

**IN THE COURT OF QUEEN'S BENCH OF ALBERTA  
IN BANKRUPTCY AND INSOLVENCY**

**IN THE MATTER OF THE BANKRUPTCY OF  
KALCO INVESTMENTS LTD.**

**TRUSTEE'S REPORT TO CREDITORS**

**MAY 6, 2021**

**BACKGROUND AND INSOLVENCY EVENTS**

This report has been prepared by The Bowra Group Inc., in its capacity as Licensed Insolvency Trustee (the "**Trustee**") of the bankrupt estate of Kalco Investments Ltd. (the "**Company**" or "**Kalco Investments**") to provide preliminary information to the creditors as at May 6, 2021.

Mr. Michael Kalisvaart ("**Kalisvaart**") and Ms. Karen Jansen ("**Jansen**") are the sole shareholders of Kalco Investments. The Company was incorporated in Alberta on December 23, 2010. Kalco Investments is a shareholder in a related company, Kalco Farms Ltd. ("**Kalco Farms**").

Kalco Farms and Kalco Investments are herein collectively referred to as (the "**Companies**").

The Companies were in the business of producing and marketing cereal grains such as wheat, barley, and rye, as well as peas and canola, grown on the fields in the municipal district of Sturgeon County and surrounding counties. The Companies farming operations were conducted on lands owned by Kalisvaart, Jansen, Kalco Investments, and Kalco Farms as well as lands leased from third parties.

Kalco Investments was the registered owner of six parcels of land as detailed below:

- i. PLAN 0840686  
BLOCK 1  
LOT 4

EXCEPTING THEREOUT ALL MINES AND MINERALS  
AREA: 32.14 HECTARES (79.42 ACRES) MORE OR LESS

- ii. MERIDIAN 4 RANGE 22 TOWNSHIP 56  
SECTION 29  
QUARTER SOUTH EAST  
CONTAINING 64.7 HECTARES (160 ACRES) MORE OR LESS  
EXCEPTING THEREOUT:

	HECTARES	(ACRES)	MORE OR LESS
A). PLAN 8821462	DESCRIPTIVE	2.17	5.36
B). PLAN 0524670	ROAD	0.454	1.12

EXCEPTING THEREOUT ALL MINES AND MINERALS  
AND THE RIGHT TO WORK THE SAME
  
- iii. MERIDIAN 4 RANGE 22 TOWNSHIP 56  
SECTION 29  
QUARTER SOUTH WEST  
EXCEPTING THEREOUT ALL MINES AND MINERALS  
AREA: 64.7 HECTARES (160 ACRES) MORE OR LESS
  
- iv. PLAN 0922546  
BLOCK 2  
LOT 2  
EXCEPTING THEREOUT ALL MINES AND MINERALS  
AREA: 31.3 HECTARES (77.34 ACRES) MORE OR LESS
  
- v. PLAN 1723349  
BLOCK 1  
LOT 5  
EXCEPTING THEREOUT ALL MINES AND MINERALS  
AREA: 16.22 HECTARES (40.08 ACRES) MORE OR LESS
  
- vi. PLAN 0840686  
BLOCK 1  
LOT 2  
EXCEPTING THEREOUT ALL MINES AND MINERALS  
AREA: 1 HECTARES (2.47 ACRES) MORE OR LESS

Collectively, the Companies alongside certain lands owned by Kalisvaart and Jansen, were the registered owners of ten parcels of land (the “**Kalco Lands**”). In addition, the Companies’ assets consisted of inventory, equipment, machinery, and various receivables.

On January 14, 2021, The Bowra Group Inc. was appointed Receiver Manager (the “**Receiver**”) by an Order of the Court of Queen’s Bench of Alberta of Kalco Farms, Kalco Investments, and

certain lands owed by Kalisvaart and Jansen. A copy of the Court Order is attached as **Appendix A**.

Pursuant to an Order granted by the Court of Queen's Bench of Alberta on April 14, 2021, Kalco Farms and Kalco Investments were assigned into Bankruptcy by the Receiver on April 23, 2021. A copy of this Order is attached as **Appendix B**. The Bowra Group Inc. was appointed Trustee. All receivership and bankruptcy application materials, creditor information, and regular updates are posted to the case website <https://www.bowragroup.com/kalcofarms>.

## **FINANCIAL SITUATION**

As a result of the insolvency, Kalco Investments does not have externally compiled financial statements for the fiscal year ending December 31, 2020. Further, when the Receiver took possession of the books and records, the accounting software had not been updated since September 2020.

Table 1 summarizes the reviewed consolidated income statements of Kalco Farms and Kalco Investments for the fiscal years ending December 31, 2018 and December 31, 2019.

	<b>Year Ended December 31, 2018 (000's)</b>	<b>Year Ended December 31, 2019 (000's)</b>
Revenue	7,090	5,486
Cost of sales	(2,551)	(2,796)
Operating and admin expenses	(5,570)	(6,785)
Other income and expenses	(834)	1,052
<b>Net Income (loss)</b>	<b>(1,865)</b>	<b>(3,043)</b>

The Companies incurred net losses of \$1,865,000 and \$3,043,000 in the fiscal years 2018 and 2019, respectively.

Table 2 summarizes the reviewed consolidated balance sheet of Kalco Farms and Kalco Investments as at December 31, 2018 and December 31, 2019.

	<b>As at December 31, 2018 (000's)</b>	<b>As at December 31, 2019 (000's)</b>
Cash	-	-
Accounts Receivable	232	695
Inventory	4,550	1,868
Prepays and deposits	1,293	615
Other current assets	350	441
	6,425	3,619
Property and equipment	10,596	10,413
Due from related company	746	746
Other long term assets	638	1,076
	<b>18,406</b>	<b>15,854</b>
Bank indebtedness	3,386	13,681
Accounts payable and accrued liabilities	928	2,186
Other current liabilities	3,057	3,079
	7,371	18,946
Long term debt	10,414	-
Capital lease obligation	235	161
Other long term liabilities	675	109
	18,694	19,217
Shareholder's equity (deficit)	(289)	(3,362)
	<b>18,406</b>	<b>15,854</b>

### **CONSERVATORY AND PROTECTIVE MEASURES**

On January 14, 2021, the Receiver attended, took possession, and secured the Kalco Land, facilities, and equipment located in Sturgeon County, Alberta. The Receiver confirmed and continued equipment, building, and liability insurance to protect the assets, and ensured the continuation of all utility services.

The Receiver sent correspondence to BMO Bank of Montreal (“**BMO**”), TD Canada Trust, Christian Credit Union Ltd., and HSBC Bank Canada requesting accounts be frozen and any funds remaining in the accounts be remitted to the Receiver.

The Receiver engaged Stewart Belland & Associates (“**Stewart Belland**”) to attend all leased properties and identify assets of the Companies. The Receiver reviewed and disclaimed all land leases.

The Receiver engaged Colliers Macaulay Nicolls Inc. (“**Colliers**”) and GD Auctions & Appraisals (“**GD**”) (collectively “**Colliers / GD**”) to host an online unreserved time auction (the “**Kalco Auction**”) to sell the Kalco Lands. On April 14, 2021, the Receiver applied for and received ten Orders from the Court of Queen’s Bench of Alberta approving the high bids from the Kalco Auction and vesting title to the various purchasers. The Sale and Vesting Orders are available on the case website. On April 30, 2021, nine of the ten sale transactions completed. The remaining lot is scheduled to close on May 12, 2021. The proceeds are being held by the Receiver subject to a future application for a Distribution Order.

Upon taking possession, the Receiver inventoried all equipment, machinery, and tools. The Receiver segregated the leased assets and prepared a Request for Offers to Purchase the Companies’ equipment, machinery, and tools (the “**Kalco Equipment**”) via tender bid process. On April 14, 2021, the Receiver applied for and received an Order from the Court of Queen’s Bench of Alberta approving the offer made by Ritchie Bros. Auctioneers (Canada) Ltd. to purchase the Kalco Equipment. The equipment transaction closed on April 15, 2021. The proceeds are being held by the Receiver subject to a future application for a Distribution Order.

The Receiver obtained legal opinion’s regarding the security held by each leasing creditor. The Receiver released certain equipment with no equity available to the estate back to the various lessors who established priority to such asset. The Receiver is in the process of determining the validity and enforceability of the security held by John Deere Financial Inc.

The Receiver held discussions with Providence Grain Group Inc. (“**Providence**”) regarding grain delivery contracts and the actual amount of 2020 crops delivered to Providence. The Receiver is in the process of reconciling the 2020 crop and related proceeds.

The Receiver held discussions with Agriculture Financial Services Corporation regarding the 2020 crop insurance. Net insurance proceeds were released and are being held by the Receiver subject to a future application for a Distribution Order.

The Receiver has taken possession of and is in the process of realizing on all Company assets. There are no assets available for realization by the Trustee.

**BOOKS AND RECORDS**

The Trustee has taken possession of certain books and records of the Company, including payroll records, bank statements, accounts receivable, and general ledgers. The Trustee is in the process of reviewing the financial records available and obtaining additional financial information.

**SECURED CREDITORS**

Table 3 provides a listing of the secured claims, according to the books and records of the Company and the Personal Property Registry, that may have a priority over the claims of unsecured creditors.

<b>Creditor</b>	<b>Assets Secured</b>	<b>Table 3 Estimated Claim (\$000's)</b>
BMO Bank of Montreal	General Security Agreement - all present and after-acquired property	16,469
McEwen's Fuel & Fertilizers Inc.	All present and after-acquired intangibles	1,363
CWB National Leasing Inc.	Specific Serial Numbered Equipment/Vehicles	266
Sturgeon County	Property taxes	17
John Deere Canada ULC	Specific Serial Numbered Equipment/Vehicle	Unknown
John Deere Financial Inc.	Specific Serial Numbered Equipment/Vehicles	Unknown

BMO holds a registered general security agreement granting them a priority charge over all the assets and after-acquired property of the Company. As at the date of Receivership, the Companies are indebted to BMO in the approximate amount of \$16,469,000.

All other secured creditors hold either registered general security agreements or security over specific serial numbered assets and equipment.

### **UNSECURED CREDITORS**

Based on the Company's books and records we are aware of 13 unsecured creditors owed approximately \$8,940. Table 4 outlines the major unsecured creditors.

<b>Creditor</b>	<b>Table 4 Estimated Claim (\$000's)</b>
MNP LLP	8.9
ADT Security Services Canada Inc.	Unknown
Coronado Gas Co-op Ltd.	Unknown
North Parkland Power Co-op	Unknown
Telus Communications - Corporate	Unknown
WCB Alberta	Unknown

Due to the nature of the Companies farming operations, Kalco Investments sales are historically GST exempt. The Trustee has reviewed the Companies books and records and believes the Kalco Investments to be in an owing position. CRA has not filed a proof of claim as of the date of this report and as such the amount of their current claim, if any, is unknown. CRA's claim for unpaid GST would rank as an unsecured claim in the bankruptcy.

### **IDENTIFICATION AND VALUATION OF ASSETS**

As noted previously, the Kalco Land and Kalco Equipment were sold in the Receivership proceedings. The proceeds are being held by the Receiver subject to a future application for a Distribution Order. There are no assets available for realization by the Trustee.

Based on realizations to date, the Receiver's analysis of the Company's remaining assets and the amount owing to BMO, the senior secured creditor, we estimate there will be no recovery to the unsecured creditors.

### **CONFLICT OF INTEREST**

As previously noted, The Bowra Group Inc. was appointed Receiver Manager of the Company on January 14, 2021 pursuant to an Order of the Court of Queen's Bench of Alberta. On April 23, 2021, the Company was assigned into bankruptcy by the Receiver pursuant to an Order of the Court of Queen's Bench of Alberta. The Bowra Group Inc. was appointed the Trustee. An independent legal opinion was obtained by the Trustee which confirms the security of BMO is valid and enforceable.

### **LEGAL ACTIONS**

The Trustee is not aware of any ongoing litigation against the Company.

### **REVIEW OF RECORDS & CONDUCT OF THE DEBTOR**

The Trustee is in the process of reviewing the books and records of the Company that were made available, including bank statements for the period of January 1, 2020 to January 14, 2021. If the Trustee identifies any transactions that could be regarded as preference payments or transfers undervalue in accordance with the *Bankruptcy and Insolvency Act*, the Trustee will seek instructions from the Inspectors and / or the creditors of the bankrupt estate.

## **CONCLUSION**

Given the estimated recovery, we estimate the secured creditors will suffer a substantial shortfall on their claims. Therefore, the Trustee does not believe there will be any recovery to the unsecured creditors.

### **The Bowra Group Inc.**

Licensed Insolvency Trustee of Kalco Investments Ltd.

Per: 

Kristin Gray, CPA, CA, CIRP, LIT

## **APPENDIX A**

A copy of the Receivership Order granted by the Honourable Justice Mah dated January 14, 2021



Clerk's Stamp:

COURT FILE NUMBER 2003 15829  
COURT COURT OF QUEEN'S BENCH OF ALBERTA  
JUDICIAL CENTRE EDMONTON  
PLAINTIFF **BANK OF MONTREAL**  
DEFENDANTS **KALCO INVESTMENTS LTD., KALCO FARMS LTD.,  
MICHAEL KALISVAART, and KAREN JANSEN**  
DOCUMENT **RECEIVERSHIP ORDER**  
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT  
Dentons Canada LLP  
2500 Stantec Tower  
10220 – 103 Avenue  
Edmonton, Alberta T5J 0K4  
Ph. (780) 423-7284 Fx. (780) 423-7276  
File No.: 126233-1895/DAH  
Attention: Dean A. Hitesman / Nicholas C. Williams

DATE ON WHICH ORDER WAS PRONOUNCED:	January 14, 2021
LOCATION WHERE ORDER WAS PRONOUNCED:	Edmonton, Alberta
NAME OF JUSTICE WHO MADE THIS ORDER:	The Honourable Justice D.R. Mah

UPON the application of Bank of Montreal ("**BMO**") in respect of Kalco Investments Ltd., Kalco Farms Ltd., Michael Kalisvaart and Karen Jansen (however with respect to Michael Kalisvaart and Karen Jansen limited to their respective interest in the Personal Lands as defined below) (collectively, the "**Debtors**"); AND UPON having read the Application and supporting Affidavit of John Hermann, filed; AND UPON reading the consent of The Bowra Group, Inc. to act as receiver and manager (the "**Receiver**") of the property of the Debtors, filed; AND UPON hearing submissions from counsel for BMO; AND UPON hearing submissions from counsel for the Defendants and any other counsel or interested parties present;

IT IS HEREBY ORDERED AND DECLARED THAT:

#### **SERVICE**

1. The time for service of the notice of application for this order (the "**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, and 65(7) of the *Personal Property Security Act*, R.S.A. 2000, c.P-7 ("**PPSA**"), The Bowra Group, Inc. is hereby appointed Receiver, without security, of all of the Debtors' current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate, including all proceeds thereof, however with respect to Michael Kalisvaart and Karen Jansen limited to the lands (the "**Personal Lands**") legally described as:

PLAN 8022100  
 LOT 1  
 EXCEPTING THEREOUT ALL MINES AND MINERALS  
 AREA: 32.7 HECTARES (80.8 ACRES) MORE OR LESS

- and -

MERIDIAN 4 RANGE 22 TOWNSHIP 56  
 SECTION 20  
 QUARTER NW  
 CONTAINING 64.7 HECTARES (160 ACRES) MORE OR LESS  
 EXCEPTING THEREOUT:

		HECTARES	(ACRES) MORE OR LESS
A) PLAN 9020606	DESCRIPTIVE	1.42	3.51
B) PLAN 0524865	SUBDIVISION	1.00	2.47

EXCEPTING THEREOUT ALL MINES AND MINERALS

(collectively, 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 Debtors, 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 Debtors;
  - (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 Debtors or any part or parts thereof;
  - (f) to receive and collect all monies and accounts now owed or hereafter owing to the Debtors and to exercise all remedies of the Debtors in collecting such monies, including, without limitation, to enforce any security held by the Debtors;

- (g) to settle, extend or compromise any indebtedness owing to or by the Debtors;
- (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 Debtors, for any purpose pursuant to this Order;
- (i) to undertake environmental or workers' health and safety assessments of the Property and operations of the Debtors;
- (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 Debtors, 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 in the ordinary course of business without the approval of this Honourable Court and 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 \$50,000.00, provided that the aggregate consideration for all such transactions does not exceed \$200,000.00; 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 *PPSA* shall not be required;
- (m) to apply for any vesting order or other orders (including, without limitation, confidentiality or sealing 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 register a copy of this Order and any other Orders in respect of the Property against title to any of the Property, and when submitted by the Receiver for registration this Order shall be immediately registered by the Registrar of Land Titles of Alberta, or any other similar government authority, notwithstanding Section 191 of the *Land Titles Act*, RSA 2000, c. L-4, or the provisions of any other similar legislation in any other province or territory, 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 Debtors 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 Debtors;
- (q) to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtors, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Debtors;
- (r) to exercise any shareholder, partnership, joint venture or other rights which the Debtors may have;
- (s) with prior Court approval, to assign Kalco Investments Ltd. and Kalco Farms Ltd. into bankruptcy; 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 Debtors, and without interference from any other Person (as defined below).

#### **DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER**

4. (i) The Debtors, (ii) all of its current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on their 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 Debtors, 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 DEBTORS OR THE PROPERTY**

8. No Proceeding against or in respect of the Debtors 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 Debtors 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 Debtors or an action, suit or proceeding that is taken in respect of the Debtors 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. Other than with respect to the Personal Lands, nothing within this Order shall limit or stay the right of the Plaintiff or any other Person to commence or continue Proceedings against the individual Defendants in this Action.

#### **NO EXERCISE OF RIGHTS OR REMEDIES**

9. All rights and remedies of any Person, whether judicial or extra-judicial, statutory or non-statutory (including, without limitation, set-off rights) against or in respect of Kalco Investments Ltd. and Kalco Farms Ltd. or the Receiver or affecting the Property are hereby stayed and suspended and shall not be commenced, proceeded with or continued except with leave of this Court, including, without limitation, any rights or remedies or provisions in any agreement, construction, ownership and operating agreement, joint venture agreement or any such similar agreement or agreements to which the Debtors are a party that purport to effect or cause a cessation of operatorship as a result of the occurrence of any default or non-performance by or the insolvency of the Debtors, the making or filing of these proceedings or any allegation, admission or evidence in these proceedings and under no circumstances shall the Debtors be replaced as operator pursuant to any such agreements without further order of this Court provided, however, that this stay and suspension does not apply in respect of any “eligible financial contract” (as defined in the BIA), and further provided that nothing in this Order shall:
  - (a) empower the Debtors to carry on any business that the Debtors are not lawfully entitled to carry on;

- (b) prevent the filing of any registration to preserve or perfect a security interest;
  - (c) prevent the registration of a claim for lien; or
  - (d) exempt the Debtors from compliance with statutory or regulatory provisions relating to health, safety or the environment.
10. Nothing in this Order shall prevent any party from taking an action against the Applicant where such an action must be taken in order to comply with statutory time limitations in order to preserve their rights at law, provided that no further steps shall be taken by such party except in accordance with the other provisions of this Order, and notice in writing of such action be given to the Monitor at the first available opportunity.

#### **NO INTERFERENCE WITH THE RECEIVER**

11. 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 Debtors, except with the written consent of the Debtors and the Receiver, or leave of this Court. Nothing in this Order shall prohibit any party to an eligible financial contract (as defined in the *BIA*) from closing out and terminating such contract in accordance with its terms.

#### **CONTINUATION OF SERVICES**

12. All persons having:
- (a) statutory or regulatory mandates for the supply of goods and/or services; or
  - (b) oral or written agreements or arrangements with the Debtors, 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 Debtors or exercising any other remedy provided under such agreements or arrangements. The Debtors shall be entitled to the continued use of its current premises, telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the usual prices or charges for all such goods or services received after the date of this Order are paid by the Debtors in accordance with the payment practices of the Debtors, or such other practices as may be agreed upon by the supplier or service provider and each of the Debtors and the Receiver, or as may be ordered by this Court.

#### **RECEIVER TO HOLD FUNDS**

13. 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

14. Subject to employees' rights to terminate their employment, all employees of the Debtors shall remain the employees of the Debtors until such time as the Receiver, on the Debtors' 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**").
15. 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 Debtors, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

## LIMITATION ON ENVIRONMENTAL LIABILITIES

16. (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**

17. 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**

18. 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 the benefits of and are hereby granted a charge (the "**Receiver's Charge**") on the Property, as security for their professional fees and disbursements, incurred at the normal rates and charges of the Receiver and such counsel, 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, deemed 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*.
19. The Receiver and its legal counsel shall pass their accounts from time to time.
20. 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**

21. 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 \$500,000.00 (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the "**Receiver's Borrowings**")

**Charge**") as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, deemed 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*.

22. Neither the Receiver's Borrowings Charge nor any other security granted by the Receiver in connection with its borrowings under this Order shall be enforced without leave of this Court.
23. The Receiver is at liberty and authorized to issue certificates substantially in the form annexed as Schedule "A" hereto (the "**Receiver's Certificates**") for any amount borrowed by it pursuant to this Order.
24. 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.
25. The Receiver shall be allowed to repay any amounts borrowed by way of Receiver's Certificates out of the Property or any proceeds, including any proceeds from the sale of any assets without further approval of this Court.

#### **ALLOCATION**

26. 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**

27. The Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.
28. 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. The Receiver's reports shall be filed by the Court Clerk notwithstanding that they do not include an original signature.
29. Nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Debtors.
30. The requirement of the parties to engage in a dispute resolution process is dispensed with.
31. The Plaintiff is given leave to continue any and all proceedings in relation to this matter.
32. This Court hereby requests the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in any foreign jurisdiction 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, to grant representative status to the Receiver in any foreign proceeding, or to assist the Receiver and its agents in carrying out the terms of this Order.

33. 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.
34. The Plaintiff shall have its costs of this Application, 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, including legal costs on a solicitor-client full indemnity basis, to be paid by the Receiver from the Debtors' estates with such priority and at such time as this Court may determine.
35. Any interested party may apply to this Court to vary or amend this Order on not less than 7 days' notice to the Receiver and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

### FILING

36. The Receiver shall establish and maintain a website in respect of these proceedings at <https://www.bowragroup.com/kalcofarms> 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.
37. Service of this Order shall be deemed good and sufficient by:
- (a) serving the same on:
    - (i) the persons listed on the service list created in these proceedings or otherwise served with notice of 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; and
  - (b) posting a copy of this Order on the Receiver's Website
- and service on any other person is hereby dispensed with.
38. 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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J.C.Q.B.A.

**SCHEDULE "A"**

**RECEIVER CERTIFICATE**

CERTIFICATE NO. \_\_\_\_\_

AMOUNT \$ \_\_\_\_\_

1. THIS IS TO CERTIFY that The Bowra Group, Inc., the receiver and manager (in each capacity the "**Receiver**") of all of the assets, undertaking and property of Kalco Investments Ltd., Kalco Farms Ltd., Michael Kalisvaart and Karen Jansen (however with respect to Michael Kalisvaart and Karen Jansen limited to their respective interest in the Personal Lands) appointed by Order of the Court of Queen's Bench of Alberta (the "**Court**") dated the 14<sup>th</sup> day of January, 2021 (the "**Order**") made in action \_\_\_\_\_, 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 \_\_\_\_\_ 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 (as defined in the Order), 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 defined in the Order) 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 \_\_\_\_\_, 2021.

\_\_\_\_\_, solely in its capacity as  
Receiver of the Property (as defined in the Order), and not in its  
personal capacity

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

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

Title: \_\_\_\_\_

## **APPENDIX B**

A copy of the Order granted by the  
Honourable Justice J.J. Gill dated April 14, 2021



Clerk's stamp:

COURT FILE NUMBER 2003-15829  
COURT COURT OF QUEEN'S BENCH OF ALBERTA  
JUDICIAL CENTRE EDMONTON  
PLAINTIFF BANK OF MONTREAL  
DEFENDANTS KALCO INVESTMENTS LTD., KALCO FARMS LTD., MICHAEL KALISVAART, and KAREN JANSEN  
DOCUMENT **ORDER APPROVING RECEIVER'S ACTIVITIES AND AUTHORIZING THE RECEIVER TO ASSIGN KALCO INVESTMENTS LTD. AND KALCO FARMS LTD. INTO BANKRUPTCY**  
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT MILLER THOMSON LLP  
Barristers and Solicitors  
2700, Commerce Place  
10155-102 Street  
Edmonton, AB, Canada T5J 4G8  
Phone: 780.429.1751 Fax: 780.424.5866  
Lawyer's Name: Susy Trace  
Lawyer's Email: strace@millerthomson.com  
File No.: 0255543-0001

**DATE ON WHICH ORDER WAS PRONOUNCED:** April 14, 2021  
**LOCATION WHERE ORDER WAS PRONOUNCED:** Edmonton, Alberta  
**NAME OF MASTER WHO MADE THIS ORDER:** The Honourable Justice J.J. Gill

**UPON THE APPLICATION** of The Bowra Group Inc. in its capacity as the court appointed receiver and manager (the "**Receiver**") of the undertakings, property and assets of Kalco Investments Ltd., Kalco Farms Ltd., and certain lands owned by Michael Kalisvaart and Karen Jansen (collectively the "**Debtors**") **AND UPON HAVING READ** the Application, the Receivership Order granted by the Honourable Justice D.R. Mah on January 14, 2021 in respect of the Debtors, the First Report to the Court of The Bowra Group Inc. in its capacity as receiver of the Debtors dated April 5, 2021 (the "**First Report**"), filed, and the Confidential Appendix to the Receiver's First Report dated April 5, 2021, (the "**Confidential Appendix**"); **AND UPON HEARING** the submissions of counsel for the Receiver and all other interested parties present;

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

1. Service of Notice of this Application and all materials in support (the "**Materials**") is hereby declared to be good and sufficient, no other person is required to have been served with the Materials and the time required for service of the Materials is abridged to that actually given.
2. The activities, conduct and actions of the Receiver as described in the First Report and the Confidential Appendix are hereby approved.
3. The Receiver is hereby authorized to assign Kalco Investments Ltd. and Kalco Farms Ltd. into bankruptcy pursuant to s. 49 of the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3.
4. Service of this Order shall be deemed good and sufficient by:
  - (a) 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; and
  - (b) Posting a copy of this Order on the Receiver's website at: <https://www.bowragroup.com/kalcofarms>; andService on any other person is hereby dispensed with.
5. 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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**J.C.Q.B.A**