

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA**

**CASE NO. 16-CV-21301-GAYLES**

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

ARIEL QUIROS, *et al.*,

Defendants, and

JAY CONSTRUCTION MANAGEMENT, INC., *et al.*,

Relief Defendants.

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**DEFENDANT ARIEL QUIROS'S MOTION FOR EXPEDITED CLARIFICATION OR  
MODIFICATION OF ASSET FREEZE ORDER<sup>1</sup>**

Defendant Ariel Quiros moves for expedited clarification or modification of the Court's Order Granting Plaintiff Securities and Exchange Commission's Motion for Temporary Restraining Order, Asset Freeze, and Other Emergency Relief ("Asset Freeze Order") [DE 11] to confirm that the advancement of defense costs under a Directors and Officers ("D&O") insurance policy is not subject to the Asset Freeze Order.

**I. INTRODUCTION**

This Motion concerns a matter of immediate urgency that is necessary to prevent an injustice. Quiros's attorneys ask the Court to permit defense costs to be advanced under an Ironshore Indemnity, Inc. ("Ironshore") insurance policy (the "Policy"). The Receiver has known that Quiros intended to use the Policy to fund his defense since at least December 12, 2016. In the

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<sup>1</sup> Due to the exigent circumstances of this Motion, Quiros is separately filing a Motion for Expedited Briefing Schedule and Hearing.

time since, Quiros's legal team has diligently prepared briefs, participated in ongoing depositions, and developed strategies on behalf of Quiros, with an expectation that reasonable costs of defense would be paid by Ironshore. Only now has the Receiver indicated that he intends to oppose any advancement of Quiros's defense costs under the Policy. The Receiver's change of position is not only unfair to Quiros and his counsel, it is overreaching and legally improper for the following reasons:

- First, the plain language of the Court's Asset Freeze Order does not encompass defense costs advanced under any insurance policy.
- Second, the purpose of an asset freeze is not to deprive a defendant of counsel or hand the Government an easy win; it is to preserve assets for a potential disgorgement award. That purpose is not advanced by preventing Quiros from using insurance, because, even if the Receiver or SEC were entirely successful in their claims against Quiros, the Policy will pay no money to indemnify claims for a disgorgement award or recovery by allegedly defrauded investors.
- Third, the Receiver has no property interest in the insurance proceeds. Courts have repeatedly rejected similar efforts by receivers to impede the payment of defense costs from an insurance policy.

This matter is now urgent. Quiros's attorneys have worked largely without compensation for the better part of a year and face immediate and significant out-of-pocket expenditures in their defense of Quiros. The Court should confirm that it is not a violation of the Asset Freeze Order to allow Ironshore's advancement of defense costs (or modify the Asset Freeze Order to permit such advancement). Quiros's attorneys believe they have an important role in ensuring justice is done in the pending matters, but they simply cannot continue to expend additional time and funds on

this case if not assured payment.

## II. BACKGROUND

On April 12, 2016, the SEC filed this Action; the same day the Court issued the broad Asset Freeze Order, which effectively froze all of Quiros's funds. [DE 11.] On May 27, 2016, the Court modified the Asset Freeze Order to allow Quiros to pay his attorneys' fees and costs, in amounts to be approved by the Court. [DE 148.] On October 20, 2016, the Court held a hearing on three petitions by Quiros's counsel to release over \$1.4 million of Quiros's frozen assets to pay for legal fees and costs for work performed from April 2016 through August 2016. [DE 109, 192, 219.] The Court allowed only \$80,000 to be distributed. [DE 232.] While the Court stated its decision "doesn't preclude counsel to petition the Court again," [DE 237 at 31:11–12], the SEC and the Receiver made clear that they opposed any of the frozen funds being used to fund Quiros's defense costs. Having been awarded a small fraction of the amount due for legal services and costs requested in their petition, along with maintaining significant accounts receivable for past due legal fees, counsel for Quiros contemplated whether any options for funding the litigation remained.

Insurance was the only way left to meaningfully fund Quiros's defense. Quiros is an insured under a Directors and Officers ("D&O") Policy that provides coverage for his defense in this action and the other litigation against him. Under the Policy, Quiros is entitled to advancement of defense costs as they are incurred. The Policy provides coverage both for indemnification after a case is adjudicated and advancement of defense costs while a suit is pending.<sup>2</sup> The D&O insurer,

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<sup>2</sup> A copy of the Policy is attached as Exhibit 1. Ironshore issued Directors, Officers and Private Company Liability Insurance Policy No. 001100502 (the "2014 Policy") to QResorts, effective July 7, 2013 through July 7, 2014, with a \$10 million limit of liability. A copy of the 2014 Policy, which aside from the coverage period is identical to the 2016 Policy, is attached as Exhibit 2. While ultimately only one of these policies applies, the coverage dispute between Quiros and Ironshore could potentially result in a finding of coverage under the 2014 Policy rather than the 2016 Policy.

Ironshore, previously denied coverage. In a final effort to continue funding a defense and avoiding motions to withdraw by his counsel, Quiros sued Ironshore for advancement of defense costs owed under the D&O Policy.<sup>3</sup>

With the risks of losing his defense and subsequently defaulting imminent, Quiros obtained an Interim Funding Agreement from Ironshore under which Ironshore agreed to advance Quiros's future defense costs up to a specified amount while Quiros and Ironshore litigated the coverage dispute. The advancement of defense costs was critical because, without such advancement, Quiros's attorneys would have moved to withdraw and Quiros would have defaulted in all the actions against him in the face of financially-ruinous liability.

Shortly after suing Ironshore, on December 12, 2016, Quiros provided a copy of the complaint in the coverage action to the Receiver in this case. Quiros recently learned from Ironshore that the Receiver's counsel had, unbeknownst to Quiros and his counsel, in mid-February 2017 (*i.e.*, more than two months after learning that Quiros intended to use the Policy), called Ironshore to ask whether Ironshore was advancing Quiros's defense costs. Quiros's counsel promptly called the Receiver's counsel to ask whether the Receiver intended to interfere with the advancement of defense costs under the Policy. Though noncommittal, the Receiver initially represented that he would not object to Quiros receiving some defense costs. But the Receiver changed his position and stated that he intended to litigate any attempt by Quiros to obtain

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<sup>3</sup> While Quiros maintains that coverage is clear under the policy, Ironshore disputes coverage. But—to avoid the dire prospect of Quiros losing his ability to retain defense counsel and defaulting in this and other actions prior to a judicial determination of coverage—Ironshore has agreed to advance certain defense costs under the Policy while the parties litigate their coverage dispute. The coverage dispute between Quiros and Ironshore, which is currently limited to coverage regarding defense costs, is being litigated in the case styled *Ariel Quiros v. Ironshore Indemnity, Inc.*, No. 16-cv-25073-MGC (S.D. Fla.). As Ironshore is ready and willing to advance defense costs (at least temporarily), the question of whether there is coverage for defense costs is a non-issue in this proceeding, and in any event is before a different court.

advancements of defense costs under the Policy. The Receiver's statement that he intended to challenge Quiros's defense attorneys' getting paid for their work pursuant to the Policy prompted the filing of this motion.

Payment under the Policy is critical because in this action and the other actions against Quiros,<sup>4</sup> Quiros's attorneys face significant, immediate out-of-pocket expenditures, and already have performed millions of dollars of legal work for which they have not been paid.

### III. ARGUMENT

#### A. The Asset Freeze's Plain Language Does Not Cover Advancement of Defense Costs.

Under its plain language, the Asset Freeze Order does not preclude Ironshore's advancement of defense costs. Indeed, the Asset Freeze Order does not mention insurance at all. The first part of the Asset Freeze Order applies to "assets or property, including but not limited to cash,<sup>5</sup> free credit balances, fully paid for securities, personal property, real property, and/or

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<sup>4</sup> These actions include an enforcement action by the State of Vermont (*State v. Quiros et al.*, Case No. 217-4-16Wncv (Vt. Super. Ct.)); an action by the Receiver for QResorts (*Michael Goldberg v. Raymond James Financial, Inc. et al.*, Case No. 1:16-cv-21831-JAL (S.D. Fla.)); two investor class-actions (*Daccache et al. v. Raymond James & Associates, Inc. et al.*, Case No. 1:16-cv-21575-FAM (S.D. Fla.) and *Zhang et al. v. Raymond James & Associates, Inc. et al.*, Case No. 1:16-cv-24655-KMW (S.D. Fla.)); and a state-court action by eight investors (*Caterina Gonzalez Calero et al. v. Raymond James & Associates, Inc. et al.*, Case No. 2016-017840-CA-01 (Fla. Cir. Ct.)). While Quiros disputes the merits of these actions, if successful they will result in financially-ruinous exposure.

<sup>5</sup> While the defense costs are paid in cash to Quiros's attorneys upon their submission of invoices to Ironshore, Quiros's right to defense costs does not fall within the definition of "cash." Courts recognize that the right to advancement of defense costs is not synonymous with cash because the value to the insured is the right to advancement rather than the funds themselves. *See In re WorldCom, Inc. Sec. Litig.*, 354 F. Supp. 2d 455, 469 (S.D.N.Y. 2005) (holding that failure to have defense costs advanced as they were incurred satisfied the injunction requirement of irreparable harm "for which money damages cannot provide adequate compensation." (emphasis added)). Different from cash, the value of the right to advancement is that, even if Quiros is later required to reimburse Ironshore, the advancement allows Quiros to continue to retain counsel during the litigation against him.

property pledged or hypothecated as collateral for loans, or charging upon or drawing from any lines of credit, owned by, controlled by, or in the possession of, whether jointly or singly.” [DE 11 at 8.] Quiros’s right to advancement of defense costs by Ironshore does not fall into any of the enumerated categories of “assets or property.” Nor are the defense costs “owned by, controlled by, or in the possession of” Quiros or any other Defendant. While Quiros has a right to have these defense costs paid on his behalf, he does not own or control the funds and the funds must be paid to his defense counsel.

The second part of the Asset Freeze Order applies to “[a]ny financial or brokerage institution or other person or entity holding any such funds or other assets, in the name, for the benefit or under the control of Defendant Quiros.” [DE 11 at 9.] Here, Ironshore is not “holding any such funds or other assets” of Quiros, or even for his benefit. No funds have been deposited into an account with Ironshore. Instead, Ironshore is merely discharging a contractual duty—using its own funds—to pay for Quiros’s defense costs.

Courts have held that asset freeze orders with language identical to this Court’s Asset Freeze Order do not apply to advancements of defense costs by a D&O insurer. *SEC v. Morriss*, No. 4:12-CV-80 (CEJ), 2012 U.S. Dist. LEXIS 64465, at \*6 (E.D. Mo. May 8, 2012) (“The SEC’s argument is directed [at] the efforts of defendants to gain access to their own assets placed under an asset freeze. *Morriss* is not asking the Court to release frozen assets and the SEC’s argument has no application here.” (emphasis added)); *id.* at \*16 (“[T]he asset freeze order previously entered does not bar Federal from disbursing proceeds to pay *Morriss*’s defense costs in accordance with the policy’s terms and conditions.”).<sup>6</sup>

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<sup>6</sup> For the Court’s convenience, the asset freeze order in *Morriss*, which contains language identical to the Asset Freeze Order in this case, is attached as Exhibit 3. *See also* Asset Freeze Order and Other Emergency Relief at 2–3, *Morriss*, No. 4:12-CV-80 (CEJ) (E.D. Mo. Jan. 17, 2012) (ECF

**B. Freezing Defense Cost Advancements Would Not Serve the Asset Freeze’s Purpose.**

The purpose of the Asset Freeze Order is to preserve funds for future disgorgement claims. The Court aimed to prevent Defendants from “continu[ing] to dissipate, conceal or transfer from the jurisdiction of this Court assets, which could be subject to an Order of Disgorgement.” [DE 11 at 4] (emphasis added). This echoed the SEC’s primary stated reason for seeking an asset freeze, “as a means of preserving funds for the equitable remedy of disgorgement” [DE 4 at 57] (emphasis added); *see also* [DE 4 at 58] (“[A] freeze over the bank and other financial accounts, and any other assets they possess of Defendants Quiros . . . is necessary to preserve those funds for disgorgement.” (emphasis added))

Freezing the advancement of defense costs would not advance this purpose because:

- If the insurance proceeds are not paid out as defense costs now, they will simply be kept by Ironshore;
- The Receiver and SEC’s claims are hypothetical and uncertain;
- Both principles of insurance law and the language of the Policy prioritize payments of an individual D&O’s defense costs to indemnity coverage; and, most fundamentally,
- There is no coverage for disgorgement under the Policy.

We address these points in turn.

Ironshore is merely paying defense costs as they are incurred. If the funds are not used for defense, Ironshore will not pay them to anyone at all—it will keep them. Thus, freezing the advancement of defense costs would not preserve assets that could later be subject to disgorgement

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No. 17) (“Any financial or brokerage institution (or other person or entity . . . holding any such funds or other assets, in the name, for the benefit of or under the control of [Defendants] . . .”).

or prevent dissipation of assets that could aid in the recovery of funds for allegedly defrauded investors. [DE 4 at 58.]

The Receiver or SEC may contend that the payment of defense costs depletes available policy limits that the SEC or allegedly defrauded investors could hypothetically recover. Case law expressly rejects efforts to put such conjectural claims ahead of the defense needs of insureds. The purpose of the Policy is to protect insureds (such as Quiros), not plaintiffs suing insureds. *In re CHS, Elecs., Inc.*, 216 B.R. 538, 542 (Bankr. S.D. Fla. 2001) (noting that “the goal of a D&O insurance policy [i]s the ‘protection of individual directors and officers’”); *Ochs v. Lipson (In re First Cent. Fin. Corp.)*, 238 B.R. 9, 16 (Bankr. E.D.N.Y. 1999) (“D&O policies are obtained for the protection of individual directors and officers. Indemnification coverage does not change this fundamental purpose. . . . In essence and at its core, a D&O policy remains a safeguard of officer and director interests and not a vehicle for corporate protection.”). The terms of the Policy reflect this by requiring that individual coverage be given priority, and that coverage for defense costs be paid prior to any indemnification. *See* Exhibit 1, Policy, End. No. 9 at § VI(i) (providing that Ironshore shall “first pay such Loss for which coverage is provided under Section I.(A) of this Policy [individual directors and officers coverage]”; Policy § VI.F (Ironshore “shall advance Costs of Defense prior to the final disposition of any Claim.”).

Moreover, Quiros has a real and immediate need to defense costs, whereas any claim to indemnification is merely hypothetical until such claims have been fully litigated and reduced to final judgment. *In re CHS*, 261 B.R. at 542 (“One having a pending, unadjudicated tort claim against another does not . . . thereby have a property interest in liability insurance proceeds payable to the defendant.” (quoting *In re La. World Exposition, Inc.*, 832 F.2d 1391, 1399 (5th Cir. 1987))). Here, any third party’s entitlement to indemnification proceeds is contingent on both success



against Quiros and the claim being covered under the Policy's coverage for indemnity, which is narrower than the Policy's coverage for defense costs. Thus, while indemnification may ultimately benefit a plaintiff, the purpose of the coverage is not meant to be a source of funds for potential plaintiffs—and potential claims for indemnification should not preclude Quiros's ability to defend himself in the first place. *C.f. In re Allied Dig. Techs. Corp.*, 306 B.R. 505, 513 (Bankr. D. Del. 2004).

But, most fundamentally, even if the Court were to consider hypothetical, not-yet-existent indemnification claims, here there is no possibility of indemnification for an SEC disgorgement claim or recovery by allegedly defrauded investors under the Ironshore Policy, which specifically excludes coverage for indemnifying any claim arising out of the insured "gaining any profit or remuneration to which they were not legally entitled" or committing fraudulent acts.<sup>7</sup> Policy § III.A. Thus, if Quiros is ultimately required to pay a disgorgement award or reimburse allegedly defrauded investors, the Policy's exclusions will necessarily bar indemnification for such an award. Consequently, preventing the advancement of defense costs will not further the Asset Freeze Order's goal of preserving funds for disgorgement or compensation of defrauded investors.<sup>8</sup> It will hurt Quiros without legal justification, yet will not increase the pool of assets for disgorgement by one cent.

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<sup>7</sup> The Policy also expressly does not cover the payment of civil fines and penalties. This exclusion is also limited to payment of fines and penalties, and is expressly inapplicable to defense costs for claims seeking such fines and penalties.

<sup>8</sup> While these exclusions apply to indemnification, they do not apply to defense costs prior to the outcome of litigation because they are triggered only if there is a final adjudication that such triggering conduct occurred. *Pendergest-Holt v. Certain Underwriters at Lloyd's of London*, 600 F.3d 562, 567 (5th Cir. 2010). It is well-established that "[t]he duty to defend is of greater breadth than the insurer's duty to indemnify, and the insurer must defend even if the allegations in the complaint are factually incorrect or meritless," and "[a]ny doubts regarding the duty to defend must be resolved in favor of the insured." *Jones v. Fla. Ins. Guar. Ass'n*, 908 So. 2d 435, 443 (Fla. 2005).

**C. Any Objections By The Receiver Are Meritless.**

The Receiver has no legitimate grounds for objecting to the advancement of Quiros's defense costs, because:

- The Receiver has no present right to the insurance proceeds;
- The law explicitly rejects claims to insurance proceeds based on hypothetical judgments or potential recoveries; and
- Even if the Receiver had a valid claim on the Policy, Quiros would still have priority to the insurance proceeds as a matter of law.

We address these additional points in turn.

1. The Receiver has no present right in the insurance proceeds.

A receiver may assert a claim to insurance policy proceeds only if it presently has a legally cognizable right to proceeds, such that the proceeds are property of the receivership estate. *SEC v. Narayan*, No. 3:16-cv-1417-M, 2017 U.S. Dist. LEXIS 14424, at \*12–13 (N.D. Tex. Feb. 2, 2017). The receiver “stands in the shoes” of the entity in receivership and “acquires no greater rights in property” than that entity. *Id.* at \*13. While an insurance policy itself may be property of the receivership estate, “ownership of the policy does not dictate whether proceeds are part of the receivership estate.” *Morriss*, 2012 U.S. Dist. LEXIS 64465, at \*7. Indeed “many courts have made a distinction between insurance policies owned by a debtor and the proceeds payable under the policies, holding that the proceeds are not property of the estate where the debtor owns the policies but has no interest in the proceeds.” *In re Taylor Bean & Whitaker Mortg. Corp.*, 2010 Bankr. LEXIS 6532, at \*7 (M.D. Fla. Sept. 14, 2010);<sup>9</sup> *see also In re CHS*, 216 B.R. at 541–53

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<sup>9</sup> Cases addressing similar issues in the bankruptcy context are analogous to the receivership context. *E.g.*, *Narayan*, 2017 U.S. Dist. LEXIS 14424, at \*11–12; *Morriss*, 2012 U.S. Bankr. 64465, at \*8 n.7. Quiros thus cites bankruptcy cases interchangeably with receivership cases.

(noting that “courts have made a distinction between insurance policies owned by a debtor, and the proceeds payable under the policies”).

Here, the Receiver has no claim to Quiros’s defense costs. Presently, the payments under the Policy may only be made toward Quiros’s defense costs, so there is no way they can inure to the Receiver’s benefit. If the Receiver were to convince the Court to stop the advancement of defense costs, the Receiver would not then receive those funds, nor would they inure to the benefit of allegedly defrauded investors. They would simply remain with Ironshore. Thus, the Receiver is engaged in an improper effort to use an asset freeze to punish Quiros and make things easier for the Government.

2. Any claims by the Receiver as a plaintiff are merely hypothetical.

To the extent the Receiver relies on a potential right to insurance proceeds based on his own hypothetical claims as a plaintiff against insured directors or officers, that argument likewise must be rejected. *Narayan*, 2017 U.S. Dist. LEXIS 14424, at \*19 (rejecting receiver’s attempt to enjoin advancement of defense costs where “the Receiver apparently seeks to preserve the Policy proceeds as ‘a significant asset of the estate’ for future distribution to claimants against the Receivership Estate, rather than as a defendant seeking defense costs or liability protection”); *In re CHS*, 216 B.R. at 541–53 (holding that proceeds were not property of the estate when the liquidating trustee based claim to proceeds on “his potential claims against the directors and officers” rather than as an insured under the policy).

When any party’s—including a receiver’s—claim to insurance proceeds is based on a potential judgment that the party might obtain against an insured, courts have uniformly held that the party has no property interest in the insurance proceeds, and thus cannot enjoin the advancement of an insured’s defense costs. *Morriss*, 2012 U.S. Dist. LEXIS 64465, at \*13 (holding

that receiver had no property interest in insurance proceeds “[t]o the extent that the receiver’s ‘real concern is that payment of defense costs may affect [her] rights as a plaintiff seeking to *recover from* the D & O Policy rather than as a potential defendant seeking to be *protected by* the D & O Policy’” (alterations in original)); *Salem Baptist Church of Jenkintown v. Fed. Ins. Co. (In re Salem Baptist Church of Jenkintown)*, 455 B.R. 857, 864–65 (Bankr. E.D. Pa. 2011) (“Here, the Debtor has not obtained a judgment against the Eastburn Defendants. As a result, the Debtor is not entitled to injunctive relief barring the Eastburn Defendants from expending the proceeds of the Policy.”); *In re Laminate Kingdom, LLC*, 2008 Bankr. LEXIS 1594, at \*11 (Bankr. S.D. Fla. Mar. 13, 2008) (“The Trustee’s real concern is that payment of defense costs may affect his rights as a plaintiff seeking to recover from the D & O Policy rather than as a potential defendant seeking to be protected by the D & O Policy. In this way, Trustee is no different than any third party plaintiff suing defendants covered by a wasting policy.” (quoting *In re Allied Dig.*, 306 B.R. at 513)); *In re CHS*, 261 B.R. at 542 (“One having a pending, unadjudicated tort claim against another does not . . . thereby have a property interest in liability insurance proceeds payable to the defendant.”). This is consistent with Florida insurance law, under which an injured third party must first obtain a judgment against the insured as a condition precedent to filing a direct lawsuit against the insured’s liability insurer. *Morales v. Zenith Ins. Co.*, 714 F.3d 1220, 1232 (11th Cir. 2013) (citing Fla. Stat. § 627.4136(1)).

Like a bankruptcy trustee, the fact that the Receiver is a receiver “does not arm him with super-plaintiff powers in causes of actions between third parties.” *In re CHS*, 261 B.R. at 544. Therefore, like any other plaintiff or potential plaintiff, the Receiver has no property interest in “the Proceeds which [he] seeks to protect to satisfy his claims if he obtains a judgment against the officers and directors.” *Id.*; see also *Morriss*, 2012 U.S. Dist. LEXIS 64465, at \*13; *In re Laminate*

*Kingdom*, 2008 Bankr. LEXIS 1594, at \*11. The Receiver therefore lacks any power, or even standing, to challenge the advancement of defense costs for Quiros to mount a defense in any action against him. Only after obtaining a judgment against Quiros (or another insured) would the Receiver even have standing to make a claim under the Policy. Fla. Stat. § 627.4136(1); *see also In re Salem Baptist*, 455 B.R. at 864.

3. Quiros has priority to the Policy, both under its terms and as a matter of equity.

Critically, even if the Receiver had a property interest in Policy proceeds, the Policy prioritizes coverage for individuals such as Quiros over coverage for an entity, and prioritizes payment for defense costs before payment for indemnification. Policy § VI.F; Policy, End. No. 9 at § VI(i). Therefore, even if the Receiver were a competing claimant, Quiros's claims for defense costs would take priority over other claims. *Morriss*, 2012 U.S. Dist. LEXIS 64465, at \*12 (holding that, even if receiver had a cognizable claim under the D&O policy, the policy's priority-of-payments provision required that "any claim that the receiver may have for defense costs is subordinate to the coverage for Morriss and any other insured persons under Insuring Clause 1"); *In re Laminate Kingdom*, 2008 Bankr. LEXIS 1594, at \*7–9 (holding that policy's priority-of-payments provision meant that estate had "only a contingent, residual interest in the Policy's proceeds" so proceeds were "not considered to be property of the estate subject to a stay"). Accordingly, to the extent the Receiver has any property interest in Policy proceeds, such interest is limited by the Policy's priority-of-payments provisions. To ignore such provisions would impermissibly grant the Receiver greater rights than previously held by the entity in receivership, which originally contracted with Ironshore. *See In re Downey Fin. Corp.*, 428 B.R. 595, 607–08 (Bankr. D. Del. 2010).

Even absent the priority-of-payments provision, based on the equities, Quiros's current claims under the Policy would trump the Receiver's hypothetical claims. Just like any other

plaintiff, the Receiver’s claims are uncertain and unproven while Quiros’s claims for defense costs are real and immediate. In such cases, courts have not hesitated to allow advancement of defense costs even assuming that the receiver has a property interest in the proceeds. *Narayan*, 2017 U.S. Dist. LEXIS 14424, at \*19 (“The Court, therefore, finds there is a clear, immediate, and actual harm to Movants that greatly outweighs any speculative and potential harm to the Receivership Estate.”); *SEC v. Stanford Int’l Bank, Ltd.*, No. 3:09-CV-298-N, 2009 U.S. Dist. LEXIS 124377, at \*20–21 (N.D. Tex. Oct. 9, 2009) (holding that even if proceeds were property of receivership court would allow advancement of directors’ defense costs under D&O policy where “the possibility that the D&O proceeds might one day be paid into the receivership does not justify denying directors’ and officers’ claims” and “[t]he potential harm to [the directors] if denied coverage is not speculative but real and immediate: they may be unable to defend themselves in civil actions in which they do not have a right to court-appointed counsel”).<sup>10</sup>

If the Court allowed the Receiver to use a speculative claim—especially one that is not for a claim by the Receiver as an insured but rather as a potential plaintiff against an insured director or officer—to prevent the advancement of defense costs, it would render D&O coverage meaningless. “D & O policies are obtained for the protection of individual directors and officers.” *In re First Cent. Fin. Corp.*, 238 B.R. at 16. Lawsuits against a company’s directors and officers are common when the company goes into receivership. “Unless directors can rely on the

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<sup>10</sup> Analogously, in the bankruptcy context, insured D&Os can generally obtain defense costs even where doing so diminishes available policy proceeds that could potentially go to the estate. *See In re Taylor Bean*, 2010 Bankr. LEXIS, 6532 at \*13 (“Numerous courts have granted relief from the automatic stay to permit the advancement of defense costs to a debtor’s directors and officers even though the insurance policies also provided direct coverage to debtor.”); *In re Laminate Kingdom*, 2008 Bankr. LEXIS 1594, at \*10 (“Because of the separate and distinct interests between the directors and officers and the debtor, numerous courts have granted relief from the automatic stay to permit the advancement of defense costs to a debtor’s directors and officers—even though the insurance policies also provided direct coverage to debtor.”).

protections given by D & O policies, good and competent men and women will be reluctant to serve on corporate boards.” *In re WorldCom*, 354 F. Supp. 2d at 469. If a receiver could simply set aside a director’s or officer’s entitlement to advancement of defense costs, directors and officers would be deprived of defense costs coverage at the exact time it is most needed and expected. This Court should not become the first to grant a receiver such devastating power.

#### IV. CONCLUSION

For the foregoing reasons, Defendant Ariel Quiros respectfully requests that the Court clarify or modify its Asset Freeze Order to confirm that it does not apply to Ironshore’s advancement of defense costs. Neither the plain language nor the intent of the Asset Freeze Order bars the advancement of defense costs. And Quiros has an immediate and real need to the Ironshore advancements, whereas any future claim by a plaintiff or the Receiver is merely hypothetical. Furthermore, if the Court declines to allow Quiros to receive defense costs, Quiros will have no means to defend himself, and his attorneys will have to consider withdrawal.

#### **Local Rule 7.1(a)(3) Certification**

Pursuant to Local Rule 7.1(a)(3), the undersigned counsel conferred with counsel for the Receiver and counsel for the SEC regarding the issues raised in this motion. The SEC and the Receiver both oppose this motion.

Dated: March 13, 2017

Respectfully submitted,

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*Counsel for Defendant Ariel Quiros*



**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this on March 13, 2017, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing documents are being served this day on all counsel of record via transmission of Notices of Electronic Filing generated by CM/ECF or in the manner stated in the service list attached.

*s/ Scott B. Cosgrove* \_\_\_\_\_  
Scott B. Cosgrove

**SERVICE LIST**  
**US District Court, Southern District of Florida**  
**Case No.: 16-cv-21301-DPG**

*Securities and Exchange Commission v. Ariel Quiros, et al.*

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# EXHIBIT 1



**IRONSHORE INDEMNITY INC.**

(A Stock Company)

Mailing Address:

PO Box 3407

New York, NY 10008

(877) IRON411

Policy # 001100504

Expiring Policy # 001100503

THIS POLICY IS ISSUED BY THE STOCK INSURANCE COMPANY SELECTED ABOVE

**DIRECTORS, OFFICERS AND PRIVATE COMPANY LIABILITY INSURANCE POLICY INCLUDING  
EMPLOYMENT PRACTICES CLAIMS COVERAGE  
WITH COSTS OF DEFENSE INCLUDED IN THE LIMIT OF LIABILITY**

**DECLARATIONS**

This is a Claims Made and Reported Policy, please read it carefully. Amounts incurred as Costs of Defense shall reduce the limit of liability available to pay judgments or settlements and shall also be applied against the retention. This Policy does not provide for any duty by the Insurer to defend those Insured under the Policy.

<p><b>ITEM 1. COMPANY NAME AND PRINCIPAL ADDRESS:</b></p> <p>Qdevelopment LLC dba QResorts Inc 111 NE 1st Street Miami, FL 33132</p>	<p><b>ITEM 2. POLICY PERIOD:</b></p> <p>(a) Inception Date – August 07, 2015</p> <p>(b) Expiration Date – August 07, 2016</p> <p>at 12:01 a.m. both dates at the Principal Address in ITEM 1.</p>
<p><b>ITEM 3. LIMIT OF LIABILITY (inclusive of Costs of Defense):</b></p> <p>\$10,000,000 aggregate limit of liability for all Claims made or deemed made during the Policy Period.</p>	
<p><b>ITEM 4. RETENTIONS:</b></p> <p>(a) Claims other than an <b>Employment Practices Claim</b> or a <b>Securities Claim</b> \$50,000</p> <p>(b) <b>Employment Practices Claim:</b> \$75,000</p> <p>(c) <b>Securities Claim:</b> \$50,000</p> <p>(d) A Retention shall not apply to a Non Indemnifiable Loss.</p>	

**ITEM 5. PREMIUM**

Total Premium                      \$51,500.00

**ITEM 6. FORMS AND ENDORSEMENTS ATTACHED AT ISSUANCE:**

1. IRON.PN.001 (0513) OFAC Compliance Notice
2. PDO FL (0907) Florida Amendatory Endorsement
3. PRV.END.058 FL (0214) Professional Errors Omissions Exclusion - Florida
4. PRV.END.062 (112) Severability of the Application Endorsement
5. PRV.EX.001 (807 Ed.) Captive Insurance Company Exclusion
6. PRV.EX.002 (807 Ed.) Commissions Exclusion
7. PRV.EX.010 (807 Ed.) Nuclear Energy Liability Exclusion Endorsement (Broad Form)
8. PRV.END.027 (1213) Absolute Bodily Injury and Property Damage Exclusion
9. PRV.MANU.049-4 (1015) ARC Private Form Amendatory Endorsement

**ITEM 7. PENDING AND PRIOR DATE:** July 07, 2011

**ITEM 8. INSURER:**

**ADDRESS:**                      c/o Ironshore Insurance Services, LLC  
One State Street Plaza  
7<sup>th</sup> Floor  
New York, NY 10004

**ITEM 9. BROKER**

**ADDRESS:**  
  
Chris Cavallaro  
Arc Excess & Surplus, LLC (Garden City)  
113 South Service Road  
Jericho, NY 11753  
**LICENSE NUMBER:** N/A

The Declarations, the signed and completed **Application** and the Policy, with endorsements, will constitute the contract between the **Insured** and the **Insurer** and this Policy is not valid unless signed below by a duly authorized representative of the Insurer.

Date: October 15, 2015

By:   
Authorized Representative

Issuing Office: N/A

Issued Date: N/A

4811-9352-0681, v. 1

**OFFEREE DISCLOSURE NOTICE OF  
TERRORISM INSURANCE COVERAGE**  
**(new policies and renewals with no terrorism  
exclusion or sublimit and no premium charge)**

You are hereby notified that, under the Terrorism Risk Insurance Act of 2002 (the "Act") effective November 26, 2002, we are making available to you insurance for losses arising out of certain acts of international terrorism. The policy you are purchasing already includes insurance for such acts. Terrorism is defined as any act certified by the Secretary of the Treasury, in concurrence with the Secretary of State and Attorney General of the United States, to be an act of terrorism; to be a violent act or an act that is dangerous to human life, property or infrastructure; to have resulted in damage within the United States, or outside the United States in the case of an air carrier or vessel or the premises of a United States Mission; and to have been committed by an individual or individuals acting on behalf of any foreign person or foreign interest, as part of an effort to coerce the civilian population of the United States or to influence the policy or affect the conduct of the United States Government by coercion.

You should know that the insurance provided by your policy for losses caused by acts of terrorism is partially reimbursed by the United States under the formula set forth in the Act. Under this formula, the United States pays 90% of covered terrorism losses that exceed the statutorily established deductible to be paid by the insurance company providing the coverage. The portion of the offered policy's annual premium that is attributable to insurance for acts of terrorism is: **\$ -0-**.

If you have any questions about this notice, please contact your agent or broker.



**IRONSHORE INDEMNITY INC.**

(A Stock Company)

Mailing Address:

PO Box 3407

New York, NY 10008

(877) IRON411

Policy Number: 001100504

**THIS IS A CLAIMS MADE AND REPORTED POLICY  
WITH COSTS OF DEFENSE INCLUDED IN THE LIMIT OF LIABILITY  
PLEASE READ THE ENTIRE POLICY CAREFULLY**

**DIRECTORS, OFFICERS AND PRIVATE COMPANY LIABILITY INSURANCE  
POLICY (INCLUDING EMPLOYMENT PRACTICES CLAIMS COVERAGE)**

In consideration of the payment of the premium and in reliance upon all statements made and information furnished to the **Insurer** shown in the Declarations, including the statements made in the **Application**, and subject to all terms, conditions and limitations of this Policy, the **Insureds** and **Insurer** agree:

**Section I. Insuring Agreements**

- A.** The **Insurer** shall pay on behalf of an **Insured Person** all **Loss** which the **Insured Person** shall be legally obligated to pay as a result of a **Claim** (including an **Employment Practices Claim**) first made against the **Insured Person** during the **Policy Period** or the Discovery Period for a **Wrongful Act**, and reported to the **Insurer** pursuant to Section VII, except for any **Loss** which the **Company** actually pays as indemnification.
- B.** The **Insurer** shall pay on behalf of the **Company** all **Loss** which the **Company** shall be legally obligated to pay as a result of a **Claim** (including an **Employment Practices Claim**) first made against an **Insured Person** during the **Policy Period** or the Discovery Period for a **Wrongful Act** reported to the **Insurer** pursuant to Section VII, but only to the extent the **Company** is required or permitted by law, to the fullest extent possible, to indemnify the **Insured Person**.
- C.** The **Insurer** shall pay on behalf of the **Company** all **Loss** which the **Company** shall be legally obligated to pay as a result of a **Claim** (including an **Employment Practices Claim**) first made against the **Company** during the **Policy Period** or the Discovery Period for a **Wrongful Act**, and reported to the **Insurer** pursuant to Section VII.

**Section II. Definitions**

- A.** "**Application**" shall mean each and every signed application submitted to the **Insurer** for consideration of insurance together with any attachments to such applications, other materials submitted therewith or incorporated therein, and any other documents submitted in connection with the underwriting of this Policy. "**Application**" shall also mean any public documents filed by the **Company** within the past 36 months with any federal, state, local or foreign governmental entity.



- B. **"Claim"** shall mean a civil, criminal, governmental, regulatory, administrative, or arbitration proceeding made against any **Insured** seeking monetary or non-monetary relief and commenced by the service of a complaint or similar pleading, the return of an indictment, or the receipt or the filing of a notice of charges or similar document, including any proceeding initiated against any **Insured** before the U.S. Equal Employment Opportunity Commission ("EEOC"), or any similar governmental body, or other written demand for monetary or non-monetary relief made against any **Insured**. However, in no event shall the term **"Claim"** include any labor or grievance proceeding which is subject to a collective bargaining agreement.
- C. **"Company"** shall mean the **Corporation** and any **Subsidiary**.
- D. **"Corporation"** shall mean the entity named in Item 1 of the Declarations.
- E. **"Costs of Defense"** shall mean reasonable and necessary legal fees, costs and expenses incurred in the investigation, defense or appeal of any **Claim**, including the costs of an appeal bond, attachment bond or similar bond (but the **Insurer** shall not have any obligation to apply for or furnish such bonds); provided, however, **Costs of Defense** shall not include salaries, wages, overhead or benefit expenses associated with any **Insured**.
- F. **"Directors"** and **"Officers"** shall mean all persons who were, now are, or shall be directors and/or officers (or foreign equivalent) of the **Company**.
- G. **"Domestic Partner"** shall mean any natural person qualifying as a domestic partner under the provisions of any applicable federal, state or local law or under the provisions of any formal program established by the **Company**.
- H. **"Employee"** shall mean any past, present or future employee of the **Company**, including any part-time, seasonal or temporary employee, acting solely in his or her capacity as such. Any person leased to the **Company** shall also be an **Employee**, but only if the **Company** indemnifies such leased person in the same manner as is provided to the **Company's** permanent employees. Any person hired by contract to perform work for the **Company**, or who is an independent contractor for the **Company**, shall also be an **Employee**, but only if the **Company** indemnifies the person in the same manner as is provided to the **Company's** permanent employees.
- I. **"Employment Practices Claim"** shall mean any **Claim** brought by or on behalf of any past, present or future **Employee** of the **Company** or an **Outside Entity**, or any applicant for employment with the **Company** or an **Outside Entity** alleging an **Employment Practices Wrongful Act**. **Employment Practices Claim** shall also mean a **Claim** brought by or on behalf of any customer or client of the **Company** alleging discrimination, sexual harassment or violation of an individual's civil rights relating to such discrimination or sexual harassment.
- J. **"Employment Practices Wrongful Act"** shall mean:
- (1) adverse or unfair reprimand of an **Employee**;
  - (2) denial of interview or position;
  - (3) denial of training to an **Employee**;
  - (4) derogatory or disparaging remarks to an **Employee**;
  - (5) discrimination;
  - (6) employment-related misrepresentations
  - (7) employment-related libel, slander, defamation, or invasion of privacy;

- (8) failure to grant tenure;
- (9) failure to provide an adequate workplace, or employment policy or procedure for **Employees**;
- (10) imposing mandatory arbitration of an **Employment Practices Claim** by an employer;
- (11) improper denial of time off or vacation time to an **Employee**;
- (12) improper disciplinary action of an **Employee**;
- (13) improper performance review of an **Employee**;
- (14) improper transfer, change of position or change of work hours or shift of an **Employee**;
- (15) improper treatment of an **Employee** for their actions as a whistleblower;
- (16) negligent evaluation of an **Employee**;
- (17) negligent release of medical information of an **Employee**;
- (18) **Retaliation** against an **Employee**;
- (19) sexual or workplace harassment of any kind;
- (20) violation of the Equal Pay Act;
- (21) wrongful deprivation of career opportunity of an **Employee**, including defamatory statements made in connection with an **Employee** reference;
- (22) wrongful dismissal, discharge or termination of employment, whether actual or constructive, of an **Employee**;
- (23) wrongful failure to promote, transfer or employ; and
- (24) violation of an **Employee's** civil rights relating to any of the above.

K. "**Financial Insolvency**" shall mean the **Company** becoming a debtor in possession, or the appointment of a receiver, conservator, liquidator, trustee, rehabilitator or similar official to control, supervise, manage or liquidate the **Company**.

L. "**Insured**" shall mean an **Insured Person** and the **Company**.

M. "**Insured Person**" shall mean **Directors, Officers and Employees**.

N. "**Insurer**" shall mean the company stated in Item 8 of the Declarations.

O. "**Loss**" shall mean compensatory damages (including back pay and front pay), punitive or exemplary damages, the multiple portion of any multiplied damage award, judgments, settlements, pre- and post-judgment interest, and **Costs of Defense**. It is understood and agreed that the enforceability of the foregoing coverage shall be governed by such applicable law which most favors coverage for punitive or exemplary damages or the multiple portion of any multiplied damage award.

**Loss** shall not include: **(1)** civil or criminal fines or penalties imposed by law; **(2)** taxes; **(3)** any amount for which an **Insured** is not financially liable or which is without legal recourse to the Insured; **(4)** employment-related benefits of any kind, including, but not limited to, stock options, commissions, profit sharing, termination payments, severance, perquisites, deferred compensation or any other type of compensation other than back pay, front pay or bonus compensation; **(5)** any liability or costs incurred by any **Insured** to modify any buildings or property in order to make a building or property more accessible or accommodating to any disabled person, or any liability or costs incurred in connection with any educational, sensitivity or other corporate program, policy, seminar or monitoring (including, but not limited to, any consulting fees paid to any law firm) relating to or arising out of an **Employment Practices Claim**; **(6)** any portion of damages, judgments or settlements arising out of any **Claim** alleging that the **Company** paid an inadequate price or consideration for the purchase of securities; or **(7)** matters which may be deemed uninsurable under the law pursuant to which this Policy shall be construed.

- P.** **"Management Control"** shall mean: **(1)** owning interests representing more than fifty percent (50%) of the voting, appointment or designation power for the selection of a majority of the Board of Directors of a corporation, the management committee members of a joint venture or partnership, or the members of the management board of a limited liability company; or **(2)** having the right, pursuant to written contract or the by-laws, charter, operating agreement or similar documents of an organization, to elect, appoint or designate a majority of the Board of Directors of a corporation, the management committee of a joint venture or partnership or the management board of a limited liability company.
- Q.** **"Outside Entity"** shall mean any not- for- profit entity or any for-profit company but only if such for-profit entity is specifically added by written endorsement to this Policy.
- R.** **"Policy Period"** shall mean the period from the Inception Date of this Policy to the Expiration Date of this Policy as set forth in Item 2 of the Declarations, or its earlier termination if applicable.
- S.** **"Pollutants"** shall mean any substance located anywhere in the world exhibiting any hazardous characteristics as defined by, or identified on any list of hazardous substances issued by, the United States Environmental Protection Agency or any state, county, municipality or locality counterpart thereof. Such substances shall include, without limitation, solids, liquids, gaseous or thermal irritants, contaminants or smoke, vapor, soot, fumes, acids, alkalis, chemicals or waste materials. **Pollutants** shall also mean any other air emission, odor, waste water, oil or oil products, infectious or medical waste, asbestos or asbestos products and any noise.
- T.** **"Pollution"** shall mean the actual, alleged or threatened discharge, release, escape or disposal of **Pollutants** into or on real or personal property, water or the atmosphere. **Pollution** also means any direction or request that the **Insured** test for, monitor, clean up, remove, contain, treat, detoxify or neutralize **Pollutants**, or any voluntary decision to do so.
- U.** **"Related Wrongful Acts"** shall mean **Wrongful Acts** which are the same, related or continuous, or **Wrongful Acts** which arise from a common nucleus of facts. **Claims** can allege **Related Wrongful Acts** regardless of whether such **Claims** involve the same or different claimants, **Insureds** or legal causes of action.
- V.** **"Retaliation"** shall mean a **Wrongful Act** of an **Insured** relating to or alleged to be in response to any of the following activities: **(1)** the disclosure or threat of disclosure by an **Employee** to a superior or to any governmental agency of any act by an **Insured** which act is alleged to be a violation of any federal, state, local or foreign law, common or statutory, or any rule or regulation promulgated thereunder; **(2)** the actual or attempted exercise by an **Employee** of any right that such **Employee** has under law, including rights under worker's compensation laws, the Family and Medical Leave Act, the Americans with Disabilities Act or any other law relating to employee rights; **(3)** the filing of any claim under the Federal False Claims Act or any other federal, state, local or foreign "whistle-blower" law; or **(4)** **Employee** strikes.
- W.** **"Securities Claim"** shall mean any **Claim** (including a civil lawsuit or criminal proceeding brought by the Securities and Exchange Commission, or by any similar state or foreign governmental or securities

regulatory entity) made against an **Insured** alleging a violation of any law, regulation or rule, whether statutory or common law, which is:

- (1) brought by any person or entity alleging, arising out of, based upon or attributable to the: (a) purchase or sale of, or (b) offer or solicitation of an offer to purchase or sell, any securities issued by the **Company**, or
- (2) brought by a security holder of the **Company**, arising solely with respect to such security holder's interest in such securities of the **Company**, whether directly, by class action, or derivatively on behalf of the **Company**.

The **Insurer** shall not assert that a **Loss** incurred in a **Securities Claim** alleging violations of Section 11 or 12 of the Securities Act of 1933, as amended, constitutes an uninsurable loss and, subject to all other terms and conditions of the Policy, shall treat that portion of all such settlements, judgments and **Costs of Defense** as constituting **Loss** under the Policy.

X. "**Subsidiary**" shall mean:

- (1) any for-profit organization of which the **Company** has **Management Control** ("**Controlled Entity**") on or before the inception of the **Policy Period** either directly or indirectly through one or more other **Controlled Entities**;
- (2) automatically any for-profit organization whose securities are not publicly traded and whose assets total less than twenty-five percent (25%) of the total consolidated assets of the **Company** as of the inception date of this Policy which the **Company** first had **Management Control** during the **Policy Period**, either directly or indirectly, through one or more other **Controlled Entities**. The **Corporation** shall provide the **Insurer** with full particulars of the new **Subsidiary** before the end of the **Policy Period**; or
- (3) an organization which the **Company** first had **Management Control** during the **Policy Period** (other than a for-profit organization described in paragraph (2) above), either directly or indirectly through one or more other **Controlled Entities**, but only upon the condition that within 90 days of its becoming a **Subsidiary**, the **Corporation** shall have provided the **Insurer** with full particulars of the new **Subsidiary** and agreed to any additional premium or amendment of the provisions of this Policy required by the **Insurer** relating to such new **Subsidiary**. Further, coverage as shall be afforded to the new **Subsidiary** is conditioned upon the **Corporation** paying when due any additional premium required by the **Insurer** relating to such new **Subsidiary**.
- (4) An organization becomes a **Subsidiary** when the **Company** has **Management Control** of such **Subsidiary**, either directly or indirectly, through one or more of its **Controlled Entities**. An organization ceases to be a **Subsidiary** when the **Company** ceases to have **Management Control** in such **Subsidiary**, either directly, or indirectly through one or more of its **Controlled Entities**.
- (5) In all events, coverage as is afforded under this Policy with respect to a **Claim** made against any **Subsidiary** and/or any **Insured Person** in their capacity as such with the **Subsidiary** shall only apply for **Wrongful Acts** committed or allegedly committed after the effective time the **Company** obtained **Management Control** of such **Subsidiary**, and prior to the effective time that the **Company** no longer has **Management Control** over such **Subsidiary**.

Y. "**Wrongful Act**" shall mean:

- (1) any actual or alleged act, omission, error, misstatement, misleading statement, neglect or breach of duty, or **Employment Practices Wrongful Act**, by any **Insured Person** in their capacity as such with the **Company**;

- (2) any matter claimed against any **Insured Person** solely by reason of their capacity as such with the **Company**;
- (3) any matter claimed against any **Insured Person** arising out of their service as a director, officer, trustee or governor of an **Outside Entity**, but only if such service is at the request of the **Company**; or
- (4) any actual or alleged act, omission, error, misstatement, misleading statement, neglect or breach of duty, or **Employment Practices Wrongful Act**, by the **Company**.

**Section III. Exclusions**

The **Insurer** shall not be liable to make any payment for **Loss** in connection with any **Claim** made against any **Insured**:

- A. alleging, arising out of, based upon or attributable to:
  - (1) an **Insured** gaining any profit, advantage or remuneration to which they were not legally entitled; provided however, this exclusion shall only apply when it is finally adjudicated that such conduct occurred; or
  - (2) the deliberately fraudulent or criminal acts of an **Insured**; provided, however, this exclusion shall only apply when it is finally adjudicated that such conduct occurred; or
  - (3) any profits in fact made from the purchase or sale by an **Insured** of securities of the **Company** within the meaning of Section 16(b) of the Securities Exchange Act of 1934 and amendments thereto or similar provision of any state statutory law; provided, however, this exclusion shall only apply when it is finally adjudicated that such conduct occurred.

Provided, however,

- (a) Exclusion A(1) shall not apply to any **Securities Claim** alleging violations of Section 11 or 12 of the Securities Act of 1933, as amended, to the portion of any **Loss** attributable to such violations.
- (b) For the purpose of determining the applicability of Exclusion A(1), (2) and (3), it is understood and agreed that:
  - (i) the **Wrongful Act** of an **Insured Person** shall not be imputed to any other **Insured Person**; and
  - (ii) only the **Wrongful Act** of any past, present or future chairman of the board, president, chief executive officer, or chief financial officer of the **Company** shall be imputed to the **Company**.
- B. alleging, arising out of, based upon or attributable to any **Wrongful Act** or **Related Wrongful Acts** or any fact, circumstance or situation which has been the subject of any notice or **Claim** given under any other policy of which this Policy is a renewal or replacement;
- C. alleging, arising out of, based upon or attributable to any pending or prior civil, criminal, administrative or investigative proceeding, or EEOC notice of charge of any kind involving the **Company** and/or any **Insured Person** as of the Pending and Prior Date stated in Item 7 of the Declarations, or any **Wrongful Act** or **Related Wrongful Acts** or any fact, circumstance or situation underlying or alleged in such proceeding or notice of charge;
- D. for any actual or alleged:

- (1) bodily injury, sickness, disease, or death of any person;
  - (2) damage to or destruction of any tangible property, including the loss of use thereof; or
  - (3) mental anguish, emotional distress, invasion of privacy, wrongful entry, eviction, false arrest, false imprisonment, malicious prosecution, libel or slander, however, this subsection (D)(3) does not apply to an **Employment Practices Claim**.
- E. for violation of any of the responsibilities, obligations or duties imposed by the Employee Retirement Income Security Act of 1974, the Fair Labor Standards Act, the National Labor Relations Act, the Worker Adjustment and Retraining Notification Act, the Consolidated Omnibus Budget Reconciliation Act, the Occupational Safety and Health Act, and any rules or regulations of the foregoing promulgated thereunder, and amendments thereto or any similar federal, state, local or foreign statutory law or common law; provided, however, this exclusion shall not apply to a **Claim** for **Retaliation** or an alleged violation of the Equal Pay Act;
- F. for any **Claim** alleging, arising out of, based upon, or attributable to the refusal, failure or inability of any **Insured** to pay wages or overtime pay for services rendered (hereinafter, "Earned Wages") (as opposed to tort-based back pay or front pay damages) or for improper payroll deductions taken by any **Insured** from any **Employee** or purported **Employee**, including, but not limited to, (i) any unfair business practice claim alleged because of the failure to pay Earned Wages, or (ii) any **Claim** seeking Earned Wages because any **Employee** or purported **Employee** was improperly classified or mislabeled as "exempt";
- G. alleging, arising out of, based upon or attributable to a **Wrongful Act** of any **Insured Person** serving as a director, officer, trustee or governor of any entity other than the **Company** or an **Outside Entity**, even if such service is at the direction of the **Company**, unless otherwise specifically added by written endorsement to this Policy;
- H. for a **Wrongful Act** of any **Insured Person** serving as a director, officer, trustee or governor of an **Outside Entity** if such **Claim** is brought by the **Outside Entity** or by any director, officer, trustee or governor thereof; provided, however, this exclusion shall not apply to any **Employment Practices Claim**;
- I. which is brought by or on behalf of the **Company** or by any **Insured Person**; or which is brought by any security holder or member of the **Company**, whether directly or derivatively, unless such security holder's or member's **Claim** is instigated and continued totally independent of, and totally without solicitation of, or assistance of, or active participation of, or intervention of, the **Company** or any **Insured Person**; provided however, this exclusion shall not apply to:
- (1) any **Employment Practices Claim** brought by an **Insured Person**, other than an **Insured Person** who is or was a member of the Board of Directors (or equivalent governing body) of the **Company**;
  - (2) any **Claim** brought by an **Insured Person** in the form of a cross-claim or third-party claim for contribution or indemnity which is part of and results directly from a **Claim** that is covered by this Policy;
  - (3) any **Claim** brought by the examiner, trustee, receiver, liquidator, rehabilitator or creditors' committee (or any assignee thereof) of the **Company**, in any bankruptcy proceeding by or against the **Company**;
  - (4) any **Claim** brought by any past **Director** or **Officer** of the **Company** who has not served as a duly elected or appointed director, officer, trustee, governor, management committee member, member of the management board, General Counsel or Risk Manager (or equivalent position) of or consultant for the **Company** for at least four (4) years prior to such **Claim** being first made;

- (5) any **Claim** brought by a **Director** or **Officer** (or equivalent position) of a **Company** formed and operating in a foreign jurisdiction against such **Company** or any **Director** or **Officer** thereof, provided that such **Claim** is brought and maintained outside the United States, Canada or any other common law country (including any territories thereof); or
- (6) any **Claim** brought against an **Insured Person** arising out of or based upon any protected activity specified in any "whistleblower" protection pursuant to any state, local or foreign laws.
- J. alleging, arising out of, based upon or attributable to, directly or indirectly resulting from, or in consequence of, or in any way involving, **Pollution**, including but not limited to, any **Claim** for financial loss to the **Company**, its security holders or its creditors;
- K. for any **Wrongful Act** of a **Subsidiary** or an **Insured Person** of such **Subsidiary** or any entity that merges with the **Company** or an **Insured Person** of such entity that merges with the **Company** occurring:
  - (1) prior to the date such entity becomes a **Subsidiary** or is merged with the **Company**;
  - (2) subsequent to the date such entity became a **Subsidiary** or was merged with the **Company** which, together with a **Wrongful Act** occurring prior to the date such entity became a **Subsidiary** or was merged with the **Company**, would constitute **Related Wrongful Acts**; or
  - (3) subsequent to the date the **Company** ceased to have, directly or indirectly, **Management Control** of such **Subsidiary**;
- L. which is insured in whole or in part by another valid policy or policies, (except with respect to any excess beyond the amount or amounts of coverage under such other policy or policies), whether such other policy or policies are stated to be primary, contributory, excess, contingent or otherwise.
- M. alleging, arising out of, based upon or attributable to any public offering of securities by the **Company**, an **Outside Entity** or an affiliate or alleging a purchase or sale of such securities subsequent to such public offering; provided, this exclusion will not apply to:
  - (1) any purchase or sale of securities exempted pursuant to section 3(b) of the Securities Act of 1933. Coverage for such purchase or sale transaction shall not be conditioned upon payment of any additional premium; however, the **Corporation** shall give the **Insurer** written notice of any public offering exempted pursuant to section 3(b), together with full particulars, as soon as practicable, but not later than 30 days after the effective date of the public offering;
  - (2) any public offering of securities (other than a public offering described in paragraph (1) above), as well as any purchase or sale of such securities subsequent to such public offering, in the event that within 30 days prior to the effective time of such public offering: (i) the **Corporation** shall give the **Insurer** written notice of such public offering together with full particulars and underwriting information required thereto and (ii) the **Corporation** accepts such terms, conditions and additional premium required by the **Insurer** for such coverage. Such coverage is also subject to the **Corporation** paying when due any such additional premium. In the event the **Corporation** gives written notice with full particulars and underwriting information pursuant to (i) above, then the **Insurer** must offer a quote for coverage under this paragraph;
- N. alleging, arising out of, based upon or attributable to any actual or alleged contractual liability or obligation of the **Company** or an **Insured Person** under any contract, agreement, employment contract or employment agreement to pay money, wages or any employee benefits of any kind. This exclusion shall not apply to an **Employment Practice Claim** to the extent liability does not arise under such contract or agreement;
- O. alleging, arising out of, based upon or attributable to the purchase by the **Company** of securities of a "publicly traded entity" in a transaction which resulted, or would result, in such entity becoming a

**Subsidiary** of the **Company**; provided, however, this exclusion shall not apply in the event that within 30 days prior to it becoming a **Subsidiary**, the **Corporation** gives written notice of the transaction to the **Insurer** together with full particulars and underwriting information required and agrees to any additional premium or amendment of the provisions of this Policy required by the **Insurer** relating to the transaction. Further, coverage as shall be conditioned upon the **Corporation** paying when due any additional premium required by the **Insurer** relating to the transaction. An entity is a "publicly traded entity" if any securities of such entity have previously been subject to a public offering;

P. alleging, arising out of, based upon or attributable to emotional distress, or injury from libel or slander, or defamation or disparagement, or for injury from a violation of a person's right of privacy; provided, this exclusion shall not apply to any **Employment Practices Claim**;

Q. alleging, arising out of, based upon or attributable to, directly or indirectly resulting from, or in consequence of, or in any way involving, any obligation pursuant to any worker's compensation, disability benefits, unemployment compensation, unemployment insurance, retirement benefits, social security benefits or similar law;

R. with respect to Insuring Agreement C only:

(1) for any actual or alleged plagiarism, misappropriation, infringement or violation of copyright, patent, trademark, trade secret or any other intellectual property rights;

(2) for any actual or alleged violation of any law, whether statutory, regulatory or common law, respecting any of the following activities: anti-trust, business competition, unfair trade practices or tortious interference in another's business or contractual relationships;

(3) for the rendering or failure to render any service to a customer or client of the **Insured**; provided, however, that this exclusion shall not apply to any:

a. **Claim** alleging **Employment Practices Violations**;

b. **Securities Claim**; or

c. **Claim** for the rendering or failure to render any professional service to the extent such professional services errors and omissions coverage has been added to this Policy by written endorsement attached hereto; or

(4) seeking fines or penalties or non-monetary relief; provided, however, that this exclusion shall not apply to any **Securities Claim** or **Employment Practices Claim**.

#### Section IV. **Limit of Liability**

A. The **Insurer** shall be liable to pay **Loss** in excess of the applicable Retention amount stated in Item 4 of the Declarations up to the Limit of Liability stated in Item 3 of the Declarations.

B. **Costs of Defense** shall be part of, and not in addition to, the Limit of Liability stated in Item 3 of the Declarations. Such **Costs of Defense** shall serve to reduce the Limit of Liability.

C. The liability of the **Insurer** for all **Loss** arising from any and all **Claims** first made and reported pursuant to Section VII of the Policy shall be the amount stated in Item 3 of the Declarations which shall be the maximum aggregate Limit of Liability of the **Insurer** for the **Policy Period** and Discovery Period, if applicable, regardless of the time of payment or the number of **Claims**.

#### Section V. **Retention**

A. The Retention shall apply to all covered **Loss**, including **Costs of Defense**.

(1) The Retention specified in Item 4 of the Declarations shall apply as follows:



- a. Item 4(a) Retention is applicable to **Loss** as a result of **Claims** other than an **Employment Practices Claim** or a **Securities Claim**.
  - b. Item 4(b) Retention is applicable to **Loss** resulting from an **Employment Practices Claim**.
  - c. Item 4(c) Retention is applicable to **Loss** resulting from a **Securities Claim**.
  - d. A Retention shall not apply to a Non Indemnifiable Loss, including **Costs of Defense**.
- B.** One Retention shall apply to **Loss** arising from each **Claim** alleging the same **Wrongful Act** or **Related Wrongful Acts**. The **Company** shall be responsible for, and shall hold the **Insurer** harmless from, any amount within the Retention.
- C.** More than one **Claim** involving the same **Wrongful Act** or **Related Wrongful Acts** of one or more **Insureds** shall be considered a single **Claim**, and only one Retention shall be applicable to such single **Claim**. All such **Claims** constituting a single **Claim** shall be deemed to have been made on the earlier of the following dates: (1) the earliest date on which any such **Claim** was first made; or (2) the earliest date on which any such **Wrongful Act** or **Related Wrongful Acts** were reported under this Policy or any other policy providing similar coverage.
- D.** For the purposes of the application of the Retention, **Loss** applicable to Insuring Agreement I.B. includes that for which indemnification is legally permissible, whether or not actual indemnification is granted. In the event the **Company** is unable to indemnify an **Insured Person** solely by reason of its **Financial Insolvency**, the **Insurer** shall, pursuant to the terms and conditions of Section VI.F., advance **Costs of Defense** incurred by an **Insured Person** without first requiring payment of the Retention applicable to **Claims** covered by Insuring Agreement I.B. The certificate of incorporation, charter or other organization documents of the **Company**, including by-laws and resolutions, shall be deemed to require indemnification and advancement of **Loss** of an **Insured Person** to the fullest extent permitted by law.

**Section VI. Costs of Defense and Settlements**

- A.** The **Insured** shall not incur **Costs of Defense**, or admit liability, offer to settle, or agree to any settlement in connection with any **Claim** without the express prior written consent of the **Insurer**, which consent shall not be unreasonably withheld. The **Insured** shall provide the **Insurer** with all information, documents, reports and particulars it may reasonably request in order to reach a decision as to such consent. Any **Loss** resulting from any admission of liability, agreement to settle, or **Costs of Defense** incurred prior to the consent of the **Insurer**, shall not be covered hereunder.
- B.** Notwithstanding Section VI.A. above, if all **Insureds** are able to settle all **Claims** that are subject to an applicable Retention for an amount that, together with the **Costs of Defense**, does not exceed the applicable Retention, the **Insured** may agree to such a settlement without the prior written consent of the **Insurer**.
- C.** The **Insured**, and not the **Insurer**, shall have the duty to defend all **Claims**, provided that the **Insured** shall only retain counsel as is mutually agreed upon with the **Insurer**. The **Company** may at its option tender to the **Insurer** the defense of a **Claim**. Such a tender of the defense of a **Claim** shall not be made more than 90 days following notice of the **Claim** pursuant to Section VII. Upon such a tender of the defense of a **Claim**, the **Insurer** shall assume the duty to defend.
- D.** The **Insurer** shall at all times have the right, but not the duty, to associate with the **Insured** in the investigation, defense or settlement of any **Claim** to which coverage under this Policy may apply. The **Insured** shall cooperate with the **Insurer** and provide the **Insurer** such information as it may reasonably require in the investigation, defense or settlement of any **Claim**.
- E.** If a **Claim** made against an **Insured** includes both covered and uncovered matters, or is made against an **Insured** and others not insured, the **Insured** and the **Insurer** recognize that there must be an allocation

between covered and uncovered **Loss**. The **Insured** and the **Insurer** shall use their best efforts to agree upon a fair and proper allocation between covered and uncovered **Loss**, taking into account the relative legal and financial exposures, and the relative benefits obtained by each **Insured** as a result of the covered and uncovered matters and/or such benefits to an uninsured party using the same measure. If the **Insured** and the **Insurer** are not able to come to some agreement regarding the amount of the allocation, then the **Insurer** shall pay only those amounts, excess of the applicable Retention amount, which the **Insurer** deems to be fair and equitable until a different amount shall be agreed upon or determined pursuant to the provisions of this Policy and the above standards.

F. The **Insurer** shall advance **Costs of Defense** prior to the final disposition of any **Claim**, provided such **Claim** is covered by this Policy. Any advancement shall be on the condition that:

- (1) the appropriate Retention has been satisfied, provided, however, this condition shall not apply in the event of the **Financial Insolvency** of the **Company**;
- (2) any amounts advanced by the Insurer shall serve to reduce the Limit of Liability stated in Item 3 of the Declarations to the extent they are not in fact repaid;
- (3) the **Insured** and the **Insurer** have agreed upon the portion of the **Costs of Defense** attributable to covered **Claims** against the **Insureds**; provided, however, if no agreement, the **Insurer** shall pay, excess of the retention, what it determines fair and reasonable until such is otherwise established; and
- (4) in the event it is finally established that the **Insurer** has no liability under the Policy for such **Claim**, the **Insured** will repay the **Insurer** all **Costs of Defense** advanced by virtue of this provision.

#### Section VII. Notice of Claim

- A. The **Insured** shall, as a condition precedent to their rights under this Policy, give the **Insurer** notice in writing of any **Claim** which is made during the **Policy Period** or Discovery period. Such notice shall be given as soon as practicable but in no event later than thirty (30) days after the end of the **Policy Period** or Discovery Period, if applicable. If notice is provided pursuant to this Section, any **Claim** subsequently made against an **Insured** and reported to the **Insurer** alleging, arising out of, based upon or attributable to the prior noticed **Claim** or alleging any **Related Wrongful Acts**, shall be considered related to the prior **Claim** and made at the time notice of the prior **Claim** was first provided.
- B. If during the **Policy Period** or during the Discovery Period the **Company** or an **Insured** shall become aware of any circumstances which may reasonably be expected to give rise to a **Claim** being made against an **Insured** and shall give written notice to the **Insurer** of the circumstances, the **Wrongful Act** allegations anticipated and the reasons for anticipating such a **Claim**, with full particulars as to dates, persons and entities involved, then a **Claim** which is subsequently made against such **Insured** and reported to the **Insurer** alleging, arising out of, based upon or attributable to such circumstances or alleging any **Related Wrongful Acts**, shall be considered made at the time notice of such circumstances was given. Notice of any such subsequent **Claim** shall be given to the **Insurer** as soon as practicable.
- C. In addition to furnishing the notice as provided in Section VII, the **Insured** shall, as soon as practicable, furnish the **Insurer** with copies of reports, investigations, pleadings and other papers in connection therewith.
- D. Notice to the **Insurer** as provided in Section VII shall be given to the **Insurer** identified in, and at the address set forth in, Item 8 of the Declarations.

#### Section VIII. Discovery Period

- A. In the event the **Insurer** or the **Corporation** refuses to renew this Policy, the **Corporation** shall have the right, upon payment of one hundred percent (100%) of the annual premium, (or if the **Policy Period** is other than annual, one hundred percent (100%) of the annualized premium), to an extension of the coverage provided by this Policy with respect to any **Claim** first made against any **Insured** during the period of twelve (12) months after the end of the **Policy Period** and reported to the **Insurer** pursuant to the provisions of this Policy, but only with respect to any **Wrongful Act** committed or alleged to have been committed before the end of the **Policy Period**. This twelve (12) month period shall be referred to in this Policy as the Discovery Period.
- B. As a condition precedent to the right to purchase the Discovery Period, the total premium for this Policy must have been paid and a written request, together with payment of the appropriate premium for the Discovery Period, must be provided to the **Insurer** no later than thirty (30) days after the end of the **Policy Period**.
- C. The fact that the coverage provided by this Policy may be extended by virtue of the purchase of the Discovery Period shall not in any way increase the Limit of Liability stated in Item 3 of the Declarations. For purposes of the Limit of Liability, the Discovery Period is considered to be part of, and not in addition to, the **Policy Period**.

**Section IX. General Conditions**

- A. Cancellation or Non-Renewal
  - (1) This Policy may be cancelled by the **Corporation** at any time by written notice to the **Insurer**. Upon cancellation by the **Corporation**, the **Insurer** shall retain the customary short rate portion of the premium, unless this Policy is converted to Run-Off pursuant to Section IX.D. wherein the entire premium for this Policy shall be deemed earned.
  - (2) This Policy may only be cancelled by the **Insurer** if the **Corporation** does not pay the premium when due.
  - (3) If the **Insurer** elects not to renew this Policy, the **Insurer** shall provide the **Corporation** with no less than sixty (60) days advance notice thereof.
- B. Application

It is agreed by the **Company** and the **Directors** and **Officers** that the particulars and statements contained in the **Application** and any information provided therewith (which shall be on file with the **Insurer** and be deemed attached hereto as if physically attached hereto) are the basis of this Policy and are to be considered as incorporated in and constituting a part of this Policy. It is further agreed by the **Company** and the **Directors** and **Officers** that the statements in the **Application** or in any information provided therewith are their representations, that they are material and that this Policy is issued in reliance upon the truth of such representations. Knowledge of any **Insured Person** of a misstatement or omission in the **Application**, shall not be imputed to any other **Insured Person** for purposes of determining the validity of this Policy as to such other **Insured Person**.
- C. Action Against the Insurer
  - (1) No action shall be taken against the **Insurer** unless, as a condition precedent thereto, there shall have been full compliance with all the terms of this Policy, and until the obligation of the **Insured** to pay shall have been finally determined by an adjudication against the **Insured** or by written agreement of the **Insured**, claimant and the **Insurer**.

- (2) No person or organization shall have any right under this Policy to join the **Insurer** as a party to any **Claim** against an **Insured** nor shall the **Insurer** be impleaded by any **Insured** or their legal representative in any such **Claim**.

D. Conversion to Run-Off Coverage

If, during the **Policy Period**, a transaction occurs wherein another entity gains control of the **Corporation** through the ownership of more than fifty percent (50%) of the voting stock of the **Corporation**, or the **Corporation** merges into another entity or consolidates with another entity such that the **Corporation** is not the surviving entity, then:

- (1) this Policy shall only apply to **Wrongful Acts** actually or allegedly committed on or before the effective date of such transaction; and
- (2) the entire premium for this Policy shall be deemed earned as of the date of such transaction.

E. Outside Entity Provision

In the event a **Claim** is made against any **Insured Person** arising out of their service as a director, officer, trustee or governor of an **Outside Entity**, coverage as may be afforded under this Policy shall be excess of any indemnification provided by the **Outside Entity** and any insurance provided to the **Outside Entity** which covers its directors, officers, trustees or governors.

F. Coverage Extensions

- (1) Lawful Spouse or Domestic Partner Provision

The coverage provided by this Policy shall also apply to the lawful spouse or **Domestic Partner** of an **Insured Person**, but only for a **Claim** arising out of any actual or alleged **Wrongful Acts** of such **Insured Person**.

- (2) Worldwide Provision

The coverage provided under this Policy shall apply worldwide. The term **Directors** and **Officers** is deemed to include individuals who serve in equivalent positions in foreign **Subsidiaries**.

- (3) Estates and Legal Representatives

- a. The coverage provided by this Policy shall also apply to the estates, heirs, legal representatives or assigns of any **Insured Person** in the event of their death, incapacity or bankruptcy, but only for **Claims** arising out of any actual or alleged **Wrongful Acts** of any **Insured Person**.

- b. In the event a bankruptcy proceeding shall be instituted by or against the **Company**, the resulting debtor-in-possession (or equivalent status outside the United States of America) shall be deemed to be the **Company**, but only with respect to coverage provided under Insuring Agreements I. B. and C.

G. Priority of Payments

- (1) In the event of **Financial Insolvency**, or the refusal of the **Corporation** to indemnify or advance the indemnification of an **Insured Person** and there is **Loss** arising from one or more covered **Claims** for which payment is due under this Policy, the **Insurer** shall:

- a. first pay such **Loss** for which coverage is provided under Section I.(A) of this Policy; then

b. with respect to whatever remaining amount of the Limit of Liability is available after payment of Section G(1)(a) above, pay such **Loss** for which coverage is provided under any other Insuring Agreements of this Policy.

(2) Subject to the provisions of paragraph (1) above, the **Insurer** shall, at the written request of the **Corporation**, delay payment of **Loss** for which coverage is provided under any Insuring Agreement other than Section I.(A) until such time as the **Corporation** designates; provided the liability of the **Insurer** with respect to such delayed payment shall not be increased, and shall not include any interest as a result of such delay. The **Corporation** shall provide written notice to the **Insurer** when such delayed payment shall be made. Such written notice shall be deemed consent from all **Insureds**, including all **Insured Persons**, to release such payment and the **Insurer** shall have no further obligation under this Policy with respect to such funds.

H. Subrogation

In the event of any payment under this Policy, the **Insurer** shall be subrogated to all of the **Insureds'** rights of recovery and the **Company** and **Insured Persons** shall execute all papers required and shall do everything that may be necessary to secure such rights, including the execution of such documents as may be necessary to enable the **Insurer** to effectively bring suit in the name of any **Insured Person** or the **Company**.

I. Dispute Resolution

In the event any dispute arises in connection with this Policy that cannot be resolved, the **Insurer** and the **Insured** shall participate in a non-binding mediation in which the **Insurer** and the **Insured** shall attempt in good faith to resolve such dispute. Either the **Insured** or the **Insurer** shall have the right to commence a judicial proceeding or, if the parties agree, a binding arbitration, to resolve such dispute. However, no judicial proceeding or arbitration shall be commenced until termination of the mediation and until at least 90 days has passed from the termination of the mediation. Each party will bear its own legal fees and expenses. The costs and expenses of a mediation, or an arbitration, shall be split equally by the parties.

J. Assignment

Assignment of interest under this Policy shall not bind the **Insurer** until its consent is endorsed hereon.

K. Conformity to Statute

Any terms of this Policy which are in conflict with the terms of any applicable laws are hereby amended to conform to such laws.

L. Entire Agreement

By acceptance of this Policy, all **Insureds** and the **Insurer** agree that this Policy (including the Declarations, **Application** submitted to the **Insurer** and any information provided therewith) and any written endorsements attached hereto constitute the entire agreement between the parties. The terms, conditions and limitations of this Policy can be waived or changed only by written endorsement.

M. Corporation Represents Insured

By acceptance of this Policy, the **Corporation** shall be designated to act on behalf of all **Insureds** for all purposes including, but not limited to, the giving and receiving of all notices and correspondence, the cancellation or non-renewal of this Policy, the payment of premiums, and the receipt of any return premiums that may be due under this Policy.

N. Representative of the Insurer

Ironshore Insurance Services, LLC, One State Street Plaza, 7th Floor, New York, NY 10004 shall act on behalf of the **Insurer** for all purposes including, but not limited to, the giving and receiving of all notices and correspondence, provided, however, notice of **Claims** shall be given pursuant to Section VII of the Policy.

**O. Service of Suit**

In the event of the failure of the **Insurer** to pay any amount claimed to be due hereunder, the **Insurer** at the request of the **Insured**, will submit to the jurisdiction of any court of competent jurisdiction within the United States. Nothing in this condition constitutes or shall be understood to constitute a waiver of the right of the **Insurer** to commence an action in any court of competent jurisdiction within the United States, to remove an action to a United States District Court or to seek a transfer of a case to another court as permitted by the laws of the United States or of any state in the United States.

Service of process in any such suit may be made upon Ironshore Insurance Services, LLC, One State Street Plaza, 7th Floor, New York, NY 10004. In any suit instituted against the **Insurer** upon this Policy the **Insurer** will abide by the final decision of such court or of any appellate court in the event of any appeal.

Pursuant to any statute of any state, territory or district of the United States which makes provision therefore, the **Insurer** hereby designates the Superintendent, Commissioner or Director of Insurance, or other officer specified for that purpose in the statute, or his or her successor or successors in office, as its true and lawful attorney upon whom may be served lawful process in any action, suit or proceeding instituted by or on behalf of the Insured or any beneficiary hereunder arising out of this Policy, and hereby designates the above named Ironshore Insurance Services, LLC, One State Street Plaza, 7th Floor, New York, NY 10004 as the entity to whom said officer is authorized to mail such process or a true copy thereof.

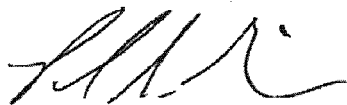
**P. Bankruptcy**

Bankruptcy or insolvency of the **Company** or any **Insured Person** shall not relieve the **Insurer** of any of its obligations under this Policy.

**Q. Headings**

The descriptions in the headings of this Policy form no part of the terms and conditions of the coverage under this Policy.

Ironshore Indemnity Inc. by:



Secretary



President



**IRONSHORE INDEMNITY INC.**

(A Stock Company)

Mailing Address:

PO Box 3407

New York, NY 10008

(877) IRON411

**Endorsement # 1**

**Policy Number:** 001100504

**Effective Date of Endorsement:** August 07, 2015

**Insured Name:** Qdevelopment LLC dba QResorts Inc

**OFAC COMPLIANCE NOTICE**

Payment of Loss under this Policy shall only be made in full compliance with all United States of America economic or trade sanction laws or regulations, including, but not limited to, sanctions, laws and regulations administered and enforced by the U.S. Treasury Department's Office of Foreign Assets Control ("OFAC").



**IRONSHORE INDEMNITY INC.**

(A Stock Company)

Mailing Address:

PO Box 3407

New York, NY 10008

(877) IRON411

**Endorsement # 2**

**Policy Number:** 001100504

**Effective Date of Endorsement:** August 07, 2015

**Insured Name:** Qdevelopment LLC dba QResorts Inc

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**FLORIDA AMENDATORY ENDORSEMENT**

Endorsement forming a part of and attaching to this Directors, Officers and Private Company Liability Insurance Policy as stated above.

It is hereby understood and agreed that:

1. Paragraph **2. "Pollutants"** of **Section II. Definitions** is hereby deleted in its entirety and replaced by the following:
  2. **"Pollutants"** include, but are not limited to, any solid, liquid, gaseous, or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals, and waste. "Waste" includes, but is not limited to, materials to be recycled, reconditioned, or reclaimed.
2. Paragraph **O. of Section II. Definitions** is hereby deleted in its entirety and replaced by the following:
  - O. **"Loss"** shall mean compensatory damages (including back pay and front pay), punitive or exemplary damages, the multiple portion of any multiplied damage award, judgments, settlements, pre- and post-judgment interest, and **Costs of Defense**. It is understood and agreed that the enforceability of the foregoing coverage shall be governed by such applicable law which most favors coverage for punitive or exemplary damages or the multiple portion of any multiplied damage award. **Punitive damages are not insurable in Florida.**

**Loss** shall not include: **(1)** civil or criminal fines or penalties imposed by law; **(2)** taxes; **(3)** any amount for which an **Insured** is not financially liable or which is without legal recourse to the Insured; **(4)** employment-related benefits of any kind, including, but not limited to, stock options, commissions, profit sharing, termination payments, severance, perquisites, deferred compensation or any other type of compensation other than back pay, front pay or bonus compensation; **(5)** any liability or costs incurred by any **Insured** to modify any buildings or property in order to make a building or property more accessible or accommodating to any disabled person, or any liability or costs incurred in connection with any educational, sensitivity or other corporate program, policy, seminar or monitoring (including, but not limited to, any consulting fees paid to any law firm) relating to or arising out of an **Employment Practices Claim**; **(6)** any portion of damages, judgments or settlements arising out of any **Claim** alleging that the **Company** paid an inadequate price or consideration for the purchase of securities; or **(7)** matters which may be deemed uninsurable under the law pursuant to which this Policy shall be construed.



3. Subparagraph (2) of Paragraph A. Cancellation or Non-Renewal of **Section IX. General Conditions** is hereby deleted in its entirety and replaced by the following:

- (2) The **Insurer** may cancel this Policy for any reason provided the Policy has been in effect for less than ninety (90) days. After this Policy has been in effect for ninety (90) days, this Policy may be cancelled by or on behalf of the **Insurer** for one of the following reasons:
- a. nonpayment of premium;
  - b. this Policy was obtained through a material misrepresentation;
  - c. failure to comply with underwriting requirements established by the **Insurer** within ninety (90) days of the date of effectuation of coverage;
  - d. the risk originally accepted has measurably increased; or
  - e. when the cancellation is for all **Corporations** under such policies for a given class of insureds.

The **Insurer** shall mail written notice of cancellation to the **Corporation** and the **Corporation's** agent or broker of record at the last address known to the **Insurer** and any mortgagee or lienholder, if known. Notice of cancellation shall be provided at least forty-five (45) days before the effective date of cancellation if cancellation is for nonpayment of premium. If cancellation is for any of the reasons listed in b. through e. above, and the Policy has been in effect for ninety (90) days or less, then notice of cancellation shall be provided at least forty-five (45) days before the effective date of cancellation. After the Policy has been in effect for ninety (90) days or more, notice of cancellation shall be provided at least ninety (90) days before the effective date of cancellation. The mailing of such notice shall be sufficient and the effective date of cancellation shall become the end of the **Policy Period**. The **Insurer** shall maintain proof of mailing on a recognized U.S. Post Office form or a form acceptable to the U.S. Post Office or other commercial mail delivery service. The notice shall state the reason or reasons for cancellation.

If the **Insurer** cancels this Policy, unearned premium shall be calculated on a pro rata basis. If the **Corporation** cancels this Policy, unearned premium shall be calculated at the **Insurer's** customary short rate. Payment of any unearned premium shall not be a condition precedent to the effectiveness of a cancellation. The **Insurer** shall make payment of any unearned premium within fifteen (15) business days of the effective date of cancellation.

4. Paragraph A. of **Section VIII. Discovery Period** is hereby deleted in its entirety and replaced by the following:

In the event the **Insurer** or the **Corporation** refuses to renew this Policy, the **Corporation** shall have the right, upon payment in accordance with the **Insurer's** approved rates and rules, to an extension of the coverage provided by this Policy with respect to any **Claim** first made against any **Insured** during the period of twelve (12) months after the end of the **Policy Period** and reported to the **Insurer** pursuant to the provisions of this Policy, but only with respect to any **Wrongful Act** committed or alleged to have been committed before the end of the **Policy Period**. This twelve (12) month period shall be referred to in this Policy as the Discovery Period.

5. Subparagraph (3) of Paragraph A. Cancellation or Non-Renewal of **Section IX. General Conditions** is amended by the addition of the following:

The notice shall state the reason or reasons for nonrenewal. The mailing of such notice shall be sufficient and the **Insurer** shall maintain proof of mailing on a recognized U.S. Post Office form or a form acceptable to the U.S. Post Office or other commercial delivery service.

6. **Section IX. General Conditions** is amended by the addition of the following:

If you need to contact someone about this Policy for any reason or to obtain information about coverage and receive assistance in resolving complaints, you may contact your insurance company at:

**IRONSHORE INDEMNITY INC.**

**Telephone: (877) IRON411**

ALL OTHER TERMS, CONDITIONS AND EXCLUSIONS REMAIN UNCHANGED.

A handwritten signature in black ink, appearing to be 'S.H.C.', written over a horizontal line.

Authorized Representative

October 15, 2015

Date



**IRONSHORE INDEMNITY INC.**

(A Stock Company)

Mailing Address:

PO Box 3407

New York, NY 10008

(877) IRON411

Endorsement # 3

Policy Number: 001100504

Effective Date of Endorsement: August 07, 2015

Insured Name: Qdevelopment LLC dba QResorts Inc

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**PROFESSIONAL ERRORS AND OMISSIONS EXCLUSION - FLORIDA**

It is hereby understood and agreed that **Section III. Exclusions** is amended to include the following exclusion:

The **Insurer** shall not be liable to make any payment for **Loss** in connection with any **Claim** made against an **Insured** alleging, arising out of, based upon or attributable to the **Company's** or any **Insured Person's** performance of or failure to perform professional services for others, or any act, error or omission relating thereto.

It is also understood and agreed that **Section III. Exclusions R.(3)** is deleted in its entirety.

ALL OTHER TERMS, CONDITIONS AND EXCLUSIONS OF THIS POLICY REMAIN UNCHANGED.

\_\_\_\_\_  
Authorized Representative

October 15, 2015

Date



**IRONSHORE INDEMNITY INC.**

(A Stock Company)

Mailing Address:

PO Box 3407

New York, NY 10008

(877) IRON411

**Endorsement # 4**

**Policy Number:** 001100504

**Effective Date of Endorsement:** August 07, 2015

**Insured Name:** Qdevelopment LLC dba QResorts Inc

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**SEVERABILITY OF THE APPLICATION ENDORSEMENT  
(FULL INDIVIDUAL SEVERABILITY; TOP 3 POSITIONS IMPUTED TO THE NAMED  
ENTITY; AND NON-RESCINDABLE A SIDE COVER)**

It is hereby understood and agreed that the following is added to the definition of **Application**:

The **Insureds** agree that in the event that such statements and representations are not accurate and complete, then this Policy shall be void *ab initio* solely with respect to any of the following **Insureds**:

- (1) solely with respect to **Loss** other than Non-Indemnifiable **Loss**, any **Insured Person** who knew as of the inception date of the **Policy Period** the facts that were not accurately and completely disclosed in the application,
- (2) a **Company**, under Section I. Insuring Agreements, COVERAGE B, to the extent it indemnifies any **Insured Person** referenced in (1) above, and
- (3) a **Company**, under Section I. Insuring Agreements, COVERAGE C, if any past, present or future President, Chief Executive Officer or Chief Financial Officer (or equivalent position) of the **Company** knew as of the inception date of the **Policy Period**, the facts that were not accurately and completely disclosed in the application,

whether or not such **Insured Person** knew that such facts were not accurately and completely disclosed in the application.

Solely with respect to any Non-Indemnifiable **Loss** of any **Insured Person**, under no circumstances shall the coverage provided by this Policy be deemed void, whether by rescission or otherwise, but such coverage will be subject to all other terms, conditions and exclusions of the Policy.

Further provided that for the purposes of the applicability of the coverage provided by this endorsement for Non-Indemnifiable **Loss**, the **Company** will be conclusively deemed to have indemnified the **Insured Persons** to the maximum extent that the **Company** is permitted or required to grant such indemnification pursuant to law, common or statutory, or contract or by the charter, by-laws, operating agreement or similar documents of the **Company** (which are hereby deemed to adopt the broadest provisions of the law which determines or defines such rights of indemnity). The **Company** hereby agrees to indemnify the **Insured Persons** to the fullest extent permitted by law including the making in good faith of any required application for

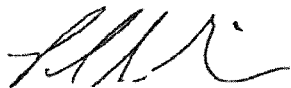
court approval.

It is also understood and agreed that Section IX General Conditions, B. Application shall be amended to include the following:

B. Application

It is agreed by the **Company** and the **Directors** and **Officers** that the particulars and statements contained in the **Application** and any information provided therewith (which shall be on file with the **Insurer** and be deemed attached hereto as if physically attached hereto) are the basis of this Policy and are to be considered as incorporated in and constituting a part of this Policy. It is further agreed by the **Company** and the **Directors** and **Officers** that the statements in the **Application** or in any information provided therewith are their representations, that they are material and that this Policy is issued in reliance upon the truth of such representations.

ALL OTHER TERMS, CONDITIONS AND EXCLUSIONS OF THIS POLICY REMAIN UNCHANGED.



\_\_\_\_\_  
Authorized Representative

October 15, 2015  
Date



**IRONSHORE INDEMNITY INC.**

(A Stock Company)

Mailing Address:

PO Box 3407

New York, NY 10008

(877) IRON411

**Endorsement # 5**

**Policy Number:** 001100504

**Effective Date of Endorsement:** August 07, 2015

**Insured Name:** Qdevelopment LLC dba QResorts Inc

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**CAPTIVE INSURANCE COMPANY EXCLUSION**

In consideration of the premium charged, it is hereby understood and agreed that the **Insurer** shall not be liable to make any payment for **Loss** in connection with any **Claim** made against any **Insured** alleging, arising out of, based upon or attributable to the ownership, management, operation or control by the **Company** of any captive insurance company or entity, including but not limited to any **Claim** alleging the insolvency or bankruptcy of the **Company** was a result of such ownership, management, operation or control.

ALL OTHER TERMS, CONDITIONS AND EXCLUSIONS REMAIN UNCHANGED.

A handwritten signature in black ink, appearing to be "S.H.C.", is written above a horizontal line.

Authorized Representative

October 15, 2015

Date



**IRONSHORE INDEMNITY INC.**

(A Stock Company)

Mailing Address:

PO Box 3407

New York, NY 10008

(877) IRON411

Endorsement # 6

Policy Number: 001100504

Effective Date of Endorsement: August 07, 2015

Insured Name: Qdevelopment LLC dba QResorts Inc

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**COMMISSIONS EXCLUSION**

In consideration of the premium charged, it is hereby understood and agreed that the **Insurer** shall not be liable to make any payment for **Loss** in connection with any **Claim** made against any **Insured** alleging, arising out of, based upon, or attributable to any:

- (i) Payment, commission, gratuity, benefit or any other favor to or for the benefit of any full or part-time domestic or foreign government or any armed services official, agent, representative, employee or any member of their family or any entity with which they are affiliated; or
- (ii) Payment, commission, gratuity, benefit or any other favor to or for the benefit of any full or part-time official, director, agent, partner, representative, principal shareholder, or owner or employee, or "affiliate" (as that term is defined in The Securities Exchange Act of 1934, including any officer, director, agent, owner, partner, representative, principal shareholder or employee of such affiliate) of any customer of the **Company** or any member of their family or any entity with which they are affiliated; or
- (iii) Political contribution, whether domestic or foreign.

ALL OTHER TERMS, CONDITIONS AND EXCLUSIONS REMAIN UNCHANGED.

Authorized Representative

October 15, 2015

Date



**IRONSHORE INDEMNITY INC.**

(A Stock Company)

Mailing Address:

PO Box 3407

New York, NY 10008

(877) IRON411

Endorsement # 7

Policy Number: 001100504

Effective Date of Endorsement: August 07, 2015

Insured Name: Qdevelopment LLC dba QResorts Inc

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**NUCLEAR ENERGY LIABILITY EXCLUSION ENDORSEMENT  
(BROAD FORM)**

In consideration of the premium charged, it is hereby understood and agreed that the **Insurer** shall not be liable to make any payment for **Loss** in connection with any **Claim** made against any **Insured**:

- A. alleging, arising out of, based upon, attributable to, or in any way involving, directly or indirectly, the hazardous properties of nuclear material, including, but not limited to:
- (1) nuclear material located at any nuclear facility owned by, or operated by, or on behalf of, any **Insured**, or discharged or dispersed therefrom; or
  - (2) nuclear material contained in spent fuel or waste which was or is at any time possessed, handled, used, processed, stored, transported or disposed of by or on behalf of any **Insured**; or
  - (3) the furnishing by any **Insured** of services, materials, parts or equipment in connection with the planning, construction, maintenance, operation or use of any nuclear facility; or
  - (4) claims for damages to the **Company** or its shareholders alleging, arising out of, based upon, or attributed to, or in any way involving, directly or indirectly, the hazardous properties of nuclear material.
- B.
- (1) which is insured under a nuclear energy liability policy issued by Nuclear Energy Liability Insurance Association, Mutual Atomic Energy Liability underwriters, or Nuclear Insurance Association of Canada, or would be insured under any such policy but for its termination or exhaustion of its limit of liability; or,
  - (2) with respect to which (a) any person or organization is required to maintain financial protection pursuant to the Atomic Energy Act of 1954, or any law amendatory thereof, or (b) the Insured is, or had this Policy not been issued would be entitled to indemnity from the United States of America, or any agency thereof,



under any agreement entered into by the United States of America, or any agency thereof, with any person or organization.

As used in this endorsement:

"hazardous properties" include radioactive, toxic or explosive properties;

"nuclear material" means source material, special nuclear material or byproduct material;

"source material", "special nuclear material", and "byproduct material" have the meanings given them in the Atomic Energy Act of 1954 or in law amendatory thereof;

"spent fuel" means any fuel element or fuel component, solid or liquid, which has been used or exposed to radiation in a nuclear reactor;

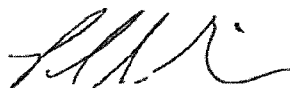
"waste" means any waste material (1) containing byproduct material and (2) resulting from the operation by any person or organization of any nuclear facility included within the definition of nuclear facility under paragraph (a) or (b) thereof;

"nuclear facility" means:

- (a) any nuclear reactor,
- (b) any equipment or device designed or used for (1) separating the isotopes of uranium or plutonium, (2) processing or utilizing spent fuel, or (3) handling, processing or packaging waste,
- (c) any equipment or device used for the processing, fabricating or alloying of special nuclear material if at any time the total amount of such material in the custody of the Insured at the premises where such equipment or device is located consists of or contains more than 25 grams of plutonium or uranium 233 or any combination thereof, or more than 250 grams of uranium 235,
- (d) any structure, basin, excavation, premises or place prepared or used for the storage or disposal of waste, and includes the site on which any of the foregoing is located, all operations conducted on such site and all premises used for such operations;

"nuclear reactor" means any apparatus designed or used to sustain nuclear fission in a self-supporting chain reaction or to contain a critical mass of fissionable material.

ALL OTHER TERMS, CONDITIONS AND EXCLUSIONS REMAIN UNCHANGED.



\_\_\_\_\_  
Authorized Representative

October 15, 2015  
Date



**IRONSHORE INDEMNITY INC.**

(A Stock Company)

Mailing Address:

PO Box 3407

New York, NY 10008

(877) IRON411

**Endorsement # 8**

**Policy Number:** 001100504

**Effective Date of Endorsement:** August 07, 2015

**Insured Name:** Qdevelopment LLC dba QResorts Inc

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**ABSOLUTE BODILY INJURY AND PROPERTY DAMAGE EXCLUSION**

It is hereby understood and agreed **Section III. Exclusions, D.** is deleted in its entirety and replaced with the following:

- D. alleging, arising out of, based upon, attributable to, or in any way involving, directly or indirectly:
  - (1) bodily injury, sickness, disease, or death of any person; or
  - (2) damage to or destruction of any tangible property, including the loss of use thereof; or
  - (3) mental anguish, emotional distress, invasion of privacy, wrongful entry, eviction, false arrest, false imprisonment, malicious prosecution, libel or slander, however, this subsection **D.(3)** does not apply to an **Employment Practices Claim.**

ALL OTHER TERMS, CONDITIONS AND EXCLUSIONS OF THIS POLICY REMAIN UNCHANGED.

\_\_\_\_\_  
Authorized Representative

October 15, 2015  
Date



**IRONSHORE INDEMNITY INC.**

(A Stock Company)

Mailing Address:

PO Box 3407

New York, NY 10008

(877) IRON411

**Endorsement # 9**

**Policy Number:** 001100504

**Effective Date of Endorsement:** August 07, 2015

**Insured Name:** Qdevelopment LLC dba QResorts Inc

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**ARC PRIVATE FORM AMENDATORY ENDORSEMENT**

In consideration of the premium charged, it is hereby understood and agreed that the Policy shall be amended as follows:

I Section II, Definitions, shall be amended as follows:

(i) Definition B, "Claim" shall be deleted in its entirety and replaced with the following:

**B. (1) "Claim"** shall mean a civil, criminal, governmental, regulatory, administrative, or arbitration proceeding made against any **Insured** seeking monetary or non-monetary relief and commenced by the service of a complaint or similar pleading, the return of an indictment, or the receipt or the filing of a notice of charges or similar document, including any proceeding initiated against any **Insured** before the U.S. Equal Employment Opportunity Commission ("EEOC"), or any similar governmental body, or other written demand for monetary or non-monetary relief made against any **Insured**. However, in no event shall the term "Claim" include any labor or grievance proceeding which is subject to a collective bargaining agreement.

**(2) Claim** shall also mean a formal civil, criminal, administrative or regulatory investigation of an **Insured Person**:

(a) once such **Insured Person** is identified in writing by such investigating authority as a person against whom a proceeding described in B.(1) above may be commenced;

(b) in the case of an investigation by the Securities and Exchange Commission ("SEC") or a similar state or foreign government authority, after:

- (i) the service of a subpoena upon such **Insured Person**; or
  - (ii) the **Insured Person** is identified in a written "Wells" or other notice from the SEC or a similar state or foreign government authority that describes actual or alleged violations of law by such **Insured Person**.
- (ii) Definition C, "**Company**" shall be deleted in its entirety and replaced with the following:
- C. "**Company**" shall mean the **Corporation** and any **Subsidiary**. **Company** shall also mean the debtor in possession, in the event of a bankruptcy proceeding instituted by or against the **Company**, but solely with respect to coverage provided under Insuring Agreements I.B and C.
- (iii) Definition F, "**Directors**" and "**Officers**" shall be deleted in its entirety and replaced with the following:
- F. "**Directors**" and "**Officers**" shall mean all persons who were, now are, or shall be directors and/or officers (or foreign equivalent) of the **Company**. **Directors** and **Officers** shall also mean any management committee member or member of the board of management.
- (iv) Definition H, "**Employee**" shall be deleted in its entirety and replaced with the following:
- H. "**Employee**" shall mean any past, present or future employee of the **Company**, including any part-time, seasonal or temporary employee, acting solely in his or her capacity as such. Any person leased to the **Company** shall also be an **Employee**, but only if the **Company** indemnifies such leased person in the same manner as is provided to the **Company's** permanent employees. Interns, volunteers, and any person hired by contract to perform work for the **Company** or who is an independent contractor for the **Company**, shall also be an **Employee**, but only if the **Company** indemnifies the person in the same manner as is provided to the **Company's** permanent employees.
- (v) Definition I, "**Employment Practices Claim**" shall be deleted in its entirety and replaced with the following:
- I. "**Employment Practices Claim**" shall mean any **Claim** brought by or on behalf of any past, present or future **Employee** of the **Company** or an **Outside Entity**, or any applicant for employment with the **Company** or an **Outside Entity** alleging an **Employment Practices Wrongful Act**. **Employment Practices Claim** shall also mean a **Claim** by any third party alleging discrimination, sexual harassment or violation of an individual's civil rights relating to such discrimination or sexual harassment.
- (vi) Definition K, "**Financial Insolvency**" shall be deleted in its entirety and replaced with the following:
- K. "**Financial Insolvency**" shall mean the **Company** becoming a debtor in possession, or the appointment of a receiver, conservator, liquidator, trustee, rehabilitator or similar official to control, supervise, manage or liquidate the **Company** or the equivalent status or equivalent events outside the territory of the United States.
- (vii) Definition O, "**Loss**", shall be deleted in its entirety and replaced with the following:

- O. "Loss" shall mean compensatory damages (including back pay and front pay), punitive or exemplary damages, the multiple portion of any multiplied damage award, judgments, settlements, pre- and post-judgment interest, and **Costs of Defense**. It is understood and agreed that the enforceability of the foregoing coverage shall be governed by such applicable law which most favors coverage for punitive or exemplary damages or the multiple portion of any multiplied damage award.

**Loss** shall not include: **(1)** civil or criminal fines or penalties imposed by law; **(2)** taxes; **(3)** any amount for which an **Insured** is not financially liable or which is without legal recourse to the Insured; **(4)** employment-related benefits of any kind, including, but not limited to, stock options, commissions, profit sharing, termination payments, severance, perquisites, deferred compensation or any other type of compensation other than back pay, front pay or bonus compensation; **(5)** any liability or costs incurred by any **Insured** to modify any buildings or property in order to make a building or property more accessible or accommodating to any disabled person, or any liability or costs incurred in connection with any educational, sensitivity or other corporate program, policy, seminar or monitoring (including, but not limited to, any consulting fees paid to any law firm) relating to or arising out of an **Employment Practices Claim**; **(6)** any portion of damages, judgments or settlements arising out of any **Claim** alleging that the **Company** paid an inadequate price or consideration for the purchase of securities; or **(7)** matters which may be deemed uninsurable under the law pursuant to which this Policy shall be construed; provided, however, that the foregoing exclusions shall not apply to **Costs of Defense**.

II. Section III, Exclusions, shall be amended as follows:

- (i) Exclusion A., sub-paragraph (3) (b) shall be deleted in its entirety and the following provision shall apply to all sub-sections of Section III, Exclusions:

For purposes of determining the applicability of any Exclusion set forth in this Policy, it is understood and agreed that:

- 1) the **Wrongful Act** of an **Insured Person** shall not be imputed to any other **Insured Person**; and
- 2) only the **Wrongful Act** of any past, present or future chairman of the board, president, chief executive officer, or chief financial officer of the **Company** shall be imputed to the **Company**.

- (ii) Exclusion C., shall be deleted in its entirety and replaced with the following:

C. alleging, arising out of, based upon or attributable to any pending or prior civil, criminal, administrative or investigative proceeding, or EEOC notice of charge of any kind involving the **Company** and/or any **Insured Person** as of the Pending and Prior Date stated in Item 7 of the Declarations, or any **Wrongful Act** or **Related Wrongful Acts** or any fact, circumstance or situation underlying or alleged in such proceeding or notice of charge. The **Insurer** will not consider an employee's filing for unemployment benefits before the Prior and Pending Litigation Date as an "administrative proceeding" for purposes of determining coverage under the policy;

- (iii) Exclusion F., shall be deleted in its entirety and replaced with the following:

F. for any **Claim** alleging, arising out of, based upon, or attributable to the refusal, failure or inability of any **Insured** to pay wages or overtime pay for services rendered (hereinafter, "Earned Wages") (as opposed to tort-based back pay or front pay damages) or for improper payroll deductions taken by any **Insured** from any **Employee** or purported **Employee**, including, but not limited to, (i) any unfair business practice claim alleged because of the failure to pay Earned Wages, or (ii) any **Claim** seeking Earned Wages because any **Employee** or purported **Employee** was improperly classified or mislabeled as "exempt"; provided, however, that this exclusion shall not apply to **Claims** for **Retaliation**;

(iv) Exclusion H., shall be deleted in its entirety and replaced with the following:

H. for a **Wrongful Act** of any **Insured Person** serving as a director, officer, trustee or governor of an **Outside Entity** if such **Claim** is brought by the **Outside Entity** or by any director, officer, trustee or governor thereof; provided, however, this exclusion shall not apply to:

- (1) any **Employment Practices Claim** ;
- (2) any **Claim** brought by any director or officer of the **Outside Entity** in the form of a cross-claim or third-party claim for contribution or indemnity which is part of and results directly from a **Claim** that is covered by this Policy;
- (3) any **Claim** brought by the examiner, trustee, receiver, liquidator, rehabilitator or creditors' committee (or any assignee thereof) of the **Outside Entity**, in any bankruptcy proceeding by or against the **Outside Entity**;
- (4) any **Claim** brought by any past director or officer of the **Outside Entity** who has not served as a duly elected or appointed director, officer, trustee, governor, management committee member, member of the management board, General Counsel or Risk Manager (or equivalent position) of or consultant for the **Outside Entity** for at least three (3) years prior to such **Claim** being first made;
- (5) any **Claim** brought by a director or officer (or equivalent position) of an **Outside Entity** formed and operating in a foreign jurisdiction provided that such **Claim** is brought and maintained outside the United States, Canada or any other common law country (including any territories thereof); or
- (6) any **Claim** brought by a director or officer of an **Outside Entity** arising out of or based upon any protected activity specified in any "whistleblower" protection pursuant to any state, local or foreign laws.

(v) Exclusion I., sub-paragraph (1) shall be deleted in its entirety and replaced with the following:

- (1) any **Employment Practices Claim**;

(vi) Exclusion I., sub-paragraph (4) shall be deleted in its entirety and replaced with the following:

- (4) any **Claim** brought by any past **Director** or **Officer** of the **Company** who has not served as a duly elected or appointed director, officer, trustee, governor, management committee member, member of the management board, General Counsel or Risk Manager (or equivalent position) of or consultant for the **Company** for at least three (3) years prior to such **Claim** being first made;

(vii) Exclusion J., shall be deleted in its entirety and replaced with the following:

J. alleging, arising out of, based upon or attributable to, directly or indirectly resulting from, or in consequence of, or in any way involving, **Pollution**, including but not limited to, any **Claim** for financial loss to the **Company**, its security holders or its creditors; provided, however, that this exclusion shall not apply to any **Securities Claim** or any **Claim** covered under Insuring Agreement A;

(viii) Exclusion M., shall be deleted in its entirety and replaced with the following:

M. alleging, arising out of, based upon or attributable to any public offering of securities by the **Company**, an **Outside Entity** or an affiliate or alleging a purchase or sale of such securities subsequent to such public offering; provided, this exclusion will not apply to:

- (1) any purchase or sale of securities exempted pursuant to section 3(b) of the Securities Act of 1933. Coverage for such purchase or sale transaction shall not be conditioned upon payment of any additional premium; however, the **Corporation** shall give the **Insurer** written notice of any public offering exempted pursuant to section 3(b), together with full particulars, as soon as practicable, but not later than 30 days after the effective date of the public offering;
- (2) any public offering of securities (other than a public offering described in paragraph (1) above), as well as any purchase or sale of such securities subsequent to such public offering, in the event that within 30 days prior to the effective time of such public offering: (i) the **Corporation** shall give the **Insurer** written notice of such public offering together with full particulars and underwriting information required thereto and (ii) the **Corporation** accepts such terms, conditions and additional premium required by the **Insurer** for such coverage. Such coverage is also subject to the **Corporation** paying when due any such additional premium. In the event the **Corporation** gives written notice with full particulars and underwriting information pursuant to (i) above, then the **Insurer** must offer a quote for coverage under this paragraph;
- (3) any **Claim** for **Loss** alleging a **Wrongful Act** which occurred during the **Insured's** preparation to commence an initial public offering ("**IPO**") and which occurred at any time prior to 12:01 a.m. on the date the **IPO** commences ("**IPO Effective Time**"), including any **Claim** for **Loss** alleging a **Wrongful Act** which occurred during the road show; provided, however that the coverage otherwise afforded under this paragraph (3) shall be deemed to be void *ab initio* effective the **IPO Effective Time**; provided further, however, that coverage shall not be deemed void *ab initio* if (i) the **Claim** is first made and reported pursuant to Clause VII prior to the **IPO Effective Time**, and (ii) a public company D&O policy is not valid and collectible with respect to such **Claim**.

(ix) Exclusion N., shall be deleted in its entirety and replaced with the following:

N. alleging, arising out of, based upon or attributable to any actual or alleged contractual liability or obligation of the **Company** or an **Insured Person** under any contract, agreement, employment contract or employment agreement to pay money, wages or any employee benefits of any kind. This exclusion shall not apply to:

- (1) an **Employment Practice Claim** to the extent liability does not arise under such contract or agreement;
- (2) an **Employment Practices Claim** arising out of any leasing or temporary help agreement;
- (3) **Costs of Defense** in connection with any **Employment Practices Claim**; or
- (4) **Claims** for mental anguish or emotional distress.

(x) Exclusion R., sub-paragraph (4) shall be deleted in its entirety and replaced with the following:

- (4) seeking fines or penalties or non-monetary relief; provided, however, that this exclusion shall not apply to any **Securities Claim** or **Employment Practices Claim**. This exclusion shall not apply to **Costs of Defense** in connection with **Claims** seeking non-monetary relief.

III. Section VI, Costs of Defense and Settlements shall be amended as follows:

(i) Paragraph F, sub-paragraph (4) shall be deleted in its entirety and replaced with the following:

- (4) in the event it is finally established that the **Insurer** has no liability under the Policy for such **Claim**, the **Insureds** will repay the **Insurer**, severally according to their respective interests, all **Costs of Defense** advanced by virtue of this provision.

IV. Section VII, Notice of Claim, shall be amended as follows:

(i) Paragraph A. shall be deleted in its entirety and replaced with the following:

- A. The **Insured** shall, as a condition precedent to their rights under this Policy, give the **Insurer** notice in writing of any **Claim** which is made during the **Policy Period** or Discovery period. Such notice shall be given as soon as practicable after the General Counsel or the Risk Manager becomes aware of such **Claim** but in no event later than sixty (60) days after the end of the **Policy Period** or Discovery Period, if applicable. If notice is provided pursuant to this Section, any **Claim** subsequently made against an **Insured** and reported to the **Insurer** alleging, arising out of, based upon or attributable to the prior noticed **Claim** or alleging any **Related Wrongful Acts**, shall be considered related to the prior **Claim** and made at the time notice of the prior **Claim** was first provided.

V. Section VIII, Discovery Period, shall be amended as follows:

(i) Paragraph A shall be deleted in its entirety and replaced with the following:

- A. In the event the **Insurer** or the **Corporation** refuses to renew this **Policy**, the **Corporation** shall have the right, upon payment of the percentage of annual premium set forth below, (or if the **Policy Period** is other than annual, the percentage of the annualized premium), to an extension of the coverage provided by this **Policy** with respect to any **Claim** first made against any **Insured** during the period set forth below after the end of the **Policy Period** and reported to the **Insurer** pursuant to the provisions of this **Policy**, but only with respect to any **Wrongful Act** committed or alleged to have been committed before the end of the **Policy Period**. This period shall be referred to in this **Policy** as the Discovery Period.



<u>Discovery Period</u>	<u>Premium</u>
Twelve (12) months	75%
Twenty-Four (24) months	150%
Thirty-Six (36) months	200%
Seventy-Two (72) months	TBD

VI. Section IX., General Conditions, shall be amended as follows:

(i) Paragraph G., Priority of Payments, shall be deleted in its entirety and replaced with the following:

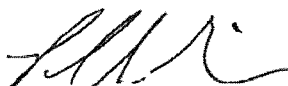
**G. Priority of Payments**

- (1) In the event of **Loss** arising from one or more covered **Claims** for which payment is due under this **Policy**, the **Insurer** shall:
  - a. first pay such **Loss** for which coverage is provided under Section I.(A) of this Policy; then
  - b. with respect to whatever remaining amount of the Limit of Liability is available after payment of Section G(1)(a) above, pay such **Loss** for which coverage is provided under any other Insuring Agreements of this Policy.
- (2) Subject to the provisions of paragraph (1) above, the **Insurer** shall, at the written request of the **Corporation**, delay payment of **Loss** for which coverage is provided under any Insuring Agreement other than Section I.(A) until such time as the **Corporation** designates; provided the liability of the **Insurer** with respect to such delayed payment shall not be increased, and shall not include any interest as a result of such delay. The **Corporation** shall provide written notice to the **Insurer** when such delayed payment shall be made. Such written notice shall be deemed consent from all **Insureds**, including all **Insured Persons**, to release such payment and the **Insurer** shall have no further obligation under this **Policy** with respect to such funds.

VII. Section IX, General Conditions, shall be amended to add the following provisions:

- R. In the event that there is an inconsistency between a state amendatory endorsement attached to this Policy and any term or condition of this Policy, it is understood and agreed that, where permitted by law, the **Insurer** shall apply those terms and conditions of either the state amendatory or this Policy which are more favorable to the **Insured**.
- S. In the event that there is an inconsistency between this endorsement and any term or condition of this Policy, it is understood and agreed that, where permitted by law, the **Insurer** shall apply those terms and conditions of either the state amendatory or this Policy which are more favorable to the **Insured**.

ALL OTHER TERMS, CONDITIONS AND EXCLUSIONS OF THIS POLICY REMAIN UNCHANGED.



\_\_\_\_\_  
Authorized Representative

October 15, 2015  
\_\_\_\_\_  
Date

**D'AMATO & LYNCH, LLP**  
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May 4, 2016

**Via Email:** [dbg@msk.com](mailto:dbg@msk.com)  
David B. Gordon  
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Mr. Ariel Quiros  
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David Cleary, Esq.  
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Mr. William Stenger  
**Via Email:** [Billstenger123@gmail.com](mailto:Billstenger123@gmail.com)

Re: Directors, Officers & Private Company Liability Insurance  
Insured : Qdevelopment LLC *dba* QResorts Inc.  
Matter : Securities & Exchange Commission (SEC Claim)  
Claim No. : PRO00051098  
Policy No. : 001100504  
Our File No. : 851-82791

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Dear Gentlemen:

We have been retained by Ironshore Claims LLC on behalf of Ironshore Specialty Insurance Company (collectively "Ironshore") with respect to the above referenced matter. In this capacity we have reviewed the complaints styled *Securities & Exchange Commission v. Quiros, et al.*, filed in the United States District Court for the Southern District of Florida ("SEC Action") and *State of Vermont, et al. v. Quiros, et al.* filed in the Superior Court for the State of Vermont ("Vermont Action"). We have also reviewed copies of the subpoenas issued by the SEC and certain deposition transcripts and other exhibits to the SEC complaint. We have reviewed these materials under the Directors, Officers & Private Company Liability Insurance Policy No. 001100504 issued to Qdevelopment dba QResorts, Inc. ("Qdevelopment") for the period of August 7, 2015 through August 7, 2016 ("Policy").

May 4, 2016  
Page No. 2

Based upon the information provided to date, it appears this matter is excluded from coverage under the Policy terms and conditions. To the extent that Ironshore may later learn of additional information which may indicate that the application of other provisions, exclusions or endorsements in the Policy would be appropriate, Ironshore reserves the right to amend and/or supplement this letter accordingly.

### SEC Action

The SEC Action seeks temporary and permanent injunctive relief against the defendants to restrain them from participating in the issuance, offer or sale of any securities issued through the EB-5 Immigration Investor Program ("EB-5 Program") or participating in the management, administration or supervision of any commercial enterprise or project that has issued any securities through the EB-5 Program. The complaint also seeks disgorgement, civil penalties, an accounting, a freezing of assets, the appointment of a receiver and records preservation as to the various defendants.

The defendants in the action include Ariel Quiros who is identified as the sole owner of QResorts, Inc. The other individual defendant is William Stenger who is identified as the President and CEO of Jay Peak, Inc. The entity defendants include QResorts, Inc., and seven limited partnerships identified as Jay Peak Hotel Suites, LP; Jay Peak Hotel Suites Phase II LP, Jay Peak Penthouse Suites LP, Jay Peak Golf and Mountain Suites LP, Jay Peak Lodge and Townhouses LP, Jay Peak Hotel Suites Stateside LP, and Jay Peak Biomedical Research Park LP. Additional entity defendants are companies identified as general managers of the various limited partnerships and include Jay Peak Management, Inc., Jay Peak GP Services, Inc., Jay Peak GP Services Golf, Inc., Jay Peak GP Services Lodge, Inc., Jay Peak GP Services Stateside, Inc., and ANC BioVermont GP Services, LLC. There are four companies identified as the "relief defendants" and include J Construction Management, Inc., JSI of Dade County, North East Contract Services, Inc., and QBurke Mountain Resort, LLC.

The SEC alleges that Quiros systematically misused investor funds and looted more than \$50 million of the more than \$350 million that had been raised from hundreds of foreign investors through the EB-5 Program. The SEC claims that the fraudulent scheme spanned across the seven limited partnership offerings through which Quiros, Stenger and the companies they run and manage, misused more than half the money raised from investors. Specifically, the SEC alleges that Quiros misappropriated more than \$50 million in investor money to finance his purchase of the Jay Peak Resort, back a personal line of credit, purchase a condominium, pay taxes of one of his companies, pay off margin loans and buy an unrelated resort. The SEC claims that Quiros and Stenger and the companies they manage made misrepresentations to potential investors and used funds contrary to the specific provisions of the investment contracts by using investor money to finance projects other than the specific project to which the investor contributed.

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### Vermont Action

The Vermont Action contains allegations similar to that set forth in the SEC Action and is brought against the same defendants (although not the “relief defendants”) named in the SEC Action. The action sets forth six causes of action for violation of the Vermont Uniform Securities Act, and eight causes of action under the Vermont Consumer Protection Act seeking an injunction to restrain and enjoin the defendants from future violations, an order requiring a full accounting, an order appointing a receiver, an order directing the Defendants to disgorge funds and benefits received as a result of their illegal activities, an order directing defendants to pay full restitution to all defrauded investors, and, an order imposing civil fines and penalties.

The State of Vermont claims that the defendants misused more than \$200 million and misappropriated more than \$50 million of funds raised from foreign investors in connection with the EB-5 Program. The State claims that Quiros and Stenger concealed their activities for nearly seven years through inter-project transfers, commingling of investor funds and using margin loans to pay for expenses. The State claims that Quiros and Stenger “backfilled” earlier projects with investor money raised in connection with later projects as funding gaps emerged as a result of the misappropriation and misuse. The State claims that Quiros “masterminded” the scheme with substantial assistance from Stenger.

### The Policy

The Policy provides for a Limit of Liability of \$10,000,000 aggregate for all **Claims**<sup>1</sup> made or deemed made during the **Policy Period**, subject to a \$50,000 retention amount.

Section I of the Policy, Insuring Agreements, provides as follows:

- A. The **Insurer** shall pay on behalf of an **Insured Person** all **Loss** which the **Insured Person** shall be legally obligated to pay as a result of a **Claim** (including an **Employment Practices Claim**) first made against the **Insured Person** during the **Policy Period** or the **Discovery Period** for a **Wrongful Act**, and reported to the **Insurer** pursuant to Section VII, except for any **Loss** which the **Company** actually pays as indemnification.
- B. The **Insurer** shall pay on behalf of the **Company** all **Loss** which the **Company** shall be legally obligated to pay as a result of a **Claim** (including an **Employment Practices Claim**) first made against an **Insured Person** during the **Policy Period** or the **Discovery Period** for a **Wrongful Act** reported to the **Insurer** pursuant to Section VII, but only to the extent the **Company** is required or permitted by law, to the fullest extent possible, to indemnify the **Insured Person**.
- C. The **Insurer** shall pay on behalf of the **Company** all **Loss** which the **Company** shall be legally obligated to pay as a result of a **Claim** (including an **Employment**

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<sup>1</sup> Bolded words have the same meaning as that set forth in the Policy.

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**Practices Claim**) first made against the **Company** during the **Policy Period** or the **Discovery Period** for a **Wrongful Act**, and reported to the **Insurer** pursuant to **Section VII**.

The Policy, as amended by endorsement 9, defines **Claim** as follows:

- B. (1) **“Claim”** shall mean a civil, criminal, governmental, regulatory, administrative, or arbitration proceeding made against any **Insured** seeking monetary or non-monetary relief and commenced by the service of a complaint or similar pleading, the return of an indictment, or the receipt or the filing of a notice of charges or similar document...
- (2) **Claim** shall also mean a formal civil, criminal, administrative or regulatory investigation of an **Insured Person**:
- (a) Once such **Insured Person** is identified in writing by such investigation authority as a person against whom a proceeding described in B.(1) above may be commenced;
- (b) In the case of an investigation by the Securities and Exchange Commission (“SEC”) or a similar state or foreign authority, after
- (i) The service of a subpoena upon such **Insured Person**;

....

We have been provided with a number of subpoenas which indicate that the SEC has been investigating Qdevelopment, QResorts and the various Jay Peak entities and individual directors, officer and employees for a number of years. Mr. Quiros and Mr. Stenger received subpoenas from the SEC dated 3/19/14. Mr. Quiros was deposed by the SEC on May 22, 2014 and September 22, 2014 and Mr. Stenger was deposed on May 21, 2014 and September 17, 2014. The Subpoenas were issued pursuant to an SEC Formal Notice of Investigation.

Based upon the information received, the **Claim** herein was first made no later than March 19, 2014, the date of the subpoenas issued with respect to Quiros and Stenger. The subpoenas, issued by the SEC in connection with its formal investigation fall within the Policy definition of **Claim** under section II.B.(2)(b)(i). Notice of this matter was not provided to Ironshore until April 15, 2016, more than two years after the **Claim** was first made. Accordingly, as the **Claim** was not

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first made during the Policy Period (August 7, 2015 to August 7, 2016), there is no coverage for this matter under the Policy.<sup>2</sup>

Notwithstanding the foregoing, we also wish to advise you of other Policy terms and conditions which may limit or preclude coverage.

First, the Policy defines **Insured** to mean an **Insured Person** and the **Company**. “**Insured Person**” as defined in the Policy to mean “**Directors, Officers and Employees**”. The Policy defines “**Company**” to mean the **Corporation** and any **Subsidiary**”.

The “**Corporation**” under the Policy is Qdevelopment LLC, dba QResorts, Inc. It is unclear, based upon the information received to date, whether each of the entity defendants are in fact a **Subsidiary** of the **Corporation**.<sup>3</sup> Ironshore reserves all rights with respect to any entity defendant which falls outside the Policy definition of **Company** and **Subsidiary**. In addition, the Policy

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<sup>2</sup> While the **Claim** was first made on or about March 19, 2014, no notice was provided under the Policy then in effect, policy number 001100502 issued by Ironshore for the period of August 7, 2013 to August 7, 2014. The April 15, 2016 notice cannot be deemed a valid notice under the 13-14 Policy as that Policy required that any notice be provided no later than sixty (60) days after the end of the **Policy Period**. Here, notice was not provided until more than two years after the **Claim** was first made and a year and a half after the end of the 13-14 **Policy Period**.

<sup>3</sup> In this regard, please note that the Policy defines **Subsidiary** as follows:

1. any for-profit organization of which the **Company** has **Management Control** (“Controlled Entity”) on or before the inception of the **Policy Period** either directly or indirectly through one or more other Controlled Entities;
2. automatically any for-profit organization whose securities are not publicly traded and whose assets total less than twenty-five percent (25%) of the total consolidated assets of the **Company** as of the inception date of this Policy which the **Company** first had **Management Control** during the **Policy Period**, either directly or indirectly, through one or more other Controlled Entities. The **Corporation** shall provide the **Insurer** with full particulars of the new **Subsidiary** before the end of the **Policy Period**; or
3. an organization which the **Company** first had **Management Control** during the **Policy Period** (other than a for-profit organization described in paragraph (2) above), either directly or indirectly through one or more other Controlled Entities, but only upon the condition that within 90 days of its becoming a **Subsidiary**, the **Corporation** shall have provided the **Insurer** with full particulars of the new **Subsidiary** and agreed to any additional premium or amendment of the provisions of this Policy required by the **Insurer** relating to such new **Subsidiary**. Further, coverage as shall be afforded to the new **Subsidiary** is conditioned upon the **Corporation** paying when due any additional premium required by the **Insurer** relating to such new **Subsidiary**.
4. An organization becomes a **Subsidiary** when the **Company** has **Management Control** of such **Subsidiary**, either directly or indirectly, through one or more of its Controlled Entities. An organization ceases to be a **Subsidiary** when the **Company** ceases to have **Management Control** in such **Subsidiary**, either directly, or indirectly through one or more of its Controlled Entities.
5. In all events, coverage as is afforded under this Policy with respect to a **Claim** made against any **Subsidiary** and/or any **Insured Person** in their capacity as such with the **Subsidiary** shall only apply for **Wrongful Acts** committed or allegedly committed after the effective time the **Company** obtained **Management Control** of such **Subsidiary**, and prior to the effective time that the **Company** no longer has **Management Control** over such **Subsidiary**.

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does not provide coverage with respect to any individual defendant acting in a capacity with an entity that does not qualify as an **Insured** under the Policy.<sup>4</sup>

Second, in light of the relief sought by the SEC and the State of Vermont we note that the Policy definition of **Loss**, as amended by Endorsement No. 9, does not include:

- (1) civil or criminal fines or penalties imposed by law;
- (2) taxes;
- (3) any amount for which an **Insured** is not financially liable or which is without legal recourse to the Insured;
- .....
- (7) matters which may be deemed uninsurable under the law pursuant to which this Policy shall be construed; provided, however, that the foregoing exclusions shall not apply to **Costs of Defense**.

The SEC and the State of Vermont are seeking civil fines and penalties as well as disgorgement and restitution of funds, neither of which falls within the Policy definition of **Loss**.

Third, Exclusion III.A. provides that the **Insurer** shall not be liable to make any payment for **Loss** in connection with any **Claim** made against any **Insured**:

A. alleging, arising out of, based upon or attributable to:

- (1) an **Insured** gaining any profit, advantage or remuneration to which they were not legally entitled; provided however, this exclusion shall only apply when it is finally adjudicated that such conduct occurred; or
- (2) the deliberately fraudulent or criminal acts of an **Insured**; provided, however, this exclusion shall only apply when it is finally adjudicated that such conduct occurred;
- .....

Fourth, the date on which the SEC and the State of Vermont commenced their investigations is unclear. Please note, however that exclusion B. precludes coverage for any **Claim** alleging, arising out of, based upon or attributable to “any pending or prior civil, criminal, administrative or investigative proceeding ... as of the Pending and Prior date [July 7, 2011] or any **Wrongful Act** or **Related Wrongful Act** or any fact, circumstance or situation underlying or alleged in such proceeding or notice of charge.

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<sup>4</sup> Exclusion III.G. precludes coverage for claims “alleging, arising out of, based upon or attributable to a **Wrongful Act** of any **Insured Person** serving as a director, officer, trustee or governor of any entity other than the **Company** or an **Outside Entity**, even if such service is at the direction of the **Company**, unless otherwise specifically added by written endorsement to this Policy”.

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Finally, Ironshore reserves all rights with respect to the representations made and information provided by the **Insureds** in connection with the underwriting of the Policy. The SEC and the State of Vermont allege that the misuse of investor funds and misappropriation of monies commenced in 2008 and continued thereafter. The financial information provided to Ironshore for each policy year in which Ironshore issued a policy, including the Policy under which notice has been provided, is now in question in light of the present allegations. The initial application provided to Ironshore and signed by Quiros on 6/8/11 contained the following questions and responses:

12. a) Has there been, or is there now pending any claim(s), suit(s), investigation(s) or action(s) against the Applicant, its Subsidiaries, or any individual or other entity proposed for insurance arising out of (any director, officer, employee or entity liability matter, including securities matters and/or employment matters; or (2) any matter claimed against any person proposed for insurance in his or her capacity under the proposed policy?

The response "none" was checked.

- b) Does the Applicant, its Subsidiaries, or any director, officer or employee of the Applicant know of any act, error or omission, which might give rise to a claim(s) under the proposed policy?

Again, the response "none" was checked.

The application further provides that "any claim arising from any claims, facts, circumstances or situations required to be disclosed in response to 12.(a) – 12(c) above is excluded from the proposed insurance."

In addition to the foregoing, the Policy was initially underwritten based upon certain financials, the accuracy of which were warranted by Mr. Quiros, as Chairman of QResorts. Specifically, Mr. Quiros provided Ironshore with a letter dated July 7, 2011 which stated the following:

To Whom It may Concern:

Please accept this warranty that the financial statements dated 4/30/10 and titled "Jay Peak Inc. and Subsidiary Consolidated Balance Sheet as of April 30, 2010" and "Jay Peak Inc. And Subsidiary Consolidated Statements of Income and Accumulated Comprehensive Income for the year ended April 30, 2010" accompanying the application captioned above, and the amounts entered into the financial question on Page 2 of the application are true and representative.

Sincerely,  
[signature]  
Ariel Quiros  
Chairman  
QResorts, Inc.



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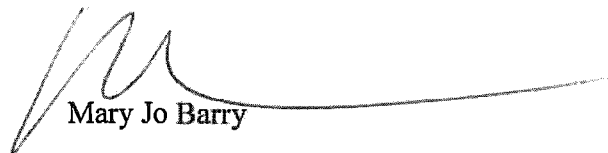
According to the complaints filed by the SEC and the State of Vermont, at the time these responses, representations and warranties were provided to Ironshore, the Insured had misappropriated investors funds to purchase Jay Peak; pledged investor funds as collateral for margin accounts, and comingled and misused investor funds by using the funds of one LP to pay costs at another LP.<sup>5</sup> To the extent the foregoing was known to any director, officer or employee of the defendants, Ironshore reserves all rights with respect to the application exclusion stated above.

In conclusion, this matter does not involve a **Claim** first made during the **Policy Period** and, accordingly falls outside the scope of coverage in its entirety. Ironshore reserves all rights under the Policy, at law and equity including the right to amend or supplement its position set forth herein.

Should you have any questions regarding this matter, please do not hesitate to contact the undersigned.

Very truly yours,

**D'AMATO & LYNCH, LLP**



Mary Jo Barry

cc: Christopher J. Cavallaro  
ARC Excess & Surplus, LLC  
Via email: ccavallaro@arcxs.com

H. Scott Fritts  
Via email: hscottfritts@yahoo.com

---

<sup>5</sup> One specific allegation, which Mr. Quiros appears to concede in his deposition testimony, is that Quiros misappropriated \$21.9 of investor funds to purchase the Jay Peak Resort in 2008. John Carpenter, a former controller at Jay Peak, Inc. submitted a Declaration to the SEC which is included among the exhibits to the SEC complaint. In that Declaration Mr. Carpenter states that he had concerns regarding the accounting practices, that he voiced his concerns to Mr. Stenger and, in particular, that he sent an email to Mr. Stenger dated August 13, 2010 in which he raised the problem that Phase II funds were being used to pay Phase I costs. Mr. Carpenter stated that his concerns regarding the use of funds was not alleviated and that he left the company in March 2011.



**MITCHELL SILBERBERG & KNUPP LLP**  
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June 16, 2016

**VIA E-MAIL AND U.S. MAIL**

Mary Jo Barry, Esq.  
D'Amato & Lynch, LLP  
Two World Financial Center  
225 Liberty Street  
New York, NY 10281

**Re: Insured: Qdevelopment LLC dba QResorts Inc.**  
**Insured Person: Ariel Quiros**  
**Policy No: 001100504**  
**Matters: SEC and Vermont Claims; Daccache v. Raymond James, et al.**  
**Claim No.: PRO00051098**

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Dear Ms. Barry:

This letter responds to the denial letters you sent to Mr. Quiros and his counsel on May 4, 2016 and May 24, 2016, in which you misstate the terms of the above-referenced Policy and the facts in an effort to justify Ironshore's bad faith denial of Mr. Quiros's claim. Undersigned counsel does not represent and does not purport to speak for any other person or entity who may have a claim under the Policy.

You correctly note that a "Claim" is defined in Endorsement 9, Definition B.2 to include a "formal civil, criminal, administrative or regulatory investigation of *an Insured Person*" after "service of a subpoena upon *such Insured Person*." However, you proceed to ignore the terms of the policy, and particularly the portions I have highlighted, as well as the facts, in denying Mr. Quiros's claim. The subpoena issued to Mr. Quiros was not in a matter in which *he* was identified as the subject of investigation in a formal notice (nor was Mr. Stenger identified as a subject of the investigation). There is no basis for asserting otherwise. Since service of a subpoena is only a claim when the *recipient* of the subpoena is also the *subject* of the formal investigation notice, the service of a subpoena on Mr. Quiros (or for that matter Mr. Stenger) was not a claim under the policy. Accordingly, your first premise is false.

Moreover, even if service of the subpoena was a claim, the Policy does not support your assertion that the subsequent lawsuits against Mr. Quiros by the SEC, the State of Vermont and various investors is deemed to be part of that *same* claim or is barred as part of the same or related wrongful acts under the Policy. You assert that no notice was given of the supposed claim when the subpoenas were served. Therefore Exclusion B, *which applies only when a notice of a claim is given in a prior period* insured by Ironshore, does not apply. (We note that you quite tellingly failed to quote this provision in making your related wrongful act/same claim



Mary Jo Barry, Esq.  
D'Amato & Lynch, LLP  
June 16, 2016  
Page 2

argument, instead opting to grossly mischaracterize what the policy says.) For the very same reason, the anti-stacking language in Section VII.A of Endorsement 9 does not apply. Simply put, **nothing** in the Policy supports the notion that the claims made when the SEC, the State of Vermont and the investors filed their actions against Mr. Quiros are barred, even assuming the earlier subpoena was a claim.

We trust that the other provisions you cited are not a basis for Ironshore's denial and refusal to defend Mr. Quiros, but are merely part of its boilerplate reservation of rights. You cannot seriously contend that Mr. Quiros, who is an officer and director of QResorts, is not an insured person. Loss limitations are not a basis for refusing to defend. Exclusion III.A on its face only applies if and when there has been a final adjudication of the matters giving rise to the exclusion, and is no basis for refusing to defend. You have no basis for asserting that the claim here is barred by the pending and prior date exclusion (which is Exclusion C, not B). Your reservations regarding the application are similarly baseless. If it is in fact denying coverage and a defense based on these exclusions, Ironshore is merely compounding its bad faith denial.

Although you have only responded to the tender of the Daccache suit, the same facts and policy provisions also apply with respect to the various civil actions filed by other investors against Mr. Quiros which have been tendered to you.

On behalf of Mr. Quiros, we hereby demand that Ironshore *immediately* withdraw its denial letter, and acknowledge and undertake its obligation to defend and/or reimburse Mr. Quiros for the costs of defending all of the tendered claims, which were tendered within 90 days of their being made. If Ironshore does not do so within 5 business days, Mr. Quiros shall take all steps necessary to secure his rights under and enforce the Policy.

This letter is without prejudice to any of Mr. Quiros's rights, all of which are expressly reserved.

Very truly yours,

A handwritten signature in cursive script, appearing to read 'Jean Pierre Nogue'.

Jean Pierre Nogue  
A Professional Corporation of  
MITCHELL SILBERBERG & KNUPP LLP

JPN/bag

cc: David Gordon, Esq.

**D'AMATO & LYNCH, LLP**  
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September 7, 2016

**Via Email:** [dbg@msk.com](mailto:dbg@msk.com)  
David B. Gordon  
Mitchell Silverberg and Knupp LLP  
12 East 49<sup>th</sup> Street  
New York, N.Y. 10017

Mr. Ariel Quiros  
**Via Email:** [A.quiros@att.net](mailto:A.quiros@att.net)

**Via Email:** [dlc2@clearyshahi.com](mailto:dlc2@clearyshahi.com)  
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Post Office Box 6740  
Rutland, VT 05702-6740

Mr. William Stenger  
**Via Email:** [Billstenger123@gmail.com](mailto:Billstenger123@gmail.com)

Re: Directors, Officers & Private Company Liability Insurance  
Insured : Qdevelopment LLC *dba* QResorts Inc.  
Matter : Wei, et al. v. Quiros, et al.  
Calerov. Raymond James Financial, Inc., et al.  
Claim No. : PRO00051098  
Policy No. : 001100504  
Our File No. : 851-82791

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Dear Gentlemen:

We have been retained by Ironshore Claims LLC on behalf of Ironshore Specialty Insurance Company (collectively "Ironshore") with respect to the above referenced matters. In this capacity we have reviewed the following matters:

- A Complaint captioned *Minggan Wei and Zhao Wei v. Ariel Quiros, et al.*, filed on July 20, 2016 in the State of Vermont Superior Court, Chittenden Unit, Civil Division, Case No. 602-7-16CNCV ("Wei Action");
- A Complaint captioned *Caterina Gonzalez Calero, et al. v. Raymond James & Associates, Inc.*, filed on July 13, 2016 in the Circuit Court of the Eleventh Judicial Circuit in and for Miami-Dade County, Florida, General Jurisdiction Division, Case No. 2016-017840 CA 01 ("Calero Action" and with the Wei Action, "Actions");

September 7, 2016  
Page No. 2

We have reviewed these materials under the Directors, Officers & Private Company Liability Insurance Policy No. 001100504 issued to Qdevelopment dba QResorts, Inc. ("Qdevelopment") for the period of August 7, 2015 through August 7, 2016 ("Policy"). This letter is intended to supplement our prior correspondence of May 4, 2016, May 24, 2016, and July 21, 2016; Ironshore's position as set forth in the prior correspondence is deemed incorporated herein.

Based upon all the information provided and reviewed to date, it appears these matters are excluded from coverage under the Policy terms and conditions. To the extent that Ironshore learns of additional information which may indicate that the application of other provisions, exclusions or endorsements in the Policy would be appropriate, Ironshore reserves the right to amend and/or supplement this letter accordingly.

### **Wei Action**

The Wei Action is brought by Plaintiffs Minggan Wei and Zhao Wei, Chinese national siblings who came to the United States to pursue their education. In an effort to gain permanent residency in the United States, plaintiffs purportedly sought an investment opportunity that would entitle them to receive permanent resident status through the EB-5 immigrant investor program (the "EB-5 Program").

The Defendants include Ariel Quiros; William Stenger; Charles Leamy; Raymond James & Associates, Inc.; Joel Burstein; State of Vermont Department of Financial Regulation; Peak CM, LLC; Gardner Kilcoyne Architects, P.C.; White + Burke Real Estate Investment Advisors, Inc.; Q Burke Mountain Resort, Hotel and Conference Center, L.P.; and Does 1 through 10. The Wei Action sets forth causes of action of violation of the Vermont Uniform Securities Act, fraudulent inducement, fraudulent concealment, aiding and abetting fraud (two counts), violation of the Vermont Consumer Protection Act, breach of fiduciary duty, aiding and abetting breach of fiduciary duty (two counts), negligence, conversion, unjust enrichment, aiding and abetting unjust enrichment, and civil conspiracy. The Wei Action seeks compensatory, exemplary, and treble damages, interest, fees and other relief the court deems proper.

The Wei Action alleges that William Stenger and Charles Leamy induced the Weis to invest \$520,000 each to become limited partners in Q Burke Mountain Resort, Hotel and Conference Center, L.P. ("Q Burke"). Plaintiffs were allegedly not told that Stenger and Ariel Quiros had been misusing, commingling and stealing investors' money for seven years and that they were under intense scrutiny from the SEC and the Vermont government. Plaintiffs allege that had they been informed of the fraudulent scheme and the imminent SEC enforcement action, they would not have invested in the project. Instead, allegedly days after the Weis completed funding their investment, the SEC and the State of Vermont brought actions against Quiros, Stenger and all of the limited partnerships and companies with which they were affiliated, with Q Burke placed into receivership and construction of the Q Burke Hotel halted. As a result of the fraudulent conduct, the Wei Action alleges that the Weis are now in grave danger of being forced to leave the country once they are finished with their education, and alleges that they will go home without their hard-earned savings without judicial intervention.

September 7, 2016  
Page No. 3

### Calero Action

The Calero Action is brought by Caterina Gonzalez Calero, among others, against Raymond James & Associates, Inc., Raymond James Financial Services, Inc., Raymond James Financial, Inc., Joel Burstein, Ariel Quiros, and William Stenger. The Calero Action sets forth numerous causes of action including multiple counts of negligent supervision, breach of fiduciary duty, conversion, civil theft, accounting, and civil conspiracy.

The Calero Action makes largely the same factual allegations as the Wei Action, with a significant focus on the alleged fraudulent misuse and embezzlement of margin loan funds by Messrs. Quiros and Stenger with the assistance of Raymond James entities.

### The Policy

The Policy provides for a Limit of Liability of \$10,000,000 aggregate for all **Claims**<sup>1</sup> made or deemed made during the **Policy Period**, subject to a \$50,000 retention amount.

Section I of the Policy, Insuring Agreements, provides as follows:

- A. The **Insurer** shall pay on behalf of an **Insured Person** all **Loss** which the **Insured Person** shall be legally obligated to pay as a result of a **Claim** (including an **Employment Practices Claim**) first made against the **Insured Person** during the **Policy Period** or the **Discovery Period** for a **Wrongful Act**, and reported to the **Insurer** pursuant to Section VII, except for any **Loss** which the **Company** actually pays as indemnification.
- B. The **Insurer** shall pay on behalf of the **Company** all **Loss** which the **Company** shall be legally obligated to pay as a result of a **Claim** (including an **Employment Practices Claim**) first made against an **Insured Person** during the **Policy Period** or the **Discovery Period** for a **Wrongful Act** reported to the **Insurer** pursuant to Section VII, but only to the extent the **Company** is required or permitted by law, to the fullest extent possible, to indemnify the **Insured Person**.
- C. The **Insurer** shall pay on behalf of the **Company** all **Loss** which the **Company** shall be legally obligated to pay as a result of a **Claim** (including an **Employment Practices Claim**) first made against the **Company** during the **Policy Period** or the **Discovery Period** for a **Wrongful Act**, and reported to the **Insurer** pursuant to Section VII.

The Policy, as amended by endorsement 9, defines **Claim** as follows:

- B. (1) **“Claim”** shall mean a civil, criminal, governmental, regulatory, administrative, or arbitration proceeding made against any **Insured** seeking monetary or non-monetary relief and

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<sup>1</sup> Bolded words have the same meaning as that set forth in the Policy.

September 7, 2016  
Page No. 4

commenced by the service of a complaint or similar pleading, the return of an indictment, or the receipt or the filing of a notice of charges or similar document...

- (2) **Claim** shall also mean a formal civil, criminal, administrative or regulatory investigation of an **Insured Person**:
- (a) Once such **Insured Person** is identified in writing by such investigation authority as a person against whom a proceeding described in B.(1) above may be commenced;
  - (b) In the case of an investigation by the Securities and Exchange Commission ("SEC") or a similar state or foreign authority, after
    - (i) The service of a subpoena upon such **Insured Person**;

....

As we have previously advised, we have been provided with a number of subpoenas which indicate that the SEC has been investigating Qdevelopment, QResorts and the various Jay Peak entities and individual directors, officer and employees for a number of years. Mr. Quiros and Mr. Stenger received subpoenas from the SEC dated March 19, 2014. Mr. Quiros was deposed by the SEC on May 22, 2014 and September 22, 2014 and Mr. Stenger was deposed on May 21, 2014 and September 17, 2014. The Subpoenas were issued pursuant to an SEC Formal Notice of Investigation. In addition, Ironshore was previously provided with notice regarding the action commenced by the SEC in the United States District Court for the Southern District of Florida ("SEC Action") and the action commenced by the State of Vermont in the Superior Court for the State of Vermont ("Vermont Action"). The **Wrongful Acts** alleged in the Actions are the same as the **Wrongful Acts** that are the subject of the SEC investigation and subpoenas, the SEC Action and the Vermont Action and, as such, constitute **Related Wrongful Acts** under the Policy. The Policy defines **Related Wrongful Acts** as follows:

**"Related Wrongful Acts"** shall mean **Wrongful Acts** which are the same, related or continuous, or **Wrongful Acts** which arise from a common nucleus of facts. **Claims** can allege **Related Wrongful Acts** regardless of whether such **Claims** involve the same or different claimants, **Insureds** or legal causes of action.

As the SEC Investigation, the SEC Action, the Vermont Action and the Actions all allege **Related Wrongful Acts**, they are deemed under the Policy terms to be a single **Claim**, and deemed to have been first made on the earliest date on which any of them was first made. Accordingly, based upon all the information received to date, the **Claim** herein was first made no later than March 19, 2014, the date of the subpoenas issued with respect to Quiros and Stenger. Notice of this matter was not provided to Ironshore until April 15, 2016 (the date of notice with respect to the SEC Action), more than two years after the **Claim** was first made. Accordingly, as the **Claim** was not first made

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during the Policy Period (August 7, 2015 to August 7, 2016), there is no coverage for this matter under the Policy.<sup>2</sup>

Notwithstanding the foregoing, we also wish to advise you of other Policy terms and conditions which may limit or preclude coverage.

First, in light of the relief sought we note that the Policy definition of **Loss**, as amended by Endorsement No. 9, does not include:

- (1) civil or criminal fines or penalties imposed by law;
- (2) taxes;
- (3) any amount for which an **Insured** is not financially liable or which is without legal recourse to the Insured;
- .....
- (7) matters which may be deemed uninsurable under the law pursuant to which this Policy shall be construed; provided, however, that the foregoing exclusions shall not apply to **Costs of Defense**.

Second, Exclusion III.A. provides that the **Insurer** shall not be liable to make any payment for **Loss** in connection with any **Claim** made against any **Insured**:

A. alleging, arising out of, based upon or attributable to:

- (1) an **Insured** gaining any profit, advantage or remuneration to which they were not legally entitled; provided however, this exclusion shall only apply when it is finally adjudicated that such conduct occurred; or
- (2) the deliberately fraudulent or criminal acts of an **Insured**; provided, however, this exclusion shall only apply when it is finally adjudicated that such conduct occurred;
- .....

Third, the date on which the SEC and the State of Vermont commenced their investigations is unclear. Please note, however that exclusion B. precludes coverage for any **Claim** alleging, arising out of, based upon or attributable to “any pending or prior civil, criminal, administrative or investigative proceeding ... as of the Pending and Prior date [July 7, 2011] or any **Wrongful Act** or **Related Wrongful Act** or any fact, circumstance or situation underlying or alleged in such proceeding or notice of charge.

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<sup>2</sup> While the **Claim** was first made on or about March 19, 2014, no notice was provided under the Policy then in effect, policy number 001100502 issued by Ironshore for the period of August 7, 2013 to August 7, 2014. The April 15, 2016 notice cannot be deemed a valid notice under the 13-14 Policy as that Policy required that any notice be provided no later than sixty (60) days after the end of the **Policy Period**. Here, notice was not provided until more than two years after the **Claim** was first made and a year and a half after the end of the August 7, 2013- August 7, 2014 **Policy Period**.



September 7, 2016

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Fourth, the Policy defines **Insured** to mean an **Insured Person** and the **Company**. “**Insured Person**” as defined in the Policy to mean “**Directors, Officers and Employees**”. The Policy defines “**Company**” to mean the **Corporation** and any **Subsidiary**. The Policy does not provide coverage with respect to any individual defendant acting in a capacity with an entity that does not qualify as an **Insured** under the Policy.<sup>3</sup>

Finally, Ironshore reserves all rights with respect to the representations made and information provided by the **Insureds** in connection with the underwriting of the Policy. The Actions allege that the misuse of investor funds and misappropriation of monies commenced in 2008 and continued thereafter. The financial information provided to Ironshore for each policy year in which Ironshore issued a policy, including the Policy under which notice has been provided, is now in question in light of the present allegations. The initial application provided to Ironshore and signed by Quiros on 6/8/11 contained the following questions and responses:

12. a) Has there been, or is there now pending any claim(s), suit(s), investigation(s) or action(s) against the Applicant, its Subsidiaries, or any individual or other entity proposed for insurance arising out of (any director, officer, employee or entity liability matter, including securities matters and/or employment matters; or (2) any matter claimed against any person proposed for insurance in his or her capacity under the proposed policy?

The response “none” was checked.

- b) Does the Applicant, its Subsidiaries, or any director, officer or employee of the Applicant know of any act, error or omission, which might give rise to a claim(s) under the proposed policy?

Again, the response “none” was checked.

The application further provides that “any claim arising from any claims, facts, circumstances or situations required to be disclosed in response to 12.(a) – 12(c) above is excluded from the proposed insurance.”

In addition to the foregoing, the Policy was initially underwritten based upon certain financials, the accuracy of which were warranted by Mr. Quiros, as Chairman of QResorts. Specifically, Mr. Quiros provided Ironshore with a letter dated July 7, 2011 which stated the following:

To Whom It may Concern:

Please accept this warranty that the financial statements dated 4/30/10 and titled “Jay Peak Inc. and Subsidiary Consolidated Balance Sheet as of April 30, 2010” and “**Jay Peak Inc. And Subsidiary Consolidated Statements of Income and**

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<sup>3</sup> Exclusion III.G. precludes coverage for claims “alleging, arising out of, based upon or attributable to a **Wrongful Act** of any **Insured Person** serving as a director, officer, trustee or governor of any entity other than the **Company** or an **Outside Entity**, even if such service is at the direction of the **Company**, unless otherwise specifically added by written endorsement to this Policy”.

September 7, 2016  
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**Accumulated** Comprehensive Income for the year ended April 30, 2010” accompanying the application captioned above, and the amounts entered into the financial question on Page 2 of the application are true and representative.

[signed by Ariel Quiros as chairman of QResorts]

According to the Actions, at the time these responses, representations and warranties were provided to Ironshore, the Insured had misappropriated investors funds to purchase Jay Peak; pledged investor funds as collateral for margin accounts, and comingled and misused investor funds by using the funds of one LP to pay costs at another LP.<sup>4</sup> To the extent the foregoing was known to any director, officer or employee of the defendants, Ironshore reserves all rights with respect to the application exclusion stated above.

In conclusion, these matters do not involve a **Claim** first made during the **Policy Period** and, accordingly falls outside the scope of coverage in its entirety. Ironshore reserves all rights under the Policy, at law and equity including the right to amend or supplement its position set forth herein.

Should you have any questions regarding this matter, please do not hesitate to contact the undersigned.

Very truly yours,

**D'AMATO & LYNCH, LLP**



Mary Jo Barry

cc: Christopher J. Cavallaro  
ARC Excess & Surplus, LLC  
Via email: ccavallaro@arcxs.com

H. Scott Fritts  
Via email: hscottfritts@yahoo.com

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<sup>4</sup> John Carpenter, a former controller at Jay Peak, Inc. submitted a Declaration to the SEC which is included among the exhibits to the SEC complaint. In that Declaration Mr. Carpenter states that he had concerns regarding the accounting practices, that he voiced his concerns to Mr. Stenger and, in particular, that he sent an email to Mr. Stenger dated August 13, 2010 in which he raised the problem that Phase II funds were being used to pay Phase I costs. Mr. Carpenter stated that his concerns regarding the use of funds was not alleviated and that he left the company in March 2011.

**D'AMATO & LYNCH, LLP**  
ATTORNEYS AT LAW

GEORGE G. D'AMATO (2007)  
LUKE D. LYNCH (1999)  
FOUNDING PARTNERS

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NEW YORK, N.Y. 10281

LONDON OFFICE

LLOYD'S  
ONE LIME STREET  
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MIBarry@Damato-Lynch.com  
Direct Dial: 212-909-2188

**June 23, 2016**

Via Email: jpn@msk.com

Jean Pierre Nogues  
Mitchell Silberberg & Knupp LLP  
11377 West Olympic Boulevard  
Los Angeles, California 90064-1683

Re: Directors, Officers & Private Company Liability Insurance  
Insured : Qdevelopment LLC *dba* QResorts Inc.  
Matter : Daccache v. Raymond James Financial, et al  
Claim No. : PRO00051098  
Policy No. : 001100504 (the "Policy")  
Our File No. : 851-82791

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Dear Mr. Nogues:

As you know, we have been retained by Ironshore Claims LLC on behalf of Ironshore Specialty Insurance Company (collectively "Ironshore") with respect to the above referenced matter. This responds to your letter dated June 16, 2016 and supplements, and incorporates by reference, all prior correspondence regarding this matter.

Based upon all the information provided and reviewed to date, we continue to believe that this matter is excluded from coverage under the Policy terms and conditions for the reasons set forth in greater detail below. To the extent that Ironshore learns of additional information which may indicate that the application of other provisions, exclusions or endorsements in the Policy would be appropriate, Ironshore reserves the right to amend and/or supplement this letter accordingly.

In relevant part, the Policy, as amended by endorsement 9, defines states as follows:

- (2) **Claim** shall also mean a formal civil, criminal, administrative or regulatory investigation of an **Insured Person**:
  - (a) Once such **Insured Person** is identified in writing by such investigation authority as a person against whom a proceeding described in B.(1) above may be commenced;

June 23, 2016  
Page No. 2

- (b) In the case of an investigation by the Securities and Exchange Commission (“SEC”) or a similar state or foreign authority, after
  - (i) The service of a subpoena upon such **Insured Person**;
  - ....

In your recent correspondence you selectively quote and misconstrue the provision. Section II.(i)B.(2), as set forth in endorsement 9, refers to the situation of an SEC investigation and provides that a **Claim** is made when an **Insured Person** is served with a subpoena.<sup>1</sup> Here, Mr. Quiros was served with a subpoena from the SEC in March 2014 and deposed in May and September of 2014. The facts fit squarely within the definition of **Claim**.

Your contention that the subsequent lawsuits by the SEC, the State of Vermont and various investors is unrelated to the SEC subpoenas is baseless considering the broad definition of “**Related Wrongful Acts**” set forth in the Policy. The Policy defines **Related Wrongful Acts** as follows:

“**Related Wrongful Acts**” shall mean **Wrongful Acts** which are the same, related or continuous, or **Wrongful Acts** which arise from a common nucleus of facts. **Claims** can allege **Related Wrongful Acts** regardless of whether such **Claims** involve the same or different claimants, **Insureds** or legal causes of action.

The SEC Action, the Vermont Action and the Investor Actions all allege **Wrongful Acts** which arise from a “common nucleus of facts” – the facts and circumstances surrounding the purchase of Jay Peak using investor funds raised through an EB-5 offering. As the SEC Investigation, the SEC Action, the Vermont Action and the Investor Actions all allege **Related Wrongful Acts**, they are deemed under the Policy terms to be a single **Claim** which was first made on the earliest date on which any of them was first made. Since these actions are related to the Subpoenas, the **Claim** herein was first made no later than March 19, 2014, the date of the subpoenas issued to Quiros. Providing timely notice of a Claim to Ironshore is a condition precedent to the Insureds’ rights under this Policy. Notice of this matter was first provided to Ironshore on April 15, 2016 (the date of notice of the SEC Action), more than two years after the **Claim** was first made. As the **Claim** was not first made during the Policy Period (August 7, 2015 to August 7, 2016) and the Insureds failed to timely provide notice to Ironshore, there is no coverage for this matter under the Policy. Your contention that, even if the earlier subpoena was a **Claim**, “nothing in the Policy” supports Ironshore’s position that coverage for same is “barred” ignores both the notice provisions of the Policy set forth in Section VII and the Policy insuring clause.

Finally, your conclusory statement that Ironshore’s comments regarding the application are “baseless” ignores the allegations of the complaints, the timing of the alleged **Wrongful Acts** and, in particular, the fact that it is alleged that Mr. Quiros misappropriated more than \$50 million in funds including the funds he used to purchase Jay Peak in 2008. Your statement also ignores the testimony taken by the SEC, including that of Mr. Quiros. Ironshore relied upon the application

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<sup>1</sup> Of note, despite its request for the same, Ironshore has not yet been provided with a copy of any Formal SEC Notice of Investigation.

June 23, 2016

Page No. 3

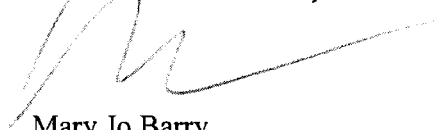
signed by Mr. Quiros and the warranties Mr. Quiros provided regarding the accuracy of certain financials. The allegations set forth in the SEC, Vermont and Investor actions, together with the testimony of Mr. Quiros, all raise issues regarding the accuracy of the information provided to Ironshore and relied upon by Ironshore in the underwriting of the policy.

For all of the above reasons, Ironshore continues to deny coverage for this matter as it does not involve a **Claim** first made during the **Policy Period** and, accordingly falls outside the scope of coverage in its entirety. Ironshore reserves all rights under the Policy, at law and equity including the right to amend or supplement its position set forth herein.

Should you have any questions regarding this matter, please do not hesitate to contact the undersigned.

Very truly yours,

**D'AMATO & LYNCH, LLP**

A handwritten signature in black ink, appearing to read 'Mary Jo Barry', is written over the printed name.

Mary Jo Barry

Law Offices of Laura Each Nguyen, PC

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August 17, 2016

Jean Pierre Nogues  
Mitchell Silberberg & Knupp  
11377 West Olympic Boulevard  
Los Angeles, CA 90064

RE: Yang adv. Value Plus Global et al

Dear Mr. Nogues:

I am receipt of your letter dated August 10, 2016, which did not arrive at my office until yesterday August 16, 2016, and I am rather taken aback by the tone.

As I have indicated to you both in our written correspondence as well our telephone conversations, my clients have always been willing to comply with the inspection obligations provided assurances are taken to ensure my clients' privacy. We have never denied your client access to the books and records of any of the Value Plus entities and have specifically provided you with dates on which said production can take place. Given the fact that this is a private company, we must require that she sign a confidentiality agreement, but said requirement is well established by California case law. Should you wish to go forward with your ill-advised lawsuit, rest assured we will seek all remedies available to us at law and equity.

Second, your statements that my clients' offices are closed are untrue and a blatant misrepresentation. My clients' offices have been in the same place that they have been since they retained me and I was there yesterday. I do not know where you are getting your information from, but it is not accurate.

Third, my client has informed me that Ms. Yang has previously appeared at my clients' offices during the lunch hour when management wasn't present, instructed the staff provide her records, despite the fact that she had no authority give such an instruction. Apparently, not only was she allowed access to all requested documents, but she used the companies' equipment and its employees to make copies of all the documents she wanted at that time without the consent of my clients. This conduct is unacceptable and will not be tolerated in the future.

We have provided you with three dates on which the inspection may take place. Please let me know which of dates you prefer so that I can make the necessary

Law Offices of Laura Each Nguyen, PC

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arrangements. If you need further dates, please let me know that as well. However, if you wish to conduct the inspection on Thursday, I need to know that today.

Very truly yours,

/s/ Laura Nguyen

Laura Each Nguyen

**UNITED STATE DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA**

<p><b>SECURITIES AND EXCHANGE COMMISSION</b></p> <p><b>Plaintiff,</b></p> <p><b>v.</b></p> <p><b>ARIEL QUIROS, WILLIAM STENGER, JAY PEAK, INC., Q RESORTS, INC., JAY PEAK HOTEL SUITES L.P., JAY PEAK HOTEL SUITES PHASE II L.P., JAY PEAK MANAGEMENT, INC., JAY PEAK PENTHOUSE SUITES L.P., JAY PEAK GP SERVICES, INC., JAY PEAK GOLF AND MOUNTAIN SUITES L.P., JAY PEAK GP SERVICES GOLF, INC., JAY PEAK LODGE AND TOWNHOUSES L.P., JAY PEAK GP SERVICES LODGE, INC., JAY PEAK HOTEL SUITES STATESIDE L.P., JAY PEAK GP SERVICES STATESIDE, INC., JAY PEAK BIOMEDICAL RESEARCH PARK L.P., AnC BIO VERMONT GP SERVICES, LLC,</b></p> <p><b>Defendants, and</b></p> <p><b>JAY CONSTRUCTION MANAGEMENT, INC., GSI OF DADE COUNTY, INC., NORTH EAST CONTRACT SERVICES, INC., Q BURKE MOUNTAIN RESORT, LLC,</b></p> <p><b>Relief Defendants.</b></p>	<p><b>CASE NO. 16-CV-21301-GAYLES</b></p> <p><b>DECLARATION OF ARIEL QUIROS</b></p>
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I, Ariel Quiros, pursuant to 28 U.S.C. § 1746, hereby declare as follows:

1. I am the sole shareholder of Q Resorts Inc. (“Q Resorts”), which wholly owns Jay Peak, Inc. (“JPI”)
2. I understand that Ironshore asserts it was not given timely notice of the SEC’s investigation relating to JPI.



That is incorrect.

3. William Kelly, who was the Chief Operating officer of JPI, was in charge of communicating with Ironshore. I directed Mr. Kelly to provide notice of the SEC investigation to Ironshore.

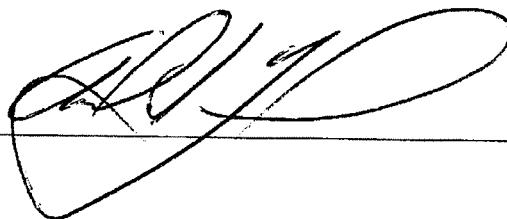
4. Further, I am aware that Mr. Kelly did, in fact, give notice to Ironshore.

5. Among the reasons why I am certain that Mr. Kelly provided notice to Ironshore is that Scott Fritts, who acted as the representative of Ironshore, told me he was aware of the SEC investigation after it commenced. When Mr. Fritts telephoned my office at that time, he asked me how things were going with respect to the SEC investigation. Mr. Fritts, of course, knew about the SEC investigation when we spoke by phone and, indeed, could not have asked about it had he not been informed about it previously by Mr. Kelly.

6. Although I do not know the exact date of my call with Mr. Fritts, it most definitely took place before August 2014.

I declare under penalty of perjury that the foregoing are true and correct.

Dated: Miami, Florida  
August \_\_, 2016

A handwritten signature in black ink, appearing to read 'Ariel Quiros', is written over a horizontal line.

Ariel Quiros

UNITED STATE DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

SECURITIES AND EXCHANGE  
COMMISSION

**Plaintiff,**

**v.**

**ARIEL QUIROS, WILLIAM STENGER,  
JAY PEAK, INC., Q RESORTS, INC., JAY  
PEAK HOTEL SUITES L.P., JAY PEAK  
HOTEL SUITES PHASE II L.P., JAY  
PEAK MANAGEMENT, INC., JAY PEAK  
PENTHOUSE SUITES L.P., JAP PEAK GP  
SERVICES, INC., JAY PEAK GOLF AND  
MOUNTAIN SUITES L.P., JAY PEAK GP  
SERVICES GOLF, INC., JAY PEAK  
LODGE AND TOWNHOUSES L.P., JAY  
PEAK GP SERVICES LODGE, INC., JAY  
PEAK HOTEL SUITES STATESIDE L.P.,  
JAY PEAK GP SERVICES STATESIDE,  
INC., JAY PEAK BIOMEDICAL  
RESEARCH PARK L.P., AnC BIO  
VERMONT GP SERVICES, LLC,**

**Defendants, and**

**JAY CONSTRUCTION MANAGEMENT,  
INC., GSI OF DADE COUNTY, INC.,  
NORTH EAST CONTRACT SERVICES,  
INC., Q BURKE MOUNTAIN RESORT,  
LLC,**

**Relief Defendants.**

**CASE NO. 16-CV-21301-GAYLES**

**DECLARATION OF KENNETH  
STRAUSS**

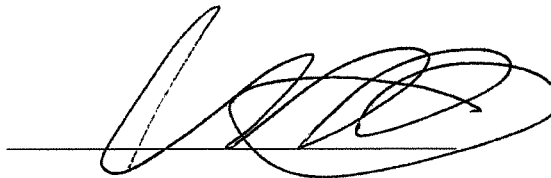
I, Kenneth Strauss, pursuant to 28 U.S.C. § 1746, hereby declare as follows:

1. I am a Certified Public Accountant and a Director of Taxation and Personal Financial Planning at Berkowitz Pollack Brant.
2. During a meeting that I attended with Ariel Quiros and William Kelly, there was discussion of the D&O insurance policy held by Jay Peak. I specifically recall that, in that

meeting, Mr. Kelly stated that he had notified Ironshore of an investigation of Jay Peak that was being conducted by the SEC and that Ironshore was on notice of the investigation.

Dated: Ft. Lauderdale, Florida

August 29, 2016

A handwritten signature in black ink, consisting of several overlapping loops and a long horizontal stroke at the end, positioned above a horizontal line.

Kenneth Strauss

# EXHIBIT 2



**IRONSHORE INDEMNITY INC.**

(A Stock Company)

Mailing Address:

PO Box 3407

New York, NY 10008

(877) IRON411

Policy # 001100502

Expiring Policy # 001100501

THIS POLICY IS ISSUED BY THE STOCK INSURANCE COMPANY SELECTED ABOVE

**DIRECTORS, OFFICERS AND PRIVATE COMPANY LIABILITY INSURANCE POLICY INCLUDING  
EMPLOYMENT PRACTICES CLAIMS COVERAGE  
WITH COSTS OF DEFENSE INCLUDED IN THE LIMIT OF LIABILITY**

**DECLARATIONS**

This is a Claims Made and Reported Policy, please read it carefully. Amounts incurred as Costs of Defense shall reduce the limit of liability available to pay judgments or settlements and shall also be applied against the retention. This Policy does not provide for any duty by the Insurer to defend those Insured under the Policy.

<p><b>ITEM 1. COMPANY NAME AND PRINCIPAL ADDRESS:</b></p> <p>Qdevelopment LLC dba QResorts Inc 111 NE 1st Street Miami, FL 33132</p>	<p><b>ITEM 2. POLICY PERIOD:</b></p> <p>(a) Inception Date – July 07, 2013  (b) Expiration Date – July 07, 2014  at 12:01 a.m. both dates at the Principal Address in ITEM 1.</p>
<p><b>ITEM 3. LIMIT OF LIABILITY (inclusive of Costs of Defense):</b></p> <p>\$10,000,000 aggregate limit of liability for all Claims made or deemed made during the Policy Period.</p>	
<p><b>ITEM 4. RETENTIONS:</b></p> <p>(a) Claims other than an <b>Employment Practices Claim</b> or a <b>Securities Claim</b> \$50,000  (b) <b>Employment Practices Claim:</b> \$75,000  (c) <b>Securities Claim:</b> \$50,000  (d) A Retention shall not apply to a Non Indemnifiable Loss.</p>	
<p><b>ITEM 5. PREMIUM</b></p> <p>Total Premium \$49,925.00</p>	

**ITEM 6. FORMS AND ENDORSEMENTS ATTACHED AT ISSUANCE:**

1. Florida Amendatory Endorsement
2. OFAC Compliance Notice
3. Nuclear Energy Liability Exclusion Endorsement (Broad Form)
4. Captive Insurance Company Exclusion
5. Commissions Exclusion
6. Absolute Bodily Injury and Property Damage Exclusion
7. Professional Errors and Omissions Exclusion
8. Severability of the Application Endorsement
9. ARC Private Form Amendatory Endorsement

**ITEM 7. PENDING AND PRIOR DATE:** July 07, 2011

**ITEM 8. INSURER:**

**ADDRESS:** c/o Ironshore Insurance Services, LLC  
One State Street Plaza  
7<sup>th</sup> Floor  
New York, NY 10004

**ITEM 9. BROKER**

**ADDRESS:**

Christopher Ruecker  
Arc Excess & Surplus, LLC (Garden City)  
113 South Service Road  
Jericho, NY 11753  
Phone: (516) 408-1838  
Email: cruecker@arcxs.com  
**LICENSE NUMBER:** N/A

The Declarations, the signed and completed **Application** and the Policy, with endorsements, will constitute the contract between the **Insured** and the **Insurer** and this Policy is not valid unless signed below by a duly authorized representative of the Insurer.

**Date:** January 6, 2014

**Issuing Office:** N/A

**By:**   
**Authorized Representative**

**Issued Date:** N/A



## IRONSHORE INDEMNITY INC.

(A Stock Company)

Mailing Address:

PO Box 3407

New York, NY 10008

(877) IRON411

Policy Number: 001100502

**THIS IS A CLAIMS MADE AND REPORTED POLICY  
WITH COSTS OF DEFENSE INCLUDED IN THE LIMIT OF LIABILITY  
PLEASE READ THE ENTIRE POLICY CAREFULLY**

## **DIRECTORS, OFFICERS AND PRIVATE COMPANY LIABILITY INSURANCE POLICY (INCLUDING EMPLOYMENT PRACTICES CLAIMS COVERAGE)**

In consideration of the payment of the premium and in reliance upon all statements made and information furnished to the **Insurer** shown in the Declarations, including the statements made in the **Application**, and subject to all terms, conditions and limitations of this Policy, the **Insureds** and **Insurer** agree:

### **Section I. Insuring Agreements**

- A.** The **Insurer** shall pay on behalf of an **Insured Person** all **Loss** which the **Insured Person** shall be legally obligated to pay as a result of a **Claim** (including an **Employment Practices Claim**) first made against the **Insured Person** during the **Policy Period** or the Discovery Period for a **Wrongful Act**, and reported to the **Insurer** pursuant to Section VII, except for any **Loss** which the **Company** actually pays as indemnification.
- B.** The **Insurer** shall pay on behalf of the **Company** all **Loss** which the **Company** shall be legally obligated to pay as a result of a **Claim** (including an **Employment Practices Claim**) first made against an **Insured Person** during the **Policy Period** or the Discovery Period for a **Wrongful Act** reported to the **Insurer** pursuant to Section VII, but only to the extent the **Company** is required or permitted by law, to the fullest extent possible, to indemnify the **Insured Person**.
- C.** The **Insurer** shall pay on behalf of the **Company** all **Loss** which the **Company** shall be legally obligated to pay as a result of a **Claim** (including an **Employment Practices Claim**) first made against the **Company** during the **Policy Period** or the Discovery Period for a **Wrongful Act**, and reported to the **Insurer** pursuant to Section VII.

### **Section II. Definitions**

- A.** "**Application**" shall mean each and every signed application submitted to the **Insurer** for consideration of insurance together with any attachments to such applications, other materials submitted therewith or incorporated therein, and any other documents submitted in connection with the underwriting of this Policy. "**Application**" shall also mean any public documents filed by the **Company** within the past 36 months with any federal, state, local or foreign governmental entity.
- B.** "**Claim**" shall mean a civil, criminal, governmental, regulatory, administrative, or arbitration proceeding made against any **Insured** seeking monetary or non-monetary relief and commenced by the service of a

- complaint or similar pleading, the return of an indictment, or the receipt or the filing of a notice of charges or similar document, including any proceeding initiated against any **Insured** before the U.S. Equal Employment Opportunity Commission (“EEOC”), or any similar governmental body, or other written demand for monetary or non-monetary relief made against any **Insured**. However, in no event shall the term “**Claim**” include any labor or grievance proceeding which is subject to a collective bargaining agreement.
- C. “**Company**” shall mean the **Corporation** and any **Subsidiary**.
- D. “**Corporation**” shall mean the entity named in Item 1 of the Declarations.
- E. “**Costs of Defense**” shall mean reasonable and necessary legal fees, costs and expenses incurred in the investigation, defense or appeal of any **Claim**, including the costs of an appeal bond, attachment bond or similar bond (but the **Insurer** shall not have any obligation to apply for or furnish such bonds); provided, however, **Costs of Defense** shall not include salaries, wages, overhead or benefit expenses associated with any **Insured**.
- F. “**Directors**” and “**Officers**” shall mean all persons who were, now are, or shall be directors and/or officers (or foreign equivalent) of the **Company**.
- G. “**Domestic Partner**” shall mean any natural person qualifying as a domestic partner under the provisions of any applicable federal, state or local law or under the provisions of any formal program established by the **Company**.
- H. “**Employee**” shall mean any past, present or future employee of the **Company**, including any part-time, seasonal or temporary employee, acting solely in his or her capacity as such. Any person leased to the **Company** shall also be an **Employee**, but only if the **Company** indemnifies such leased person in the same manner as is provided to the **Company’s** permanent employees. Any person hired by contract to perform work for the **Company**, or who is an independent contractor for the **Company**, shall also be an **Employee**, but only if the **Company** indemnifies the person in the same manner as is provided to the **Company’s** permanent employees.
- I. “**Employment Practices Claim**” shall mean any **Claim** brought by or on behalf of any past, present or future **Employee** of the **Company** or an **Outside Entity**, or any applicant for employment with the **Company** or an **Outside Entity** alleging an **Employment Practices Wrongful Act**. **Employment Practices Claim** shall also mean a **Claim** brought by or on behalf of any customer or client of the **Company** alleging discrimination, sexual harassment or violation of an individual’s civil rights relating to such discrimination or sexual harassment.
- J. “**Employment Practices Wrongful Act**” shall mean:
- (1) adverse or unfair reprimand of an **Employee**;
  - (2) denial of interview or position;
  - (3) denial of training to an **Employee**;
  - (4) derogatory or disparaging remarks to an **Employee**;
  - (5) discrimination;
  - (6) employment-related misrepresentations
  - (7) employment-related libel, slander, defamation, or invasion of privacy;
  - (8) failure to grant tenure;



- (9) failure to provide an adequate workplace, or employment policy or procedure for **Employees**;
  - (10) imposing mandatory arbitration of an **Employment Practices Claim** by an employer;
  - (11) improper denial of time off or vacation time to an **Employee**;
  - (12) improper disciplinary action of an **Employee**;
  - (13) improper performance review of an **Employee**;
  - (14) improper transfer, change of position or change of work hours or shift of an **Employee**;
  - (15) improper treatment of an **Employee** for their actions as a whistleblower;
  - (16) negligent evaluation of an **Employee**;
  - (17) negligent release of medical information of an **Employee**;
  - (18) **Retaliation** against an **Employee**;
  - (19) sexual or workplace harassment of any kind;
  - (20) violation of the Equal Pay Act;
  - (21) wrongful deprivation of career opportunity of an **Employee**, including defamatory statements made in connection with an **Employee** reference;
  - (22) wrongful dismissal, discharge or termination of employment, whether actual or constructive, of an **Employee**;
  - (23) wrongful failure to promote, transfer or employ; and
  - (24) violation of an **Employee's** civil rights relating to any of the above.
- K. "**Financial Insolvency**" shall mean the **Company** becoming a debtor in possession, or the appointment of a receiver, conservator, liquidator, trustee, rehabilitator or similar official to control, supervise, manage or liquidate the **Company**.
- L. "**Insured**" shall mean an **Insured Person** and the **Company**.
- M. "**Insured Person**" shall mean **Directors, Officers and Employees**.
- N. "**Insurer**" shall mean the company stated in Item 8 of the Declarations.
- O. "**Loss**" shall mean compensatory damages (including back pay and front pay), punitive or exemplary damages, the multiple portion of any multiplied damage award, judgments, settlements, pre- and post-judgment interest, and **Costs of Defense**. It is understood and agreed that the enforceability of the foregoing coverage shall be governed by such applicable law which most favors coverage for punitive or exemplary damages or the multiple portion of any multiplied damage award.
- Loss** shall not include: (1) civil or criminal fines or penalties imposed by law; (2) taxes; (3) any amount for which an **Insured** is not financially liable or which is without legal recourse to the Insured; (4)

- employment-related benefits of any kind, including, but not limited to, stock options, commissions, profit sharing, termination payments, severance, perquisites, deferred compensation or any other type of compensation other than back pay, front pay or bonus compensation; **(5)** any liability or costs incurred by any **Insured** to modify any buildings or property in order to make a building or property more accessible or accommodating to any disabled person, or any liability or costs incurred in connection with any educational, sensitivity or other corporate program, policy, seminar or monitoring (including, but not limited to, any consulting fees paid to any law firm) relating to or arising out of an **Employment Practices Claim**; **(6)** any portion of damages, judgments or settlements arising out of any **Claim** alleging that the **Company** paid an inadequate price or consideration for the purchase of securities; or **(7)** matters which may be deemed uninsurable under the law pursuant to which this Policy shall be construed.
- P.** **"Management Control"** shall mean: **(1)** owning interests representing more than fifty percent (50%) of the voting, appointment or designation power for the selection of a majority of the Board of Directors of a corporation, the management committee members of a joint venture or partnership, or the members of the management board of a limited liability company; or **(2)** having the right, pursuant to written contract or the by-laws, charter, operating agreement or similar documents of an organization, to elect, appoint or designate a majority of the Board of Directors of a corporation, the management committee of a joint venture or partnership or the management board of a limited liability company.
- Q.** **"Outside Entity"** shall mean any not-for-profit entity or any for-profit company but only if such for-profit entity is specifically added by written endorsement to this Policy.
- R.** **"Policy Period"** shall mean the period from the Inception Date of this Policy to the Expiration Date of this Policy as set forth in Item 2 of the Declarations, or its earlier termination if applicable.
- S.** **"Pollutants"** shall mean any substance located anywhere in the world exhibiting any hazardous characteristics as defined by, or identified on any list of hazardous substances issued by, the United States Environmental Protection Agency or any state, county, municipality or locality counterpart thereof. Such substances shall include, without limitation, solids, liquids, gaseous or thermal irritants, contaminants or smoke, vapor, soot, fumes, acids, alkalis, chemicals or waste materials. **Pollutants** shall also mean any other air emission, odor, waste water, oil or oil products, infectious or medical waste, asbestos or asbestos products and any noise.
- T.** **"Pollution"** shall mean the actual, alleged or threatened discharge, release, escape or disposal of **Pollutants** into or on real or personal property, water or the atmosphere. **Pollution** also means any direction or request that the **Insured** test for, monitor, clean up, remove, contain, treat, detoxify or neutralize **Pollutants**, or any voluntary decision to do so.
- U.** **"Related Wrongful Acts"** shall mean **Wrongful Acts** which are the same, related or continuous, or **Wrongful Acts** which arise from a common nucleus of facts. **Claims** can allege **Related Wrongful Acts** regardless of whether such **Claims** involve the same or different claimants, **Insureds** or legal causes of action.
- V.** **"Retaliation"** shall mean a **Wrongful Act** of an **Insured** relating to or alleged to be in response to any of the following activities: **(1)** the disclosure or threat of disclosure by an **Employee** to a superior or to any governmental agency of any act by an **Insured** which act is alleged to be a violation of any federal, state, local or foreign law, common or statutory, or any rule or regulation promulgated thereunder; **(2)** the actual or attempted exercise by an **Employee** of any right that such **Employee** has under law, including rights under worker's compensation laws, the Family and Medical Leave Act, the Americans with Disabilities Act or any other law relating to employee rights; **(3)** the filing of any claim under the Federal False Claims Act or any other federal, state, local or foreign "whistle-blower" law; or **(4)** **Employee** strikes.
- W.** **"Securities Claim"** shall mean any **Claim** (including a civil lawsuit or criminal proceeding brought by the Securities and Exchange Commission, or by any similar state or foreign governmental or securities regulatory entity) made against an **Insured** alleging a violation of any law, regulation or rule, whether statutory or common law, which is:

- (1) brought by any person or entity alleging, arising out of, based upon or attributable to the: (a) purchase or sale of, or (b) offer or solicitation of an offer to purchase or sell, any securities issued by the **Company**, or
- (2) brought by a security holder of the **Company**, arising solely with respect to such security holder's interest in such securities of the **Company**, whether directly, by class action, or derivatively on behalf of the **Company**.

The **Insurer** shall not assert that a **Loss** incurred in a **Securities Claim** alleging violations of Section 11 or 12 of the Securities Act of 1933, as amended, constitutes an uninsurable loss and, subject to all other terms and conditions of the Policy, shall treat that portion of all such settlements, judgments and **Costs of Defense** as constituting **Loss** under the Policy.

X. "**Subsidiary**" shall mean:

- (1) any for-profit organization of which the **Company** has **Management Control** ("Controlled Entity") on or before the inception of the **Policy Period** either directly or indirectly through one or more other Controlled Entities;
- (2) automatically any for-profit organization whose securities are not publicly traded and whose assets total less than twenty-five percent (25%) of the total consolidated assets of the **Company** as of the inception date of this Policy which the **Company** first had **Management Control** during the **Policy Period**, either directly or indirectly, through one or more other Controlled Entities. The **Corporation** shall provide the **Insurer** with full particulars of the new **Subsidiary** before the end of the **Policy Period**; or
- (3) an organization which the **Company** first had **Management Control** during the **Policy Period** (other than a for-profit organization described in paragraph (2) above), either directly or indirectly through one or more other Controlled Entities, but only upon the condition that within 90 days of its becoming a **Subsidiary**, the **Corporation** shall have provided the **Insurer** with full particulars of the new **Subsidiary** and agreed to any additional premium or amendment of the provisions of this Policy required by the **Insurer** relating to such new **Subsidiary**. Further, coverage as shall be afforded to the new **Subsidiary** is conditioned upon the **Corporation** paying when due any additional premium required by the **Insurer** relating to such new **Subsidiary**.
- (4) An organization becomes a **Subsidiary** when the **Company** has **Management Control** of such **Subsidiary**, either directly or indirectly, through one or more of its Controlled Entities. An organization ceases to be a **Subsidiary** when the **Company** ceases to have **Management Control** in such **Subsidiary**, either directly, or indirectly through one or more of its Controlled Entities.
- (5) In all events, coverage as is afforded under this Policy with respect to a **Claim** made against any **Subsidiary** and/or any **Insured Person** in their capacity as such with the **Subsidiary** shall only apply for **Wrongful Acts** committed or allegedly committed after the effective time the **Company** obtained **Management Control** of such **Subsidiary**, and prior to the effective time that the **Company** no longer has **Management Control** over such **Subsidiary**.

Y. "**Wrongful Act**" shall mean:

- (1) any actual or alleged act, omission, error, misstatement, misleading statement, neglect or breach of duty, or **Employment Practices Wrongful Act**, by any **Insured Person** in their capacity as such with the **Company**;
- (2) any matter claimed against any **Insured Person** solely by reason of their capacity as such with the **Company**;

- (3) any matter claimed against any **Insured Person** arising out of their service as a director, officer, trustee or governor of an **Outside Entity**, but only if such service is at the request of the **Company**; or
- (4) any actual or alleged act, omission, error, misstatement, misleading statement, neglect or breach of duty, or **Employment Practices Wrongful Act**, by the **Company**.

**Section III. Exclusions**

The **Insurer** shall not be liable to make any payment for **Loss** in connection with any **Claim** made against any **Insured**:

- A. alleging, arising out of, based upon or attributable to:
  - (1) an **Insured** gaining any profit, advantage or remuneration to which they were not legally entitled; provided however, this exclusion shall only apply when it is finally adjudicated that such conduct occurred; or
  - (2) the deliberately fraudulent or criminal acts of an **Insured**; provided, however, this exclusion shall only apply when it is finally adjudicated that such conduct occurred; or
  - (3) any profits in fact made from the purchase or sale by an **Insured** of securities of the **Company** within the meaning of Section 16(b) of the Securities Exchange Act of 1934 and amendments thereto or similar provision of any state statutory law; provided, however, this exclusion shall only apply when it is finally adjudicated that such conduct occurred.

Provided, however,

- (a) Exclusion A(1) shall not apply to any **Securities Claim** alleging violations of Section 11 or 12 of the Securities Act of 1933, as amended, to the portion of any **Loss** attributable to such violations.
- (b) For the purpose of determining the applicability of Exclusion A(1), (2) and (3), it is understood and agreed that:
  - (i) the **Wrongful Act** of an **Insured Person** shall not be imputed to any other **Insured Person**; and
  - (ii) only the **Wrongful Act** of any past, present or future chairman of the board, president, chief executive officer, or chief financial officer of the **Company** shall be imputed to the **Company**.
- B. alleging, arising out of, based upon or attributable to any **Wrongful Act** or **Related Wrongful Acts** or any fact, circumstance or situation which has been the subject of any notice or **Claim** given under any other policy of which this Policy is a renewal or replacement;
- C. alleging, arising out of, based upon or attributable to any pending or prior civil, criminal, administrative or investigative proceeding, or EEOC notice of charge of any kind involving the **Company** and/or any **Insured Person** as of the Pending and Prior Date stated in Item 7 of the Declarations, or any **Wrongful Act** or **Related Wrongful Acts** or any fact, circumstance or situation underlying or alleged in such proceeding or notice of charge;
- D. for any actual or alleged:
  - (1) bodily injury, sickness, disease, or death of any person;
  - (2) damage to or destruction of any tangible property, including the loss of use thereof; or

- (3) mental anguish, emotional distress, invasion of privacy, wrongful entry, eviction, false arrest, false imprisonment, malicious prosecution, libel or slander, however, this subsection (D)(3) does not apply to an **Employment Practices Claim**.
- E. for violation of any of the responsibilities, obligations or duties imposed by the Employee Retirement Income Security Act of 1974, the Fair Labor Standards Act, the National Labor Relations Act, the Worker Adjustment and Retraining Notification Act, the Consolidated Omnibus Budget Reconciliation Act, the Occupational Safety and Health Act, and any rules or regulations of the foregoing promulgated thereunder, and amendments thereto or any similar federal, state, local or foreign statutory law or common law; provided, however, this exclusion shall not apply to a **Claim** for **Retaliation** or an alleged violation of the Equal Pay Act;
- F. for any **Claim** alleging, arising out of, based upon, or attributable to the refusal, failure or inability of any **Insured** to pay wages or overtime pay for services rendered (hereinafter, "Earned Wages") (as opposed to tort-based back pay or front pay damages) or for improper payroll deductions taken by any **Insured** from any **Employee** or purported **Employee**, including, but not limited to, (i) any unfair business practice claim alleged because of the failure to pay Earned Wages, or (ii) any **Claim** seeking Earned Wages because any **Employee** or purported **Employee** was improperly classified or mislabeled as "exempt";
- G. alleging, arising out of, based upon or attributable to a **Wrongful Act** of any **Insured Person** serving as a director, officer, trustee or governor of any entity other than the **Company** or an **Outside Entity**, even if such service is at the direction of the **Company**, unless otherwise specifically added by written endorsement to this Policy;
- H. for a **Wrongful Act** of any **Insured Person** serving as a director, officer, trustee or governor of an **Outside Entity** if such **Claim** is brought by the **Outside Entity** or by any director, officer, trustee or governor thereof; provided, however, this exclusion shall not apply to any **Employment Practices Claim**;
- I. which is brought by or on behalf of the **Company** or by any **Insured Person**; or which is brought by any security holder or member of the **Company**, whether directly or derivatively, unless such security holder's or member's **Claim** is instigated and continued totally independent of, and totally without solicitation of, or assistance of, or active participation of, or intervention of, the **Company** or any **Insured Person**; provided however, this exclusion shall not apply to:
- (1) any **Employment Practices Claim** brought by an **Insured Person**, other than an **Insured Person** who is or was a member of the Board of Directors (or equivalent governing body) of the **Company**;
  - (2) any **Claim** brought by an **Insured Person** in the form of a cross-claim or third-party claim for contribution or indemnity which is part of and results directly from a **Claim** that is covered by this Policy;
  - (3) any **Claim** brought by the examiner, trustee, receiver, liquidator, rehabilitator or creditors' committee (or any assignee thereof) of the **Company**, in any bankruptcy proceeding by or against the **Company**;
  - (4) any **Claim** brought by any past **Director** or **Officer** of the **Company** who has not served as a duly elected or appointed director, officer, trustee, governor, management committee member, member of the management board, General Counsel or Risk Manager (or equivalent position) of or consultant for the **Company** for at least four (4) years prior to such **Claim** being first made;
  - (5) any **Claim** brought by a **Director** or **Officer** (or equivalent position) of a **Company** formed and operating in a foreign jurisdiction against such **Company** or any **Director** or **Officer** thereof, provided that such **Claim** is brought and maintained outside the United States, Canada or any other common law country (including any territories thereof); or

- (6) any **Claim** brought against an **Insured Person** arising out of or based upon any protected activity specified in any "whistleblower" protection pursuant to any state, local or foreign laws.
- J. alleging, arising out of, based upon or attributable to, directly or indirectly resulting from, or in consequence of, or in any way involving, **Pollution**, including but not limited to, any **Claim** for financial loss to the **Company**, its security holders or its creditors;
- K. for any **Wrongful Act** of a **Subsidiary** or an **Insured Person** of such **Subsidiary** or any entity that merges with the **Company** or an **Insured Person** of such entity that merges with the **Company** occurring:
- (1) prior to the date such entity becomes a **Subsidiary** or is merged with the **Company**;
  - (2) subsequent to the date such entity became a **Subsidiary** or was merged with the **Company** which, together with a **Wrongful Act** occurring prior to the date such entity became a **Subsidiary** or was merged with the **Company**, would constitute **Related Wrongful Acts**; or
  - (3) subsequent to the date the **Company** ceased to have, directly or indirectly, **Management Control** of such **Subsidiary**;
- L. which is insured in whole or in part by another valid policy or policies, (except with respect to any excess beyond the amount or amounts of coverage under such other policy or policies), whether such other policy or policies are stated to be primary, contributory, excess, contingent or otherwise.
- M. alleging, arising out of, based upon or attributable to any public offering of securities by the **Company**, an **Outside Entity** or an affiliate or alleging a purchase or sale of such securities subsequent to such public offering; provided, this exclusion will not apply to:
- (1) any purchase or sale of securities exempted pursuant to section 3(b) of the Securities Act of 1933. Coverage for such purchase or sale transaction shall not be conditioned upon payment of any additional premium; however, the **Corporation** shall give the **Insurer** written notice of any public offering exempted pursuant to section 3(b), together with full particulars, as soon as practicable, but not later than 30 days after the effective date of the public offering;
  - (2) any public offering of securities (other than a public offering described in paragraph (1) above), as well as any purchase or sale of such securities subsequent to such public offering, in the event that within 30 days prior to the effective time of such public offering: (i) the **Corporation** shall give the **Insurer** written notice of such public offering together with full particulars and underwriting information required thereto and (ii) the **Corporation** accepts such terms, conditions and additional premium required by the **Insurer** for such coverage. Such coverage is also subject to the **Corporation** paying when due any such additional premium. In the event the **Corporation** gives written notice with full particulars and underwriting information pursuant to (i) above, then the **Insurer** must offer a quote for coverage under this paragraph;
- N. alleging, arising out of, based upon or attributable to any actual or alleged contractual liability or obligation of the **Company** or an **Insured Person** under any contract, agreement, employment contract or employment agreement to pay money, wages or any employee benefits of any kind. This exclusion shall not apply to an **Employment Practice Claim** to the extent liability does not arise under such contract or agreement;
- O. alleging, arising out of, based upon or attributable to the purchase by the **Company** of securities of a "publicly traded entity" in a transaction which resulted, or would result, in such entity becoming a **Subsidiary** of the **Company**; provided, however, this exclusion shall not apply in the event that within 30 days prior to it becoming a **Subsidiary**, the **Corporation** gives written notice of the transaction to the **Insurer** together with full particulars and underwriting information required and agrees to any additional premium or amendment of the provisions of this Policy required by the **Insurer** relating to the transaction.

Further, coverage as shall be conditioned upon the **Corporation** paying when due any additional premium required by the **Insurer** relating to the transaction. An entity is a "publicly traded entity" if any securities of such entity have previously been subject to a public offering;

- P. alleging, arising out of, based upon or attributable to emotional distress, or injury from libel or slander, or defamation or disparagement, or for injury from a violation of a person's right of privacy; provided, this exclusion shall not apply to any **Employment Practices Claim**;
- Q. alleging, arising out of, based upon or attributable to, directly or indirectly resulting from, or in consequence of, or in any way involving, any obligation pursuant to any worker's compensation, disability benefits, unemployment compensation, unemployment insurance, retirement benefits, social security benefits or similar law;
- R. with respect to Insuring Agreement C only:
  - (1) for any actual or alleged plagiarism, misappropriation, infringement or violation of copyright, patent, trademark, trade secret or any other intellectual property rights;
  - (2) for any actual or alleged violation of any law, whether statutory, regulatory or common law, respecting any of the following activities: anti-trust, business competition, unfair trade practices or tortious interference in another's business or contractual relationships;
  - (3) for the rendering or failure to render any service to a customer or client of the **Insured**; provided, however, that this exclusion shall not apply to any:
    - a. **Claim** alleging **Employment Practices Violations**;
    - b. **Securities Claim**; or
    - c. **Claim** for the rendering or failure to render any professional service to the extent such professional services errors and omissions coverage has been added to this Policy by written endorsement attached hereto; or
  - (4) seeking fines or penalties or non-monetary relief; provided, however, that this exclusion shall not apply to any **Securities Claim** or **Employment Practices Claim**.

#### Section IV. **Limit of Liability**

- A. The **Insurer** shall be liable to pay **Loss** in excess of the applicable Retention amount stated in Item 4 of the Declarations up to the Limit of Liability stated in Item 3 of the Declarations.
- B. **Costs of Defense** shall be part of, and not in addition to, the Limit of Liability stated in Item 3 of the Declarations. Such **Costs of Defense** shall serve to reduce the Limit of Liability.
- C. The liability of the **Insurer** for all **Loss** arising from any and all **Claims** first made and reported pursuant to Section VII of the Policy shall be the amount stated in Item 3 of the Declarations which shall be the maximum aggregate Limit of Liability of the **Insurer** for the **Policy Period** and Discovery Period, if applicable, regardless of the time of payment or the number of **Claims**.

#### Section V. **Retention**

- A. The Retention shall apply to all covered **Loss**, including **Costs of Defense**.
  - (1) The Retention specified in Item 4 of the Declarations shall apply as follows:
    - a. Item 4(a) Retention is applicable to **Loss** as a result of **Claims** other than an **Employment Practices Claim** or a **Securities Claim**.

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- b. Item 4(b) Retention is applicable to **Loss** resulting from an **Employment Practices Claim**.
  - c. Item 4(c) Retention is applicable to **Loss** resulting from a **Securities Claim**.
  - d. A Retention shall not apply to a Non Indemnifiable Loss, including **Costs of Defense**.
- B. One Retention shall apply to **Loss** arising from each **Claim** alleging the same **Wrongful Act** or **Related Wrongful Acts**. The **Company** shall be responsible for, and shall hold the **Insurer** harmless from, any amount within the Retention.
  - C. More than one **Claim** involving the same **Wrongful Act** or **Related Wrongful Acts** of one or more **Insureds** shall be considered a single **Claim**, and only one Retention shall be applicable to such single **Claim**. All such **Claims** constituting a single **Claim** shall be deemed to have been made on the earlier of the following dates: (1) the earliest date on which any such **Claim** was first made; or (2) the earliest date on which any such **Wrongful Act** or **Related Wrongful Acts** were reported under this Policy or any other policy providing similar coverage.
  - D. For the purposes of the application of the Retention, **Loss** applicable to Insuring Agreement I.B. includes that for which indemnification is legally permissible, whether or not actual indemnification is granted. In the event the **Company** is unable to indemnify an **Insured Person** solely by reason of its **Financial Insolvency**, the **Insurer** shall, pursuant to the terms and conditions of Section VI.F., advance **Costs of Defense** incurred by an **Insured Person** without first requiring payment of the Retention applicable to **Claims** covered by Insuring Agreement I.B. The certificate of incorporation, charter or other organization documents of the **Company**, including by-laws and resolutions, shall be deemed to require indemnification and advancement of **Loss** of an **Insured Person** to the fullest extent permitted by law.

#### Section VI. **Costs of Defense and Settlements**

- A. The **Insured** shall not incur **Costs of Defense**, or admit liability, offer to settle, or agree to any settlement in connection with any **Claim** without the express prior written consent of the **Insurer**, which consent shall not be unreasonably withheld. The **Insured** shall provide the **Insurer** with all information, documents, reports and particulars it may reasonably request in order to reach a decision as to such consent. Any **Loss** resulting from any admission of liability, agreement to settle, or **Costs of Defense** incurred prior to the consent of the **Insurer**, shall not be covered hereunder.
- B. Notwithstanding Section VI.A. above, if all **Insureds** are able to settle all **Claims** that are subject to an applicable Retention for an amount that, together with the **Costs of Defense**, does not exceed the applicable Retention, the **Insured** may agree to such a settlement without the prior written consent of the **Insurer**.
- C. The **Insured**, and not the **Insurer**, shall have the duty to defend all **Claims**, provided that the **Insured** shall only retain counsel as is mutually agreed upon with the **Insurer**. The **Company** may at its option tender to the **Insurer** the defense of a **Claim**. Such a tender of the defense of a **Claim** shall not be made more than 90 days following notice of the **Claim** pursuant to Section VII. Upon such a tender of the defense of a **Claim**, the **Insurer** shall assume the duty to defend.
- D. The **Insurer** shall at all times have the right, but not the duty, to associate with the **Insured** in the investigation, defense or settlement of any **Claim** to which coverage under this Policy may apply. The **Insured** shall cooperate with the **Insurer** and provide the **Insurer** such information as it may reasonably require in the investigation, defense or settlement of any **Claim**.
- E. If a **Claim** made against an **Insured** includes both covered and uncovered matters, or is made against an **Insured** and others not insured, the **Insured** and the **Insurer** recognize that there must be an allocation between covered and uncovered **Loss**. The **Insured** and the **Insurer** shall use their best efforts to agree upon a fair and proper allocation between covered and uncovered **Loss**, taking into account the relative legal and financial exposures, and the relative benefits obtained by each **Insured** as a result of the covered



and uncovered matters and/or such benefits to an uninsured party using the same measure. If the **Insured** and the **Insurer** are not able to come to some agreement regarding the amount of the allocation, then the **Insurer** shall pay only those amounts, excess of the applicable Retention amount, which the **Insurer** deems to be fair and equitable until a different amount shall be agreed upon or determined pursuant to the provisions of this Policy and the above standards.

- F. The **Insurer** shall advance **Costs of Defense** prior to the final disposition of any **Claim**, provided such **Claim** is covered by this Policy. Any advancement shall be on the condition that:
- (1) the appropriate Retention has been satisfied, provided, however, this condition shall not apply in the event of the **Financial Insolvency** of the **Company**;
  - (2) any amounts advanced by the Insurer shall serve to reduce the Limit of Liability stated in Item 3 of the Declarations to the extent they are not in fact repaid;
  - (3) the **Insured** and the **Insurer** have agreed upon the portion of the **Costs of Defense** attributable to covered **Claims** against the **Insureds**; provided, however, if no agreement, the **Insurer** shall pay, excess of the retention, what it determines fair and reasonable until such is otherwise established; and
  - (4) in the event it is finally established that the **Insurer** has no liability under the Policy for such **Claim**, the **Insured** will repay the **Insurer** all **Costs of Defense** advanced by virtue of this provision.

#### Section VII. Notice of Claim

- A. The **Insured** shall, as a condition precedent to their rights under this Policy, give the **Insurer** notice in writing of any **Claim** which is made during the **Policy Period** or Discovery period. Such notice shall be given as soon as practicable but in no event later than thirty (30) days after the end of the **Policy Period** or Discovery Period, if applicable. If notice is provided pursuant to this Section, any **Claim** subsequently made against an **Insured** and reported to the **Insurer** alleging, arising out of, based upon or attributable to the prior noticed **Claim** or alleging any **Related Wrongful Acts**, shall be considered related to the prior **Claim** and made at the time notice of the prior **Claim** was first provided.
- B. If during the **Policy Period** or during the Discovery Period the **Company** or an **Insured** shall become aware of any circumstances which may reasonably be expected to give rise to a **Claim** being made against an **Insured** and shall give written notice to the **Insurer** of the circumstances, the **Wrongful Act** allegations anticipated and the reasons for anticipating such a **Claim**, with full particulars as to dates, persons and entities involved, then a **Claim** which is subsequently made against such **Insured** and reported to the **Insurer** alleging, arising out of, based upon or attributable to such circumstances or alleging any **Related Wrongful Acts**, shall be considered made at the time notice of such circumstances was given. Notice of any such subsequent **Claim** shall be given to the **Insurer** as soon as practicable.
- C. In addition to furnishing the notice as provided in Section VII, the **Insured** shall, as soon as practicable, furnish the **Insurer** with copies of reports, investigations, pleadings and other papers in connection therewith.
- D. Notice to the **Insurer** as provided in Section VII shall be given to the **Insurer** identified in, and at the address set forth in, Item 8 of the Declarations.

#### Section VIII. Discovery Period

- A. In the event the **Insurer** or the **Corporation** refuses to renew this Policy, the **Corporation** shall have the right, upon payment of one hundred percent (100%) of the annual premium, (or if the **Policy Period** is other than annual, one hundred percent (100%) of the annualized premium), to an extension of the coverage provided by this Policy with respect to any **Claim** first made against any **Insured** during the

period of twelve (12) months after the end of the **Policy Period** and reported to the **Insurer** pursuant to the provisions of this Policy, but only with respect to any **Wrongful Act** committed or alleged to have been committed before the end of the **Policy Period**. This twelve (12) month period shall be referred to in this Policy as the Discovery Period.

- B. As a condition precedent to the right to purchase the Discovery Period, the total premium for this Policy must have been paid and a written request, together with payment of the appropriate premium for the Discovery Period, must be provided to the **Insurer** no later than thirty (30) days after the end of the **Policy Period**.
- C. The fact that the coverage provided by this Policy may be extended by virtue of the purchase of the Discovery Period shall not in any way increase the Limit of Liability stated in Item 3 of the Declarations. For purposes of the Limit of Liability, the Discovery Period is considered to be part of, and not in addition to, the **Policy Period**.

#### Section IX. General Conditions

##### A. Cancellation or Non-Renewal

- (1) This Policy may be cancelled by the **Corporation** at any time by written notice to the **Insurer**. Upon cancellation by the **Corporation**, the **Insurer** shall retain the customary short rate portion of the premium, unless this Policy is converted to Run-Off pursuant to Section IX.D. wherein the entire premium for this Policy shall be deemed earned.
- (2) This Policy may only be cancelled by the **Insurer** if the **Corporation** does not pay the premium when due.
- (3) If the **Insurer** elects not to renew this Policy, the **Insurer** shall provide the **Corporation** with no less than sixty (60) days advance notice thereof.

##### B. Application

It is agreed by the **Company** and the **Directors** and **Officers** that the particulars and statements contained in the **Application** and any information provided therewith (which shall be on file with the **Insurer** and be deemed attached hereto as if physically attached hereto) are the basis of this Policy and are to be considered as incorporated in and constituting a part of this Policy. It is further agreed by the **Company** and the **Directors** and **Officers** that the statements in the **Application** or in any information provided therewith are their representations, that they are material and that this Policy is issued in reliance upon the truth of such representations. Knowledge of any **Insured Person** of a misstatement or omission in the **Application**, shall not be imputed to any other **Insured Person** for purposes of determining the validity of this Policy as to such other **Insured Person**.

##### C. Action Against the Insurer

- (1) No action shall be taken against the **Insurer** unless, as a condition precedent thereto, there shall have been full compliance with all the terms of this Policy, and until the obligation of the **Insured** to pay shall have been finally determined by an adjudication against the **Insured** or by written agreement of the **Insured**, claimant and the **Insurer**.
- (2) No person or organization shall have any right under this Policy to join the **Insurer** as a party to any **Claim** against an **Insured** nor shall the **Insurer** be impleaded by any **Insured** or their legal representative in any such **Claim**.

##### D. Conversion to Run-Off Coverage

If, during the **Policy Period**, a transaction occurs wherein another entity gains control of the **Corporation** through the ownership of more than fifty percent (50%) of the voting stock of the **Corporation**, or the **Corporation** merges into another entity or consolidates with another entity such that the **Corporation** is not the surviving entity, then:

- (1) this Policy shall only apply to **Wrongful Acts** actually or allegedly committed on or before the effective date of such transaction; and
- (2) the entire premium for this Policy shall be deemed earned as of the date of such transaction.

**E. Outside Entity Provision**

In the event a **Claim** is made against any **Insured Person** arising out of their service as a director, officer, trustee or governor of an **Outside Entity**, coverage as may be afforded under this Policy shall be excess of any indemnification provided by the **Outside Entity** and any insurance provided to the **Outside Entity** which covers its directors, officers, trustees or governors.

**F. Coverage Extensions**

(1) Lawful Spouse or Domestic Partner Provision

The coverage provided by this Policy shall also apply to the lawful spouse or **Domestic Partner** of an **Insured Person**, but only for a **Claim** arising out of any actual or alleged **Wrongful Acts** of such **Insured Person**.

(2) Worldwide Provision

The coverage provided under this Policy shall apply worldwide. The term **Directors** and **Officers** is deemed to include individuals who serve in equivalent positions in foreign **Subsidiaries**.

(3) Estates and Legal Representatives

- a. The coverage provided by this Policy shall also apply to the estates, heirs, legal representatives or assigns of any **Insured Person** in the event of their death, incapacity or bankruptcy, but only for **Claims** arising out of any actual or alleged **Wrongful Acts** of any **Insured Person**.
- b. In the event a bankruptcy proceeding shall be instituted by or against the **Company**, the resulting debtor-in-possession (or equivalent status outside the United States of America) shall be deemed to be the **Company**, but only with respect to coverage provided under Insuring Agreements I. B. and C.

**G. Priority of Payments**

- (1) In the event of **Financial Insolvency**, or the refusal of the **Corporation** to indemnify or advance the indemnification of an **Insured Person** and there is **Loss** arising from one or more covered **Claims** for which payment is due under this Policy, the **Insurer** shall:
  - a. first pay such **Loss** for which coverage is provided under Section I.(A) of this Policy; then
  - b. with respect to whatever remaining amount of the Limit of Liability is available after payment of Section G(1)(a) above, pay such **Loss** for which coverage is provided under any other Insuring Agreements of this Policy.
- (2) Subject to the provisions of paragraph (1) above, the **Insurer** shall, at the written request of the **Corporation**, delay payment of **Loss** for which coverage is provided under any Insuring

Agreement other than Section I.(A) until such time as the **Corporation** designates; provided the liability of the **Insurer** with respect to such delayed payment shall not be increased, and shall not include any interest as a result of such delay. The **Corporation** shall provide written notice to the **Insurer** when such delayed payment shall be made. Such written notice shall be deemed consent from all **Insureds**, including all **Insured Persons**, to release such payment and the **Insurer** shall have no further obligation under this Policy with respect to such funds.

**H. Subrogation**

In the event of any payment under this Policy, the **Insurer** shall be subrogated to all of the **Insureds'** rights of recovery and the **Company** and **Insured Persons** shall execute all papers required and shall do everything that may be necessary to secure such rights, including the execution of such documents as may be necessary to enable the **Insurer** to effectively bring suit in the name of any **Insured Person** or the **Company**.

**I. Dispute Resolution**

In the event any dispute arises in connection with this Policy that cannot be resolved, the **Insurer** and the **Insured** shall participate in a non-binding mediation in which the **Insurer** and the **Insured** shall attempt in good faith to resolve such dispute. Either the **Insured** or the **Insurer** shall have the right to commence a judicial proceeding or, if the parties agree, a binding arbitration, to resolve such dispute. However, no judicial proceeding or arbitration shall be commenced until termination of the mediation and until at least 90 days has passed from the termination of the mediation. Each party will bear its own legal fees and expenses. The costs and expenses of a mediation, or an arbitration, shall be split equally by the parties.

**J. Assignment**

Assignment of interest under this Policy shall not bind the **Insurer** until its consent is endorsed hereon.

**K. Conformity to Statute**

Any terms of this Policy which are in conflict with the terms of any applicable laws are hereby amended to conform to such laws.

**L. Entire Agreement**

By acceptance of this Policy, all **Insureds** and the **Insurer** agree that this Policy (including the Declarations, **Application** submitted to the **Insurer** and any information provided therewith) and any written endorsements attached hereto constitute the entire agreement between the parties. The terms, conditions and limitations of this Policy can be waived or changed only by written endorsement.

**M. Corporation Represents Insured**

By acceptance of this Policy, the **Corporation** shall be designated to act on behalf of all **Insureds** for all purposes including, but not limited to, the giving and receiving of all notices and correspondence, the cancellation or non-renewal of this Policy, the payment of premiums, and the receipt of any return premiums that may be due under this Policy.

**N. Representative of the Insurer**

Ironshore Insurance Services, LLC, One State Street Plaza, 7th Floor, New York, NY 10004 shall act on behalf of the **Insurer** for all purposes including, but not limited to, the giving and receiving of all notices and correspondence, provided, however, notice of **Claims** shall be given pursuant to Section VII of the Policy.

**O. Service of Suit**

In the event of the failure of the **Insurer** to pay any amount claimed to be due hereunder, the **Insurer** at the request of the **Insured**, will submit to the jurisdiction of any court of competent jurisdiction within the United States. Nothing in this condition constitutes or shall be understood to constitute a waiver of the right of the **Insurer** to commence an action in any court of competent jurisdiction within the United States, to remove an action to a United States District Court or to seek a transfer of a case to another court as permitted by the laws of the United States or of any state in the United States.

Service of process in any such suit may be made upon Ironshore Insurance Services, LLC, One State Street Plaza, 7th Floor, New York, NY 10004. In any suit instituted against the **Insurer** upon this Policy the **Insurer** will abide by the final decision of such court or of any appellate court in the event of any appeal.

Pursuant to any statute of any state, territory or district of the United States which makes provision therefore, the **Insurer** hereby designates the Superintendent, Commissioner or Director of Insurance, or other officer specified for that purpose in the statute, or his or her successor or successors in office, as its true and lawful attorney upon whom may be served lawful process in any action, suit or proceeding instituted by or on behalf of the Insured or any beneficiary hereunder arising out of this Policy, and hereby designates the above named Ironshore Insurance Services, LLC, One State Street Plaza, 7th Floor, New York, NY 10004 as the entity to whom said officer is authorized to mail such process or a true copy thereof.

**P.** Bankruptcy

Bankruptcy or insolvency of the **Company** or any **Insured Person** shall not relieve the **Insurer** of any of its obligations under this Policy.

**Q.** Headings

The descriptions in the headings of this Policy form no part of the terms and conditions of the coverage under this Policy.

Ironshore Indemnity Inc. by:



Secretary



President



## IRONSHORE INDEMNITY INC.

(A Stock Company)

Mailing Address:

PO Box 3407

New York, NY 10008

(877) IRON411

### Endorsement # 1

**Policy Number:** 001100502

**Effective Date of Endorsement:** July 07, 2013

**Insured Name:** Qdevelopment LLC dba QResorts Inc

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

## FLORIDA AMENDATORY ENDORSEMENT

Endorsement forming a part of and attaching to this Directors, Officers and Private Company Liability Insurance Policy as stated above.

It is hereby understood and agreed that:

1. Paragraph **2. "Pollutants"** of **Section II. Definitions** is hereby deleted in its entirety and replaced by the following:
  2. **"Pollutants"** include, but are not limited to, any solid, liquid, gaseous, or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals, and waste. "Waste" includes, but is not limited to, materials to be recycled, reconditioned, or reclaimed.
2. Paragraph **O.** of **Section II. Definitions** is hereby deleted in its entirety and replaced by the following:
  - O.** **"Loss"** shall mean compensatory damages (including back pay and front pay), punitive or exemplary damages, the multiple portion of any multiplied damage award, judgments, settlements, pre- and post-judgment interest, and **Costs of Defense**. It is understood and agreed that the enforceability of the foregoing coverage shall be governed by such applicable law which most favors coverage for punitive or exemplary damages or the multiple portion of any multiplied damage award. **Punitive damages are not insurable in Florida.**

**Loss** shall not include: **(1)** civil or criminal fines or penalties imposed by law; **(2)** taxes; **(3)** any amount for which an **Insured** is not financially liable or which is without legal recourse to the Insured; **(4)** employment-related benefits of any kind, including, but not limited to, stock options, commissions, profit sharing, termination payments, severance, perquisites, deferred compensation or any other type of compensation other than back pay, front pay or bonus compensation; **(5)** any liability or costs incurred by any **Insured** to modify any buildings or property in order to make a building or property more accessible or accommodating to any disabled person, or any liability or costs incurred in connection with any educational, sensitivity or other corporate program, policy, seminar or monitoring (including, but not limited to, any consulting fees paid to any law firm) relating to or arising out of an **Employment Practices Claim**; **(6)** any portion of damages, judgments or settlements arising out of any **Claim** alleging that the **Company** paid an inadequate price or consideration for the purchase of securities; or **(7)** matters which may be deemed uninsurable under the law pursuant to which this Policy shall be construed.

3. Subparagraph (2) of Paragraph A. Cancellation or Non-Renewal of **Section IX. General Conditions** is hereby deleted in its entirety and replaced by the following:

- (2) The **Insurer** may cancel this Policy for any reason provided the Policy has been in effect for less than ninety (90) days. After this Policy has been in effect for ninety (90) days, this Policy may be cancelled by or on behalf of the **Insurer** for one of the following reasons:
- a. nonpayment of premium;
  - b. this Policy was obtained through a material misrepresentation;
  - c. failure to comply with underwriting requirements established by the **Insurer** within ninety (90) days of the date of effectuation of coverage;
  - d. the risk originally accepted has measurably increased; or
  - e. when the cancellation is for all **Corporations** under such policies for a given class of insureds.

The **Insurer** shall mail written notice of cancellation to the **Corporation** and the **Corporation's** agent or broker of record at the last address known to the **Insurer** and any mortgagee or lienholder, if known. Notice of cancellation shall be provided at least forty-five (45) days before the effective date of cancellation if cancellation is for nonpayment of premium. If cancellation is for any of the reasons listed in **b.** through **e.** above, and the Policy has been in effect for ninety (90) days or less, then notice of cancellation shall be provided at least forty-five (45) days before the effective date of cancellation. After the Policy has been in effect for ninety (90) days or more, notice of cancellation shall be provided at least ninety (90) days before the effective date of cancellation. The mailing of such notice shall be sufficient and the effective date of cancellation shall become the end of the **Policy Period**. The **Insurer** shall maintain proof of mailing on a recognized U.S. Post Office form or a form acceptable to the U.S. Post Office or other commercial mail delivery service. The notice shall state the reason or reasons for cancellation.

If the **Insurer** cancels this Policy, unearned premium shall be calculated on a pro rata basis. If the **Corporation** cancels this Policy, unearned premium shall be calculated at the **Insurer's** customary short rate. Payment of any unearned premium shall not be a condition precedent to the effectiveness of a cancellation. The **Insurer** shall make payment of any unearned premium within fifteen (15) business days of the effective date of cancellation.

4. Paragraph A. of **Section VIII. Discovery Period** is hereby deleted in its entirety and replaced by the following:

In the event the **Insurer** or the **Corporation** refuses to renew this Policy, the **Corporation** shall have the right, upon payment in accordance with the **Insurer's** approved rates and rules, to an extension of the coverage provided by this Policy with respect to any **Claim** first made against any **Insured** during the period of twelve (12) months after the end of the **Policy Period** and reported to the **Insurer** pursuant to the provisions of this Policy, but only with respect to any **Wrongful Act** committed or alleged to have been committed before the end of the **Policy Period**. This twelve (12) month period shall be referred to in this Policy as the Discovery Period.

5. Subparagraph (3) of Paragraph A. Cancellation or Non-Renewal of **Section IX. General Conditions** is amended by the addition of the following:

The notice shall state the reason or reasons for nonrenewal. The mailing of such notice shall be sufficient and the **Insurer** shall maintain proof of mailing on a recognized U.S. Post Office form or a form acceptable to the U.S. Post Office or other commercial delivery service.


6. **Section IX. General Conditions** is amended by the addition of the following:

If you need to contact someone about this Policy for any reason or to obtain information about coverage and receive assistance in resolving complaints, you may contact your insurance company at:

**IRONSHORE INDEMNITY INC.**

**Telephone: (877) IRON411**

ALL OTHER TERMS, CONDITIONS AND EXCLUSIONS REMAIN UNCHANGED.

A handwritten signature in blue ink, appearing to be 'SMC', is written over a horizontal line.

Authorized Representative

January 6, 2014  
Date





**IRONSHORE INDEMNITY INC.**

(A Stock Company)

Mailing Address:

PO Box 3407

New York, NY 10008

(877) IRON411

**Endorsement # 2**

**Policy Number:** 001100502

**Effective Date of Endorsement:** July 07, 2013

**Insured Name:** Qdevelopment LLC dba QResorts Inc

**OFAC COMPLIANCE NOTICE**

Payment of Loss under this Policy shall only be made in full compliance with all United States of America economic or trade sanction laws or regulations, including, but not limited to, sanctions, laws and regulations administered and enforced by the U.S. Treasury Department's Office of Foreign Assets Control ("OFAC").



**IRONSHORE INDEMNITY INC.**

(A Stock Company)

Mailing Address:

PO Box 3407

New York, NY 10008

(877) IRON411

**Endorsement # 3**

**Policy Number:** 001100502

**Effective Date of Endorsement:** July 07, 2013

**Insured Name:** Qdevelopment LLC dba QResorts Inc

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**NUCLEAR ENERGY LIABILITY EXCLUSION ENDORSEMENT  
(BROAD FORM)**

In consideration of the premium charged, it is hereby understood and agreed that the **Insurer** shall not be liable to make any payment for **Loss** in connection with any **Claim** made against any **Insured**:

- A. alleging, arising out of, based upon, attributable to, or in any way involving, directly or indirectly, the hazardous properties of nuclear material, including, but not limited to:
- (1) nuclear material located at any nuclear facility owned by, or operated by, or on behalf of, any **Insured**, or discharged or dispersed therefrom; or
  - (2) nuclear material contained in spent fuel or waste which was or is at any time possessed, handled, used, processed, stored, transported or disposed of by or on behalf of any **Insured**; or
  - (3) the furnishing by any **Insured** of services, materials, parts or equipment in connection with the planning, construction, maintenance, operation or use of any nuclear facility; or
  - (4) claims for damages to the **Company** or its shareholders alleging, arising out of, based upon, or attributed to, or in any way involving, directly or indirectly, the hazardous properties of nuclear material.
- B.
- (1) which is insured under a nuclear energy liability policy issued by Nuclear Energy Liability Insurance Association, Mutual Atomic Energy Liability underwriters, or Nuclear Insurance Association of Canada, or would be insured under any such policy but for its termination or exhaustion of its limit of liability; or,
  - (2) with respect to which (a) any person or organization is required to maintain financial protection pursuant to the Atomic Energy Act of 1954, or any law amendatory thereof, or (b) the Insured is, or had this Policy not been issued would be entitled to indemnity from the United States of America, or any agency thereof, under any agreement entered into by the United States of America, or any agency thereof, with any person or organization.

As used in this endorsement:

"hazardous properties" include radioactive, toxic or explosive properties;

"nuclear material" means source material, special nuclear material or byproduct material;

"source material", "special nuclear material", and "byproduct material" have the meanings given them in the Atomic Energy Act of 1954 or in law amendatory thereof;

"spent fuel" means any fuel element or fuel component, solid or liquid, which has been used or exposed to radiation in a nuclear reactor;


"waste" means any waste material (1) containing byproduct material and (2) resulting from the operation by any person or organization of any nuclear facility included within the definition of nuclear facility under paragraph (a) or (b) thereof;

"nuclear facility" means:

- (a) any nuclear reactor,
- (b) any equipment or device designed or used for (1) separating the isotopes of uranium or plutonium, (2) processing or utilizing spent fuel, or (3) handling, processing or packaging waste,
- (c) any equipment or device used for the processing, fabricating or alloying of special nuclear material if at any time the total amount of such material in the custody of the Insured at the premises where such equipment or device is located consists of or contains more than 25 grams of plutonium or uranium 233 or any combination thereof, or more than 250 grams of uranium 235,
- (d) any structure, basin, excavation, premises or place prepared or used for the storage or disposal of waste, and includes the site on which any of the foregoing is located, all operations conducted on such site and all premises used for such operations;

"nuclear reactor" means any apparatus designed or used to sustain nuclear fission in a self-supporting chain reaction or to contain a critical mass of fissionable material.

ALL OTHER TERMS, CONDITIONS AND EXCLUSIONS REMAIN UNCHANGED.



\_\_\_\_\_  
Authorized Representative

January 6, 2014  
Date



**IRONSHORE INDEMNITY INC.**

(A Stock Company)

Mailing Address:

PO Box 3407

New York, NY 10008

(877) IRON411

**Endorsement # 4**

**Policy Number:** 001100502

**Effective Date of Endorsement:** July 07, 2013

**Insured Name:** Qdevelopment LLC dba QResorts Inc

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**CAPTIVE INSURANCE COMPANY EXCLUSION**

In consideration of the premium charged, it is hereby understood and agreed that the **Insurer** shall not be liable to make any payment for **Loss** in connection with any **Claim** made against any **Insured** alleging, arising out of, based upon or attributable to the ownership, management, operation or control by the **Company** of any captive insurance company or entity, including but not limited to any **Claim** alleging the insolvency or bankruptcy of the **Company** was a result of such ownership, management, operation or control.

ALL OTHER TERMS, CONDITIONS AND EXCLUSIONS REMAIN UNCHANGED.

\_\_\_\_\_  
Authorized Representative

January 6, 2014

Date



**IRONSHORE INDEMNITY INC.**

(A Stock Company)

Mailing Address:

PO Box 3407

New York, NY 10008

(877) IRON411

**Endorsement # 5**

**Policy Number:** 001100502

**Effective Date of Endorsement:** July 07, 2013

**Insured Name:** Qdevelopment LLC dba QResorts Inc

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**COMMISSIONS EXCLUSION**

In consideration of the premium charged, it is hereby understood and agreed that the **Insurer** shall not be liable to make any payment for **Loss** in connection with any **Claim** made against any **Insured** alleging, arising out of, based upon, or attributable to any:

- (i) Payment, commission, gratuity, benefit or any other favor to or for the benefit of any full or part-time domestic or foreign government or any armed services official, agent, representative, employee or any member of their family or any entity with which they are affiliated; or
- (ii) Payment, commission, gratuity, benefit or any other favor to or for the benefit of any full or part-time official, director, agent, partner, representative, principal shareholder, or owner or employee, or "affiliate" (as that term is defined in The Securities Exchange Act of 1934, including any officer, director, agent, owner, partner, representative, principal shareholder or employee of such affiliate) of any customer of the **Company** or any member of their family or any entity with which they are affiliated; or
- (iii) Political contribution, whether domestic or foreign.

ALL OTHER TERMS, CONDITIONS AND EXCLUSIONS REMAIN UNCHANGED.

\_\_\_\_\_  
Authorized Representative

January 6, 2014

Date



**IRONSHORE INDEMNITY INC.**

(A Stock Company)  
Mailing Address:  
PO Box 3407  
New York, NY 10008  
(877) IRON411

**Endorsement # 6**

**Policy Number:** 001100502

**Effective Date of Endorsement:** July 07, 2013

**Insured Name:** Qdevelopment LLC dba QResorts Inc

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**ABSOLUTE BODILY INJURY AND PROPERTY DAMAGE EXCLUSION**

It is hereby understood and agreed that Section III. Exclusions, D. is deleted in its entirety and replaced with the following:

- D.** alleging, arising out of, based upon, attributable to, or in any way involving, directly or indirectly:
  - (1)** bodily injury, sickness, disease or death of any person;
  - (2)** damage to or destruction of any tangible property, including the loss of use thereof; or
  - (3)** mental anguish, emotional distress or malicious prosecution, however, this subsection D. (3) does not apply to an **Employment Practices Claim**.

ALL OTHER TERMS, CONDITIONS AND EXCLUSIONS OF THIS POLICY REMAIN UNCHANGED.

\_\_\_\_\_  
Authorized Representative

January 6, 2014  
Date



**IRONSHORE INDEMNITY INC.**

(A Stock Company)

Mailing Address:

PO Box 3407

New York, NY 10008

(877) IRON411

**Endorsement # 7**

**Policy Number:** 001100502

**Effective Date of Endorsement:** July 07, 2013

**Insured Name:** Qdevelopment LLC dba QResorts Inc

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**PROFESSIONAL ERRORS AND OMISSIONS EXCLUSION**

It is hereby understood and agreed that the **Insurer** shall not be liable to make any payment for **Loss** in connection with any **Claim** made against an **Insured** alleging, arising out of, based upon or attributable to the **Company's** or any **Insured Person's** performance of or failure to perform professional services for others, or any act, error or omission relating thereto.

It is also understood and agreed that Section III. Exclusions R.(3) is deleted in its entirety.

ALL OTHER TERMS, CONDITIONS AND EXCLUSIONS OF THIS POLICY REMAIN UNCHANGED.

A handwritten signature in blue ink, appearing to be "J.M.C.", is written over a horizontal line.

Authorized Representative

January 6, 2014

Date



**IRONSHORE INDEMNITY INC.**

(A Stock Company)

Mailing Address:

PO Box 3407

New York, NY 10008

(877) IRON411

**Endorsement # 8**

**Policy Number:** 001100502

**Effective Date of Endorsement:** July 07, 2013

**Insured Name:** Qdevelopment LLC dba QResorts Inc

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**SEVERABILITY OF THE APPLICATION ENDORSEMENT  
(FULL INDIVIDUAL SEVERABILITY; TOP 3 POSITIONS IMPUTED TO THE  
NAMED ENTITY; AND NON-RESCINDABLE A SIDE COVER)**

It is hereby understood and agreed that the following is added to the definition of **Application**:

The **Insureds** agree that in the event that such statements and representations are not accurate and complete, then this Policy shall be void *ab initio* solely with respect to any of the following **Insureds**:

- (1) solely with respect to **Loss** other than Non-Indemnifiable **Loss**, any **Insured Person** who knew as of the inception date of the **Policy Period** the facts that were not accurately and completely disclosed in the application,
- (2) a **Company**, under Section I. Insuring Agreements, COVERAGE B, to the extent it indemnifies any **Insured Person** referenced in (1) above, and
- (3) a **Company**, under Section I. Insuring Agreements, COVERAGE C, if any past, present or future President, Chief Executive Officer or Chief Financial Officer (or equivalent position) of the **Company** knew as of the inception date of the **Policy Period**, the facts that were not accurately and completely disclosed in the application,

whether or not such **Insured Person** knew that such facts were not accurately and completely disclosed in the application.

Solely with respect to any Non-Indemnifiable **Loss** of any **Insured Person**, under no circumstances shall the coverage provided by this Policy be deemed void, whether by rescission or otherwise, but such coverage will be subject to all other terms, conditions and exclusions of the Policy.

Further provided that for the purposes of the applicability of the coverage provided by this endorsement for Non-Indemnifiable **Loss**, the **Company** will be conclusively deemed to have indemnified the **Insured Persons** to the maximum extent that the **Company** is permitted or required to grant such indemnification pursuant to law, common or statutory, or contract or by the charter, by-laws, operating agreement or similar documents of the **Company** (which are hereby deemed to adopt the broadest provisions of the law which determines or defines such rights of indemnity). The **Company** hereby agrees to indemnify the



**Insured Persons** to the fullest extent permitted by law including the making in good faith of any required application for court approval.

It is also understood and agreed that Section IX General Conditions, B. Application shall be amended to include the following:

B. Application

It is agreed by the **Company** and the **Directors** and **Officers** that the particulars and statements contained in the **Application** and any information provided therewith (which shall be on file with the **Insurer** and be deemed attached hereto as if physically attached hereto) are the basis of this Policy and are to be considered as incorporated in and constituting a part of this Policy. It is further agreed by the **Company** and the **Directors** and **Officers** that the statements in the **Application** or in any information provided therewith are their representations, that they are material and that this Policy is issued in reliance upon the truth of such representations.

ALL OTHER TERMS, CONDITIONS AND EXCLUSIONS OF THIS POLICY REMAIN UNCHANGED.



\_\_\_\_\_  
Authorized Representative

January 6, 2014  
Date



**IRONSHORE INDEMNITY INC.**

(A Stock Company)

Mailing Address:

PO Box 3407

New York, NY 10008

(877) IRON411

**Endorsement # 9**

**Policy Number:** 001100502

**Effective Date of Endorsement:** July 07, 2013

**Insured Name:** Qdevelopment LLC dba QResorts Inc

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**ARC PRIVATE FORM AMENDATORY ENDORSEMENT**

In consideration of the premium charged, it is hereby understood and agreed that the Policy shall be amended as follows:

I Section II, Definitions, shall be amended as follows:

(i) Definition B, "**Claim**" shall be deleted in its entirety and replaced with the following:

**B. (1) "Claim"** shall mean a civil, criminal, governmental, regulatory, administrative, or arbitration proceeding made against any **Insured** seeking monetary or non-monetary relief and commenced by the service of a complaint or similar pleading, the return of an indictment, or the receipt or the filing of a notice of charges or similar document, including any proceeding initiated against any **Insured** before the U.S. Equal Employment Opportunity Commission ("EEOC"), or any similar governmental body, or other written demand for monetary or non-monetary relief made against any **Insured**. However, in no event shall the term "**Claim**" include any labor or grievance proceeding which is subject to a collective bargaining agreement.

**(2) Claim** shall also mean a formal civil, criminal, administrative or regulatory investigation of an **Insured Person**:

(a) once such **Insured Person** is identified in writing by such investigating authority as a person against whom a proceeding described in B.(1) above may be commenced;

(b) in the case of an investigation by the Securities and Exchange Commission ("SEC") or a similar state or foreign government authority, after:

(i) the service of a subpoena upon such **Insured Person**; or

(ii) the **Insured Person** is identified in a written "Wells" or other notice from the SEC or a similar state or foreign government authority that describes actual or alleged violations of law by such **Insured Person**.

(ii) Definition C, "**Company**" shall be deleted in its entirety and replaced with the following:

**C.** "**Company**" shall mean the **Corporation** and any **Subsidiary**. **Company** shall also mean the debtor in possession, in the event of a bankruptcy proceeding instituted by or against the **Company**, but solely with respect to coverage provided under Insuring Agreements I.B and C.

(iii) Definition F, "**Directors**" and "**Officers**" shall be deleted in its entirety and replaced with the following:

**F.** "**Directors**" and "**Officers**" shall mean all persons who were, now are, or shall be directors and/or officers (or foreign equivalent) of the **Company**. **Directors** and **Officers** shall also mean any management committee member or member of the board of management.

(iv) Definition H, "**Employee**" shall be deleted in its entirety and replaced with the following:

**H.** "**Employee**" shall mean any past, present or future employee of the **Company**, including any part-time, seasonal or temporary employee, acting solely in his or her capacity as such. Any person leased to the **Company** shall also be an **Employee**, but only if the **Company** indemnifies such leased person in the same manner as is provided to the **Company's** permanent employees. Interns, volunteers, and any person hired by contract to perform work for the **Company** or who is an independent contractor for the **Company**, shall also be an **Employee**, but only if the **Company** indemnifies the person in the same manner as is provided to the **Company's** permanent employees.

(v) Definition I, "**Employment Practices Claim**" shall be deleted in its entirety and replaced with the following:

**I.** "**Employment Practices Claim**" shall mean any **Claim** brought by or on behalf of any past, present or future **Employee** of the **Company** or an **Outside Entity**, or any applicant for employment with the **Company** or an **Outside Entity** alleging an **Employment Practices Wrongful Act**. **Employment Practices Claim** shall also mean a **Claim** by any third party alleging discrimination, sexual harassment or violation of an individual's civil rights relating to such discrimination or sexual harassment.

(vi) Definition K, "**Financial Insolvency**" shall be deleted in its entirety and replaced with the following:

**K.** "**Financial Insolvency**" shall mean the **Company** becoming a debtor in possession, or the appointment of a receiver, conservator, liquidator, trustee, rehabilitator or similar official to control, supervise, manage or liquidate the **Company** or the equivalent status or equivalent events outside the territory of the United States.

(vii) Definition O, "**Loss**", shall be deleted in its entirety and replaced with the following:

**O.** "**Loss**" shall mean compensatory damages (including back pay and front pay), punitive or exemplary damages, the multiple portion of any multiplied damage award, judgments,

settlements, pre- and post-judgment interest, and **Costs of Defense**. It is understood and agreed that the enforceability of the foregoing coverage shall be governed by such applicable law which most favors coverage for punitive or exemplary damages or the multiple portion of any multiplied damage award.

**Loss** shall not include: **(1)** civil or criminal fines or penalties imposed by law; **(2)** taxes; **(3)** any amount for which an **Insured** is not financially liable or which is without legal recourse to the Insured; **(4)** employment-related benefits of any kind, including, but not limited to, stock options, commissions, profit sharing, termination payments, severance, perquisites, deferred compensation or any other type of compensation other than back pay, front pay or bonus compensation; **(5)** any liability or costs incurred by any **Insured** to modify any buildings or property in order to make a building or property more accessible or accommodating to any disabled person, or any liability or costs incurred in connection with any educational, sensitivity or other corporate program, policy, seminar or monitoring (including, but not limited to, any consulting fees paid to any law firm) relating to or arising out of an **Employment Practices Claim**; **(6)** any portion of damages, judgments or settlements arising out of any **Claim** alleging that the **Company** paid an inadequate price or consideration for the purchase of securities; or **(7)** matters which may be deemed uninsurable under the law pursuant to which this Policy shall be construed; provided, however, that the foregoing exclusions shall not apply to **Costs of Defense**.

II. Section III, Exclusions, shall be amended as follows:

- (i) Exclusion A., sub-paragraph (3) (b) shall be deleted in its entirety and the following provision shall apply to all sub-sections of Section III, Exclusions:

For purposes of determining the applicability of any Exclusion set forth in this Policy, it is understood and agreed that:

- 1) the **Wrongful Act** of an **Insured Person** shall not be imputed to any other **Insured Person**; and
- 2) only the **Wrongful Act** of any past, present or future chairman of the board, president, chief executive officer, or chief financial officer of the **Company** shall be imputed to the **Company**.

- (ii) Exclusion C., shall be deleted in its entirety and replaced with the following:

**C.** alleging, arising out of, based upon or attributable to any pending or prior civil, criminal, administrative or investigative proceeding, or EEOC notice of charge of any kind involving the **Company** and/or any **Insured Person** as of the Pending and Prior Date stated in Item 7 of the Declarations, or any **Wrongful Act** or **Related Wrongful Acts** or any fact, circumstance or situation underlying or alleged in such proceeding or notice of charge. The **Insurer** will not consider an employee's filing for unemployment benefits before the Prior and Pending Litigation Date as an "administrative proceeding" for purposes of determining coverage under the policy;

- (iii) Exclusion F., shall be deleted in its entirety and replaced with the following:

**F.** for any **Claim** alleging, arising out of, based upon, or attributable to the refusal, failure or inability of any **Insured** to pay wages or overtime pay for services rendered (hereinafter, "Earned Wages") (as opposed to tort-based back pay or front pay damages) or for improper payroll deductions taken

by any **Insured** from any **Employee** or purported **Employee**, including, but not limited to, (i) any unfair business practice claim alleged because of the failure to pay Earned Wages, or (ii) any **Claim** seeking Earned Wages because any **Employee** or purported **Employee** was improperly classified or mislabeled as “exempt”; provided, however, that this exclusion shall not apply to **Claims** for **Retaliation**;

(iv) Exclusion H., shall be deleted in its entirety and replaced with the following:

**H.** for a **Wrongful Act** of any **Insured Person** serving as a director, officer, trustee or governor of an **Outside Entity** if such **Claim** is brought by the **Outside Entity** or by any director, officer, trustee or governor thereof; provided, however, this exclusion shall not apply to:

- (1) any **Employment Practices Claim** ;
- (2) any **Claim** brought by any director or officer of the **Outside Entity** in the form of a cross-claim or third-party claim for contribution or indemnity which is part of and results directly from a **Claim** that is covered by this Policy;
- (3) any **Claim** brought by the examiner, trustee, receiver, liquidator, rehabilitator or creditors’ committee (or any assignee thereof) of the **Outside Entity**, in any bankruptcy proceeding by or against the **Outside Entity**;
- (4) any **Claim** brought by any past director or officer of the **Outside Entity** who has not served as a duly elected or appointed director, officer, trustee, governor, management committee member, member of the management board, General Counsel or Risk Manager (or equivalent position) of or consultant for the **Outside Entity** for at least three (3) years prior to such **Claim** being first made;
- (5) any **Claim** brought by a director or officer (or equivalent position) of an **Outside Entity** formed and operating in a foreign jurisdiction provided that such **Claim** is brought and maintained outside the United States, Canada or any other common law country (including any territories thereof); or
- (6) any **Claim** brought by a director or officer of an **Outside Entity** arising out of or based upon any protected activity specified in any “whistleblower” protection pursuant to any state, local or foreign laws.

(v) Exclusion I., sub-paragraph (1) shall be deleted in its entirety and replaced with the following:

- (1) any **Employment Practices Claim**;

(vi) Exclusion I., sub-paragraph (4) shall be deleted in its entirety and replaced with the following:

- (4) any **Claim** brought by any past **Director** or **Officer** of the **Company** who has not served as a duly elected or appointed director, officer, trustee, governor, management committee member, member of the management board, General Counsel or Risk Manager (or equivalent position) of or consultant for the **Company** for at least three (3) years prior to such **Claim** being first made;

(vii) Exclusion J., shall be deleted in its entirety and replaced with the following:

J. alleging, arising out of, based upon or attributable to, directly or indirectly resulting from, or in consequence of, or in any way involving, **Pollution**, including but not limited to, any **Claim** for financial loss to the **Company**, its security holders or its creditors; provided, however, that this exclusion shall not apply to any **Securities Claim** or any **Claim** covered under Insuring Agreement A;

(viii) Exclusion M., shall be deleted in its entirety and replaced with the following:

M. alleging, arising out of, based upon or attributable to any public offering of securities by the **Company**, an **Outside Entity** or an affiliate or alleging a purchase or sale of such securities subsequent to such public offering; provided, this exclusion will not apply to:

- (1) any purchase or sale of securities exempted pursuant to section 3(b) of the Securities Act of 1933. Coverage for such purchase or sale transaction shall not be conditioned upon payment of any additional premium; however, the **Corporation** shall give the **Insurer** written notice of any public offering exempted pursuant to section 3(b), together with full particulars, as soon as practicable, but not later than 30 days after the effective date of the public offering;
- (2) any public offering of securities (other than a public offering described in paragraph (1) above), as well as any purchase or sale of such securities subsequent to such public offering, in the event that within 30 days prior to the effective time of such public offering: (i) the **Corporation** shall give the **Insurer** written notice of such public offering together with full particulars and underwriting information required thereto and (ii) the **Corporation** accepts such terms, conditions and additional premium required by the **Insurer** for such coverage. Such coverage is also subject to the **Corporation** paying when due any such additional premium. In the event the **Corporation** gives written notice with full particulars and underwriting information pursuant to (i) above, then the **Insurer** must offer a quote for coverage under this paragraph;
- (3) any **Claim** for **Loss** alleging a **Wrongful Act** which occurred during the **Insured's** preparation to commence an initial public offering ("**IPO**") and which occurred at any time prior to 12:01 a.m. on the date the **IPO** commences ("**IPO Effective Time**"), including any **Claim** for **Loss** alleging a **Wrongful Act** which occurred during the road show; provided, however that the coverage otherwise afforded under this paragraph (3) shall be deemed to be void *ab initio* effective the **IPO Effective Time**; provided further, however, that coverage shall not be deemed void *ab initio* if (i) the **Claim** is first made and reported pursuant to Clause VII prior to the **IPO Effective Time**, and (ii) a public company D&O policy is not valid and collectible with respect to such **Claim**.

(ix) Exclusion N., shall be deleted in its entirety and replaced with the following:

N. alleging, arising out of, based upon or attributable to any actual or alleged contractual liability or obligation of the **Company** or an **Insured Person** under any contract, agreement, employment contract or employment agreement to pay money, wages or any employee benefits of any kind. This exclusion shall not apply to:

- (1) an **Employment Practice Claim** to the extent liability does not arise under such contract or agreement;

- (2) an **Employment Practices Claim** arising out of any leasing or temporary help agreement;
- (3) **Costs of Defense** in connection with any **Employment Practices Claim**; or
- (4) **Claims** for mental anguish or emotional distress.

(x) Exclusion R., sub-paragraph (4) shall be deleted in its entirety and replaced with the following:

- (4) seeking fines or penalties or non-monetary relief; provided, however, that this exclusion shall not apply to any **Securities Claim** or **Employment Practices Claim**. This exclusion shall not apply to **Costs of Defense** in connection with **Claims** seeking non-monetary relief.

III. Section VI, Costs of Defense and Settlements shall be amended as follows:

(i) Paragraph F, sub-paragraph (4) shall be deleted in its entirety and replaced with the following:

- (4) in the event it is finally established that the **Insurer** has no liability under the Policy for such **Claim**, the **Insureds** will repay the **Insurer**, severally according to their respective interests, all **Costs of Defense** advanced by virtue of this provision.

IV. Section VII, Notice of Claim, shall be amended as follows:

(i) Paragraph A. shall be deleted in its entirety and replaced with the following:

- A. The **Insured** shall, as a condition precedent to their rights under this Policy, give the **Insurer** notice in writing of any **Claim** which is made during the **Policy Period** or Discovery period. Such notice shall be given as soon as practicable after the General Counsel or the Risk Manager becomes aware of such **Claim** but in no event later than sixty (60) days after the end of the **Policy Period** or Discovery Period, if applicable. If notice is provided pursuant to this Section, any **Claim** subsequently made against an **Insured** and reported to the **Insurer** alleging, arising out of, based upon or attributable to the prior noticed **Claim** or alleging any **Related Wrongful Acts**, shall be considered related to the prior **Claim** and made at the time notice of the prior **Claim** was first provided.

V. Section VIII, Discovery Period, shall be amended as follows:

(i) Paragraph A shall be deleted in its entirety and replaced with the following:

- A. In the event the **Insurer** or the **Corporation** refuses to renew this **Policy**, the **Corporation** shall have the right, upon payment of the percentage of annual premium set forth below, (or if the **Policy Period** is other than annual, the percentage of the annualized premium), to an extension of the coverage provided by this **Policy** with respect to any **Claim** first made against any **Insured** during the period set forth below after the end of the **Policy Period** and reported to the **Insurer** pursuant to the provisions of this **Policy**, but only with respect to any **Wrongful Act** committed or alleged to have been committed before the end of the **Policy Period**. This period shall be referred to in this **Policy** as the Discovery Period.

<u>Discovery Period</u>	<u>Premium</u>
Twelve (12) months	75%
Twenty-Four (24) months	150%

Thirty-Six (36) months	200%
Seventy-Two (72) months	TBD

VI. Section IX., General Conditions, shall be amended as follows:

(i) Paragraph G., Priority of Payments, shall be deleted in its entirety and replaced with the following:

**G. Priority of Payments**

- (1) In the event of **Loss** arising from one or more covered **Claims** for which payment is due under this **Policy**, the **Insurer** shall:
  - a. first pay such **Loss** for which coverage is provided under Section I.(A) of this Policy; then
  - b. with respect to whatever remaining amount of the Limit of Liability is available after payment of Section G(1)(a) above, pay such **Loss** for which coverage is provided under any other Insuring Agreements of this Policy.
- (2) Subject to the provisions of paragraph (1) above, the **Insurer** shall, at the written request of the **Corporation**, delay payment of **Loss** for which coverage is provided under any Insuring Agreement other than Section I.(A) until such time as the **Corporation** designates; provided the liability of the **Insurer** with respect to such delayed payment shall not be increased, and shall not include any interest as a result of such delay. The **Corporation** shall provide written notice to the **Insurer** when such delayed payment shall be made. Such written notice shall be deemed consent from all **Insureds**, including all **Insured Persons**, to release such payment and the **Insurer** shall have no further obligation under this **Policy** with respect to such funds.

VII. Section IX, General Conditions, shall be amended to add the following provisions:

- R. In the event that there is an inconsistency between a state amendatory endorsement attached to this Policy and any term or condition of this Policy, it is understood and agreed that, where permitted by law, the **Insurer** shall apply those terms and conditions of either the state amendatory or this Policy which are more favorable to the **Insured**.
- S. In the event that there is an inconsistency between this endorsement and any term or condition of this Policy, it is understood and agreed that, where permitted by law, the **Insurer** shall apply those terms and conditions of either the state amendatory or this Policy which are more favorable to the **Insured**.

ALL OTHER TERMS, CONDITIONS AND EXCLUSIONS OF THIS POLICY REMAIN UNCHANGED.

  
 \_\_\_\_\_  
 Authorized Representative

January 6, 2014  
Date



# EXHIBIT 3

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI

CASE NO.

<b>SECURITIES AND EXCHANGE COMMISSION,</b>	)
	)
<b>Plaintiff,</b>	)
<b>v.</b>	)
	)
<b>BURTON DOUGLAS MORRISS,</b>	)
<b>ACARTHA GROUP, LLC,</b>	)
<b>MIC VII, LLC,</b>	)
<b>ACARTHA TECHNOLOGY PARTNERS, LP, and</b>	)
<b>GRYPHON INVESTMENTS III, LLC</b>	)
	)
<b>Defendants, and</b>	)
	)
<b>MORRISS HOLDINGS, LLC,</b>	)
	)
<b>Relief Defendant.</b>	)
_____	)

**ASSET FREEZE ORDER  
AND OTHER EMERGENCY RELIEF**

This cause comes before the Court upon motion by Plaintiff Securities and Exchange Commission for the following orders with respect to Defendants Acartha Group, LLC; MIC VII, LLC; Acartha Technology Partners, LP (“ATP”); and Gryphon Investments III, LLC (collectively, the “Investment Entities”) and Relief Defendant Morriss Holdings, LLC:

- 1) an Order Freezing Defendants Acartha Group’s, MIC VII’s, ATP’s, and Gryphon Investments’s and Relief Defendant Morriss Holdings’s Assets;
- 2) an Order Requiring Sworn Accountings;
- 3) an Order Prohibiting Destruction of Documents;
- 4) an Order Expediting Discovery;

- 5) an Order to Show Cause Why the Court Should Not Issue A Continuing Asset Freeze.

The Court has considered the Commission's Complaint, its *Ex Parte* Emergency Motion for Asset Freeze and Other Emergency Relief, its Supporting Memorandum of Law, and the declarations and exhibits filed in support of its motion. The Court finds the Commission has made a sufficient and proper showing in support of the relief granted herein by demonstrating a *prima facie* case of securities laws violations by the Defendants. The Court also finds good cause to believe that unless immediately restrained and enjoined by Order of this Court, the Defendants will continue to dissipate, conceal or transfer from the jurisdiction of this Court assets which could be subject to an Order of Disgorgement. Accordingly:

**IT IS ORDERED AND ADJUDGED** that the motion is **GRANTED**, and the Court also orders as follows:

**I.**

**ASSET FREEZE**

**IT IS FURTHER ORDERED AND ADJUDGED** that:

A. Defendants Acartha Group, MIC VII, ATP, and Gryphon Investments, and Relief Defendant Morriss Holdings, their directors, officers, agents, servants, employees, attorneys, depositories, banks, and those persons in active concert or participation with any one or more of them, and each of them, who receive notice of this order by personal service, mail, facsimile transmission or otherwise, except any Receiver this Court appoints, be and hereby are, restrained from, directly or indirectly, transferring, setting off, receiving, changing, selling, pledging, assigning, liquidating or otherwise disposing of, or withdrawing any assets or property, including but not limited to cash, free credit balances, fully paid for securities, and, and/or property

pledged or hypothecated as collateral for loans, or charging upon or drawing from any lines of credit, owned by, controlled by, or in the possession of:

1. Acartha Group, LLC;
2. MIC VII, LLC;
3. Acartha Technology Partners, LP;
4. Gryphon Investments III, LLC; and
5. Morriss Holdings, LLC.

B. Any financial or brokerage institution or other person or entity located within the jurisdiction of the United States Courts and holding any such funds or other assets, in the name, for the benefit or under the control of the Acartha Group, MIC VII, ATP, Gryphon Investments, or Morriss Holdings, directly or indirectly, held jointly or singly, and which receives actual notice of this order by personal service, facsimile, or otherwise, shall hold and retain within its control and prohibit the withdrawal, removal, transfer, disposition, pledge, encumbrance, assignment, set off, sale, liquidation, dissipation, concealment, or other disposal of any such funds or other assets.

**IT IS FURTHER ORDERED AND ADJUDGED** that the Court has jurisdiction to determine the effect of any bankruptcy proceeding may have on this matter.

**IT IS FURTHER ORDERED AND ADJUDGED** that the automatic stay provisions of 11 U.S.C. § 362(a) do not apply to this matter and the asset freeze requested by the Commission.

II.

ACCOUNTINGS

**IT IS FURTHER ORDERED AND ADJUDGED** that within seven calendar days of the issuance of this Order, Defendants Morriss, Acartha Group, MIC VII, ATP, Gryphon Investments, and Relief Defendant Morriss Holdings shall:

(a) make a sworn accounting to this Court and the Commission of all funds, whether in the form of compensation, commissions, loans, income (including payments for assets, shares, or property of any kind), and other benefits (including the provision of services of a personal or mixed business and personal nature) Morris received from investors, Acartha Group, MIC VII, ATP, Gryphon Investments, and Morriss Holdings;

(b) make a sworn accounting to this Court and the Commission of all assets, funds, or other properties held by the Morriss, Acartha Group, MIC VII, ATP, Gryphon Investments, and Morriss Holdings, jointly or individually, or for its direct or indirect beneficial interest, or over which it maintains control, wherever situated, stating the location, value, and disposition of each such asset, fund, and other property; and

(c) provide to the Court and the Commission a sworn identification of all accounts (including, but not limited to, bank accounts, savings accounts, securities accounts and deposits of any kind) in which Morriss, Acartha Group, MIC VII, ATP, Gryphon Investments, and Morriss Holdings (whether solely or jointly), directly or indirectly (including through a corporation, partnership, relative, friend or nominee), either have an interest or over which they have the power or right to exercise control.

**IT IS FURTHER ORDERED AND ADJUDGED** that Defendants Morriss, Acartha Group, MIC VII, ATP, Gryphon Investments, and Relief Defendant Morriss Holdings shall each

make a sworn accounting within seven calendar days of the issuance of this Order to the Commission and this Court of:

(a) all funds received from any source, including, but not limited to, funds received from investors;

(b) all compensation, income (including payment for assets, shares or property of any kind), other benefits (including the provision of services of a personal or mixed business and personal nature) these entities have paid to Morriss; and

(c) all assets, funds, or other properties held in their names, or for their direct or indirect beneficial interest, or over which they maintain control, wherever situated, stating the location, value, and disposition of each such asset, fund, and other property.

The requirement of the sworn accounting shall not apply to the Court-appointed Receiver over Morriss, Acartha Group, MIC VII, ATP, and Gryphon Investments.

### III.

#### RECORDS PRESERVATION

**IT IS FURTHER ORDERED AND ADJUDGED** that, pending determination of the Commission's request for an Asset Freeze, the Defendants and Relief Defendant, their directors, officers, agents, servants, employees, attorneys, depositories, banks, and those persons in active concert or participation with any one or more of them, and each of them, be and they hereby are restrained and enjoined from, directly or indirectly, destroying, mutilating, concealing, altering, disposing of, or otherwise rendering illegible in any manner, any of the books, records, documents, correspondence, brochures, manuals, papers, ledgers, accounts, statements, obligations, files and other property of or pertaining to the Defendants wherever located, until further Order of this Court.

IV.

**EXPEDITED DISCOVERY**

**IT IS FURTHER ORDERED AND ADJUDGED** that:

(a) Immediately upon entry of this Order, and while the Commission's request for an Asset Freeze is pending, the parties may take depositions upon oral examination of parties and non-parties subject to two days notice. Should any Defendant fail to appear for a properly noticed deposition, that party may be prohibited from introducing evidence at the hearing on the Commission's request for a preliminary injunction;

(b) Immediately upon entry of this Order, and while the Commission's request for an Asset Freeze is pending, the parties shall be entitled to serve interrogatories, requests for the production of documents, and requests for admissions. The parties shall respond to such discovery requests within two days of service;

(c) All responses to the Commission's discovery requests shall be delivered to Adam L. Schwartz at 801 Brickell Avenue, Suite 1800, Miami, Florida 33131 by the most expeditious means available; and

(d) Service of discovery requests shall be sufficient if made upon the parties by facsimile or overnight courier, and depositions may be taken by telephone or other remote electronic means.

V.

**SHOW CAUSE HEARING**


IT IS ORDERED AND ADJUDGED that the Defendants and Relief Defendant show cause, if any, before the Honorable Carol E Jackson of this Court, at 9:30 o'clock A.m., on the 27<sup>th</sup> day of January, 2012, in Courtroom 14-North of the United States Courthouse, St. Louis, Missouri, or as soon thereafter as the matter can be heard, why the Court Should Not Enter a Continuing Asset Freeze Order as to Defendants Acartha Group, MIC VII, ATP, Gryphon Investments, and Relief Defendant Morriss Holdings as requested by the Commission.

VI.

**RETENTION OF JURISDICTION**

IT IS FURTHER ORDERED AND ADJUDGED that this Court shall retain jurisdiction over this matter and the Defendants and Relief Defendant in order to implement and carry out the terms of all Orders and Decrees that may be entered and/or to entertain any suitable application or motion for additional relief within the jurisdiction of this Court, and will order other relief that this Court deems appropriate under the circumstances.

DONE AND ORDERED this 17<sup>th</sup> day of January, 2012, at St. Louis, Missouri.

  
UNITED STATES DISTRICT JUDGE

Copies to:

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**Counsel for Securities and  
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