission together with applicable Harmonized Sales Tax (and any other taxes as may hereafter be applicable), from the proceeds of the sale prior to any payment to the undersigned on completion, as advised by the brokerage(s) to my lawyer. SIGNED, SEALED AND DELIVERED in the presence of: IN WITNESS whereof I have hereunto set my hand and seal:

Witness lines for Mitch Vininsky (Seller/Authorized Signing Officer) and another witness, including date 13 March 2024 | 6:27 AM PDT and seals.

SPOUSAL CONSENT: The undersigned spouse of the Seller hereby consents to the disposition evidenced herein pursuant to the provisions of the Family Law Act, R.S.O.1990, and hereby agrees to execute all necessary or incidental documents to give full force and effect to the sale evidenced herein.

Witness lines for Spouse, including date and seal.

CONFIRMATION OF ACCEPTANCE: Notwithstanding anything contained herein to the contrary, I confirm this Agreement with all changes both typed and written was finally accepted by all parties at 12:17 PM this 03/15/24 day of 03/15/24. (a.m./p.m.)

INFORMATION ON BROKERAGE(S)
Listing Brokerage: ROYAL LEPAGE TEAM REALTY, 613-692-3567 (Tel.No.)
Beth Bonvie (Salesperson/Broker/Broker of Record Name)
Co-op/Buyer Brokerage: BENNETT PROPERTY SHOP KANATA REALTY INC, (613) 670-0169 (Tel.No.)
Gregory Blok (Salesperson/Broker/Broker of Record Name)

ACKNOWLEDGEMENT

I acknowledge receipt of my signed copy of this accepted Agreement of Purchase and Sale and I authorize the Brokerage to forward a copy to my lawyer. I acknowledge receipt of my signed copy of this accepted Agreement of Purchase and Sale and I authorize the Brokerage to forward a copy to my lawyer.
Witness lines for Mitch Vininsky (Seller) and Carmine Zayoun (Buyer), including dates and seals.

FOR OFFICE USE ONLY
COMMISSION TRUST AGREEMENT
To: Co-operating Brokerage shown on the foregoing Agreement of Purchase and Sale:
In consideration for the Co-operating Brokerage procuring the foregoing Agreement of Purchase and Sale, I hereby declare that all moneys received or receivable by me in connection with the Transaction as contemplated in the MLS® Rules and Regulations of my Real Estate Board shall be receivable and held in trust. This agreement shall constitute a Commission Trust Agreement as defined in the MLS® Rules and shall be subject to and governed by the MLS® Rules pertaining to Commission Trust.
DATED as of the date and time of the acceptance of the foregoing Agreement of Purchase and Sale.
Authorized to bind the Listing Brokerage: [Signature]
Acknowledged by: Gregory Blok, 03/10/24
Authorized to bind the Co-operating Brokerage



Schedule A Agreement of Purchase and Sale – Commercial

Form 500

for use in the Province of Ontario

This Schedule is attached to and forms part of the Agreement of Purchase and Sale between:

BUYER: Zayoun Group Inc, and

SELLER: KSV Restructuring Inc., Court-appointed Receiver of First Swiss Mortgage Corp

for the purchase and sale of 8457 COUNTY RD 17 Road Clarence-Rockland

ON K4K 1K7 dated the 10 day of March 2024

Buyer agrees to pay the balance as follows:

~~The Buyer agrees to pay the balance of the Purchase Price, subject to adjustments, to the Seller on completion of this transaction, with funds drawn on a lawyer's trust account in the form of a bank draft, certified cheque or wire transfer using the Lynx high value payment system as set out and prescribed by the Canadian Payments Act (R.S.C., 1985, c. C-21) as amended from time to time.~~

~~The Buyer shall have the right at anytime, prior to closing, to assign the within Agreement to any person, persons or corporation.~~

~~The Buyer and Seller mutually agree that the Buyer has the right to provide the deposit electronically either through e-transfer or wire and it shall be held in the manner described within said offer. It is further agreed that said deposit shall be provided within forty eight (48) hours of acceptance and receipt of the electronic deposit instructions. The Buyer understands time is of the essence and will provide the e-transfer deposit promptly.~~

~~This Offer is conditional upon the Buyer completing their due diligence, acceptable to the Buyer's, in it's sole, unfettered and absolute discretion. The Seller will provide any necessary consents or accesses required by the Buyer to satisfy this condition. The Seller agrees to deliver required information (outlined below) in their possession within five (5) business days of the acceptance of said offer. Unless the Buyer gives notice in writing delivered to the Seller personally or in accordance with any other provisions for the delivery of notice in this Agreement of Purchase and Sale or any Schedule thereto not later than 8:00 p.m. on the on May 11 2024, that this condition is fulfilled, this Offer shall be null and void and the deposit shall be returned to the Buyer in full without deduction. This condition is included for the benefit of Buyer and may be waived at the Buyer's sole option by notice in writing to the Seller as aforesaid within the time period stated herein.~~

~~The Buyer and Seller agree that the Buyer shall be permitted access and consents to the Buyer drilling test holes as necessary, on the property, as deemed necessary by the Buyer, acting reasonably, for planning and development purposes, between acceptance of this offer and final closing, with a minimum of forty-eight (48) hours written notice (email is acceptable notice), provided to the Seller's agent.~~

This form must be initialed by all parties to the Agreement of Purchase and Sale.

INITIALS OF BUYER(S):

CZ

INITIALS OF SELLER(S):

MV



Schedule A Agreement of Purchase and Sale – Commercial

Form 500

for use in the Province of Ontario

This Schedule is attached to and forms part of the Agreement of Purchase and Sale between:

BUYER: Zayoun Group Inc, and

SELLER: KSV Restructuring Inc., Court-appointed Receiver of First Swiss Mortgage Corp

for the purchase and sale of 8457 COUNTY RD 17 Road Clarence-Rockland

ON K4K 1K7 dated the 10 day of March, 2024

Buyer agrees to pay the balance as follows:

~~In addition to any other provision in this Agreement or any Schedule thereto the parties agree that any deposit to be delivered by the Buyer to the Deposit Holder may be delivered by Electronic Funds Transfer (EFT) to an account designated by the Deposit Holder. Provided further the Buyer making the EFT shall, with respect the said EFT, provide such information to the Deposit Holder as required by the Deposit Holder to comply with the requirements of the Real Estate and Business Brokers Act, 2002, as amended from time to time or to comply with other relevant statutory requirements.~~

~~It is acknowledged by the Buyer and Seller that this agreement pertains to four parcels of land, totalling approximately 1.5 acres, as outlined below:~~

~~PIN: 690560062 ROLL #: 031601602117900 PT LT 18 CON 1 OS CLARENCE PT 1, 50R8635; S/T RR176067; CLARENCE-ROCKLAND~~

MV
Authenticated
[Signature]

~~PIN: 90560028 ROLL #: 031601602117900 PT LT 18 CON 1 OS CLARENCE AS IN RR166835; CLARENCE-ROCKLAND~~

~~PIN: 690560031 ROLL #: 031601602117810 PT LT 18 CON 1 OS CLARENCE AS IN RR38118; CLARENCE-ROCKLAND~~

~~PIN: 690560033 ROLL #: 031601602117810 PT LT 18 CON 1 OS CLARENCE PT 6, 50R8635; SUBJECT TO AN EASEMENT OVER PART 1, PLAN 50R8720 AS IN RR176067; CLARENCE-ROCKLAND~~

This form must be initialed by all parties to the Agreement of Purchase and Sale.

INITIALS OF BUYER(S):

CZ

INITIALS OF SELLER(S):

MV



Schedule A Agreement of Purchase and Sale – Commercial

Form 500

for use in the Province of Ontario

This Schedule is attached to and forms part of the Agreement of Purchase and Sale between:

BUYER: Zayoun Group Inc, and

SELLER: KSV Restructuring Inc., Court-appointed Receiver of First Swiss Mortgage Corp

for the purchase and sale of 8457 COUNTY RD 17 Road Clarence-Rockland

ON K4K 1K7 dated the 10 day of March, 2024

Buyer agrees to pay the balance as follows:

~~The Buyer and Seller agree that the Buyer shall be permitted access to the property (land component only), as deemed necessary by the Buyer, acting reasonably, for planning and development purposes, between conditional sale (and deposit receipt) and final closing, with a minimum of forty-eight (48) hours written notice (email is acceptable notice), provided to the Seller's or their agent.~~

~~The Seller agrees to provide to the Buyer any further information the Buyer deems necessary, which is not propitiatory in nature; concerning construction, required for financing, planning, operations, leasing and permitting of the property within five (5) days of written notice being provided (email is acceptable).~~

MV



~~The Seller will sign all necessary documents or authorizations, within three (3) business days required by the Buyer, pertaining to, but not limited to planning, Official Plan, Official Plan amendments, zoning, site plan or other documents required by the Township of Clarence-Rockland or Province of Ontario. The Seller will also permit the Township of Clarence-Rockland (or other government bodies) to erect any necessary signage, in the Township of Clarence-Rockland (or other government bodies) sole discretion. The Buyer and Seller agree this right shall begin once the property is conditionally sold and the first deposit has been received by the deposit holder.~~

~~The seller agrees to provide, within 5 business days of acceptance - engineering, architectural drawings, city correspondences, environmental reports, surveys (in Seller's possession), leases, lease applications, tenant background studies, environmental reports, traffic and noise studies in their possession or within their reasonable access. The Buyer further agrees to provide letters of reliance if needed for the above deliverables.~~

~~The Seller and the Buyer agree and/or acknowledge that no information provided by Bennett Property Shop Realty, Brokerage and/or its Brokers and Salespersons is to be construed as expert legal, financial, tax, building condition, construction, environmental or other professional advice and that they have had the opportunity to consult with any such professional advisers prior to signing this Agreement.~~

~~Permission to Publish and Distribute Sales information:
In accordance with the Federal Privacy Act [PIPEDA], the Buyer[s] and Seller[s] consent to the publication and distribution of information pertaining to the sale of this property upon acceptance of the Agreement of Purchase and Sale. The Brokerages involved are authorized to advertise the sale price with other Realtors and the public in the promotion and conduct of their business. Such promotions shall not include the names of the Buyer[s] or Seller[s].~~

This form must be initialed by all parties to the Agreement of Purchase and Sale.

INITIALS OF BUYER(S):

INITIALS OF SELLER(S):

Appendix “I”



Court File No.

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

B E T W E E N:

KSV RESTRUCTURING INC., IN ITS CAPACITY AS THE COURT-
APPOINTED RECEIVER AND MANAGER OF ALL ASSETS,
UNDERTAKINGS AND PROPERTIES OF FIRST SWISS MORTGAGE
CORP.

Plaintiff

- and -

SYED RAZA and SYED A. RAZA PROFESSIONAL CORPORATION

Defendants

STATEMENT OF CLAIM

TO THE DEFENDANTS

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiff.
The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the *Rules of Civil Procedure*, serve it on the plaintiff's lawyer or, where the plaintiff does not have a lawyer, serve it on the plaintiff, and file it, with proof of service in this court office, WITHIN TWENTY DAYS after this statement of claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the *Rules of Civil Procedure*. This will entitle you to ten more days within which to serve and file your statement of defence.

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IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

IF YOU PAY THE PLAINTIFF'S CLAIM, and \$750 for costs, within the time for serving and filing your statement of defence you may move to have this proceeding dismissed by the Court. If you believe the amount claimed for costs is excessive, you may pay the plaintiff's claim and \$400 for costs and have the costs assessed by the Court.

TAKE NOTICE: THIS ACTION WILL AUTOMATICALLY BE DISMISSED if it has not been set down for trial or terminated by any means within five years after the action was commenced unless otherwise ordered by the court.

Date _____ Issued by _____
Local Registrar

Address of court office: Superior Court of Justice (Commercial List)
330 University Avenue, 9th Floor
Toronto ON M5G 1R7

TO: Syed Raza
250 Consumers Road
Suite 803
North York, ON
M2J 4V6

AND TO: Syed A. Raza Professional Corporation
250 Consumers Road
Suite 803
North York, ON
M2J 4V6

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CLAIM

1. The plaintiff, KSV Restructuring Inc. (**KSV**), solely in its capacity as the court-appointed receiver and manager (in such capacity, the **Receiver**) of all of the assets, undertakings, and properties of First Swiss Mortgage Corp. (**First Swiss**), claims against the defendants, Syed Raza (**Raza**) and Syed A. Raza Professional Corporation (**SRPC**, and together with Raza, the **Defendants**), on a joint and several basis, for the following relief:

- (a) general damages in the amount of \$25 million, and/or such further or other amounts as may be proven at trial, for negligence and/or breach of contract;
- (b) disgorgement of all fees, costs, disbursements and other funds paid by First Swiss to the Defendants;
- (c) a declaration that any provisions, express or implied, purporting to provide indemnity from First Swiss to any of the Defendants is inapplicable, or, in the alternative, void or voidable or, in the further alternative, unenforceable as against First Swiss and that the Defendants are not entitled to any indemnity of any kind from First Swiss;
- (d) the costs of this action on a full indemnity or other appropriate scale, plus all applicable taxes;
- (e) pre- and post-judgment interest on a compound basis at an appropriate rate; and
- (f) such further and other relief as this Honourable Court deems just.

Parties

2. First Swiss was incorporated on September 16, 2004, under the laws of Canada. At all material times, First Swiss was a licensed mortgage brokerage and mortgage administrator, which was authorized to practice as a mortgage brokerage and administrator in Ontario as well as in British Columbia. Its business was regulated by the *Mortgage Brokerages, Lenders and Administrators Act, 2006*, S.O. 2006, c. 29 (Ontario) (the **MBLAA**) and the *Mortgage Brokers Act*, RSBC 1996, c. 313 (British Columbia) (the **MBA**). First Swiss was registered with the Financial Services Regulatory Authority of Ontario (**FSRA**) (formerly the Financial Services Commission of Ontario, or FSCO) and with the British Columbia Financial Services Authority (**BCFSA**).

3. The defendant Raza is an individual ordinarily resident in Ontario. At all material times, Raza held himself out as a Chartered Professional Accountant and Licensed Public Accountant specializing in, among other things, audit engagements and business accounting.

4. The defendant SRPC is a professional corporation through which Raza practices as an accountant. SRPC is incorporated under the laws of Ontario, with its office located in Toronto, Ontario.

5. Beginning in March 2023, FSRA received a series of complaints concerning First Swiss and its representatives from certain parties that had invested in and funded residential mortgages through First Swiss. These complaints alleged, among other things, that First Swiss:

- (a) misreported the value of mortgages under its administration in FSRA filings;

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- (b) discharged mortgages represented to be held in trust for individual investors, without notice to the investors and without repayment to them;
 - (c) failed to register on title certain mortgages that investors had funded and that First Swiss represented were entered into on behalf of investors;
 - (d) failed to make interest payments to the investors when due;
 - (e) ceased operations without accounting to investors for their funds; and
 - (f) declared itself to be insolvent and delivered a bankruptcy statement of affairs that did not account for investors' funds.
6. First Swiss filed an assignment in bankruptcy on March 15, 2023.
7. Pursuant to an order of the Ontario Superior Court of Justice (Commercial List) (the **Court**) dated March 17, 2023, on application by FSRA, KSV was appointed as Receiver of First Swiss (the **Initial Appointment Order**). The Initial Appointment Order was amended and restated on May 19, 2023, pursuant to a further order of the Court (the **Amended and Restated Appointment Order**).
8. Pursuant to the Amended and Restated Appointment Order, the Receiver's mandate includes, among others, pursuing litigation claims on behalf of First Swiss to maximize recoveries for the benefit of its creditors—including investors, who are the largest creditors of First Swiss by far. In this action, the Receiver is seeking relief as against the Defendants strictly on behalf of First Swiss.

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9. On March 22, 2023, FSRA issued a Notice of Proposal to Revoke Licenses as well as an Interim Order, which suspended the mortgage administrator and mortgage brokerage licenses issued to First Swiss as well as the mortgage brokerage license issued to its principal, Reza Nezami-Nia.

10. On May 25, 2023, FSRA revoked the mortgage administrator and mortgage brokerage licenses issued to First Swiss on the basis that First Swiss was no longer suitable to be licensed under the *MBLAA* due to, among other things, the bankruptcy and financial position of First Swiss, contraventions of requirements under the *MBLAA*, and provision of false/deceptive information to FSRA.

Background

11. Since its initial appointment, the Receiver has investigated investors' allegations of wrongdoing against First Swiss and its representatives, including the individuals employed by First Swiss at the time of its assignment into bankruptcy —Mr. Nezami-Nia (the principal and sole named director of First Swiss), Patrick Dookram (Vice President of Trading and Portfolio Management for First Swiss), and Yana Papanyan (Lead Underwriter for First Swiss).

12. In the course of its investigation, the Receiver learned that the Defendants served as First Swiss' auditor from its fiscal year ended August 31, 2015 through to its fiscal year ended August 31, 2022, which corresponds with the period of time that coincides with the investor complaints.

13. The Defendants assumed audit responsibilities in or around 2015 from First Swiss' former auditor, PricewaterhouseCoopers Inc. (**PwC**).

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14. Specifically, in or around 2015, the Defendants undertook three main auditing services for First Swiss, which the Defendants continued to undertake in each fiscal year during the material time leading up to First Swiss' assignment into bankruptcy:

- (a) auditing First Swiss' financial statements;
- (b) auditing First Swiss' compliance with the standards in the *MBLAA* applicable to mortgage administrators with trust funds, expressing an opinion on First Swiss' compliance with Ontario Regulation 189/08 (Mortgage Administrators: Standards of Practice) and Ontario Regulation 193/08 (Reporting Requirements for Licensees), and reporting to FSRA and its predecessor, FSCO, regarding the same. Such reporting included opining on whether First Swiss complied with, among other things: (i) its management of the trust accounts, including its duty to report any shortfalls; (ii) its duty to establish certain policies and procedures; (iii) its duty to maintain a financial guarantee in the amount of \$25,000; and (iv) its duty to complete certain filings within a prescribed time period; and
- (c) reporting to the BCFSA, and providing the BCFSA with an audit opinion on First Swiss' compliance with the *MBA*. In doing so, the Defendants were asked to review the Mortgage Broker's Representation to the Registrar of Mortgage Brokers in British Columbia.

15. The Receiver identified issues of significant concern regarding First Swiss' bank accounts and its financial and reporting practices, particularly relating to its trust accounts and the misuse

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of trust funds, among other issues, which the Defendants were required to investigate and identify, and ought to have detected (but failed to detect) in the course of their auditing work for First Swiss.

16. During the material time, approximately \$23 million of Investor funds were misused, including by being improperly transferred between First Swiss trust accounts to First Swiss' general operating account. A significant portion of these trust funds were then transferred to First Swiss' parent company (and sole shareholder), 680771 Canada Corp. (“680”), which were used to fund, among other things, Mr. Nezami-Nia's personal lifestyle expenses (such as aviation equipment, private school tuition, life insurance and vehicle lease payments). Mr. Nezami-Nia is the sole named director of 680.

17. In addition to failing to discover and/or failing to report this misconduct in the course of the Defendants' audit work on an annual basis—knowing that the financial statements they audited were filed with FSRA and would be relied upon by investors and regulators—the Defendants also inappropriately booked accounting entries which eliminated amounts due to First Swiss from 680 (in respect of improperly advanced funds) by offsetting those amounts with amounts that were properly due, owing and payable to investors.

18. The Defendants' failure to employ appropriate audit techniques, including their failure to review the use of trust funds, their failure to diligently review First Swiss' (and 680's) bank records, and their failure to make appropriate inquiries of First Swiss personnel, resulted in First Swiss being able to continue operating as a licensed mortgage administrator, and its personnel being able to continue as licensees. This allowed First Swiss to continue to raise funds from investors, ultimately resulting in substantial additional losses to First Swiss, including in the form

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of investor liabilities, that would not have arisen but for the Defendants' negligence, breach of contract, and breach of their professional, regulatory and other legal obligations.

Negligence

Duty of Care

19. Each year between First Swiss' fiscal year ended 2015 and its fiscal year ended August 31, 2022, the Defendants entered into an engagement letter with First Swiss to provide auditing services regarding First Swiss' financial statements and compliance with the *MBLAA* and *MBA*.

20. The purpose of these engagements was to, among other things, ensure that the financial statements were free from material misstatements and thereby protect First Swiss from the consequences (that is, financial loss) arising from any otherwise undetected errors or wrongdoing. The Defendants were also engaged to report on First Swiss' compliance with the *MBLAA* and *MBA*, particularly regarding First Swiss' use of trust funds.

21. The Defendants were required to report any financial irregularities or other indicators of non-compliance with applicable statutes, including the mishandling of trust funds, to regulatory authorities, with a view to halting financial losses to First Swiss arising from any such conduct as soon as possible.

22. Accordingly, at all material times, First Swiss, its investors and regulators, were reasonably entitled to—and did—rely on the Defendants as First Swiss' auditor for these purposes.

23. The Defendants were in a sufficiently close and direct relationship with First Swiss that they were required to perform their auditing services with reasonable care, diligence, and

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competence. Financial loss to First Swiss resulting from abuse that they failed to detect (but reasonably ought to have detected) in the course of their engagements, as in fact occurred, was an objectively foreseeable harm that could result should the Defendants provide their services negligently.

Standard of Care

24. In providing their services to First Swiss, the Defendants were subject to auditing and professional standards including Generally Accepted Auditing Standards (**GAAS**)—which, in each annual engagement letter, they expressly assured First Swiss they would follow—and the Canadian Standard on Assurance Engagements 3531 (**CSAE 3531**). As a general matter, they were required to exercise the degree of care, diligence, and skill that a reasonably prudent person would exercise in similar circumstances. GAAS and CSAE 3531, among other applicable standards, inform this standard of care.

25. During the relevant period, the Defendants failed to provide their auditing services in accordance with the applicable auditing and professional standards and their own representations (including as set out in the applicable engagement letters), and thereby failed to provide their services in accordance with the applicable standard of care. Broadly stated, they failed to review the use of trust funds, failed to diligently review First Swiss' bank records and other records, and failed to make appropriate inquiries of First Swiss personnel. Their misconduct included, but was not limited to, the following acts and omissions:

- (a) The Defendants did not check to verify that investor funds in First Swiss' trust account were invested in mortgages. As a result, they failed to identify that certain

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deposits were made in respect of duplicative mortgage advances or mortgages that did not exist at all;

- (b) The Defendants did not check to verify that funds repaid by borrowers were repaid to investors as required;
- (c) The Defendants failed to identify (much less inquire into) entries in First Swiss bank statements clearly showing the flow of funds from its trust accounts (i.e., investor funds, to be used for funding mortgages, or funds repaid by borrowers, to be repaid to investors), to its operating account, and on to 680, rather than funding mortgages or being repaid to investors as required. Further, despite possession of records which indicated an extensive flow of funds from First Swiss to 680, the Defendants confirmed that there were no significant related party transactions (except for rent sharing with 680) and this was reflected in the audited financial statements;
- (d) The Defendants' inquiries of First Swiss were generic and did not refer to the mortgage industry generally or First Swiss' operations in particular. Given the high risk of abuse inherent in trust accounts, particularly in the context of mortgage administration businesses such as that of First Swiss, the Defendants' inquiries were inadequate. The Defendants maintained virtually no working papers specific to their audits of First Swiss' *MBLAA* and *MBA* compliance, and their limited inquiries regarding the same would not have allowed them to

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confirm that First Swiss' trust accounts were being administered in accordance with the applicable requirements of the *MBLAA* and *MBA*;

- (e) The Defendants failed to inquire into who at First Swiss was responsible for repaying investors, how funds for repaid mortgages ought to have been disbursed, and how these aspects of First Swiss' financial practices should have been audited; and
- (f) The Defendants failed to obtain, or even request, from investors confirmation of their mortgage investments held with First Swiss—as was the standard practice of First Swiss' prior auditor, PwC;
- (g) Despite First Swiss' audited financial statements for the year ending August 31, 2022 disclosing that the total principal amount due from borrowers that year was \$1,869,632, the Defendants possessed documents from First Swiss that indicated it supposedly had more than ten times that amount, being \$18,754,380.92, in mortgages under administration at that time. This was a highly anomalous discrepancy that a diligent review of First Swiss' records would have readily identified; and
- (h) The Defendants inappropriately booked accounting entries which eliminated amounts due to First Swiss from 680 (in respect of improperly advanced trust funds) by offsetting those amounts with amounts that were properly due, owing and payable to investors.

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26. In light of the above and the other acts and omissions of the Defendants, they failed to perform their engagements for First Swiss with the required care, diligence, and skill that they represented they had the expertise to provide, that they were required to provide, and that First Swiss reasonably relied on them to provide.

Breach of contract

27. The engagement letters between the Defendants and First Swiss each year between the company's fiscal year ended August 31, 2015, and its fiscal year ended August 31, 2022, are valid and enforceable contracts.

28. Pursuant to each engagement letter, the Defendants were required to undertake the services described above (and in more detail in the engagement letters) competently and reasonably. They did neither. In doing so, they materially breached the express and implied terms of each engagement letter.

29. Among other things, the Defendants agreed to employ and comply with GAAS in their auditing work for First Swiss, and agreed to make appropriate inquiries of management regarding First Swiss' financials which would include requests for supporting documentation.

30. The Defendants did not employ or comply with GAAS in the course of their audits, as agreed and required. Nor did the Defendants make appropriate inquiries of management in the face of evident irregularities in First Swiss' financial records. On the occasions where the Defendants received supporting documentation from First Swiss, these were disregarded—for instance, when the Defendants ignored First Swiss records showing that the amount owing from borrowers was approximately ten (10) times greater than what the Defendants ultimately

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reported; or when the Defendants improperly booked accounting entries (amounting to millions of dollars) that eliminated amounts due to First Swiss from 680 (in respect of improperly advanced funds) by offsetting those amounts with amounts that were properly payable to investors.

31. Accordingly, the Defendants are liable for the losses suffered by First Swiss that were the reasonably foreseeable consequence of their failure to perform their obligations under the engagement letters as agreed, at the required standard.

Causation and Damages

32. The Defendants ought to have detected and disclosed the significant errors and irregularities contained in First Swiss' books, records and financial reporting because the Defendants were uniquely positioned by reason of their represented expertise and their access to First Swiss' records and representatives.

33. Had the Defendants complied with their contractual, common law, professional and other obligations owed to First Swiss, and provided their services as a reasonable and prudent auditor would have, they would have understood the operations of First Swiss as a mortgage administrator. Had they performed their engagements in accordance with GAAS and CSAE 3531 (among other applicable professional and legal standards) as required, they would have readily identified the mishandling of trust funds and mortgages under First Swiss' administration. This misconduct was plainly identifiable in First Swiss' bank and other records which were in the Defendants' possession and to which they had ready access, and would have certainly been apparent following any reasonable inquiries regarding the same.

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34. Had the Defendants identified the significant financial irregularities within First Swiss, as they reasonably should have following their first audit engagement for First Swiss in 2015 (and in every fiscal year thereafter), and correspondingly qualified the opinions they provided to First Swiss and to FSRA and BCFSA at that time (or at any time thereafter), these regulators would have immediately suspended First Swiss' license and operations—as they ultimately did shortly after the Receiver was appointed. Had First Swiss' license and operations been suspended when they ought to have—namely, as soon as possible following the Defendants' first audit engagement for First Swiss and their associated reporting to FSRA and BCFSA—First Swiss would have ceased operating and it would not have incurred the extensive losses it incurred from the time of the Defendants' first audit in 2015 until 2023.

35. However, the Defendants' breach of their contractual, common law, professional and other obligations owed to First Swiss resulted in the regulators not being alerted to the losses actually being suffered by First Swiss and therefore not suspending First Swiss' operations at that time, or at any time during the Defendants' engagements with First Swiss. The Defendants' failure to appropriately discharge their contractual, common law, professional and other duties and obligations owed to First Swiss caused significant damage to First Swiss and its creditors, including the investors. In particular, First Swiss has incurred approximately \$25 million in losses, for which the Defendants are jointly and severally liable. If the Defendants had performed their duties to First Swiss as required, the resultant exposure of First Swiss' true financial position would have eliminated the losses, liabilities and damages incurred by First Swiss or, at a minimum, significantly reduced such losses, liabilities and damages.

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36. In addition, the Receiver seeks the disgorgement of all fees, costs, disbursements and other funds paid by First Swiss to the Defendants on a restitutionary basis because it would be inequitable to allow the Defendants to be unjustly enriched by retaining benefits they received in the expectation that they had competently and lawfully performed their duties owed to First Swiss, in light of the Defendants' subsequently revealed breaches of their contractual, common law, professional and other obligations owed to First Swiss.

37. Further particulars of the Receiver's damages may be provided prior to trial.

38. The Defendants knew or ought to have known, and foresaw or ought to have foreseen, that losses to First Swiss would result from their acts and omissions. Notwithstanding, they undertook (or failed to undertake, as the case may be) the actions described herein. Such losses were proximate to the Defendants' wrongful conduct described above.

39. The Receiver has also incurred, and is continuing to incur, significant costs and out-of-pocket expenses relating to investigations into First Swiss' true financial position and the Defendants' acts and omissions, which special damages will be particularized prior to trial.

Interest

40. First Swiss has suffered loss of profitable business opportunities and has been deprived of, among other things, the right to earn compound interest on the amounts at issue in this proceeding. Accordingly, the Receiver seeks pre- and post-judgment interest on a compound basis at an appropriate rate of interest.

Place of Trial

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41. The Receiver proposes that this action be tried at Toronto.

February 6, 2024

BENNETT JONES LLP
3400 One First Canadian Place
P.O. Box 130
Toronto, ON M5X 1A4

Sean Zweig (#57307I)
Email: zweigs@bennettjones.com

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Lawyers for the Plaintiff,
KSV Restructuring Inc., in its capacity as
receiver and manager of all assets, undertakings,
and properties of First Swiss Mortgage Corp.

KSV RESTRUCTURING INC., IN ITS CAPACITY AS THE COURT-
APPOINTED RECEIVER AND MANAGER OF ALL ASSETS,
UNDERTAKINGS AND PROPERTIES OF FIRST SWISS
MORTGAGE CORP.

SYED RAZA and SYED A. RAZA PROFESSIONAL CORPORATION

-and-

Plaintiff

Defendant

Court File No.

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

PROCEEDING COMMENCED AT
TORONTO

STATEMENT OF CLAIM

BENNETT JONES LLP
3400 One First Canadian Place
P.O. Box 130
Toronto, ON M5X 1A4

Sean Zweig (#573071)
Email: zweigs@bennettjones.com

Joseph Blinick (#64325B)
Email: blinickj@bennettjones.com

Thomas Feore (#82456H)
Email: feoret@bennettjones.com

Telephone: (416) 777-6254
Facsimile: (416) 863-1716

Lawyers for the Plaintiff,
KSV Restructuring Inc., in its capacity as receiver and manager of all
assets, undertakings, and properties of First Swiss Mortgage Corp.

Appendix “J”

First Swiss Mortgage Corp.

Statement of Receipts and Disbursements

For the Period Ending June 13, 2024

(\$; unaudited)

Description	Amount
Receipts	
Mortgage repayments	1,879,416
Funding from Investors	340,806
Interest income from borrowers	141,532
Funding from FSRA	50,000
Interest earned from funds on hand	46,030
HST Refund	404
	<u>2,458,187</u>
Disbursements	
Legal fees and disbursements	600,817
Loan repayment (investors and FSRA)	433,981
Receiver fees and disbursements	364,914
Deemed trust claim - CRA	149,582
HST	128,960
Phase 2 fees	18,117
IT administration	14,218
Misc expenses	9,811
Bank charges	1,013
Software and license	879
Filing fees	73
	<u>1,722,366</u>
Balance	<u><u>735,822</u></u>

Check -

0

Appendix “K”



Ben Luder
kvs advisory inc.
220 Bay Street, Suite 1300
Toronto, Ontario, M5J 2W4
T +1 416 953 9421
F +1 416 932 6266

kvsadvisory.com
bluder@kvsadvisory.com

April 8, 2024

Sent via Email – [REDACTED]

To: Creditors of First Swiss Mortgage Corp. (the “Company”)

Re: Claims Against the Company

As you know, KSV Restructuring Inc. was appointed by Order of the Ontario Superior Court of Justice (Commercial List) dated March 17, 2023 (as amended and restated on May 19, 2023, the “Receivership Order”) as receiver (the “Receiver”) of all of the assets, undertakings and properties of the Company.

Information regarding the receivership proceedings, including reports to Court filed by the Receiver, can be found on the Receiver’s website (the “Website”) at <https://www.kvsadvisory.com/experience/case/firstswiss>.

Since its appointment, the Receiver has administered the Company’s portfolio of active mortgages, and in the process has collected principal and interest payments of approximately \$2 million. The Receiver’s activities have also included, among other things, the following:

- Investigating the Company’s affairs and those of its principals, including: a) reviewing the Company’s bank accounts from 2016 to 2023; b) reviewing the bank accounts of 680771 Canada Corp., the Company’s sole shareholder; c) conducting an examination of Reza Nezami-Nia, the Company’s sole director and ultimate shareholder; d) meeting with Patrick Dookram, the Company’s former Vice President of Trading and Portfolio Management; e) corresponding and attempting to meet with Yana Papanyan, the Company’s former Lead Underwriter; and f) reviewing the Company’s books and records, including certain electronic records;
- Filing a statement of claim against the Company’s former auditor for negligence and breach of contract (the “Auditor Claim”). A copy of the Auditor Claim is posted on the Website;
- Corresponding with the insurer of the Company’s directors’ and officers’ insurance policy regarding claims that the Receiver may advance against the Company’s principals;
- Commencing a power of sale proceeding in respect of a first mortgage registered by the Company on title to a property in Rockland, Ontario;

- Corresponding with Shinhan Bank Canada regarding the Receiver's potential claims against it for, among other things, its facilitation of the Company's mishandling of its trust accounts and negligence; and
- Cooperating with Financial Services Regulatory Authority of Ontario ("FSRA") and Toronto Police Services in respect of their investigations into the Company and its principals.

The Receiver has been coordinating its efforts with the ad hoc Investor Advisory Committee (the "IAC") regarding the above and the use of the funds held in the Receiver's estate account. In early March 2024, the Receiver repaid the funds that it had borrowed from FSRA and from lenders that funded the receivership process pursuant to an Order of the Court dated May 19, 2023.

The Receiver is now working to confirm the balances owing to the Company's investors, which is required prior to any distribution and subject to Court approval. In that regard, the Receiver and the IAC have prepared a schedule based on the Company's books and records of the balances owing to the parties that provided funds to the Company for the specific purpose of placing mortgages (the "Investors"). The schedule was prepared using a consistent methodology to calculate principal owing to March 17, 2023 (the "Schedule"), being the date of the Receivership Order. The methodology assumes that all Investors are treated equally, regardless of whether: a) the funds advanced were actually used to fund a mortgage; and b) a mortgage was registered on title to a residential property in respect of funds advanced by an Investor as at the date of the Receivership Order. The Receiver previously summarized its position that the Company did not manage its funds or operate on a basis that would meet the legal requirements for a trust, and that Investors should therefore be treated equally, in Section 9.0 of the Receiver's Second Report to Court dated May 12, 2023.

Based on the Schedule, your unsecured claim has been calculated to be [REDACTED].

If you disagree with the amount reflected above and/or you believe that you have other amounts owed to you by the Company, then you are required to complete and return the attached notice of dispute form and include your evidence to support your claim (a "Dispute") on or before May 24, 2024 (the "Dispute Deadline"). Subject to approval of the Court, failure to submit a Dispute by the Dispute Deadline will result in you being deemed to accept the amount reflected above. The Receiver will review all Disputes received. If a Dispute cannot be resolved consensually, the Receiver will schedule a date for the Dispute to be adjudicated by the Court. The timing to make a distribution to the Investors will be delayed if Disputes need to be adjudicated by the Court; the costs to do so will further erode the recoveries by the Investors.

Should you have any questions, please contact the undersigned or a representative of the IAC.

Yours truly,

**KSV RESTRUCTURING INC.
SOLELY IN ITS CAPACITY AS COURT-APPOINTED RECEIVER OF
FIRST SWISS MORTGAGE CORP.
AND NOT IN ITS PERSONAL CAPACITY**

Ben Luder

Per: Ben Luder

NOTICE OF DISPUTE

I hereby dispute the enclosed Creditor Notice in respect of my claim.

Revised Amount of Claim (\$CAD): _____

Reasons for Dispute (attach extra sheets and copies of all supporting documentation if necessary):

Name of Claimant: _____

(Signature of individual completing this Dispute)

Date

(Please print name)

Telephone Number: _____

Email address: _____

Full Mailing Address: _____

THIS FORM (ALONG WITH THE CREDITOR NOTICE THAT IS BEING DISPUTED) IS TO BE RETURNED BY PREPAID ORDINARY MAIL, COURIER, PERSONAL DELIVERY OR ELECTRONIC OR DIGITAL TRANSMISSION AND MUST BE RECEIVED NO LATER THAN 5:00 P.M. (EASTERN TIME) ON MAY 24, 2024, BEING 45 DAYS AFTER THE CREDITOR NOTICE WAS SENT BY THE RECEIVER, TO:

KSV Restructuring Inc.
in its capacity as the Court-Appointed Receiver of First Swiss Mortgage Corp.
220 Bay Street, Suite 1300
Toronto, ON M5J 2W4

Attention: Ben Luder
E-mail: bluder@ksvadvisory.com

Appendix “L”

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

**IN THE MATTER OF THE RECEIVERSHIP OF FIRST SWISS MORTGAGE CORP., A
CORPORATION INCORPORATED UNDER THE LAWS OF ONTARIO**

B E T W E E N :

**CHIEF EXECUTIVE OFFICER OF THE FINANCIAL SERVICES REGULATORY AUTHORITY
OF ONTARIO**

Applicant

- and -

FIRST SWISS MORTGAGE CORP.

Respondent

**AFFIDAVIT OF MITCH VININSKY
(sworn June 14, 2024)**

I, **MITCH VININSKY**, of the City of Toronto, in the Province of Ontario, **MAKE OATH
AND SAY AS FOLLOWS:**

1. I am a Managing Director of KSV Restructuring Inc. ("KSV").
2. Pursuant to an order (the "**Receivership Order**") of the Ontario Superior Court of Justice (Commercial List) made on March 17, 2023, KSV was appointed as the receiver (in such capacity, the "**Receiver**"), without security, of the assets, undertakings and properties (the "**Property**") of First Swiss Mortgage Corp. (the "**Company**").
3. I have managed this mandate since the date of the Receivership Order. As such, I have knowledge of the matters to which I hereinafter depose.
4. The Receiver prepared invoices detailing its services rendered and disbursements incurred (the "**Invoices**") from May 1, 2023 to May 31, 2024 in the aggregate amount of \$241,149.35. Attached hereto and marked as **Exhibit "A"** to this Affidavit are copies of the Invoices.
5. Additionally, attached hereto as Exhibit "B" is a summary of the roles, hours and rates charged by members of the Receiver who have worked on this matter, and I hereby confirm that the list represents an accurate account of such information. The average hourly rate of the Receiver is \$503.41.
6. I consider the accounts to be fair and reasonable considering the circumstances connected with this matter.

7. This Affidavit is made in support of a motion to, *inter alia*, approve the attached accounts of the Receiver and the fees and disbursements detailed therein, and for no improper purpose whatsoever.

SWORN before me at the City of)
Toronto, in the Province of Ontario,)
this 14th day of June, 2024)



Rajinder Kashyap, a Commissioner, etc.,
Province of Ontario, for KSV Restructuring Inc.
Expires February 23, 2027



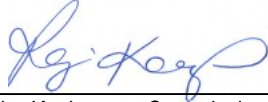
MITCH VININSKY

Attached is Exhibit "A"

Referred to in the
AFFIDAVIT OF MITCH VININSKY

Sworn before me

this 14th day of JUNE, 2024



Rajinder Kashyap, a Commissioner, etc.,
Province of Ontario, for KSV Restructuring Inc.
Expires February 23, 2027



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INVOICE

First Swiss Mortgage Corporation
c/o KSV Restructuring Inc.
220 Bay Street, Suite 1300
Toronto, ON M5J 2W4

June 8, 2023

Invoice No: 3158
HST #: 818808768RT0001

Re: First Swiss Mortgage Corporation (the “Company”)

For professional services rendered during the period ended, May 31, 2023 by KSV Restructuring Inc., in its capacity as receiver and manager (the “Receiver”) of the Company’s assets, undertakings and properties appointed pursuant to an order of the Ontario Superior Court of Justice (the “Court”) issued on March 17, 2023 (“Receivership Order”), including:

- Corresponding extensively with Bennett Jones LLP (“Bennett Jones”), the Receiver’s counsel, regarding all aspects of this mandate;
- Corresponding extensively and speaking with numerous parties that advanced funds to the Company to place mortgages (the “Investors”);
- Corresponding with Dancap Private Equity Inc. (“Dancap”), the Company’s largest investor, regarding a schedule summarizing the status of mortgages that the Company reported to Investors as being active;
- Corresponding extensively and speaking with numerous Investors regarding a funding proposal letter and term sheet (the “Loan Agreement”) prepared by the Receiver;
- Corresponding with borrowers and Bennett Jones regarding mortgage discharges;
- Reviewing historical payments by certain borrowers and preparing discharge statements for three borrowers;
- Preparing the Receiver’s Second Report to Court dated May 12, 2023 (the “Second Report”);

- Reviewing comments from Bennett Jones on the Second Report;
- Reviewing and commenting on a Notice of Motion and draft Court orders related to the Second Report;
- Preparing the Supplement to the Second Report dated May 15, 2023 (the "Supplementary Report");
- Preparing a sworn affidavit of fees, which was included in the Second Report;
- Corresponding with the Investor Advisory Committee (the "IAC") and Bennett Jones regarding the relief to be sought at a hearing on May 19, 2023;
- Arranging for the removal of a leased photocopier from the Company's office;
- Corresponding and attending calls with Tariq Shaikh, the Company's former bookkeeper, regarding his role at the Company;
- Reviewing accounting data provided by Mr. Shaikh and discussing same with Dancap;
- Attending a call on May 12, 2023, with the IAC to discuss the draft orders related to the Second Report;
- Attending a call on May 16, 2023, with Dancap to discuss the QuickBooks information received;
- Reviewing information related to the property at 8457 Highway 17, Rockland (the "Hwy 17 Property"), which is subject to a first mortgage registered by the Company, and considering realization strategies;
- Corresponding with a realtor regarding the Hwy 17 Property;
- Reviewing correspondence between Bennett Jones and Karrass Law, legal counsel to Reza Nezami-Nia, the Company's sole director, regarding the adjournment of relief related to Mr. Nezami-Nia;
- Reviewing and commenting on a litigation timetable to address the relief sought related to Mr. Nezami-Nia;
- Requesting information and the Company's historical financial reporting documents from Financial Services Regulatory Authority of Ontario ("FSRA"), the Company's regulator;
- Attending a call on May 18, 2023, with the Toronto Police Services to discuss its investigation;

- Attending a call on May 18, 2023, with Patrick Dookram, the Company's former Vice President of Trading and Portfolio Management, regarding the contents on his computer and the login credentials for the Company's computers;
- Attending at Court, virtually, on May 19, 2023 regarding the Receiver's findings and relief set out in the Second Report and Supplementary Report;
- Corresponding with Bennett Jones regarding the Court hearing;
- Reviewing and commenting on materials filed by Bennett Jones related to trust claims by Investors;
- Attending a call on May 24, 2023 with FSRA regarding a potential claim against the Company's principals;
- Reviewing documents and historical financial reports provided by FSRA and corresponding with FSRA and Bennett Jones regarding the same;
- Reviewing an endorsement by Justice Steele dated May 29, 2023 and corresponding with Bennett Jones in that regard;
- Preparing and sending an email to Investors regarding the priority ranking of interest in the Loan Agreement;
- Contacting environmental consulting firms to provide a quote for a Phase Two report on the Hwy 17 Property;
- Corresponding with counsel to several borrowers regarding requests to discharge mortgages that had been repaid;
- Corresponding and obtaining a quote from Kroll, the Receiver's information technology agent, to access the Company's servers;
- Corresponding with Yana Papanyan, the Company's former Lead Underwriter, regarding the login credentials to the Company's computers;
- Maintaining a detailed log of borrower payments;
- Responding to calls and inquiries from borrowers;
- Preparing and maintaining a master list of all known Investor mortgages, addresses and mortgage registration status;
- Maintaining the Receiver's case website;
- Convening internal meetings; and

- Dealing with all other matters not otherwise referred to herein.

Total fees and disbursements per attached time summary	\$ 62,397.42
HST	<u>\$ 8,111.66</u>
Total	<u>\$ 70,509.08</u>

KSV Restructuring Inc.
First Swiss Mortgage Corp.

Time Summary

For the Month Ending May 31, 2023

Personnel	Rate (\$)	Hours	Amount (\$)
Mitch Vininsky	700	50.06	35,042.00
Nisan Thurairatnam	425	53.45	22,716.25
Other Staff and administration	175 - 700	18.20	4,638.25
Total fees		121.71	62,396.50
Out-of-pocket disbursements			
Postage			0.92
Total fees and disbursements			<u>62,397.42</u>



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INVOICE

First Swiss Mortgage Corporation
c/o KSV Restructuring Inc.
220 Bay Street, Suite 1300
Toronto, ON M5J 2W4

July 7, 2023

Invoice No: 3176
HST #: 818808768RT0001

Re: First Swiss Mortgage Corporation (the “Company”)

For professional services rendered during the period ended June 30, 2023 by KSV Restructuring Inc., in its capacity as receiver and manager (the “Receiver”) of the Company’s assets, undertakings and properties appointed pursuant to an order of the Ontario Superior Court of Justice (the “Court”) issued on March 17, 2023 (“Receivership Order”), including:

- Corresponding extensively with Bennett Jones LLP (“Bennett Jones”), the Receiver’s counsel, regarding all aspects of this mandate;
- Corresponding with parties that advanced funds to the Company to place mortgages (the “Investors”);
- Corresponding with Dancap Private Equity Inc. (“Dancap”), the Company’s largest investor, and Bennett Jones regarding enforcement steps related to the Company’s active mortgage portfolio;
- Corresponding with Dancap regarding information provided by Syed A. Raza Professional Corporation, the Company’s former auditor, and additional inquiries to the Auditor;
- Preparing and sending a letter dated June 2, 2023 to the Auditor;
- Requesting information and the Company’s historical financial reporting from Financial Services Regulatory Authority of Ontario (“FSRA”), the Company’s regulator;

- Attending a call on June 2, 2023 with FSRA regarding its compliance protocols for mortgage administrators;
- Attending a meeting on June 6, 2023 with Dancap at the Receiver's office to review certain data stored on the Company's computers;
- Reviewing a summary provided by Dancap regarding documents on the Company's computers;
- Corresponding with Shinhan Bank of Canada, the Company's bank, to request cheque, wire and other transaction information;
- Corresponding with the Bank of Montreal, the Company's former bank, to request historical bank account statements;
- Attending a call on June 8, 2023 with FRSA regarding the Company's errors & omissions insurance and the Receiver's potential claim;
- Reviewing an extensive set of documents and records provided by the Auditor;
- Attending a call on June 8, 2023 with the Auditor regarding the information he provided;
- Reviewing and commenting on a list of questions prepared by Bennett Jones regarding a proposed examination of Jane Knop, one of the Company's former employees;
- Reviewing the responding application record dated June 9, 2023 of Reza Nezami-Nia, the Company's sole director, and discussing same with Bennett Jones;
- Preparing the Second Supplement to the Receiver's Second Report to Court dated June 16, 2023 (the "Second Supplementary Report");
- Reviewing comments from Bennett Jones regarding the Second Supplementary Report and discussing same with Bennett Jones;
- Reviewing a letter from Chaitons LLP, counsel to FSRA, in response to Mr. Nezami-Nia's application record;
- Corresponding with Bennett Jones and Dancap regarding a proposed examination of Yana Papanayan, the Company's former Lead Underwriter;
- Corresponding with borrowers and Bennett Jones regarding mortgage discharges;
- Reviewing historical payments by certain borrowers and preparing discharge statements for three borrowers;

- Corresponding with an individual purporting to be the landlord of the Company's leased office space;
- Corresponding with Bennett Jones and reviewing a list of questions for an examination of Mr. Nezami-Nia;
- Attending the examination of Mr. Nezami-Nia on June 27, 2023 and discussing same with Bennett Jones;
- Reviewing a summary update prepared by Bennett Jones to Dancap and FSRA regarding the examination of Mr. Nezami-Nia;
- Reviewing a fee proposal from LRL Engineering ("LRL") or a Phase Two report to be conducted related to the property at 8457 Highway 17, Rockland (the "Phase 2 Report");
- Corresponding with Dancap regarding the Phase 2 Report;
- Corresponding with LRL regarding the Phase 2 Report, including for access to the property;
- Attending a call on June 16, 2023 with British Columbia Financial Services Authority ("BCFSA") regarding, among other things, the reporting requirements for mortgage brokers in British Columbia;
- Corresponding with BCFSA regarding an investigation into the Company's operations as an unlicensed broker;
- Corresponding with multiple departments at Google regarding access to the Company's Google Workspace account;
- Attending a payroll trust examination on June 16, 2023 with a representative from Canada Revenue Agency;
- Reviewing correspondence between Bennett Jones and Karrass Law, legal counsel to Mr. Nezami-Nia, the Company's sole director, regarding a litigation timetable for examinations and written submissions;
- Corresponding with counsel to several borrowers regarding requests to discharge mortgages that had been repaid;
- Corresponding with Ms. Papayan regarding the login credentials to the Company's computers;
- Maintaining a detailed log of borrower payments;
- Responding to calls and inquiries from borrowers;

- Preparing and maintaining a master list of all known Investor mortgages, addresses and mortgage registration status;
- Maintaining the Receiver's case website;
- Convening internal meetings; and
- Dealing with all other matters not otherwise referred to herein.

Total fees and disbursements per attached time summary	\$ 46,090.47
HST	\$ 5,991.76
Total	<u>\$ 52,082.23</u>

KSV Restructuring Inc.
First Swiss Mortgage Corp.

Time Summary

For the Month Ending June 30, 2023

Personnel	Rate (\$)	Hours	Amount (\$)
Mitch Vininsky	700	41.70	29,190.00
Nisan Thurairatnam	425	34.20	14,535.00
Other Staff and administration	175 - 700	10.90	2,315.75
Total fees		86.80	46,040.75
Out-of-pocket disbursements			
Quickbooks			49.72
Total fees and disbursements			<u>46,090.47</u>



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INVOICE

First Swiss Mortgage Corporation
c/o KSV Restructuring Inc.
220 Bay Street, Suite 1300
Toronto, ON M5J 2W4

August 11, 2023

Invoice No: 3232
HST #: 818808768RT0001

Re: First Swiss Mortgage Corporation (the "Company")

For professional services rendered during the period ended July 31, 2023 by KSV Restructuring Inc., in its capacity as receiver and manager (the "Receiver") of the Company's assets, undertakings and properties appointed pursuant to an order of the Ontario Superior Court of Justice (the "Court") issued on March 17, 2023 ("Receivership Order"), including:

- Corresponding extensively with Bennett Jones LLP ("Bennett Jones"), the Receiver's counsel, regarding all aspects of this mandate;
- Corresponding with parties that advanced funds to the Company to place mortgages (the "Investors");
- Corresponding with Dancap Private Equity Inc. ("Dancap"), the Company's largest investor, and Bennett Jones regarding enforcement steps related to the Company's active mortgage portfolio;
- Corresponding with Dancap regarding information provided by Syed A. Raza Professional Corporation (the "Auditor"), the Company's former auditor;
- Reviewing and commenting on a draft letter from Bennett Jones to the Auditor regarding the Company's claims;
- Corresponding with Bennett Jones regarding emails from Yana Papayan, the Company's former Lead Underwriter;
- Attending a call on July 7, 2023 with Shinhan Bank of Canada ("Shinhan") the Company's bank, regarding requested financial information;

- Reviewing financial documents and cheque copies provided by Shinhan;
- Corresponding with Dancap regarding expired mortgages;
- Reviewing and preparing a letter to borrowers regarding the repayment of the principal balance of their respective mortgages;
- Reviewing an email from Dancap regarding the letter to the Auditor, and corresponding with Bennett Jones regarding the same;
- Attending a call on July 7, 2023 with Dancap regarding the Auditor letter and to provide a general update of the receivership;
- Corresponding with Bennett Jones regarding Mr. Nezami-Nia's sworn net worth statement, next steps for Court attendance and preparing a response to Mr. Nezami-Nia's lawyer;
- Corresponding with Bennett Jones regarding the discussion with the Company's insurer and a letter received from the insurer's counsel;
- Corresponding with Financial Services Regulatory Authority of Ontario, the Company's regulator, regarding the letter received from the Company's insurer;
- Preparing an agenda for a meeting with the Investor Advisory Committee (the "IAC");
- Corresponding with Olympia Trust regarding the business relationship and agreement it had with the Company;
- Corresponding with Bennett Jones and Mr. Nezami-Nia's lawyer regarding the scheduled Court hearing and a rescheduling pending an updated and accurate net worth statement;
- Preparing a schedule of receipts and disbursements;
- Attending a call on July 8, 2023 with the IAC;
- Reviewing and editing a letter to Mr. Steiber, counsel to the Company's insurer;
- Following up with Toronto Police Services regarding its investigation of the Company's principals;
- Following up with LRL Engineering on the status of the phase two report to be conducted related to the property at 8457 Highway 17, Rockland;
- Reviewing and responding to a notice received from the British Columbia Financial Services Authority;

- Reviewing the results of the Canada Revenue Agency's Payroll Trust Examination and corresponding with Bennett Jones regarding the same;
- Reviewing all mail that was redirected from the Company's office to the Receiver's office;
- Corresponding with borrowers and Bennett Jones regarding mortgage discharges;
- Reviewing historical payments by certain borrowers and preparing discharge statements for three borrowers;
- Corresponding with multiple departments at Google regarding access to the Company's Google Workspace account;
- Corresponding with counsel to several borrowers regarding requests to discharge mortgages that had been repaid;
- Maintaining a detailed log of borrower payments;
- Responding to calls and inquiries from borrowers;
- Maintaining the Receiver's case website;
- Convening internal meetings; and
- Dealing with all other matters not otherwise referred to herein.

Total fees and disbursements per attached time summary	\$ 21,733.55
HST	\$ 2,825.36
Total	<u>\$ 24,558.91</u>

KSV Restructuring Inc.
First Swiss Mortgage Corp.

Time Summary

For the Month Ending July 31, 2023

Personnel	Rate (\$)	Hours	Amount (\$)
Mitch Vininsky	700	16.20	11,340.00
Nisan Thurairatnam	425	14.25	6,056.25
Other Staff and administration	175 - 700	9.60	1,986.75
Total fees		40.05	19,383.00
Out-of-pocket disbursements			
Mail forwarding			282.75
QuickBooks			47.35
Kroll inv TR00698190			1,725.00
Photocopies			4.50
Postage			290.95
Total disbursements			2,350.55
Total fees and disbursements			21,733.55



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INVOICE

First Swiss Mortgage Corporation
c/o KSV Restructuring Inc.
220 Bay Street, Suite 1300
Toronto, ON M5J 2W4

September 12, 2023

Invoice No: 3258
HST #: 818808768RT0001

Re: First Swiss Mortgage Corporation (the “Company”)

For professional services rendered during August 2023 by KSV Restructuring Inc., in its capacity as receiver and manager (the “Receiver”) of the Company’s assets, undertakings and properties appointed pursuant to an order of the Ontario Superior Court of Justice (the “Court”) issued on March 17, 2023 (“Receivership Order”), including:

- Corresponding with Bennett Jones LLP (“Bennett Jones”), the Receiver’s counsel, regarding all aspects of this mandate;
- Reviewing a letter dated July 31, 2023 from the Investor Advisory Committee (the “IAC”) regarding the accounts of the Receiver and Bennett Jones, and corresponding with Bennett Jones regarding the same;
- Corresponding with Bennett Jones regarding emails from Yana Papayan, the Company’s former Lead Underwriter;
- Attending calls on August 8 and 18, 2023 with the Financial Services Regulatory Authority of Ontario (“FSRA”), the Company’s regulator, and Bennett Jones regarding the Receiver’s claims under the Company’s errors & omissions insurance policy;
- Reviewing correspondence between Bennett Jones and Karrass Law, legal counsel to Reza Nezami-Nia, regarding a Personal Net Worth Statement (“PNW”) sworn by Mr. Nezami-Nia;
- Reviewing the PNW and corresponding with the IAC regarding the same;

- Attending a call on August 14, 2023 with Canada Revenue Agency regarding the Company's input tax credits;
- Corresponding with borrowers and Bennett Jones regarding mortgage discharges;
- Reviewing a phase two report completed by LRL Engineering on the property located at 8457 Highway 17, Rockland (the "Hwy 17 Property");
- Attending a call on August 17, 2023 with Bennett Jones to prepare for a meeting with the IAC;
- Reviewing correspondence between Karrass Law and Bennett Jones regarding the source of funding used to purchase an office condominium;
- Attending a call on August 18, 2023 with the IAC regarding, among other things, potential recoveries and litigation strategy;
- Reviewing and commenting on a draft letter from Bennett Jones to Forbes Chochla Leon LLP ("Forbes"), counsel to Syed A. Raza Professional Corporation, regarding the Company's claims;
- Attending a call on August 23, 2023 with a realtor regarding the Hwy 17 Property;
- Reviewing correspondence between Bennett Jones and Forbes;
- Corresponding with parties that advanced funds to the Company to place mortgages (the "Investors");
- Reviewing and editing a demand letter and notice of intention to enforce security on the Hwy 17 Property;
- Corresponding with several borrowers regarding the repayment of the principal balance of their respective mortgages;
- Reviewing and preparing a response to the letter from the IAC dated July 31, 2023;
- Reviewing all mail that was redirected from the Company's office to the Receiver's office;
- Reviewing historical payments by certain borrowers and preparing discharge statements for six borrowers;
- Corresponding with counsel to several borrowers regarding requests to discharge mortgages that had been repaid;
- Maintaining a detailed log of borrower payments;
- Responding to calls and inquiries from borrowers;

- Maintaining the Receiver's case website;
- Convening internal meetings; and
- Dealing with all other matters not otherwise referred to herein.

Total fees and disbursements per attached time summary	\$ 18,648.92
HST	\$ 2,424.36
Total	<u>\$ 21,073.28</u>

KSV Restructuring Inc.
First Swiss Mortgage Corp.

Time Summary

For the Month Ending August 31, 2023

Personnel	Rate (\$)	Hours	Amount (\$)
Mitch Vininsky	700	11.40	7,980.00
Nisan Thurairatnam	425	22.98	9,766.50
Other Staff and administration	175 - 210	4.50	901.50
Total fees		38.88	18,648.00
Total disbursements			0.92
Total fees and disbursements			<u>18,648.92</u>



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INVOICE

First Swiss Mortgage Corporation
c/o KSV Restructuring Inc.
220 Bay Street, Suite 1300
Toronto, ON M5J 2W4

October 13, 2023

Invoice No: 3309
HST #: 818808768RT0001

Re: First Swiss Mortgage Corporation (the “Company”)

For professional services rendered during September 2023 by KSV Restructuring Inc., in its capacity as receiver (the “Receiver”) of the Company’s assets, undertakings and properties appointed pursuant to an order of the Ontario Superior Court of Justice (the “Court”) issued on March 17, 2023 (“Receivership Order”), including:

- Corresponding with Bennett Jones LLP (“Bennett Jones”), the Receiver’s counsel, regarding all aspects of this mandate;
- Corresponding with Bennett Jones regarding emails from Yana Papanyan, the Company’s former Lead Underwriter;
- Reviewing and commenting on a Notice of Examination to Ms. Papanyan;
- Corresponding with Financial Services Regulatory Authority of Ontario (“FSRA”), the Company’s regulator, and Bennett Jones, regarding the Receiver’s claims under the Company’s errors & omissions insurance policy (the E&O Policy);
- Reviewing correspondence between Forbes Chochla Leon LLP, counsel to Syed A. Raza Professional Corporation (the “Auditor”), and Bennett Jones regarding the Company’s claims against the Auditor;
- Attending a call on September 7, 2023 with LRL Engineering regarding the Phase Two report for the property at 8457 Highway 17, Rockland;

- Attending an update call on September 11, 2023 with Dancap Private Equity Inc., the Company's largest investor, regarding, among other things, potential recoveries and litigation strategy;
- Reviewing a list of questions prepared by Bennett Jones for the examination of Ms. Papanyan;
- Reviewing and commenting on a memorandum from the Investor Audit Committee;
- Corresponding with Google's legal team regarding access to the Company's email accounts;
- Attending a call on September 18, 2023 with FSRA regarding the Company's claim under the E&O Policy;
- Preparing an Interim Report of the Receiver as required pursuant to Section 246 of the *Bankruptcy and Insolvency Act*;
- Attending a call on September 22, 2023 with Bennett Jones regarding litigation between Toronto Aircraft Inc. and 9806881 Canada Corp., an affiliate of the Company (the "Aircraft Litigation");
- Attending a call on September 28, 2023 with the Canada Revenue Agency ("CRA") regarding the Company's input tax credits ("ITC");
- Reviewing a letter from CRA regarding an audit of the ITCs;
- Corresponding with borrowers and Bennett Jones regarding mortgage discharges;
- Corresponding with several borrowers regarding the repayment of the principal balance of their respective mortgages;
- Corresponding with Bennett Jones regarding a motion before the Court of Appeal of Ontario related to the Aircraft Litigation;
- Reviewing all mail that was redirected from the Company's office to the Receiver's office;
- Reviewing historical payments by certain borrowers and preparing discharge statements for four borrowers;
- Corresponding with counsel to several borrowers regarding requests to discharge mortgages that had been repaid;
- Maintaining a detailed log of borrower payments;
- Responding to calls and inquiries from borrowers;

- Maintaining the Receiver's case website;
- Convening internal meetings; and
- Dealing with all other matters not otherwise referred to herein.

Total fees and disbursements per attached time summary	\$ 10,690.86
HST	\$ 1,389.81
Total	<u>\$ 12,080.67</u>

KSV Restructuring Inc.
First Swiss Mortgage Corp.

Time Summary

For the Month Ending September 30, 2023

Personnel	Rate (\$)	Hours	Amount (\$)
Mitch Vininsky	700	8.70	6,090.00
Nisan Thurairatnam	425	8.45	3,591.25
Other Staff and administration	175 - 210	4.70	916.25
Total fees		21.85	10,597.50
Out-of-pocket disbursements			
Postage			43.64
Quickbooks			49.72
Total disbursements			93.36
Total fees and disbursements			10,690.86



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INVOICE

First Swiss Mortgage Corporation
c/o KSV Restructuring Inc.
220 Bay Street, Suite 1300
Toronto, ON M5J 2W4

November 14, 2023

Invoice No: 3356
HST #: 818808768RT0001

Re: First Swiss Mortgage Corporation (the “Company”)

For professional services rendered during October 2023 by KSV Restructuring Inc., in its capacity as receiver (the “Receiver”) of the Company’s assets, undertakings and properties appointed pursuant to an order of the Ontario Superior Court of Justice (the “Court”) issued on March 17, 2023 (“Receivership Order”), including:

- Corresponding with Bennett Jones LLP (“Bennett Jones”), the Receiver’s counsel, regarding all aspects of this mandate;
- Following up with Toronto Police Services regarding its investigation of the Company’s principals;
- Corresponding with Bennett Jones regarding a letter received from Canada Revenue Agency (“CRA”) regarding information it requested to review the Company’s Input Tax Credits (“ITC”);
- Preparing and issuing a letter to the CRA regarding the ITCs;
- Reviewing correspondence between Forbes Chochla Leon LLP, counsel to Syed A. Raza Professional Corporation (the “Auditor”), and Bennett Jones regarding the Company’s claims against the Auditor;
- Preparing a summary of receipts and disbursements and providing the same to Dancap Private Equity Inc. (“Dancap”), the Company’s largest investor;
- Corresponding with Dancap regarding, among other things, the Company’s remaining mortgage portfolio;

- Corresponding with the legal team at Google regarding access to the Company's email accounts;
- Reviewing and responding to a letter dated October 13, 2023 from Allyce Mutungi Barrister & Notary, legal counsel to one of the borrowers, regarding the repayment of a mortgage;
- Attending a call on October 16, 2023 with Dancap regarding potential insurance claims and other litigation matters;
- Reviewing correspondence between Bennett Jones and Blaney McMurty LLP, counsel to a borrower, regarding a mortgage that was previously repaid but not discharged;
- Preparing a draft letter to the investors regarding the estimated recoveries;
- Reviewing and commenting on a draft litigation memo prepared by Bennett Jones regarding the estimated litigation costs in connection with claims against Reza Neami-Nia, the company's sole director, Yana Papanyan, the Company's former Lead Underwriter, Patrick Dookram, the Company's former Vice President of Trading and Portfolio Management, and the Auditor;
- Attending a call on October 27, 2023 with Dancap to discuss, among other things, the status of all mortgages;
- Corresponding with borrowers and Bennett Jones regarding mortgage discharges;
- Reviewing all mail that was redirected from the Company's office to the Receiver's office;
- Reviewing historical payments by certain borrowers and preparing discharge statements for four borrowers;
- Corresponding with counsel to several borrowers regarding requests to discharge mortgages that had been repaid;
- Maintaining a detailed log of borrower payments;
- Responding to calls and inquiries from borrowers;
- Maintaining the Receiver's case website;
- Convening internal meetings; and

- Dealing with all other matters not otherwise referred to herein.

Total fees and disbursements per attached time summary	\$ 12,192.91
HST	<u>\$ 1,585.08</u>
Total	<u>\$ 13,777.99</u>

KSV Restructuring Inc.
First Swiss Mortgage Corp.

Time Summary

For the Month Ending October 31, 2023

Personnel	Rate (\$)	Hours	Amount (\$)
Mitch Vininsky	700	6.40	4,480.00
Nisan Thurairatnam	425	15.95	6,778.75
Other staff and administration	175 - 210	4.60	882.50
Total fees		26.95	12,141.25
Total disbursements (Quickbooks)			51.66
Total fees and disbursements			12,192.91



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INVOICE

First Swiss Mortgage Corporation
c/o KSV Restructuring Inc.
220 Bay Street, Suite 1300
Toronto, ON M5J 2W4

December 8, 2023

Invoice No: 3395
HST #: 818808768RT0001

Re: First Swiss Mortgage Corporation (the “Company”)

For professional services rendered during November 2023 by KSV Restructuring Inc., in its capacity as receiver (the “Receiver”) of the Company’s assets, undertakings and properties appointed pursuant to an order of the Ontario Superior Court of Justice (the “Court”) issued on March 17, 2023 (“Receivership Order”), including:

- Corresponding with Bennett Jones LLP (“Bennett Jones”), the Receiver’s counsel, regarding all aspects of this mandate;
- Corresponding with borrowers and Bennett Jones regarding mortgage discharges;
- Corresponding with Bennett Jones regarding a letter received from Canada Revenue Agency (“CRA”) regarding information it requested to review the Company’s Input Tax Credits (“ITC”);
- Corresponding with Royal LePage Team Realty (the “Realtor”) to list a property located at 8457 Highway 17, Rockland (the “Hwy 17 Property”);
- Attending a call on November 14, 2023 with CRA regarding its disallowance of the Company’s ITCs;
- Reviewing and editing a listing agreement (the “Listing Agreement”) in relation to the Hwy 17 Property;
- Attending a call on November 17, 2023 with a member from the investor advisory committee to discuss, among other things, the potential insurance claims and other recovery options;

- Corresponding with Bennett Jones regarding the Listing Agreement;
- Preparing a summary of receipts and disbursements and providing the same to Dancap Private Equity Inc. (“Dancap”), the Company’s largest investor;
- Corresponding with Dancap regarding potential insurance claims and other litigation matters;
- Attending a call on November 30, 2023 with the CRA regarding a deemed trust claim and corresponding with Bennett Jones regarding same;
- Corresponding with borrowers and Bennett Jones regarding mortgage discharges;
- Reviewing all mail that was redirected from the Company’s office to the Receiver’s office;
- Reviewing historical payments by certain borrowers and preparing discharge statements for four borrowers;
- Corresponding with counsel to several borrowers regarding requests to discharge mortgages that had been repaid;
- Maintaining a detailed log of borrower payments;
- Responding to calls and inquiries from borrowers;
- Maintaining the Receiver’s case website;
- Convening internal meetings; and
- Dealing with all other matters not otherwise referred to herein.

Total fees and disbursements per attached time summary	\$ 8,889.59
HST	\$ 1,155.65
Total	<u>\$ 10,045.24</u>

KSV Restructuring Inc.
First Swiss Mortgage Corp.

Time Summary

For the Month Ending November 30, 2023

Personnel	Rate (\$)	Hours	Amount (\$)
Mitch Vininsky	700	5.90	4,130.00
Nisan Thurairatnam	425	9.33	3,965.25
Other staff and administration	175 - 210	3.46	661.00
Total fees		18.69	8,756.25
Out-of-pocket disbursements			
Courier			37.43
Quickbooks			95.91
Total disbursements			133.34
Total fees and disbursements			8,889.59



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INVOICE

First Swiss Mortgage Corporation
c/o KSV Restructuring Inc.
220 Bay Street, Suite 1300
Toronto, ON M5J 2W4

January 11, 2024

Invoice No: 3436
HST #: 818808768RT0001

Re: First Swiss Mortgage Corporation (the "Company")

For professional services rendered during December 2023 by KSV Restructuring Inc., in its capacity as receiver (the "Receiver") of the Company's assets, undertakings and properties appointed pursuant to an order of the Ontario Superior Court of Justice (the "Court") issued on March 17, 2023 ("Receivership Order"), including:

- Corresponding with Bennett Jones LLP ("Bennett Jones"), the Receiver's counsel, regarding all aspects of this mandate;
- Corresponding with Royal LePage Team Realty (the "Realtor") to list a property located at 8457 Highway 17, Rockland (the "Hwy 17 Property");
- Attending a call on December 1, 2023, with Patrick Dookram, the Company's former Vice President of Trading and Portfolio Management, regarding his personal mailing address;
- Corresponding with Bennett Jones regarding the preparation of T5103s;
- Preparing a letter dated December 6, 2023 to the investors that advanced funds to the Company regarding an update of the Receivership proceedings;
- Corresponding extensively with Bennett Jones regarding potential insurance claims and other litigation matters;
- Attending a call on December 19, 2023 with a member of the investor advisory committee to discuss, among other things, potential recoveries and next steps;
- Corresponding with the Realtor regarding a price reduction on the Hwy 17 Property;

- Corresponding with borrowers and Bennett Jones regarding mortgage discharges;
- Reviewing all mail that was redirected from the Company's office to the Receiver's office;
- Reviewing historical payments by certain borrowers and preparing discharge statements for two borrowers;
- Corresponding with counsel to several borrowers regarding requests to discharge mortgages that had been repaid;
- Maintaining a detailed log of borrower payments;
- Responding to calls and inquiries from borrowers;
- Maintaining the Receiver's case website;
- Convening internal meetings; and
- Dealing with all other matters not otherwise referred to herein.

Total fees and disbursements per attached time summary	\$ 5,547.91
HST	\$ 721.23
Total	<u>\$ 6,269.14</u>

KSV Restructuring Inc.
First Swiss Mortgage Corp.
Time Summary
For the Month Ending December 31, 2023

Personnel	Rate (\$)	Hours	Amount (\$)
Mitch Vininsky	700	4.20	2,940.00
Nisan Thurairatnam	425	5.25	2,231.25
Other staff and administration	175 - 210	1.70	325.00
Total fees		11.15	5,496.25
Out-of-pocket disbursements			
Quickbooks			51.66
Total disbursements			51.66
Total fees and disbursements			5,547.91



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First Swiss Mortgage Corporation
c/o KSV Restructuring Inc.
220 Bay Street, Suite 1300
Toronto, ON M5J 2W4

February 12, 2024

Invoice No: 3490
HST #: 818808768RT0001

Re: First Swiss Mortgage Corporation (the “Company”)

For professional services rendered during January 2024 by KSV Restructuring Inc., in its capacity as receiver (the “Receiver”) of the Company’s assets, undertakings and properties appointed pursuant to an order of the Ontario Superior Court of Justice (the “Court”) issued on March 17, 2023 (“Receivership Order”), including:

- Corresponding with Bennett Jones LLP (“Bennett Jones”), the Receiver’s counsel, regarding all aspects of this mandate;
- Corresponding with Royal LePage Team Realty (the “Realtor”) regarding the listing for a property located at 8457 Highway 17, Rockland (the “Hwy 17 Property”);
- Corresponding with Bennett Jones and a member from the investor advisory committee (the “IAC”) to discuss a potential termination of the receivership;
- Reviewing Court materials regarding a borrower’s mortgage that was repaid to the Company but not discharged by Olympia Trust Company;
- Attending a call on January 16, 2024 with Bennett Jones and the IAC to discuss, among other things, potential recoveries and next steps;
- Attending a call on January 17, 2024 with a member of the IAC to discuss litigation and other potential recoveries;
- Preparing a summary of receipts and disbursements and providing the same to Dancap Private Equity Inc. (“Dancap”), the Company’s largest investor;

- Attending a call on January 19, 2024 with Bennett Jones and a member of the IAC to discuss claims subject to insurance;
- Corresponding with the Realtor regarding a price reduction on the Hwy 17 Property;
- Reviewing and editing a draft letter to Clyde & Co., counsel to Victor Insurance, the Company's errors and omissions insurer, regarding a proposed settlement under the insurance policy;
- Corresponding with a member of the IAC regarding a draft letter to Shinhan Bank Canada;
- Attending a call on January 31, 2024 with Dancap to discuss, among other things, the status of all mortgages;
- Reviewing all mail that was redirected from the Company's office to the Receiver's office;
- Reviewing historical payments by certain borrowers and preparing discharge statements for two borrowers;
- Maintaining a detailed log of borrower payments;
- Responding to calls and inquiries from borrowers;
- Maintaining the Receiver's case website;
- Convening internal meetings; and
- Dealing with all other matters not otherwise referred to herein.

Total fees and disbursements per attached time summary	\$ 7,925.58
HST	<u>\$ 1,030.33</u>
Total	<u><u>\$ 8,955.91</u></u>

KSV Restructuring Inc.
First Swiss Mortgage Corp.

Time Summary

For the Month Ending January 31, 2024

Personnel	Rate (\$)	Hours	Amount (\$)
Mitch Vininsky	750	5.50	4,125.00
Nisan Thurairatnam	475	6.50	3,087.50
Other staff and administration	195 - 250	3.08	660.50
Total fees		15.08	7,873.00
Out-of-pocket disbursements			
Postage			0.92
Quickbooks			51.66
Total disbursements			52.58
Total fees and disbursements			7,925.58



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INVOICE

First Swiss Mortgage Corporation
c/o KSV Restructuring Inc.
220 Bay Street, Suite 1300
Toronto, ON M5J 2W4

March 20, 2024

Invoice No: 3569
HST #: 818808768RT0001

Re: First Swiss Mortgage Corporation (the "Company")

For professional services rendered during February 2024 by KSV Restructuring Inc., in its capacity as receiver (the "Receiver") of the Company's assets, undertakings and properties appointed pursuant to an order of the Ontario Superior Court of Justice (the "Court") issued on March 17, 2023 ("Receivership Order"), including:

- Corresponding with Bennett Jones LLP ("Bennett Jones"), the Receiver's counsel, regarding all aspects of this mandate;
- Corresponding with a member of the investor advisory committee ("IAC") regarding a draft letter to Shinhan Bank Canada ("Shinhan");
- Reviewing correspondence between Clyde & Co Canada LLP and Bennett Jones regarding the Company's claims against Syed A. Raza Professional Corporation (the "Auditor");
- Attending a call on February 7, 2024 with a member of the IAC regarding a letter to the Company's insurer;
- Corresponding with Fasken Martineau DuMoulin LLP, counsel to Shinhan, regarding the Receiver's claims against Shinhan;
- Corresponding with Bennett Jones and a member of the IAC to discuss next steps related to the receivership;
- Reviewing Court materials regarding a borrower's mortgage that was repaid to the Company but not discharged by Olympia Trust Company;

- Attending a call on February 14, 2024 with a member of the IAC to discuss, among other things, the status of the receivership and next steps;
- Attending a call on February 20 and 27, 2024 with Financial Services Regulatory Authority of Ontario ("FSRA"), the Company's regulator, regarding an update of FSRA's investigation of the Company and its principals;
- Preparing a funding repayment schedule regarding the repayment of principal and interest to investors who funded these proceedings (the "Funding Repayment");
- Setting up a secured virtual data room for investors to upload their personal bank details in relation to the Funding Repayment and corresponding with the investors regarding the same;
- Filing a complaint against the Auditor with Chartered Professional Accountants of Ontario;
- Corresponding with a realtor from Royal LePage Team Realty regarding the listing for a property located at 8457 Highway 17, Rockland;
- Corresponding with Kroll LLP, the Receiver's subcontractor, regarding the data imaged from the Company's computers;
- Reviewing mail that was redirected from the Company's office to the Receiver's office;
- Reviewing historical payments by certain borrowers and preparing a discharge statement for one borrower;
- Maintaining a detailed log of borrower payments;
- Responding to calls and inquiries from borrowers;
- Maintaining the Receiver's case website;
- Convening internal meetings; and
- Dealing with all other matters not otherwise referred to herein.

Total fees and disbursements per attached time summary	\$ 14,400.91
HST	<u>\$ 1,872.12</u>
Total	<u><u>\$ 16,273.03</u></u>

KSV Restructuring Inc.
First Swiss Mortgage Corp.
Time Summary
For the Month Ending February 29, 2024

Personnel	Rate (\$)	Hours	Amount (\$)
Mitch Vininsky	750	11.10	8,325.00
Nisan Thurairatnam	475	10.25	4,868.75
Other staff and administration	195 - 250	5.55	1,155.50
Total fees		26.90	14,349.25
Quickbooks			51.66
Total fees and disbursements			<u>14,400.91</u>



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First Swiss Mortgage Corporation
c/o KSV Restructuring Inc.
220 Bay Street, Suite 1300
Toronto, ON M5J 2W4

April 5, 2024

Invoice No: 3598
HST #: 818808768RT0001

Re: First Swiss Mortgage Corporation (the "Company")

For professional services rendered during March 2024 by KSV Restructuring Inc., in its capacity as receiver (the "Receiver") of the Company's assets, undertakings and properties appointed pursuant to an order of the Ontario Superior Court of Justice (the "Court") issued on March 17, 2023 ("Receivership Order"), including:

- Corresponding with Bennett Jones LLP ("Bennett Jones"), the Receiver's counsel, regarding all aspects of this mandate;
- Attending a call on March 1, 2024 with a member of the investor advisory committee (the "IAC") regarding next steps related to the receivership and the repayment of receiver borrowings;
- Corresponding with the Toronto Police Services regarding an investigation into the Company's principal;
- Preparing a letter to creditors with an update on the receivership and information to confirm the amount owed by the Company to each respective creditor;
- Corresponding with a member of the IAC regarding the payment of legal counsel fees in relation to the initial receivership application ;
- Corresponding extensively with a realtor from Royal LePage Team Realty regarding the listing for a property located at 8457 Highway 17, Rockland the ("Rockland Property");

- Corresponding with Bennett Jones and editing an offer received on the Rockland Property;
- Corresponding with Financial Services Regulatory Authority of Ontario ("FSRA"), the Company's regulator, regarding FSRA's investigation of the Company and a search warrant to obtain, among other things, copies of the Company's bank account statements;
- Attending calls on March 13, 15 and 27, 2024 with members of the IAC to discuss, among other things, the status of the receivership and next steps;
- Attending a meeting on March 26, 2024 with FSRA to provide documents and data as set out in a search warrant it obtained regarding the Company;
- Reviewing mail that was redirected from the Company's office to the Receiver's office;
- Reviewing historical payments by certain borrowers and preparing a discharge statement for one borrower;
- Maintaining a detailed log of borrower payments;
- Responding to calls and inquiries from borrowers;
- Maintaining the Receiver's case website;
- Convening internal meetings; and
- Dealing with all other matters not otherwise referred to herein.

Total fees and disbursements per attached time summary	\$ 14,146.07
HST	<u>\$ 1,838.99</u>
Total	<u>\$ 15,985.06</u>

KSV Restructuring Inc.
First Swiss Mortgage Corp.

Time Summary

For the Month Ending March 31, 2024

Personnel	Rate (\$)	Hours	Amount (\$)
Mitch Vininsky	750	10.70	8,025.00
Nisan Thurairatnam	475	9.50	4,512.50
Other staff and administration	195 - 250	7.55	1,505.25
Total fees		27.75	14,042.75
Total disbursements (QuickBooks)			103.32
Total fees and disbursements			<u>14,146.07</u>



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First Swiss Mortgage Corporation
c/o KSV Restructuring Inc.
220 Bay Street, Suite 1300
Toronto, ON M5J 2W4

June 10, 2024

Invoice No: 3694
HST #: 818808768RT0001

Re: First Swiss Mortgage Corporation (the “Company”)

For professional services rendered during April and May 2024 by KSV Restructuring Inc., in its capacity as receiver (the “Receiver”) of the Company’s assets, undertakings and properties appointed pursuant to an order of the Ontario Superior Court of Justice (the “Court”) issued on March 17, 2023, as amended (the “Receivership Order”), including:

- Corresponding with Bennett Jones LLP (“Bennett Jones”), the Receiver’s counsel, regarding all aspects of this mandate;
- Preparing the Receiver’s interim report to the Office of the Superintendent of Bankruptcy pursuant to section 246(2) of the *Bankruptcy and Insolvency Act*;
- Preparing a letter dated April 8, 2024 to the parties that advanced funds to the Company for it to place mortgages to confirm the balances owing to them;
- Corresponding with a member of the investor advisory committee (the “IAC”) regarding recoveries, the claims process and the status of the receivership proceedings generally, including calls on April 12, 2024 and May 1, 28 and 30, 2024;
- Preparing a letter to Canada Revenue Agency regarding payment for its deemed trust claim;

- Corresponding extensively with a realtor from Royal LePage Team Realty (“Royal LePage”) regarding the listing for a property located at 8457 Highway 17, Rockland (the “Rockland Property”);
- Corresponding with Royal LePage regarding multiple extension requests related to the sale of the Rockland Property;
- Attending a call on April 29, 2024 with the City of Rockland (the “City”) regarding a notice sent by the City regarding a tax sale of the Rockland Property (the “Notice”);
- Corresponding with Bennett Jones regarding the Notice;
- Reviewing and commenting on a letter prepared by Bennett Jones to the City, reviewing the City’s response and discussing same with Bennett Jones;
- Corresponding with Bennett Jones regarding the Receiver’s litigation with the Company’s auditor (the “Auditor”);
- Reviewing correspondence between Bennett Jones and counsel representing the Auditor;
- Reviewing the Statement of Defence filed by the Auditor;
- Corresponding with Bennett Jones regarding title searches for two properties with active mortgages;
- Corresponding with Financial Services Regulatory Authority of Ontario (“FSRA”), the Company’s regulator, regarding FSRA’s investigation of the Company and a search warrant to obtain, among other things, copies of the Company’s bank account statements;
- Attending a meeting on May 21, 2024 with the FSRA to provide documents and data as set out in a search warrant it obtained regarding the Company;
- Reviewing mail that was redirected from the Company’s office to the Receiver’s office;
- Reviewing historical payments by certain borrowers and preparing a discharge statement for one borrower;
- Maintaining a detailed log of borrower payments;
- Responding to calls and inquiries from borrowers;
- Maintaining the Receiver’s case website;

- Convening internal meetings; and
- Dealing with all other matters not otherwise referred to herein.

Total fees and disbursements per attached time summary	\$ 18,486.08
HST	<u>\$ 2,406.19</u>
Total due	<u>\$ 20,889.27</u>

KSV Restructuring Inc.
First Swiss Mortgage Corp.

Time Summary

For the Period Ending May 31, 2024

Personnel	Rate (\$)	Hours	Amount (\$)
Mitch Vininsky	750	13.50	10,125.00
Ben Luder	450	10.00	4,500.00
Nisan Thurairatnam	475	3.00	1,425.00
Other staff and administration	195 - 250	10.76	2,373.75
Total fees		37.26	18,423.75
Out-of-pocket disbursements			62.33
Total fees and disbursements			<u>18,486.08</u>

Attached is Exhibit "B"

Referred to in the

AFFIDAVIT OF MITCH VININSKY

Sworn before me

this 14th day of JUNE, 2024



Rajinder Kashyap, a Commissioner, etc.,
Province of Ontario, for KSV Restructuring Inc.
Expires February 23, 2027

First Swiss Mortgage Corp.
Schedule of Professionals' Time and Rates
For the Period from May 1, 2023 to May 31, 2024

Personnel	Title	Duties	Hours	Billing Rate (\$ per hour)	Amount (\$)
Mitch Vininsky	Managing Director	Overall responsibility	185.36	700 - 750	131,792.00
Noah Goldstein	Managing Director	Overall responsibility	2.25	700	1,575.00
Nisan Thurairatnam	Manager	All aspects of mandate	193.11	425 - 475	83,534.25
Ben Luder	Manager	All aspects of mandate	10.00	450	4,500.00
Other staff and administrative			82.35		16,747.00
Total fees			<u>473.07</u>		<u>238,148.25</u>
Disbursements					3,001.10
Total					<u>241,149.35</u>
Total hours					473.07
Average hourly rate					\$ 503.41

Appendix “M”