

November 19, 1986

SUBJECT: INSURANCE

WITHDRAWN

Circular Letter No. 21 (1986)

TO: Chief Executive Officer

Chief Operating Officer

Chief Underwriting Officer

Chief Government Affairs Officer

OF: ALL PROPERTY/CASUALTY INSURANCE 031PANUS AITIHCRTZED TO WRUE.GENERAL LIABILITY INSURANCE IN THIS STATE

RE: LIQUOR LAW LIABILITY INSURADVE MARKET ASSISTANCE PROGRAM

Through carefully designed market, assistance programs (MAP) and with the cooperation of responsible insurance carriers and producers, the New York State Insurance Department has been able to help obtain vital liability insurance coverage in response to difficult market conditions. The Municipal; Community Service and Police Professional MAP efforts, supplementing the Liability Hotline, have thus far been productive.

These MAP efforts are designed to provide critical coverages, while doing everything possible to promote voluntary insurance markets. As announced last week, the Department will be holding a public hearing on December 1, 1986 to consider whether triggering the JUA is warranted for any problem liability insurance markets, including (but not limited to) winter recreational activities, small business activities and liquor law liability. Market assistance programs customized for small business activities and for liquor law liability are now under active development.

Enclosed for your consideration are the specifications for a proposed Liquor Law Liability Insurance MAP -- utilizing a qualified servicing carrier (Frontier), a quota share reinsurance arrangement and underwriting criteria emphasizing risk management -- in which we seek your participation by way of prompt subscription. Full subscription, of course, is necessary for this voluntary MAP effort to succeed.

In an effort to facilitate liquor law liability insurance coverage., the Legislature has amended the New York State Alcoholic Beverage Control Law to change the governing standard of responsibility from "actual or apparent" to "visible" intoxication -- clearly a meaningful tort reform that enhances risk management. The insurance industry has a clear opportunity to prove that tort reform is justified..

Please review the enclosed materials, and transmit your response (to be received no later than November 28, 1986) to the attention of:

Arnold Braun (212-602-0375)

Senior Insurance Examiner

Property & Casualty Insurance Bureau

New York State Insurance Department

160 West Broadway

New York, New York 10013

If you have any questions, please contact Deputy Superintendent Richard Hsia (212-602-0414), or Frontier's Robert Wasserman (914-794-8000). Mr. Wasserman has agreed to serve as industry coordinator for this particular MAP effort, under the auspices of this Department.

Very truly yours,

[SIGNATURE]

JAMES P. CORCORAN

SUPERINTENDENT OF INSURANCE

PLACEMENT SLIP

LIQUOR LAW LIABILITY MARKET ASSISTANCE PROGRAM

REINSURED: FRONTIER INSURANCE COMPANY
Monticello, NY

CLASSIFICATION OF
BUSINESS COVERED: Liquor Law Liability business written
by the Reinsured in cooperation with the
Liquor Law Liability Market Assistance
Program of New York State.

TERRITORY: New York State

TERM & TERMINATION: Continuous from 12:01 a.m. Eastern
Standard Time, , 1986.
Treaty may be cancelled at any
by either party giving at least 90 days
prior written notice. In the event of
cancellation, Reinsurers shall continue
to share in, all business written prior to
cancellation date until natural expiry of
such business.

TYPE OF TREATY: Quota Share

TREATY LIMIT: \$ 100,000 each common cause
\$ 500,000 in the aggregate per policy

REINSURED'S SHARE: 10.0%

REINSURED'S MAXIMUM

RETENTION: \$ 10,000 each common cause
\$ 50,000 in the aggregate

REINSURERS' SHARE: 90.0%

REINSURERS' MAXIMUM

LIMIT: \$ 90,000 each common cause
\$ 450,000 in the aggregate

CEDING COMMISSION: 30.0%

REPORTING AND

SETTLEMENT: Quarterly statements to be issued within
60 days after the close of the quarter and
payment to be made within 90 days of the
close of the quarter.

UNDERLYING POLICY

FORM: Occurrence with annual aggregate,
\$ 10,000 assault and battery deductible and a
\$ 1,000 other claims deductible;
both deductibles include defense costs

Accepted % of cession i.e., % of Gross Subject

\$ 100,000 Liability.

Reinsurer Authorized Signature

Title

Date

Reference No. Reinsurer Reinsured

NEW YORK LIQUOR LIABILITY MARKET ASSISTANCE PROGRAM UNDERWRITING GUIDE

ELIGIBILITY

Any person, partnership, association or corporation holding a license to manufacture, distribute, serve or sell alcoholic beverages in the State of New York shall be eligible for this program provided always that the applicant for insurance: 1) has been refused liquor liability coverage by the voluntary insurance market in New York State; 2) has had Liquor Liability Insurance at some time during the five years immediately preceding application to the MAP, * 3) does not offer "happy hours", "two for one drinks," "ladies nights," or any other schemes which induce customers to drink in greater volume or more frequently than moral and responsible business practice dictates; 4) will agree to attend, along with all servers of alcoholic beverages in the applicant's employ, an approved server-training seminar within 45 days after the inception of coverage. The organization conducting the seminars shall issue certificates of attendance to each

person attending and it shall be the insured's responsibility to submit these to the servicing carrier within the 45-day time limit. Failure of the insured to comply with this requirement will result in cancellation of the Liquor Liability policy (see Exhibit 1 for a list of organizations approved to conduct seminars).

COVERAGES

A. Coverage will be provided on an occurrence form. The maximum limit of liability shall be \$ 100,000 each common cause subject to a \$ 500,000 annual aggregate limit.

B. Two deductibles shall apply: A \$ 1,000 deductible each claim including defense costs within the deductible, and, a \$ 10,000 deductible each claim applying only to assault and battery including defense costs within the deductible. The assault and battery deductible stands by itself (i.e. the \$ 1,000 deductible applies only to other-than-assault and battery-claims).

MARKETING

The servicing carrier, Frontier Insurance Company, will accept business only through its licensed policy-writing agents, who shall allow a 5% commission to brokers. (See Exhibit 2 for a list of licensed Frontier agents).

>FTNT>

* if new business>ENDFN>

APPLICATIONS

No risk shall be considered or bound unless the application is completed in full and the signed deductible endorsement is received.

INSPECTIONS Each risk written by the MAP shall be inspected by a representative of the servicing carrier within 30 working days after the inception of coverage to verify liquor license information and other representations made on the application.

EXHIBIT 1

UPSTATE

T.A.M. OF NEW YORK, INC.
531 Spring St.
Phoenix, New York 13135

Phone: (315) 349-3243

I'M SMART
422 West Onondaga
Syracuse, New York 13201

Phone: (315) 471-3251

ENTIRE STATE

T.I.P.S.
Health Communications, Inc.
Suite 475
600 New Hampshire Avenue, NW
Washington, DC 20037

Phone: (202) 333-8267

Exhibit 2

75 Bernard Fleischer Associates Inc. 39 East Jericho Turnpike Mineola, New York 11501

55 Jardine Insurance Brokers Center City Plaza 433 State Street Schenectady, New York 12301

071 H.R. Keller & CO., Inc. 2005 Sheridan Drive Buffalo, New York 14223

046 New York State Risk Managers, Inc. P.O. Box 6985 Syracuse, New York 13217

356 GM RE Agency Inc. Bethlehem Court Delmar, New York 12054

012 Rhulen Special. Risk 196 Broadway Monticello, New York 12701

INTERESTS AND LIABILITIES CONTRACT

to the

LIQUOR LAW LIABILITY QUOTA SHARE

REINSURANCE AGREEMENT

between

FRONTIER INSURANCE COMPANY

and

This Interest and Liabilities Contract is made this day of , 1986 between Frontier Insurance Company of 1986 Broadway, Monticello, New York, County of Sullivan, State, of New York, hereinafter referred to as the Company and of City of County of , State of , hereinafter referred to as the Subscribing Reinsurer.

WITNESSETH: In consideration of the mutual promises and covenants herein contained. the parties hereto agree as follows:

The undersigned Subscribing Reinsurer shall have a % share in the Interest and Liabilities of the attached Liquor Liability Quota share Reinsurance Agreement, hereinafter referred to as the Agreement as of 12:01 a.m. Eastern Standard Time, this day of , 1986.

The share of the undersigned Subscribing Reinsurer in respect of the said Agreement shall be separate and apart from the shares of the other subscribing reinsurers and the interests and liabilities of the Subscribing Reinsurer shall not be joint with those of the other subscribing reinsurers and in no event shall the Subscribing Reinsurer participate in the interests and liabilities of the other subscribing reinsurers.

The Company shall pay the Subscribing Reinsurer % of all premiums due or which may become due the Subscribing Reinsurer in accordance with the attached Agreement.

This Interests and Liabilities Agreement shall attach and is subjects to the term and cancellation provisions, if any, contained in the Liquor Law Liability Quota Share Reinsurance Agreement.

The Liquor Law Liability Quota Share Reinsurance Agreement to which this Agreement is attached, may be changed, altered, and amended as the parties may agree, thereby changing, altering, and amending the interests and liabilities of the Subscribing Reinsurer herein, provided such change, alteration and amendment is evidenced by amendment to this Agreement executed by the Company and the Subscribing Reinsurer.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be signed in duplicate by their duly authorized representatives this day of , 1986.

By

Company

Title

Subscribed and Sworn to
before me this day
of , 1986.

Notary Public

By

Company

Title

Subscribed and Sworn to
before me this day
of , 1986.

Notary Public

LIQUOR LAM LIABILITY QUOTA SHARE

REINSURANCE AGREEMENT

This Liquor Law Liability Quota Share Reinsurance. Agreement is made between Frontier Insurance Company of 196 Broadway, Monticello, New York, County of Sullivan. State of New York, hereinafter referred to as the Company and the Subscribing Reinsurers subscribing to the respective Interests and Liabilities Agreement to which this Agreement is attached, hereinafter referred to as the Reinsurer.

WITNESSETH: In consideration of the mutual covenants and promised herein contained the parties hereto agreed as follows:

ARTICLE I. Business Covered

A. The Company shall cede to the Reinsurer and the Reinsurer shall accept from the Company a 90% Quota Share participation of the net retained liability of the Company on policies, as defined herein, in force at the inception of this Agreement and issued or renewed during the term of this Agreement.

B. The liability of the Reinsurer shall commence obligatorily and simultaneously with that of the company and shall apply wherever loss may occur during the currency of this Agreement.

C. This Agreement and the insurance and reinsurance issued hereunder within the terms of the Agreement applies to the Company's Liquor Law Liability policies issued in connection with the New York Liquor Law Market Assistance Program only, except as excluded in Article VIII and subject to the limitations stated in Article III.

ARTICLE II. Territory

This Agreement applies only to policies issued to insured or reinsureds located in the State of New York in the United States of America.

ARTICLE III. Limits of Cover

A. The Reinsurer's liability under any one policy shall not exceed \$ 1,000,000.

B. The maximum liability which may be ceded by the Company to the Reinsurer under this Agreement in respect of any one risk, any one insured is 90% of \$ 100,000,000.

ARTICLE IV. Terms and Cancellation

A. This Agreement is effective as of 12:01 a.m. Eastern Standard Time, , 1986, and applied to the new and renewal business of the Company written subsequent to the time and date mentioned hereinabove and shall continue in full force and effect until terminated as hereinafter provided. The Reinsurer shall remain liable on the business then in force until the natural expiry of the policies on the Reinsurer's share of losses arising out of all such business.

B. Either party may cancel this Agreement as of or any subsequent by giving notice in writing at least ninety days prior to such date stating to the other its desire to effect such cancellation.

C. In the event of cancellation of this Agreement, the Reinsurer shall not be liable for any losses occurring under new and renewal policies becoming effective after the date of cancellation. The Reinsurer shall remain liable for losses occurring after the date of cancellation on all policies in force at such date until the expiration or prior termination of such policies.

D. Every notice of termination shall be given by registered letter addressed to the intended recipient at such recipient's address as hereinabove set forth. The determining whether the requisite number of days' notice has been given in any case, the date of termination shall be counted but the date of mailing shall not.

E. Notwithstanding the termination of this Agreement as hereinabove provided, the provisions of this Agreement shall continue to apply to all unfinished business hereunder to the end/ that all obligations and liabilities incurred by each party hereunder prior to such termination shall be fully performed and discharged.

This Agreement is attached to the respective Interests and Liabilities Contract.

F. It is agreed, however, that either party may terminate this Agreement forthwith in the event that:

1. One party should at any time become insolvent, or suffer any impairment of capital, or file a petition in bankruptcy or go into liquidation or rehabilitation, or have a receiver appointed, or be acquired or controlled by any other insurance company or organization, or

2. Termination under this Section "F" shall be effected by written notice of cancellation to the other party, containing instructions as to mode of cancellation, i.e. a run-off basis or on a cut-off basis with portfolio settlement, if any.

G. This Agreement shall automatically terminate if the Reinsurer's participation shall fall below ninety percent of \$ 100,000.

H. If any law or regulation of the Federal or State or Local Government of any jurisdiction in which the Company is doing-business shall render illegal the arrangements made in this Agreement, the Agreement can be terminated immediately, insofar as it applies to such jurisdiction by the Company's giving notice to the Reinsurer to such effect.

ARTICLE V. Excess of Original Policy Limits

A. The company shall be indemnified by the Reinsurer within the limits hereof, in connection with any loss in excess of the limit of its policy, such loss in excess of the limit having been incurred because of failure by the Company to settle within the policy limit or by reason of alleged or actual negligence, fraud or bad faith in rejecting an offer of settlement or in the preparation of the defense or in the trial of any action against an insured or reinsured or in the preparation or prosecution of an appeal consequent upon such action.

B. This Article shall not apply where the loss has been incurred due to the fraud of a member of the board of directors or a corporate office of the Company acting individually or collectively or in collusion with any individual or corporation or any other organization or party involved in the presentation, defense or settlement or any claim covered hereunder.

C. For the purpose of this Article, the word "Loss" shall be defined as any amounts for which the Company would have been contractually liable to pay had it not been for the limit of the policy.

ARTICLE VI. Extra Contractual Obligations

A. This Reinsurance shall exclude all cover in respect of Extra Contractual Obligations howsoever arising, such Extra Contractual Obligations being defined as any award made by a court of competent jurisdiction against an Insurer or Reinsurer, which award is not within the coverage granted by any insurance and/or reinsurance contract made between the parties in dispute.

B. Notwithstanding the foregoing in consideration of an additional premium of \$ 1.00 this Reinsurance shall extend to cover any loss arising from a "Claims Related Extra Contractual Obligation":

1. awarded against the Company or.

2. included by the Company where it has paid his share of a 'claims Related Extra Contractual Obligation' awarded against one more of its Co-Insurers.

C. It is warranted that any recovery under this Reinsurance in respect of 'Claims Related Extra Contractual Obligation shall only be for the part of any award which corresponds to the Company's share of the insurance and/or reinsurance policy and/or contract giving rise to the award, and all proportional protection effected by the Company shall provide or shall be deemed to provide pro-rata coverage for such obligations.

D. This reinsurance shall also extend to cover all loss from Extra Contractual Obligations howsoever arising where the loss is incurred by the Company as a result of its participation in any insurance or reinsurance which provides cover

for such loss, it being understood and agreed that such result from a contractual liability incurred by the Company.

E. A "Claims Related Extra Contractual Obligation" shall be defined as the amount awarded against an Insurer or Reinsurer found liable by a court of competent jurisdiction to pay damages to an Insured or Reinsured in respect of the conduct of a claim made under an insurance and/or reinsurance policy and/or contract, where such liability has arisen because of:

1. the failure of the Insurer or Reinsurer to agree or pay a claim within the policy limits or to provide a defense against such claims as required by law or,
2. bad faith or negligence in rejecting an offer of settlement or
3. negligence or breach of duty in the preparation of the defense or the conduct of a trial or the preparation or prosecution of any appeal and/or subrogation and/or any subsequent action resulting there-from.

F. There shall be no liability under this Reinsurance in respect of:

1. any assumption of liability by way of participation in any mutual scheme designed specifically to cover Extra Contractual Obligation or,
2. any Extra Contractual Obligation arising from the fraud of a director, officer or employee of the Company acting individually or collectively or in collusion with an individual or corporation or with any other organization or party involved in the presentation defense or settlement of any claim.

G. Any loss arising under this Reinsurance in respect of "Claims Related Extra Contractual Obligations" shall be deemed to be a loss arising from the same event as that giving rise to the claim to which the Extra Contractual Obligations is related; and recovery of such loss hereunder will be in the same proportion as the subject matter business of this reinsurance.

ARTICLE VII. Retention

The Company shall retain net for its own account 10% on each risk reinsured hereunder, said net retention unreinsured in any way other than by catastrophe reinsurance.

ARTICLE VIII. Exclusions

The Reinsurance provided under this Agreement does not apply to:

- A. Credit, Financial Guarantee and Insolvency.
- B. Any Insolvency Fund as per attached Insolvency Funds Exclusion Clause.
- C. Any loss or liability accruing to the Company directly or indirectly, and whether as insurer or member, of any pool, Syndicate, Association or Bureau.
- D. Liability under provisions of the Nuclear Incident Exclusion Clause Liability Reinsurance, a copy of which is attached to this Agreement.
- E. Loss or damage which is occasioned by war, invasion, hostilities, acts of foreign enemies, civil war, rebellion, insurrection, military or usurped power, or martial law, or confiscation by order of any government or public authority, but not excluding liability for loss or damage which would be covered under a standard form of policy containing a standard war exclusion clause.

ARTICLE IX. Definitions

A. The term "policies" is defined herein as any and all binders, certificates, contracts or policies of insurance or reinsurance classified by the Company as business written under this Agreement.

B. The term "net premiums written" is defined herein as gross premiums and additional premiums less return premiums and less premium ceded on all facultative reinsurance on the business covered under this Agreement.

C. The term "incident" is defined herein as the initial A act or acts attributable to a specific alleged crime or complaint resulting in action by the Insured, which crime or complaint can be fixed as to time and place, and any subsequent acts which directly relate to or arise out of the original crime or complaint.

D. The term "net retained liability" as used herein means the remaining portion of the Company's gross liability under each policy after deducting all reinsurances which inure to the sole benefit of the Company.

The Company shall cede to the Reinsurer a pro rata share of its premium and additional premiums, if any, on policies becoming effective on and after in respect to business covered hereunder and the Reinsurer shall refund to the Company a pro rata share of each return premium.

ARTICLE XI. Ceding Commission

A. The Reinsurer shall allow the Company a ceding commission of 30% on the written premiums ceded under this Agreement. On all return premium the Company shall return to the Reinsurer the commission allowance of 30%.

B. The commission allowance which the Reinsurer makes to the Company on the business ceded under this Agreement includes provisions for all taxes and any other expenses whatsoever, except allocated loss and loss adjustment expenses.

ARTICLE XII. Losses, Loss Adjustment Expenses and Salvage

A. The Company shall adjust, settle or compromise all claims and losses. All such adjustments, settlements, and compromised, including ex gratia payments, shall be binding on the Reinsurer in proportion to its participation. The Company shall likewise commence, continued defend, compromise, settle or withdraw from actions, suits or proceedings and generally do all such matters and things relating to any claim or loss as in its judgment May be beneficial or expedient, and all payments made and costs and expenses incurred in connection therewith or in taking legal advice therefore (including the pro rata share, according to the time occupied in adjusting such loss, of salaries and expenses of the Company's field employees and salaried adjusters who have no administrative duties, and expenses of the Company's officials incurred in connection with the loss but excluding salaries of the Company's officials and regular office employees and office expenses of the Company) shall be shared by the Reinsurer proportionately. The Reinsurer shall, on the other hand, benefit proportionately from all reductions of losses by salvage, compromise or otherwise.

B. If the total amount due to the Company for loss or losses recoverable under this Agreement for any one loss occurrence is in excess of \$ 10.000 each subscribing reinsurer subscribing to the respective Interests and Liabilities Agreement to which this Agreement is attached will, upon demand and receipt of reinsurance proofs of loss, forthwith remit the amount due including but not limited to amounts less than \$ 10.000. otherwise losses shall be carried to account as otherwise provided herein.

C. In the event of a loss intimated to the Company or its agents before an entry has been made in the records of the Company, the Company shall be entitled to claim on the Reinsurer in conformity with the limits which the Company usually retains upon similar risks or subjects of insurance as established by its practices.

ARTICLE XIII. Reports and Remittances

A. The Company will provide the Reinsurer with all necessary data respecting premiums and losses, including reserves thereon, as at dates and on forms mutually acceptable to the Company and the Reinsurer.

B. The Company shall render a quarterly account within sixty days after the end of each calendar quarter summarizing the following information relating to the business covered under this Agreement:

1. Statement of premiums written and earned during the quarter;
2. Statement of commissions allowed during the quarter;
3. The Reinsurer's share of losses plus loss expenses paid, less salvage received and any balance due the Reinsurer, as indicated by the aforesaid account, shall be remitted to the Reinsurer with the account.
4. Reinsurer's share of losses outstanding at the end of the quarter.

C. Payment by the Reinsurer of its proportion of loss and loss expenses paid less salvage received by the Company will be made by the Reinsurer to the Company within ninety days of the close of the quarter.

D. As soon as possible following the end of each agreement year, the Company shall furnish the following information to the Reinsurer for the agreement year:

1. Summary of written premiums ceded,
2. Summary of premiums earned,
3. Summary of loss and loss adjustment expense paid and outstanding, segregated by the agreement year in which the loss occurred, and
4. Any other information which the Reinsurer may require for its Annual Convention Statement which may be reasonably available to the Company.

ARTICLE XIV. Currency

All payments hereunder shall be made in United States currency.

ARTICLE XV. Errors and Omissions

Any inadvertent neglect, delay, error or omission on the part of the Company shall not invalidate the reinsurance under this Agreement or be held to relieve either party hereto from any liability which would attach to it hereunder if such neglect, delay, error or omission is rectified upon discovery by an official of the Company.

ARTICLE XVI. Follow the Fortunes Clause

A. The Reinsurer's liability shall attach simultaneously with that of the Company, and all reinsurances for which the Reinsurer shall be liable by virtue of this Agreement shall be subject in all respects to the same risks, terms, conditions, interpretations, assessments, waivers, and to the same modifications, alterations and cancellations, as the respective insurance (or reinsurances) of the Company to which such reinsurances relate, the true intent of this Agreement being that the Reinsurer shall, in every case to which this Agreement applies and in the proportions specified herein, follow

the fortunes of the Company.

B. Nothing herein shall in any Manner create any obligations or establish any rights against the Reinsurer in favor of any third parties or any persons not parties to this reinsurance agreement.

ARTICLE XVII. Insolvency Clause

In the event of the insolvency of the Company, reinsurance under this Agreement shall be payable by the Reinsurer (on the basis of liability of the Company under contract or contracts reinsured without diminution because of the insolvency of the Company) to the Company or to its liquidator, receiver, or statutory successor, except as provided by Section 4118a of the New York Insurance Law or except:

(a) where the Agreement specifically provides another payee of such reinsurance in the event of the insolvency of the Company, and

(b) where the Reinsurer, with the consent of the direct insured or insureds, has assumed such policy obligations of the Company as direct obligations, of the Reinsurer to the payees under such policies and in substitution for the obligations of the Company to such payees.

It is agreed, however, that the liquidator or receiver or statutory successor of the insolvent Company shall give written notice to the Reinsurer of the pendency of a claim against the insolvent Company of the contract or contracts reinsured within a reasonable time after such claim is filed in the insolvency proceeding and that, during the pendency of such claim the Reinsurer may investigate such claim and interpose at their own expense in the proceeding where such claim is to be adjudicated, any defense or defenses which they may deem available to the Company or its liquidator or, receiver or statutory successor. The expense thus incurred by the Reinsurer shall be chargeable, subject to court approval against the insolvent Company as part of the expense of liquidation to the extent of a proportionate share of the benefit which may accrue to the Company solely as a result of the defense undertaken by the Reinsurer.

ARTICLE XVIII. Self-Insured Obligations

A. As respects all business the subject matter hereof, where the coverage has been agreed upon between the Company and the Reinsurer this Agreement shall cover all obligations of the Company assumed by it as a self-insurer (or self-insured obligations in excess of any valid and collectible insurance available to the Company) to the same extent as if all types of insurance covered by this Agreement were afforded under the broadest form of agreements issued by the Company.

B. Any insurance or reinsurance wherein the Company hereby reinsured and/or its affiliated and/or subsidiary companies are named as the Insured or Reinsurer party, whether alone or jointly with some other party, shall be deemed to be an insurance or reinsurance coming within the scope of this Agreement, notwithstanding that no legal liability may arise in respect thereof by reason of the fact that the Company hereby reinsured and/or its affiliated and/or subsidiary companies are named as the Insured or Reinsured party or one of the Insured or Reinsured Parties.

ARTICLE XIX. Residual Markets Clause A. The Reinsurer shall bear and remit to the Company as its proportionate share of any assessments, regardless of the basis of assessment, levied upon the Company by the governing authority of any mandatory insurance pool or plan, or state administered or sponsored. Insolvency or guaranty fund, to which the Company is required to belong, or in which the Company is required to participate, by reason of its issuing contracts of insurance on risks reinsured hereunder. For the purpose of this Agreement, mandatory insurance pool or plan shall mean any plan of insurance mandated by statute or regulation for the purpose of providing a source of insurance to persons, natural or otherwise, to whom such insurance would otherwise be unavailable in accordance with standards contemplated by such statute or regulation, including, but not limited to, so-called Assigned Risk plans, Fair Plans, Joint Underwriting Association, Worker's Compensation Pools and Windstorm Pools.

B. Allocation of assessments to business covered under this Agreement shall be calculated by the Company in an equitable and consistent fashion, and shall be applied to ceded premiums, losses and expenses as appropriate.

ARTICLE XX. Arbitration

All disputes or differences arising out of the interpretation of this Agreement shall be submitted to the decision of two arbitrators, one to be chosen by each party and in the event of the arbitrators failing to agree, to the decision of an umpire to be chosen by the arbitrators. The arbitrators and umpire shall be active or retired executive officials of fire or casualty insurance or reinsurance companies. If either of the parties fails to appoint an arbitrator within one month after being required by the other party in writing to do so, or if the arbitrators fail to appoint an umpire within one month of a request in writing by either of them to do so, such arbitrator or umpire, as the case may be, shall at the request of either party be appointed by a Justice of the Supreme Court of the State of New York.

The Arbitration proceeding shall take place in New York, New York. The applicant shall submit its case within one month after the appointment of the court of arbitration, and the respondent shall submit his reply within one month after the receipt of the claim. The arbitrators and umpire are relieved from all judicial formality and may abstain from following the strict rules of law. They shall settle any dispute under the Agreement according to an equitable rather than a strictly legal interpretation of its terms and their decision shall be final and not subject to appeal.

Each party shall bear the expenses of its arbitrator and shall jointly and equally share with the other the expenses of the umpire and of the arbitration.

This article shall survive the termination this Agreement.

ARTICLE XXI. Offset Clause

Each party hereto shall have, and may exercise at any time and from time to time, the right to offset any balance or balances, whether on account of premiums or on account of losses or otherwise, due from each party to the other (or, if more than one, any other) party hereto under this Agreement, provided however, that in the event of the insolvency of a party hereto, offsets shall only be allowed in accordance with the provisions of Section 7427 of the Insurance Law of the State of New York.

ARTICLE XXII. Loss Reserves

(This clause applies only to those Reinsurers who cannot qualify for credit by any state or any other governmental authority having jurisdiction Over the Company's loss reserves).

A. As regards policies and bonds issued by the Company coming within the scope of. this Agreement, the Company agrees that when it shall file with the Insurance Department or set up on its books reserves for losses which it shall be required to set up by law it will forward to the Reinsurer a statement showing the proportion of such loss reserves which is applicable to them. The Reinsurer hereby agrees that they will apply for and secure delivery to the Company a clean irrevocable Letter of Credit issued by any bank acceptable to the governmental authority having jurisdiction over the Company's loss reserves in an amount equal to the Reinsurer's proportion of said loss reserves.

B. The Company agrees to use and apply any amounts which it may draw upon such Credit for the following purposes only:

1. To pay the Reinsurer's share of and to reimburse the Company for the Reinsurer's share of any liability for loss reinsured by this Agreement.
2. To make refund of any sum which is in excess of the actual amount required to pay Reinsurer's share of any liability reinsured by this Agreement.

C. The designate bank shall have no responsibility whatsoever in connection with the propriety of withdrawals made by the Company on the disposition of funds withdrawn, except to see that withdrawals are made only upon the order of properly authorized representatives of the Company.

ARTICLE XXIII. Access to Records

The Reinsurer or its duly appointed representatives shall have free access at all reasonable times to such books and records of the Company and its departmental or branch offices as shall reflect premium and loss transactions of the Company for the purpose of obtaining any and all information concerning this Agreement or the subject matter hereof.

ARTICLE XXIV. Tax

In consideration of the term under which this Agreement is issued, the Company undertakes not to claim any deduction of the premium hereon when making Canadian tax returns or when making tax returns, other than Income or Profits Tax returns, to any state or Territory of the United States or to the District of Columbia.

ARTICLE XXV. Intermediary

New York Property Insurance Underwriting Association is hereby recognized as the Intermediary negotiating this Agreement for all business hereunder. All communications (including but not limited to notices, statements, premiums, return premiums, commissions, taxes, losses, loss adjustment expense, salvages, and loss settlements) relating thereto shall be transmitted to the Company or the Reinsurer through [name and address]. Payments by the Company to the Intermediary shall constitute payment to the Reinsurer to the extent of such payments. Payments by the Reinsurer to the Intermediary shall only constitute payment to the Company to the extent that such payments are actually received by the Company.

ARTICLE XXV. Execution

This Agreement is executed by the Company and by each Reinsurer by the signing, in duplicate, the Interests and Liabilities Contract to which this Agreement is attached.