

**18-CV-0529**

Cause No. \_\_\_\_\_

BY THE SEA COUNCIL OF  
CO-OWNERS, INC.

*Plaintiff*

v.

TEXAS WINDSTORM INSURANCE  
ASSOCIATION

*Defendants*

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IN THE DISTRICT COURT OF

GALVESTON COUNTY, TEXAS

**Galveston County - 10th District Court**

\_\_\_\_\_ JUDICIAL DISTRICT

**PLAINTIFF'S ORIGINAL PETITION & JURY DEMAND**

TO THE HONORABLE JUDGE & JURY OF HARRIS COUNTY CITIZENS:

Plaintiff BY THE SEA COUNCIL OF CO-OWNERS, INC. ("By The Sea" or "Plaintiff") file this Original Petition against TEXAS WINDSTORM INSURANCE ASSOCIATION ("TWIA" or "Defendant"), and would respectfully show the following:

**Discovery Control Plan**

1.1 Plaintiff intends to conduct discovery under Level 2 of Texas Rule of Civil Procedure 190.

**Parties**

2.1 Plaintiff, By The Sea, is a domestic nonprofit corporation in good standing with a principal place of business in Galveston County, Texas.

2.2 Upon information and belief Texas Windstorm Insurance Association, is an insurance company engaged in the business of insurance in Texas, operating for the purpose of accumulating monetary profit. TWIA may be served with process by served with process by certified mail, return receipt requested, through its general manager or any other officer or director at, **5700 South MoPac Expressway, Building E, Suite 530, Austin, Texas 78749.**

### **Venue & Jurisdiction**

3.1 Venue is proper in Galveston County under Tex. Civ. Prac. & Rem. Code section 15.002(a)(1) as all or a substantial part of the events or omissions giving rise to this claim occurred in Galveston County. In particular, the adjustment of the claim by Defendant for losses under the policy (including payments to be made to Plaintiff under the policy) were conducted in Galveston County, Texas. Investigations and policy representations, including communications to and from Defendant and Plaintiff (including telephone calls, mailings, and other communications to Plaintiff) occurred in Galveston County, Texas.

3.2 Plaintiff seeks damages within the jurisdictional limits of this Court. At this time, Plaintiff seeks monetary relief in an amount over \$1,000,000. Plaintiff reserves the right to modify the amount and type of relief sought in the future.

### **Factual Background**

4.1 On or before August 26, 2017, TWIA sold a commercial property policy (the “Policy”) to By The Sea whereby TWIA would provide insurance coverage for the property located at 7310 Seawall Blvd., Galveston, Texas 77551 (the “Property”) in exchange for the timely payment of premiums. The Policy was sold by TWIA to By The Sea as the insured under the Policy and provides coverage for damages to the Property caused by a windstorm. The Policy Period was from November 29, 2016 through November 29, 2017. *See* Exhibit “A”.

4.2 On or about August 26, 2017, Hurricane Harvey, recognized as one of the most devastating natural disasters in United States history, made landfall on the Texas coast in San Patricio County and Aransas County as a Category 4 hurricane. Hurricane Harvey continued to travel through the southeast part of Texas, inflicting billions of dollars in damages to private and public property. The Texas Division of Emergency Management incurred more than \$439 million in costs associated

with debris removal, public property damage, and police/EMS response immediately after Harvey. Texas Governor Greg Abbott has estimated that Hurricane Harvey's damages will total an historic \$180 billion.

4.3 As a result, the damaged building components include, among other items, interior damage, exterior damage, damage to lighting, elevators, security cameras, and the roofing system of the Property. Upon discovering the damages, By The Sea filed an insurance claim on August 26, 2017 under the Policy with TWIA for damages to the Property caused by the storm. Plaintiff asked that the cost of repairs be covered pursuant to the Policy.

4.5 Specifically, on September 29, 2017, TWIA's adjuster personally observed substantial wind damage that resulted from the August 26, 2017 storm. TWIA engaged and relied upon BSC Forensics' engineer, Jarrod Burns, who concluded that the damages were not storm related, and instead were a result of long-term, trapped moisture, installation deficiencies, and other excuses. Burns further confirmed that wind from Hurricane Harvey could not be ruled out as a contributing factor.

4.6 Despite clear evidence of covered damage, TWIA engaged in and ratified this improper claims conduct and ultimately approved a gross underpayment of the contractual damages. TWIA instead unreasonably blamed the loss on causes other than wind to avoid contractual responsibilities and to save TWIA in excess of \$1,000,000. Plaintiff cooperated throughout the claim process and even had consultants meticulously point out the extent of the damages covered by the subject policy.

4.7 TWIA chose to ignore obvious damages to the Property. Plaintiff was forced to hire its own representative and demand re-inspections and re-evaluations of the obvious damages to the Property that TWIA ignored.

4.8 TWIA wrongfully denied and delayed Plaintiff's claim for repairs and replacement. Furthermore, TWIA has underestimated damages during their investigation. TWIA has chosen to continue to deny and delay timely payment of the damages. As a result, By The Sea has not been fully paid under the Policy provided by TWIA since the windstorm.

4.9 As a result of Defendant's acts and/or omissions, By The Sea was required to retain an attorney to prosecute its claim for insurance benefits.

4.10 Unfortunately, Defendant has delayed payment for By The Sea's necessary and covered Property damages under its insurance policy. Given the repeated delays of payment, Plaintiff has been subjected to significant economic impact, and physical damage. In addition, Plaintiff has suffered financial harm and damage as a result of Defendant's denials and repeated delays. The significant effect of Defendant's wrongful and unjustified delays, however, is still uncompensated.

#### **FIRST CAUSE OF ACTION—Breach of Contract**

5.1 By The Sea re-alleges and incorporates each allegation contained in Paragraphs 1-4.10 of this Petition as if fully set forth herein.

5.2 TWIA breached the contract of insurance it had with By The Sea, by its failure and/or refusal to adequately pay the claim as it is obligated to do under the terms of the Policy in question and under the laws in the State of Texas. Plaintiff was damaged by TWIA's breach of contract.

#### **SECOND CAUSE OF ACTION—Texas Insurance Code §2210.575-6**

6.1 By The Sea re-alleges and incorporates each allegation contained in Paragraphs 1-5.2 of this Petition as if fully set forth herein.

6.2 TWIA mishandled Plaintiff's claim to their detriment by intentionally: (1) failing to meet the deadlines or timelines established under subchapter L-1 of Chapter 2210 of the Texas Insurance

Code without good cause, including the applicable deadline established by Section 2210.5731 for payment of an accepted claim or the accepted portion of a claim; (2) disregarding applicable guidelines published by the Texas Commissioner of Insurance under Section 2210.578(f); (3) failing to provide the notice required under Section 2210.573(d); (4) rejecting the claim without conducting a reasonable investigation with respect to the claim; and (5) denying coverage for the claim in part or in full when TWIA's liability had become reasonably clear as a result of TWIA's investigation with respect to the portion of the claim that was denied.

6.3 In addition to covered losses under the Policy and consequential damages resulting from the above conduct, Plaintiff is entitled to additional damages not to exceed the aggregated amount of the covered loss under the policy (minus amounts already paid) plus consequential damages, pursuant to Section 2210.576(d) of the Texas Insurance Code.

#### **CONDITIONS PRECEDENT**

7.1 All conditions precedent to Plaintiff's right to recover have been fully performed or have been waived by TWIA.

#### **ATTORNEY'S FEES**

8.1 Plaintiff engaged the undersigned attorneys to prosecute this lawsuit against TWIA and agreed to pay reasonable attorney's fees and expenses through trial and any appeal.

8.2 Plaintiff is entitled to reasonable and necessary attorney's fees pursuant to TEX. CIV. PRAC. & REM. CODE 38.001-38.003 because they are represented by an attorney, presented the claim to TWIA, and TWIA did not tender the just amount owed before the expiration of the thirtieth day after the claim was presented.

8.3 Plaintiff further prays that they be awarded all reasonable attorney's fees incurred in prosecuting their causes of action through trial and any appeal pursuant to Section 2210.576 of the

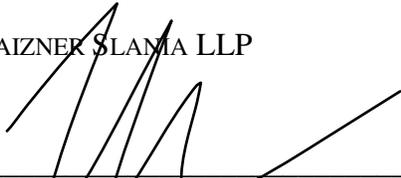
Texas Insurance Code.

**PRAYER**

WHEREFORE, PREMISES CONSIDERED, Plaintiff respectfully request that this Court cite Defendant to appear and answer herein and that Plaintiff has judgment taken against Defendant and recovers from Defendant all damages allowed by law, including consequential damages, and that Plaintiff be awarded attorneys' fees for trial and any appeal of this case, for pre-judgment and post judgment interest as allowed by law, costs of court, and such other and further relief, both general and special, at law or in equity, to which Plaintiff is justly entitled.

Respectfully submitted,

RAIZNER SLANIA LLP



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JEFFREY L. RAIZNER

State Bar No. 00784806

ANDREW P. SLANIA

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[efile@raiznerlaw.com](mailto:efile@raiznerlaw.com)

-and-

THE LAW OFFICES OF A. CRAIG EILAND, PC

A. CRAIG EILAND

State Bar No. 06502380

1220 Colorado Street, Suite 300

Austin, Texas 78701

Phone: 409-763-3260

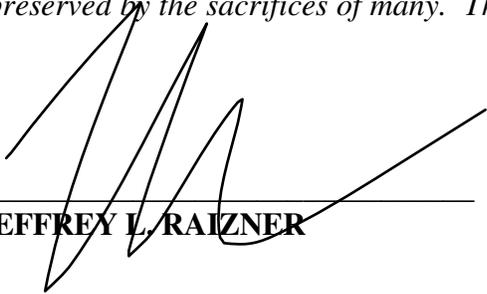
Fax: 713-513-5211

[ceiland@eilandlaw.com](mailto:ceiland@eilandlaw.com)

**ATTORNEYS FOR PLAINTIFF**

**JURY DEMAND**

*Plaintiff hereby demands a trial by jury, a right enshrined in the Constitution of the United States of America and the State of Texas and preserved by the sacrifices of many. The necessary jury fee has been paid.*



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**JEFFREY L. RAIZNER**

### IMPORTANT NOTICE FOR INSUREDS

Your Texas Windstorm Insurance Association (TWIA) policy covers direct physical loss to the covered property caused by windstorm or hail unless the loss is excluded in the Exclusions. In case of a loss, note the following:

If a windstorm or hail loss occurs immediately notify your agent:

- TWIA does not have insurance agents. Your insurance agent acts only on your behalf and has no right to act or speak on behalf of TWIA.
- Once your agent has filed your claim with TWIA, we will assign your claim to an independent claim-adjusting firm in your area.
- TWIA will send you a letter acknowledging your claim and give you the name of the adjusting firm.
- The adjuster will call you for an appointment to inspect the damaged property.
- If you have any questions before an adjuster has contacted you, contact the assigned adjusting firm.

TEMPORARY REPAIRS

Please make temporary repairs and dry-out/protect your property as quickly as possible after a loss to prevent further damage. Do not make permanent repairs, such as a roof replacement or asphalt patches until the adjuster has made an inspection. The adjuster needs to be able to see the damage and determine if it is from windstorm or hail.

Before tearing out, removing or covering over damaged property or debris, take pictures or videotapes if possible. Keep any damaged property until the adjuster sees it and approves of disposal.

Cover openings with a tarp or plastic to prevent additional water damage, and dry out water damaged/wet areas immediately.

If your loss is covered by the policy, reasonable costs for temporary repairs are covered, so be sure to keep invoices and receipts.

You must provide the adjuster with the following information and documentation:

- Proof of Loss: Within 91 days after the date of TWIA's claim acknowledgment, unless we extend the time in writing, you must submit a signed, sworn Proof of Loss form. The TWIA adjuster will provide you with this form.
- Inventory: If coverage is provided on your personal property (Dwelling policy) or Business Personal Property (Commercial policy), you must provide a detailed inventory of all damaged or destroyed personal property. Include a description and age of each item, their cost at the time of purchase and their estimated replacement cost today. Again, document with photos if necessary.
- Documentation: Provide information and documentation relating to the damage you claim or any other insurance claims you have made relating to the damage. This includes reports, estimates, invoices, receipts, photos, and videos.
- Other Claims: Provide information and documentation concerning any other water damage, structural damage and repairs you have had, whether due to plumbing leaks, flood, air-conditioning system leaks, foundation settlement, or other sources.

The adjuster will report their findings to TWIA with their recommendations.

- The final decision on your claim will be made by TWIA.
- If you are due a payment for your loss, a check will be issued and sent to you.

To qualify for insurance through TWIA, most permanent repairs must be inspected by a Texas Department of Insurance (TDI) inspector or by a Texas licensed professional engineer. The TDI inspection must verify compliance



with the building codes. The TDI inspector (or engineer) must inspect during the repair/replacement process and will issue a **WPI-8 certificate** when repairs are completed and meet the windstorm code. Please call your county's local Windstorm Inspection Office to make an appointment prior to beginning the repairs, but after materials are delivered to the work site and the work has been scheduled. You can call 1-800-248-6032 or 512-322-2203 for more details and information about the inspection process or you can go to the TDI website at [www.tdi.state.tx.us/](http://www.tdi.state.tx.us/). Additional information regarding the Windstorm Inspection Program can be found there.

If you disagree with a decision on your loss, please advise and discuss with the adjuster and submit any additional information and documents you have that support your claim. You may appeal any act, ruling or decision made by TWIA by filing a complaint with the commissioner of insurance not later than the 30<sup>th</sup> day after the date of that act, ruling, or decision. A hearing, if requested, will be held in the county in which the insured property is located or in Travis County, whichever you choose. In addition, you may bring an action against the association in the county where your covered property is located or in a district court in Travis County. A person may not proceed under both remedies for the same act, ruling, or decision. (Refer to the Dispute Resolution section of your policy for more details.)

**NOTE:** This page is not a part of your policy and is not intended to be a complete description of all your rights and responsibilities under your policy. Refer to the provision "Duties After Loss" under the CONDITIONS section in your policy for specific policy requirements. This page is not intended to address every provision in your policy.



**COMMERCIAL DECLARATIONS PAGE**

**Texas Windstorm Insurance Association  
P.O. Box 99090 Austin, Texas 78709-9090**

**Policy Number:** 58390609

**Policy Period:** Nov 29, 2016 to Nov 29, 2017

**Eff. date chg'd due to renewal  
premium received by company late**

12:01 A.M. Standard Time at the property location

**Name and Mailing Address of Agent:**  
Brady Chapman Holland & Associates Inc  
10055 West Gulf Bank  
Houston, TX 77040

**Name and Mailing Address of Insured:**  
By The Sea Council of Co-owners  
7310 Seawall Blvd.  
Galveston, TX 77551

**Early cancellation may result in approximately 25% of your premium being retained by Texas Windstorm Insurance Association.**

**This policy will be subject to an immediate surcharge if determined necessary by the Texas Insurance Commissioner. Failure to pay the surcharge will result in cancellation of the policy.**

**Insured:** By The Sea Council of Co-owners

**COVERAGES - Windstorm and Hail Only**

In consideration of the stipulations and conditions herein or added hereto which are made a part of this policy, and of the premiums provided, T.W.I.A. does insure the insured named above and legal representatives FROM the inception date shown above TO the expiration date shown above at 12:01 A.M. Standard Time at the location of property against direct loss resulting from the perils of Windstorm and Hail only which have a premium inserted opposite thereto and only on the property described and located as provided hereon.

Item No.	Coverage A/B	Property and Form Description	Coins %	Per Item/Per Occ Deductible % Amt	Form Number	Limit of Liability	Premium
1	A	<i>Property Description:</i> Condominium 7310 Seawall Blvd, Galveston, Galveston County, TX, 77551  <i>Underwriting Details:</i> Stories: 12, Roof: Composition, Construction: WR, Occupancy: Condominium  Increased Cost in Construction Form (10%) Item #1 Forms: 164 280 282 432 801	wvd	1% \$42820		\$4,282,000	\$22,579.00
					432		\$2,619.00
2	B	<i>Business Personal Property located in item 1</i> Item #2 Forms: 164	80	1% \$1000*		\$100,000	\$334.00
3	A	<i>Property Description:</i> Cabana #1 7310 Seawall Blvd, Galveston, Galveston County, TX, 77551  <i>Underwriting Details:</i> Stories: 1, Roof: Composition, Construction: Frame, Occupancy: Cabana #1  Increased Cost in Construction Form (10%) Item #3 Forms: 164 432 801	100	1% \$1000*		\$21,000	\$155.00
					432		\$18.00
<b>Total Limit / Total Premium:</b>						<b>\$4,424,000</b>	<b>\$25,878.00</b>
<b>Total ICC Premium:</b>						2,655.00	
<b>Total Surcharges:</b>							\$0.00
<b>Total Premium + Total Surcharges:</b>							<b>\$25,878.00</b>

**Original  
Part 1, Page 1 of 2**

(This Policy contains two parts. To be valid, both parts must be combined and the policy countersigned by the Texas Windstorm Insurance Association.)

01219531

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**EXHIBIT "A"**

**COVERAGES - Windstorm and Hail Only**

Attached to and forming part of Policy Number 58390609

In consideration of the stipulations and conditions herein or added hereto which are made a part of this policy, and of the premiums provided, T.W.I.A. does insure the insured named above and legal representatives FROM the inception date shown above TO the expiration date shown above at 12:01 A.M. Standard Time at the location of property against direct loss resulting from the perils of Windstorm and Hail only which have a premium inserted opposite thereto and only on the property described and located as provided hereon.

Item No.	Coverage A/B	Property and Form Description	Coins %	Per Item/Per Occ Deductible % Amt	Form Number	Limit of Liability	Premium
4	A	<p><i>Property Description:</i> Cabana #2 7310 Seawall Blvd, Galveston, Galveston County, TX, 77551</p> <p><i>Underwriting Details:</i> Stories: 1, Roof: Composition, Construction: Frame, Occupancy: Cabana #2</p>	100	1% \$1000*		\$21,000	\$155.00
		<p>Increased Cost in Construction Form (10%)</p> <p>Item #4 Forms: 164 432 801</p>			432		\$18.00
----- End of Items Schedule -----							
* Effective August 1, 2007, the minimum deductible amount allowed for any insured Commercial Item is \$1000							

Original  
Part 1, Page 2 of 2

(This Policy contains two parts. To be valid, both parts must be combined and the policy countersigned by the Texas Windstorm Insurance Association.)

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EXHIBIT "A"

TEXAS WINDSTORM INSURANCE ASSOCIATION  
Windstorm and Hail

CONDOMINIUM PROPERTY FORM  
ADDITIONAL POLICY PROVISIONS

Attached to and forming part of Policy No. 58390609 of the Texas Windstorm Insurance Association issued at its Austin, Texas agency.

Dated: 12/4/2016

John Polak, Agents

Items: 1

This policy is amended as follows:

Covered Property

BUILDING(S), when designated by an "X" in the box(es)  of this endorsement, will also include:

1. Fixtures, installations or additions comprising a part of the building within the unfinished interior surfaces of the perimeter walls, floors and ceilings of individual condominium units initially installed, or replacements thereof, in accordance with the original condominium plans and specifications.

2. Fixtures, installations or additions comprising a part of the building within the unfinished interior surfaces of the perimeter walls, floors and ceilings of individual condominium units initially installed, or replacements thereof, in accordance with the original condominium plans and specifications, or installed by or at the expense of the Unit Owners.

Prescribed by the Texas Department of Insurance  
Form No. TWIA-282 - Condominium Property Form - Additional Policy Provisions  
Effective: June 15, 1999

01219531



# Texas Windstorm Insurance Association

Windstorm and Hail

## Amendatory Endorsement

**COVERAGES, PROPERTY NOT COVERED is amended to add storm doors as follows:**

1. **Unless specifically described in the Declarations, we do not cover:**
  - a. Animals;
  - b. Motor or engine propelled vehicles or machine designed for movement on land, including attached machinery or equipment. However, we do cover such vehicles which are not subject to motor vehicle registration, while located in a fully enclosed building, and are:
    - (1) Devices and equipment for assisting the handicapped;
    - (2) Lawn and garden equipment not exceeding 18 horsepower;
    - (3) Golf carts;
    - (4) Vehicles or machines use for recreational purposes while located on the described location;
    - (5) Fork lifts.
  - c. Aircraft meaning any device used or designed for flight, except model or hobby aircraft not used or designed to carry people or cargo;
  - d. Watercraft, including outboard motors and furnishings or equipment. However, we do cover watercraft, including outboard motors and furnishings or equipment, while located on land, in a fully enclosed building, on the described location;
  - e. Wharves, docks, piers, boathouses, bulkheads or other structures located over or partially over water and the property in or on it;
  - f. Radio or television towers, antennas and satellite signal receiving equipment, windmills, wind chargers, and outside erected signs;
  - g. Metal smokestacks, except when securely fastened to walls of a masonry building;
  - h. Greenhouses and cloth awnings;
  - i. Metal screen enclosures and their contents;
  - j. Manuscripts, bullion, records and books of records (except for their physical value in the blank);
  - k. Customers goods in laundries, cleaning, or pressing establishments;
  - l. Storm doors.

Endorsement No: TWIA 801 - Amendatory Endorsement (Commercial Policy)  
Effective: 4/1/2016

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EXHIBIT "A"

## COMMERCIAL DECLARATIONS PAGE

**Texas Windstorm Insurance Association**  
**P.O. Box 99090 Austin, Texas 78709-9090**

**Policy Number:** 58390609

**Policy Period:** Nov 29, 2016 to Nov 29, 2017

12:01 A.M. Standard Time at the property location

**Name and Mailing Address of Agent:**

Brady Chapman Holland & Associates Inc  
 10055 West Gulf Bank  
 Houston, TX 77040

**Early cancellation may result in approximately 25% of your premium being retained by Texas Windstorm Insurance Association.**

**This policy will be subject to an immediate surcharge if determined necessary by the Texas Insurance Commissioner. Failure to pay the surcharge will result in cancellation of the policy.**

**Insured:** By The Sea Council of Co-owners

**COVERAGES - Windstorm and Hail Only**

In consideration of the stipulations and conditions herein or added hereto which are made a part of this policy, and of the premiums provided, T.W.I.A. does insure the insured named above and legal representatives FROM the inception date shown above TO the expiration date shown above at 12:01 A.M. Standard Time at the location of property against direct loss resulting from the perils of Windstorm and Hail only which have a premium inserted opposite thereto and only on the property described and located as provided hereon.

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3	A	<i>Property Description:</i> Cabana #1 7310 Seawall Blvd, Galveston, Galveston County, TX, 77551  <i>Underwriting Details:</i> Stories: 1, Roof: Composition, Construction: Frame, Occupancy: Cabana #1  Increased Cost in Construction Form (10%) Item #3 Forms: 164 432 801	100	1% \$1000*		\$21,000	\$155.00
					432		\$18.00

**Total Limit / Total Premium: \$4,424,000 \$25,878.00**

**Total ICC Premium: 2,655.00**

**Total Surcharges: \$0.00**

**Total Premium + Total Surcharges: \$25,878.00**

**Memorandum of Insurance - Not a Policy**

This is furnished simply as a memorandum of said policy as it stands at the date of issue hereof and is given as a matter of information only and confers no rights on the holder and imposes no liability upon this Association.



**COVERAGES - Windstorm and Hail Only**

Attached to and forming part of Policy Number 58390609

In consideration of the stipulations and conditions herein or added hereto which are made a part of this policy, and of the premiums provided, T.W.I.A. does insure the insured named above and legal representatives FROM the inception date shown above TO the expiration date shown above at 12:01 A.M. Standard Time at the location of property against direct loss resulting from the perils of Windstorm and Hail only which have a premium inserted opposite thereto and only on the property described and located as provided hereon.

Item No.	Coverage A/B	Property and Form Description	Coins %	Per Item/Per Occ Deductible % Amt	Form Number	Limit of Liability	Premium
4	A	<p><i>Property Description: Cabana #2</i>                      7310 Seawall Blvd, Galveston, Galveston County, TX, 77551</p> <p><i>Underwriting Details:</i>                      Stories: 1, Roof: Composition, Construction: Frame, Occupancy: Cabana #2</p>	100	1% \$1000*		\$21,000	\$155.00
		<p>Increased Cost in Construction Form (10%)                      Item #4 Forms: 164 432 801</p>			432		\$18.00
----- End of Items Schedule ----- * Effective August 1, 2007, the minimum deductible amount allowed for any insured Commercial Item is \$1000							

**Memorandum of Insurance - Not a Policy**

This is furnished simply as a memorandum of said policy as it stands at the date of issue hereof and is given as a matter of information only and confers no rights on the holder and imposes no liability upon this Association.





Texas Windstorm  
Insurance Association

## IMPORTANT NOTICE OF CONTRACT CHANGE TWIA POLICY

An **Amendatory Endorsement** is being added to all TWIA Dwelling and Commercial Policies. This Amendatory Endorsement changes the **COVERAGES** section, **PROPERTY NOT COVERED**. Unless specifically described in the Declarations, "Storm Doors" are not covered by the TWIA policy.

To be eligible for coverage, the storm door must meet building code requirements as outlined in the Texas Insurance Code Chapter 2210, Texas Administrative Code and TWIA Plan of Operation.

## NOTIFICACIÓN IMPORTANTE DE CAMBIO DE CONTRATO PÓLIZA DE TWIA

Se está agregando una **reforma enmendatoria** a todas las pólizas residenciales y comerciales de TWIA. Esta reforma enmendatoria cambia la sección de las **COBERTURAS**, de la **PROPIEDAD NO CUBIERTA**. A menos que haya sido descrito específicamente en las declaraciones, las "Puertas contra tormentas" no están cubiertas bajo la póliza de TWIA.

Para ser elegible para la cobertura, la puerta contra tormentas debe cumplir con los requerimientos del código de construcción según lo indica el Capítulo 2210 del Código de seguros del estado de Texas (Texas Insurance Code Chapter 2210) y el Plan de operaciones de TWIA.



## **Texas Windstorm Insurance Association**

5700 South MoPac Expressway, Building A, Austin, Texas 78749  
P.O. Box 99090, Austin, Texas 78709-9090  
1-800-788-8247 / Fax 512-899-4950

### **TWIA COMMERCIAL POLICY WINDSTORM AND HAIL**

**THIS POLICY JACKET WITH THE COMMON DECLARATIONS PAGE, COVERAGE PARTS, AND ENDORSEMENTS, IF ANY, ISSUED TO FORM A PART THEREOF, COMPLETES THIS POLICY.**

THIS POLICY DOES NOT PROVIDE FLOOD OR WAVE WASH COVERAGE. CONSULT YOUR AGENT FOR AVAILABILITY OF FLOOD COVERAGE.

Ed Date 08/2016



## IMPORTANT NOTICE

To obtain information or make a complaint:

You may call Texas Windstorm Insurance Association's toll-free telephone number for information or to make a complaint at

**1-800-788-8247**

You may contact the Texas Department of Insurance to obtain information on companies, coverages, rights or complaints at

**1-800-252-3439**

You may write the Texas Department of Insurance

P.O. Box 149104  
Austin, TX 78714-9104  
FAX # (512) 475-1771  
Web: <http://www.tdi.texas.gov>  
E-mail: [ConsumerProtection@tdi.texas.gov](mailto:ConsumerProtection@tdi.texas.gov)

To obtain price and policy form comparisons and other information relating to residential property insurance and personal automobile insurance, you may visit the Texas Department of Insurance/Office of Public Insurance Counsel website:

[www.helpinsure.com](http://www.helpinsure.com)

## PREMIUM OR CLAIM DISPUTES:

Should you have a dispute concerning your premium or about a claim you should contact the agent or the company first. If the dispute is not resolved, you may contact the Texas Department of Insurance.

## ATTACH THIS NOTICE TO YOUR POLICY:

This notice is for information only and does not become a part or condition of the attached document.

## OMBUDSMAN FOR POLICYHOLDERS:

The Texas Department of Insurance has established the Coastal Outreach and Assistance Services Team (COAST) Program to assist consumers with understanding the TWIA claim process. To obtain assistance from the COAST Program, please refer to the COAST Program website at [www.tdi.texas.gov/Consumer/COAST](http://www.tdi.texas.gov/Consumer/COAST); email [ConsumerProtection@tdi.state.tx.us](mailto:ConsumerProtection@tdi.state.tx.us); call toll-free 1-855-352-6278; or write to COAST Program – MC 111-1A, Texas Department of Insurance, P.O. Box 149104, Austin, TX 78714-9104.

## AVISO IMPORTANTE

Para obtener informacion o para someter una queja:

Usted pueda llamar al numero de telefono gratis de Texas Windstorm Insurance Association para informacion o para someter una queja al

**1-800-788-8247**

Pueda comunicarse con el Departamento de Seguros de Texas para obtener informacion acerca de companias, coberturas, derechos o quejas al

**1-800-252-3439**

Pueda escribir al Departamento de Seguros de Texas

P.O. Box 149104  
Austin, TX 78714-9104  
FAX # (512) 475-1771  
Web: <http://www.tdi.texas.gov>  
E-mail: [ConsumerProtection@tdi.texas.gov](mailto:ConsumerProtection@tdi.texas.gov)

Para obtener formas de comparación de precios y póliza y otra información acerca del seguro de propiedad residencial y del seguro de automóvil, visite el sitio web del Departamento de Seguros de Texas y la Oficina del Asesor Público de Seguros:

[www.helpinsure.com](http://www.helpinsure.com)

## DISPUTAS SOBRE PRIMAS O RECLAMOS:

Si tiene una disputa concerniente a su prima o a un reclamo, debe comunicarse con el agente o la compania primero. Si no se resuelve la disputa, pueda entonces comunicarse con el departamento (TDI).

## UNA ESTE AVISO A SU POLIZA:

Este aviso es solo para proposito de informacion y no se convierte en parte o condicion del documento adjunto.

## DEFENSOR DEL PUEBLO PARA LOS ASEGURADOS:

El Departamento de Seguros de Texas ha establecido el Programa de Alcance Comunitario y Servicios de Asistencia para el Área Costera (Coastal Outreach and Assistance Services Team (COAST) Program, por su nombre y siglas en inglés) para ayudar a los consumidores a entender el proceso de las reclamaciones de TWIA. Para obtener ayuda del Programa COAST, visite el sitio Web del Programa COAST en [www.tdi.texas.gov/Consumer/COAST](http://www.tdi.texas.gov/Consumer/COAST); por medio de correo electrónico a [ConsumerProtection@tdi.state.tx.us](mailto:ConsumerProtection@tdi.state.tx.us); o llame gratis al 1-855-352-6278; o escriba al Programa COAST – MC 111-1A, Texas Department of Insurance, P.O. Box 149104, Austin, TX 78714-9104.

# TEXAS WINDSTORM INSURANCE ASSOCIATION

## IMPORTANT NOTICE REGARDING RESOLUTION OF DISPUTES

YOUR ACCESS TO JUDICIAL REVIEW OF OUR DECISIONS UNDER THIS POLICY IS LIMITED BY STATUTE. DISPUTES UNDER THIS POLICY MUST BE RESOLVED THROUGH DISPUTE RESOLUTION PROCEDURES STIPULATED IN THE POLICY CONDITIONS AND THE TEXAS WINDSTORM INSURANCE ASSOCIATION ACT, CHAPTER 2210, TEXAS INSURANCE CODE.

### DISPUTES REGARDING ACCEPTED CLAIMS:

If we accept coverage for the claim in full or part, and you dispute the amount of loss, you must demand appraisal no later than the 60<sup>th</sup> day after the date you receive notice of our decision regarding your claim, or request a 30-day extension not later than the 75<sup>th</sup> day after you receive notice of our decision regarding your claim. Otherwise, you waive the right to contest our determination of the amount of loss that we will pay.

An appraisal decision is binding on you and us as to the amount of loss we will pay for a fully accepted claim or the accepted portion of a partially accepted claim. You may file a lawsuit not later than two years after the date of the appraisal decision to vacate an appraisal decision and begin a new appraisal process. Otherwise, you may not bring a lawsuit against us with reference to a claim for which we have accepted coverage in full.

The processes, deadlines, and binding effect of appraisal are further described in policy Condition 11.

### DISPUTES REGARDING DENIED CLAIMS:

If we deny coverage for the claim in full or part, and you dispute that determination, you must provide us with notice, not later than two years after the date on which you receive notice of our decision regarding your claim, that you intend to bring a lawsuit concerning denial of the claim. Otherwise, you waive the right to contest our denial of the claim, and you are barred from bringing a lawsuit concerning denial of coverage.

We must request alternative dispute resolution (including mediation) not later than the 60<sup>th</sup> day after we receive your notice of intent to bring a lawsuit. Alternative dispute resolution must be completed not later than the 60<sup>th</sup> day after we request alternative dispute resolution, unless the period is extended by mutual agreement or by a rule of the commissioner of insurance. If alternative dispute resolution is not completed or you are not satisfied after alternative dispute resolution, you may bring a lawsuit in a district court not later than two years after the date on which you receive notice of our decision regarding your claim. The only issues you may raise in a lawsuit against us are (1) whether our denial of coverage was proper, and (2) the amount of damages permitted under the Texas Windstorm Insurance Association Act, Section 2210.576(b), Texas Insurance Code.

The requirements for notice of intent to bring a lawsuit, alternative dispute resolution, and filing a lawsuit against us are described in policy Condition 12.

### OMBUDSMAN FOR POLICYHOLDERS:

The Texas Department of Insurance has established the Coastal Outreach and Assistance Services Team (COAST) Program to assist consumers with understanding the TWIA claim process. To obtain assistance from the COAST Program, please refer to the COAST Program website at [www.tdi.texas.gov/Consumer/COAST](http://www.tdi.texas.gov/Consumer/COAST); email [ConsumerProtection@tdi.state.tx.us](mailto:ConsumerProtection@tdi.state.tx.us); call toll-free 1-855-352-6278; or write to COAST Program – MC 111-1A, Texas Department of Insurance, P.O. Box 149104, Austin, TX 78714-9104.

This notice is for information only and does not become a part or condition of the insurance policy.



**TEXAS WINDSTORM INSURANCE ASSOCIATION  
COMMERCIAL POLICY  
WINDSTORM AND HAIL**

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## Texas Windstorm Insurance Association - Commercial Policy Windstorm and Hail

Various provisions in this policy restrict coverage. Read the entire policy carefully to determine rights, duties and what is and is not covered.

Throughout this policy, the words "we", "us", and "our" refer to the Texas Windstorm Insurance Association. "You" and "your" refer to the named insured shown in the Declarations.

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### AGREEMENT

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We will provide the insurance described in this policy in return for the premium and compliance with all applicable provisions of this policy.

#### Premium Surcharge:

The Texas Insurance Commissioner has the authority to determine that a premium surcharge is necessary to pay public securities issued on behalf of TWIA policyholders and to require you to pay this surcharge. This policy will immediately be subject to any non-refundable premium surcharge determined by the Commissioner and implemented by us.

If a surcharge is implemented, we will notify you in writing and include in the notice the amount you must pay. Payment of the surcharge will then be due 120 days after you receive the notice from us. Failure to pay the surcharge by the deadline will result in cancellation of the policy.

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### COVERAGES

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#### COVERED PROPERTY

Covered property, as used in this policy, means the following types of property for which a limit of liability is shown in the Declarations.

#### COVERAGE A (Building)

##### We cover:

1. Building or structure, meaning everything which is legally part of the building or structure described in the Declarations, unless listed in the PROPERTY NOT COVERED section of the policy. However, we do not cover machinery which is not used solely in the service of the building.
2. Personal property owned by you that is used for the service of and located on the described

Page 1

location, including:

- a. Fire extinguishing equipment;
- b. Maintenance equipment and supplies;
- c. Floor coverings;
- d. Window shades;
- e. Furnishings of corridors and stairs; and
- f. Appliances used for refrigerating, ventilating, cooking, dishwashing or laundry.

However, you are covered for these items as building landlord, but not if you are a tenant or occupant.

3. Materials and supplies located on or next to the described location used to construct, alter or repair the building or other structures on the described location. The total limit of liability for this coverage is 10% of the Coverage A (Building) limit of liability. This is not additional insurance and does not increase the Coverage A (Building) limit of liability.
4. At your option, 10% of the limit of liability applying to your boarding, rooming, fraternity or sorority houses or apartment buildings (containing 8 or less separate apartments) may be extended as excess insurance to:
  - a. Fences
  - b. Drives
  - c. Walks
  - d. Outdoor Fixtures
  - e. Garages, employee's quarters and other outbuildings used in connection with any such building.

This extension does not apply to structures over or partially over water. This is not additional insurance and does not increase the limit of liability.

#### COVERAGE B (Business Personal Property)

##### We cover:

Business personal property located in or on the building described in the Declarations, or in the open on the described location, or in a vehicle or railroad car located within 100 feet of the described building, consisting of the following unless otherwise specified in the Declarations:



1. Furniture and fixtures;
2. Machinery and Equipment;
3. Stock, meaning merchandise held in storage or for sale, raw materials, and goods in process or finished, including supplies used in their packing or shipping;
4. All other personal property owned by you;
5. Personal property of others for which you are legally liable, that is:
  - a. Sold but not delivered;
  - b. Held in trust, on consignment, for storage, or;
  - c. Held for repairs.
6. Personal property of your officers, partners or employees, if not otherwise insured. Loss or damage to the covered property will be adjusted and made payable to you.
7. Labor, materials or services furnished or arranged by you on personal property of others;
8. Your use interest as tenant in improvements and betterments. Improvements and betterments are fixtures, alterations, installations or additions:
  - a. Made a part of the building or structure you occupy but do not own; and
  - b. You acquired or made at your expense but cannot legally remove.
9. Your interest as unit owner in improvements and betterments made to a condominium. Improvements and betterments are fixtures, alterations, installations or additions which are part of:
  - a. The building and contained within the unfinished interior surfaces of the perimeter walls, floors, and ceilings; and
  - b. The exterior surfaces of balconies and terraces.

However, we do not cover property in or on the described location which is defined in the condominium's declarations or by-laws as a common element.

#### **PROPERTY NOT COVERED**

1. Unless specifically described in the Declarations, we do not cover:
  - a. Animals;
  - b. Motor or engine propelled vehicles or machines designed for movement on land, including attached machinery or equipment. However, we do cover such vehicles which are not subject to motor vehicle registration, while

located in a fully enclosed building, and are:

- (1) Devices and equipment for assisting the handicapped;
  - (2) Lawn and garden equipment not exceeding 18 horsepower;
  - (3) Golf carts;
  - (4) Vehicles or machines used for recreational purposes while located on the described location;
  - (5) Fork Lifts.
- c. Aircraft, meaning any device used or designed for flight, except model or hobby aircraft not used or designed to carry people or cargo.
  - d. Watercraft, including outboard motors and furnishings or equipment. However, we do cover watercraft, including outboard motors and furnishings or equipment, while located on land, in a fully enclosed building, on the described location.
  - e. Wharves, docks, piers, boathouses, bulkheads or other structures located over or partially over water and the property in or on it;
  - f. Radio or television towers, antennas and satellite signal receiving equipment, windmills, wind chargers, and outside erected signs;
  - g. Metal smokestacks, except when securely fastened to walls of a masonry building;
  - h. Greenhouses and cloth awnings;
  - i. Metal screen enclosures and their contents;
  - j. Manuscripts, bullion, records and books of records (except for their physical value in blank);
  - k. Customers' goods in laundries, cleaning, or pressing establishments.
2. **We do not cover:**
    - a. Accounts, currency, deeds, or other evidences of debt, money, or securities.
    - b. Wind turbines
    - c. Breakaway walls, or business personal property contained within a breakaway wall enclosure. Breakaway wall means a wall that is not a part of the structural support of the building and is intended through its design and construction to collapse under specific lateral loading forces, without causing

damage to the elevated portion of the building or supporting foundation systems.

- d. Property that is covered under another coverage form of this or any other policy in which it is more specifically described, except for the excess of the amount due from the other insurance.

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#### EXTENSIONS OF COVERAGE

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1. Debris Removal.

We will pay your expenses to remove debris of covered property caused by or resulting from windstorm or hail that occurs during the policy period. However, we will not pay more than the amount of insurance, nor such proportion of such expense as the amount of insurance bears to the total amount of all insurance, whether such insurance includes this clause or not. This does not increase the limit of liability that applies to the damaged property.

2. Preservation of Property.

If it is necessary to move covered property from the described premises to preserve it from loss or damage by windstorm or hail, we will pay for the expense and any direct physical loss or damage to that property:

- a. While it is being moved or while temporarily stored at another location; and
- b. Only if the loss or damage occurs within 30 days after the property is first moved.

This does not increase the limit of liability that applies to the damaged property.

3. Reasonable Repairs.

If property is damaged by windstorm or hail, we will pay the reasonable cost you incur for necessary repairs made solely to protect covered property from future damage. This coverage does not increase the limit of liability that applies to the property being repaired.

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#### COVERED CAUSES OF LOSS

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We insure for direct physical loss to the covered property caused by windstorm or hail unless the loss is excluded in the Exclusions.

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#### EXCLUSIONS

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The following exclusions apply to loss to covered property:

1. Flood.

We will not pay under any and all circumstances for loss or damage caused by or resulting from flood, surface water, waves, storm surge, tides, tidal water, tidal waves, tsunami, seiche, overflow of streams or other bodies of water, or spray from any of these, all whether driven by wind or not.

2. Governmental Action.

We will not pay for loss or damage caused by or resulting from seizure or destruction of property by order of governmental authority.

3. War.

We will not pay for loss or damage caused by or resulting from:

- a. War, including undeclared or civil war;
- b. Warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or
- c. Insurrection, rebellion, revolution, usurped power or action taken by governmental authority in hindering or defending against any of these.

4. Nuclear Hazard.

We will not pay for loss or damage resulting from nuclear reaction or radiation, or radioactive contamination, however caused.

5. Power Failure.

We will not pay for loss or damage resulting from the failure of power or other utility service supplied to the described premises, if the failure occurs away from the described premises. However, we will pay for loss resulting from physical damage to power, heating or cooling equipment located on the described premises if caused by windstorm or hail.

6. Rain.

We will not pay for loss or damage caused by or resulting from rain, whether driven by wind or not, unless wind or hail first makes an opening in the walls or roof of the described building. Then we will only pay for loss to the interior of the



building, or the insured property within, caused immediately by rain entering through such openings.

7. Electricity.

We will not pay for loss or damage to electrical devices or wiring caused by electricity resulting from artificial causes.

8. Ordinance or Law.

We will not pay for loss or damage caused directly or indirectly by the enforcement of any ordinance or law:

- a. Regulating the construction or repair of any property; or
- b. Requiring the demolition of any property, including the cost of removing its debris.

9. Business Income/Extra Expense.

We will not pay for loss resulting from the interruption of business or manufacture.

10. Mold, Fungi, or Other Microorganisms.

We will not pay for loss or damage caused by or resulting from fungi or mold and other microorganisms, except as provided in 10.b.

- a. "Fungi or mold and other microorganisms" when used in the policy or in this exclusion means the presence, growth, proliferation, spread or any activity of fungi or mold and other microorganisms.

This exclusion also applies to the cost:

- (1) To remove fungi or mold and other microorganisms from covered property covered under this Texas Windstorm Insurance Association policy.
- (2) To tear out and replace any part of the building or other covered property as needed to gain access to the fungi or mold and other microorganisms; and
- (3) Of testing of air or property to confirm the absence, presence or level of fungi or mold and other microorganisms;

- b. This exclusion applies unless the fungi or mold and other microorganisms are located upon the portion of covered property which must be repaired or replaced because of sudden and accidental direct physical damage resulting from wind or hail which would otherwise be covered

under this policy. For purposes of this exclusion, sudden and accidental shall include a loss event that is hidden or concealed for a period of time until it is detectable. A hidden loss must be reported to us no later than 30 days after the date it was detected or should have been detected.

- c. However, the exception to the exclusion described in "b." above does not include:

- (1) the cost to treat, contain, remove or dispose of the fungi or mold and other microorganisms beyond that which is required to repair or replace the covered property physically damaged by water;
- (2) the cost of any testing of air or property to confirm the absence, presence or level of fungi, mold and other microorganisms whether performed prior to, during or after the removal, repair, restoration or replacement;
- (3) the cost of any decontamination of the covered property covered under this Texas Windstorm Insurance Association policy;
- (4) any increase in loss under this Texas Windstorm Insurance Association policy related to loss of use, debris removal, additional living expense, or diminution in value resulting from c. (1), (2), and (3).

11. Asbestos.

We will not pay for any loss or damage caused by or resulting from asbestos. We do pay for direct physical loss caused by windstorm or hail to covered property containing asbestos materials; however, we will not pay for the additional cost or expense to test for, monitor, clean up, remove, contain, treat, abate or assess the effects of asbestos or asbestos-containing materials.

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**DEDUCTIBLE**

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We will not pay for loss or damage to any item in any one occurrence until the amount of loss or damage exceeds the Deductible amount shown in the Declarations for that item. We will then pay the amount of loss or damage for that item in excess of the

Deductible amount, up to the applicable limit of liability, after any deduction required by the Coinsurance Condition.

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### CONDITIONS

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1. Policy Period. This policy applies only to loss which occurs during the policy period shown in the Declarations.
2. Insurable Interest and Limit of Liability. Even if more than one person has an insurable interest in the property covered, we will not be liable in any loss:
  - a. for an amount greater than the interest of a person insured under this policy; or
  - b. for more than the applicable limit of liability.
3. Fraudulent Misrepresentation.
  - a. This policy is void as to an insured, if the insured has fraudulently misrepresented in proof of loss or death a fact material to the question of our liability under the policy, and the insured's misrepresentation misled and caused us to waive or lose a valid defense to the policy.
  - b. This policy is void as to an insured, if the insured has fraudulently misrepresented in the application for the policy any fact material to the risk, and the insured's misrepresentation contributed to the contingency or event on which the policy became due and payable.
4. Duties After Loss.
  - a. Your Duties After Loss.
    - (1) In case of a loss to covered property caused by windstorm or hail, you must file a claim with us not later than one year after the date on which the damage to property that is the basis of the claim occurs. The commissioner of insurance, on a showing of good cause by a person insured by us, may extend the one-year period to file a claim for a period not to exceed 180 days. You may also submit with your claim any bids, estimates, reports, photographs, invoices, bills, receipts, inventories, comments, documents, records and other

information.

- (2) You must provide us with the information we request under Condition 4.b.(1).
  - (3) You must protect the property from further damage.
  - (4) You must make reasonable, necessary and temporary repairs to protect the property.
  - (5) You must keep an accurate record of repair expenses.
  - (6) You must provide us access to the damaged property as often as we reasonably require.
- b. Our Duties After Loss.
    - (1) Not later than the 30<sup>th</sup> day after the date the claim is filed, we may request in writing information that is necessary to determine whether to accept or reject the claim.
    - (2) Not later than the 60<sup>th</sup> day after the date we receive a claim or the 60<sup>th</sup> day after the date we receive information requested under Condition 4.b.(1), whichever is later, we shall provide you, in writing, notice of the amount of the loss we will pay, if any, and notice that:
      - (i) we have accepted coverage for the claim in full;
      - (ii) we have accepted coverage for the claim in part and have denied coverage for the claim in part; or
      - (iii) we have denied coverage for the claim in full.
    - (3) We must, on request, provide you reasonable access to all information relevant to the determination by us concerning the claim. You may copy the information at your own cost or may request that we provide a copy of all or part of the information to you. We may charge you the actual cost incurred by us in providing a copy of the information requested, excluding any amount for labor involved in making any information or copy of information available to you.



5. Loss Payment.

- a. If we notify you under Condition 4.b.(2) that we will pay your claim, or part of your claim, we must make payment not later than the 10<sup>th</sup> day after we notify you.
- b. If payment of your claim or part of your claim requires the performance of an act by you, we must make payment not later than the 10<sup>th</sup> day after the date the act is performed.

6. Loss Settlement. Covered property losses are settled as follows:

- a. We will use any guidelines published by the commissioner of insurance under Insurance Code Sec. 2210.578(f) to evaluate and settle claims involving the extent to which a loss to insured property was incurred as a result of wind, waves, tidal surges, or rising waters not caused by waves or surges.
- b. Our liability and payment for covered losses will not exceed the smallest of the following:
  - (1) The actual cash value of the damaged property at the time of loss, determined with proper deduction for depreciation;
  - (2) The cost to repair or replace the damaged property with material of like kind and quality; or
  - (3) The specified limit of liability of the policy.
- c. We will not pay you more than your financial interest in the covered property.
- d. If two or more of this policy's coverages apply to the same loss or damage, we will not pay more than the actual amount of the loss or damage.

7. Coinsurance. If a coinsurance percentage is shown in the Declarations, the following condition applies:

We will not pay the full amount of any loss if the actual cash value of covered property at the time of loss times the coinsurance percentage shown for it in the Declarations is greater than the limit of liability for the property.

Instead, we will determine the most we will pay using the following steps:

- a. Multiply the actual cash value of covered property at the time of loss by the

coinsurance percentage;

- b. Divide the limit of liability of the property by the figure determined in step a.;
- c. Multiply the total amount of loss, before the application of any deductible, by the figure determined in step b.; and
- d. Subtract the deductible from the figure determined in step c.

We will pay the amount determined in step d. or the limit of liability, whichever is less. For the remainder, you will either have to rely on other insurance or absorb the loss yourself.

In applying this coinsurance clause we will disregard the value of foundations of buildings which are below the surface of the lowest basement floor or, where there is no basement, which are below the surface of the ground.

We will not consider the cost of removal of debris in the determination of actual cash value when applying the coinsurance clause.

We will not require a special inventory or appraisal of undamaged property if your total claim for loss is:

- a. Less than \$10,000; and
- b. Less than 5% of the limit of liability on described property.

This provision does not waive any of the requirements of the coinsurance clause.

Example No. 1 (Underinsurance):

When:

The actual cash value of the property is \$250,000

The coinsurance percentage for it is 80%

The limit of liability for it is \$100,000

The deductible is \$1000

The amount of loss is \$40,000

Step (1)  $\$250,000 \times 80\% = \$200,000$

(the minimum amount of insurance to meet your coinsurance requirements)

Step (2)  $\$100,000 \div \$200,000 = .50$

Step (3)  $\$40,000 \times .50 = \$20,000$

Step (4)  $\$20,000 - \$1000 = \$19,000$

We will pay no more than \$19,000. The remaining \$21,000 is not covered.

Example No. 2 (Adequate insurance)

When:

The actual cash value of the property is \$250,000

The coinsurance percentage for it is 80%

The limit of liability for it is \$200,000

The deductible is \$2000

The amount of loss is \$40,000

Step (1)  $\$250,000 \times 80\% = \$200,000$

(the minimum amount of insurance to meet your coinsurance requirements)

Step (2)  $\$200,000 \div \$200,000 = 1.00$

Step (3)  $\$40,000 \times 1.00 = \$40,000$

Step (4)  $\$40,000 - \$2000 = \$38,000$

We will pay \$38,000 of the loss. No penalty applies.

8. Mortgage Clause (Without Contribution).

- a. The word "mortgagee" includes trustee.
- b. We will pay for any covered loss of or damage to buildings or structures to the mortgagee shown in the Declarations as interests appear.
- c. The mortgagee has the right to receive loss payment even if the mortgagee has started foreclosure or similar action on the building or structure.
- d. If we deny your claim because of your acts or because you have failed to comply with the terms of this policy, the mortgagee has the right to receive loss payment if the mortgagee:

(1) At our request, pays any premiums due under this policy, if you have failed to do so.

(2) Submits to us any information we requested from you under Condition 4.b.(1) promptly after receiving notice from us of your failure to do so.

(3) Has notified us of any change in ownership, occupancy or substantial change in risk known to the mortgagee.

All of the terms of this policy will then apply directly to the mortgagee. Failure of the mortgagee to comply with d.(1), d.(2) or d.(3) above shall void this policy as to the interest of the mortgagee.

- e. If we pay the mortgagee for any loss or damage and deny payment to you because of

your acts or because you have failed to comply with the terms of this policy:

- (1) The mortgagee's rights under the mortgage will be transferred to us to the extent of the amount we pay;
- (2) The mortgagee's right to recover the full amount of the mortgagee's claim will not be impaired.

At our option, we may pay to the mortgagee the whole principal on the mortgage plus any accrued interest. In this event, your mortgage and note will be transferred to us and you will pay your remaining mortgage debt to us.

- f. If this policy is canceled, we will give the mortgagee specifically named in the Declarations written notice of cancellation.

If we cancel the policy, we will give the mortgagee the same number of days' notice of cancellation we give you.

If you cancel the policy, we will give the mortgagee notice of cancellation to be effective on the date stated in the notice. The effective date of cancellation cannot be before the 10th day after we mail notice.

We will not give notice of cancellation to any successor or assignee of the mortgagee named in this policy.

- g. If the property described is a dwelling and is foreclosed upon under the deed of trust, the mortgagee may cancel this policy of insurance and will be entitled to any unearned premiums from this policy.

The mortgagee must credit any unearned premium against any deficiency owed by the borrower and return any unearned premium not so credited to the borrower.

9. Other Insurance.

- a. If property covered by this policy is also covered by other insurance, we will pay only the proportion of a loss caused by windstorm or hail under this policy that the limit of liability applying under this policy bears to the total amount of insurance covering the property.

- b. If glass or an item of personal property is insured specifically under any other policy, then this policy applies as excess insurance over the specific insurance.

- c. If a loss covered by this policy is also covered by other insurance in the name of a condominium association, the insurance



provided in this policy will be excess over the amount collectible under the other insurance.

10. Limited Judicial Remedies.

Your access to judicial review of our decisions under this policy is limited by statute.

- a. You may not bring a private lawsuit against us, our agent or representative under Chapters 541 (concerning unfair methods of competition and unfair or deceptive acts or practices) or 542 (concerning processing and settlement of claims), Texas Insurance Code. Subchapter L-1, Chapter 2210, Texas Insurance Code provides the exclusive remedies for claims against us, our agent or our representative.
- b. You may not bring a class action suit against us.
- c. We and our agents or representatives may not be held liable for damages under Chapter 17, Texas Business and Commerce Code (concerning deceptive trade practices), or under any provisions of any law providing for additional damages, punitive damages, or a penalty, except as otherwise specified by the Texas Windstorm Insurance Association Act, Chapter 2210, Texas Insurance Code.
- d. You may not bring a lawsuit against us with reference to a claim for which we have accepted coverage in full, except as provided by Condition 11.
- e. You may not bring a lawsuit against us with reference to the amount of loss we will pay for a claim in full or in part, except as provided by Condition 11.
- f. You may not bring a lawsuit against us with reference to a claim for which we have denied coverage in full or in part, except as provided by Condition 12.

11. Disputes Concerning the Amount of Loss Exclusive Remedy.

- a. If you dispute the amount we will pay for a claim, your exclusive remedy under this policy is appraisal.
- b. If you choose to demand appraisal, you must

do so no later than the 60<sup>th</sup> day after the date you receive notice from us that we accept coverage for a claim in full or in part as provided by Condition 4.b.(2).

- c. You may request in writing that the 60-day period to demand appraisal be extended:
  - (1) not later than the 75<sup>th</sup> day after the date you receive written notice from us that we accept coverage for a claim in full or in part; and
  - (2) we may grant an additional 30-day period in which you may demand appraisal, on a showing of good cause.
- d. You may request from us a detailed summary of the manner in which we determined the amount of the loss we will pay.
- e. If you do not demand appraisal before the 61<sup>st</sup> day after we notify you that we accept coverage for a claim in full or in part, or before the 31<sup>st</sup> day after we grant an extension for good cause, you waive your right to contest our determination of the amount of loss we will pay for that claim.
- f. Appraisal Process.
  - (1) If you demand appraisal of the amount we will pay for a claim, you and we will each select a competent and independent appraiser. You shall notify us of your appraiser's identity. We shall notify you of our appraiser's identity within 10 days after we receive notice of your appraiser's identity. The two appraisers will choose a competent and independent umpire. If they cannot agree upon an umpire within 15 days, the commissioner of insurance shall select an umpire from a roster of qualified umpires maintained by the Texas Department of Insurance.
  - (2) The two appraisers will then determine the amount of loss, stating separately for the portion of the claim for which we have accepted coverage in full or in part:
    - (i) The actual cash value of the damaged property at the time of loss, determined with proper deduction for depreciation; and

- (ii) The cost to repair or replace the damaged property with material of like kind and quality.
  - (3) If you or we request that they do so, the appraisers will also determine:
    - (i) the full replacement cost of the building at the time of loss for purposes of the Loss Settlement Condition; and
    - (ii) the value of the covered property at the time of loss for purposes of the Coinsurance Condition.
  - (4) If you or we request that they do so, the appraisers will also determine the amount that you necessarily spent to repair or replace the damaged property.
  - (5) If you or we request that they do so, the appraisers will also determine the amount of loss for any extensions of coverage for which we have accepted coverage in full or in part.
  - (6) If the appraisers fail to agree, they will submit their differences to the umpire. An itemized decision agreed to by any two of these three and filed with us will determine the amount of the loss.
  - (7) You and we are responsible in equal shares for paying the costs incurred or charged in connection with the appraisal, including expenses of the appraisers and umpire. If we pay more than our share of the costs of appraisal, our liability and payment for covered losses shall be reduced by the amount we pay in excess of our share.
  - g. The appraisal decision is binding upon you and us and is not otherwise reviewable or appealable, unless:
    - (1) the appraisal decision was obtained by corruption, fraud, or other undue means;
    - (2) your or our rights were prejudiced by:
      - (i) evident partiality by an appraisal umpire;
      - (ii) corruption by an appraiser or umpire; or
      - (iii) misconduct or willful misbehavior of an appraiser or umpire; or
  - (3) an appraiser or umpire:
    - (i) exceeded the appraiser's or umpire's powers;
    - (ii) refused to postpone the appraisal after a showing of sufficient cause for the postponement;
    - (iii) refused to consider evidence material to the claim; or
    - (iv) conducted the appraisal in a manner that substantially prejudiced your or our rights.
  - h. If you or we believe the appraisal decision is appealable as a result of any reason listed in Condition 11.g., you or we may file a lawsuit to vacate the appraisal decision in a district court in the county in which the loss that is the subject of the appraisal occurred. A lawsuit under this paragraph must be filed not later than two years after the date of an appraisal decision. If the court vacates the appraisal decision, you and we must begin the appraisal process again.
12. Disputes Concerning Denied Coverage – Exclusive Remedy.
- a. If you dispute our decision to deny coverage for a claim in full or in part, prior to bringing a lawsuit against us, you must provide notice to us of your intent to bring a lawsuit. You may use a form supplied by us.
  - b. If you do not provide notice of intent to bring a lawsuit against us within two years after the date you receive notice from us that we denied a claim in full or in part as provided by Condition 4.b.(2), you waive your right to contest our partial or full denial of coverage and you are barred from bringing a lawsuit against us concerning the denial of that claim.
  - c. As a prerequisite for filing a lawsuit against us, we may require you to submit the dispute to alternative dispute resolution by mediation or moderated settlement conference, as provided by Chapter 154, Texas Civil Practice and Remedies Code. If we require an alternative dispute resolution:



- (1) we must request the alternative dispute resolution in writing not later than the 60<sup>th</sup> day after the date we receive your notice of intent to bring a lawsuit against us; and
- (2) except as provided by Condition 12.c.(3), the alternative dispute resolution must be completed not later than the 60<sup>th</sup> day after the date we request the alternative dispute resolution in writing.
- (3) The 60-day period for completion of the alternative dispute resolution can be extended by:
  - (i) your and our mutual consent; or
  - (ii) rule adopted by the commissioner of insurance.

d. Mediation.

- (1) If we request alternative dispute resolution by mediation and you and we are unable to agree on a mediator, the commissioner of insurance shall select a mediator from a roster of qualified mediators maintained by the Texas Department of Insurance.
- (2) If we request alternative dispute resolution by mediation, you and we will be equally responsible for the expenses of mediation.

e. Lawsuit Against Us.

- (1) You may bring a lawsuit against us concerning the denial of a claim only if you have notified us of your intent to bring a lawsuit as required by Condition 12.a.
- (2) As provided by Condition 12.c., we have 60 days from the receipt of your notice of intent to bring a lawsuit against us to request that you submit your dispute with us to alternative dispute resolution. You may not bring a lawsuit against us prior to the expiration of that 60-day period, unless we waive our right to request alternative dispute resolution of that claim dispute in writing.
- (3) If we request alternative dispute resolution as provided by 12.c., you may

bring a lawsuit against us if:

- (i) the alternative dispute resolution was not completed within 60 days from the date we made the request, and no extension was granted under Condition 12.c.(3);
  - (ii) the alternative dispute resolution was not completed prior to the expiration of an authorized extension of the 60- day period, as provided by Condition 12.c.; or
  - (iii) you are not satisfied after completion of the alternative dispute resolution.
- (4) You must bring any lawsuit against us concerning the denial of a claim not later than two years after the date on which you receive written notification from us that we have denied a claim in full or in part as provided by Condition 4.b.(2).
  - (5) You must bring any lawsuit against us concerning the denial of a claim in a district court in the county in which the loss that is the subject of the coverage denial occurred.
  - (6) If you bring a lawsuit against us concerning the denial of a claim prior to providing notice as required under Condition 12.a., the court shall abate the lawsuit until you provide the notice to us and, if requested by us, the dispute has been submitted to alternative dispute resolution.
  - (7) Limitation on Scope of Lawsuit. You may only bring a lawsuit against us concerning the denial of a claim to determine:
    - (i) whether our denial of coverage was proper; and
    - (ii) the amount of damage to which you are entitled to recover, if any.
  - (8) Limitation on Damages Concerning Denied Coverage.
    - (i) You may recover only:
      - (A) the covered loss payable under

the terms of this policy, less any amount already paid by us for any portion of a covered loss;

- (B) prejudgment interest, at the rate provided in Subchapter B, Chapter 304, Texas Finance Code, from the first day after the date specified by Condition 5., by which we were or would have been required to pay an accepted claim in full or in part; and
  - (C) court costs and reasonable and necessary attorney's fees.
- (ii) Nothing in the Texas Windstorm Insurance Association Act, Chapter 2210, Texas Insurance Code, including the limitation on damages described by Condition 12.e.(8)(i), may be construed to limit the consequential damages, or amount of consequential damages, that you may recover under common law in a lawsuit against us.
- (iii) You may recover damages in an amount not to exceed two times the damages associated with a covered loss payable under the terms of the policy and any consequential damages recoverable under common law, if you show by clear and convincing evidence that we mishandled your claim to your detriment by intentionally:
- (A) failing to meet the deadlines or timelines established in the Texas Windstorm Insurance Association Act under Subchapter L-1, Chapter 2210, Texas Insurance Code, without good cause, including the applicable deadline established for payment of an accepted claim or the accepted portion of a claim;
  - (B) disregarding applicable guidelines published by the commissioner of insurance under Section 2210.578(f), Texas Insurance Code;
  - (C) failing to provide written notice that we have accepted or rejected a claim as provided for under Condition 4.b.(2);

- (D) rejecting a claim without conducting a reasonable investigation with respect to the claim; or
- (E) denying coverage for a claim in full or in part, if our liability has become reasonably clear as a result of our investigation with respect to the portion of the claim that was denied.

For purposes of Condition 12.e.(8)(iii), "intentionally" means actual awareness of the facts surrounding the act or practice listed under Condition 12.e.(8)(iii), coupled with the specific intent that you suffer harm or damages as a result of the act or practice. Specific intent may be inferred from objective manifestations that we acted intentionally or from facts that show that we acted with flagrant disregard of the duty to avoid the acts or practices listed under Condition 12.e.(8)(iii).

13. Commissioner Extension of Deadlines. The commissioner of insurance, on a showing of good cause, may by rule extend any deadline established under policy Condition 4, 5, 11 and 12 by periods not to exceed 120 days in the aggregate with reference to claims filed during a particular catastrophe year.
14. Appeals Other Than Claims Disputes. A person insured under this policy, or their representative, who is aggrieved by an act, ruling or decision by us, may appeal to the commissioner of insurance not later than the 30<sup>th</sup> day after the date of that act, ruling or decision. This policy condition does not apply to a person who is required to resolve a dispute under Conditions 11 or 12 or a binding arbitration endorsement to this policy.
15. Subrogation (Transfer of Rights of Recovery Against Others to Us). If any person or organization to or for whom we make payment under this policy has rights to recover damages from another, those rights are transferred to us to the extent of our payment. That person or organization must do everything necessary to secure our rights and must do nothing after loss to impair them. But you may waive your rights against another party in writing, prior to a loss to your covered property.
16. Abandonment of Property. There can be no abandonment of property to us.



17. Liberalization. If the commissioner of insurance adopts a revision which would broaden or extend the coverage under this policy without additional premium within 45 days prior to or during the policy period, the broadened or extended coverage will immediately apply to this policy.
18. Waiver or Change of Policy Provisions. This policy contains all the agreements between you and us concerning the insurance afforded. You are authorized to make changes in the terms of this policy with our consent; however, this policy's terms can be amended or waived only by endorsement issued by us and made a part of this policy. Your agent is not our authorized representative.
19. Cancellation.
  - a. You may cancel this policy at any time by notifying us in writing of the date cancellation is to take effect. We will send you any refund due when the policy is returned to us. The refund will be pro rata, subject to a policy minimum retained premium in an amount equal to 90 days or \$100 whichever is applicable. Payment of the minimum retained premium shall not create or extend coverage beyond the cancellation date that you requested. The minimum retained premium is fully earned on the effective date of the policy and you shall owe to us any unpaid balance of the minimum retained premium.
  - b. We may cancel this policy by mailing or delivering to you notice in writing of the date cancellation takes effect. The effective date of cancellation cannot be before the 14th day after we mail or deliver the notice. Our notice of cancellation will state the reason for cancellation and will state that if the refund is not included with the notice, it will be returned on demand. The refund will be pro rata.
20. Assignment. Your rights and duties under this policy may not be transferred without our prior written consent except as provided as follows:
  - a. If you die, your rights and duties will be transferred to your legal representative subject to our right to verify your legal representative's authority to act in your behalf.
  - b. If you sell the real property insured by this policy, you may assign your rights and duties under the policy to the new owner. However:
    - (1) the new owner may not change any of the terms of this policy without our prior written consent; and
    - (2) you, the new owner, or the agent shown in the Declarations must notify us in writing of the change of ownership within 30 days after the real estate closing.
21. Pro Rata Distribution. If one limit of liability applies to two or more separate coverage items A. (building) and B. (business personal property), coverage will apply to each item in the same proportion that the value of each such item bears to the total limit for that item of insurance. This provision does not apply to items to which 100% coinsurance applies.
22. Valuation. We will determine the value of covered property in the event of loss or damage as follows:
  - a. At actual cash value as of the time of loss or damage, except as provided in b. and c. below.
  - b. Tenant's Improvements and Betterments at:
    - (1) Actual cash value of the lost or damaged property if you make repairs promptly.
    - (2) A proportion of your original cost if you do not make repairs promptly. We will determine the proportionate value as follows:
      - (a) Multiply the original cost by the number of days from the loss or damage to the expiration of the lease; and
      - (b) Divide the amount determined in (a) above by the number of days from the installation of improvements to the expiration of the lease. If your lease contains a renewal option, the expiration of the renewal option period will replace the expiration of the lease in this procedure.
    - (3) Nothing if others pay for repairs or replacement.
  - c. Records and books of records, including those which exist on electronic or magnetic media (other than prepackaged software programs), at the cost of:
    - (1) Blank materials for reproducing the records; and
    - (2) Labor to transcribe or copy the records when there is a duplicate.

In Witness Whereof, this Association has executed and attested these presents; but this policy shall not be valid unless countersigned by an authorized representative of this Association.

**Secretary, Board of Directors**

*Richard King*

**President, Board of Directors**

*George Pettit*

