

Loren E. Weiss (Utah Bar No. 3969)
RAY QUINNEY & NEBEKER
36 S. State Street, Suite 1400
Salt Lake City, UT 84111
Telephone: (801) 323-3330
Facsimile: (801) 532-7543
Email: lweiss@rqn.com
Attorneys for Douglas W. Child

George Hofmann (Utah Bar No. 10005)
PARSONS KINGHORN HARRIS, P.C.
111 East Broadway, 11th Floor
Salt Lake City, UT 84111
Telephone: (801) 363-4300
Facsimile: (801) 363-4378
Email: gbh@pkhlawyers.com
Attorneys for Robert D. Geringer

Oliver K. Myers
OLIVER K. MYERS, P.C.
P.O. Box 9153
Salt Lake City, UT 84109
Telephone: (801) 231-1778
Facsimile: (801) 359-2320
Email: myersok@msn.com
*Attorneys for William J. Warwick and
William H. Davidson*

Schuyler G. Carroll
PERKINS COIE LLP
30 Rockefeller Plaza, 22nd Floor
New York, NY 10112
Telephone: (212) 262-6905
Facsimile: (212) 977-1649
Email: scarroll@perkinscoie.com
*Attorneys for Jeff Austin, William Grundy,
and Keith Green*

Neil A. Kaplan (Utah Bar No. 3974)
CLYDE SNOW & SESSIONS
201 S. Main Street, Suite 1300
Salt Lake City, UT 84111
Telephone: (801) 322-2516
Facsimile: (801) 521-6280
Email: nak@clydesnow.com
Attorneys for Kirby D. Cochran

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION**

In re:

CASTLE ARCH REAL ESTATE
INVESTMENT COMPANY,

Debtor.

Bankruptcy No. 11-35082 JTM

Chapter 11

**MOTION FOR RELIEF FROM THE AUTOMATIC STAY,
TO THE EXTENT APPLICABLE, TO ADVANCE DEFENSE COSTS**

Douglas W. Child (“Child”), Kirby D. Cochran (“Cochran”), Robert D. Geringer (“Geringer”), William J. Warwick (“Warwick”), William H. Davidson (“Davidson”), Jeff Austin (“Austin”), William Grundy (“Grundy”), and Keith Green (“Green”) (collectively, the “Movants”), by their attorneys, pursuant to Sections 105(a) and 362 of Title 11 of the United States Bankruptcy Code and Federal Rules of Bankruptcy Procedure 4001 and 9014, bring this motion for relief from the automatic stay, to the extent applicable, to authorize AXIS Surplus Insurance Company (“AXIS”) to advance defense costs under Private Equity and Venture Capital Fund Liability Policy No. EAN756858/01/2010 (the “Policy”) issued to Castle Arch Real Estate Investment Company, LLC (“CAREIC”). In support of this motion, the Movants state as follows:

Jurisdiction and Venue

1. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409. This is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2)(A), (B), (G), and (O). The statutory predicates for the relief requested herein are §§ 105(a) and 362 of the Bankruptcy Code.

Background

2. On or about October 17, 2011, CAREIC and its affiliates (collectively, the “Debtors”) filed a voluntary Petition for relief under Chapter 11 of the Bankruptcy Code. By this Court’s Order dated May 3, 2012, D. Ray Strong was appointed as the Chapter 11 Trustee in this case (the “Trustee”).

3. AXIS issued the Policy to CAREIC for the **Policy Period**¹ of December 20, 2010 to January 20, 2013. Effective January 20, 2012, the Policy was endorsed (Endorsement No. 17) to, among other things, amend the Insuring Agreements for the period January 20, 2012 to January 20, 2013, to amend the Limit of Liability to provide a maximum aggregate Limit of Liability of \$1 million, and to provide that the applicable retention under Insuring Agreement A (the applicable insuring agreement here) is \$0. A copy of the Policy is attached hereto as Exhibit A.

4. The Policy, as amended by endorsement, provides coverage only for **Insured Individuals** for **Non-Indemnifiable Loss** subject to a maximum aggregate Limit of Liability of \$1 million. **Defense Costs** are part of, and not in addition to, the Limit of Liability.

5. In or about December 2012 or early January 2013, several of the Movants provided notice to AXIS of the intention of the Trustee to proceed with litigation against them and others as set forth in the Disclosure Statement for the Trustee's Plan for Liquidation dated September 29, 2012. Thereafter, several of the Movants and the Trustee provided notice to AXIS of demand letters issued by the Trustee to several of the Movants. The letters indicated that the Trustee would file a complaint asserting the claims which the Trustee believes to be in excess of the Policy's \$1 million Limit of Liability.

6. On or about October 12, 2013, Child and Cochran, through their respective counsel, and several of the other Movants, received a draft complaint from the Trustee, which first articulated the nature and factual basis for the Trustee's claims against the Movants. The demand letters and the draft complaint are collectively referred to as the "Trustee Matters." The

¹ Terms in bold are defined in the Policy.

Trustee has indicated, through his counsel, his intention to attempt mediation to resolve all of the claims made against the Movants.

7. The Movants have retained multiple defense counsel to represent them in defense of the Trustee Matters.² The Movants seek from AXIS the advancement of **Defense Costs** under the Policy.

The Policy

8. The Policy is a claims made and reported insurance policy which provides coverage, subject to its terms, conditions and exclusions, for **Claims** first made against **Insured Individuals** during the **Policy Period**.

9. For purposes of this motion, Insuring Agreement A of the Policy provides individual management liability insurance to **Insured Individuals** in situations where, like here, the **Individual Insureds** are not being indemnified by the company. Insuring Agreement A provides:

A. **INDIVIDUAL MANAGEMENT LIABILITY:**

Except for **Loss** that the Insurer pays pursuant to Insuring Agreements C, D, or E below, the Insurer shall pay in connection with a **Wrongful Act** which takes place before or during the **Policy Period** all **Non-Indemnifiable Loss** on behalf of any:

1. **Insured Individual** arising from any **Claim** for a **Wrongful Act** first made against such **Insured Individual**;
2. **Insured Individual** arising from any **Claim** for a **Wrongful Act** while serving in an **Outside Position** first made against such **Insured Individual**;

² Douglas W. Child is represented by defense counsel at Ray Quinney & Nebeker. Kirby D. Cochran is represented by defense counsel at Clyde Snow & Sessions. Robert D. Geringer is represented by defense counsel at Parsons Kinghorn Harris, P.C. William J. Warwick and William H. Davidson are represented by defense counsel, Oliver K. Myers, P.C. Jeff Austin, William Grundy, and Keith Green are represented by defense counsel at Perkins Coie LLP.

During the **Policy Period** or Extended Reporting Period, if applicable, and reported in writing to the Insurer as soon as practicable after any **Insured Individual** first becomes aware of such **Claim**, but in no event later than sixty (60) days after the expiration of the **Policy Period** or Extended Reporting Period, if applicable.

The coverage set forth in Insuring Agreement A.2 above shall be specifically excess of any indemnification and insurance available to such **Insured Individual** from the **Outside Entity**.

(Ex. A, Endorsement No. 17, p. 2 of 10.)

10. Pursuant to Section III.F. of the Policy, the definition of **Insured(s)** includes only **Insured Individuals**. It does not include the company. Section III.H. of the Policy defines **Insured Individuals** as:

Any one or more natural persons who was, is, or shall become an:

1. director, officer, trustee or **Manager(s)** or equivalent executive of the **Policyholder** other than a **General Partner**; or
2. employee of the **Policyholder**.

Solely for purposes of Insuring Agreement A.1, **Insured Individual(s)** shall include directors and officers of a corporation acting as a general partner of a **Limited Partnership**, or the members of the board of managers or executive management officers of any limited liability company acting as a general partner of a **Limited Partnership**, if such limited liability company's members have delegated management of such limited liability company to such board of managers or have elected executive management officers.

(Ex. A, Endorsement No. 17, p. 3 of 10, Section III.H, p. 4 of 16.)

11. Section VIII of the Policy, as amended by Endorsement No. 17, provides, "Notwithstanding any provision in this Policy to the contrary, this Policy shall provide coverage only for **Insured Individuals**, and only for **Non-Indemnifiable Loss**." (Ex. A, Endorsement No. 17, p. 10 of 10.) The Movants are **Insured Individuals** under the Policy because they were, at all relevant times, directors, officers or employees of CAREIC. The Debtors are not **Insureds**

because they are not **Insured Individuals** and, as such, are not entitled to coverage under the Policy.

12. The Policy defines **Non-Indemnifiable Loss** as “**Loss** incurred by an **Insured Individual** for which the **Policyholder**: (i) is neither permitted nor required by common or statutory law to indemnify such **Insured Individual**; (ii) or is financially unable to indemnify such **Insured Individual** by reason of **Financial Impairment**.” (Ex. A, Endorsement No. 17, p. 5 of 10.) **Loss** includes **Defense Costs**. (Ex. A, Endorsement No. 17, p. 3 of 10.) In this case, the Debtors are not indemnifying the Movants. **Defense Costs** is defined by the Policy in part as:

B. Defense Costs means reasonable and necessary legal fees and expenses incurred by or on behalf of the **Insureds** in defending, settling or appealing **Claims**, and the premiums for appeal, attachment or similar bonds. The Insurer, however, shall have no obligation to apply for or furnish such bonds. **Defense Costs** shall not include regular or overtime wages, salaries, fees or benefits of the **Insured Individuals** or employees of the **Policyholder** or the **Policyholder’s** overhead expenses.

(Ex. A, Section III.B, p. 3 of 16.)

13. AXIS is prepared to advance **Defense Costs** for the Trustee Matters to the Movants qualifying as **Insured Individuals** in accordance with the Policy’s terms and conditions and pursuant to a reservation of its rights.

REQUESTED RELIEF AND REASONS THEREFORE

14. Out of an abundance of caution, the Movants seek an Order of the Court, pursuant to §§ 105(a) and 362(d) of the Bankruptcy Code, to lift the automatic stay (to the extent it may apply) to allow AXIS to advance **Defense Costs** in connection with the Trustee Matters. A proposed Order is attached hereto as Exhibit B.

15. The automatic stay under Section 362(d) of the Bankruptcy Code, which precludes the continuation of a judicial action against a debtor or a trustee, is not permanent and may be terminated, modified or conditioned. Section 362(d)(1) of the Bankruptcy Code states:

[o]n request of a party in interest and after notice and hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay—

(1) for cause, including the lack of adequate protection of an interest in property of such party in interest; . . .

11 U.S.C. § 362(d)(1).

16. Because “cause” is not further defined in the Bankruptcy Code, relief from the stay for cause is a discretionary determination made on a case by case basis. *In re Busch*, 29 B.R. 137, 140 (B.A.P. 10th Cir. 2003); *In re Carbaugh*, 278 B.R. 512, 525 (B.A.P. 10th Cir. 2002).

17. Section 362 of the Bankruptcy Code provides, in relevant part, that the filing of a bankruptcy petition operates as a stay of “any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate.” 11 U.S.C. § 362(a)(3). The estate’s property includes “all legal or equitable interests of the debtor in property as of the commencement of the case.” 11 U.S.C. § 541(a)(1).

18. In determining a bankruptcy estate’s property interest in an insurance policy, courts are guided by the language and scope of the policy at issue. *In re Allied Digital Technologies Corp.*, 306 B.R. 505, 509 (Bankr. D. Del. 2004). The outcome of this fact-based analysis usually hinges on who is the insured under the liability policy because liability policies are held by insureds as protection against claims that may be asserted against them. *See In re Minoco Group of Companies, Ltd.*, 799 F.2d 517, 519 (9th Cir. 1986). Courts also look at

whether the debtor's estate is worth more with the policy than without it, and whether the debtor would have a right to receive policy proceeds. *See Sosebee v. Steadfast Ins. Co.*, 701 F.3d 1012, 1023 (5th Cir. 2012). Here, the Debtors are not entitled to any policy proceeds because they are not **Insured Individuals**. The Policy, as amended by endorsement, does not provide coverage to the Debtors. Rather, it specifically provides coverage for **Non-Indemnifiable Loss** to **Insured Individuals** only.

19. Courts have held that insurance policies and their proceeds which benefit only the directors and officers of a bankrupt company, which is the case here, are not property of the estate. *See In re Reliance Group Holdings, Inc. Sec. Litig.*, No. 00-CV-4653, 2004 WL 943545 at *11-12 (S.D.N.Y. Apr. 30, 2004) (authorizing insurers to fund settlement of securities litigation against bankrupt company's directors and officers over liquidator's objection because there is no basis to conclude that a Side A policy or its proceeds, which benefit only directors and officers, are property of the estate).

20. Other courts have found that insurance policy proceeds are not property of an estate where the policy benefits only the directors and officers by providing either direct coverage for claims made against them, or indirect coverage to reimburse an insured company for indemnifying the directors or officers. *See, e.g., Louisiana World Exposition, Inc. v. Fed Ins. Co. (In re Louisiana World Exposition, Inc.)*, 832 F.2d 1391, 1400-01 (5th Cir. 1987) (proceeds of policy that only benefit directors and officers through direct liability coverage or coverage for amounts bankrupt company indemnified its directors and officers are not property of the estate); *In re Allied Digital Technologies Corp.*, 306 B.R. 505, 512-13 (Bankr. D. Del. 2004) (proceeds of policy providing direct coverage to directors and officers and indemnity coverage for bankrupt

company were not property of the estate where directors and officers were subject of Trustee action and bankrupt company had not indemnified them); *Imperial Corp. of America v. Milberg, Weiss, Bershad, Specthrie & Lerach (In re Imperial Corp. of America)*, 144 B.R. 115, 118-19 (Bankr. S.D. Cal. 1992) (proceeds of policy providing direct coverage to directors and officers and indemnity coverage for amounts paid by bankrupt company on behalf of directors and officers were not property of the estate).

21. Even if the automatic stay were deemed to apply, there is “cause” to lift the stay. The Movants have not been and will not be indemnified in connection with the Trustee Matters. Without advancement of **Defense Costs** under the Policy, the Movants qualifying as **Insured Individuals** under the Policy will be prevented from conducting a meaningful defense to the Trustee Matters. Other courts have granted similar requests for relief under similar circumstances. *See In re Allied Digital Technologies Corp.*, 306 B.R. at 513 (concluding that the policy proceeds were not part of the debtor’s estate, but that even if they were, cause existed for stay relief to advance defense costs to individual defendants in accordance with the terms and conditions of the D&O policy); *Maxwell v. Megliola (In re Marchfirst, Inc.)*, 288 B.R. 526, 530 (Bankr. N.D. Ill. 2002), *aff’d*, *Megliola v. Maxwell*, 293 B.R. 443 (N.D. Ill. 2003) (authorizing a D&O insurer to advance defense costs to a debtor’s former directors and officers).

22. Under Section 105(a) of the Bankruptcy Code, this Court is authorized to issue “any order, process, or judgment that is necessary or appropriate to carry out the provisions of [the Bankruptcy Code].” 11 U.S.C. § 105(a). The purpose of § 105 is to ensure a bankruptcy court’s power to take whatever action is “appropriate or necessary in aid of the exercise of [its] jurisdiction.” 2 *Collier on Bankruptcy*, § 105.1 at 105-5-105-6 (15th rev. ed. 1997). A

Bankruptcy Court should, thus, exercise its § 105 power where it is either necessary or appropriate to implement the provisions of the Bankruptcy Code or where equity and substantial justice requires. *In re Dunckle Associates, Inc.*, 19 B.R. 481, 485 (Bankr. E.D. Pa. 1982). Here, lifting the automatic stay (to the extent it applies) and authorizing the advancement of **Defense Costs** under the Policy will manifestly promote equity and substantial justice with respect to the Trustee Matters against the Movants.

23. **Defense Costs** will not be paid by the Debtors or from property of the Estate, and the Policy specifically covers **Insured Individuals** only, and the Movants are not Debtors. Therefore, granting this motion will not result in any prejudice to the Estate or the Trustee and will not otherwise diminish the Estate.

24. The Bankruptcy Appellate Panel for the Tenth Circuit (and numerous other courts) has adopted the factors enumerated in *In re Curtis*, 40 B.R. 795, 799-800 (Bankr. D. Utah 1984) to determine whether “cause” exists to grant relief from stay. *In re Busch*, 294 B.R. at 141; *In re Carbaugh*, 278 B.R. at 525. Among other things, the Court should consider “the impact of the stay on the parties and the ‘balance of hurt.’” *In re Curtis*, 40 B.R. at 800. For the reasons stated above, the impact of the stay on the parties and the “balance of hurt” weigh strongly in favor of granting relief from the stay to the extent it may apply.

25. For the reasons discussed herein, proceeds of the Policy are not property of the Estate. Alternatively, to the extent the automatic stay is deemed to apply, there is cause to lift the stay to authorize AXIS to advance of **Defense Costs** to the Movants in accordance with the Policy’s terms and conditions. A proposed order granting this motion for the reasons stated herein is attached hereto as Exhibit B.

26. The Movants respectfully request that the Court waive the 14-day stay which would otherwise apply pursuant to Fed. R. Bankr. P. 4001(a)(3).

WHEREFORE, Child, Cochran, Geringer, Austin, Grundy, Green, Warwick, and Davidson, through their counsel, respectfully request that this Court enter an Order:

- A. Authorizing AXIS to advance **Defense Costs** under AXIS Policy No. EAN756858/01/2010 subject to its terms and conditions;
- B. Waiving the 14-day stay which would otherwise apply pursuant to Fed R. Bankr. P. 4001(a)(3); and
- C. Granting such other and further relief as this Court deems just and proper.

DATED this 27th day of November, 2013.

RAY QUINNEY & NEBEKER

/s/ Loren W. Weiss

Loren E. Weiss

Attorneys for Douglas W. Child

CLYDE SNOW & SESSIONS

/s/ Neil A. Kaplan

Neil A. Kaplan

Attorneys for Kirby D. Cochran

PARSONS KINGHORN HARRIS, P.C.

/s/ George Hofmann

George Hofmann

Attorneys for Robert D. Geringer

PERKINS COIE LLP

/s/ Schuyler G. Carroll

Schuyler G. Carroll

*Attorneys for Jeff Austin, William Grundy, and
Keith Green*

OLIVER K. MYERS, P.C.

/s/ Oliver K. Myers

Oliver K. Myers

*Attorneys for William J. Warwick and William H.
Davidson*

CERTIFICATE OF SERVICE

I hereby certify that on this 27th day of November, 2013, a true and correct copy of the foregoing **Motion for Relief From the Automatic Stay, to the Extent Applicable, to Advance Defense Costs** was mailed first class, postage prepaid, to the following:

D. Ray Strong, Trustee
Berkley Research Group
201 South Main Street , Suite 450
Salt Lake City, UT 84111

Castle Arch Real Estate Investment Co.
8 East Broadway #212
Salt Lake City, UT 84111-2283

Jeffrey M Armington
Mary Margaret Hunt
Christopher J Martinez
Dorsey & Whitney, LLP
136 South Main St., Ste 1000
Salt Lake City, UT 84101

T. Edward Cundick
Adam S. Affleck
Prince Yeates & Geldzahler
15 West South Temple , Ste. 1700
Salt Lake City, UT 84101

John T. Morgan tr
US Trustees Office
Ken Garff Bldg.
405 South Main Street, Ste 300
Salt Lake City, UT 84111

Michael L. Labertew
Labertew & Associates, LLC
1640 Creek Side Lane
Park City, UT 84098

Official Committee of Unsecured Creditors
c/o Lon A. Jenkins, Troy J. Aramburu
Jones Waldo Holbrook & McDonough
170 South Main, Suite 1500
Salt Lake City, UT 84101

/s/ George Hofmann

EXHIBIT A



PRIVATE EQUITY AND VENTURE CAPITAL FUND LIABILITY POLICY DECLARATIONS

THIS POLICY IS WRITTEN ON A CLAIMS MADE AND REPORTED BASIS AND COVERS ONLY CLAIMS FIRST MADE AGAINST THE INSURED DURING THE POLICY PERIOD OR THE EXTENDED REPORTING PERIOD, IF APPLICABLE, AND REPORTED IN WRITING TO THE INSURER PURSUANT TO THE TERMS HEREIN. THE LIMIT OF LIABILITY AVAILABLE TO PAY JUDGMENTS OR SETTLEMENTS SHALL BE REDUCED AND MAY BE TOTALLY EXHAUSTED BY AMOUNTS INCURRED AS DEFENSE COSTS. PLEASE READ THIS POLICY CAREFULLY.

INSURER: AXIS SURPLUS INSURANCE COMPANY

POLICY NUMBER: EAN756858/01/2010

Item 1. **Insured Organization** and Address:

Castle Arch Real Estate Investment Company, LLC (Name)
1284 Flint Meadow Drive (Address)
Suite B
Kaysville, UT 84037

Item 2. **Policy Period:**

From 12:01 AM (Local time at the address stated in Item 1) on December 20, 2010
To 12:01 AM (Local time at the address stated in Item 1) on December 20, 2011

Item 3. Limit of Liability:

Maximum aggregate Limit of Liability for all
Claims under Section I. Insuring Agreements combined \$ 5,000,000

Item 4. Retentions:

- (A)
 - (1) Each **Claim** under Section I. Insuring Agreements A .1 or A. 3. \$ 0
 - (2) Each **Claim** under Section I. Insuring Agreement A. 2. \$ 150,000
- (B) Each **Claim** under Section I. Insuring Agreement B \$ 150,000
- (C)
 - (1) Each **Claim** under Section I. Insuring Agreement C made against a natural person **General Partner** \$ 150,000
 - (2) Each **Claim** with respect to all **Insureds** under Section I. Insuring Agreement C, other than **Claims** against natural person **General Partners** \$ 150,000
- (D) Each **Claim** under Section I. Insuring Agreement D \$ 0

Item 5. Extended Reporting Period:

Additional Premium: 150 percent of annualized premium for the **Policy Period**

The insurer issuing this policy does not hold a certificate of authority to do business in this State, and thus is not fully subject to regulation by the Utah Insurance Commissioner. This policy receives no protection from any of the guaranty associations created under Chapter 28, Title 31A (UC 31A-15-103 [8]).

Item 6. Pending or Prior Claim Date:

Section I. Insuring Agreement A: November 06, 2006
Section I. Insuring Agreement B: December 20, 2010
Section I. Insuring Agreement C: December 20, 2010
Section I. Insuring Agreement D: November 06, 2006

Item 7. Continuity Date: Insuring Agreements A & D: November 06, 2006
Insuring Agreements B & C: December 20, 2010

Item 8. Notices to Insurer:

Notice Of Claim(s) To Be Sent To:

Axis U.S. Insurance
Financial Insurance Solutions Claims
Address: Connell Corporate Park
300 Connell Drive
P.O. Box 357
Berkeley Heights, NJ 07922-0357

Facsimile: (908) 508-4389
Toll-Free Number: (866) 259-5435

All Other Notices To Be Sent To:

Axis U.S. Insurance
Financial Insurance Solutions
Address: Connell Corporate Park
300 Connell Drive
P.O. Box 357
Berkeley Heights, NJ 07922-0357

Facsimile: (908) 508-4301
Toll-Free Number: (866) 259-5435

Item 9. Endorsements Effective at Inception:

SLN-UT 0804 Policyholder Notice – Utah
SOS-CW 0803 Service of Suit Clause
Manuscript Schedule of Limited Partnerships
MU 1037 0203 Amend Definition of Subsidiary Endorsement
Manuscript Add Definition of Application
Manuscript Amend Other Insurance
Manuscript Bilateral ERP
Manuscript Enhancement Endorsement
Manuscript Amend Insuring Agreement B
Manuscript Amend Cancellation Provision
Manuscript Amend Representations and Severability
Manuscript Amend Spousal Extension
Manuscript EPL Endorsement
Manuscript Amend Definition of Defense Costs
Manuscript Amend ERISA Exclusion

Item 10: Terrorism Coverage Premium:

\$ No separate additional premium

The Insurer has caused this Policy to be signed and attested by its authorized officers, but it shall not be valid unless also signed by another duly authorized representative of the Insurer.



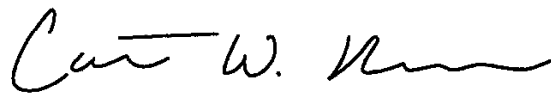
Authorized Representative

December 20, 2010

Date



Secretary



President

PRIVATE EQUITY AND VENTURE CAPITAL FUND LIABILITY POLICY

In consideration of payment of the premium, and in reliance on all statements made in the Application for this Policy and all information provided to the Insurer, and subject to all the provisions of this Policy, the Insurer designated as such in the Declarations and the **Insured Organization**, on behalf of all **Insureds**, agree as follows:

I. INSURING AGREEMENTS

The Insurer shall pay in connection with a **Wrongful Act**, which takes place before or during the **Policy Period**:

A. INDIVIDUAL MANAGEMENT LIABILITY:

Except for **Loss** that the Insurer pays pursuant to Insuring Agreements B, C or D below, the Insurer shall pay in connection with a **Wrongful Act** which takes place before or during the **Policy Period** all **Loss** on behalf of any:

1. **Insured Individual** which the **Policyholder** is not permitted to indemnify or does not indemnify by reason of **Financial Impairment** arising from any **Claim** for a **Wrongful Act** first made against such **Insured Individual**;
2. **Policyholder** for which the **Policyholder** grants indemnification to any **Insured Individual**, as permitted or required by law, arising from any **Claim** for a **Wrongful Act** first made against such **Insured Individual**; or
3. **Insured Individual** arising from any **Claim** for a **Wrongful Act** while serving in an **Outside Position** first made against such **Insured Individual**;

during the **Policy Period** or Extended Reporting Period, if applicable, and reported in writing to the Insurer as soon as practicable after any **Insured** first becomes aware of such **Claim**, but in no event later than thirty (30) days after the expiration of the **Policy Period** or Extended Reporting Period, if applicable.

The coverage set forth in Insuring Agreement A. 3. above shall be specifically excess of any indemnification and insurance available to such **Insured Individual** from the **Outside Entity**.

B. ENTITY PROFESSIONAL SERVICES LIABILITY:

The Insurer shall pay in connection with a **Wrongful Act** which takes place before or during the **Policy Period** all **Loss** on behalf of the **Policyholder** for which the **Policyholder** becomes legally obligated to pay as a result of a **Claim** arising from the rendering of or failure to render **Professional Services** and first made during the **Policy Period** or Extended Reporting Period, if applicable, and reported in writing to the Insurer as soon as practicable after any **Insured** first becomes aware of such **Claim**, but in no event later than thirty (30) days after the expiration of the **Policy Period** or Extended Reporting Period, if applicable.

C. GENERAL PARTNERS AND LIMITED PARTNERSHIP LIABILITY:

The Insurer shall pay in connection with a **Wrongful Act** which takes place before or during the **Policy Period** all **Loss** on behalf of any:

1. **General Partner** arising from a **Claim** for a **Wrongful Act** first made against such **General Partner**; or
2. **Limited Partnership** arising from a **Claim** for a **Wrongful Act** first made against such **Limited Partnership**;

during the **Policy Period** or Extended Reporting Period, if applicable, and reported in writing to the Insurer as soon as practicable after any **Insured** first becomes aware of such **Claim**, but in no event later than thirty (30) days after the expiration of the **Policy Period** or Extended Reporting Period, if applicable.

D. PORTFOLIO COMPANY OUTSIDE DIRECTORSHIP LIABILITY

The Insurer shall pay on behalf of the **Insured Individuals Loss** in excess of any **Portfolio Company Indemnification and Insurance** which the **Insured Individuals** become legally obligated to pay as a result of a **Claim** for a **Wrongful Act** in their capacity as a director of a **Portfolio Company** that is first made during the **Policy Period** or Extended Reporting Period, if applicable, and reported in writing to the Insurer as soon as practicable after any **Insured** first becomes aware of such **Claim**, but in no event later than thirty (30) days after the expiration of the **Policy Period** or Extended Reporting Period, if applicable.

II. COVERAGE EXTENSIONS

A. Spouses

If a **Claim** made against an **Insured Individual** includes a claim against the **Insured Individual's** lawful spouse solely by reason of (1) such spouse's status as a spouse of the **Insured Individual**, or (2) such spouse's ownership interest in property from which the claimant seeks recovery for the **Wrongful Acts** of the **Insured Individual**, all loss which such spouse becomes legally obligated to pay on account of such claim shall be treated for purposes of this Policy as **Loss** which the **Insured Individual** is legally obligated to pay on account of the **Claim** made against the **Insured Individual**. Such loss shall be covered under this Policy only if and to the extent that such loss would be covered under this Policy if incurred by the **Insured Individual**.

The coverage extension afforded by this Subsection does not apply to any **Claim** alleging any wrongful act or omission by an **Insured Individual's** spouse.

B. Estates and Legal Representatives

Coverage under this Policy shall extend to a **Claim** made against the estates, heirs, legal representatives or assigns of an **Insured Individual** who is deceased or against the legal representatives or assigns of an **Insured Individual** who is incompetent, insolvent or bankrupt for the **Wrongful Acts** of such **Insured Individual**.

The coverage extension afforded by this Subsection does not apply to any **Claim** alleging any wrongful act or omission by the **Insured Individual's** estates, heirs, legal representatives or assigns.

C. Extended Reporting

If the Insurer cancels or chooses not to renew this Policy, the **Policyholder** or the **Insured Individuals** shall have the right, upon payment of the additional premium required by the Insurer in Item 5 in the Declarations, to a one year Extended Reporting Period following the termination of the **Policy Period**, but only with respect to **Wrongful Acts** occurring prior to the effective date of cancellation or nonrenewal.

The right to purchase the Extended Reporting Period shall not be available in the event of nonrenewal or cancellation of this Policy resulting from the failure to pay any premium due. The offer of renewal terms, conditions or premiums different from those in effect prior to renewal shall not constitute a refusal to renew.

However, the Insurer may, in its sole discretion and subject to any additional terms, conditions and premiums required by the Insurer, agree by written endorsement to this Policy to any other Extended Reporting requested by the **Insureds**.

This right to elect any Extended Reporting Period shall lapse unless written notice of the Election of the Extended Reporting Period, together with payment of the additional premium due, is given by the **Policyholder** or **Insured Individual** and is received by the Insurer within thirty (30) days following the

effective date of cancellation, or nonrenewal. Coverage under the Extended Reporting shall apply only to a **Claim** that is first made against the **Policyholder** or **Insured Individual** during the Extended Reporting and any **Claim** made during the Extended Reporting Period shall be deemed to have been made during the immediately preceding **Policy Period**. The Limit of Liability applicable to the Extended Reporting Period shall be part of, and not in addition to, the Limit of Liability for the immediately preceding **Policy Period**. The premium with respect to any Extended Reporting Period shall be deemed fully earned upon payment. Notwithstanding the foregoing, the Insurer may elect, at its sole option, to provide a Limit of Liability applicable to the Extended Reporting Period that is in addition to, and not part of, the Limit of Liability for the immediately preceding **Policy Period**.

III. DEFINITIONS

A. **Claim(s)** means the receipt by any **Insured** of:

1. a written demand against any **Insured** for monetary damages;
2. a civil, arbitration, administrative, investigative or regulatory proceeding against any **Insured** commenced by:
 - (a) the service of a complaint or similar pleading;
 - (b) the filing of a notice of charges, investigative order or like document; or
 - (c) written notice or subpoena from an authority identifying such **Insured** as an entity or person against whom a formal proceeding may be commenced; or
3. a formal criminal proceeding against any **Insured Individual** commenced by:
 - (a) the return of an indictment, information, or similar pleading; or
 - (b) written notice or subpoena from an authority identifying such **Insured Individual** as an individual against whom a formal proceeding will be commenced.

B. **Defense Costs** means reasonable and necessary legal fees and expenses incurred by or on behalf of the **Insureds** in defending, settling or appealing **Claims**, and the premiums for appeal, attachment or similar bonds. The Insurer, however, shall have no obligation to apply for or furnish such bonds. **Defense Costs** shall not include regular or overtime wages, salaries, fees or benefits of the **Insured Individuals** or employees of the **Policyholder** or the **Policyholder's** overhead expenses.

C. **Executive Individuals** means any one or more natural persons who are a past, present or future chairperson of the board of directors, president, chief executive officer, chief operating officer, chief financial officer, in-house general counsel, general partner, portfolio representative or risk manager of the **Policyholder** or any person fulfilling a role that is the functional equivalent to any of the foregoing.

D. **Financial Impairment** means:

1. the appointment by any state or federal official, agency or court of any receiver, trustee, examiner, conservator, liquidator, rehabilitator or similar official to take control of, supervise, manage or liquidate the **Policyholder**; or
2. the **Policyholder** becoming a debtor in possession within the meaning of the United States Bankruptcy Code or similar legal status under foreign law.

E. **General Partner** means:

1. any natural person general partner of a **Limited Partnership**; and

2. any entity acting as a general partner of a **Limited Partnership**.

With respect to any corporation acting as a general partner of a **Limited Partnership**, such corporation's directors and officers shall be **Insured Individuals**, for the purposes of Section I Insuring Agreement A.1. and A.2. of the Policy.

With respect to any limited liability company acting as a general partner of a **Limited Partnership**, if such limited liability company's members have delegated management of such limited liability company to a board of managers or have otherwise elected executive management officers, then such members of the board of managers and executive management officers shall be deemed to be **Insured Individuals** for the purpose of Section I. Insuring Agreement A.1. and A.2. of the Policy.

- F. **Insured(s)** means the **Insured Individuals** and the **Policyholder**.
- G. **Insured Organization** means the company designated in Item 1 in the Declarations.
- H. **Insured Individual(s)** means any one or more natural persons who was, is, or shall become an:
1. director, officer, trustee or **Manager(s)** or equivalent executive of the **Policyholder** other than a **General Partner**; or
 2. employee of the **Policyholder**.
- I. **Interrelated Wrongful Acts** means any and all **Wrongful Acts** that have as a common nexus any fact, circumstance, situation, event, transaction, cause or series of causally or logically connected facts, circumstances, situations, events, transactions or causes.
- J. **Investment Fund** means any separate legal entity:
1. which is listed in the attached schedule of **Investment Funds** and which was created or established by a **Policyholder** prior to the inception date of the **Policy Period** listed in Item 2 of the Declarations; or
 2. which, subject to Section VIII. A., was created during the **Policy Period**;
- whose assets consist of a sum of money whose principal is invested or will be invested pursuant to the objectives set forth in such entity's private placement memorandum, prospectus, offering memorandum or similar document. Notwithstanding Section III.J.2 above, the **Policyholder** shall provide notice to the Insurer within thirty (30) days after the termination or expiration of the **Policy Period** of all **Investment Funds** created, sponsored or acquired during the **Policy Period**. If this Policy is a renewal of an existing policy issued by the Insurer and **Investment Funds** were created during such preceding **Policy Period**, such funds must be scheduled by the Insurer in the Schedule of **Investment Funds** under this Policy in order for coverage to apply to such **Investment Funds**, and the Insurer may condition such coverage on any additional terms, conditions or additional premium that the Insurer in its sole discretion deems appropriate.
- The term **Investment Fund** shall not include any **Portfolio Company**.
- K. **Limited Partnership** means any entity:
1. listed in Item 1 of the Declarations of this Policy that is a limited partnership;
 2. any **Investment Fund** that is a limited partnership; and
 3. any limited partnership listed in an endorsement to this Policy listing any additional **Limited Partnerships**.
- L. **Loss** means the amount(s) including **Defense Costs** which the **Insured Individuals**, or the

Policyholder with respect to Section I Insuring Agreement B, become legally obligated to pay on account of a **Claim**, including damages, judgments, any award of pre-judgment or post-judgment interest, settlement amounts, costs and fees awarded pursuant to judgments.

Loss does not include:

1. any amounts for which the **Insureds** are legally or financially absolved from payment;
2. any amount allocated to uncovered loss pursuant to Section V.A. Allocation;
3. any investigative costs;
4. the return of any contribution of capital to any **Insured Individual**;
5. liquidated damages under any contract for **Professional Services**;
6. damages, costs or expenses incurred by an **Insured** in making physical changes, modification, alterations, or improvements as a part of an accommodation of any disabled person pursuant to the Americans with Disabilities Act of 1990 or any similar federal, state or local law;
7. taxes or the loss of tax benefits, or fines or penalties imposed by law; or
8. matters uninsurable under the law applicable to this Policy.

However, in determining the insurability of punitive or exemplary damages, or the multiplied portion of any multiplied damage award, it is agreed that the law of the jurisdiction most favorable to the insurability of those damages will control for purposes of resolving any dispute between the Insurer and the **Insureds**, provided that such jurisdiction is:

- (a) where the punitive, exemplary or multiplied damages were awarded or imposed;
- (b) where the **Wrongful Act** underlying the **Claim** took place;
- (c) where either the Insurer or any **Insured** is incorporated organized, has its principal place of business or resides; or
- (d) where this Policy was issued or became effective.

M. **Manager(s)** means any one or more natural persons who was, is, or shall become a manager, managing member, member of the board of managers or equivalent executive of a company that is a limited liability company.

N. **Non-Profit Entity** means any non-profit corporation, community chest, fund or foundation that is not included in the definition of **Policyholder** and that is (i) exempt from federal income tax as an organization described in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended.

O. **Outside Entity** means:

1. any **Non-Profit Entity**; or
2. any other entity, if **Outside Position** coverage with respect to such entity is specifically granted by endorsement to this Policy.

P. **Outside Position** means the position of director, officer, trustee or other equivalent executive position held by any **Insured Individual** in an **Outside Entity** if service in such position is at the specific request of the **Policyholder** before the time of service in the **Outside Position**.

- Q. **Policyholder** means the **Insured Organization** and its **Subsidiaries**, including any such organization as a debtor in possession within the meaning of the United States Bankruptcy Code or similar legal status under foreign law, and any **Limited Partnership**.
- R. **Policy Period** means the period of time specified in Item 2 in the Declarations, subject to prior termination in accordance with Section VIII.D.
- S. **Pollutants** means any substance located anywhere in the world exhibiting any hazardous characteristics as defined by or identified on a list of hazardous substances issued by the United States Environmental Protection Agency or any federal, 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, mold, spores, fungi, germs, chemicals or waste materials. **Pollutants** shall also mean any other air emission, odor, waste water, oil or oil product, infectious or medical waste, asbestos or asbestos product, lead or lead product, noise, and electric, magnetic or electromagnetic field.
- T. **Portfolio Company** means any entity in which any **Investment Fund** has a financial interest pursuant to the investment objectives set forth in any private placement memorandum, prospectus or similar document issued by the **Policyholder** and which is not an **Outside Entity**; and
1. which is scheduled to this Policy; or
 2. which is not scheduled to this Policy, but the **Investment Fund's** financial interest in such **Portfolio Company** was created during the **Policy Period**.
- U. **Portfolio Company Indemnification and Insurance** means:
1. any indemnification which a **Portfolio Company** is legally permitted or required to provide its directors and/or officers, including any **Insured Individual**, except to the extent that such **Portfolio Company** fails to provide such indemnification by reason of its **Financial Impairment**; and
 2. any insurance provided for the benefit of the directors, officers, partners, managers and/or employees of any **Portfolio Company**.
- V. **Professional Services** means the formation, capitalization, operation or management of an **Investment Fund** for a fee by the **Policyholder** in its exercise of management and control of such **Investment Fund**. Unless this Policy is endorsed otherwise, **Professional Services** does not include services performed by an **Insured** for a **Portfolio Company** regardless of whether such **Professional Services** are performed on a compensated or uncompensated basis.
- W. **Subsidiary(ies)** means any entity in which and so long as the **Insured Organization**, either directly or indirectly:
1. owns more than fifty (50) percent of the issued and outstanding voting stock or other equity interest; or
 2. controls voting rights representing the present right to vote for election or to appoint more than fifty (50) percent of the directors or trustees,
- on or before the effective date of this Policy, or after the effective date of this Policy if the entity is covered pursuant to Section VIII.B.1, solely with regard to **Wrongful Acts** occurring at or after the time such entity became a **Subsidiary**.
- Subsidiary** shall not include any **Portfolio Company**.
- X. **Wrongful Act(s)** means any error, misstatement, misleading statement, act, omission, neglect, or breach of duty actually or allegedly committed or attempted by:

1. any **Insured Individual** in their capacity as such;
2. any **Insured Individual** in an **Outside Position** in their capacity as such with respect to Section I. Insuring Agreement A. 3;
3. the **Policyholder** with respect to Section I. Insuring Agreement B;
4. a **General Partner** in his, her or its capacity as a general partner of a **Limited Partnership** with respect to Insuring Agreement C; or
5. the **Insured Individuals** in their capacity as a director of a **Portfolio Company** with respect to Insuring Agreement D.

IV. EXCLUSIONS

A. Exclusions Applicable To All Section I. Insuring Agreements:

The Insurer shall not be liable for **Loss** arising from any **Claim** made against any **Insured**:

1. based upon, arising out of, directly or indirectly resulting from, in consequence of or in any way involving:
 - (a) any **Wrongful Act**, fact, circumstance, situation or other event which has been the subject of any written notice given under any other policy; or
 - (b) any other **Wrongful Act** whenever occurring, which, together with a **Wrongful Act** described in (a) above, constitute **Interrelated Wrongful Acts**;
2. based upon, arising out of, directly or indirectly resulting from, in consequence of or in any way involving:
 - (a) any written demand, suit or other proceeding pending, or order, decree or judgment entered, against any **Insured** on or prior to the Pending or Prior Claim Date set forth in Item 6 in the Declarations, or any **Wrongful Act**, fact, circumstance or situation underlying or alleged therein; or
 - (b) any other **Wrongful Act** whenever occurring, which, together with a **Wrongful Act** described in (a) above, constitute **Interrelated Wrongful Acts**;
3. for bodily injury, sickness, disease, emotional distress, mental anguish, outrage, humiliation, death, false arrest, or imprisonment, abuse of process, malicious prosecution, defamation, libel, slander, product or trade disparagement, violation or invasion of any right of privacy or private occupancy, trespass, nuisance or wrongful entry or eviction, or for injury to or destruction of any tangible property including loss of use thereof;
4. based upon, arising out of, directly or indirectly resulting from, in consequence of or in any way involving:
 - (a) any nuclear reaction, radiation or contamination;
 - (b) the actual, alleged or threatened discharge, release, escape, seepage, migration, dispersal or disposal of **Pollutants** into or on real or personal property, water or the atmosphere; or
 - (c) any direction or request that the **Insureds** test for, monitor, clean up, remove, contain, treat, detoxify or neutralize **Pollutants**, or any voluntary decision to do so;

5. brought or maintained by or on behalf of any **Insured** except a **Claim**:
 - (a) that is a derivative action brought or maintained on behalf of the **Policyholder** by one or more persons who are not **Insured Individuals** and who bring and maintain the **Claim** totally independent of and without the solicitation, assistance, participation, or intervention of any **Insured**; or
 - (b) brought or maintained by any **Insured Individual** for contribution or indemnity, if the **Claim** is brought without the assistance, participation or intervention of the **Policyholder**;
6. based upon, arising out of, directly or indirectly resulting from, in consequence of or in any way involving any actual or alleged violation of the responsibilities, obligations or duties imposed by the Employee Retirement Income Security Act of 1974 and amendments thereto or similar provisions of any federal, state or local statutory law or common law or the equivalent law of any other country in connection with any pension, profit sharing, health and welfare or other employee benefit plan or trust established or maintained for the purpose of providing employee benefits, regardless of whether such benefits are for the employees of the **Policyholder** or another employer;
7. in their capacities as directors, officer and/or employees of any **Subsidiary** or as a director of any **Portfolio Company** for any actual or alleged **Wrongful Act** occurring at any time when such entity was not a **Subsidiary** or a **Portfolio Company**;
8. for any suit brought by or on behalf of or in the name or right of any debt or equity interest holder of a **Portfolio Company**; provided that this exclusion shall not apply to the coverage afforded under Insuring Agreement D of the Policy;
9. solely with respect to **Claims** against the **Policyholder**, based upon, arising out of, directly or indirectly resulting from, in consequence of or in any way involving any breach of contract or agreement, whether written or oral; provided that this Exclusion A. 9. shall not apply to liability for **Loss** which would have attached even in the absence of such contract or agreement, or any actual or alleged breach of any contract for the **Policyholder's** provision of **Professional Services**;
10. based upon, arising out of, directly or indirectly resulting from, in consequence of or in any way involving:
 - (a) the committing in fact of any deliberately fraudulent or criminal act or omission or any willful violation of any statute or regulation by such **Insured**; or
 - (b) such **Insured** having gained any profit, remuneration or advantage to which such **Insured** was not legally entitled;
11. based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving from any **Claim** made against any **Insured** for the actual or proposed payment by any **Insured** of allegedly inadequate or excessive consideration in connection with its purchase of securities; provided, however, that this exclusion shall not apply to **Defense Costs**;
12. based upon, arising out of, directly or indirectly resulting from, in consequence of or in any way involving any actual or alleged infringement, violation or dilution of copyright, patent, title, trademark, trade name, service mark, service name, disclosure of trade secrets; misappropriation of name or likeness; misappropriation of property rights, information or ideas; plagiarism; or any other violation of intellectual property rights;
13. based upon, arising out of, directly or indirectly resulting from, in consequence of or in

any way involving any actual or alleged: (a) any commingling of funds; or (b) any oral or written promise or guarantee of the future value or performance of any investment or investment product or **Investment Fund**;

14. for any labor, employment related or workplace related **Claim** or for an actual or alleged violation of the responsibilities, obligations or duties imposed by the following laws and any amendments thereto:
 - (a) any law governing workers' compensation, unemployment insurance, social security, disability benefits or similar law,
 - (b) the Fair Labor Standards Act, the National Labor Relations Act, the Worker Adjustment and Retraining Notification Act, the Consolidated Omnibus Budget Reconciliation Act of 1986, the Occupational Safety and Health Act,
 - (c) The Civil Rights Act of 1964, the Civil Rights Act of 1866;
 - (d) any other federal, state local or foreign statute or law similar to any statute or law described in (a) through (c) of this exclusion; or
 - (e) rules or regulations promulgated under any of such statutes or laws;
15. for the return or reimbursement of fees paid by the **Limited Partnership** to a **General Partner** or an affiliate of the **General Partner** in connection with services performed for the **Limited Partnership**; provided, however, that this Exclusion A. 15 shall not apply to **Defense Costs**; or
16. based upon, arising out of, directly or indirectly resulting from, in consequence of or in any way involving to any **Insured's** activities as an, Underwriter or Broker or Dealer. As used in this exclusion 16;
 - a. "Underwriter" means an underwriter as defined in Section 2.(11) of the Securities Act of 1933, as amended; and
 - b. "Broker" and "Dealer" shall mean broker and dealer as those terms are defined in section 3.(a)(4) and section 3.(a)(5) of the Securities Exchange Act of 1934, as amended.

B. Exclusion Applicable Solely To Section I. Insuring Agreement A. 3:

The Insurer shall not be liable for **Loss** arising from any **Claim** made against the **Insured Individuals** by, on behalf of, or for the benefit of the **Outside Entity**, or one or more of the **Outside Entity's** directors, officers, trustees or equivalent executives.

C. Severability of Exclusions

With respect to all exclusions set forth above:

1. knowledge possessed by any **Insured Individual** shall not be imputed to any other **Insured Individual**; and
2. knowledge possessed by any **Executive Individual** shall be imputed to the **Policyholder**.

V. ALLOCATION, LIMITS OF LIABILITY, RETENTIONS, DEFENSE AND SETTLEMENT, PRIORITY OF PAYMENTS

A. Allocation

If both **Loss** covered under this Policy and Loss not covered under this Policy are incurred in connection with any **Claim**, the **Insured Individual**, the **Policyholder** and the Insurer shall use their best efforts to agree upon a fair and proper allocation of such amount between covered **Loss** and uncovered loss in accordance with the terms and conditions of this Policy.

If there is an agreement on an allocation of **Defense Costs**, the Insurer shall advance on a current basis such **Defense Costs**. If there can be no agreement on an allocation of **Loss**:

- (a) no presumption as to allocation shall exist in any arbitration, suit or other proceeding;
- (b) the Insurer shall advance on a current basis **Defense Costs** which the Insurer believes to be covered under this Policy until a different allocation is negotiated, arbitrated or judicially determined; and
- (c) the Insurer, if requested by the **Insured Individuals** and/or the **Policyholder**, shall submit such dispute to binding arbitration. The rules of the American Arbitration Association shall apply except with respect to the selection of the arbitration panel, which shall consist of one arbitrator selected by the **Insured Individuals** and/or the **Policyholder**, one arbitrator selected by the Insurer and a third independent arbitrator selected by the first two arbitrators.

Any negotiated arbitrated or judicially determined allocation of **Defense Costs** on account of a **Claim** shall be applied retroactively to all **Defense Costs** on account of such **Claim**, notwithstanding any prior advancement to the contrary. Any allocation or advancement of **Defense Costs** on account of a **Claim** shall not apply to or create any presumption with respect to the allocation of other **Loss** on account of such **Claim**.

B. Limit of Liability

The Insurer's maximum aggregate liability under all Insuring Agreements for all **Loss** arising from all **Claims** first made during the **Policy Period** shall be the Limit of Liability set forth in Item 3 in the Declarations.

The Limit of Liability for the Extended Reporting, if exercised, shall be part of and not in addition to the Limit of Liability for the immediately preceding **Policy Period**. The purchase of the Extended Reporting Period shall not increase or reinstate the Limit of Liability, which shall be the maximum liability of the Insurer for such **Policy Period** and Extended Reporting Period, combined.

Defense Costs are part of, and not in addition to, the Limit of Liability set forth in Item 3 in the Declarations and the payment by the Insurer of **Defense Costs** reduces and may totally exhaust such Limit of Liability.

If the Limit of Liability is exhausted by payment of **Loss**, the Insurer's obligations under this Policy shall be completely fulfilled and extinguished.

All **Claims** arising from the same **Wrongful Act** and all **Interrelated Wrongful Acts** shall be deemed one **Claim**, and such **Claim** shall be deemed to be first made on the earlier date that: (i) any of the **Claims** is first made against an **Insured** under this Policy or any prior policy, or (ii) valid notice was given by the **Insureds** under this Policy or any prior policy of any **Wrongful Act** or any fact, circumstance, situation, event, transaction or cause which underlies such **Claim**. Coverage under this Policy shall apply only with respect to **Claims** deemed to have been first made during the **Policy Period** and reported in writing to the Insurer in accordance with the terms herein.

C. Retentions

The applicable Retention set forth in Item 4 in the Declarations shall apply with respect to **Loss** arising from each **Claim** under Section I. Insuring Agreements.

The Insurer shall be liable for only that part of **Loss** arising from a **Claim** which is excess of the applicable Retention set forth in Item 4 in the Declarations, and such Retention shall be borne by the **Insureds** uninsured and at their own risk. If different parts of **Loss** arising from a single **Claim** are subject to different Retentions, the applicable Retention will be applied separately to each part of such **Loss**, but the sum of such Retentions shall not exceed the largest applicable Retention.

With respect to Section I. Insuring Agreement A.2., if the **Policyholder** is permitted or required by law to indemnify the **Insured Individuals** for any **Loss**, or to advance **Defense Costs** on their behalf, and does not in fact do so other than for reasons of **Financial Impairment**, the Insurer shall pay **Loss**, or advance **Defense Costs**, on behalf of the **Insured Individuals** without regard to the Retention, but the **Policyholder** shall reimburse the Insurer for such amounts up to the Retention set forth in Item 4(A)(2) in the Declarations.

D. Defense and Settlement

It shall be the **Insureds'** duty and not the Insurer's duty to defend **Claims**.

The **Insureds** shall not settle any **Claim**, select any defense counsel, incur any **Defense Costs**, admit or assume any liability, stipulate to any judgment, or otherwise assume any contractual obligation without the Insurer's prior written consent, which consent shall not be unreasonably withheld. The Insurer shall not be liable for any settlement, **Defense Costs**, assumed obligation, admission or stipulated judgment to which it has not consented or for which the **Insureds** are not legally obligated. The **Insureds** shall not knowingly take any action which increases the Insurer's exposure for **Loss** under this Policy. The **Insureds** shall provide the Insurer with all information, assistance and cooperation which the Insurer reasonably requests and shall do nothing that may prejudice the Insurer's potential or actual rights of recovery with respect to **Loss** paid on account of a **Claim**. Notwithstanding the foregoing, the Insurer's consent shall not be required with respect to any **Claim** if the total **Loss** (inclusive of **Defense Costs**) arising from such **Claim** is less than fifty (50) percent of the applicable Retention set forth in Item 4 in the Declarations.

If the Insurer recommends a settlement within the Policy's applicable Limit of Liability which is acceptable to the claimant and the **Insureds** unreasonably refuse to consent to such settlement, then the Insurer's liability for all **Loss** on account of such **Claim** shall not exceed the amount for which the Insurer could have settled such **Claim**, plus an additional fifty (50) percent of such amount, plus **Defense Costs** incurred up to the date the **Insureds** refused to settle such **Claim**. However, in no event shall the Insurer's liability exceed the applicable Limit of Liability set forth in Section V.B. Limits of Liability.

The Insurer shall have the right and shall be given the opportunity to effectively associate with the **Insureds** in the investigation, defense and settlement, including but not limited to the negotiation of a settlement, of any **Claim** that appears reasonably likely to be covered in whole or in part hereunder.

Subject to Section V.A. Allocation of the Policy, the Insurer shall advance on behalf of the **Insureds Defense Costs** which the **Insureds** have incurred in connection with **Claims** made against them, prior to the final disposition of such **Claims**, provided that to the extent it is finally established that any such **Defense Costs** are not covered under this Policy, the **Insureds**, severally according to their interests, shall repay such **Defense Costs** to the Insurer.

E. Priority of Payments

In the event of **Loss** arising from a **Claim** or **Claims** for which payment is due under the provisions of this Policy, then the Insurer shall first, pay such **Loss** for which the **Policyholder** does not indemnify an **Insured Individual** and for which coverage is provided under Section I. Insuring Agreement A of this Policy.

VI. AWARENESS PROVISION

- A. If during the **Policy Period** any **Insured** becomes aware of circumstances which could give rise to a **Claim**, and the **Insured** gives written notice of such circumstances to the Insurer during the **Policy Period**, then any **Claim** subsequently arising from such circumstances shall be considered to have been made during the **Policy Period** in which the circumstances were first reported to the Insurer. No coverage shall be provided for fees and expenses incurred prior to the time such circumstances result in a **Claim**.
- B. The **Insureds** shall, as a condition precedent to exercising their rights hereunder:
1. include with any notice of circumstances a description of such circumstances, the nature of the potential **Wrongful Act**, the nature and extent of the potential damages, the names of the potential claimants, the identity of the **Insureds** involved in the potential **Wrongful Act** and the manner in which the **Insured** first became aware of such circumstances; and
 2. give the Insurer such additional information and cooperation as it may reasonably require.

VII. NOTICES

All notices under any provision of this Policy must be made in writing and delivered by prepaid express courier, certified mail or fax. Notices to the **Insureds** shall be given to the **Insured Organization**. Notices to the Insurer shall be given to the appropriate party at the address set forth in Item 8 in the Declarations. Notices given as described above shall be deemed to be received and effective upon actual receipt thereof by the addressee or one day following the date such notices are sent, whichever is earlier.

VIII. GENERAL CONDITIONS

A. Newly Created Investment Funds

If during the **Policy Period** an **Insured Organization** creates an **Investment Fund**, such newly created **Investment Fund** and its **Insured Individuals** shall be **Insureds** under this Policy. However, if:

- (i) the offering size of any newly created **Investment Fund** or the aggregate amount of the offerings of all **Investment Funds** which are newly created during the **Policy Period** exceeds 150% of the offering amount of the most recently created **Investment Fund** scheduled in Endorsement No. 1; or
- (ii) the investment objectives (as set forth in the private placement memorandum, prospectus or similar document issued by the **Insured Organization**) of any newly created **Investment Fund** differ materially with respect to investment industry classification from the investment objectives of the **Investment Fund(s)** scheduled in Endorsement No. 1;

then the **Insured Organization** as a condition precedent to coverage with respect to such new **Insureds**, shall give written notice of such newly created **Investment Fund** to the Insurer as soon as practicable but in no event more than ninety (90) days after the effective date of the offering or private placement memorandum, together with such information as the Insurer may require, and shall pay any additional premium so required by the Insurer. If the **Insured Organization** fails to comply with such condition precedent, coverage otherwise afforded by this Section VIII. A. shall terminate as of ninety (90) days after the effective date of such creation of the **Investment Fund**.

B. Transactions That Affect Coverage

1. Acquisition or Creation of Another Organization

If, after the effective date of this Policy, the **Policyholder** creates or acquires a corporation or limited liability company where the purpose of such entity is to manage, create, operate, invest in or execute the investment plan of an **Investment Fund**, then such entity and any subsidiaries thereof shall be deemed to be a **Subsidiary**.

2. There shall be no coverage for any **Wrongful Act** by such created, acquired or merged entity or by any persons or entities considered to be **Insureds** pursuant to paragraph VIII B.1. above, where such **Wrongful Act** occurred in whole or in part before the effective date of such creation, acquisition or merger or for any **Wrongful Act** occurring on or after such date which, together with any **Wrongful Acts** occurring before such date, constitute **Interrelated Wrongful Acts**.

3. Acquisition of **Insured Organization**

If, during the **Policy Period**, any of the following events occurs:

- (a) the acquisition of the **Insured Organization**, or of all or substantially all of its assets, by another entity, or the merger or consolidation of the **Insured Organization** into or with another entity such that the **Insured Organization** is not the surviving entity; or
- (b) the acquisition by any person, entity or affiliated group of persons or entities of the right to elect, appoint or designate at least fifty (50) percent of the directors of the **Insured Organization**;

then coverage under this Policy shall continue until termination of the **Policy Period** and shall not be cancelable by the **Insured Organization**, but only with respect to **Wrongful Acts** occurring prior to such merger, consolidation or acquisition. The **Insured Organization** shall give written notice of such merger, consolidation or acquisition to the Insurer as soon as practicable together with such information as the Insurer may require. However, coverage under this Policy will cease as of the effective date of such event with respect to **Wrongful Acts** occurring after such event. The appointment by any state or federal official, agency or court of any receiver, trustee, examiner, conservator, liquidator, rehabilitator or similar official to take control of, supervise, manage or liquidate the **Insured Organization**, or the **Insured Organization** becoming a debtor in possession within the meaning of the United States Bankruptcy Code or similar legal status under foreign law, shall be considered an acquisition within the meaning of this Subsection.

4. Cessation of a Subsidiary

If before or during the **Policy Period** an organization ceases to be a **Subsidiary**, coverage with respect to such **Subsidiary** and its **Insureds** shall continue until termination of the **Policy Period**, but only with respect to **Wrongful Acts** occurring prior to the date such organization ceased to be a **Subsidiary**.

5. Portfolio Company Outside Directorship Run-Off Coverage

If during the **Policy Period** an **Insured Individual** ceases serving as a director of a **Portfolio Company**, coverage under Insuring Agreement (D) of this Policy shall continue with respect to such **Insured Individual** in such capacity until termination of this Policy but only with respect to a **Claim** for **Wrongful Acts** occurring prior to the time such **Insured Individual** ceased serving in such capacity.

- C. Representations With Respect To Application

In granting coverage to any one of the **Insureds**, the Insurer has relied upon the statements made in the written Application for this Policy and all information provided to the Insurer and upon the statements in the original written application submitted to another insurer with respect to prior

coverage incepting as of the Continuity Date, if any, set forth in Item 7 in the Declarations. All such statements are the basis of this Policy and shall be incorporated in and constitute part of this Policy.

D. Cancellation/Nonrenewal

1. The **Insured Organization** may cancel this Policy by giving the Insurer advance written notice of cancellation.
2. The Insurer may cancel this Policy by giving the **Insured Organization** written notice of cancellation at least ninety (90) days before the effective time of cancellation.
3. Notice of cancellation shall state the effective time of cancellation. The **Policy Period** shall end at that time.
4. If this Policy is cancelled, the Insurer shall send the **Insured Organization** any premium refund as soon as practicable. If the **Insured Organization** cancels, the refund shall be on the customary short rate basis. The return or tender of a return premium is not a condition precedent to the cancellation becoming effective at the time stated in the cancellation notice.
5. If the Insurer decides not to renew this Policy, the Insurer shall provide written notice to the **Insured Organization** at least sixty (60) days prior to the end of the **Policy Period**.
6. If any controlling law requires a longer period of notice by the Insurer, the Insurer shall give such longer notice.

E. Other Insurance

1. If any **Loss** arising from any **Claim** is insured by any other insurance policy(ies), prior or current, then this Policy shall apply only in excess of the amount of any deductibles, retentions, and limits of liability under such other policy(ies) whether such policy(ies) is stated to be primary, contributory, excess, contingent or otherwise, unless such policy(ies) is written to be specifically excess of this Policy by reference in such other policy(ies) to this Policy's Policy Number indicated in the Declarations.
2. Non-Profit Outside Position Liability Extension

Payment by the Insurer or any member company of the Axis Group of Insurance Companies under another policy as a result of a **Claim** against an **Insured Individual** in an **Outside Position** shall reduce, by the amount of such payment, the Insurer's Limit of Liability under this Policy with respect to such **Claim**.
3. Any payment by the Insurer or any member company of the Axis Group of Insurance Companies under another policy as result of a **Claim** against an **Insured Individual** as a director of a **Portfolio Company** shall reduce, by the amount of such payment, the Insurer's Limit of Liability under this Policy with respect to such **Claim**.

F. Territory

This Policy shall apply to **Claims** made against the **Insureds** anywhere in the world and Wrongful Acts occurring anywhere in the world.

G. Valuation and Currency

All premiums, limits, Retentions, **Loss** and other amounts under this Policy are expressed and payable in the currency of the United States. If judgment is rendered, settlement is denominated or another element of **Loss** under this Policy is stated in a currency other than United States dollars, payment under this Policy shall be made in United States dollars at the rate of exchange

published in the *Wall Street Journal* on the date the judgment becomes final or payment of the settlement or other element of **Loss** is due.

H. Subrogation

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

I. No Action Against Insurer

No action shall lie against the Insurer unless, as a condition precedent thereto, there has been full compliance with all the terms of this Policy. No person or organization shall have any right under this Policy to join the Insurer as a party to any action against the **Insureds** to determine the **Insureds'** liability, nor shall the Insurer be impleaded by the **Insureds** or their legal representatives.

J. Authorization

By acceptance of this Policy, the **Insured Organization** agrees to act on behalf of the **Insureds** with respect to the giving and receiving of any notice provided for in this Policy (except the giving of notice to apply for any Extended Reporting), the payment of premiums and the receipt of any return premiums that may become due under this Policy, and the agreement to and acceptance of endorsements, and the **Insureds** agree that the **Insured Organization** shall act on their behalf.

K. Alteration and Assignment of Interest

No change in, modification of, or assignment of interest under this Policy shall be effective except when made by a written endorsement to this Policy which is signed by an authorized representative of the Insurer. The **Insureds** agree that this Policy constitutes the entire agreement between the **Insureds** and the Insurer, or any of their agents or brokers. Notice to or knowledge possessed by the Insurer, the **Insureds** or any agent, broker or other person acting on behalf of the **Insureds** or Insurer shall not effect a waiver of or estop the Insurer or the **Insureds** from asserting any rights under this Policy.

L. Service of Suit

The Insurer agrees that in the event of its failure to pay any amount claimed to be due under this Policy, it, at the request of an **Insured**, shall submit to the jurisdiction of any court having competent jurisdiction within the United States of America, and all matters arising under this Policy shall be determined in accordance with the law and practice of such court.

The Insurer hereby designates the Commissioner, Director or Superintendent of Insurance, or similar official specified by law for that purpose, or her or his successor(s) in office, or the person designated in the following paragraph, as its true and lawful attorney upon whom may be served any lawful process in any action, suit or proceeding instituted by or on behalf of an **Insured** arising from this Policy. It is further agreed that the Insurer shall abide by the final decision of any court having competent jurisdiction and in which such action, suit or proceeding is brought, including any court having competent appellate jurisdiction.

Upon receipt of process lawfully served, the Insurer designates the following person to whom the official designated in the above paragraph may mail such process:

Richard T. Gieryn, Jr.
11680 Great Oaks Way
Suite 400
Alpharetta, GA 30022

Named Insured Castle Arch Real Estate Investment Company, LLC		
Policy Number EAN756858/01/2010	Policy Period December 20, 2010 to December 20, 2011	Issued by AXIS Surplus Insurance Company

POLICYHOLDER NOTICE

UTAH

The insurer issuing this Policy does not hold a Certificate of Authority to do business in the state of Utah and thus is not fully subject to regulation by the Utah Insurance Commissioner. This Policy receives no protection from any of the guaranty associations created under Utah Insurance Code Title 31A, Chapter 28.

Named Insured Castle Arch Real Estate Investment Company, LLC		Endorsement Number 01
Policy Number EAN756858/01/2010	Policy Period December 20, 2010 to December 20, 2011	Effective Date of Endorsement December 20, 2010
Issued By AXIS Surplus Insurance Company		Endorsement Issue Date December 20, 2010

This endorsement changes the policy. Please read it carefully.

SERVICE OF SUIT CLAUSE

The Company hereby designates the Superintendent, Commissioner or Director of Insurance, or his/her designee, as its true and lawful attorney upon whom may be served any lawful process in any action, suit or proceeding instituted by you or on your behalf or by any beneficiary under this Policy against the Company arising out of this Policy, provided that all lawful process received by said Superintendent, Commissioner or Director of Insurance, or his/her designee, is sent by certified or registered mail to the Company at:

AXIS U.S. Insurance
Attention: Claims Administrator
11680 Great Oaks Way
Suite 500
Alpharetta, GA 30022



Endorsement No. 02

Effective date of this endorsement: 12:01 a.m. on: December 20, 2010
To be attached to and form part of Policy Number: EAN756858/01/2010
Issued to: Castle Arch Real Estate Investment Company, LLC
By: AXIS Surplus Insurance Company

SCHEDULE OF INVESTMENT FUNDS

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

This endorsement modifies insurance provided under the following:

PRIVATE EQUITY AND VENTURE CAPITAL FUND LIABILITY INSURANCE

In consideration of the premium charged, it is agreed that the term "Investment Funds" shall include the following:

- Castle Arch Opportunity Partners I, LLC*
- Castle Arch Opportunity Partners II, LLC*
- Castle Arch Opportunity Partners III, LLC*
- REO Venture Group Opportunity Fund, LLC*
- Distressed Property Opportunity Partners, LLC*
- The Meo-Castle Arch Distressed Asset Partners, LLC*
- Champion Castle Arch Partners, LLC*
- REO Value Opportunity Partners, LLC*
- Castle Arch SoCal Avarar Opportunity Fund, LLC*
- Castle Arch Lease to Own Income Fund, LLC*
- Castle Arch Secured Development Fund, LLC*

All other provisions remain unchanged.



Authorized Representative

September 13, 2011

Date

Effective date of this endorsement: 12:01 a.m. on December 20, 2010
To be attached to and form part of Policy Number: EAN756858/01/2010
Issued to: Castle Arch Real Estate Investment Company, LLC
By: AXIS Surplus Insurance Company

AMEND DEFINITION OF SUBSIDIARY ENDORSEMENT

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

This endorsement modifies insurance provided under the following:

PRIVATE EQUITY AND VENTURE CAPITAL FUND LIABILITY INSURANCE

In consideration of the premium charged, the term **Subsidiary**, as defined in Section III., Definitions, of this Policy, is amended to include:

*The Meo-Castle Arch Managers, LLC
Castle Arch Asia Limited*

All other provisions remain unchanged.



Authorized Representative

December 20, 2010

Date

Endorsement No. 04

Effective date of this endorsement: 12:01 a.m. on December 20, 2010
To be attached to and form part of Policy Number: EAN756858/01/2010
Issued to: Castle Arch Real Estate Investment Company, LLC
By: AXIS Surplus Insurance Company

DEFINITION OF APPLICATION ENDORSEMENT

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

This endorsement modifies insurance provided under the following:

PRIVATE EQUITY AND VENTURE CAPITAL FUND LIABILITY INSURANCE

In consideration of the premium charged, it is agreed that Section III. DEFINITIONS, of this Policy is amended to include the following definition:

Application means each and every signed application, any attachments to such applications, other materials submitted therewith or incorporated therein and any other such documents submitted in connection with the underwriting of this policy or the underwriting of any other private equity and venture capital fund liability policy issued by the Insurer, or any of its affiliates, of which this policy is a renewal, replacement or which succeed it in time, as well as any publicly available documents that are filed by the **Insured Organization** twelve (12) months prior to the inception date of this Policy with the U.S. Securities and Exchange Commission ("SEC") (or for any similar federal, state local or foreign regulatory agency), including, but not limited to, the **Policyholder's** quarterly, annual and other reports to owners of its securities, 10Ks, 10Qs, 8Ks, proxy statements and certifications relating to the accuracy of the foregoing.

All other provisions remain unchanged.



Authorized Representative

December 20, 2010

Date

Endorsement No. 05

Effective date of this endorsement: 12:01 a.m. on December 20, 2010
To be attached to and form part of Policy Number: EAN756858/01/2010
Issued to: Castle Arch Real Estate Investment Company, LLC
By: AXIS Surplus Insurance Company

AMEND GENERAL CONDITION E. ENDORSEMENT

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

This endorsement modifies insurance provided under the following:

PRIVATE EQUITY AND VENTURE CAPITAL FUND LIABILITY POLICY

In consideration of the premium charged, it is agreed that Section VIII. E. of the Policy is deleted in its entirety and replaced with the following:

E. Other Insurance

If any **Loss** arising from any **Claim** is insured by any other valid and collectible policy(ies), prior or current, then this Policy shall apply only in excess of the amount of any deductibles, retentions, and limits of liability under such other policy(ies) whether such policy(ies) is stated to be primary, contributory, excess, contingent or otherwise, unless such policy(ies) is written to be specifically excess of this Policy by reference in such other policy(ies) to this Policy's Policy Number indicated in the Declarations.



Authorized Representative

December 20, 2010

Date

Endorsement No. 06

Effective date of this endorsement: 12:01 a.m. on December 20, 2010
To be attached to and form part of Policy Number: EAN756858/01/2010
Issued to: Castle Arch Real Estate Investment Company, LLC
By: AXIS Surplus Insurance Company

MANUSCRIPT ENDORSEMENT

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

This endorsement modifies insurance provided under the following:

PRIVATE EQUITY AND VENTURE CAPITAL FUND LIABILITY INSURANCE

In consideration of the premium charged, it is agreed that the first paragraph of Section II. C., COVERAGE EXTENSIONS, Extended Reporting, of the Policy is deleted and amended to read in its entirety as follows:

If the Insurer or the **Insured Organization** cancels or chooses not to renew this Policy, the **Policyholder** or the **Insured Individuals** shall have the right, upon payment of the additional premium required by the Insurer in Item 5 in the Declarations, to a one year Extended Reporting Period following the termination of the **Policy Period**, but only with respect to **Wrongful Acts** occurring prior to the effective date of cancellation or nonrenewal.

All other provisions remain unchanged.



Authorized Representative

December 20, 2010

Date

Endorsement No. 07

Effective date of this endorsement: 12:01 a.m. on December 20, 2010
To be attached to and form part of Policy Number: EAN756858/01/2010
Issued to: Castle Arch Real Estate Investment Company, LLC
By: AXIS Surplus Insurance Company

MANUSCRIPT ENDORSEMENT

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

This endorsement modifies insurance provided under the following:

PRIVATE EQUITY AND VENTURE CAPITAL FUND LIABILITY POLICY

It is agreed that:

I. Section III. DEFINITIONS is amended as follows:

A. Definition III.A **Claim(s)** is replaced with the following:

Claim(s) means the receipt by any **Insured** of:

1. a written demand against any **Insured** for monetary or non-monetary relief;
2. a civil, criminal, arbitration, administrative, investigative or regulatory proceeding against any **Insured** commenced by:
 - (a) the service of a complaint or similar pleading;
 - (b) the filing of a notice of charges, investigative order or like document;
 - (c) the return of an indictment, information, or similar pleading; or
 - (d) written notice or subpoena from an authority identifying such **Insured** as an entity or person against whom a formal proceeding may be commenced; or

B. Definition III.L **Loss** is amended by the addition of the following:

- a. In addition, the Insurer shall not assert that **Loss** incurred by any **Insured** on account of any **Claim** for a **Wrongful Act** with respect to the purchase or sale of or offer to purchase or sell any securities of an **Investment Fund** or **Portfolio Company** is uninsurable due to the **Insured's** actual or alleged violation of Section 11, 12 or 15 of the Securities Act of 1933, as amended.

C. Definition III.V **Professional Services** is replaced with the following:

Professional Services means:

1. the formation, capitalization, operation or management of an **Investment Fund** for a fee by the **Policyholder** in its exercise of management and control of such **Investment Fund**; or
2. **Real Estate Activities**.

Unless this Policy is endorsed otherwise, **Professional Services** does not include services performed by an **Insured** for a **Portfolio Company** regardless of whether such **Professional Services** are performed on a compensated or uncompensated basis.

D. The following Definition is added:

Real Estate Activities means:

1. identification of and arranging of financing by an **Insured** for the purchase or sale of or investment in real estate properties on behalf of an **Investment Fund**;
2. the creation, distribution or sale of securities or interest by an **Insured** in a tenants-in-common fund or similar tenants-in-common investment vehicle on behalf of an **Investment Fund**; or
3. services by an **Insured** as asset manager for a real estate property, including the appointment of a third party property manager, but not to include services rendered as a property manager, on behalf of an **Investment Fund**, provided that such services shall not apply to **Loss**, including **Defense Costs**, in connection with any **Claim** against an **Insured** to the extent that such **Claim** is for a **Wrongful Act** by such **Insured** in connection with the management or supervision of any division, **Subsidiary** or group of the **Insured** or any third party vendor offering any of the aforementioned services.

Real Estate Activities does not include any services rendered by an **Insured** in connection with property management, property leasing or mortgage servicing.

II. Section IV. EXCLUSIONS is amended as follows:

A. Exclusion A.5 is replaced with the following:

5. brought or maintained by or on behalf of any **Insured** except a **Claim**:
 - (a) that is a derivative lawsuit brought and maintained on behalf of the **Policyholder** by one or more persons who are not **Insured Individuals**, without the solicitation, assistance, participation or intervention of any **Insured**;
 - (b) brought or maintained by any **Insured Individual** as a cross claim or counterclaim for contribution or indemnity, without the assistance, participation or intervention of the **Policyholder**;
 - (c) brought or maintained by or on behalf of a bankruptcy or insolvency receiver, trustee, examiner, conservator, liquidator, rehabilitator or creditors' committee of a **Policyholder**, or any assignee thereof;
 - (d) brought by an **Insured Individual** who has not served as an **Insured Individual** within three (3) years immediately preceding the date the **Claim** is first made, without the solicitation, assistance, active participation, or intervention of any **Insured**; or
 - (e) brought or maintained by an **Investment Fund** if advised in a bona fide written legal opinion by a counsel retained by or on behalf of an **Insured** that not doing so would be a breach of fiduciary duty;

provided, however, that for the purposes of this Exclusion A.5, the terms **Insured Individual** and **Insured** shall not include any natural person who is a "Whistleblower" protected pursuant to Section 806 of the Sarbanes-Oxley Act of 2002 or any similar state, local or federal statute;

B. Exclusion A.10 is replaced with the following:

10. based upon, arising out of, directly or indirectly resulting from, in consequence of or in any way involving:
 - (a) any deliberately fraudulent or criminal act or omission or any willful violation of any statute or regulation by such **Insured**; or
 - (b) any profit, remuneration or advantage to which such **Insured** was not legally entitled;

if established in a final and non-appealable adjudication adverse to such **Insured** in the underlying action; provided this Exclusion shall not apply to allegations in a **Claim** asserted against any **Insured Individual** under Sections 11, 12 or 15 of the Securities Act of 1933, as amended, arising out of the purchase or sale of or offer to purchase or sell any securities of an **Investment Fund** or **Portfolio Company**.

C. Exclusion A.12 is deleted.

D. Exclusion A.13 is deleted.

III. Paragraph 3. Acquisition of **Insured Organization** of Subsection VIII.B. Transactions That Affect Coverage is replaced with the following:

If, during the **Policy Period**, any of the following events occurs:

- (a) the acquisition of the **Insured Organization**, or of all or substantially all of its assets, by another entity, or the merger or consolidation of the **Insured Organization** into or with another entity such that the **Insured Organization** is not the surviving entity; or
- (b) the acquisition by any person, entity or affiliated group of persons or entities of the right to elect, appoint or designate at least fifty percent (50%) of the directors of the **Insured Organization**;

then coverage under this Policy shall continue until termination of the **Policy Period** and shall not be cancelable by the **Insured Organization**, but only with respect to **Wrongful Acts** occurring prior to such merger, consolidation or acquisition. The **Insured Organization** shall give written notice of such merger, consolidation or acquisition to the Insurer as soon as practicable together with such information as the Insurer may require. However, coverage under this Policy will cease as of the effective date of such event with respect to **Wrongful Acts** occurring after such event. The appointment by any state or federal official, agency or court of any receiver, trustee, examiner, conservator, liquidator, rehabilitator or similar official to take control of, supervise, manage or liquidate the **Insured Organization**, or the **Insured Organization** becoming a debtor in possession within the meaning of the United States Bankruptcy Code or similar legal status under foreign law, shall not be considered an acquisition within the meaning of this Subsection.

All other provisions of the Policy remain unchanged.



Authorized Representative

December 20, 2010

Date

Endorsement No. 08

Effective date of this endorsement: 12:01 a.m. on December 20, 2010
To be attached to and form part of Policy Number: EAN756858/01/2010
Issued to: Castle Arch Real Estate Investment Company, LLC
By: AXIS Surplus Insurance Company

MANUSCRIPT ENDORSEMENT

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

This endorsement modifies insurance provided under the following:

PRIVATE EQUITY AND VENTURE CAPITAL FUND LIABILITY POLICY

It is agreed that:

I. Section I. INSURING AGREEMENTS is replaced with the following:

A. INDIVIDUAL MANAGEMENT LIABILITY:

Except for **Loss** that the Insurer pays pursuant to Insuring Agreements B, C or D below, the Insurer shall pay in connection with a **Wrongful Act** which takes place before or during the **Policy Period** all **Loss** on behalf of any:

1. **Insured Individual** which the **Policyholder** is not permitted to indemnify or does not indemnify by reason of **Financial Impairment** arising from any **Claim** for a **Wrongful Act** first made against such **Insured Individual**;
2. **Policyholder** for which the **Policyholder** grants indemnification to any **Insured Individual**, as permitted or required by law, arising from any **Claim** for a **Wrongful Act** first made against such **Insured Individual**; or
3. **Insured Individual** arising from any **Claim** for a **Wrongful Act** while serving in an **Outside Position** first made against such **Insured Individual**;

during the **Policy Period** or Extended Reporting Period, if applicable, and reported in writing to the Insurer as soon as practicable after any **Executive Officer** first becomes aware of such **Claim**, but in no event later than sixty (60) days after the expiration of the **Policy Period** or Extended Reporting Period, if applicable.

The coverage set forth in Insuring Agreement A.3 above shall be specifically excess of any indemnification and insurance available to such **Insured Individual** from the **Outside Entity**.

B. INSURED ORGANIZATION LIABILITY COVERAGE

The Insurer shall pay in connection with a **Wrongful Act** which takes place before or during the **Policy Period** all **Loss** on behalf of the **Policyholder** for which the **Policyholder** becomes legally obligated to pay as a result of a **Claim** first made during the **Policy Period** or Extended Reporting Period, if applicable, and reported in writing to the Insurer as soon as practicable after any **Insured** first becomes aware of such **Claim**, but in no event later than sixty (60) days after the expiration of the **Policy Period** or Extended Reporting Period, if applicable.

C. GENERAL PARTNERS AND LIMITED PARTNERSHIP LIABILITY:

The Insurer shall pay in connection with a **Wrongful Act** which takes place before or during the **Policy Period** all **Loss** on behalf of any:

1. **General Partner** arising from a **Claim** for a **Wrongful Act** first made against such **General Partner**; or

2. **Limited Partnership** arising from a **Claim** for a **Wrongful Act** first made against such **Limited Partnership**;

during the **Policy Period** or Extended Reporting Period, if applicable, and reported in writing to the Insurer as soon as practicable after any **Executive Officer** first becomes aware of such **Claim**, but in no event later than sixty (60) days after the expiration of the **Policy Period** or Extended Reporting Period, if applicable.

D. PORTFOLIO COMPANY OUTSIDE DIRECTORSHIP LIABILITY

The Insurer shall pay on behalf of the **Insured Individuals Loss** in excess of any **Portfolio Company Indemnification and Insurance** which the **Insured Individuals** become legally obligated to pay as a result of a **Claim** for a **Wrongful Act** in their capacity as a director of a **Portfolio Company** that is first made during the **Policy Period** or Extended Reporting Period, if applicable, and reported in writing to the Insurer as soon as practicable after any **Executive Officer** first becomes aware of such **Claim**, but in no event later than sixty (60) days after the expiration of the **Policy Period** or Extended Reporting Period, if applicable.

- II. Solely for the purposes of this Endorsement, the term **Executive Officer(s)** means any one or more natural persons who are a past, present or future chief executive officer, chief financial officer, in-house general counsel or their functional equivalent of the **Policyholder** or a **Plan**.

All other provisions of this Policy remain unchanged.



Authorized Representative

December 20, 2010

Date

Endorsement No. 09

Effective date of this endorsement: 12:01 a.m. on December 20, 2010
To be attached to and form part of Policy Number: EAN756858/01/2010
Issued to: Castle Arch Real Estate Investment Company, LLC
By: AXIS Surplus Insurance Company

AMEND CANCELLATION ENDORSEMENT

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

This endorsement modifies insurance provided under the following:

PRIVATE EQUITY AND VENTURE CAPITAL FUND LIABILITY POLICY

In consideration of the premium charged, it is agreed that Section VIII. GENERAL CONDITIONS, D. 2. of this Policy is hereby deleted and amended to read in its entirety as follows:

- "2. The Insurer may only cancel this Policy in the event of nonpayment of premium by giving the **Insured Organization** written notice of cancellation at least twenty (20) days before the effective time of cancellation. This Policy may not otherwise be cancelled by the Insurer."

All other provisions remain unchanged.



Authorized Representative

December 20, 2010

Date

Endorsement No. 10

Effective date of this endorsement: 12:01 a.m. on December 20, 2010
To be attached to and form part of Policy Number: EAN756858/01/2010
Issued to: Castle Arch Real Estate Investment Company, LLC
By: AXIS Surplus Insurance Company

MANUSCRIPT ENDORSEMENT

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

This endorsement modifies insurance provided under the following:

PRIVATE EQUITY AND VENTURE CAPITAL FUND LIABILITY POLICY

In consideration of the premium charged, it is agreed that Section VIII. GENERAL CONDITIONS, C. of this Policy is hereby deleted and amended to read in its entirety as follows:

"C. Representations and Severability With Respect To **Application**

In granting coverage to any one of the **Insureds**, the Insurer has relied upon the statements made in the written **Application** for this Policy and all information provided to the Insurer and upon the statements in the original written application submitted to another insurer with respect to prior coverage incepting as of the Continuity Date, if any, set forth in Item 7. in the Declarations. All such statements are the basis of this Policy and shall be incorporated in and constitute part of this Policy.

In order to determine if coverage is available:

1. only facts pertaining to and knowledge possessed by any chief executive officer, chief financial officer, in-house general counsel or their functional equivalent of the **Policyholder** shall be imputed to all **Insureds** other than **Insured Individuals**; and
2. no declaration or statement in the **Application** or knowledge possessed by the **Policyholder** or any **Insured Individual** shall be imputed to any other **Insured Individual**. Such written **Application(s)** for coverage shall be construed as a separate **Application** for coverage by each **Insured Individual**.


Notwithstanding the foregoing, it is agreed that this Policy shall not be rescindable by the Insurer with respect to any **Claim** against an **Insured Individual** for which coverage is afforded solely under Insuring Agreement A. 1. and for which:

1. the **Policyholder** is not permitted by law to indemnify such **Insured Individuals**; or
2. the **Policyholder** is permitted to indemnify such **Insured Individuals**, but does not indemnify such **Insured Individuals** solely because of **Financial Impairment**.

Notwithstanding the foregoing, nothing herein shall affect the Insurer's rights under this Policy to adjust, investigate or deny claims or to otherwise reserve its rights under this Policy with respect to any **Claim** under any Insuring Agreement."

For the purposes of this Endorsement, the term **Application** means each and every signed application, any attachments to such applications, other materials submitted therewith or incorporated therein and any other such documents submitted in connection with the underwriting of this policy or of which this policy is a renewal, replacement or which succeed it in time.

All other provisions remain unchanged.



Authorized Representative

December 20, 2010

Date

Endorsement No. 11

Effective date of this endorsement: 12:01 a.m. on December 20, 2010
To be attached to and form part of Policy Number: EAN756858/01/2010
Issued to: Castle Arch Real Estate Investment Company, LLC
By: AXIS Surplus Insurance Company

MANUSCRIPT ENDORSEMENT

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

This endorsement modifies insurance provided under the following:

PRIVATE EQUITY AND VENTURE CAPITAL FUND LIABILITY POLICY

In consideration of the premium charged, it is agreed that Section II. COVERAGE EXTENSIONS, A. of this Policy shall include any natural person qualifying as a domestic partner under the provisions of any applicable federal, state or local law in the United States of America.

All other provisions remain unchanged.



Authorized Representative

December 20, 2010

Date

Endorsement No. 12

Effective date of this endorsement: 12:01 a.m. on December 20, 2010
To be attached to and form part of Policy Number: EAN756858/01/2010
Issued to: Castle Arch Real Estate Investment Company, LLC
By: AXIS Surplus Insurance Company

MANUSCRIPT ENDORSEMENT

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

This endorsement modifies insurance provided under the following:

PRIVATE EQUITY AND VENTURE CAPITAL FUND LIABILITY POLICY

In consideration of the premium charged, it is agreed that:

1. Subject to the maximum aggregate Limit of Liability for this Policy set forth in Item 3. of the Declarations, the following Insuring Agreement E. is added to Section I. INSURING AGREEMENTS of this Policy:

"E. EMPLOYMENT PRACTICE LIABILITY:

The Insurer shall pay in connection with a **Wrongful Act** which takes place before or during the **Policy Period** all **Loss** on behalf of the **Insureds** arising from a **Claim** for a **Wrongful Employment Act** made against any **Insured** by or on behalf of any **Employee** provided that the **Claim** is first made against the **Insureds** during the **Policy Period** or the Extended Reporting Period, if applicable, and reported in writing to the Insurer as soon as practicable after any **Insured** first becomes aware of such **Claim**, but in no event later than thirty (30) days after the expiration of the **Policy Period** or the Extended Reporting Period, if applicable."

2. The term **Claim**, as defined in Section III. DEFINITIONS, A. of this Policy, is amended by the addition of the following:

"or 4. a formal, administrative, investigative or regulatory proceeding by or before the Equal Employment Opportunity Commission (EEOC), the Office of Federal Contract Compliance Programs (OFCCP) or a similar formal proceeding before another federal, state or other governmental agency commenced by a notice of charges, formal investigative order or similar document against any **Insured** for any **Wrongful Employment Act**."

3. For the purposes of this Policy, the term **Wrongful Act** will include any **Wrongful Employment Act(s)** by an **Insured** in their capacity as such.
4. For the purposes of this Policy, the term **Wrongful Employment Act(s)** means any error, misstatement, misleading statement, act, omission, neglect or breach of duty actually or allegedly committed or attempted by an **Insured** constituting:
 - a. wrongful dismissal, discharge or termination (either actual or constructive) of employment;
 - b. breach of any implied employment contract;
 - c. employment-related misrepresentation(s) to an employee;
 - d. violation of any federal, state or local statute, regulation, ordinance or common law concerning employment or discrimination in employment;

- e. sexual harassment (as that term is defined by the federal Equal Employment Opportunity Commission) or other illegal workplace harassment;
 - f. wrongful failure to employ or promote;
 - g. wrongful reference, discipline or deprivation of a career opportunity;
 - h. wrongful demotion or adverse change in the terms, conditions or status of employment;
 - i. failure to grant tenure or adopt adequate workplace or employment policies and procedures;
 - j. illegal retaliatory treatment of employees;
 - k. negligent hiring, supervision, evaluation or retention of employees;
 - l. employment-related invasion of privacy or defamation;
 - m. employment-related wrongful infliction of emotional distress; or
 - o. employment-related libel, slander, false arrest, detention or imprisonment.
5. For the purposes of this Policy, **Employee** means any one or more natural persons who are past, present or future:
- a. duly appointed officer of the **Policyholder**;
 - b. individuals whose labor or service is directed by the **Policyholder**, whether such labor or service is on a part-time, temporary, seasonal or full-time basis;
 - c. leased employees and volunteers whose labor or service is directed solely by the **Policyholder**;
 - d. applicants for prospective employment by the **Policyholder**; or
 - e. any individual contracted to perform work for the **Policyholder** or who is an independent contractor for the **Policyholder**, but only if such individual performs work or services solely for or on behalf of the **Policyholder**.
6. The Insurer shall not be liable for **Loss** arising from any **Claim** made against any **Insured**:
- a. based upon, arising out of, directly or indirectly resulting from, in consequence of or in any way involving any action that relates to a collective bargaining agreement; or
 - b. for an actual or alleged violation of the responsibilities, obligations or duties imposed by the following laws and any amendments thereto:
 - (i) any law governing workers' compensation, unemployment insurance, social security, disability benefits or similar law;
 - (ii) the Employee Retirement Income Security Act of 1974 (except Section 510 thereof);
 - (iii) the Fair Labor Standards Act (except the Equal Pay Act);
 - (iv) the National Labor Relations Act;
 - (v) the Worker Adjustment and Retraining Notification Act;

- (vi) the Consolidated Omnibus Budget Reconciliation Act of 1985;
- (vii) the Occupational Safety and Health Act;
- (viii) any other federal, state, local or foreign statute or law similar to any statute or law described in (i) through (vii) of this exclusion; or
- (ix) rules or regulations promulgated under any of such statutes or laws;

however, this exclusion shall not apply to any **Claim** for any actual or alleged retaliatory treatment of the claimant by the **Insured** on account of the claimant's exercise or attempt to exercise any employment rights pursuant to any such statute, law, rule or regulation.

7. Except for **Defense Costs** from **Claims** for **Wrongful Employment Act(s)** against the **Insured Individuals** and subject to the other terms, conditions and exclusions of this Policy, the Insurer shall not be liable for **Loss** on account of any **Claim** made against any **Insured**, based upon, arising out of, directly or indirectly resulting from, in consequence of or in any way involving:
- a. recovery of amounts owing under or assumed by any **Insured** pursuant to any express written employment contract or agreement with any **Employee**; provided, however, this exclusion shall not apply to the extent the **Insured** would be liable for such **Loss** in the absence of such contract or agreement;
 - b. the actual or alleged provision of or failure to provide any reasonable accommodations required by, made as a result of, or to conform with the requirements of the Americans with Disabilities Act and any amendments thereto or any similar federal, state, local or foreign law (or recovery of the costs associated therewith);
 - c. recovery of compensation earned by the claimant in the course of employment but not paid by the **Policyholder**, including any unpaid salary, bonus, wages, overtime, severance pay, retirement benefits, stock options, perquisites, fringe benefits, vacation days, sick days, medical or insurance to which the claimant allegedly was or would have been entitled had the **Policyholder** provided the claimant with a continuation or conversion of such benefits or insurance benefits (or the equivalent value of any such compensation earned but not paid); provided, however, this exclusion shall not apply to any back pay or front pay; or
 - d. any request for non-monetary relief including injunctive relief, declaratory relief, restitution or any other equitable remedy.

8. Section IV. EXCLUSIONS, A. 5. of this Policy is amended to include the following:

“or (c) for a **Wrongful Employment Act** but solely with respect to the coverage provided under Insuring Agreement E.,”

9. The Insurer shall only pay **Loss** from **Claims** for **Wrongful Employment Act(s)** in excess of \$150,000 which amount shall be deemed to be the amount set forth in Item 4. of the Declarations of this Policy as the retention amount for any **Claim** under Insuring Agreement E.

All other provisions remain unchanged.



Authorized Representative

December 20, 2010

Date

Endorsement No. 13

Effective date of this endorsement: 12:01 a.m. on December 20, 2010
To be attached to and form part of Policy Number: EAN756858/01/2010
Issued to: Castle Arch Real Estate Investment Company, LLC
By: AXIS Surplus Insurance Company

MANUSCRIPT ENDORSEMENT

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

This endorsement modifies insurance provided under the following:

PRIVATE EQUITY AND VENTURE CAPITAL FUND LIABILITY POLICY

In consideration of the premium charged, it is agreed that:

1. The term **Defense Costs**, as defined in Section III. DEFINITIONS, B. of this Policy, is hereby amended to include **Investigation Costs**.
2. For the purposes of this Endorsement, the term **Investigation Costs** means reasonable and necessary legal fees (including but not limited to attorneys' fees and experts' fees) and expenses (other than regular or overtime wages, salaries, fees or benefits of the **Insured Individuals** or employees of the **Policyholder** or the **Policyholder's** overhead expenses) incurred by the **Policyholder** (including its board of directors or any committee of its board of directors) in connection with the investigation or evaluation of any **Shareholder Derivative Demand**.
3. For the purposes of this Endorsement, the term **Shareholder Derivative Demand** means a written demand by one or more **Securities** holders upon the board of directors of the **Policyholder** to bring a civil proceeding in a court of law against any **Insured Individual** for a **Wrongful Act**.
4. For the purposes of this Endorsement, the term **Securities** means equity interests including common or preferred stock, options, rights or warrants in such stock, representing an ownership interest in the **Investment Fund** or a right to acquire or dispose of such interest provided, however, that **Securities** does not include options or rights at issue in a **Claim** that is solely employment related; or
5. The term **Loss**, as defined in Section III. DEFINITIONS, L. of this Policy, does not include any investigative costs other than **Investigation Costs** or **Defense Costs** in connection with a **Claim**

All other provisions remain unchanged.



Authorized Representative

December 20, 2010

Date

Endorsement No. 14

Effective date of this endorsement: 12:01 a.m. on December 20, 2010
To be attached to and form part of Policy Number: EAN756858/01/2010
Issued to: Castle Arch Real Estate Investment Company, LLC
By: AXIS Surplus Insurance Company

MANUSCRIPT ENDORSEMENT

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

This endorsement modifies insurance provided under the following:

PRIVATE EQUITY AND VENTURE CAPITAL FUND LIABILITY POLICY

In consideration of the premium charged, it is agreed that Section IV. EXCLUSIONS, A. 6. of this Policy is hereby deleted and amended to read in its entirety as follows:

- "6. for any actual or alleged violation of the responsibilities, obligations or duties imposed by the Employee Retirement Income Security Act of 1974 and amendments thereto or similar provisions of any federal, state or local statutory law or common law or the equivalent law of any other country in connection with any pension, profit sharing, health and welfare or other employee benefit plan or trust established or maintained for the purpose of providing employee benefits, regardless of whether such benefits are for the employees of the **Policyholder** or another employer;"

All other provisions remain unchanged.



Authorized Representative

December 20, 2010

Date

Endorsement No. 15

Effective date of this endorsement: 12:01 a.m. on: December 20, 2011
To be attached to and form part of Policy Number: EAN756858/01/2010
Issued to: Castle Arch Real Estate Investment Company, LLC
By: AXIS Surplus Insurance Company

POLICY PERIOD EXTENSION ENDORSEMENT

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

This endorsement modifies insurance provided under the following:

PRIVATE EQUITY AND VENTURE CAPITAL FUND LIABILITY POLICY

In consideration of an additional premium of \$2,100 it is agreed that Item 2. **Policy Period** of the Declarations is deleted and amended to read in its entirety as follows:

Item 2. **Policy Period:**

From 12:01 AM (Local time at the address stated in Item 1.) on *December 20, 2010*
To 12:01 AM (Local time at the address stated in Item 1.) on *December 31, 2011*

It is further understood and agreed that the Limits of Liability for the **Policy Period** set forth above shall remain unchanged and that this extension of the **Policy Period** shall not operate in any way to increase the Limits of Liability as stated in Item 3. of the Declarations.

All other provisions remain unchanged.



Authorized Representative

December 20, 2011

Date

Endorsement No. 16

Effective date of this endorsement: 12:01 a.m. on: December 31, 2011
To be attached to and form part of Policy Number: EAN756858/01/2010
Issued to: Castle Arch Real Estate Investment Company, LLC
By: AXIS Surplus Insurance Company

POLICY PERIOD EXTENSION ENDORSEMENT

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

This endorsement modifies insurance provided under the following:

PRIVATE EQUITY AND VENTURE CAPITAL FUND LIABILITY POLICY

In consideration of an additional premium of \$3,850 it is agreed that Item 2. **Policy Period** of the Declarations is deleted and amended to read in its entirety as follows:

Item 2. **Policy Period:**

From 12:01 AM (Local time at the address stated in Item 1.) on *December 20, 2010*
To 12:01 AM (Local time at the address stated in Item 1.) on *January 20, 2012*

It is further understood and agreed that the Limits of Liability for the **Policy Period** set forth above shall remain unchanged and that this extension of the **Policy Period** shall not operate in any way to increase the Limits of Liability as stated in Item 3. of the Declarations.

All other provisions remain unchanged.



Authorized Representative

December 31, 2011

Date

Endorsement No. 17

Effective date of this endorsement: 12:01 a.m. on: January 20, 2012
To be attached to and form part of Policy Number: EAN756858/01/2010
Issued to: Castle Arch Real Estate Investment Company, LLC
By: AXIS Surplus Insurance Company

MANUSCRIPT ENDORSEMENT

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

This endorsement modifies insurance provided under the following:

PRIVATE EQUITY AND VENTURE CAPITAL FUND LIABILITY POLICY

For an additional premium of \$25,000 it is agreed that:

1. Item 2 of the Declarations is replaced with the following:

Item 2. **Policy Period:**

From: 12:01 AM (Local time at the address stated in Item 1) on December 20, 2010

To: 12:01 AM (Local time at the address stated in Item 1) on January 20, 2013

2. Item 3. of the Declarations is replaced with the following:

Item 3. Limit of Liability:

Maximum aggregate Limit of Liability for all

Claims under Section I. Insuring Agreements combined: \$1,000,000

3. Item 4. of the Declarations is replaced with the following:

Item 4. Retentions:

Each **Claim** under Section I. Insuring Agreements A.1 or A.2.: \$0

Each **Claim** under Section I. Insuring Agreement C made against a natural person **General Partner**: \$150,000

Each **Claim** under Section I. Insuring Agreement D: \$ 0

Each **Claim** under Section I. Insuring Agreement E: \$ 150,000

4. Item 6. of the Declarations is replaced with the following:

Item 6. Pending or Prior Claim Date:

Section I. Insuring Agreement A: November 6, 2006

Section I. Insuring Agreement C: December 20, 2010

Section I. Insuring Agreement D: November 6, 2006

Section I. Insuring Agreement E: December 20, 2010

5. Item 7. of the Declarations is replaced with the following:

Item 7. Continuity Date: Insuring Agreements A & D: November 6, 2006

Insuring Agreement C: December 20, 2010

Insuring Agreement E: December 20, 2010

6. Section I. Insuring Agreement A is replaced with the following:

A. INDIVIDUAL MANAGEMENT LIABILITY:

Except for **Loss** that the Insurer pays pursuant to Insuring Agreements C, D, or E below, the Insurer shall pay in connection with a **Wrongful Act** which takes place before or during the **Policy Period** all **Non-Indemnifiable Loss** on behalf of any:

1. **Insured Individual** arising from any **Claim** for a **Wrongful Act** first made against such **Insured Individual**;
2. **Insured Individual** arising from any **Claim** for a **Wrongful Act** while serving in an **Outside Position** first made against such **Insured Individual**;

during the **Policy Period** or Extended Reporting Period, if applicable, and reported in writing to the Insurer as soon as practicable after any **Insured Individual** first becomes aware of such **Claim**, but in no event later than sixty (60) days after the expiration of the **Policy Period** or Extended Reporting Period, if applicable.

The coverage set forth in Insuring Agreement A.2 above shall be specifically excess of any indemnification and insurance available to such **Insured Individual** from the **Outside Entity**.

7. Section I. Insuring Agreement B is deleted.

8. Section I. Insuring Agreement C is replaced with the following:

C. GENERAL PARTNERS LIABILITY:

The Insurer shall pay in connection with a **Wrongful Act** which takes place before or during the **Policy Period** all **Non-Indemnifiable Loss** on behalf of any **General Partner** arising from a **Claim** for a **Wrongful Act** first made against such **General Partner** during the **Policy Period** or Extended Reporting Period, if applicable, and reported in writing to the Insurer as soon as practicable after any **Insured Individual** first becomes aware of such **Claim**, but in no event later than sixty (60) days after the expiration of the **Policy Period** or Extended Reporting Period, if applicable.

9. Section I. Insuring Agreement D is replaced with the following:

D. PORTFOLIO COMPANY OUTSIDE DIRECTORSHIP LIABILITY

The Insurer shall pay on behalf of the **Insured Individuals**, **Non-Indemnifiable Loss** in excess of any **Portfolio Company Indemnification and Insurance** which the **Insured Individuals** become legally obligated to pay as a result of a **Claim** for a **Wrongful Act** in their capacity as a director of a **Portfolio Company** that is first made during the **Policy Period** or Extended Reporting Period, if applicable, and reported in writing to the Insurer as soon as practicable after any **Insured Individual** first becomes aware of such **Claim**, but in no event later than sixty (60) days after the expiration of the **Policy Period** or Extended Reporting Period, if applicable.

10. Section I. INSURING AGREEMENTS is amended by the addition of the following:

E. EMPLOYMENT PRACTICE LIABILITY:

The Insurer shall pay in connection with a **Wrongful Act** which takes place before or during the **Policy Period** all **Non-Indemnifiable Loss** on behalf of the **Insureds** arising from a **Claim** for a **Wrongful Employment Act** made against any **Insured** by or on behalf of any **Employee** provided that the **Claim** is first made against the **Insureds** during the **Policy Period** or the Extended Reporting Period, if applicable, and reported in writing to the Insurer as soon as practicable after any **Insured Individual** first becomes aware of such **Claim**, but in no event later than thirty (30) days after the expiration of the **Policy Period** or the Extended Reporting Period, if applicable.

11. The first paragraph of Subsection II.C. Extended Reporting is replaced with the following:

If the Insurer chooses not to renew this Policy or the **Insured Organization** cancels or chooses not to renew this Policy, then the **Policyholder** or the **Insured Individuals** shall have the right, upon payment of the additional premium required by the Insurer in Item 5 of the Declarations, to a one (1) year Extended Reporting Period following the termination of the **Policy Period**, but only with respect to **Wrongful Acts** occurring prior to the effective date of cancellation or nonrenewal.

12. Definition A. **Claim(s)** is replaced with the following:

A. **Claim(s)** means the receipt by any **Insured** of:

1. a written demand against any **Insured** for monetary or non-monetary relief;
2. a civil, criminal, arbitration, administrative, investigative or regulatory proceeding against any **Insured** commenced by:
 - (a) the service of a complaint or similar pleading;
 - (b) the filing of a notice of charges, investigative order or like document;
 - (c) the return of an indictment, information, or similar pleading; or
 - (d) written notice or subpoena from an authority identifying such **Insured** as an entity or person against whom a formal proceeding may be commenced;

Solely with respect to Insuring Agreement E. Employment Practice Liability, **Claim** also means a formal, administrative, investigative or regulatory proceeding by or before the Equal Employment Opportunity Commission (EEOC), the Office of Federal Contract Compliance Programs (OFCCP) or a similar formal proceeding before another federal, state or other governmental agency commenced by a notice of charges, formal investigative order or similar document against any **Insured** for any **Wrongful Employment Act**.

13. Definition E. **General Partner** is replaced with the following:

E. **General Partner** means any natural person general partner of a **Limited Partnership**.

14. Definition F. **Insured(s)** is replaced with the following:

F. **Insured(s)** means the **Insured Individual(s)**.

15. Definition H. **Insured Individual(s)** is amended by the addition of the following:

Solely for purposes of Insuring Agreement A.1, **Insured Individual(s)** shall include directors and officers of a corporation acting as a general partner of a **Limited Partnership**, or the members of the board of managers or executive management officers of any limited liability company acting as a general partner of a **Limited Partnership**, if such limited liability company's members have delegated management of such limited liability company to such board of managers or have elected executive management officers.

16. Definition L. **Loss** is amended as follows:

A. The first paragraph is replaced with the following:

Loss means the amount(s) including **Defense Costs** which the **Insured Individuals** become legally obligated to pay on account of a **Claim**, including damages, judgments, any award of pre-judgment or post-judgment interest, settlement amounts, costs and fees awarded pursuant to judgments.

B. The following is added:

The Insurer shall not assert that **Loss** incurred by any **Insured** on account of any **Claim** for a **Wrongful Act** with respect to the purchase or sale of or offer to purchase or sell any securities of an **Investment**

Fund or **Portfolio Company** is uninsurable due to the **Insured's** actual or alleged violation of Section 11, 12 or 15 of the Securities Act of 1933, as amended.

17. Definition V. **Professional Services** is replaced with the following:

V. **Professional Services** means:

1. the formation, capitalization, operation or management of an **Investment Fund** for a fee by the **Policyholder**, or an **Insured Individual** on behalf of the **Policyholder**, in the exercise of management and control of such **Investment Fund**; or
2. **Real Estate Services**.

Unless this Policy is endorsed otherwise, **Professional Services** does not include services performed by an **Insured** for a **Portfolio Company** regardless of whether such **Professional Services** are performed on a compensated or uncompensated basis.

18. Definition X. **Wrongful Act(s)** is replaced with the following:

X. **Wrongful Act(s)** means any error, misstatement, misleading statement, act, omission, neglect, or breach of duty actually or allegedly committed or attempted by:

1. any **Insured Individual** in his or her capacity as such or in the performance of **Professional Services**;
2. any **Insured Individual** in an **Outside Position** in his or her capacity as such with respect to Insuring Agreement A.2;
3. a **General Partner** in his or her capacity as a general partner of a **Limited Partnership** with respect to Insuring Agreement C;
4. an **Insured Individual** in his or her capacity as a director of a **Portfolio Company** with respect to Insuring Agreement D; or

Solely with respect to Insuring Agreement E, **Wrongful Act(s)** also means **Wrongful Employment Act(s)** by an **Insured** in their capacity as such.

19. Section III. DEFINITIONS is amended by the addition of the following:

Application means each and every signed application, any attachments to such applications, other materials submitted therewith or incorporated therein and any other such documents submitted in connection with the underwriting of this Policy or the underwriting of any other private equity and venture capital fund liability policy issued by the Insurer or any of its affiliates, of which this policy is a renewal, replacement, or which succeed it in time, as well as any publicly available documents that are filed by the **Policyholder** with the U.S. Securities and Exchange Commission or any similar federal, state, local or foreign regulatory agency within twelve (12) months prior to the inception date of this Policy. Such documents include, but are not limited to, the **Policyholder's** quarterly, annual, and other reports to owners of its securities, 10Ks, 10Qs, 8Ks, proxy statements and certifications relating to the accuracy of the foregoing.

Employee means any one or more natural persons who are past, present or future:

- (a) duly appointed officer of the **Policyholder**;
- (b) individuals whose labor or service is directed by the **Policyholder**, whether such labor or service is on a part-time, temporary, seasonal or full-time basis;
- (c) leased employees and volunteers whose labor or service is directed solely by the **Policyholder**;
- (d) applicants for prospective employment by the **Policyholder**; or

- (e) any individual contracted to perform work for the **Policyholder** or who is an independent contractor for the **Policyholder**, but only if such individual performs work or services solely for or on behalf of the **Policyholder**.

Non-Indemnifiable Loss means **Loss** incurred by an **Insured Individual** for which the **Policyholder**: (i) is neither permitted nor required by common or statutory law to indemnify such **Insured Individual**; (ii) or is financially unable to indemnify such **Insured Individual** by reason of **Financial Impairment**.

Real Estate Activities means:

- (a) identification of and arranging of financing by an **Insured** for the purchase or sale of or investment in real estate properties on behalf of an **Investment Fund**;
- (b) the creation, distribution or sale of securities or interests by an **Insured** in a tenants-in-common fund or similar tenants-in-common investment vehicle on behalf of an **Investment Fund**; or
- (c) services by an **Insured** as asset manager for a real estate property, including the appointment of a third-party property manager, but not including services rendered as a property manager, on behalf of an **Investment Fund**, provided that such services shall not apply to **Loss**, including **Defense Costs**, in connection with any **Claim** against an **Insured** to the extent that such **Claim** is for a **Wrongful Act** by such **Insured** in connection with the management or supervision of any division, **Subsidiary** or group of the **Insured** or any third-party vendor offering any of the aforementioned services.

Real Estate Activities does not include any services rendered by an **Insured** in connection with property management, property leasing, or mortgage servicing.

Wrongful Employment Act(s) means any error, misstatement, misleading statement, act, omission, neglect or breach of duty actually or allegedly committed or attempted by an **Insured** constituting:

- (a) wrongful dismissal, discharge or termination (either actual or constructive) of employment;
- (b) breach of any implied employment contract;
- (c) employment-related misrepresentation(s) to an employee;
- (d) violation of any federal, state or local statute, regulation, ordinance or common law concerning employment or discrimination in employment;
- (e) sexual harassment (as that term is defined by the federal Equal Employment Opportunity Commission) or other illegal workplace harassment;
- (f) wrongful failure to employ or promote;
- (g) wrongful reference, discipline or deprivation of a career opportunity;
- (h) wrongful demotion or adverse change in the terms, conditions or status of employment;
- (i) failure to grant tenure or adopt adequate workplace or employment policies and procedures;
- (j) illegal retaliatory treatment of employees;
- (k) negligent hiring, supervision, evaluation or retention of employees;
- (l) employment-related invasion of privacy or defamation;
- (m) employment-related wrongful infliction of emotional distress; or
- (n) employment-related libel, slander, false arrest, detention or imprisonment.

20. Exclusion 4 is replaced with the following:

4. based upon, arising out of, directly or indirectly resulting from, in consequence of or in any way involving:
 - (a) any nuclear reaction, radiation or contamination;
 - (b) the actual, alleged or threatened discharge, release, escape, seepage, migration, dispersal or disposal of **Pollutants** into or on real or personal property, water or the atmosphere; or
 - (c) any direction or request that the **Insureds** or the **Policyholder** test for, monitor, clean up, remove, contain, treat, detoxify or neutralize **Pollutants**, or any voluntary decision to do so;

21. Exclusion A.5 is replaced with the following:

5. brought or maintained by or on behalf of the **Policyholder** or any **Insured** against another **Insured** except a **Claim**:
 - (a) that is a derivative lawsuit brought and maintained on behalf of the **Policyholder** by one or more persons who are not **Insured Individuals**, without the solicitation, assistance, participation or intervention of any **Insured**;
 - (b) brought or maintained by any **Insured Individual** as a cross claim or counterclaim for contribution or indemnity, without the assistance, participation or intervention of the **Policyholder**;
 - (c) brought or maintained by or on behalf of a bankruptcy or insolvency receiver, trustee, examiner, conservator, liquidator, rehabilitator or creditors' committee of a **Policyholder**, or any assignee thereof;
 - (d) brought by an **Insured Individual** who has not served as an **Insured Individual** within three (3) years immediately preceding the date the **Claim** is first made, without the solicitation, assistance, active participation, or intervention of any **Insured**; or
 - (e) brought or maintained by an **Investment Fund** if advised in a bona fide written legal opinion by a counsel retained by or on behalf of such **Investment Fund** that not doing so would be a breach of fiduciary duty;
 - (f) brought by an **Insured Individual** as a "Whistleblower" protected pursuant to Section 806 of the Sarbanes-Oxley Act of 2002; or
 - (g) for a **Wrongful Employment Act** but solely with respect to the coverage provided under Insuring Agreement E;

22. Exclusion A.6 is replaced with the following:

6. for any actual or alleged violation of the responsibilities, obligations or duties imposed by the Employee Retirement Income Security Act of 1974 (ERISA), and amendments thereto or similar provisions of any federal, state or local statutory law or common law or the equivalent law of any other country in connection with any pension, profit sharing, health and welfare or other employee benefit plan or trust established and maintained by the or on behalf of the **Policyholder** for the purpose of providing employee benefits for the employees of the **Policyholder**; provided that this exclusion shall not apply to a **Claim** for a **Wrongful Employment Act** under Insuring Agreement E for a violation of Section 510 of ERISA.

23. Exclusion A.10 is replaced with the following:

10. based upon, arising out of, directly or indirectly resulting from, in consequence of or in any way involving:

(a) any deliberately fraudulent or criminal act or omission or any willful violation of any statute or regulation by such **Insured**; or

(b) any profit, remuneration or advantage to which such **Insured** was not legally entitled;

if established in a final and non-appealable adjudication adverse to such **Insured** in the underlying action; provided that paragraph 10(b) above shall not apply to allegations in a **Claim** asserted against any **Insured Individual** under Sections 11, 12 or 15 of the Securities Act of 1933, as amended, arising out of an initial or subsequent public offering of the securities of an **Investment Fund** or **Portfolio Company**, unless a final and non-appealable adjudication in the in underlying action establishes that the **Insured** was not legally entitled to any such profit, remuneration or advantage.

24. Exclusion A.12 is deleted.

25. Exclusion A.13 is deleted.

26. Section IV. EXCLUSIONS is amended by the addition of the following:

The Insurer shall not be liable for **Loss** arising from any **Claim** made against any Insured under Insuring Agreement E:

1. based upon, arising out of, directly or indirectly resulting from, in consequence of or in any way involving any action that relates to a collective bargaining agreement; or

2. for an actual or alleged violation of the responsibilities, obligations or duties imposed by the following laws and any amendments thereto:

a. any law governing workers' compensation, unemployment insurance, social security, disability benefits or similar law;

b. the Fair Labor Standards Act (except the Equal Pay Act);

c. the National Labor Relations Act;

d. the Worker Adjustment and Retraining Notification Act;

e. the Consolidated Omnibus Budget Reconciliation Act of 1985;

f. the Occupational Safety and Health Act;

g. any other federal, state, local or foreign statute or law similar to any statute or law described in (a) through (f) of this exclusion; or

h. rules or regulations promulgated under any of such statutes or laws;

provided that this exclusion shall not apply to any **Claim** for any actual or alleged retaliatory treatment of the claimant by the **Insured** on account of the claimant's exercise or attempt to exercise any employment rights pursuant to any such statute, law, rule or regulation.

Except for **Defense Costs** from **Claims** for **Wrongful Employment Act(s)** against the **Insured Individuals** and subject to the other terms, conditions and exclusions of this Policy, the Insurer shall not be liable for **Loss** on account of any **Claim** made against any **Insured**, based upon, arising out of, directly or indirectly resulting from, in consequence of or in any way involving:

1. recovery of amounts owing under or assumed by any **Insured** pursuant to any express written employment contract or agreement with any **Employee**; provided, however, this exclusion shall not apply to the extent the **Insured** would be liable for such **Loss** in the absence of such contract or agreement;
2. the actual or alleged provision of or failure to provide any reasonable accommodations required by, made as a result of, or to conform with the requirements of the Americans with Disabilities Act and any amendments thereto or any similar federal, state, local or foreign law (or recovery of the costs associated therewith);
3. recovery of compensation earned by the claimant in the course of employment but not paid by the **Policyholder**, including any unpaid salary, bonus, wages, overtime, severance pay, retirement benefits, stock options, perquisites, fringe benefits, vacation days, sick days, medical or insurance to which the claimant allegedly was or would have been entitled had the **Policyholder** provided the claimant with a continuation or conversion of such benefits or insurance benefits (or the equivalent value of any such compensation earned but not paid); provided, however, this exclusion shall not apply to any back pay or front pay; or
4. any request for non-monetary relief including injunctive relief, declaratory relief, restitution or any other equitable remedy.

27. Subsection V.A. Allocation is replaced with the following:

A. Allocation

If both **Loss** covered under this Policy and Loss not covered under this Policy are incurred in connection with any **Claim**, the **Insured Individual** and the Insurer shall use their best efforts to agree upon a fair and proper allocation of such amount between covered **Loss** and uncovered loss in accordance with the terms and conditions of this Policy.

If there is an agreement on an allocation of **Defense Costs**, the Insurer shall advance on a current basis such **Defense Costs**. If there can be no agreement on an allocation of **Loss**:

- (a) no presumption as to allocation shall exist in any arbitration, suit or other proceeding;
- (b) the Insurer shall advance on a current basis **Defense Costs** which the Insurer believes to be covered under this Policy until a different allocation is negotiated, arbitrated or judicially determined; and
- (c) the Insurer, if requested by the **Insured Individuals**, shall submit such dispute to binding arbitration. The rules of the American Arbitration Association shall apply except with respect to the selection of the arbitration panel, which shall consist of one arbitrator selected by the **Insured Individuals** and/or the **Policyholder**, one arbitrator selected by the Insurer and a third independent arbitrator selected by the first two arbitrators.

Any negotiated arbitrated or judicially determined allocation of **Defense Costs** on account of a **Claim** shall be applied retroactively to all **Defense Costs** on account of such **Claim**, notwithstanding any prior advancement to the contrary. Any allocation or advancement of **Defense Costs** on account of a **Claim** shall not apply to or create any presumption with respect to the allocation of other **Loss** on account of such **Claim**.

28. The last paragraph of Subsection V.C. Retentions is deleted.

29. Subsection V.C. Retentions is amended by the addition of the following:

The Insurer shall pay only **Loss** from each **Claim** for a **Wrongful Employment Act** in excess of the Retention set forth in Item 4. of the Declarations with respect to each **Claim** under Insuring Agreement E.

30. Paragraph VIII.B.3. Acquisition of **Insured Organization** is replaced with the following:

3. Acquisition of **Insured Organization**

If, during the **Policy Period**, any of the following events occurs:

(a) the acquisition of the **Insured Organization**, or of all or substantially all of its assets, by another entity, or the merger or consolidation of the **Insured Organization** into or with another entity such that the **Insured Organization** is not the surviving entity; or

(b) the acquisition by any person, entity or affiliated group of persons or entities of the right to elect, appoint or designate at least fifty percent (50%) of the directors of the **Insured Organization**;

then coverage under this Policy shall continue until termination of the **Policy Period** and shall not be cancelable by the **Insured Organization**, but only with respect to **Wrongful Acts** occurring prior to such merger, consolidation or acquisition. The **Insured Organization** shall give written notice of such merger, consolidation or acquisition to the Insurer as soon as practicable together with such information as the Insurer may require. However, coverage under this Policy will cease as of the effective date of such event with respect to **Wrongful Acts** occurring after such event. The appointment by any state or federal official, agency or court of any receiver, trustee, examiner, conservator, liquidator, rehabilitator or similar official to take control of, supervise, manage or liquidate the **Insured Organization**, or the **Insured Organization** becoming a debtor in possession within the meaning of the United States Bankruptcy Code or similar legal status under foreign law, shall not be considered an acquisition within the meaning of this Subsection.

31. Subsection VIII.C. Representations With Respect to Application is replaced with the following:

C. Representations and Severability With Respect To **Application**

In granting coverage to any one of the **Insureds**, the Insurer has relied upon the statements made in the written **Application** for this Policy and all information provided to the Insurer and upon the statements in the original written application submitted to another insurer with respect to prior coverage incepting as of the Continuity Date, if any, set forth in Item 7. in the Declarations. All such statements are the basis of this Policy and shall be incorporated in and constitute part of this Policy.

In order to determine if coverage is available, no declaration or statement in the **Application** or knowledge possessed by the **Policyholder** or any **Insured Individual** shall be imputed to any other **Insured Individual**. Such written **Application(s)** for coverage shall be construed as a separate **Application** for coverage by each **Insured Individual**.

Notwithstanding the foregoing, it is agreed that this Policy shall not be rescindable by the Insurer with respect to any **Claim** against an **Insured Individual** for which coverage is afforded solely under Insuring Agreement A.1 and for which:

1. the **Policyholder** is not permitted by law to indemnify such **Insured Individuals**; or
2. the **Policyholder** is permitted to indemnify such **Insured Individuals**, but does not indemnify such **Insured Individuals** solely because of **Financial Impairment**.

Notwithstanding the foregoing, nothing herein shall affect the Insurer's rights under this Policy to adjust, investigate or deny claims or to otherwise reserve its rights under this Policy with respect to any **Claim** under any Insuring Agreement.

32. Section VIII. GENERAL CONDITIONS is amended by the addition of the following:

The **Policyholder** shall indemnify the **Insured Individuals** to the fullest extent permitted by law.

Notwithstanding any provision in this Policy to the contrary, this Policy shall provide coverage only for **Insured Individuals**, and only for **Non-indemnifiable Loss**.

All other provisions of this Policy remain unchanged.

A handwritten signature in black ink, appearing to read "Nancy A. [unclear]".

Authorized Representative

March 23, 2012

Date

Effective date of this endorsement: 12:01 a.m. on: January 20, 2012
To be attached to and form part of Policy Number: EAN756858/01/2010
Issued to: Castle Arch Real Estate Investment Company, LLC
By: AXIS Surplus Insurance Company

DELETE SPECIFIED ENDORSEMENT

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

This endorsement modifies insurance provided under the following:

PRIVATE EQUITY AND VENTURE CAPITAL FUND LIABILITY POLICY

It is agreed that as of the effective date of this endorsement, Endorsement No(s). 4, 6, 7, 8, 10, 12, 13, and 14 of the Policy is/are deleted.

All other provisions remain unchanged.



Authorized Representative

February 17, 2012

Date

EXHIBIT B

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION**

<p>In re:</p> <p>CASTLE ARCH REAL ESTATE INVESTMENT COMPANY, LLC,</p> <p>Debtor.</p>	<p>Bankruptcy No. 11-35082 JTM</p> <p>Chapter 11</p>
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**ORDER GRANTING MOTION FOR RELIEF FROM THE AUTOMATIC
STAY, TO THE EXTENT APPLICABLE, TO ADVANCE DEFENSE COSTS**

This matter having come before the Court on the Motion of Douglas W. Child, Kirby D. Cochran, Robert D. Geringer, William J. Warwick, William H. Davidson, Jeff Austin, William Grundy, and Keith Green for Relief From the Automatic Stay, to the Extent Applicable, to Advance Defense Costs, the Court having reviewed the Motion and any objections and other pleadings related thereto, adequate and sufficient notice of the Motion having been given to all parties in interest, upon due deliberation it is hereby

ORDERED that:

1. The Motion is granted;
2. AXIS is authorized to advance Defense Costs under AXIS Policy No. EAN756858/01/2010, subject to its terms and conditions;
3. Nothing in this Order shall modify or alter the contractual rights and obligations provided for under the terms and provisions of AXIS Policy No. EAN756858/01/2010.
4. The Court shall, and hereby does, retain jurisdiction with respect to all matters arising from or related to the implementation of this Order.

5. The fourteen day stay under Federal Rule of Bankruptcy Procedure 4001(a)(3) is hereby waived.

--- END OF ORDER ---