Grant Thornton

Clerk's Stamp

COURT FILE NUMBER	1201-15430
COURT	COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE	CALGARY
PLAINTIFFS	STANLEY EISENBERG, BRENDA EISENBERG, JACK EISENBERG, LYNN EISENBERG and EISENBERG'S PROPERTIES LTD.
DEFENDANTS:	910234 ALBERTA LTD., RANDY CALMUSKY, THERESA CALMUSKY, KYLE CALMUSKY, CALE HUMENIUK and JORDAN RINTOUL
DOCUMENT	RECEIVER'S NINTH REPORT February 24, 2014
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING DOCUMENT	<u>RECEIVER</u> Grant Thornton Limited 900, 833 – 4th Avenue SW Calgary, AB T2P 3T5 Attention: Guy Odhams Telephone: (403) 296-3143 Facsimile: (403) 260-2571 E-Mail: Guy.Odhams@ca.gt.com <u>COUNSEL</u> Field LLP 400, 604 – 1 Street S.W. Calgary, AB T2P 1M7 Attention: Douglas S. Nishimura Telephone: (403) 260-8548 Facsimile: (403) 264-7084 E-Mail: dnishimura@fieldlaw.com

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Exhibits

Exhibit 1 – Receipts and disbursements as at February 21st, 2014

Background

1. 910234 Alberta Ltd. ("**910**" or the "**Company**") is a corporation incorporated pursuant to the laws of the Province of Alberta. Randy Calmusky is the sole director of 910.

2. 910 was in the business of raising funds from investors for the purpose of investing in residential mortgages. Investors provided funds in the form of loans to 910, and those loans were to be documented through a series of mortgage sale and servicing agreements.

3. On December 6, 2012, Stanley Eisenberg, Brenda Eisenberg, Jack Eisenberg, Lynn Eisenberg and Eisenberg's Properties Ltd. (collectively the "**Eisenbergs**"), applied for, and were granted an Attachment Order by the Honourable Justice K. D. Yamauchi on December 6, 2012 (the "**Attachment Order**").

4. On December 10, 2012, the Eisenbergs applied for a Receivership Order against 910 and other parties. On December 12, 2013, a Receivership Order was granted by the Honourable Mr. Justice S. J. LoVecchio, appointing Grant Thornton Limited (the "**Receiver**") as Receiver of all of the assets of 910 (the "**Property**").

5. The Receiver filed an Initial Report to the Court on December 20, 2012. On December 21, 2012, an Order was granted by the Honourable Mr. Justice R. G. Stevens, extending the Attachment Order to January 14, 2013.

6. The Receiver filed its Second Report to the Court on January 9, 2013. On January 14, 2013, an Order (the "**Amended Receivership Order**") was granted by the Honourable Madam Justice K. M. Horner, expanding the Receiver's powers was granted. A copy of the Amended Receivership Order is attached as Exhibit 2 in the Receiver's Third Report. On the same day, the Honourable Madam Justice K. M. Horner granted an Order extending the Attachment Order to February 22, 2013.

7. The Receiver filed its Third Report to the Court on February 13, 2013. On February 19, 2013, an Order was granted by the Honourable Madam Justice K. M. Horner, allowing and

directing, *inter alia*, that all current and future interest payments with respect to the mortgage registered against the lands municipally described as 356 Spyglass Way, Calgary, Alberta, (**"356 Spy Glass Way"**) be paid to the Receiver and the Attachment Order be extended until April 19, 2013.

8. The Receiver filed its Fourth Report on March 27, 2013. On April 5, 2013, the Honourable Madam Justice K. M. Horner, granted on Order allowing the Receiver, among other things, to accept payment from Trickle Creek Homes Ltd. (**"Trickle Creek"**) in the amount of $1,207,890.41, together with any accrued interest (the **"Trickle Creek Proceeds"**), to be held in trust pending a determination of entitlement to the Trickle Creek Proceeds and to discharge the mortgage, registered as Instrument No. 121 164 817, granted by Trickle Creek to 940 against 356 Spyglass Way (the **"Trickle Creek Mortgage"**). The Order also extended the Attachment Order for an additional six months from April 5, 2013.

9. The Receiver filed its Fifth Report on May 7, 2013, dealing with a proposed assignment into bankruptcy of 910. 910 was subsequently assigned into bankruptcy effective May 15, 2013.

10. The Receiver's Sixth Report filed on August 28, 2013. Provided information and documentation required to release the Trickle Creek funds to the Receiver and declaring them to be property of the estate of 910, information relating to Theresa Calmusky, Gary Calmusky, Mary Calmusky (the **"Calmuskys"**) and the Trickle Creek loan, information and documentation regarding the disposition of certain properties in Langdon, Alberta (the **"Langdon Properties"**); and information and documentation with respect to the extension of the Attachment Order.

11. The Receiver's Supplemental Sixth Report filed September 27, 2013, provided the Court with a summary of information regarding the transactions between 910, Randy Calmusky and the Calmuskys.

12. The Receiver's Seventh Report filed November 15, 2013 provided a summary of the sales process and information regarding the residential purchase contract for 27 Elveden Place SW, and information with respect to the extension of the Attachment Order.

13. The Receiver's Eighth Report filed February 6, 2014 the Court with an update of the activities of the Receiver since the issuance of our seventh report together with recommendations to make an interim distribution and conduct the sale of 57 Everglen Crescent SW, Calgary.

14. The purpose of this Ninth Report is to provide the Court with information regarding amounts owed by the Calmuskys regarding interest and court costs.

Disclaimer and Limitations of Report

15. In preparing this Report, the Receiver has necessarily relied upon financial and other information and representations supplied by various parties. Although the information supplied has been reviewed for reasonableness, the Receiver has not independently verified the accuracy or completeness of the information nor has the Receiver conducted an audit and, as a result, the Receiver is not providing any form of assurance on the information subject to its review. The procedures the Receiver performed are limited in nature to those outlined in its report. As such, the Receiver's work may not necessarily disclose all the significant matters about 910 or any errors, misstatements, irregularities, or illegal acts, if such exist, on the part of 910 or its management, directors, and advisors or in the underlying information.

16. The findings contained herein are based primarily on review of various documents made available to the Receiver and discussions and communications with various parties. Due to the lack of summary financial records of 910, the Receiver has not had an opportunity to complete all of its potential work, as disclosed within the Report. The Receiver may refine or alter its observations as further information is obtained or is brought to its attention after the date of this Report.

17. The Receiver assumes no responsibility or liability for any loss or damage occasioned by any party as a result of the circulation, publication, reproduction or use of this report. Any use which any party makes of this report, or any reliance on or decisions to be made based on it is the responsibility of such party.

Receiver's Activities

18. Since our last report, the Receiver has

 (a) Commenced the distribution of funds to the Investors;

 (b) Retained a real estate agent to view 41 Everglen Crescent and complete a market value report; and

 (c) Retained a real estate agent to sell 57 Everglen Crescent.

Amounts owed by the Calmuskys

19. On October 3, 2013, this Court ordered that the interest on the Trickle Creek Mortgage in the amount of $97,665, which was previously paid to the Calmuskys by Trickle Creek, be repaid to the Receiver of 910.

20. On October 28, 2013 this Court ordered that costs be awarded against Theresa Calmusky in the amount of $3,000. These costs are with respect to the July 11, 2013 Order which Theresa Calmusky is currently appealing and will not be heard until April 3, 2014.

21. On November 8, 2013 this Court ordered that costs be awarded against the Calmuskys in the amount of $5,000, in respect of the October 3, 3013 decision.

22. On January 13, 2014, the Court of Appeal awarded costs against the Calmuskys. The amount has not yet been set or agreed to by the parties.

23. All of these amounts remain unpaid, and Writs of Enforcement have been filed for all of the amounts except for the Court of Appeal costs.

24. The Receiver had its legal counsel conduct a search for any property owned by Gary and Mary Calmusky in Alberta. None were found.

25. An Affidavit of the legal assistant to counsel for the Calmuskys indicated that those individuals do not have cash to pay legal fees.

Amount held as Security for Trickle Creek Appeal

26. Prior to the Appeal regarding the Trickle Creek mortgage proceeds, the Calmuskys were required to post $45,000 as security against any damages or costs that could be claimed or awarded by the court. Following the dismissal of the Appeal, the Receiver was advised by counsel for the Calmuskys that counsel for the Calmuskys claimed the funds as a retainer. The correspondence in this regard is attached to the Affidavit of Simone Assaily filed by the Calmuskys.

27. Had the Receiver been aware of the position taken by the Calmuskys regarding the alleged retainer, the Receiver could have, and would have, made an application for security for costs at the very least, and may have asked that the money be held as security for the judgment as well.

28. The Receiver requests permission to attach the funds in question by way of garnishment, in order to pay down amounts owing to the estate by the Calmuskys.

Receipts and Disbursements

29. Attached as **Exhibit 1** is a statement of receipts and disbursements for the period ending February 21, 2014, held by the Receiver.

30. As mentioned in our previous report, additional funds are being held by the Receiver's counsel.

Recommended Course of Action

31. The Receiver makes the following recommendation:

    (a) The funds held in trust by counsel for the Calmuskys is subject to attachment by the Receiver.

Dated at Calgary Alberta, the 24th day of February 2014.

GRANT THORNTON LIMITED

Per: ______________________
Guy Odhams

District of	Alberta
Division No.	02 - Calgary
Court No.	1201-15430
Estate No.	25-094345

Exhibit 1

In the matter of the receivership of
910234 Alberta Ltd.
of the town of Priddis, in the Province of Alberta

Form 12
Interim Statement of Receipts and Disbursements

RECEIPTS			
1. Asset Realization			
Cash on hand		53.28	53.28
2. Miscellaneous Refunds and Receipts			
Interest allocation		6,444.38	
Miscellaneous other receipts		58.50	
Mortgages receivable		2,767,321.97	
Utility Refunds		41.30	2,773,866.15
TOTAL RECEIPTS			2,773,919.43
DISBURSEMENTS			
3. Fees Paid			
To registrar		150.00	
To official receiver		70.00	220.00
4. Notice of first meeting			
Local paper		223.04	223.04
5. Premium			
Insurance		10,690.00	10,690.00
6. Trustee's remuneration			
Trustee's fees		9,944.00	
GST charged on Trustee remuneration		497.20	10,441.20
7. Miscellaneous			
Net Operating expenes		555.00	
Bank charges		411.00	
Security		2,644.09	
Utilities		3,341.52	
Legal fees/disbursements		292,771.89	
Receiver's fees and costs		270,494.00	
Expenses - sales		1,245.76	
GST Paid		28,407.28	
Property taxes paid		10,052.14	609,922.68
TOTAL DISBURSEMENTS			631,496.92
Note: How much of the total disbursements was paid for services provided by persons related to the trustee?		0.00	
Amount available for distribution			2,142,422.51
8. Levy payable under section 147 of the Act			0.00
9. Unsecured creditors			
Proved claims of	6,605,000.00		
Current dividend	0.00 less levy	0.00	0.00
10. Amount retained in the Trust account by the Trustee:			2,142,422.51