

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

BETWEEN:

**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

**MOTION RECORD  
(Returnable May 19, 2023)**

May 12, 2023

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Lawyers for the Receiver

## INDEX

<b>Tab</b>	<b>Document</b>
<b>1</b>	Notice of Motion (returnable May 19, 2023 at 12:00 p.m. EST)
<b>2</b>	Second Report of the Receiver dated May 12, 2023
<b>3</b>	Amended and Restated Appointment Order
<b>4</b>	Redline to Appointment Order
<b>5</b>	Ancillary Order

# **Tab 1**

**ONTARIO  
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**Notice of Motion  
(Returnable May 19, 2023)**

KSV Restructuring Inc. ("**KSV**"), in its capacity as the receiver (in such capacity, 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 will bring a motion before the Honourable Justice Steele of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") on Friday, May 19, 2023 at 12:00 p.m. (Toronto time) or as soon after that time as the motion can be heard.

**PROPOSED METHOD OF HEARING:** The motion is to be heard via videoconference. Zoom details will be provided by the Court.

**THE MOTION IS FOR:**

1. An order (the "**Ancillary Order**"), among other things:

- (a) 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;
- (b) 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;
- (c) directing Bank of Montreal ("**BMO**") (i) to provide the Receiver with all available information regarding the Company's and 680's historical accounts with the Bank of Montreal 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;
- (d) directing Mr. Nezami-Nia, 680, 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;
- (e) 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;
- (f) 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;

- (g) 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/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;
- (h) 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;
- (i) declaring that the Investors do not have trust claims against the Company, including in respect of mortgages registered by the Company;
- (j) approving the fees of the Receiver and its counsel, Bennett Jones LLP ("**Bennett Jones**"); and
- (k) 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:

- (a) approving the loan agreement entered into between the Receiver and certain Investors (the "**Loan Agreement**"), and certain related relief;
- (b) 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

(c) granting the Receiver certain additional typical powers that were removed from the Appointment Order to limit the Receiver's initial mandate.

3. Such further and other relief as this Honourable Court deems just.

**THE GROUNDS FOR THIS MOTION ARE:**

***Background***

4. KSV was appointed as the Receiver pursuant to an order (the "**Appointment Order**") granted by this Court on March 17, 2023 in response to an application brought 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 (the "**CJA**"). Pursuant to the Appointment Order, KSV was appointed as Receiver without security of all of the assets, undertakings and properties of 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**").

5. 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, as affirmed at the first meeting of creditors held on April 4, 2023 and continued on April 20, 2023.

6. The Receiver understands that the Company was a mortgage lender doing business in Ontario and British Columbia. The Company's sole director is Mr. Nezami-Nia, and immediately

prior to the Receivership, the Company employed three individuals, being Mr. Nezami-Nia, Mr. Dookram and Ms. Papanyan.

7. The application to appoint the Receiver over the Company was brought following complaints to FSRA of wrongdoing by parties that advanced funds to the Company in respect of mortgage investments (the "**Investors**"). The complaints included that the Company had failed to make registrations on title in connection with certain funds Investors advanced for specific mortgages; the Company discharged mortgages Investors had funded, without their knowledge, and without such funds being paid to them; and the Company was not current in making interest payments to Investors.

8. The principal purposes of the receivership are to allow the Receiver to investigate allegations of wrongdoing against the Company and/or its principals by the Investors and take possession and control of the Property to maximize recoveries for the Investors and the Company's other creditors. In connection therewith, the Receiver was granted certain investigatory powers in the Appointment Order.

9. As required by the Appointment Order, the Receiver detailed the preliminary findings of its investigation based on interviews with various parties and a review of certain books and records in the First Report on March 31, 2023. As set out therein, the Receiver found considerable evidence of wrongdoing validating the complaints made by the Investors. The First Report also set out potential next steps that could lead to recoveries for Investors, subject to funding being available to the Receiver. The First Report and related materials are available on the Receiver's case website at: <https://www.ksvadvisory.com/experience/case/firstswiss>.



### *Loan Agreement*

10. The Receiver discussed the contents of the First Report with several investors, including Dancap Private Equity Inc., the largest Investor. Following these discussions, Dancap formed an *ad hoc* committee with representatives from four other large Investors (the "**Investor Advisory Committee**") to streamline communications between the Receiver and Investors going forward.

11. Following discussions regarding actions to be taken for the benefit of Investors, the Receiver and the Investor Advisory Committee prepared the Loan Agreement. The opportunity to participate in the funding was made available to all Investors, as described in a letter appending the term sheet in respect of the Loan Agreement sent to each known Investor by the Receiver on April 25, 2023. The key terms of the Loan Agreement are summarized below:

- (a) *Lenders*: all Investors that advance to the Receiver their *pro rata* share of \$400,000<sup>1</sup> (the "**Loan**") based on the amount owed to the Investor in outstanding mortgages<sup>2</sup> (regardless of whether the mortgages ever existed), rounded to the nearest \$1,000. All known Investors were provided the opportunity to participate;
- (b) *Borrower*: the Receiver;
- (c) *Interest*: 15% compounded semi-annually, payable on the Maturity Date (as defined below);
- (d) *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;

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<sup>1</sup> Represents the maximum principal amount, with the minimum amount being \$250,000.

<sup>2</sup> 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.

- (e) *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;
- (f) *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.

12. All Investors that participate in the Loan are treated equally. As of the date of the Second Report, the Receiver has received an aggregate of approximately \$334,000 from 30 Lenders.

13. The Receiver recommends the Court approve the Loan Agreement. Among other things, the Loan Agreement was developed with and is supported by the Investor Advisory Committee, with all Investors having an opportunity to participate; the Loan will allow the Receiver to pursue opportunities to recover proceeds for the benefit of the Investors; FSRA has consented to the Loan ranking *pari passu*; and the terms of the Loan are commercially reasonable.

### ***Borrowers***

14. As of the date of the Second Report, despite receiving letters from both the Receiver and Bennett Jones directing them to remit payments when due to the Receiver, several Borrowers have not remitted interest payments to the Receiver in respect of their mortgages with the Company. As there may be uncertainty for certain Borrowers as to who to remit principal and interest payments,

the Receiver is requesting the Court make a direction that the Receiver is exclusively entitled to such payments.

***Production of Information – Banking***

15. The Receiver understands that Shinhan was the primary bank where the Company held its accounts. Shinhan has provided the Receiver with statements from January 1, 2020 to April 11, 2023 (the "**Period**") related to three of the Company's accounts (the "**Accounts**"). The Receiver has identified that approximately \$5.9 million was transferred from these accounts to another account at Shinhan (the "**6254 Account**") held by 680. Mr. Nezami-Nia is the sole director of 680, and 680 is the sole shareholder of the Company.

16. 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 any accounts held by the Company or 680, as well as the 6254 Account. The information that the Receiver requires includes statements prior to the Period, cheque images and details regarding payees and deposits. 680 is not an arm's length company, and the Receiver is not aware of any legitimate reason why 680 would have received millions of dollars from the Company. The Receiver believes that the provision of this information will assist the Receiver's investigation and that this direction is appropriately connected to its previously-approved investigatory powers.

17. The Receiver also understands that an Investor received recent interest payments from an account at BMO (the "**5844 Account**"). Similar to the above, the Receiver believes it is appropriate to direct BMO to provide all available information to the Receiver regarding the Company's and

680's historical accounts with the Bank of Montreal since January 1, 2014, and to advise the Receiver whether Mr. Nezami-Nia, Patrick Dookram, Yana Papanyan or Eugene Trounev is 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.

***Production of Information – Regarding 680***

18. 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, the Auditor and 680 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. 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.

***Production of Information – Mr. Nezami-Nia's Electronic Devices***

19. 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**").

20. The Receiver believes it is appropriate to direct Mr. Nezami-Nia to provide the Devices to a third-party to allow for the devices to be imaged and for the Data to be provided to the Receiver,

except for any correspondence with a lawyer or law firm. 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 in connection with the business is fair and reasonable in the circumstances.

***Production of Information – Other***

21. As discussed above, there is already significant evidence of wrongdoing in respect of Mr. Nezami-Nia. Given that the extent of his involvement with other companies is unknown, the Receiver is seeking a direction that Mr. Nezami-Nia, the Auditor, and any other party having in its possession books and records during the Relevant Time for any company in which Mr. Nezami-Nia is or was during the Relevant Time a director, officer, majority shareholder, partner, or controlling mind of any kind, provide such books and records to the Receiver, subject to privilege exceptions. The Receiver is of the view that this would assist with its investigation for the benefit of the Company's stakeholders, and that such relief is fair and reasonable.

***Examinations***

22. 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.

23. 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 reasons 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 or 680.

***Further Relief in respect of Mr. Nezami-Nia***

24. In order to better ascertain Mr. Nezami-Nia's net worth and the Receiver's ability to recover funds from Mr. Nezami-Nia (if necessary and appropriate in respect of his apparent wrongdoing), the Receiver is requesting that Mr. Nezami-Nia be directed to prepare and provide a sworn net worth statement to the Receiver and submit to examinations under oath in respect of the sworn statement. As above, the Receiver believes this is necessary and appropriate given the evidence in respect of Mr. Nezami-Nia's wrongdoing to date, including evidence provided by Shinhan and the Company's internal accounting records.

***No Trust Claims***

25. For the reasons set out in the First Report, the Receiver remains of the view that the Company did not operate its accounts or manage its funds in a way that would meet any characteristics or legal requirements of a trust. Among other things, the Receiver notes that there does not appear to be any consistency or rationale for which mortgages were registered, and that the Investors who would stand to benefit from trust principles were not more diligent but were simply relatively luckier.

26. Significant funds that were required to be held in trust for individual Investors were simply not.

27. As such, the Receiver recommends that this Court declare that the Investors do not have valid trust claims against the Company, including in respect of the proceeds from mortgages registered by the Company. 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.

***Borrower Repayment***

28. In the First Report, the Receiver noted 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.

29. 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. Marciano has agreed to release the funds to the Receiver on the basis set out below.

30. 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. The Investor Advisory Committee is supportive of this relief.

***Expansion of Receiver's Powers***

31. At the time the Receiver was appointed, its primary mandate was to conduct an initial investigation, and the Appointment Order was tailored to include on limited powers. The Receiver now views it as appropriate to expand its mandate to provide it with the powers typically granted to receivers by this Court, including the following powers:

- (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.

***Approval of Fees and Activities***

32. The Receiver is seeking approval of its fees and the fees of Bennett Jones, as set out in the fee affidavits appended to the Second Report. The activities of the Receiver are detailed in the First and Second Reports, as well as the invoices appended to the fee affidavit. The Receiver is of the view its activities and the fees of the Receiver and Bennett Jones are reasonable and appropriate in the circumstances and should be approved.

**OTHER GROUNDS**

33. Section 37 of the *MBLAA*.

34. Section 101 of the *CJA*.

35. Rules 1.04, 2.03, 3.02, 16, 38 and 39 of the Ontario *Rules of Civil Procedure*, R.R.O 1990, Reg. 194, as amended.

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

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

- (a) the Second Report of the Receiver dated May 12, 2023, and the Supplement to the Second Report of the Receiver, to be filed; and
- (b) such further and other evidence as counsel may advise and this Court may permit.

May 12, 2023

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Lawyers for the Receiver

**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

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

Proceedings commenced in Toronto

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**NOTICE OF MOTION  
(Returnable May 19, 2023)**

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Lawyers for the Receiver

# **Tab 2**



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

May 12, 2023

<b>Contents</b>	<b>Page</b>
1.0 Introduction.....	1
1.1 Purposes of this Report.....	2
1.2 Restrictions .....	4
2.0 Background .....	4
3.0 Loan Agreement .....	5
3.1 Recommendation .....	7
4.0 Borrowers .....	7
5.0 Banking .....	8
5.1 Shinhan.....	8
5.2 BMO.....	9
6.0 Examinations .....	10
7.0 Books and Records of 680.....	10
8.0 Imaging of Mr. Nezami-Nia's Electronic Devices.....	11
9.0 Mortgage Administration .....	11
9.1 Borrower Repayment .....	13
10.0 Expansion of the Receiver's Powers.....	13
11.0 Receiver's Activities.....	14
12.0 Professional Fees .....	15
13.0 Conclusion and Recommendation .....	15

## APPENDICES

Appendix	Tab
Appointment Order .....	A
Endorsement of Justice Steele.....	B
First Report of the Receiver (without appendices) .....	C
Letter to Investors dated April 25, 2023 .....	D
Form of Receiver’s Correspondence to the Borrowers .....	E
Form of Letter to Borrowers from Bennett Jones .....	F
Email Exchange dated March 22, 2023 between Karrass and Bennet Jones .....	G
Email Exchange dated May 9, 2023 between Karras and Bennett Jones .....	H
Fee Affidavit of KSV .....	I
Fee Affidavit of Bennett Jones.....	J



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

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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")<sup>1</sup>. 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.

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<sup>1</sup> 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 \$400,000<sup>2</sup> (the "Loan") based on the amount owed to the Investor in outstanding mortgages<sup>3</sup> (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.

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<sup>2</sup> Represents the maximum principal amount, with the minimum amount being \$250,000.

<sup>3</sup> 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 9<sup>th</sup> 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 Schedule<sup>4</sup>.
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.

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<sup>4</sup> 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 sale<sup>5</sup>;
- 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**

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<sup>5</sup> 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 “A”**

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE ) FRIDAY, THE 17<sup>TH</sup>  
 )  
JUSTICE ) DAY OF MARCH, 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  
(appointing Receiver)**

THIS APPLICATION, made by the Applicant for an Order 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**”), appointing 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, was heard this day by judicial videoconference via Zoom.



ON READING the affidavit of Cameron Clark sworn on March 15, 2023 and the Exhibits thereto, the affidavit of Daniel Baum sworn on March 15, 2023 and the Exhibits thereto, the affidavit of Jared Green sworn on March 15, 2023 and the Exhibits thereto, the affidavit of Rose Baum sworn on March 15, 2023 and the Exhibits thereto, the affidavit of Elias Toby sworn on March 15, 2023 and the Exhibits thereto, the affidavit of Jeffrey A. Winnick sworn on March 16, 2023 and the Exhibits thereto, and the affidavit of Nestor Repetski sworn on March 15, 2023 and the Exhibits thereto and on hearing the submissions of counsel for the Applicant 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 Notice of Application and the Application is hereby abridged and validated, and service on the Respondent in the manner served is hereby validated, so that this Application 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 Restructuring Inc. is hereby appointed 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**”).

### **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 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;
- (k) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;
- (l) 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;
- (m) 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;
- (n) to exercise any shareholder, partnership, joint venture or other rights which the Debtor may have; and
- (o) 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 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 \$50,000.00 (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

20. 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.

21. 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.

22. 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**

23. 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>'.

24. 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**

25. THIS COURT ORDERS that the Receiver shall file a report with the Court containing its findings and recommendations within 15 days of the date of this Order in connection with a hearing to take place on April 3, 2023 for the purpose of any relief to be sought by the Applicant or the Receiver with respect to the Debtor, the Property and/or the administration of the receivership.

26. 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.

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

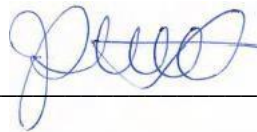
28. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, 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.

29. 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.

30. THIS COURT ORDERS that 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.

31. 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.



## 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**

Applicant

-and-

**FIRST SWISS MORTGAGE CORP.**

Respondent

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

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

PROCEEDING COMMENCED AT  
TORONTO

**ORDER**

**CHAITONS LLP**

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**Lawyers for the Applicant**

## **Appendix “B”**



SUPERIOR COURT OF JUSTICE

COUNSEL SLIP

COURT FILE NO.: CV-23-00696362

DATE: 19 March 2023

NO. ON LIST: 3

TITLE OF PROCEEDING: FIRST SWISS MORTGAGE CORP

BEFORE JUSTICE: Steele

**PARTICIPANT INFORMATION**

**For Plaintiff, Applicant, Moving Party, Crown:**

Name of Person Appearing	Name of Party	Contact Info
Counsel for Applicant George Benchetrit	Chief Executive Officer of the Financial Services Regulatory Authority of Ontario	george@chaitons.com

**For Defendant, Respondent, Responding Party, Defence:**

Name of Person Appearing	Name of Party	Contact Info
Counsel for Respondent Fred Tayar	Winick Realty Corp. and Winrep Holdings	fred@fredtayar.com
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Steve Graff	Brian Kremer, Lorne Rose and Samaron Holdings Inc.	sgraff@airdberlis.com

**For Other, Self-Represented:**

Name of Person Appearing	Name of Party	Contact Info
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Richard Goldhar	Trustee	<a href="mailto:rgoldhar@goldhar.ca">rgoldhar@goldhar.ca</a>
Sean Zweig , Mitch Vininsky	KSV Restructuring Inc. Proposed Receiver	<a href="mailto:zweigs@bennettjones.com">zweigs@bennettjones.com</a> <a href="mailto:mvininsky@ksvadvisory.com">mvininsky@ksvadvisory.com</a>
Maria Konyukhova	Jared Green, Dan Baum, Rose Baum	<a href="mailto:mkonyukhova@stikeman.com">mkonyukhova@stikeman.com</a>
Adam Slavens	Goldhar and Associates	<a href="mailto:aslavens@torys.com">aslavens@torys.com</a>

## **ENDORSEMENT OF JUSTICE STEELE:**

1. This is an application under section 37 of the Mortgage Brokerages, Lenders and Administrators Act, 2006 (the “MBLAA”) by the Chief Executive Officer of the Financial Services Regulatory Authority (“FSRA”) for the appointment of KSV Restructuring Inc., as receiver, over the assets, property, and undertakings of First Swiss Mortgage Corp. (“First Swiss”).
2. FSRA brings this receivership application on an urgent basis, as a result of recent and very serious allegations of wrongdoing by First Swiss. Among other thing, it is alleged that First Swiss:
  - Under-reported the value of mortgages under administration in filings with FSRA;
  - Discharged mortgages represented to have been held in trust for individual investors, without notice to the investors and without repayment to them;
  - Failed to ever register on title certain mortgages that First Swiss represented were entered into on behalf of investors;
  - Ceased operations without accounting to investors for their funds; and
  - Declared itself to be insolvent and delivered a bankruptcy statement of affairs that does not account for investors’ funds.

## **Background**

3. First Swiss is licensed as a mortgage brokerage and a mortgage administrator under the MBLAA. Its business is regulated by FSRA.
4. Beginning in March 2023, FSRA received a series of complaints concerning First Swiss and its representatives from certain parties that had invested in mortgages through First Swiss.
5. First Swiss filed an assignment in bankruptcy on March 15, 2023. The trustee in bankruptcy is not opposing this application.

## **Analysis**

### *Jurisdiction of Court of Appoint Receiver*

6. The MBLAA provides in para. 37(1) and (2) that:
  - (1) The Chief Executive Officer [of FSRA] may apply to the Superior Court of Justice for an order appointing a receiver, receiver and manager, trustee or liquidator of property that is in the

possession or under the control of a licensee or person or entity who the Chief Executive Officer believes, on reasonable grounds, is or was required to have a licence.

(2) If the court is satisfied that the appointment is in the public interest, the court may make the appointment and may impose such conditions as the court considers appropriate.

7. The Court also has authority under section 101 of the *Courts of Justice Act* to appoint a receiver or receiver and manager where it is just or convenient to do so.

#### *Impact of Bankruptcy Proceedings*

8. Section 69.3 of the BIA provides that “on the bankruptcy of any debtor, no creditor has any remedy against the debtor or the debtor’s property, or shall commence or continue any action, execution or other proceedings, for the recovery of a claim provable in bankruptcy.” “Creditor” is defined in the BIA to mean “a person having a claim provable as a claim under [the BIA].”

9. FSRA submits that as it is not a creditor of First Swiss, and this proceeding does not involve the recovery of a claim provable in bankruptcy, no stay should apply. I agree. The language in the BIA contemplates a stay by creditors. It does not, however, contemplate that the regulator’s power to apply to the Court to appoint a receiver in circumstances where it may be in the public interest to do so is stayed.

10. FSRA submits that if the stay under section 69.3 of the BIA applies, it should be lifted under section 69.4 to allow the application to proceed. Under section 69.4 of the BIA, a creditor who is affected by a stay may apply to the Court for a declaration that the stay provisions no longer operate in respect of that creditor and the Court may make such a declaration if it is satisfied that (a) the creditor is likely to be materially prejudiced by the continued operation of the stay; or (b) that it is equitable on other grounds to make the declaration. Because FSRA is not a creditor and the stay, therefore, does not apply, it is not necessary to resort to section 69.4 of the BIA to lift a stay.

#### *Appointment of Receiver*

11. FSRA filed affidavit evidence from various investors in First Swiss. The evidence of Rose Baum, an investor, was that:

- In February 2023, she did not receive the required monthly interest payment from First Swiss in respect of her mortgage investments for the month of January 2023.
- Certain of the mortgages she invested in through First Swiss were never registered on title against the subject properties.
- Several of her active mortgage investments had been discharged without her knowledge. First Swiss has never notified her that these mortgages were discharged, nor has First Swiss repaid her the principal. Instead, she continued to receive monthly interest payments in respect of the discharged mortgages up until December 2022.
- On March 9, 2023, she received a notice from First Swiss which stated, among other things, that all payments and transactions were halted until further notice and First Swiss was unable to respond to emails or calls promptly due to a potential restructuring process.

12. Similar evidence was filed by investors Daniel Baum and Jared Green.

13. The evidence of the Chief Operating Officer of Dancap Private Equity Inc. (“Dancap”), the largest single investor in First Swiss, was as follows:

- As at December 31, 2022, Dancap has 36 mortgage investments in Ontario and 24 mortgage investments in British Columbia through First Swiss as broker and administrator, for a total principal amount of approximately \$6.7 million.
- Dancap has not received a distribution in respect of its investments for the December 20, 2022 statement or for any later periods, but had previously received payments for all monthly statements.
- Dancap’s counsel undertook real property searches of the various properties it had mortgages over. As a result of the searches, Dancap learned that of the 36 Ontario mortgages, only 8 were still actively registered against the subject properties, 6 were never registered, and the remaining 22 mortgages had been discharged between September of 2017 and August of 2022.
- Dancap was never advised of any of these mortgage discharges or cancellations. Further, for months, and in some cases years, First Swiss continued to report monthly interest payments on properties where the mortgage had been discharged or cancelled.
- Dancap supports FSRA in its request to appoint a receiver to, among other things, take control of First Swiss’ bank accounts, assets and its books and records.

14. The Court heard submissions from FSRA. FSRA proposes that a receiver be appointed with all the necessary powers to investigate and report back to the Court within 2-3 weeks. At that time, there would be another Court hearing to determine next steps. FSRA states that at this point there is much that is unknown. However, the claims to date are approximately \$13 million, about half of which are attributed to Dancap. FSRA further states that trust claims may also arise.

15. FSRA submits that it is justified and in the public interest for the Court to grant the requested relief in the circumstances.

16. First Swiss filed a letter indicating that it was not taking a position on FSRA’s application to have a receiver appointed “except to express the concern that the appointment of the receiver will likely be costly and will eat into any money that investors could recover from the corporation.”

17. Certain of the investors also made submissions.

18. Winnick Realty Corp (“Winnick”) and Winrep Holdings Inc. (“Winrep”) indicated that, although they do not take a position on the appointment of the receiver, they have issues with the proposed order. Specifically, it is proposed that the receiver would be appointed as receiver of all the assets of First Swiss, including “any assets or property held by [First Swiss] in trust for any third party.” Winnick and Winrep argue that their trust property should not be the subject matter of the order. The issue is that First Swiss investors generally invested such that First Swiss was holding the mortgage as trustee for the benefit of the investor (the beneficial owner). However, as noted by Dancap, there are concerns that the trust funds were commingled, among other things.

19. Winnick and Winrep referred to *Ontario (Securities Commission) v. Consortium Construction Inc.*, 1992 CarswellOnt 176, 11 C.P.C. (3d) 352 (ONCA). The Court of Appeal has made it clear that the Court's discretion to make an order that covers trust assets in a receivership, "should be sparingly exercised."
20. Based on the jurisprudence, I am satisfied that the Court can make the order covering trust property: *Consortium*, at para. 10. I understand that this discretion should be used sparingly by the Court. However, given the circumstances, I am satisfied that this is a situation where the Court should exercise its discretion. In particular, the Court was advised that the investors are aware of at least one instance of potential overlap of trusts between investors. There is much that is unknown at this stage regarding how the investors' assets have been held by First Swiss, including whether there was commingling of trust funds. There may be numerous competing trust claims.
21. Concerns were raised regarding the breadth of the powers proposed to be granted to the receiver under the draft order. Certain creditors were concerned that the proposed powers are far too expansive for this stage of the process. I agree. At this stage, the receiver requires expansive investigatory and examination powers, but not, for example, the power to sell. I have amended the powers in the Order granted. If the receiver is of the view that it requires another power not provided under the amended Order in the next 2 weeks, which I do not anticipate it will, it may return to Court on an urgent basis before me.
22. The other concerns raised by investors related primarily to the costs of the investigation, which FSRA is initiating. Under section 37(5) of the MBLAA, the appointee's fees and expenses are in the discretion of the Court. As noted above, at this stage FSRA proposes an interim order for a limited time period for the receiver to investigate then return to Court to report on April 3, 2023. In my view the scope of the mandate is reasonable.
23. On the record before me and having heard the oral submissions of counsel for FSRA and certain investors, I am satisfied that it is appropriate and in the public interest to appoint a receiver in the circumstances. However, the receiver will be required to return to Court on April 3, 2023 at 10 am to report to the Court the results of its preliminary investigation.
24. Order to go in accordance with the attached.



## **Appendix “C”**



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

**March 31, 2023**

<b>Contents</b>		<b>Page</b>
1.0	Introduction.....	1
1.1	Purposes of this Report.....	2
1.2	Restrictions .....	2
2.0	Background .....	3
3.0	Interviews .....	4
3.1	Mr. Nezami-Nia .....	4
3.2	Mr. Dookram .....	6
4.0	Auditor.....	7
5.0	Banking Information.....	8
5.1	6254 Account .....	10
6.0	Investors and Borrowers.....	10
6.1	Investors .....	10
6.2	Borrowers.....	13
6.3	Preliminary Views Regarding Trust Claims by Investors.....	13
7.0	Receiver’s Activities.....	14
8.0	Next Steps and Funding .....	15

## **APPENDICES**

<b>Appendix</b>	<b>Tab</b>
Receivership Order.....	A
Endorsement of Justice Steele.....	B
Ontario Profile Report - 10013536 Canada Corp.....	C
WhatsApp Correspondence .....	D
Audited Statements .....	E
Receiver’s Correspondence with Auditor .....	F
Portions of Auditor’s Responses .....	G
Profile Search - 6807771 Canada Corp.....	H
Investors Statements.....	I
Tracing Examples.....	J



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 Receiver<sup>1</sup>;
  - 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

---

<sup>1</sup> 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:

<b>(unaudited; \$)</b>	<b>Amount</b>
<b>Receipts</b>	
Investors	8,395,724
Mortgage Interest and Mortgage Repayments	10,085,797
Sundry/Unknown	1,249,716
<b>Total Receipts</b>	<b>19,731,237</b>
<b>Disbursements</b>	
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
<b>Total Disbursements</b>	<b>19,732,332</b>
Opening Cash Balance	1,428
Net Cash Flow	(1,095)
<b>Closing Cash Balance</b>	<b>333</b>

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:

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

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.<sup>2</sup> A summary of the schedule is presented below.<sup>3</sup> 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

<sup>2</sup> 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.

<sup>3</sup> 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 Company<sup>4</sup>; 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;

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<sup>4</sup> 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”**



**Nisan Thurairatnam**

**ksv advisory inc.**

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Suite 1300, PO Box 20  
Toronto, Ontario, M5J 2W4  
T +1 416 932 6023  
F +1 416 932 6266

ksvadvisory.com  
nthurairatnam@ksvadvisory.com

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April 25, 2023

**DELIVERED VIA EMAIL - «Email\_1», «Email\_2»**

«Investor\_Name»

Dear Investor:

**Re: Receivership Proceedings of First Swiss Mortgage Corp. (“First Swiss”)  
Loan Agreement for Funding Receivership Costs**

As you may know, KSV Restructuring Inc. was appointed by Order of the Ontario Superior Court of Justice (Commercial List) dated March 17, 2023 (the “Receivership Order”) as receiver (the “Receiver”) of all of the assets, undertakings and properties of First Swiss (the “Property”). The Receiver filed a Report to Court dated March 31, 2023 (the “First Report”) which, among other things, summarized its preliminary findings regarding the events that led to the receivership and identified potential next steps that could lead to recoveries for investors, subject to funding being made available to the Receiver to proceed with one or more of those steps.

A copy of the First Report and other materials filed in the receivership proceeding can be accessed here: <https://www.ksvadvisory.com/experience/case/firstswiss>.

The Receiver has been corresponding with several of First Swiss’s investors, including the largest investor, Dancap Private Equity Inc. (“Dancap”). The Receiver understands that many investors, including Dancap, have agreed to advance their pro-rata portion of \$400,000 in order to continue the investigation and allow the Receiver to pursue certain of the steps it outlined in the First Report, including a claim against First Swiss’s insurance policy and examinations under oath of certain principals of First Swiss in order to identify, among other things, additional recoveries.

Furthermore, an Investor Advisory Committee (the “Committee”) has been formed which is comprised of several large investors and includes the following:

1. Dancap (Chair) - Elias Toby [elias@dancap.ca](mailto:elias@dancap.ca)
2. Samaron Holdings Inc. - Lorne Rose [lorne@lornerose.com](mailto:lorne@lornerose.com)
3. Eventuate Inc. - Cindy Smith [cindysmith1@sympatico.ca](mailto:cindysmith1@sympatico.ca)
4. Baum Family - Jared Green [jared@gravyprojects.com](mailto:jared@gravyprojects.com)
5. Arora Family - Upkar Arora [uarora@rallyassets.com](mailto:uarora@rallyassets.com)

After a discussion among approximately 20 significant investors last week, the Receiver understands that it was agreed that Elias Toby will chair the Committee and help to support investors’ communications with the Receiver so as to minimize the Receiver’s time in this regard and reduce professional fees.

Attached is a “Loan Agreement” which is subject to Court approval<sup>1</sup> and sets forth the terms and conditions under which investor advances would be made to the Receiver for continuation of the investigative and recovery steps referenced above. Investor contributions will be determined based their pro rata share of

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<sup>1</sup> The Receiver will seek Court approval of the Loan Agreement after the May 5<sup>th</sup> deadline referenced below.



outstanding principal claims (currently estimated to be approximately \$19.4 million based on investors that have corresponded with the Receiver and/or Dancap), rounded to the nearest \$1,000. For example, if an investor has \$100,000 of outstanding mortgages (regardless of whether or not the amount was ever registered to a borrower), 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).

The Loan Agreement contemplates that a minimum of \$250,000 will be funded by the investors; however, the Committee is of the view that \$400,000, or close to that amount, is required to address the steps identified by the Receiver.

As set out in the Loan Agreement, the advance will, among other things:

- a) accrue 15% interest, compounded semi-annually;
- b) be subject to the Receiver's Borrowing Charge (as set out in the Receivership Order), meaning that it represents a charge against the Property ranking subordinate only to the Receiver's Charge (for its fees and expenses); and
- c) rank *pari passu* with Financial Services Regulatory Authority of Ontario, the Ontario regulator that advanced \$50,000 on the appointment of the Receiver.

Investors that intend to participate in this funding must provide their pro rata share of the \$400,000 to the Receiver by no later than May 5, 2023 either by certified cheque, bank draft or wire to:

Bank of Montreal  
1 First Canadian Place  
100 King Street West  
Toronto, ON M5X 1A3

Bank Transit (ABA) #: 00022  
Bank Institution #: 001  
Bank Account #: 0002-1824-340  
Bank Swift code: BOFMCAM2  
Name of account: KSV Restructuring Inc., General Trust Account  
220 Bay St., Suite 1300 PO Box 20  
Toronto ON M5J 2W4

The Receiver has agreed not to use these funds for professional fees accrued up to March 31, 2023.

Please contact the Committee with any questions regarding the above or the undersigned.

Yours very truly,

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



Per: Nisan Thurairatnam

## First Swiss – Receiver's Second Borrowing Facility

### Summary of Key Terms

KSV Restructuring Inc. was appointed by the Ontario Superior Court of Justice (Commercial List) (the "**Court**") as the receiver (in such capacity, the "**Receiver**") of the assets, undertakings and property of First Swiss Mortgage Corp. ("**First Swiss**") pursuant to a Court Order dated March 17, 2023 (the "**Appointment Order**").

This Term Sheet summarizes the principal terms upon which certain Investors (as defined below) will provide a loan to the Receiver to, among other things, fund the fees and disbursements of the Receiver and the Receiver's counsel, Bennett Jones LLP ("**Bennett Jones**"). The Loan (as defined below) is subject to the approval of the Court.

The Term Sheet should be read in connection with the Receiver's letter dated April 25, 2023, to which this Term Sheet is attached (the "**Letter**").

Subject to approval by the Court, the Receiver will offer all First Swiss investors of which it is aware (the "**Investors**") the opportunity to participate in the Receiver's Borrowings Facility pursuant to the following key terms:

**Borrower:** KSV Restructuring Inc., solely in its capacity as the Receiver of First Swiss (the "**Borrower**").

**Loan Amount:** The Lenders will make available a loan in the maximum principal amount of \$400,000 (the "**Loan**"). The Loan will be in a principal amount not less than \$250,000.

All Investors will be offered an opportunity to participate in funding the Loan on a pro-rata basis based on the amount owed to the Investor in outstanding mortgages<sup>1</sup> (regardless of whether the mortgages ever existed), rounded to the nearest \$1,000.

Each Investor that wishes to participate in the Loan must provide its Loan amount to the Receiver by no later than May 5, 2023. Such amount shall be provided by certified cheque, bank draft or wire at the coordinates provided in the Letter. If the Loan is not approved by the Court or a minimum of \$250,000 is not raised, all amounts funded to the Receiver under this Term Sheet will be forthwith returned to the applicable Investors.

**Interest:** 15%, compounded semi-annually, payable on the Maturity Date (as defined below).

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<sup>1</sup> The outstanding mortgages is currently estimated to be approximately \$19.4 million based on Investors that have corresponded with the Receiver and/or Dancap Private Equity Inc. 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.

- Maturity:** The Loan shall mature when there are proceeds sufficient to repay the Loan, including principal and interest, at the discretion of the Receiver and the Investor Advisory Committee (as defined below), or upon Court Order.
- Lenders:** The undersigned Investors (in such capacity, the "**Lenders**").
- Investor Advisory Committee:** In order to streamline communications between the Lenders and the Receiver, the following parties have agreed to form the "**Investor Advisory Committee**":
1. Dancap Private Equity Inc. (Chair) – Elias Toby
  2. Samaron Holdings Inc. – Lorne Rose
  3. Eventuate Inc. – Cindy Smith
  4. Baum Family – Jared Green
  5. Arora Family – Upkar Arora
- Security and Priority:** The obligations of the Borrower under this Term Sheet shall 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 hereto as Schedule "A". The obligations of the Borrower shall 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 the Financial Services Regulatory Authority of Ontario. A Receiver's Certificate in the aggregate of the amount of the Loan shall be issued by the Receiver to the Investor Advisory Committee on behalf of the Lenders upon Court approval of this Term Sheet.
- Use of Loan by the Receiver:** The Loan shall 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.
- Entire Agreement:** The Term Sheet and its Schedules constitute the entire agreement between the parties related to the subject matter hereof.
- Counterparts:** The Term Sheet may be executed in any number of counterparts, each of which when executed and delivered shall be deemed to be an original, and all of which when taken together shall constitute one and the same instrument. Any part may execute this Term Sheet by signing any counterpart of it.

**Status of Receiver:** The Receiver is entering into this Term Sheet solely in its capacity as the Receiver of First Swiss, and has no personal liability for any obligation arising under or pursuant to this Term Sheet.

**Governing Law:** The laws of the province of Ontario and the federal law applicable therein.

**Court Approval:** This Term Sheet and all the terms herein are subject to approval of the Court.

*[Signature pages follow – the remainder of this page is intentionally left blank]*

**IN WITNESS WHEREOF**, the parties below agree to be bound by the Term Sheet.

**KSV Restructuring Inc., solely in its capacity as the Receiver of First Swiss Mortgage Corp.**

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

Name: Mitch Vininsky

Title: Managing Director

**[Insert name of Investor in First Swiss Mortgage Corp]**

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

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

Address: \_\_\_\_\_

Email: \_\_\_\_\_

Title (if applicable): \_\_\_\_\_

**Witness (if Investor is an individual)**

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

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

**Schedule "A" – Form of Receiver's 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 17<sup>th</sup> day of March, 2023 (the "**Order**") made in an action having Court file number CV-23-00696362-00CL, 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 in accordance with its term with interest thereon calculated and compounded semi-annually after the date hereof at a per annum equal to the rate of 15 per cent.

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 \_\_\_\_\_, 2023.

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

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

## **Appendix “E”**





**Nisan Thurairatnam**

**ksv advisory inc.**

220 Bay Street  
Suite 1300, PO Box 20  
Toronto, Ontario, M5J 2W4  
T +1 416 932 6023  
F +1 416 932 6266

ksvadvisory.com  
nthurairatnam@ksvadvisory.com

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March 22, 2023

**DELIVERED BY REGISTERED MAIL**

«First\_Name\_1» «Last\_Name\_1»  
«First\_Name\_2» «Last\_Name\_2»  
«Address»

Dear «First\_Name\_1» and «First\_Name\_2»:

**Re: Receivership Proceedings of First Swiss Mortgage Corp.  
(Court File No. CV-23-00696362-00CL)**

As you may be aware, following an application made by the Financial Services Regulatory Authority of Ontario ("FSRA"), KSV Restructuring Inc. ("KSV") was appointed by Order of the Ontario Superior Court of Justice (Commercial List) dated March 17, 2023 as receiver (in such capacity, the "Receiver") of all of the assets, undertakings and properties of First Swiss Mortgage Corp. ("First Swiss"). The Order appointing KSV as the Receiver (the "Appointment Order") is attached hereto as Schedule "A".

We understand from the books and records of First Swiss that you are a borrower pursuant to a mortgage in favour of First Swiss in respect of the property with the municipal address «Address». We understand that there may be confusion regarding recent events, including our appointment and its impact on borrowers, so we are writing to clarify certain of those matters.

Shortly before our appointment, on March 15, 2023, First Swiss filed an assignment in bankruptcy pursuant to the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3. Then on March 17, 2023, FSRA brought an application to appoint KSV as Receiver on an urgent basis as a result of serious allegations of wrongdoing against First Swiss made by various investors in the days leading to the application. The bankruptcy proceedings of First Swiss are separate from the receivership proceedings, and our Court-approved mandate as Receiver includes taking possession and control of First Swiss and conducting an investigation into its affairs.

In addition to our investigatory powers, the Appointment Order empowers and authorizes the Receiver to take possession of and exercise control over the Property (as defined therein) and any and all proceeds, receipts and disbursements arising out of or from the Property and to receive and collect all monies and accounts now owed or hereafter owing to First Swiss and, in consultation with FSRA, to exercise all remedies of First Swiss in collecting such monies, including, without limitation, to enforce any security held by First Swiss (see sections 3(a) and 3(i), respectively, of the Appointment Order).

We understand that shortly before our appointment, counsel for certain investors of First Swiss advised certain borrowers that mortgage payments should be made directly to counsel for First Swiss investors going forward. **Please note that the mortgage payments are receivership property, and SHOULD NOT be made to investors, their counsel, or any other third party.**

**Please send mortgage payments when due directly to the Receiver either:**

- a) by cheque, to 220 Bay Street, Suite 1300, Box 20, Toronto, Ontario, M5J 2W4; or
- b) by wire to:

Bank of Montreal  
1 First Canadian Place  
100 King Street West  
Toronto, ON M5X 1A3

Bank Transit (ABA)#: 00022  
Bank Institution #: 001  
Bank Account #: 1591-057  
Bank Swift code: BOFMCAM2  
Name of account: KSV Restructuring Inc. RECEIVER OF FIRST SWISS MORTGAGE CORP.

The Receiver will be reporting to the Court on an interim basis on or before April 3, 2023. Materials filed with the Court in these proceedings will be available on the Receiver's case website at: <https://www.ksvadvisory.com/experience/case/firstswiss>.

Please contact the undersigned if you have any questions.

Yours very truly,

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



Per: Nisan Thurairatnam

## **Appendix “F”**



Bennett Jones

Bennett Jones LLP  
3400 One First Canadian Place, P.O. Box 130  
Toronto, Ontario, M5X 1A4 Canada  
T: 416.863.1200  
F: 416.863.1716

Sean H. Zweig  
Partner  
Direct Line: 416.777.6254  
e-mail: zweigs@bennettjones.com

May 9, 2023

**DELIVERED VIA REGISTERED MAIL**

[Borrower]  
[Address]

Dear [Borrower]:

**Re: Receivership Proceedings of First Swiss Mortgage Corp.  
(Court File No. CV-23-00696362-00CL)**

Bennett Jones LLP is counsel to KSV Restructuring Inc. ("**KSV**"), in its capacity as the receiver (the "**Receiver**") of the assets, undertakings and properties of First Swiss Mortgage Corp. ("**First Swiss**"). The order appointing KSV as the Receiver and other relevant materials filed with the Court in these proceedings are available on the Receiver's website at: <https://www.ksvadvisory.com/experience/case/firstswiss>.

We write further to the letters addressed to you by the Receiver dated March 22, 2023 and April 13, 2023.

As noted in prior correspondence, the Receiver understands that you are a borrower pursuant to a mortgage (the "**Mortgage**") in favour of First Swiss in respect of the property with the municipal address [Property, City] (the "**Mortgaged Property**").

You were informed by the Receiver by letter on March 22, 2023 that all mortgage payments (including principal and interest) are receivership property and must be sent directly to the Receiver when due. You were also informed on April 13, 2023 that your interest payment for April 2023, which was due on April 1, 2023, had not been received by the Receiver, and that in order to avoid immediate enforcement action, you were required to send your mortgage payments directly to the Receiver.

We hereby notify you that as of the date of this letter, the Receiver has not received your interest payment for April 2023, or your interest payment for May 2023, which was due on May 1, 2023 (the "**Interest Payments**"). You are therefore in default of your obligations pursuant to the Mortgage.

May 9, 2023

Page 2

On behalf of the Receiver, we hereby demand immediate payment of the Interest Payments to be made directly to the Receiver at the coordinates below:

**Bank of Montreal**

1 First Canadian Place  
100 King Street West  
Toronto, ON M5X 1A3

Bank Transit (ABA)#: **00022**

Bank Institution #: **001**

Bank Account #: **1591-057**

Bank Swift code: **BOFMCAM2**

Name of account: **KSV Restructuring INC. RECEIVER OF FIRST SWISS MORTGAGE CORP.**

If payment is not received within **ten days** from the date of this letter, the Receiver may exercise and enforce all available rights and remedies that it has at law and under the Mortgage without further notice to you, including without limitation, exercising its ability to initiate power of sale proceedings in respect of the Mortgaged Property and notifying the first mortgagee of your default.

Nothing in this letter shall constitute or be deemed to be a waiver by the Receiver of any breach, default, or event of default that has occurred to the date hereof and the Receiver specifically reserves all of its rights and remedies at law or in equity or arising under or in connection with the mortgage and related and all documents and instruments provided in connection therewith.

Thank you for your attention to this matter.

Yours very truly,

**BENNETT JONES LLP**

Per: Sean Zweig

cc: Thomas Gray (Bennett Jones LLP)  
Mitch Vininsky & Nisan Thurairatnam (KSV Restructuring Inc.)



Bennett Jones

## **Appendix “G”**

**From:** [Robert Karrass](#)  
**To:** [Sean Zweig](#)  
**Cc:** [Mitch Vininsky](#); [Noah Goldstein \(ngoldstein@ksvadisory.com\)](mailto:ngoldstein@ksvadisory.com); [Thomas Gray](#)  
**Subject:** Re: Laptop  
**Date:** Wednesday, March 22, 2023 2:47:38 PM  
**Attachments:** [clip\\_image001.png](#)

---

Hi Sean,

1. Yes please suggest a firm that can assist.
2. Agreed. In terms of timing, that depends on how much information there is on the phone and laptop. If very little, I expect quite quickly. If a lot, it will take a bit longer. Given my existing schedule I will strive to have everything to you by Friday.

Best,

Robert  
**Robert Karrass**  
Principal



7636 Yonge Street, Thornhill, ON L4J 1V9  
T. 416-477-6022 ext. 202 | F. 416-477-6033 | [www.karrasslaw.com](http://www.karrasslaw.com)

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On Mar 22, 2023, at 2:22 PM, Sean Zweig <[ZweigS@bennettjones.com](mailto:ZweigS@bennettjones.com)> wrote:

Hi Robert,

While I do not necessarily agree with everything in your email below (e.g. we do not actually know whether the phone and/or laptop were purchased by Mr. Nezami or the debtor), in the interest of time and making sure there is proper preservation of records, the Receiver is prepared to proceed as follows:

- 1) You will image the phone and laptop today or tomorrow, and hold those images in trust pending further order of the court. To ensure this is done properly, the Receiver can suggest some firms that do this. Please let us know if that would be helpful.
- 2) You will promptly go through the phone and laptop, and provide the Receiver with copies of all documents, folders, and communications required to be provided under the Order. Please let us know when we can expect that process to be completed by.

Please confirm.

**Sean Zweig**  
*Partner\**, Bennett Jones LLP  
\*Denotes Professional Corporation  
3400 One First Canadian Place, P.O. Box 130, Toronto, ON, M5X 1A4  
T. [416 777 6254](tel:4167776254) | F. [416 863 1716](tel:4168631716)  
[BennettJones.com](http://BennettJones.com)

<[image001.png](#)>

---

**From:** Robert Karrass <[robert@karrasslaw.com](mailto:robert@karrasslaw.com)>  
**Sent:** Wednesday, March 22, 2023 12:22 PM  
**To:** Sean Zweig <[ZweigS@bennettjones.com](mailto:ZweigS@bennettjones.com)>  
**Cc:** Mitch Vininsky <[mvininsky@ksvadisory.com](mailto:mvininsky@ksvadisory.com)>; Noah Goldstein  
([ngoldstein@ksvadisory.com](mailto:ngoldstein@ksvadisory.com)) <[ngoldstein@ksvadisory.com](mailto:ngoldstein@ksvadisory.com)>; Thomas Gray  
<[GrayT@bennettjones.com](mailto:GrayT@bennettjones.com)>  
**Subject:** Re: Laptop

Hi Sean,

I appreciate your undertaking, however, on review of the Order, I don't believe my client is required to provide his phone or his laptop. I take this position on the following basis:

1. Both the phone and laptop are personal property of Mr. Nezami and not property of the Debtor.
2. Both the phone and laptop were utilized to communicate with me relating to both First Swiss but also related to other legal matters entirely unrelated to the within proceedings, and with other counsel related to his family law matters, and other matters.
3. The order clearly states that nothing in paragraphs 5 and 6 of the 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.
4. To the extent that my client used his phone and his laptop to check emails or to communicate with people related to work, he is happy to provide copies of everything in his possession related to First Swiss, but he cannot provide an image of his phone or laptop without also delivering and providing access to records that are privileged.
5. While I appreciate your undertaking, my client should not be put in a position where he is required to trust that his privileged communications will not be accessed or reviewed, especially when you cannot know if something is privileged without looking at it.

That said, I am counsel and an officer of the court, I would be happy to go through my clients phone and laptop and provide you copies of all documents, folders, and communications pursuant to my client's obligations under the Court Order. Alternatively, I would be happy to image the phone and laptop myself (I would have to figure out how to do that, but it can't be that hard) and hold those images in trust pending further order of the court.

Please advise at your earliest convenience, my client wants to assist in any way that he can and pursuant to his obligations.

Best,

Robert  
**Robert Karrass**  
Principal  
< >  
7636 Yonge Street, Thornhill, ON L4J 1V9  
T. 416-477-6022 ext. 202 | F. 416-477-6033 | [www.karrasslaw.com](http://www.karrasslaw.com)

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On Mar 22, 2023, at 9:35 AM, Sean Zweig <[ZweigS@bennettjones.com](mailto:ZweigS@bennettjones.com)> wrote:

Hi Robert,

Thank you for the quick response. I've discussed with the Receiver, and it agrees that the contents of the computer will not be viewed by anyone other than the Receiver and its counsel without your client's consent or an Order of the Court. And in terms of potentially privileged information, the Receiver agrees not to review any correspondence from/to legal counsel, and that your client providing the computer to the Receiver does not waive any applicable privilege. The Receiver would also like to image Reza's cell phone on the same terms. There is presumably no reason to treat the cell phone any different than the laptop.

We would like to get this done today. Please confirm that is acceptable to your client, and then we can coordinate logistics. We are happy for Reza to hand-deliver the laptop and cell phone, and wait for them to be imaged. Or we can send a courier. Please let us know.

**Sean Zweig**

*Partner\**, Bennett Jones LLP

\*Denotes Professional Corporation

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

T. 416 777 6254 | F. 416 863 1716

[BennettJones.com](http://BennettJones.com)

<[image001.png](#)>

**From:** Robert Karrass <[robert@karrasslaw.com](mailto:robert@karrasslaw.com)>

**Sent:** Tuesday, March 21, 2023 6:18 PM

**To:** Sean Zweig <[ZweigS@bennettjones.com](mailto:ZweigS@bennettjones.com)>

**Cc:** Mitch Vininsky <[mvininsky@ksvadvisory.com](mailto:mvininsky@ksvadvisory.com)>; Noah Goldstein (<[ngoldstein@ksvadvisory.com](mailto:ngoldstein@ksvadvisory.com)> <[ngoldstein@ksvadvisory.com](mailto:ngoldstein@ksvadvisory.com)>); Thomas Gray <[GrayT@bennettjones.com](mailto:GrayT@bennettjones.com)>

**Subject:** Re: Laptop

Hi Sean,

I've raised this with my client. He advises that he has a personal laptop which was not used for first Swiss related work except to occasionally check email.

I would note that there is privileged information on that laptop related to advice provided by counsel both in relation to first Swiss and other matters.

Before we agree to provide the laptop, please advise how you and Mitch intend to safeguard my client's privileged information. Also please confirm that none of my clients information will be provided to third parties or disseminated in any way pending agreement of the parties or further order of the court.

Thank you,

Robert

On Tue, Mar 21, 2023 at 4:50 PM Sean Zweig  
<[ZweigS@bennettjones.com](mailto:ZweigS@bennettjones.com)> wrote:

Robert,

We understand that Reza used a laptop at the office. Can you please confirm right away? Assuming he did, we would like to arrange to have it imaged urgently. We can arrange a courier.

**Sean Zweig**

*Partner\**, Bennett Jones LLP

\*Denotes Professional Corporation

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

T. [416 777 6254](tel:4167776254) | F. [416 863 1716](tel:4168631716)

[BennettJones.com](http://BennettJones.com)

<[image001.png](#)>

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Robert Karrass

Principal - Karrass Law

7636 Yonge Street, Thornhill, ON L4J 1V9

T. 416-477-6022 ext. 202 | F. 416-477-6033 | [www.karrasslaw.com](http://www.karrasslaw.com)

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you do not wish to receive future commercial electronic messages from Bennett Jones,  
you can unsubscribe at the following link: <http://www.bennettjones.com/unsubscribe>

## **Appendix “H”**

**From:** [Sean Zweig](#)  
**To:** [Robert Karrass](#)  
**Cc:** [Mitch Vininsky](#); [Nisan Thurairatnam](#); [Thomas Gray](#)  
**Subject:** RE: Laptop and Mobile Phone  
**Date:** Wednesday, May 10, 2023 11:56:20 AM  
**Attachments:** [image002.png](#)  
[image001.png](#)

---

Hi Robert,

Please provide additional details as to what records and information you would like the Receiver to grant access to, and what you propose in that regard. We can then consider.

With respect to the laptop and phone, we have provided a very standard and market process to ensure that privileged communications are not produced. Kroll is simply a service provider that KSV has used from time to time; that is the extent of the "business relationship". If you would like to use a different reputable service provider who has the same capabilities, that's fine. There is no need for independent counsel to review given the process we have proposed. Please advise whether you have any issue with the process we have proposed, and whether you have an alternative suggestion to Kroll.

With respect to funding, an update will be provided in the Receiver's next report, which we expect to be served by the end of the week.

**Sean Zweig**

*Partner\**, Bennett Jones LLP

\*Denotes Professional Corporation

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

T. [416 777 6254](tel:4167776254) | F. [416 863 1716](tel:4168631716)

[BennettJones.com](http://BennettJones.com)



---

**From:** Robert Karrass <[robert@karrasslaw.com](mailto:robert@karrasslaw.com)>

**Sent:** Wednesday, May 10, 2023 9:56 AM

**To:** Sean Zweig <[ZweigS@bennettjones.com](mailto:ZweigS@bennettjones.com)>

**Cc:** Mitch Vininsky <[mvininsky@ksvadvisory.com](mailto:mvininsky@ksvadvisory.com)>; Nisan Thurairatnam <[NThurairatnam@ksvadvisory.com](mailto:NThurairatnam@ksvadvisory.com)>; Thomas Gray <[GrayT@bennettjones.com](mailto:GrayT@bennettjones.com)>

**Subject:** Re: Laptop and Mobile Phone

Hi Sean,

Thanks for the email. I am still waiting for a response to my last email advising that we intend to hire our own forensic accounting expert and requesting the Receiver's position on whether they will cooperate by providing the expert with access to records and information.

Regarding the Phone and Laptop, the court order is clear that my client shall not be compelled to produce information if that would require him to provide access to privileged information.

Kroll has a business relationship with the Receiver, we do not feel it is appropriate to provide Kroll with the opportunity to access my client's privileged documents and communication. If there was a way for me to do this, or if the receiver wishes to have the court appoint independent counsel to act as a referee (which I have seen done on multiple occasions) to complete the review of the hard disks on terms that protect my client's privilege, we may be amenable to that (depending on the terms).

Can you advise whether the Receiver has received funding to continue in their role in this matter? Last we heard, the Receiver had exhausted their loan and there were no additional funds for the Receiver to continue.

Best,

Robert  
**Robert Karrass**  
Principal



7636 Yonge Street, Thornhill, ON L4J 1V9  
T. 416-477-6022 ext. 202 | F. 416-477-6033 | [www.karrasslaw.com](http://www.karrasslaw.com)

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On May 9, 2023, at 11:12 AM, Sean Zweig <[ZweigS@bennettjones.com](mailto:ZweigS@bennettjones.com)> wrote:

Robert,

We are circling back regarding the laptop and mobile phone used by your client. The Receiver would like images of both, subject to protecting any applicable privilege. Our suggestion is that everything be provided to Kroll, and searches can be run to ensure that any communications with legal counsel (whether your firm or otherwise) are not provided to the Receiver. You and your client can provide Kroll with a list of law firms/lawyers.

Please confirm that is acceptable to your client. We are intending to be in Court on May 19 on other matters, so if we do have your client's confirmation before we serve materials later this week, we will be seeking that relief at the May 19 hearing.

Thank you

**Sean Zweig**  
*Partner\**, Bennett Jones LLP  
\*Denotes Professional Corporation  
3400 One First Canadian Place, P.O. Box 130, Toronto, ON, M5X 1A4

T. [416 777 6254](tel:4167776254) | F. [416 863 1716](tel:4168631716)  
[BennettJones.com](http://BennettJones.com)

[<image001.png>](#)

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## **Appendix “I”**



**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

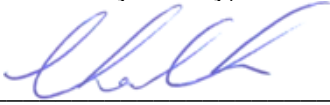
**AFFIDAVIT OF MITCH VININSKY  
(sworn May 11, 2023)**

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 March 17, 2023 to April 30, 2023 in the aggregate amount of \$135,900.80. 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 \$518.05.

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 11<sup>th</sup> day of May, 2023 )



\_\_\_\_\_  
Catherine Anne Stuyck-Therault, a Commissioner, etc.,  
Province of Ontario, for KSV Advisory Inc. and KSV Restructuring Inc.  
Expires February 19, 2025



---

**MITCH VININSKY**

Attached is Exhibit "A"

Referred to in the

AFFIDAVIT OF MITCH VININSKY

Sworn before me

this 11<sup>th</sup> day of MAY, 2023



---

Catherine Anne Stuyck-Therault, a Commissioner, etc.,  
Province of Ontario, for KSV Advisory Inc. and KSV Restructuring Inc.  
Expires February 19, 2025



**ksv advisory inc.**

220 Bay Street, Suite 1300 PO Box 20  
Toronto, Ontario, M5J 2W4  
T +1 416 932 6262  
F +1 416 932 6266

ksvadvisory.com

---

**INVOICE**

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

May 1, 2023

Invoice No: 3086  
HST #: 818808768RT0001

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

For professional services rendered during the period ended March 31, 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 extensively with Bennett Jones LLP ("Bennett Jones"), the Receiver's counsel, Financial Services Regulatory Authority of Ontario ("FSRA"), the Company's regulator, and Chaitons LLP ("Chaitons"), FSRA's counsel, regarding all aspects of this mandate;
- Reviewing the receivership application materials filed by FSRA;
- Reviewing and providing comments on the draft Receivership Order;
- Corresponding and attending calls with Stikeman Elliott LLP and Goodmans LLP, counsel to certain of the Company's lenders;
- Corresponding and attending calls on March 15, 2023 with Goldhar & Associates Ltd., the Company's licensed insolvency trustee (the "Trustee"), regarding the Company's assignment in bankruptcy;
- Reviewing the Company's statement of affairs and other bankruptcy filing materials;
- Attending calls on March 17, 2023 with Bennett Jones, FSRA and Chaitons related to the receivership hearing;

- Preparing for the Company's receivership, including checklists and communication materials;
- Attending at Court, virtually, on March 17, 2023 for the receivership application;
- Reviewing the issued Receivership Order;
- Reviewing an endorsement of Justice Steele dated March 19, 2023 in connection with the Receivership Order;
- Reviewing certain of the Company's books and records as provided by the Trustee;
- Corresponding extensively and speaking with several parties that advanced funds to the Company to place mortgages (the "Investors"), including Dancap Private Equity Inc., Upkar Arora, Jared Green, Cedric Daley, Dan Baum, Joseph Camilleri and numerous others;
- Preparing and sending a letter to Shinhan Bank Canada ("Shinhan") to restrict the Company's bank accounts and obtain historical account records;
- Preparing and sending a letter to Bank of Montreal ("BMO") to restrict the Company's bank accounts and obtain historical account records;
- Attending a call on March 20, 2023 with Reza Nezami-Nia, the Company's principal, to schedule a meeting;
- Corresponding with Karrass Law ("Karrass"), Mr. Nezami-Nia's counsel, regarding the Receiver's interview with Mr. Nezami-Nia;
- Attending a meeting on March 20, 2023 at Karrass's offices with Bennett Jones, Karrass and Mr. Nezami-Nia to discuss, among other things, the allegations in the receivership application materials;
- Reviewing information provided by Mr. Nezami-Nia, including his correspondence on WhatsApp and an appraisal for a property located at 8457 Highway 17, Rockland, where the Company is the first mortgagee;
- Corresponding and speaking with Prolink Insurance Inc. ("Prolink"), the Company's insurance agent, regarding the Company's insurance policies;
- Reviewing information provided by Prolink and discussing same with Bennett Jones and with FSRA;
- Attending a meeting on March 21, 2023 with Patrick Dookram, the Company's former Vice President of Trading and Portfolio Management, regarding the Investor allegations;
- Corresponding extensively with Shinhan regarding the Company's bank accounts;

- Reviewing the Company's historical bank statements provided by Shinhan and analyzing certain transactions;
- Attending a call on March 22, 2023 with representatives of FSRA and Toronto Police Services to discuss the Investor complaints and the Receiver's preliminary findings;
- Preparing a letter to all known borrowers to advise them of the Receivership Order and direct them to make interest payments to the Receiver's trust account;
- Responding to calls and inquiries from the borrowers;
- Attending calls on March 23 and 28, 2023 with Syed A. Raza Professional Corporation, Company's auditor (the "Auditor"), regarding the scope of services provided and the Company's historical financial statements;
- Reviewing information provided by the Auditor and discussing same with Bennett Jones and with FSRA;
- Preparing updates for FSRA, including calls and/or emails on March 20, 21, 22, 24 and 30, 2023;
- Reviewing a significant number of property and corporate searches prepared by Bennett Jones;
- Corresponding and attending a call with Yana Papanyan, the Company's former Lead Underwriter;
- Reviewing numerous banker boxes of documents removed from the Company's office premises;
- Reviewing the Company's bank statements and preparing a summary of deposits, withdrawals and intercompany transactions;
- Preparing a summary of bank transactions between the Company and 6807771 Canada Corp. ("680"), the Company's sole shareholder;
- Corresponding with Bennett Jones and with FSRA regarding the activity in the 680 bank account;
- Reviewing personal bank statements provided by Mr. Dookram;
- Preparing and maintaining a master list of all known Investor mortgages, addresses and the mortgage registration status;
- Preparing the First Report to Court dated March 31, 2023 (the First Report");
- Corresponding extensively with Bennett Jones regarding the First Report;

- Drafting and sending to the Trustee and the Office of the Superintendent of Bankruptcy the Notice of Receiver and Statement of the Receiver pursuant to sections 245(1) and 246(1) of the *Bankruptcy and Insolvency Act*;
- Updating FSRA regularly regarding the status of the receivership proceeding;
- Coordinating with the Receiver's IT agent to image the Company's computers and the cell phone of Mr. Dookram;
- Corresponding with FSRA and with certain Investors regarding further funding of the receivership proceeding;
- Reviewing information from certain borrowers regarding their repayment of the mortgages that had been provided by the Company and discussing same with Bennett Jones;
- Creating and 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	\$ 86,955.50
HST	<u>\$ 11,304.22</u>
Total	<u>\$ 98,259.72</u>

KSV Restructuring Inc.  
First Swiss Mortgage Corp.

**Time Summary**

For the Period March 15, 2023 to March 31, 2023

---

<b>Personnel</b>	<b>Rate (\$)</b>	<b>Hours</b>	<b>Amount (\$)</b>
Mitch Vininsky	700	68.00	47,600.00
Noah Goldstein	700	6.50	4,550.00
Nisan Thurairatnam	425	73.50	31,237.50
Other Staff and administration	205-425	13.75	3,293.00
Total fees		93.75	86,680.50
Out-of-pocket disbursements (Ascend fee)			275.00
Total fees and disbursements			<u>86,955.50</u>





**ksv advisory inc.**

220 Bay Street, Suite 1300 PO Box 20  
Toronto, Ontario, M5J 2W4  
T +1 416 932 6262  
F +1 416 932 6266

ksvadvisory.com

---

**INVOICE**

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

May 10, 2023

Invoice No: 3113  
HST #: 818808768RT0001

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

For professional services rendered during the period ended April 30, 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 extensively with Bennett Jones LLP (“Bennett Jones”), the Receiver’s counsel, regarding all aspects of this mandate;
- Corresponding with Financial Services Regulatory Authority of Ontario (“FSRA”), the Company’s regulator, and Chaitons LLP (“Chaitons”), FSRA’s counsel, regarding the Receiver’s preliminary findings and potential next steps;
- Corresponding extensively and speaking with numerous parties that advanced funds to the Company to place mortgages (the “Investors”);
- Attending calls on April 2, 2023 with Bennett Jones and Chaitons to prepare for the Court hearing on April 3, 2023;
- Attending at Court, virtually, on April 3, 2023 regarding the Receiver’s findings and recommendations set out in the First Report to Court dated March 31, 2023;
- Corresponding with Bennett Jones regarding the Court hearing;
- Preparing a memorandum to Dancap Private Equity Inc. (“Dancap”), the Company’s largest investor, regarding the status of the proceeding and the potential uses of additional funding;

- Corresponding with Dancap regarding a mortgage investment schedule, Investor claims and borrower repayments;
- Corresponding with counsel to several borrowers regarding requests to discharge mortgages that had been repaid;
- Attending the First Meeting of Creditors on April 4, 2023 (the "FMC") convened by Goldhar & Associates Ltd., the Company's licensed insolvency trustee (the "Trustee");
- Attending a meeting on April 14, 2023 with Patrick Dookram, the Company's former Vice President of Trading and Portfolio Management, regarding the contents on his computer;
- Corresponding with Toronto Police Services regarding certain information retrieved from Mr. Dookram's computer;
- Reviewing and editing a funding proposal letter and term sheet (the "Loan Agreement") for the purposes of raising funds to advance the receivership;
- 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 considering realization strategies;
- Corresponding with Yana Papanyan, the Company's former Lead Underwriter;
- Corresponding with Bennett Jones and Chaitons regarding the Loan Agreement;
- Corresponding with Dancap regarding the letter and Loan Agreement to send to Investors;
- Corresponding with Veranova Properties Limited, the former property manager of the Hwy 17 Property, regarding the condition of the property;
- Corresponding with a realtor regarding the Hwy 17 Property;
- Preparing and sending a second letter to all known borrowers to advise them of the Receivership Order and direct them to make interest payments to the Receiver's trust account;
- Finalizing and sending letters to all known investors regarding the Loan Agreement;
- Attending a continuation of the FMC on April 20, 2023;
- Responding to calls and inquiries from borrowers;
- Corresponding with and arranging for Xerox to remove a leased printer located at the Company's premises;

- Reviewing a significant number of property and corporate searches prepared by Bennett Jones;
- Preparing and maintaining a master list of all known Investor mortgages, addresses and mortgage registration status;
- Reviewing information from borrowers regarding their repayment of the mortgages that had been provided by the Company and discussing same with Bennett Jones;
- Dealing with borrower discharges;
- 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	\$ 48,945.30
HST	<u>6,362.89</u>
Total	<u>\$ 55,308.19</u>

KSV Restructuring Inc.  
First Swiss Mortgage Corp.

**Time Summary**

For the Period ending April 30, 2023

<b>Personnel</b>	<b>Rate (\$)</b>	<b>Hours</b>	<b>Amount (\$)</b>
Mitch Vininsky	700	27.70	19,390.00
Nisan Thurairatnam	425	42.75	18,168.75
Other Staff and administration	205-425	12.50	2,526.50
Total fees		55.25	40,085.25
Add: Out of Pocket Disbursements			
Courier			25.04
Postage			120.20
Photocopies			37.45
Kroll			8,625.00
Travel			52.36
Total Out of Pocket Disbursements			8,860.05
Total fees and disbursements			48,945.30

Attached is Exhibit "B"

Referred to in the

AFFIDAVIT OF MITCH VININSKY

Sworn before me

this 11<sup>th</sup> day of MAY, 2023



---

Catherine Anne Stuyck-Therault, a Commissioner, etc.,  
Province of Ontario, for KSV Advisory Inc. and KSV Restructuring Inc.  
Expires February 19, 2025

**First Swiss Mortgage Corp.**  
**Schedule of Professionals' Time and Rates**  
**For the Period from March 17, 2023 to April 30, 2023**

---

Personnel	Title	Duties	Hours	Billing Rate (\$ per hour)	Amount (\$)
Mitch Vininsky	Managing Director	Overall responsibility	95.70	700	66,990.00
Noah Goldstein	Managing Director	Overall responsibility	6.50	700	4,550.00
Nisan Thurairatnam	Manager	All aspects of mandate	116.25	425	49,406.25
Other staff and administrative			26.25	175 - 425	5,819.50
Total fees			<u>244.70</u>		<u>126,765.75</u>
Out of pocket					9,135.05
Total					<u>135,900.80</u>
Total hours					244.70
Average hourly rate					\$ 518.05

## **Appendix “J”**

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

BETWEEN:

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

Applicant

- and -

**FIRST SWISS MORTGAGE CORP.**

Respondents

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

**FEE AFFIDAVIT  
(Sworn May 12, 2023)**

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

1. I am a partner at Bennett Jones LLP ("**Bennett Jones**") who has had primary carriage of this file and, as such, have knowledge of the matters to which I hereinafter depose. Where I do not have personal knowledge of the matters discussed in this Affidavit, I have stated the source of my information and, in all cases, believe it to be true.
2. Bennett Jones is counsel to KSV Restructuring Inc., in its capacity as the Court-appointed Receiver in the above-captioned proceedings (in such capacity, the "**Receiver**").
3. Attached hereto as **Exhibit "A"** are copies of the Statements of Account rendered by Bennett Jones in connection with its role as counsel to the Receiver for the period between March



13, 2023 and April 30, 2023. These Statements of Account have been redacted to address matters of confidentiality or privilege.

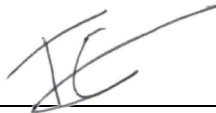
4. Attached hereto as **Exhibit "B"** is a table summarizing the aforementioned Statements of Account for the fees and disbursements incurred by Bennett Jones in connection with these proceedings for the period between March 13, 2023 and April 30, 2023.

5. Attached hereto as **Exhibit "C"** is a table detailing, among other things, the hourly rates and the time expended by the various professionals at Bennett Jones who have worked on this matter for the period between March 13, 2023 and April 30, 2023.

6. The total legal fees (exclusive of disbursements and general and harmonized sales taxes) billed by Bennett Jones for the aforementioned accounts to April 30, 2023, in connection with its role as counsel to the Receiver, are \$141,291.50. To the best of my knowledge, the rates charged by Bennett Jones are comparable to the rates charged for the provision of services of a similar nature and complexity by other large legal firms in the Toronto market.

7. This Affidavit is made in support of approval of the fees and disbursements of Bennett Jones as counsel to the Receiver, and for no other or improper purpose.

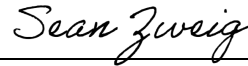
**SWORN REMOTELY** by Sean Zweig stated as being located in the City of Toronto, in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario, on May 12<sup>th</sup>, 2023 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



---

**THOMAS GRAY**

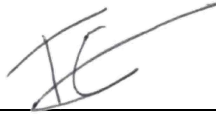
Commissioner for Taking Affidavits  
(or as may be)



---

**SEAN ZWEIG**

THIS IS **EXHIBIT "A"** REFERRED TO IN  
THE AFFIDAVIT OF SEAN ZWEIG,  
SWORN BEFORE ME THIS 12<sup>TH</sup> DAY OF MAY, 2023.

A handwritten signature in black ink, appearing to be 'TG' with a long horizontal stroke extending to the right.

---

**THOMAS GRAY**

A Commissioner for taking Affidavits  
(or as may be)



Bennett Jones

Bennett Jones LLP  
Suite 3400  
1 First Canadian Place  
P.O. Box 130  
Toronto, Ontario M5X 1A4

KSV Restructuring Inc.  
220 Bay Street, 13th Floor  
P.O. Box 20  
TORONTO, ON M5J 2W4

**Attention: Mitch Vininsky and Noah Goldstein**

Re: First Swiss Mortgage Corp.  
Our File Number: 074735.00043

Date: May 8, 2023  
Invoice: 1512055

---

**PROFESSIONAL SERVICES RENDERED in conjunction with the above noted matter:**

Professional Services	\$	10,002.00
Disbursements Incurred As Your Agent (Non Taxable)	\$	35.60
Total Due before Tax	\$	10,037.60
GST/HST	\$	1,300.26
<b>Total Due in CAD</b>	<b>\$</b>	<b>11,337.86</b>

Due upon receipt. Bennett Jones reserves the right to charge interest at a rate not greater than 12% per annum on outstanding invoices over 30 days. We collect, use and disclose information pursuant to our Privacy Policies. For further information visit our website at [www.bennettjones.com](http://www.bennettjones.com). GST/HST number: 119346757

May 8, 2023  
Page 2

Client: 074735.00043  
Invoice No.: 1512055

Date	Name	Description	Hours
13/03/23	Sean Zweig	Many discussions with N. Goldstein; Call with Stikeman and N. Goldstein; Reviewing and commenting on draft Order and Notice of Application	1.60
14/03/23	Sean Zweig	Many calls with N. Goldstein throughout day; Considering issues; Revising Order; Reviewing revised drafts of Court materials	1.40
15/03/23	Sean Zweig	Many calls with N. Goldstein; Reviewing and commenting on draft outline of initial steps; Reviewing and commenting on various drafts of Order; Calls regarding same; Reviewing bankruptcy package; Emails regarding same; Preparing consent; Various other correspondence	1.90
15/03/23	Joseph Blinick	Correspondence with S. Zweig regarding matter	0.20
15/03/23	Olivia D'Innocenzo	Conducting a bankruptcy search on First Swiss Mortgage Corp. and circulating same to S. Zweig	0.30
16/03/23	Thomas Gray	Initial call to discuss file with S. Zweig and preliminary review of motion materials filed by Applicant	0.60
16/03/23	Joseph Blinick	Correspondence and discussions with S. Zweig regarding matter and next steps with respect to same	0.40
16/03/23	Sean Zweig	Reviewing Application Record; Multiple discussions with T. Gray; Many discussions with KSV; Reviewing correspondence with various investors' counsel; Reviewing Factum; Reviewing various information provided by investors' counsel; Call with KSV and G. Benchetrit; Preparing for hearing; Call with J. Blinick	3.80

Total Hours	10.20
Total Professional Services	\$ 10,002.00

Name	Hours	Rate
Sean Zweig	8.70	\$ 1,035.00
Joseph Blinick	0.60	\$ 860.00
Thomas Gray	0.60	\$ 565.00
Olivia D'Innocenzo	0.30	\$ 475.00

Disbursements Incurred As Your Agent (Non Taxable)	Amount
Online Government Service - Registration	\$ 35.60



<b>Disbursements Incurred As Your Agent (Non Taxable)</b>		<b>Amount</b>
Total Disbursements Incurred as Your Agent	\$	35.60
	GST/HST \$	1,300.26
TOTAL DUE	\$	<u>11,337.86</u>



Bennett Jones

KSV Restructuring Inc.  
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TORONTO, ON M5J 2W4

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**Remittance Statement**

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<b>Total Due in CAD</b>	<b>\$</b>	<b>11,337.86</b>



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Professional Services	\$	79,367.50
Disbursements	\$	5,761.59
Total Due before Tax	\$	85,129.09
GST/HST	\$	11,066.78
<b>Total Due in CAD</b>	<b>\$</b>	<b>96,195.87</b>

Due upon receipt. Bennett Jones reserves the right to charge interest at a rate not greater than 12% per annum on outstanding invoices over 30 days. We collect, use and disclose information pursuant to our Privacy Policies. For further information visit our website at [www.bennettjones.com](http://www.bennettjones.com). GST/HST number: 119346757





May 8, 2023  
Page 2

Client:  
Invoice No.:

074735.00043  
1512056

Date	Name	Description	Hours
17/03/23	Thomas Gray	Discussion with S. Zweig regarding Court and next steps	0.30
17/03/23	Sean Zweig	Call with G. Benchetrit and N. Goldstein; Preparing for and attending at receivership application; Many calls and emails with KSV; Call with T. Gray; Other correspondence	2.90
19/03/23	Thomas Gray	Emails regarding next steps and reviewing order, application record and other materials	1.00
19/03/23	Sean Zweig	Reviewing Order and Endorsement granted; Discussing same with N. Goldstein; Emails with Chaitons	0.50
20/03/23	Thomas Gray	Call with Receiver team to discuss file; Emails throughout day regarding Receiver's findings on various issues; Reviewing documents and coordinating PIN searches and summaries; Drafting letter to borrowers	4.40
20/03/23	Alexandra Terpoy-Heinemann	Emails with T. Gray regarding Ontario and BC property searches; Obtaining and reviewing Ontario parcel registers and coordinating BC searches with B. Fossen; Drafting tracking chart and forwarding same to T. Gray	2.10
20/03/23	Bobbie Fossen	Ordering searches from the B.C. Land Title Office	0.20
20/03/23	Joseph Blinick	Internal correspondence regarding matter	0.20
20/03/23	Sean Zweig	Working on file throughout day and evening, including: Preparing for and attending call with KSV regarding action plan and next steps; Reviewing audited financial statements; Reviewing certain information received from Trustee; Calls and emails with R. Karrass; Preparing for and attending meeting with principal; Many calls and emails with KSV throughout day; Various other correspondence; Reviewing D&O policy; Reviewing other information obtained; Reviewing and commenting on email to FSRA	7.10
20/03/23	Olivia D'Innocenzo	Conducting corporate and PPSA searches on [REDACTED]; Circulating same to T. Gray	0.60
21/03/23	Alexandra Terpoy-Heinemann	Reviewing VuMaps and Teraview to locate additional properties and updating tracking chart; Obtaining parcel registers and reviewing same; Email to T. Gray with details of search; Arranging	5.30

Date	Name	Description	Hours
		for additional searches in BC	
21/03/23	Thomas Gray	Reviewing documents and correspondence from Receiver; Finalizing draft letter and circulating same; Coordinating preparation of summary charts for mortgages and reviewing same; Multiple internal discussions regarding file, including updates from S. Zweig and discussion regarding insurance with S. Zweig and C. Viney	4.50
21/03/23	Bobbie Fossen	Conducting further searches in the BC Land Title Office	0.40
21/03/23	Christine Viney	Call with S. Zweig and T. Gray regarding background to receivership and potential claims against First Swiss directors and officers	0.50
21/03/23	Nicole Yap	Email instructions from T. Gray regarding registration of court order; Reviewing court order; Email exchange with A. Terpoy regarding instructions; Email exchanges with N. McNeilage and E. Bilokin regarding registration of court order; Locating property PINs to determine ownership; Email to T. Gray with comments on registration of court order; Pulling PINs and reviewing; Email to T. Gray with copies of PINs; Reviewing registration guide regarding caution-charge; Email to T. Gray with comments on effect of cautions registered on title	1.00
21/03/23	Sean Zweig	Correspondence throughout day regarding various issues and reviewing significant number of documents; Reviewing and commenting on letter to borrowers; Call with C. Viney regarding insurance policy; Call with two investors; Many emails and calls with KSV throughout day	3.40
21/03/23	Joseph Blinick	Discussions with S. Zweig regarding current status of matter and next steps; Follow-up correspondence relating to same; Attending to have asset searches in respect of principals conducted	0.50
21/03/23	Olivia D'Innocenzo	Conducting a corporate search on [REDACTED] [REDACTED] Circulating same to T. Gray	0.30
21/03/23	Jelena Petrovic	Reviewing PINs and cross-referencing with summary chart; Email to A. Terpoy providing comments and suggestions for updates	2.20
22/03/23	Alexandra	Reviewing Teraview and VuMap and obtaining	0.70



Date	Name	Description	Hours
	Terpoy-Heinemann	additional parcel registers, and coordinating BC searches; Updating chart with details of same; Emails with T. Gray regarding same	
22/03/23	Thomas Gray	Coordinating further searches, reviewing summary, and pulling related materials; Call with counsel to borrower and discussions regarding same; Reviewing various updates from Receiver; Reviewing research findings	2.00
22/03/23	Bobbie Fossen	Conducting further searches in the B.C. Land Title Office	0.10
22/03/23	Christine Viney	Reviewing and considering First Swiss E&O Policy in connection with potential claims made through the receivership process	1.60
22/03/23	Preet Gill	Phone call with S. Zweig regarding case law and research on allocation of loss and related principles; Conducting research and analysis on same; Drafting summary analysis and internal correspondence regarding same; Further follow-up case law research on same; Correspondence with S. Zweig regarding same	2.70
22/03/23	Nicole Yap	Email to S. Zweig requesting instructions; Drafting e-reg caution; Discussion with N. McNeilage regarding form and implications of no dealings indicator; Pulling and reviewing registered cautions; Email to S. Zweig regarding further properties secured by the charge and seeking instructions	1.00
22/03/23	Sean Zweig	Emails regarding appraisals; Emails regarding bank records; Many emails and calls with KSV; Dealing with R. Karrass regarding laptop and cell phone; Dealing with borrower counsel; Discussion with P. Bell regarding trust research issue, and considering same; Reviewing notices from FSRA; Other correspondence throughout day, including with respect to next steps	3.50
22/03/23	Joseph Blinick	Internal correspondence regarding asset searches in respect of principals; Discussions with S. Zweig regarding current status and next steps, including [REDACTED]	0.40
22/03/23	Olivia D'Innocenzo	Conducting corporate search on [REDACTED] and circulating same to J. Blinick	0.50
23/03/23	Thomas Gray	Call to discuss insurance matters; Reviewing	2.60

Date	Name	Description	Hours
		updates from KSV; Reaching out to counsel for borrower; Coordinating further searches and reviewing and discussing same	
23/03/23	Christine Viney	Call with S. Zweig and T. Gray regarding insurance policy review and considerations in connection with potential coverage under First Swiss E&O policy	0.90
23/03/23	Nicole Yap	Pulling additional PINs and revising draft caution and authorization; Email to S. Zweig with draft documents; Email exchange with S. Zweig regarding authorization; Attending to amendment of authorization; Receipt and review of signed authorization; Attending to registration of caution; Email to S. Zweig with receipted instrument and comments on subsearch	1.00
23/03/23	Preet Gill	Phone call with S. Zweig; Reviewing receivership order provisions; Further discussion with S. Zweig regarding same	0.30
23/03/23	Sean Zweig	Call with FSRA; Various correspondence throughout day with KSV and T. Gray; Reviewing various documents; Dealing with registering Caution; Dealing with borrower counsel; Internal call regarding insurance policy; Reviewing update to FSRA	3.20
23/03/23	Olivia D'Innocenzo	Conducting corporate searches on [REDACTED] [REDACTED] Circulating same to T. Gray	0.70
23/03/23	Jelena Petrovic	Confirming legal descriptions for municipal addresses provided; Downloading copies of PINs; Emails with T. Gray with respect to same	0.40
24/03/23	Thomas Gray	Coordinating further searches; Discussions regarding list of properties with KSV and emails with counsel regarding searches conducted; Reviewing information from KSV	3.80
24/03/23	Sean Zweig	Call with J. Latham; Calls with M. Vininsky; Correspondence with KSV and T. Gray throughout day; Emails with K. Karrass; Call with FSRA; Reviewing various documents and searches received; Considering next steps; Reviewing letter from borrower, and correspondence regarding same; Reviewing email from J. Latham	3.60

Date	Name	Description	Hours
24/03/23	Joseph Blinick	Internal correspondence regarding asset searches in respect of Principals	0.20
24/03/23	Olivia D'Innocenzo	Conducting Ontario and Federal corporate searches on [REDACTED] [REDACTED] Circulating same to T. Gray	0.70
25/03/23	Thomas Gray	Reviewing searches received from Goodmans and Stikeman	0.90
25/03/23	Sean Zweig	Reviewing Receiver's Certificate	0.10
26/03/23	Thomas Gray	Reviewing searches received from other parties; Preparing instructions for clerks	0.30
27/03/23	Alexandra Terpoy-Heinemann	Obtaining parcel registers and reviewing same; Drafting tracking chart; Various emails with T. Gray and B. Fossen	2.70
27/03/23	Thomas Gray	Emails with clerk team and KSV regarding various searches and summaries of same; Reviewing information on Yorkville Property and summarizing same	1.60
27/03/23	Bobbie Fossen	Conducting further searches in the B.C. Land Title Office; Reviewing titles for B.C. properties	0.90
27/03/23	Sean Zweig	Emails with C. Viney regarding insurance matter; Various emails and reviewing various documents throughout day; Call with DanCap and J. Latham	1.60
27/03/23	Olivia D'Innocenzo	Conducting an Ontario and federal corporate search on [REDACTED]; Circulating same to T. Gray	0.40
27/03/23	Jelena Petrovic	Call with A. Terpoy; Reviewing PINs provided by other counsel to confirm existing First Swiss mortgages registered on title; Ensuring same have been identified correctly on master worksheet; Email to A. Terpoy summarizing findings	2.50
28/03/23	Thomas Gray	Multiple discussions with clerks regarding searches; Reviewing and commenting on draft report; Emails with counsel for borrower and counsel for lender; Discussions internally regarding file	2.30
28/03/23	Alexandra Terpoy-Heinemann	Various emails to and from T. Gray, B. Fossen and J. Petrovic regarding property searches; Reviewing VuMap and Teraview to identify additional lands; Extensive review of parcel registers and continuing	6.90

Date	Name	Description	Hours
		to draft tracking charts	
28/03/23	Bobbie Fossen	Continuing review of B.C. titles	0.60
28/03/23	Sean Zweig	Call and correspondence with G. Benchetrit regarding insurance matter; High-level review of materials provided by auditor, and discussing same; Reviewing information provided by Dancap; Various correspondence with KSV and T. Gray throughout day; Correspondence regarding refinancing of [REDACTED] mortgage; Reviewing bank statements; Reviewing and commenting on draft Report, and considering related issues	3.80
28/03/23	Jelena Petrovic	Identifying correct legal descriptions for municipal addresses provided by T. Gray; Email to A. Terpoy forwarding PIN list	1.60
29/03/23	Alexandra Terpoy-Heinemann	Continuing to obtain parcel registers and review same; Updating tracking charts; Call with T. Gray regarding details of same	5.10
29/03/23	Thomas Gray	Call to discuss file with KSV; Discussing searches with clerks and beginning to review master summary	1.30
29/03/23	Sean Zweig	Reviewing revised draft of Report; Various correspondence throughout day regarding many issues and dealing with same; Call with KSV regarding Report	2.20
29/03/23	Jelena Petrovic	Identifying correct legal descriptions for additional municipal addresses provided by T. Gray; Reviewing numerous PINs to confirm existing First Swiss mortgages registered on title; Cross-referencing finding with working charts; Email to A. Terpoy advising of findings of review	4.00
30/03/23	Alexandra Terpoy-Heinemann	Reviewing parcel registers to confirm mortgage amounts; Reviewing correspondence and excel chart with respect to additional property and emails with T. Gray regarding same	1.10
30/03/23	Thomas Gray	Reviewing compiled charts, and working with student and clerks on updates; Call with KSV to discuss same; Reviewing updated report; Discussions regarding file	3.00
30/03/23	Sean Zweig	Call with FSRA; Dealing with mortgage discharge in respect of paid mortgage; Correspondence in connection with other repaid mortgages;	2.10

May 8, 2023  
Page 8

Client: 074735.00043  
Invoice No.: 1512056

Date	Name	Description	Hours
		Reviewing master tracker list, and considering related issues; Reviewing and commenting on revised Report; Many calls and emails with KSV	
30/03/23	Jelena Petrovic	Confirming legal descriptions and downloading additional PINs	0.30
31/03/23	Alexandra Terpoy-Heinemann	Obtaining and reviewing additional parcel registers and forwarding same to T. Gray	0.70
31/03/23	Thomas Gray	Multiple rounds of edits to draft report, including several calls regarding mortgages; Finalizing, serving, filing and uploading same to Caselines	6.90
31/03/23	Sean Zweig	Reviewing and commenting on further revised drafts of Report, and corresponding regarding same; Discussing potential funding source with KSV, and considering same; Call with Receiver and Trustee; Follow-up discussion regarding serving as in inspector; Various other correspondence; Reviewing final Report with appendices	3.80
Total Hours			124.00
Total Professional Services			\$ 79,367.50

Name	Hours	Rate
Preet Gill	3.00	\$ 960.00
Sean Zweig	37.80	\$ 1,035.00
Joseph Blinick	1.30	\$ 860.00
Christine Viney	3.00	\$ 760.00
Thomas Gray	34.90	\$ 565.00
Alexandra Terpoy-Heinemann	24.60	\$ 310.00
Olivia D'Innocenzo	3.20	\$ 475.00
Nicole Yap	3.00	\$ 465.00
Jelena Petrovic	11.00	\$ 310.00
Bobbie Fossen	2.20	\$ 135.00

Disbursements	Amount
Professional Services	\$ 632.00
Land Title - Search	\$ 4,866.04
Online Government Service	\$ 183.05
Teraview Filing	\$ 80.50
Total Disbursements	\$ 5,761.59
GST/HST	\$ 11,066.78
TOTAL DUE	\$ 96,195.87



Bennett Jones

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220 Bay Street, 13th Floor  
P.O. Box 20  
TORONTO, ON M5J 2W4

**Attention: Mitch Vininsky and Noah Goldstein**

Re: First Swiss Mortgage Corp.  
Our File Number: 074735.00043

Date: May 8, 2023  
Invoice: 1512056

---

**Remittance Statement**

Professional Services	\$	79,367.50
Disbursements	\$	5,761.59
Total Due before Tax	\$	85,129.09
GST/HST	\$	11,066.78
<b>Total Due in CAD</b>	<b>\$</b>	<b>96,195.87</b>





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Invoice: 1512057

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**PROFESSIONAL SERVICES RENDERED in conjunction with the above noted matter:**

Professional Services	\$	51,922.00
Disbursements	\$	1,392.22
Total Due before Tax	\$	<u>53,314.22</u>
GST/HST	\$	6,930.85
<b>Total Due in CAD</b>	<b>\$</b>	<b><u>60,245.07</u></b>

Due upon receipt. Bennett Jones reserves the right to charge interest at a rate not greater than 12% per annum on outstanding invoices over 30 days. We collect, use and disclose information pursuant to our Privacy Policies. For further information visit our website at [www.bennettjones.com](http://www.bennettjones.com). GST/HST number: 119346757

May 8, 2023  
Page 2Client:  
Invoice No.:074735.00043  
1512057

<b>Date</b>	<b>Name</b>	<b>Description</b>	<b>Hours</b>
02/04/23	Thomas Gray	Emails regarding file	0.20
02/04/23	Sean Zweig	Reviewing correspondence with F. Tayar; Correspondence regarding upcoming First Meeting of Creditors, and issues related to same; Considering same	0.50
03/04/23	Alexandra Terpoy-Heinemann	Emails with T. Gray regarding pending searches and next steps	0.20
03/04/23	Thomas Gray	Attending hearing; Attending call with investors; Updates to service list; Discussions with S. Zweig regarding funding; Coordinating searches	3.90
03/04/23	Sean Zweig	Call with KSV regarding upcoming hearing; Preparing for and attending hearing; Attending investor Q&A; Call with A. Slavens; Reviewing Endorsement granted; Call with G. Benchetrit; Call with Stikeman; Call with Goodmans and Dancap; Call regarding upcoming First Meeting of Creditors; Many emails and calls with KSV throughout day; Various other correspondence throughout day; Reviewing asset investigation results	4.90
03/04/23	Joseph Blinick	Reviewing and considering asset search report; Internal correspondence regarding same; Internal correspondence and discussions regarding potential insurance claim; Starting to review and consider E&O policies	0.80
04/04/23	Christine Viney	Call with S. Zweig, J. Blinick and T. Gray regarding insurance policy review	0.70
04/04/23	Alexandra Terpoy-Heinemann	Emails with T. Gray regarding pending searches and next steps	0.10
04/04/23	Thomas Gray	Discussion regarding file with clerks regarding searches; Attending creditor meeting; Emails and discussions regarding same	4.10
04/04/23	Sean Zweig	Emails regarding upcoming First Meeting of Creditors; Reviewing certain search results and considering next steps; Internal call regarding insurance matters; Follow-up correspondence regarding same; Reviewing Trustee's Preliminary Report; Attending at First Meeting of Creditors; Many follow-up discussions; Reviewing report regarding P. Dookram; Reviewing and commenting on draft memorandum regarding funding; Reviewing revised draft; Other correspondence	5.20

Date	Name	Description	Hours
04/04/23	Joseph Blinick	Reviewing E&O policy and related endorsements; Internal meeting regarding E&O policy and path forward with respect to seeking recovery under same; Follow-up correspondence regarding discrete issues relating to same, including with respect to applicable exclusions; Reviewing and considering asset search report with respect to P. Dookram; Internal correspondence regarding same	1.60
04/04/23	Olivia D'Innocenzo	Conducting a corporate search on [REDACTED] and circulating same to T. Gray	0.30
05/04/23	Thomas Gray	Emails regarding file and updates to service list	0.20
05/04/23	Sean Zweig	Call with R. Goldhar; Various correspondence throughout day with Receiver; Various correspondence with investors and borrowers; Dealing with issues raised; Reviewing email from E. Toby	1.40
06/04/23	Sean Zweig	Emails with L. Strezos; Multiple discussions with N. Goldstein	0.50
09/04/23	Sean Zweig	Correspondence with Receiver	0.20
10/04/23	Thomas Gray	Emails regarding mortgage payout; Updating service list	0.20
10/04/23	Sean Zweig	Call with M. Vininsky regarding Dancap call; Call with L. Strezos; Emails with borrowers' counsel; Call and emails with N. Goldstein regarding next steps	0.70
10/04/23	Joseph Blinick	Internal correspondence	0.20
11/04/23	Thomas Gray	Reviewing correspondence regarding discharging mortgages; Updating service list	0.20
11/04/23	Christine Viney	Completing review and consideration of First Swiss insurance policy and potential coverage under same; Call with J. Blinick regarding review	1.20
11/04/23	Sean Zweig	Emails with E. Toby; Dealing with multiple borrowers throughout day; Reviewing proof of claim from [REDACTED], and emails regarding same; Emails regarding FMOC minutes	0.70
11/04/23	Joseph Blinick	Internal correspondence and discussions regarding insurance-related issues and path forward with respect to same	0.80



Date	Name	Description	Hours
12/04/23	Alexandra Terpoy-Heinemann	Reviewing additional properties and obtaining parcels; Coordinating BC searches with B. Fossen; Reviewing parcels and updating Excel and Word charts	4.10
12/04/23	Bobbie Fossen	Ordering additional title searches from the B.C. Land Title Office	0.50
12/04/23	Thomas Gray	Emails regarding additional searches and reviewing correspondence regarding discharges	0.20
12/04/23	Sean Zweig	Emails with G. Benchetrit regarding insurance notice; Reviewing and commenting on letter to borrowers; Correspondence regarding mortgage discharges; Call with S. Graff; Various emails regarding request from principal	0.90
13/04/23	Alexandra Terpoy-Heinemann	Finalizing review of additional property searches	1.30
13/04/23	Thomas Gray	Update on file from S. Zweig; Emails regarding searches and reviewing same, sending same to KSV	0.40
13/04/23	Sean Zweig	Various emails and calls regarding request from borrower; Other correspondence	1.00
14/04/23	Alexandra Terpoy-Heinemann	Reviewing email from T. Gray and discussions with J. Petrovic regarding discharge of charge; Various emails with T. Gray and email to J. van Gent regarding next steps	2.40
14/04/23	Thomas Gray	Emails regarding discharge; Emails regarding further investors identified by P. Dookram	0.50
14/04/23	Eugenia Bilokin	Emails with A. Terpoy regarding preparation of a discharge of charge by a receiver	0.20
14/04/23	Sean Zweig	Emails regarding mortgage discharge; Call with N. Goldstein regarding funding discussions update; Reviewing mortgage summary from company computer; Emails regarding investor list and issue in connection with same	0.80
15/04/23	John van Gent	Email from A. Terpoy concerning process for a receiver to discharge a charge on behalf of a mortgagee; Reviewing materials and considering same; Email to A. Terpoy with instructions to prepare discharge	0.30



<b>Date</b>	<b>Name</b>	<b>Description</b>	<b>Hours</b>
15/04/23	Sean Zweig	Reviewing emails to E. Tobias and Toronto Police	0.20
16/04/23	Sean Zweig	Emails with S. Graff	0.10
17/04/23	Alexandra Terpoy-Heinemann	Emails with J. van Gent and T. Gray regarding discharge of charge; Preparing acknowledgement and direction and discharge and emails with J. Petrovic regarding same	1.80
17/04/23	Thomas Gray	Internal emails regarding acknowledgement and direction; Responding to borrower's counsel regarding payment of interest; Call to discuss funding from investors	1.30
17/04/23	Sean Zweig	Various correspondence regarding payout and mortgage discharge; Reviewing draft letter to investors and term sheet regarding funding; Call with KSV regarding funding arrangement; Correspondence with various borrowers; Discussions with N. Goldstein	1.60
18/04/23	Alexandra Terpoy-Heinemann	Discussion with J. Petrovic and finalizing discharge document; Forwarding same to T. Gray	1.30
18/04/23	Thomas Gray	Reviewing draft letter to investors and drafting related term sheet; Emails regarding discharge	3.30
18/04/23	Sean Zweig	Reviewing full investor summary from company records; Various correspondence in connection with funding; Reviewing and commenting on two drafts of letter to investors; Reviewing and commenting on draft Term Sheet; Correspondence regarding repayment and discharge; Reviewing revised Term Sheet	1.50
18/04/23	Jelena Petrovic	Reviewing draft discharge and acknowledgement and direction; Email to A. Terpoy providing comments on same; Discussion with A. Terpoy with respect to revisions required	1.50
19/04/23	Thomas Gray	Discussions regarding discharges; Emails regarding receiving interest for borrower; Reviewing searches and correspondence regarding same with KSV	1.50
19/04/23	Alexandra Terpoy-Heinemann	Various discussions with J. van Gent regarding Caution and related statements; Attending to registration of discharge of charge and email to T. Gray regarding same	1.10
19/04/23	John van Gent	Numerous emails and telephone calls with S.	1.00



May 8, 2023  
Page 6

Client:  
Invoice No.:

074735.00043  
1512057

Date	Name	Description	Hours
		Zweig and A. Terpy concerning discharge of charge; Reviewing and providing comments on e-reg. discharge; Attending to execution and registration of same	
19/04/23	Sean Zweig	Reviewing KSV's comments on Term Sheet, and dealing with same; Correspondence with E. Toby regarding same; Dealing with mortgage repayment and discharge; Discussions with N. Goldstein; Correspondence with various borrowers; Reviewing and commenting on FMOC minutes; Reviewing draft email to investors regarding replacement of Trustee; Call with G. Benchetrit; Emails with Trustee; Other correspondence	1.90
19/04/23	Olivia D'Innocenzo	Conducting a PPSA search on [REDACTED]; Reviewing results and circulating same to T. Gray	0.40
19/04/23	Jelena Petrovic	Emails and discussion with A. Terpy with respect to revisions and registration of discharge	0.20
20/04/23	Thomas Gray	Emails regarding further mortgage discharges; Reviewing various updates on file; Several updates to service list	1.70
20/04/23	Nicole Yap	Receipt and review of returned Caution; Email to S. Zweig seeking instructions on removal of order from Caution; Email exchange with S. Zweig; Removing order from Caution and resubmitting for registration	0.40
20/04/23	Sean Zweig	Correspondence regarding funding; Emails regarding Caution registered; Reviewing correspondence with Y. Papanyan; Emails regarding mortgage discharge; Emails regarding Xerox machine; Attending continuation of First Meeting of Creditors; Discussions with N. Goldstein	2.80
20/04/23	Carol Billingsley	Considering requirements for filing a discharge of mortgage on behalf of Receiver; Discussion with Land Title examiner; Email filing and providing execution requirements to T. Gray	0.50
21/04/23	Thomas Gray	Discussion regarding service list issue	0.10
21/04/23	Sean Zweig	Emails with S. Graff; Emails regarding funding; Other correspondence	0.40

Date	Name	Description	Hours
23/04/23	Thomas Gray	Various email correspondence	0.10
23/04/23	Sean Zweig	Emails with M. Vininsky regarding two issues	0.20
24/04/23	Thomas Gray	Call with counsel to borrower; Updates to service list; Various emails on file	0.70
24/04/23	Sean Zweig	Preparing for and attending call with counsel to investor regarding trust funds; Emails with KSV regarding same; Various correspondence regarding funding and related issues; Other correspondence	1.10
25/04/23	Thomas Gray	Internal discussions regarding file and funding; Emails regarding investor information; Correspondence regarding discharge of mortgage	0.50
25/04/23	Sean Zweig	Various correspondence throughout day with Receiver and T. Gray	0.30
26/04/23	Thomas Gray	Coordinating time with Court for next hearing; Reviewing email updates on file; Emails regarding discharging of mortgages	1.20
26/04/23	Sean Zweig	Emails throughout day in connection with administering existing mortgages and investor funding	0.40
27/04/23	Thomas Gray	Reviewing email updates regarding funding; Emails regarding discharges	0.50
27/04/23	Sean Zweig	Emails with Receiver, T. Gray and others regarding various matters	0.50
28/04/23	Sean Zweig	Reviewing email from Superintendent; Discussion with T. Gray; Other correspondence	0.30
30/04/23	Thomas Gray	Emails regarding trust issue; Updates to service list	0.30

Total Hours	72.10
Total Professional Services	\$ 51,922.00

Name	Hours	Rate
John van Gent	1.30	\$ 1,050.00
Sean Zweig	28.10	\$ 1,035.00
Joseph Blinick	3.40	\$ 860.00
Christine Viney	1.90	\$ 760.00
Thomas Gray	21.10	\$ 565.00
Carol Billingsley	0.50	\$ 330.00
Alexandra Terpoy-Heinemann	12.30	\$ 310.00

<b>Name</b>	<b>Hours</b>	<b>Rate</b>
Olivia D'Innocenzo	0.70 \$	475.00
Eugenia Bilokin	0.20 \$	465.00
Nicole Yap	0.40 \$	465.00
Jelena Petrovic	1.70 \$	310.00
Bobbie Fossen	0.50 \$	135.00

<b>Disbursements</b>	<b>Amount</b>
Professional Services	\$ 557.00
Land Title - Search	\$ 716.02
Online Government Service	\$ 38.70
Teraview Filing	\$ 80.50
Total Disbursements	\$ 1,392.22
GST/HST	\$ 6,930.85
<b>TOTAL DUE</b>	<b>\$ 60,245.07</b>





Bennett Jones

KSV Restructuring Inc.  
220 Bay Street, 13th Floor  
P.O. Box 20  
TORONTO, ON M5J 2W4

**Attention: Mitch Vininsky and Noah Goldstein**

Re: First Swiss Mortgage Corp.  
Our File Number: 074735.00043

Date: May 8, 2023  
Invoice: 1512057

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**Remittance Statement**

Professional Services	\$	51,922.00
Disbursements	\$	1,392.22
Total Due before Tax	\$	53,314.22
GST/HST	\$	6,930.85
<b>Total Due in CAD</b>	<b>\$</b>	<b>60,245.07</b>

THIS IS **EXHIBIT "B"** REFERRED TO IN  
THE AFFIDAVIT OF SEAN ZWEIG,  
SWORN BEFORE ME THIS 12<sup>TH</sup> DAY OF MAY, 2023.

A handwritten signature in black ink, appearing to read 'TG', is positioned above a horizontal line.

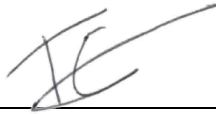
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**THOMAS GRAY**

A Commissioner for taking Affidavits  
(or as may be)

<b>Invoice #</b>	<b>Period Ended</b>	<b>Fees</b>	<b>Disbursements</b>	<b>GST/HST</b>	<b>Total</b>
Invoice # 1	March 16, 2023	\$10,002.00	\$35.60	\$1,300.36	\$11,337.86
Invoice # 2	March 31, 2023	\$79,367.50	\$5,761.59	\$11,066.78	\$96,195.87
Invoice # 3	April 30, 2023	\$51,992.00	\$1,392.22	\$6,930.85	\$60,245.07
<b>Total</b>		<b>\$141,291.50</b>	<b>\$7,189.41</b>	<b>\$19,297.89</b>	<b>\$167,778.80</b>

THIS IS **EXHIBIT "C"** REFERRED TO IN  
THE AFFIDAVIT OF SEAN ZWEIG,  
SWORN BEFORE ME THIS 12<sup>TH</sup> DAY OF MAY, 2023.

A handwritten signature in black ink, appearing to read 'TG', is positioned above a horizontal line.

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**THOMAS GRAY**

A Commissioner for taking Affidavits  
(or as may be)

<b>Timekeeper</b>	<b>Year of Call (if applicable)</b>	<b>Hourly Rate</b>	<b>Total Hours</b>	<b>Total Fees</b>
J. van Gent	2002	\$1,050	1.3	\$1,365.00
P. Gill	2008	\$960	3.0	\$2,880.00
S. Zweig	2009	\$1,035	74.6	\$77,211.00
C. Viney	2012	\$760	4.9	\$3,724
J. Blinick	2013	\$860	5.3	\$4,558.00
T. Gray	2021	\$565	56.6	\$31,979.00
C. Billingsley	N/A	\$330	0.5	\$165.00
E. Bilokin	N/A	\$465	0.2	\$93.00
O. D'Innocenzo	N/A	\$475	4.2	\$1,995.00
B. Fossen	N/A	\$135	2.7	\$364.50
J. Petrovic	N/A	\$310	12.7	\$3,937.00
A. Terpoy	N/A	\$310	36.9	\$11,439.00
N. Yap	N/A	\$465	3.4	\$1,581.00
<b>Total</b>			<b>206.30</b>	<b>141,291.50</b>

**Average hourly rate = \$684.88<sup>1</sup>**

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<sup>1</sup> Exclusive of applicable general and harmonized sales taxes.

**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

**FEE AFFIDAVIT OF SEAN ZWEIG  
(Sworn May 12, 2023)**

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

**Sean Zweig** (LSO#: 57307I)  
Tel: (416) 777-6254  
Email: [zwiogs@bennettjones.com](mailto:zwiogs@bennettjones.com)

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

Lawyers for the Receiver

**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

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

Proceedings commenced in Toronto

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**SECOND REPORT OF THE  
RECEIVER**

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**BENNETT JONES LLP**

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

**Sean Zweig** (LSO#: 57307I)

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Lawyers for the Receiver

# Tab 3



**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE ) FRIDAY, THE 19<sup>TH</sup>  
 )  
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.

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 shall rank *pari passu* with the Receiver's prior borrowings secured by the Receiver's Borrowing Charge.

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.

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## 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#: 57307I)

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Lawyers for the Receiver

# Tab 4

ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST

THE HONOURABLE ) FRIDAY, THE 17<sup>TH</sup>  
 )  
JUSTICE STEELE ) DAY OF ~~MARCH~~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

(~~appointing Receiver~~ Amending and Restating Appointment Order dated March 17, 2023)

THIS ~~APPLICATION~~MOTION, made by ~~the Applicant for an Order~~ 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”),~~ appointing 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 ~~affidavit of Cameron Clark sworn on March 15, 2023 and the Exhibits thereto, the affidavit of Daniel Baum sworn on March 15, 2023 and the Exhibits thereto~~ Motion Record of the Receiver dated May 12, 2023, including the ~~affidavit of Jared Green sworn on March 15, 2023 and the Exhibits thereto, the affidavit of Rose Baum sworn on March 15, 2023 and the Exhibits thereto, the affidavit of Elias Toby sworn on March 15, 2023 and the Exhibits thereto, the affidavit of Jeffrey A. Winnick sworn on March 16, 2023 and the Exhibits thereto, and the affidavit of Nestor Repetski sworn on March 15, 2023 and the Exhibits thereto~~ Second Report of the Receiver dated May 12, 2023 and on hearing the submissions of counsel for the ~~Applicant~~ 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 ~~Notice~~ Motion Record of ~~Application and the Application~~ Receiver is hereby abridged and validated, and service ~~on the Respondent in the manner served~~ is hereby validated, so that this ~~Application~~ 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 ~~Restructuring Inc. is hereby appointed~~ '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) ~~(j)~~ 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) ~~(k)~~ to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;
- (p) ~~(l)~~ 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) ~~(m)~~ 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) ~~(n)~~ to exercise any shareholder, partnership, joint venture or other rights which the Debtor may have; and
- (s) ~~(o)~~ 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.

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 shall rank *pari passu* with the Receiver's prior borrowings secured by the Receiver's Borrowing Charge.

21. ~~19.~~ 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 ~~\$50,000.00~~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. ~~20.~~ 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. ~~21.~~ 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. ~~22.~~ 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. ~~23.~~ 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. ~~24.~~ 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

~~25. — THIS COURT ORDERS that the Receiver shall file a report with the Court containing its findings and recommendations within 15 days of the date of this Order in connection with a hearing to take place on April 3, 2023 for the purpose of any relief to be sought by the Applicant or the Receiver with respect to the Debtor, the Property and/or the administration of the receivership.~~

27. ~~26.~~ 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. ~~27.~~ THIS COURT ORDERS that nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Debtor.

29. ~~28.~~ 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. ~~29.~~ 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. ~~30.~~ THIS COURT ORDERS that (i) the Applicant and any other parties who contributed evidence in support of ~~this~~ the Order [appointing the Receiver dated March 17, 2023 \(the "Appointment Order"\)](#) shall have their costs of ~~this~~ at application, up to and including entry and service of ~~this~~ 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. ~~31.~~ 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.

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# Tab 5

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE ) FRIDAY, THE 19<sup>TH</sup>  
 )  
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  
(Ancillary Order)**

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 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 (the "**Second Report**") and on hearing the submissions of counsel for the Receiver and such other parties in attendance at the hearing of this motion,

### **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.

### **DEFINED TERMS**

2. THIS COURT ORDERS that capitalized terms used within this Order and not expressly defined herein shall have the meanings set forth in the Second Report.

### **PAYMENT OF INTEREST**

3. THIS COURT ORDERS that each borrower with an active mortgage registered in favour of the Debtor (each, a "**Borrower**") is hereby directed to pay to the Receiver all principal, interest and other payments as and when due under such Borrower's mortgage.

### **PRODUCTION OF INFORMATION**

4. THIS COURT ORDERS that Shinhan Bank Canada is hereby directed to provide the Receiver with all information requested by the Receiver related to the accounts of the Debtor and the accounts of 6807771 Canada Corp. ("**680**"), including, without limitation, all statements, cheque images and details regarding payees and deposits.

5. THIS COURT ORDERS that each of Reza Nezami-Nia, Syed A. Raza Professional Corporation and 680 is hereby directed to provide the Receiver with all books and records in its possession or control related to the Debtor and/or 680, provided however that nothing in this paragraph shall require the delivery of books or records, or the granting of access to books or 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 Bank of Montreal is hereby directed to (i) provide the Receiver with all available information regarding the Debtor's and 680's historical accounts with the Bank of Montreal since January 1, 2014, and (ii) advise the Receiver whether account 00022/1565844 is owned or controlled by Reza Nezami-Nia, Patrick Dookram, Yana Papanyan or Eugene Trounev, or any other principal of the Debtor or their relatives, and if so, to provide the Receiver with account statements for the last 12 months or such longer period as the Receiver may request.

7. THIS COURT ORDERS that Reza Nezami-Nia is hereby directed to: (i) provide all electronic devices (including, without limitation, any cellphone and laptop) he used in connection with the Debtor's business to Kroll Consulting Canada Co. ("**Kroll**") or another third party information technology specialist acceptable to the Receiver and Reza 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.

8. THIS COURT ORDERS that Reza Nezami-Nia, Syed A. Raza Professional Corporation 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 Reza 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, is hereby directed to provide such books and records to the Receiver, provided however that nothing in this paragraph shall require the delivery of books or records, or the granting of access to books or 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.

9. THIS COURT ORDERS that nothing in this Order shall limit in any way the Receiver's rights and powers pursuant to the Appointment Order.

## **EXAMINATIONS**

10. THIS COURT ORDERS that, if served with a Notice of Examination by the Receiver, Reza Nezami-Nia, Patrick Dookram, Yana Papanyan and/or any other parties with information

relevant to the Debtor and these proceedings are hereby directed to (i) attend for an examination at the Receiver's offices or such other place acceptable to the Receiver, regardless of whether they have obtained counsel; and (ii) provide the Receiver at such examination with any non-privileged information requested by the Receiver related in any way to the Debtor and/or 680.

#### **FURTHER RELIEF REGARDING REZA NEZAMI-NIA**

11. THIS COURT ORDERS that Reza Nezami-Nia prepare and provide to the Receiver within four days of this Order, a sworn statement describing the nature, value, and location of his assets worldwide, whether in his own name or not, whether solely or jointly owned, and whether owned directly or indirectly.

12. THIS COURT ORDERS that Reza Nezami-Nia submit to examinations under oath in respect of such sworn statement.

13. THIS COURT ORDERS that if the provision of any of this information is likely to incriminate Reza Nezami-Nia, he may be entitled to refuse to provide it.

#### **NO TRUST CLAIMS**

14. 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.

#### **APPROVAL OF RECEIVER'S FEES AND ACTIVITIES**

15. THIS COURT ORDERS that the Receiver's activities as set out in (i) its First Report dated March 31, 2023, and (i) the Second Report be and are hereby approved, provided, however, that only the Receiver, in its personal capacity and only with respect to its own personal liability, shall be entitled to rely upon or utilize in any way such approval.

16. THIS COURT ORDERS that the fees and disbursements of the Receiver and the Receiver's legal counsel, Bennett Jones LLP ("**Bennett Jones**"), as set out in the Second Report and as more particularized within the fee affidavits of the Receiver and Bennett Jones be and are hereby approved.

**GENERAL**

17. THIS COURT ORDERS that the Receiver and Bennett Jones shall have no liability with respect to any losses, claims, damages or liability of any nature or kind to any person in connection with or as a result of carrying out the provisions of this Order, except to the extent such losses, claims, damages or liability results from the gross negligence or wilful misconduct of the Receiver or Bennett Jones, as determined by this Court. Nothing in this Order shall derogate from the protections afforded to the Receiver under the Appointment Order or any other Order of this Court.

18. 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.

19. 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.

20. THIS COURT ORDERS that this Order and all of its provisions are effective as of 12:01 a.m. on the date of this Order without the need for entry or filing.

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**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

**ANCILLARY ORDER  
(May 19, 2023)**

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Lawyers for the Receiver



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

Applicant

Respondent

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

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

Proceedings commenced in Toronto

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**MOTION RECORD OF THE RECEIVER  
(Returnable May 19, 2023)**

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