



3. Defendant is without sufficient information to admit or deny the allegations in paragraph 3 of the Complaint, and therefore, denies same

4. Defendant admits that it issued Policy No. IL-PACP-613D0687-TLC-07 on or about June 7, 2007 and would further respond that such policy speaks for itself regarding what locations are covered by the policy and the specific coverages which are provided. Defendant admits the policy was effective from July 17, 2007 until July 17, 2008. Defendant denies the remaining allegations in paragraph 4 of the Complaint.

5. Defendant admits that First Texas was involved in the procurement of the policy. Defendant is without sufficient information to admit or deny the remaining allegations of paragraph 5 of the Complaint, and therefore, denies same.

6. Defendant admits that Herbert and Marlene Singer Living Trust was the named insured under the applicable insurance policy on the date the policy was issued. Defendant admits that Defendant changed the named insured of the applicable insurance policy from Herbert and Marlene Singer Living Trust to GunBarrell-Jacksonville, LLC, Herbert Singer on or about November 29, 2007. Defendant denies the remaining allegations in paragraph 6 of the Complaint.

7. Defendant is without sufficient information to admit or deny when Plaintiffs discovered the theft referenced in paragraph 7 of the Complaint and therefore denies such allegations. Defendant admits that a loss was reported to it in December 2007 relating to the theft of copper that Plaintiffs claimed required the replacement of air-conditioning units. Defendant denies the remaining allegations in paragraph 7 of the Complaint.

8. Defendant admits that a loss was reported to it in December 2007 and assigned claim no. A8N0004 and that Defendant denied such claim in March 2008 because the policy did

not provide coverage due to the application of the vacancy limitation. Defendant denies the remaining allegations in paragraph 8 of the Complaint.

9. Defendant admits that in May 2008, a loss relating to the theft of copper at the referenced building was reported to Defendant and assigned claim no. A7U4895. Defendant is without sufficient information to admit or deny the remaining allegations of paragraph 9 of the Complaint, and therefore, denies same.

10. Defendant admits it was notified of a second loss relating to the theft of copper and that it has denied the claim associated with such loss. Defendant denies the remaining allegations in paragraph 10 of the Complaint.

11. Defendant denies the allegations in paragraph 11 of the Complaint.

12. Defendant admits that First Texas was involved in the procurement of the policy. Defendant is without sufficient information to admit or deny the remaining allegations of paragraph 12 of the Complaint, and therefore, denies same.

13. Defendant admits that on July 17, 2007, a Travelers risk control consultant inspected the insured property located at 1822 S. Jackson, Jacksonville, Texas 75766, including the building identified by Plaintiffs as Location No. 2, Building No.1. Defendant admits that a copy of the risk consultant's written report dated July 27, 2007 was sent by Travelers to Traci Davis at First Texas. Defendant is without sufficient information to admit or deny the allegations in the fifth sentence of paragraph 13 of the Complaint, and therefore, denies same. Defendant denies the remaining allegations in paragraph 13 of the Complaint.

14. Defendant denies that its denial of Plaintiffs' claims was wrongful. Defendant is without sufficient information to admit or deny the remaining allegations in paragraph 14 of the Complaint, and therefore, denies same

15. Defendant admits that it received correspondence dated December 3, 2008 and admits that it sent correspondence dated February 2, 2009 to Plaintiffs. Defendant would further respond that such correspondence speaks for itself. Defendant denies the remaining allegations in paragraph 15 of the Complaint.

16. Defendant would respond that any correspondence attached to the Complaint speaks for itself. Defendant is without sufficient information to admit or deny the allegations of paragraph 16 of the Complaint, and therefore, denies same.

17. Defendant admits that it produced as part of its Additional Disclosures the document identified as Exhibit G. Defendant would further respond that such document speaks for itself. Defendant denies the allegations in the third sentence of paragraph 17. Defendant is without sufficient information to admit or deny the remaining allegations of paragraph 17 of the Complaint, and therefore, denies same.

18. Defendant admits that the buildings identified in the policy as Location Nos. 1, 2 and 3 are collectively referred to as Cherokee Plaza. Defendant admits that Cherokee Plaza consists of three buildings in Jacksonville, Texas. Defendant admits that Location No. 2 is the largest of the three buildings in Cherokee Plaza and has a total square footage of slightly more than 54,000 sq. ft. Defendant admits that a large portion of this store was leased to Winn Dixie during certain time periods. Defendant is without sufficient information to admit or deny the remaining allegations of paragraph 18 of the Complaint, and therefore, denies same.

19. Defendant denies that use of the property in question for storage constitutes customary operations under the policy. Defendant is without sufficient information to admit or deny the remaining allegations of paragraph 19 of the Complaint, and therefore, denies same.

20. Defendant denies that the use of the property in question for storage constitutes customary operations under the policy. Defendant is without sufficient information to admit or deny the remaining allegations of paragraph 20 of the Complaint, and therefore, denies same.

21. Defendant denies that the preparation of the property in question for a potential tenant constitutes customary operations under the policy. Defendant admits that in May 2008, a loss relating to the theft of copper at the referenced building was reported to Defendant and assigned claim no. A7U4895. Defendant is without sufficient information to admit or deny the remaining allegations of paragraph 21 of the Complaint, and therefore, denies same.

22. Defendant admits that “customary operations” is not defined in the policy. Defendant is without sufficient information to admit or deny the remaining allegations in the fifth and sixth sentences of paragraph 22 of the Complaint, and therefore, denies same. Defendant denies the remaining allegations in paragraph 22 of the Complaint.

23. Defendant admits that the property in question has a total of 54,255 sq. ft. Defendant denies the remaining allegations in paragraph 23 of the Complaint.

24. Defendant admits the policy was effective from July 17, 2007 until July 17, 2008, and would further respond that such policy speaks for itself regarding what locations are covered by the policy and the specific coverages which are provided. Defendant admits that on July 17, 2007, Travelers inspected the property. Defendant denies the remaining allegations in paragraph 24 of the Complaint.

25. Defendant admits that Plaintiffs deny that the location of the property was vacant as defined by the policy. Defendant denies the remaining allegations in paragraph 25 of the Complaint.

26. Defendant admits that Plaintiffs deny that the location of the property was vacant as defined by the policy. Defendant is without sufficient information to admit or deny the remaining allegations of paragraph 26 of the Complaint, and therefore, denies same.

27. Defendant denies the allegations in paragraph 27 of the Complaint.

28. Defendant denies the allegations in paragraph 28 of the Complaint.

29. Defendant denies the allegations in paragraph 29 of the Complaint.

30. Defendant denies the allegations in paragraph 30 of the Complaint.

31. Defendant denies the allegations in paragraph 31 of the Complaint.

32. Defendant denies the allegations in paragraph 32 of the Complaint.

33. Defendant denies the allegations in paragraph 33 of the Complaint.

34. Defendant denies the allegations in paragraph 34 of the Complaint.

35. Defendant denies the allegations in paragraph 35 of the Complaint.

36. Defendant admits that it received a demand letter dated December 3, 2008, but denies that such letter meets the conditions required for a pre-suit demand under the Texas Insurance Code or the Texas Deceptive Trade Practices Act. Defendant denies the remaining allegations in paragraph 36 of the Complaint.

37. Defendant denies the allegations in paragraph 37 of the Complaint.

38. Defendant denies the allegations in paragraph 38 of the Complaint.

39. Defendant denies the allegations in paragraph 39 of the Complaint.

40. Defendant denies the allegations in paragraph 40 of the Complaint.

41. Defendant denies the allegations in paragraph 41 of the Complaint.

42. Defendant denies the allegations in paragraph 42 of the Complaint.

43. Defendant denies that Plaintiffs are entitled to the relief requested in their Prayer.

44. All allegations in the Complaint not expressly admitted herein are denied.

## **II. Additional Defenses**

Defendant pleads the following matters in defense, should the same be necessary:

1. Defendant specifically denies that all conditions precedent to Plaintiffs' claims for recovery have occurred or been met.

2. Some or all of the Plaintiffs lack standing to assert claims in this case because they were not an insured(s) under the subject insurance policy at the time of the losses in question. The insured under the policy had been amended to GunBarrell-Jacksonville, LLC, Herbert Singer. Plaintiffs must also demonstrate an insurable interest in the property at the time of the alleged loss.

3. Plaintiffs' claims are subject to the deductible of the insurance policy at issue as well as the limits of insurance provided therein.

4. Coverage may be limited or precluded to the extent the claim falls within the limitation number 5 in the Businessowner's Property Coverage Special Form, which provides:

**d.** We will not pay for any loss or damage caused by any of the following, even if they are Covered Causes of loss, if the building where loss or damage occurs has been "vacant" for more than 60 consecutive days before that loss or damage occurs:

- (1) Vandalism;
- (2) Sprinkler Leakage, unless you have protected the system against freezing;
- (3) Building glass breakage;
- (4) Discharge or leakage of water;
- (5) "Theft"; or
- (6) Attempted "theft".

With respect to Covered Causes of Loss other than those listed in Paragraphs (1) through (6) above, we will reduce the amount we would otherwise pay for the loss or damage by 15%.

5. Plaintiffs' claims are premature because Plaintiffs failed to send the statutorily required pre-suit demand letters.

6. In addition, the following condition of the policy could serve to preclude or limit available coverage in the event it is determined Plaintiffs failed to comply with such condition:

E. PROPERTY LOSS CONDITIONS

The following conditions apply in addition to the Common Policy Conditions:

3. Duties in the Event of Loss or Damage:

- a. You must see that the following are done in the event of loss or damage to Covered Property:
  - (2) Give us prompt notice of the loss of damage. Include a description of the property involved.
  - (3) As soon as possible, give us a description of how, when and where the loss or damage occurred.
  - (4) Take all reasonable steps to protect the Covered Property from further damage, and keep a record of your expenses necessary to protect the Covered Property, for consideration in the settlement of the claim. This will not increase the Limit of Insurance. However, we will not pay for any loss or damage resulting from a cause of loss that is not a Covered Cause of Loss. Also, if feasible, set the damaged property aside and in the best possible order for examination.

7. Plaintiffs' claims are barred, in whole or in part, by the negligence and/or comparative responsibility of Plaintiffs, persons acting on Plaintiffs' behalf, and/or third parties.

8. Plaintiffs' punitive damages claims are barred in whole or in part by the Due Process Clause and the Excessive Fines Clause of the United States Constitution, Chapter 41 of the Texas Civil Practice & Remedies Code, or any other applicable law.

WHEREFORE, PREMISES CONSIDERED, Defendant The Travelers Lloyds Insurance Company prays that Plaintiffs take nothing by this suit, and that Defendant goes hence and recover costs in its behalf expended.



Respectfully submitted,

/s/ Wm. Lance Lewis

WM. LANCE LEWIS

Texas Bar No. 12314560

MARCIE L. SCHOUT

Texas Bar No. 24027960

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**ATTORNEYS FOR DEFENDANT  
THE TRAVELERS LLOYDS INSURANCE  
COMPANY**

**CERTIFICATE OF SERVICE**

This is to certify that a true and correct copy of the above and foregoing instrument is being served upon counsel of record for Plaintiffs via electronic service, on this 13th day of July, 2009, in accordance with the Federal Rules of Civil Procedure.

/s/ Wm. Lance Lewis

Wm. Lance Lewis