

COURT FILE NUMBER 2201 13540

COURT Court of King's Bench of Alberta

JUDICIAL CENTRE Calgary

PLAINTIFFS
(APPLICANTS) **BANCORP FINANCIAL SERVICES INC., BANCORP BALANCED MORTGAGE FUND II LTD., and BANCORP GROWTH MORTGAGE FUND II LTD.**

DEFENDANTS
(RESPONDENT) **ALVARO DEVELOPERS INC., ALVARO LIMITED PARTNERSHIP, CRUZ CUSTOM HOMES LTD., 1770374 ALBERTA INC., SUNSET HOMES LTD., DANIEL RODOLFO ASTETE-CRUZ, and PEDRO ARNOLDO OCANA MULLER**

DOCUMENT **APPLICATION
(Receivership Order and Sealing Order)**

PARTY FILING THIS DOCUMENT **BANCORP FINANCIAL SERVICES INC., BANCORP BALANCED MORTGAGE FUND II LTD., and BANCORP GROWTH MORTGAGE FUND II LTD.**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT **Fasken Martineau DuMoulin LLP**
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\$50.00
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NOTICE TO RESPONDENTS: See Attached Service List at Schedule “A”

This application is made against you. You are a respondent.

You have the right to state your side of this matter before the judge.

To do so, you must be in Court when the application is heard as shown below:

Date	December 2, 2022
Time	3:00 p.m.
Where	Edmonton Law Courts, 1A Sir Winston Churchill Square Edmonton, Alberta, T5J 0R2
Before Whom	The Honourable Justice K. Feth, Commercial List, via WebEx

Go to the end of this document to see what else you can do and when you must do it.

Remedy claimed or sought:

1. The Applicants, Bancorp Financial Services Inc., Bancorp Balanced Mortgage Fund II Ltd., and Bancorp Growth Mortgage Fund II Ltd. (collectively, the “**Lender**”), seek:
 - (a) an order substantially in the form as the receivership order attached hereto as **Schedule “B”** (the “**Receivership Order**”):
 - i. abridging the time for service of this application and supporting materials, if necessary, and deeming such service to be good and sufficient;
 - ii. appointing Alvarez & Marsal Canada Inc. (“**A&M**”) as receiver-manager over all of Alvaro Developers Inc.’s (the “**Trustee**”) and Alvaro Limited Partnership’s (the “**Beneficial Owner**”, and together with the Trustee, the “**Borrower**”), current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate, including all proceeds thereof (the “**Property**”); and
 - (b) an order substantially in the form attached hereto as **Schedule “C”** (the “**Sealing Order**”):
 - i. sealing the confidential exhibits marked as Confidential Exhibit “1” and “2” (the “**Confidential Exhibits**”) to the Affidavit of Michael Saba, sworn November 16, 2022 (the “**Saba Affidavit**”) on the Court file, until the conclusion of the within proceedings;
 - (c) costs against the Borrowers on a solicitor-and-his-own-client full indemnity basis; and
 - (d) such further and other relief as this Honourable Court deems just.

Grounds for making this application:

I. Overview

2. Capitalized terms used herein and not otherwise defined have the meanings ascribed to them in the Saba Affidavit, and filed in support of this application.
3. In about 2019, the Applicant Lender advanced the Loan to the Respondent Borrower as first mortgage construction financing to build a residential development on the Lands comprising 10 townhomes and two condominium units (the “**Development**”).
4. The Respondents, Cruz Custom Homes Ltd., 1770374 Alberta Inc., Sunset Homes Ltd., Daniel Rodolfo Astete-Cruz, and Pedro Arnold Ocana Muller (collectively, the “**Guarantors**”) guaranteed the obligations of the Borrower to the Lender under the Loan and the Security.
5. In September 2022, construction on the Development halted. The site is vacant, but at “lock-up”, meaning the constructed units can be independently secured having their own walls, windows and doors. The fencing surrounding the Development has been compromised, in part due to the Borrower’s failure to pay the fencing company. As a result, the Development is accessible from the street and individuals have been seeking shelter in the parkade and completed units of the Development (the “**Security Concerns**”). The Security Concerns will deteriorate the value of the Development if unaddressed.
6. There is an accepted offer from the Potential Purchaser to purchase the Development. However, the Borrowers cannot convey clear title to the Lands to the Potential Purchaser (or any other prospective buyer) on account of the registered Charges.
7. Accordingly, the Lender seeks the appointment of a receiver over the Property with a view towards: (1) taking control of and securing the Development site to ameliorate the Security Concerns and prevent deterioration of the value of the Development, and thereby its Security; and (2) realizing on its Security and maximizing value for all stakeholders through a provident sale of the Development that will be the subject of a further application and approval of this Court.
8. The Trustee and the Guarantors have confirmed they are supportive of the Lender’s Application to appoint a Receiver for the purposes of selling the Development.

II. The Loan and Security

9. By Commitment Letter dated September 23, 2019, and as amended and restated from time to time, (the “**Loan Agreement**”), the Lender agreed to loan the Borrower the principal sum of \$5,350,000 (the “**Loan**”) to construct the Development.
10. The Development sits on two parcels of land located at 428 and 430 3rd Avenue, Northeast, in Calgary, Alberta, and legally described as (together, the “**Lands**”):

Title Number: 181 195 112

Plan 1332N, Block 2, Lot 1, Excepting thereout that portion of Lot 1 lying east of a line drawn 37.5 feet east from the west boundary and all of Lots 2 to 4 inclusive, excepting thereout all mines and minerals from Lot 2 and the [sic] that portion of Lot 3 which lies to the east of the westerly 7 feet throughout of the said Lot 3;

Title Number: 201 009 726

Plan 1332N, Block 2, all that portion of Lot 1 which lies to the east of a line drawn parallel with and 37.5 feet perpendicularly distant easterly from the west boundary of said lot.

11. Pursuant to the Loan Agreement, all obligations of the Borrower to the Lender, payment of the amount owing under the Loan inclusive of interest and legal and other costs (the “**Indebtedness**”) are secured by, among other things (collectively, and together with the Loan Agreement, the “**Security**”):
- (a) a Collateral Mortgage and Assignment of Rents and Leases granted by the Trustee in the principal amount of \$5,350,000, which was registered against title to the Lands on November 26, 2019 under registration numbers 201 011 929 and 201 011 930 (together, the “**First Mortgage**”);
- (b) a General Security Agreement dated November 6, 2019, granted by the Borrower in favour of the Lender, pursuant to which the Borrower granted a security interest

in all present and after acquired property of the Borrower located at, related to or derived from the Lands (collectively, the “**Property**”) (the “**GSA**”); and

- (c) a Guarantee and Postponement of Claims dated November 6, 2019, granted by each of the Guarantors in favour of the Lender (the “**Guarantee**”).

12. The terms of the First Mortgage and the GSA provide, among other things, that:

- (a) the Lender may appoint a receiver over the Lands, any income generated thereby, and any personal property of the Borrower relating thereto;
- (b) a waiver, or permitting of an extension of time for the performance of, any of the provisions of the Security shall not be construed as a waiver of any subsequent or other default; and
- (c) the Borrower shall pay the costs of and relating to the enforcement of the Security on a solicitor-and-own-client full indemnity basis.

13. Prior to the Lender extending the Loan to the Borrower, the Borrower had entered into a vendor take back mortgage (“**VTB**”) in the amount of \$1,140,000 in order to purchase the property. The VTB was subordinated and postponed to the Lender’s First Mortgage through a Subordination and Standstill Agreement entered into between the VTB holder, the Lender, and the Borrower, on or about December 4, 2019 (the “**Subordination Agreement**”).

III. The Charges

14. As at November 8, 2022, there were numerous registrations and encumbrances registered against title to the Lands. In particular, there are 6 builders’ liens registered against the Lands, 3 agreements charging the Lands, and 2 writs. Additionally, there are several registrations pending at the land titles office respecting the Lands. The charges are summarized as:

Type of Encumbrance	Encumbrancer	Value	Date of Registration
Agreement Charging Land	Pedro Ocana Muller	Not specified	January 21, 2021
Builder's Lien	Foothills Fire Protections Ltd.	\$63,381.00	March 5, 2021
Agreement Charging Land	BESTPRO Construction Ltd.	Not specified	March 24, 2021
Builder's Lien	Q Construction Management Ltd.	\$130,543.00	March 24, 2021
Builder's Lien	Creative Solutions Contracting Services Ltd. c/o Beaumont Church LLP	\$39,084.00	March 26, 2021
Builder's Lien	Q Construction Management Ltd.	\$101,200.00	May 1, 2021
Builder's Lien	BESTPRO Construction Ltd.	\$39,102.00	May 3, 2021
Agreement Charging Land	King Construction Ltd.	Not specified	August 27, 2021
Writ	Lafarge Cananda Inc.	\$155,461 + costs if any	October 5, 2021
Writ	Masuch Law LLP	\$23,859.00 + costs if any	November 10, 2021
Builder's Lien	Lux Windows and Glass Ltd.	\$62,489.00	May 17, 2022

IV. Default under the Security and Forbearance Agreement

15. On January 31, 2021, the Loan matured without extension.
16. By August 11, 2021, the Borrower breached the terms of the Loan Agreement and the Security by, among other things, failing to make payments when due (the “**First Default**”).
17. On August 11, 2021, the Lender made demand on the Borrower and Guarantors for payment of the Indebtedness and provided notice of its intention under section 244 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 to enforce the Security.

18. Between about August 11 2021, and August 19, 2022, the Lender and the Borrower engaged in discussions regarding the First Default and repayment of the Loan, but no formal agreement crystallized.
19. On August 19, 2022, the Lender made further demand on the Borrower and Guarantors for payment of the Indebtedness and provided notice of its intention under section 244 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 to enforce the Security.
20. On September 26, 2022, the Lender, Borrower, and Guarantors entered into a forbearance agreement (the “**Forbearance Agreement**”), pursuant to which the parties agreed, among other things, that:
 - (a) the Borrower had defaulted under the terms of the Security, and the Borrower and Guarantors had requested the Lender forbear for a period of time from realizing on its security;
 - (b) as at August 19, 2022, the Indebtedness totalled \$4,717,516.00, and the Borrower and the Guarantors were liable therefor;
 - (c) the Security is valid and enforceable and would remain so following execution of the Forbearance Agreement;
 - (d) the Borrower would make payments on account of the Indebtedness in accordance with the schedule set forth therein (the “**Payment Schedule**”), which, among other things, provided that
 - (i) on October 8, 2022 the Borrower would pay the deposit payable pursuant to the Accepted Offer to the Lender;
 - (ii) the Indebtedness would be paid in full by November 30, 2022 (the “**Deadline**”);
 - (e) by the Deadline, the Borrower would complete the sale of the Lands pursuant to the Commercial Purchase Contract among the Trustee and 1188716 B.C. Ltd., or

its assignee (the “**Potential Purchaser**”) dated August 24, 2022 (the “**Accepted Offer**”); and

- (f) upon the occurrence of an Event of Default (as defined therein) and including failure by the Borrower to make payment in accordance with the Payment Schedule, the Lender may, without further notice to the Borrower or Guarantors, pursue its remedies under the Security, including the appointment of a receiver.

21. The Borrower did not make any payments pursuant to the Payment Schedule as set forth in the Forbearance Agreement.

V. Further Default under the Security and Forbearance Agreement

22. The Borrower breached the terms of the Loan Agreement, the Security, and the Forbearance Agreement as follows:

- (a) The Borrower has failed to repay balances due and owing under the Loan Agreement and Security as they come due;
- (b) The Borrower has failed to make any of the required payments under the Payment Schedule;
- (c) The Borrower has permitted the Charges to accrue against the Lands;
- (d) The Borrower has permitted substantial property tax arrears to accrue against the Lands;
- (e) The Borrower has failed to pay or promptly pay all insurance premiums on all insurance policies in respect of the Lands and in favour of the Lender; and
- (f) The Borrower has failed to keep the Lands and the Development in good and substantial repair;

(collectively the “**Events of Default**”).

23. Since the Event of Defaults, the Lender and the Borrower have discussed the mechanics of completing the sale of the Lands to the Potential Purchaser under the Accepted Offer. It

has become apparent that the Trustee cannot convey clear title to the Lands to the Potential Purchaser on account of the registration of the Charges.

24. As a result of the Events of Default and pursuant to the Loan Agreement, Security and the Forbearance Agreement, the Lender is authorized to and seeks to appoint a receiver over the Borrower and its property (including the Lands), in order to: (1) take control of and secure the Development site to ameliorate the Security Concerns and prevent deterioration of the value of the Development, and thereby the Lender's Security; and (2) realize on its security and maximize value for all stakeholders through a provident sale of the Development that will be the subject of a further application and approval of this Court.

VI. Appointment of a Receiver

25. The Borrower is insolvent as it has been unable to pay its debts as they become due, including the Indebtedness.
26. Given the serious deterioration of the financial condition of the Borrower, which has caused the Charges to accrue against the Lands, the Borrower's inability or refusal to keep the Lands insured, and the Borrower's inability or refusal to keep the Lands secure and in good repair, the Lender has significant concerns that letting the Borrower maintain control over the Lands will cause value of the Lands to further erode, jeopardizing the Lender's Security and also jeopardizing the closing of any potential sale respecting the Lands.
27. The only efficient way of preserving and realizing upon the Borrower's Property (including the Lands) in an orderly manner that preserves value for the Lender and the Chargeholders, and without incurring any potential further payment obligations ranking in priority to the Lender, is through the appointment of a receiver.
28. Given the foregoing, the appointment of a receiver over the right, title, and interest of the Borrower in and to the Property (including the Lands) is crucial to preserve the interests and position of the Lender with respect to its Loan to the Borrower.
29. The appointment of a receiver is just, equitable, and convenient in the circumstances, and necessary in order to preserve the Lender's security.

30. A&M has consented to act as receiver and manager over the Borrower.
31. The Trustee and the Guarantors have confirmed they are supportive of the Lender's Application to appoint a Receiver for the purposes of selling the Development.

VII. Sealing of the Confidential Exhibits

32. The Confidential Exhibits contain commercial information concerning the value of the Development and the Lands, and specifically the proposed purchase price of the Development. The public disclosure and dissemination of such information would cause serious and irreparable harm to the Lender, as well as other stakeholders, as it would adversely affect any future sales process that may be conducted by the Receiver.
33. The Sealing Order sought by the Lender in respect of the Confidential Exhibits is the least restrictive measure to prevent the dissemination of this commercially sensitive information in to the market. It is a fair and reasonable method of addressing the serious and irreparable harm that would result if the Confidential Exhibits were publicly disseminated.
34. There are no other reasonable alternative measures to mitigate the aforementioned risks to the Lender's commercial interests apart from the grant of the Sealing Order. In the circumstances, the salutary effects of the Sealing Order outweigh its deleterious effects.
35. Such further and other grounds as counsel may advise and this Honourable Court may permit.

Material or evidence to be relied on:

36. The pleadings and materials, including the Statement of Claim, filed in this Action;
37. The Affidavit of Michael Saba, sworn November 16, 2022, filed;
38. The Affidavit(s) of Service, if any, filed;
39. The Consent to Act as Receiver executed by a duly authorized member of A&M; and
40. Such further and other materials as Counsel may advise and this Honourable Court permits.

Applicable rules:

41. *Alberta Rules of Court*, AR 124/2010, and in particular Pat 1, and Rules 6.2, 6.3, 6.9, 6.47, 11.27 and 11.29.
42. *Bankruptcy and Insolvency General Rules*, CRC 1978, c 368, and in particular Rules 3, 6, 9 and 13.

Applicable Acts and regulations:

43. *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, and in particular section 47 and Part XI.
44. *Judicature Act*, RSA 2000, c. J-2, and in particular sections 8 and 13(2).
45. *Personal Property Security Act*, RSA 2000, c P-7, and in particular section 65(7).

How the application is proposed to be heard or considered:

46. The Applicants propose that this application be heard before the Honourable Justice K. Feth on December 2, 2022 at 3:00pm sitting on the Commercial List, via WebEx video conference, which appearance has been scheduled with the Commercial Coordinator, on affidavit evidence with some or all of the parties present.

WARNING

If you do not come to Court either in person or by your lawyer, the Court may give the applicant what they want in your absence. You will be bound by any order that the Court makes. If you want to take part in this application, you or your lawyer must attend in Court on the date and at the time shown at the beginning of the form. If you intend to rely on an affidavit or other evidence when the application is heard or considered, you must reply by giving reasonable notice of the material to the applicant.

COURT FILE NUMBER

Clerk's Stamp

COURT Court of King's Bench of Alberta

JUDICIAL CENTRE Calgary

PLAINTIFF
(APPLICANT) **BANCORP FINANCIAL SERVICES INC.,
BANCORP BALANCED MORTGAGE
FUND II LTD., and BANCORP GROWTH
MORTGAGE FUND II LTD.**

DEFENDANTS
(RESPONDENTS) **ALVARO DEVELOPERS INC., ALVARO
LIMITED PARTNERSHIP, CRUZ
CUSTOM HOMES LTD., 1770374
ALBERTA INC., SUNSET HOMES LTD.,
DANIEL RODOLFO ASTETE-CRUZ, and
PEDRO ARNOLDO OCANA MULLER**

DOCUMENT **RECEIVERSHIP ORDER**

ADDRESS FOR
SERVICE AND
CONTACT **Fasken Martineau DuMoulin LLP**
Barristers & Solicitors
3400 First Canadian Centre
INFORMATION OF 350 – 7th Avenue S.W.
PARTY FILING Calgary, AB T2P 3N9
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Date On Which Order Was Pronounced: December 2, 2022

Name Of Judge Who Made This Order: The Honourable K. Feth

Location Of Hearing: Calgary, Alberta

UPON the application of Bancorp Financial Services Inc., Bancorp Balanced Mortgage Fund II Ltd., and Bancorp Growth Mortgage Fund II Ltd. (collectively, the “**Lender**”) in respect of Alvaro Developers Inc. and Alvaro Limited Partnership (together the “**Debtor**”); **AND UPON** having read the Application and the Affidavit of Michael Saba, sworn November 16, 2022; **AND UPON** reading the consent of Alvarez & Marsal Canada Inc. to act as receiver (the “**Receiver**”)

of the Debtor, filed; **AND UPON** hearing counsel for the Lender and all other interested parties;
IT IS HEREBY ORDERED AND DECLARED THAT:

SERVICE

1. The time for service of the notice of application for this order is hereby abridged and service thereof is deemed good and sufficient.

APPOINTMENT

2. Pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 (“**BIA**”), and sections 13(2) of the *Judicature Act*, R.S.A. 2000, c. J-2, 99(a) of the *Business Corporations Act*, R.S.A. 2000, c. B-9, and 65(7) of the *Personal Property Security Act*, R.S.A. 2000, c. P-7, Alvarez & Marsal Canada Inc. is hereby appointed Receiver, without security, of all of the Debtor’s current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate, including all proceeds thereof (the “**Property**”).

RECEIVER’S POWERS

3. 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 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 manage, operate and carry on the business of the Debtor, including the powers to enter into any agreements, incur any obligations in the ordinary course of

business, cease to carry on all or any part of the business, or cease to perform any contracts of the Debtor;

- (d) 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;
- (e) to purchase or lease machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Debtor or any part or parts thereof;
- (f) to receive and collect all monies and accounts now owed or hereafter owing to the Debtor and to exercise all remedies of the Debtor in collecting such monies, including, without limitation, to enforce any security held by the Debtor;
- (g) to settle, extend or compromise any indebtedness owing to or by the Debtor;
- (h) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the Debtor, for any purpose pursuant to this Order;
- (i) to undertake environmental or workers' health and safety assessments of the Property and operations of the Debtor;
- (j) 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, and provided further that nothing in this Order shall authorize the Receiver to defend or settle the action in which this Order is made unless otherwise directed by this Court;
- (k) to, market any or all 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;

- (l) 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 \$75,000, provided that the aggregate consideration for all such transactions does not exceed \$250,000; 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 60(8) of the *Personal Property Security Act*, R.S.A. 2000, c. P-7 or any other similar legislation in any other province or territory shall not be required;
- (m) 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;
- (n) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate 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 direct the Registrar of Land Titles of Alberta, or any other similar government authority, to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property, notwithstanding Section 191 of the *Land Titles Act*, RSA 2000, c L-4, or the provisions of any similar provincial enactment, and notwithstanding that the appeal period in respect of this Order has not elapsed and the Registrar of Land Titles shall accept all Affidavits of Corporate Signing Authority submitted by the Receiver in its capacity as Receiver of the Debtor and not in its personal capacity;
- (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;
- (s) to assign the Debtor into bankruptcy or to obtain a bankruptcy order in respect of the Debtor, if the Receiver determines that it is appropriate and in the best interest of the estate; and
- (t) 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. (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, and (iii) 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 (excluding Property subject to liens the validity of which is dependent on maintaining possession) to the Receiver upon the Receiver's request.
5. 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 documents prepared in contemplation of litigation or due to statutory provisions prohibiting such disclosure.

6. 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. 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. 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, provided, however, that nothing in this Order shall: (i) prevent any Person from commencing a proceeding regarding a claim that might otherwise become barred by statute or an existing agreement if such proceeding is not commenced before the expiration of the stay provided by this paragraph 8; and (ii) affect a Regulatory Body's investigation in respect of the Debtor or an action, suit or proceeding that is taken in respect of the Debtor by or before the Regulatory Body, other than the enforcement of a payment order by the Regulatory Body or the Court. "**Regulatory Body**" means a person or body that has powers, duties or functions relating to the enforcement or administration of an Act of Parliament or of the legislature of a province.

NO EXERCISE OF RIGHTS OF REMEDIES

9. All rights and remedies (including, without limitation, set-off rights) against the Debtor, the Receiver, or affecting the Property, are hereby stayed and suspended and shall not be commenced, proceeded with or continued except with the written consent of the Receiver or leave of this Court, provided however 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. No Person shall accelerate, suspend, 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. 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 Debtor are hereby restrained until further Order of this Court from discontinuing, altering, interfering with, suspending or terminating the supply of such goods or services as may be required by the Receiver, and this Court directs 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. 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. Subject to employees' rights to terminate their employment, 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 BIA, other than such amounts as the Receiver may specifically agree in writing to pay, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*, S.C. 2005, c.47 ("**WEPPA**").

14. Pursuant to clause 7(3)(c) of the *Personal Information Protection and Electronic Documents Act*, S.C. 2000, c. 5, the Receiver shall disclose personal information of identifiable individuals to prospective purchasers or bidders for the Property and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more sales of the Property (each, a “Sale”). Each prospective purchaser or bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of the Sale, and if it does not complete a Sale, shall return all such information to the Receiver, or in the alternative destroy all such information. The purchaser of any Property shall be entitled to continue to use the personal information provided to it, and related to the Property purchased, in a manner which is in all material respects identical to the prior use of such information by the Debtor, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

LIMITATION ON ENVIRONMENTAL LIABILITIES

15. (a) Notwithstanding anything in any federal or provincial law, the Receiver is not personally liable in that position for any environmental condition that arose or environmental damage that occurred:
- (i) before the Receiver's appointment; or
 - (ii) after the Receiver's appointment unless it is established that the condition arose or the damage occurred as a result of the Receiver's gross negligence or wilful misconduct.
- (b) Nothing in sub-paragraph (a) exempts a Receiver from any duty to report or make disclosure imposed by a law referred to in that sub-paragraph.
- (c) Notwithstanding anything in any federal or provincial law, but subject to sub-paragraph (a) hereof, where an order is made which has the effect of requiring the Receiver to remedy any environmental condition or environmental damage affecting the Property, the Receiver is not personally liable for failure to comply with the order, and is not personally liable for any costs that are or would be incurred by any person in carrying out the terms of the order,

- (i) if, within such time as is specified in the order, within 10 days after the order is made if no time is so specified, within 10 days after the appointment of the Receiver, if the order is in effect when the Receiver is appointed, or during the period of the stay referred to in clause (ii) below, the Receiver:
 - A. complies with the order, or
 - B. on notice to the person who issued the order, abandons, disposes of or otherwise releases any interest in any real property affected by the condition or damage;
- (ii) during the period of a stay of the order granted, on application made within the time specified in the order referred to in clause (i) above, within 10 days after the order is made or within 10 days after the appointment of the Receiver, if the order is in effect when the Receiver is appointed, by,
 - A. the court or body having jurisdiction under the law pursuant to which the order was made to enable the Receiver to contest the order; or
 - B. the court having jurisdiction in bankruptcy for the purposes of assessing the economic viability of complying with the order; or
- (iii) if the Receiver had, before the order was made, abandoned or renounced or been divested of any interest in any real property affected by the condition or damage.

LIMITATION ON THE RECEIVER'S LIABILITY

16. Except for gross negligence or wilful misconduct, as a result of its appointment or carrying out the provisions of this Order the Receiver shall incur no liability or obligation that exceeds an amount for which it may obtain full indemnity from the Property. Nothing in this Order shall derogate from any limitation on liability or other protection afforded to the Receiver under any applicable law, including, without limitation, Section 14.06, 81.4(5) or 81.6(3) of the BIA.

RECEIVER'S ACCOUNTS

17. The Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements, in each case, incurred at their standard rates and charges. 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, incurred both before and after the making of this Order in respect of these proceedings, and 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 but subject to section 14.06(7), 81.4(4), 81.6(2) and 88 of the BIA.
18. The Receiver and its legal counsel shall pass their accounts from time to time.
19. 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 the legal fees and disbursements, incurred at the normal 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

20. 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 \$500,000 (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 and the charges set out in sections 14.06(7), 81.4(4), 81.6(2) and 88 of the BIA.

21. 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.
22. 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.
23. 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.

ALLOCATION

24. Any interested party may apply to this Court on notice to any other party likely to be affected, for an order allocating the Receiver's Charge and Receiver's Borrowings Charge amongst the various assets comprising the Property.

GENERAL

25. The Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.
26. Notwithstanding Rule 6.11 of the *Alberta Rules of Court*, unless otherwise ordered by this Court, the Receiver will report to the Court from time to time, which reporting is not required to be in affidavit form and shall be considered by this Court as evidence.
27. 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, the United States or other jurisdictions in which the Property might be located, 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. 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. The Plaintiff shall have its costs of this motion, up to and including entry and service of this Order, provided for by the terms of the Plaintiff's security or, if not so provided by the Plaintiff's security, then 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. Any interested party may apply to this Court to vary or amend this Order on not less than 5 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.

FILING

32. The Receiver shall establish and maintain a website in respect of these proceedings at <http://www.alvarezandmarsal.com/> _____ and shall post there as soon as practicable:
 - (a) all materials prescribed by statute or regulation to be made publically available;and

- (b) all applications, reports, affidavits, orders and other materials filed in these proceedings by or on behalf of the Receiver, or served upon it, except such materials as are confidential and the subject of a sealing order or pending application for a sealing order.

Justice of the Court of King's Bench of Alberta

SCHEDULE "A"

RECEIVER CERTIFICATE

CERTIFICATE NO. _____

AMOUNT \$ _____

1. THIS IS TO CERTIFY that Alvarez & Marsal Canada Inc., the receiver (the "**Receiver**") of all of the assets, undertakings and properties of (the "**Debtor**"), appointed by Order of the Court of King's Bench of Alberta and Court of King's Bench of Alberta in Bankruptcy and Insolvency (collectively, the "**Court**") dated the ___ day of _____, _____ (the "**Order**") made in action numbers _____, 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 *Bankruptcy and Insolvency Act*, 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 [●].
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__.

Alvarez & Marsal Canada Inc., solely in its capacity as Receiver of the Property (as defined in the Order), and not in its personal capacity

Per: _____
Name:
Title:

COURT FILE NUMBER

Clerk's Stamp

COURT Court of King's Bench of Alberta

JUDICIAL CENTRE Calgary

PLAINTIFFS
(APPLICANTS) **BANCORP FINANCIAL SERVICES
INC., BANCORP BALANCED
MORTGAGE FUND II LTD., and
BANCORP GROWTH MORTGAGE
FUND II LTD.**

DEFENDANTS
(RESPONDENT) **ALVARO DEVELOPERS INC.,
ALVARO LIMITED PARTNERSHIP,
CRUZ CUSTOM HOMES LTD., 1770374
ALBERTA INC., SUNSET HOMES
LTD., DANIEL RODOLFO ASTETE-
CRUZ, and PEDRO ARNOLDO OCANA
MULLER**

DOCUMENT **SEALING ORDER**

PARTY FILING THIS
DOCUMENT **BANCORP FINANCIAL SERVICES
INC., BANCORP BALANCED
MORTGAGE FUND II LTD., and
BANCORP GROWTH MORTGAGE
FUND II LTD.**

ADDRESS FOR
SERVICE AND
CONTACT **Fasken Martineau DuMoulin LLP**
INFORMATION OF
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350 – 7th Avenue S.W.
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DATE ON WHICH ORDER WAS PRONOUNCED: December 2, 2022

LOCATION WHERE ORDER WAS PRONOUNCED: Edmonton, Alberta

NAME OF THE JUDGE WHO MADE THIS ORDER: The Honourable Justice K. Feth

UPON the application of Bancorp Financial Services Inc., Bancorp Balanced Mortgage Fund II Ltd., and Bancorp Growth Mortgage Fund II Ltd. (collectively, the “**Lender**”) in respect of Alvaro Developers Inc. and Alvaro Limited Partnership (together the “**Debtor**”); **AND UPON** having read the Application and the Affidavit of Michael Saba, sworn November 16, 2022 (the “**Saba Affidavit**”); **IT IS HEREBY ORDERED AND DECLARED THAT:**

1. Unless otherwise defined herein, all capitalized terms shall have the meaning given to them in the Saba Affidavit.
2. Service of notice of this application and supporting materials is hereby declared to be good and sufficient, and no other person is required to have been served with notice of this application, and time for service of this application is abridged to that actually given.

SEALING

3. Part 6, Division 4 of the *Alberta Rules of Court* does not apply to the Application.
4. Confidential Exhibits “1” and “2” to the Affidavit of Michael Saba sworn in these proceedings on November 16, 2022 (the “**Confidential Exhibits**”) shall be sealed on the Court file, kept confidential and not form part of the public record, and not be available for public inspection, notwithstanding Division 4 of Part 6 of the *Alberta Rules of Court*, until further Order of this Court.
5. The Clerk of the Court shall file the Confidential Exhibits in a sealed envelope attached to a notice that sets out the style of cause of these proceedings and states that:

THIS ENVELOPE CONTAINS CONFIDENTIAL MATERIALS FILED IN COURT FILE NO. [●]. THE CONFIDENTIAL MATERIALS ARE SEALED PURSUANT TO THE SEALING ORDER GRANTED BY THE HONOURABLE JUSTICE K. FETH ON DECEMBER 2, 2022, AND ARE NOT TO BE PLACED ON THE PUBLIC RECORD, OR MADE PUBLICLY ACCESSIBLE, UNTIL FURTHER ORDER OF THIS COURT.

6. Leave is hereby granted to any person or party affected by this Order to apply to this Honourable Court for a further order modifying or varying the terms of paragraphs 4 or 5 of this Order, with such application to be brought on no less than seven days' notice to the Applicants and any other affected party pursuant to the *Alberta Rules of Court*.

SERVICE OF THIS ORDER

7. Service of this Order shall be deemed good and sufficient by serving the same on:
 - (i) the persons listed on the service list created in these proceedings;
 - (ii) any other person served with notice of the application for this Order; and
 - (iii) any other parties attending or represented at the application for this Order,and service on any other person is hereby dispensed with.
8. Service of this Order may be effected by facsimile, electronic mail, personal delivery or courier. Service is deemed to be effected the next business day following transmission or delivery of this Order.

Justice of the Court of King's Bench of Alberta