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)

FACTUM OF 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

October 18, 2010

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TO: Attached Service List

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SERVICE LIST

TO:	**MacLeod Dixon LLP** 3700 Canterra Tower 400 Third Avenue SW Calgary, AB T2P 4H2 **Attention: Howard Gorman** Phone: (403) 267-8222 Fax: (403) 264-5973 Email: Howard.Gorman@macleoddixon.com Lawyers for Earthrenew Corporation, Earthrenew, Inc., Earthrenew LP 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.

AND TO:	**RSM Richter Inc.** Bow Valley Square 2 3810, 205 - 5 Avenue SW Calgary, AB T2P 2V7 **Attention: Robert Taylor** Phone: (403) 233-7112 Fax: (403) 206-0841 Email: BTaylor@RSMRichter.com Receiver of Earthrenew Corporation, Earthrenew, Inc., Earthrenew LP 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.

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PART I – NATURE OF THE MOTION

1. This motion is for, *inter alia*, the following relief:

   (a) a declaration that the Respondents, EarthRenew, Inc., EarthRenew IP Holdings LLC, EarthRenew Strathmore 1 LP, EarthRenew Strathmore General Partner Ltd., EarthRenew Management General Partner Ltd., EarthRenew Operational Employee LP, EarthRenew Management LP, EarthRenew Solutions LP (collectively, the "**Subsidiaries**") are bound by the terms and conditions of the secured debentures issued to the Applicants on the basis that the secured debentures were executed by Ms. Christianne Carin, the Chief Executive Officer of EarthRenew Corporation ("**EarthRenew**"), who had the authority to bind each of the Subsidiaries, and that the Applicants and the Respondents intended that each of the Subsidiaries be so bound and relied on Ms. Carin's authority for the purposes of binding the Subsidiaries to the terms and conditions of the Secured Debentures; and

(b) in the alternative to paragraph (a) above, an order for rectification of the secured debentures issued to the Applicants adding the Subsidiaries as parties and signatories thereto.

PART II – FACTS

THE PARTIES

2. 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." and, subsequently, changed its name to "EarthRenew Corporation".

Affidavit of Michael Conboy sworn October 6, 2010 ("Conboy Affidavit"), Motion Record of the Moving Parties ("Motion Record"), Tab 2, pg. 2, para. 8.

3. The following entities are wholly owned subsidiaries of EarthRenew:

(a) EarthRenew, Inc. ("**EarthRenew Inc.**"), a California Corporation that holds EarthRenew's intellectual property assets in the United States;

(b) EarthRenew IP Holdings LLC ("**EarthRenew Holdings**"), a Delaware limited liability company that holds EarthRenew's intellectual property assets that are owned outside of Canada and the United States;

(c) EarthRenew Strathmore General Partner Ltd. ("**EarthRenew Strathmore**"), an Alberta corporation, which is the general partner of EarthRenew Strathmore 1 LP ("**Strathmore LP**"), an Alberta limited partnership that owns EarthRenew's plant located in Strathmore, Alberta; and

(d) EarthRenew Management General Partner Ltd. ("**EarthRenew Management**"), an Alberta corporation, which is the general partner of EarthRenew Operational Employee LP ("**Operational LP**"), EarthRenew Management LP ("**Management LP**") and EarthRenew Solutions LP ("**Solutions LP**"), all Alberta limited partnerships.

Conboy Affidavit, Motion Record, Tab 2, pgs. 3-4, paras. 9-16.

4. Nile Capital I S.à.r.l. ("**Nile I**") and Nile Capital II S.à.r.l. ("**Nile II**") are Luxemburg limited liability companies, Luxor Capital Partners, LP ("**Luxor Capital**") is a Delaware limited partnership and Luxor Capital Partners Offshore Master Fund, LP ("**Luxor Master Fund**") is a Cayman Islands limited partnership.

Conboy Affidavit, Motion Record, Tab 2, pg. 2, paras. 4-7.

THE SECURED DEBENTURES

5. EarthRenew has issued the following secured debentures:

(a) 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 the Applicant, Nile I, which was amended by agreement dated April 12, 2010 (the "**Nile I Secured Debenture**");

(b) 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 the Applicant, Nile II (the "**Nile II Secured Debenture**");

(c) a 5% convertible secured debenture dated August 12, 2010, bearing certificate number CSD-8 in the amount of US$228,696 in favour of the Applicant, Luxor Capital (the "**Luxor Capital Secured Debenture**"); and

(d) a 5% convertible secured debenture dated August 12, 2010 bearing certificate number CSD-9 in the amount of US$271,304 in favour of the Applicant, Luxor Master Fund (the "**Luxor Master Fund Secured Debenture**"),

(collectively, the "**Secured Debentures**").

Conboy Affidavit, Motion Record, Tab 2, pgs. 4-5, para. 17.

THE RECEIVERSHIP

6. On September 15, 2010, upon an application brought by the Applicants, this Honourable Court granted an order (the "**Order**") appointing RSM Richter Inc. ("**Richter**") as Receiver of all of the assets, properties and undertakings of the Respondents.

Conboy Affidavit, Motion Record, Tab 2, pg. 5, para. 18.

THE SECURITY GRANTED PURSUANT TO THE SECURED DEBENTURES

7. As security for its obligations to the Applicants, EarthRenew agreed pursuant to each one of the Secured Debentures to, among other things:

(a) mortgage, charge and assign to the holder of each one of the Secured Debentures, and their successors and assigns, and grant to the holder of each one of the Secured Debentures, a security interest in all of its present and after acquired personal property and in each of its present and future Subsidiaries (as defined in each one of the Secured Debentures); and

(b) charge 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 EarthRenew's, and its present and future Subsidiaries (as defined in each one of the Secured Debentures), assets, property and undertaking, both present and future, of every kind and nature, wherever situate.

Conboy Affidavit, Motion Record, Tab 2, pg. 5, para. 19.

8. While there were no signature blocks in the Secured Debentures referring to the Subsidiaries, they nevertheless executed the Secured Debentures through the agency of the person who signed on behalf of EarthRenew.

9. The Applicants perfected their security over EarthRenew and the Subsidiaries by registration under the *Personal Property Security Act*, R.S.A. 2000, c. P-7.

Conboy Affidavit, Motion Record, Tab 2, pg. 8, para. 29.

PART III – ISSUES

10. The issues to be considered by this Honourable Court are:

(a) whether this Honourable Court should grant a declaration that the Subsidiaries are bound by the terms and conditions of the Secured Debentures on the basis that the Secured Debentures were executed by Ms. Christianne Carin, the Chief

Executive Officer of EarthRenew, who had the authority to bind each of the Subsidiaries, and that the Applicants and the Respondents intended that each of the Subsidiaries be so bound and relied on Ms. Carin's authority for the purposes of binding the Subsidiaries to the terms and conditions of the Secured Debentures; and

(b) otherwise, whether this Honourable Court should grant an order for rectification of the Secured Debentures issued to the Applicants adding the Subsidiaries as parties and signatories thereto.

PART IV – LAW AND ARGUMENT

ACTUAL AUTHORITY

11. The Applicants submit that the each one of the Respondents are bound by the Secured Debentures executed by Ms. Carin, the Chief Executive Officer of EarthRenew, on the basis that Ms. Carin had the actual authority to bind EarthRenew and the Subsidiaries and in fact did so at the time she executed the Secured Debentures, and the Court ought to merely confirm this conclusion.

12. In *Canadian Laboratory Supplies Ltd. v. Englehard Industries of Canada Ltd.* ("***Canadian Laboratory***"), the Supreme Court of Canada cited Lord Diplock in the English case of *Freeman & Lockyer v. Buckhurst Park Properties (Mangal), Ltd.* ("***Freeman & Lockyer***"), with respect to the actual authority given to corporate principals:

> Such 'actual' authority may be conferred by the constitution of the corporation itself, as, for example, in the case of a company, upon the board of directors, or it may be conferred by those who under its constitution have the powers of management upon some other person to whom the constitution permits them to delegate authority to make representations of this kind.

> ***Freeman & Lockyer v. Buckhurst Park Properties (Mangal), Ltd.*, [1964] 2 Q.B. 480 (C.A.) at 504-505.**
>
> ***Canadian Laboratory Supplies Ltd. v. Englehard Industries of Canada Ltd.*, [1979] 2 S.C.R. 787 at 798.**

13. Ms. Carin is a director and/or officer of each of EarthRenew Inc., EarthRenew Holdings, EarthRenew Strathmore and EarthRenew Management with signing authority for each of them and, accordingly, had the actual authority to bind each of the Respondents.

> **Conboy Affidavit, Motion Record, Tab 2, pg. 6, para. 23.**

INDOOR MANAGEMENT RULE

14. The Applicants submit that section 19 of the Alberta *Business Corporations Act*, R.S.A. 2000, c. B-9, as amended (the "**ABCA**") applies. Section 19 of the ABCA provides:

> A corporation, a guarantor of an obligation of the corporation <u>*or a person claiming through the corporation*</u> may not assert against a person dealing with the corporation or dealing with any person who has acquired rights from the corporation [...]
>
> (b) that the persons named in the most recent notice filed by the Registrar under section 106 or 113 are not the directors of the corporation, [...]
>
> (e) that a person held out by the corporation as a director, an officer or an agent of the corporation
>
> (i) has not been duly appointed, or
>
> (ii) has no authority to exercise a power or perform a duty that the director, officer or agent might reasonably be expected to exercise or perform,
>
> (f) that a document issued by any director, officer or agent of the corporation with actual or usual authority to issue the document is not valid or not genuine, or [...]
>
> unless the person has, or by virtue of the person's position with or relationship to the corporation ought to have, knowledge of those facts at the relevant time. (<u>*Emphasis added*</u>)

> ***Business Corporations Act*, R.S.A. 2000, c. B-9, s. 19.**

APPARENT OR OSTENSIBLE AUTHORITY

15. The Applicants submit that section 19 of the ABCA applies in the circumstances. If section 19 of the ABCA does not apply, Ms. Carin was held out to the Applicants as having the authority to bind the Subsidiaries to the terms and conditions of the Secured Debentures and the Applicants relied on the apparent or ostensible authority of Ms. Carin to execute the Secured Debentures.

16. It was always the intention of both the Applicants and EarthRenew that, pursuant to each one of the Secured Debentures, EarthRenew would grant a security interest in and to all of the present and after-acquired personal property of both EarthRenew and the Subsidiaries and grant a floating charge on all of its and the Subsidiaries' present and future assets, properties and undertakings. By virtue of the absence of the signature blocks for the Subsidiaries and the absence of an additional agreement purporting to grant security over the assets, properties and undertakings of the Subsidiaries, the Secured Debentures *may* not wholly or properly reflect this common intention to the extent such signatures were necessary.

Conboy Affidavit, Motion Record, Tab 2, pg. 6, para. 21.

17. Michael Conboy, the Director of Research of Luxor Capital Group, LP, an entity related to the Applicants has sworn an affidavit confirming that it was always the intention of both the Applicants and EarthRenew that the Subsidiaries would be bound by the terms and conditions of the Secured Debentures.

18. The intention to include the Subsidiaries as parties to the Secured Debentures is also found in the language of the Secured Debentures, each of which states that:

> As security for the due payment of all amounts payable hereunder, The Corporation hereby:

> (a) mortgages, charges and assigns to the Holder, its successors and assigns, and grants to the Holder a security interest in, all of present and after acquired Personal Property of the Corporation *<u>and each of the Corporation's present and future Subsidiaries</u>*; and
>
> (b) charges as and by way of a floating charge to and in favour of the Holder, its successors and assigns, all of its *<u>and its present and future Subsidiaries</u>* undertaking, real property and assets, both present and future, of every kind and nature, wherever situate. *<u>(Emphasis Added)</u>*

Conboy Affidavit, Motion Record, Tab 2, pg. 5, para. 19.

19. In an amended and restated preliminary prospectus prepared by EarthRenew dated June 4, 2010, after the issuance of the Nile I Debenture and the Nile II Debenture but before the Luxor Capital Secured Debenture and the Luxor Master Fund Secured Debenture (the "**Prospectus**"), which was filed with the securities regulatory authorities in each of the provinces of Canada, other than Quebec, EarthRenew disclosed that, pursuant to the Nile I Debenture and the Nile II Debenture, it had granted a security interest to the Applicants in and to all of the assets, properties and undertakings of EarthRenew and its Subsidiaries. Specifically, EarthRenew stated:

> On September 3, 2009, EarthRenew issued secured convertible debentures, as amended on April 12, 2010 (the "Secured Debentures") in an aggregate principal amount of US$6,000,000 (the "Principal Amount"). The Secured Debentures mature on March 31, 2011 and have an annual coupon rate of 5% per annum, compounded semi-annually. *<u>As security for the Secured Debentures, EarthRenew granted a security interest in all of the present and after-acquired personal property of EarthRenew and its subsidiaries and granted a floating charge on all of its and its subsidiaries' present and future undertaking, real property and assets.</u>* This security ranks in priority to any other security interest except for indebtedness incurred in connection with the purchase of capital property secured by that property to an aggregate limit of US$250,000 and future project debt financing of plants. *<u>(Emphasis Added)</u>*

Conboy Affidavit, Motion Record, Tab 2, pgs. 7-8, para. 27.

20. The Luxor Capital Secured Debenture and the Luxor Master Fund Secured Debenture, which were issued after the Prospectus was prepared, were drafted in the same form as the

Nile I Secured Debenture and the Nile II Debenture and contain the same language with respect to granting a security interest in and to the assets, properties and undertakings of both EarthRenew and the Subsidiaries.

Conboy Affidavit, Motion Record, Tab 2, pg. 8, para. 28.

21. In *Canadian Laboratory*, the Supreme Court of Canada also referred to Lord Diplock comments in *Freeman & Lockyer* with respect to the ostensible authority and corporate principals:

> The second characteristic of a corporation, namely, that unlike a natural person it can only make a representation through an agent, has the consequence that in order to create an estoppel between the corporation and the contractor, the representation as to the authority of the agent which creates his 'apparent' authority must be made by some person or persons who have 'actual' authority from the corporation to make the representation. [...] It follows that where the agent upon whose 'apparent' authority the contractor relies has no 'actual' authority from the corporation to enter into a particular kind of contract with the contractor on behalf of the corporation, the contractor cannot rely upon the agent's own representation as to his actual authority. He can rely upon a representation by a person or persons who have actual authority to manage or conduct that part of the business of the corporation to which the contract relates.

***Freeman & Lockyer v. Buckhurst Park Properties (Mangal), Ltd.*, [1964] 2 Q.B. 480 (C.A.) at 504-505.**

***Canadian Laboratory Supplies Ltd. v. Englehard Industries of Canada Ltd.*, [1979] 2 S.C.R. 787 at 798.**

22. In *Doiron v. Devon Capital Corp.*, [2003] 339 A.R. 371 (C.A.) the Alberta Court of Appeal summarized the doctrine of ostensible authority as follows:

> The doctrine of ostensible authority serves to give an agent the authority to bind a principal to agreements made with third parties in circumstances where the agent has no actual authority to do so. The requirements to establish ostensible authority are set out in the leading case of *Freeman & Lockyer v. Buckhurst Park Properties (Mangal) Ltd.*, [1964] 1 All E.R. 630 (C.A.). They are:
>
> a) that a representation that the agent had authority to enter on behalf of the company into a contract of the kind sought to be enforced was made to the contractor;

b) that such representation was made by a person or persons who had actual authority to manage the business of the company either generally or in respect of those matters to which the contract relates;

c) that the contractor was induced by such representations to enter into the contract (i.e. that he in fact relied upon it); and

d) that under its memorandum or articles of association the company was not deprived of the capacity either to enter into a contract of the kind sought to be enforced or to delegate authority to enter into a contract of that kind to the agent. [...]

The law of ostensible authority does not require an explicit representation of authority. It is found where the principal has created a situation such that it is reasonable to infer and rely upon the apparent authority of the person.

> ***Doiron v. Devon Capital Corp.*** **(2003), 38 B.L.R. (3d) 82 (C.A.) at para 13.**

23. The Applicants submit that, in the context of negotiating the Secured Debentures with the officers and directors of the Respondents, it was reasonable to infer that Ms. Carin had the authority to bind the Subsidiaries and it was her intention to do so. The Applicants relied on this inference when it invested funds pursuant to the Secured Debentures and would not have done so if they had any knowledge, idea or concern that the Subsidiaries would not be bound by their terms and conditions.

24. With respect to any subsidiary or any other entity added to or made liable under the Debenture that is not incorporated in Alberta, the Applicants submit that, regardless of the statute under which they are constituted, they were entitled to rely on the authority, whether actual or ostensible authority, that the person signing in Alberta would have had under Alberta law.

> **Castel & Walker, *Canadian Conflict of Laws*, (Looseleaf ed.), pgs. 3-67.**
>
> **Dicey, Morris and Collins, *The Conflict of Laws*, 14th Edition (London: Sweet & Maxwell, 2006) at 33-432.**
>
> ***Presentaciones Musicales S.A. v. Secunda and Another,*** **[1994] Ch. 271 (C.A.) at 283.**

AN ORDER FOR RECTIFICATION SHOULD BE GRANTED

25. The remedy of rectification is available where there is an agreement that predates the document sought to be rectified or where there is evidence of a continuing common intention in regard to the particular provision in question that is not accurately reflected in the written document.

> ***Peter Pan Drive-In Ltd. v. Flambro Realty Ltd.* (1978), 22 O.R. (2d) 291 (H.C.) at 295-296.**

26. The burden of proof on a party seeking rectification was summarized by the Ontario Supreme Court, High Court of Justice in *209991 Ontario Ltd. v. Canadian Imperial Bank of Commerce,* wherein Anderson, J. refers to the following statement of Brooke, J.A., writing for the Ontario Court of Appeal, in *H.F. Clarke Ltd. v. Thermidaire Corp.*:

> In order for a party to succeed on a plea of rectification, he must satisfy the court that the parties, all of them, were in complete agreement as to the terms of their contract but wrote them down incorrectly. ... The court will not write a contract for businessmen or others but rather through the exercise of its jurisdiction to grant rectification in appropriate circumstances, it will reproduce their contract in harmony with the intention clearly manifested by them, and so defeat claims or defences which would otherwise unfairly succeed to the end that business may be fairly and ethically done.

> ***H.F. Clarke Ltd. v. Thermidaire Corp.* Ltd. (1973), 2 O.R. 57 (C.A.) at 64-65.**

> ***209991 Ontario Limited v. Canadian Imperial Bank of Commerce et al.* (1988), 39 B.L.R. 44 (Ont. H.C.) at p. 61.**

27. In *Adelaide Capital Corp. v. St. Raphael's Nursing Homes Ltd.*, the Ontario Court of Justice (General Division) held that a general security agreement was capable of rectification to expand the extent of the security interests described therein on the basis that it was clear throughout the negotiations that the parties intended the applicant to take comprehensive security over all the respondent's assets.

Adelaide Capital Corp. v. St. Raphael's Nursing Homes Ltd. (1995), 42 C.B.R. (3d) 17 (Ont. Gen Div.).

28. References made in paragraphs 13 and 16 to 20 above are relied upon in support of this legal principal and the relief sought based thereon.

PART V – RELIEF REQUESTED

29. The Applicants respectfully request that this Honourable Court grant:

(a) a declaration that the Subsidiaries are bound by the terms and conditions of the secured debentures issued to the Applicants on the basis that the Secured Debentures were executed by Ms. Christianne Carin, the Chief Executive Officer of EarthRenew, who had the authority to bind each of the Subsidiaries, and that the Applicants and the Respondents intended that each of the Subsidiaries be so bound and relied on Ms. Carin's authority for the purposes of binding the Subsidiaries to the terms and conditions of the Secured Debentures;

(b) in the alternative to paragraph (a) above, an order for rectification of the Secured Debentures issued to the Applicants adding the Subsidiaries as parties and signatories thereto; and

(c) such further and other relief as counsel may request and this Honourable Court may permit.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 7th day of October, 2010.

Steven L. Graff

Ian E. Aversa

SCHEDULE "A"

LIST OF AUTHORITIES

Jurisprudence

1. *Freeman & Lockyer v. Buckhurst Park Properties (Mangal), Ltd.*, [1964] 2 Q.B. 480 (C.A.)

2. *Canadian Laboratory Supplies Ltd. v. Englehard Industries of Canada Ltd.*, [1979] 2 S.C.R. 787

3. *Doiron v. Devon Capital Corp.* (2003), 38 B.L.R. (3d) 82 (C.A.)

4. *Peter Pan Drive-In Ltd. v. Flambro Realty Ltd.* (1978), 22 O.R. (2d) 291 (H.C.)

5. *H.F. Clarke Ltd. v. Thermidaire Corp. Ltd.* (1973), 2 O.R. 57 (C.A.)

6. *209991 Ontario Limited v. Canadian Imperial Bank of Commerce et al.* (1988), 39 B.L.R. 44 (Ont. H.C.)

7. *Adelaide Capital Corp. v. St. Raphael's Nursing Homes Ltd.* (1995), 42 C.B.R. (3d) 17 (Ont. Gen Div.)

8. Dicey, Morris and Collins, *The Conflict of Laws*, 14th Edition (London: Sweet & Maxwell, 2006)

9. *Presentaciones Musicales S.A. v. Secunda and Another*, [1994] Ch. 271 (C.A.)

SCHEDULE "B"

TEXT OF STATUTES, REGULATIONS & BY-LAWS

Alberta Business Corporations Act, R.S.A. 2000, c. B-9, as amended

19. A corporation, a guarantor of an obligation of the corporation or a person claiming through the corporation may not assert against a person dealing with the corporation or dealing with any person who has acquired rights from the corporation:

(a) that the articles, bylaws or any unanimous shareholder agreement have not been complied with,

(b) that the persons named in the most recent notice filed by the Registrar under section 106 or 113 are not the directors of the corporation,

(c) that the place named as the registered office in the most recent notice filed by the Registrar under section 20 is not the registered office of the corporation,

(d) that the post office box designated as the address for service by mail in the most recent notice filed by the Registrar under section 20 is not the address for service by mail of the corporation,

(e) that a person held out by the corporation as a director, an officer or an agent of the corporation

(i) has not been duly appointed, or

(ii) has no authority to exercise a power or perform a duty that the director, officer or agent might reasonably be expected to exercise or perform,

(f) that a document issued by any director, officer or agent of the corporation with actual or usual authority to issue the document is not valid or not genuine, or

(g) that financial assistance referred to in section 45 or a sale, lease or exchange of property referred to in section 190 was not authorized,

unless the person has, or by virtue of the person's position with or relationship to the corporation ought to have, knowledge of those facts at the relevant time.

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Defendants
(Respondents)

CLERK OF THE COURT
OCT 14 2010
CALGARY, ALBERTA

FACTUM OF 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

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