



**PERSONAL AUTOMOBILE INSURANCE POLICY**

**ILLINOIS**

**IMPORTANT**

**Notify your producer or the Company** at 7400 N. Caldwell Ave., Niles, IL 60714, of **EVERY** accident, however slight, immediately upon its occurrence. Delay in giving notice may jeopardize your right. Send a completed report as soon as practicable.

**PLEASE READ YOUR POLICY AND REPORT IN WRITING ANY ERRORS IMMEDIATELY TO THE COMPANY.**

**NOTICE** – This policy has been issued based upon the reliance of your statements and representations on the application. **Read it carefully** and notify the Company immediately of any misinformation or changes which have occurred or may occur.

PERSONAL AUTOMOBILE INSURANCE POLICY PROVISIONS

**Viva Seguros Insurance Company, Niles, Illinois**  
(A stock company herein called the Company)

agrees with the named insured, shown in the Declarations made a part hereof, in consideration of the payment of the premium and in reliance upon the statements and representations in the Application and subject to the Declarations and all of the terms of the policy, the Company agrees to insure you for the coverages and limits shown in the Declarations.

**PART A - BODILY INJURY LIABILITY AND PROPERTY DAMAGE LIABILITY COVERAGE**

**Bodily Injury Liability; Property Damage Liability.** To pay on behalf of the insured, but only to the extent of the applicable limits, all sums which the insured shall become legally obligated to pay as compensatory damages only and not for any punitive or exemplary damages because of:

1. **bodily injury**, or
2. **property damage** caused by accident arising out of the ownership, maintenance or use of the owned automobile or any non-owned automobile, provided, however, that the obligation under this policy to pay does not extend to the payment of fines, penalties or orders of restitution or judgments for restitution entered in criminal, quasi criminal or ordinance actions. Further, the Company shall defend any civil suit alleging such **bodily injury** or **property damage** covered under this policy seeking damages payable under the terms of this policy with attorneys hired and paid by the Company, even if any of the allegations of the suit are groundless, false, or fraudulent. However, the Company may make such investigation and settlement of any claim or suit as it deems expedient without admitting liability or waiving any of its rights that it may have under the terms of this policy. It is understood and agreed the Company has no obligation to any insured after the applicable limits of the policy have been exhausted by payment for the accident which is the subject of the claims or suits. Further, the Company will no longer have any obligation at all to defend any claims or suits against any insured. It is further understood and agreed the Company is not obligated to pay, and shall not pay, attorney fees for any legal or investigative work unless such attorneys are specifically selected by the Company. It is further understood and agreed the Company is not obligated to pay, and shall not pay, any sum which the insured may be legally obligated to pay as a result of a lawsuit unless the Company received actual notice of said suit before any judgment had been entered in said suit.

**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 civil suit, premiums on bonds to release attachments for an amount not in excess of the applicable limit of liability of this policy;
- (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;
- (d) all reasonable expenses, other than loss of earnings, incurred by the insured at the Company's request.

**Persons Insured.** The following are insureds under Part A - "Bodily Injury Liability and Property Damage Liability" Coverages:

- (a) With respect to the owned automobile;
  - (1) the named insured, or any person named as a driver on the insurance application, or by endorsement, or
  - (2) any other person using such automobile to which the named insured has given permission provided the use be within the scope of such permission.
- (b) With respect to a non-owned automobile;
  - (1) the named insured, or any person named as a driver on the insurance application, or by endorsement, provided the insured received the permission of its owner, and the use is within the scope of such permission, or
  - (2) a relative, but only with respect to a private passenger automobile, provided the person using such automobile has received the permission of its owner and the use is within the scope of such permission.
- (c) Any other person or organization legally responsible for the use of:
  - (1) an owned automobile, or
  - (2) a non-owned automobile, if such automobile is not owned or hired by such person or organization, provided the actual use thereof is by a person who is an insured under (a) or (b) above with respect to such owned automobile or non-owned automobile.

**Definitions.** Under Part A - "Bodily Injury Liability and Property Damage Liability" Coverage:

"we", "us", and "our" mean the Company providing this insurance;

"you" and "your" mean the "named insured";

"**bodily injury**" means **bodily injury** to a person and sickness, disease or death that results from it;

"**property damage**" means injury to or destruction of property including loss of use thereof;

"**named insured**" means the individual named in the Declarations and includes his/her spouse, if a resident of the same household;

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

"**insured**" means a person or organization described under "Persons Insured";

"**spouse**" means a lawfully wedded spouse and, also means a person joined in a civil union according to statute;

"**relative**" means a person related to the named insured or his/her spouse by blood, marriage or adoption and who is a resident of the same household as the named insured or spouse and is either a non-driver or is listed on the Application for this insurance as a driver, provided neither such relative nor his/her spouse owns a private passenger automobile;

"**owned automobile**" means:

- (a) a private passenger, farm, or utility automobile described in this policy;
- (b) a private passenger, farm, or utility automobile, ownership of which is acquired by the named insured during the policy period provided:
  - (1) the acquired automobile replaces an automobile described in this policy; neither the named insured nor any resident of his/her

household retains ownership of the described replaced automobile, and the named insured notified the Company in writing, within 30 days after the date of acquisition of his/ her decision to make this policy applicable to such acquired replacement automobile, or

- (2) the Company insures all private passenger, farm, and utility automobiles owned by the named insured on the date of such acquisition and the named insured notifies the Company in writing within 30 days after the date of such acquisition of his/her decision to make this and no other policy issued by the Company applicable to such automobile, or

(c) a **temporary substitute automobile**;

**“temporary substitute automobile”** means an automobile not owned by the named insured, or any resident of the same household, while temporarily used as a substitute for the owned automobile when withdrawn from normal use because of its breakdown, repair, servicing, loss or destruction and is not a non-owned automobile;

**“non-owned automobile”** means a private passenger, farm, or utility automobile not owned by or furnished for the **regular use** of either the named insured or any resident of the household of the named insured, other than a temporary substitute automobile, while said automobile is in the possession or custody of the insured or is being operated by him/her;

**“regular use”** means the use of an automobile 3 or more times during the policy period;

**“private passenger automobile” or “automobile”** means a four wheel private passenger, station wagon or jeep type automobile designed solely for public road use and designed solely to carry persons;

**“farm automobile”** means an automobile of the truck type with a load capacity of fifteen hundred pounds or less not used for business or commercial purposes other than farming;

**“utility automobile”** means an automobile, other than a farm automobile, with a load capacity of fifteen hundred pounds or less of the pick-up body, sedan delivery or panel truck type not used for business or commercial purposes;

**“trailer”** means a trailer designed for use with a private passenger automobile, if not being used for business or commercial purposes with other than a private passenger, farm or utility automobile, or a farm wagon or farm implement while used with a farm automobile, and if not a home, office, store, display or passenger trailer;

**“automobile business”** means the business or occupation of selling, repairing, servicing, washing, storing, or parking automobiles;

**“use”** of an automobile includes the loading and unloading thereof;

**“war”** means war, whether or not declared, civil war, insurrection, rebellion or revolution, or any act or condition incident to any of the foregoing.

**Exclusions.** This policy does not apply to and does not provide coverage under Part A - “Bodily Injury Liability and Property Damage Liability” Coverage for:

- (a) **bodily injury or property damage** to the named insured or any relative of the named insured related by blood, marriage, or adoption residing in the same household as the insured. The term ‘insured’ as used in this exclusion means the person against whom the claim is made or suit is brought. This exclusion shall not apply when a third party acquires the right of contribution against a member of the injured person’s family;
- (b) any automobile while used in the delivery, or any activity associated with delivery, of food, mail, newspapers, magazines, or packages for an employer or business or in any trade or business;
- (c) **bodily injury or property damage** either expected or intended by the insured;
- (d) **bodily injury or property damage** arising out of the operation of farm machinery;
- (e) **bodily injury** to any employee of the insured arising out of and in the course of his/her employment by the insured, but this exclusion does not apply to any such injury arising out of and in the course of domestic employment by the insured unless benefits are in whole or in part either payable or required to be provided under any worker’s compensation law if such injury arises out of the ownership, maintenance, or use of an owned automobile or non-owned automobile
- (f) an owned automobile while used in the automobile business;
- (g) a non-owned automobile while used (1) in the automobile business by the insured or (2) in any other business or occupation of the insured;
- (h) injury to or destruction of (1) property owned or transported by the insured or (2) property, including a rental car, rented to or in charge of the insured other than a residence or private garage or (3) property as to which the insured is for any purpose exercising physical control;
- (i) any automobile rented or leased by the insured where other valid and collectible coverage in the form of an insurance policy, bond, or self-insurance has been furnished to the insured in connection with such rental or lease;
- (j) **bodily injury or property damage** with respect to which an insured under this policy is also an insured under a nuclear energy liability policy issued by Nuclear Energy Liability Insurance Association, Mutual Atomic Energy Liability Underwriters or Nuclear Insurance Association of Canada, or would be an insured under any such policy but for its termination upon exhaustion of its limit of liability;
- (k) any automobile designed for racing while being tested, repaired or serviced, or to any automobile while used, operated, manipulated or maintained for prearranged or organized racing event;
- (l) **bodily injury or property damage** due to war; **bodily injury or property damage** caused by any automobile while being operated or used in the commission of a criminal act, other than a traffic violation, and including while fleeing and eluding the police or other law enforcement or government authorities;
- (m) any automobile while pushing or pulling another automobile or vehicle or being pushed or pulled by another automobile or vehicle except for a trailer rented by an insured;
- (n) any automobile while in the control of an excluded operator;
- (o) any automobile rented or leased to the named insured and operated by any other operator unauthorized or excluded under the terms of any rental or lease agreement.
- (p) any person operating an automobile without a reasonable belief that he or she is entitled to do so, however, this exclusion does not apply to operation of the owned automobile by the named insured or a relative;

- (q) **bodily injury or property damage** caused during the commission of a crime or while attempting to elude police.
- (r) **bodily injury or property damage** arising out of any snow removal activities performed by or at the direction of any **insured**, unless such use is stated on the declarations.
- (s) to **bodily injury** of any employee of an **insured** arising out of and in the course of employment by the **insured** if such injury arises out of the ownership, maintenance or use of an **owned automobile** or of a **non-owned automobile**;
- (t) to **bodily injury** to any fellow employee of an **insured** injured in the course and scope of his/her employment if such injury arises out of the ownership, maintenance or use of an automobile in the business of the **insured's** employer;
- (u) to any automobile while used as a public or livery conveyance, but this exclusion does not apply to the named insured with respect to **bodily injury or property damage** which results from the named insured's occupancy of a non-owned automobile other than as the operator thereof
- (v) to sums awarded as punitive or exemplary damages, except that if a suit shall have been brought against the insured with respect to a claim or claims for acts or alleged acts falling within the coverage provided by the policy seeking both compensatory and punitive or exemplary damages, then the Company will afford a defense to such action without liability, however, for such punitive or exemplary damages

**Financial Responsibility Laws.** When this policy is certified as proof of financial responsibility for the future under the provisions of any motor vehicle financial responsibility law, such insurance as is afforded by the policy for **bodily injury** liability or for **property damage** liability shall comply with the provisions of such law to the extent of the coverage and limits of liability required by such law, but in no event in excess of the limits of liability stated in this policy. The insured agrees to reimburse the Company for any payment made by the Company it would not have been obligated to make under the terms of this policy except for the agreement contained in this paragraph.

**Limits of Liability.** The limit of liability for this “- Bodily Injury Liability Coverage” as 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 and loss of consortium, arising out of **bodily injury** sustained by any one person as the result of any one accident. Subject to this limit for “each person”, the limit of liability as stated in the Declarations as applicable to “each accident” for this “- **Bodily Injury** Liability Coverage” is the maximum limit of the Company’s liability for all damages, including damages for care and loss of services and loss of consortium, arising out of **bodily injury** sustained by two or more persons as the result of any one accident.

The limit of liability for this “Property Damage Liability Coverage” as stated in the Declarations as applicable to “each accident” is the maximum limit of the Company’s liability for all damages arising out of injury to or destruction of all property of one or more persons or organizations, including the loss of use thereof, as the result of any one accident.

Therefore, these limits of liability for - **Bodily Injury** Liability Coverage” and for - Property Damage Liability Coverage” are the most the Company will pay under each said coverage regardless of the number of:

- (1) insureds;
- (2) claims made or suits resulting from **bodily injury or property damage**;
- (3) automobiles or separated itemizations of premiums stated in the Declarations;
- (4) automobiles involved in the accident.

The limits for any coverage for any automobile under this policy may not be aggregated with the limits for any similar coverage, whether provided by the Company or another insurer, applying to other motor vehicles, for purposes of determining the total limit of insurance coverage available for **bodily injury** suffered by a person in any one accident. Therefore, the total limit of liability under all the policies, whether provided by the Company or another insurer shall not exceed the highest applicable limit of liability under any one policy.

**Other Insurance.** If the insured has other insurance against a loss covered by Part A - “**Bodily Injury** Liability and Property Damage Liability” Coverage of this policy the Company shall not be liable under this policy for a greater proportion of such loss than the applicable limit of liability stated in the Declarations bears to the total applicable limit of liability of any valid and collectible insurance against such loss; provided, however, the insurance with respect to a temporary substitute automobile or non-owned automobile shall be excess insurance over any other valid and collectible insurance, liability bond or self-insurance.

## PART B - UNINSURED MOTORIST COVERAGE

### Uninsured Motorist Bodily Injury;

### Uninsured Motorist Property Damage.

To pay all sums which the insured or his/her legal representative shall be legally entitled to recover as compensatory damages only and not for any punitive or exemplary damages from the owner or operator of an uninsured motor vehicle because of **property damage** to an automobile described in the policy and **bodily injury** sustained by the insured, caused by accident and arising out of the ownership, maintenance or use of such uninsured motor vehicle, provided, for the purposes of this coverage, determination of 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 as herein provided. Recovery under this Part for “**property damage**” is subject to the payment of a specific separate premium for uninsured motorist **property damage** coverage.

No judgment against any person or organization alleged to be legally responsible for the **bodily injury or property damage** shall be admissible in evidence or conclusive, 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 such judgment is entered pursuant to an action prosecuted by the insured with the written consent of the company.

**Definitions.** The definitions under Part A -, except the definition of “insured”, apply to Part B and under Part B. “**insured**” means:

- (a) the named insured and any relative of the named insured; (b) any other person while lawfully occupying an insured automobile;
- (c) any person, with respect to damages he/she is entitled to recover because of bodily injury to which this Part applies when sustained by an insured under (a) or (b) above.

“insured automobile” means:

- (a) an automobile described in the policy for which a specific premium charge indicates coverage is afforded;
- (b) an automobile, ownership of which is acquired by the named insured during the policy period, provided:
  - (1) the acquired automobile replaces an insured automobile defined in (a) above; neither the named insured nor any resident of his/her household retains ownership of the described replaced automobile; and the named insured notifies the Company in writing within 30 days after the date of said acquisition of his/ her decision to make this policy applicable to such acquired replacement automobile; or
  - (2) the Company insures under this coverage all automobiles owned by the named insured on the date of such acquisition and the named insured notifies the Company in writing within 30 days after the date of such acquisition of his/her decision to make this and no other policy issued by the Company applicable to such automobile;
- (c) a temporary substitute automobile for an insured automobile as defined in (a) or (b) above, and
- (d) a non-owned automobile while being operated by the named insured, but shall not include:
  - (1) any automobile or trailer owned by a resident of the same household as the named insured;
  - (2) any automobile while used for delivery of food, goods or products for a business or while used for any other commercial purpose; or
  - (3) any automobile while being used without the permission of the owner.

“uninsured motor vehicle” includes a trailer of any type and means:

- (a) a motor vehicle or trailer with respect to the ownership, maintenance or use for which, there is no **bodily injury** 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 motor vehicle, or said bond or insurance policy has limits less than required by the Illinois Financial Responsibility Law;
- (b) a hit-and-run motor vehicle;
- (c) a motor vehicles 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 its 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 Company has received a written claim under this provision by or on behalf of the insured within the later of six (6) months from the date of such court order of rehabilitation or insolvency or two (2) years from the date of the accident. To the extent that this provision conflicts with this policy’s exclusion for claims received by the Company more than two (2) years after the accident, this provision shall control.

However, the term “uninsured motor vehicle” does not include any vehicle or equipment:

- (1) owned by or furnished or available for the regular use of an insured or a relative of the named insured who causes **bodily injury** or **property damage** in excess of the limit required under the Illinois Financial Responsibility Law;
- (2) owned or operated by a self-insurer within the meaning of any motor vehicle financial responsibility law, motor carrier law or any similar or other law;
- (3) owned by any governmental unit or agency;
- (4) operated on rails or crawler-treads;
- (5) designed for use principally off public roads while not upon public roads; or
- (6) while located for use as a residence or premises and not as a vehicle.

“hit-and-run motor vehicle” means a motor vehicle which causes **bodily injury** to an insured arising out of physical contact of such motor vehicle 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 motor vehicle’; and (b) the insured or someone on his/ her behalf shall have reported the accident within 24 hours to a police, peace or judicial officer or to 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/her 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/her legal representative makes available for inspection the motor vehicle which the insured was occupying at the time of the accident.

“state” includes the District of Columbia, any territory, or possession of the United States, and any province of Canada.

**Exclusions.** This policy does not apply and does not provide coverage under this Part B –“Uninsured Motorist” Coverage: (a) to **bodily injury** or **property damage** to an insured with

- respect to which such insured, his/her 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 therefore;
- (b) 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;
- (c) to any claim alleging punitive or exemplary damages against the owner or operator of an uninsured motor vehicle or to the payment of any award, finding, verdict, or judgment against the owner or operator of an uninsured motor vehicle for punitive or exemplary damages;
- (d) to **property damage** when the owned automobile has collision coverage or is described in any other policy of automobile insurance;
- (e) to **bodily injury** to any person while occupying any automobile not owned by, or furnished or available for the regular use of the named insured or any relative while such automobile is used as a public or livery conveyance for a fee; but this exclusion does not apply to:
  - (1) a share-the-expense car pool, or
  - (2) the named insured or any relative;
- (f) while any covered automobile is in the control of an excluded operator;
- (g) to **bodily injury** to an insured while occupying an automobile (other than an insured automobile), motorcycle or any other motor

- vehicle owned by the named insured or relative or by being struck by such automobile;
- (h) to any **bodily injury** or **property damage** which is either expected or intended by the insured or incurred by an insured occupant of a vehicle who is complicit in the intentional act of the driver of that vehicle;
- (i) to **bodily injury** of an insured while occupying a motor vehicle owned by, or furnished or available for the regular use of the insured, a resident spouse or resident relative, if that motor vehicle is not described on the declarations of this policy under which a claim is made or is not a newly acquired or replacement automobile covered under the terms of this policy;
- (j) if Underinsured Motorist Coverage applies to the accident.
- (k) arising out of the operation of any automobile designed for racing while being tested, repaired or serviced, or to any automobile while used, operated, manipulated or maintained in pre-arranged or organized racing event;
- (l) to any claim for which the Company has not received a written claim by or on behalf of the insured within two years of the date of the accident;
- (m) any person operating or occupying an automobile without a reasonable belief that he or she is entitled to do so, however this exclusion does not apply to the named insured or a relative with respect to the owned automobile;
- (n) 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;
- (o) **bodily injury** or **property damage** arising out of the operation, occupation, or use of a motor vehicle during or in connection with the commission of a crime or while attempting to elude police.
- (p) to bodily injury to any person while operating or occupying any motor vehicle while used as a public or livery conveyance, or for delivery of food or any other products,
- (q) for property damage to an automobile while being used as a public or livery conveyance or in the delivery of food or other products.
- (r) to property damage to a temporary substitute automobile or non-owned automobile as defined in PART A
- (s) to property damage caused by an at-fault uninsured automobile or hit and run automobile if the owner or operator of such vehicle cannot be identified
- (t) to loss of use of an automobile, loss or damage to personal property located in an automobile, loss or damage to equipment or accessories installed in an automobile that are not available, furnished, or installed by the manufacturer of the automobile, except for damage to child restraint system.

#### **Limits of Liability.**

- (a) The limit of liability as stated in the Declarations for this Uninsured Motorist Coverage as applicable to “each person” is the maximum limit of the Company’s liability for all insureds for all damages including damages for care and loss of services and loss of consortium arising out of **bodily injury** sustained by any one person as a result of any one accident. Subject to this limit for “each person”, the limit of liability as stated in the Declarations for this Uninsured Motorist Coverage as applicable to “each accident” is the maximum limit of the Company’s liability for all damages, including damages for care and loss of services and loss of consortium arising out of **bodily injury** sustained by two or more persons as a result of any one accident.

Therefore, these limits of liability for this Uninsured Motorist Coverage are the most the Company will pay under this coverage regardless of the number of:

- (1) insureds;
- (2) claims made or suits resulting from **bodily injury** or **property damage**;
- (3) automobiles or separated itemizations of premiums stated in the Declarations; or
- (4) automobiles involved in the accident.

The limits for any coverage for any automobile under this policy may not be aggregated with the limits for any similar coverage, whether provided by the Company or another insurer, applying to other motor vehicles, for purposes of determining the total limit of insurance coverage available for **bodily injury** suffered by a person in any one accident. Therefore, the total limit of liability under all the policies, whether provided by the Company or another insurer shall not exceed the highest applicable limit of liability under any one policy.

- (b) Any amount payable under the terms of Part B - “Uninsured Motorists” Coverage because of **bodily injury** sustained in an accident by a person who is an insured under Part B - “Uninsured Motorists” Coverage shall be reduced by:
  - (1) all sums paid for **bodily injury** by 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 “1 - **Bodily Injury** Liability” Coverage of Part A - “**Bodily Injury** Liability and Property Damage Liability” Coverage; and
  - (2) the amount paid and the present value of all amounts payable for **bodily injury** under any worker’s compensation law or any similar law.
- (c) Any payment made under Part B - “Uninsured Motorists” Coverage to or for any insured shall be applied in reduction of the amount for damages which the insured may be entitled to recover from any person under “1 - **Bodily Injury** Liability” Coverage of Part A - “**Bodily Injury** Liability and Property Damage Liability” Coverage.
- (d) The Company shall not be obligated to pay under this coverage that part of the damages the insured may be entitled to recover from the owner or operator of an uninsured motor vehicle that represents medical payments paid or payable under Part D - “Medical Payments” Coverage.
- (e) Any amount payable under Part B - “Uninsured Motorists” Coverage shall be reduced by all sums paid to the insured for **property damage** on behalf of the owner or operator of the uninsured motor vehicle and any other person or organization jointly or severally liable together with such owner or operator.
- (f) Property damage losses recoverable hereunder shall be limited to damages caused by the actual physical contact of an identifiable uninsured motor vehicle with the automobile described in the policy.

- (g) There shall be no coverage for loss of use of the insured automobile and no coverage for loss or damage to personal property located in the insured automobile, except for damage to child restraint system.
- (h) There shall be no liability imposed under the Uninsured Motorist Property Damage Coverage if the owner or the operator of the vehicle at fault or the hit-and-run motor vehicle cannot be identified.
- (i) If coverage is provided to a motor vehicle, defined herein as an uninsured motor vehicle, under a bond or insurance policy having limits less than required by the Illinois Financial Responsibility Law, then the Company's maximum limit of liability under this Part for "each person" is the difference between the limit as stated on the declarations of this policy for injury to one person and the corresponding limit provided in such bond or insurance policy, and the Company's maximum limit of liability under this part for "each accident" is the difference between the limit as stated on the declarations of this policy for injury to 2 or more persons and the corresponding limit provided in such bond or insurance 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 B - "Uninsured Motorists" Coverage 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 limits 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/her 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 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.

**Trust Agreement.** In the event of payment to any person under Part B - "Uninsured Motorists" Coverage:

- (a) the Company shall be entitled to the extent of such payment to the proceeds of any settlement or judgment resulting from the exercise of any rights of recovery of such person against any person or organization legally responsible for the **property damage** or **bodily injury** for which the payment is made, including the proceeds recoverable from the assets of any insolvent insurer;
- (b) such person shall hold in trust for the benefit of the Company all rights of recovery which he/she shall have against any other person or organization because of the damages which are the subject of claim made under Part B - "Uninsured Motorists" Coverage;
- (c) such person shall do whatever is proper to secure such rights and shall do nothing after loss to prejudice such rights;
- (d) if requested in writing by the Company or its representative, such person shall take, through any representative designated by the Company, such actions as may be necessary or appropriate to recover such payment as damages from any 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 these provisions.

**Legal Action Against the Company Under This Part B - "Uninsured Motorists" Coverage.** No suit, action, or arbitration proceedings for recovery of any claim may be brought against this Company until the insured has fully complied with all the terms of this policy. Further, any suit, action, or arbitration will be barred unless commenced within two (2) years after the date of the accident. Arbitration proceedings will not commence until this Company receives at the same time (1) the insured's written demand for arbitration and (2) the insured's written selection of an arbitrator.

### **PART C - UNDERINSURED MOTORIST COVERAGE**

**Underinsured Motorist:** To pay all sums which an insured or his/her legal representative shall be legally entitled to recover as compensatory damages only and not for any punitive or exemplary damages from the owner or operator of an underinsured motor vehicle because of **bodily injury** sustained by an insured and caused by an accident arising out of the ownership, maintenance or use of the underinsured motor vehicle provided, for the purposes of this coverage, determination as to whether the insured or his/her legal representative is legally entitled to recover such damages, and if so the amount thereof, shall be made by agreement between the insured and the Company or, if they fail to agree, by arbitration as herein provided. No judgment against any person or organization alleged to be legally responsible for the **bodily injury** shall be conclusive, 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 such judgment is entered pursuant to an action prosecuted by the insured with the written consent of the Company. The Company shall not be obligated to pay under this coverage until the limits of liability under all **bodily injury** liability bonds or policies applicable to the underinsured motor vehicle and its operator have been exhausted by payment of judgments or settlements.

**Definitions.** Except as provided in Part C, the definitions under Part A - "**Bodily Injury** Liability and Property Damage Liability" Coverage apply to Part C - "Underinsured Motorists" Coverage and under Part C - "Underinsured Motorists" Coverage the following definitions apply:

**"Insured"** means:

- (a) the **named insured and any relative of the named insured**;
- (b) any person while lawfully occupying an **owned vehicle**;
- and,
- (c) any other 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 C applies 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 or trailer of any type to which a **bodily injury** liability bond or policy

applies at the time of the accident but its limit for **bodily injury** liability is less than the limit of liability for this Underinsured Motorist Coverage.

**However, “underinsured motor vehicle”** does not include any vehicle or equipment:

- (a) owned by or furnished or available for the regular use of an insured or any relative of the named insured;
- (b) owned by any governmental unit or agency; (c) operated on rails or crawler-treads;
- (d) designed for use principally off public roads while not upon public roads;
- (e) while located for use as a residence or premises and not as a vehicle;
- (f) owned or operated by a person qualifying as a self-insurer under any applicable motor vehicle law;
- (g) to which a **bodily injury** liability bond or policy applies at the time of the accident, but the bonding or insuring company denies coverage or is or becomes insolvent;
- (h) defined as an “underinsured motor vehicle” under Part B - “Uninsured Motorists” Coverage;
- (i) insured under Part A - “Bodily Injury Liability and Property Damage Liability” Coverage - “1 - Bodily Injury Liability” Coverage and “2 - Property Damage Liability” Coverage; or
- (j) to which a **bodily injury** liability bond or policy applies at the time of the accident but its limit for **bodily injury** liability is less than the minimum limit for **bodily injury** liability specified by the Financial Responsibility Law of Illinois.

**Exclusions.** This policy does not apply and does not provide coverage under this Part C - “Underinsured Motorist” Coverage:

- (a) to any person while occupying an automobile when it is being used to carry persons or property for a fee;
- (b) to **bodily injury** incurred by any person operating or occupying any automobile without a reasonable belief that he or she is entitled to do so, however this exclusion shall not apply to the named insured or a relative regarding the owned automobile;
- (c) 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;
- (d) to any claim alleging punitive or exemplary damages against the owner or operator of an underinsured motor vehicle or to the payment of any award, finding, verdict or judgment against the owner or operator of an underinsured motor vehicle for punitive or exemplary damages;
- (e) if Part B - “Uninsured Motorist” Coverage applies to the accident;
- (f) while any automobile is in the control of an excluded operator;
- (g) to any insured while occupying a vehicle the insured owns which is insured for this Underinsured Motorist Coverage under another policy; or
- (h) to **bodily injury** of an insured while occupying a motor vehicle owned by, or furnished or available for the regular use of the insured, a resident spouse or resident relative, if that motor vehicle is not described in this policy under which claim is made or is not a newly acquired or replacement automobile covered under the terms of this policy.
- (i) arising out of the operation of any automobile designed for racing while being tested, repaired or serviced, or to any automobile while used, operated, manipulated or maintained in pre-arranged or organized racing event;
- (j) to any claim for which the Company has not received a written demand for arbitration under this Part before the later of: 2 years after the date of the accident or 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 insolvency;
- (k) arising out of the operation, occupation or use of a motor vehicle during or in connection with the commission of a crime or while attempting to elude police;
- (l) to **bodily injury** which is either expected or intended by the insured or incurred by an insured occupant of a vehicle who is complicit in the intentional act of the driver of that vehicle.

**Limit of Liability.** The limit of liability as shown in the Declarations for “each person” for Underinsured Motorist Coverage, less those amounts actually recovered under the applicable **bodily injury** insurance policies, bonds or other security maintained on the underinsured motor vehicle, 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, including loss of service, society, or consortium, to others resulting from this **bodily injury**. The limit of liability as shown in the Declarations for “each accident” is the maximum amount of coverage, less the amounts actually recovered under the applicable **bodily injury** insurance policies, bonds or other security maintained on the underinsured motor vehicle, 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 or if more than one claim is made or more than one automobile is insured under this policy. If the insured has Underinsured Motorist Coverage available under more than one policy or provision of coverage, recovery or benefits may be equal to, but may not exceed the higher of the applicable limits of the respective coverage and the limits of liability for Underinsured motorist Coverage shall not be increased because of multiple motor vehicles covered under this policy.

The limit of liability under this policy shall be reduced by: (a) all sums paid because of **bodily injury** coverage by or on behalf of persons or organizations that may be legally responsible; (b) payments for **bodily injury** coverage by or on behalf of persons or organizations that may be legally responsible; (c) any payment for **bodily injury** or medical expense under any other part of this policy; and (d) all sums paid or payable to or for the insured because of the **bodily injury** under any worker’s compensation law or similar law. If more than one policy is issued by this Company to any person and applies under this Part, the total limit of this Company’s liability under all such policies shall not exceed the amount applicable under only one policy.

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.

If the Company and the insured or his/her legal representative agree that the insured 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 coverage 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 judgments, or any settlement reached between any insured and the person or persons responsible for this 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.

**Other Insurance.** With respect to **bodily injury** to an insured while occupying a motor vehicle not owned by the named insured, the insurance under Part C - "Underinsured Motorists" Coverage shall apply only as excess insurance over any other similar insurance available to such insured and applicable to such motor vehicle as primary insurance, then this insurance shall apply only in the amount by which the limit of liability for Part C - "Underinsured Motorists" 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 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 any loss to which Part C - "Underinsured Motorists" 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.

**Trust Agreement.** In the event of payment to any person under Part C - "Underinsured Motorists" Coverage:

- (a) the Company shall be entitled to the extent of such payment to the proceeds of any settlement or judgment resulting from the exercise of any rights of recovery of such person against any person or organization legally responsible for the **property damage** or **bodily injury** for which the payment is made, including the proceeds recoverable from the assets of any insolvent insurer;
- (b) such person shall hold in trust for the benefit of the Company all rights of recovery which he shall have against any other person or organization because of the damages which are the subject of claim made under Part C - "Underinsured Motorists" Coverage;
- (c) such person shall do whatever is proper to secure such rights and shall do nothing after loss to prejudice such rights;
- (d) if requested in writing by the Company or its representative, such person shall take, through any such payment as damages from any 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 these provisions.

**Legal Action Against the Company Under This Part C - "Underinsured Motorists" Coverage.** No suit, action, or arbitration proceedings for recovery of any claim may be brought against this Company until the insured has fully complied with all the terms of this policy. Further, any suit, action or arbitration will be barred unless the Company shall have received an unqualified, written demand for arbitration within the later of: 2 years after the date of the accident or 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 or judgment or settlement.

**PART D - MEDICAL PAYMENTS COVERAGE - Medical Payments** To pay all reasonable expenses incurred and submitted to the Company within one year from the date of accident for necessary medical, surgical, X-ray and dental services, including prosthetic devices, and necessary ambulance, hospital, professional nursing and funeral services to or for the named insured and each relative who sustains **bodily injury** caused by accident, while occupying an automobile; or to or for any other person who sustains **bodily injury** caused by accident, while occupying:

- (a) the owned automobile, while being used by an insured; or
- (b) a non-owned automobile, if the **bodily injury** results from its operation by an insured provided no such payment shall be made unless the person to or for whom such payment is made shall have executed a written agreement that the amount of such payment shall (1) be applied toward the settlement of any claim or the satisfaction of any judgment for damages entered in his/her favor, (2) against any insured because of **bodily injury** arising out of an accident to which the Part A - "Bodily Injury Liability and Property Damage Liability" Coverage applies. Part D - "Medical Payments" Coverage.

**Exclusions.** This policy does not apply and does not provide coverage under Part D - "Medical Payments" Coverage to **bodily injury**:

- (a) sustained while occupying (1) an automobile while used as a public or livery conveyance or for while used for a delivery purpose during the course of business or for other commercial purpose, or (2) any automobile while located for use as a residence or premises;
- (b) sustained by the named insured or a relative (1) while occupying an automobile owned by or furnished for the regular use of either the named insured or any resident of the household of the named insured, other than an automobile defined herein as an "owned automobile", or (2) while occupying or as a result of being struck by (i) a motor vehicle or other equipment designed for use principally off public roads while not upon public roads, or (ii) a vehicle operated on rails or crawler-treads;
- (c) sustained by any person other than the named insured or a resident of the household of the named insured, resulting from use of (1) a non-owned automobile while used in the automobile business, or (2) a non-owned automobile in any other business or occupation except operation or occupancy of private passenger automobile by the named insured or by his/her private chauffeur or domestic servant or a trailer used therewith or with an owned automobile;

- (d) sustained by any person who is employed in the automobile business, if the accident arises out of the operation thereof and if benefits therefor are in whole or in part either payable or required to be provided under any worker's compensation law;
- (e) from loss due to war, riot, or civil commotion;
- (f) to the extent any medical expense is paid or payable to or on behalf of the injured person under the provisions of any other (i) insurance affording benefits for medical expenses, (ii) individual, blanket group accident, disability or hospitalization insurance, (iii) medical or surgical reimbursement plan, or (iv) worker's compensation or any similar law;
- (g) resulting from the hazardous properties of nuclear material and arising out of the operation of a nuclear facility by any person or organization;
- (h) arising out of the operation of any automobile designed for racing while being tested, repaired or serviced, or to any automobile while used, operated, manipulated or maintained in pre-arranged or organized racing event;
- (i) while any automobile is in the control of an excluded operator;
- (j) incurred by any person while operating or occupying any automobile without a reasonable belief that he or she is entitled to do so, however this exclusion does not apply to the named insured or a relative with regard to the operation of the owned automobile;
- (k) arising out of the operation, occupation or use of a motor vehicle during or in connection with the commission of a crime or while attempting to elude police;
- (l) arising out of the operation or occupation of a motor vehicle in such circumstances where **bodily injury** is either expected or intended by the insured or incurred by an insured occupant of a vehicle who is complicit in the intentional act of the driver of that vehicle.
- (m) sustained while occupying an automobile owned by the insured for which the named insured has not notified the company in writing within 30 days of such acquisition of his intention to make Part D of this policy applicable to such automobile.

**Arbitration.** If any person making claim hereunder and the Company do not agree that a medical bill submitted for payment is not usual and customary or necessary and reasonable or do not otherwise agree that it is payable under Part D, these matters shall be submitted to arbitration. Upon the insured or the Company demanding arbitration, the insured and the Company shall each select a qualified arbitrator and the two arbitrators so named shall select a third arbitrator. The three arbitrators so selected shall hear and determine the questions in dispute. Any decision made by the arbitrators shall be binding for the amount decided by the arbitrators to be payable hereunder not exceeding the limits of liability for Medical Payments as provided in the Declarations of this policy subject to all other terms and conditions of this policy. To the extent that an arbitration decision exceeds the limit of liability, it is void. The authority of the arbitrators is limited to a determination of the amount due for Medical Payments and does not extend to punitive damages or other damages other than Medical Payments covered by this policy. Each party shall bear the cost of his/her own arbitrator and shall share equally the costs of the third arbitrator. No arbitrator shall have authority to hear or decide class or representative claims.

**Limits of Liability.** The limit of liability for this Medical Payments Coverage as stated in the Declarations as applicable to "each person" is the maximum limit of the Company's liability for all expenses incurred by or on behalf of each person who sustains **bodily injury** as the result of any one accident.

Therefore, this limit of liability for this medical payments coverage is the most the Company will pay under this coverage regardless of the number of:

- (1) insureds;
- (2) claims made or suits resulting from **bodily injury**;
- (3) automobiles or separated itemizations of premium stated in the Declarations; or
- (4) automobiles involved in the accident.

The limits for any coverage for any automobile under this policy may not be aggregated with the limits for any similar coverage, whether provided by the Company or another insurer, applying to other motor vehicles, for purposes of determining the total limit of insurance coverage available for **bodily injury** suffered by a person in any one accident. Therefore, the total limit of liability under all the policies, whether provided by the Company or another insurer shall not exceed the highest applicable limit of liability under any one policy.

**Other Insurance.** If there is other automobile medical payments insurance against a loss covered by Part D - "Medical Payments" Coverage of this policy, the Company shall not be liable under this policy for a greater proportion of such loss than the applicable limit of liability stated in the Declarations bears to the highest applicable limit of liability of any valid and collectible automobile medical payments insurance; provided, however, the insurance with respect to a temporary substitute automobile or non-owned automobile shall be excess insurance over any other valid and collectible automobile medical payments insurance.

**Legal Action Against the Company Under This Part D - "Medical Payments" Coverage.** No suit, action, or arbitration for recovery of any claim may be brought against this Company until the named insured, relative, or any other person has fully complied with all the terms of this policy. Further, any suit or action will be barred unless commenced within two years after the date of the accident.

## **PART E - PHYSICAL DAMAGE COVERAGE**

**Comprehensive or Other than Collision Coverage** (excluding Collision). At the Company's option to have repaired or to pay the cost or repair of damage caused other than by collision to the **owned automobile** operated by an insured but only for the cost of such repairs in excess of the deductible amount stated in the Declarations as applicable hereto. For the purpose of this coverage, breakage of glass and loss caused by missiles, falling objects, fire, theft or larceny, explosion, earthquake, windstorm, hail, war, flood, malicious mischief or vandalism, riot or civil commotion shall not be deemed to be loss caused by collision. Damage to an automobile incurred during or as a result of a theft shall be deemed as loss due to theft.

**Collision** At the Company's option to have repaired or pay the cost of repair of damage caused by collision to the **owned automobile**,

minus the deductible amount.

**Deductible.** The deductible amount stated on the declaration page shall be applicable to each individual loss, regardless of whether the insured reports the loss to the Company or a claim is made for the loss under the policy.

**Towing and Labor Costs.** To pay for reasonable towing and labor charges, necessitated by the disablement of an **owned automobile** while being operated by an **insured** hereunder, not to exceed the coverage limit for Towing stated in the Declarations, provided, that towing is to the nearest point at which the disablement can be remedied and the labor is performed at the place of disablement. No coverage is afforded for claims not made within 30 days of the towing occurrence, or made using receipts that do not detail the nature of the service, that do not indicate a paid status, or cannot be validated by an identifiable service facility. This coverage is limited to two such events per policy period.

**Roadside Assistance Coverage.** The Company will pay for the following emergency roadside assistance services necessitated by the disablement of an **owned automobile** listed in the Declarations as carrying this Coverage, but only to the extent of the limits of this Coverage as stated in the Declarations and only two (2) occurrences per vehicle per policy period: (a) reasonable towing and labor costs to the nearest point at which disablement can be remedied; (b) tire change; (c) battery jump start; (d) key lockout service; and (e) fuel, oil and water delivery service limited to the amounts of fuel, oil and water necessary for the vehicle to travel to the nearest point where fuel and oil is available for purchase by the insured or driver.

**Rental Reimbursement** – Under **Part E**, it is agreed commencing 48 hours after direct or accidental loss or damage to the insured automobile (hereinafter called loss), which is timely reported to the Company and covered by the Company, the Company will reimburse the insured for the rental fee expense incurred with a maximum daily reimbursement benefit as specified on the Declarations for a maximum period as specified on the Declarations (excluding mileage charge) for the rental of a substitute automobile while the insured automobile is in the custody of a licensed business, garage or facility for repairs.

**Exclusions.** Rental reimbursement does not apply:

- (a) if such loss occurs while any driver of the insured automobile is intoxicated or under the influence of any narcotic unless administered at the advice of a physician;
- (b) if such loss occurs to a vehicle that is rented by or on behalf of an insured; or
- (c) if the automobile is in control of an excluded operator

Reimbursement is limited to such expenses incurred during a period commencing at 12:01 AM on the day following the date the named insured delivers the owned automobile to the garage for repairs.

Coverage terminates: on the date of reasonably satisfactory completion of repairs or the date the Company and the named insured agree the automobile is a total loss but in no event more than the maximum number of days as stated on the declaration page.

**Payment of Loss.** At the Company's option, the Company may pay to the insured for loss in money or provide a substitute form of transportation. In no event shall the Company accept a claim for rental reimbursement unless a verified, itemized statement of rental charges is supplied by the insured within thirty (30) days after the date of loss from a licensed or recognized automobile rental agency or business. This insurance is applicable in addition to any other valid or collectible collision insurance available to the insured.

**Definitions.** The definitions in Part A - "Bodily Injury Liability and Property Damage Liability" Coverage, except the definition of "insured", applies to Part E - Physical Damage" Coverage and under Part E - "Physical Damage" Coverage:

**"insured"** means (a) with respect to the owned automobile (1) the named insured and (2) any person or organization, other than a person or organization engaged in the automobile business or as a carrier or other bailee for hire, maintaining, using or having custody of said automobile with the permission of the named insured, and within the scope of such permission; **"non owned automobile"** means an automobile not owned by or furnished for the regular use of either the named insured or any relative, other than a temporary substitute automobile, while said automobile is in the possession or custody of the insured or is being operated by him/her;

**"loss"** means each direct and accidental physical damage to or destruction of the owned automobile or equipment common to the use of the owned automobile, including any child restraint system that was in use by a child during an accident to which this coverage applies, but "loss" does not include **diminution in value**:

**"collision"** means an upset of the owned automobile or physical contact between the owned automobile and another motor vehicle, physical object or person. Collision does not include (1) breakage of glass or (2) loss caused by missiles, falling objects, fire, theft or larceny, explosion, earthquake, windstorm, hail, war, flood, malicious mischief or vandalism, riot or civil commotion;

**"damage"** means physical damage to tangible property and does not include intangible economic loss such as diminution in value;

**"aftermarket crash part"** means a replacement for any of the non-mechanical sheet metal or plastic parts that generally constitute the exterior of a motor vehicle, including inner and outer panels;

**"non-original equipment manufacturer (Non-OEM) aftermarket crash part"** means an aftermarket crash part not made for or by the manufacturer of the motor vehicle;

**"like kind and quality part"** includes but is not limited to a replacement part for any vehicle obtained from any vehicle obtained from another vehicle;

**"repair"** means physical repair but does not mean restoration to pre-accident value or condition;

**"diminution in value"** means the actual or perceived decrease of market or resale value of an automobile or part thereof, measured after repair of physical damage.

**"trailer"** means a trailer designed for use with a private passenger, farm or utility automobile, and is not a home, office, store, display, or passenger trailer;

**"forcible entry"** means unauthorized entry to the automobile and forcible defeat of its ignition, ignition locks, steering locks, or other security devices installed to prevent operation by unauthorized persons;

**"equipment"** means the standard or optional equipment which is available from the manufacturer for that make, model, and model year of automobile and was permanently installed in the automobile in the place designed by the manufacturer at the time of original sale or inception of this policy;

**"hit and run automobile"** means an automobile which causes damage to an insured automobile arising out of physical contact of such

automobile with the insured automobile 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/her behalf shall have reported the accident promptly to a police, peace, or judicial officer or to 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/her legal representative makes available for inspection the automobile which the insured was occupying at the time of the accident.

**"temporary substitute automobile"** means an automobile not owned by the named insured, or any resident of the same household, while temporarily used as a substitute for the owned automobile when withdrawn from normal use because of its breakdown, repair, servicing, loss or destruction and is not a non-owned automobile. There is no coverage under Part 5 - "Physical Damage" Coverage when the owned automobile qualifies as a temporary substitute automobile.

**Exclusions.** This policy does not apply to and does not provide coverage under Part E - "Physical Damage" Coverage for:

- (a) any automobile while used for a delivery purpose during the course of business or for any commercial purpose, or while used as a public or livery conveyance, or a ridesharing program for a fee;
- (b) loss of equipment not available from the manufacturer of the automobile named in the policy for that make, model, and model year;
- (c) loss of equipment which is available from the manufacturer of the automobile named in the policy for that make, model, and model year, but which is not permanently installed in the dash or console opening specified by the manufacturer of the automobile for the installation of such equipment;
- (d) loss to any automobile arising out of its use by the insured in the automobile business;
- (e) loss to a non-owned automobile, to any automobile owned by the named insured and not described in this policy or to any temporary substitute automobile, while being used when the vehicle described in the declarations is either being repaired due to a loss or mechanical breakdown, or any other reason that would cause the vehicle described in the declarations to be non-operational that carries any other type of valid and collectible insurance, self insurance, or bond;
- (f) damage which is due and confined to wear and tear, freezing, mechanical or electrical breakdown or failure, unless such damage results from a theft covered by this policy;
- (g) tires, unless damaged by fire, malicious mischief, vandalism, stolen or unless the loss is coincident with and from the same cause as other loss covered by this policy;
- (h) loss due to radioactive contamination;
- (i) breakage of glass, under "8 - Collision Coverage" of Part E - "Physical Damage" Coverage, if insurance with respect to such breakage is otherwise afforded;
- (j) loss to any automobile designed for racing while being tested, repaired, or serviced or to any automobile used, operated, manipulated or maintained in pre-arranged or organized racing event.
- (k) loss of or damage to any device or instrument designed for the recording, reproduction, receiving, or transmittal of sound, radio waves, microwave or television signals unless such device or instrument is permanently installed in the dash or console opening specified by the manufacturer of the automobile for the installation of such equipment;
- (l) personal effects or personal property including, but not limited to clothing, luggage, tools, tapes, wire, records, compact discs or other medium for use with any device or instrument designed for the recording, reproduction, or recording and reproduction of sound;
- (m) loss arising out of the operation, occupation or use of a motor vehicle while used during or in connection with the commission of a crime other than a traffic violation, and including while fleeing and eluding the police or other law enforcement or government authorities
- (n) loss to any custom furnishings or equipment in or upon any automobile including, but not limited to, special carpeting, insulation, furniture, bars, television receivers, facilities for cooking or sleeping, height-extension roofs, custom murals, custom paint or other decals or graphics;
- (o) any claim under this Part where damage, theft or loss resulted from the intentional act of any insured or a person acting at the direction of any insured, however, this exclusion does not apply to the interest in the property of 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, provided that payment to the innocent co-insured is limited to his or her ownership interest in the property as reduced by any payments to a mortgagor or other secured interest;
- (p) any loss arising out of or during use of an automobile for the transportation of hazardous substance or flammable liquid;
- (q) loss due to war, riot, or civil commotion;
- (r) to loss due to theft under Part E if evidence exists that forcible entry was not required to gain access to the automobile or to operate it, or that evidence exists that keys were left in, on or near the automobile while it was unattended. This includes proximity FOB transponder systems that allow the automobile to continue running after being started, then left unattended;
- (s) loss to any trailer;
- (t) loss due to confiscation, towing or impounding by a duly constituted government or civil authority, to abandonment or to damages incurred during repossession by loss payee or its agent;
- (u) loss resulting from the alteration of an automobile beyond manufacturer specifications;
- (v) any automobile while in control of an operator excluded by endorsement to this policy or any renewal thereof;
- (w) to any obligation assumed by the insured, registered owner or legal owner for any of the following costs: (1) estimating fees, (2) teardown charges, (3) negotiating charges, (4) administrative fees;
- (x) to diminution in value to any automobile.
- (y) theft or conversion by an insured, member of the insured's household, or any person using the automobile with permission of the insured including embezzlement or secretion by any person in possession of the automobile under a bailment lease, conditional sale,

purchase agreement, mortgage or other encumbrance not declared, or if the automobile is or at any time becomes subject to a bailment lease not declared and described in the declarations page.

**Limit of Liability.** The Company's liability under this Part shall not exceed the smallest of the following:

- (a) the actual cash value of stolen or damaged property or part thereof at the time of the accident or theft;
- (b) the amount necessary to repair the damaged property using, at the sole discretion of the company, new parts from the vehicle's manufacturer, aftermarket crash parts or non-original equipment manufacturer (Non-OEM) aftermarket crash parts or like kind and quality parts. Non original equipment manufacturer (Non-OEM) aftermarket crash parts will be identified on the repair estimate;
- (c) the amount necessary to replace the stolen or damaged property at the time of the accident with like kind and quality property less depreciation;
- (d) the actual cash value of the stolen or damaged property less deductible and less the salvage value of retained vehicles nine (9) model years or older;
- (e) in no event will the Company be liable for more than the actual cash value of the Described vehicle listed on the declarations page or \$40,000 whichever is less.

**Supplementary Payments.** In addition to the applicable limit of liability:

- (a) to reimburse the insured for transportation expenses not exceeding \$8 per day or totaling more than \$200 incurred during the period commencing 72 hours after a theft covered by this policy of the entire automobile has been reported to the Company and the police, and terminating on the date the whereabouts of the automobile becomes known to the named insured or Company or on such earlier date as the Company tenders settlement for such theft;
- (b) to pay general average and salvage charges for which the insured becomes legally liable as to the automobile being transported.

**Other Insurance.** If the insured has other insurance against a loss covered by Part E - "Physical Damage" Coverage of this policy, the Company shall not be liable under this policy for a greater proportion of such loss than the applicable limit of liability of this policy bears to the total applicable limit of liability of all valid and collectible insurance, self insurance or bond against such loss. This insurance with respect to a **temporary substitute automobile or non-owned automobile** shall be excess over any other valid and collectible insurance or self-insurance.

#### **PART F – NON-OWNER FILING POLICY**

**Non-Owner's Policy** - F applies only if the term "**NON-OWNER**" appears on the Declarations of the policy. If this policy is written as a **Non-Owner** or **Non-Owner Filing Policy** as shown on the Declarations, it is agreed that, notwithstanding any provision of this policy to the contrary, such insurance as is afforded under this policy only applies with respect to the use of any "non-owned automobile" and not with respect to any "owned automobile", subject to the following provisions which control over any conflicting provisions in this policy:

1. For all purposes in this policy "named insured" shall mean only such person as is specifically named on the Declarations and does not include a spouse.
2. In Parts A, B and C, "Persons Insured" shall mean only the named insured.
3. Such insurance as is afforded under Part D shall apply only to medical expenses incurred by the named insured and by any other person lawfully occupying a non-owned automobile operated by the named insured, with permission of its owner.
4. This policy does not apply to any automobile owned by or furnished for the regular use of the named insured or his/her spouse or any resident of the household of the named insured.
5. No Physical Damage coverage shall be afforded under this policy.
6. In Parts A, B, C and D of this policy the Other Insurance provision is replaced as follows: This insurance shall be excess over any other valid and collectible insurance.

#### **PART G - CONDITIONS**

**Unless Otherwise Noted, Conditions Apply To All Parts**

**1. Policy Period, Territory.** This policy applies only to accidents and losses 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 expiration date of each policy period. If the 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. The Company shall compute premium in accordance with the manuals currently in use. Each policy period shall begin and end at 12:01 A.M. standard time at the address of the named insured.

**2. Premium.** During the term of this policy and any renewal thereof, the named insured shall immediately inform the Company of each change in the garaging address of an insured vehicle, of each new resident driver, of the suspension or revocation of the driver license of the named insured or of any resident driver, and of any other change in the persons or vehicles for which coverage is provided hereunder so as to allow the Company to determine whether and under what premium and conditions to continue coverage under this policy. If the named insured disposes of an automobile or changes residence address, he/she shall inform the Company in writing within 30 days of such change. If the named insured acquires ownership of an additional or replacement automobile, he/she shall inform the Company in writing within 30 days following acquisition of his/her decision to make this and no other policy issued by the Company applicable to such owned automobile. Any premium adjustment necessary shall be effective as of the date of such change or acquisition in accordance with the manuals currently in use by the Company. The named insured shall, upon request, furnish reasonable proof of the number of such automobiles or trailers and a description thereof.

If, at any time, the Company becomes aware of any operator residing in the insured's household, "resident operator" or any "regular operator" of an insured automobile, other than an excluded operator who is not named on the declaration page as a named insured or operator or becomes aware that the residence of the named insured has changed and the inclusion of that person as a named insured or operator or the address of such residence 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 to the correct rate class effective:

- a. on the inception date of the policy if such person was a "resident operator" or "regular operator" as of the inception date of the policy; or
- b. on the date such person became a "resident operator" or "regular operator" if such person became a "resident operator" or "regular operator" during the policy period,
- c. on the date such residence changed,

and the named insured will be liable for the difference between the total premium you have been charged for your coverage and the total amount of premium you would have been charged for that coverage had such person been named on the declaration page as an insured or operator or had you disclosed such person to the Company as an operator or driver when such person became a resident operator or regular operator or had the change of address been reported to the Company.. However, in those instances where the insured has made a claim under the collision or comprehensive coverages of this policy and the repair or replacement cost of the insured vehicle minus the deductible shall be less than the additional premium, as stated above, the Company shall limit its recovery from the insured to the cost of the repairs or replacement of the insured vehicle.

For purposes of Condition 2, "resident operator" means any person who resides in the insured's household and who at any time during the policy period uses or operates an insured automobile, and "regular operator" means any person who operates an insured automobile and to whom such automobile is made available for his/her regular use.

**3. Notice.** In the event of an accident 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 address of the injured and of available witnesses, shall be given by or on behalf of the insured directly to the Company as soon as practicable. However, in the case of a "hit and run" claim notice must be given to the Company in writing within 30 days of the accident. In the event of theft of the automobile the insured must notify the police within 24 hours. If claim is made or suit is brought against an insured, he/she shall immediately forward to the Company every demand, notice, summons, or other process received by him/her, his/her representative, or agent. The Company will not be obligated to pay, and shall not pay under Part A - "Bodily Injury Liability and Property Damage Liability" Coverage, unless the Company received actual notice of a lawsuit before a judgment had been entered in said suit. If, before the Company makes a payment of loss under Parts A - "Bodily Injury Liability and Property Damage Liability", B - "Uninsured Motorists", C - "Underinsured Motorists", D - "Medical Payments", or E - "Physical Damage" Coverages, the insured or his/her legal representative shall institute any legal action for **bodily injury** or **property damage** against any person or organization legally responsible for the use of an automobile involved in the accident, a copy of the summons and complaint or other process served in connection with such legal action shall be forwarded immediately to the Company by the insured or his/her legal representative.

All notices required by this policy shall be in writing and shall be served personally or by certified mail, return receipt requested. For the purpose of all time limitations, notice shall be deemed to have been given on the date when so placed in the United States mail, postage prepaid.

Notice shall be given as follows to the Company:

Viva Seguros Insurance Co.  
7400 N. Caldwell Ave.  
Niles, IL 60714

To The Insured(s):

Notice shall be given to the person(s) designated as the "Named Insured(s)" on the Declarations Page that is a part of this policy as issued, at the last known address for the "named insured".

#### **4. Fraud and Misrepresentation.**

Statements contained in the application are deemed to be representations relied upon by the Company in issuing the policy.

(a) If there has been a misrepresentation or false warranty, made with actual intent to deceive or which materially affects either the risk or hazard assumed by the Company, made by the insured or in his behalf in the negotiation for this policy, or breach of condition of such policy, and if said misrepresentation or false warranty or breach of condition is stated in the policy or endorsement or rider attached thereto, or in the written application for this policy, then this policy shall be null and void and of no benefit, provided, however that the Company, during the lesser of the first year of the policy or the first term of the policy, rescinds the policy and declares this policy void. If the policy has been in effect more than the lesser of one year or the first policy term, then the Company shall not rescind this policy. Notwithstanding any other provisions of this policy, this policy shall provide no coverage or benefit to any person who makes a fraudulent statement or omission or engages in fraudulent conduct with respect to any accident of loss for which coverage or a benefit is sought under this policy or any renewal of this policy.

(b) **Premium Adjustment.** If, at any time, the Company becomes aware of a misrepresentation that would have made the risk ineligible or resulted in a higher premium charge, the Company reserves the right to endorse retroactively the policy to the correct premium charge. In the event that the Company exercises that right, the named insured will be liable for the total premium amount charged for the applicable coverage, which shall include any additional premium amounts that the named insured would have been charged had such misrepresentation not been made. In addition, a three hundred percent (300%) surcharge, based on the total premium amount the named insured would have been charged for the coverage had such misrepresentation not been made, will be assessed against the policy. However, the amount charged shall not exceed the claim amount, in the event that such claim is the reason the Company becomes aware of the misrepresentation. The total premium amount charged will be calculated based on the earlier of (1) the inception date of the policy, or (2) the date the misrepresentation occurred during the policy period. Nothing in this Condition shall preclude the Company from

exercising or pursuing any other right or remedy available under law.

**5. Two or More Automobiles.** When two or more automobiles are insured hereunder, an automobile and a trailer attached thereto shall be held to be one automobile as respects limits of liability under Parts A - "Bodily Injury Liability and Property Damage Liability", B - "Uninsured Motorists", C - "Underinsured Motorists" and D - "Medical Payments" Coverages of this policy.

**6. Assistance and Cooperation of the Insured.** The insured shall cooperate with the Company and, upon the Company's request or through attorneys selected by the Company to represent the insured must:

- (a) cooperate with us in the investigation and settlement of any claim including promptly providing a statement sufficient to identify the facts of an accident, persons and vehicles involved, and facts necessary to determine coverage.
- (b) assist in making settlements, securing, and giving evidence, obtaining the attendance of witnesses and in the conduct of any legal proceedings and attending hearings and trials as the Company requires in connection with the subject matter of this insurance;
- (c) not voluntarily make any payment, except at his/her own cost, 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 accident, and shall not make any admissions as to fault;
- (d) notify the Company of any change of his/her address or residence during the pendency of any suit against the insured;
- (e) send the Company promptly any legal papers received relating to any claim or suit;
- (f) submit to physical examinations at the Company's expense by doctors we choose as often as we may reasonably require;
- (g) authorize the Company to obtain medical and any other records we deem pertinent to a claim investigation;
- (h) provide any written proofs of loss the Company requires;
- (i) allow the Company to take signed and recorded statements and answer all questions we may ask when and as often as we may require;
- (j) submit to examinations under oath as often as the Company requires, outside the presence of any other insured or person to be examined under oath;
- (k) at the Company's request, take such actions as shall be necessary to permit the Company to access electronic data stored in the automobile or remotely, such as but not limited to data stored in systems such as On Star.

The Company has no duty to provide coverage under this policy unless there has been full compliance with these responsibilities.

After the notice of claim under any part of this policy, the Company may require the insured to take such actions as may be necessary or appropriate to preserve his/her right to recover damages from any person or organization alleged to 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. The Company shall reimburse the insured for court costs, jury fees, and sheriff's fees arising from this action.

**7. Action Against Company - Part A - "Bodily Injury Liability and Property Damage Liability" Coverage.** No action shall lie against the Company unless, as a condition precedent thereto, the insured shall have fully complied with all terms of this policy, nor until the amount of the insured's obligation to pay shall have been determined either by final 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 final 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 insured or his/her legal representative implead the Company. **Parts B - "Uninsured Motorists", C - "Underinsured Motorists", D - "Medical Payments" and E - "Physical Damage" Coverages.** . No suit, arbitration, including appraisal, shall lie against the Company unless, as a condition precedent thereof, there shall have been full compliance with the terms of the policy nor under Part E until 30 days after the amount payable has been determined by the Company. In no event shall suit, arbitration, or appraisal be commenced against the Company more than two years after the date of accident, except only in the following circumstances:

- (a) under Part B, if coverage is based on entry of a court order of rehabilitation or liquidation by reason of insolvency of an insurer, suit or arbitration shall not be commenced against the Company after the later of: two years after the date of the accident or six months after the entry of such court order of rehabilitation or liquidation by reason of insolvency; or
- (b) under Part C, suit or arbitration shall not be commenced after the later of: two years after the date of accident or six months after 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.

Wherever this Condition limits the period within which the insured may sue, the running of such period is tolled from the date proof of loss is filed with the Company, in whatever form is required by this policy, until the date the claim is denied in completely or in part.

**8. Medical Report; Proof and Payment of Claim - Parts B - "Uninsured Motorists", C - "Underinsured Motorists" and D - "Medical Payments" Coverages.** As soon as practicable any injured person or someone on his/her behalf making claim shall give to the Company written proof, under oath if required, including full particulars of the accident or loss and the nature and extent of the injuries, treatment, and other details entering into the determination of the amount payable. 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 injury, but such payment shall not constitute an admission of liability of any person or of the Company.

If required, 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 forms within 15 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/she, or in the event of his/her incapacity, his/her legal representative, or in the event of his/her death, his/her legal representative or the person or persons entitled to sue therefore, shall upon each request from the Company execute authorization to enable the Company to obtain medical reports and copies of any and all records needed to evaluate or assess the claim.

**9. Insured Duties in Event of Loss - Part E - "Physical Damage" Coverage.** In the event of loss the insured must:

- (a) allow the Company to inspect and appraise the insured automobile before its repair or disposal.

- (b) protect the automobile, whether or not the loss is covered by this policy, and any further loss due to the insured's failure to protect shall not be recoverable under this policy; reasonable expenses incurred in affording such protection shall be deemed incurred at the Company's request;
- (c) report the loss to the Company within 31 days after loss, and within 60 days thereafter file with the Company his/ her sworn proof of loss in such form and including such information as the Company may reasonably require;
- (d) upon the Company's request, exhibit the damaged property and submit to examination under oath; and
- (e) in the event of theft, report the loss promptly, or as soon as practicable, after the insured is made aware of such theft, to police, peace, judicial officers, or the Commissioner of Motor Vehicles.

The Company has no duty to provide coverage under this policy unless there has been full compliance with these duties.

**10. Appraisal – Part E - “Physical Damage” Coverage.** If the insured and the company fail to agree as to the amount payable, then the dispute shall be decided by appraisal as described herein. The insured and the Company shall each select a competent appraiser, and the appraisers shall select a competent and disinterested umpire. The appraisers shall state separately the actual cash value of the vehicle at the time of the accident and the amount necessary to repair the damage under Part E and, failing to agree, submit their differences to the umpire. The appraisers and the umpire shall use forms supplied by the Company and shall abide by the terms, definitions and conditions of the policy. An award in writing of either the two appraisers or one appraiser and the umpire shall determine the amount payable under this policy. The determination in appraisal of the actual cash value of the vehicle and of the amount necessary to repair the damage under Part E shall be binding as between the insured and the Company. The award shall specify the application of the deductible. The insured and the Company shall each pay his/ her or its chosen appraiser and shall bear equally the other expenses of the appraisal and umpire. The Company shall not be deemed to have waived any of its rights by any act relating to appraisal. No appraiser or umpire shall have authority to hear or decide class or representative claims.

**11. Payment of Loss.** Any amount due is payable (a) to the insured, or (b) if the insured is a minor to his/her parent or guardian, or (c) if the insured is deceased to his/her surviving spouse, otherwise (d) to a person authorized by court order 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 provision (d) hereof.

**Part E - “Physical Damage” Coverage.** The Company may pay for the loss in money, or may repair or replace the damaged or stolen property; or may, at any time before the claim is paid or the property replaced, at its own expense, return any stolen property to the named insured, or at its option, to the address shown in the Declarations, with payment for any resultant damage thereto less deductible; or may take all or such part of the property at the agreed or appraised value, but there shall be no abandonment to the Company. The Company may settle any claim under Part E either with the insured, with the loss payee, if the automobile is deemed by the Company to be a total loss, or with the owner of the property. If the insured or owner elects to have the automobile repaired at a facility of his/her or her own choosing and that facility charges more than the Company would pay for the repair at another licensed auto repair facility reasonably available, then the Company may tender the amount payable under its estimate and the insured or owner will be responsible to pay the difference to the repair facility of his/her or her own choosing. If hidden or additional damage is identified, then the Company shall be given an opportunity to estimate the cost of such additional repair and the Company may tender such additional amount payable pursuant to its additional estimate.

**12. No Benefit to Bailee - Part E - “Physical Damage” Coverage.** The insurance afforded by this policy shall not inure directly or indirectly to the benefit of any carrier or other bailee for hire which is liable for loss to the automobile.

**13. Subrogation.** In the event of any payments under this policy, the Company shall be subrogated to all the rights of recovery therefore which the insured, an injured person or any other person receiving such payment may have against any person or organization and they 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.

In the event of any payment under Part C - “Underinsured Motorists” Coverage, the Company shall not exercise any right of subrogation under a policy providing additional Uninsured Motorist Coverage against an underinsured motorist 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 a receipt of such notice.

**14. Changes.** The terms of this policy shall not be waived or changed, except by endorsement issued by the Company to form a part of this policy. Notice to or knowledge possessed by any person shall not be waived or changed, except by endorsement issued by the Company to form a part of this policy. Notice to or knowledge possessed 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.

**15. Assignment.** Assignment of interest under this policy shall not bind the Company until its consent is endorsed hereon. If, however, the named insured, or his/her spouse, if a resident of the same household, shall die during the policy period, this policy shall cover:

(1) the survivor as named insured, (2) his/her legal representative as named insured but only while acting within the scope of his/her duties as such, (3) any person having proper temporary custody of an owned automobile, as an insured, until the appointment and qualification of such legal representative, and (4) under Part D any person who was a relative at the time of such death.

**16. Cancellation.** This policy may be canceled by the named insured 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 a premium finance company acting pursuant to a power of attorney in its financing contract, and the Company shall honor the date of cancellation as set forth in the request from the premium finance company without requiring the return of the policy and without requiring a copy of the premium finance contract. The Company may rely on the representations in a premium finance company's request to cancel. This policy may be canceled by the Company by mailing to the named insured and the loss payee at their last known addresses written notice stating when not less than 30 days thereafter such cancellation shall be effective, however, where cancellation is for non-payment of premiums at least ten (10) days notice must be given. The Company shall not exercise its right to cancel the policy after it has been in effect for sixty (60) days or in any subsequent renewal period, except After a policy of automobile insurance as defined in Section 143.13(a) has been effective for 60 days, or if such policy is a renewal policy, the insurer shall not exercise its option to cancel such policy except for one or



more of the following reasons: a. Nonpayment of premium; b. The policy was obtained through a material misrepresentation; c. Any insured violated any of the terms and conditions of the policy; d. The named insured failed to disclose fully his motor vehicle accidents and moving traffic violations for the preceding 36 months if called for in the application; e. Any insured made a false or fraudulent claim of knowingly aided or abetted another in the presentation of such a claim; f. The named insured or any other operator who either resides in the same household or customarily operates an automobile insured under such policy: 1. has, within the 12 months prior to the notice of cancellation, had his driver's license under suspension or revocation; 2. is or becomes subject to epilepsy or heart attacks, and such individual does not produce a certificate from a physician testifying to his unqualified ability to operate a motor vehicle safely; 3. has an accident record, conviction record (criminal or traffic), physical, or mental condition which is such that his operation of an automobile might endanger the public safety; 4. has, within the 36 months prior to the notice of cancellation, been addicted to the use of narcotics or other drugs; or 5. has been convicted, or forfeited bail, during the 36 months immediately preceding the notice of cancellation, for any felony, criminal negligence resulting in death, homicide or assault arising out of the operation of a motor vehicle, operating a motor vehicle while in an intoxicated condition or while under the influence of drugs, being intoxicated while in, or about, an automobile or while having custody of an automobile, leaving the scene of an accident without stopping to report, theft or unlawful taking of a motor vehicle, making false statements in an application for an operator's or chauffeur's license or has been convicted or forfeited bail for 3 or more violations within the 12 months immediately preceding the notice of cancellation, of any law, ordinance, or regulation limiting the speed of motor vehicles or any of the provisions of the motor vehicle laws of any state, violation of which constitutes a misdemeanor, whether or not the violations were repetitions of the same offense of different offenses; g. The insured automobile is: 1. so mechanically defective that its operation might endanger public safety; 2. used in carrying passengers for hire or compensation (the use of an automobile for a car pool shall not be considered use of an automobile for hire or compensation); 3. used in the business of transportation of flammables or explosives; 4. an authorized emergency vehicle; 5. changed in shape or condition during the policy period so as to increase the risk substantially; or 6. subject to an inspection law and has not been inspected or, if inspected, has failed to qualify.

The Company shall not fail to renew any policy of insurance unless it shall mail notice of such to the named insured at least thirty (30) days prior to the date of expiration. This provision shall not apply if the Company has manifested its willingness to renew directly to the named insured or in the case of non-payment. If the Company does not issue a non-renewal notice and renewal is not offered, this policy shall terminate only on the effective date of any similar insurance procured by the insured with respect to the same subject or location designated in both policies.

Renewal of a policy does not constitute a waiver or estoppel with respect to grounds for cancellation that existed before the effective date of such renewal.

After this policy has been effective or renewed for five or more years, the Company shall not exercise its right of non-renewal, unless: a. The policy was obtained through a material misrepresentation; or b. Any insured violated any of the terms and conditions of the policy; or c. The named insured failed to disclose fully his motor vehicle accidents and moving traffic violations for the preceding 36 months, if such information is called for in the application; or d. Any insured made a false or fraudulent claim or knowingly aided or abetted another in the presentation of such a claim; or e. The named insured or any other operator who either resides in the same household or customarily operates an automobile insured under such a policy: 1. Has, within the 12 months prior to the notice of non-renewal had his drivers license under suspension or revocation; or 2. Is or becomes subject to epilepsy or heart attacks, and such individual does not produce a certificate from a physician testifying to his unqualified ability to operate a motor vehicle safely; or 3. Has an accident record, conviction record (criminal or traffic), or a physical or mental condition which is such that his operation of an automobile might endanger the public safety; or 4. Has, within the 36 months prior to the notice of non-renewal, been addicted to the use of narcotics or other drugs; or 5. Has been convicted or forfeited bail, during the 36 months immediately preceding the notice of non-renewal, for any felony, criminal negligence resulting in death, homicide or assault arising out of the operation of a motor vehicle, operating a motor vehicle while in an intoxicated condition or while under the influence of drugs, being intoxicated while in or about an automobile or while having custody of an automobile, leaving the scene of an accident without stopping to report, theft or unlawful taking of a motor vehicle, making false statements in an application for an operators or chauffeurs license, or has been convicted or forfeited bail for 3 or more violations within the 12 months immediately preceding the notice of non-renewal, of any law, ordinance or regulation limiting the speed of motor vehicles or any of the provisions of the motor vehicle laws of any state, violation of which constitutes a misdemeanor, whether or not the violations were repetitions of the same offense or different offenses; or f. The insured automobile is: 1. So mechanically defective that its operation might endanger public safety; 2. Used in carrying passengers for hire or compensation (the use of an automobile for a car pool shall not be considered use of an automobile for hire or compensation); or 3. Used in the business of transportation of flammables or explosives; or 4. An authorized emergency vehicle; or 5. Changed in shape or condition during the policy period so as to increase the risk substantially; or 6. Subject to an inspection law and it has not been inspected or, if inspected, has failed to qualify; or g. The notice of the intention not to renew is mailed to the insured at least 60 days before the date of nonrenewal as provided in Section 143.17.

All notices of cancellation or non-renewal shall include a specific explanation of the reason or reasons for cancellation or non-renewal. The mailing of notice as aforesaid on a recognized U.S. Post Office form or a form acceptable to the U.S. Post Office or other commercial mail delivery service shall be sufficient proof of notice, and a copy of such notice shall be sent to the insured's producer of record, and loss payee of record, at the last mailing address known to the Company.

In the event of the cancellation of this policy, earned premiums shall be computed pro-rata to the date of cancellation. Any refund of the premium shall be without prejudice to any claim arising prior to the cancellation, and the Company shall make such refund to the named insured's producer of record within 30 days from:

- (1) the date of the notice of cancellation by the Company, or

- (2) the date the Company receives the request for cancellation from the named insured or its representatives, but payment or tender of unearned premium is not a condition of cancellation.

**17 Arbitration. Parts B and C** Any dispute with respect to the coverage and the amount of the damages shall be submitted for arbitration to the American Arbitration Association and shall be subject to its rules of the conduct of arbitration hearings as to all matters except medical opinions. If the amount of the damages being sought is equal to or less than limits of \$25,000 and \$50,000 then the current American Arbitration Association Rules shall apply as to medical opinions. If the amount being sought in an American Arbitration Association case exceeds that amount as set forth in Section 7-203 of the Illinois Motor Vehicle Code, then the Rules of Evidence that apply in the circuit court for placing medical opinions into evidence shall govern. Alternatively, disputes with respect to damages and the coverage shall be determined in the following manner: Upon the **insured** requesting arbitration, each party to the dispute shall select an arbitrator and the two arbitrators so named shall select a third arbitrator. If such arbitrators are not selected within 45 days from such request, either party may request that the arbitration be submitted to the American Arbitration Association. Any decision made by the arbitrators shall be written and shall be binding for the amount of damage not exceeding \$75,000 for **bodily injury** to or death of any one person, \$150,000 for **bodily injury** to or death of 2 or more persons in any one motor vehicle accident, or corresponding policy limits under this Part, whichever is less. Arbitration before a three-arbitrator panel shall be subject to the rules of evidence in Illinois courts, except to the extent the use of such rules is modified by the Illinois Insurance Code. Each party shall bear the cost of his or her own arbitrator and shall share equally the cost of the third arbitrator. All arbitration hearings under this policy shall take place in the Illinois County in which the **insured** resides and in accordance with the usual rules governing procedure and admission of evidence in courts of law of that state and not in accordance with any court mandated arbitration or mediation rules. If the person demanding arbitration does not reside in Illinois, the arbitration shall then take place in an Illinois county in which the Company has an office. Any person making claim here under shall answer written interrogatories under oath when served by the Company, and shall comply with the Company's request for production of documents supporting that person's claim. No arbitrator shall have authority to hear or decide class or representative claims. Any provisions herein that are in conflict with statute or settled law shall be construed to be amended to comply with such statute or settled law.

**18. Declarations.** By acceptance of this policy, the named insured agrees that the statements and representations contained in the Application, have been made by him/her or on his/her behalf and said statements and representations and the statements in the Application and in any subsequent Application or questionnaire accepted by the Company are offered as an inducement to the Company to issue or continue this policy and this policy is issued and continued in reliance upon the truth of such statements and representations and this policy embodies all agreements existing between himself/ herself and the Company or any of its agents relating to this insurance.

**19. Excluded Drivers.** If at the time of an accident a person is identified on the declarations or on an endorsement to this policy as Excluded, and if the accident involves operation of any motor vehicle by such person, then notwithstanding any other provision of this policy, no coverage of any kind under this policy is owing or payable to any person with respect to such accident and the Company is not obligated to defend any person in any legal action concerning that accident.

**20. Rideshare Provisions**

This provision applies to all coverages provided hereunder to any loss arising out of an occurrence wherein the operator of the **rideshare insured vehicle** receives and accepts an order to transport a passenger to a given location under a **transit order**. All coverages under this policy are suspended from the moment the **transit order** is received via a **transportation network platform** until the trip has been completed and the passenger leaves the vehicle.

Additional definitions:

**rideshare insured vehicle:** means any vehicle listed on the schedule of vehicles on the declarations page while temporarily used to transport passengers for compensation under a **transit order**.

**transit order:** means a request to transfer a passenger or passengers from one location another via a **rideshare insured vehicle** received through a **transportation network platform**.

**transportation network platform:** means an online –enabled application or digital network used to connect passengers with drivers for the purpose of providing prearranged transportation services for compensation.

**21. Authorized Agents.** No person shall be deemed an agent of the Company unless such person is authorized in writing as such agent by an officer of the Company.

**LOSS PAYEE.** Loss under this policy shall be payable as interest may appear to the person or organization named in the Declarations as loss payee, provided this insurance as to such interest for any bailment lessor, conditional vendor, mortgagee or assignee of bailment lessor, conditional vendor or mortgagee (herein called the lien holder) has not been invalidated by any act or neglect of the insured owner of the covered automobile nor by any change in the title of ownership of the same. Further, in the event of conversion, embezzlement or secretion by the insured owner of the covered automobile, interest under the said bailment lease, conditional sale, mortgage or other encumbrance is not covered under this policy, unless specifically insured against and premium paid therefor; and provided also, in case the named insured has neglected to pay any premium due under this policy, the lien holder has paid the same. The lien holder shall notify

the Company of any change of ownership or increase of hazard which shall come to the knowledge of said lien holder and, if accepted by the Company, it shall be endorsed herein and the lien holder shall, on demand, pay the premium for any such increased hazard for the term of the use thereof; otherwise this policy shall be null and void.

If this Company elects to cancel this policy at any time as provided by its terms, the Company shall notify the lien holder when not less than ten (10) days thereafter such cancellation shall be effective as to the interest of said lien holder therein and the Company shall have the right, on like notice, to cancel this agreement.

Should the insured fail to render Proof of Loss within the time granted in the conditions of this policy, the lien holder shall do so within sixty (60) days thereafter, in the form and in the manner as provided by this policy; and further, shall be subject to the provisions of this policy relating to appraisal and time of payment and of bringing suit. Whenever the Company shall pay the lien holder any sum for loss under this policy and shall claim that, as to the named insured, no liability therefore existed, the Company shall, to the extent of such payment, be thereupon legally subrogated to all the rights of the party to whom such payment shall be made, under securities held as collateral to the debt, or may at its option, pay to the lien holder the whole principal due or to grow due on the mortgage with interest, and shall thereupon receive a full assignment and transfer of the mortgage and of all such other securities; but no subrogation shall impair the right of the lien holder to recover the full amount of its claim.

These provisions subject to all terms, conditions, protect the interest of the lien holder and exclusions contained in this policy, which policy is available to the lien holder upon request.

IN WITNESS WHEREOF, the Company has caused this policy to be signed by its authorized representatives, but this policy shall not be valid unless completed by the attachment hereto of a Declarations page.



PRESIDENT

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**The Illinois Insurance Codes requires notification of the following addresses:**

Viva Seguros Insurance Company maintains a Toll-Free Customer Service phone line during regular business hours:  
1-855-235-1522.

Illinois Department of Insurance, Consumer Division, 122 S. Michigan Ave., 19th Floor, Chicago, Illinois 60603 and Illinois Department of Insurance 320 West Washington Street, Springfield, Illinois 62767.

In compliance with the requirement of the Fair Credit Reporting Act (Public Law 91-508), we advise that as part of our routine procedure in reviewing applications for insurance or renewals of Insurance policies, this insurance company may procure an investigative consumer report including information as to the consumer's character, general reputation, personal characteristics or mode of living, if such insurance is for an individual and is primarily for personal, family or household purposes such information may, without limitation be obtained through personal interviews with neighbors, friends or others with whom the consumer is acquainted.

Upon written request to this insurance company, made within a reasonable period after receipt of this notice, this company will provide in writing a complete and accurate disclosure of the nature and scope of the investigation requested, if one was requested, or advise that none was requested.

**OPTIONAL PROVISIONS**

**LEGAL EXPENSE REIMBURSEMENT**

This coverage is addition to other coverage under this policy and applies only if a premium for this coverage is shown on the declarations

**Coverage for Legal Expense Reimbursement.** The Company will reimburse the **named insured**, up to \$500.00, for attorney's fees and expenses incurred by the **named insured** for services rendered by an attorney to defend the **named insured** against citations(s) alleging a moving violation of the Illinois Vehicle Code (625 ILCS 5/et..seq.), or any such similar code of a municipality within the State of Illinois, while driving the **owned automobile**. The maximum benefit payable under this coverage is \$500.00 during the policy period stated in the declarations.

**Definitions.** Except as defined herein, the definitions under Part I of the policy apply to this coverage. The following additional definitions apply to this coverage:

**"moving violation"** means any traffic violation committed while an automobile is in motion;

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

**Exclusions.** This coverage does not apply to:

1. any citation alleging violation of the Criminal Code of 1961 (720 ILCS 5/et.seq.), Cannabis Control Act (720 ILCS 550/et.seq.), Illinois Controlled Substances Act (720 ILCS 570/et.seq.), Liquor Control Act of 1934 (234 ILCS 5/et seq.), or Illinois Identification Card Act (15 ILCS 335/et.seq.);
2. any citation alleging a violation other than a moving violation;
3. any citation issued outside the State of Illinois;
4. any citation issued to anyone other than the **named insured**;
5. any citation issued to the **named insured** while not driving his or her **owned automobile**;
6. expenses or fees incurred with an attorney unlicensed to practice law in Illinois;
7. any fine, penalty or assessment payable on a citation;
8. any punitive or exemplary damages payable on a citation or otherwise; or
9. the **named insured's** out-of-pocket expenses regardless of whether incurred by the **named insured** or his or her attorney, including but not limited to, court costs, towing charges, impound fees, travel expenses or any other incidental expenses related to the citation.

**Proof of Loss.** Written proof of loss must be given to the Company within ninety (90) days of the date of the citation(s). Proof of loss must include a copy of the citation(s) and a copy of any bills or invoices incurred by the **named insured** for services rendered by his or her attorney to defend the **named insured** against citation(s) alleging a moving violation while driving an **owned automobile**. Failure to furnish such proof of loss within the time required shall invalidate the coverage provided by this coverage. However, failure to provide copies of bills or invoices for attorney's fees or expenses incurred after proof of loss has been provided hereunder shall not invalidate or reduce this, provided such bills or invoices are furnished as soon as reasonably possible and in no event later than one (1) year from the time proof of loss is initially required to be furnished hereunder. All bills or invoices for attorney's fees and expenses submitted hereunder shall provide an itemization of the attorney's fees and expenses by citation. Following receipt of proof of loss, the Company shall have the right to request additional documentation to support the claim for coverage hereunder.

**Action Against Company.** Notwithstanding anything to the contrary stated in the policy to which this coverage is attached, no action at law or in equity shall be brought to recover under this coverage prior to the expiration of sixty (60) days after written proof of loss has been received by the Company. No such action shall be brought after the expiration of one (1) year after the time proof of loss is initially required to be furnished hereunder, except that the time for bringing such action shall be tolled from the date proof of loss is filed with the Company, in the form required above, until the claim is denied in whole or in part.

**Selection of Attorney.** Notwithstanding the Company's right to select counsel and control the defense of suits against an **insured** as described in Part I of this policy, the Company is not obligated to select and will not select an attorney for the **named insured**

and shall not control the attorney the **named insured** selects for purposes of the coverage described herein. The **named insured** has the right to choose his or her own attorney under the coverage provided herein and the **named insured** shall be solely responsible to choose and retain his or her own attorney. The choice of attorney and the attorney's fees and expenses charged by that attorney shall not expand or enlarge the Company's obligation under this coverage and the **named insured** shall be solely responsible to his or her own attorney for attorney's fees and expenses in excess of the Company's limit of liability under this coverage.

## ACCIDENTAL DEATH COVERAGE

This coverage is addition to other coverage under this policy and applies only if a premium for this coverage is shown on the declarations

**Accidental Death.** This coverage provides indemnity for loss of life resulting from **bodily injury** caused solely by an accident, to the extent herein limited and provided, and in consideration of your payment of the premium, in reliance upon your statements in any application forms relevant hereto (all of which are incorporated herein), and subject to all limits, exclusions, conditions, and other terms of this coverage, the Company does hereby agree to insure the **named insured** against death occurring within ninety (90) days of **Injury** and resulting from **Injury** sustained by the named insured during the policy period applicable hereto, in the amount of \$5,000.00 for the policy period applicable hereto, to the extent herein limited and provided. The maximum benefit payable under this coverage is \$5,000.00 during the policy period stated in the Declarations of the policy to which this coverage is attached or the policy period applicable hereto if this coverage is added after the inception date of said policy regardless of the number of owned automobiles or the number of persons insured hereunder.

“**Injury**” wherever used in this coverage means accidental bodily injuries sustained by the **named insured** which are the direct cause of loss, independent of disease, sustained as a result of operating, driving, or riding in the **named insured’s** owned automobile, or as a result of the burning or exploding of the **named insured’s** owned automobile while this coverage is in force.

This coverage shall be effective during the policy period set forth in the Declarations of the policy to which this coverage is attached or if this coverage is added after the inception date of said policy, coverage shall be effective as of the effective date of the amended Declarations adding this coverage. All periods of insurance begin and end at 12:01 a.m. Standard Time, at the place of residence of the named insured.

**Definitions.** The definitions under Part I of the policy apply to this coverage.

## EXCLUSIONS AND LIMITATIONS

- (A) This coverage shall not cover death caused by **Injury** arising out of the use by any person of an owned automobile without a reasonable belief that the person is entitled to do so.
- (B) This coverage shall not cover death caused by (1) **Injury** arising out of the operation of an owned automobile in any pre-arranged or organized race or speed contest; (2) suicide or any suicide attempt, while sane or insane; (3) war or any act of war, or service in any military, naval or air force of any country; (4) participation in any civil disorder or riot; (5) participation in a crime, attempt to commit a crime, or commission of a crime; or (6) **Injury** sustained while engaging in an illegal occupation.
- (C) This coverage shall not cover death from an **Injury** occurring outside the continental United States.
- (D) This coverage shall not cover death from an **Injury** occurring while the named insured is operating, driving or riding in a non-owned automobile.

## UNIFORM PROVISIONS

**Entire Contract:** This coverage, including any further endorsements and the attached papers, if any, constitutes the entire contract of insurance with respect to the coverage provided hereunder. No change to this coverage shall be valid until approved by an executive officer of the Company and reflected by amended Declarations issued by the Company. No agent has authority to change this coverage or waive any of its provisions.

**Proof of Loss:** Written proof of loss must be given to the Company within ninety (90) days of the named insured’s death. Failure to furnish such proof within the time required shall not invalidate nor reduce any claim if it was not reasonably possible to give proof within such time, provided such proof is furnished as soon as reasonably possible and in no event, except in the case of legal incapacity, later than one year from the time proof is otherwise required. The Company shall have the right, within thirty (30) days of receipt of the written proof of loss, to request additional documentation to support the claim.

Time of Payment of Claims: The Company shall pay claims payable under this coverage within thirty (30) days of receipt of due written proof of loss. If payment is not made within such thirty (30)-day period, the Company shall also pay nine (9%) percent per annum interest from the thirtieth (30<sup>th</sup>) day after receipt of due written proof of loss until payment is made, unless such interest payment is less than One (\$1) Dollar.

Payment of Claims: Claims payable under this policy shall be made to the estate of the named insured. Notwithstanding this, the Company shall have the right to pay, up to One Thousand (\$1,000) Dollars per person, to any relative by blood or connection by marriage to the named insured who the Company deems is equitably entitled to the payment. Any such payment made by the Company in good faith shall fully discharge the Company to the extent of such payment.

Physical Examination and Autopsy: The Company, at its own expense, shall have the right and opportunity to make an autopsy where it is not forbidden by law.

Assignment: The Company will not assume responsibility for determining the validity of an assignment of the named insured's benefits to a provider of services. No such assignment of benefits will be recognized until the Company has received notice of it at its offices.

Legal Actions: No action at law or in equity shall be brought to recover on this coverage prior to the expiration of sixty (60) days after written proof of loss has been furnished in accordance with the requirements of this coverage. No such action shall be brought after the expiration of three years after the time proof of loss is required to be furnished, except that the running of such period shall be 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.

Reimbursement Provision: If a covered person incurs expenses for **Injury** that occurred due to the negligence of a third party, A) we have the right to reimbursement for all benefits we paid from any and all damages collected from the third party for those same expenses whether by action at law, settlement, or compromise, by the covered person, covered person's parents, if the covered person is a minor, or covered person's legal representative as a result of that **Injury**; and B) we are assigned the right to recover from the third party, or his or her insurer, to the extent of the benefits we paid for that **Injury**. We shall have the right to reimbursement out of all funds the covered person, the covered person's parents, if the covered person is a minor, or the covered person's legal representative, is or was able to obtain for the same expenses we have paid as a result of that **Injury**. You are required to furnish any information or assistance or provide any documents that we may reasonably require in order to obtain our rights under this provision. This provision applies whether or not the third party admits liability.