



3. Dickinson SDI, LLC is a domestic limited liability company located and operating in the State of Texas.

4. Kemah SDI, LLC is a domestic limited liability company located and operating in the State of Texas.

5. Broadway West SDI, LLC is a domestic limited liability company located and operating in the State of Texas.

6. Broadway East SDI, LLC is a domestic limited liability company located and operating in the State of Texas.

7. Port Lavaca Drive-In, Inc. is a domestic for-profit corporation located and operating in the State of Texas.

8. Upon information and belief Underwriters at Lloyd's, London ICAT Syndicate 4242 is an alien syndicate reinsurer insurance company engaged in the business of insurance in Texas, operating for the purposes of accumulating monetary profit. Lloyd's regularly conducts the business of insurance in a systematic and continuous manner in the State of Texas. According to its policy, Lloyd's may be served with process by serving **Mendes & Mount, LLP, 750 Seventh Avenue, New York, NY 10019.**

9. Upon information and belief National Fire & Marine Insurance Company is a foreign surplus lines insurance company engaged in the business of insurance in Texas, operating for the purposes of accumulating monetary profit. National regularly conducts the business of insurance in a systematic and continuous manner in the State of Texas. According to its policy, National may be served with process by serving **Counsel, Legal Department, National Fire & Marine Insurance Company, 3024 Harney Street, Omaha, NE 68131.**

**Venue & Jurisdiction**

10. This Court has jurisdiction pursuant to 28 U.S.C. § 1332(a) because there is complete diversity of citizenship between Plaintiffs and Defendants and the amount in controversy exceeds the sum of seventy-five thousand dollars (\$75,000.00), exclusive of interests and costs.

11. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b)(2) because this action concerns real properties and businesses located and operating in Galveston County, Texas, and all or a substantial part of the events giving rise to the claims described herein occurred in Galveston County, Texas. In particular, the insurance policies at issue and of which Plaintiffs are the beneficiaries were to be performed in Galveston County, Texas and the losses under the policies (including payments to be made to Plaintiffs under the policies) were required to be made in Galveston County, Texas. Further, investigation, including communications to and from Defendants and Plaintiffs (including telephone calls, mailings, and other communications to Plaintiff) occurred in Galveston County, Texas.

### **Factual Background**

#### ***The Properties***

12. KN3 Pasadena, LLC and KN3 Investments, LLC own and operate the commercial property located at 3107 Red Bluff Road, Pasadena, Texas 77503, in Harris County, Texas.

13. Dickinson SDI, LLC owns and operates the commercial property located at 169 FM 517 Road E., Dickinson, Texas 77539, in Galveston County, Texas.

14. Kemah SDI, LLC owns and operates the commercial property located at 1355 TX-146, Kemah, Texas 77565, in Galveston County, Texas.

15. Broadway West SDI, LLC owns and operates the commercial property located at 7031 W Broadway Street, Pearland, Texas 77581, in Brazoria County, Texas.

16. Broadway East SDI, LLC owns and operates the commercial property located at 2815 Broadway Street, Pearland, Texas 77581, in Brazoria County, Texas.

17. Port Lavaca Drive-In, Inc. owns and operates the commercial property located at 411 TX-35, Port Lavaca, Texas 77979 in Calhoun County, Texas.

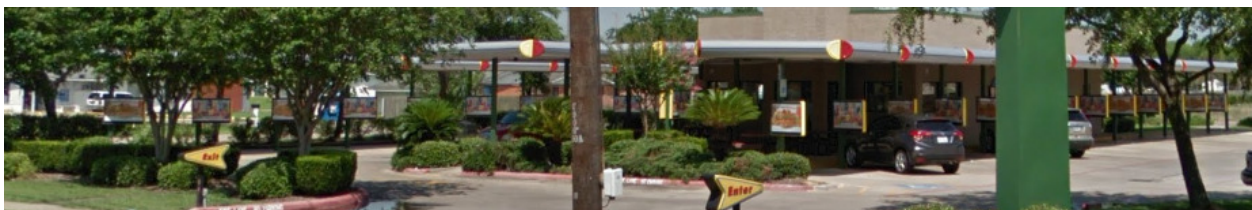
18. All of the properties described above are collectively referred to as the “Properties,” with individual properties sometimes referred to as a “Property.”

***3107 Red Bluff Road, Pasadena, Texas 77503***



19. This property is a 1,150 sq. ft. single-story building built in 1975. In 1992, three canopies were added to the property for an improvement total of 3,947 sq. ft. The building, canopies, and land service as a fast food restaurant.

***169 Farm to Market 517 Road West, Dickinson, Texas 77539***



20. This property is a 1,657 sq. ft. single-story building and canopies (5,853 sq. ft.) built in 2003. The building, canopies, and land service as a fast food restaurant.

***1355 Hwy 146, Kemah, Texas 77565***



21. This property is a 1,662 sq. ft. single-story building and canopies (6,745 sq. ft.) built in 2003. The building, canopies and land service as a fast food restaurant.

***7031 W. Broadway, Pearland, Texas 77581***



22. This property is a 1,362 sq. ft. single-story building built in 1998. In 2007, two canopies were added to the property for an improvement total of 2,280 sq. ft. The building, canopies, and land service as a fast food restaurant.

***2815 E. Broadway, Pearland, Texas 77581***





23. This property is a 1,376 sq. ft. single-story building and canopies (3,360 sq. ft.) built in 2000. The building, canopies, and land service as a fast food restaurant.

***411 South Highway 35, Port Lavaca, Texas 77979***



24. This property is a 1,494 sq. ft. single-story building and canopies (2,599 sq. ft.) built in 1998. The building, canopies and land service as a fast food restaurant.

***The KN3 Pasadena, LLC Policy***

25. Prior to August 25, 2017, KN3 Pasadena, LLC paid annual premiums, assessments, fees, surcharges, and taxes to Certain Underwriters at Lloyd's London, ICAT Syndicate 4242 and National Fire & Marine Insurance Company in order to acquire comprehensive commercial insurance coverage for the Property under Policy No. 42-7590109554-S-00 (the "KN3 Pasadena, LLC Policy"). The KN3 Pasadena, LLC Policy provides coverage for KN3 Pasadena, LLC's Property, for covered damages that occur during the Policy Period, from May 1, 2017 through May 1, 2018. In exchange for KN3 Pasadena, LLC's premium payment, the KN3 Pasadena, LLC's Policy includes the following limits and coverages, in relevant part:

|  |                                     |                         |
|--|-------------------------------------|-------------------------|
| Policy Number                                  | <b>SPECIAL CAUSE OF LOSS POLICY</b> | ICAT SCOL 50(f) (11 14) |
| 42-7590109554-S-00                             | DECLARATIONS PAGE                   | 05/01/2017              |
| <b>Schedule A Property or Interest Covered</b> |                                     |                         |

**Location #1 - Building #1 Covered Property**

Building #1: 3107 Red Bluff Rd SONIC LOCATION STORE#2713, PASADENA, TX 77503

|   |                                 |                              | Deductible   |  |   |                          |
|---|---------------------------------|------------------------------|--|--|---|--------------------------|
|   |                                 | Total Insured Value          | Limit of Insurance                                   | Named Windstorm  | All Other Windstorm/Hail                            | All Other Causes of Loss |
| Building                                |                                 | \$270,000                    | \$270,000  | 2.00% or \$1,000 whichever is greater, by location.  | 2.00% or \$1,000 whichever is greater, by location. | \$2,500 by policy.       |
| Business Personal Property              | Combined Limit of Insurance     | \$300,000                    | \$300,000  |  |   |                          |
| Tenant Improvements and Betterments     |                                 |                              |  |  |   |                          |
| Ordinance or Law:                       |                                 |                              |  | None of the Coverage Parts of this coverage shall be available unless the deductible provisions of Building Coverage have been satisfied and a claim payment is due you under Building Coverage. |   |                          |
|   | Part A:                         |                              | Included in the Building Limit of Insurance          |  |   |                          |
|   | Parts B and C (Combined Limit): |                              | Sublimited to 10.00% of Building Limit of Insurance. |  |   |                          |
| Policy Number                           |                                 | SPECIAL CAUSE OF LOSS POLICY |  |  | ICAT SCOL 50(f) (11 14)                             |                          |
| 42-7590109554-S-00                      |                                 | DECLARATIONS PAGE            |  |  | 05/01/2017  |                          |
| Schedule A Property or Interest Covered |                                 |                              |  |  |   |                          |

**Location #1 - Covered Property**

|  |  | Deductible          |                    |   |   |
|--|--|---------------------|--------------------|---|---|
| Additional Property Coverage                                 |  | Total Insured Value | Limit of Insurance | Named Windstorm                                     | All Other Windstorm/Hail Causes of Loss             |
| Other Structures - Open or Not Fully Enclosed                |  | \$50,000            | \$50,000           | 2.00% or \$1,000 whichever is greater, by location. | 2.00% or \$1,000 whichever is greater, by location. |
| Light Poles and Street Signs                                 |  | \$6,000             | \$6,000            |   |   |
| Total of All Additional Covered Property Limits of Insurance |  | \$56,000            | \$56,000           |   |   |

|   |  | Deductible          |                    |   |   |
|---|--|---------------------|--------------------|---|---|
| Location # 1<br>Business Income with Extra Expense including Rental Value |  | Total Insured Value | Limit of Insurance | Named Windstorm                                     | All Other Windstorm/Hail Causes of Loss             |
| Monthly Limit of Indemnity: 8.33%   |  | \$265,000           | \$265,000          | 2.00% or \$1,000 whichever is greater, by location. | 2.00% or \$1,000 whichever is greater, by location. |

|  |                                     |                                |
|--|-------------------------------------|--------------------------------|
| <b>Policy Number</b>                           | <b>SPECIAL CAUSE OF LOSS POLICY</b> | <b>ICAT SCOL 50(f) (11 14)</b> |
| 42-7590109554-S-00                             | DECLARATIONS PAGE                   | 05/01/2017                     |
| <b>Schedule A Property or Interest Covered</b> |                                     |                                |

|   |  |
|---|--|
| Replacement Cost* (Building, Personal Property):  | Yes, Including "Stock" (If Personal Property is covered)       |
| *Except certain roof(s) as indicated below.   |  |
| Coinurance:   | Waived   |
| Property In Transit:  | Lesser of Business Personal Property ("BPP") Limit or \$25,000 |
| <i>The following applies only if a Limit of Insurance is shown for Business Income or Rental Value:</i> |  |
| Extended Period Of Indemnity:   | 180 days   |

| <b>Coverages Under Building and Personal Property or Condominium Coverage Forms</b> |   |
|---|---|
| <b>Additional Coverages</b>   | <b>Additional Limits and Sublimits</b>  |
| Debris Removal:   | 25% of Loss Within Limit, Up To Additional \$10,000 per Location in Addition to Limit |
| Preservation of Property:   | 30 Days   |
| Fire Department Service Charge:   | \$25,000  |
| Pollutant Clean Up and Removal  | \$10,000  |
| Increased Cost of Construction  | Lesser of 5% of Building Limit of Insurance or \$10,000                               |
| Electronic Data:  | \$15,000  |
| Customers' Property in Your Covered Building:                                       | Lesser of BPP Limit of Insurance or \$10,000, subject to \$250 deductible             |
| Lock Replacement:   | \$5,000, subject to \$250 deductible  |
| Fire Extinguisher Recharge:   | \$25,000  |
| <b>Coverage Extensions</b>  |   |
| Newly Acquired or Constructed Property - Building:                                  | Lesser of Building Limit of Insurance or \$500,000                                    |
| Newly Acquired Business Personal Property :   | Lesser of BPP Limit of Insurance or \$100,000   |
| Personal Effects and Property of Others:  | \$10,000 (in Addition to Limit)   |
| Property Off Premises:  | \$25,000 (in Addition to Limit)   |
| Outdoor Property:   | \$25,000 Limited to \$250 per tree, plant or shrub                                    |
| Non-Owned Detached Trailers:  | Lesser of BPP Limit of Insurance or \$5,000   |

|  |                                     |                                |
|--|-------------------------------------|--------------------------------|
| <b>Policy Number</b>                           | <b>SPECIAL CAUSE OF LOSS POLICY</b> | <b>ICAT SCOL 50(f) (11 14)</b> |
| 42-7590109554-S-00                             | DECLARATIONS PAGE                   | 05/01/2017                     |
| <b>Schedule A Property or Interest Covered</b> |                                     |                                |

| <b>Coverage Under ICAT Endorsement</b>  |                        |
|---|------------------------|
| <b>Coverage</b>   | <b>Sublimit</b>        |
| Wind-Driven Rain:   | \$50,000               |
| Sewer, Drain, and Sump Back-Up, or Overflow:  | \$25,000               |
| Perimeter Extension:  | Increased to 1000 feet |
| Utility Services - Direct Damage:   | \$25,000               |
| Limited to "specified causes of loss"   |                        |
| <i>The following coverages apply only if a Limit of Insurance for BPP is shown.</i>   |                        |
| <i>These coverages are limited by policy to the lesser of the sublimit listed below or the total Limit of Insurance shown for BPP</i> |                        |
| Theft, Disappearance, or Destruction of Money and Securities:   | \$10,000               |
| Robbery of a Custodian or Safe Burglary (Money and Securities Only):  | \$10,000               |
| Accounts Receivable:  | \$100,000              |
| Valuable Papers and Records:  | \$100,000              |
| Commercial Fine Arts:   | \$25,000               |
| Tenant Glass:   | \$25,000               |
| Spoilage:   | \$50,000               |
| <i>The following coverage applies only if a Limit of Insurance for Business Income or Extra Expense ("BI/EE") is shown.</i>           |                        |
| <i>This coverage is limited by policy to the lesser of the sublimit listed below or the total Limit of Insurance shown for BI/EE:</i> |                        |
| Utility Services - Time Element:  | \$25,000               |
| Limited to "specified causes of loss"   |                        |



|  |                                     |                         |
|--|-------------------------------------|-------------------------|
| Policy Number                                  | <b>SPECIAL CAUSE OF LOSS POLICY</b> | ICAT SCOL 50(f) (11 14) |
| 42-7590109554-S-00                             | DECLARATIONS PAGE                   | 05/01/2017              |
| <b>Schedule A Property or Interest Covered</b> |                                     |                         |

|   |   |           |
|---|---|-----------|
| <u>Equipment Breakdown Deductible, Coverages and Sublimits</u>  |   |           |
| Equipment Breakdown Deductible:   |   | \$1,000   |
| <i>The following coverages are limited by policy to the lesser of the sublimit listed below or the Policy Limit of Insurance:</i> |   |           |
| Pollutant Clean Up and Removal:   |   | \$250,000 |
| Expediting Expenses:  |   | Included  |
| Refrigerant Contamination:  |   | \$250,000 |
| Spoilage:   |   | \$250,000 |
| CFC Refrigerants:   |   | Included  |
| Computer Equipment:   |   | Included  |
| Valuable Papers and Records:  | Part of Valuable Papers and Records Limit of Insurance Stated Above |           |
| Environmental, Safety, & Efficiency Improvements:   | Up to 150% of non-"Improved" Replacement Property                   |           |
| Green Environmental & Efficiency Improvements:  | Lesser of 150% of non-"Green" Cost or \$100,000                     |           |
| Service Interruption:   | Included (only if coverage for BI/EE is shown)                      |           |

26. As evidenced by the Declarations Page and confirmed in the Policy's provisions, the KN3 Pasadena, LLC Policy provides coverage to the Property's physical structure on a replacement cost value basis for damages caused by wind and hail up to \$270,000.00. *See* Ex. A, Policy, at Declarations Pages.

***The Dickinson SDI, LLC, Kemah SDI, LLC, Broadway West SDI, LLC, Broadway East SDI, LLC, and Port Lavaca Drive-In, Inc.'s Policy***

27. Prior to August 25, 2017, Dickinson SDI, LLC, et al. paid annual premiums, assessments, fees, surcharges, and taxes to Certain Underwriters at Lloyd's of London ICAT Syndicate 4242 and National Fire & Marine Insurance Company in order to acquire comprehensive commercial insurance coverage for the Properties under Policy No.: 42-7560095785-S-01 ( the "Dickinson SDI, LLC, Kemah SDI, LLC, Broadway West SDI, LLC, Broadway East SDI, LLC and Port Lavaca Drive-In, Inc. Policy"). The Policy provides coverage for the Properties, for covered damages that occur during the Policy Period, from June 1, 2017 through June 1, 2018. In

exchange for premium payment, the Policy includes the following limits and coverages, in relevant part:

|                      |   |                                |
|----------------------|---|--------------------------------|
| <b>Policy Number</b> | <b>NAMED PERIL COMMERCIAL PROPERTY POLICY</b> | <b>ICAT NPNA 50(d) (11 14)</b> |
| 42-7560095785-S-01   | DECLARATIONS PAGE AND SCHEDULE A              | 06/01/2017                     |
| <b>Schedule A</b>    |   |                                |

**Location #1**

**Building #1: 7031 W BROADWAY ST , PEARLAND, TX 77581**

Coverage Basis: Replacement Cost

Coinsurance: Waived

Windstorm Protective Device Credit: Not Included

Pollutant Clean Up & Removal: Included

Electronic Data Processing Coverage: Included

|   |                                     |                            | Deductible   |   |   |
|---|-------------------------------------|----------------------------|--|---|---|
| <u>Location #1 - Building #1 Covered Property</u> |                                     | <u>Total Insured Value</u> | <u>Limit of Insurance</u>                              | <u>Named Storm</u>  | <u>All Other Wind/Hail</u>                                |
| Coverage A:                                       | Building                            | \$270,000                  | \$270,000  | 2.00% or \$1,000<br>whichever is greater,<br>by location.   | 2.00% or \$1,000<br>whichever is greater,<br>by location. |
| Coverage B:                                       | Business Personal Property          | \$300,000                  | \$300,000  |   |   |
| Coverage C:                                       | Tenant Improvements and Betterments |                            |  |   |   |
| Coverage F:                                       | Ordinance or Law:                   |                            |  | None of the Coverage Parts of Coverage F shall be available unless the deductible provisions of Coverage A have been satisfied and a claim payment is due You under Coverage A. |   |
|   | Part A:                             |                            | Included in Coverage A Limit of Insurance              |   |   |
|   | Parts B and C (Combined Limit):     |                            | Sublimited to 10.00% of Coverage A Limit of Insurance. |   |   |

| Policy Number      | NAMED PERIL COMMERCIAL PROPERTY POLICY | ICAT NPNA 50(d) (11 14) |
|--------------------|--|-------------------------|
| 42-7560095785-S-01 | DECLARATIONS PAGE AND SCHEDULE A       | 06/01/2017              |
| <b>Schedule A</b>  |  |                         |

|  |                            |                           | Deductible   |  |
|--|----------------------------|---------------------------|--|--|
| <u>Location #1 Coverage D Covered Property</u> | <u>Total Insured Value</u> | <u>Limit of Insurance</u> | Named Windstorm                                      | All Other Wind/Hail                                  |
| Coverage D: Additional Property Coverage       |                            |                           |  |  |
| Awnings, Canopies, Including Over Gas Pumps    | \$60,000                   | \$60,000                  | 2.00% or \$1,000, whichever is greater, by location. | 2.00% or \$1,000, whichever is greater, by location. |
| Light Poles and Street Signs                   | \$6,000                    | \$6,000                   |  |  |
| Total of All Coverage D Limits of Insurance    | \$66,000                   | \$66,000                  |  |  |

|  |                            |                           | Deductible   |  |
|--|----------------------------|---------------------------|--|--|
| <u>Location #1 Coverage E</u>                            | <u>Total Insured Value</u> | <u>Limit of Insurance</u> | Named Windstorm                                      | All Other Wind/Hail                                  |
| Coverage E: Business Income; Rental Value; Extra Expense |                            |                           |  |  |
| Monthly Limit of Indemnity: 8.33%                        | \$85,000                   | \$85,000                  | 2.00% or \$1,000, whichever is greater, by location. | 2.00% or \$1,000, whichever is greater, by location. |

| Policy Number      | NAMED PERIL COMMERCIAL PROPERTY POLICY | ICAT NPNA 50(d) (11 14) |
|--------------------|--|-------------------------|
| 42-7560095785-S-01 | DECLARATIONS PAGE AND SCHEDULE A       | 06/01/2017              |
| <b>Schedule A</b>  |  |                         |

## Location #2

Building #1: 2815 BROADWAY ST , PEARLAND, TX 77581

|                                      |                  |
|--------------------------------------|------------------|
| Coverage Basis:                      | Replacement Cost |
| Coinsurance:                         | Waived           |
| Windstorm Protective Device Credit:  | Not Included     |
| Pollutant Clean Up & Removal:        | Included         |
| Electronic Data Processing Coverage: | Included         |

|   |                                     |                            | Deductible   |   |   |
|---|-------------------------------------|----------------------------|--|---|---|
| <u>Location #2 - Building #1 Covered Property</u> |                                     | <u>Total Insured Value</u> | <u>Limit of Insurance</u>                              | Named Storm   | All Other Wind/Hail                                       |
| Coverage A:                                       | Building                            | \$270,000                  | \$270,000  | 2.00% or \$1,000<br>whichever is greater,<br>by location.   | 2.00% or \$1,000<br>whichever is greater,<br>by location. |
| Coverage B:                                       | Business Personal Property          | \$300,000                  | \$300,000  |   |   |
| Coverage C:                                       | Tenant Improvements and Betterments |                            |  |   |   |
| Coverage F:                                       | Ordinance or Law:                   |                            |  | None of the Coverage Parts of Coverage F shall be available unless the deductible provisions of Coverage A have been satisfied and a claim payment is due You under Coverage A. |   |
|   | Part A:                             |                            | Included in Coverage A Limit of Insurance              |   |   |
|   | Parts B and C (Combined Limit):     |                            | Sublimited to 10.00% of Coverage A Limit of Insurance. |   |   |

| Policy Number      | NAMED PERIL COMMERCIAL PROPERTY POLICY | ICAT NPNA 50(d) (11 14) |
|--------------------|--|-------------------------|
| 42-7560095785-S-01 | DECLARATIONS PAGE AND SCHEDULE A       | 06/01/2017              |
| <b>Schedule A</b>  |  |                         |

|  |                            |                           | Deductible   |  |
|--|----------------------------|---------------------------|--|--|
| <u>Location #2 Coverage D Covered Property</u> | <u>Total Insured Value</u> | <u>Limit of Insurance</u> | Named Windstorm                                      | All Other Wind/Hail                                  |
| Coverage D: Additional Property Coverage       |                            |                           |  |  |
| Awnings, Canopies, Including Over Gas Pumps    | \$60,000                   | \$60,000                  | 2.00% or \$1,000, whichever is greater, by location. | 2.00% or \$1,000, whichever is greater, by location. |
| Light Poles and Street Signs                   | \$6,000                    | \$6,000                   |  |  |
| Total of All Coverage D Limits of Insurance    | \$66,000                   | \$66,000                  |  |  |

|   |                            |                           | Deductible  |   |
|---|----------------------------|---------------------------|---|---|
| <u>Location #2 Coverage E</u>   | <u>Total Insured Value</u> | <u>Limit of Insurance</u> | Named Windstorm   | All Other Wind/Hail                                       |
| Coverage E: Business Income; Rental Value; Extra Expense<br><u>Monthly Limit of Indemnity:</u><br>8.33% | \$180,000                  | \$180,000                 | 2.00% or \$1,000<br>whichever is greater,<br>by location. | 2.00% or \$1,000<br>whichever is greater,<br>by location. |

| Policy Number      | NAMED PERIL COMMERCIAL PROPERTY POLICY | ICAT NPNA 50(d) (11 14) |
|--------------------|--|-------------------------|
| 42-7560095785-S-01 | DECLARATIONS PAGE AND SCHEDULE A       | 06/01/2017              |
| <b>Schedule A</b>  |  |                         |

**Location #3**

Building #1: 1355 TX-146 , KEMAH, TX 77565

Coverage Basis: Replacement Cost

Coinsurance: Waived

Windstorm Protective Device Credit: Not Included

Pollutant Clean Up &amp; Removal: Included

Electronic Data Processing Coverage: Included

|   |                                     |                            |  | Deductible  |   |
|---|-------------------------------------|----------------------------|--|---|---|
| <u>Location #3 - Building #1 Covered Property</u> |                                     | <u>Total Insured Value</u> | <u>Limit of Insurance</u>                              | Named Storm   | All Other Wind/Hail                                       |
| Coverage A:                                       | Building                            | \$270,000                  | \$270,000  | 2.00% or \$1,000<br>whichever is greater,<br>by location.   | 2.00% or \$1,000<br>whichever is greater,<br>by location. |
| Coverage B:                                       | Business Personal Property          | \$300,000                  | \$300,000  |   |   |
| Coverage C:                                       | Tenant Improvements and Betterments |                            |  |   |   |
| Coverage F:                                       | Ordinance or Law:                   |                            |  | None of the Coverage Parts of Coverage F shall be available unless the deductible provisions of Coverage A have been satisfied and a claim payment is due You under Coverage A. |   |
|   | Part A:                             |                            | Included in Coverage A Limit of Insurance              |   |   |
|   | Parts B and C (Combined Limit):     |                            | Sublimited to 10.00% of Coverage A Limit of Insurance. |   |   |

| Policy Number      | NAMED PERIL COMMERCIAL PROPERTY POLICY | ICAT NPNA 50(d) (11 14) |
|--------------------|--|-------------------------|
| 42-7560095785-S-01 | DECLARATIONS PAGE AND SCHEDULE A       | 06/01/2017              |
| <b>Schedule A</b>  |  |                         |

|  |                            |                           | Deductible   |  |
|--|----------------------------|---------------------------|--|--|
| <u>Location #3 Coverage D Covered Property</u> | <u>Total Insured Value</u> | <u>Limit of Insurance</u> | Named Windstorm                                      | All Other Wind/Hail                                  |
| Coverage D: Additional Property Coverage       |                            |                           |  |  |
| Awnings, Canopies, Including Over Gas Pumps    | \$60,000                   | \$60,000                  | 2.00% or \$1,000, whichever is greater, by location. | 2.00% or \$1,000, whichever is greater, by location. |
| Light Poles and Street Signs                   | \$6,000                    | \$6,000                   |  |  |
| Total of All Coverage D Limits of Insurance    | \$66,000                   | \$66,000                  |  |  |

|   |                            |                           | Deductible  |   |
|---|----------------------------|---------------------------|---|---|
| <u>Location #3 Coverage E</u>   | <u>Total Insured Value</u> | <u>Limit of Insurance</u> | Named Windstorm                                     | All Other Wind/Hail                                 |
| Coverage E: Business Income; Rental Value; Extra Expense<br>Monthly Limit of Indemnity: 8.33% | \$160,000                  | \$160,000                 | 2.00% or \$1,000 whichever is greater, by location. | 2.00% or \$1,000 whichever is greater, by location. |

| Policy Number      | NAMED PERIL COMMERCIAL PROPERTY POLICY | ICAT NPNA 50(d) (11 14) |
|--------------------|--|-------------------------|
| 42-7560095785-S-01 | DECLARATIONS PAGE AND SCHEDULE A       | 06/01/2017              |
| <b>Schedule A</b>  |  |                         |

**Location #4**

Building #1: 169 FM 517 RD E , DICKINSON, TX 77539

Coverage Basis: Replacement Cost

Coinsurance: Waived

Windstorm Protective Device Credit: Included

Pollutant Clean Up &amp; Removal: Included

Electronic Data Processing Coverage: Included

|   |                                     |                            | Deductible   |   |   |
|---|-------------------------------------|----------------------------|--|---|---|
| <u>Location #4 - Building #1 Covered Property</u> |                                     | <u>Total Insured Value</u> | <u>Limit of Insurance</u>                              | Named Storm   | All Other Wind/Hail                                       |
| Coverage A:                                       | Building                            | \$270,000                  | \$270,000  | 2.00% or \$1,000<br>whichever is greater,<br>by location.   | 2.00% or \$1,000<br>whichever is greater,<br>by location. |
| Coverage B:                                       | Business Personal Property          | \$300,000                  | \$300,000  |   |   |
| Coverage C:                                       | Tenant Improvements and Betterments |                            |  |   |   |
| Coverage F:                                       | Ordinance or Law:                   |                            |  | None of the Coverage Parts of Coverage F shall be available unless the deductible provisions of Coverage A have been satisfied and a claim payment is due You under Coverage A. |   |
|   | Part A:                             |                            | Included in Coverage A Limit of Insurance              |   |   |
|   | Parts B and C (Combined Limit):     |                            | Sublimited to 10.00% of Coverage A Limit of Insurance. |   |   |



|                      |   |                                |
|----------------------|---|--------------------------------|
| <b>Policy Number</b> | <b>NAMED PERIL COMMERCIAL PROPERTY POLICY</b> | <b>ICAT NPNA 50(d) (11 14)</b> |
| 42-7560095785-S-01   | DECLARATIONS PAGE AND SCHEDULE A              | 06/01/2017                     |
| <b>Schedule A</b>    |   |                                |

|  |                            |                           | Deductible   |  |
|--|----------------------------|---------------------------|--|--|
| <u>Location #4 Coverage D Covered Property</u> | <u>Total Insured Value</u> | <u>Limit of Insurance</u> | Named Windstorm                                      | All Other Wind/Hail                                  |
| Coverage D: Additional Property Coverage       |                            |                           |  |  |
| Awnings, Canopies, Including Over Gas Pumps    | \$60,000                   | \$60,000                  | 2.00% or \$1,000, whichever is greater, by location. | 2.00% or \$1,000, whichever is greater, by location. |
| Light Poles and Street Signs                   | \$6,000                    | \$6,000                   |  |  |
| Total of All Coverage D Limits of Insurance    | \$66,000                   | \$66,000                  |  |  |

|   |                            |                           | Deductible  |   |
|---|----------------------------|---------------------------|---|---|
| <u>Location #4 Coverage E</u>   | <u>Total Insured Value</u> | <u>Limit of Insurance</u> | Named Windstorm                                     | All Other Wind/Hail                                 |
| Coverage E: Business Income; Rental Value; Extra Expense<br>Monthly Limit of Indemnity: 8.33% | \$130,000                  | \$130,000                 | 2.00% or \$1,000 whichever is greater, by location. | 2.00% or \$1,000 whichever is greater, by location. |

|                      |   |                                |
|----------------------|---|--------------------------------|
| <b>Policy Number</b> | <b>NAMED PERIL COMMERCIAL PROPERTY POLICY</b> | <b>ICAT NPNA 50(d) (11 14)</b> |
| 42-7560095785-S-01   | DECLARATIONS PAGE AND SCHEDULE A              | 06/01/2017                     |
| <b>Schedule A</b>    |   |                                |

**Location #5****Building #1: 411 TX-35 , PORT LAVACA, TX 77979**

|                                      |                  |
|--------------------------------------|------------------|
| Coverage Basis:                      | Replacement Cost |
| Coinurance:                          | Waived           |
| Windstorm Protective Device Credit:  | Not Included     |
| Pollutant Clean Up & Removal:        | Included         |
| Electronic Data Processing Coverage: | Included         |

|   |                                     |                            | Deductible   |   |   |
|---|-------------------------------------|----------------------------|--|---|---|
| <u>Location #5 - Building #1 Covered Property</u> |                                     | <u>Total Insured Value</u> | <u>Limit of Insurance</u>                              | Named Storm   | All Other Wind/Hail                                       |
| Coverage A:                                       | Building                            | \$270,000                  | \$270,000  | 2.00% or \$1,000<br>whichever is greater,<br>by location.   | 2.00% or \$1,000<br>whichever is greater,<br>by location. |
| Coverage B:                                       | Business Personal Property          | \$300,000                  | \$300,000  |   |   |
| Coverage C:                                       | Tenant Improvements and Betterments |                            |  |   |   |
| Coverage F:                                       | <u>Ordinance or Law:</u>            |                            |  | None of the Coverage Parts of Coverage F shall be available unless the deductible provisions of Coverage A have been satisfied and a claim payment is due You under Coverage A. |   |
|   | Part A:                             |                            | Included in Coverage A Limit of Insurance              |   |   |
|   | Parts B and C (Combined Limit):     |                            | Sublimited to 10.00% of Coverage A Limit of Insurance. |   |   |

|                    |   |                         |
|--------------------|---|-------------------------|
| Policy Number      | <b>NAMED PERIL COMMERCIAL PROPERTY POLICY</b> | ICAT NPNA 50(d) (11 14) |
| 42-7560095785-S-01 | <b>DECLARATIONS PAGE AND SCHEDULE A</b>       | 06/01/2017              |
| <b>Schedule A</b>  |   |                         |

|  |                            |                           | Deductible   |  |
|--|----------------------------|---------------------------|--|--|
| <u>Location #5 Coverage D Covered Property</u> | <u>Total Insured Value</u> | <u>Limit of Insurance</u> | Named Windstorm                                      | All Other Wind/Hail                                  |
| Coverage D: Additional Property Coverage       |                            |                           |  |  |
| Awnings, Canopies, Including Over Gas Pumps    | \$50,000                   | \$50,000                  | 2.00% or \$1,000, whichever is greater, by location. | 2.00% or \$1,000, whichever is greater, by location. |
| Total of All Coverage D Limits of Insurance    | \$50,000                   | \$50,000                  |  |  |

|   |                            |                           | Deductible  |   |
|---|----------------------------|---------------------------|---|---|
| <u>Location #5 Coverage E</u>   | <u>Total Insured Value</u> | <u>Limit of Insurance</u> | Named Windstorm                                     | All Other Wind/Hail                                 |
| Coverage E: Business Income; Rental Value; Extra Expense<br><u>Monthly Limit of Indemnity:</u><br>8.33% | \$578,000                  | \$578,000                 | 2.00% or \$1,000 whichever is greater, by location. | 2.00% or \$1,000 whichever is greater, by location. |

|                    |   |                         |
|--------------------|---|-------------------------|
| Policy Number      | <b>NAMED PERIL COMMERCIAL PROPERTY POLICY</b> | ICAT NPNA 50(d) (11 14) |
| 42-7560095785-S-01 | <b>DECLARATIONS PAGE AND SCHEDULE A</b>       | 06/01/2017              |
| <b>Schedule A</b>  |   |                         |

|   |                 |
|---|-----------------|
| <b>ICAT Coverage Extensions</b>   |                 |
| <b>Coverage</b>   | <b>Sublimit</b> |
| <p>The following Extensions apply only if a Limit of Insurance for Coverage B: Business Personal Property ("BPP") is shown on this Schedule A.</p> <p>These Extensions are limited by Policy to the lesser of the sublimit listed below or the total Limit of Insurance for BPP:</p>                                    |                 |
| Electronic Data:  | \$15,000        |
| Fine Arts:  | \$25,000        |
| Valuable Papers :   | \$100,000       |
| Accounts Receivable:  | \$100,000       |
| <p>The following Extensions apply only if a Limit of Insurance for BPP or Coverage E: Loss of Business Income; Rental Value ("BI/RV") is shown on this Schedule A.</p> <p>These Extensions are limited by Policy to the lesser of the sublimit listed below or the total Limit of Insurance shown for BPP or BI/RV:</p> |                 |
| Food Spoilage:  | \$50,000        |
| Utility Interruption:   | \$25,000        |
| <p>The following Extension applies only if a Limit of Insurance is shown for BI/EE:</p> <p>This coverage is limited by policy to the lesser of the sublimit listed below or the total Limit of Insurance shown for BI/EE:</p>   |                 |
| Extended Period Of Indemnity:   | 180 days        |

28. As evidence by the Declarations Page, the Policy provides coverage to the Properties' physical structure on a replacement cost value basis for damages up to \$1,664,000.00. See Ex. B, Policy at Declarations Pages. The Policy also contains a Deductible provision that confirms coverage for damages to the interior of the Property that result from windstorm and hail.

***Hurricane Harvey***

29. On or about August 25, 2017, Hurricane Harvey, recognized as one of the most devastating natural disasters in United States history, made landfall on the Texas coast as a Category 4 hurricane with wind speeds of up to 150 miles per hour. Hurricane Harvey's wind and rain continued to travel through the southeast part of Texas, inflicting billions of dollars in damages to private and public property in Fort Bend County and Harris County alone. 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.

***Sonic Properties make insurance claims for damages***

30. As a result of Harvey's extreme winds and rain when it hit Harris County and the Texas Coast on or about August 25, 2017, the Properties were substantially damaged. Sizeable portions of the Properties' roofs were compromised by wind. As a result, there was also interior damage to the properties. The following photographs taken after Harvey depict some of the damages:

*3107 Red Bluff Road, Pasadena, Texas 77503*

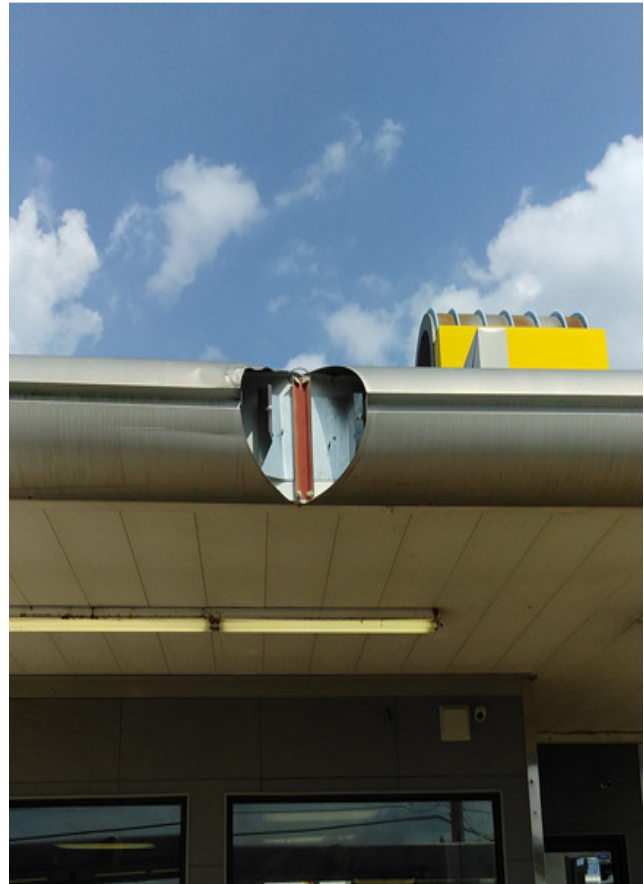








***7031 W Broadway Street, Pearland, Texas 77581***



*2815 Broadway Street, Pearland, Texas 77581*





*1355 TX-146, Kemah, Texas 77565*



***169 FM 517 Road E, Dickinson, Texas 77539***



***411 TX-35, Port Lavaca, Texas 77979***



31. The Properties—especially the roofs and ceilings—were substantially damaged by the storm. Yet as devastating as the physical damage was, Plaintiffs felt fortunate to be protected by millions of dollars in insurance coverage it had procured to insure the Properties

from precisely this type of catastrophe. Immediately after the storm, Plaintiffs promptly filed claims with Certain Underwriters at Lloyd's, London ICAT Syndicate 4242 and National Fire & Marine Insurance Company, alerting them to the extensive damages. This sense of security, borne of a pricey contractual relationship, would prove illusory as Lloyd's and National began their investigation and handling of the claim.

***Plaintiffs work hard to document its damages for Lloyd's and National but received denials.***

32. Lloyd's and National's claims-handling process resulted in wrongful denial that omitted the wealth of facts, physical evidence, obvious hail and wind damages, and meteorological data supporting Plaintiffs' claims. Lloyd's and National unreasonably pinned the loss on anything but the hail and wind, an action designed to save Lloyd's and National hundreds of thousands of dollars in damages to the Properties and the businesses.

33. Lloyd's and National assigned Charles R. Beshara of Worley Claims Services LLC and ICAT Boulder Claims, LLC to handle the claims. Beshara and ICAT Boulder Claims, LLC were unqualified and incapable of adequately assessing the damages to these types of commercial Properties and were the source of many delays throughout the claims process. Lloyd's and National and its adjusters took months to even inspect the Properties or attempt to assess the damages. Lloyd's and National, Beshara and ICAT Boulder Claims, LCC continued to delay the claim resolution and did not provide the insured with answers.

34. Finally, Lloyd's and National ultimately denied the claims on both October 14, 2017 and April 12, 2018, despite the fact that wind and hail damages were obvious and that liability under the Policies were reasonably clear. *See* Ex. C, the "Denial Letters." According to Lloyd's and National, Plaintiffs' claims would not be paid because the "damages found to the property do not exceed your policy deductible" and they were "unable to find a Covered Cause



of Loss” No explanation—or alternative amount—was set forth by Lloyd’s and National. Their conclusions, denials, and refusal to acknowledge or pay the claim were based on an outcome-oriented investigation aimed at denying Plaintiffs’ claim from the outset. Lloyd’s and National, its adjusters, and consultants ignored obvious catastrophic hail and wind damage to the Properties and refused to consider that hail and wind were actually the source of obvious damages. The claims adjustment process was unnecessarily complicated, disorganized, and conducted behind closed doors until Lloyd’s and National ultimately wrongfully refused to compensate its insureds for any of the obvious covered damages under the policy.

35. To this day, due to Lloyd’s and National’s outcome-oriented, inadequate, and haphazard investigation, Lloyd’s and National have refused to pay for any covered damages under the Policies.

***Lloyd’s and National ignores Plaintiffs’ demand letters***

36. On June 1, 2017, Governor Abbott signed House Bill 1774 into law as Section 542A of the Texas Insurance Code. This new law was sponsored by approximately sixty state representatives and senators and contains important consumer protections against a variety of unscrupulous practices. Particularly, Section 542A.003 requires detailed, comprehensive presuit notice that is intended to make the claims and litigation processes more transparent and potentially even avoid unnecessary lawsuits. Upon receiving notice, an insurer has a right to conduct an inspection, and even make an offer to avoid litigation. When utilized properly, Section 542A should assist business consumers like Plaintiffs to avoid protracted litigation over a clear claim.

37. In compliance with Section 542A.003, Plaintiffs gave its pre-suit notice to Lloyd’s and National on August 1, 2018. The pre-suit notice provided a comprehensive outline

of Plaintiffs' claim and damages, quantified its loss, and even offered to waive a formal claim for attorneys' fees if the contractual amounts were paid promptly.

38. Lloyd's and National responded with undervalued offers of settlement.

**Count 1 – Violations of Texas Insurance Code, Section 541**

39. Plaintiffs re-alleges and incorporates each allegation contained in Paragraphs 1-38 of this Complaint as if fully set forth herein.

40. Lloyd's and National failed to attempt to effectuate a prompt, fair, and equitable settlement of a claim with respect to which liability has become reasonably clear, in violation of Texas Insurance Code Section 541.060 (a)(2)(A).

41. Lloyd's and National failed to adopt and implement reasonable standards for prompt investigation of the claims arising under its Policies.

42. Lloyd's and National failed to provide promptly a reasonable explanation, in relation to the facts or applicable law, for the denial of a claim, in violation of Texas Insurance Code Section 541.060 (a)(3).

43. Lloyd's and National refused to pay the claims without conducting a reasonable investigation with respect to the claims, in violation of Texas Insurance Code Section 541.060 (a)(7).

44. Lloyd's and National misrepresented the insurance policies under which it affords property coverage to Plaintiffs, by making an untrue statement of material fact, in violation of Texas Insurance Code Section 541.061 (1).

45. Lloyd's and National misrepresented the insurance policies under which it affords property coverage to Plaintiffs by failing to state a material fact that is necessary to make other statements made not misleading, in violation of Texas Insurance Code Section 541.061 (2).

46. Lloyd's and National misrepresented the insurance policies under which it affords property coverage to Plaintiffs by making a statement in such manner as to mislead a reasonably prudent person to a false conclusion of material fact and failing to disclose a matter required by law to be disclosed, in violation of Texas Insurance Code Section 541.061 (3) and Texas Insurance Code Section 541.002 (1). Defendants misrepresented the insurance policies to Plaintiffs by making a statement in such manner as to mislead a reasonably prudent person to a false conclusion of material fact and failing to disclose a matter required by law to be disclosed, in violation of Texas Insurance Code Section 541.061 (3) and Texas Insurance Code Section 541.002 (1).

47. Lloyd's and National knowingly committed the foregoing acts, with actual knowledge of the falsity, unfairness, or deception of the foregoing acts and practices, in violation of Texas Insurance Code Section 541.002 (1).

**Count 2 – Violations of the Texas Insurance Code, Section 542**

48. Plaintiffs re-allege and incorporate each allegation contained in Paragraphs 1-47 of this Complaint as if fully set forth herein.

49. Lloyd's and National failed to acknowledge receipt of the claim in violation of Texas Insurance Code Section 542.055 (a)(1).

50. Lloyd's and National failed to timely commence investigations of the claims or to request from Plaintiffs any additional items, statements or forms that Lloyd's and National reasonably believed to be required from Plaintiffs in violation of Texas Insurance Code Section 542.055 (a)(2)-(3).

51. Lloyd's and National failed to notify Plaintiffs in writing of the acceptance or rejection of the claims not later than the 15<sup>th</sup> business day after receipt of all items, statements and forms required by Defendants in violation of Texas Insurance Code Section 542.056(a).

52. Lloyd's and National delayed payments of Plaintiffs' claims in violation of Texas Insurance Code Section 542.058(a).

53. Each of the actions described herein were done "knowingly" as that term is used in the Texas Insurance Code and were a producing cause of Plaintiffs' damages.

### **Count 3 – Statutory Interest**

54. Plaintiffs re-allege and incorporate each allegation contained in Paragraphs 1-53 of the Complaint as if fully set forth herein.

55. Plaintiffs make a claim for statutory interest penalties along with reasonable attorneys' fees for violation of Texas Insurance Code Subchapter B pursuant to Texas Insurance Code Section 542.060.

### **Count 4 – Breach of Contract**

56. Plaintiffs re-allege and incorporate each allegation contained in Paragraphs 1-55 of the Complaint as if fully set forth herein.

57. As outlined above, Lloyd's and National breached its contracts with Plaintiffs by refusing to pay for covered damages under the Policies. As a result of Lloyd's and National's breach, Plaintiffs suffered legal damages.

### **Count 5 – Breach of duty of good faith & fair dealing**

58. Plaintiffs re-allege and incorporate each allegation contained in Paragraphs 1-57 of the Complaint as if fully set forth herein.

59. Lloyd's and National, as the property coverage insurers, had a non-delegable duty to deal fairly and in good faith with Plaintiffs in the processing of the claims. Lloyd's and National breached their duty by refusing to properly investigate and effectively denying insurance benefits. Lloyd's and National knew or should have known that there was no reasonable basis for denying or

delaying the required benefits. As a result of Lloyd's and National's breach of these legal duties, Plaintiffs suffered legal damages.

#### **Count 6 – Punitive Damages for Bad Faith**

60. Plaintiffs re-allege and incorporate each allegation contained in Paragraphs 1-59 of this Complaint as if fully set for herein.

61. Defendants acted fraudulently and with malice (as that term is legally defined) in denying and delaying Plaintiffs' claims for benefits. Further, Defendants had actual, subjective awareness of the risk involved, but nevertheless proceeded with conscious indifference to the rights, safety, or welfare of Plaintiffs.

#### **Count 7 – Violations of Texas Deceptive Trade Practices Act**

62. Plaintiffs re-allege and incorporate each allegation contained in Paragraphs 1-61 of this Complaint as if fully set forth herein.

63. The Texas Deceptive Trade Practices Act (DTPA) provides additional protections to consumers who are victims of deceptive, improper, or illegal practices. Defendants' violations of the Texas Insurance Code create a cause of action under the DTPA. Defendants' violations of the Texas Insurance Code, as set forth herein, specifically violate the DTPA as well. Defendants have also acted unconscionably, as that term is defined under the DTPA.

64. Each of the actions described herein were done "knowingly" as that term is used in the DTPA and were a producing cause of Plaintiffs' damages.

#### **Resulting Legal Damages**

65. Plaintiffs are entitled to the actual damages resulting from the Defendants' violations of the law. These damages include the consequential damages to its economic welfare from the wrongful denials and delays of benefits including loss of the properties and business;



and the other actual damages permitted by law. In addition, Plaintiffs are entitled to exemplary damages.

66. As a result of Defendants' acts and/or omissions, Plaintiffs have sustained damages in excess of the minimum jurisdictional limits of this Court.

67. Plaintiffs are entitled under law to the recovery of prejudgment interest at the maximum legal rate.

68. Defendants' knowing violations of the Texas Insurance Code and DTPA entitle Plaintiffs to the attorneys' fees, treble damages, and other penalties provided by law.

69. Plaintiffs are entitled to statutory interest as damages under the Texas Insurance Code 542.060(c).

70. As a result of Defendants' acts and/or omissions, Plaintiffs have sustained damages in excess of the jurisdictional limits of this Court.

71. Plaintiffs are entitled under law to the recovery of prejudgment interest at the maximum legal rate.

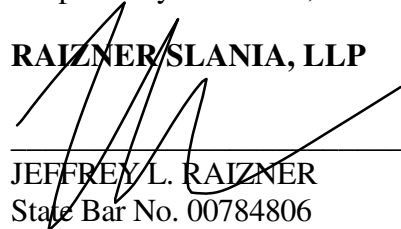
72. Plaintiffs are entitled to the recovery of attorneys' fees pursuant to Tex. Civ. Prac. & Rem. Code §38.001, Texas Insurance Code 542.060(a)-(c), and Tex. Bus & Commerce Code §17.50.

### **PRAYER**

WHEREFORE, PREMISES CONSIDERED, Plaintiffs respectfully request that Plaintiffs have a judgment against Defendants for actual damages in excess of the minimum jurisdictional limits of this Court, pre- and post-judgment interest as allowed by law, costs of suit, and all other relief, at law or in equity, to which Plaintiffs may be entitled.

Respectfully submitted,

**RAIZNER/SLANIA, LLP**



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Southern District Bar No. 15277

ANDREW P. SLANIA

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Fax: 713.554-9098

**ATTORNEYS FOR PLAINTIFFS**

**JURY DEMAND**

*Plaintiffs 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**