

No. 2019- 6159

**Official Order  
of the  
Texas Commissioner of Insurance**

**Date:** NOV 22 2019

**Subject Considered:**

Approval of Texas Windstorm Insurance Association  
Revised Policy Forms and New and Revised Endorsements

Petition Numbers: P-0819-11, P-0819-12, P-0819-13, and P-0919-15  
SERFF State Tracking Numbers: S670105, S670106, S670104, and S671347

**General remarks and official action taken:**

The subject of this order is the Texas Windstorm Insurance Association (TWIA) submission of new and revised forms for approval.

The following findings of fact and conclusions of law are adopted:

**Findings of Fact**

1. On August 16, 2019, TWIA submitted the following new and revised forms for approval:
  - Dwelling Policy (revised);
  - Endorsement No. 365 – Replacement Cost Coverage B (Personal Property) (revised);
  - Endorsement No. 802 – Replacement Cost Coverage A (Dwelling) (new); and
  - Endorsement No. 804 – Replacement Cost Coverage A (Dwelling) – Actual Cash Value Roofs (new).

2. On September 18, 2019, TWIA submitted revised versions of the four forms listed above. It also submitted three more revised forms for approval:
  - Commercial Policy;
  - Endorsement No. 164 – Replacement Cost Coverage A (Building) and Coverage B (Business Personal Property); and
  - Endorsement No. 165 – Replacement Cost Coverage – Actual Cash Value Roofs.
3. TWIA submitted the forms through the NAIC System for Electronic Rate and Form Filing (SERFF). TDI assigned the following SERFF State Tracking Numbers to the submissions: S670105, S670106, S670104, and S671347.
4. TWIA explained that it was submitting the forms as part of its effort to implement provisions of House Bill 1900, House Bill 2102, Senate Bill 615, and Senate Bill 442, 86th Legislature, Regular Session (2019).
5. The forms include new and revised provisions and disclosures about:
  - replacement cost coverage processes and deadlines;
  - appraisal processes and deadlines;
  - deadline extensions by the Commissioner; and
  - payment of deductibles.
6. The revised Dwelling Policy also removes a provision requiring TWIA to wait until the dwelling suffers a loss to determine whether the policy will provide replacement cost coverage without a deduction for depreciation.
7. TDI posted notice of the submissions on the TDI website on September 24, 2019. Notice of the submissions was also published in the October 4, 2019, issue of the *Texas Register* at 44 *TexReg* 5821. The time to request a public hearing ended on October 25, 2019. The comment period ended on November 4, 2019. TDI received no hearing requests or comments.
8. TDI staff reviewed the submissions and sent TWIA questions about the new forms and revisions to existing forms. TWIA responded and submitted final versions of the forms. The final versions of the forms are attached to this order.

**Conclusions of Law**

1. TWIA submitted the new and revised forms for approval under 28 TAC § 5.4911.
2. After the public has had an opportunity to comment and request a public hearing, the Commissioner may approve the new and revised forms under 28 TAC § 5.4911. The Commissioner must approve the forms by order before TWIA can use them.
3. The new and revised forms are consistent with TWIA's obligation to provide windstorm and hail insurance in the catastrophe area under Insurance Code Chapter 2210.

**Order**

The Commissioner approves the following forms submitted by TWIA and attached to this order:

Attachment	Form
1	Dwelling Policy
2	Endorsement No. 365 – Replacement Cost Coverage B (Personal Property)
3	Endorsement No. 802 – Replacement Cost Coverage A (Dwelling)
4	Endorsement No. 804 – Replacement Cost Coverage A (Dwelling) – Actual Cash Value Roofs
5	Commercial Policy
6	Endorsement No. 164 – Replacement Cost Coverage A (Building) and Coverage B (Business Personal Property)
7	Endorsement No. 165 – Replacement Cost Coverage – Actual Cash Value Roofs

Kent C. Sullivan  
Commissioner of Insurance

By: Marianne M. Baker

Marianne M. Baker  
Director, Property and Casualty Lines Office  
Property and Casualty Division  
Commissioner's Order No. 12-0018

2019- 6159

Commissioner's Order

Texas Windstorm Insurance Association

Approval of Policy Forms and Endorsements

Petition Nos. P-0819-11, P-0819-12, P-0819-13, and P-0919-15

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Reviewed by:

A handwritten signature in cursive script that reads "Elisabeth Ret". The signature is written in black ink and is positioned above the printed name.

Elisabeth Ret, Staff Attorney

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Attachment 1

## **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 DWELLING 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).

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## **INSURANCE WEBSITE NOTICE**

### **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.

## **AVISO DEL SITIO WEB DE SEGUROS**

### **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).

**TEXAS WINDSTORM INSURANCE ASSOCIATION****IMPORTANT NOTICE REGARDING RESOLUTION OF DISPUTES**

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

**DISPUTES REGARDING ACCEPTED CLAIMS:**

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

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

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

**OMBUDSMAN FOR POLICYHOLDERS:**

**The Texas Department of Insurance has established the Coastal Outreach and Assistance Services Team (COAST) Program to assist consumers with understanding the TWIA claim process. To obtain assistance from the COAST Program, please refer to the COAST Program website at [www.tdi.texas.gov/Consumer/COAST](http://www.tdi.texas.gov/Consumer/COAST); email [ConsumerProtection@tdi.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.

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**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.

**TEXAS WINDSTORM INSURANCE ASSOCIATION  
DWELLING POLICY - WINDSTORM AND HAIL**

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## Texas Windstorm Insurance Association Dwelling 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.

"Business" includes trade, profession or occupation.

"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

This insurance applies to the described location and coverages for which a limit of liability is shown in the Declarations.

#### COVERAGE A (Dwelling)

We cover:

1. The dwelling on the described location shown in the Declarations, used principally for dwelling purposes, including structures attached to the dwelling, unless listed in the PROPERTY NOT COVERED section of the policy.
2. Materials and supplies located on or next to the described location used to construct, alter or repair the dwelling or other structures on the described location. The total limit of liability for this item is 10% of the Coverage A (Dwelling) limit of liability. This is not additional insurance and does not increase the Coverage A (Dwelling) limit of liability.
3. If not otherwise covered in this policy, building equipment and outdoor equipment used for the service of and located on the described location.
4. Maintenance equipment and supplies, floor coverings, window shades, refrigerators and stoves that you own as a landlord, located on the described location.
5. Other structures on the described location, set apart from the dwelling by clear space. This includes structures connected to the dwelling by only a fence, utility line or similar connection.

The total limit of liability for other structures is 10% of the Coverage A (Dwelling) limit of liability. This is not additional insurance and does not increase the

Coverage A (Dwelling) limit of liability. We do not cover other structures used for business purposes.

6. Other structures specifically described in the Declarations. We do not cover other structures used for business purposes.

**COVERAGE B (Personal Property)**

**We cover:**

Personal property and business personal property owned or used by you or members of your family residing with you while it is on the described location. At your request, we will cover personal property owned by a guest or residence employee while the property is on the described location.

You may use up to 10% of the Coverage B (Personal Property) limit of liability for loss by windstorm or hail to personal property covered under Coverage B (Personal Property) while anywhere in the world. This coverage does not apply to business personal property or property of guests or residence employees. This is not additional insurance and does not increase the Coverage B (Personal Property) limit of liability.

At your request, you may use up to 10% of the Coverage B (Personal Property) limit of liability for loss by windstorm or hail to property of others while in your custody and located on the described location. This is not additional insurance and does not increase the Coverage B (Personal Property) limit of liability.

**PROPERTY NOT COVERED**

**We do not cover:**

1. Animals.
2. Money, currency or bullion.
3. Securities, deeds, or evidences of debt.
4. Records, books of records or manuscripts.
5. Motor or engine propelled vehicles or machines designed for movement on land, including attached machinery or equipment. However, we do cover such vehicles, while located in a fully enclosed building, which are not subject to motor vehicle registration and are:
  - a. Devices and equipment for assisting the handicapped.
  - b. Power mowers and other lawn and garden equipment not exceeding 18 horsepower.
  - c. Golf carts.
  - d. Vehicles or machines used for recreational purposes while located on the described location.
6. Aircraft, meaning any device used or designed for flight except model or hobby aircraft not used or designed to carry people or cargo.
7. 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.
8. Unless specifically described in the Declarations:
  - a. Cloth awnings.
  - b. Greenhouses and their contents.
  - c. Metal screen enclosures and their contents.
  - d. Buildings or structures located wholly or partially over water and their contents.
  - e. Radio and television towers.
  - f. Outside satellite dishes, masts and antennas, including lead-in wiring.
  - g. Windmills and wind chargers.
9. Wind turbines.
10. Breakaway walls, or 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.
11. 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.

**EXTENSIONS OF COVERAGE**

**1. Debris Removal.**

We will pay your expense for the removal from the described location of:

- a. Debris of covered property if windstorm or hail causes the loss.
- b. A tree that has damaged covered property if windstorm or hail causes the tree to fall.

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

When insurance under another policy applies to the damaged property, we will pay only a proportion of debris removal expense, determined by dividing the limit of liability that applies to the damaged property on this policy by the total limit of liability that applies to the damaged property under both policies, and applying the resulting percentage to the debris removal expense.

**2. Reasonable Repairs.**

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

**3. Improvements, Alterations and Additions.**

- a. If you are a tenant of the described location, the Coverage B (Personal Property) limit of liability applies to a loss caused by windstorm or hail to improvements, alterations and additions, made or acquired at your expense, to that part of the described location used only by you.
- b. If you are a condominium owner at the described location, the Coverage B (Personal Property) limit of liability applies to a loss caused by windstorm or hail to alterations, fixtures, installations and additions which are part of the building and contained within the unfinished interior surfaces of the perimeter walls, floors and ceilings of the condominium unit, and the exterior surfaces of balconies and terraces of the condominium unit. Coverage B (Personal Property) does not include property in or on the

condominium unit which is defined in the condominium's declarations or by-laws as a common element.

This is not additional insurance and does not increase the Coverage B (Personal Property) limit of liability.

**4. Property Removed.**

We will pay for expense and damage incurred in the removal of covered property from the described location endangered by windstorm or hail. This coverage exists on a pro-rata basis for 30 days at each location to which such property is removed for preservation. This is not additional insurance and does not increase the Coverage B (Personal Property) limit of liability.

**PERILS INSURED AGAINST**

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

**EXCLUSIONS**

The following exclusions apply to loss to covered property:

**1. Flood.**

We do not cover under any and all circumstances 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 do not cover loss caused by the destruction of property by order of governmental authority.

**3. War.**

We do not cover loss resulting directly or indirectly from war. This includes undeclared war, civil war, insurrection, rebellion, revolution, warlike act by military personnel, destruction or seizure or use for military purpose, and any consequence of these. Discharge of a nuclear weapon will be deemed a warlike act even if accidental.

**4. Nuclear Hazard.**

We do not cover loss resulting directly or indirectly from nuclear reaction, radiation or radioactive contamination, all whether controlled or uncontrolled or however caused.

5. Power Failure.

We do not cover loss resulting directly or indirectly from power failure, unless such failure results from direct physical damage to power, heating or cooling equipment located on the described location caused by windstorm or hail.

6. Rain.

We do not cover loss or damage caused by or resulting from rain, whether driven by wind or not, unless direct force of wind or hail makes an opening in a roof or wall and rain enters through this opening and causes the damage.

7. Electricity.

We do not cover loss to electrical devices or wiring caused by electricity resulting from artificial causes.

8. Ordinance or Law.

We do not cover 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. Mold, Fungi, or Other Microorganisms.

We do not cover loss or damage caused by or resulting from fungi or mold and other microorganisms, except as provided in 9.b.

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

This exclusion also applies to the cost:

- (1) To remove fungi or mold and other microorganisms from covered property covered under this Texas Windstorm Insurance Association policy.

- (2) To tear out and replace any part of the building or other covered property as needed to gain access to the fungi or mold and other microorganisms; and

- (3) Of testing of air or property to confirm the absence, presence or level of fungi or mold and other microorganisms.

b. This exclusion applies unless the fungi or mold and other microorganisms are located upon the portion of covered property which must be repaired or replaced because of sudden and accidental direct physical damage resulting from wind or hail which would otherwise be covered under this policy. For purposes of this exclusion, sudden and accidental shall include a loss event that is hidden or concealed for a period of time until it is detectable. A hidden loss must be reported to us no later than 30 days after the date it was detected or should have been detected.

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

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

10. Asbestos.

We do not cover any loss or damage caused by or resulting from asbestos. We do cover direct physical loss caused by windstorm or hail to covered property containing asbestos materials; however, we do not cover 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 claim is filed, we may request in writing information that is necessary to determine whether to accept or reject the claim.
  - (2) Not later than the 60<sup>th</sup> day after the date we receive a claim or the 60<sup>th</sup> day after the date we receive information requested under Condition 4.b.(1), whichever is later, we shall provide you, in writing, notice of the amount of the loss we will pay, if any, and notice that:
    - (i) we have accepted coverage for the claim in full;
    - (ii) we have accepted coverage for the claim in part and have denied coverage for the claim in part; or
    - (iii) we have denied coverage for the claim in full.
  - (3) We must, on request, provide you reasonable access to all information relevant to the determination by us concerning the claim. You may copy the information at your own cost or may request that we provide a copy of all or part of the information to you. We may charge you the actual cost incurred by us in providing a copy of the information requested, excluding any amount for labor involved in making any information or copy of information available to you.

5. Loss Payment.

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

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

- a. We will use any guidelines published by the commissioner of insurance under Insurance Code Sec. 2210.578(f) to evaluate and settle claims involving the extent to which a loss to insured property was incurred as a result of wind, waves, tidal surges, or rising waters not caused by waves or surges.
- b. Our liability and payment for covered losses will not exceed the smallest of the following:
  - (1) The "actual cash value" of the damaged property;
  - (2) The "cost to repair or replace" the damaged property; or
  - (3) The specified limit of liability of the policy.

7. Residential Community Property. This policy, subject to all other terms and conditions, when covering residential community property, as defined by state law, shall remain in full force and effect as to the interest of each spouse covered, irrespective of divorce or change of ownership between the spouses until the expiration of the policy or until canceled in accordance with the terms and conditions of this policy.

8. Mortgage Clause (Without Contribution).

- a. The word "mortgagee" includes trustee.
- b. We will pay for any covered loss of or damage to buildings or structures to the mortgagee shown in the Declarations as interests appear.

c. The mortgagee has the right to receive loss payment even if the mortgagee has started foreclosure or similar action on the building or structure.

d. If we deny your claim because of your acts or because you have failed to comply with the terms of this policy, the mortgagee has the right to receive loss payment if the mortgagee:

- (1) At our request, pays any premiums due under this policy, if you have failed to do so.
- (2) Submits to us any information we requested from you under Condition 4.b.(1) promptly after receiving notice from us of your failure to do so.
- (3) Has notified us of any change in ownership, occupancy or substantial change in risk known to the mortgagee.

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

e. If we pay the mortgagee for any loss or damage and deny payment to you because of your acts or because you have failed to comply with the terms of this policy:

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

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

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

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

cancellation we give you.

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

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

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

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

9. Other Insurance.

- a. If property covered by this policy is also covered by other insurance, we will pay only the proportion of a loss caused by windstorm or hail under this policy that the limit of liability applying under this policy bears to the total amount of insurance covering the property.
- b. If glass or an item of personal property is insured specifically under any other policy, then this policy applies as excess insurance over the specific insurance.
- c. If a loss covered by this policy is also covered by other insurance in the name of a condominium association, the insurance provided in this policy will be excess over the amount collectible under the other insurance.

10. Limited Judicial Remedies.

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

- a. You may not bring a private lawsuit against us, our agent or representative under Chapters 541 (concerning unfair methods of competition and unfair or deceptive acts or practices) or 542 (concerning processing and settlement of claims), Texas Insurance Code. Subchapter L-1,

Chapter 2210, Texas Insurance Code provides the exclusive remedies for claims against us, our agent or our representative.

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

11. Disputes Concerning the Amount of Loss - Exclusive Remedy.

- a. If you dispute the amount we will pay for a claim, your exclusive remedy under this policy is appraisal.
- b. If you choose to demand appraisal, you must do so no later than the 60<sup>th</sup> day after the date you receive notice from us that we accept coverage for a claim in full or in part as provided by Condition 4.b.(2).
- c. You may request in writing that the 60-day period to demand appraisal be extended:
  - (1) not later than the 75<sup>th</sup> day after the date you receive written notice from us that we accept coverage for a claim in full or in part; and
  - (2) we may grant an additional 30-day period in which you may demand appraisal, on a showing of good cause

d. You may request from us a detailed summary of the manner in which we determined the amount of the loss we will pay.

e. If you do not demand appraisal before the 61<sup>st</sup> day after we notify you that we accept coverage for a claim in full or in part, or before the 31<sup>st</sup> day after we grant an extension for good cause, you waive your right to contest our determination of the amount of loss we will pay for that claim.

f. Appraisal Process.

(1) If you demand appraisal of the amount we will pay for a claim, you and we will each select a competent and independent appraiser. You shall notify us of your appraiser's identity. We shall notify you of our appraiser's identity within 10 days after we receive notice of your appraiser's identity. The two appraisers will choose a competent and independent umpire. If they cannot agree upon an umpire within 15 days, the commissioner of insurance shall select an umpire from a roster of qualified umpires maintained by the Texas Department of Insurance.

(2) The two appraisers will then determine the amount of loss, stating separately for the portion of the claim for which we have accepted coverage in full or in part:

- (i) The "actual cash value" of the damaged property; 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 with the appraisal, including

expenses of the appraisers and umpire. If we pay more than our share of the costs of appraisal, our liability and payment for covered losses shall be reduced by the amount we pay in excess of our share.

g. The appraisal decision is binding upon you and us and is not otherwise reviewable or appealable, unless:

(1) the appraisal decision was obtained by corruption, fraud, or other undue means;

(2) your or our rights were prejudiced by:

- (i) evident partiality by an appraisal umpire;
- (ii) corruption by an appraiser or umpire; or
- (iii) misconduct or willful misbehavior of an appraiser or umpire; or

(3) an appraiser or umpire:

- (i) exceeded the appraiser's or umpire's powers;
- (ii) refused to postpone the appraisal after a showing of sufficient cause for the postponement;
- (iii) refused to consider evidence material to the claim; or
- (iv) conducted the appraisal in a manner that substantially prejudiced your or our rights.

h. If you or we believe the appraisal decision is appealable as a result of any reason listed in Condition 11.g., you or we may file a lawsuit to vacate the appraisal decision in a district court in the county in which the loss that is the subject of the appraisal occurred. A lawsuit under this paragraph must be filed not later than two years after the date of an appraisal decision. If the court vacates the appraisal decision, you and we must begin the appraisal process again.

12. Disputes Concerning Denied Coverage –Exclusive Remedy.

- a. If you dispute our decision to deny coverage for a claim in full or in part, prior to bringing a lawsuit against us, you must provide notice to us of your intent to bring a lawsuit. You may use a form supplied by us.
- b. If you do not provide notice of intent to bring a lawsuit against us within two years after the date you receive notice from us that we denied a claim in full or in part as provided by Condition 4.b.(2), you waive your right to contest our partial or full denial of coverage and you are barred from bringing a lawsuit against us concerning the denial of that claim.
- c. As a prerequisite for filing a lawsuit against us, we may require you to submit the dispute to alternative dispute resolution by mediation or moderated settlement conference, as provided by Chapter 154, Texas Civil Practice and Remedies Code. If we require an alternative dispute resolution:
  - (1) we must request the alternative dispute resolution in writing not later than the 60<sup>th</sup> day after the date we receive your notice of intent to bring a lawsuit against us; and
  - (2) except as provided by Condition 12.c.(3), the alternative dispute resolution must be completed not later than the 60<sup>th</sup> day after the date we request the alternative dispute resolution in writing.
  - (3) The 60-day period for completion of the alternative dispute resolution can be extended by:
    - (i) your and our mutual consent; or
    - (ii) rule adopted by the commissioner of insurance.
- d. Mediation.
  - (1) If we request alternative dispute resolution by mediation and you and we are unable to agree on a mediator, the commissioner of insurance shall select a mediator from a roster of qualified mediators maintained by the Texas Department of Insurance.
  - (2) If we request alternative dispute resolution by mediation, you and we will be equally responsible for the expenses of mediation.
- e. Lawsuit Against Us.
  - (1) You may bring a lawsuit against us concerning the denial of a claim only if you have notified us of your intent to bring a lawsuit as required by Condition 12.a.
  - (2) As provided by Condition 12.c., we have 60 days from the receipt of your notice of intent to bring a lawsuit against us to request that you submit your dispute with us to alternative dispute resolution. You may not bring a lawsuit against us prior to the expiration of that 60-day period, unless we waive our right to request alternative dispute resolution of that claim dispute in writing.
  - (3) If we request alternative dispute resolution as provided by 12.c., you may bring a lawsuit against us if:
    - (i) the alternative dispute resolution was not completed within 60 days from the date we made the request, and no extension was granted under Condition 12.c.(3);
    - (ii) the alternative dispute resolution was not completed prior to the expiration of an authorized extension of the 60-day period, as provided by Condition 12.c.; or
    - (iii) you are not satisfied after completion of the alternative dispute resolution.
  - (4) You must bring any lawsuit against us concerning the denial of a claim not later than two years after the date on which you receive written notification from us that we have denied a claim in full or in part as provided by Condition 4.b.(2).
  - (5) You must bring any lawsuit against us concerning the denial of a claim in a district court in the county in which the loss that is the subject of the coverage denial occurred.
  - (6) If you bring a lawsuit against us concerning the denial of a claim prior to providing notice as required under Condition 12.a., the court shall abate the lawsuit until you provide the notice to us and, if requested

by us, the dispute has been submitted to alternative dispute resolution.

(7) Limitation on Scope of Lawsuit. You may only bring a lawsuit against us concerning the denial of a claim to determine:

(i) whether our denial of coverage was proper; and

(ii) the amount of damage to which you are entitled to recover, if any.

(8) Limitation on Damages Concerning Denied Coverage.

(i) You may recover only:

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

(b) prejudgment interest, at the rate provided in Subchapter B, Chapter 304, Texas Finance Code, from the first day after the date specified by Condition 5., by which we were or would have been required to pay an accepted claim in full or in part; and

(c) court costs and reasonable and necessary attorney's fees.

(ii) Nothing in the Texas Windstorm Insurance Association Act, Chapter 2210, Texas Insurance Code, including the limitation on damages described by Condition 12.e.(8)(i), may be construed to limit the consequential damages, or amount of consequential damages, that you may recover under common law in a lawsuit against us.

(iii) You may recover damages in an amount not to exceed two times the damages associated with a covered loss payable under the terms of the policy and any consequential damages recoverable under common law, if you show by clear and convincing evidence that we mishandled your claim to your detriment by intentionally:

(A) failing to meet the deadlines or

timelines established in the Texas Windstorm Insurance Association Act under Subchapter L-1, Chapter 2210, Texas Insurance Code, without good cause, including the applicable deadline established for payment of an accepted claim or the accepted portion of a claim;

(B) disregarding applicable guidelines published by the commissioner of insurance under Section 2210.578(f), Texas Insurance Code;

(C) failing to provide written notice that we have accepted or rejected a claim as provided for under Condition 4.b.(2);

(D) rejecting a claim without conducting a reasonable investigation with respect to the claim; or

(E) denying coverage for a claim in full or in part, if our liability has become reasonably clear as a result of our investigation with respect to the portion of the claim that was denied.

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

13. Commissioner Extension of Deadlines. The commissioner of insurance, on a showing of good cause, may by rule extend any deadline established under policy Condition 4, 5, 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 30th day after the date of that act, ruling or decision. This policy condition does not apply to a person who is required to resolve a dispute under Conditions 11 or 12 or a binding arbitration endorsement to this policy.
15. Subrogation (Transfer of Rights of Recovery Against Others to Us). If any person or organization to or for whom we make payment under this policy has rights to recover damages from another, those rights are transferred to us to the extent of our payment. That person or organization must do everything necessary to secure our rights and must do nothing after loss to impair them. But you may waive your rights against another party in writing, prior to a loss to your covered property.
16. Abandonment of Property. There can be no abandonment of property to us.
17. Liberalization. If the commissioner of insurance adopts a revision which would broaden or extend the coverage under this policy without additional premium within 45 days prior to or during the policy period, the broadened or extended coverage will immediately apply to this policy.
18. Waiver or Change of Policy Provisions. This policy contains all the agreements between you and us concerning the insurance afforded. You are authorized to make changes in the terms of this policy with our consent; however, this policy's terms can be amended or waived only by endorsement issued by us and made a part of this policy. Your agent is not our authorized representative.

19. Cancellation.

- a. You may cancel this policy at any time by notifying us in writing of the date cancellation is to take effect. We will send you any refund due when the policy is returned to us. The refund will be pro rata, subject to a policy minimum retained premium in an amount equal to 90 days or \$100 whichever is applicable. Payment of the minimum retained premium shall not create or extend coverage beyond the cancellation date that you requested. The minimum retained premium is fully earned on the effective date of the policy and you shall owe to us any unpaid balance of the minimum retained premium.
  - b. We may cancel this policy by mailing or delivering to you notice in writing of the date cancellation takes effect. The effective date of cancellation cannot be before the 14th day after we mail or deliver the notice. Our notice of cancellation will state the reason for cancellation and will state that if the refund is not included with the notice, it will be returned on demand. The refund will be pro rata.
20. Assignment. Assignment of your rights and duties under this policy will not be valid unless we give our 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.

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**Endorsement No. (TWIA) 365 – Replacement Cost Coverage B (Personal Property)**

This endorsement applies only to those Items of Coverage for which this Endorsement No. (TWIA) 365 is scheduled on the Declarations page.

This endorsement will not apply unless you have, at the inception date of this policy, replacement cost coverage in effect on the same property and in the same amount or more, under a companion dwelling, homeowners, farm and ranch owners, condominium owners, or tenant policy to which a windstorm and hail exclusion agreement endorsement is also attached.

In consideration of an included additional premium, the following sections of your TWIA DWELLING POLICY are changed by this endorsement.

**Your Duties After Loss Condition 4.a.(5) is replaced by the following:**

4. Duties After Loss.

a. Your Duties After Loss.

- (5) You must keep an accurate record of repair expenses and proof of payment of any applicable Deductible. Upon completion of repairs or replacement, you may submit reasonable proof of repair expenses and payment of any applicable Deductible, including invoices, bills, statements, receipts, canceled checks, money order receipts, credit card statements, and a copy of an executed installment plan contract or other financing arrangement that requires full payment of the Deductible over time.

**Our Duties After Loss Settlement Condition 4.b.(2). is replaced by the following:**

4. Duties After Loss.

b. Our Duties After Loss.

- (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.

If we accept coverage for your claim under Coverage B (Personal Property) in full or part, our notification under this subsection will notify you of the deadlines for completion and documentation of repairs and for demanding appraisal of the "replacement cost" under Condition 6.d.

**The following section d. is added to Loss Settlement Condition 6.:**

6. Loss Settlement.

d. Our liability and payment for covered losses to personal property under Coverage B (Personal Property) is modified as follows:

- (1) We will pay the smallest of the following:
- (a) The "replacement cost", meaning the amount actually and necessarily spent to repair or replace the damaged personal property; or
  - (b) The specified limit of liability of the policy.

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- (2) We will pay no more than the "actual cash value" until repair or replacement is completed and documentation of "replacement cost" and payment of any applicable Deductible is submitted to us under Condition 4.a.(5).
- (3) You may request payment of "replacement cost" by submitting documentation to us of the completion of repairs or replacement, the "replacement cost", and payment of the Deductible not later than the 545th day after the date we notify you of the amount we will pay under Condition 4.b.(2).
- (4) Not later than the 30th day after the date that we receive documentation from you under Condition 6.d.(3), we will provide you, in writing, notice of:
- (a) the amount we will pay under Condition 6.d.(1); and
  - (b) the deadline to request appraisal of the "replacement cost" under Condition 6.d.(6).
- (5) If we notify you under Condition 6.d.(4) that we will pay your claim, or part of your claim, we must make payment not later than the 10th day after we notify you.
- (6) If you have not completed appraisal under Condition 11. of the amount we will pay under Condition 4.b.(2) and you dispute the amount we will pay for "replacement cost", you may demand appraisal of the "replacement cost" not later than the 30th day after the date you receive notice from us under Condition 6.d.(4). You may demand appraisal of "replacement cost" under this subsection without regard to whether all repairs related to the claim are complete. If you demand appraisal of "replacement cost" under this subsection, the appraisal will be conducted as follows:
- (a) 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.
  - (b) The two appraisers will then determine the "replacement cost." 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 "replacement cost".
  - (c) You and we are responsible in equal shares for paying the costs incurred or charged in connection with the appraisal, including expenses of the appraisers and umpire. If we pay more than our share of the costs of appraisal, our liability and payment for covered losses shall be reduced by the amount we pay in excess of our share.
  - (d) The appraisal decision is binding upon you and us and is not otherwise reviewable or appealable except as provided by Condition 11.g. and 11.h.

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**The following is added to the DEDUCTIBLE clause:**

We may refuse to pay Replacement Cost Coverage under this endorsement until we receive reasonable proof of payment by you of any Deductible applicable to the claim. Reasonable proof of payment includes a canceled check, money order receipt, credit card statement, and a copy of an executed installment plan contract or other financing arrangement that requires full payment of the deductible over time.

All other terms and conditions of the policy apply.

# Attachment 3

## TEXAS WINDSTORM INSURANCE ASSOCIATION Windstorm and Hail

### Endorsement No. (TWIA) 802 – Replacement Cost Coverage A (Dwelling)

This endorsement applies only to those Items of Coverage for which this Endorsement No. (TWIA) 802 is scheduled on the Declarations Page.

**Your Duties After Loss Condition 4.a.(5) is replaced by the following:**

**4. Duties After Loss.**

**a. Your Duties After Loss.**

(5) You must keep an accurate record of repair expenses and proof of payment of any applicable Deductible. Upon Completion of repairs or replacement, you may submit reasonable proof of repair expenses and payment of any applicable Deductible, including invoices, bills, statements, receipts, canceled checks, money order receipts, credit card statements, and a copy of an executed installment plan contract or other financing arrangement that requires full payment of the Deductible over time.

**Our Duties After Loss Settlement Condition 4.b.(2). is replaced by the following:**

**4. Duties After Loss.**

**b. Our Duties After Loss.**

(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.

If we accept coverage for your claim under Coverage A (Dwelling) in full or part, our notification under this subsection will notify you of the deadlines for completion and documentation of repairs and for demanding appraisal of the "replacement cost" under Condition 6.c.

**The following section c. is added to Loss Settlement Condition 6.:**

**6. Loss Settlement.**

**c. Our liability and payment for covered losses to dwelling and other building(s) under Coverage A (Dwelling), excluding outdoor antennas, fences, and structures other than buildings, is modified as follows:**

- (1) We will pay the smallest of the following:
  - (a) The "replacement cost", meaning the amount actually and necessarily spent to repair or replace the damaged dwelling and other building(s); or
  - (b) The specified limit of liability of the policy.
- (2) We will pay no more than the "actual cash value" until repair or replacement is completed and documentation of "replacement cost" and payment of any applicable Deductible is submitted to us under Condition 4.a.(5).
- (3) You may request payment of "replacement cost" by submitting documentation to us of the completion of repairs or replacement, the "replacement cost", and payment of the Deductible not later than the 545th day after the date we notify you of the amount we will pay under Condition 4.b.(2).

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- (4) Not later than the 30th day after the date that we receive documentation from you under Condition 6.c.(3), we will provide you, in writing, notice of:
- (a) the amount we will pay under Condition 6.c.(1); and
  - (b) the deadline to request appraisal of the "replacement cost" under Condition 6.c.(6).
- (5) If we notify you under Condition 6.c.(4) that we will pay your claim, or part of your claim, we must make payment not later than the 10th day after we notify you.
- (6) If you have not completed appraisal under Condition 11. of the amount we will pay under Condition 4.b.(2) and you dispute the amount we will pay for "replacement cost", you may demand appraisal of the "replacement cost" not later than the 30th day after the date you receive notice from us under Condition 6.c.(4). You may demand appraisal of "replacement cost" under this subsection without regard to whether all repairs related to the claim are complete. If you demand appraisal of "replacement cost" under this subsection, the appraisal will be conducted as follows:
- (a) 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.
  - (b) The two appraisers will then determine the "replacement cost." 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 "replacement cost".
  - (c) You and we are responsible in equal shares for paying the costs incurred or charged in connection with the appraisal, including expenses of the appraisers and umpire. If we pay more than our share of the costs of appraisal, our liability and payment for covered losses shall be reduced by the amount we pay in excess of our share.
  - (d) The appraisal decision is binding upon you and us and is not otherwise reviewable or appealable except as provided by Condition 11.g. and 11.h.

**The following is added to the DEDUCTIBLE clause:**

We may refuse to pay Replacement Cost Coverage under this endorsement until we receive reasonable proof of payment by you of any Deductible applicable to the claim. Reasonable proof of payment includes a canceled check, money order receipt, credit card statement, and a copy of an executed installment plan contract or other financing arrangement that requires full payment of the deductible over time.

All other terms and conditions of the policy apply.

# Attachment 4

**TEXAS WINDSTORM INSURANCE ASSOCIATION**  
**Windstorm and Hail**

**Endorsement No. (TWIA) 804 – Replacement Cost Coverage A (Dwelling) –**  
**Actual Cash Value Roofs**

This endorsement applies only to those Items of Coverage for which this Endorsement No. (TWIA) 804 is scheduled on the Declarations Page.

In consideration of an included premium credit, the following sections of your TWIA DWELLING POLICY are changed by this endorsement.

**Your Duties After Loss Condition 4.a.(5) is replaced by the following:**

**4. Duties After Loss.**

**a. Your Duties After Loss.**

- (5) You must keep an accurate record of repair expenses and proof of payment of any applicable Deductible. Upon completion of repairs or replacement, you may submit reasonable proof of repair expenses and payment of any applicable Deductible, including invoices, bills, statements, receipts, canceled checks, money order receipts, credit card statements, and a copy of an executed installment plan contract or other financing arrangement that requires full payment of the Deductible over time.

**Our Duties After Loss Settlement Condition 4.b.(2) is replaced by the following:**

**4. Duties After Loss.**

**b. Our Duties After Loss.**

- (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.

If we accept coverage for your claim under Coverage A (Dwelling) in full or part, our notification under this subsection will notify you of the deadlines for completion and documentation of repairs and for demanding appraisal of the "replacement cost" under Condition 6.c.

**The following section c. is added to Loss Settlement Condition 6.:**

**6. Loss Settlement.**

**c. Our liability and payment for covered losses to dwelling and other building(s) under Coverage A (Dwelling), excluding "roof covering", outdoor antennas, fences and structures other than buildings, is modified as follows:**

- (1) We will pay the smallest of the following:
- (a) The "replacement cost", meaning the amount actually and necessarily spent to repair or replace the damaged dwelling and other building(s); or
  - (b) The specified limit of liability of the policy.
- (2) We will pay no more than the "actual cash value" until repair or replacement is completed and documentation of "replacement cost" and payment of any applicable Deductible is submitted to us under Condition 4.a.(5).

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- (3) You may request payment of "replacement cost" by submitting documentation to us of the completion of repairs or replacement, the "replacement cost", and payment of the Deductible not later than the 545th day after the date we notify you of the amount we will pay under Condition 4.b.(2).
- (4) Not later than the 30th day after the date that we receive documentation from you under Condition 6.c.(3), we will provide you, in writing, notice of:
  - (a) the amount we will pay under Condition 6.c.(1); and
  - (b) the deadline to request appraisal of the "replacement cost" under Condition 6.c.(6).
- (5) If we notify you under Condition 6.c.(4) that we will pay your claim, or part of your claim, we must make payment not later than the 10th day after we notify you.
- (6) If you have not completed appraisal under Condition 11. of the amount we will pay under Condition 4.b.(2) and you dispute the amount we will pay for "replacement cost", you may demand appraisal of the "replacement cost" not later than the 30th day after the date you receive notice from us under Condition 6.c.(4). You may demand appraisal of "replacement cost" under this subsection without regard to whether all repairs related to the claim are complete. If you demand appraisal of "replacement cost" under this subsection, the appraisal will be conducted as follows:
  - (a) 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.
  - (b) The two appraisers will then determine the "replacement cost." 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 "replacement cost".
  - (c) You and we are responsible in equal shares for paying the costs incurred or charged in connection with the appraisal, including expenses of the appraisers and umpire. If we pay more than our share of the costs of appraisal, our liability and payment for covered losses shall be reduced by the amount we pay in excess of our share.
  - (d) The appraisal decision is binding upon you and us and is not otherwise reviewable or appealable except as provided by Condition 11.g. and 11.h.
- (7) "Roof covering" means:
  - (a) The roofing material exposed to the weather;
  - (b) The underlayments applied for moisture protection; and
  - (c) All flashings required in the replacement of a roof covering.

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**TEXAS WINDSTORM INSURANCE ASSOCIATION**  
**Windstorm and Hail**

**The following is added to the DEDUCTIBLE clause:**

We may refuse to pay Replacement Cost Coverage under this endorsement until we receive reasonable proof of payment by you of any Deductible applicable to the claim. Reasonable proof of payment includes a canceled check, money order receipt, credit card statement, and a copy of an executed installment plan contract or other financing arrangement that requires full payment of the deductible over time.

All other terms and conditions of the policy apply.

**Attachment 5**

**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).

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## 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).

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**INSURANCE WEBSITE NOTICE**

**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.

**AVISO DEL SITIO WEB DE SEGUROS**

**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).

**TEXAS WINDSTORM INSURANCE ASSOCIATION**

**IMPORTANT NOTICE REGARDING RESOLUTION OF DISPUTES**

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

**DISPUTES REGARDING ACCEPTED CLAIMS:**

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

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.

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**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  
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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.

---

**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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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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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

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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.

d. You may not bring a lawsuit against us with

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reference to a claim for which we have accepted coverage in full, except as provided by Condition 11.

- e. You may not bring a lawsuit against us with reference to the amount of loss we will pay for a claim in full or in part, except as provided by Condition 11.
  - f. You may not bring a lawsuit against us with reference to a claim for which we have denied coverage in full or in part, except as provided by Condition 12.
11. Disputes Concerning the Amount of Loss Exclusive Remedy.
- a. If you dispute the amount we will pay for a claim, your exclusive remedy under this policy is appraisal.
  - b. If you choose to demand appraisal, you must do so no later than the 60<sup>th</sup> day after the date you receive notice from us that we accept coverage for a claim in full or in part as provided by Condition 4.b.(2).
  - c. You may request in writing that the 60-day period to demand appraisal be extended:
    - (1) not later than the 75<sup>th</sup> day after the date you receive written notice from us that we accept coverage for a claim in full or in part; and
    - (2) we may grant an additional 30-day period in which you may demand appraisal, on a showing of good cause.
  - d. You may request from us a detailed summary of the manner in which we determined the amount of the loss we will pay.
  - e. If you do not demand appraisal before the 61<sup>st</sup> day after we notify you that we accept coverage for a claim in full or in part, or before the 31<sup>st</sup> day after we grant an extension for good cause, you waive your right to contest our determination of the amount of loss we will pay for that claim.
  - f. Appraisal Process.
    - (1) If you demand appraisal of the amount

we will pay for a claim, you and we will each select a competent and independent appraiser. You shall notify us of your appraiser's identity. We shall notify you of our appraiser's identity within 10 days after we receive notice of your appraiser's identity. The two appraisers will choose a competent and independent umpire. If they cannot agree upon an umpire within 15 days, the commissioner of insurance shall select an umpire from a roster of qualified umpires maintained by the Texas Department of Insurance.

- (2) The two appraisers will then determine the amount of loss, stating separately for the portion of the claim for which we have accepted coverage in full or in part:
  - (i) The "actual cash value" of the damaged property; 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 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;

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- (ii) corruption by an appraiser or umpire; or
  - (iii) misconduct or willful misbehavior of an appraiser or umpire; or
- (3) an appraiser or umpire:
- (i) exceeded the appraiser's or umpire's powers;
  - (ii) refused to postpone the appraisal after a showing of sufficient cause for the postponement;
  - (iii) refused to consider evidence material to the claim; or
  - (iv) conducted the appraisal in a manner that substantially prejudiced your or our rights.
- h. If you or we believe the appraisal decision is appealable as a result of any reason listed in Condition 11.g., you or we may file a lawsuit to vacate the appraisal decision in a district court in the county in which the loss that is the subject of the appraisal occurred. A lawsuit under this paragraph must be filed not later than two years after the date of an appraisal decision. If the court vacates the appraisal decision, you and we must begin the appraisal process again.
12. Disputes Concerning Denied Coverage – Exclusive Remedy.
- a. If you dispute our decision to deny coverage for a claim in full or in part, prior to bringing a lawsuit against us, you must provide notice to us of your intent to bring a lawsuit. You may use a form supplied by us.
  - b. If you do not provide notice of intent to bring a lawsuit against us within two years after the date you receive notice from us that we denied a claim in full or in part as provided by Condition 4.b.(2), you waive your right to contest our partial or full denial of coverage and you are barred from bringing a lawsuit against us concerning the denial of that claim.
- c. As a prerequisite for filing a lawsuit against us, we may require you to submit the dispute to alternative dispute resolution by mediation or moderated settlement conference, as provided by Chapter 154, Texas Civil Practice and Remedies Code. If we require an alternative dispute resolution:
- (1) we must request the alternative dispute resolution in writing not later than the 60<sup>th</sup> day after the date we receive your notice of intent to bring a lawsuit against us; and
  - (2) except as provided by Condition 12.c.(3), the alternative dispute resolution must be completed not later than the 60<sup>th</sup> day after the date we request the alternative dispute resolution in writing.
  - (3) The 60-day period for completion of the alternative dispute resolution can be extended by:
    - (i) your and our mutual consent; or
    - (ii) rule adopted by the commissioner of insurance.
- d. Mediation.
- (1) If we request alternative dispute resolution by mediation and you and we are unable to agree on a mediator, the commissioner of insurance shall select a mediator from a roster of qualified mediators maintained by the Texas Department of Insurance.
  - (2) If we request alternative dispute resolution by mediation, you and we will be equally responsible for the expenses of mediation.
- e. Lawsuit Against Us.
- (1) You may bring a lawsuit against us concerning the denial of a claim only if you have notified us of your intent to bring a lawsuit as required by Condition 12.a.
  - (2) As provided by Condition 12.c., we have 60 days from the receipt of your notice of intent to bring a lawsuit against us to request that you submit your dispute with us to

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- alternative dispute resolution. You may not bring a lawsuit against us prior to the expiration of that 60-day period, unless we waive our right to request alternative dispute resolution of that claim dispute in writing.
- (3) If we request alternative dispute resolution as provided by 12.c., you may bring a lawsuit against us if:
- (i) the alternative dispute resolution was not completed within 60 days from the date we made the request, and no extension was granted under Condition 12.c.(3);
  - (ii) the alternative dispute resolution was not completed prior to the expiration of an authorized extension of the 60- day period, as provided by Condition 12.c.; or
  - (iii) you are not satisfied after completion of the alternative dispute resolution.
- (4) You must bring any lawsuit against us concerning the denial of a claim not later than two years after the date on which you receive written notification from us that we have denied a claim in full or in part as provided by Condition 4.b.(2).
- (5) You must bring any lawsuit against us concerning the denial of a claim in a district court in the county in which the loss that is the subject of the coverage denial occurred.
- (6) If you bring a lawsuit against us concerning the denial of a claim prior to providing notice as required under Condition 12.a., the court shall abate the lawsuit until you provide the notice to us and, if requested by us, the dispute has been submitted to alternative dispute resolution.
- (7) Limitation on Scope of Lawsuit. You may only bring a lawsuit against us concerning the denial of a claim to determine:
- (i) whether our denial of coverage was proper; and
  - (ii) the amount of damage to which you are entitled to recover, if any.
- (8) Limitation on Damages Concerning Denied Coverage.
- (i) You may recover only:
    - (A) the covered loss payable under the terms of this policy, less any amount already paid by us for any portion of a covered loss;
    - (B) prejudgment interest, at the rate provided in Subchapter B, Chapter 304, Texas Finance Code, from the first day after the date specified by Condition 5., by which we were or would have been required to pay an accepted claim in full or in part; and
    - (C) court costs and reasonable and necessary attorney's fees.
  - (ii) Nothing in the Texas Windstorm Insurance Association Act, Chapter 2210, Texas Insurance Code, including the limitation on damages described by Condition 12.e.(8)(i), may be construed to limit the consequential damages, or amount of consequential damages, that you may recover under common law in a lawsuit against us.
  - (iii) You may recover damages in an amount not to exceed two times the damages associated with a covered loss payable under the terms of the policy and any consequential damages recoverable under common law, if you show by clear and convincing evidence that we mishandled your claim to your detriment by intentionally:
    - (A) failing to meet the deadlines or timelines established in the Texas Windstorm Insurance Association Act under Subchapter L-1, Chapter 2210, Texas Insurance Code, without good cause, including the applicable deadline established for payment of an accepted claim or the accepted portion of a claim;
    - (B) disregarding applicable guidelines

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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 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

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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.

**Endorsement No. (TWIA) 164 – Replacement Cost Coverage –  
Coverage A (Building) and Coverage B (Business Personal Property)**

This endorsement applies only to those Items of Coverage for which this Endorsement No. (TWIA) 164 is scheduled on the Declarations page.

**Your Duties After Loss Condition 4.a.(5) is replaced by the following:**

**4. Duties After Loss.**

**a. Your Duties After Loss.**

- (5) You must keep an accurate record of repair expenses and proof of payment of any applicable Deductible. Upon completion of repairs or replacement, you may submit reasonable proof of repair expenses and payment of any applicable Deductible, including invoices, bills, statements, receipts, canceled checks, money order receipts, credit card statements, and a copy of an executed installment plan contract or other financing arrangement that requires full payment of the Deductible over time.

**Our Duties After Loss Condition 4.b.(2) is replaced by the following:**

**4. Duties After Loss.**

**b. Our Duties After Loss.**

- (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.

If we accept coverage for your claim under Coverage A (Building) or Coverage B (Business Personal Property) in full or part, our notification under this subsection will notify you of the deadlines for completion and documentation of repairs and for demanding appraisal of the "replacement cost" under Condition 6.c.

**The following section c. is added to Loss Settlement Condition 6.:**

**6. Loss Settlement.**

**c. Our liability and payment for covered losses under Coverage A (Building) and Coverage B (Business Personal Property), excluding property described in Condition 6.c.(7), is modified as follows:**

- (1) We will pay the smallest of the following:
  - (a) The "replacement cost", meaning the amount actually and necessarily spent to repair or replace the damaged building(s) or business personal property; or
  - (b) The specified limit of liability of the policy.
- (2) We will pay no more than the "actual cash value" until repair or replacement is completed and documentation of "replacement cost" and payment of any applicable Deductible is submitted to us under Condition 4.a.(5).
- (3) You may request payment of "replacement cost" by submitting documentation to us of the completion of repairs or replacement, "replacement cost", and payment of the Deductible not later than the 545th day after the date we notify you of the amount we will pay under Condition 4.b.(2).

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- (4) Not later than the 30th day after the date that we receive documentation from you under Condition 6.c.(3), we will provide you, in writing, notice of:
- (a) the amount we will pay under Condition 6.c.(1); and
  - (b) the deadline to request appraisal of the "replacement cost" under Condition 6.c.(6).
- (5) If we notify you under Condition 6.c.(4) that we will pay your claim, or part of your claim, we must make payment not later than the 10th day after we notify you.
- (6) If you have not completed appraisal under Condition 11. of the amount we will pay under Condition 4.b.(2) and you dispute the amount we will pay for "replacement cost", you may demand appraisal of the "replacement cost" not later than the 30th day after the date you receive notice from us under Condition 6.c.(4). You may demand appraisal of "replacement cost" under this subsection without regard to whether all repairs related to the claim are complete. If you demand appraisal of "replacement cost" under this subsection, the appraisal will be conducted as follows:
- (a) 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.
  - (b) The two appraisers will then determine the "replacement cost." 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 "replacement cost".
  - (c) You and we are responsible in equal shares for paying the costs incurred or charged in connection with the appraisal, including expenses of the appraisers and umpire. If we pay more than our share of the costs of appraisal, our liability and payment for covered losses shall be reduced by the amount we pay in excess of our share.
  - (d) The appraisal decision is binding upon you and us and is not otherwise reviewable or appealable except as provided by Condition 11.g. and 11.h.
- (7) Condition 6.c. does not apply to the following property:
- (a) Stock (raw, in process, or finished) or merchandise, including materials and supplies in connection therewith;
  - (b) Property of others;
  - (c) Personal property usual to a residence;
  - (d) Books of account, abstracts, manuscripts, drawings, card index systems and other records or storage media (including film, tape, disc, drum, cell and other magnetic recording or storage media);
  - (e) Paintings, etchings, pictures, tapestries, statuary, marbles, bronzes, antique furniture, rare books, antique silver, porcelains, rare glassware, bric-a-brac or other articles of art, rarity or antiquity;
  - (f) Outdoor equipment, except equipment used in the service of the building; or
  - (g) Window or wall air conditioning units.
- However, Condition 6.c. applies to property described subsections (7)(a) through (7)(f) if you are a church, school, or hospital.

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**The following is added to the DEDUCTIBLE clause:**

We may refuse to pay Replacement Cost Coverage under this endorsement until we receive reasonable proof of payment by you of any Deductible applicable to the claim. Reasonable proof of payment includes a canceled check, money order receipt, credit card statement, and a copy of an executed installment plan contract or other financing arrangement that requires full payment of the deductible over time.

All other terms and conditions of the policy apply.

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**Endorsement No. (TWIA) 165 – Replacement Cost Coverage – Actual Cash Value Roofs**

This endorsement applies only to those Items of Coverage for which this Endorsement No. (TWIA) 165 is scheduled on the Declarations page.

**Your Duties After Loss Condition 4.a.(5) is replaced by the following:**

4. Duties After Loss.

a. Your Duties After Loss.

- (5) You must keep an accurate record of repair expenses and proof of payment of any applicable Deductible. Upon completion of repairs or replacement, you may submit reasonable proof of repair expenses and payment of any applicable Deductible, including invoices, bills, statements, receipts, canceled checks, money order receipts, credit card statements, and a copy of an executed installment plan contract or other financing arrangement that requires full payment of the Deductible over time.

**Our Duties After Loss Condition 4.b.(2) is replaced by the following:**

4. Duties After Loss.

b. Our Duties After Loss.

- (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.

If we accept coverage for your claim under Coverage A (Building) or Coverage B (Business Personal Property) in full or part, our notification under this subsection will notify you of the deadlines for completion and documentation of repairs and for demanding appraisal of the "replacement cost" under Condition 6.c.

**The following section c. is added to Loss Settlement Condition 6.:**

6. Loss Settlement.

- c. Our liability and payment for covered losses under Coverage A (Building) and Coverage B (Business Personal Property), excluding "roofs" and other property described in Condition 6.c.(7), is modified as follows:

- (1) We will pay the smallest of the following:
  - (a) The "replacement cost", meaning the amount actually and necessarily spent to repair or replace the damaged building(s) or business personal property; or
  - (b) The specified limit of liability of the policy.
- (2) We will pay no more than the "actual cash value" until repair or replacement is completed and documentation of "replacement cost" and payment of any applicable Deductible is submitted to us under Condition 4.a.(5).
- (3) You may request payment of "replacement cost" by submitting documentation to us of the completion of repairs or replacement, "replacement cost", and payment of the Deductible not later than the 545<sup>th</sup> day after the date we notify you of the amount we will pay under Condition 4.b.(2).

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- (4) Not later than the 30<sup>th</sup> day after the date that we receive documentation from you under Condition 6.c.(3), we will provide you, in writing, notice of:
- (a) the amount we will pay under Condition 6.c.(1); and
  - (b) the deadline to request appraisal of the "replacement cost" under Condition 6.c.(6).
- (5) If we notify you under Condition 6.c.(4) 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.
- (6) If you have not completed appraisal under Condition 11. of the amount we will pay under Condition 4.b.(2) and you dispute the amount we will pay for "replacement cost", you may demand appraisal of the "replacement cost" not later than the 30<sup>th</sup> day after the date you receive notice from us under Condition 6.c.(4). You may demand appraisal of "replacement cost" under this subsection without regard to whether all repairs related to the claim are complete. If you demand appraisal of "replacement cost" under this subsection, the appraisal will be conducted as follows:
- (a) 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.
  - (b) The two appraisers will then determine the "replacement cost." 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 "replacement cost".
  - (c) You and we are responsible in equal shares for paying the costs incurred or charged in connection with the appraisal, including expenses of the appraisers and umpire. If we pay more than our share of the costs of appraisal, our liability and payment for covered losses shall be reduced by the amount we pay in excess of our share.
  - (d) The appraisal decision is binding upon you and us and is not otherwise reviewable or appealable except as provided by Condition 11.g. and 11.h.
- (7) Condition 6.c. does not apply to the following property:
- (a) Stock (raw, in process, or finished) or merchandise, including materials and supplies in connection therewith;
  - (b) Property of others;
  - (c) Personal property usual to a residence;
  - (d) Books of account, abstracts, manuscripts, drawings, card index systems and other records or storage media (including film, tape, disc, drum, cell and other magnetic recording or storage media);
  - (e) Paintings, etchings, pictures, tapestries, statuary, marbles, bronzes, antique furniture, rare books, antique silver, porcelains, rare glassware, bric-a-brac or other articles of art, rarity or antiquity;
  - (f) Outdoor equipment, except equipment used in the service of the building;
  - (g) Window or wall air conditioning units; or
  - (h) "Roofs".

However, Condition 6.c. applies to property described subsections (7)(a) through (7)(f) if you are a church, school, or hospital.

- (8) "Roofs" means:
- (a) Roofs and all materials required for replacement of a roof and related building components, including underlayment, fasteners, flashing, and water-proofing;
  - (b) Previous roof layers, insulation boards, and decking; and
  - (c) Vents and roof-mounted equipment or other structures.

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**The following is added to the DEDUCTIBLE clause:**

We may refuse to pay Replacement Cost Coverage under this endorsement until we receive reasonable proof of payment by you of any Deductible applicable to the claim. Reasonable proof of payment includes a canceled check, money order receipt, credit card statement, and a copy of an executed installment plan contract or other financing arrangement that requires full payment of the deductible over time.

All other terms and conditions of the policy apply.