

# 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.**

Flood Insurance: You may also need to consider the purchase of flood insurance. Your insurance policy does not include coverage for damage resulting from a flood even if hurricane winds and rain caused the flood to occur. Without separate flood insurance coverage, you may have uncovered losses caused by a flood. Please discuss the need to purchase separate flood insurance coverage with your insurance agent or insurance company, or visit [www.floodsmart.gov](http://www.floodsmart.gov).

## Where you can get information or make a complaint

If you have a question or a problem with a claim or your premium, contact your insurance company first. You can also get information or file a complaint with the Texas Department of Insurance.

### Texas Windstorm Insurance Association

To get information or file a complaint with your insurance company:

Call: TWIA at 1-800-788-8247

Toll-free: 1-800-788-8247

Email: [Compliance@twia.org](mailto:Compliance@twia.org)

Mail: Attn: Compliance Department  
P.O. Box 99090  
Austin, TX 78709-9090

### The Texas Department of Insurance

To get help with an insurance question, learn about your rights, or file a complaint with the state:

Call: 1-800-252-3439

Online: [www.tdi.texas.gov](http://www.tdi.texas.gov)

Email: [ConsumerProtection@tdi.texas.gov](mailto:ConsumerProtection@tdi.texas.gov)

Mail: MC 111-1A, P.O. Box 149091, Austin, TX 78714-9091

### To compare policies and prices

Visit [Helpinsure.com](http://Helpinsure.com) to compare prices and coverages on home and auto insurance policies. The website is a service of the Texas Department of Insurance and the Office of Public Insurance Counsel.

## Donde puede obtener información o presentar una queja

Si tiene una pregunta o un problema con una reclamación o con su prima de seguro, comuníquese primero con su compañía de seguros. Usted también puede obtener información o presentar una queja ante el Departamento de Seguros de Texas (Texas Department of Insurance, por su nombre en inglés).

### Texas Windstorm Insurance Association

Para obtener información o para presentar una queja ante su compañía de seguros:

Llame a: TWIA al 1-800-788-8247

Teléfono gratuito: 1-800-788-8247

Correo electrónico: [Compliance@twia.org](mailto:Compliance@twia.org)

Dirección postal: Attn: Compliance Department  
P.O. Box 99090  
Austin, TX 78709-9090

### El Departamento de Seguros de Texas

Para obtener ayuda con una pregunta relacionada con los seguros, para conocer sus derechos o para presentar una queja ante el estado:

Llame: 1-800-252-3439

En línea: [www.tdi.texas.gov](http://www.tdi.texas.gov)

Correo electrónico: [ConsumerProtection@tdi.texas.gov](mailto:ConsumerProtection@tdi.texas.gov)

Dirección postal: MC 111-1A, P.O. Box 149091, Austin, TX 78714-9091

### Para comparar pólizas y precios

Visite [Helpinsure.com](http://Helpinsure.com) para comparar precios y coberturas en pólizas de seguro para el hogar y automóvil. El sitio web es un servicio del Departamento de Seguros de Texas y de la Oficina del Asesor Público de Seguros (Office of Public Insurance Counsel, por su nombre en inglés).

## INSURANCE WEBSITE NOTICE

### To compare policies and prices

Visit [Helpinsure.com](https://www.helpinsure.com) to compare prices and coverages on home and auto insurance policies. The website is a service of the Texas Department of Insurance and the Office of Public Insurance Counsel.

## AVISO DEL SITIO WEB DE SEGUROS

### Para comparar pólizas y precios

Visite [Helpinsure.com](https://www.helpinsure.com) para comparar precios y coberturas en pólizas de seguro para el hogar y automóvil. El sitio web es un servicio del Departamento de Seguros de Texas y de la Oficina del Asesor Público de Seguros (Office of Public Insurance Counsel, por su nombre en inglés).

# TEXAS WINDSTORM INSURANCE ASSOCIATION

## IMPORTANT NOTICE ABOUT SUPPLEMENTAL CLAIM PAYMENTS

If you think our claim payment is not enough, you can ask for a supplemental (additional) claim payment.

Deadlines: The deadline to ask for a supplemental claim payment is 60 days after the date you receive the letter that says how much we will pay:

- We may extend the deadline in some situations.
- If you are not sure about a deadline, contact us as soon as possible.
- We can help explain any deadlines that may apply to your claim.

How to ask for a supplemental claim payment:

- Call us at (800) 788-8247;
- Visit our Claims Center at [www.twia.org/claimscenter](http://www.twia.org/claimscenter); or
- Email [claims@twia.org](mailto:claims@twia.org).
- When asking for a supplemental claim payment:
  - If you can, tell us why our claim payment was not enough. Please send detailed estimates, pictures, contracts for the repair work, or any other information you think might help.
  - Why it helps: We can make a decision and issue payments quickly when we know the repair costs.

This is what TWIA will do:

- Review your request as soon as possible.
- Respond to your request within 30 days. We may ask you for more information to help us make a decision. We may need to send someone to inspect your property.
- Send you a letter that tells you our decision on your request for a supplemental claim payment. If we agree to pay, we will mail the check to you within 10 business days after sending you our decision letter.

Appraisal Process: If you are still not satisfied with the amount that we paid you, you can repeat this process or demand appraisal.

- You can find more information about appraisal in the Notice below titled “Disputes Regarding Accepted Claims.”
- The appraisal process does not start until you tell us that you hired an appraiser to represent you in the appraisal process.

Read more about supplemental claim payments and appraisal in Condition 11 of this policy on Page 8.

## 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.

You may demand appraisal of “replacement cost” without regard to whether all repairs related to the claim are complete. You must demand appraisal no later than the 30th day after the date you receive notice of our decision regarding your request for replacement cost coverage.

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 60th day after we receive your notice of intent to bring a lawsuit. Alternative dispute resolution must be completed not later than the 60th 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.texas.gov](mailto:ConsumerProtection@tdi.texas.gov); 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**

#### **IMPORTANT NOTICE REGARDING PAYMENT OF INSURANCE DEDUCTIBLES**

Texas law requires a person insured under a property insurance policy to pay any deductible applicable to a claim made under the policy. It is a violation of Texas law for a seller of goods or services who reasonably expects to be paid wholly or partly from the proceeds of a property insurance claim to knowingly allow the insured person to fail to pay, or assist the insured person's failure to pay, the applicable insurance deductible.

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

**TEXASWINDSTORM 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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### DEFINITIONS

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In this policy:

“Actual cash value” means the reasonable and necessary amount that you are likely to incur to repair or replace the damaged part of covered property, at the time of loss or damage, with material of like kind and quality and for the same use, subject to a deduction for deterioration and depreciation. “Actual cash value” applies to valuation of damage regardless of whether the property has sustained partial loss or total loss. The “actual cash value” of lost or damaged property may be significantly less than its replacement cost. We will not pay to repair or replace undamaged property due to mismatch of color, discontinued, outdated or obsolete material.

“Cost to repair or replace” means the reasonable and necessary amount that you are likely to incur to repair

or replace the damaged part of covered property, at the time of loss or damage, with material of like kind and quality and for the same use, without a deduction for deterioration and depreciation. We will not pay to repair or replace undamaged property due to mismatch of color, discontinued, outdated or obsolete material.

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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 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

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## Windstorm and Hail

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

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## Windstorm and Hail

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

# Texas Windstorm Insurance Association - Commercial Policy

## Windstorm and Hail

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

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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.

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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 and proof of payment of any applicable Deductible.

- (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

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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 60th day after the date we receive a claim or the 60th 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;
- (2) The "cost to repair or replace" the damaged property; or
- (3) The specified limit of liability of the policy.

### 7. Coordination of Coverage. Our liability and payment for covered losses under Condition 6. is subject to the following:

- a. Our liability and payment for your use interest as tenant in improvements and betterments will be reduced by the amount the lessor or others are obligated to pay for repairs or replacement of the tenant improvements and betterments.
- b. If two or more of this policy's coverages apply to the same loss or damage, payment for the loss under one coverage will reduce any amount you are entitled to recover under another coverage.
- c. 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.

### 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.

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(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.

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- 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~~Disputes About the Amount of Your Covered Loss.
- a. ~~If you disagree with the amount paid on your claim for your covered damages/loss; if you dispute the amount we will pay for a claim, your exclusive remedy under this policy is appraisal.~~
    - (1) You may request supplemental (additional) payments on covered or accepted items. Your deadline to ask for a supplemental (additional) payment is the same as your deadline for appraisal.
    - (2) If we are unable to agree on a supplemental (additional) payment, you may demand appraisal.
    - ~~(1)~~(3) Appraisal is your exclusive remedy or only way to resolve a disagreement about the amount we will pay for your covered damages.
  - 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; and
      - (ii) The "cost to repair or replace" the damaged property.
    - (3) 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.
    - (4) 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.
    - (5) You and we are responsible in equal shares for paying the costs incurred or charged in connection

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- 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

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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

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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, 6, 11 and 12, including endorsements, and set the number of days by which the deadline is extended.
- 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

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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. Assignment of your rights and duties under the policy will not be valid unless we give our written consent.

21. Death. If you die, we insure:

- a. Your spouse, if a resident of the same household at the time of death; or
- b. The legal representative of the decedent's estate only with respect to the described location.

Coverage will be provided until the end of the policy period in which you die.