

# ENTERED

C50090

COURT FILE NO. 2201-13540

COURT COURT OF KING'S BENCH OF ALBERTA

JUDICIAL CENTRE CALGARY

IN THE MATTER OF THE RECEIVERSHIP  
OF ALVARO DEVELOPERS INC. and  
ALVARO LIMITED PARTNERSHIP

PLAINTIFFS 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

APPLICANT ALVAREZ & MARSAL CANADA INC. in its  
capacity as Court-appointed Receiver and  
Manager of the assets, undertakings and  
properties of ALVARO DEVELOPERS INC.  
and ALVARO LIMITED PARTNERSHIP.

DOCUMENT **APPLICATION**  
**(Approval and Vesting Order, Approval of**  
**Final Distribution, Receiver's Actions,**  
**Conduct and Fees, Restricted Court Access**  
**Order, and Discharge Order)**

ADDRESS FOR SERVICE AND CONTACT  
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4600 Eighth Avenue Place East  
INFORMATION OF PARTY 525 - Eighth Ave SW  
FILING THIS DOCUMENT Calgary, AB T2P 1G1

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Fax: +1 403.776.3800  
Email: [kkashuba@torys.com](mailto:kkashuba@torys.com)  
File No. 39108-2010



COM  
May 10, 2023  
\$50

## NOTICE TO RESPONDENTS:

This **Application** is made against you. You are a Respondent.

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

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

|              |  |
|--------------|--|
| Date:        | Wednesday, May 10, 2023                          |
| Time:        | 11:00 a.m.                                       |
| Where:       | Calgary Courts Centre, via WebEx videoconference |
| Before Whom: | The Honourable Justice Colin J. Feasby           |

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. An Approval and Vesting Order in substantially the same form as that attached as Schedule “A” to this Application, granting the following relief and directions:
  - 1.1 abridging, if necessary, the time for service of this Application and deeming service good and sufficient;
  - 1.2 authorizing, approving and ratifying the sale transaction of certain assets (the “**Purchased Assets**”) between Alvarez & Marsal Canada Inc. (“**A&M**”) in its capacity as the Court-appointed receiver and manager (the “**Receiver**”) of certain of the assets, undertakings and properties (collectively, the “**Property**”) of Alvaro Developers Inc. (the “**Trustee**”) and Alvaro Limited Partnership (the “**Beneficial Owner**”, and together with the Trustee, the “**Debtor**”), and Honeywell Development Corp. (collectively, the “**Purchaser**”), as described in the Second Report of the Receiver, filed May 1, 2023 (the “**Receiver’s Second Report**”);
  - 1.3 authorizing and directing the Receiver to take such steps and execute all such deeds, documents and instruments as may be reasonably necessary to consummate the transaction as contemplated with the Purchaser (collectively, the “**Transaction**”);
  - 1.4 vesting the Debtor’s right, title and interest, in and to the Purchased Assets (as described and defined in the proposed form of Approval and Vesting Order) to be sold to the Purchaser;
  - 1.5 authorizing and directing the Receiver to deliver to the Purchaser, at the closing of the Transaction, any instruments of transfer of the Purchased Assets, signed by the Receiver, along with the conveyances necessary to convey title of the Purchased Assets to the Purchaser;

- 1.6 granting leave to the Receiver to apply or reapply to this or any court or administrative body in any province of Canada for advice, assistance and directions as may be necessary to carry out the terms of the Order sought.
2. An Order, in substantially the form of the proposed Order attached hereto as Schedule “B” (the **“Restricted Court Access Order”**) to this Application, directing the sealing of the Receiver’s Confidential Supplemental Report dated May 1, 2021 (the **“Confidential Supplemental Report”**) in accordance with Part 6, Division 4 of the *Alberta Rules of Court*.
3. A Discharge Order in substantially the same form as that attached as Schedule “C” to this Application, granting the following relief and directions:
  - 3.1 authorizing and directing the Receiver to make a distribution to Bancorp Financial Services Inc., Bancorp Balanced Mortgage Fund II Ltd. and Bancorp Growth Mortgage Fund II Ltd. (collectively, the **“Secured Lender”**), from the net sale proceeds derived from the closing of the Transaction, as set out and described in the Receiver’s Second Report;
  - 3.2 approving the Receiver’s actions and those of its legal counsel to date;
  - 3.3 approving the previously undertaken actions, conduct and activities of the Receiver and those of the Receiver’s legal counsel, and the Receiver’s statement of receipts and disbursements, as set out and described in the Second Report; and
  - 3.4 discharging A&M as Receiver of the Property, upon the conclusion of the remaining specified and administrative duties as described in the Receiver’s Second Report;
  - 3.5 authorizing the Receiver to share certain books and records of the Debtor (including, bank statements, and accounting records) with 1788459 Alberta Ltd. (**“178”**), a secured creditor of the Debtor, to assist 178 to understand how the funds 178 advanced to the Debtor were used, upon 178 entering into a confidentiality agreement with the Receiver; and
  - 3.6 granting leave to the Receiver to apply to this Court for advice and directions as may be necessary to carry out the terms of the Order sought.
4. Such further and other relief, advice and directions as counsel may advise and this Honourable Court may deem just and appropriate.

**Grounds for making this Application:**

5. On December 2, 2022, following the Application of the Secured Lender, A&M was appointed as Receiver over the Property of the Debtor, by Order of the Honourable Justice D. Mah (the “**Receivership Order**”) (the subject proceedings referred to herein as the “**Receivership Proceedings**”).

*i. Approval and Vesting Order*

6. Pursuant to the terms of the Receivership Order, and in particular subparagraph 3(k) thereof, the Receiver is empowered and authorized to market any or all of the Debtor’s Property, including advertising and soliciting offers in respect of the Debtor’s Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate.
7. Pursuant to subparagraph 3(l) of the Receivership Order, the Receiver is empowered and authorized to sell, convey, transfer, lease or assign the Debtor’s Property or any part or parts thereof out of the ordinary course of business, with or without approval of the Court, dependent on whether certain monetary thresholds are met.
8. While a sale and investment solicitation process (the “**SISP**”) was approved by Honourable Justice John S. Little pursuant to an Order granted on March 29, 2023 in the event that the transaction between the Receiver and the Purchaser did not materialize, the Receiver has entered into a definitive asset purchase agreement with the Purchaser (the “**Sale Agreement**”) for sale of the Purchased Assets to the Purchaser, which is subject to the approval of this Honourable Court.
9. Details of the key terms of the Sale Agreement, including issues related to the commission are set forth in the Receiver’s Second Report.
10. Based on the Receiver’s analysis, the Receiver is satisfied that the sale of the Purchased Assets described in the Receiver’s Second Report is just, appropriate and in the best interest of the administration of the Debtor’s receivership estate and the stakeholders affected thereby, and therefore, the Receiver did not conduct the SISP.
11. The Receiver has made efforts to obtain the best price for the Purchased Assets in the circumstances.
12. The terms as set out in the proposed form of the Approval and Vesting Order attached hereto as Schedule “A” are necessary to effect the sale of the Purchased Assets as contemplated by the Receiver and the Purchaser.

13. The Secured Lender and 178, each as a lender, although the Secured Lender will be left with a deficiency and 178 will receive no recoveries under the subject transaction, support the proposed sale to the Purchaser and share the position that the SISP is not required in these particular circumstances.

*ii. Approval of Actions, Conduct and Fees*

14. The efforts of the Receiver in relation to the matters discussed and more particularly set out in the Receiver's Second Report, including, without limitation, in relation to the Receiver's efforts made in connection with the negotiation and finalization of the Sale Agreement, making distributions to creditors and finalizing the administration of the estate, have been or will be duly undertaken as part of the Receiver's Court-ordered mandate in these proceedings.
15. All of the actions and conduct in respect of the fees and disbursements incurred by the Receiver and its legal counsel during the course of the administration of the within proceedings as reported in the Receiver's Second Report are reasonable and necessary, and have been validly undertaken and incurred in connection with the conduct of the Receiver's obligations herein in relation to the Property.

*iii. Restricted Court Access Order*

16. The Confidential Supplemental Report contains matters of a sensitive commercial nature, including, *inter alia*, the deposit and information concerning the purchase price in respect of the sale of the Purchased Assets of the Debtor, and the purchase price analysis and appraisal (the "**Confidential Information**").
17. The publication or dissemination of the Confidential Information could result in harm to the sale of the Purchased Assets of the Debtor, should the Transaction not close, and may be highly prejudicial to the receivership estate.
18. The Restricted Court Access Order being sought is the least restrictive and prejudicial alternative to prevent the dissemination of the commercially sensitive Confidential Information, such that it is fair and just in the circumstances to restrict public access to the Confidential Information.
19. Counsel to the Receiver completed and submitted a Notice to Media of Application to Restrict Access, in respect of the Restricted Court Access Order being sought.
20. The terms as set out in the proposed form of Restricted Court Access Order attached hereto as **Error! Reference source not found.** are necessary to effect the sealing of the Confidential Supplemental Report.

***iv. Discharge Order***

21. The Receiver has now completed, or is about to complete, all aspects concerning the administration of the within Receivership Proceedings.
22. There are certain funds remaining in the receivership estate, which the Receiver intends on using to pay outstanding obligations of the receivership estate and the estimated costs to complete the administration of the estate.
23. The proposed distribution of remaining funds as set out in the Receiver's Second Report, which includes the payment of the balance of net sale proceeds to the Secured Lender, is just and appropriate and is necessary.
24. All of the actions in respect of the fees and disbursements incurred by the Receiver and its legal counsel during the course of the administration of the within proceedings are reasonable, have been validly incurred in connection with the conduct of the Receiver's obligations herein, and have now been or are about to be completed.
25. The Receiver is not aware of any reason that it should be required for any further purposes herein, and should be discharged as Receiver of the Property upon the conclusion of the remaining specified and other administrative duties as described in the Receiver's Second Report.
26. The discharge of the Receiver as proposed is just, appropriate and in the best interest of the administration of the receivership estate and the stakeholders affected thereby.
27. The terms as set out in the proposed form of Discharge Order attached hereto as Schedule "C" are necessary to effect the discharge of the Receiver.
28. The Secured Lender, as lender, supports the discharge of the Receiver on the terms proposed.
29. 178 has requested that the Receiver provide the Debtor's books and records for its review and consideration and to allow 178 an opportunity to understand how the funds 178 advanced to the Debtor were used. The Receiver is amenable to the proposed approach subject to 178 entering into a confidentiality agreement.

***v. Miscellaneous***

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

**Material or evidence to be relied on:**

31. All pleadings, proceedings and other materials filed in the within action, including the Receivership Order.
32. The Receiver's Second Report.
33. The Confidential Supplemental Report.
34. The proposed forms of Orders attached as Schedule "A", Schedule "B", and Schedule "C" to this Application.
35. Notice to Media of Application to Restrict Access.
36. The inherent jurisdiction of this Honourable Court to control its own process.
37. Such further and other material and evidence as counsel may advise and this Honourable Court may permit.

**Applicable rules:**

38. Part 6, Division 7, and in particular Rules 1.3, 3.2, 6.3(1), 6.47(e) and (f), 6.9(1)(b), 11.27, 11.29, 13.5, 6.29, and Part 6, Division 4 and in particular Rule 6.28(b) and the *Bankruptcy and Insolvency General Rules*, CRC 1985, c 368, as amended, and in particular Rule 11 thereof and such further and other Rules as counsel may advise and that this Honourable Court may permit.

**Applicable Acts and Regulations:**

39. *Bankruptcy and Insolvency Act*, RSC 1985, c B-3, as amended, the *Judicature Act*, RSA 2000, c J-2, as amended, and such further and other Rules, Acts and Regulations as counsel may advise and that this Honourable Court may permit.

**Any irregularity complained of or objection relied on:**

40. None.

**How the Application is proposed to be heard or considered:**

41. Oral submissions by counsel at an Application in Commercial List Justice Chambers as agreed and scheduled by counsel, before the Honourable Justice Colin J. Feasby, at the Calgary Courts Centre, on

Wednesday, May 10, 2023, at 11:00 a.m. or as soon thereafter as counsel may be heard, via WebEx videoconference.

**AFFIDAVIT EVIDENCE IS REQUIRED IF YOU WISH TO OBJECT.**

**WARNING**

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May ,023  
\$50

If you do not come to Court either in person or by your lawyer, the Court may give the applicant(s) 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.



A-1

**SCHEDULE "A"**  
**APPROVAL AND VESTING ORDER**

(see attached)

COURT FILE NO. 2201-13540

COURT COURT OF KING'S BENCH OF ALBERTA

JUDICIAL CENTRE CALGARY

Clerk's Stamp

IN THE MATTER OF THE RECEIVERSHIP  
OF ALVARO DEVELOPERS INC. and  
ALVARO LIMITED PARTNERSHIP

PLAINTIFFS 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

APPLICANT ALVAREZ & MARSAL CANADA INC. in its  
capacity as Court-appointed Receiver and  
Manager of the assets, undertakings and  
properties of ALVARO DEVELOPERS INC.  
and ALVARO LIMITED PARTNERSHIP.

DOCUMENT **APPROVAL AND VESTING ORDER**  
(Sale by Receiver)

ADDRESS FOR SERVICE AND CONTACT  
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INFORMATION OF PARTY 525 - Eighth Ave SW  
FILING THIS DOCUMENT Calgary, AB T2P 1G1

Attention: Kyle Kashuba  
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Fax: +1 403.776.3800  
Email: [kkashuba@torys.com](mailto:kkashuba@torys.com)  
File No. 39108-2010

DATE UPON WHICH ORDER WAS PRONOUNCED: May 10, 2023

LOCATION WHERE ORDER WAS PRONOUNCED: Justice Colin J. Feasby

NAME OF JUSTICE WHO MADE THIS ORDER: Calgary, Alberta

**UPON THE APPLICATION** by Alvarez & Marsal Canada Inc., in its capacity as the Court-appointed receiver and manager (the “**Receiver**”) of the undertakings, property and assets of Alvaro Developers Inc. (the “**Trustee**”) and Alvaro Limited Partnership (the “**Beneficial Owner**”, and together with the Trustee, the “**Debtor**”) for an order approving the sale transaction (the “**Transaction**”) contemplated by an asset purchase agreement (the “**Sale Agreement**”) between the Receiver and Honeywell Development Corp. (the “**Purchaser**”) dated April 28, 2023 and appended to the Second Report of the Receiver dated May 1, 2023 (the “**Receiver’s Second Report**”), in respect of the real property located at the premises with the legal description described below and vesting in the Purchaser the right, title and interest of the Debtor in and to the Lands (as defined below) and the other assets described in the Sale Agreement (the “**Purchased Assets**”)

**AND UPON HAVING READ** the Receivership Order dated December 2, 2022 (the “**Receivership Order**”), the Receiver’s Second Report, the Confidential Supplemental Report of the Receiver dated May 1, 2023 and the Affidavit of Service of Leah Bruchet (the “**Affidavit of Service**”); **AND UPON IT APPEARING** that all interested and affected parties have been served with notice of this Application; **AND UPON NOTING** the advice of counsel for the Receiver that there existed no opposition from any of the interested or affected parties to this Application following service of the Application materials noted herein; **AND UPON HEARING** the submissions of counsel for the Receiver, the Purchaser, counsel for Bancorp Financial Services Inc., Bancorp Balanced Mortgage Fund II Ltd. and Bancorp Growth Mortgage Fund II Ltd. (collectively, the “**Secured Lender**”), and from any other interested parties who may be present, with no one appearing for any other person on the service list, although properly served as appears from the Affidavit of Service; **AND UPON** being satisfied that it is appropriate to do so;

**IT IS HEREBY ORDERED AND DECLARED THAT:**

**SERVICE**

1. Service of notice of this Application and supporting materials is hereby declared to be good and sufficient, no other person is required to have been served with notice of this Application, and the time for service of this Application is abridged to that actually given.

**APPROVAL OF TRANSACTION**

2. The Transaction relating to the lands and structures thereon, which are legally described as follows (collectively, the “**Lands**”):

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 THAT PORTION OF LOT 3 WHICH LIES TO THE EAST  
OF THE WESTERLY 7 FEET THROUGHOUT OF THE SAID LOT 3

Title Number: 181 195 112 (the “**112 Lands**”)

and

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

Title Number: 201 009 726 (the “**726 Lands**”)

is hereby approved, and the execution of the Sale Agreement by the Receiver is hereby authorized and approved, and is deemed to be commercially reasonable and in the best interests of the receivership estate and the stakeholders affected thereby, with such minor amendments as the Receiver may deem necessary and as may be agreed upon by the Receiver and the Purchaser. The Receiver is hereby authorized and directed, subject to the terms and conditions of this Order and the Sale Agreement, to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction or for the conveyance of the Purchased Assets to the Purchaser.

## **VESTING OF PROPERTY**

3. Upon the delivery by the Receiver of a Receiver’s certificate to the Purchaser substantially in the form set out in Schedule “A” hereto (the “**Receiver’s Closing Certificate**”) confirming the closing of the Transaction contemplated by the Sale Agreement, all of the Debtor’s right, title and interest in and to the Purchased Assets described in the Sale Agreement attached as Appendix “A” to the Receiver’s Second Report shall vest absolutely in the name of the Purchaser, free and clear of and from any and all caveats, security interests (whether contractual, statutory, or otherwise), hypothecs, pledges, mortgages, liens, trusts or deemed trusts, reservations of ownership, royalties, options, rights of pre-emption, privileges, interests, assignments, actions, judgments, executions, levies, taxes, writs of enforcement, charges, or other claims, whether contractual, statutory, financial, monetary or otherwise, whether or not they have attached or been perfected, registered or filed and whether secured,

unsecured or otherwise (collectively, the “**Claims**”, which term shall explicitly not include the Permitted Encumbrances (as defined below)) including, without limiting the generality of the foregoing:

- (a) any encumbrances or charges created by the Receivership Order;
- (b) any charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Alberta) or any other personal property registry system;
- (c) any liens or claims of lien under the *Builders’ Lien Act* (Alberta); and
- (d) those Claims listed in **Schedule “B”** hereto (all of which are collectively referred to as the “**Encumbrances**”), and

for greater certainty, this Court orders that all of the Claims including the Encumbrances, other than the permitted encumbrances described in the Sale Agreement (including, without limitation, those set forth in Schedule A thereto) and listed in **Schedule “C”** hereto (the “**Permitted Encumbrances**”), affecting or relating to the Purchased Assets are hereby expunged, discharged and terminated as against the Purchased Assets.

4. Upon delivery of the Receiver’s Closing Certificate, and upon filing of a certified copy of this Order, together with any applicable registration fees, all governmental authorities including those referred to below in this paragraph (collectively, “**Governmental Authorities**”) are hereby authorized, requested and directed to accept delivery of such Receiver’s Closing Certificate and certified copy of this Order as though they were originals and to register such transfers, interest authorizations, discharges and discharge statements of conveyance as may be required to convey to the Purchaser clear title to the Purchased Assets subject only to Permitted Encumbrances. Without limiting the foregoing:

- a. the Registrar of Land Titles (“**Land Titles Registrar**”) for the Lands shall and is hereby authorized, requested and directed to forthwith:
  - (i) cancel existing Certificates of Title No. 181 195 112 and 201 009 726 for the Lands;
  - (ii) issue new Certificates of Title for the Lands in the name of the Purchaser, namely, Honeywell Development Corp.;
  - (iii) transfer to the New Certificates of Title the existing instruments listed in **Schedule “C”**, to this Order, and to issue and register against the New Certificates of Title such

new mortgages, caveats, utility rights of ways, easements or other instruments as are listed in **Schedule “C”**; and

(iv) discharge and expunge the Encumbrances listed in **Schedule “B”** to this Order and discharge and expunge any Claims including Encumbrances (but excluding Permitted Encumbrances) which may be registered after the date of the Sale Agreement against the existing Certificates of Title to the Lands; and

(b) the Registrar of the Alberta Personal Property Registry (the “**PPR Registrar**”) shall and is hereby directed to forthwith cancel and discharge any registrations at the Alberta Personal Property Registry (whether made before or after the date of this Order) claiming security interests (other than Permitted Encumbrances) in the estate or interest of the Debtor in any of the Purchased Assets which are of a kind prescribed by applicable regulations as serial-number goods.

5. In order to effect the transfers and discharges described above, this Court directs each of the Governmental Authorities to take such steps as are necessary to give effect to the terms of this Order and the Sale Agreement. Presentment of this Order and the Receiver’s Closing Certificate shall be the sole and sufficient authority for the Governmental Authorities to make and register transfers of title or interest and cancel and discharge registrations against any of the Purchased Assets of any Claims including Encumbrances but excluding Permitted Encumbrances.
6. No authorization, approval or other action by and no notice to or filing with any governmental authority or regulatory body exercising jurisdiction over the Purchased Assets is required for the due execution, delivery and performance by the Receiver of the Sale Agreement
7. Upon delivery of the Receiver’s Closing Certificate together with a certified copy of this Order, this Order shall be immediately registered and the steps set out above shall be carried out by the Land Titles Registrar and/or the applicable Governmental Authorities notwithstanding the requirements of section 191(1) of the *Land Titles Act*, RSA 2000, c L-7 (Alberta) and notwithstanding that the appeal period in respect of this Order has not elapsed, which appeal period is expressly waived. The Land Titles Registrar is hereby directed to 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.

## **CLOSING OF THE SALE TRANSACTION**

8. The closing of the Transaction shall be effected in accordance with the terms of the Sale Agreement and such amendments to the Sale Agreement as may be agreed to in writing between the Purchaser and the Receiver.
9. For the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Purchased Assets shall stand in the place and stead of the Purchased Assets, and from and after the delivery of the Receiver's Closing Certificate and all Claims including Encumbrances (but excluding Permitted Encumbrances) shall not attach to, encumber or otherwise form a charge, security interest, lien, or other Claim against the Purchased Assets and may be asserted against the net proceeds from the sale of the Purchased Assets with the same priority as they had with respect to the Purchased Assets immediately prior to the sale, as if the Purchased Assets had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale. Unless otherwise ordered (whether before or after the date of this Order), the Receiver shall not make any distributions to creditors of net proceeds from sale of the Purchased Assets without further order of this Court, provided however the Receiver may apply any part of such net proceeds to repay any amounts the Receiver has borrowed for which it has issued a Receiver's Certificate pursuant to the Receivership Order.
10. The Purchaser shall not, by virtue of the completion of the Transaction, have liability of any kind whatsoever in respect of any Claims against the Debtor.
11. Upon completion of the Transaction, the Debtor and all persons who claim by, through or under the Debtor in respect of the Purchased Assets, and all persons or entities having any Claims of any kind whatsoever in respect of the Purchased Assets, save and except for persons entitled to the benefit of the Permitted Encumbrances, shall stand absolutely and forever barred, estopped and foreclosed from and permanently enjoined from pursuing, asserting or claiming any and all right, title, estate, interest, royalty, rental, equity of redemption or other Claim whatsoever in respect of or to the Purchased Assets, and to the extent that any such persons or entities remain in the possession or control of any of the Purchased Assets, or any artifacts, certificates, instruments or other indicia of title representing or evidencing any right, title, estate, or interest in and to the Purchased Assets, they shall forthwith deliver possession thereof to the Purchaser.
12. The Purchaser shall be entitled to enter into and upon, hold and enjoy the Purchased Assets for its own use and benefit without any interference of or by the Debtor, or any person claiming by or through or against the Debtor.

13. Immediately after the closing of the Transaction, the holders of the Permitted Encumbrances shall have no claim whatsoever against the Receiver or the Debtor.
14. The Receiver is directed to file with the Court a copy of the Receiver's Closing Certificate, forthwith after delivery thereof to the Purchaser.

#### **MISCELLANEOUS MATTERS**

15. Notwithstanding:
  - (a) the pendency of these proceedings and any declaration of insolvency made herein;
  - (b) the pendency of any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3, as amended (the "**BIA**") (Canada) in respect of the Debtor and any bankruptcy order issued pursuant to any such applications;
  - (c) any assignment in bankruptcy made in respect of the Debtor; and
  - (d) the provisions of any federal or provincial statute,

the vesting of the Purchased Assets in the Purchaser pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of the Debtor and shall not be void or voidable by creditors of the Debtor, nor shall it constitute nor be deemed to be a transfer at undervalue, settlement, fraudulent preference, assignment, fraudulent conveyance, or other reviewable transaction under the BIA or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

16. The Receiver, the Purchaser and any other interested party, shall be at liberty to apply for further advice, assistance and direction as may be necessary in order to give full force and effect to the terms of this Order and to assist and aid the parties in closing the Transaction.
17. This Honourable Court hereby requests the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in any of its provinces or territories or in any foreign jurisdiction, to act in aid of and to be complimentary to this Court in carrying out the terms of this Order, 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.

18. Service of this Order shall be deemed good and sufficient by:

(c) 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;
- (iii) any other parties attending or represented at the application for this Order;
- (iv) the Purchaser or the Purchaser's solicitors; and

(d) Posting a copy of this Order on the Receiver's website at:

<https://www.alvarezandmarsal.com/alvaro>

and service on any other person is hereby dispensed with.

19. 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.

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Justice of the Court of King's Bench of Alberta

**Schedule "A"****Form of Receiver's Closing Certificate**

|                             |   |
|-----------------------------|---|
| COURT FILE NO.              | 2201-13540  |
| COURT                       | COURT OF KING'S BENCH OF ALBERTA  |
| JUDICIAL CENTRE             | CALGARY   |
|                             | IN THE MATTER OF THE RECEIVERSHIP<br>OF ALVARO DEVELOPERS INC. and<br>ALVARO LIMITED PARTNERSHIP  |
| PLAINTIFFS                  | BANCORP FINANCIAL SERVICES INC.,<br>BANCORP BALANCED MORTGAGE FUND<br>II LTD. and BANCORP GROWTH<br>MORTGAGE FUND II LTD.   |
| DEFENDANTS<br>(RESPONDENTS) | ALVARO DEVELOPERS INC., ALVARO<br>LIMITED PARTNERSHIP, CRUZ<br>CUSTOM HOMES LTD., 1770374<br>ALBERTA INC., SUNSET HOMES LTD.,<br>DANIEL RODOLFO ASTETE-CRUZ and<br>PEDRO ARNOLDO OCANA MULLER         |
| APPLICANT                   | ALVAREZ & MARSAL CANADA INC. in its<br>capacity as Court-appointed Receiver and Manager<br>of the assets, undertakings and properties of<br>ALVARO DEVELOPERS INC. and ALVARO<br>LIMITED PARTNERSHIP. |

Clerk's Stamp

**DOCUMENT RECEIVER'S CLOSING CERTIFICATE**

|  |   |
|--|---|
| ADDRESS FOR SERVICE<br>AND CONTACT<br>INFORMATION OF PARTY<br>FILING THIS DOCUMENT | Torys LLP<br>4600 Eighth Avenue Place East<br>525 - Eighth Ave SW<br>Calgary, AB T2P 1G1<br><br>Attention: Kyle Kashuba<br>Telephone: +1 403.776.3744<br>Fax: +1 403.776.3800<br>Email: <a href="mailto:kkashuba@torys.com">kkashuba@torys.com</a><br>File No. 39108-2010 |
|--|---|

## RECITALS

- A. Pursuant to an Order of the Honourable Justice D. Mah of the Court of King's Bench of Alberta, Judicial District of Calgary (the "**Court**") dated December 2, 2022, Alvarez & Marsal Canada Inc. was appointed as the receiver and manager (the "**Receiver**") of the undertakings, property and assets of Alvaro Developers Inc. (the "**Trustee**") and Alvaro Limited Partnership (the "**Beneficial Owner**", and together with the Trustee, the "**Debtor**"), and the Receiver was tasked with amongst other things, identifying, securing, arranging for sale and monetizing the assets, undertakings and properties of the Debtor.
  
- B. Pursuant to an Order of the Court dated May 10, 2023 granted by The Honourable Justice Colin J. Feasby, the Court approved the asset purchase agreement dated April 28, 2023 (the "**Sale Agreement**") between the Receiver and Honeywell Development Corp. (the "**Purchaser**") and provided, *inter alia*, for the vesting in the Purchaser of the right, title and interest of the Debtor (if any) in and to the Purchased Assets, which vesting is to be effective with respect to the Purchased Assets upon the delivery by the Receiver to the Purchaser of a certificate confirming (i) the payment by the Purchaser of the Purchase Price (as defined in the Sale Agreement) for the Purchased Assets which shall be satisfied upon documentation substantiating, or confirmation by Bancorp Financial Services Inc., Bancorp Balanced Mortgage Fund II Ltd. and Bancorp Growth Mortgage Fund II Ltd. (collectively, the "**Secured Lender**"), that Mortgage Instrument No. 201 011 929 and the corresponding Assignment of Rents and Leases Instrument No. 201 011 930 (together, the "**Mortgage and Assignment of Rents and Leases**") in favour of the Secured Lender registered against the Lands, have been assigned, accepted, and assumed by the Purchaser in an amount at least equal to the Purchase Price (less the Deposit); (ii) that the conditions to Closing as set out in the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser, as applicable; and (iii) the Transaction has been completed to the satisfaction of the Receiver.
  
- C. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Sale Agreement.

### **THE RECEIVER CERTIFIES** the following:

1. The Purchaser has paid (by virtue of the foregoing noted assignment, acceptance and assumption by the Purchaser of the Mortgage and Assignment of Rents and Leases) the Purchase Price, and the Receiver has received documentation substantiating, or a confirmation from the Secured Lender, that the Mortgage and Assignment of Rents and Leases have been assigned, accepted, and

assumed by the Purchaser in an amount at least equal to the Purchase Price (less the Deposit) pursuant to the Sale Agreement;

2. The conditions to Closing as set out in the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser, as applicable;
3. The Transaction has been completed to the satisfaction of the Receiver; and
4. This Certificate was delivered by the Receiver at \_\_\_\_\_ (insert time) on \_\_\_\_\_ (insert date).

Alvarez & Marsal Canada Inc., in its capacity as the Court-appointed receiver and manager of all of the undertakings, properties and assets of Alvaro Developers Inc. and Alvaro Limited Partnership and not in its personal or corporate capacity

**Per:** \_\_\_\_\_

**Name:** Orest Konowalchuk

**Title:** Senior Vice President

**Schedule "B"****Claims / Encumbrances to be Discharged**

As relates to the 112 Lands:

| <b>Title Number 181 195 112</b> |             |   |
|---------------------------------|-------------|---|
| <b>Registration Number</b>      | <b>Date</b> | <b>Encumbrances, Liens &amp; Interests / Particulars</b>  |
| 181 229 765                     | 26/10/2018  | Mortgage<br>Mortgagee - 1788459 Alberta Ltd.<br>226043 76 Street E<br>Foothills, Alberta T1S 3W2<br>Original Principal Amount: \$500,000<br>(Data Updated By: Transfer of Mortgage 201009727) |
| 201 009 729                     | 14/01/2020  | Amending Agreement<br>Amount: \$1,140,000<br>Affects Instrument: 181229765  |
| 201 039 228                     | 25/02/2020  | Postponement of Mort 181229765<br>To Mort 201011929 Cave 201011930  |
| 211 018 522                     | 21/01/2021  | Caveat<br>Re: Agreement Charging Land<br>Caveator - Pedro Ocana Muller<br>Wesley Mah<br>206, 1333-8 St SW<br>Calgary, Alberta T2R 1M6<br>Agent - Wesley Mah                                   |
| 211 049 341                     | 05/03/2021  | Builder's Lien<br>Lienor - Foothills Fire Protection Ltd.<br>46 Cimarron Grove Drive<br>Okotoks, Alberta T1S 2H1<br>Agent - Priority Credit Management Corp.<br>Amount: \$63,381              |
| 211 062 027                     | 24/03/2021  | Caveat<br>Re: Agreement Charging Land<br>Caveator - Bestpro Construction Ltd.<br>Attn: Alejandro Baron<br>3217 11 Mahogany Row<br>Calgary, Alberta T3M 2L6<br>Agent - Alejandro Baron         |
| 211 062 732                     | 24/03/2021  | Builder's Lien<br>Lienor - Q Construction Management Ltd.<br>4915 51 Street SE<br>Calgary, Alberta T1X 1C8<br>Agent - Adrianna Worman<br>Amount: \$130,543                                    |
| 211 064 408                     | 26/03/2021  | Builder's Lien<br>Lienor - Creative Solutions Contracting Services Ltd.   |

| Title Number 181 195 112 |            |   |
|--------------------------|------------|---|
| Registration Number      | Date       | Encumbrances, Liens & Interests / Particulars   |
|                          |            | c/o Beaumont Church LLP<br>Attn: Daniel A Hawkwood<br>300, 2912 Memorial Dr SE<br>Calgary, Alberta T2A 6R1<br>Agent - Reno Volpi<br>Amount: \$39,084<br>(Data Updated By: 211064430)  |
| 211 087 141              | 01/05/2021 | Builder's Lien<br>Lienor - Q Construction Management Ltd.<br>Attn: Adrianna Worman<br>Goodfellow & Schuettlaw<br>200, 602 11 Ave SW<br>Calgary, Alberta T2R 1J8<br>Agent - Adrianna Worman<br>Amount: \$101,200   |
| 211 087 552              | 03/05/2021 | Builder's Lien<br>Lienor - Bestpro Construction Ltd.<br>c/o Field LLP<br>400, 444-7 Ave SE<br>Calgary, Alberta T2P 0X8<br>Attn: Todd W. Kathol<br>Agent - Alejandro Baron<br>Amount: \$39,102   |
| 211 129 438              | 06/07/2021 | Certificate of Lis Pendens<br>Affects Instrument: 211087552   |
| 211 164 579              | 27/08/2021 | Caveat<br>Re: Agreement Charging Land<br>Caveator - Kang Construction Ltd.<br>c/o 900, 517 10 Avenue SW<br>Calgary, Alberta T2R 0A8<br>Agent - Calvin C Robb  |
| 211 193 150              | 05/10/2021 | Writ<br>Creditor - Lafarge Canada Inc.<br>c/o 2800, 801-6th Ave SW<br>Calgary, Alberta T2P 4A3<br>Debtor - Alvaro Developers Inc.<br>c/o 125, 8838 Blackfoot Tr SE<br>Calgary, Alberta T2J 3J1<br>Amount: \$155,461 and costs if any<br>Action Number: 2101-08456 |
| 211 224 653              | 10/11/2021 | Writ<br>Creditor - Masuch Law LLP<br>#125, 8838 Blackfoot Trail SE<br>Calgary, Alberta T2J 3J1<br>Debtor - Alvaro Developers Inc.<br>520, 999 - 8 Street SW<br>Calgary, Alberta T2R 1J5<br>Amount: \$23,859 and costs if any<br>Action Number: 2101-01295         |

| Title Number 181 195 112 |            |   |
|--------------------------|------------|---|
| Registration Number      | Date       | Encumbrances, Liens & Interests / Particulars   |
| 211 224 666              | 10/11/2021 | Certificate of Lis Pendens<br>Affects Instrument: 211049341<br>Date Received August 30/2021   |
| 211 237 307              | 29/11/2021 | Certificate of Lis Pendens<br>Affects Instrument: 211164579   |
| 211 238 109              | 29/11/2021 | Certificate of Lis Pendens<br>Affects Instrument: 211062732<br>Affects Instrument: 211087141<br>Received Sept 15/2021   |
| 211 238 266              | 29/11/2021 | Certificate of Lis Pendens<br>Affects Instrument: 211064408   |
| 221 071 883              | 05/04/2022 | Certificate of Lis Pendens<br>Affects instrument: 211226377   |
| 231 056 899              | 24/02/2023 | Writ<br>Creditor - Q Construction Management Ltd.<br>125 88838 Blackfoot Trail SE<br>Calgary<br>Alberta T2j3j1<br>Debtor - Alvaro Developers Inc.<br>520, 999 - 8 Street SW<br>Calgary, Alberta T2R1J5<br>Amount: \$235,208 and costs if any<br>Action Number: 2101-11280 |
| 231 060 661              | 27/02/2023 | Certificate of Lis Pendens<br>By - Lisa Kantor  |
| 231 074 550              | 10/03/2023 | Certificate of Lis Pendens<br>By - Lisa Kantor  |
| 231 086 164              | 21/03/2023 | Order<br>In favour of - Alvarez & Marsal Canada Inc.<br>Receivership Order  |
| 231 122 170              | 24/04/2023 | TAX NOTIFICATION<br>BY - THE CITY OF CALGARY.<br>CREDIT & COLLECTIONS, IMC #8060<br>800 MACLEOD TRAIL S<br>CALGARY, ALBERTA<br>T2P2M5   |
| E002FRJ                  | 15/03/2023 | JZ Law<br>Customer File Number: 258001  |
| E002P8X                  | 23/03/2023 | Alberta Municipal Affairs<br>New Home Buyer Protection<br>Office<br>780-643-1393<br>Customer File Number:<br>21RE1327998 (RF)   |

As relates to the 726 Lands:

| <b>Title Number 201 009 726</b> |             |   |
|---------------------------------|-------------|---|
| <b>Registration Number</b>      | <b>Date</b> | <b>Encumbrances, Liens &amp; Interests / Particulars</b>  |
| 201 009 728                     | 14/01/2020  | Mortgage<br>Mortgagee - 1788459 Alberta Ltd.<br>226043 76 Street E<br>Foothills, Alberta T1S 3W2<br>Original Principal Amount: \$1,140,000  |
| 201 009 796                     | 14/01/2020  | Amending Agreement<br>Amount: \$1,140,000<br>Affects Instrument: 201009728  |
| 201 039 227                     | 25/02/2020  | Postponement of Mort 201009728<br>To Mort 201011929 Cave 201011930  |
| 211 205 970                     | 20/10/2021  | Writ<br>Creditor - Lafarge Canada Inc.<br>2800,801-6th Ave. SW<br>Calgary, Alberta T2P 4A3<br>Debtor - Alvaro Developers Inc.<br>c/o 125, 8838 Blackfoot Trail SE<br>Calgary, Alberta T2J 3J1<br>Amount: \$155,461 and costs if any<br>Action Number: 2101-08456          |
| 211 224 653                     | 10/11/2021  | Writ<br>Creditor – Masuch Law LLP<br>#125, 8838 Blackfoot Trail SE<br>Calgary, Alberta T2J 3J1<br>Debtor – Alvaro Developers Inc.<br>520, 999 - 8 Street SW<br>Calgary, Alberta T2R 1J5<br>Amount: \$23,859 and costs if any<br>Action Number: 2101-01295                 |
| 231 056 899                     | 24/02/2023  | Writ<br>Creditor - Q Construction Management Ltd.<br>125 88838 Blackfoot Trail SE<br>Calgary<br>Alberta T2j3j1<br>Debtor - Alvaro Developers Inc.<br>520, 999 - 8 Street SW<br>Calgary, Alberta T2R1J5<br>Amount: \$235,208 and costs if any<br>Action Number: 2101-11280 |



| Title Number 201 009 726 |            |   |
|--------------------------|------------|---|
| Registration Number      | Date       | Encumbrances, Liens & Interests / Particulars   |
| 231 086 164              | 21/03/2023 | Order<br>In favour of - Alvarez & Marsal Canada Inc.<br>Receivership Order  |
| 231 086 539              | 21/03/2023 | Caveat<br>Re: Order Pursuant to Municipal Government Act<br>Caveator - The City Of Calgary.<br>Law, Legal Services, Law And Legislative Dept<br>Municipal Bldg, 12th Fl<br>800 Macleod Trail Se<br>Calgary, Alberta T2g2m3<br>Agent - Jennifer Ndirangu |
| 231 122 170              | 24/04/2023 | TAX NOTIFICATION<br>BY - THE CITY OF CALGARY.<br>CREDIT & COLLECTIONS, IMC #8060<br>800 MACLEOD TRAIL S<br>CALGARY, ALBERTA<br>T2P2M5   |

## Schedule "C"

## Permitted Encumbrances

\* Capitalized terms herein have the meaning set forth in the Sale Agreement, and include, without limitation, the following:

As relates to the 112 Lands:

| Title Number 181 195 112 |            |  |
|--------------------------|------------|--|
| Registration Number      | Date       | Encumbrances, Liens & Interests / Particulars  |
| 5495FS                   | 18/12/1945 | Restrictive Covenant   |
| 201 011 929              | 16/01/2020 | Mortgage<br>Mortgagee - Bancorp Financial Services Inc.<br>1420, 1090 West Georgia Street<br>Vancouver, British Columbia V6E 3V7<br>Mortgagee - Bancorp Balanced Mortgage Fund II Ltd.<br>Mortgagee - Bancorp Growth Mortgage Fund II Ltd.<br>Both of:<br>#1420, 1090 West Georgia Street<br>Vancouver, British Columbia V6E 3V7<br>Original Principal Amount: \$5,350,000 |
| 201 011 930              | 16/01/2020 | Caveat<br>Re: Assignment of Rents and Leases<br>Caveator - Bancorp Financial Services Inc.<br>Caveator - Bancorp Balanced Mortgage Fund II Ltd.<br>Caveator - Bancorp Growth Mortgage Fund II Ltd.<br>All of:<br>Attention: Manager<br>1420-1090 West Georgia Street<br>Vancouver, British Columbia V6E 3V7<br>Agent - Gabrielle Motuz                                     |

As relates to the 726 Lands:

| Title Number 201 009 726 |            |   |
|--------------------------|------------|---|
| Registration Number      | Date       | Encumbrances, Liens & Interests / Particulars |
| 991 082 894              | 27/03/1999 | Caveat  |

| Title Number 201 009 726 |            |   |
|--------------------------|------------|---|
| Registration Number      | Date       | Encumbrances, Liens & Interests / Particulars   |
|                          |            | RE: Encroachment Agreement  |
| 201 011 929              | 16/01/2020 | Mortgage<br>Mortgagee – Bancorp Financial Services Inc.<br>1420, 1090 West Georgia Street<br>Vancouver, British Columbia V6E 3V7<br>Mortgagee – Bancorp Balanced Mortgage Fund II Ltd.<br>Mortgagee – Bancorp Growth Mortgage Fund II Ltd.<br>Both of:<br>#1420, 1090 West Georgia Street<br>Vancouver, British Columbia V6E 3V7<br>Original Principal Amount:<br>\$5,350,000 |
| 201 011 930              | 16/01/2020 | Caveat<br>Re: Assignment of Rents and Leases<br>Caveator - Bancorp Financial Services Inc.<br>Caveator - Bancorp Balanced Mortgage Fund II Ltd.<br>Caveator - Bancorp Growth Mortgage Fund II Ltd.<br>All of:<br>Attention: Manager<br>1420-1090 West Georgia Street<br>Vancouver, British Columbia V6E 3V7<br>Agent - Gabrielle Motuz  |

**SCHEDULE “B”**  
**RESTRICTED COURT ACCESS ORDER**

(see attached)

COURT FILE NO. 2201-13540

COURT COURT OF KING'S BENCH OF ALBERTA

JUDICIAL CENTRE CALGARY

Clerk's Stamp

IN THE MATTER OF THE RECEIVERSHIP  
OF ALVARO DEVELOPERS INC. and  
ALVARO LIMITED PARTNERSHIP

PLAINTIFFS 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

APPLICANT ALVAREZ & MARSAL CANADA INC. in its  
capacity as Court-appointed Receiver and  
Manager of the assets, undertakings and  
properties of ALVARO DEVELOPERS INC.  
and ALVARO LIMITED PARTNERSHIP.

DOCUMENT **RESTRICTED COURT ACCESS ORDER**

ADDRESS FOR SERVICE AND CONTACT  
INFORMATION OF PARTY  
FILING THIS DOCUMENT Torys LLP  
4600 Eighth Avenue Place East  
525 - Eighth Ave SW  
Calgary, AB T2P 1G1

Attention: Kyle Kashuba  
Telephone: +1 403.776.3744  
Fax: +1 403.776.3800  
Email: [kkashuba@torys.com](mailto:kkashuba@torys.com)  
File No. 39108-2010

DATE ON WHICH ORDER WAS PRONOUNCED: May 10, 2023

NAME OF JUSTICE WHO MADE THIS ORDER: Justice Colin J. Feasby

LOCATION OF HEARING: Calgary, Alberta

**UPON THE APPLICATION** by Alvarez & Marsal Canada Inc. in its capacity as the Court-appointed receiver and manager (the “**Receiver**”) of Alvaro Developers Inc. (the “**Trustee**”) and Alvaro Limited Partnership (the “**Beneficial Owner**”, and together with the Trustee, the “**Debtor**”), for amongst other things, a restricted court access order, as described and discussed in the Second Report of the Receiver filed May 1, 2023 (the “**Second Report**”); **AND UPON HAVING READ** the Receivership Order dated December 2, 2022, the Second Report, the Confidential Supplemental Report of the Receiver dated May 1, 2023 (the “**Confidential Supplemental Report**”), the Affidavit of Service of Leah Bruchet (the “**Affidavit of Service**”), and any other material and evidence filed to date in the within proceedings; **AND UPON HEARING** the submissions of counsel for the Receiver, and from any other interested parties who may be present, with no one appearing for any other person on the service list, although properly served as appears from the Affidavit of Service;

**IT IS HEREBY ORDERED AND DECLARED THAT:**

1. The Confidential Supplemental Report shall be treated as confidential, sealed and not form part of the public record, and shall be inserted in a sealed envelope which shall be clearly marked:

“THIS ENVELOPE CONTAINS THE CONFIDENTIAL SUPPLEMENTAL REPORT OF ALVAREZ & MARSAL CANADA INC., IN ITS CAPACITY AS COURT-APPOINTED RECEIVER AND MANAGER OF ALVARO DEVELOPERS INC. AND ALVARO LIMITED PARTNERSHIP, WHICH IS SEALED PURSUANT TO COURT ORDER, IS NOT TO BE OPENED, AND IS NOT TO BE PLACED ON THE PUBLIC RECORD OR MADE PUBLICALLY ACCESSIBLE WITHOUT PRIOR AUTHORITY FROM THE HONOURABLE JUSTICE COLIN J. FEASBY OR ANY OTHER JUSTICE OF THE COURT OF KING’S BENCH”.

2. The Confidential Supplemental Report enclosed in the sealed envelope noted above, shall itself, on its face, be clearly marked as a confidential document, in language substantially the same as the above.
3. The Confidential Supplemental Report of the Receiver may be filed with the Court four months after the discharge of the Receiver in connection with the subject receivership proceedings.
4. Any party may apply to set aside this Order upon providing the Plaintiffs and all interested parties with five days’ notice of such application and the Confidential Supplemental Report will be unsealed four months after the discharge of the Receiver in connection with the subject receivership proceedings.

5. Service of the notice of this Application and supporting materials is hereby declared to be good and sufficient, no other person is required to have been served with notice of this Application, and the time for service of this Application is abridged to that actually given.
6. No other persons are entitled to be served with a copy of this Order.
7. The Receiver is at liberty to reapply for further advice, assistance and direction as may be necessary to give full force and effect to the terms of this Order.

---

Justice of the Court of King's Bench of Alberta

C-1

**SCHEDULE “C”  
DISCHARGE ORDER**

(see attached)



|  |   |               |
|--|---|---------------|
| COURT FILE NO.   | 2201-13540  | Clerk's Stamp |
| COURT  | COURT OF KING'S BENCH OF ALBERTA  |               |
| JUDICIAL CENTRE  | CALGARY   |               |
|  | IN THE MATTER OF THE RECEIVERSHIP<br>OF ALVARO DEVELOPERS INC. and<br>ALVARO LIMITED PARTNERSHIP  |               |
| PLAINTIFFS   | BANCORP FINANCIAL SERVICES INC.,<br>BANCORP BALANCED MORTGAGE FUND<br>II LTD. and BANCORP GROWTH<br>MORTGAGE FUND II LTD.   |               |
| DEFENDANTS<br>(RESPONDENTS)  | ALVARO DEVELOPERS INC., ALVARO<br>LIMITED PARTNERSHIP, CRUZ<br>CUSTOM HOMES LTD., 1770374<br>ALBERTA INC., SUNSET HOMES LTD.,<br>DANIEL RODOLFO ASTETE-CRUZ and<br>PEDRO ARNOLDO OCANA MULLER   |               |
| APPLICANT  | ALVAREZ & MARSAL CANADA INC. in its<br>capacity as Court-appointed Receiver and<br>Manager of the assets, undertakings and<br>properties of ALVARO DEVELOPERS INC.<br>and ALVARO LIMITED PARTNERSHIP.   |               |
| DOCUMENT   | <b>ORDER (Final Distribution, Approval of<br/>Receiver's Fees, Disbursements, and<br/>Activities, Discharge of Receiver, and Sharing<br/>of the Books and Records)</b>  |               |
| ADDRESS FOR SERVICE<br>AND CONTACT<br>INFORMATION OF PARTY<br>FILING THIS DOCUMENT | Torys LLP<br>4600 Eighth Avenue Place East<br>525 - Eighth Ave SW<br>Calgary, AB T2P 1G1<br><br>Attention: Kyle Kashuba<br>Telephone: +1 403.776.3744<br>Fax: +1 403.776.3800<br>Email: <a href="mailto:kkashuba@torys.com">kkashuba@torys.com</a><br>File No. 39108-2010 |               |

DATE UPON WHICH ORDER WAS PRONOUNCED: May 10, 2023

NAME OF JUSTICE WHO MADE THIS ORDER: Justice Colin J. Feasby

LOCATION OF HEARING: Calgary, Alberta

**UPON THE APPLICATION** of Alvarez & Marsal Canada Inc., in its capacity as the Court-appointed receiver and manager (the “**Receiver**”) of Alvaro Developers Inc. (the “**Trustee**”) and Alvaro Limited Partnership (the “**Beneficial Owner**”, and together with the Trustee, the “**Debtor**”), for an Order for the final distribution of proceeds, approval of the Receiver’s fees and disbursements, approval of the Receiver’s activities and discharge of the Receiver; **AND UPON HAVING READ** the Receivership Order dated December 2, 2022, the Second Report of the Receiver, dated May 1, 2023, the Confidential Supplemental Report of the Receiver dated May 1, 2023 and the Affidavit of Service of Leah Bruchet (the “**Affidavit of Service**”); **AND UPON HEARING** the submissions of counsel for the Receiver, counsel for Bancorp Financial Services Inc., Bancorp Balanced Mortgage Fund II Ltd. and Bancorp Growth Mortgage Fund II Ltd. (collectively, the “**Secured Lender**”), and from any other interested parties who may be present, with no one appearing for any other person on the service list, although properly served as appears from the Affidavit of Service; **AND UPON** being satisfied that it is appropriate to do so:

**IT IS HEREBY ORDERED AND DECLARED THAT:**

**SERVICE**

1. 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.

**DISTRIBUTION OF FUNDS**

2. The Receiver is authorized and directed to make a final distribution of funds, to the Secured Lender, as proposed in the Receiver’s Second Report.

**DISCHARGE OF THE RECEIVER**

3. The Receiver is hereby authorized to have all of the Debtor’s remaining books and records destroyed 30 days after the filing of this Order, unless a former director or officer of the Debtor makes

arrangements with the Receiver to physically take possession of the books and records, at their sole cost and expense, prior to the 30 days elapsing.

4. The previously undertaken actions, conduct and activities of the Receiver and of the Receiver's counsel as reported in the Second Report and in all other reports of the Receiver, are hereby authorized and approved.
5. The Receiver's accounts for fees and disbursements, as set out in the Receiver's Second Report and other reports filed herein are hereby approved without the necessity of a formal passing of its accounts.
6. The accounts of the Receiver's legal counsel, Torys LLP, for its fees and disbursements, as set out in the Receiver's Second Report and other reports filed herein are hereby approved without the necessity of a formal assessment of those accounts.
7. The Receiver is hereby authorized to pay any remaining professional fees up to the discharge of the Receiver, particulars of which are set out in the Receiver's Second Report.
8. The Receiver's activities as set out in the Receiver's Second Report and any other reports filed herein, and the Statement of Receipts and Disbursements as attached to the Receiver's Second Report, are hereby ratified and approved.
9. On the evidence before the Court, the Receiver has satisfied its obligations under and pursuant to the terms of the Orders granted in the within proceedings up to and including the date hereof, and the Receiver shall not be liable for any act or omission on its part including, without limitation, any act or omission pertaining to the discharge of its duties in the within proceedings, save and except for any liability arising out of any fraud, gross negligence or willful misconduct on the part of the Receiver, or with leave of the Court. Subject to the foregoing any claims against the Receiver in connection with the performance of its duties are hereby stayed, extinguished and forever barred.
10. No action or other proceeding shall be commenced against the Receiver in any way arising from or related to its capacity or conduct as Receiver, except with prior leave of this Court on notice to the Receiver, and upon such terms as the Court may direct.

11. Upon the Receiver filing with the Clerk of the Court a sworn Affidavit (the “**Discharge Affidavit**”) of a licensed Trustee employed by the Receiver, substantially in the form attached hereto as Schedule “A”, confirming that:

- (a) the matters set out in paragraph 2 of this Order have been completed; and
- (b) all other minor administrative tasks required of the Receiver have been taken,

then the Receiver shall be discharged as Receiver of the Debtor, provided however, that notwithstanding its discharge herein: (a) the Receiver shall remain Receiver for the performance of such incidental duties as may be required to complete the administration of the receivership herein, and (b) the Receiver shall continue to have the benefit of the provisions of all Orders made in this proceeding, including all approvals, protections and stays of proceedings in favour of the Receiver in its capacity as Receiver.

#### **SHARING OF BOOKS AND RECORDS**

12. The Receiver may share certain books and records of the Debtor (including, bank statements, and accounting records) with 1788459 Alberta Ltd. (“**178**”), a secured creditor of the Debtor, to assist 178 to understand how the funds 178 advanced to the Debtor were used, upon 178 entering into a confidentiality agreement with the Receiver, at the sole cost and expense of 178.

#### **MISCELLANEOUS**

13. The Receiver is at liberty to reapply for further advice, assistance and direction as may be necessary to give full force and effect to, and in carrying out the terms of, this Order.
14. This Order must be served only upon those interested parties attending or represented at the within Application and service may be effected by facsimile, electronic mail, personal delivery or courier. Service is deemed to be effected the next business day following the transmission or delivery of such documents.
15. Service of this Order on any party not attending this Application is hereby dispensed with.

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Justice of the Court of King’s Bench of Alberta

**Schedule "A"**

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|--|---|---------------|
| COURT FILE NO.   | 2201-13540  | Clerk's Stamp |
| COURT  | COURT OF KING'S BENCH OF ALBERTA  |               |
| JUDICIAL CENTRE  | CALGARY   |               |
|  | IN THE MATTER OF THE RECEIVERSHIP<br>OF ALVARO DEVELOPERS INC. and<br>ALVARO LIMITED PARTNERSHIP  |               |
| PLAINTIFFS   | BANCORP FINANCIAL SERVICES INC.,<br>BANCORP BALANCED MORTGAGE FUND<br>II LTD. and BANCORP GROWTH<br>MORTGAGE FUND II LTD.   |               |
| DEFENDANTS<br>(RESPONDENTS)  | ALVARO DEVELOPERS INC., ALVARO<br>LIMITED PARTNERSHIP, CRUZ<br>CUSTOM HOMES LTD., 1770374<br>ALBERTA INC., SUNSET HOMES LTD.,<br>DANIEL RODOLFO ASTETE-CRUZ and<br>PEDRO ARNOLDO OCANA MULLER   |               |
| APPLICANT  | ALVAREZ & MARSAL CANADA INC. in its<br>capacity as Court-appointed Receiver and<br>Manager of the assets, undertakings and<br>properties of ALVARO DEVELOPERS INC.<br>and ALVARO LIMITED PARTNERSHIP.   |               |
| DOCUMENT   | <b>AFFIDAVIT</b><br><b>(Confirming Discharge of Receiver)</b>   |               |
| ADDRESS FOR SERVICE<br>AND CONTACT<br>INFORMATION OF PARTY<br>FILING THIS DOCUMENT | Torys LLP<br>4600 Eighth Avenue Place East<br>525 - Eighth Ave SW<br>Calgary, AB T2P 1G1<br><br>Attention: Kyle Kashuba<br>Telephone: +1 403.776.3744<br>Fax: +1 403.776.3800<br>Email: <a href="mailto:kkashuba@torys.com">kkashuba@torys.com</a><br>File No. 39108-2010 |               |

**AFFIDAVIT OF OREST KONOWALCHUK**

**Sworn on ■, 2023**

I, Orest Konowalchuk, of the City of Calgary, in the Province of Alberta, SWEAR AND SAY THAT:

1. I am a Licenced Insolvency Trustee, and a Senior Vice President with Alvarez & Marsal Canada Inc., which is the Court-appointed receiver and manager (the “**Receiver**”) of the assets, undertakings and properties of Alvaro Developers Inc. (the “**Trustee**”) and Alvaro Limited Partnership (the “**Beneficial Owner**”, and together with the Trustee, the “**Debtor**”).
2. Pursuant to the Order granted by the Honourable Justice D. Mah of the Court of King’s Bench of Alberta (the “**Court**”) dated December 2, 2022, Alvarez & Marsal Canada Inc. was appointed as the Receiver over the assets, undertakings and properties of the Debtor.
3. Pursuant to an Order (Final Distribution, Approval of Receiver’s Fees, Disbursements, Activities and Discharge of Receiver, and Sharing of the Books and Records) granted by Justice Colin J. Feasby dated May 10, 2023 (the “**Discharge Order**”), the Court approved the discharge of the Receiver, subject to the filing an Affidavit in the within form confirming that the Receiver had completed certain other administrative activities required to complete its administration of the Debtors’ receivership proceedings.
4. This will confirm that the Receiver has completed all other activities required to complete its administration of the Debtors’ receivership proceedings, including, without limitation, all matters set out in paragraph 2 of the Discharge Order and the Receiver’s Second Report.
5. I make this Affidavit further to the requirements of the Discharge Order, and understand that upon the filing of this Affidavit, Alvarez & Marsal Canada Inc. will be fully and finally discharged from its capacity as the Receiver of the Debtor.
6. I make this Affidavit for no other or improper purpose.

SWORN before me at the City of  
Calgary, in the Province of Alberta,  
this \_\_\_\_ day of \_\_\_\_\_, 2023

\_\_\_\_\_  
A Commissioner for Oaths in and  
for the Province of Alberta

\_\_\_\_\_  
Name: Orest Konowalchuk, LIT