Action No. 1001-13706

IN THE COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL DISTRICT OF CALGARY

BETWEEN:

NILE CAPITAL I S.À.R.L., NILE CAPITAL II S. À.R.L., LUXOR CAPITAL PARTNERS, LP and LUXOR CAPITAL PARTNERS OFFSHORE MASTER FUND, LP

Plaintiffs
(Applicants)

- and -

EARTHRENEW CORPORATION, EARTHRENEW, INC., EARTHRENEW IP HOLDINGS LLC, EARTHRENEW STRATHMORE 1 LP, EARTHRENEW STRATHMORE GENERAL PARTNER LTD., EARTHRENEW SOLUTIONS LP, EARTHRENEW OPERATIONAL EMPLOYEE LP, EARTHRENEW MANAGEMENT LP and EARTHRENEW MANAGEMENT GENERAL PARTNER LTD.

Defendants
(Respondents)

AFFIDAVIT OF MICHAEL CONBOY
sworn September 15, 2010

VOLUME 1 of 2

Action No. ________________

IN THE COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL DISTRICT OF CALGARY

BETWEEN:

NILE CAPITAL I S.À.R.L., NILE CAPITAL II S. À.R.L., LUXOR CAPITAL PARTNERS, LP and LUXOR CAPITAL PARTNERS OFFSHORE MASTER FUND, LP

Plaintiffs
(Applicants)

- and -

EARTHRENEW CORPORATION, EARTHRENEW, INC., EARTHRENEW IP HOLDINGS LLC, EARTHRENEW STRATHMORE 1 LP, EARTHRENEW STRATHMORE GENERAL PARTNER LTD., EARTHRENEW SOLUTIONS LP, EARTHRENEW OPERATIONAL EMPLOYEE LP, EARTHRENEW MANAGEMENT LP and EARTHRENEW MANAGEMENT GENERAL PARTNER LTD.

Defendants
(Respondents)

AFFIDAVIT OF MICHAEL CONBOY
(sworn September 15, 2010)

I, MICHAEL CONBOY, of the City of New York, in the State of New York, one of the United States of America, MAKE OATH AND SAY:

1. I am the Director of Research of Luxor Capital Group, LP, an entity related to the Applicants. As such, I have knowledge of the matters to which I hereinafter depose, save and except where I refer to information obtained from others, in which case I identify the source of that information and believe such information to be true.

THE PURPOSE OF THE APPLICATION

2. The respondent, EarthRenew Corporation ("**EarthRenew**"), issued secured debentures to the Applicants. The secured debentures impose various obligations on EarthRenew. EarthRenew has failed to perform certain of those obligations and has

committed one or more Events of Default (defined herein). Accordingly, the Applicants are seeking an order pursuant to section 243 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "***BIA***"), section 13(2) of the *Judicature Act*, R.S.A. 2000, c.J-2,, section 99(a) of the *Business Corporations Act*, R.S.A. 2000, c.B-9, and section 65(7) of the *Personal Property Security Act*, R.S.A. 2000, c.P-7 to appoint RSM Richter Inc. ("**Richter**"), a licensed bankruptcy trustee, as receiver (in such capacity, the "**Receiver**"), without security, of all of the assets, undertakings and properties of the Respondents.

THE PARTIES AND OTHER INTERESTED PERSONS

3. Nile Capital I S.à.r.l. is a Luxemburg Société à responsabilité limitée.

4. Nile Capital II S.à.r.l. is a Luxemburg Société à responsabilité limitée.

5. Luxor Capital Partners, LP ("**Luxor Capital**") is a Delaware limited partnership.

6. Luxor Capital Partners Offshore Master Fund, LP ("**Luxor Master Fund**") is a Cayman Islands limited partnership.

7. EarthRenew is an Alberta corporation that produces organic matter fertilizer using patented technology. EarthRenew was incorporated under the *Business Corporations Act* (Alberta) on December 22, 1999, as EarthRenew Organics Ltd. ("**Organics Ltd**."). On January 1, 2010, its articles of incorporation were amended to change the name of the corporation from "EarthRenew Organics Ltd." to "EarthRenew Corporation". EarthRenew's corporate profile report is attached hereto as **Exhibit A**. EarthRenew's articles of amendment are attached hereto as **Exhibit B**.

8. The Respondent, EarthRenew, Inc., a California Corporation, is a wholly-owned subsidiary of EarthRenew and holds EarthRenew's intellectual property assets in the United States.

9. The Respondent, EarthRenew IP Holdings LLC, a Delaware limited liability company, is a wholly-owned subsidiary of EarthRenew and holds EarthRenew's intellectual property assets that are owned outside of Canada and the United States. Prior to changing its name to EarthRenew IP Holdings LLC, it carried on business using the name Annona, LLC.

10. The Respondent, EarthRenew Strathmore 1 LP, an Alberta limited partnership, is wholly-owned by EarthRenew and owns EarthRenew's plant located in Strathmore, Alberta.

11. The Respondent, EarthRenew Strathmore General Partner Ltd., an Alberta corporation, is wholly-owned by EarthRenew and is the general partner of Strathmore LP.

12. The Respondent, EarthRenew Management General Partner Ltd., an Alberta corporation, is wholly-owned by EarthRenew and is the general partner of the entities referenced in paragraphs 13 - 15 below.

13. The Respondent, EarthRenew Operational Employee LP, an Alberta limited partnership, is wholly-owned by EarthRenew.

14. The respondent, EarthRenew Management LP, an Alberta limited partnership, is wholly-owned by EarthRenew.

15. The respondent, EarthRenew Solutions LP, an Alberta limited partnership is wholly-owned by EarthRenew.

THE SECURED DEBENTURES

16. EarthRenew issued a 5% convertible secured debenture dated January 4, 2010, bearing certificate number CSD-6 in the amount of US$2,744,349 in favour of Nile Capital I S.à.r.l. (the "**Nile I Secured Debenture**") which was amended by agreement dated April 12, 2010. A copy of the Nile I Secured Debenture and the amending agreement is attached hereto as **Exhibit C**. As a result of the amendment to the Nile I Secured Debenture, it matures at 4:30 p.m. (Calgary time) on March 31, 2011.

17. The Nile I Secured Debenture was initially issued to Luxor Capital pursuant to a secured debenture dated September 3, 2009, bearing certificate number CSD-3. It was transferred by Luxor Capital to Nile Capital I S.à.r.l. on January 4, 2010 and was re-issued by EarthRenew to Nile Capital I S.à.r.l. On this same date EarthRenew issued a 5% convertible secured debenture dated May 18, 2010, bearing certificate number CSD-7 in the amount of US$3,255,651 in favour of Nile Capital II S.à.r.l. (the "**Nile II Secured Debenture**"), a copy of which is attached hereto as **Exhibit D**. The Nile II Secured Debenture matures at 4:30 p.m. (Calgary time) on March 31, 2011.

18. The Nile II Secured Debenture was initially issued to Luxor Capital Partners Offshore, Ltd. ("**Luxor Offshore**") pursuant to a secured debenture dated September 3, 2009, bearing certificate number CSD-4. It was transferred by Luxor Offshore to Nile Capital II S.à.r.l. on January 4, 2010 and was re-issued by EarthRenew to Nile Capital I S.à.r.l. on this same date.

19. EarthRenew issued a 5% convertible secured debenture dated August 12, 2010, bearing certificate number CSD-8 in the amount of US$228,696 in favour of Luxor

Capital (the "**Luxor Capital Secured Debenture**"), which is attached hereto as **Exhibit E**. It matures at 4:30 p.m. (Calgary time) on March 31, 2011.

20. EarthRenew issued a 5% convertible secured debenture dated August 12, 2010 bearing certificate number CSD-9 in the amount of US$271,304 in favour of Luxor Master Fund (the "**Luxor Master Fund Secured Debenture**"), which is attached hereto as **Exhibit F**. It matures at 4:30 p.m. (Calgary time) on March 31, 2011.

21. The Nile I Secured Debenture, Nile II Secured Debenture, Luxor Capital Secured Debenture and Luxor Master Fund Secured Debenture (collectively, the "**Secured Debentures**") each provide as follows:

(a) EarthRenew shall pay to the holder of each of the Secured Debentures, on their respective maturity dates, or on such earlier or later date as provided in the Secured Debentures, the principal amount of each of the Secured Debentures and interest thereon;

(b) the Secured Debentures may be converted by the holder of each one of the Secured Debentures to fully paid common shares in EarthRenew on the terms contained in the Secured Debentures;

(c) each one of the Secured Debentures earns interest at the rate of 5% *per annum*, compounded semi-annually, payable after as well as before maturity and after as well as before default and judgment, with interest on amounts in default at the same rate, payable on an accrued basis on the date interest is payable;

(d) interest is payable on the earlier of the date that each one of Secured Debentures matures or on the date that the Secured Debentures are converted, as the case may be;

(e) all references to currency are to dollars in the lawful currency of the United States; and

(f) the Secured Debentures shall be governed by the laws of the Province of Alberta or the laws of Canada, as applicable.

THE SECURITY GRANTED TO THE APPLICANTS

The Secured Debentures

22. As security for the amounts payable pursuant to each one of the Secured Debentures (the "**Security**"), EarthRenew:

(a) mortgaged, charged and assigned to the holder of each one of the Secured Debentures, and their successors and assigns, and granted to the holder of each one of the Secured Debentures, a security interest in all of its present and after acquired Personal Property (as defined in each one of the Secured Debentures) and in each of its present and future Subsidiaries (as defined in each one of the Secured Debentures); and

(b) charged as and by way of a floating charge to and in favour to the holder of each one of the Secured Debentures, and their successors and assigns, all of its, and its present and future Subsidiaries (as defined in each one of the Secured Debentures), undertaking, real property and assets, both present and future, of every kind and nature, wherever situate.

23. The Secured Debentures further provide that:

(a) the Security shall rank at all times in priority to any other secured interest, charge and mortgage, save and except:

(i) for any security interests registered under the *Personal Property Security Act* (Alberta) (the "***PPSA***"), at the date that each one of the Secured Debentures was issued by EarthRenew; and

(ii) Permitted Encumbrances, as that term is defined in each one of the Secured Debentures; and

(b) the Security created by each one of the Secured Debentures is intended to attach:

(i) to the existing Charged Property (as defined in each one of the Secured Debentures as being the subject matter of the Security) on the date that EarthRenew signed the Secured Debentures; and

(ii) to the Charged Property subsequently acquired by EarthRenew, immediately upon EarthRenew acquiring rights to such property.

24. Each one of the Secured Debentures provides that upon the occurrence of an event of a default by EarthRenew of its obligations to the holder of the Secured Debentures ("**Event of Default**"), the entire outstanding principal and interest owing pursuant to the Secured Debentures shall be accelerated and shall be due and owing, and the Security shall become enforceable. Once the Security has become enforceable, the holder of the Secured Debentures may realise upon the Security and, to the extent

permitted by law, enforce its rights by the remedies set out in the Secured Debentures including, among other things:

(a) entry into possession;

(b) commencing court proceedings to appoint a receiver or a receiver-manager of all or any part of the Charged Property;

(c) commencing court proceedings to sell, foreclose or lease all or any part of the Charged Property; and

(d) availing to any other remedy authorised or permitted in the Secured Debentures or by law and equity.

25. The following events, among others, constitute an Event of Default:

(a) defaults in repayment of the principal amount or interest on the Secured Debentures;

(b) ceasing to carry on in the ordinary course its business or a substantial part thereof;

(c) failing to comply with the covenants contained in the Secured Debentures;

(d) failing to pay any indebtedness in excess of US$500,000, or its equivalent in another currency, when due;

(e) defaulting under any other agreement or instrument relating to an indebtedness in excess of US$500,000, with the effect of such default or event being to accelerate the maturity of such indebtedness, or permit the holder to accelerate the maturity of such indebtedness after having given notice of such default or event, and such default or event has not been remedied by EarthRenew within any time permitted; and

(f) if any indebtedness in excess of US$500,000 shall be declared to be due and payable, or required to be prepaid (other than by regularly scheduled required repayment) prior to the stated maturity thereof.

26. On the occurrence of an Event of Default, the holder of each one of the Secured Debentures may, in its discretion, by notice in writing to EarthRenew, declare the amount due under the applicable Secured Debentures, and accrued interest, to be due and payable, and the same shall forthwith become immediately due and payable to the holder of each of the Secured Debentures, and EarthRenew shall forthwith pay the amounts due to the holder.

THE REGISTRATION OF THE APPLICANTS' SECURITY

27. Luxor Capital and Luxor Master Fund have perfected their security over the Respondents under the applicable Personal Property Security Acts in the provinces of Ontario and Alberta, and under the Uniform Commercial Code in the States of Delaware and California.

28. There are certain other creditors that have also registered security against the Respondents. These creditors are comprised of companies that have registered security over specific equipment, such a computers, telephone equipment and office furniture and photocopiers.

29. Attached hereto as **Exhibit G** is schedule that summarises all of the entities that have registered security over the Respondents, including any previous names that the

Respondents used. The schedule details the date that security was registered, the date that the registration expires, the registration number, the debtor, the secured party and the nature of the security held by these entities.

30. Attached hereto as **Exhibit H** are the searches that were undertaken upon which this summary is based.

THE RESPONDENTS' UNSECURED CREDITORS

31. On page 79 of EarthRenew's preliminary prospectus, dated April 29, 2010, and amended and restated on June 4, 2010 (the "**Prospectus**"), EarthRenew states that it had issued unsecured debentures valued at $17,200,000 which are outstanding. EarthRenew issued further unsecured convertible debentures between January 2010 and March 2010, in the amount of $2,820,000, which are reflected on page 80 the Prospectus. A copy of the Prospectus is attached hereto as **Exhibit I**.

32. One of these unsecured debentures is dated January 4, 2010 and was issued to Nile Capital I S.à.r.l. It bears certificate number CSUD – 5, matures on December 31, 2011, and is in the amount of $3,480,000. A copy is attached hereto as **Exhibit J**.

33. Another of these unsecured debentures is dated January 4, 2010 and was issued to Nile Capital I S.à.r.l. It bears certificate number CSUD – 6, matures on December 31, 2011, and is in the amount of $2,000,000. A copy is attached hereto as **Exhibit K**.

34. Another of these unsecured debentures is dated January 4, 2010 and was issued to Nile Capital II S.à.r.l. It bears certificate number CSUD – 10, matures on December 31, 2011, and is in the amount of $5,220,000. A copy is attached hereto as **Exhibit L**.

35. Another of these unsecured debentures is dated January 4, 2010 and was issued to Nile Capital II S.à.r.l. It bears certificate number CSUD – 11, matures on December 31, 2011, and is in the amount of $3,000,000. A copy is attached hereto as **Exhibit M**.

36. Accordingly, Luxor Capital, directly, and through Luxor Offshore, a related entity, is the registered holder of nearly seventy percent of the debt issued pursuant to, and evidenced by, these unsecured debentures.

37. Based on my review of the Prospectus, and in particular the statements relating to EarthRenew's authorized share capital on pages 78 and 79 of the Prospectus, I believe that additional monies have been injected into EarthRenew in the form of equity capital, some of which was advanced by Luxor. I further believe that the particulars of these injections are outside the scope of this Affidavit.

EARTHRENEW'S DEFAULT AND LIABILITY TO THE APPLICANTS

38. I believe that EarthRenew has ceased to carry on business in the ordinary course and has therefore committed an Event of Default.

39. From approximately July 1, 2010 to August 31, 2010, I understand that EarthRenew attempted to raise capital to fund its operations through an Initial Public Offering (the "**IPO**"). The Prospectus, attached at Exhibit H, was prepared for this purpose.

40. EarthRenew did not proceed with the IPO because it has not been able to raise sufficient capital to continue to fund its operations as planned.

41. I am advised by Christine Carin ("**Carin**"), the Chief Executive Officer, President a director and a shareholder of EarthRenew, and believe, that EarthRenew has placed

on temporary leave approximately thirty percent of its employees and is operating with a significantly reduced staff.

42. I am also advised by Carin, and believe, that EarthRenew does not have sufficient funds, nor is able to access the funds necessary, to continue its operations in the ordinary course or grow its business as planned. As at September 8, 2010, EarthRenew had less than $15,000 on hand to fund its operations. I am further advised by Carin, and believe, that EarthRenew requires $550,000 per month to fund its operating losses.

43. As a result of the information provided to me by Carin, I believe that EarthRenew does not have the funds required to continue to operate its business.

APPOINTING RICHTER AS RECEIVER

44. The applicants propose that Richter be appointed as receiver and manager of the respondents. Richter is an experienced, licensed trustee in bankruptcy and has consented to act as receiver and manager (the "**Receiver**"). A copy of the consent is attached hereto as **Exhibit N**.

DELIVERY OF SECTION 244(1) NOTICES

45. On September 14, 2010, the Applicants issued and delivered to the Respondents demands for repayment and notices pursuant to section 244(1) of the *BIA*. A copy of these demands and notices are attached hereto as **Exhibit O**.

46. The Applicants anticipate receiving the EarthRenew Companies' consent to the immediate enforcement of the security referred to in the notices sent pursuant to section 244(1) of the *BIA*.

PRIORITY CHARGE FOR RECEIVER / MANAGER'S FEES

47. The Applicants are requesting that the Receiver be granted a charge over the assets of the EarthRenew Companies, which charge shall that rank ahead of all existing security to protect the Receiver's claim for fees and disbursements (the "**Receiver's Charge**").

CONCLUSION

48. I believe that the appointment of a receiver over the Respondents' business will likely maximize recoveries for all stakeholders including suppliers, employees, and creditors of the Respondents. The Applicants are prepared to provide limited funding for the Receiver that would have a priority ranking behind only the Receiver's Charge.

SWORN BEFORE ME at the City of Calgary, in the Province of Alberta, this 15 day of September, 2010.	)))))))	
A Commissioner, etc.		**MICHAEL CONBOY**

HOWARD A. GORMAN
BARRISTER & SOLICITOR

Action No: ________________

IN THE COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL DISTRICT OF *

BETWEEN:

NILE CAPITAL I S.À.R.L., NILE CAPITAL II S.À.R.L., LUXOR CAPITAL PARTNERS, LP and LUXOR CAPITAL PARTNERS OFFSHORE MASTER FUND, LP

Plaintiffs
(Applicants)

- and -

EARTHRENEW CORPORATION, EARTHRENEW, INC., EARTHRENEW IP HOLDINGS LLC, EARTHRENEW STRATHMORE 1 LP, EARTHRENEW STRATHMORE GENERAL PARTNER LTD., EARTHRENEW SOLUTIONS LP, EARTHRENEW OPERATIONAL EMPLOYEE LP, EARTHRENEW MANAGEMENT LP and EARTHRENEW MANAGEMENT GENERAL PARTNER LTD.

Defendants
(Respondents)

CLERK OF THE COURT
SEP 15 2010
CALGARY, ALBERTA

AFFIDAVIT OF MICHAEL CONBOY
Sworn September 15, 2010, VOLUME 2

Aird & Berlis LLP
Brookfield Place, 181 Bay Street
Toronto, Ontario M5J 2T9

Steven L. Graff
Telephone: (416) 865-7726
Fax: (416) 863-1515

7167476.5