

FOUNDERS INSURANCE COMPANYSM

**DES PLAINES, ILLINOIS
(A STOCK COMPANY)**

ILLINOIS GARAGE LIABILITY POLICY

PLEASE READ YOUR POLICY CAREFULLY

NOTICE – This policy has been issued in reliance on the statements and the information in the application which is incorporated herein and made a part of this policy. **Read your application and immediately notify the Company of any misinformation or incomplete information.**

ILLINOIS GARAGE LIABILITY POLICY
FOUNDERS INSURANCE COMPANY
DES PLAINES, ILLINOIS

(A stock insurance company, herein called the Company)

The insurance afforded is only with respect to such of the following coverages hereunder as are indicated by specific premium charge or charges. The limit of the Company's liability against each such coverage shall be as stated herein and the Declarations, subject to terms of this policy having reference thereto.

I. GARAGE LIABILITY
COVERAGE A. BODILY INJURY
COVERAGE B. PROPERTY DAMAGE

The Company will pay on behalf of the insured all sums, except for punitive or exemplary damages, which the insured shall become legally obligated to pay as damages because of

A. Bodily Injury or
B. Property Damage

to which this insurance applies, caused by an accident and arising out of garage operations, including only the automobile hazard for which insurance is afforded. The Company shall have the right and duty to defend any claim or suit against the insured seeking damages on account of such bodily injury or property damage, even if any of the allegations of the suit are groundless, false or fraudulent, and may make such investigation and settlement of any claim or suit as it deems expedient, but the Company shall not be obligated to pay any claim or judgment or to defend any suit after the applicable limit of the Company's liability has been exhausted by payment of judgments or settlements. If a suit is brought against the insured seeking both compensatory and punitive or exemplary damages, the Company will afford a defense to such action but without liability, however, for such punitive or exemplary damages.

Supplementary Payments

To pay, in addition to the applicable limits of liability:

- (a) all expenses incurred by the Company, all costs taxed against the insured in any such suit and all interest on the entire amount of any judgment therein which accrues after entry of the judgment and before the Company has paid or tendered or deposited in court that part of the judgment which does not exceed the limit of the Company's liability thereon;
- (b) premiums on appeal bonds required in any such suit, premiums on bonds to release attachments for an amount not in excess of the applicable limit of liability of this policy, and the cost of bail bonds required of the insured because of accident or traffic law violation arising out of the use of an automobile insured hereunder, not to exceed \$250 per bail bond, but

- without obligation to apply for or furnish any such bonds;
- (c) expenses incurred by the insured for such immediate medical and surgical relief to others as shall be imperative at the time of an accident involving an automobile insured hereunder and not due to war; and
- (d) all reasonable expenses incurred by the insured at the Company's request, including actual loss of earnings, not to exceed \$25 per day.

Exclusions

This insurance does not apply under the Garage Liability Coverages:

- (a) to liability assumed by the insured under any contract or agreement except an incidental contract;
- (b) to bodily injury or property damage arising out of the ownership, maintenance, operation, use, loading or unloading of any escalator at premises owned, rented or controlled by the named insured; but this exclusion does not apply to an escalator at the premises which the named insured owns, rents or controls only in part unless the named insured operates, maintains or controls the escalator;
- (c) to any obligation for which the insured or any carrier as his insurer may be held liable under any worker's compensation, unemployment compensation or disability benefits law, or under any similar law;
- (d) to bodily injury to any employee of the insured arising out of and in the course of his employment by the insured or to any obligation of the insured to indemnify another because of damages arising out of such injury; but this exclusion does not apply to:
 - (1) any such injury arising out of and in the course of domestic employment by the insured unless benefits therefor are in whole or in part either payable or required to be provided under any worker's compensation law, or
 - (2) liability assumed by the insured under an incidental contract;
- (e) to bodily injury or property damage arising out of the ownership, maintenance, use, operation, entrustment to others, loading or unloading of any:
 - (1) haulaway, tank truck or tank trailer (or any vehicle used therewith) owned, hired or held for sale by the named insured and not being delivered, demonstrated or tested;
 - (2) automobile
 - (i) while being used in any prearranged or organized racing, speed or demolition contest or in any stunting activity or in

- practice or preparation for any such contest or activity, or
- (ii) while rented to others by the named insured unless to a salesman for use principally in the business of the named insured, or
 - (iii) while being used by the insured as a public or livery conveyance or for carrying property for a charge;
- (3) watercraft or aircraft;
 - (4) service vehicles equipped with a wrecker body, mobile hoist, flat bed, or any other system installed for the purpose of lifting, carrying or towing another vehicle;
- (f) to bodily injury or property damage arising out of and occurring in the course of structural alterations, new construction or demolition operations performed for the named insured by independent contractors, or acts or omissions of the named insured in connection with his general supervision of any such operations; but this exclusion does not apply to operations of which the Company has written notice within 30 days after the commencement thereof;
- (g) to property damage to
- (1) property owned by, rented to or held for sale by the insured, or
 - (2) property in the care, custody or control of or being transported by the insured or property as to which the insured is for any purpose exercising physical control; but part (2) of this exclusion does not apply to property damage arising out of the ownership, maintenance or use at the premises of any automobile servicing hoist designed to raise the entire automobile, or to such insurance as is afforded for the use of elevators at the premises;
- (h) to property damage to premises alienated by the named insured arising out of such premises or any part thereof;
- (i) to loss of use of tangible property which has not been physically injured or destroyed resulting from:
- (1) a delay in or lack of performance by or on behalf of the named insured of any contract or agreement, or
 - (2) the failure of the named insured's products or work performed by or on behalf of the named insured to meet the level of performance, quality, fitness or durability warranted or represented by the named insured;
- but this exclusion does not apply to loss of use of other tangible property resulting from the sudden and accidental physical injury to or destruction of the named insured's products or work performed by or on behalf of the named insured after such products or work have been put to use by any person or organization other than an insured;
- (j) to property damage to any of the named insured's products if such property damage results from a condition existing in such product or any part thereof at the time possession is relinquished to the purchaser thereof;
- (k) to property damage to work performed by or on behalf of the named insured arising out of the work or any portion thereof, or out of materials, parts or equipment furnished in connection therewith;
 - (l) to damages claimed for the withdrawal, inspection, repair, replacement, or loss of use of the named insured's products or work forming a part thereof, if such products, work or property are withdrawn from the market or from use because of any known or suspected defect or deficiency therein;
 - (m) to bodily injury or property damage due to war, whether or not declared, civil war, insurrection, rebellion or revolution or to any act or condition incident to any of the foregoing;
 - (n) to bodily injury or property damage for which the insured or his indemnitee may be held liable:
 - (1) as a person or organization engaged in the business of manufacturing, distributing, selling or serving alcoholic beverages, or
 - (2) if not so engaged, as an owner or lessor of premises used for such purposes, if such liability is imposed:
 - (i) by, or because of the violation of any statute, ordinance or regulation pertaining to the sale, gift, distribution or use of any alcoholic beverage, or
 - (ii) by reason of the selling, serving or giving of any alcoholic beverage to a minor or to a person under the influence of alcohol or which causes or contributes to the intoxication of any person;
- but part (ii) of this exclusion does not apply with respect to liability of the insured or his indemnitee as an owner or lessor described in (2) above;
- (o) to bodily injury or property damage arising out of the actual, alleged or threatened discharge, dispersal, release or escape of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, liquids or gases, waste materials or other irritants, contaminants or pollutants into or upon land, the atmosphere or any watercourse or body of water;
 - (p) (1) to bodily injury or property damage arising out of the loading or unloading of pollutants;
 - (2) to bodily injury or property damage arising out of or caused by exposure to asbestos or materials or products containing asbestos;
 - (3) to bodily injury or property damage arising out of or caused by lead, paint containing lead, or any other substance or material containing lead;
 - (4) to any legal obligation of any insured for indemnification or contribution due to damages arising out of bodily injury or property damage caused by lead, paint containing lead, or any other substance or material containing lead;
 - (5) to any loss, cost, expenses, or damages arising out of any:
 - (i) request, demand, or order that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify, or neutralize, or in any way respond to, or assess the effects of pollutants; or

- (ii) claim or suit relating to testing for, monitoring, cleaning up, removing, containing, treating, detoxifying, or neutralizing, or in any way responding to or assessing the effects of pollutants;

Exclusion (p)(5) above does not apply to bodily injury or property damage caused by heat, smoke or fumes from a hostile fire. A hostile fire means a fire that becomes uncontrollable or breaks out from where it was intended to be.

- (q) to bodily injury or property damage arising directly or indirectly out of the ownership, maintenance, or harboring of any animal, or arising directly or indirectly out of any act by such animal;
- (r) to bodily injury or property damage resulting from the ownership, possession, entrustment, loading, unloading, discharge or any other use of any firearm;
- (s) to any liability arising out of:
 - (1) assault and/or battery committed by any insured or any other person, whether or not committed by or at the direction of any insured;
 - (2) the failure to suppress or prevent assault and/or battery by any person in (s)(1) above; or
 - (3) negligent hiring, placement, training or supervision, relating in any way to assault and/or battery;
- (t) to bodily injury or property damage resulting from the hazardous properties of nuclear material and arising out of the operation of a nuclear facility by any person or organization; or
- (u) to any liability arising out of the sale, repair, ownership, use or maintenance of All Terrain Vehicles (ATV) designed principally for off road operation.

II. GARAGEKEEPERS' LEGAL LIABILITY

COVERAGE C-1 – FIRE AND EXPLOSION

COVERAGE C-2 – THEFT OF THE ENTIRE AUTOMOBILE

COVERAGE C-3 – COLLISION OR UPSET

The Company will pay on behalf of the insured all sums that the insured shall become legally obligated to pay as damages because of:

- C-1. loss to an automobile caused by fire or explosion other than explosion of tires;
- C-2. loss to an automobile caused by theft of the entire automobile;
- C-3. loss to an automobile or other property of a kind customarily left in charge of a garage caused by collision of the automobile or such property with another object or by upset thereof, occurring while such automobile or other property is in the custody of the insured for safekeeping, storage, service or repair,
 - (1) at a location stated in the Declarations or while temporarily removed therefrom in the ordinary course of the insured's business, or
 - (2) away from the premises if the insured is attending to such automobile or property;

The Company shall have the right and duty to defend any suit against the insured seeking damages on account of such loss, even if any of the allegations of the suit are groundless, false or fraudulent, and may make such investigation and settlement of any claim or suit as it deems expedient, but the Company shall not be obligated to pay any claim or judgment or to defend any suit after the applicable limit of the Company's liability has been exhausted by payment of judgments or settlements.

The deductible amount stated in the Declarations as applicable hereto shall be deducted from the total amount of all sums which the insured shall become legally obligated to pay as damages because of each loss, and the limit of the Company's liability shall be the difference between such deductible amount and the limit of liability stated in the Declarations.

The Supplementary Payments provision under Part I of this policy is applicable to the insurance afforded for Garagekeepers' Legal Liability, except the provisions with respect to the cost of bail bonds and expenses for first aid.

Exclusions

This insurance does not apply under the Garagekeepers' Legal Liability Coverages:

- (a) to liability of the insured under any agreement to be responsible for loss;
- (b) to an automobile or other property:
 - (1) owned by or rented to
 - (i) the named insured or a partner therein or a member thereof, or the spouse of any one of them if a resident of the same household,
 - (ii) an employee of the named insured or his spouse if a resident of the same household, unless the automobile or other property is in the custody of the named insured under an agreement for which a specific pecuniary charge has been made, or
 - (2) in the custody of the named insured for demonstration or sale;
- (c) to loss by theft due to any fraudulent, dishonest or criminal act by the named insured, a partner therein, a member thereof or employee, trustee or authorized representative thereof, whether working or otherwise and whether acting alone or in collusion with others;
- (d) to loss arising out of the use of any elevator, or any automobile servicing hoist designed to raise an entire automobile;
- (e) to defective parts, accessories or materials furnished or to faulty work performed on an automobile, out of which loss arises;
- (f) to an automobile or other property while the automobile is being used in any prearranged or organized racing, speed or demolition contest or in any stunting activity or in practice or preparation for any such contest or activity;

- (g) to loss due to war, whether or not declared, civil war, insurrection, rebellion or revolution, or to any act or condition incident to any of the foregoing;
- (h) to loss resulting from the hazardous properties of nuclear material and arising out of the operation of a nuclear facility by any person or organization;
- (i) to damages for loss of use of an automobile;
- (j) to property damage arising directly or indirectly out of the ownership, maintenance, or harboring of any animal, or arising directly or indirectly out of any act by such animal;
- (k) to loss arising out of the ownership, maintenance, operation, use, loading or unloading of any service vehicles equipped with a wrecker body, mobile hoist, flat bed, or any other system installed for the purpose of lifting, carrying or towing another vehicle; or
- (l) (1) to loss arising out of the actual, alleged or threatened discharge, dispersal, release or escape of pollutants or the loading or unloading of such pollutants;
- (2) to loss arising out of or caused by exposure to asbestos or materials or products containing asbestos;
- (3) to loss arising out of or caused by lead, paint containing lead, or any other substance or material containing lead;
- (4) to any legal obligation of any insured for indemnification or contribution due to damages arising out of loss caused by lead, paint containing lead, or any other substance or material containing lead;
- (5) to any loss, cost, expenses, or damages arising out of any:
 - (i) request, demand, or order that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify, or neutralize, or in any way respond to, or assess the effects of pollutants; or
 - (ii) claim or suit relating to testing for, monitoring, cleaning up, removing, containing, treating, detoxifying, or neutralizing, or in any way responding to or assessing the effects of pollutants;

Exclusion (l)(5) above does not apply to loss caused by heat, smoke or fumes from a hostile fire. A hostile fire means a fire that becomes uncontrollable or breaks out from where it was intended to be.

III. PERSONS INSURED

Each of the following is an insured under this insurance to the extent set forth below:

- A. Under the Garage Bodily Injury and Property Damage Liability Coverages:
 - (1) the named insured;
 - (2) with respect to garage operations other than the automobile hazard:
 - (a) any employee, director or stockholder of the named insured while acting within the scope of his/her duties as such;

- (b) if the named insured is designated in the Declarations as an individual, the person so designated but only with respect to the conduct of a business of which he/she is the sole proprietor, and the spouse of the named insured with respect to the conduct of such a business;
- (c) if the named insured is designated in the Declarations as a partnership or joint venture, any partner or member thereof but only with respect to his liability as such;
- (d) any person or organization having a financial interest in the garage operations of the named insured;
- (3) with respect to the automobile hazard:
 - (a) any person while using, with the permission of the named insured, any automobile to which the insurance applies under the automobile hazard, provided his actual operation or (if he/she is not operating) his other actual use thereof is within the scope of such permission, but with respect to bodily injury or property damage arising out of the loading or unloading of an automobile, such person shall be an insured only if he/she is:
 - (i) a borrower of the automobile, or
 - (ii) a partner, member or employee of the named insured or of such borrower;
 - (b) any other person or organization but only with respect to his or its liability because of acts or omissions of the named insured or an insured under (a) above.

None of the following is an insured:

- (a) any person while engaged in the business of his employer with respect to bodily injury or any fellow employee of such person injured in the course of his employment;
- (b) any person or organization, other than the named insured or its directors stockholders, partners, members or employees while acting within the scope of their duties as such, with respect to operations performed by independent contractors for the named insured;
- (c) any person or organization, other than the named insured, with respect to any automobile
 - (i) owned by such person or organization or by a member (other than the named insured) of the same household, or
 - (ii) possession of which has been transferred to another by the named insured pursuant to an agreement of sale;
- (d) any partner, member or employee of the named insured or the spouse of such person, with respect to property damage to property owned by, rented to or held for sale by the named insured, or property in the care, custody or control of or transported by the named insured.

This insurance does not apply to bodily injury or property damage arising out of the conduct of any current or past partnership or joint venture of which the insured is a partner or member and which is not designated in the Declarations as a named insured.

B. Under the Garagekeepers' Legal Liability Coverages:

- (1) the named insured;
- (2) if the named insured is designated in the Declarations as an individual, the person so designated but only with respect to the conduct of a business of which he/she is the sole proprietor, and the spouse of the named insured with respect to the conduct of such a business;
- (3) any employee, director or stockholder of the named insured while acting within the scope of his duties as such; and
- (4) if the named insured is designated in the Declarations as a partnership or joint venture, any partner or member thereof but only with respect to his liability as such.

IV. LIMITS OF LIABILITY

Regardless of the number of (1) insureds under this policy, (2) persons or organizations who sustain bodily injury, property damage or loss, (3) claims made or suits brought on account of bodily injury, property damage, or loss, or (4) automobiles to which this policy applies, the Company's liability is limited as follows:

Coverages A and B – For the purpose of determining the limit of the Company's liability, all bodily injury and property damage arising out of continuous or repeated exposure to substantially the same general conditions shall be considered as arising out of one accident.

Coverage A Bodily Injury – The limit of bodily injury liability stated in the Declarations as applicable to "each person" is the maximum limit of the Company's liability for all damages, including damages for care and loss of services, because of bodily injury sustained by one person. The limit of bodily injury liability stated in the Declarations as applicable to "each accident" is the maximum limit of the Company's liability, subject to the above provision respecting each person, for all bodily injury to two or more persons in the same accident.

Coverage B Property Damage – The limit of property damage liability stated in the Declarations is the total limit of the Company's liability for all damages because of property damage sustained by one or more persons or organizations as the result of any one accident.

Combined Single Limit Coverages A and B – Regardless of the number of insureds, persons injured, claims made or suits brought on account of bodily injury or property damage, automobiles stated in the Declarations, or automobiles involved in the accident, if the limit of liability is stated in the Declarations as a Combined Single Limit, the total limit of liability for bodily injury and property damage taken together arising out of one accident shall be the amount stated in the Declarations.

Coverages C-1, C-2 and C-3 – Subject to the application of any deductible, the limit of the Company's liability for loss at each location shall be the limit of liability stated in the Declarations as applicable thereto; if however, at the time of loss there were at the location where the loss occurred automobiles of others in the custody of the insured in excess of the maximum number of automobiles indicated in the Declarations for such location, the Company shall not be liable for a greater proportion of the amount for which it otherwise would be liable than the maximum number of such automobiles stated for such location bears to the number of automobiles at such location at the time the loss occurred.

Subject to the application of the deductible stated in the Declarations, the limit of liability applicable to Coverage C-3 for loss to property of a kind customarily left in charge of a garage, other than automobiles, is \$5,000, which sum is included in the applicable limit of liability for loss at the location. The limit of liability for any one automobile is \$10,000 under coverage C-1, C-2 and C-3.

All the terms of this policy apply irrespective of the application of any deductible amount and the Company may pay any part or all of the deductible amount to effect settlement of any claims or suit and, upon notification of the action taken, the named insured shall promptly reimburse the Company for such part of the deductible amount as has been paid by the Company.

Repairs by the named insured shall be adjusted at actual cost to the named insured for labor and materials.

**V. EXPENSES FOR MEDICAL SERVICES
COVERAGE D – Automobile Medical Payments
COVERAGE DP – Premises Medical Payments**

The Company will pay all reasonable medical expense incurred within one year from the date of accident:

- (a) to or for each person who sustains bodily injury, caused by accident, while occupying any automobile which is being used by any person who is an insured under the Garage Liability Bodily Injury Coverage with respect to such use;
- (b) to or for each person who sustains bodily injury, caused by accident, and arising out of the ownership, maintenance or use of the premises for the purposes of a garage, and all operations necessary or incidental thereto.

Exclusions

Expenses for Medical Services insurance does not apply:

- (a) under the Automobile Medical Payments Coverage, to bodily injury sustained by any employee of an insured under the Garage Liability Bodily Injury Coverage arising out of and in the course of his employment by such insured;

- (b) under the Premises Medical Payments Coverage, to bodily injury sustained by
 - (1) any person while occupying or through being struck by an automobile away from the premises;
 - (2) any person practicing, instructing or participating in any physical training, sport, athletic activity or contest;
 - (3) the named insured, or any partner therein or member thereof, or any employee of the named insured arising out of and in the course of his employment by the named insured;
 - (4) any person while engaged in maintenance, alteration, demolition or new construction operations for the named insured or for any lessor of the premises;
- (c) under the Premises Medical Payments Coverage, to bodily injury arising out of
 - (1) the ownership, maintenance, operation, use, loading or unloading of any escalator at premises owned, rented or controlled by the named insured; but this exclusion (c) (1) does not apply to an escalator at premises which the named insured owns, rents or controls only in part unless the named insured operates, maintains or controls the escalator;
 - (2) structural alterations, new construction or demolition operations for the named insured by independent contractors or their subcontractors, or omissions or supervisory acts of the insured in connection therewith;
- (d) under the Premises Medical Payments Coverage, to bodily injury resulting from the selling, serving or giving of any alcoholic beverage (i) in violation of any statute, ordinance or regulation, (ii) to a minor, (iii) to a person under the influence of alcohol or (iv) which causes or contributes to the intoxication of any person, if the named insured is a person or organization engaged in the business of manufacturing, distributing, selling or serving alcoholic beverages or, if not so engaged, is an owner or lessor of premises used for such purposes but only part (i) of this exclusion applies when the named insured is such an owner or lessor;
- (e) under the Premises Medical Payments Coverage, to any medical expense for services by the named insured, any employee thereof, or any person or organization under contract to the named insured to provide such services;
- (f) under the Automobile and Premises Medical Payments Coverages, to bodily injury sustained by an employee of any garage, if the accident arises out of the operation thereof and if benefits therefore are in whole or in part either payable or required to be provided under any worker's compensation law;
- (g) under the Automobile and Premises Medical Payments Coverages, to bodily injury due to war, whether or not declared, civil war, insurrection, rebellion or revolution, or to any act or condition incident to any of the foregoing;

- (h) under the Automobile and Premises Medical Payments Coverages, to bodily injury arising directly or indirectly out of the ownership, maintenance, or harboring of any animal, or arising directly or indirectly out of any act by such animal;
 - (i) under the Automobile and Premises Medical Payments Coverages, to expenses incurred with respect to bodily injury resulting from the hazardous properties of nuclear material and arising out of the operation of a nuclear facility by any person or organization; or
 - (j) under the Automobile and Premises Medical Payments Coverages, to bodily injury arising out of the ownership, maintenance, operation, use, loading or unloading of any service vehicles equipped with a wrecker body, mobile hoist, flat bed, or any other system installed for the purpose of lifting, carrying or towing another vehicle.

Limit of Liability

The limit of liability for medical payments stated in the Declarations as applicable to "each person" is the limit of the Company's liability for all medical expense incurred by or on behalf of each person who sustains bodily injury as the result of one accident.

VI. UNINSURED MOTORISTS COVERAGE Coverage E – Uninsured Motorist Coverage for Bodily Injury

To pay all sums which the insured or his legal representative shall be legally entitled to recover as damages, excluding sums awarded as punitive or exemplary damages, because of bodily injury resulting therefrom, sustained by an insured person caused by accident and arising out of the ownership, maintenance or use of an uninsured automobile; provided, for the purposes of this coverage, determination as to whether the insured or such representative is legally entitled to recover such damages, and if so the amount thereof, shall be made by agreement between the insured or such representative and the Company, or if they fail to agree, by arbitration. No judgment against any person or organization alleged to be legally responsible for the bodily injury shall be conclusive or binding, as between the insured and the Company, of the issues of liability of such person or organization or of the amount of damages to which the insured is legally entitled, unless the Company shall have agreed in writing to be bound before judgment is entered. In no instance shall the amount payable under this Part exceed the amount of any judgment that limits the Company's right to recover against an at-fault party. A direction by the Company to file suit to protect subrogation rights against the person or organization alleged to be legally responsible for the bodily injury shall not be deemed an agreement by the Company to be bound by the judgment.

Definitions

The definitions under Part VIII, except the definition of "insured," apply to Part VI, and under Part VI:

"insured" means (a) the named insured or, while a resident of the same household as the named insured (if the named insured is a natural person), his spouse; (b) any other person while lawfully occupying an insured automobile; and (c) any person, with respect to damages he is entitled to recover because of bodily injury to which this Part applies sustained by an insured under (a) or (b) above;

The insurance afforded under Part VI applies separately to each insured but the inclusion herein of more than one insured shall not operate to increase the limits of the Company's liability;

"insured automobile" means:

- (a) an automobile described in the Declarations of this policy for which a specific premium charge indicates that coverage is afforded;
- (b) a temporary substitute automobile for an insured automobile as defined in (a) above; and
- (c) an automobile while being operated by the named insured or, while a resident of the same household as the named insured (if the named insured is a natural person), his spouse;

but "insured automobile" shall not include: (1) under subparagraphs (b) and (c) above, any automobile owned by or furnished for the regular use of the named insured or any resident of the same household as the named insured (if the named insured is a natural person), (2) any automobile while used as a public or livery conveyance, or (3) any automobile while being used without the direct permission of the owner;

"uninsured automobile" means:

- (a) an automobile with respect to the ownership, maintenance or use of which there is, in at least the amount specified by the financial responsibility law of the state in which the insured automobile is principally garaged, a bodily liability bond or insurance policy applicable at the time of the accident with respect to any person or organization legally responsible for the use of such automobile but the company writing the same denies coverage thereunder;
- (b) an automobile with respect to the ownership, maintenance or use of which there is, in at least the amount specified by the financial responsibility law of the state in which the insured automobile is principally garaged, no bodily liability bond or insurance policy applicable at the time of the accident with respect to any person or organization legally responsible for the use of such automobile;
- (c) a hit-and-run automobile; or
- (d) an automobile where on, before or after the accident date the liability insurer thereof is unable to make payment with respect to the legal liability of its insured within the limits specified in the policy because of the entry by a court of competent jurisdiction of an order of rehabilitation or liquidation by reason of insolvency on or after the accident date;

provided, however, that the insured notifies the Company in writing of his claim under this provision within the later of six (6) months from the date of a court order of rehabilitation or insolvency or two (2) years from the date of the accident. To the extent that this provision conflicts with the policy's exclusion of claims presented to the Company more than two years after the accident, this section controls.

However, the term "uninsured automobile" shall not include: (1) an insured automobile or any automobile owned by or furnished for the regular use of the named insured or any resident of the same household as the named insured (if the named insured is a natural person), (2) an automobile owned or operated by a self-insurer within the meaning of any motor vehicle financial responsibility law, motor carrier law or any similar law, (3) an automobile owned by the United States of America, Canada, a state, a country, a township, a municipality, a village, and political subdivision of any such government or an agency of any of the foregoing, (4) a land motor vehicle if operated on rails or crawler-treads or while located for use as a residence or premises and not as a vehicle, or (5) a farm type tractor or equipment designed for use principally off public roads, except while actually upon public roads; and

"hit-and-run automobile" means an automobile which causes bodily injury to an insured arising out of physical contact of such automobile with the insured or with an automobile which the insured is occupying at the time of the accident, provided:

- (a) there cannot be ascertained the identity of either the operator or the owner of such hit-and-run automobile, (b) the insured or someone on his behalf shall have reported the accident within 24 hours to a police, peace or judicial officer of the Commissioner of Motor Vehicles, and shall have filed with the Company within 30 days thereafter a statement under oath that the insured or his legal representative has a cause or causes of action arising out of such accident for damages against a person or persons whose identity is unascertainable and setting forth the facts in support thereof, and (c) at the Company's request, the insured or his legal representative makes available for inspection the automobile which the insured was occupying at the time of the accident.

Exclusions

This insurance does not apply under the Uninsured Motorists Coverage:

- (a) to bodily injury to an insured with respect to which such insured, his legal representative or any person entitled to payment under this coverage shall, without written consent of the Company, make any settlement with any person or organization who may be legally liable therefor;
- (b) so as to inure directly or indirectly to the benefit of any worker's compensation or disability benefits carriers or any person or organization qualifying as a self-insurer under any worker's compensation or disability benefits law or any similar law;

- (c) arising out of the operation of any automobile, insured under this policy, in any pre-arranged or organized race or speed contest;
- (d) to bodily injury to an insured while operating any automobile while used as a public or livery conveyance, including but not limited to any motor vehicle owned by any governmental body, but this exclusion does not apply to the named insured (if the named insured is a natural person) with respect to bodily injury which results from the named insured's occupancy of an automobile other than an automobile owned or furnished for the regular use of the named insured other than as the operator thereof;
- (e) if any claim is made under the Underinsured Motorist portion of this policy;
- (f) to bodily injury to an insured while the automobile which he is occupying is used in any illicit trade or transportation or in the commission of any felony;
- (g) to loss caused intentionally by or at the direction of the insured, except that this exclusion does not apply to an innocent co-insured who did not cooperate in or contribute to the creation of the loss if the loss arose out of a pattern of criminal domestic violence and the perpetrator of the loss is criminally prosecuted for the act causing the loss;
- (h) to bodily injury of an insured while occupying an automobile owned by or furnished for the regular use of the named insured or any resident of the same household as the named insured (if the named insured is a natural person) if that automobile is not described in the Declarations of this policy or any endorsement or amended Declarations thereto or otherwise insured hereunder;
- (i) to bodily injury arising out of the use by any person of an automobile without a reasonable belief that the person is entitled to do so;
- (j) to any claim for which the Company has not received a written claim by or on behalf of the insured within two (2) years of the date of the accident or, if coverage is based on the entry of a court order of rehabilitation or liquidation by reason of insolvency of an insurer, the later of two (2) years from the date of the accident or six (6) months from the date of such order of rehabilitation or liquidation of such insurer;
- (k) to bodily injury resulting from the hazardous properties of nuclear material and arising out of the operation of a nuclear facility by any person or organization;
- (l) to any claim for which the Company does not receive a written demand for arbitration within two years of the date of accident or, if coverage for the claim is based on a court order of rehabilitation or liquidation by reason of insolvency of an insurer, within the later of two years of the date of the accident or six months of entry of the court order of rehabilitation or liquidation by reason of insolvency; or
- (m) to bodily injury of an insured while occupying a service vehicle equipped with a wrecker body,

mobile hoist, flat bed, or any other system installed for the purpose of lifting, carrying or towing another vehicle.

Limits of Liability

- (a) The limit of uninsured motorist coverage stated in the Declarations as applicable to "each person" is the maximum limit of the Company's liability for all damages due to bodily injury to one person. Bodily injury to one person includes all injury and damages to others, including loss of services, society or consortium, resulting from this bodily injury. The limit of uninsured motorist coverage stated in the Declarations as applicable to "each accident" is the maximum amount of coverage, subject to the above provision respecting each person, for all bodily injury to two or more persons in the same accident. The limits of uninsured motorist coverage are not increased because more than one person is insured at the time of the accident. It is agreed between the insured and the Company that in no event shall the total limit of the Company's liability exceed the per person and per accident limits as stated in the Declaration page under this coverage, regardless of the number of automobiles insured under the policy or the separate itemization of premiums therefor; and that coverage under this section shall not be stacked with any other similar coverage that may be issued under this policy or any other policy.
- (b) If the limit of liability is stated in the Declarations as a Combined Single Limit, the total limit of liability for bodily injury arising out of one accident shall be the amount stated in the Declarations, regardless of the number of insureds, persons injured, claims made or suits brought on account of bodily injury, automobiles stated in the Declarations, or automobiles involved in the accident.
- (c) Any amount payable under the terms of this Part because of bodily injury sustained in an accident by a person who is an insured under this Part shall be reduced by: (1) all sums paid on account of such bodily injury or on behalf of (i) the owner or operator of the uninsured automobile and (ii) any other person or organization jointly or severally liable together with such owner, or operator, for such bodily injury including all sums paid under Coverage A of this policy, and (2) the amount paid and the present value of all amounts payable on account of such bodily injury under any worker's compensation law, disability benefits law or any similar law.
- (d) Any payment made under this Part to or for any insured shall be applied in reduction of the amount of damages which he may be entitled to recover from any person or organization insured under Coverage A of Part I.
- (e) The Company shall not be obligated to pay under this coverage that part of the damage which the insured may be entitled to recover from the owner or operator of an uninsured automobile which represents expenses for medical services paid or payable under Part V.

Two or more automobiles insured

The total limit of the Company's liability under all policies issued by the Company to the insured or which provide coverage to or for the insured shall not exceed the highest limit indicated for any one automobile under any one policy.

Other Insurance

With respect to bodily injury to an insured while occupying an automobile not owned by the named insured, the insurance under Part VI shall apply only as excess insurance over any other similar insurance available to such insured and applicable to such automobile as primary insurance, and this insurance shall then apply only in the amount by which the limit of liability for this coverage exceeds the applicable limit of liability of such other insurance. Except as provided in the foregoing paragraph, if the insured has other similar insurance available to him and applicable to the accident, the damages shall be deemed not to exceed the higher of the applicable limits of liability of this insurance and such other insurance, and the Company shall not be liable for a greater proportion of and loss to which this Coverage applies than the limit of liability hereunder bears to the sum of the applicable limits of liability of this insurance and such other insurance.

Arbitration

If any person making claim hereunder and the Company do not agree that both the vehicle(s) and the driver(s) of the vehicle(s) with which any person making claim has had an accident were not covered by liability insurance at the time of the accident, or do not agree that such person is legally entitled to recover damages from the owner or operator of an uninsured automobile because of bodily injury to an insured, or do not agree as to the amount payable hereunder, then these matters shall be submitted to arbitration. Any disputes with respect to the amount of damages shall be submitted for arbitration to the American Arbitration Association and be subject to its rules for the conduct of arbitration hearings as to all matters except medical opinions. Alternatively, such disputes shall be determined in the following manner: Upon the insured or the Company requesting arbitration, the insured and the Company shall each select an arbitrator and the two (2) arbitrators so named shall select a third arbitrator. The three (3) arbitrators so selected shall hear and determine the questions in dispute. If such arbitrators are not selected within forty-five (45) days from such request, either party may request that the arbitration be submitted to the American Arbitration Association. Any decision made by the arbitrator(s) shall be binding for the amount of damages not exceeding \$50,000 for bodily injury to or death of any one person, \$100,000 for bodily injury to or death of two (2) or more persons in any one motor vehicle accident, or the corresponding policy limits for bodily injury or death, whichever is less. If the decision of the arbitrator(s) exceeds the limits set out in the preceding sentence, then either party may reject the decision of the arbitrator(s) insofar as it exceeds the amounts set out in the preceding sentence and demand a trial by filing suit

within sixty (60) days of the date of the arbitration award. Except as required by law or as provided above, all arbitration hearings, either before the American Arbitration Association or before a three arbitrator panel shall be conducted in the County and State in which the insured resides and in accordance with the usual rules governing procedure and admission of evidence in courts of law of that County and not in accordance with any court mandated arbitration or mediation rules. It is agreed that the arbitrator(s) shall not enter an award in excess of the applicable policy limits, and, if an award is entered in excess of the applicable policy limits then that portion of the award which exceeds the policy limits is void, and not binding on either the insured or the Company. The arbitrator(s) shall have no authority to award punitive or exemplary damages or attorneys' fees and shall have authority to only decide issues relevant to an individual claimant's case at hand. Each party will pay the expenses it incurs and the expenses of its arbitrator and bear the expenses of the third arbitrator equally or in the event of AAA arbitration, each party shall bear its own fees and costs and each party shall share equally the fees and costs of the AAA arbitration and arbitrator. In the event of trial, all costs and expenses, including attorneys' fees, will be paid by the party incurring them. The cost of a continuance shall be assessed against the party rescheduling and may be taken as a setoff to an award.

Notwithstanding the above paragraph, any coverage dispute shall be determined by a court of competent jurisdiction. No arbitration shall proceed until all matters of coverage are resolved by the court.

Trust Agreement

In the event of presentment of claim or of payment to any person under this Part:

- (a) the Company shall be entitled to the extent of such payment to the proceeds of any settlement or judgment that may result from the exercise of any rights of recovery of such person against any person or organization legally responsible for the bodily injury because of which such payment is made;
- (b) such person shall hold in trust for the benefit of the Company all rights of recovery which he shall have against such other person or organization because of the damages which are the subject of claim made under this Part;
- (c) such person shall do whatever is proper to secure and shall do nothing after loss to prejudice such rights;
- (d) if requested in writing by the Company, such person shall take, through any representative designated by the Company, such action as may be necessary or appropriate to recover such payment as damages from such other person or organization, such action to be taken in the name of such person; in the event of a recovery, the Company shall be reimbursed out of such recovery for expenses, costs and attorneys' fees incurred by it in connection therewith;
- (e) such person shall execute and deliver to the Company such instruments and papers as may be

appropriate, to secure the rights and obligations of such person and the Company established by this provision.

VII. UNDERINSURED MOTORISTS COVERAGE

Coverage F-Underinsured Motorist (Damages for Bodily Injury)

To pay all sums which the insured or his legal representative shall be legally entitled to recover, excluding sums awarded as punitive or exemplary damages, because of bodily injury, but which are uncompensated because the total sums of damages exceed the liability coverage limits available from any person(s) at fault in the accident. The liability of the at-fault person(s) for these damages must arise out of the ownership, maintenance, or use of an underinsured motor vehicle.

Definitions

The definitions under Part VIII (except the definition of "insured") and the definition of "insured automobile" under Part VI apply to Part VII, and under Part VII:

"insured" means (a) the named insured or while a resident of the same household as the named insured (if the named insured is a natural person), his spouse; (b) any other person while lawfully occupying an insured automobile; and (c) any person with respect to damages he is entitled to recover because of bodily injury to which this Part applies sustained by an insured under (a) or (b) above;

The insurance afforded under Part VII applies separately to each insured, but the inclusion herein of more than one insured shall not operate to increase the limits of the Company's liability;

"underinsured motor vehicle" means a land motor vehicle of any type with respect to the ownership, maintenance or use to which bodily injury liability bonds or insurance policies apply at the time of the accident, but their limits for bodily injury liability are less than the limits of liability for this coverage. However, "underinsured motor vehicle" does not include any vehicle:

(a) Owned by or furnished for the regular use of the named insured or any resident of the same household as the named insured (if the named insured is a natural person); (b) Owned by the United States of America, Canada, a state, a country, a township, a municipality, a village, or a political subdivision of any such government or an agency of any of the foregoing; (c) Operated on rails or crawler-treads; (d) Which is a farm type tractor, is equipment designed mainly for use off public roads while not upon public roads, or "mobile equipment"; (e) While located for use as a residence or premises; (f) Owned or operated by a person or organization qualifying as a self-insurer under any applicable motor vehicle law; (g) To which bodily injury liability bonds or policies apply at the time of the accident, but under which the bonding or insuring companies deny coverage or are to become insolvent.

Exclusions

This insurance does not apply under the Underinsured Motorists Coverage for bodily injury sustained by any person:

- (a) so as to inure directly or indirectly to the benefit of any worker's compensation or disability benefits carrier or, any person or organization qualifying as a self-insurer under any worker's compensation or disability benefits law or any similar law;
- (b) arising out of the operation of any vehicle, insured under this policy, in any prearranged or organized race or speed contest;
- (c) while operating any motor vehicle while used as a public or livery conveyance, including but not limited to any motor vehicle owned by any governmental body, but this exclusion does not apply to the named insured (if the named insured is a natural person) with respect to bodily injury which results from the named insured's occupancy of a motor vehicle other than an automobile owned or furnished for the regular use of the named insured other than as the operator thereof;
- (d) resulting from the hazardous properties of nuclear material and arising out of the operation of a nuclear facility by any person or organization;
- (e) arising out of the operation of farm machinery or mobile equipment;
- (f) who is an employee of the insured and arising out of and in the course of (1) domestic employment by the insured, if benefits therefor are in whole or in part either payable or required to be provided under any worker's compensation law, or (2) other employment by the insured;
- (g) who is a fellow employee of the insured injured in the course of his employment if such injury arises out of the use of a motor vehicle in the business of his employer, but this exclusion does not apply to the named insured with respect to injury sustained by any such fellow employee;
- (h) due to war;
- (i) while the motor vehicle is (1) being operated or used in the commission of a crime other than a traffic violation, or (2) fleeing to or from a crime other than a traffic violation;
- (j) to any person occupying the insured automobile who is covered by any other policy of insurance containing similar coverage;
- (k) arising out of the use by any person of an automobile without a reasonable belief that the person is entitled to do so;
- (l) to bodily injury of an insured while occupying a motor vehicle owned by or furnished for the regular use of the named insured or any resident of the same household as the named insured (if the named insured is a natural person) if that motor vehicle is not described in the Declarations of this policy or any endorsement or amended Declarations thereto or otherwise insured hereunder;
- (m) to any claim for which the Company has not received a written claim under this Part by or on

behalf of the insured within two (2) years of the date of the accident;

- (n) to any claim for which the Company has not received a written demand for arbitration under this Part before the later of two (2) years after the date of the accident or six (6) months after the limits of liability or portion thereof under all bodily injury liability insurance policies, bonds or other security applicable to the underinsured motor vehicle and its operator have been partially or fully exhausted by payment of judgment or settlement; or
- (o) to bodily injury to an insured with respect to which such insured, his legal representative or any person entitled to payment under this insurance, shall, without written consent of the Company, make any settlement with any person or organization who may be legally liable therefore;
- (p) while occupying a service vehicle equipped with a wrecker body, mobile hoist, flat bed, or any other system installed for the purpose of lifting, carrying or towing another vehicle.

Limits of Liability

- (a) The limit of liability as shown in the Declarations for "each person" for Underinsured Motorists Coverage is the Company's maximum limit of liability for all damages due to bodily injury to one person. Bodily injury to one person includes all injury and damages to others, including loss of services, society or consortium, resulting from this bodily injury. The limit of liability as shown in the Declarations for "each accident" is the maximum amount of coverage, subject to the above provision respecting each person, for all bodily injury to two or more persons in the same accident. The limits of liability are not increased because more than one person is insured at the time of the accident. It is agreed between the insured and the Company that in no event shall the total limit of the Company's liability exceed the per person and per accident limits as stated in the Declarations regardless of the number of vehicles insured under this policy or the separate itemization of premiums and that coverage under this section shall not be stacked with any other similar coverage that may be issued under this policy or any other policy.
- (b) If the limit of liability is stated in the Declarations as a Combined Single Limit, the total limit of liability for bodily injury arising out of one accident shall be the amount stated in the Declarations, regardless of the number of insureds, persons injured, claims made or suits brought on account of bodily injury, automobiles stated in the Declarations, or automobiles involved in the accident.
- (c) Any amount payable under the terms of this Part because of bodily injury sustained in an accident by a person who is an insured under this Part shall be reduced by:
 - (1) all sums paid on account of such bodily injury by or on behalf of (i) the owner or operator of the underinsured motor vehicle and (ii) any other person or organization jointly or severally liable together with such owner or operator for such

bodily injury including all sums paid under Coverage A of this policy, and

- (2) (i) the amount paid and the present value of all amounts payable on account of such bodily injury under any workers' compensation law, plus, (ii) the amount paid and the present value of all amounts payable on account of such bodily injury under any non-governmental disability benefits policy or program.
- (d) Any payment made under this Part to or for any insured shall be applied in reduction of the amount of damages which he may be entitled to recover from any person insured under Coverage A.
- (e) The Company shall not be obligated to pay under this coverage that part of the damages which the insured may be entitled to recover from the owner or operator of an underinsured motor vehicle which represents expenses for medical services paid or payable under Part V.
- (f) The Company shall not be obligated to make payment under this coverage until the limits of liability or portion thereof under all bodily injury liability insurance policies applicable to the underinsured motor vehicle and its operators have been partially or fully exhausted by payment of judgment or settlement.
- (g) If the Company and the insured or his legal representative agree that the insured has suffered bodily injury as a result of negligent operation, use or maintenance of an underinsured motor vehicle and also agree on the damages resulting therefrom, then a judgment or settlement of the bodily injury claim in an amount less than the limits of liability coverages applicable to the claim shall not preclude the claimant from making an underinsured motorist claim under this policy. The maximum amount payable pursuant to such a settlement agreement shall not exceed the amount by which the limits of the underinsured motorist coverage exceed the limits of bodily injury liability insurance of the owner or operator of the underinsured motor vehicle. Such agreement shall be final as to the amount due and shall be binding upon the insured and the Company regardless of the amount of any judgment, or any settlement reached between any insured and the person or persons responsible for the accident. No such settlement shall be concluded unless: (i) the insured has complied with all other applicable policy terms and conditions and (ii) before the conclusion of the settlement agreement, the insured has filed suit against the underinsured motor vehicle owner or operator and has not abandoned the suit, or settled the suit without preserving the rights of the Company, provided, however, that suit against the underinsured owner and operator may be dismissed where the Company has been given notice in advance of a settlement between the insured and the underinsured motorist and the Company fails to advance a payment to the insured in an amount equal to the tentative settlement within 30 days following receipt of such notice.
- (h) (1) In no event shall the Company's liability to pay underinsured motorist benefits under this Part exceed the difference between the limit of such coverage as stated in the Declarations of this policy

and the amounts recovered from the underinsured motorist under all liability policies, bonds or other security available to such underinsured motorist for the loss.

- (2) Notwithstanding (h)(1) above, in the event of a settlement agreement with the underinsured motorist, the Company's liability to pay underinsured motorist benefits under this Part shall not exceed the difference between the limit of such coverage as stated in the Declarations of this policy and the limit of the bodily injury liability insurance of the underinsured motorist.

Two or more automobiles insured

The total limit of the Company's liability under all policies issued by the Company to the insured or which provide coverage to or for the insured shall not exceed the highest limited indicated for any one automobile under any one policy.

Other Insurance

With respect to bodily injury to an insured while occupying an automobile not owned by the named insured, the insurance under Part VII shall apply only as excess insurance over any other similar insurance available to such automobile as primary insurance, and this insurance shall then apply only in the amount by which the limit of liability for this coverage exceeds the applicable limit of liability of such other insurance. Except as provided in the foregoing paragraph, if the insured has other similar insurance available to him and applicable to the accident, damages shall be deemed not to exceed the higher of the applicable limits of liability of this insurance and such other insurance, and the Company shall not be liable for a greater proportion of any loss to which this coverage applies than the limit of liability hereunder bears to the sum of the applicable limits of liability of this insurance and such other insurance. Should the insured have available claims under both the uninsured motorist coverage and this coverage in this policy, he must elect as to whether he will proceed under this coverage or the uninsured motorist coverage. The election of one shall bar any future claim under the other coverage.

Arbitration

If any person making claim hereunder and the Company do not agree that such person is legally entitled to recover damages from the owner or operator of the underinsured motor vehicle because of bodily injury to the insured, or do not agree as to the amount of payment which may be owing under this Part, then the matter or matters upon which such person and the Company do not agree shall be determined by arbitration. Any demand for arbitration shall be in writing. The dispute may be submitted by either party to the American Arbitration Association (AAA) for administration according to its rules for arbitration of underinsured motorist claims as to all matters except medical opinions. As to medical opinions, if the amount of damages being sought is equal to or less than the amount provided for in Section 7-203 of the Illinois Vehicle Code, then the current American Arbitration Association rules shall apply. If the amount being sought in an American

Arbitration Association case exceeds the amount set forth in Section 7-203 of the Illinois Vehicle Code, then the rules of evidence as used in Illinois courts for placing medical opinions into evidence shall govern. To the extent that the American Arbitration Association rules are silent on an issue of the admission of evidence, then the usual rules of evidence as apply in Illinois courts shall apply. No arbitration hearing shall be held until such time as the amount actually paid to or for the person making claim from the liability insurer, bond or other security applicable to the underinsured motor vehicle or its operator has been determined by settlement or judgment. The arbitrator shall thereafter hear and determine the matters in issue. The award of the arbitrator shall be binding on the parties, but the arbitrator shall not enter an award in excess of the policy limit for this coverage subject to the Limits of Liability as stated in this Part. To the extent that an arbitration award exceeds the policy limit for this coverage stated in the Declarations subject to the Limits of Liability as stated in this Part, the amount of the award which exceeds the policy limit for this coverage as stated in the Declarations subject to the Limits of Liability in this Part shall be void but the remaining portion of the award shall be binding on the parties. Each party shall bear its own attorneys' fees and costs and each party shall share equally the fees and costs of the AAA arbitration and arbitrator. The arbitrator shall have no authority to award punitive or exemplary damages or attorneys' fees and shall have authority to only decide issues relevant to an individual claimant's case at hand. The cost of a continuance shall be assessed against the party rescheduling and may be taken as a setoff to an award. The arbitration shall take place in Illinois in the county of residence of the person demanding arbitration. If the person demanding arbitration does not reside in Illinois then the arbitration shall take place in an Illinois county where the Company maintains a place of business.

Notwithstanding the above paragraph, any coverage dispute shall be determined by a court of competent jurisdiction. No arbitration shall proceed until all matters of coverage are resolved by the court.

Trust Agreement

In the event of payment to any person under this Part:

- (a) The Company shall be entitled to the extent of such payment to the proceeds of any settlement or judgment that may result from the exercise of any rights of recovery of such person against any person or organization legally responsible for the bodily injury because of which such payment is made;
- (b) Such person shall hold in trust for the benefit of the Company all rights of recovery which he shall have against such other person or organization because of the damages which are the subject of the claim made under this Part;
- (c) Such person shall do whatever is proper to secure and shall do nothing after loss to prejudice such rights;
- (d) If requested in writing by the Company such person shall take through any representative designated by the Company, such action as may be necessary or

appropriate to recover such payment as damages from such other person or organization, such action to be taken in the name of such person and in the event of a recovery, the Company shall be reimbursed out of such recovery for expenses, costs and attorneys' fees incurred by it in connection therewith;

- (e) Such person shall execute and deliver to the Company such instruments and papers as may be appropriate to secure the rights and obligations of such person and the Company established by this provision.

VIII. DEFINITIONS

When used in reference to this insurance (including endorsements forming a part of the policy):

"automobile" means a land motor vehicle, other than mobile equipment capable of moving under its own power, equipment for use therewith, and animal drawn equipment;

"automobile hazard" means one of the following hazards for which insurance is afforded as indicated:

Automobile Hazard 1.

(1) the ownership, maintenance or use (including loading or unloading) of any automobile for the purpose of garage operations, and (2) the occasional use for other business purposes and non-business purposes of any automobile owned by or in charge of the named insured and used principally in garage operations, and (3) the ownership, maintenance or use of any automobile owned by the named insured while furnished for the use of any person.

Automobile Hazard 2.

The use in connection with garage operations of any automobile which is neither owned nor hired by the named insured, a partner therein or a member thereof, or a member of the same household as any such person;

"garage" means an automobile sales agency, repair shop, service station, storage facility or public parking place;

"garage operations" means the ownership, maintenance or use of the premises for the purposes of a garage and all operations necessary or incidental thereto;

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

"incidental contract" means a lease of premises, an easement, a sidetrack agreement, or an elevator maintenance agreement;

"insured" means a person or organization described under Part III. "Persons Insured";

"loss" means direct and accidental loss of or injury to property or a person that occurs during the policy period;

"medical expense" means expenses for necessary medical, surgical, x-ray and dental services, including prosthetic devices, and necessary ambulance, hospital, professional nursing and funeral services;

"mobile equipment" means a land vehicle (including any machinery or apparatus attached thereto), whether or not self-propelled, (1) not subject to motor vehicle registration, or (2) maintained for use exclusively on premises owned by or rented to the named insured, including the ways immediately adjoining, or (3) designed for use principally off public roads or (4) designed or maintained for the sole purpose of affording mobility to equipment of the following types forming an integral part of or permanently attached to such vehicle: power cranes, shovels, loaders, diggers and drills; concrete mixers (other than the mix-in transit type); graders, scrapers, rollers and other road construction or repair equipment; air compressors, pumps and generators, including spraying, welding and building cleaning equipment; and geophysical exploration and well servicing equipment;

"named insured" means the person or organization listed in the Declarations of this policy;

"named insured's products" means the goods or products made or sold while engaging in garage operations;

"nuclear material" means source material, special nuclear material or by-product material;

"nuclear facility" means:

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

and includes the site on which any of the foregoing is located, all operations conducted on such site and all premises used for such operations. With regards to this definition only, "waste" means any waste

material (a) containing by-product material other than the tailings or wastes produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its source material content, and (b) resulting from the operation by any person or organization of any nuclear facility included under the first two paragraphs of the definition of nuclear facility.

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

"occupying" means in or upon or entering into or alighting from;

"pollutants" mean any noise, or solid, semi-solid, liquid, gaseous, or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals, biological and etiologic agents or materials, electromagnetic or ionizing radiation and energy, genetically engineered materials, carcinogenic and mutagenic materials, waste and any irritant or contaminant;

"premises" means the premises where the named insured conducts garage operations, and includes the ways immediately adjoining, but does not include any portion of such premises upon which business operations are conducted by any other person or organization;

"property damage" means (1) physical injury to or destruction of tangible property which occurs during the policy period, including the loss of use thereof at any time resulting therefrom, or (2) loss of use of tangible property which has not been physically injured or destroyed provided such loss of use is caused by an accident during the policy period;

"punitive or exemplary damages" means sums awarded by a court of competent jurisdiction against the insured as a punishment or deterrent;

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

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

"temporary substitute automobile" means any automobile of like size, type and weight, not owned by or furnished for the regular use of the named insured or any resident of the same household (if the named insured is a natural person), while temporarily used as a substitute for an automobile described in the Declarations that is withdrawn from normal use

because of its breakdown, repair, servicing, loss or destruction;

"use" of an automobile includes the loading and unloading thereof;

"war" means war, whether or not declared, civil war, insurrection, riot, civil commotion, rebellion or revolution, or any act or condition incident to any of the foregoing;

"waste" includes any materials to be disposed, recycled, reconditioned or reclaimed; or

"work" means repairs to or products installed on an automobile.

IX. CONDITIONS (Unless otherwise noted, conditions apply to all Parts.)

1. Policy Period, Territory

This policy applies only to accidents, occurrences and loss during the policy period, as stated in the Declarations, while the automobile is within the United States of America, its territories or possessions, or Canada or is being transported between ports thereof. This policy may be renewed for successive policy periods by payment of the required premium to the Company on or before the effective date of each successive policy period. If such premium is not paid when due, the policy shall terminate as of that date and such date shall be the end of the policy period. Such premium shall be computed in accordance with the manuals then in use by the Company. Each policy period shall begin and end at 12:01 A.M. standard time at the address of the named insured.

2. Premium

The policy premium in the Declarations is based on the exposures you told us you would have when this policy began. In order to determine your actual exposures, during the course of the policy the named insured shall notify the Company (through his broker) immediately of any address change, any newly acquired or replacement automobiles, or the addition of any driver or operator not shown on the Declarations or application. This requirement does not amend or enlarge the coverages provided by this policy.

If the named insured complies with the notification provisions of this section, any additional premium shall be paid promptly. Any premium adjustment necessary shall be made in accordance with the manuals in use by the Company. The named insured shall, upon request, furnish reasonable proof of the number of such automobiles and a description thereof.

If, at any time, the Company becomes aware of any driver or operator of an automobile insured hereunder or

temporary substitute automobile, other than an excluded driver or operator who is not named on the Declarations page as a named insured or operator and the inclusion of that person as a named insured or operator under the policy would require a higher rate class, the policy will at the Company's option be declared null and void or be endorsed or amended via the Declarations to the correct rate class effective:

- (1) on the inception date of the policy if such person was a driver or operator as of the inception date of the policy; or
- (2) on the date such person became a driver or operator during the policy period, and the named insured will be liable for the difference between the total premium charged for coverage and the total amount of premium that would have been charged for same coverage had such person been named on the Declarations page as an insured or driver or operator or had such person been disclosed to the Company as a driver or operator when such person became a driver or operator.

3. Notice

(a) In the event of an accident, occurrence or loss, written notice containing particulars sufficient to identify the insured and also reasonably obtainable information with respect to the time, place and circumstances thereof, and the names and addresses of the injured and of available witnesses, shall be given by or for the insured to the Company or any of its authorized agents as soon as practical; however, in the case of an accident with a hit-and-run automobile under Part VI, such notice must be given to the Company in writing within 30 days of the accident; (b) In the event of theft, the insured shall also promptly notify the police; (c) The policy shall be null and void and of no benefit or effect whatsoever as to any claim arising thereunder in the event that the attestations or statements in the application for insurance coverage or in any claim against the Company shall prove to be false or fraudulent in nature. In the event no notice is received by the Company from the insured or the Company's rights have been prejudiced by the insured's actions or failure to provide timely notice, no payments will be made on the insured's behalf. If claim is made or suit is brought against the insured, he shall immediately forward to the Company every demand, notice, summons or other process received by him or his representative. The Company will not be obligated to pay, and shall not pay under Part I, unless the Company received actual notice at its home office of the lawsuit before a judgment has been entered in said suit.

4. Two or More Automobiles – Parts I, V and VI

When two or more automobiles are insured hereunder, the terms of this policy shall apply separately to each, except as otherwise provided in Part IV.

5. Assistance and Cooperation of the Insured – Parts I and VI

As a condition precedent to the Company's duty of indemnity with respect to suits against an insured, the insured shall cooperate with the Company and, upon the Company's request, assist in making settlements, in the conduct of suits and in enforcing any right of contribution or indemnity against any person or organization who may be liable to the insured because of bodily injury, property damage or loss with respect to which insurance is afforded under this policy; and the insured shall attend hearings and trials and assist in securing and giving evidence and obtaining the attendance of witnesses. The insured shall not, except at his own cost, voluntarily make any payment, assume any obligation or incur any expense other than for such immediate medical and surgical relief to others as shall be imperative at the time of the accident. The insured must cooperate with us in the investigation, settlement or defense of any claim or suit; failure to cooperate fully will be deemed a breach of contract.

Part VI Only. After notice of claim under Part VI, and before any arbitration proceedings shall be initiated the insured shall: (a) take such action as may be necessary or appropriate to preserve his right to recover damages from all persons or organizations who may be legally responsible for the bodily injury, and in any action against the Company the Company may require the insured to join such person or organization as a party Defendant; and (b) at the Company's request and upon payment in advance by the Company of all court costs, forward to the Company proof that a lawsuit was filed and that a summons and complaint were served in the appropriate court of law within the applicable statute of limitations against all parties who may be liable or legally responsible for the insured's bodily injury, said lawsuit to be maintained and prosecuted with due diligence until final judgment.

6. Action Against Company – Part I

No action shall lie against the Company unless, as a condition precedent thereto, the insured shall have fully complied with all the terms of this policy, nor until the amount of the insured's obligation to pay shall have been finally determined either by judgment against the insured after actual trial or by written agreement of the insured, the claimant and the Company.

Any person or organization or the legal representative thereof who has secured such judgment or written agreement shall thereafter be entitled to recover under this policy to the extent of the insurance afforded by this policy. No person or organization shall have any right under this policy to join the Company as a party to any action against the insured to determine the insured's liability, nor shall the Company be impleaded by the insured or his legal representative.

Parts V, VI and VII. No action shall lie against the Company unless, as a condition precedent thereto,

there shall have been full compliance with all terms of this policy and unless otherwise provided herein, suit or arbitration is commenced against the Company within two (2) years of the date of the accident and: (a) under Part VI and except as stated therein, unless written demand for arbitration shall have been received by the Company within two years of the accident; provided that if coverage under Part VI is based on entry of a court order of rehabilitation or liquidation by reason of insolvency of an insurer, then in such event suit or arbitration shall not be commenced against the Company after the later of two (2) years after the date of the accident or six (6) months after the entry of such court order of rehabilitation or liquidation by reason of insolvency, and (b) under Part VII and except as stated therein, suit or arbitration shall not be commenced after the later of two (2) years after the accident or six (6) months after such time as the amount actually paid to or for the person making claim from the liability insurer, bond or other security applicable to the underinsured motor vehicle or its operator has been determined by settlement or judgment. For purposes of this policy, arbitration is commenced against the Company only when the Company receives a written demand for arbitration.

Whenever this Condition limits the period within which the insured may bring suit or arbitration, the running of such period is tolled from the date proof of loss is filed with the Company, in whatever form is required by the Company, until the date the claim is denied in whole or in part.

7. Medical Reports; Proof and Payment of Claim – Part V

As soon as practicable the injured person or someone on his behalf shall give to the Company written proof of claim, under oath if required, and shall, after each request from the Company, execute authorization to enable the Company to obtain medical reports and copies of records. The injured person shall submit to physical examination by physicians selected by the Company when and as often as the Company may reasonably require. The Company may pay the injured person or any person or organization rendering the services and such payment shall reduce the amount payable hereunder for such injury. Payment hereunder shall not constitute an admission of liability of any person or, except hereunder, of the Company.

8. Proof of Claim – Part VI

As soon as practicable, the insured or other person making claim shall give to the Company written proof of claim, under oath if required, including full particulars of the nature and extent of the injuries, treatment, and other details entering into the determination of the amount payable. The insured and every other person making claim shall submit to examinations under oath by any person named by the Company and subscribe the same, as often as may reasonably be required. Proof of claim shall be made upon forms furnished by the

Company unless the Company shall have failed to furnish such form within forty-five (45) days after receiving notice of claim.

The injured person shall submit to physical examinations by physicians selected by the Company, when and as often as the Company may reasonably require and he, in the event of his incapacity, his legal representative, or in the event of his death, his legal representative or the person or persons entitled to sue therefor, shall upon each request from the Company execute authorization to enable the Company to obtain medical reports, employment records, and all other records relative to alleged damages.

9. Payment of Loss – Part VI

Any amount due is payable (a) to the insured, or (b) if the insured is a minor to his parent or guardian, or (c) if the insured be deceased to his surviving spouse, otherwise (d) to a person authorized by law to receive such payment or to a person legally entitled to recover the damages which the payment represents; provided, the Company may at its option pay any amount due in accordance with division (d) hereof.

10. Subrogation – Parts VI and VII

In the event of any payment under this policy, the Company shall be subrogated to all the insured's rights of recovery therefor against any person or organization and the insured shall execute and deliver instruments and papers and do whatever else is necessary to secure such rights. The insured shall do nothing after loss to prejudice such rights.

The Company shall not exercise any right of subrogation under a policy providing underinsured motorist coverage where the Company has been provided with written notice in advance of a settlement between its insured and the underinsured motorist and the Company fails to advance a payment to the insured, in an amount equal to the tentative settlement, within 30 days following receipt of such notice.

Part V. In the event of any payment under the Expenses for Medical Services Coverage of this policy, the Company shall be subrogated to all the rights of recovery which the injured person or anyone receiving such payment may have against any person or organization and such person shall execute and deliver instruments and papers and do whatever else is necessary to secure such rights. Such person shall do nothing after loss to prejudice such rights.

12. Changes

Notice to any agent or knowledge possessed by any agent or by any person shall not effect a waiver or a change in any part of this policy or stop the Company from asserting any right under the terms of this policy, nor shall the terms of this policy be waived or changed, except by endorsement issued to form a part of this policy signed by a duly authorized

representative of the Company or by amended Declarations issued by the Company.

policy relative to any accident, loss or occurrence between a prior cancellation and the effective date of reinstatement.

13. Assignment

Assignment of interest under this policy shall not bind the Company until its consent is endorsed hereon; if, however, the named insured in the Declarations (if the named insured is a natural person) or his spouse, if a resident of the same household (if the named insured is a natural person), shall die, this policy shall cover (1) the survivor as named insured, (2) his legal representative as named insured, but only while acting within the scope of his duties as such, and (3) any person having proper temporary custody of an automobile insured hereunder, as an insured, until the appointment and qualification of such legal representative.

14. Cancellation

This policy may be cancelled by the named insured in the Declarations by surrender thereof to the Company or any of its authorized agents or by mailing to the Company written notice stating when thereafter the cancellation shall be effective. This policy may be cancelled by the Company by mailing to the named insured in the Declarations at the last mailing address known to the Company, written notice stating when thereafter such cancellation shall be effective. However, the Company shall not exercise its rights to cancel such policy after it has been in effect for sixty (60) days except for the reasons set forth in Section 143.16a of the Illinois Insurance Code. No notice of cancellation of a policy to which Section 143.16a applies is effective unless mailed by the Company to the named insured at least thirty (30) days prior to the effective date of cancellation during the first sixty (60) days of coverage and sixty (60) days prior to the effective date of cancellation after the coverage has been effective for sixty-one (61) days or more; however, where cancellation is for non-payment of premium, at least ten (10) days notice of cancellation shall be given. The mailing of notice as aforesaid shall be sufficient proof of notice. The time of the surrender or the effective date and hour of cancellation stated in the notice shall become the end of the policy period. If the policy cancels, earned premium shall be computed prorate.

Premium adjustment may be made either at the time cancellation is effective or as soon as practicable after cancellation becomes effective, but payment or tender of unearned premium is not a condition of cancellation.

If this policy has been cancelled and reinstatement is requested, the Company may, at its sole option, reinstate the policy and determine the effective date of the reinstatement. Coverage under a reinstated policy shall be prospective only as of the effective date stated in the reinstatement endorsement or amended Declarations and is not retroactive to the prior cancellation date. No coverage is provided under a reinstatement of this

15. Declarations

By the acceptance of this policy, the named insured in the Declarations or an authorized representative if the named insured is a legal entity, agrees that the statements contained in the application have been made by him or on his behalf and that said statements and the statements in the Declarations and in any subsequent application accepted by the Company are offered as an inducement to the Company to issue or continue this policy and that the same are his agreements and representations, and that this policy is issued and continued in reliance upon the truth of such statements and representations and that this policy is issued and continued in reliance upon the truth of such statements and representations and that this policy embodies all agreements existing between himself and the Company or any of its agents relating to this insurance. If this policy is subject to an exclusion of named drivers at the time of an accident, and if the accident involves the use or operation of any automobile by an excluded driver, then no coverage of any kind under this policy is provided by the Company to any person with respect to such loss and the Company is not obligated to defend any person in any legal action concerning the loss.

16. Fraud and Misrepresentation

Statements contained in the application are deemed to be representations relied upon by the Company in issuing this policy. If any representation contained in the application is false, misleading or materially affects the acceptance or rating of this risk by the Company, by direct misrepresentation, omission, concealment of material fact or incorrect statement, then the Company may, during the first year the policy has been in effect or the first policy term, whichever is less, rescind the policy. If the policy is rescinded by the Company, there shall be no coverage under this policy for any loss, accident or claim occurring at any time during the term stated in the Declarations. Additionally, without rescinding the policy, the Company shall not provide any coverage hereunder for a claim concerning which the insured or claimant has made a fraudulent statement or engaged in fraudulent conduct in connection with an accident or loss for which coverage is sought under this policy.

17. Inspection and Audit

The Company shall be permitted but not obligated to inspect the named insured's property and operations at any time. Neither the Company's right to make inspections nor the making thereof nor any report thereon shall constitute an undertaking, on behalf of or for the benefit of the named insured or others, to determine or warrant that such property or operations are safe or healthful, or are in compliance