

1-10-2012

Goodspeed v. Shippen Clerk's Record v. 1 Dckt. 38829

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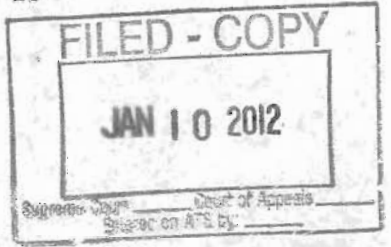
IN THE
SUPREME COURT
OF THE
STATE OF IDAHO
VOLUME 1

LAW CLERK

**WILLIAM SHAWN GOODSPEED and)
SHELLEE BETH GOODPSEED,)
)
Plaintiffs-Respondents,)
)
-vs-)
)
**ROBERT and JORJA SHIPPEN,)
)
Defendants-Appellants,)****

SUPREME COURT NO. 38829-2011

**Jefferson County
Case No. CV-2009-15**



CLERK'S RECORD ON APPEAL

Appeal from the District court of the 7th Judicial District of the State of Idaho, in and for

**THE JEFFERSON COUNTY
DISTRICT COURT
GREGORY S. ANDERSON
DISTRICT JUDGE**

ATTORNEY FOR APPELLANT

**Robin D. Dunn
P.O. Box 277
Rigby, ID 83442**

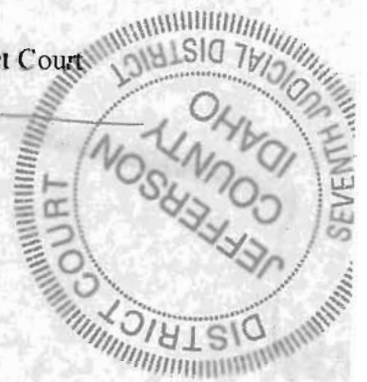
ATTORNEY FOR RESPONDENT

**Weston S. Davis
P.O. Box 51630
Idaho Falls, ID 83405-1630**

Filed this the 19 day of Sept, 2011

Christine Boulter
Clerk of the District Court

By: *Nancy Andersen*
Deputy



38829

copy

Volume 1

IN THE SUPREME COURT OF THE STATE OF IDAHO

WILLIAM SHAWN GOODSPEED and)
SHELLEE BETH GOODPSEED,)
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Plaintiffs-Respondents,)
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-vs-)
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Defendants-Appellants,)
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ATTORNEY FOR RESPONDENT

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Rigby, ID 83442

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2009 JAN -6 PM 2:28
DISTRICT COURT
JEFFERSON COUNTY, IDAHO

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IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF JEFFERSON

WILLIAM SHAWN GOODSPEED and
SHELLEE BETH GOODSPEED, husband and
wife,

Plaintiffs,

vs.

SHIPPEN CONSTRUCTION, INC., an Idaho
corporation, and ROBERT and JORJA
SHIPPEN, husband and wife,

Defendants.

Case No.:

01 2009-15

COMPLAINT

COMES NOW Plaintiffs, as and for a claim for relief, plead and allege as follows:

1. That Plaintiffs, WILLIAM SHAWN and SHELLEE BETH GOODSPEED, are bona fide residents of the State of Idaho who reside in Jefferson County.
2. That Defendant, SHIPPEN CONSTRUCTION, INC., (hereinafter "Shippen Construction") is an Idaho corporation in good standing with the State of Idaho.
3. That Defendant, ROBERT and JORJA SHIPPEN, are a bona fide residents of the State of Idaho who reside in Jefferson County



4. That the subject property of this litigation, namely, 3709 East 319 North, Rigby, Idaho, is located in Jefferson County.

5. That both jurisdiction and venue are proper in this action.

6. That pursuant to Idaho Code § 6-2503, Plaintiff's served written notice of the ensuing claim on the construction professional, Shippen Construction, and Robert Shippen, by mailing a copy to Robert Shippen by certified mail on the Idaho corporation's registered agent. Attached hereto as Exhibit "A" is a copy of such attempt to comply with the Notice and Opportunity to Repair Act, together with a acknowledgment of receipt.

7. Plaintiffs received a letter from Dunn Law Offices, PLLC on November 19, 2008, which volunteers to accept service of a complaint against Defendants, lists defenses Defendants will raise if a complaint is filed, and fails to assert any willingness to repair or remedy the construction defect. Plaintiffs therefore have brought this action against Defendants in compliance with the Act.

COUNT ONE: BREACH OF EXPRESS WARRANTY

8. Plaintiffs hereby incorporate and re-allege paragraphs 1 - 7 and further plead and allege as follows:

9. On July 2, 2008, Plaintiffs and Defendants entered a real estate contract for the purchase and sale of a residence and real property commonly referred to as 319 N. 3709 E., Rigby, ID 83442 (hereinafter "the Property").

10. The Purchase and Sale Contract extends a builder's warranty on the Property for a minimum of one year.

11. Additionally, on August 8, 2006, Defendants, Robert and Jorja Shippen and Shippen Construction, through its authorized agents, listed the Property for sale on the

Multiple Listing Service (hereinafter "MLS") in Idaho.

12. That MLS listing specifically stated twice that the Property had never had sub water flooding issues, when in fact it had.

13. That MLS listing also stated twice that the Builder would install a leaching system to give the buyer peace of mind against flooding.

14. The MLS listing served as an express warranty, warranting that the Property had never flooded and would not flood.

15. After the Plaintiffs' July 2, 2007 purchase of the Property, they learned from a neighbor that the Property's basement had flooded in August of 2006, contrary to the representation in the MLS listing.

16. Despite the installment of a leaching system, the Property flooded again in August of 2007 and September of 2007 (within the one year warranty period) and continues to flood frequently from seeping groundwater.

17. The express warranties were therefore breached to the extent the Defendants misrepresented that the house had not flooded and would not flood.

18. These express warranties were further breached when the house flooded in August and September of 2007 and thereafter, subsequent to the time of the sale.

19. As a result of this flooding, Plaintiffs have suffered damages in an amount in excess of \$10,000, which shall be proven at trial.

COUNT TWO: BREACH OF IMPLIED WARRANTY

20. Plaintiffs hereby incorporate and re-allege paragraphs 1 - 19 and further plead and allege as follows:

21. Implied in every newly constructed residence lies an implied warranty of habitability.

22. That implied warranty was breached when the residence flooded in August and September of 2007 and each time it has flooded thereafter.

23. Such continual flooding results in the uninhabitability of the entire residence.

24. As a result of this flooding, Plaintiffs have suffered damages in an amount in excess of \$10,000, which shall be proven at trial.

**COUNT THREE: BREACH OF THE IMPLIED COVENANT
OF GOOD FAITH AND FAIR DEALING**

25. Plaintiffs hereby incorporate and re-allege paragraphs 1 - 24 and further plead and allege as follows:

26. Implied in every contract is a covenant of good faith and fair dealing.

27. Defendants represented to Plaintiffs that the Property Plaintiffs were about to purchase had not flooded, when in fact it had flooded.

28. Defendants further represented that a leaching system was installed to prevent snow run off and to give peace of mind against sub-water flooding.

29. Defendants breached its implied covenant of good faith and fair dealing by misrepresenting the condition of and flooding history of the Property.

30. As a result of this breach, Plaintiffs have suffered damages in an amount in excess of \$10,000, which shall be proven at trial.

COUNT FOUR: FRAUDULENT CONCEALMENT OF KNOWN DEFECT

31. Plaintiffs hereby incorporate and re-allege paragraphs 1- 30 and further plead and allege as follows:

32. Defendants knowingly concealed the following facts from Plaintiffs:

- a) Defendants concealed the fact that the property had flooded prior to the sale by representing that it had not flooded.
- b) Defendants knowingly installed a sump pump under the false stated premise that it was intended for winter snow run off.

33. The condition of the Property and these statements were material to the purchase of the Property.

34. At the time these statements were made, Defendants knew the statements were false and Plaintiffs did not.

35. Defendants intended for the Plaintiffs to rely on these statements.

36. Plaintiffs did in fact rely on these statements.

37. Plaintiffs' reliance was reasonable.

38. As a proximate result of Defendants' misrepresentations, Plaintiffs suffered damages in excess of \$10,000.00, in an amount to be proven at trial.

COUNT FIVE: FRAUDULENT MISREPRESENTATION OF KNOWN FACT

39. Plaintiffs hereby incorporates and re-allege paragraphs 1- 38 and further plead and allege as follows:

40. Defendants knowingly misrepresented the following facts to Plaintiffs:

- a) Defendants misrepresented in their MLS listing that the Property had

never flooded prior to the sale, when in fact it had.

- b) Defendants misrepresented that a sump pump was installed for winter snow runoff, when it was actually installed to remove ground water.
- c) Defendants misrepresented that subsequent flooding in August of 2007 was the result of a nearby canal rupture.

41. These statements were material to the purchase of the Property.

42. At the time these statements were made, Defendants knew the statements were false and Plaintiffs did not.

43. Defendants intended for the Plaintiffs to rely on these statements.

44. Plaintiffs did in fact rely on these statements.

45. Plaintiffs' reliance was reasonable.

46. As a proximate result of Defendants' misrepresentations, Plaintiffs suffered damages in excess of \$10,000.00, in an amount to be proven at trial.

COUNT SIX: UNJUST ENRICHMENT

47. Plaintiffs hereby incorporates and re-allege paragraphs 1 - 46 and further plead and allege as follows:

48. Defendants were unjustly enriched by obtaining the agreed upon purchase price of the residence of \$272,000, in exchange for a house that representedly had no history of flooding and upon guarantees that the house would not flood.

49. Plaintiffs detrimentally relied on Defendants' representations regarding the Property.

50. Because Defendants misrepresented the status of the house, Defendants

obtained a higher purchase price for the house than they would have received had Defendants made the flooding disclosure. This resulted in unjust enrichment to the Defendants.

51. But for Defendants' misrepresentation, Plaintiffs would not have even purchased the Property.

52. That as a proximate result of Defendants' misrepresentations, Defendants were unjustly enriched in excess of \$10,000.00, in an amount to be proven at trial.

ATTORNEY'S FEES

53. Plaintiffs have been required to retain an attorney to prosecute this action and are entitled to costs and attorney fees pursuant to Idaho Code §12-120 and §12-121 and I.R.C.P. 54. Further, Plaintiffs are entitled to attorneys fees pursuant to the parties' purchase and sale agreement of the Property. In the event this matter is taken by default, Plaintiffs are entitled to a reasonable attorney fee of \$2,500.00, and such additional amount in the event this matter is contested.

WHEREFORE, Plaintiff prays for judgment as follows:

A. That the contract for the sale of the Property be rescinded, with all title and obligations on the Property being reinstated to Defendants, relieving Plaintiffs of any future obligations on the residence;

B. That Plaintiffs additionally be awarded money damages in an amount to reflect their improvements on the property in an amount in excess of \$10,000 to be proven at trial;

C. That Plaintiffs additionally be awarded money damages in an amount to reflect Plaintiff's efforts to mitigate the damage to the Property as a result of the flooding;

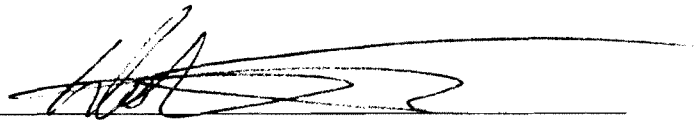
D. That, in the event the contract is not rescinded, Plaintiffs receive damages in excess of \$10,000.00 in an amount to be proven at trial;

E. That in the event the contract is not rescinded, Defendants be ordered to repair and restore the Property to the extent reasonably possible to ensure continuing and uninterrupted habitability thereof;

F. For attorneys fees in the amount of \$2,500.00 in the event this matter is taken by Default, and such additional amounts that may be incurred in the event this matter is contested; and

G. For such other relief as the Court deems just and proper.

DATED this 31 day of December, 2008.


WESTON S. DAVIS, ESQ.

L:\wsd\~ Clients\7411.1 Goodspeed\Complaint.wpd

WESTON S. DAVIS, ESQ. (ISB. No. 7449)
ANDERSON NELSON HALL SMITH, P.A.
490 Memorial Drive
Post Office Box 51630
Idaho Falls, Idaho 83405-1630
Telephone (208) 522-3001
Fax (208) 523-7254

2009 JAN -7 AM 9:55
DISTRICT COURT
JEFFERSON COUNTY, IDAHO

Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF JEFFERSON

WILLIAM SHAWN GOODSPEED and
SHELLEE BETH GOODSPEED, husband and
wife,

Plaintiffs,

vs.

SHIPPEN CONSTRUCTION, INC., an Idaho
corporation, and ROBERT and JORJA
SHIPPEN, husband and wife,

Defendants.

Case No.: CN-2009-15

SUMMONS

NOTICE: YOU HAVE BEEN SUED BY THE ABOVE-NAMED PLAINTIFF(S). THE COURT MAY ENTER JUDGMENT AGAINST YOU WITHOUT FURTHER NOTICE UNLESS YOU RESPOND WITHIN 20 DAYS. READ THE INFORMATION BELOW.

TO: SHIPPEN CONSTRUCTION
ROBERT SHIPPEN
JORJA SHIPPEN

You are hereby notified that in order to defend this lawsuit, an appropriate written response must be filed with the above designated court within 20 days after service of this Summons on you. If you fail to so respond, the court may enter judgment against you as demanded by the plaintiff(s) in the Complaint.



10

A copy of the Complaint is served with this Summons. If you wish to seek the advice or representation by an attorney in this matter, you should do so promptly so that your written response, if any, may be filed in time and other legal rights protected.

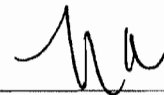
An appropriate written response requires compliance with Rule 10(a)(1) and other Idaho Rules of Civil Procedure and shall also include:

1. The title and number of this case.
2. If your response is an Answer to the Complaint, it must contain admissions or denials of the separate allegations of the Complaint and other defenses you may claim.
3. Your signature, mailing address and telephone number of your attorney.
4. Proof of mailing or delivery of a copy of your response to plaintiffs' attorney, as designated above.

To determine whether you must pay a filing fee with your response, contact the Clerk of the above-named Court.

DATED this 7th day of December, 2008.

CLERK OF THE COURT

By 
Deputy Clerk

L:\wsd\~ Clients\7411.1 Goodspeed\Summons.wpd



WESTON S. DAVIS, ESQ. (ISB. No. 7449)
ANDERSON NELSON HALL SMITH, P.A.
490 Memorial Drive
Post Office Box 51630
Idaho Falls, Idaho 83405-1630
Telephone (208) 522-3001
Fax (208) 523-7254

2009 JAN 21 PM 1:51
DISTRICT COURT
JEFFERSON COUNTY, IDAHO

Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF JEFFERSON

WILLIAM SHAWN GOODSPEED and
SHELLEE BETH GOODSPEED, husband and
wife,

Plaintiffs,

vs.

SHIPPEN CONSTRUCTION, INC., an Idaho
corporation, and ROBERT and JORJA
SHIPPEN, husband and wife,


Defendants.

Case No.: CV-09-015

ACCEPTANCE OF SERVICE

Robin D. Dunn, hereby accepts and acknowledges service of the Summons and
Complaint by receipt of copies thereof this 13 day of January, 2009, service having been
made upon the undersigned at Rigby, Idaho, on said date.

DATED this 13 day of January, 2009.



Robin D. Dunn, Esq.



WESTON S. DAVIS, ESQ. (ISB. No. 7449)
ANDERSON NELSON HALL SMITH, P.A.
490 Memorial Drive
Post Office Box 51630
Idaho Falls, Idaho 83405-1630
Telephone (208) 522-3001
Fax (208) 523-7254

2009 FEB -6 PM 1:02
DISTRICT COURT
JEFFERSON COUNTY, IDAHO

Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF JEFFERSON

WILLIAM SHAWN GOODSPEED and
SHELLEE BETH GOODSPEED, husband and
wife,

Plaintiffs,

vs.

SHIPPEN CONSTRUCTION, INC., an Idaho
corporation, and ROBERT and JORJA
SHIPPEN, husband and wife,

Defendants.

Case No.: CV-09-015

**NOTICE OF INTENT TO TAKE
DEFAULT**

NOTICE IS HEREBY GIVEN, pursuant to Idaho Rule of Civil Procedure 55, that Plaintiff herein named has been served with a Summons and Complaint in the above-entitled action, and having failed to answer or otherwise plead or defend in said action, Defendant shall, on or after February 10, 2009, file default against Plaintiff and move the Court for default judgment.

DATED this 5 day of February, 2009.



WESTON S. DAVIS, ESQ.




14 FEB 2009

CERTIFICATE OF SERVICE

I hereby certify that I served a true copy of the foregoing document upon the following this 5 day of February 2009, by hand delivery, mailing with the necessary postage affixed thereto, facsimile, or overnight mail.

Robin D. Dunn
P.O. Box 277
477 Pleasant Country Lane
Rigby, ID 83442-0277

- Mailing
- Hand Delivery
- Fax
- Overnight Mail



WESTON S. DAVIS, ESQ.

L:\wsd\~ Clients\7411.1 Goodspeed\Notice Intent Default.wpd

DUNN LAW OFFICES, PLLC
 Robin D. Dunn, Esq., ISB # 2903
 Amelia A. Sheets, Esq., ISB #5899
 P.O. Box 277
 477 Pleasant Country Lane
 Rigby, Idaho 83442
 (208) 745-9202 (t)
 (208) 745-8160 (f)

2009 FEB -9 PM 4: 54
 DISTRICT COURT
 JEFFERSON COUNTY, IDAHO

Attorneys for Defendants

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE
 STATE OF IDAHO, IN AND FOR THE COUNTY OF JEFFERSON
 MAGISTRATE'S DIVISION

WILLIAM SHAWN GOODSPEED and)
 SHELLEE BETH GOODSPEED,)
 husband and wife,)
)
 Plaintiffs,)

Case No. CV 09-015

DEFENDANTS' ANSWER TO
 COMPLAINT

vs.)

SHIPPEN CONSTRUCTION, INC., an)
 Idaho corporation, and ROBERT and)
 JORJA SHIPPEN, husband and wife,)
)
 Defendants.)

Fee Category: I.7
 Fee: \$58.00

COMES NOW, defendants, by and through the undersigned attorney of record, and
 answer that Complaint on file herein as follows:

I

The Complaint on file herein fails to state an adequate cause for which relief may be
 granted and should be dismissed pursuant to the Idaho Rules of Civil Procedure, Rule
 (12)(6).

II

Robert and Jorja Shippen, husband and wife, are not involved in this Complaint and



ko

should be dismissed, with prejudice and an appropriate award of fees and costs.

III

The defendants herein do not waive any defenses by answering this Complaint and more particular, the following: jurisdiction both – subject and personal; failure to join indispensable parties and/or the defense of statute of limitation and/or laches.

IV

The defendants reserve the right, after appropriate discovery, to assert counterclaims and/or alternate pleading based upon discovery.

V

The defendants herein deny each and every allegation of the Complaint on file unless specifically admitted hereafter.

VI

The defendants answer and each and every paragraph of the Complaint on file herein according to the numerical reference set forth by plaintiffs as follows:

1. Admit;
2. Admit;
3. Admit;
4. Neither admit nor deny as the subject property should not be a matter of litigation.
5. Jurisdiction over real property is subject to Idaho Code Section and venue is appropriate where the defendants reside. It is believed that these two (2) concepts are property in the above action, but the defendants deny based upon the fact that the same are legal conclusion.

6. Mr. Shippen has received a written notice, but deny that the notice is appropriate as no cause of action exists against Robert and Jorja Shippen and that the Shippen Construction claim is without merit.
7. The defendants admit that they have accepted service, but deny the remainder of said allegation.
8. Defendants reincorporate and reallege answers previously set forth in paragraphs 1 through 7.
9. A contract for real estate sale was entered into, but the particulars are unknown to the defendants without review of said contract. As such, the defendants admit that a real estate venture was entered into between the parties and believe the residence and property are properly _____.
10. Deny that a builder's warranty applies to all aspects of a building and is specific in nature.
11. As to the exact date contained in this paragraph, the defendants are unsure, but admit the balance of said paragraph.
12. Deny.
13. The exact nature of the leaching system was discussed, but the particulars are uncertain as to these answering parties.
14. Deny.
15. The defendants are without knowledge and therefore denies the same.
16. The defendants are without knowledge and therefore denies the same.
17. Deny.
18. Deny.
19. Deny.

20. Defendants reallege paragraphs answered 1 through 19 as though full set forth hereafter.

21. Deny.

22. Deny.

23. Deny.

24. Deny.

25. Defendants reallege paragraphs answered 1 through 24 and incorporate the same herein.

26. Deny.

27. Deny.

28. Deny.

29. Deny.

30. Deny.

31. Defendants reallege paragraphs answered 1 through 30 and incorporate the same herein.

32. Deny.

33. Deny.

34. Deny.

35. Deny.

36. Deny.

37. Deny.

38. Deny.

39. Defendants reallege paragraphs answered 1 through 38 and incorporate the same herein.

40. Deny.
41. Deny.
42. Deny.
43. Deny.
44. Deny.
45. Deny.
46. Deny.
47. Defendants reallege paragraphs answered 1 through 44 and incorporate the same herein.
48. Deny.
49. Deny.
50. Deny.
51. Deny.
52. Deny.
53. Defendants have been made aware that an attorney represents plaintiffs, but deny the plaintiffs should have set forth this Complaint and therefore deny the same.

FIRST AFFIRMATIVE DEFENSE

The written sales agreement specifically requires an requests the plaintiffs to inspect and cause inspections to be made upon the real property in question. As such, the plaintiffs are without a cause of action for which relief may be granted.

SECOND AFFIRMATIVE DEFENSE

The defendants have given no specific warranties for sub-water control as the such are acts of God and not within the control of builder.

THIRD AFFIRMATIVE DEFENSE

The plaintiffs are estopped from asserting their claims herein and the defendants rely upon detrimental reliance, estoppel and other similar defenses.

FOURTH AFFIRMATIVE DEFENSE

The defendants reserve the right to set forth additional defenses based upon adequate discovery.

The defendants request a trial by jury.

ATTORNEY FEES

The defendants herein request attorney fees as are recoverable by contract, statute, rule and/or case law developed in the State of Idaho.

WHEREFORE, defendants having fully answered the Complaint on file herein, requests and prays for relief as follows:

1. That the Complaint on file herein be dismissed with prejudice;
2. That the defendants, each and everyone of them, be awarded attorney fees, reasonable costs of court and other such expenses are necessarily recoverable in defending this action;
3. For all relief that is just in the premises.

DATED this 9 day of February, 2009.

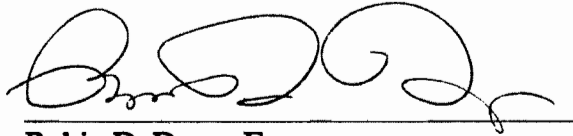


Robin D. Dunn, Esq.
DUNN LAW OFFICES, PLLC

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 9 day of February, 2009 a true and correct copy of the foregoing was delivered to the following persons(s) by:

- Hand Delivery
- Postage-prepaid mail
- Facsimile Transmission



**Robin D. Dunn, Esq.
DUNN LAW OFFICES, PLLC**

**Weston S. Davis, Esq.
P.O. Box 51630
Idaho Falls, ID 83405**

11
20

WESTON S. DAVIS, ESQ (ISB No. 7449)
NELSON HALL PARRY TUCKER, P.A.
490 Memorial Drive
Post Office Box 51630
Idaho Falls, Idaho 83405-1630
Telephone (208) 522-3001
Fax (208) 523-7254

ADMITTED TO PRACTICE
STATE OF IDAHO

Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF JEFFERSON

WILLIAM SHAWN GOODSPEED and
SHELLEE BETH GOODSPEED, husband and
wife,

Plaintiffs,

vs.

SHIPPEN CONSTRUCTION, INC., an Idaho
corporation, and ROBERT and JORJA
SHIPPEN, husband and wife,

Defendants.

Case No.: CV-09-015


NOTICE OF SERVICE

I HEREBY CERTIFY that on this 12 day of May 2009, I served upon Shippen Construction and Robert and Jorja Shippen, and their attorney of record Robin D. Dunn, Esq., Interrogatories, Requests for Admission, and Requests for Production of Documents to Defendants by having a true and correct copy of same mailed by U. S. Mail, postage prepaid, to:

Robin D. Dunn
P.O. Box 277
477 Pleasant Country Lane
Rigby, ID 83442-0277

S

Dated this 12 day of May 2009.




WESTON S. DAVIS, ESQ.

CERTIFICATE OF SERVICE

I hereby certify that I served a true copy of the foregoing document upon the following this 12 day of May 2009, by hand delivery, mailing with the necessary postage affixed thereto, facsimile, or overnight mail.

Robin D. Dunn
P.O. Box 277
477 Pleasant Country Lane
Rigby, ID 83442-0277

- Mailing
- Hand Delivery
- Fax
- Overnight Mail



WESTON S. DAVIS, ESQ.

L:\wsd\~ Clients\7411.1 Goodspeed\Notice of Service#1.wpd



WESTON S. DAVIS, ESQ (ISB No. 7449)
NELSON HALL PARRY TUCKER, P.A.
490 Memorial Drive
Post Office Box 51630
Idaho Falls, Idaho 83405-1630
Telephone (208) 522-3001
Fax (208) 523-7254

2009 JUN 25 PM 1:44

DISTRICT COURT
JEFFERSON COUNTY, IDAHO

Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF JEFFERSON

WILLIAM SHAWN GOODSPEED and
SHELLEE BETH GOODSPEED, husband and
wife,

Plaintiffs,

vs.

SHIPPEN CONSTRUCTION, INC., an Idaho
corporation, and ROBERT and JORJA
SHIPPEN, husband and wife,

Defendants.

Case No.: CV-09-015

NOTICE OF HEARING

PLEASE TAKE NOTICE that on the 27th day of July, 2009, at 2:15 p.m., of said day, or as soon thereafter as counsel can be heard in the above court, in Rigby, Jefferson County, Idaho, Plaintiff will call up for hearing Plaintiff's Motion to Compel before the Honorable Gregory Moeller, District Judge.

DATED this 24 day of June, 2009.


WESTON S. DAVIS, ESQ.

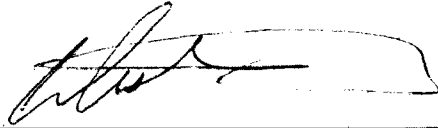
CERTIFICATE OF SERVICE

I hereby certify that I served a true copy of the foregoing document upon the following this 24 day of June 2009, by hand delivery, mailing with the necessary postage affixed thereto, facsimile, or overnight mail.

Robin D. Dunn
P.O. Box 277
477 Pleasant Country Lane
Rigby, ID 83442-0277

Hon. Greg Moeller
Madison County Courthouse
P. O. Box 389
Rexburg, ID 83440

- Mailing
- Hand Delivery
- Fax
- Overnight Mail



WESTON S. DAVIS, ESQ.

L:\wsd\~ Clients\7411.1 Goodspeed\Motion to Compel (NoH).wpd

WESTON S. DAVIS, ESQ (ISB No. 7449)
NELSON HALL PARRY TUCKER, P.A.
490 Memorial Drive
Post Office Box 51630
Idaho Falls, Idaho 83405-1630
Telephone (208) 522-3001
Fax (208) 523-7254

2009 JUN 25 PM 1:44
DISTRICT COURT
JEFFERSON COUNTY, IDAHO

Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF JEFFERSON

WILLIAM SHAWN GOODSPEED and
SHELLEE BETH GOODSPEED, husband and
wife,

Plaintiffs,

vs.

SHIPPEN CONSTRUCTION, INC., an Idaho
corporation, and ROBERT and JORJA
SHIPPEN, husband and wife,

Defendants.

Case No.: CV-09-015

MOTION TO COMPEL

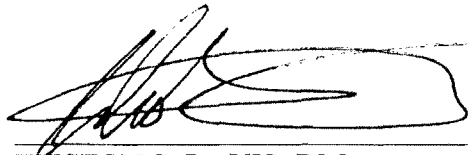
COMES NOW Plaintiff, through counsel of record, and moves the Court to compel Defendant to answer Plaintiff's Interrogatories and Requests for Production of Documents to Defendants which were served upon Defendants on or about the 12th day of May, 2009. This motion is based on the grounds that Defendant has failed to answer or produce those documents requested and the time allowed by law has passed.

Pursuant to Idaho Rule of Civil Procedure 37(a)(2), Plaintiff's counsel also hereby

certifies that it has made a good faith attempt to confer with the opposing counsel of record regarding the objections to discovery in this matter. Such efforts are evidenced by Exhibit "A" hereto attached.

Additional attorney fees and court costs have been and continue to be incurred by Plaintiff as a result of Defendant's failure to comply with discovery requests. Plaintiff therefore requests an award of attorney fees on this motion.

DATED this 24 day of June, 2009.



WESTON S. DAVIS, ESQ.

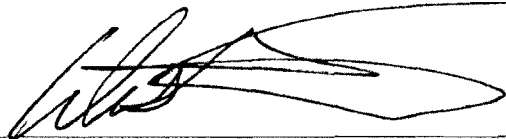
CERTIFICATE OF SERVICE

I hereby certify that I served a true copy of the foregoing document upon the following this 24 day of June 2009, by hand delivery, mailing with the necessary postage affixed thereto, facsimile, or overnight mail.

Robin D. Dunn
P.O. Box 277
477 Pleasant Country Lane
Rigby, ID 83442-0277

Hon. Gregory Moeller
Madison County Courthouse
P. O. Box 389
Rexburg, ID 83440

- Mailing
- Hand Delivery
- Fax
- Overnight Mail



WESTON S. DAVIS, ESQ.

L:\wsd\~ Clients\7411.1 Goodspeed\Motion to Compel.wpd



NELSON HALL PARRY TUCKER, P.A.

Attorneys & Counselors

490 Memorial Drive
PO Box 51630
Idaho Falls, ID 83405-1630
Phone: (208) 522-3001
Fax: (208) 523-7254
e-mail: nhpt@nhptlaw.net
www.nhptlaw.com

Douglas R. Nelson
Blake G. Hall
Scott R. Hall
Steven R. Parry
Brian T. Tucker
Wiley R. Dennert
Sam L. Angell
Weston S. Davis
W. Joe Anderson
(1923-2002)

June 15, 2009

Robin D. Dunn
P.O. Box 277
477 Pleasant Country Lane
Rigby, ID 83442-0277

RE: *Goodspeed v. Shippen*; Meet and Confer

Dear Mr. Dunn:

This letter stands to attempt to confer with you in good faith regarding your answers to our discovery requests pursuant to I.R.C.P. 37(a)(2). We have not received your responses to our discovery and the thirty days for answering have passed. Therefore, we ask that you respond to our discovery requests.

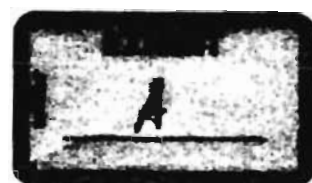
Please provide your response to our Interrogatories and Requests for Production on or before June 22, 2009. Otherwise, we will be required to file a motion to compel and seek attorneys fees and costs in the process. If you have any questions, please contact me.

Yours very truly,

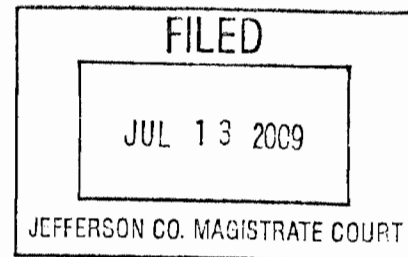
Weston S. Davis, Esq.

cc: client

L:\wsd\~ Clients\7411.1 Goodspeed\Dunn.Ltr2.wpd



WESTON S. DAVIS, ESQ (ISB No. 7449)
NELSON HALL PARRY TUCKER, P.A.
490 Memorial Drive
Post Office Box 51630
Idaho Falls, Idaho 83405-1630
Telephone (208) 522-3001
Fax (208) 523-7254



Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF JEFFERSON

WILLIAM SHAWN GOODSPEED and
SHELLEE BETH GOODSPEED, husband and
wife,

Plaintiffs,

vs.

SHIPPEN CONSTRUCTION, INC., an Idaho
corporation, and ROBERT and JORJA
SHIPPEN, husband and wife,

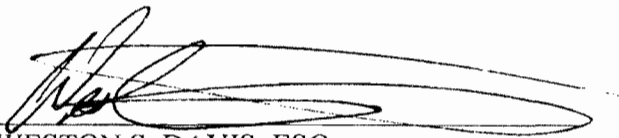
Defendants.

Case No.: CV-09-015

NOTICE OF HEARING

PLEASE TAKE NOTICE that on the 27th day of July, 2009, at 2:15 p.m., of said day, or as soon thereafter as counsel can be heard in the above court, in Rigby, Jefferson County, Idaho, Plaintiff will call up for hearing Plaintiff's Motion to Deem Admitted Plaintiffs Requests for Admission to Defendants before the Honorable Gregory Moeller, District Judge.

DATED this 13 day of July, 2009.


WESTON S. DAVIS, ESQ.


CERTIFICATE OF SERVICE

I hereby certify that I served a true copy of the foregoing document upon the following this 13 day of July 2009, by hand delivery, mailing with the necessary postage affixed thereto, facsimile, or overnight mail.

Robin D. Dunn
P.O. Box 277
477 Pleasant Country Lane
Rigby, ID 83442-0277

Hon. Greg Moeller
Madison County Courthouse
P. O. Box 389
Rexburg, ID 83440

- Mailing
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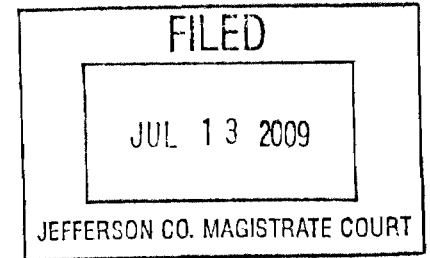
WESTON S. DAVIS, ESQ.

L:\wsd\~ Clients\7411.1 Goodspeed\RfA Deem Admitted (NoH).wpd

21

WESTON S. DAVIS, ESQ (ISB No. 7449)
NELSON HALL PARRY TUCKER, P.A.
490 Memorial Drive
Post Office Box 51630
Idaho Falls, Idaho 83405-1630
Telephone (208) 522-3001
Fax (208) 523-7254

Attorneys for Plaintiff



IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF JEFFERSON

WILLIAM SHAWN GOODSPEED and
SHELLEE BETH GOODSPEED, husband and
wife,

Plaintiffs,

vs.

SHIPPEN CONSTRUCTION, INC., an Idaho
corporation, and ROBERT and JORJA
SHIPPEN, husband and wife,

Defendants.

Case No.: CV-09-015

**MOTION TO DEEM ADMITTED
PLAINTIFF'S REQUESTS FOR
ADMISSION TO DEFENDANTS**

COME Plaintiffs, by and through counsel of record, Weston S. Davis, Esq. of Nelson Hall Parry Tucker, P.A. and moves this Court to deem the Requests for Admission to Defendants submitted to Defendants through their attorney, Robin D. Dunn as being admitted pursuant to Idaho Rule of Civil Procedure 36.

This motion is supported by the memorandum and affidavit filed concurrently herewith. Plaintiffs give notice of their intent to present oral argument on this motion.

36

DATED this 13 day of July, 2009


WESTON S. DAVIS, ESQ.


CERTIFICATE OF SERVICE

I hereby certify that I served a true copy of the foregoing document upon the following this 13 day of July 2009, by hand delivery, mailing with the necessary postage affixed thereto, facsimile, or overnight mail.

Robin D. Dunn
P.O. Box 277
477 Pleasant Country Lane
Rigby, ID 83442-0277

Hon. Gregory Moeller
Madison County Courthouse
P. O. Box 389
Rexburg, ID 83440

- Mailing
- Hand Delivery
- Fax
- Overnight Mail


WESTON S. DAVIS, ESQ.

L:\wsd\~ Clients\7411.1 Goodspeed\RfA Decm Admitted (Motion).wpd

35

WESTON S. DAVIS, ESQ (ISB No. 7449)
NELSON HALL PARRY TUCKER, P.A.
490 Memorial Drive
Post Office Box 51630
Idaho Falls, Idaho 83405-1630
Telephone (208) 522-3001
Fax (208) 523-7254

Attorneys for Plaintiff

2009 JUL 14 PM 2:00
DISTRICT COURT
JEFFERSON COUNTY, IDAHO
MA

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF JEFFERSON

WILLIAM SHAWN GOODSPEED and
SHELLEE BETH GOODSPEED, husband and
wife,

Plaintiffs,

vs.

SHIPPEN CONSTRUCTION, INC., an Idaho
corporation, and ROBERT and JORJA
SHIPPEN, husband and wife,

Defendants.

Case No.: CV-09-015

**MEMORANDUM IN SUPPORT OF
MOTION TO DEEM ADMITTED
PLAINTIFF'S REQUESTS FOR
ADMISSION TO DEFENDANTS**

COME Plaintiffs, by and through counsel of record, Weston S. Davis, Esq. of Nelson Hall Parry Tucker, P.A. and moves this Court to deem the Requests for Admission to Defendants submitted to Defendants through their attorney, Robin D. Dunn, as being admitted pursuant to Idaho Rule of Civil Procedure 36 as follows:

On May 12, 2009 Plaintiffs served their Requests for Admission on Defendants' counsel.

See Affidavit of Weston S. Davis, Esq. On June 15, 2009 Plaintiffs served a meet and confer

letter on Defendants' counsel pursuant to I.R.C.P. 37. *Id.* On June 24, 2009, Plaintiff's served a copy of its Motion to Compel on Defendants' counsel. To date, however, Defendants have not responded to the Requests for Admission and more than thirty (30) days have passed since the time of service. *Id.*


Idaho Rule of Civil Procedure 36 states:

Each matter of which an admission is requested shall be separately set forth. The matter *is admitted* unless, within 30 days after service of the request, or within such shorter or longer time as the court may allow, the party to whom the request is directed serves upon the party requesting the admission a written answer or objection addressed to the matter, signed under oath by the party or by the party's attorney, unless the court shortens time.

To date, Plaintiffs have not received any answer or objection from Defendants on these Requests for Admission. Therefore, this Court should deem the Requests for Admission to Defendants, namely Requests for Admission Nos. 1 - 21, as admitted and as conclusively established, pursuant to I.R.C.P. 36.

Plaintiffs request their reasonable attorneys fees in pursuing the admission of these Requests for Admission pursuant to I.R.C.P. 36 and 54(d) and (e).

DATED this 13 day of July, 2009


WESTON S. DAVIS, ESQ.

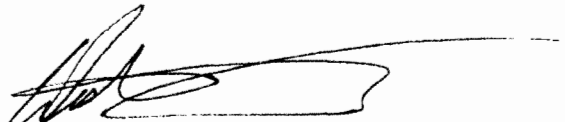
CERTIFICATE OF SERVICE

I hereby certify that I served a true copy of the foregoing document upon the following this 13 day of July 2009, by hand delivery, mailing with the necessary postage affixed thereto, facsimile, or overnight mail.

Robin D. Dunn
P.O. Box 277
477 Pleasant Country Lane
Rigby, ID 83442-0277

Hon. Gregory Moeller
Madison County Courthouse
P. O. Box 389
Rexburg, ID 83440

- Mailing
 Hand Delivery
 Fax
 Overnight Mail


WESTON S. DAVIS, ESQ.

L:\wsd\~ Clients\7411.1 Goodspeed\RfA Deem Admitted (Memo).wpd

WESTON S. DAVIS, ESQ (ISB No. 7449)
NELSON HALL PARRY TUCKER, P.A.
490 Memorial Drive
Post Office Box 51630
Idaho Falls, Idaho 83405-1630
Telephone (208) 522-3001
Fax (208) 523-7254

2009 JUL 14 PM 2:00
DISTRICT COURT
JEFFERSON COUNTY, IDAHO
MLK

Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF JEFFERSON

WILLIAM SHAWN GOODSPEED and
SHELLEE BETH GOODSPEED, husband and
wife,

Plaintiffs,

vs.

SHIPPEN CONSTRUCTION, INC., an Idaho
corporation, and ROBERT and JORJA
SHIPPEN, husband and wife,

Defendants.

Case No.: CV-09-015

**AFFIDAVIT IN SUPPORT OF
MOTION TO DEEM ADMITTED
PLAINTIFF'S REQUESTS FOR
ADMISSION TO DEFENDANTS**

STATE OF IDAHO)
 : ss.
County of Bonneville)

WESTON S. DAVIS, being first duly sworn upon oath, deposes and states as
follows:

1. I am an attorney for Plaintiffs in this action.
2. That on May 12, 2009, Plaintiff's served their Requests for Admission on Defendants' counsel, Robin D. Dunn. Attached hereto as Exhibit "A" is a true and correct copy of said requests.

3. That on June 15, 2009, Plaintiffs served a meet and confer letter pursuant to I.R.C.P. on Defendants.

4. That more than 30 days since the service of the requests have passed.


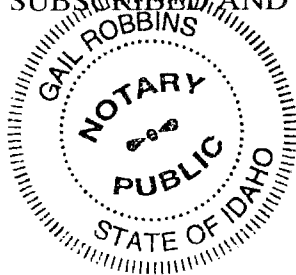
5. That to date, Defendants have not responded to any of Plaintiff's Requests for Admission.

DATED this 13 day of July, 2009



WESTON S. DAVIS, ESQ.

SUBSCRIBED AND SWORN to before me this 13th day of July, 2009.



Notary Public
Residing at: [Handwritten Address]
Commission expires: 10/15/2014


CERTIFICATE OF SERVICE

I hereby certify that I served a true copy of the foregoing document upon the following this 13 day of July 2009, by hand delivery, mailing with the necessary postage affixed thereto, facsimile, or overnight mail.

Robin D. Dunn
P.O. Box 277
477 Pleasant Country Lane
Rigby, ID 83442-0277

Hon. Gregory Moeller
Madison County Courthouse
P. O. Box 389
Rexburg, ID 83440

- Mailing
- Hand Delivery
- Fax
- Overnight Mail



WESTON S. DAVIS, ESQ.

L:\wsd\~ Clients\7411.1 Goodspeed\rfA Decm Admitted (Affidavit).wpd

WESTON S. DAVIS, ESQ (ISB No. 7449)
NELSON HALL PARRY TUCKER, P.A.
490 Memorial Drive
Post Office Box 51630
Idaho Falls, Idaho 83405-1630
Telephone (208) 522-3001
Fax (208) 523-7254

Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF JEFFERSON

WILLIAM SHAWN GOODSPEED and
SHELLEE BETH GOODSPEED, husband and
wife,

Plaintiffs,

vs.

SHIPPEN CONSTRUCTION, INC., an Idaho
corporation, and ROBERT and JORJA
SHIPPEN, husband and wife,

Defendants.

Case No.: CV-09-015

**INTERROGATORIES, REQUESTS
FOR ADMISSION, AND
REQUESTS FOR PRODUCTION
OF DOCUMENTS TO
DEFENDANTS**

Pursuant to Rules 33 and 34, Idaho Rules of Civil Procedure, Plaintiffs submit the following Interrogatories, Requests for Admission, and Requests for Production of Documents to Defendant. Answers and production of the requested documents are to be made within thirty (30) days of service hereof at the offices of Nelson Hall Parry Tucker P.A., 490 Memorial Drive, Idaho Falls, Idaho. Alternatively, Defendants may mail copies of such documents to Nelson Hall Parry Tucker, P.A., P.O. Box 51630, Idaho Falls, Idaho 83405-1630 within thirty (30) days of service hereof.

INTERROGATORIES, REQUESTS FOR ADMISSION, AND REQUESTS
FOR PRODUCTION OF DOCUMENTS - 1



PRELIMINARY STATEMENT

A. These Interrogatories do not merely seek such information within your personal knowledge. In answering these Interrogatories, you are required to furnish all information that is available to you or subject to your reasonable inquiry including information in the possession of your attorneys, investigators, accountants, advisors, representatives, or other persons directly or indirectly employed by or connected with you or your attorneys and anyone else otherwise subject to your control. In responding to the Requests and answering the Interrogatories, furnish all information, however obtained, including hearsay which is available to you. Include information known by or in possession of yourself, your agents and your attorneys, or appearing in your records.

B. In answering these Interrogatories, you must make a diligent search of your records and of other papers and materials in your possession or available to you or your representatives. If an Interrogatory has subparts, answer each part separately and in full, and do not limit your answer to the Interrogatory as a whole. If these Interrogatories cannot be answered in full, answer to the extent possible, specify the reason for your inability to answer the remainder, and state whatever information and knowledge you have regarding the unanswered portion.

C. If you cannot fully respond to any discovery requested hereby, after exercising due diligence to secure the full information, indicate such, and answer to the extent possible. Specify whatever information or knowledge you have concerning the unanswered portion and explain what you did in attempting to secure the unknown information.

D. A Request or Interrogatory which seeks information contained in or information about or identification of any documents may be answered by providing a copy of such document.

E. Any ambiguity, uncertainty, or lack of clarity in the language of these Interrogatories or Requests for Production of Documents and Things shall be construed as requesting the maximum information discoverable pursuant to Rule 26 of the Idaho Rules of Civil Procedure. However, in no event shall these Interrogatories or Requests for Production of Documents and Things be interpreted in such a manner as to request information beyond the scope of discovery.

F. With respect to each Interrogatory, in addition to supplying the information asked for and identifying the specific documents referred to, identify and describe all documents to which you refer in preparing your answers.

G. These Interrogatories are continuing and the answers thereto must be supplemented to the maximum extent authorized by law and the applicable rules. If, after responding to these Interrogatories, you acquire any information responsive thereto, you are requested to file and serve supplemental responses containing such information, as required by the Idaho Rules of Civil Procedure.

DEFINITIONS

Person - "Person" shall mean and include a natural person, partnership, firm, or corporation or any other kind of business or legal entity, its agents or employees. In each instance wherein you are asked to "identify" a person or the "identity" of a person, state with respect to each such person his name and last known residence, business address, and telephone number.

Describe - The word "describe" means to specify in detail and to particularize the content of the answer to the question. "Describe" does not mean to reply in summary or outline form. Where used in reference to any document(s) or tangible evidence, "describe" includes stating the title or name, date, time, author of any document, the common name, identifying number of any object and the name and address of the person(s) having possession of such at present. When used in reference to any fact, "describe" means to particularize as to time, place and manner of the fact, as opposed to merely stating ultimate facts or conclusions of law.

Detail - The word "detail" means to itemize, particularize, discuss and describe any relevant material, event or fact which would aid in developing a theory about the issue in question.

Document - The words "Document" and "Documents" mean all written, typewritten, printed, recorded, or graphic matters, however produced and reproduced, pertaining in any way to the subject matter of this action. This definition includes, but is not limited to any and all originals, copies of drafts of any and all of the following: papers, letters, telegrams, statements, books, reports, studies, records, notes, summaries, schedules, contracts, agreements, drawings, sketches, invoices, orders, acknowledgments, diaries, reports, forecasts, appraisals, memoranda, telephone logs, letters, photographs, pictures, films, computer programs or other graphic, symbolic, recorded or written materials of any nature whatsoever. Any document which contains any comments, notations, addition, insertion, or marking of any kind which is not part of another document is to be considered as a separate document.

"Injury" or "Injuries" - Includes physical, mental or emotional injuries to persons whether economic or otherwise.

Incident - The word "incident" when used in this discovery request refers to your employment with the above-named employer. The term will sometimes be narratively referred to as "the incident".

Identify - The word "identify" when used in reference to a natural person means to state his or her full name, address, and relationship between such person and you. When used in reference to a company, corporation, general or limited partnership, association (whether or not for profit) or any other business entity, "identify" means to state the name, address, and relationship between such business entity and you. When used in reference to an act, "identify" means to describe the substance of the events constituting such act, as well as the date, place and identity of persons involved in such act, whether any memoranda or notes or other recordation of such act was made, whether such

recording now exists and who is presently the custodian of such records. When used in reference to documents, identify means to state the date, author and type of document, and provide its present location and custodian.

Specify - "Specify" is provided the same definition as describe.

Maintenance - The word "maintenance" includes repair, upkeep, periodic efficiency checks, replacement of parts (including a listing of the specific part) and any other act designed to keep the machines in a workable condition.

"And" as well as "Or" - Shall be construed either disjunctively or conjunctively as necessary to bring within the scope of these Interrogatories and Requests for Production of Documents and Things any information which might otherwise be construed to be outside their scope.

Communication - As used herein, a "communication" is any transmission or exchange of information, written or oral, formal or informal, regarding any event, action taken or policy here required into.

Writing - When the term "writing" is used in the following Interrogatories and Requests for Production of Documents and Things, it shall include any writing, memorandum, report, record, letter or document.

"You" or "Your" - The pronoun "you" or "your" as used herein, means the party or parties to whom these Interrogatories and Requests for Production of Documents and Things are addressed and the party's agents, representatives and his attorneys.

Knowledge - "Knowledge" includes first-hand knowledge and information derived from any other source, including but not limited to hearsay knowledge.

INTERROGATORIES

INSTRUCTIONS AND DEFINITIONS

The following terms, words and phrases shall have the following meaning in this discovery pleading.

1. The term "you" and "your" refers to the individual answering the interrogatory and all agents, employees, representatives (including insurers), investigators, consultants and attorneys of the answering party.

2. The term "document" shall mean any kind of written, printed, typed, graphic or photographic matter of any kind or nature, however produced or reproduced, and all mechanical and electronic sound recordings and written transcripts thereof, however produced or reproduced whether in your control or not, and including without limitation, originals, all file copies, all other copies no

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matter how and by whom prepared and all drafts of such documents whether used or not.

3. The term "identify", when used with respect to a document, or the description or identification of a document, shall be deemed to request the nature and substance of the document with sufficient particularity to enable the same to be precisely identified, including the date, if any, which the document bears, the names of all persons authorizing the document, and the name and address of the custodian(s) of the original or, if none, a legible copy of the documents.

4. The term "identify" when used with respect to a person, shall be deemed to request the person's full name, the person's last known business address (if a natural person), the person's last known address, and the person's business and resident telephone number.

5. The term "identify" when used with respect to oral communications, shall be deemed to request, whether said communication was in person or by telephone an identification (as provided in definition 4) of each person who participated in or heard any part of said communication and the substance of what was said by each person who participated in said communication.

6. These interrogatories are continuing in characters so as to require you to file supplementary answers in a seasonal manner if you obtain further or different information before trial.

7. Where knowledge or information in possession of a party is requested, such request includes information and knowledge either in your possession, under your control, within your dominion, or available to you, regardless of whether this information is in your personal possession, or is possessed by your agent, attorneys, servants, employees, independent contractors, representatives, insurers or others with whom you have a relationship or from whom you are capable of deriving information, documents or material.

8. Each interrogatory shall be accorded a separate answer and each subpart of an interrogatory shall be accorded a separate answer.

INTERROGATORY NO. 1: Please state the name, address, and telephone number of each and every person known to you or your attorneys who has knowledge of, or who purports to have knowledge of, any of the facts of the case and state what those facts or purported facts are.

INTERROGATORY NO. 2: Please state names, addresses and phone numbers of each and every witness you plan to call to testify at the trial of this matter, and provide a brief summary of the facts to which each witness will testify.

INTERROGATORY NO. 3: Please list and identify any exhibits you intend or expect to introduce into evidence at the trial of the above-entitled matter. State the names and addresses of

the person(s) presently having possession of said exhibit(s).

INTERROGATORY NO. 4: Please identify any and all experts whom you have engaged and who are expected to testify at the trial of this cause, and for each such expert, please provide educational background, field of specialization, a detailed summary of the opinions to which the expert will testify, and all facts, data, events and other knowledge utilized by the expert upon which his/her testimony is based.

INTERROGATORY NO. 5: Have you obtained written or recorded statements from anyone concerning any of the issues of this action: If so, for each statement, state the name and address of the person who took the statement, the name and address of the person who made the statement, and the substance of the statement.

INTERROGATORY NO. 6: State whether or not you intend to rely upon any statement made by the opposing party. If your answer is in the affirmative, please state the place of the conversation; the date of the conversation; the name, address and telephone number of each person present at the conversation; and what was said by each party in the conversation.

INTERROGATORY NO. 7: Please identify when you became aware of the high sub-water situation on the property and its residence located at 3709 E. 319 N., Rigby, Idaho (hereinafter "the Property") and surrounding area.

INTERROGATORY NO. 8: Please identify what work was done to the Property to remove water and repair water damage prior to selling the Property to the Plaintiffs.

INTERROGATORY NO. 9: Please identify what disclosures regarding high sub-water or sub-water damage, if any, were made and who they were made to regarding the Property.

INTERROGATORY NO. 10: Please identify any documents in your possession or access related to the building, construction, purchase, and sale of the Property.

INTERROGATORY NO. 11: Please identify each and every sub-water (or water intrusion) lawsuit or claim (pending or resolved) that you are aware of in Rigby, Idaho and the surrounding vicinity including the names of the parties, the nature of the claim, the location of the properties over which such issues are claimed, and the date you became aware of said claim or lawsuit.

INTERROGATORY NO. 12: If prior to this lawsuit, you have been a plaintiff or defendant in any other litigation, please state the name and address of the court involved; the names of all

parties to said proceeding; the case filing number; what the litigation involved by way of causes of action and defenses; the disposition of the case by settlement; court trial and/or judgment or appeal; and whether an appellate court affirmed, remanded, or reversed the trial court's finding.

INTERROGATORY NO. 13: Please identify any insurance policies in place that may provide coverage for the issues alleged in Plaintiff's Complaint.

INTERROGATORY NO. 14: Please identify all officers, directors, and investors (whether silent or active) both current and former and their positions for Shippen Construction, Inc. and the dates that such positions were held.

INTERROGATORY NO. 15: Please identify dates of all annual meetings for Shippen Construction, Inc. from January 1, 2005 to the present.

INTERROGATORY NO. 16: Please identify all contractors, subcontractors, individuals and companies that participated in the design or construction of the Property, including any employees or agents of Shippen Construction, Inc. and what their duties included.

INTERROGATORY NO. 17: Please describe in detail your role in Shippen Construction, Inc. including, but not limited to management, construction, design, and/or accounting activities.

INTERROGATORY NO. 18: Please identify with specificity any an all surveys, flood plain assessments, water table assessments, and other water assessments you relied on prior to constructing the property.

INTERROGATORY NO 19: Please state with detail and particularity the factual basis for your Third Affirmative Defense set forth in your Answer that "Plaintiffs are estopped from asserting their claims herein and the defendants rely upon detrimental reliance, estoppel, and other similar defenses."

INTERROGATORY NO. 20: Please list the properties (by common address) you improved, built, or were in the process of building or improving in the years 2005 - 2008

REQUESTS FOR ADMISSION

REQUEST FOR ADMISSION NO. 1: Admit you were the general contractor responsible for the construction of the Property.

REQUEST FOR ADMISSION NO. 2: Admit during the excavation of the Property's foundation, the foundation flooded.

REQUEST FOR ADMISSION NO. 3: Admit despite said flooding, you continued construction.

REQUEST FOR ADMISSION NO. 4: Admit you listed the Property for sale with the Multiple Listing Service (MLS) on August 10, 2006.

REQUEST FOR ADMISSION NO. 5: Admit that in August of 2006, the Property's basement flooded due to high levels sub-water.

REQUEST FOR ADMISSION NO. 6: Admit that in the MLS listing you represented that the property had not had sub-water issues.

REQUEST FOR ADMISSION NO. 7: Admit that prior to the time you sold the property, you knew the property had flooded.

REQUEST FOR ADMISSION NO. 8: Admit that despite the flooding, you never amended the MLS listing prior to the purchase of the property.

REQUEST FOR ADMISSION NO. 9: Admit that on July 2, 2007, the Plaintiffs purchased the Property from Defendants.

REQUEST FOR ADMISSION NO. 10: Admit that prior to the time of the purchase, you concealed your knowledge of the flooding from Plaintiffs.

REQUEST FOR ADMISSION NO. 11: Admit you installed a leaching system to prevent future flooding.

REQUEST FOR ADMISSION NO. 12: Admit you represented to Plaintiffs that the leaching system was installed to alleviate any concerns of there ever being sub-water issues.

REQUEST FOR ADMISSION NO. 13: Admit you told Plaintiffs the main reason for the leaching system was to alleviate any concerns about snow melt flooding the basement.

REQUEST FOR ADMISSION NO. 14: Admit that during the time of the negotiations, you knew Plaintiffs were from Tennessee.

REQUEST FOR ADMISSION NO. 15: Admit that at the time you made the prior statements, you knew they were false.

REQUEST FOR ADMISSION NO. 16: Admit you intended for Plaintiffs to rely on the above statements.

REQUEST FOR ADMISSION NO. 17: Admit that Plaintiffs reliance on the above statements was reasonable.

REQUEST FOR ADMISSION NO. 18: Admit that at the time of the sale, you entered a contract expressly placing a one year warranty on the Property.

REQUEST FOR ADMISSION NO. 19: Admit prior to the commencement of these legal proceedings, you were given proper notice under the Idaho Opportunity to Repair Act.

REQUEST FOR ADMISSION NO. 20: Admit that after receiving this notice your attorney of record made no mention of an intention to repair the property, made defenses to allegations in the letters disputing the claim, and notified Plaintiff's counsel that he was willing to accept service of any litigation filed in the matter.

REQUEST FOR ADMISSION NO. 21. Admit that you are liable for Plaintiff's attorneys fees and costs incurred in pursuing this litigation.

INTERROGATORY NO. 21: If you have denied or intended to deny the truth of the facts, matters or allegations contained herein, please state the following with respect to each such Request for Admission of Fact or Genuineness of Documents (a separate response is requested for each).

1. Any and all facts, reasons, or grounds upon which you base your denial of the substance of said Request for Admission of Fact and/or Genuineness of Documents.
2. Describe with particularity all documents of any nature whatsoever known to you which you allege support your denial of said Request for Admission or proves or tends to prove that the facts, matters, or allegation stated therein are not true.
3. For any denial or non-answer based upon lack of knowledge, state the full extent of your efforts to inquire concerning the subject matter of the request, including listing all documents and materials reviewed.

PRODUCTION OF DOCUMENTS

INSTRUCTIONS AND DEFINITIONS

The following terms, words and phrases shall have the following meaning in this discovery pleading.

1. This request is intended to cover all the documents in your possession and your agents, insurers, representatives, consultants and attorneys subject to their custody and control or otherwise reasonably available to them, regardless of the actual location of the documents.

2. As used herein, term "document" or "documents" shall mean any kind of written, printed, typed, graphic or photographic matter of any kind or nature, however produced or reproduced, an all mechanical and electronic sound recordings and written transcripts thereof, however produced or reproduced whether in your control or not, and including without limitation, originals, all file copies, all other copies no matter how and by whom prepared and all drafts of such documents whether used or not.

3. Each request for production shall be accorded a separate answer. If objection is made to any part of an item or category in this request, the reasons for the objection must be specified.

4. If you withhold any documents by reason of a claim of privilege or other reason, please identify each such document, indicating its date, general subject matter (without disclosing the contents), persons to whom distributed and basis upon which the privilege is claimed.

5. These requests are deemed to be continuing so as to require supplemental responses if you or your attorney, agents, employee or representatives (including insurers) obtain further documentation or requested information between the time these responses are served and the time of trial.

REQUEST FOR PRODUCTION NO. 1: Produce all documents relied on by you in answering the foregoing interrogatories.

REQUEST FOR PRODUCTION NO. 2: Please produce all documents, memoranda, and other written or recorded records in your possession, or reasonably available to you, which relate in any manner to your answer in the foregoing interrogatories.

REQUEST FOR PRODUCTION NO. 3: Produce all documents to be relied on or introduced in evidence by you at any pre-trial motion hearing or at the trial herein.

REQUEST FOR PRODUCTION NO. 4: You are requested to provide those documents as discussed in Interrogatories Nos. 4 and 5.

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REQUEST FOR PRODUCTION NO. 5: Produce all of your personal and business tax returns in which you have any interest for the past four (4) years and also produce your current pay stub(s) from all sources showing your year to date income.

REQUEST FOR PRODUCTION NO. 6: Produce all corporate documents for the past four (4) years, including, but not limited to financial reports, annual meeting minutes, board meeting minutes, and board resolutions.

REQUEST FOR PRODUCTION NO. 7: For all assets you presently own or owned during or since January 1, 2007, produce all titles, registrations, bills of sale or other evidence of ownership and all receipts, invoices, or other documentation.

REQUEST FOR PRODUCTION NO. 8: For all outstanding financial obligations in the past four (4) years produce the current billing statements or other evidence of the debt and current balance of the debt..

REQUEST FOR PRODUCTION NO. 9: If you have retained an expert witness, produce a copy of the expert's report, underlying data, raw data, tests, answers to questions submitted to the expert by yourself or others, and any other information upon which the expert relies in drawing his or her conclusion. Also produce a copy of the resume' for any expert(s).

REQUEST FOR PRODUCTION NO. 10: Produce a copy of any written or recorded statement from anyone concerning any of the issues of this action.

REQUEST FOR PRODUCTION NO. 11: Please produce all documents related to any and all insurance policies that may provide coverage for the issues in this matter, as identified in the Plaintiff's Complaint.

REQUEST FOR PRODUCTION NO. 12: Please produce all documents that support your affirmative defenses.

REQUEST FOR PRODUCTION NO. 13: Please produce all communications and documents with the developer, architect, county, city, and building department related to the Property.

REQUEST FOR PRODUCTION NO. 14: Please produce all communications and documents with your contractors and subcontractors related to the property.


REQUEST FOR PRODUCTION NO. 15: Please produce all documents or documentary evidence of communications between you and the District Seven Health Department related to the

Property.

REQUEST FOR PRODUCTION NO. 16: Please produce all documents or documentary evidence of communications between you and any and all appraisers who visited the site of the Property

REQUEST FOR PRODUCTION NO. 17: Please produce copies of all listings of the Property posted on the Multiple Listing Service (MLS), together with all documents you or your agent completed for purposes of listing the Property.

DATED this 12 day of May, 2009.




WESTON S. DAVIS, ESQ.

CERTIFICATE OF SERVICE

I hereby certify that I served a true copy of the foregoing document upon the following this 12 day of May 2009, by hand delivery, mailing with the necessary postage affixed thereto, facsimile, or overnight mail.

Robin D. Dunn
P.O. Box 277
477 Pleasant Country Lane
Rigby, ID 83442-0277

- Mailing
- Hand Delivery
- Fax
- Overnight Mail



WESTON S. DAVIS, ESQ.

L:\wsd\~ Clients\7411.1 Goodspeed\Int & Req #1.wpd

50

DUNN LAW OFFICES, PLLC
Robin D. Dunn, Esq., ISB # 2903
Amelia A. Sheets, Esq., ISB #5899
P.O. Box 277
477 Pleasant Country Lane
Rigby, Idaho 83442
(208) 745-9202 (t)
(208) 745-8160 (f)

2009 JUL 16 AM 8:03
DISTRICT COURT
JEFFERSON COUNTY, IDAHO

Attorneys for Defendants

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF JEFFERSON
MAGISTRATE'S DIVISION

WILLIAM SHAWN GOODSPEED and)
SHELLEE BETH GOODSPEED,)
husband and wife,)
)
Plaintiffs,)

Case No. CV 09-015

NOTICE OF SERVICE

vs.)

SHIPPEN CONSTRUCTION, INC., an)
Idaho corporation, and ROBERT and)
JORJA SHIPPEN, husband and wife,)
)
Defendants.)

I HEREBY CERTIFY that the following document was served, by postage pre-paid mailing, to plaintiff's attorney, Weston S. Davis, Esq., P.O. Box 51630, Idaho Falls, Idaho 83405 together with a copy of this notice, on the 14th day of July, 2009:

- 1) *Defendants' Answers to Interrogatories, Requests for Admission and Requests for Production of Documents.*



Robin D. Dunn, Esq.
DUNN LAW OFFICES, PLLC

2009 JUL 21 AM 8:14
DISTRICT COURT
JEFFERSON COUNTY, IDAHO

DUNN LAW OFFICES, PLLC
Robin D. Dunn, Esq., ISB # 2903
Amelia A. Sheets, Esq., ISB #5899
P.O. Box 277
477 Pleasant Country Lane
Rigby, Idaho 83442
(208) 745-9202 (t)
(208) 745-8160 (f)
rdunn@dunnlawoffices.com

Attorneys for Defendants

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF JEFFERSON

WILLIAM SHAWN GOODSPEED and)
SHELLEE BETH GOODSPEED,)
husband and wife,)
)
Plaintiffs,)
)
vs.)
)
SHIPPEN CONSTRUCTION, INC., an)
Idaho corporation, and ROBERT and)
JORJA SHIPPEN, husband and wife,)
)
Defendants.)
_____)

Case No. CV 09-015
MOTION TO DISMISS

COMES NOW, defendants in the above-entitled matter, and move the Court pursuant to Rule 12(b)6 to dismiss the above-entitled matter for the reason that a cause of action does not exist. This motion to dismiss is being filed for the reason that the defendants are not proper parties.

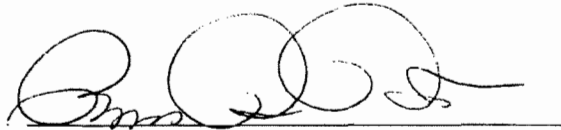
The reason a cause of action does not exist is the real estate contract between

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plaintiff and a defendant for sale of real property does not involve the named defendants entitling plaintiff to relief.

In the alternative, the defendants request that this matter be treated as a Motion for Summary Judgment pursuant to IRCP, Rule 56. This alternative pleading is in the event the matter is not considered as a Motion to Dismiss since a supplemental affidavit will be filed in this matter outlining and proving to the Court the non-existence of a remedy against the named defendants.

DATED this 16th day of July, 2009.



Robin D. Dunn, Esq.
DUNN LAW OFFICES, PLLC

2/1/09

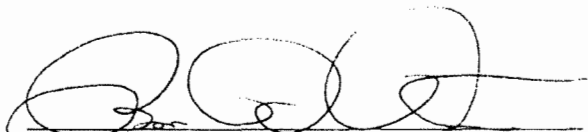
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 16th day of July, 2009, a true and correct copy of the foregoing was delivered to the following person(s) by:

Hand Delivery

Postage-prepaid mail

Facsimile Transmission



Robin D. Dunn, Esq.
DUNN LAW OFFICES, PLLC

Weston S. Davis, Esq.
P.O. Box 51630
Idaho Falls ID, 83405

Chamber Copy:
Hon. Gregory Moeller
Rexburg, Idaho

DUNN LAW OFFICES, PLLC
 Robin D. Dunn, Esq., ISB # 2903
 Amelia A. Sheets, Esq., ISB #5899
 P.O. Box 277
 477 Pleasant Country Lane
 Rigby, Idaho 83442
 (208) 745-9202 (t)
 (208) 745-8160 (f)
rdunn@dunnlawoffices.com

2009 JUL 21 AM 8:14
 DISTRICT COURT
 JEFFERSON COUNTY, IDAHO

Attorneys for Defendants

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE
 STATE OF IDAHO, IN AND FOR THE COUNTY OF JEFFERSON

WILLIAM SHAWN GOODSPEED and)
 SHELEE BETH GOODSPEED,)
 husband and wife,)
)
 Plaintiffs,)

Case No. CV 09-015

AFFIDAVIT OF ROBERT SHIPPEN

vs.)

SHIPPEN CONSTRUCTION, INC., an)
 Idaho corporation, and ROBERT and)
 JORJA SHIPPEN, husband and wife,)
)
 Defendants.)

STATE OF IDAHO)
)ss:
 COUNTY OF JEFFERSON)

ROBERT SHIPPEN, being first duly sworn, deposes and states as follows:

- 1) That he and his wife are named defendants in the above named lawsuit.
- 2) That he and his wife have nothing to do with the allegations of the complaint on file herein as they did not act in their individual capacities in construction or sale of the subject real property.

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3) That Shippen Construction, Inc. is a subcontractor and has nothing to do with the general contractor or the sale of the real property.

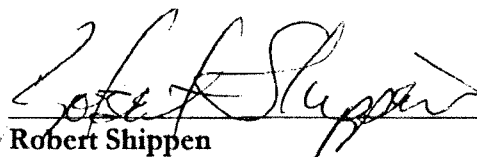
4) The various subcontractors on the case are as follows:

- a) Justin Fullmer;
- b) Marriott, Inc.;
- c) L&F Electric;
- d) Holeshoot Plumbing;
- e) T. Merrill Construction;
- f) Southerland Cabinetry;
- g) Keith Klingler roofing;
- h) Rocky Mountain Siding;
- i) Shippen Construction, Inc.

5) The main contractor on this case and general contractor who caused the construction and who caused the sale of the property is Marriott Homes, Inc. This is an Idaho corporation licensed to do business in Idaho and currently active. None of the named defendants in the above named lawsuit had any involvement other than Shippen Construction, Inc. was a subcontractor who performed excavation services. Any exposure, if any, is through the general contractor. As such, the undersigned requests the complaint be dismissed, with prejudice, as to the named parties herein.

6) Further your affiant sayeth naught.

DATED this 16th day of July, 2009.



Robert Shippen
Agent for Shippen Construction, Inc. and in
his individual capacity

SUBSCRIBED AND SWORN to before me this 16th day of July, 2009.

Jamal Nield

Notary Public

Residing at: Rigby, Idaho

Commission Expires: 11/30/14

(SEAL)

[Handwritten mark]

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 16th day of July, 2009, a true and correct copy of the foregoing was delivered to the following person(s) by:

Hand Delivery

Postage-prepaid mail

Facsimile Transmission



Robin D. Dunn, Esq.
DUNN LAW OFFICES, PLLC

Weston S. Davis, Esq.
P.O. Box 51630
Idaho Falls ID, 83405

Chamber Copy:
Hon. Gregory Moeller
Rexburg, Idaho

DUNN LAW OFFICES, PLLC
Robin D. Dunn, Esq., ISB # 2903
Amelia A. Sheets, Esq., ISB #5899
P.O. Box 277
477 Pleasant Country Lane
Rigby, Idaho 83442
(208) 745-9202 (t)
(208) 745-8160 (f)
rdunn@dunnlawoffices.com

2009 JUL 21 AM 8:14
DISTRICT COURT
JEFFERSON COUNTY, IDAHO

Attorneys for Defendants

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF JEFFERSON

WILLIAM SHAWN GOODSPEED and)
SHELLEE BETH GOODSPEED,)
husband and wife,)
)
Plaintiffs,)

Case No. CV 09-015

NOTICE OF HEARING

vs.)

SHIPPEN CONSTRUCTION, INC., an)
Idaho corporation, and ROBERT and)
JORJA SHIPPEN, husband and wife,)
)
Defendants.)

PLEASE TAKE NOTICE, that on the 27th day of July, 2009, at 2:15 p.m., or as soon thereafter as counsel can be heard, in the Jefferson County Courthouse at Rigby, Idaho, before the Honorable Gregory Moeller, counsel for Defendants, Shippen Construction, Inc.; and Robert and Jorga Shippen, Robin D. Dunn, Esq., Dunn Law Offices, in the above-entitled action will call up for hearing their Motion to Dismiss.

DATED this 16th day of July, 2009.



Robin D. Dunn, Esq.
DUNN LAW OFFICES, PLLC

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 16th day of July, 2009, a true and correct copy of the foregoing was delivered to the following person(s) by:

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Idaho Falls ID, 83405

Chamber Copy:
Hon. Gregory Moeller
Rexburg, Idaho

WESTON S. DAVIS, ESQ (ISB No. 7449)
NELSON HALL PARRY TUCKER, P.A.
490 Memorial Drive
Post Office Box 51630
Idaho Falls, Idaho 83405-1630
Telephone (208) 522-3001
Fax (208) 523-7254

2009 JUL 23 PM 1:39
DISTRICT COURT
JEFFERSON COUNTY, IDAHO

Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF JEFFERSON

WILLIAM SHAWN GOODSPEED and
SHELLEE BETH GOODSPEED, husband and
wife,

Plaintiffs,

vs.

SHIPPEN CONSTRUCTION, INC., an Idaho
corporation, and ROBERT and JORJA
SHIPPEN, husband and wife,

Defendants.

Case No.: CV-09-015

**RESPONSE AND OBJECTION TO
DEFENDANT'S MOTION TO
DISMISS**

COME Plaintiffs, by and through counsel of record, Weston S. Davis, Esq. of Nelson
Hall Parry Tucker, P.A. and objects to Defendant's Motion to Dismiss and responds as follows:

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I. THE MOTION TO DISMISS IMPROPERLY APPLIES THE STANDARD OF A RULE 12(b)(6) MOTION BY RELYING ON AN AFFIDAVIT.

Plaintiffs object to Defendants' Motion to Dismiss as being premature and improperly raised before this court. Defendant's motion to dismiss is improperly supported by affidavit:

"[A] trial court, in considering a Rule 12(b)(6) motion to dismiss, has no right to hear evidence; and since judicial notice [and affidavits supporting such motion are] merely a substitute for the conventional method of taking evidence to establish facts, the court has no right to take judicial notice [or entertain affidavits] of anything, with the possible exception of *facts of common knowledge* which controvert averments in the complaint. . . . If a trial court considers factual allegations outside the pleading on a Rule 12(b)(6) motion, it errs if it fails to convert the motion to one for summary judgment. Furthermore, if a court considers matters outside the pleadings on a Rule 12(b)(6) motion to dismiss, such motion must be treated as a motion for summary judgment *and* the proceedings thereafter must comport with the hearing and notice requirements of Rule 56.

Hellickson v. Jenkins, 118 Idaho 273, 276, 796 P.2d 150, 153 (Ct. App 1990). *Citations omitted, emphasis in original.* In that case, even though facts of a probate case had already been found in another related case, the trial court erred when it took judicial notice of such facts on a party's motion to dismiss. *Id.* An affidavit to support a Motion to Dismiss likewise attempts to introduce facts outside of the pleadings and is likewise improper. *Id.*

Because the reading of Rule 12(b)(6) can be vague, there are two possible interpretations of the rule: (1) a true motion to dismiss or (2) a motion for summary judgment. *Stewart v. Arrington Construction Company*, 92 Idaho 526, 530, 446 P.2d 895,899 (1968). Under a true 12(b)(6) approach, the court does not accept affidavits on a motion to dismiss. *Id.*

With the true 12(b)(6) motion . . . a distinction must be drawn between 'failure to state a claim upon which relief may be granted' and the historical 'failure to state a cause of action.' . . . The basis test for the sufficiency of a complaint here [(under a 12(b)(6) motion)] is 'whether in the light most favorable to the plaintiff, and with every intendment regarded in his favor, the complaint is sufficient to constitute *any* valid claim. The liberal test for sufficiency of a complaint makes it difficult to avoid it under the test of I.R.C.P. 12(b)(6) alone.

Id. at 531, 931 *Citations omitted.*

Restated, if the complaint states *any* valid claim, a motion to dismiss must be denied. The Idaho Supreme Court itself recognizes this is a very liberal test in favor of the Plaintiff. *Id.* This is because the Court favors the policy of exploring allegations and issues prior to making an ultimate determination in the case. *Id.* A defendant is therefore precluded from introducing facts by affidavit under a *true* Rule 12(b)(6) motion.

Finally, if there are any doubts between denying or granting a motion to dismiss, then those doubts must be liberally construed in favor of retaining the plaintiff's complaint. *Id.*

In this case, on July 15, 2009, one (1) day prior to filing the Motion to Dismiss and twenty one (21) days after Plaintiffs' filing their Motion to Compel, Defendants filed answers to Plaintiffs' discovery, alleging that Marriott Homes, Inc., not Shippen Construction, was the builder of the property. The next day, Defendants filed their Motion to Dismiss supported by an affidavit of Robert Shippen alleging that Marroitt Homes, Inc. was the builder of the home. However, as mentioned above, introducing facts and evidence by affidavit on a Motion to Dismiss is wholly improper and Defendant's Motion to Dismiss should therefore be denied. To the extent this Court were to find any doubt as to whether the Motion to Dismiss should be granted, the Idaho Supreme Court has stated that such doubt should be resolved in favor of the plaintiff by retaining the complaint.

In the event this Court were to hold that the submission of the affidavit is somehow proper, which Plaintiff firmly asserts should not be the case, Plaintiff has herewith filed an affidavit of William Goodspeed showing a good faith basis for naming Robert and Jorja Shippen and Shippen Construction as proper parties to this action. The closing documents of the Subject
RESPONSE AND OBJECTION TO DEFENDANT'S MOTION TO DISMISS - 3

6/13

Real Property, including the warranty deed on the property indicate that Robert and Jorja Shippen doing business as Shippen Construction were the owners of the subject real property prior to the conveyance to the Plaintiffs. Such stands in direct conflict with the Affidavit of Robert Shippen filed with his motion that neither he, his wife, or Shippen Construction had anything to do with the construction or sale of the residence. Therefore, there appears to be a genuine issue as to whether the Shippens and Shippen Construction will bear liability as a result of this suit. Dismissal of the present action would therefore be premature and wholly improper under Rule 12(b)(6).

II. THE MOTION TO DISMISS IS UNTIMELY FILED AND SHOULD NOT BE CONSIDERED BY THIS COURT.

Defendants further object to Defendant's motion as being improperly filed before this Court. I.R.C.P. 7(b)(3) requires that a motion be filed 14 days prior to the time set for hearing. In this case, Defendants filed their motion on July 16, 2008, only 11 days prior to the time set for hearing. Plaintiff's actually received Defendant's motion on July 20, 2009--seven (7) days before the time set for hearing on this motion. Further, Defendants' motion might be construed by this Court as one for summary judgment, and under those circumstances, the motion must be filed 28 days before the time set for hearing. Therefore, Plaintiff objects to any hearing on this motion as it has been improperly noticed for hearing under the Idaho Rules of Civil Procedure.

CONCLUSION

Because Defendants motion to dismiss is improperly before this Court, both for improper submission of an affidavit and for giving untimely notice to Plaintiff's, Plaintiffs request an award of attorneys fees in necessarily responding to this motion. Plaintiff requests such fees pursuant to I.C. §§ 12-120, 121, and 123, and I.R.C.P. 54(d) and (e)

DATED this 22 day of July, 2009


WESTON S. DAVIS, ESQ.


CERTIFICATE OF SERVICE

I hereby certify that I served a true copy of the foregoing document upon the following this 22 day of July 2009, by hand delivery, mailing with the necessary postage affixed thereto, facsimile, or overnight mail.

Robin D. Dunn
P.O. Box 277
477 Pleasant Country Lane
Rigby, ID 83442-0277

Hon. Gregory Moeller
Madison County Courthouse
P. O. Box 389
Rexburg, ID 83440

- Mailing
- Hand Delivery
- Fax
- Overnight Mail


WESTON S. DAVIS, ESQ.

L:\wsd\ Clients\7411.1 Goodspeed\Response & Objection to Motion to Dismiss.wpd

WESTON S. DAVIS, ESQ (ISB No. 7449)
NELSON HALL PARRY TUCKER, P.A.
490 Memorial Drive
Post Office Box 51630
Idaho Falls, Idaho 83405-1630
Telephone (208) 522-3001
Fax (208) 523-7254

2009 JUL 23 PM 1:39
DISTRICT COURT
JEFFERSON COUNTY, IDAHO

Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF JEFFERSON

WILLIAM SHAWN GOODSPEED and
SHELLEE BETH GOODSPEED, husband and
wife,

Plaintiffs,

vs.

SHIPPEN CONSTRUCTION, INC., an Idaho
corporation, and ROBERT and JORJA
SHIPPEN, husband and wife,

Defendants.

Case No.: CV-09-015

**AFFIDAVIT IN SUPPORT OF
RESPONSE AND OBJECTION TO
DEFENDANT'S MOTION TO
DISMISS**

STATE OF IDAHO)
 : ss.
County of Bonneville)

WILLIAM SHAWN GOODSPEED, being first duly sworn upon oath, deposes and states
as follows:

1. I am one of the Plaintiffs in the above entitled action.
2. I purchased and reside at 3709 E. 319 North, Rigby, ID 83442, hereinafter the
"Subject Real Property".
3. Attached hereto as Exhibit "A" are a few of the closing documents which I signed

6/6

and that I received in the closing of the Subject Real Property.

4. These documents include the warranty deed which is signed by Robert and Jorja Shippen and the Final Closing statement identifying the Shippens as the sellers of the Subject Real Property.

5. It is my understanding based upon the purchase and sale negotiations and upon the closing documents that I purchased the home from Robert and Jorja Shippen and Shippen Construction, Inc.

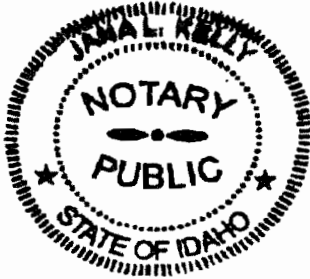
6. I believe dismissal of this action would be premature, based upon evidence only recently disclosed to my attorney, the legitimacy of which has not been verified.

DATED this 22 day of July, 2009

W. S. Goodspeed

WILLIAM SHAWN GOODSPEED

SUBSCRIBED AND SWORN to before me this 22 day of July, 2009.



J. Kelly

Notary Public
Residing at: Booneville ID
Commission expires: MAR. 12, 2012

67

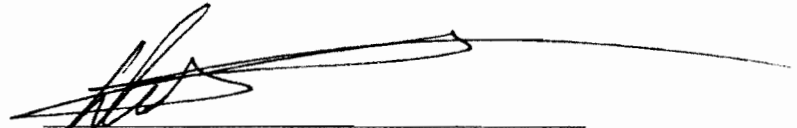
CERTIFICATE OF SERVICE

I hereby certify that I served a true copy of the foregoing document upon the following this 22 day of July 2009, by hand delivery, mailing with the necessary postage affixed thereto, facsimile, or overnight mail.

Robin D. Dunn
P.O. Box 277
477 Pleasant Country Lane
Rigby, ID 83442-0277

Hon. Gregory Moeller
Madison County Courthouse
P. O. Box 389
Rexburg, ID 83440

- Mailing
- Hand Delivery
- Fax
- Overnight Mail



WESTON S. DAVIS, ESQ.

L:\wsd\~ Clients\7411.1 Goodspeed\Response & Objection (Affidavit).wpd

RECORDING REQUESTED BY
First American Title Company

AND WHEN RECORDED MAIL TO:
First American Title Company
110 N. Clark Street
Rigby, ID 83442

359999

Instrument # 359999
RIGBY, JEFFERSON, IDAHO
2007-07-03 01:50:00 No. of Pages: 2
Recorded for : FIRST AMERICAN TITLE
CHRISTINE BOULTER Fee: 6.00
Ex-Officio Recorder Deputy u
Index to: WARRANTY DEED

Space Above This Line for Recorder's Use Only

WARRANTY DEED

File No.: 218469-RI (dm)

Date: June 29, 2007

For Value Received, **Robert Shippen and Jorja Shippen, dba Shippen Construction**, hereinafter called the Grantor, hereby grants, bargains, sells and conveys unto **William S. Goodspeed and Shellee B. Goodspeed, husband and wife**, hereinafter called the Grantee, whose current address is **3709 East 319 North, Rigby, ID 83442**, the following described premises, situated in **Jefferson County, Idaho**, to-wit:

Lot 7, Block 2 Woodhaven Creek Estates, Division No. 1, Jefferson County, Idaho, as shown on the plat recorded November 29, 2004, as Instrument No. 335643. Affidavit of Correction recorded February 3, 2005, as Instrument No. 337151.

SUBJECT TO all easements, right of ways, covenants, restrictions, reservations, applicable building and zoning ordinances and use regulations and restrictions of record, and payment of accruing present year taxes and assessments as agreed to by parties above.

TO HAVE AND TO HOLD the said premises, with its appurtenances, unto the said Grantee, and to the Grantee's heirs and assigns forever. And the said Grantor does hereby covenant to and with the said Grantee, that the Grantor is the owner in fee simple of said premises; that said premises are free from all encumbrances except current years taxes, levies, and assessments, and except U.S. Patent reservations, restrictions, easements of record and easements visible upon the premises, and that Grantor will warrant and defend the same from all claims whatsoever.

RECEIVED BY
ASSESSOR
For PLATTING
Date 7/3/07 Time 1:50

69



First American Title Company Final Statement		B. Type of Loan	
		1-5. Loan Type Conv. Unins.	
		6. File Number 218469-RI	
		7. Loan Number 002004463410	
		8. Mortgage Insurance Case Number	
C. Note: This form is furnished to give you a statement of actual settlement costs. Amounts paid to and by the settlement agent are shown, items marked "(POC)" were paid outside this closing; they are shown here for informational purposes and are not included in the totals.			
D. Name of Borrower: William S. Goodspeed, Shellee B. Goodspeed 3709 East 319 North, Rigby, ID 83442			
E. Name of Seller: Robert Shippen, Jorja Shippen			
F. Name of Lender: Citimortgage, Inc. 100 Galleria Officecentre Ste. 300 Southfield, MI 48034			
G. Property Location: 3709 East 319 North, Rigby, ID 83442			
H. Settlement Agent: First American Title Company Address: P.O. Box 405, Rigby, ID 83442		L. Settlement Date: 07/03/2007	
Place of Settlement Address: P.O. Box 405, Rigby, ID 83442		Print Date: 07/03/2007, 11:05 AM	
		Disbursement Date: 07/03/2007	
J. Summary of Borrower's Transaction		K. Summary of Seller's Transaction	
100. Gross Amount Due From Borrower		400. Gross Amount Due To Seller	
101. Contract Sales Price	272,000.00	401. Contract Sales Price	
102. Personal Property		402. Personal Property	
103. Settlement charges to borrower (line 1400)	2,972.04	403. Total Deposits	
104.		404.	
105.		405.	
Adjustments for items paid by seller in advance		Adjustments for items paid by seller in advance	
106. City/town taxes		406. City/town taxes	
107. County taxes		407. County taxes	
108. Assessments		408. Assessments	
109.		409.	
110.		410.	
111.		411.	
112.		412.	
113.		413.	
114.		414.	
115.		415.	
120. Gross Amount Due From Borrower	274,972.04	420. Gross Amount Due To Seller	
200. Amounts Paid By Or in Behalf of Borrower		500. Reductions in Amount Due to Seller	
201. Deposit or earnest money	2,500.00	501. Excess deposit (see instructions)	
202. Principal amount of new loan(s)	217,600.00	502. Settlement charges (line 1400)	
203. Existing loan(s) taken subject		503. Existing loan(s) taken subject	
204. Interest on New Loan from Citimortgage, Inc.	77.50	504. Payoff of first mortgage loan	
205. HELOC Credit from Citimortgage, Inc.	12.00	505. Payoff of second mortgage loan	
206.		506.	
207.		507.	
208.		508.	
209.		509.	
Adjustments for items unpaid by seller		Adjustments for items unpaid by seller	
210. City/town taxes		510. City/town taxes	
211. County taxes 01/01/07 to 07/02/07 @ \$173.90/yr	86.71	511. County taxes	
212. Assessments		512. Assessments	
213.		513.	
214.		514.	
215.		515.	
216.		516.	
217.		517.	
218.		518.	
219.		519.	
220. Total Paid By/For Borrower	220,276.21	520. Total Reduction Amount Due Seller	
300. Cash At Settlement From/To Borrower		600. Cash At Settlement To/From Seller	
301. Gross amount due from Borrower (line 120)	274,972.04	601. Gross amount due to Seller (line 420)	
302. Less amounts paid by/for Borrower (line 220)	220,276.21	602. Less reductions in amounts due to Seller (line 520)	
303. Cash (X From) (To) Borrower	54,695.83	603.	

The HUD-1 Settlement Statement which I have prepared is a true and accurate account of this transaction. I have caused or will cause the funds to be disbursed in accordance with this statement.

7/21/07

L. Settlement Charges		
	Paid From Borrower's Funds at Settlement	Paid From Seller's Funds at Settlement
700. Total Sales/Broker's Commission based on price		
Division of Commission (line 700) as follows		
701.		
702.		
703. Commission paid at Settlement		
704.		
800. Items Payable in Connection with Loan		
801. Loan Origination Fee		
802. Loan Discount		
803. Appraisal Fee		
804. Credit Report		
805. Lender's Inspection Fee		
806. Mortgage Insurance Application Premium		
807. Assumption Fee		
808. Commitment Fee - Citimortgage, Inc.	565.00	
809. Application Fee - Citimortgage, Inc.	480.00	
810.		
811.		
812.		
813.		
814.		
Supplemental Summary		
900. Items Required by Lender to be Paid in Advance		
901. Interest		
902.		
903. Hazard Insurance Premium for 1 year(s) to TBD	311.00	
904.		
905.		
Supplemental Summary		
1000. Reserves Deposited with Lender		
1001. Hazard Insurance 2 mo(s) @\$25.92/mo	51.84	
1002. Mortgage Insurance		
1003. City Property Taxes		
1004. County Property Taxes 3 mo(s) @\$250.70/mo	752.10	
1005. Annual assessments		
1006.		
1007.		
1008. Aggregate Accounting Adjustment	-129.60	
1100. Title Charges		
1101. Settlement or closing fee - First American Title Company	433.00	
1102. Abstract or title search		
1103. Title examination		
1104. Title Insurance Binder		
1105. Document Fee		
1106. Notary Fee		
1107. Attorney Fee		
(includes above item numbers:)		
1108. Title Insurance -- See supplemental page for breakdown of individual fees and payees (includes above item numbers:)	362.70	
1109. Lender's coverage \$217,600.00 Premium: \$362.70		
1110. Owner's coverage \$272,000.00		
1111. Endorsements 9-06/8.1-06/22-06 - First American Title Company	50.00	
1112.		
1113.		
1114.		
1115.		
1116.		
1117.		
1200. Government Recording and Transfer Charges		
1201. *Recording fees: Deed \$6.00 Mortgage \$48.00 Release \$0.00	54.00	
1202. City/county tax/stamps:		
1203. State tax/stamps:		
1204. Recording Fee-HELOC Deed of Trust - First American Title Company	12.00	
1205.		
1206.		
1300. Additional Settlement Charges		
1301. Survey to		
1302. Pest inspection to		
1303. Courier and Handling Fee - First American Title Company	30.00	
1304.		
1305.		
1306.		
1307.		
1308.		
1309.		
1310.		
1311.		
1312.		
1313.		
1314.		
Supplemental Summary		
1400. Total Settlement Charges (enter on lines 103, Section J and 502, Section K)	2,972.04	

L. Settlement Charges		
	Paid From Borrower's Funds at Settlement	Paid From Seller's Funds at Settlement
700. Total Sales/Broker's Commission based on price		
Division of Commission (line 700) as follows		
701.		
702.		
703. Commission paid at Settlement		
704.		
800. Items Payable in Connection with Loan		
801. Loan Origination Fee		
802. Loan Discount		
803. Appraisal Fee		
804. Credit Report		
805. Lender's Inspection Fee		
806. Mortgage Insurance Application Premium		
807. Assumption Fee		
808. Commitment Fee - Citimortgage, Inc.	565.00	
809. Application Fee - Citimortgage, Inc.	480.00	
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811.		
812.		
813.		
814.		
Supplemental Summary		
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901. Interest		
902.		
903. Hazard Insurance Premium for 1 year(s) to TBD	311.00	
904.		
905.		
Supplemental Summary		
1000. Reserves Deposited with Lender		
1001. Hazard Insurance 2 mo(s) @\$25.92/mo	51.84	
1002. Mortgage Insurance		
1003. City Property Taxes		
1004. County Property Taxes 3 mo(s) @\$250.70/mo	752.10	
1005. Annual assessments		
1006.		
1007.		
1008. Aggregate Accounting Adjustment	-129.60	
1100. Title Charges		
1101. Settlement or closing fee - First American Title Company	433.00	
1102. Abstract or title search		
1103. Title examination		
1104. Title Insurance Binder		
1105. Document Fee		
1106. Notary Fee		
1107. Attorney Fee		
(includes above item numbers:)		
1108. Title Insurance - See supplemental page for breakdown of individual fees and payees	362.70	
(includes above item numbers:)		
1109. Lender's coverage \$217,600.00 Premium: \$362.70		
1110. Owner's coverage \$272,000.00		
1111. Endorsements 9-06/8, 1-06/22-06 - First American Title Company	50.00	
1112.		
1113.		
1114.		
1115.		
1116.		
1117.		
1200. Government Recording and Transfer Charges		
1201. *Recording fees: Deed \$6.00 Mortgage \$48.00 Release \$0.00	54.00	
1202. City/county tax/stamps:		
1203. State tax/stamps:		
1204. Recording Fee-HELOC Deed of Trust - First American Title Company	12.00	
1205.		
1206.		
1300. Additional Settlement Charges		
1301. Survey to		
1302. Pest Inspection to		
1303. Courier and Handling Fee - First American Title Company	30.00	
1304.		
1305.		
1306.		
1307.		
1308.		
1309.		
1310.		
1311.		
1312.		
1313.		
1314.		
Supplemental Summary		
1400. Total Settlement Charges (enter on lines 103, Section J and 502, Section K)	2,972.04	

73

2009 JUL 29 AM 10:18
JEFFERSON COUNTY, IDAHO

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF JEFFERSON

WILLIAM SHAWN GOODSPEED, ETAL,)
)
 Plaintiffs,)
)
 -vs-)
)
 SHIPPEN CONSTRUCTION, ETAL,)
)
 Defendants.)

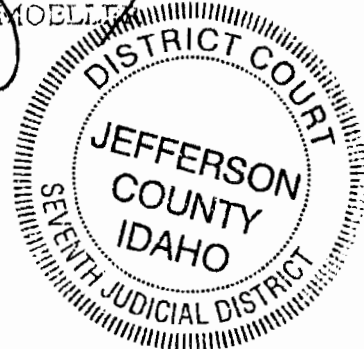
Case No. CV-2009-15

NOTICE OF TIME FOR HEARING

NOTICE IS HEREBY GIVEN that a status conference in the above-entitled matter shall
come on for hearing before the Honorable Gregory W. Moeller, District Judge on the 28th day of
September, 2009, at 2:00 p.m.

DATED this 28th day of July, 2009.


GREGORY W. MOELLER
District Judge



cc: Weston Davis, Esq.
Robin Dunn, Esq.

2009 JUL 29 AM 10:18
JEFFERSON COUNTY, IDAHO

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF JEFFERSON

WILLIAM SHAWN GOODSPEED, ETAL,)
)
Plaintiffs,)
-vs.-)
)
SHIPPEN CONSTRUCTION, ETAL,)
)
Defendant.)

Case No. CV-2009-15

MINUTE ENTRY
ON MOTIONS

July 27, 2009, at 2:36 P.M., this motion to deem admitted and motion to dismiss came on for hearing before the Honorable Gregory W. Moeller, District Judge, sitting in open court at Rigby, Idaho.

Mr. David Marlow, Court Reporter, and Ms. Nancy Andersen, Deputy Court Clerk, were present.

Mr. Weston Davis appeared on behalf of the plaintiffs.

Mr. Robin Dunn appeared on behalf of the defendants.

Mr. Dunn presented argument regarding the motion to dismiss. Mr. Dunn will concede the motion to dismiss. Mr. Dunn would like to have the complaint amended, have a scheduling order and have the motion to dismiss be converted to a summary judgment.

Mr. Davis objected to having it be converted to a summary judgment.

The Court order that Mr. Davis will have 45 days to reply and Mr. Dunn will have 7 days to respond.

The Court set the case for status conference on September 28, 2009, at 2:00 p.m.

Mr. Davis presented argument on motion to deem admitted.

Mr. Dunn responded and stated that he could be sanctioned, not his client.

Mr. Davis responded.

Motion to deem admitted will be on hold until after summary judgment.

Mr. Davis asked for attorney's fees and cost.

Mr. Dunn responded.


The Court granted motion for attorney's fees on motion to compel an award that the Court would deem reasonable.

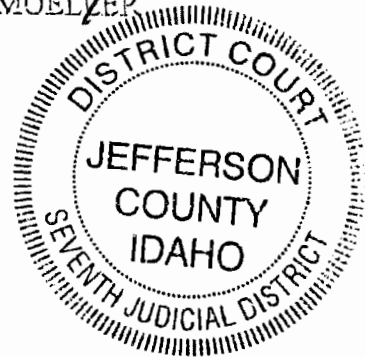
Mr. Davis will prepare the order.

Mr. Dunn addressed the Court.

Nothing further.

Court was thus adjourned.


GREGORY W. MOELLER
District Judge



c: Weston Davis, Esq.
Robin Dunn, Esq.

158

2009 JUL 30 PM 4:53

DISTRICT COURT
JEFFERSON COUNTY, IDAHO

DUNN LAW OFFICES, PLLC
Robin D. Dunn, Esq., ISB #2903
Amelia A. Sheets, Esq., ISB #5899
P.O. Box 277
477 Pleasant Country Lane
Rigby, ID 83442
(208) 745-9202 (t)
(208) 745-8160 (f)

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF JEFFERSON
MAGISTRATE'S DIVISION

WILLIAM SHAWN GOODSPEED and)
SHELLEE BETH GOODSPEED,)
husband and wife,)

Plaintiffs,)

vs.)

SHIPPEN CONSTRUCTION, INC., an)
Idaho corporation, and ROBERT and)
JORJA SHIPPEN, husband and wife,)

Defendants.)

Case No. CV 09-015

DEFENDANTS' MOTION TO
ALLOW REQUESTS FOR
ADMISSION AND ANSWERS
TO STAND


COMES NOW, defendants, by and through the undersigned attorney of record, and
moves the Court for an order allowing the following:

1. That the answers provided by defendants on Requests for Admission be allowed
to stand as filed with the defendants. These Requests for Admission were
answered and provided to the plaintiff before the hearing on the Motion to
Compel. However, the plaintiffs' filed a Motion to Deem the Requests for
Admission Admitted notwithstanding the answers having been filed by the
named defendants.

DEFENDANTS' MOTION TO ALLOW REQUESTS FOR ADMISSION AND ANSWERS TO STAND

2. In support of this motion, the Affidavit of Robin D. Dunn is filed herewith and incorporated in this motion by reference.

DATED this 30 day of July, 2009.




Robin D. Dunn, Esq.
DUNN LAW OFFICES, PLLC

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 30 day of July, 2009, a true and correct copy of the foregoing was delivered to the following persons(s) by:

- Hand Delivery
- Postage-prepaid mail
- Facsimile Transmission



Robin D. Dunn, Esq.
DUNN LAW OFFICES, PLLC

Weston S. Davis, Esq.
P.O. Box 51630
Idaho Falls, ID 83405

Courtesy Copy To: Honorable Gregory Moeller
Madison County Courthouse
P.O. Box 389
Rexburg, ID 83440

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 30 day of July, 2009, a true and correct copy of the foregoing was delivered to the following persons(s) by:

- Hand Delivery
 Postage-prepaid mail
 Facsimile Transmission



Robin D. Dunn, Esq.
DUNN LAW OFFICES, PLLC

Weston S. Davis, Esq.
P.O. Box 51630
Idaho Falls, ID 83405

Courtesy Copy To: Honorable Gregory Moeller
Madison County Courthouse
P.O. Box 389
Rexburg, ID 83440

2009

3. Pursuant to Rule 60(b) and the subdivisions thereof, the attorney and undersigned affiant states as follows:
- (a) The answers were provided by the client to the attorney, but he did not submit the answers in the time period allowed by the rules.
 - (b) The reason for doing this was there was a change in district judges at such time. The undersigned was unsure which district judge would be handling the matter and was waiting for a "Scheduling Order" on discovery and other matters. Because of this delay in obtaining the new judge, the undersigned did not answer, according to the rules, the Requests for Admission in a timely fashion.
 - (c) The defendants, through no fault of their own, have and did provide answers to the undersigned attorney. The undersigned attorney was willing to and the Court did order attorney fees on the Motion to Compel, pay such fees because of his error and not of that of his clients.
 - (d) The plaintiffs did provide a letter requesting responses to discovery requests. The undersigned did provide those discovery requests, but a hearing was held and plaintiffs were required to initiate said hearing. The answers were provided before the hearing and the answers should stand and punishment not be attributed to the defendants for the tardy response of the undersigned attorney.
 - (e) No prejudice has resulted to the plaintiffs in this matter because the case is just beginning and discovery has not even been initiated by the defendants. Due to the inadvertences, excuse, neglect or mistake of the

undersigned attorney, the requests should not be deemed admitted.

- (f) For another reason the requests should not be deemed admitted. It is the belief of the defendants that the incorrect party is named in the lawsuit. Marriott Homes, Inc., was the actual general contractor and has not been named in this lawsuit. For that reason, the undersigned attorney did not answer the discovery as the discovery requests were inapplicable to the subcontractor, Shippen Construction, Inc., and the individual husband and wife. The discovery responses on Requests for Admission made no sense because the correct party was not named in the lawsuit. As such, it was impossible to answer the Requests for Admission in a proper fashion. In hindsight, the named defendants should merely have denied the Requests for Admission and/or answered that they were not the correct parties in interest.

4. For all of the reasons mentioned above, the answers propounded by the named defendants should stand and not be deemed admitted without the answers being provided.
5. The affiant believes that the answers are true and correct and had his clients' agent sign the answers which were propounded to the Court.

DATED this 30 day of July, 2009.



Robin D. Dunn, Esq.
DUNN LAW OFFICES, PLLC

SUBSCRIBED AND SWORN to before me this 30th day of July, 2009.

Janal Nield
Notary Public for Idaho
Residing at: Wisville
Commission: 11/31/14

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 30 day of July, 2009, a true and correct copy of the foregoing was delivered to the following persons(s) by:

- Hand Delivery
- Postage-prepaid mail
- Facsimile Transmission

Robin D. Dunn
Robin D. Dunn, Esq.
DUNN LAW OFFICES, PLLC

Weston S. Davis, Esq.
P.O. Box 51630
Idaho Falls, ID 83405

Courtesy Copy To: Honorable Gregory Moeller
Madison County Courthouse
P.O. Box 389
Rexburg, ID 83440

WESTON S. DAVIS, ESQ (ISB No. 7449)
NELSON HALL PARRY TUCKER, P.A.
490 Memorial Drive
Post Office Box 51630
Idaho Falls, Idaho 83405-1630
Telephone (208) 522-3001
Fax (208) 523-7254

2009 SEP 10 PM 4:55
DISTRICT COURT
JEFFERSON COUNTY, IDAHO

Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF JEFFERSON

WILLIAM SHAWN GOODSPEED and
SHELLEE BETH GOODSPEED, husband and
wife,

Plaintiffs,

vs.

SHIPPEN CONSTRUCTION, INC., an Idaho
corporation, and ROBERT and JORJA
SHIPPEN, husband and wife,

Defendants.

Case No.: CV-09-015

**RESPONSE TO DEFENDANT'S
CONVERTED MOTION FOR
SUMMARY JUDGMENT**

COME NOW, Plaintiffs, in response to Defendants' July 16, 2009 Motion to Dismiss, converted by this Court to a Motion for Summary Judgment on July 27, 2009. Defendants' motion should be denied because material issues of fact exist regarding the liability of the named Defendants.

STATEMENT OF FACTS

On April 24, 2006, Robert Shippen, apparently as an agent for Shippen Construction, entered a Member Service Agreement wherein he agreed to install a wastewater treatment system on the

Subject Real Property. *Affidavit of Shellee Goodspeed, Exhibit "A"*.

On or about May 8, 2006, Robert Shippen, apparently as an agent for Shippen Construction, applied for and obtained a building permit on the Subject Real Property (3709 East 319 North, Rigby, Idaho) with Jefferson County, Idaho. *See Affidavit of Brenda Monson, Exhibit "A"*.

At about that same period of time, Robert Shippen, again apparently as an agent for Shippen Construction, applied for and obtained a Septic Permit from the District Seven Health Department. *Id.*

Shippen Construction also contracted with Wilson & Associates Designs to design and engineer the residence built on the subject real property. *Id.*

Throughout the years 2006 and 2007, Jefferson County performed a series of inspections on the Subject Real Property, citing the name of the contractor as Shippen Construction. *Id.*

On June 16, 2007, the Plaintiffs made an offer to Robert Shippen to purchase the Subject Real Property, which Robert and Jorja Shippen accepted on June 17, 2007. *See Affidavit of Shellee Goodspeed, Exhibit "B"*. While Robert and Jorja Shippen signed the Purchase and Sale Agreement, they did not do so in a representative capacity for Marriott Homes, Inc. nor did they list their contractor registration number. *Id.* Mr. Shippen did, however, list his email address as shippenconst@yahoo.com. Mr. Shippen then signed an addendum to extend the date of acceptance by the seller, and both he and Ms. Jorja Shippen signed a subsequent addendum to correctly identify the Subject Real Property's address. *Id.* He similarly executed the Seller's Property Condition Disclosure Form—again without reference to Marriott Homes, Inc.. *Id., Exhibit "C"*.

Then, on July 2, 2007, "Robert Shippen and Jorja Shippen, dba Shippen Construction" signed a Warranty Deed on the Subject Real Property to Plaintiffs. *Id., Exhibit "D"*.

Further, Robert and Jorja Shippen were listed and signed as the Sellers in the closing documents at the closing of the Subject Real Property, making no reference to signing in the capacity of officers of Marriott Homes, Inc. nor making specific reference in their signatures to signing in the capacity of officers of Shippen Construction, Inc.. *Id.*, Exhibit "E".

At the time of the sale, Robert and Jorja Shippen, husband and wife, were the record owners of the Subject Real Property. *Id.*, Exhibit "F".

Plaintiffs have therefore named both Shippen Construction, Inc., the general contractor of record on the subject real property, and Robert and Jorja Shippen, the record owners of the Subject Real Property and the signatories at the time of the closing as the Defendants in the above action.

Defendants now move this Court solely by affidavit to dismiss Plaintiffs' Complaint alleging that Marriott Homes, Inc., not Shippen Construction Inc. or Robert and Jorja Shippen, was the contractor on the Subject Real Property and that the case should be dismissed due to Plaintiff's alleged failure to name the proper party. However, such assertion is without merit, and therefore Defendants' motion should be denied. At the very least, this motion, together with the affidavits filed contemporaneously herewith, creates an issue of material fact rendering summary judgment inappropriate.

STANDARD OF REVIEW

Rule 56(c) of the Idaho Rules of Civil Procedure provides that summary judgment "shall be rendered 'if the pleadings, depositions and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.'" *Smith v. Meridian Joint School Dist. No. 2*, 128 Idaho 714, 718, 918 P.2d 583, 587 (1996) (quoting I.R.C.P. 56(c)); *see also Avila v. Wahlquist*, 126 Idaho 745, 890 P.2d

331 (1995). In making this determination, a Court should liberally construe the record in favor of the party opposing the motion and draw all reasonable inferences and conclusions in that party's favor. *Smith*, 128 Idaho at 718, 918 P.2d at 587 (citing *Friel v. Boise City Hous. Auth.*, 126 Idaho 484, 485, 887 P.2d 29, 30 (1994)). Based on the evidence, if reasonable persons could reach differing conclusions or draw conflicting inferences, summary judgment must be denied. *Id.* (citing *Harris v. Department of Health and Welfare*, 123 Idaho 295, 298, 847 P.2d 1156, 1159 (1992)). However, if the evidence reveals no disputed issues of material fact, then summary judgment should be granted. *Id.* at 718-719, 918 P.2d at 587-88 (citing *Loomis v. City of Hailey*, 119 Idaho 434, 437, 807 P.2d 1272, 1275 (1991)).

“The burden of establishing the absence of a genuine issue of material fact rests at all times with the party moving for summary judgment.” *Id.* at 719, 918 P.2d at 588 (citing *Tingley v. Harrison*, 125 Idaho 86, 89, 867 P.2d 960, 963 (1994)). In meeting its burden, the moving party is required to “challenge in its motion and establish through evidence the absence of any genuine issue of material fact on an element of the nonmoving party's case.” *Id.* (citing *Thomsen v. Idaho Ins. Agency, Inc.*, 126 Idaho 527, 530, 887 P.2d 1034, 1038 (1994)).

“If the moving party fails to challenge an element or fails to present evidence establishing the absence of genuine issue of material fact on that element, the burden does not shift to the nonmoving party, and the nonmoving party is not required to respond with supporting evidence.” *Id.* (citing *Thomsen*, 126 Idaho at 530-31, 887 P.2d at 1037-38; *Badell v. Beeks*, 115 Idaho 101, 102, 765 P.2d 126, 127 (1988)).

ARGUMENT

I. THE GOODSPEEDS ARE IN PRIVILEGE OF CONTRACT WITH THE NAMED DEFENDANTS.

A party may only obtain relief under a breach of contract claim from those with whom the party is in a direct contractual relationship for relief. *Wing v. Martin*, 107 Idaho 267, 272, 688 P.2d 1172, 1177 (1984). This relationship is otherwise referred to as privity of contract—"those who exchange the [contractual] promissory word or those to whom the promissory words are directed." *Id. citing Calemari and Perillo*, Contracts § 17-1 (2d ed. 1977).

In this case, Defendants allege Plaintiffs have failed to name the proper Defendants and the case should be dismissed. However, Defendants have not directed this Court to any agreement entered between the Plaintiffs and Marriott Homes, Inc. and Defendant bears the burden to show no issue of material fact exists. Instead, Plaintiff has directed this Court to numerous documents indicating a direct dealing with Robert and Jorja Shippen and Shippen Construction including the Purchase and Sale Agreement itself, the closing documents, and the Warranty Deed conveying the property to the Plaintiffs. *See Affidavit of Shellee Goodspeed*. Further, several public records of Jefferson County acknowledge that Shippen Construction was the contractor of the Subject Real Property. *See Affidavit of Brenda Monson*. Even if the Defendant were to produce documentation implicating Plaintiffs somehow new Marriott Homes, Inc. was the general contractor, the operative documents in this case are in Robert and Jorja Shippen's name or in Shippen Construction's name. The documents produced in the *Affidavits of Shellee Goodspeed and Brenda Monson* should conclusively establish that Marriott Homes, Inc. is not a proper party to this suit; at the very least the existence of such documents creates a genuine issue of material fact as to whether the Shippens and Shippen Construction are liable for fraudulent misrepresentation and whether they are in breach of

contract.

However, to the extent discovery continues to be ongoing, Plaintiff has petitioned this Court for leave to amend the complaint to include Marriott Homes, Inc. as a Defendant to this action.

Because Robert and Jorja Shippen and Shippen Construction, Inc. have not been named improperly in the above entitled matter Defendants' converted Motion for Summary Judgment should be denied. Further because a motion is pending to amend the complaint, Defendants' motion should be denied.

II. A CLAIM FOR BREACH OF THE IMPLIED WARRANTY OF HABITABILITY MUST BE BROUGHT AGAINST THE CONTRACTOR RESPONSIBLE FOR THE CONSTRUCTION OF THE RESIDENCE.

Even though the operative documents show Robert and Jorja Shippen as the individuals conveying the Subject Real Property, a claim for the breach of the warranty of habitability must be brought against the contractor responsible for the construction of the property. *See Bethlahmy v. Bechtel*, 91 Idaho 55, 67, 415 P. 2d 698, 711 (1966). If however, the builder-developer of the property exercised control over the construction of the property, then the implied warranty would extend from the builder-developer. *Tusch Enterprises v. Coffin*, 113 Idaho 37, 48, 740 P.2d 1022, 1034 (1987)

Documents of public record show Shippen Construction, not Marriott Homes was the contractor of the Subject Real Property. Shippen Construction contracted with Wilson Associates Designs for the design and engineering of the residence. *Affidavit of Brenda Monson*. Shippen Construction applied for the building permit and was the recipient of the county inspections. *Id.* Shippen Construction entered the wastewater treatment system agreement for the subject Real Property. *Affidavit of Shellee Goodspeed*. Shippen Construction is also referenced in several of the

closing documents and in the Warranty Deed. *Id.* Marriott Homes has done none of these. Therefore, a genuine issue of material fact arises as to whether Shippen Construction, not Marriott Homes, was the general contractor and how involved Robert Shippen was as a builder-developer on the Subject Real Property. Summary judgment to dismiss the complaint is thus inappropriate.

However, to the extent discovery continues to be ongoing, Plaintiff is petitioning this Court for leave to amend the complaint to include Marriott Homes, Inc. and Robert and Jorja Shippen doing business as Shippen Construction as defendants to this action and to include a claim for alter ego liability against Robert Shippen.

ATTORNEYS FEES

Pursuant to I.C. §§ 12-120, 121, and 123 and I.R.C.P. 54 and 56, Plaintiff respectfully requests an award of attorneys fees from Defendant for defending Defendant's Motion for Summary Judgment on the following bases:

1. Defendant's motion is not supported by any documentation, and is in fact directly controverted by several records that are publically available which were made, completed by, or submitted by Robert Shippen to the county prior to and during the time of the purchase and sale agreement or at the time of closing.

2. Defendant's motion shows a genuine issue of material fact regarding the Defendants' liability exists.

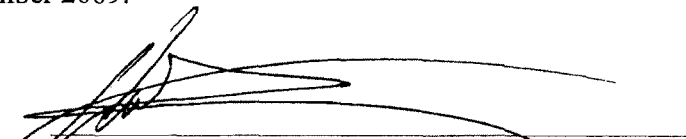
3. Defendant's motion violates the summary judgment standard clearly setting forth in Idaho Rule of Civil Procedure 56(c), that no genuine issue of material fact exists.

For these reasons, Plaintiff asks the Court to grant to Plaintiff all attorneys fees necessarily incurred in responding to Defendant's motion for summary judgment.

CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests that Defendants' converted Motion for Summary Judgment be denied and that Plaintiffs receive an award of their attorneys fees in necessarily defending this matter.

DATED this 10 day of September 2009.


WESTON S. DAVIS, ESQ.


CERTIFICATE OF SERVICE

I hereby certify that I served a true copy of the foregoing document upon the following this 10 day of September 2009, by hand delivery, mailing with the necessary postage affixed thereto, facsimile, or overnight mail.

Robin D. Dunn
P.O. Box 277
477 Pleasant Country Lane
Rigby, ID 83442-0277

Hon. Gregory Moeller
Madison County Courthouse
P. O. Box 389
Rexburg, ID 83440
(Mailed)

- Mailing
- Hand Delivery
- Fax
- Overnight Mail


WESTON S. DAVIS, ESQ.

L:\wsd\~ Clients\7411.1 Goodspeed\Response to MSJ.wpd

[Handwritten mark]

WESTON S. DAVIS, ESQ (ISB No. 7449)
NELSON HALL PARRY TUCKER, P.A.
490 Memorial Drive
Post Office Box 51630
Idaho Falls, Idaho 83405-1630
Telephone (208) 522-3001
Fax (208) 523-7254

2009 SEP 10 PM 4:09
DISTRICT COURT
JEFFERSON COUNTY, IDAHO

Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF JEFFERSON

WILLIAM SHAWN GOODSPEED and
SHELLEE BETH GOODSPEED, husband and
wife,

Plaintiffs,

vs.

SHIPPEN CONSTRUCTION, INC., an Idaho
corporation, and ROBERT and JORJA
SHIPPEN, husband and wife,

Defendants.

Case No.: CV-09-015

**AFFIDAVIT OF BRENDA
MONSON IN SUPPORT OF
RESPONSE TO DEFENDANT'S
CONVERTED MOTION FOR
SUMMARY JUDGMENT**

STATE OF IDAHO)
 : ss.
County of Bonneville)

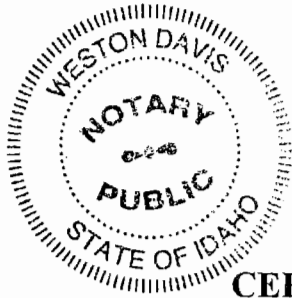
BRENDA MONSON, being first duly sworn upon oath, deposes and states as follows:

1. I am an employee of Jefferson County, Idaho and work in the Planning and Zoning Office in said county..
2. That attached hereto as Exhibit "A" are true and correct copies of documents found in the Planning and Zoning office regarding the subject real property : 3709 E 319 N., Rigby, Idaho 83442.

DATED this 10 day of September, 2009

Brenda Monson
Brenda Monson

SUBSCRIBED AND SWORN to before me this 10 day of September, 2009.



[Signature]
Notary Public
Residing at: Bonneville County
Commission expires: 02/16/13

CERTIFICATE OF SERVICE

I hereby certify that I served a true copy of the foregoing document upon the following this 10 day of September 2009, by hand delivery, mailing with the necessary postage affixed thereto, facsimile, or overnight mail.

Robin D. Dunn
P.O. Box 277
477 Pleasant Country Lane
Rigby, ID 83442-0277

Hon. Gregory Moeller
Madison County Courthouse
P. O. Box 389
Rexburg, ID 83440
(Mailed)

- Mailing
- Hand Delivery
- Fax
- Overnight Mail

[Signature]
WESTON S. DAVIS, ESQ.

L:\wsd\~ Clients\7411.1 Goodspeed\Response to MSJ (Affidavit - Monson).wpd

EXHIBIT "A"

EXHIBIT "A"

Jefferson County Planning & Zoning

243 East Fremont Avenue

Rigby ID, 83442

Date: 5/8/2006

Permit No: JEF-06-05-07

Job Address: 3109 East 319 North

Lot: 7 Block: 2 Sub: Woodhaven Div #1

Township: 4N Range: 38E Sec: 14

Pin: _____

Owner

Name: _____

Address: _____

City, State, Zip: _____ Phone: _____

Contractor

Name: Shippen Construction

Address: 518 North 3950 East

City, State, Zip: Rigby, ID 83442 Phone: _____

Designer

Name: _____

Phone: _____

Structure: New Type: Residence

Dimension: 94 X 39 Plot Acres: 1 Main/Foundation: 2000

Garage/Year: 888 Stories/X Wide: 1 2nd Floor: _____

Basement: Full - Unfinished (2000)

Footings: Concrete

Foundation: Concrete

Floors: Wood

Ext Walls: Masonry, Veneer, Stucco

Int Walls: Drywall

Ceiling: Drywall

Roof: Comp Sh

Heat: Gas

Insulation: Walls, Ceiling, Perimeter

In Flood Plain: No

Certificate: N/A

Use: R-3, U,

Zoning: Residential

Valuation: \$161,272

Permit Cost: \$1,470.57

10% Review: \$133.69

Refund: \$401.06

Mike McLean
Issued By

Robert D. Shippen
Applicant Signature

Policies and Violations for a Building Permit

Refund Policy. Jefferson County adopted the 2000 IBC, IRC and the IECC in April of 2004. It is outlined in this ordinance that the purchaser of the building permit may be eligible for a refund if all of the conditions of the inspections and building codes are honored. This refund is issued after the final inspection is approved and a certificate of occupancy is issued. This office will mail it to the applicant or their representative after the completion of all of the paper work.

Expiration. Every permit issued shall become invalid unless the work authorized by such permit is commenced within one hundred and eighty days after its issuance, or if the work authorized by such permit is suspended or abandoned for a period of one hundred and eighty days after the time the work is commenced. An extension may be applied for in writing with an additional filing fee.

Completion of project. The applicant has two years from the issuing date to complete the project. An extension may be applied for with a minimal fee depending on the portion of work to be completed. If the project is not completed within this time period the applicant will have to reapply for a new building permit as outlined for all new building permits.

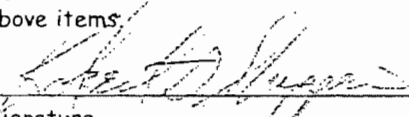
Unlawful Acts. It shall be unlawful for any person, firm or corporation to erect, construct, alter, extend, repair, move, remove, demolish or occupy any building, structure or equipment regulated by this code, or cause same to be done, in conflict with or in violation of any of the provisions of this code.

Notice of Violation. The building official is authorized to serve a notice of violation or order on the person responsible for the erection, construction, alteration, extension, repair, moving, removal, demolition or occupancy of a building or structure in violation of the provisions of this code, or in violation of a detail statement or a plan approved thereunder, or in violation of a permit or certificate issued under the provisions of this code. Such order shall direct the discontinuance of the illegal action or condition and the abatement of the violation.

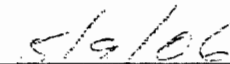
Prosecution of Violation. If the notice of violation is not complied with in the time prescribed by such notice, the building official is authorized to request the legal counsel of the jurisdiction to institute the appropriate proceeding at law or in equity to restrain, correct, or abate such violation, or to require the removal or termination of the unlawful occupancy of the building or structure in violation of the provisions of this code or of the order or direction made pursuant thereto.

Violation Penalties. Any person who violates a provision of this code or fails to comply with any of the requirements thereof or who erects, constructs, alters, or repairs a building or structure in violation of the approved construction documents or directive of the building official, or of a permit or certificate issued under the provisions of this code, shall be subject to penalties as prescribed by the law.

Agreement. I have read and understood the information outlined on this form, and I agree to all above items.



Signature



Date

**Jefferson County
Building Department
Inspection Ticket**

Name: <i>Shippin Construction</i>	Permit No: <i>06-05-07</i>
Site Address: <i>Wood Haven Lot 7 B12</i>	Time: <i>9:30 05/16/06</i>

Inspection Type: (Circle Inspection)

<input checked="" type="checkbox"/> Layout	<input type="checkbox"/> Footing	<input type="checkbox"/> House Foundation
<input type="checkbox"/> Garage Foundation	<input type="checkbox"/> Sheathing / Framing	<input type="checkbox"/> Insulation
<input type="checkbox"/> Drywall	<input type="checkbox"/> Final	<input type="checkbox"/> Certificate of Occupancy

Approval: Yes No

Remarks: <i>Front Set back @ 76' MINOR 12' MINOR</i>
<i>Changes</i>
Inspector: <i>[Signature]</i>

243 E. Fremont Avenue, Rigby, Idaho 83442 - 745-9220

*woodhaven
lot 7, block 2*

Permit # 06-05-07

**Jefferson County
Building Department
Inspection Ticket**

Name: <i>Shippin Construction</i>	Permit No: <i>06-05-07</i>
Site Address: <i>Wood Haven Lot 7 B12</i>	Time: <i>9:30 05/16/06</i>

Inspection Type: (Circle Inspection)

<input type="checkbox"/> Layout	<input checked="" type="checkbox"/> Footing	<input type="checkbox"/> House Foundation
<input type="checkbox"/> Garage Foundation	<input type="checkbox"/> Sheathing / Framing	<input type="checkbox"/> Insulation
<input type="checkbox"/> Drywall	<input type="checkbox"/> Final	<input type="checkbox"/> Certificate of Occupancy

Approval: Yes No

Remarks: <i>2 #14 BAR CONTINUOUS + SUSPENDED</i>
Inspector: <i>[Signature]</i>

243 E. Fremont Avenue, Rigby, Idaho 83442 - 745-9220

98

**Jefferson County
Building Department
Inspection Ticket**

PERMIT # POSTED

Woodhaven

Name: Shuppen Const.	Permit No: 16-UG-07
Site Address: Lot 7 Pk 2	Time: 9:00 Thurs 5/15

Inspection Type: (Circle Inspection)

Layout	Footing	<u>House Foundation</u>
Garage Foundation	Sheathing / Framing	Insulation
Drywall	Final	Certificate of Occupancy

Approval: Yes No

Remarks: VERTS AT 24" 2 #4 BAR AT TOP 12" OF POUR / SHORT WALLS HAVE 1 #4 BAR AT TOP 12"
Inspector: James A. [Signature]

243 E. Fremont Avenue, Rigby, Idaho 83442 - 745-9220

**Jefferson County
Building Department
Inspection Ticket**

Name: Shuppen Construction	Permit No: 16-UG-07
Site Address: 3701 E 310N	Time: 3:00 9.16.2016

Inspection Type: (Circle Inspection)

Layout	Footing	House Foundation
Garage Foundation	<u>Sheathing / Framing</u>	Insulation
Drywall	Final	Certificate of Occupancy

Approval: Yes No

Remarks: The on load already shrunked the walls
Inspector: [Signature]

243 E. Fremont Avenue, Rigby, Idaho 83442 - 745-1387

99

**Jefferson County
Building Department
Inspection Ticket**

10013 913-6241 JEF

Name: <u>Shippin Construction</u>	Permit No: <u>06-05-07</u>
Site Address: <u>3709 E. 319 N.</u>	Time: <u>3:00 Mon. 8-21-06</u>

Inspection Type: (Circle Inspection)

Layout	Footing	House Foundation
Garage Foundation	Sheathing / <u>Framing</u>	Insulation
Drywall	Final	Certificate of Occupancy

Approval: Yes No

Remarks: 2x4 straps where needed
& trusses. Fixed Sheathing partition

Inspector: Allen [Signature]

243 E. Fremont Avenue, Rigby, Idaho 83442 - 745-1387

**Jefferson County
Building Department
Inspection Ticket**

Name: <u>Shippin Construction</u>	Permit No: <u>JEF 06-05-07</u>
Site Address: <u>3709 E. 319 N.</u>	Time: <u>3:00 Mon 8-21-06</u>

Inspection Type: (Circle Inspection)

Layout	Footing	House Foundation
Garage Foundation	Sheathing / Framing	<u>Insulation</u>
Drywall	Final	Certificate of Occupancy

Approval: Yes No

Remarks: ventilation good
Basement exterior walls good

Inspector: Allen [Signature]

243 E. Fremont Avenue, Rigby, Idaho 83442 - 745-1387

100

**Jefferson County
Building Department
Inspection Ticket**

215-6241 307

Name: Shippen Construction	Permit No: 06-15-07
Site Address: 3709 E. 319 N.	Time: 3:00 Thurs 8/1/06

Inspection Type: (Circle Inspection)

Layout	Footing	House Foundation
Garage Foundation	Sheathing / Framing	Insulation
<u>Drywall</u>	Final	Certificate of Occupancy

Approval: Yes No

Remarks: 5/8" Lip & Lid Garage House to Garage wall 5/8" House 5/8" Lid 1/2 walls Finish last ~~stage~~ stage
Basement: All Ex. wall big Room Lid down Stairway

Inspector: Allen Eldredge

243 E. Fremont Avenue, Rigby, Idaho 83442 - 745-1387

Must Have # on house

**Jefferson County
Building Department
Inspection Ticket**

Name: Shippen Construction	Permit No: JEF-06-05-07
Site Address: 3709 E 319 N	Time: THUR. 215 1:00

Inspection Type: (Circle Inspection)

Layout	Footing	House Foundation
Garage Foundation	Sheathing / Framing	Insulation
Drywall	<u>Final</u>	Certificate of Occupancy

Approval: Yes No

Remarks: No state electrical final. No final OK
Fire place. State Plumbing & HVAC NO
Finals. Letter on when back deck is done to be done

Inspector: Allen Eldredge

243 E. Fremont Avenue, Rigby, Idaho 83442 - 745-1387

101



JEFFERSON COUNTY PLANNING AND ZONING
243 EAST FREMONT AVENUE
RIGBY, IDAHO 83442

May 23, 2006

Shippen Construction
518 North 3950 East
Rigby, ID 83442

To Whom It May Concern:

The County assigned street address for **Building Permit JEF-06-05-07** will be as follows: **3709 East 319 North (Woodhaven #1, Lot 7, Block 2)**. To determine city and zip code you must contact the Post Office and notify them of your new address. You must also notify your utilities and other correspondences of your new address. This office has notified the Assessors Office and Enhanced 911.

If you have any questions, please contact the Planning & Zoning office at (208) 745-9220.

Sincerely,

A handwritten signature in cursive script that reads "DaNiel José".

DaNiel José
Planning and Zoning Administrator
Jefferson County



MAILED

MAY 23 2006

100



Building Department
210 Courthouse Way, Suite 170
Rigby, Idaho 83442
208-745-1387
208-745-1386 Fax

February 19, 2008

Shippen Construction
518 North 3950 East
Rigby, ID 83442

To Whom It May Concern:

Re: JEF-06-05-07

This letter is just to remind you that your building permit is only good for two years. It will be expiring in May of 2008. Our records indicate that your last inspection was February 15, 2007. If you would like to schedule an inspection please call us at the number listed at the top of the page

If you have finished the structure please let us know so a final inspection can be done, and the paper work for this permit may be completed and archived. If you have any questions please call the Jefferson County Building Department during regular business hours.

Thank you,

A handwritten signature in black ink that reads "James A. Lynch". The signature is written in a cursive style with a long horizontal stroke extending to the right.

James A. Lynch
Jefferson County
Building Official

MAILED
2/19/08 KR

113

DISTRICT SEVEN HEALTH DEPARTMENT
SEPTIC PERMIT

522 N 395TH RD

NOTE THIS PERMIT IS ONLY VALID FOR ONE YEAR FROM DATE OF ISSUE and IS NOT TRANSFERABLE

Installation shall comply with all the requirements of Idaho's Individual Subsurface Sewage Disposal Regulations as stated below.
Failure to install the system in compliance with permit may be grounds for disapproval and may result in further legal action being taken.

CDP No _____ T-Code: 934 Time: 10 Permit No 21-04-103
Receipt No _____

Permit Issued To: Name SHIPPEN CONCT Phone _____

For Location: Address _____ City Ridley Zip _____

Legal Description: 1/4 Section _____ Section 14 Township 7N Range 39E
Subdivision Woodhaven C&K Ed. P&T Lot 7 Block 2

SEPTIC TANK SPECIFICATIONS (minimums)

Size of Septic Tank: _____ gallons Multiple tank (If using or required): _____ Total gallons
First tank: _____ gallons Second tank: _____ gallons
Pump Chamber (If required): _____ gallons ATU: Company: Wagner Model: 5000

SEWAGE DISPOSAL (DRAINFIELD) SPECIFICATIONS (minimums)

Type of Standard & Basic Alternative System Permitted: _____

Type of Complex Alternative System Permitted: ETA w/ Dmac

Note A licensed complex installer is required to install a complex system. A homeowner cannot install complex systems.

MAXIMUM DEPTH OF EXCAVATION: 3 Feet DISPOSAL AREA SIZE: 292 Sq. Ft.
SOIL TYPE: NS SA A APPLICATION RATE: 1.2 gals/day/ft2
DISTANCE TO NEAREST SURFACE WATER (explanation): _____

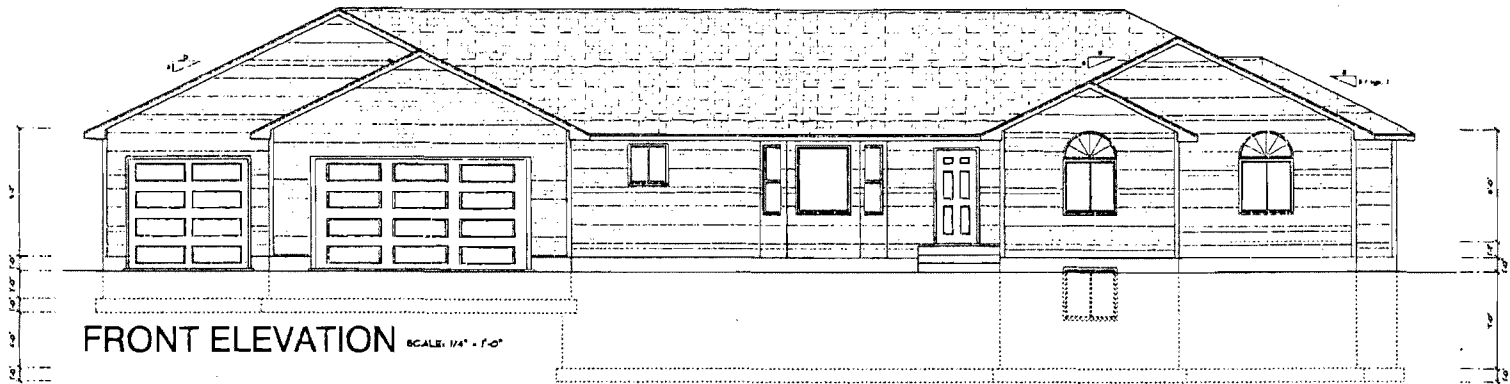
SPECIAL CONDITIONS

INSPECTION REQUIRED BEFORE COVER

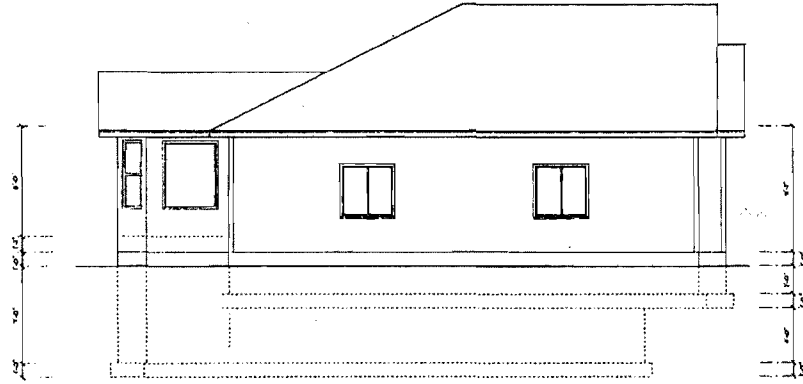
I hereby agree that the system will be installed as per the permit and will not make any changes from the permit without written approval from District 7. I also hereby authorize access to this property for purpose of inspection.

Applicant/Agent Signature X Scott D. Shippin Date: 4/16/06

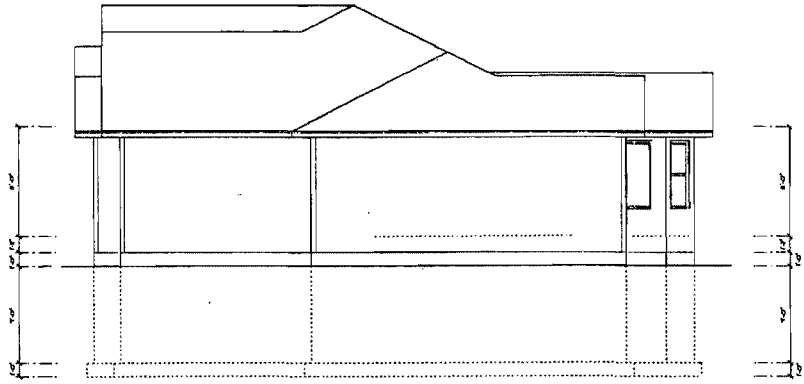
ISSUED BY EHS Raymond Krolak, RPHS # _____ Date Issued: 21 Apr 06
Expiration Date: Apr 07



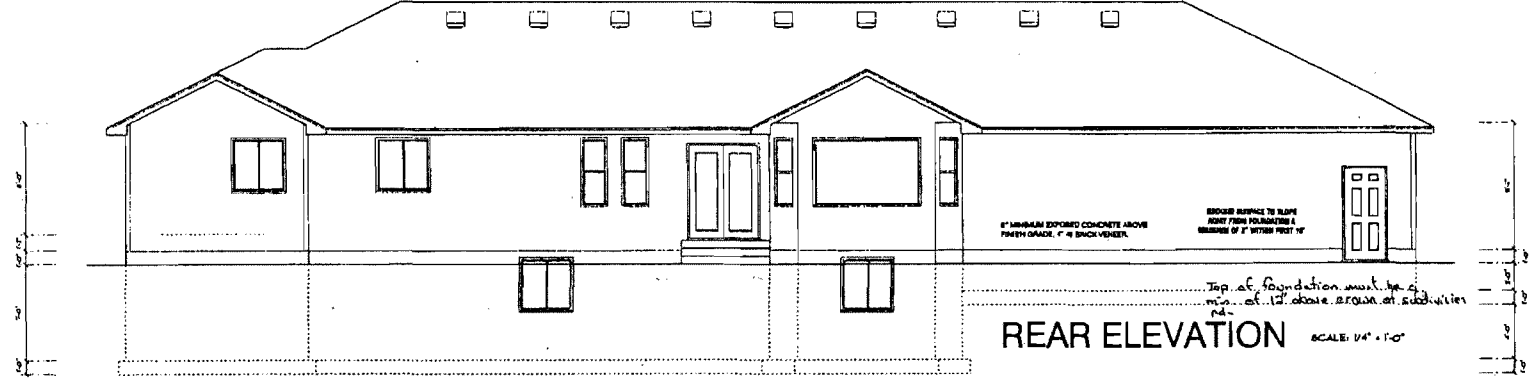
FRONT ELEVATION SCALE: 1/4" = 1'-0"



LEFT ELEVATION SCALE: 1/4" = 1'-0"



RIGHT ELEVATION SCALE: 1/4" = 1'-0"



REAR ELEVATION SCALE: 1/4" = 1'-0"

Wilson & Assoc. designs
 403 E. 463 N. Piquette Square #3143 (208) 737-4033

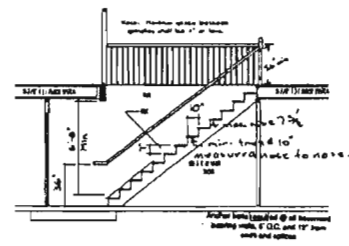
SHIPPEN

COPYRIGHT 2002
 WILSON & ASSOC., DESIGNS
 ALL RIGHTS RESERVED. NO PART OF THIS DOCUMENT OR ANY REPRODUCTION THEREOF MAY BE REPRODUCED OR TRANSMITTED IN ANY FORM OR BY ANY MEANS, ELECTRONIC OR MECHANICAL, INCLUDING PHOTOCOPYING, RECORDING, OR BY ANY INFORMATION STORAGE AND RETRIEVAL SYSTEM, WITHOUT PERMISSION IN WRITING FROM WILSON & ASSOC., DESIGNS.

DATE:	SHIPPEN-2002
DRAWN BY:	D. WELCH
CHECKED BY:	D. WELCH
APPROVED:	

NOTE: IT SHALL BE THE CONTRACTOR'S RESPONSIBILITY TO ASSURE THAT THE STRUCTURE SHALL ADHERE TO ALL OF THE LATEST STATE, LOCAL, AND SEC. CODES, REGULATIONS, AND INTERPRETATIONS.
 DATE: 12-01-02
 SHEET NO.: 4

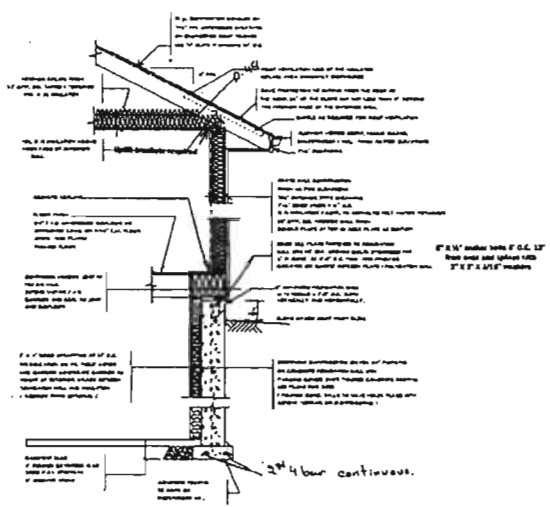
BEARING WALL HEADER SCHEDULE			
Header No.	Header Size	Header Spacing	Header Material
1	12" x 12"	16"	Concrete
2	12" x 12"	16"	Concrete
3	12" x 12"	16"	Concrete
4	12" x 12"	16"	Concrete
5	12" x 12"	16"	Concrete
6	12" x 12"	16"	Concrete
7	12" x 12"	16"	Concrete
8	12" x 12"	16"	Concrete
9	12" x 12"	16"	Concrete
10	12" x 12"	16"	Concrete
11	12" x 12"	16"	Concrete
12	12" x 12"	16"	Concrete
13	12" x 12"	16"	Concrete
14	12" x 12"	16"	Concrete
15	12" x 12"	16"	Concrete
16	12" x 12"	16"	Concrete
17	12" x 12"	16"	Concrete
18	12" x 12"	16"	Concrete
19	12" x 12"	16"	Concrete
20	12" x 12"	16"	Concrete
21	12" x 12"	16"	Concrete
22	12" x 12"	16"	Concrete
23	12" x 12"	16"	Concrete
24	12" x 12"	16"	Concrete
25	12" x 12"	16"	Concrete
26	12" x 12"	16"	Concrete
27	12" x 12"	16"	Concrete
28	12" x 12"	16"	Concrete
29	12" x 12"	16"	Concrete
30	12" x 12"	16"	Concrete
31	12" x 12"	16"	Concrete
32	12" x 12"	16"	Concrete
33	12" x 12"	16"	Concrete
34	12" x 12"	16"	Concrete
35	12" x 12"	16"	Concrete
36	12" x 12"	16"	Concrete
37	12" x 12"	16"	Concrete
38	12" x 12"	16"	Concrete
39	12" x 12"	16"	Concrete
40	12" x 12"	16"	Concrete
41	12" x 12"	16"	Concrete
42	12" x 12"	16"	Concrete
43	12" x 12"	16"	Concrete
44	12" x 12"	16"	Concrete
45	12" x 12"	16"	Concrete
46	12" x 12"	16"	Concrete
47	12" x 12"	16"	Concrete
48	12" x 12"	16"	Concrete
49	12" x 12"	16"	Concrete
50	12" x 12"	16"	Concrete



TYPICAL STAIR SECTION
DATE: 11/15

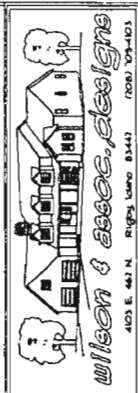
CONCRETE FOUNDATION NOTES

1. Footings are to have an undisturbed level and devoid of any organic material.
2. Soil bearing pressure assumed to be 2000 psf.
3. Any 12" under grade supported walls to be a minimum of 4" granular compacted to 95%.
4. Concrete to develop a minimum of 3000 psi of 28 days with a minimum of 5 w/c of normal portland and a maximum slump of 5.
5. Concrete shall be have control joints at 20' (maximum) each way.
6. Concrete sidewalks to have 3/4" thick joints of 5' c.c. (maximum)
7. Reinforcing steel to be #425 grade 60.
8. All wood in contact with concrete to be pressure treated or redwood.



FRAME WALL SECTION - FULL BASEMENT
DETAIL: 501 SCALE: 1/4" = 1'-0"

TYPICAL NOTES & SECTIONS



SHIPPEN

Copyright 2007
Wilson & Assoc. Designs
All Rights Reserved. All
Revisions, drawings and notes
shall remain the property of
Wilson & Assoc. Designs. No
part of this drawing, including
any notes or specifications, may
be reproduced, stored in a
retrieval system, or transmitted
in any form or by any means
electronic, mechanical, photocopying,
recording, or by any information
storage and retrieval system, without
the prior written permission of
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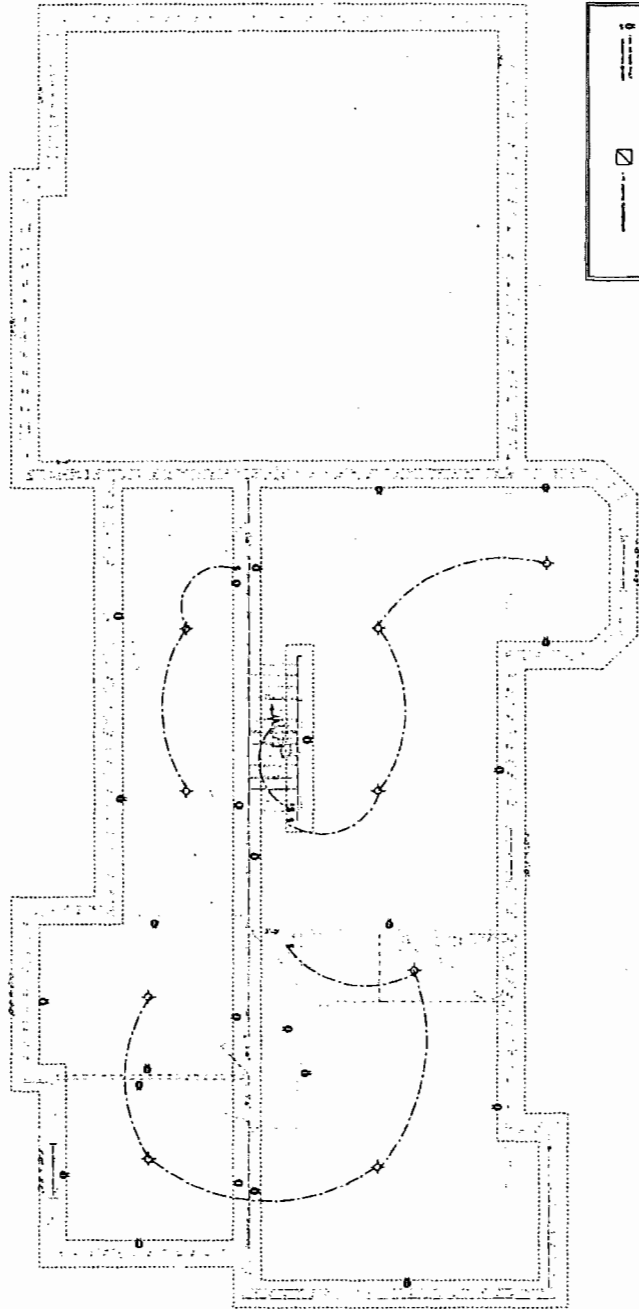
DATE:	Shippen 2007
DRAWN BY:	A. S. S. S.
CHECKED BY:	A. S. S. S.
REVISED:	

NOTE: IT SHALL BE THE
CONTRACTOR'S RESPONSIBILITY
TO SEE THAT THE STRUCTURE
SHALL CONFORM TO ALL OF THE
LATEST STATE CODES, AND
LOCAL ORDINANCES, AND
ALL APPLICABLE REGULATIONS,
AND SPECIFICATIONS.

DATE: 11-01-07

SHEET NO. 5

ELECTRICAL LEGEND	
1. Panel	+
2. Branch	○
3. Switch	◇
4. Receptacle	□
5. Light fixture	■
6. Panel	⊕
7. Branch	⊙
8. Switch	◇
9. Receptacle	□
10. Light fixture	■
11. Panel	⊕
12. Branch	⊙
13. Switch	◇
14. Receptacle	□
15. Light fixture	■
16. Panel	⊕
17. Branch	⊙
18. Switch	◇
19. Receptacle	□
20. Light fixture	■



BASEMENT ELECTRICAL PLAN

SCALE: 1/4" = 1'-0"

<p>6</p>	<p>DATE: 04-04-03</p>	<p>SHIPPEN</p>	<p><i>wilson & assoc. designs</i></p> <p>403 E. 467 N. Rigby Idaho 83442 (208) 725-4103</p>
	<p>PROJECT NO.:</p>		

208-745-1386

To: Jefferson Planning and Zoning

Bob Shippen talked to me on the phone, and his house plans meet the requirements for Woodhaven Creek Estates.

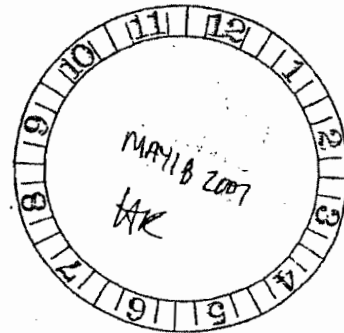
Plans approved May 18, 2007

Paul Jenkins
Woodhaven Creek Estates

If any questions, I will be back in Rigby
May 21 - Monday. Phone 351-4857

JEF-06-03-16 Div.1

JEF-06-05-07 Div.1



WESTON S. DAVIS, ESQ (ISB No. 7449)
NELSON HALL PARRY TUCKER, P.A.
490 Memorial Drive
Post Office Box 51630
Idaho Falls, Idaho 83405-1630
Telephone (208) 522-3001
Fax (208) 523-7254

RECORDED
INDEXED
JUL 15 2009
CLERK OF DISTRICT COURT

Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF JEFFERSON

WILLIAM SHAWN GOODSPEED and
SHELLEE BETH GOODSPEED, husband and
wife,

Plaintiffs,

vs.

SHIPPEN CONSTRUCTION, INC., an Idaho
corporation, and ROBERT and JORJA
SHIPPEN, husband and wife,

Defendants.

Case No.: CV-09-015

**AFFIDAVIT OF SHELLEE
GOODSPEED IN SUPPORT OF
RESPONSE TO DEFENDANT'S
CONVERTED MOTION FOR
SUMMARY JUDGMENT**

STATE OF IDAHO)
 : ss.
County of Bonneville)

SHELLEE GOODSPEED, being first duly sworn upon oath, deposes and states as follows:

1. I am one of the Plaintiffs in the above entitled action.
2. That attached hereto as Exhibit "A" is a true and correct copy of Member Service Agreement entered between Shippen Construction, Robert Shippen, and Effluent Technologies Inc., recorded on the Subject Real Property which I obtained from the Jefferson County

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Recorder's Office.

3. That attached hereto as Exhibit "B" is a true and correct copy of the Purchase and Sale Agreement, together with the applicable addendums, between the Plaintiffs and Robert and Jorja Shippen.

4. That attached hereto as Exhibit "C" is a true and correct copy of the Seller's Property Condition Disclosure signed by Robert Shippen, myself, and my husband, which I obtained at the closing of the subject real property.

5. That attached hereto as Exhibit "D" is a true and correct copy of the Warranty Deed from Robert and Jorja Shippen, d/b/a Shippen Construction granting the Subject Real Property to me and my husband.

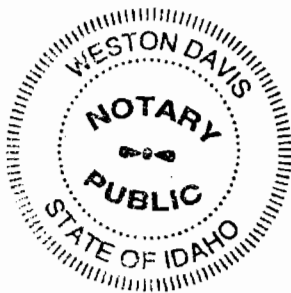
6. That attached hereto as Exhibit "E" is a true and correct copy of several of the closing documents I received at the time of closing on the Subject Real Property listing Robert and Jorja Shippen as the Sellers of the Subject Real Property.


7. That attached hereto as Exhibit "F" is a true and correct copy of the Deed of Reconveyance I obtained from the Jefferson County Recorder's Office, indicating Robert Shippen and Jorja Shippen, husband and wife, as the owners of record of the Subject Real Property prior to the property being conveyed to me and my husband.

DATED this 10th day of September, 2009


SHELLEE GOODSPEED

SUBSCRIBED AND SWORN to before me this 10 day of September, 2009.




Notary Public
Residing at: Bonneville County
Commission expires: 2/16/13

CERTIFICATE OF SERVICE

I hereby certify that I served a true copy of the foregoing document upon the following this 10 day of September 2009, by hand delivery, mailing with the necessary postage affixed thereto, facsimile, or overnight mail.

Robin D. Dunn
P.O. Box 277
477 Pleasant Country Lane
Rigby, ID 83442-0277

Hon. Gregory Moeller
Madison County Courthouse
P. O. Box 389
Rexburg, ID 83440
(Mailed)

- Mailing
 Hand Delivery
 Fax
 Overnight Mail


WESTON S. DAVIS, ESQ.

L:\wsd\~ Clients\7411.1 Goodspeed\Response to MSJ (Affidavit - Shellee).wpd

EXHIBIT "A"

EXHIBIT "A"

348023

Microfilm No. _____
April 24, 2006
At 1:48 O'Clock P M
CHRISTINE BOULTER
Jefferson Co. Recorder
File # 400 MW Deputy
Recorded at Request of Robert Shigara

MEMBER SERVICE AGREEMENT

THIS AGREEMENT is made this 24 day of April, 2006, by and between Shippin Court, whose address is 514 N 3950 E Rigby (hereinafter referred to as "Owner" or "Member"), and EFFLUENT TECHNOLOGIES INC., an Idaho nonprofit Corporation (hereinafter referred to as "Company").

RECITALS

WHEREAS, Owner's land in the State of Idaho is such that a wastewater treatment system must be installed in order to meet the requirements of the State of Idaho.

WHEREAS, Owner desires to install a wastewater treatment system manufactured by ALL STAR INDUSTRIES, LLC., which shall hereinafter be referred to as "treatment system."

WHEREAS, In order for the State of Idaho to approve the installation of the 'treatment system' as a satisfactory system, the State requires that Owner be a Member of a perpetual organization which will provide for the inspection and maintenance of Owner's system.

NOW, THEREFORE, Owner and Company agree as follows:

- (1) Upon installation of the 'treatment system' and the execution of this Agreement, Owner shall become a Member of the Company.
- (2) Owner shall pay its share of maintenance, service, and management fees (hereinafter collectively referred to as 'assessments') in order to provide for maintenance and repair of Owner's treatment system in perpetuity and operation of the Company. Owner shall pay a \$75.00 fee at the time Owner purchases a treatment system.
- (3) Owner's obligation to continue as a Member of the Company and pay for the assessments shall continue unless the requirement is eliminated by the State of Idaho.
- (4) Owner is required to keep the treatment system on his premises operating in good condition. Some repair or replacement costs may not be covered by the service agreement.
- (5) This obligation on the part of the Owner shall be perpetual and shall run with Owner's land (i.e. appurtenant) described in "Exhibit I" which is attached hereto and incorporated herein by reference. A copy of this Agreement will be recorded to evidence the obligation of Owner and Owner's heirs, successors, assigns, transferees, and grantees to be a Member

4/24/06 1:48 pm

115

of the Company and to pay the required 'assessment'. Owner agrees to notify the Company of the name of any new owner upon the Transfer of the Owners property.

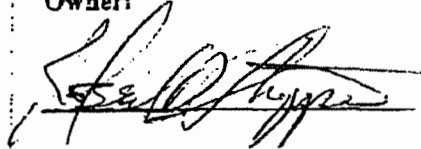
- (6) Owner agrees that company is entitled to have a lien against the property described on Exhibit "1" for any assessments not paid for maintenance of the 'treatment system'. Company shall also be entitled to bring court action to collect any delinquent assessments owed by the Owner for maintenance, service, and entitled to past due fees together with interest, cost, filing fees, and attorneys fees in any action, demand, or proceeding to recover unpaid fees.
- (7) Owner agrees that Company, and its successors, agents, and assigns, and easement on Owner's property, more fully described in "Exhibit 1" to install, access, inspect, maintain, and service the 'treatment system,' along with performing annual sampling of effluent and periodic sampling of the settled solids in the aeration chamber on the property.
- (8) This agreement is corporate and shall be governed by the articles and by laws of the Company.

CERTIFICATE OF MEMBERSHIP

A copy of this Agreement shall be the Member's Certificate of Membership for the 'treatment system' installed on the land described in 'Exhibit 1' for the purposes of the Company.

IN WITNESS WHEREOF, the parties have signed this agreement effective the day and year first written above.

Owner:



EFFLUENT TECHNOLOGIES, INC.
an Idaho Nonprofit Corporation

By

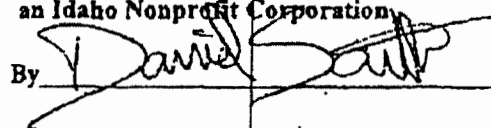


EXHIBIT 1

(Easement)

Now on this 24 day of April, 2006, Shyria Covert, Owner, whose address is 518 N 3850 E in consideration of the sum of Ten Dollars and other valuable consideration (the receipt of which is hereby acknowledged), grants to Effluent Technologies, Inc., an Idaho Nonprofit Corporation (the "Company") whose mailing address is 3007 East 49th North, Idaho Falls, Idaho 83401 and to Corporations successors, agents, and assigns, an easement on the following described real property sufficient to install, access, inspect, perform annual sampling of effluent and periodic sampling of the settled solids in the aeration chamber, maintain, and service the treatment system while it remains on the property.

Lot 7 Blk 2 Woodhaven Creek

legal description of the property

IN WITNESS WHEREOF, Owner set his/her hand the day and the year above written.

Owner

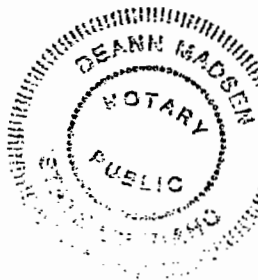
Robert D. Shyria

STATE OF IDAHO)

COUNTY OF JEFFERSON) S.S.

On this 24 day of April, 2006, before me a Notary Public, personally appeared Robert D. Shyria to me known to be the person described in and who executed the foregoing instrument, and acknowledged that he/she executed the name as his/her free act deed.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year above written.



DeAnn Madsen

NOTARY PUBLIC
RESIDING AT: Lewisville, IDAHO

My commission expires: 8-22-2008

EXHIBIT "B"

EXHIBIT "B"



RE-21 REAL ESTATE PURCHASE AND SALE AGREEMENT



THIS IS A LEGALLY BINDING CONTRACT. READ THE ENTIRE DOCUMENT INCLUDING ANY ATTACHMENTS. IF YOU HAVE ANY QUESTIONS, CONSULT YOUR ATTORNEY AND/OR ACCOUNTANT BEFORE SIGNING.

ID# 24051188

DATE June 16, 2007

LISTING AGENCY WinStar Realty

Office Phone # 208-529-8888 Fax #

Listing Agent Dave Chapple

E-Mail

Phone # 208-351-9951

SELLING AGENCY Coldwell Banker Eagle Rock

Office Phone # 208-529-4663

Fax # 208-523-0202

Selling Agent Randy Stoor

E-Mail randys@realstate-eastidaho.com

Phone # 208-589-4162

1. BUYER: William S. Goodspeed & Shellee B. Goodspeed, husband & wife (Hereinafter called "BUYER") agrees to purchase, and the undersigned SELLER agrees to sell the following described real estate hereinafter referred to as "PREMISES" COMMONLY KNOWN AS 319 N 3709 E, City Rigby, Jefferson County, ID, Zip 83442 legally described as: Lot 7, Block 2, Woodhaven Creek Estates

OR Legal Description Attached as addendum # NA (Addendum must accompany original offer.)

2. \$ *****272,000.00 PURCHASE PRICE: Two hundred seventy two thousand DOLLARS, payable upon the following TERMS AND CONDITIONS (not including closing costs):

3. FINANCIAL TERMS: Note: A+C+D+E must add up to total purchase price.

\$ *****2,500.00 (A). EARNEST MONEY: BUYER hereby deposits Two thousand five hundred DOLLARS as Earnest Money evidenced by: [] cash [X] personal check [] cashier's check [] note (due date): NA [] other NA and a receipt is hereby acknowledged. Earnest Money to be deposited in trust account [] upon receipt, or [X] upon acceptance by all parties and shall be held by: [] Listing Broker [X] Selling Broker [] other NA for the benefit of the parties hereto. The responsible Broker shall be Jay Webb/Coldwell Banker Eagle Rock

(B). ALL CASH OFFER: [X] NO [] YES If this is an all cash offer do not complete lines 32 through 61, fill blanks with "0" (ZERO). IF CASH OFFER, BUYER'S OBLIGATION TO CLOSE SHALL NOT BE SUBJECT TO ANY FINANCIAL CONTINGENCY. BUYER agrees to provide SELLER within NA business days from the date of acceptance of this agreement by all parties, evidence of sufficient funds and/or proceeds necessary to close transaction. Acceptable documentation includes, but is not limited to, a copy of a recent bank or financial statement or contract(s) for the sale of BUYER'S current residence or other property to be sold.

\$ *****217,600.00 (C). NEW LOAN PROCEEDS: This Agreement is contingent upon BUYER obtaining the following financing: [X] FIRST LOAN of \$ *****217,600.00 not including mortgage insurance, through [] FHA [] VA [X] CONVENTIONAL [] IHFA, [] RURAL DEVELOPMENT, [] OTHER NA with interest not to exceed 7.0 % for a period of 30 year(s) at: [X] Fixed Rate [] Other NA BUYER shall pay no more than NA point(s) plus origination fee if any. SELLER shall pay no more than NA point(s). Any reduction in points shall first accrue to the benefit of the [] BUYER [] SELLER [] Divided Equally [X] NA. [] SECOND LOAN of \$ *****0.00 with interest not to exceed NA % for a period of NA year(s) at: [] Fixed Rate [] Other NA BUYER shall pay no more than NA point(s) plus origination fee if any. SELLER shall pay no more than NA point(s). Any reduction in points shall first accrue to the benefit of the [] BUYER [] SELLER [] Divided Equally [X] NA.

LOAN APPLICATION: BUYER [X] has applied [] shall apply for such loan(s) within NA business day(s) of SELLER'S acceptance. Within 5 business days of final acceptance of all parties, BUYER agrees to furnish SELLER with a written confirmation showing lender approval of credit report, income verification, debt ratios in a manner acceptable to the SELLER(S) and subject only to satisfactory appraisal and final lender underwriting. If such written confirmation is not received by SELLER(S) within the strict time allotted, SELLER(S) may at their option cancel this agreement by notifying BUYER(S) in writing of such cancellation within 2 business day(s) after written confirmation was required. If SELLER does not cancel within the strict time period specified as set forth herein, SELLER shall be deemed to have accepted such written confirmation of lender approval and shall be deemed to have elected to proceed with the transaction. SELLER'S approval shall not be unreasonably withheld. If an appraisal is required by lender, the property must appraise at not less than purchase price or BUYER'S Earnest Money may be returned at BUYER'S request. BUYER may also apply for a loan with different conditions and costs and close transaction provided all other terms and conditions of this Agreement are fulfilled, and the new loan does not increase the costs or requirements to the SELLER

FHA / VA: If applicable, it is expressly agreed that notwithstanding any other provisions of this contract, BUYER shall not be obligated to complete the purchase of the property described herein or to incur any penalty or forfeiture of Earnest Money deposits or otherwise unless BUYER has been given in accordance with HUD/FHA or VA requirements a written statement by the Federal Housing Commissioner, Veterans Administration or a Direct Endorsement lender setting forth the appraised value of the property of not less than the sales price as stated in the contract. SELLER agrees to pay fees required by FHA or VA.

\$ *****0.00 (D). ADDITIONAL FINANCIAL TERMS: [] Additional financial terms are specified under the heading "OTHER TERMS AND/OR CONDITIONS" (Section 4). [] Additional financial terms are contained in a FINANCING ADDENDUM of same date, attached hereto, signed by both parties.

\$ *****51,900.00 (E). APPROXIMATE FUNDS DUE FROM BUYERS AT CLOSING (Not including closing costs): Cash at closing to be paid by BUYER at closing in GOOD FUNDS, includes: cash, electronic transfer funds, certified check or cashier's check. NOTE: If any of above loans being Assumed or taken "subject to", any net difference between the approximate balances and the actual balance of said loan(s) shall be adjusted at closing of escrow to: [] Cash [X] Other: Certified Check

BUYER'S Initials (WSG) Date 6-16-07 SELLER'S Initials (X) Date

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Received For Jun 17 2007 5:00 PM FAX Station 655V Job CO

Jun 17 07 03:48p Robert D Shippen SHIPPEN 208-745-8241 p.1

Selling Agent Randy Stoor E-Mail randys@realestate-eastidaho.com Phone # 208-589-4162

1. BUYER: William S. Goodspeed & Shalae B. Goodspeed, husband & wife (Hereinafter called "BUYER") agree to purchase, and the undersigned SELLER agrees to sell the following described real estate hereinafter referred to as "PREMISES" COMMONLY KNOWN AS 319 N 3709 E City Rigby County, ID. Zip 83442 legally described as: Lot 7, Block 2, Woodhaven Creek Estates

OR Legal Description Attached as addendum # NA (Addendum must accompany original offer.)

2. \$ 272,000.00 PURCHASE PRICE: Two hundred seventy two thousand DOLLARS, payable upon the following TERMS AND CONDITIONS (not including closing costs):

3. FINANCIAL TERMS: Note: A+C+D+E must add up to total purchase price.

3. 2,500.00 (A). EARNEST MONEY: BUYER hereby deposits Two thousand five hundred DOLLARS as

Earnest Money evidenced by: cash personal check cashier's check note (due date): NA and a receipt is hereby acknowledged. Earnest Money to be deposited in trust account upon receipt or upon acceptance by all parties and shall be held by: Listing Broker Selling Broker other NA For the benefit of the parties hereto. The responsible Broker shall be Jay Webb Coldwell Banker Eagle Rock.

(B). ALL CASH OFFER: NO YES IF THIS IS AN ALL CASH OFFER DO NOT COMPLETE LINES 32 THROUGH 61, FILL BLANKS WITH "0" (ZERO.) IF CASH OFFER, BUYER'S OBLIGATION TO CLOSE SHALL NOT BE SUBJECT TO ANY FINANCIAL CONTINGENCY. BUYER agrees to provide SELLER within NA business days from the date of acceptance of this agreement by all parties, evidence of sufficient funds and/or proceeds necessary to close transaction. Acceptable documentation includes, but is not limited to, a copy of a recent bank or financial statement or contract(s) for the sale of BUYER'S current residence or other property to be sold.

3. 217,600.00 (C). NEW LOAN PROCEEDS: This Agreement is contingent upon BUYER obtaining the following financing:

FIRST LOAN of \$ 217,600.00 not including mortgage insurance, through FHA VA CONVENTIONAL HFA RURAL DEVELOPMENT, OTHER NA with interest not to exceed 7.0 % for a period of 30 year(s) at: Fixed Rate Other NA BUYER shall pay no more than 0 point(s) plus origination fee if any. SELLER shall pay no more than 0 point(s). Any reduction in points shall first accrue to the benefit of the BUYER SELLER Divided Equally N/A.

SECOND LOAN of \$ 0.00 with interest not to exceed NA % for a period of NA year(s) at: Fixed Rate Other NA BUYER shall pay no more than NA point(s) plus origination fee if any. SELLER shall pay no more than NA point(s). Any reduction in points shall first accrue to the benefit of the BUYER SELLER Divided Equally N/A.

LOAN APPLICATIONS: BUYER has applied shall apply for such loan(s) within NA business day(s) of SELLER'S acceptance. Within 5 business days of final acceptance of all parties, BUYER agrees to furnish SELLER with a written confirmation showing lender approval of credit report, income verification, debt ratios in a manner acceptable to the SELLER(S) and subject only to satisfactory appraisal and final lender underwriting. If such written confirmation is not received by SELLER(S) within the strict time enclosed, SELLER(S) may at their option cancel this agreement by notifying BUYER(S) in writing of such cancellation within 2 business day(s) after written confirmation was required. If SELLER does not cancel within the strict time period specified as set forth herein, SELLER shall be deemed to have accepted such written confirmation of lender approval and shall be deemed to have elected to proceed with the transaction. SELLER'S approval shall not be unreasonably withheld. If an appraisal is required by lender, the property must appraise at not less than purchase price or BUYER'S Earnest Money may be returned at BUYER'S request. BUYER may also apply for a loan with different conditions and costs and close transaction provided all other terms and conditions of this Agreement are fulfilled, and the new loan does not increase the costs or requirements to the SELLER.

FHA/VA: If applicable, it is expressly agreed that notwithstanding any other provisions of this contract, BUYER shall not be obligated to complete the purchase of the property described herein or to incur any penalty or forfeiture of Earnest Money deposits or otherwise unless BUYER has been given in accordance with HUD/FHA or VA requirements a written statement by the Federal Housing Commissioner, Veterans Administration or a Direct Endorsement lender setting forth the appraised value of the property of not less than the sales price as stated in the contract. SELLER agrees to pay fees required by FHA or VA.

3. 0.00 (D). ADDITIONAL FINANCIAL TERMS: Additional financial terms are specified under the heading "OTHER TERMS AND/OR CONDITIONS" (Section 4). Additional financial terms are contained in a FINANCING ADDENDUM of same date, attached hereto, signed by both parties.

3. 51,900.00 (E). APPROXIMATE FUNDS DUE FROM BUYERS AT CLOSING (Not including closing costs): Cash at closing to be paid by BUYER at closing in GOOD FUNDS. Includes: cash, electronic transfer funds, certified check or cashier's check. NOTE: If any of above loans being Assumed or taken "subject to", any net differences between the approximate balances and the actual balance of said loan(s) shall be adjusted at closing of escrow in: Cash Other: Certified Check.

BUYER'S Initials: W S & S B Date: 6-16-07 SELLER'S Initials: RDS Date: 6/17/07

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Jun 17 07 03:49p Robert D Shippen SHIPPEN

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78 PROPERTY ADDRESS: 318 N. 3709 E. Rigby, ID 83442

ID#: 2405118A

79 **4. OTHER TERMS AND/OR CONDITIONS:** This Agreement is made subject to the following special terms, considerations and/or contingencies
 80 which must be satisfied prior to closing. All plumbing, heating, electrical, mechanical systems to be in working order at
 81 closing. Builder to complete a walk-through inspection with the buyers within 3-5 days prior to closing to identify
 82 any items needing attention or completion by the builder in a standard workmanlike manner. Builder to provide a
 83 standard Builder's Warranty for a minimum of 1 year, in addition to manufacturer's warranties on appliances, fixtures
 84 etc. Builder to include a central air conditioning system, installed & running by closing.
 85 Builder to complete a drainage/leach system around home (walk-out basement area).
 86 Builder to install full width mirrors above vanities in main & master bath.
 87 TV (cable) jack to be installed on east wall of master bedroom. Locks to operate & secure sliding doors.
 88 Builder to provide "Certificate of Occupancy", Permits and approvals for septic system & well.
 89 Builder to allow buyers to store belongings in the garage until closing. Buyers agree to hold builder harmless.

90 **5. ITEMS INCLUDED & EXCLUDED IN THIS SALE:** All existing fixtures and fittings that are attached to the property are INCLUDED IN THE PURCHASE
 91 PRICE (unless excluded below), and shall be transferred free of liens. These include, but are not limited to, all attached floor coverings, attached television
 92 antennas, satellite dish and receiving equipment, attached plumbing, bathroom and lighting fixtures, window screens, screen doors, storm windows, storm doors,
 93 all window coverings, garage door openers) and transfer(s), exterior trees, plants or shrubbery, water heating apparatus and (boilers, attached fireplace
 94 equipment, ovens, venting, cooling and heating systems, oil ranges, ovens, built-in dishwashers, fuel tanks and irrigation fixtures and equipment, all water
 95 systems, wells, springs, water, water rights, ditches and ditch rights, if any, that are appurtenant thereto that are now on or used in connection with the premises
 96 and shall be included in the sale unless otherwise provided herein. BUYER should satisfy himself/herself that the condition of the included items is acceptable. It
 97 is agreed that any item included in this section is of nominal value less than \$100.

98 (A). **ADDITIONAL ITEMS SPECIFICALLY INCLUDED IN THIS SALE:** Electric range/oven, built-in microwave, disposal,
 99 dishwasher.

100 (B). **ITEMS SPECIFICALLY EXCLUDED IN THIS SALE:** None

101 **6. TITLE CONVEYANCE:** Title of SELLER is to be conveyed by warranty deed, unless otherwise provided, and is to be marketable and insurable except for
 102 rights reserved in federal patents, state or railroad deeds, building or use restrictions, building and zoning regulations and ordinances of any governmental unit,
 103 and rights of way and easements established or of record. Liens, encumbrances or defects to be discharged by SELLER may be paid out of purchase money at
 104 date of closing. No liens, encumbrances or defects which are to be discharged or assumed by BUYER or to which title is taken subject to, exist unless otherwise
 105 specified in this Agreement.

106 **7. TITLE INSURANCE:** There may be types of title insurance coverages available other than those listed below and parties to this
 107 agreement are advised to talk to a title company about any other coverages available that will give the BUYER additional coverage.

108 (A). **PRELIMINARY TITLE COMMITMENT:** Prior to closing the transaction, SELLER or BUYER shall furnish to BUYER a preliminary commitment of a
 109 title insurance policy showing the condition of the title to said premises. BUYER shall have 3 business day(s) from receipt of the preliminary commitment or
 110 not fewer than twenty-four (24) hours prior to closing, within which to object in writing to the condition of the title as set forth in the preliminary commitment. If
 111 BUYER does not so object, BUYER shall be deemed to have accepted the conditions of the title. It is agreed that if the title of said premises is not marketable,
 112 or cannot be made so within 7 business day(s) after notice containing a written statement of defect is delivered to SELLER, BUYER'S Earnest Money
 113 deposit will be returned to BUYER and SELLER shall pay for the cost of title insurance cancellation fee, escrow and legal fees, if any.

114 (B). **TITLE COMPANY:** The parties agree that First American Title Title Company
 115 located at Clark Street, Rigby, ID 83442 shall provide the title policy and preliminary report of commitment.

116 (C). **STANDARD COVERAGE OWNER'S POLICY:** SELLER shall within a reasonable time after closing furnish to BUYER a title insurance policy in the
 117 amount of the purchase price of the premises showing marketable and insurable title subject to the liens, encumbrances and defects elsewhere set out in this
 118 Agreement to be discharged or assumed by BUYER unless otherwise provided herein. The risk assumed by the title company in the standard coverage
 119 policy is limited to matters of public record. BUYER shall receive a LTA/ALTA Owner's Policy of Title Insurance. A title company, at BUYER'S request, can
 120 provide information about the availability, desirability, coverage and cost of various title insurance coverages and endorsements. If BUYER desires title
 121 coverage other than that required by this paragraph, BUYER shall instruct Closing Agency in writing and pay any increase in cost unless otherwise provided
 122 herein.

123 (D). **EXTENDED COVERAGE LENDER'S POLICY (Mortgagee policy):** The lender may require that BUYER (Borrower) furnish an Extended Coverage
 124 Lender's Policy. This extended coverage lender's policy considers matters of public record and additionally insures against certain matters not shown in the
 125 public record. This extended coverage lender's policy is solely for the benefit of the lender and only protects the lender.

126 **8. MECHANIC'S LIENS - GENERAL CONTRACTOR DISCLOSURE STATEMENT NOTICE:** BUYER and SELLER are hereby notified that,
 127 subject to Idaho Code §15-525 et seq., a "General Contractor" must provide a Disclosure Statement to a homeowner that describes certain rights afforded
 128 to the homeowner (e.g. lien waivers, general liability insurance, extended policies of title insurance, surety bonds, and sub-contractor information). The
 129 Disclosure Statement must be given to a homeowner prior to the General Contractor entering into any contract in an amount exceeding \$2,000 with a
 130 homeowner for construction, alteration, repair, or other improvements to real property, or with a residential real property purchaser for the purchase and
 131 sale of newly constructed property. Such disclosure is the responsibility of the General Contractor and it is not the duty of your agent to obtain this
 132 information on your behalf. You are advised to consult with any General Contractor subject to Idaho Code §15-525 et seq. regarding the General
 133 Contractor Disclosure Statement.

134 BUYER'S Initials (WJA x CJS) Date: 6-16-07 SELLER'S Initials (RS) Date: 6/17/07

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Received Fax Jun 17 2007 5:05 PM Fax From: Smiths #142 To: 0582/4500 Co.

Jun 17 07 03:50p Robert D Shippen SHIPPEN

208-745-8241

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PROPERTY ADDRESS: 319 N. 3709 E., Rigby, ID 83442

CR: 24051188

8. INSPECTION:

(A) BUYER chooses to have inspection not to have inspection. If BUYER chooses not to have inspection skip section 8C. BUYER shall have the right to conduct inspections, investigations, tests, surveys and other studies at BUYER'S expense. BUYER shall, within 7 business days of acceptance, complete these inspections and give to SELLER written notice of disapproved items. BUYER is strongly advised to exercise these rights and to make BUYER'S own selection of professionals with appropriate qualifications to conduct inspections of the entire property.

(B) FNA INSPECTION REQUIREMENT, if applicable: "For Your Protection: Get a Home Inspection". HUD 82584-CN must be signed on or before execution of this agreement.

(C) SATISFACTION/REMOVAL OF INSPECTION CONTINGENCIES:

1). If BUYER does not within the strict time period specified give to SELLER written notice of disapproved items, BUYER shall conclusively be deemed to have: (a) completed all inspections, investigations, review of applicable documents and disclosures; (b) elected to proceed with the transaction and (c) assumed all liability, responsibility and expense for repairs or corrections other than for items which SELLER has otherwise agreed in writing to repair or correct.

2). If BUYER does within the strict time period specified give to SELLER written notice of disapproved items, BUYER shall provide to SELLER pertinent section(s) of written inspection reports. SELLER shall have 2 business day(s) in which to respond in writing. The SELLER, at their option, may correct the items as specified by the BUYERS in their letter or may elect not to do so. If the SELLER agrees to correct the items listed for in the BUYERS letter, then both parties agree that they will continue with the transaction and proceed to closing. This will remove the BUYER'S inspection contingency.

3). If the SELLER elects not to correct the disapproved items, or does not respond in writing within the strict time period specified, then the BUYER(S) have the option of either continuing the transaction without the SELLER being responsible for correcting these deficiencies or giving the SELLER written notice within 2 business days that they will not continue with the transaction and will receive their Earnest Money back.

4). If BUYER does not give such written notice of cancellation within the strict time periods specified, BUYER shall conclusively be deemed to have elected to proceed with the transaction without repairs or corrections other than for items which SELLER has otherwise agreed in writing to repair or correct. SELLER shall make the property available for all inspections. BUYER shall keep the property free and clear of liens; indemnify and hold SELLER harmless from all liability, claims, demands, damages and costs; and repair any damages arising from the inspections. No inspections may be made by any governmental building or zoning inspector or government employee without the prior consent of SELLER unless required by local law.

10. LEAD PAINT DISCLOSURE: The subject property is is not defined as "Target Housing" regarding lead-based paint or lead-based paint hazards. If yes, BUYER hereby acknowledges the following: (a) BUYER has been provided an EPA approved lead-based paint hazard information pamphlet, "Protect Your Family From Lead in Your Home"; (b) receipt of SELLER'S Disclosure of Information and Acknowledgment Form and have been provided with all records, test reports or other information, if any, related to the presence of lead-based paint hazards on said property; (c) that this contract is contingent upon BUYER'S right to have the property tested for lead-based paint hazards to be completed no later than NA or the contingency will terminate; (d) that BUYER hereby waives does not waive this right; (e) that if test results show unacceptable amounts of lead-based paint on the premises, BUYER has the right to cancel the contract subject to the option of the SELLER (to be given in writing) to elect to remove the lead-based paint and correct the problem which must be accomplished before closing; (f) that if the contract is canceled under this clause, BUYER'S earnest money deposit will be returned to BUYER.

11. SQUARE FOOTAGE VERIFICATION: BUYER IS AWARE THAT ANY REFERENCE TO THE SQUARE FOOTAGE OF THE REAL PROPERTY OR IMPROVEMENTS IS APPROXIMATE. IF SQUARE FOOTAGE IS MATERIAL TO THE BUYER, IT MUST BE VERIFIED DURING THE INSPECTION PERIOD.

12. SELLER'S PROPERTY DISCLOSURE FORM: If required by Title 55, Chapter 25 Idaho Code SELLER shall within ten (10) days after execution of this Agreement provide to BUYER "SELLER'S Property Disclosure Form" or other acceptable form. BUYER has received the "SELLER'S Property Disclosure Form" or other acceptable form prior to signing this Agreement: Yes No NA

13. COVENANTS, CONDITIONS AND RESTRICTIONS (CC&R'S): BUYER is responsible to obtain and review a copy of the CC&R's (if applicable). BUYER has reviewed CC&R's: Yes No

14. SUBDIVISION HOMEOWNER'S ASSOCIATION: BUYER is aware that membership in a Home Owner's Association may be required and BUYER agrees to abide by the Articles of Incorporation, By-Laws and rules and regulations of the Association. BUYER is further aware that the Property may be subject to assessments levied by the Association described in full in the Declaration of Covenants, Conditions and Restrictions. BUYER has reviewed Homeowner's Association Documents: Yes No N/A Association fees/dues are \$ NA per NA BUYER SELLER N/A to pay Homeowner's Association SET UP FEE of \$ NA a said property TRANSFER FEES of \$ NA at closing.

15. "NOT APPLICABLE DEFINED:" The letters "n/a," "NA," "n.a.," and "N.A." as used herein are abbreviations of the term "not applicable." Where this agreement uses the term "not applicable" or an abbreviation thereof, it shall be evidence that the parties have contemplated certain facts or conditions and have determined that such facts or conditions do not apply to the agreement or transaction herein.

BUYER'S Initials RSK x CAS Date 6-18-07 SELLER'S Initials RSK Date 6/17/07

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Jun 17 07 03:51p

Robert D Shippen SHIPPEN

208-745-8241

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PROPERTY ADDRESS: 319 N. 3709 E., Rigby, ID 83442

ID: 24051188

14. COSTS PAID BY: Costs in addition to those listed below may be incurred by BUYER and SELLER unless otherwise agreed herein, or provided by law or required by lender, or otherwise stated herein. The below costs will be paid as indicated. Some costs are subject to loan program requirements. SELLER agrees to pay up to \$ _____ of lender required repair costs only. BUYER or SELLER has the option to pay any lender required repair costs in excess of this amount.

	BUYER	SELLER	Shared Equally	N/A		BUYER	SELLER	Shared Equally	N/A
Appraisal Fee	X				Title Ins. Standard Coverage Owner's Policy		X		
Appraisal Re-inspection Fee				X	Title Ins. Extended Coverage Lender's Policy - Mortgagee Policy	X			
Closing Escrow Fee			X		Additional Title Coverage				
Lender Document Preparation Fee	X				Fuel in Tank - Amount to be Determined by Supplier				
Tax Service Fee	X				Wall Inspection		X		
Flood Certificate/Tracking Fee	X				Septic Inspections		X		
Lender Required Inspections				X	Septic Pumping				X
Attorney Contract Preparation or Review Fee				X	Survey				X
					Eagle Policy (Extended)		X		

17. OCCUPANCY: BUYER does does not intend to occupy property as BUYER'S primary residence.

18. FINAL WALK THROUGH: The SELLER grants BUYER and any representative of BUYER reasonable access to conduct a final walk through inspection of the premises approximately 3 calendar day(s) prior to close of escrow, NOT AS A CONTINGENCY OF THE SALE, but for purposes of verifying BUYER that any repairs agreed to in writing by BUYER and SELLER have been completed and premises are in substantially its same condition as on acceptance date of this contract. SELLER shall make premises available for the final walk through and agreed to accept the responsibility and expense for making sure all the utilities are turned on for the walk through except for phone and cable. If BUYER does not conduct a final walk through, BUYER specifically releases the SELLER and Broker(s) of any liability.

19. RISK OF LOSS: Prior to closing of this sale, all risk of loss shall remain with SELLER. In addition, should the premises be materially damaged by fire or other destructive cause prior to closing, this agreement shall be void at the option of the BUYER.

20. CLOSING: On or before the closing date, BUYER and SELLER shall deposit with the closing agency all funds and instruments necessary to complete this transaction. Closing means the sale on which all documents are either recorded or accepted by an escrow agent and the sale proceeds are available to SELLER. The closing shall be no later than (Date) July 2, 2007. The parties agree that the CLOSING AGENCY for this transaction shall be First American Title located at Clark Street, Rigby, ID 83442. If a long-term escrow / collection is involved, then the long-term escrow holder shall be NA.

21. POSSESSION: BUYER shall be entitled to possession upon closing or _____ date _____ time _____ A.M. / P.M. Property taxes and water assessments (using the last available assessment as a basis), rents, interest and reserves, liens, encumbrances or obligations assumed and utilities shall be pro-rated as of Day of closing/recording.

22. SALES PRICE INFORMATION: SELLER and BUYER hereby grant permission to the brokers and other party to this Agreement, to disclose sale data from this transaction, including selling price and property address to the local Association / Board of REALTORS®, multiple listing service, its members, its members' prospects, appraisers and other professional users of real estate sales data. The parties to this Agreement acknowledge that sales price information compiled as a result of this Agreement may be provided to the County Assessor Office by either party or by either party's Broker.

23. FACSIMILE TRANSMISSION: Facsimile or electronic transmission of any signed original documents, and retransmission of any signed facsimile or electronic transmission shall be the same as delivery of an original. At the request of either party or the Closing Agency, the parties will confirm facsimile and electronic transmitted signatures by signing an original document.

BUYER'S Initials (WSh x Lgy) Date 6-16-07 SELLER'S Initials (R Y) Date 6/16/07

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PROPERTY ADDRESS: 319 N. 3709 E., Rigby, ID 83442

ID# 24051188

24. SINGULAR AND PLURAL terms each include the other, when appropriate.

25. BUSINESS DAYS & HOURS A business day is herein defined as Monday through Friday, 8:00 A.M. to 5:00 P.M. In the local time zone where the subject real property is physically located. A business day shall not include any Saturday or Sunday, nor shall a business day include any legal holiday recognized by the state of Idaho as found in Idaho Code §73-106. The time in which any act required under this agreement is to be performed shall be computed by excluding the date of execution and including the last day. The first day shall be the day after the date of execution, if the last day is a legal holiday, then the time for performance shall be the next subsequent business day.

26. SEVERABILITY: In the case that any one or more of the provisions contained in this Agreement, or any application thereof, shall be invalid, illegal or unenforceable in any respect, the validity, legality or enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

27. ATTORNEY'S FEES: If either party initiates or defends any arbitration or legal action or proceedings which are in any way connected with this Agreement, the prevailing party shall be entitled to recover from the non-prevailing party reasonable costs and attorney's fees, including such costs and fees on appeal.

28. DEFAULT: If BUYER defaults in the performance of this Agreement, SELLER has the option of: (1) accepting the Earnest Money as liquidated damages or (2) pursuing any other lawful right and/or remedy to which SELLER may be entitled. If SELLER elects to proceed under (1), SELLER shall make demand upon the holder of the Earnest Money, upon which demand said holder shall pay from the Earnest Money the costs incurred by SELLER'S Broker on behalf of SELLER and BUYER related to the transaction, including, without limitation, the costs of title insurance, escrow fees, appraisal, credit report fees, inspection fees and attorney's fees; and said holder shall pay any balance of the Earnest Money, one-half to SELLER and one-half to SELLER'S Broker, provided that the amount to be paid to SELLER'S Broker shall not exceed the Broker's agreed to commission. SELLER and BUYER specifically acknowledge and agree that if SELLER elects to accept the Earnest Money as liquidated damages, such shall be SELLER'S sole and exclusive remedy, and such shall not be considered a penalty or forfeiture. If SELLER elects to proceed under (2), the holder of the Earnest Money shall be entitled to pay the costs incurred by SELLER'S Broker on behalf of SELLER and BUYER related to the transaction, including, without limitation, the costs of brokerage fee, title insurance, escrow fees, appraisal, credit report fees, inspection fees and attorney's fees, with any balance of the Earnest Money to be held pending resolution of the matter.

If SELLER defaults, having approved said sale and fails to consummate the same as herein agreed, BUYER'S Earnest Money deposit shall be returned to him/her and SELLER shall pay for the costs of title insurance, escrow fees, appraisals, credit report fees, inspection fees, brokerage fees and attorney's fees, if any. This shall not be considered as a waiver by BUYER of any other lawful right or remedy to which BUYER may be entitled.

29. EARNEST MONEY DISPUTE / INTERPLEADER: Notwithstanding any termination of this contract, BUYER and SELLER agree that in the event of any controversy regarding the Earnest Money and things of value held by Broker or closing agency, unless mutual written instructions are received by the holder of the Earnest Money and things of value, Broker or closing agency shall not be required to take any action but may await any proceeding, or at Broker's or closing agency's option and sole discretion, may interplead all parties and deposit any monies or things of value into a court of competent jurisdiction and shall recover court costs and reasonable attorney's fees.

30. COUNTERPARTS: This Agreement may be executed in counterparts. Executing an agreement in counterparts shall mean the signature of two identical copies of the same agreement. Each identical copy of an agreement signed in counterparts is deemed to be an original, and all identical copies shall together constitute one and the same instrument.

31. REPRESENTATION CONFIRMATION: Check one (1) box in Section 1 and one (1) box in section 2 below to confirm that in this transaction, the brokerage(s) involved had the following relationship(s) with the BUYER(S) and SELLER(S).

Section 1:

- A. The brokerage working with the BUYER(S) is acting as an AGENT for the BUYER(S).
- B. The brokerage working with the BUYER(S) is acting as a LIMITED DUAL AGENT for the BUYER(S), without an ASSIGNED AGENT.
- C. The brokerage working with the BUYER(S) is acting as a LIMITED DUAL AGENT for the BUYER(S) and has an ASSIGNED AGENT acting solely on behalf of the BUYER(S).
- D. The brokerage working with the BUYER(S) is acting as a NONAGENT for the BUYER(S).

Section 2:

- A. The brokerage working with the SELLER(S) is acting as an AGENT for the SELLER(S).
- B. The brokerage working with the SELLER(S) is acting as a LIMITED DUAL AGENT for the SELLER(S), without an ASSIGNED AGENT.
- C. The brokerage working with the SELLER(S) is acting as a LIMITED DUAL AGENT for the SELLER(S) and has an ASSIGNED AGENT acting solely on behalf of the SELLER(S).
- D. The brokerage working with the SELLER(S) is acting as a NONAGENT for the SELLER(S).

Each party signing this document confirms that he has received, read and understood the Agency Disclosure Brochure adopted or approved by the Idaho Real Estate Commission and has consented to the relationship confirmed above. In addition, each party confirms that the brokerage's agency office policy was made available for inspection and review. EACH PARTY UNDERSTANDS THAT HE IS A "CUSTOMER" AND IS NOT REPRESENTED BY A BROKERAGE UNLESS THERE IS A SIGNED WRITTEN AGREEMENT FOR AGENCY REPRESENTATION.

BUYER'S Initials RS X CS Date 6-16-07 SELLER'S Initials RS X CS Date 6/17/07

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Jun 17 07 03:52p

Robert D Shippen SHIPPEN

208-745-8241

p.8

RE-21 RESIDENTIAL PURCHASE AND SALE AGREEMENT PAGE 8 OF 8 JULY 2006 EDITION

PROPERTY ADDRESS: 319 N. 3709 E., Rigby, ID 83442 ID#: 24051188

32. ENTIRE AGREEMENT: This Agreement contains the entire Agreement of the parties respecting the matters herein set forth and supercedes all prior Agreements between the parties respecting such matters. No warranties, including, without limitation, any warranty of habitability, agreements or representations not expressly set forth herein shall be binding upon either party.

33. TIME IS OF THE ESSENCE IN THIS AGREEMENT.

34. AUTHORITY OF SIGNATORY: IF BUYER or SELLER is a corporation, partnership, trust, estate, or other entity, the person executing this agreement on its behalf warrants his or her authority to do so and to bind BUYER or SELLER.

35. ACCEPTANCE: BUYER'S offer is made subject to the acceptance of SELLER on or before (Date) 06/18/2007 at (Local Time in which property is located) 8:00 AM P.M. If SELLER does not accept this Agreement within the time specified, the entire Earnest Money shall be refunded to BUYER on demand.

36. BUYER'S SIGNATURES:

SEE ATTACHED BUYER'S ADDENDUM(S): (Specify number of BUYER addendum(s) attached.)

BUYER Signature [Signature] BUYER (Print Name) William S. Goodspeed
Date 6-16-07 Time 1:45 AM P.M. Phone # 865-556-7234 Cell #
Address 913 Oak Haven Rd. City Knoxville State TN Zip 37932
E-Mail Address Fax #

BUYER Signature [Signature] BUYER (Print Name) Shellee B. Goodspeed
Date 6-16-07 Time 1:45 AM P.M. Phone # Cell #
Address City State Zip
E-Mail Address Fax #

37. SELLER'S SIGNATURES:

On this date, I/We hereby approve and accept the transaction set forth in the above Agreement and agree to carry out all the terms thereof on the part of the SELLER.

SIGNATURE(S) SUBJECT TO ATTACHED COUNTER OFFER

SIGNATURE(S) SUBJECT TO ATTACHED ADDENDUM(S) #

SELLER Signature [Signature] SELLER (Print Name) Robert D Shippen
Date 6/17/07 Time 3:35 AM P.M. Phone # 313-6241 Cell #
Address 518 N 3790 E. Rigby City Rigby State ID Zip 83442
E-Mail Address shippen.conr@qnetco.com Fax # 745-8241

SELLER Signature SELLER (Print Name)
Date Time AM P.M. Phone # Cell #
Address City State Zip
E-Mail Address Fax #

CONTRACTOR REGISTRATION # (if applicable)

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RE-21 RESIDENTIAL PURCHASE AND SALE AGREEMENT PAGE 8 OF 8 JULY 2006 EDITION

Company: Coldwell Banker Eagle Rock SN: PCE5-06387
Provided by: Randy Stoor Printed using Software from Professional Computer Forms Co. v. 3.05

125/105

Received Fax: Jun 17 2007 Fax Station: CREB/ Webb Co. 9

Jun 17 07 03:52p Robert D Shippen SHIPPEN 208-745-8241 p.9
May 24 07 12:09p Patrick Duffin (208) 552-9805 p.1

RE-11 ADDENDUM # 1 (1,2,3, etc.)



RE-11 ADDENDUM # 1 (1,2,3, etc.)



Date: 6-17-07

THIS IS A LEGALLY BINDING CONTRACT. READ THE ENTIRE DOCUMENT INCLUDING ANY ATTACHMENTS. IF YOU HAVE ANY QUESTIONS, CONSULT YOUR ATTORNEY AND/OR ACCOUNTANT BEFORE SIGNING.

This is an ADDENDUM to the Purchase and Sale Agreement and Receipt for Earnest Money. "Addendum" means that the information below is added material for the agreement (such as facts or descriptions) and/or means the form is being used to change, correct or revise the agreement (such as modification, addition or deletion of a term).

PURCHASE AND SALE AGREEMENT DATED: 6-16-07 ID # 24051188
ADDRESS: 319 N. 3709 E. Rigby, Id. 83442
BUYER(S): William S. Goodspeed and Shellee B. Goodspeed
SELLER(S): Bob Shippen

The undersigned parties hereby agree as follows:

Sellers acceptance is to be extended to 6/18/2007 at 11:00 AM. Seller agrees to all other terms.

To the extent the terms of this ADDENDUM modify or conflict with any provisions of the Purchase and Sale Agreement including all prior Addendums or Counter Offers, these terms shall control. All other terms of the Purchase and Sale Agreement including all prior Addendums or Counter Offers not modified by this ADDENDUM shall remain the same. Upon its execution by both parties, this agreement is made an integral part of the aforementioned Agreement.

BUYER: [Signature] Date: 6-18-07
BUYER: Shellee Goodspeed Date: 6-18-07
SELLER: [Signature] Date: 6-17-07
SELLER: [Signature] Date:

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RE-11 ADDENDUM # ONE (1,2,3, etc.)



Date: July 2, 2007

THIS IS A LEGALLY BINDING CONTRACT. READ THE ENTIRE DOCUMENT INCLUDING ANY ATTACHMENTS. IF YOU HAVE ANY QUESTIONS, CONSULT YOUR ATTORNEY AND/OR ACCOUNTANT BEFORE SIGNING.

1 This is an ADDENDUM to the Purchase and Sale Agreement.
2 ("Addendum" means that the information below is added material for the agreement (such as lists or descriptions) and/or means the form is being used
3 to change, correct or revise the agreement (such as modification, addition or deletion of a term)).
4

5 PURCHASE AND SALE AGREEMENT DATED: June 16, 2007 ID # 24051188

6 ADDRESS: 319 N. 3709 E., Rigby, ID 83442

7 BUYER(S): William S. Goodspeed & Shellee B. Goodspeed

8 SELLER(S): Robert Shippen Construction

9 The undersigned parties hereby agree as follows:
10
11

12 1. Buyers & Sellers acknowledge that the correct Address for this property is:
13 3709 E. 319 N., Rigby, ID 83442 and hereby amend the purchase & sale agreement
14 (the address used had the street number swapped with the house number)
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32 To the extent the terms of this ADDENDUM modify or conflict with any provisions of the Purchase and Sale Agreement including all prior
33 Addendums or Counter Offers, these terms shall control. All other terms of the Purchase and Sale Agreement including all prior
34 Addendums or Counter Offers not modified by this ADDENDUM shall remain the same. Upon its execution by both parties, this
35 agreement is made an integral part of the aforementioned Agreement.
36

37 BUYER: W.S. Goodspeed Date: 7/2/07
38 BUYER: Shellee Goodspeed Date: 7-2-07
39 SELLER: Robert Shippen Date: 7/2/07
40 SELLER: Robert Shippen Date: 7/2/07

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EXHIBIT "C"

EXHIBIT "C"

Jun 17 07 03:49p

Robert D Shippen SHIPPEN

208-745-8241

p.3



RE-26 SELLER'S PROPERTY CONDITION DISCLOSURE FORM FOR NEW CONSTRUCTION ONLY



1 SELLER'S (and/or Contractor's) Name(s): Robert D Shippen Contractor Reg. # ACT 1528
2 Property Address: 319 N 3209 E
3 Legal Address: Lot 7 Block 2 Woodhaven Creek

4 SELLER PROPERTY DISCLOSURE FORM REQUIREMENTS REGARDING NEW CONSTRUCTION: Pursuant to Idaho Code, the transfer of NEWLY
5 CONSTRUCTED 'residential real property' not previously inhabited is EXEMPT FROM the SAME DISCLOSURE required by SELLERS of EXISTING 'residential
6 real property'. (Section 55-2501, Idaho Code). However, it is a requirement of SELLERS of new construction that there be disclosure of annexation and
7 city services status.

8 'RESIDENTIAL REAL PROPERTY' AS DEFINED BY IDAHO CODE: 'Residential Real Property' means real property that is improved by a building or other
9 structure that has one (1) to four (4) dwelling units or an individually owned unit in a structure of any size. This also applies to real property that has a combined
10 residential and commercial use. (Section 55-2503, Idaho Code).

11 PURPOSE OF STATEMENT: Pursuant to Section 55-2601, Idaho Code, et. seq. the SELLERS of NEWLY CONSTRUCTED residential real property SHALL
12 DISCLOSE information regarding ANNEXATION and CITY SERVICES in the form as prescribed in questions 1, 2, and 3 below.

- 13 1). Is the property located in an area of city impact, adjacent or contiguous to a city limit, and thus legally subject to annexation by the city?
14 [] Yes [X] No [] Do Not Know [] The property is already within city limits
15
16 2). Does the property, if not within city limits, receive any city services, thus making it legally subject to annexation by the city?
17 [] Yes [X] No [] Do Not Know [] The property is already within city limits
18
19 3). Does the property have a written "consent to annex" recorded in the county recorder's office, thus making it legally subject to annexation by the city?
20 [] Yes [X] No [] Do Not Know [] The property is already within city limits

21 ACKNOWLEDGEMENT: SELLER and BUYER understand the information contained in this document is not a warranty or guaranty of any kind by the SELLER or
22 by the agent representing the SELLER in this transaction and no agent is authorized to make representations or verify representations concerning this information.
23 It is not a substitute for any inspections or independent verification of the information by the Purchaser. Purchaser is encouraged to obtain his/her own
24 professional inspection or independent verification of the accuracy contained herein. The SELLER'S disclosure of the above information is made and performed in
25 good faith. SELLER and BUYER understand that Listing Broker and Selling Broker in no way warrants or guarantees the above information on the property.

26 SELLER hereby acknowledges receipt of a copy of this form:

27 [Signature] 6/17/07 SELLER Date
28 [Signature] Date

29 BUYER hereby acknowledges receipt of a copy of this disclosure form and does hereby WAIVE NOT WAIVE the right to rescind the related purchase
30 agreement within three (3) business days from the date of receipt of this form. IF BUYER DOES NOT WAIVE THE RIGHT TO RESCIND as set forth above,
31 BUYER may only rescind the purchase and sale agreement within three (3) business days following receipt of this disclosure statement, by a written, signed and
32 dated document that is delivered to the SELLER or his agents by personal delivery, ordinary or certified mail, or facsimile transmission. BUYER'S rescission must
33 be based on a specific objection to a disclosure in the disclosure statement. The notice of rescission must specifically identify the disclosure objected to by the
34 BUYER. If no signed notice of rescission is received by the SELLER within the three (3) business day period, BUYER'S right to rescind is waived.

35 [Signature] 6-18-07 BUYER Date
36 [Signature] 6-18-07 Date

37 AMENDED DISCLOSURE FORM: Subsequent to the delivery of the initial SELLER'S Property Condition Disclosure Form previously acknowledged, SELLER
38 hereby makes the following amendments. (Attach additional pages if necessary.) Other than those amendments made below, the SELLER states that there have
39 been no changes to the information contained in the initial SELLER'S Property Condition Disclosure Form. IF THERE ARE NO UPDATES, THERE IS NO NEED
40 TO SIGN BELOW.

41 SELLER hereby acknowledges receipt of this amended form:

42 SELLER Date SELLER Date

43 BUYER hereby acknowledges receipt of a copy of the amended disclosure form and does hereby WAIVE NOT WAIVE the right to rescind the related
44 purchase agreement based strictly on the amendments to the disclosure form within three (3) business days from the date of receipt of this amended form. IF
45 BUYER DOES NOT WAIVE THE RIGHT TO RESCIND as set forth above, BUYER may only rescind the purchase and sale agreement within three (3) business
46 days following receipt of this amended disclosure statement, by a written, signed and dated document that is delivered to the SELLER or his agents by personal
47 delivery, ordinary or certified mail, or facsimile transmission. BUYER'S rescission must be based on a specific objection to a disclosure in the disclosure
48 statement. The notice of rescission must specifically identify the disclosure objected to by the BUYER. If no signed notice of rescission is received by the
49 SELLER within the three (3) business day period, BUYER'S right to rescind is waived.

50 BUYER Date BUYER Date

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EXHIBIT "D"

EXHIBIT "D"

<p>A. Settlement Statement</p> <p style="text-align: center;">First American Title Company Final Statement</p>	<p>B. Type of Loan</p> <p>1. Loan Type Conv. Unins.</p> <p>6. File Number 218469-RI</p> <p>7. Loan Number 002004463410</p> <p>8. Mortgage Insurance Case Number</p>
---	---

C. Note: This form is furnished to give you a statement of actual settlement costs. Amounts paid to and by the settlement agent are shown, items marked "POC" were paid outside this closing; they are shown here for informational purposes and are not included in the totals.

D. Name of Borrower: William S. Goodspeed, Shellee B. Goodspeed
3709 East 319 North, Rigby, ID 83442

E. Name of Seller: Robert Shippen, Jorja Shippen

F. Name of Lender: Citimortgage, Inc.
100 Galleria Officecentre Ste. 300
Southfield, MI 48034

G. Property Location: 3709 East 319 North, Rigby, ID 83442

<p>H. Settlement Agent: First American Title Company Address: P.O. Box 405, Rigby, ID 83442</p> <p>Place of Settlement Address: P.O. Box 405, Rigby, ID 83442</p>	<p>I. Settlement Date: 07/03/2007</p> <p>Print Date: 07/03/2007, 11:05 AM</p> <p>Disbursement Date: 07/03/2007</p>
---	--

J. Summary of Borrower's Transaction		K. Summary of Seller's Transaction	
100. Gross Amount Due From Borrower		400. Gross Amount Due To Seller	
101. Contract Sales Price	272,000.00	401. Contract Sales Price	
102. Personal Property		402. Personal Property	
103. Settlement charges to borrower (line 1400)	2,972.04	403. Total Deposits	
104.		404.	
105.		405.	
Adjustments for items paid by seller in advance		Adjustments for items paid by seller in advance	
106. City/town taxes		406. City/town taxes	
107. County taxes		407. County taxes	
108. Assessments		408. Assessments	
109.		409.	
110.		410.	
111.		411.	
112.		412.	
113.		413.	
114.		414.	
115.		415.	
120. Gross Amount Due From Borrower	274,972.04	420. Gross Amount Due To Seller	
200. Amounts Paid By Or In Behalf of Borrower		500. Reductions in Amount Due to Seller	
201. Deposit or earnest money	2,500.00	501. Excess deposit (see instructions)	
202. Principal amount of new loan(s)	217,600.00	502. Settlement charges (line 1400)	
203. Existing loan(s) taken subject		503. Existing loan(s) taken subject	
204. Interest on New Loan from Citimortgage, Inc.	77.50	504. Payoff of first mortgage loan	
205. HELOC Credit from Citimortgage, Inc.	12.00	505. Payoff of second mortgage loan	
206.		506.	
207.		507.	
208.		508.	
209.		509.	
Adjustments for items unpaid by seller		Adjustments for items unpaid by seller	
210. City/town taxes		510. City/town taxes	
211. County taxes 01/01/07 to 07/02/07 @\$173.90/yr	86.71	511. County taxes	
212. Assessments		512. Assessments	
213.		513.	
214.		514.	
215.		515.	
216.		516.	
217.		517.	
218.		518.	
219.		519.	
220. Total Paid By/For Borrower	220,276.21	520. Total Reduction Amount Due Seller	
300. Cash At Settlement From/To Borrower		600. Cash At Settlement To/From Seller	
301. Gross amount due from Borrower (line 120)	274,972.04	601. Gross amount due to Seller (line 420)	
302. Less amounts paid by/for Borrower (line 220)	220,276.21	602. Less reductions in amounts due to Seller (line 520)	
303. Cash (X From) (To) Borrower	54,695.83	603.	

The HUD-1 Settlement Statement which I have prepared is a true and accurate account of this transaction. I have caused or will cause the funds to be disbursed in accordance with this statement.

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L. Settlement Charges		Paid From Borrower's Funds at Settlement	Paid From Seller's Funds at Settlement
700. Total Sales/Broker's Commission	on price		
Division of Commission (line 700) as follows			
701.			
702.			
703. Commission paid at Settlement			
704.			
800. Items Payable in Connection with Loan			
801. Loan Origination Fee			
802. Loan Discount			
803. Appraisal Fee			
804. Credit Report			
805. Lender's Inspection Fee			
806. Mortgage Insurance Application Premium			
807. Assumption Fee			
808. Commitment Fee - Citimortgage, Inc.		565.00	
809. Application Fee - Citimortgage, Inc.		480.00	
810.			
811.			
812.			
813.			
814.			
Supplemental Summary			
900. Items Required by Lender to be Paid in Advance			
901. Interest			
902.			
903. Hazard Insurance Premium for 1 year(s) to TBD		311.00	
904.			
905.			
Supplemental Summary			
1000. Reserves Deposited with Lender			
1001. Hazard Insurance 2 mo(s) @\$25.92/mo		51.84	
1002. Mortgage Insurance			
1003. City Property Taxes			
1004. County Property Taxes 3 mo(s) @\$250.70/mo		752.10	
1005. Annual assessments			
1006.			
1007.			
1008. Aggregate Accounting Adjustment		-129.60	
1100. Title Charges			
1101. Settlement or closing fee - First American Title Company		433.00	
1102. Abstract or title search			
1103. Title examination			
1104. Title Insurance Binder			
1105. Document Fee			
1106. Notary Fee			
1107. Attorney Fee			
(includes above item numbers:)			
1108. Title Insurance - See supplemental page for breakdown of individual fees and payees		362.70	
(includes above item numbers:)			
1109. Lender's coverage \$217,600.00 Premium: \$362.70			
1110. Owner's coverage \$272,000.00			
1111. Endorsements 9-06/8.1-06/22-06 - First American Title Company		50.00	
1112.			
1113.			
1114.			
1115.			
1116.			
1117.			
1200. Government Recording and Transfer Charges			
1201. *Recording fees: Deed \$6.00 Mortgage \$48.00 Release \$0.00		54.00	
1202. City/county tax/stamps:			
1203. State tax/stamps:			
1204. Recording Fee-HELOC Deed of Trust - First American Title Company		12.00	
1205.			
1206.			
1300. Additional Settlement Charges			
1301. Survey to			
1302. Pest Inspection to			
1303. Courier and Handling Fee - First American Title Company		30.00	
1304.			
1305.			
1306.			
1307.			
1308.			
1309.			
1310.			
1311.			
1312.			
1313.			
1314.			
Supplemental Summary			
1400. Total Settlement Charges (enter on lines 103, Section J and 502, Section K)		2,972.04	

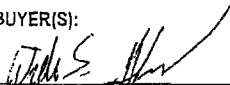
132

Supplemental Page HUD-1 Settlement Statement	File No. 218469-RI
First American Title Company Final Statement	Loan No. 002004463410
	Settlement Date: 07/03/2007
Borrower Name & Address: William S. Goodspeed, Shellee B. Goodspeed 3709 East 319 North, Rigby, ID 83442	
Seller Name & Address: Robert Shippen, Jorja Shippen	

Section L. Settlement Charges continued	Paid From Borrower's Funds at Settlement	Paid From Seller's Funds at Settlement
1108. Supplemental Summary 362.70		
a) Policy-Extended Lender's Policy - First American Title Company	362.70	
1201. Supplemental Summary 54.00		
a) Recording Fee-Deed - First American Title Company	6.00	
b) Recording Fee-1st Deed of Trust - First American Title Company	48.00	

I have carefully reviewed the HUD-1 Settlement Statement and to the best of my knowledge and belief, it is a true and accurate statement of all receipts and distributions made on my account or by me in this transaction. I further certify that I have received a copy of the HUD-1 Settlement Statement.

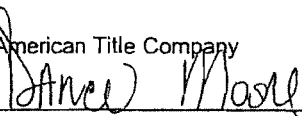
BUYER(S):



 William S. Goodspeed



 Shellee B. Goodspeed

First American Title Company
 By 

 Darci Moore



First American Title Company

TAX AGREEMENT

Date: June 29, 2007

File No.: 218469-RI (dm)

Property: 3709 East 319 North, Rigby, ID 83442

The tax value shown on the attached closing statement is based on ESTIMATES.

Buyer and Seller herein affirm and agree that First American Title Company, its employees, agents, or assigns have not made any warranties as to the accuracy of these tax figures. Further, Buyer and Seller agree that should the actual tax, as shown on the tax statement forwarded by the Jefferson Assessor/Treasurer's Office during the year of the sale differ from the figure represented on the attached closing statement, the following will occur:

1. In the event Buyer has received excess credit based on the "estimated tax", Buyer agrees to reimburse Seller; or
2. In the event Buyer has not received sufficient credit based on the "estimated tax", Seller agrees to reimburse Buyer.
3. Payment of the pro-rated portion, due, if any, shall be made by the respective party (directly to the party) within thirty (30) days after notification of the actual tax assessed.
4. In the event there is no proration due to the property's status at the time of sale, parties agree to prorate outside of escrow, per their agreement.
5. PAYMENT OF ANY SUBSEQUENT TAX STATEMENTS WHICH MAY BE RECEIVED AFTER DATE OF CLOSING ON THIS TRANSACTION WILL BE HANDLED DIRECTLY BETWEEN THE RESPECTIVE PARTIES, AND FIRST AMERICAN TITLE COMPANY DOES NOT ASSUME ANY LIABILITY OR RESPONSIBILITY IN CONNECTION THEREWITH.

Further, Buyer and Seller herein agrees to hold First American Title Company harmless from any loss, liability, or responsibility in the event the prorated tax figures are based on a Homeowner's Tax Exemption, (I.C. 63-105DD), do or do not apply for the year in which the sale occurs. It is agreed that it is the buyer's responsibility to investigate the status of and qualify for the Homeowner's Tax Exemption as it may apply to the property being purchased.

2004 Real Property Tax(es) for Parcel No. RP04N38E144802
Tax Amount \$0.00

Dated: 29th day of July, 2007

Robert Shippen
Robert Shippen

William S. Goodspeed
William S. Goodspeed

Jorja Shippen
Jorja Shippen

Shellee B. Goodspeed
Shellee B. Goodspeed

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First American Title Company

**CLOSING ESCROW INSTRUCTIONS
PURCHASE**

Escrow No.: **218469-RI**

Officer: **Darci Moore**

Date: _____

Buyer: **William S. Goodspeed and Shellee B. Goodspeed**

To: **First American Title Company, 110 N. Clark Street, Rigby, ID 83442**

I/We hereby agree to purchase the hereinafter property as described in Schedule A of Commitment No. **218469-RI** situated in **Jefferson County, Idaho** for a total consideration of **\$272,000.00** and will on or before closing hand you said consideration, which is payable as follows:

Earnest Money Deposit	\$2,500.00
Balance of Sales Price in the amount of	\$269,500.00

(closing costs and/or fees are additional)

I/We will deliver to you any additional funds and execute any instruments which are necessary to comply with the terms hereof, all of which you may use when you hold for me a Warranty Deed from:

Robert Shippen and Jorja Shippen, dba Shippen Construction

You are authorized and instructed to issue the specified title insurance policy or policies, in the specified amounts, to-wit:

OWNERS EAGLE \$272,000.00	LENDERS EAGLE \$
OWNERS STANDARD\$	OWNERS EXTENDED \$
LENDERS STANDARD \$	LENDERS EXTENDED \$217,600.00

on the property described on attached Order No.: **218469-RI**

Showing title vested in: **William S. Goodspeed and Shellee B. Goodspeed**

Subject to:

1. Paragraphs **1-9, 11, 12** of Schedule 'B' of Owner's Commitment for Title Insurance Order No. **218469-RI**, dated **June 18, 2007**, Revision No. **1**, a copy of which is attached hereto.
2. Additional documents creating exceptions that will be recorded at the time of dosing:

new Deed of Trust

I have read the above referenced preliminary title commitment and approve the policy of title insurance to be issued as required by instructions to include the above vesting and exceptions:

Buyers Initials: WSH WSH sgy

Seller(s) and Buyer(s) hereby acknowledge that all contingencies and conditions on the Buy/Sell Agreement dated June 16, 2007 and addendums dated , have been fully satisfied or negotiated outside of this escrow.

Seller initials: AS

Buyer initials: WSH SGJ

PRORATE AND/OR ADJUST THE FOLLOWING AS OF 07/02/2007
-CHECK THOSE WHICH APPLY-

- X 1. Taxes based on the amount of the tax statement set forth below under type of taxes for the year therein specified of the Tax Collector which has been issued prior to the close of escrow. No liability is assumed for the errors, omissions, and/or changes in the amount of the General County Taxes assessed on real and personal property by the County Assessor and/or Taxing Authority. (If the amount of the new tax bill issued by the Tax Collector after the close of escrow is more or less than the amount used for proration purposes, the difference, if any, will be adjusted by the parties herein outside of escrow.) **Sellers are to FORWARD to buyers any present or future tax bills on property herein.** TYPE OF TAXES: [X] Real Property 2006 [] Mobile Home [] Personal Property
- _____ 2. Rents/Security Deposits
- _____ 3. Condo or Homeowner's Association Dues
- _____ 4. City Water/Sewer
- _____ 5. City/County SID's (State Specific)
- _____ 6. Other

Seller initials: AS

Buyer initials: WSH SGJ

LOAN CALCULATIONS/PAYOFFS

Loan amounts shown in seller(s) and buyer(s) settlement statements were determined from information provided to First American Title Company by the lender, or escrow provider, copies of which are available to the parties for inspection. Any inaccuracies or deficiencies in the calculation of these amounts by the lender or escrow provider remain the responsibility of the party legally obligated thereunder.

Seller initials: AS

Buyer initials: WSH SGJ

WATER RIGHTS

The parties acknowledge that First American Title Company is not responsible for the transfer of any water, or water rights.

I hereby agree to hold you harmless from the failure of the transfer of water to myself regardless of the reason or cause. If any transfer of water is being done, it is an accommodation for me. I understand that you have not made a search of the water rights to this land. I further understand that you are not making any representation and warranty concerning said water rights.

Seller initials: AS

Buyer initials: WSH SGJ

First American Title Company is hereby authorized and instructed to insert appropriate addresses on any and all documents generated by this escrow, that may or may not have been previously signed by buyers and/or sellers herein.

GENERAL PROVISIONS

MISCELLANEOUS FEES

Escrow Holder may incur certain additional costs on behalf of the parties for services performed by third party providers. The fees charged by Escrow Holder for such services may include mark up over the direct cost of such services to reflect the averaging of direct, administrative and overhead charges of Escrow Holder for such services.

RECONVEYANCE

In the event a lender who is paid in full in connection with this escrow, fails to timely forward the paid Note and a request for reconveyance of the paid Deed of Trust, the escrow holder acting as trustee and title insurer may use the procedures outlined in state statutes and regulations to effect a reconveyance of the Deed of Trust. Among other provisions of this chapter is the following: "The reconveyance of a trust deed pursuant to this chapter shall not itself discharge any personal obligation that was secured by the trust deed at the time of its reconveyance."

DEPOSIT OF FUNDS AND DISBURSEMENTS

All disbursements shall be made by your check. You are authorized not to close escrow or disburse until good funds, as provided for in state statutes and regulations have been confirmed. All funds received in this escrow shall be deposited in one or more of your general escrow accounts with any bank doing business in said State may be transferred to any other general escrow account or accounts. Upon specific instructions from all parties to this escrow, you may hold funds as otherwise instructed herein.

CLOSE OF ESCROW

The expression "close of escrow" means the date on which instruments referred to herein are filed for record unless otherwise indicated herein. Recordation of any instrument delivered through this escrow, if necessary or proper in the issuance of a policy of title insurance called for, is hereby authorized.

AUTHORIZATION TO FURNISH COPIES

You are to only furnish a copy of these instructions, amendments thereto, closing statements and/or any other documents deposited in this escrow, to the lender or lenders, the real estate broker or brokers and/or the attorney or attorneys involved in this transaction upon request of such lenders, brokers or attorneys.

CONFLICTING DEMANDS OR CLAIMS

Should you, before or after the close of escrow, receive or become aware of any conflicting demands or claims with respect to this escrow or the rights of any of the parties hereto, or any money or property deposited herein or affected hereby, you shall have the right to discontinue any or all further acts on your part until such conflict is resolved to your satisfaction, and you shall have the further right to commence or defend any action or proceedings for the determination of such conflict. The provisions herein shall include, but are not limited to, conflicting demands or disputed claims relating to the real estate commissions and/or brokerage fees.

ATTORNEYS FEES, COST/SUIT IN INTERPLEADER

The parties hereto jointly and severally agree to pay all costs, damages, judgments and expenses, including reasonable attorney's fees suffered or incurred by you in connection with, or arising out of this escrow, including, but without limiting the generality of the foregoing, as suit in interpleader brought by you. The parties expressly agree that you, as escrow holder, have the absolute right, at your election, to file an action in interpleader. You are authorized to deposit with the Clerk of Court all documents and funds held in this escrow.

RIGHT OF CANCELLATION

If any party to this escrow elects to cancel these instructions because of the failure of any party to comply with any of the terms hereof within the time limits provided herein, said party so electing to cancel shall deliver a written notice to the other party and escrow agent demanding that said other party comply with the terms hereof within ten days from the receipt of said notice by escrow agent that these instructions shall hereupon become canceled. When the written notice is delivered to escrow agent by the party so electing to cancel, escrow agent shall within 5 days thereafter send a copy of said notice to the other party in the manner provided by law and the usual practices of the escrow agent. In the event said other party shall fail within said ten day period to comply with all of the terms hereof, these instructions shall become canceled and escrow agent is thereupon authorized: (a) first, to pay to the party electing to cancel any earnest money deposited hereunder by said other party, after deducting any charges; (b) second, to pay to said other party, any other money deposited hereunder by said other party, after deducting any charges remaining unpaid; (c) third, to pay to the party electing to cancel, any money deposited by said party, after deducting any charges remaining unpaid; and (d) fourth, to return all

documents deposited under to the party who delivered the same except documents executed by more than one party, which shall be marked "canceled" and retained in the files of escrow agent.

LEGAL ADVICE

Both Seller and Buyer acknowledge by their signatures hereon the following: I have been specifically informed that First American Title Company (hereinafter designated as "First American Title Company") is not licensed to practice law and no legal advice has been offered by First American Title Company or any of its employees. I have been further informed that First American Title Company is acting only as escrow agent and that it is forbidden by law from offering advice to any party regarding the merits of this escrow transaction or the nature of the instruments utilized, and that it has not done so. I have not been referred by First American Title Company to any named attorney or attorneys or discouraged from seeking advice of any attorney, but have been requested to seek legal council of my own choosing at my own expense, if I have doubt concerning any aspect of this transaction.

PREPARATION OF FORM DOCUMENTS

I further declare all instruments to which I am a party, if prepared by First American Title Company, have been prepared under the direction of my attorney, agents acting in my behalf, or myself, at my direction or request, and particularly declare that copying legal descriptions from title reports onto forms of deeds, etc., or reforming of legal descriptions or agreements, is or will be solely at my direction or request.

PERSONAL PROPERTY TAXES

No examination or insurance as to the amount or payment of personal property taxes is required unless specifically requested.

TAXPAYER REPORTING INFORMATION

The Seller(s) acknowledges that Federal Law requires First American Title Company to report this transaction to the Internal Revenue Service on Form 1099.

FACSIMILES/ELECTRONIC DOCUMENT DELIVERY

In the event Seller and/or Buyer utilize facsimile or electronically transmitted documents, Seller and Buyer agree to accept and instruct First American Title Company to rely upon documents as if they bore original signatures. Seller and Buyer agree to provide the documents bearing the original signatures within 5 days of transmission. Seller and Buyer acknowledge and agree that any documents necessary for recording may not be accepted by the County Clerk and Recorder, with facsimile or electronically transmitted signatures, thus delaying the close of escrow.

AMENDMENTS TO ESCROW INSTRUCTIONS

Any amendments of and/or supplements to any instructions must be in writing. If any "Earnest Money Agreements," "Receipt and Agreements to Purchase" or the like are attached to these instructions and one or more terms of said agreements conflict with or vary from these instructions, these instructions shall nevertheless, control.

We have been afforded adequate time and opportunity to read and understand these escrow instructions and all other documents referred to therein.

Dated:

BUYER(S):

William S. Goodspeed

William S. Goodspeed

Shellee B. Goodspeed
Shellee B. Goodspeed

Address:

~~319 North 3709 East~~ 3709 E. 319 North
Rigby, ID 83442

SELLER(S): Robert Shippen and Jorja Shippen

I/We approve of the foregoing instructions, agree to be bound thereof, and agree to sell and will deliver to you papers, instructions and/or funds required from me within the time limits specified herein, which you are authorized to deliver when you can issue your policy of title insurance as set forth above. You are instructed to use the money and record the instruments to comply with said escrow instructions and to pay all encumbrances of record necessary, without further approval including prepayment penalties to show title as herein provided. I agree to pay your usual sellers escrow fee, drawing of documents and such other charges which are advanced for my account regardless of the consummation of this escrow. I also agree to pay the policy of title insurance premium and recording fees which are properly chargeable to me.

Robert Shippen
Robert Shippen

Jorja Shippen
Jorja Shippen

Address: 518 N. 3950 E.
Rigby, ID 83442

EXHIBIT "E"

EXHIBIT "E"



First American Title Company
110 N. Clark Street, Rigby, ID 83442
Phone (208)745-8715 - Fax (208)745-8716

Escrow Officer: **Dardi Moore**
Title Officer: **Mandi Foster**

To: **Citimortgage, Inc.**
100 Galleria Offcentre Ste. 300
Southfield, MI 48034

Order No.: **218469-RI**

Attn: **Cecilia Garibay**

Your Ref: **002004463410**

Re: Property Address: **3709 East 319 North, Rigby, ID 83442**

COMMITMENT FOR TITLE INSURANCE

Issued by

FIRST AMERICAN TITLE INSURANCE COMPANY

Agreement to Issue Policy

We agree to issue a policy to you according to the terms of this Commitment.

When we show the policy amount and your name as the proposed insured in Schedule A, this Commitment becomes effective as of the Commitment Date shown in Schedule A.

If the Requirements shown in this Commitment have not been met within six months after the Commitment Date, our obligation under this Commitment will end. Also, our obligation under this Commitment will end when the Policy is issued and then our obligation to you will be under the Policy.

Our obligation under this Commitment is limited by the following:

- The Provisions in Schedule A.
- The Requirements in Schedule B-I.
- The Exceptions in Schedule B-II.
- The Conditions.

This Commitment is not valid without Schedule A and Section 1 and 2 of Schedule B.

First American Title Insurance Company

By: *[Signature]* President

Attest: *[Signature]* Secretary

Countersigned

First American Title Company

[Signature]

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ALTA Plain Language Commitment Form

INFORMATION

The Title Insurance Commitment is a legal contract between you and the Company. It is issued to show the basis on which we will issue a Title Insurance Policy to you. The Policy will insure you against certain risks to the land title, subject to the limitations shown in the Policy.

The Company will give you a sample of the Policy form, if you ask.

The Policy contains an arbitration clause. All arbitrable matters when the Amount of Insurance is \$2,000,000 or less shall be arbitrated at the option of either the Company or you as the exclusive remedy of the parties. You may review a copy of the arbitration rules at <http://www.alta.org/>.

The Commitment is based on the land title as of the Commitment Date. Any changes in the land title or the transaction may affect the Commitment and the Policy.

The Commitment is subject to its Requirements, Exceptions and Conditions.

THIS INFORMATION IS NOT PART OF THE TITLE INSURANCE COMMITMENT. YOU SHOULD READ THE COMMITMENT VERY CAREFULLY.

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Page

AGREEMENT TO ISSUE POLICY

SCHEDULE A

1. Commitment Date
2. Policies to be Issued, Amounts and Proposed Insureds
3. Interest in the Land and Owner
4. Description of the Land

SCHEDULE B-I -- REQUIREMENTS

SCHEDULE B-II -- EXCEPTIONS

CONDITIONS

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**SECOND COMMITMENT
SCHEDULE A**

1. Commitment Date : **June 18, 2007 at 7:30 A.M.**

2. Policy or Policies to be issued:

	Policy Amount	Premium Amount
Owner's Policy		
Eagle Protection (10/17/98) Form 1490 EAGLE	\$ 272,000.00	\$ 1,185.54
with applied credit of		\$ 47.56
Proposed Insured:		
William S. Goodspeed and Shellee B. Goodspeed		
Breakdown of Owner's Premium		
Base Rate		\$ 1,121.00
Additional Eagle Premium		\$ 112.10
 Loan Policy		
Extended Loan Policy (06/17/06) Form 1056-06	\$ 217,600.00	\$ 362.70
with applied credit of		\$ None
Proposed Insured:		
Citimortgage, Inc., its successors and assigns as their interests may appear as defined in Paragraph 1(a) of the Conditions and Stipulations of this policy.		
Endorsements: 9-06, 22-06, 8.1-06		\$ 50.00

3. A fee simple interest in the land described in this Commitment is owned, at the Commitment Date by:

Robert Shippen and Jorja Shippen, dba Shippen Construction

4. The land referred to in this Commitment is described as follows:

Lot 7, Block 2 Woodhaven Creek Estates, Division No. 1, Jefferson County, Idaho, as shown on the plat recorded November 29, 2004, as Instrument No. 335643. Affidavit of Correction recorded February 3, 2005, as Instrument No. 337151.

The records of Jefferson County disclose the above property address as: 3709 East 319 North, Rigby, ID 83442

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SCHEDULE B-SECTION I

REQUIREMENTS

The following requirements must be met:

- (a) Pay the agreed amounts for the interest in the land and/or the mortgage to be insured.
- (b) Pay us the premiums, fees and charges for the policy.
- (c) Documents satisfactory to us creating the interest in the land and/or the mortgage to be insured must be signed, delivered and recorded.
- (d) You must tell us in writing the name of anyone not referred to in this Commitment who will get an interest in the land or who will make a loan on the land. We may then make additional requirements and exceptions.
- (e) Release(s) or Reconveyance(s) of items(s) 6.
- (f) We require proof that an improved one-to-four family or condominium residence is located on the property. That proof may be in the form of a Certificate of Occupancy or a Certificate of Completion from the proper governmental authority.
- (g) Pursuant to Regulation 25, of the Department of Insurance we cannot delete Paragraph 6 until we have reviewed and approved the following:
 - 1. Lien subordinations from the sub-contractors for work done.
 - 2. Contractors Disclosure Statement which provides a list of all subcontractors, materialmen and rental equipment providers.
 - 3. Lien releases for all work and/or materials furnished on the project up to the time of recording the deed of trust to be insured.
 - 4. Indemnity agreement to be executed by the general contractor and/or record owner.
 - 5. Financial statement of the general contractor and/or record owner.

Please have the general contractor and/or record owner contact the title department for details on the above requirement.

**SCHEDULE B -SECTION II
EXCEPTIONS**

Any policy we issue will have the following exceptions unless they are taken care of to our satisfaction.

1. Any rights, interests or claims of parties in possession and any facts about the Land that an inspection or inquiry of parties in possession would disclose and that are not shown by the Public Records.
2. Any easements or liens or rights to lien for medical indigent services and for any liens, or rights to lien, for services, labor or material theretofore or hereafter furnished, imposed by law and not shown by the Public Records.
3. 2007 taxes are an accruing lien, not yet due and payable until the fourth Monday in November of the current year. The first one-half is not delinquent until after December 20 of the current year, the second one-half is not delinquent until after June 20 of the following year. Taxes which may be assessed and entered on the property roll for 2006 with respect to new improvements and first occupancy, which may be included on the regular property, which are an accruing lien, not yet due and payable.

General taxes as set forth below. Any amounts not paid when due will accrue penalties and interest in addition to the amount stated herein:

Year	Original Amount	Amount Paid	Parcel Number	Covers
2006	\$173.90	\$173.90	RP007560020070A	Bare Lot Only

Homeowners Exemption is not in effect for 2006.
Circuit breaker is not in effect for 2006.

4. All matters, covenants, conditions, restrictions, easements and any rights, interests or claims which may exist by reason thereof, disclosed by the recorded plat of said subdivision, recorded November 29, 2004, as Instrument number 335643, and disclosed by Affidavit of Correction recorded February 3, 2005, as Instrument No. 337151, but deleting any covenant, condition or restriction indicating a preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status, or national origin to the extent such covenants, conditions or restrictions violate 42 USC 3604(c).
5. Covenants, Conditions and Restrictions recorded as Instrument No. 335644 and re-recorded as Instrument No. 339346, and Covenants, Conditions and Restrictions recorded as Instrument No. 339694, and Amendment recorded as Instrument No. 341657, but omitting any covenant, condition or restriction based on race, color, religion, sex, handicap, familial status, or national origin to the extent that such covenants, conditions or restrictions violate 42 USC 3604(c).
6. Deed of Trust dated August 30, 2005, to secure an original indebtedness of \$40,000.00, and any other amounts and/or obligations secured thereby
Recorded: September 1, 2005, as Instrument No. 342206
Grantor: Robert Shippen and Jorja Shippen, husband and wife
Trustee: First American Title Company
Beneficiary: Paul Jenkins and Rosemary Jenkins
7. Member Service Agreement Agreement upon the terms, conditions and provisions contained therein:
Parties: Shippen Construction and Effluent Technologies, Inc.
Recorded: April 24, 2006, Instrument No. 348023

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8. The effect of any, of Deed of Reconveyance by Alliance Title and Escrow Corp., recorded May 22, 2007, as Instrument No. 358688. This Deed of Reconveyance is a Deed of Trust recorded as Instrument No. 342206. However, the original trustee of said Deed of Trust was First American Title Company.

INFORMATIONAL NOTES

- A. As an accommodation and not part of this commitment, no liability is assumed by noting the following conveyances describing all or a part of the subject property, which have been recorded within the last 24 months: None

- B. Other than as shown in Schedule B; we find no Judgment Liens, State Tax Liens, Federal Tax Liens or Child Support Liens of record which attach to the name(s) or interest of the vested owner and/or proposed insured owner/borrower.

- C. Pursuant to the State of Idaho Insurance Regulations: A cancellation fee will be charged on all cancelled orders, unless notified to the contrary, all orders shall be cancelled and a billing sent within 6 months of the effective date on the commitment.

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CONDITIONS**1. DEFINITIONS**

(a)"Mortgage" means mortgage, deed of trust or other security instrument.

(b)"Public Records" means title records that give constructive notice of matters affecting your title according to the state statutes where the land is located.

2. LATER DEFECTS

The Exceptions in Schedule B - Section II may be amended to show any defects, liens or encumbrances that appear for the first time in the public records or are created or attach between the Commitment Date and the date on which all of the Requirements (a) and (c) of Schedule B - Section I are met. We shall have no liability to you because of this amendment.

3. EXISTING DEFECTS

If any defects, liens or encumbrances existing at Commitment Date are not shown in Schedule B, we may amend Schedule B to show them. If we do amend Schedule B to show these defects, liens or encumbrances, we shall be liable to you according to Paragraph 4 below unless you knew of this information and did not tell us about it in writing.

4. LIMITATION OF OUR LIABILITY

Our only obligation is to issue to you the Policy referred to in this Commitment, when you have met its Requirements. If we have any liability to you for any loss you incur because of an error in this Commitment, our liability will be limited to your actual loss caused by your relying on this Commitment when you acted in good faith to:

Comply with the Requirements shown in Schedule B - Section I

or

Eliminate with our written consent any Exceptions shown in Schedule B - Section II.

We shall not be liable for more than the Policy Amount shown in Schedule A of this Commitment and our liability is subject to the terms of the Policy form to be issued to you.

5. CLAIMS MUST BE BASED ON THIS COMMITMENT

Any claim, whether or not based on negligence, which you may have against us concerning the title to the land must be based on this commitment and is subject to its terms.

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First American Title Company

110 N. Clark Street, Rigby, ID 83442
Phone (208)745-8715 - Fax (208)745-8716

PRIVACY POLICY

We Are Committed to Safeguarding Customer Information

In order to better serve your needs now and in the future, we may ask you to provide us with certain information. We understand that you may be concerned about what we will do with such information – particularly any personal or financial information. We agree that you have a right to know how we will utilize the personal information you provide to us. Therefore, together with our parent company, The First American Corporation, we have adopted this Privacy Policy to govern the use and handling of your personal information.

Applicability

This Privacy Policy governs our use of the information which you provide to us. It does not govern the manner in which we may use information we have obtained from any other source, such as information obtained from a public record or from another person or entity. First American has also adopted broader guidelines that govern our use of personal information regardless of its source. First American calls these guidelines its *Fair Information Values*, a copy of which can be found on our website at www.firstam.com.

Types of Information

Depending upon which of our services you are utilizing, the types of nonpublic personal information that we may collect include:

- Information we receive from you on applications, forms and in other communications to us, whether in writing, in person, by telephone or any other means;
- Information about your transactions with us, our affiliated companies, or others; and
- Information we receive from a consumer reporting agency.

Use of Information

We request information from you for our own legitimate business purposes and not for the benefit of any nonaffiliated party. Therefore, we will not release your information to nonaffiliated parties except: (1) as necessary for us to provide the product or service you have requested of us; or (2) as permitted by law. We may, however, store such information indefinitely, including the period after which any customer relationship has ceased. Such information may be used for any internal purpose, such as quality control efforts or customer analysis. We may also provide all of the types of nonpublic personal information listed above to one or more of our affiliated companies. Such affiliated companies include financial service providers, such as title insurers, property and casualty insurers, and trust and investment advisory companies, or companies involved in real estate services, such as appraisal companies, home warranty companies, and escrow companies. Furthermore, we may also provide all the information we collect, as described above, to companies that perform marketing services on our behalf, on behalf of our affiliated companies, or to other financial institutions with whom we or our affiliated companies have joint marketing agreements.

Former Customers

Even if you are no longer our customer, our Privacy Policy will continue to apply to you.

Confidentiality and Security

We will use our best efforts to ensure that no unauthorized parties have access to any of your information. We restrict access to nonpublic personal information about you to those individuals and entities who need to know that information to provide products or services to you. We will use our best efforts to train and oversee our employees and agents to ensure that your information will be handled responsibly and in accordance with this Privacy Policy and First American's *Fair Information Values*. We currently maintain physical, electronic, and procedural safeguards that comply with federal regulations to guard your nonpublic personal information.

EXHIBIT "F"

EXHIBIT "F"

358688

Instrument # 358688
RIGBY, JEFFERSON, IDAHO
2007-05-22 02:08:00 No. of Pages: 1
Recorded for : ALLIANCE TITLE & ESCROW
CHRISTINE BOULTER Fee: 3.00
Ex-Officio Recorder Deputy *CB*
Index to: RECONVEYANCE



Customer Reference No:
ATEC Reference No. /

DEED OF RECONVEYANCE

Pursuant to a written request made by the beneficiary, the undersigned, as trustee in the deed of trust executed by

Robert Shippen and Jorja Shippen, husband and wife

to **Paul Jenkins and Rosemary Jenkins** recorded **September 1, 2005** as Instrument No 342206 Records of Jefferson County, Idaho, does hereby GRANT and RECONVEY unto the parties LEGALLY ENTITLED THERETO, without warranty, all the estate and interest derived to the trustee under said deed of trust, in the lands therein described.

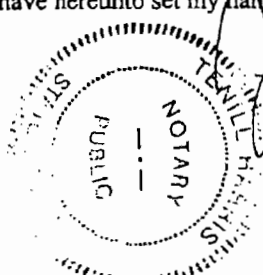
Alliance Title and Escrow Corp.

May 22, 2007

By _____

State of Idaho
County of Jefferson } ss.

On this 22nd day of May, 2007, before me, a Notary Public in and for said state, personally appeared, Emily A. Heister known to me to be the Assistant Vice-President of the Corporation, and acknowledged to me that pursuant to a Resolution of the Board of Directors, he/she executed the foregoing in said Corporation name.
IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.



Emily A. Heister

Notary Public for the State of
Residing at: _____ Residing In Jefferson County
Commission Expires: _____ Commission Expires: 08-13-09

RECORDING REQUESTED BY
First American Title Company

AND WHEN RECORDED MAIL TO:
First American Title Company
110 N. Clark Street
Rigby, ID 83442

359999

Instrument # 359999

RIGBY, JEFFERSON, IDAHO
2007-07-03 01:50:00 No. of Pages: 2
Recorded for : FIRST AMERICAN TITLE
CHRISTINE BOULTER Fee: 6.00
Ex-Officio Recorder Deputy u
Index to: WARRANTY DEED

Space Above This Line for Recorder's Use Only

WARRANTY DEED

File No.: 218469-RI (dm)

Date: June 29, 2007

For Value Received, **Robert Shippen and Jorja Shippen, dba Shippen Construction**, hereinafter called the Grantor, hereby grants, bargains, sells and conveys unto **William S. Goodspeed and Shellee B. Goodspeed, husband and wife**, hereinafter called the Grantee, whose current address is **3709 East 319 North, Rigby, ID 83442**, the following described premises, situated in **Jefferson County, Idaho**, to-wit:

Lot 7, Block 2 Woodhaven Creek Estates, Division No. 1, Jefferson County, Idaho, as shown on the plat recorded November 29, 2004, as Instrument No. 335643. Affidavit of Correction recorded February 3, 2005, as Instrument No. 337151.

SUBJECT TO all easements, right of ways, covenants, restrictions, reservations, applicable building and zoning ordinances and use regulations and restrictions of record, and payment of accruing present year taxes and assessments as agreed to by parties above.

TO HAVE AND TO HOLD the said premises, with its appurtenances, unto the said Grantee, and to the Grantee's heirs and assigns forever. And the said Grantor does hereby covenant to and with the said Grantee, that the Grantor is the owner in fee simple of said premises; that said premises are free from all encumbrances except current years taxes, levies, and assessments, and except U.S. Patent reservations, restrictions, easements of record and easements visible upon the premises, and that Grantor will warrant and defend the same from all claims whatsoever.

RECEIVED BY
ASSESSOR

For PLATTING

Date 7/3/07 Time 1:50

152

WESTON S. DAVIS, ESQ (ISB No. 7449)
NELSON HALL PARRY TUCKER, P.A.
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Telephone (208) 522-3001
Fax (208) 523-7254
Attorneys for Plaintiff

2009 SEP 14 PM 2:12
DISTRICT COURT
JEFFERSON COUNTY, IDAHO

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF JEFFERSON

WILLIAM SHAWN GOODSPEED and
SHELLEE BETH GOODSPEED, husband and
wife,

Plaintiffs,

vs.

SHIPPEN CONSTRUCTION, INC., an Idaho
corporation, and ROBERT and JORJA
SHIPPEN, husband and wife,

Defendants.

Case No.: CV-09-015

NOTICE OF HEARING

PLEASE TAKE NOTICE that on the 28th day of September, 2009, at 2:00 p.m., of said day, or as soon thereafter as counsel can be heard in the above court, in Rigby, Jefferson County, Idaho, Plaintiffs will call up for hearing Plaintiffs' Motion to Deem Admitted Plaintiffs Requests for Admission to Defendants and Plaintiff's Motion to Amend Complaint before the Honorable Gregory Moeller, District Judge.

DATED this 11 day of September, 2009.


WESTON S. DAVIS, ESQ.

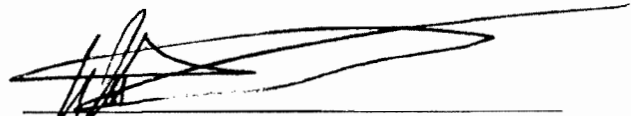
CERTIFICATE OF SERVICE

I hereby certify that I served a true copy of the foregoing document upon the following this 11 day of September 2009, by hand delivery, mailing with the necessary postage affixed thereto, facsimile, or overnight mail.

Robin D. Dunn
P.O. Box 277
477 Pleasant Country Lane
Rigby, ID 83442-0277

Hon. Greg Moeller
Madison County Courthouse
P. O. Box 389
Rexburg, ID 83440

- Mailing
- Hand Delivery
- Fax
- Overnight Mail



WESTON S. DAVIS, ESQ.

L:\wsd\~ Clients\7411.1 Goodspeed\Amend Complaint (NoH).wpd

155

WESTON S. DAVIS, ESQ (ISB No. 7449)
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2009 SEP 14 PM 2:12
DISTRICT COURT
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Attorneys for Plaintiff

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wife,

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vs.

SHIPPEN CONSTRUCTION, INC., an Idaho
corporation, and ROBERT and JORJA
SHIPPEN, husband and wife,

Defendants.

Case No.: CV-09-015

**MOTION TO AMEND
COMPLAINT**

COME NOW Plaintiffs, William and Shellee Goodspeed, through counsel of record and move the Court to grant leave to amend their Complaint. A copy of the proposed amended Complaint is attached hereto as Exhibit "A".

After conducting initial discovery and inquiring into numerous documents of public record, it has been determined that:

A. Defendants have stated in their responses to discovery that "Marriott Homes,

Inc. [was] the builder of the residence” and “Shippen Construction Inc. did not work as the general contractor but as a sub-contractor for Marriot Homes.”


(Response to Interrogatory No. 1).

- B. Robert Shippen stated in his Affidavit in Support of Motion to Dismiss: “The main contractor on this case and general contractor who caused the sale of the property is Marriott Homes, Inc.”
- C. After inspection of public records, the purchase and sale documents, and other closing documents submitted with Plaintiff’s Response to Converted Motion for Summary Judgment indicate that Robert Shippen and his wife, Jorja Shippen acted as individuals doing business as Shippen Construction, acted as husband and wife, and may have still been acting in the capacity of Shippen Construction, Inc., despite Mr. Shippen’s statements to the contrary.

WHEREFORE, Plaintiffs ask the Court to grant leave to amend the Complaint so it may include these individuals to the extent any such allegations or documented findings may be true.

Plaintiffs give notice of their intent to present evidence and testimony at hearing and to cross examine Defendants and their affiant/witnesses.

DATED this 11 day of September, 2009.


WESTON S. DAVIS, ESQ.

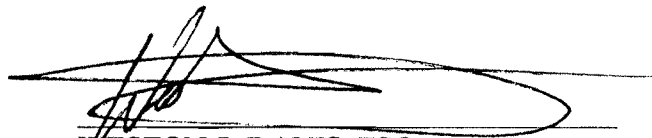
CERTIFICATE OF SERVICE

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WESTON S. DAVIS, ESQ.

L:\wsd\~ Clients\7411.1 Goodspeed\Amend Complaint (Motion).wpd

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Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF JEFFERSON

WILLIAM SHAWN GOODSPEED and
SHELLEE BETH GOODSPEED, husband and
wife,

Plaintiffs,

vs.

SHIPPEN CONSTRUCTION, INC., an Idaho
corporation, ROBERT and JORJA SHIPPEN,
husband and wife, ROBERT and JORJA
SHIPPEN, dba SHIPPEN CONSTRUCTION,
ROBERT SHIPPEN, an individual, and
MARRIOTT HOMES, LLC.

Defendants.

Case No.: CV-09-015

AMENDED COMPLAINT

COMES NOW Plaintiffs, as and for a claim for relief, plead and allege as follows:

1. That Plaintiffs, WILLIAM SHAWN and SHELLEE BETH GOODSPEED, are bona fide residents of the State of Idaho who reside in Jefferson County.
2. That Defendant, SHIPPEN CONSTRUCTION, INC., is an Idaho corporation in good standing with the State of Idaho.
3. That Defendants, ROBERT and JORJA SHIPPEN, are a bona fide residents of



the State of Idaho who reside in Jefferson County.

4. That Defendant, MARRIOTT HOMES,LLC, is an Idaho Corporation in good standing with the State of Idaho.

5. That the subject property of this litigation, namely, 3709 East 319 North, Rigby, Idaho, is located in Jefferson County.

6. That both jurisdiction and venue are proper in this action.

7. That pursuant to Idaho Code § 6-2503, Plaintiff's served written notice of the ensuing claim on the construction professional, Shippen Construction, Inc., and Robert Shippen, by mailing a copy to Robert Shippen by certified mail on the Idaho corporation's registered agent. Attached hereto as Exhibit "A" is a copy of such attempt to comply with the Notice and Opportunity to Repair Act, together with a acknowledgment of receipt.

8. Plaintiffs received a letter from Dunn Law Offices, PLLC on November 19, 2008, which volunteers to accept service of a complaint against Defendants, lists defenses Defendants will raise if a complaint is filed (none of which notify Plaintiffs that they have allegedly attempted to sue the wrong entity), and fails to assert any willingness to repair or remedy the construction defect. Plaintiffs therefore have brought this action against Defendants in compliance with the Act.

9. That, upon information and belief, Marriott Homes, LLC is a closely held limited liability company wherein Robert and Jorja Shippen are the only members or constitute a majority of the members in the company. Additionally, Robert Shippen is the registered agent for Marriott Homes, LLC, and Marriot Homes, LLC shares the same physical address as Shippen Construction, Inc. Therefore, Marriott Homes, LCC was also on notice of the ensuing

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claim prior to its filing.

COUNT ONE: BREACH OF EXPRESS WARRANTY

10. Plaintiffs hereby incorporate and re-allege paragraphs 1 - 9 and further plead and allege as follows:

11. On June 17, 2007, Plaintiffs and Defendants (Shippen Construction, Inc.; and/or Robert and Jorja Shippen, husband or wife; and/or Robert and Jorja Shippen d/b/a Shippen Construction; and/or Robert Shippen; and/or Marriott Homes, LLC) entered a real estate contract for the purchase and sale of a residence and real property commonly referred to as 319 N. 3709 E., Rigby, ID 83442 (hereinafter "the Property"). This purchase and sale agreement was amended on June 18, 2007 and then again on July 2, 2007.

12. The Purchase and Sale Contract expressly extends a builder's warranty on the Property for a minimum of one year.

13. Additionally, on August 8, 2006, Defendants, through its/their authorized agents, listed the Property for sale on the Multiple Listing Service (hereinafter "MLS") in Idaho.

14. That MLS listing specifically stated twice that the Property had never had sub water flooding issues, when in fact it had.

15. That MLS listing also stated twice that the Builder would install a leaching system to give the buyer peace of mind against flooding.

16. The MLS listing served as an express warranty, warranting that the Property had never flooded and would not flood.

17. After the Plaintiffs' July 2, 2007 purchase of the Property, they learned from a neighbor that the Property's basement had flooded in August of 2006, contrary to the

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representation in the MLS listing.

18. Despite the installment of a leaching system, the Property flooded again in August of 2007 and September of 2007 (within the one year warranty period) and continues to flood frequently from seeping groundwater today.

19. The express warranties were therefore breached to the extent the Defendants misrepresented that the house had not flooded and would not flood.

20. These express warranties were further breached when the house flooded in August and September of 2007 and thereafter, subsequent to the time of the sale.

21. As a result of this flooding, Plaintiffs have suffered damages in an amount in excess of \$10,000, which shall be proven at trial.

COUNT TWO: BREACH OF IMPLIED WARRANTY

22. Plaintiffs hereby incorporate and re-allege paragraphs 1 - 21 and further plead and allege as follows:

23. Implied in every newly constructed residence lies an implied warranty of habitability. Defendants (Shippen Construction, Inc.; and/or Robert and Jorja Shippen, husband or wife; and/or Robert and Jorja Shippen d/b/a Shippen Construction; and/or Robert Shippen; and/or Marriott Homes, LLC) therefore extended a implied warranty of habitability to Plaintiffs.

24. That implied warranty was breached when the residence flooded in August and September of 2007 and each time it has flooded thereafter.

25. Such continual flooding results in the uninhabitability of the entire residence.

26. As a result of this flooding, Plaintiffs have suffered damages in an amount in

excess of \$10,000, which shall be proven at trial.

**COUNT THREE: BREACH OF THE IMPLIED COVENANT
OF GOOD FAITH AND FAIR DEALING**

27. Plaintiffs hereby incorporate and re-allege paragraphs 1 - 26 and further plead and allege as follows:

28. Implied in every contract is a covenant of good faith and fair dealing.

29. Defendants (Shippen Construction, Inc.; and/or Robert and Jorja Shippen, husband or wife; and/or Robert and Jorja Shippen d/b/a Shippen Construction; and/or Robert Shippen; and/or Marriott Homes, LLC) represented to Plaintiffs that the Property Plaintiffs were about to purchase had not flooded, when in fact it had flooded.

30. Defendants further represented that a leaching system was installed to prevent snow run off and to give peace of mind against sub-water flooding.

31. Defendants breached its/their implied covenant of good faith and fair dealing by misrepresenting the condition of and flooding history of the Property.

32. As a result of this breach, Plaintiffs have suffered damages in an amount in excess of \$10,000, which shall be proven at trial.

**COUNT FOUR: FRAUDULENT
CONCEALMENT OF KNOWN DEFECT**

33. Plaintiffs hereby incorporate and re-allege paragraphs 1- 32 and further plead and allege as follows:

34. Defendants (Shippen Construction, Inc.; and/or Robert and Jorja Shippen, husband or wife; and/or Robert and Jorja Shippen d/b/a Shippen Construction; and/or Robert Shippen; and/or Marriott Homes, LLC) knowingly concealed the following facts from

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Plaintiffs:

- a) Defendants concealed the fact that the property had flooded prior to the sale by representing that it had not flooded.
- b) Defendants knowingly installed a sump pump under the false stated premise that it was intended for winter snow run off.

35. The condition of the Property and these statements were material to the purchase of the Property.

36. At the time these statements were made, Defendants knew the statements were false and Plaintiffs did not.

37. Defendants intended for the Plaintiffs to rely on these statements.

38. Plaintiffs did in fact rely on these statements.

39. Plaintiffs' reliance was reasonable.

40. As a proximate result of Defendants' misrepresentations, Plaintiffs suffered damages in excess of \$10,000.00, in an amount to be proven at trial.

**COUNT FIVE: FRAUDULENT
MISREPRESENTATION OF KNOWN FACT**

41. Plaintiffs hereby incorporates and re-allege paragraphs 1- 40 and further plead and allege as follows:

42. Defendants (Shippen Construction, Inc.; and/or Robert and Jorja Shippen, husband or wife; and/or Robert and Jorja Shippen d/b/a Shippen Construction; and/or Robert Shippen; and/or Marriott Homes, LLC) knowingly misrepresented the following facts to Plaintiffs:

- a) Defendants misrepresented in their MLS listing that the Property had

never flooded prior to the sale, when in fact it had.

- b) Defendants misrepresented that a sump pump was installed for winter snow runoff, when it was actually installed to remove ground water.
- c) Defendants misrepresented that subsequent flooding in August of 2007 was the result of a nearby canal rupture.

43. These statements were material to the purchase of the Property.

44. At the time these statements were made, Defendants knew the statements were false and Plaintiffs did not.

45. Defendants intended for the Plaintiffs to rely on these statements.

46. Plaintiffs did in fact rely on these statements.

47. Plaintiffs' reliance was reasonable.

48. As a proximate result of Defendants' misrepresentations, Plaintiffs suffered damages in excess of \$10,000.00, in an amount to be proven at trial.

COUNT SIX: FRAUD IN THE INDUCEMENT

55. Plaintiffs hereby incorporate and re-allege paragraphs 1 - 48 and further plead and allege as follows:

56. Defendants (Shippen Construction, Inc.; and/or Robert and Jorja Shippen, husband or wife; and/or Robert and Jorja Shippen d/b/a Shippen Construction; and/or Robert Shippen; and/or Marriott Homes, LLC) knowingly misrepresented the following facts from Plaintiffs:

- a) Defendants misrepresented in their MLS listing that the Property had never flooded prior to the sale, when in fact it had.

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- b) Defendants misrepresented that a sump pump/leaching system was installed for winter snow runoff, when it was actually installed to remove ground water.

57. The condition of the Property and these statements were material to the purchase of the Property.

58. At the time these statements were made, Defendants knew the statements were false and Plaintiffs did not.

59. Defendants intended for the Plaintiffs to rely on these statements to induce Plaintiffs to purchase the property.

60. Plaintiffs did in fact rely on these statements.

61. Plaintiffs' reliance was reasonable.

62. As a proximate result of Defendants' misrepresentations, Plaintiffs suffered damages in excess of \$10,000.00, in an amount to be proven at trial.

COUNT SEVEN: UNJUST ENRICHMENT

63. Plaintiffs hereby incorporate and re-allege paragraphs 1 - 63 and further plead and allege as follows:

64. Defendants (Shippen Construction, Inc.; and/or Robert and Jorja Shippen, husband or wife; and/or Robert and Jorja Shippen d/b/a Shippen Construction; and/or Robert Shippen; and/or Marriott Homes, LLC) were unjustly enriched by obtaining the agreed upon purchase price of the residence of \$272,000, in exchange for a house that representedly had no history of flooding and upon guarantees that the house would not flood.

65. Plaintiffs detrimentally relied on Defendants' representations regarding the

1/16/10

Property.

66. Because Defendants misrepresented the status of the house, Defendants obtained a higher purchase price for the house than they would have received had Defendants made the flooding disclosure. This resulted in unjust enrichment to the Defendants.

67. But for Defendants' misrepresentation, Plaintiffs would not have even purchased the Property.

68. That as a proximate result of Defendants' misrepresentations, Defendants were unjustly enriched in excess of \$10,000.00, in an amount to be proven at trial.

**COUNT EIGHT: ALTER EGO
(Veil Piercing)**

69. Plaintiffs hereby incorporate and re-allege paragraphs 1 - 68 and further plead and allege as follows:

70. That defendant Robert and/or Jorja Shippen maintains such a unity of interest in defendants Shippen Construction, Inc. and in Marriott Homes, LLC that the individuality of such entities has ceased.

71. That the fiction of a separate existence between said Robert and/or Jorja Shippen and said defendant entities would perpetuate fraud or an inequitable result to the extent Robert and/or Jorja Shippen intend to rely on corporate or limited liability status solely as a shield against liability of the breaches and fraud heretofore mentioned.

72. Based on information and belief, the value of the Defendant entities has been filtered or siphoned to Robert and/or Jorja Shippen for personal use, rendering the viability of any judgment as enforceable only against Robert and/or Jorja Shippen.

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73. That the damages and claims for liability (including, but not limited to, misrepresentation, concealment of a know defect and fraud in the inducement) sought forth above against Marriott Homes, LLC and/or Shippen Construction, Inc., should be imposed upon Robert Shippen under the theory of alter ego or corporate veil piercing.

ATTORNEY'S FEES

Plaintiffs have been required to retain an attorney to prosecute this action and are entitled to costs and attorney fees pursuant to Idaho Code §12-120 and §12-121 and I.R.C.P. 54. Further, Plaintiffs are entitled to attorneys fees pursuant to the parties' purchase and sale agreement of the Property. In the event this matter is taken by default, Plaintiffs are entitled to a reasonable attorney fee of \$2,500.00, and such additional amount in the event this matter is contested.

WHEREFORE, Plaintiff prays for judgment as follows:

A. That the contract for the sale of the Property be rescinded, with all title and obligations on the Property being reinstated to Defendants, relieving Plaintiffs of any future obligations on the residence;

B. That Plaintiffs additionally be awarded money damages in an amount to reflect their improvements on the property in an amount in excess of \$10,000 to be proven at trial;

C. That Plaintiffs additionally be awarded money damages in an amount to reflect Plaintiff's efforts to mitigate the damage to the Property as a result of the flooding;

D. That, in the event the contract is not rescinded, Plaintiffs receive damages in excess of \$10,000.00 in an amount to be proven at trial;

E. That in the event the contract is not rescinded, Defendants be ordered to repair

and restore the Property to the extent reasonably possible to ensure continuing and uninterrupted habitability thereof;

F. For attorneys fees in the amount of \$2,500.00 in the event this matter is taken by Default, and such additional amounts that may be incurred in the event this matter is contested; and

G. For such other relief as the Court deems just and proper.

DATED this _____ day of September, 2009.

WESTON S. DAVIS, ESQ.

CERTIFICATE OF SERVICE

I hereby certify that I served a true copy of the foregoing document upon the following this _____ day of September 2009, by hand delivery, mailing with the necessary postage affixed thereto, facsimile, or overnight mail.

Robin D. Dunn
P.O. Box 277
477 Pleasant Country Lane
Rigby, ID 83442-0277

Hon. Gregory Moeller
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WESTON S. DAVIS, ESQ.

L:\wsd\~ Clients\7411.1 Goodspeed\Complaint (Amended).wpd

167

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2009 SEP 17 PM 4:41
 DISTRICT COURT
 JEFFERSON COUNTY, IDAHO

Attorneys for Defendants

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE
 STATE OF IDAHO, IN AND FOR THE COUNTY OF JEFFERSON

WILLIAM SHAWN GOODSPEED and)
 SHELEE BETH GOODSPEED,)
 husband and wife,)

Plaintiffs,)

vs.)

SHIPPEN CONSTRUCTION, INC., an)
 Idaho corporation, and ROBERT and)
 JORJA SHIPPEN, husband and wife,)

Defendants.)

Case No. CV 09-015

RESPONSE TO THE
 PLAINTIFFS' REPLY
 TO DEFENDANTS'
 SUMMARY JUDGEMENT;
 REPLY TO REQUEST TO
 AMEND COMPLAINT

The defendants originally filed a motion to dismiss the complaint of the plaintiffs for the reason and belief that the named defendants have nothing to do with the cause of action alleged by the plaintiffs. The court indicated that an affidavit had been filed and would convert the motion to dismiss into a summary judgment motion. The plaintiff had an opportunity to respond as the court set this matter for hearing on the 28th day of September, 2009. The defendant was allowed to reply 7 days before the hearing. This memorandum and the additional affidavits are the reply of the defendants.

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Additionally, the plaintiffs have filed a request to amend the complaint to add another party not named. The defendants will respond to this request.

A. Standard of Review.

This Court is required to review a motion for summary judgment by applying the following standard:

Summary judgment is appropriate if the pleadings, affidavits, and discovery documents on file with the court, read in the light most favorable to the nonmoving party, demonstrate no material issue of fact such that the moving party is entitled to a judgment as a matter of law. The burden of proving the absence of material facts is upon the moving party. The adverse party, however, “may not rest upon the mere allegations or denials of his pleadings, but his response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial.” In other words, the moving party is entitled to a judgment when the nonmoving party fails to make a showing sufficient to establish the existence of an element essential to that party’s case on which that party will bear the burden of proof at trial.

Baxter v. Craney, 135 Idaho 166, 170, 16 P.3d 263, 266 (2000) (citations omitted). The Court should “liberally construe the record in favor of the party opposing the motion for summary judgment, drawing all reasonable inferences and conclusions supported by the record in favor of that party.” *Walker v. Hollinger*, 132 Idaho 172, 175, 968 P.2d 661, 664 (1998).

Notwithstanding, the following also applies to the case herein:

[W]hen a motion for summary judgment which has been properly supported with evidence indicating the absence of material factual issues, the burden shifts to the non-moving party to make a showing of the existence of a genuine material fact which would preclude summary judgment. This standard of review is not affected by the fact that both parties have filed motions for summary judgment. Rather, each motion must be separately considered on its own merits, with the court drawing all reasonable inferences against the party whose motion is under consideration.

Treasure Valley Gastroenterology Specialists, P.A., v. Woods, 135 Idaho 485, 488-489 20 P.3d 21, 24-25 (2001).

B. Argument.

The argument is very simple and straight-forward. The named defendant should be dismissed because these defendants have nothing to do with the cause of actions(s) being alleged by the plaintiffs.

First, the owners of the real property in question were Robert and Jorja Shippen, husband and wife. They owned real property as individuals and had nothing to do with the building or workmanship of the house placed on their real property. Obviously, they would have to sign sales agreements, deeds and transfers to complete the sale to the plaintiffs. But, they were not responsible, in any manner, for the building and construction of the structure on their real property. Thus, they should be dismissed from the lawsuit. Nothing in opposing affidavits rebuts this position.

Second, the plaintiffs have named Shippen Construction, Inc. as a co-defendant. This entity is a subcontractor working on the project. The subcontractors are numerous on this project. None of the other subcontractors are named in the lawsuit. Shippen Construction, Inc. is a lawful corporation with its agent as Robert Shippen. It is a concrete and excavation company. It does not perform general contracting and has never built a house as a general contractor. This factual truth has not been rebutted and is contained in both the original and supplemental affidavits of Robert Shippen. Thus, this subcontractor should be dismissed.

This corporation never purchased materials or supplies, paid subcontractors or

performed any of the general contract services of the building. It provided concrete, excavation and oversight, via the general contractor, for subcontract duties as mentioned. It only performed those services consistent with such subcontract duties.

With these two parties dismissed, the complaint fails unless it is amended.

Therefore the complaint should be dismissed.

The actual general contractor is Marriott Homes, LLC. This limited liability company has is an on-going and licensed entity in the state of Idaho. Robert Shippen is the manager/member. (On tax returns it has often been listed as a corporation as that is the policy of the IRS in such returns). It pays all subcontractors, purchases supplies and materials, handles all billings and payments and oversees the subcontractors and completion of the project. If any negligence can be attributed to anyone, this would be the contractor responsible for the actions of the building. No other entity or person is responsible for the actions of the overall project.

Plaintiffs have filed documents indicating that Shippen Construction, Inc. or as a d/b/a could be responsible. The affidavit of James Lynch makes clear that Shippen Construction is associated with Robert Shippen for numerous years and oftentimes is written on documents used by the building officials. However, he knew that the general contractor was always Marriott Homes, LLC. The county was aware that four separate Shippen Construction companies exist in Jefferson County, Idaho. None of these companies are the same and are owned and operated by different Shippen persons.

The correct entity for the purpose of the complaint is simply Marriott Homes, LLC. Plaintiffs know realize such fact and attempt to amend the complaint but want to include all other potential persons/entities it can muster. This only confuses and complicates more

simplistic issues. The complaint should be dismissed and the plaintiffs refile with the proper party.

RESPONSE TO AMEND COMPLAINT

The plaintiffs have filed a motion to amend complaint to add Marriott Homes, LLC. Courts routinely grant such motions—but the proper procedure would be to dismiss the complaint and re-file in correct manner. The defendants have no objection, in the face of judicial economy, to have an amended complaint EXCLUDING all but Marriott Homes, LLC. These current defendants request fees and costs for dealing with the amended complaint pursuant to statute, rule and case law.

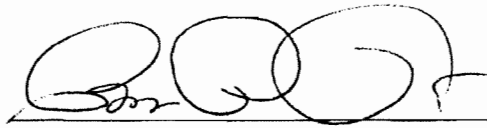
If the court will recall, the defendants had difficulty answering requests for admissions since the proper party was not named. The court considered attorney fees in compelling answers. The undersigned attorney took full responsibility for the late answers and requested that any fees be attributed to him. However, the undersigned attorney requested this court, and also filed a Rule 60(b) motion to have the answers that were submitted serve as the correct answers due to his own mistake and/or neglect. That motion is before the court in response and in conjunction with the summary judgment motion and the motion to amend.

In the spirit of fairness, if the amended complaint is allowed with the only proper party, the defendant would incur additional attorney fees to answer. As such, fees should be awarded to the defendants if this occurred. A simple solution is to waive the fees awarded to plaintiffs for the late answers to discovery and offset the same against the amended complaint. In that manner all parties would be treated fairly and the new Amended Answer and fees associated therewith could be offset against the prior fees for discovery.

CONCLUSION

The original complaint should be dismissed as to all defendants. The court could either allow the plaintiffs to re-file or to allow an amended complaint naming Marriott Homes, LLC only. Fees for late discovery by defendants could be offset against fees for additional answer and response to the Motion to Amend by defendants. The answers to Requests for Admissions, filed by the defendants, should be allowed to stand as no prejudice has occurred to plaintiffs and the case is early in the discovery process.

DATED this 17^h day of September, 2009.




ROBIN D. DUNN
ATTORNEY FOR DEFENDANTS

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 17^h day of September, 2009, a true and correct copy of the foregoing was delivered to the following person(s) by:

- Hand Delivery
- Postage-prepaid mail
- Facsimile Transmission



Robin D. Dunn, Esq.
DUNN LAW OFFICES, PLLC

10/4

Weston S. Davis, Esq.
P.O. Box 51630
Idaho Falls ID, 83405

Chamber Copy:
Hon. Gregory Moeller
Rexburg, Idaho

170

DUNN LAW OFFICES, PLLC
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 rdunn@dunnlawoffices.com

2009 SEP 17 PM 4:41
 DISTRICT COURT
 JEFFERSON COUNTY, IDAHO

Attorneys for Defendants

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE
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 husband and wife,)

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SHIPPEN CONSTRUCTION, INC., an)
 Idaho corporation, and ROBERT and)
 JORJA SHIPPEN, husband and wife,)

Defendants.)

Case No. CV 09-015

SUPPLEMENTAL AFFIDAVIT OF
 ROBERT SHIPPEN

STATE OF IDAHO)
)ss:
 COUNTY OF JEFFERSON)

ROBERT SHIPPEN, being first duly sworn, deposes and states as follows:

1) That he and his wife are named defendants in the above named lawsuit. The statements and facts herein are based upon the personal knowledge of the affiant.

2) That he and his wife have nothing to do with the allegations of the complaint on file herein as they did not act in their individual capacities in construction or building of the subject real property. It is true that the real property was titled in their individual names;

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but, a general contractor performed all work on the premises. That general contractor is Marriott Homes, LLC.

Ownership of the real property required that the husband and wife, Robert and Jorja Shippen, transfer title to the plaintiffs at closing. Your affiant states, as husband and wife, nothing more was performed in the pending case by these two individuals.

3) That Shippen Construction, Inc. is a subcontractor and has nothing to do with the general contractor or the sale of the real property. County employees are familiar with Robert Shippen and his excavation and concrete company and normally simply state: "Shippen Construction" on any forms. In fact, there are four (4) Shippen Construction companies in Jefferson County, Idaho.

However, ALL purchases of materials and supplies were through the business entity, Marriott Homes, LLC. All payments to subcontractors were through the checking account of Marriott Homes, LLC. Your affiant purchased all materials and supplies, on behalf of Marriott Homes, LLC, through various wholesalers such as Stock Building Supply.

4) The various subcontractors on the case are as follows:

- a) Justin Fullmer;
- b) L&F Electric;
- c) Holeshoot Plumbing;
- d) T. Merrill Construction;
- e) Southerland Cabinetry;
- f) Keith Klingler roofing;
- g) Rocky Mountain Siding;
- h) Shippen Construction, Inc.

5) The main contractor on this case and general contractor who caused the construction and who caused the building of the property is Marriott Homes, LLC. This is an Idaho limited liability company (tax forms require the term corporation) licensed to do

business in Idaho and currently active. None of the named defendants in the above named lawsuit had any involvement other than Shippen Construction, Inc. was a subcontractor who performed concrete and excavation services. Excavation is associated with sewer permits.

Any exposure, if any, is through the general contractor. As such, the undersigned requests the complaint be dismissed, with prejudice, and/or if the court allows an amended complaint that the only party named would be the general contractor, Marriott Homes, LLC.

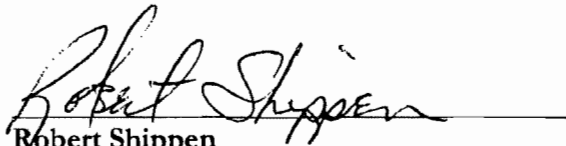
6) Shippen Construction, Inc., has never built a house since its formation as a corporation. It has always acted as an excavation and concrete company. This company has never paid any material or supplies for homes except those associated with excavation and concrete.

7) Your affiant further states that Robert and Jorja Shippen, as husband and wife, have never built a home for resale and have only built their own personal dwellings during their marriage. The last home that was sold by Robert and Jorja Shippen was their personal residence for 18 years.

8) Marriot Homes has built homes for resale since 1988 and became a limited liability company approximately 4-5 years ago.

9) Further your affiant sayeth naught.

DATED this 16th day of September, 2009.


Robert Shippen
Agent for Shippen Construction, Inc. and in
his individual capacity

SUBSCRIBED AND SWORN to before me this 16th day of September, 2009.



Notary Public
Residing at: Rigby, Idaho
Commission Expires: 10/01/10

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the ^{17th} 16th day of September, 2009, a true and correct copy of the foregoing was delivered to the following person(s) by:

- Hand Delivery
- Postage-prepaid mail
- Facsimile Transmission

Robin D. Dunn, Esq.
DUNN LAW OFFICES, PLLC

Weston S. Davis, Esq.
P.O. Box 51630
Idaho Falls ID, 83405

Chamber Copy:
Hon. Gregory Moeller
Rexburg, Idaho

DUNN LAW OFFICES, PLLC
 Robin D. Dunn, Esq., ISB # 2903
 Amelia A. Sheets, Esq., ISB #5899
 P.O. Box 277
 477 Pleasant Country Lane
 Rigby, Idaho 83442
 (208) 745-9202 (t)
 (208) 745-8160 (f)
 rdunn@dunnlawoffices.com

2009 SEP 17 PM 4:42
 DISTRICT COURT
 JEFFERSON COUNTY, IDAHO

Attorneys for Defendants

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE
 STATE OF IDAHO, IN AND FOR THE COUNTY OF JEFFERSON

WILLIAM SHAWN GOODSPEED and)
 SHELEE BETH GOODSPEED,)
 husband and wife,)

Case No. CV 09-015

Plaintiffs,)

AFFIDAVIT OF
 JAMES LYNCH

vs.)

SHIPPEN CONSTRUCTION, INC., an)
 Idaho corporation, and ROBERT)
 JORJA SHIPPEN, husband and wife,)

Defendants.)

STATE OF IDAHO)
)ss:
 COUNTY OF JEFFERSON)

JAMES LYNCH, being first duly sworn, deposes and states as follows:

1) That he is the building inspector for Jefferson County, Idaho. Further, your affiant has reviewed the affidavit of Brenda Monson who works in the Planning and Zoning Department with your affiant as building inspector. The statements and facts herein are based upon the personal knowledge of your affiant affiant.

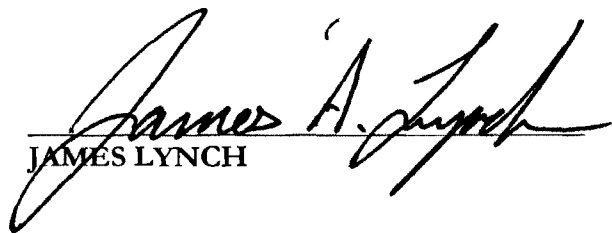
2) That he has signed various "inspection tickets" that are attached to the affidavit of

Brenda Monson. The name "Shippen Construction" appears on those tickets or in the affidavit of Brenda Monson on various documents. The name "Shippen Construction" is associated with Robert Shippen and does not reflect the actual general contractor. The Shippen Construction name is associated with concrete and excavation and is known to your affiant.

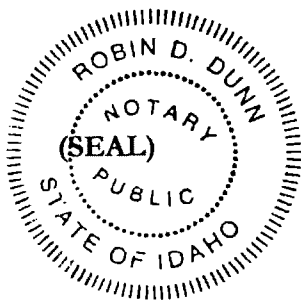
3) The actual general contractor on the 3709 E. 319 N. Rigby, Idaho property was not "Shippen Construction". Your affiant knows the general contractor to be Marriott Homes, LLC. Robert Shippen is a principal owner and agent of both Shippen Construction, Inc. and of Marriott Homes, LLC. Thus, to be technically correct, the documents should have stated Marriott Homes, LLC and not the concrete and excavating company of Shippen Construction, Inc.

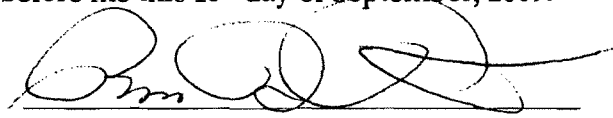
4) Further your affiant sayeth naught.

DATED this 16th day of September, 2009.


JAMES LYNCH

SUBSCRIBED AND SWORN to before me this 16th day of September, 2009.

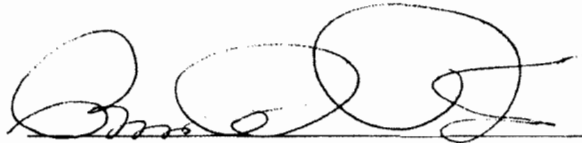



Notary Public
Residing at: Rigby, Idaho
Commission Expires: 10/01/10

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the ^{17th}~~16th~~ day of September, 2009, a true and correct copy of the foregoing was delivered to the following person(s) by:

- Hand Delivery
- Postage-prepaid mail
- Facsimile Transmission



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DUNN LAW OFFICES, PLLC

Weston S. Davis, Esq.
P.O. Box 51630
Idaho Falls ID, 83405

Chamber Copy:
Hon. Gregory Moeller
Rexburg, Idaho

173

WESTON S. DAVIS (I.S.B. # 7449)
NELSON HALL PARRY TUCKER, P.A.
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Post Office Box 51630
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FILED SEP 21 PM 2:45
DISTRICT COURT
JEFFERSON COUNTY, IDAHO

Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF JEFFERSON

WILLIAM SHAWN GOODSPEED and
SHELLEE BETH GOODSPEED, husband and
wife,

Plaintiffs,

vs.

SHIPPEN CONSTRUCTION, INC., an Idaho
corporation, and ROBERT and JORJA
SHIPPEN, husband and wife,

Defendants.

CV 2009-15
Case No. ~~CV-05-7036~~

**RESPONSE AND OBJECTION TO
MOTION TO ALLOW REQUESTS
FOR ADMISSION AND ANSWERS
TO STAND**

COME NOW Plaintiffs, by and through their attorney of record, Weston S. Davis of Nelson Hall Parry Tucker, P.A., and hereby object and respond to Defendants' Motion to Allow Requests for Admission and Answers to Stand as follows:

1. The critical time for Defendants' present motion has passed as Judge Moeller reserved making a ruling on Plaintiffs' *Motion to Deem Admitted Plaintiff's Requests for Admission to Defendants* for his ruling on Defendant's converted motion for summary judgment. Plaintiff's motion to deem the requests admitted has already been argued by both parties. Judge Moeller did

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not indicate at the hearing whether he would entertain subsequent motions to thwart Plaintiff's motion to deem the requests admitted. Submission of this motion by Defendants is untimely and is only intended to interrupt those issues already argued before this Court.

2. Additionally, I.R.C.P. 36(a) is self executing and Plaintiffs' requests, under the rules, are already deemed admitted. Plaintiffs mentioned at oral argument the purpose of their motion to obtain an order deeming the requests admitted was to prevent any possible argument from Defendants alleging a procedural defect of entry of the admission, as some judges believe it is appropriate to obtain an order admitting the requests prior to using the admissions. For that same reason, Plaintiffs continue to seek an order acknowledging the rules have deemed the requests admitted.

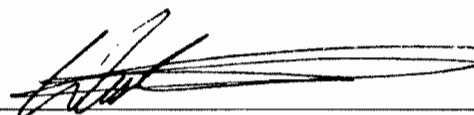
3. Defendants cite to I.R.C.P. 60(b) under the theory of inadvertence or excusable neglect as a basis for authority to allow for a variance of the self executing provisions of Rule 36(a). However, excusable neglect is measured by the what a reasonably prudent person would have done under the circumstances. *Johnson v. Pioneer Title*, 104 Idaho 727, 662 P.2d 1171 (Ct. App. 1983). In other words, neglect itself is not enough, the neglect must be excusable. *Marano v. Dial*, 108 Idaho 680, 701 P.2d 300 (Ct. App. 1985).

In this case, Defendants have been represented by Counsel since November of 2008. Plaintiffs served discovery on Defendant's counsel on May 12, 2009. Defendant's counsel did not timely respond to the discovery requests, claiming the change in judges somehow left counsel unsure of how to respond. However, in spite of a judge change, a reasonable response of an attorney with twenty plus years of litigation experience would have been a timely objection and denial of the admission based upon the alleged failure to name the proper party—a point recognized by Defendant's

counsel in paragraph 3(f) of the Affidavit of Robin Dunn. Because Defendants' failure to timely respond to these requests was not reasonable, any effort to set aside the admission under Rule 60(b) must fail.

4. Further, as has been argued by Plaintiffs' *Response to Motion to Dismiss* and *Response to Converted Motion for Summary Judgment*, Plaintiff has properly named Shippen Construction and Robert and Jorja Shippen to the complaint, so a meritorious defense does not exist to support Defendants' present motion.

DATED this 18 day of September, 2009.


WESTON S. DAVIS, ESQ.

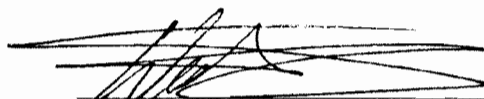
CERTIFICATE OF SERVICE

I hereby certify that I served a true copy of the foregoing document upon the following this 18 day of September 2009, by hand delivery, mailing with the necessary postage affixed thereto, facsimile, or overnight mail.

Robin D. Dunn
P.O. Box 277
477 Pleasant Country Lane
Rigby, ID 83442-0277

Hon. Gregory Moeller
Madison County Courthouse
P. O. Box 389
Rexburg, ID 83440

- Mailing
- Hand Delivery
- Fax
- Overnight Mail


WESTON S. DAVIS, ESQ.

L:\wsd\~ Clients\7411.1 Goodspeed\Response to Motion to Allow R4A to stand.wpd

16/0

WESTON S. DAVIS (I.S.B. # 7449)
NELSON HALL PARRY TUCKER, P.A.
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2009 SEP 21 PM 5:05
DISTRICT COURT
JEFFERSON COUNTY, IDAHO

Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF JEFFERSON

WILLIAM SHAWN GOODSPEED and
SHELLEE BETH GOODSPEED, husband and
wife,

Plaintiffs,

vs.

SHIPPEN CONSTRUCTION, INC., an Idaho
corporation, and ROBERT and JORJA
SHIPPEN, husband and wife,

Defendants.

Case No.: ~~CV-09-045~~ CV-2009-15

**PLAINTIFFS' MOTION TO
STRIKE AFFIDAVIT OF JAMES
LYNCH AND SUPPLEMENTAL
AFFIDAVIT OF ROBERT
SHIPPEN AND MOTION TO
DISQUALIFY**

COMES NOW the Plaintiffs by and through their attorney of record, Weston S. Davis of Nelson Hall Parry Tucker, P.A., and hereby move the Court to Strike the Affidavit of James Lynch and Supplemental Affidavit of Robert Shippen in support of their reply to Plaintiffs' Response to Defendants' Converted Motion for Summary Judgment.

The basis for this Motion to Strike is that by the recent submittal of the above mentioned affidavits in Defendant's reply brief, Plaintiffs have no opportunity to refute such affidavits. Idaho Rule of Civil Procedure 56(c) states:

If the adverse party [to a motion for summary judgment] desires to serve opposing affidavits, the party must do so at least 14 days prior to the date of the hearing. The adverse party shall also serve an answering brief at least 14 days prior to the date of the hearing. The moving party may thereafter serve a reply *brief* not less than 7 days before the date of the hearing.

Thus, the rule contemplates the adverse party may submit affidavits with their responsive brief. However, the authority for a party moving for summary judgment to submit affidavits with their reply brief is conspicuously absent from the language of Rule 56(c). Because Rule 56(c) specifically defines and provides for what can be filed in support of or in opposition to a Motion for Summary judgment, the fact that the rule fails to state that affidavits may be filed with the movant's reply brief indicates that the filing of such affidavits should not be allowed with the movant's reply brief. Allowing such affidavits to be filed and considered by the Court deprives the non-moving parties to a motion for summary judgment the ability to respond with counter affidavits.


At the hearing on Plaintiff's Motion to Dismiss on July 27, 2009, this Court extended to Defendant's counsel the opportunity to either amend his Motion to Dismiss or file a motion for summary judgment based upon the ruling that the Motion to Dismiss must be converted to a motion for summary judgment. Defendant's counsel elected to let the motion stand as it was filed with the Court with its supporting affidavit. Therefore, Plaintiff prepared its response and actions to respond around the existing motion. To allow Defendant to present affidavits that Plaintiff does not have an opportunity to refute is unjust and not permitted under the rules of procedure. Therefore, the affidavit submitted by James Lynch and Supplemental Affidavit of Robert Shippen filed with Defendants' reply should be stricken.

Should the Court determine that these affidavits are somehow admissible, which Plaintiffs firmly assert it should not, in the interest of justice, the Court should, pursuant to Rule 56(e) and 56

(f) of the Idaho Rules of Civil Procedure vacate the hearing set for September 28, 2009 and allow the non-moving parties to conduct discovery in order to fairly respond to the affidavits filed by Defendants in their reply brief.

As a final consideration before this Court, Defendants' counsel represents Jefferson County and has now submitted an affidavit from a Jefferson County employee. Such action creates a conflict of interest and calls the credibility of the Defendants' county employee testimony and affidavits into question. An attorney should not exploit his role in a public office to the advantage of another client. *See* Idaho Rule of Professional Conduct 1.11, Comment 3. Plaintiffs believe that Mr. Dunn's relationship and employment with the county is of such a nature that he would be able to elicit more favorable testimony on behalf of his client from the county employees for the sake of continuing a good working relationship between Mr. Dunn and the county for years to come. For such reason, Plaintiffs move to disqualify Mr. Dunn from representing Defendants.

DATED this 16 day of September, 2009.


WESTON S. DAVIS, ESQ.

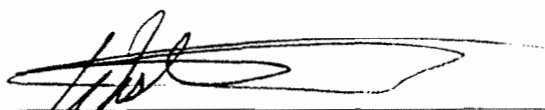
CERTIFICATE OF SERVICE

I hereby certify that I served a true copy of the foregoing document upon the following this 16 day of September 2009, by hand delivery, mailing with the necessary postage affixed thereto, facsimile, or overnight mail.

Robin D. Dunn
P.O. Box 277
477 Pleasant Country Lane
Rigby, ID 83442-0277

Hon. Gregory Moeller
Madison County Courthouse
P. O. Box 389
Rexburg, ID 83440

- Mailing
- Hand Delivery
- Fax
- Overnight Mail


WESTON S. DAVIS, ESQ.

L:\wsd\~ Clients\7411.1 Goodspeed\Motion.Strike.Affidavit.wpd

WESTON S. DAVIS (I.S.B. # 7449)
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490 Memorial Drive
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Fax (208) 523-7254

RECEIVED 21 APR 2005
CLERK OF DISTRICT COURT
JEFFERSON COUNTY, IDAHO

Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF JEFFERSON

WILLIAM SHAWN GOODSPEED and
SHELLEE BETH GOODSPEED, husband and
wife,

Plaintiffs,

vs.

SHIPPEN CONSTRUCTION, INC., an Idaho
corporation, and ROBERT and JORJA
SHIPPEN, husband and wife,

Defendants.

2009-15
Case No. CV-05-7036

**PLAINTIFFS' MOTION TO
SHORTEN TIME**

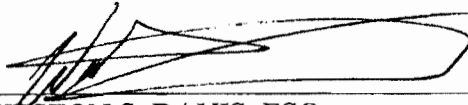
COME NOW Plaintiffs, by and through their attorney of record, Weston S. Davis of Nelson Hall Parry Tucker, P.A., and hereby move this Court for an order allowing Plaintiffs' Motion to Strike the Affidavit of James Lynch and Supplemental Affidavit of Robert Shippen in support of Defendants' reply brief on motion for summary judgment, to be heard less than fourteen (14) days after the filing of the notice of hearing as set forth in Rule 7(b)(3)(a) of the Idaho Rules of Civil Procedure.

The basis for this motion is that Defendants' Motion for Summary Judgment hearing is

currently set for September 28, 2008, at 2:00 p.m., which is related to the present motion. Plaintiffs believe that Defendants will not suffer any prejudice as a result of having this motion heard less than fourteen (14) days subsequent to its filing.

Plaintiffs also base this motion on the grounds that Plaintiffs did not receive the affidavits submitted by Defendants until eleven days prior to the hearing and were unable to give fourteen days notice before hearing on this matter.

DATED this 18 day of September, 2009.


WESTON S. DAVIS, ESQ.


CERTIFICATE OF SERVICE

I hereby certify that I served a true copy of the foregoing document upon the following this 18 day of September 2009, by hand delivery, mailing with the necessary postage affixed thereto, facsimile, or overnight mail.

Robin D. Dunn
P.O. Box 277
477 Pleasant Country Lane
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Hon. Gregory Moeller
Madison County Courthouse
P. O. Box 389
Rexburg, ID 83440

- Mailing
- Hand Delivery
- Fax
- Overnight Mail


WESTON S. DAVIS, ESQ.

L:\wsd\~ Clients\7411.1 Goodspeed\Motion.Strike.Shorten.Time.wpd

139

WESTON S. DAVIS (I.S.B. # 7449)
NELSON HALL PARRY TUCKER, P.A.
490 Memorial Drive
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Idaho Falls, Idaho 83405-1630
Telephone (208) 522-3001
Fax (208) 523-7254

2009 SEP 25 PM 2:07
JEFFERSON COUNTY, IDAHO

Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF JEFFERSON

WILLIAM SHAWN GOODSPEED and
SHELLEE BETH GOODSPEED, husband and
wife,

Plaintiffs,

vs.

SHIPPEN CONSTRUCTION, INC., an Idaho
corporation, and ROBERT and JORJA
SHIPPEN, husband and wife,

Defendants.

2009-15
Case No. CV-~~05-7036~~

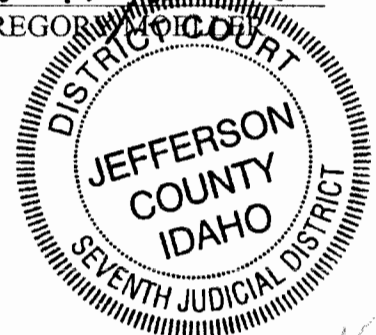
ORDER TO SHORTEN TIME

Upon showing of good cause and pursuant to the court's discretion to shorten time for a hearing, pursuant to Idaho Rule of Civil Procedure 7(b)(3),

IT IS HEREBY ORDERED that Plaintiffs' Motion to Strike shall be heard on the 28th day of September, 2009 at 2:00 p.m..

DATED this 24th day of September, 2009.


HONORABLE GREGOR
District Judge



CLERK'S CERTIFICATE OF SERVICE

I hereby certify that on this 25th day of September, 2009, a true and correct copy of the foregoing Order was served upon the following by first class mail, postage prepaid, or by hand delivery:


WESTON S. DAVIS, ESQ
NELSON HALL PARRY TUCKER, P.A.
490 Memorial Drive
Post Office Box 51630
Idaho Falls, Idaho 83405-1630

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- Fax
- E-Mail
- Overnight Mail
- Courthouse Box

Robin D. Dunn
P.O. Box 277
477 Pleasant Country Lane
Rigby, ID 83442-0277

- Mailing
- Hand Delivery
- Fax
- E-Mail
- Overnight Mail
- Courthouse Box

CLERK OF THE COURT

By: 
Deputy Clerk

L:\wsd\ Clients\7411.1 Goodspeed\Motion.Strike.Shorten.Time.(Order).wpd

DUNN LAW OFFICES, PLLC
 Robin D. Dunn, Esq., ISB # 2903
 Amelia A. Sheets, Esq., ISB #5899
 P.O. Box 277
 477 Pleasant Country Lane
 Rigby, Idaho 83442
 (208) 745-9202 (t)
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rdunn@dunnlawoffices.com

2009 SEP 29 PM 4:39
 DISTRICT COURT
 JEFFERSON COUNTY, IDAHO

Attorneys for Defendants

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE
 STATE OF IDAHO, IN AND FOR THE COUNTY OF JEFFERSON

WILLIAM SHAWN GOODSPEED and)
 SHELEE BETH GOODSPEED,)
 husband and wife,)

Plaintiffs,)

vs.)

SHIPPEN CONSTRUCTION, INC., an)
 Idaho corporation, and ROBERT and)
 JORJA SHIPPEN, husband and wife,)
 ROBERT and JORJA SHIPPEN,)
 d/b/a SHIPPEN CONSTRUCTION,)
 ROBERT SHIPPEN, an individual, and)
 MARRIOTT HOMES, LLC,)

Defendants.)

Case No. CV 09-015

MOTION TO DISCARD
 REQUESTS FOR ADMISSIONS
 AND ALLOW ANSWERS TO
 STAND

I.R.C.P. Rule 36(b)

COMES NOW, defendants, and MOVE the court for an Order, pursuant to Rule
 36(b) of the I.R.C.P., allowing the defendants Answers to Requests for Admissions to stand
 and to discard or remove defaulted Requests for Admissions.

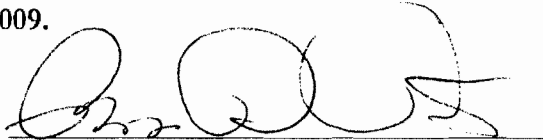
If fees are sought by plaintiffs for this motion or the motion to compel the same

176

should be offset in the court allowing the plaintiff to amend its complaint and requiring the defendants to re-answer an amended complaint.

The two motions should be an offset for attorney fees and/or costs.

Dated this 29th day of September, 2009.



Robin D. Dunn, Esq.
DUNN LAW OFFICES, PLLC

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 29th day of September, 2009, a true and correct copy of the foregoing was delivered to the following person(s) by:

Hand Delivery

Postage-prepaid mail

Facsimile Transmission



Robin D. Dunn, Esq.
DUNN LAW OFFICES, PLLC

Weston S. Davis, Esq.
P.O. Box 51630
Idaho Falls ID, 83405

Chamber Copy:
Hon. Gregory Moeller
Rexburg, Idaho

DUNN LAW OFFICES, PLLC
 Robin D. Dunn, Esq., ISB # 2903
 Amelia A. Sheets, Esq., ISB #5899
 P.O. Box 277
 477 Pleasant Country Lane
 Rigby, Idaho 83442
 (208) 745-9202 (t)
 (208) 745-8160 (f)
rdunn@dunnlawoffices.com

2010 SEP 29 PM 4:39
 DISTRICT COURT
 JEFFERSON COUNTY, IDAHO

Attorneys for Defendants

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE
 STATE OF IDAHO, IN AND FOR THE COUNTY OF JEFFERSON

WILLIAM SHAWN GOODSPEED and)
 SHELEE BETH GOODSPEED,)
 husband and wife,)

Plaintiffs,)

vs.)

SHIPPEN CONSTRUCTION, INC., an)
 Idaho corporation, and ROBERT)
 JORJA SHIPPEN, husband and wife,)
 ROBERT and JORJA SHIPPEN,)
 d/b/a SHIPPEN CONSTRUCTION,)
 ROBERT SHIPPEN, an individual, and)
 MARRIOTT HOMES, LLC,)

Defendants.)

Case No. CV 09-015

MEMORANDUM ON
 REQUESTS FOR ADMISSIONS

I.R.C.P. Rule 36(b)

The court request additional briefing within 14 days from the earlier hearing of
 September 28, 2009 on the issue of whether the court must accept "Requests for Admissions
 being Deemed Admitted" if not served within the time period set forth by Rule.

The answer to that question/issue is no.

The defendants answered Requests for Admissions propounded by the defendants

but the answers were late. Thus, the defendants request leave of the court to allow the filed answers, albeit late, to stand. No prejudice has occurred to the plaintiffs as discovery has barely commenced and a trial or other hearings have not been set. The case is in the early stages of discovery. The court certainly does not want untrue information to be submitted to the fact-finder.

Rule 36(b) supports the position of the defendants that the court should do justice and allow the proper answers to be placed before the fact-finder. Rule 36 states as follows:

(b) Effect of Admission. Any matter admitted under this rule is conclusively established unless the court on motion permits withdrawal or amendment of the admission. Subject to the provisions of Rule 16 governing amendment of a pre-trial order, the court may permit withdrawal or amendment when the presentation of the merits of the action will be sub served thereby and the party who obtained the admission fails to satisfy the court that withdrawal or amendment will prejudice that party in maintaining an action or defense on the merits. Any admission made by a party under this rule is for the purpose of the pending action only and is not an admission by the party for any other purpose nor may it be used against him in any other proceeding.

IRCP Rule 36, Requests for admission
----- Excerpt from page 107.

Case law supports this position and the discretion of the trial court. Relevant law is as follows:

Just prior to trial, the plaintiffs made a motion to have the requests for admissions "discarded." The defendant argued that the requests should be deemed admitted since they were not answered or denied within fifteen days as required by > I.R.C.P. 36(a). The trial court granted the motion to discard the requests for admissions under the circumstances of the case. We find no error in the trial court's ruling. The plaintiffs' motion was in essence a motion pursuant to > I.R.C.P. 36(b) which permits the trial court to withdraw admissions under appropriate circumstances. No prejudice occurred to Uniroyal since plaintiffs' statements in depositions and interrogatories set out plaintiffs' position which adequately denied the substance of the requests for admissions submitted by the association.

Vannoy v. Uniroyal Tire Co., 726 P.2d 648, 111 Idaho 536, (Idaho 1985)
----- Excerpt from page 726 P.2d 656.

Reading the statute and case law in conjunction indicates that the plaintiff in the

case at bar must suffer prejudice. This proposition cannot be support since the plaintiff has received complete and full answers to the requests for admissions. Those answers were available before the Motion to Compel. Furthermore, the plaintiffs have yet to rely on any Requests for Admissions since the case is so new and the substance of discovery has not been completed. Furthermore, trial has not even been set nor has a status conference setting out discovery dates, cut-offs, motions and pretrial even been contemplated. The plaintiffs have suffered no prejudice.

Case law describes prejudice as follows:

"Prejudice" as contemplated in > F.R.C.P. 36(b) is " 'not simply that the party who obtained the admission will now have to convince the fact finder of its truth. Rather, it relates to the difficulty a party may face in proving its case, e.g., caused by the unavailability of key witnesses, because of the sudden need to obtain evidence' with respect to the questions previously deemed admitted." > Hadley, 45 F.3d at 1348 (quoting Brook Village [130 Idaho 565] N. Assoc. v. General Elec. Co., 686 F.2d 66, 70 (1st Cir.1982)> To view preceding link please click here). "The party who obtained the admission has the burden of proving that withdrawal of the admission would prejudice the party's case." Id. Again, these federal decisions are persuasive and consistent with > I.R.C.P. 36(b).

The Court determined that no prejudice had occurred in Vannoy v. Uniroyal Tire Co., 111 Idaho 536, 726 P.2d 648 (1985), where, "[j]ust prior to trial, the plaintiffs made a motion to have the requests for admissions 'discarded.' " > Id. at 544, 726 P.2d at 656. In that case, "statements in depositions and interrogatories set out plaintiffs' position which adequately denied the substance of the requests for admissions submitted by the association." Id. Similarly, in the Ninth Circuit, "[c]ases finding prejudice to support a denial generally show a ... [high] level of reliance on the admissions." > Hadley, 45 F.3d at 1349. Where the motion for withdrawal is not made until the middle of the trial, prejudice has been found. Id. See > 999, 776 F.2d at 869.

Quiring v. Quiring, 944 P.2d 695, 130 Idaho 560, (Idaho 1997).

----- Excerpt from pages 944 P.2d 699-944 P.2d 700.

It is clear that the plaintiff has not suffered prejudice. Furthermore, the Requests for Admission were fully answered. Trial has not been set and the case is early. The defendants tried to dismiss the parties they believed were not properly in the case as the

Requests related, in the opinion of the defendants, to an unnamed party.

Rule 36(b) specifically addresses the court's desire to act fairly and still follow rules of order. This rule [Rule 36(b)] addresses both fairness and allows for rules to control in court procedure.

The defendants requested relief pursuant to Rule 60(b) and now relief pursuant to Rule 36(b). The court should grant such relief.

CONCLUSION

The court can determine that the ends of justice and fairness are completely compatible with rules of law. The plaintiffs are not prejudiced if the answers provided in Request for Admissions are allowed to stand and the tardy response does not deem Requests for Admissions admitted without answer. The case is "young" and discovery has not commenced in full swing. The case is not set for trial and no prejudice will occur to any party.

Dated this 29th day of September, 2009.



Robin D. Dunn, Esq.
DUNN LAW OFFICES, PLLC


CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 29th day of September, 2009, a true and correct copy of the foregoing was delivered to the following person(s) by:

Hand Delivery

Postage-prepaid mail

Facsimile Transmission



Robin D. Dunn, Esq.
DUNN LAW OFFICES, PLLC

Weston S. Davis, Esq.
P.O. Box 51630
Idaho Falls ID, 83405

Chamber Copy:
Hon. Gregory Moeller
Rexburg, Idaho

2009 SEP 30 AM 8:42
JEFFERSON COUNTY, IDAHO

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF JEFFERSON

WILLIAM SHAWN GOODSPEED and,)	
SHELLEE BETH GOODSPEED,)	Case No. CV-2009-15
husband and wife,)	
)	MINUTE ENTRY
Plaintiffs,)	ON MOTIONS
-vs.-)	
)	
SHIPPEN CONSTRUCTION, INC., an Idaho)	
Corporation, and ROBERT AND JORJA)	
SHIPPEN, husband and wife,)	
)	
Defendants.)	

September 28, 2009, at 2:04 P.M., the defendants' motion for summary judgment, plaintiffs' motion to deem admitted plaintiffs' request for admissions to defendants and plaintiffs' motion to amend complaint, plaintiffs' motion to strike and motion to disqualify and status conference came on for hearing before the Honorable Gregory W. Moeller, District Judge, sitting in open court at Rigby, Idaho.

Mr. David Marlow, Court Reporter, and Ms. Nancy Andersen, Deputy Court Clerk, were present.

Mr. Weston Davis appeared on behalf of the plaintiffs.

Mr. Robin Dunn appeared on behalf of the defendants.

Mr. Weston presented argument supporting motion to disqualify Mr. Dunn.

Mr. Dunn presented argument in objection to motion to disqualify.

Mr. Davis responded.

The Court **denied** the motion to disqualify Mr. Dunn.

Mr. Davis presented argument in support of motion to strike.

Mr. Dunn presented argument in objection to motion to strike

Mr. Davis responded.

The Court **denied** the motion to strike. The Court will allow Mr. Davis 7 days to file affidavits in rebuttal.

Mr. Davis presented argument in support of motion to amend complaint.

Mr. Dunn stated that he would stipulate to add Marriott Homes to the complaint as he feels that Marriott Homes is the only defendant.

The Court **granted** the motion to amend complaint.

Mr. Dunn presented argument in support of motion for summary judgment.

Mr. Davis presented argument in objection to motion to summary judgment.

Mr. Dunn responded.

The Court denied the motion for summary judgment.

Mr. Davis presented argument in support of motion to deem admitted

Mr. Dunn presented argument in objection to motion to deem admitted.

Mr. Davis responded.

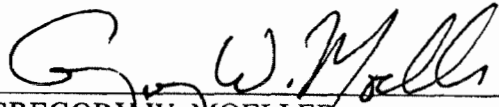
The Court offered Mr. Dunn 14 days to submit a brief. If no brief, will deem matter submitted.

Mr. Davis will have 10 days to reply if necessary.

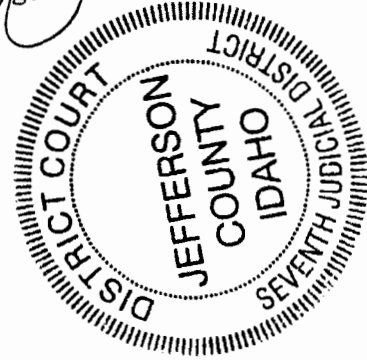
Mr. Dunn stated that the plaintiffs have been contacting the defendants.

The Court ordered that all contact between parties must be cleared by attorneys first.

Court was thus adjourned.


GREGORY W. MOELLER
District Judge

c: Weston Davis, Esq.
Robin Dunn, Esq.



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2009-09-15
FILED
CLERK OF DISTRICT COURT
JEFFERSON COUNTY, IDAHO

Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF JEFFERSON

WILLIAM SHAWN GOODSPEED and
SHELLEE BETH GOODSPEED, husband and
wife,

Plaintiffs,

vs.

SHIPPEN CONSTRUCTION, INC., an Idaho
corporation, ROBERT and JORJA SHIPPEN,
husband and wife, ROBERT and JORJA
SHIPPEN, dba SHIPPEN CONSTRUCTION,
ROBERT SHIPPEN, an individual, and
MARRIOTT HOMES, LLC.

Defendants.

Case No.: CV-09-015

AMENDED COMPLAINT

COMES NOW Plaintiffs, as and for a claim for relief, plead and allege as follows:

1. That Plaintiffs, WILLIAM SHAWN and SHELLEE BETH GOODSPEED, are bona fide residents of the State of Idaho who reside in Jefferson County.
2. That Defendant, SHIPPEN CONSTRUCTION, INC., is an Idaho corporation in good standing with the State of Idaho.
3. That Defendants, ROBERT and JORJA SHIPPEN, are a bona fide residents of the

State of Idaho who reside in Jefferson County.

4. That Defendant, MARRIOTT HOMES, LLC, is an Idaho Corporation in good standing with the State of Idaho.

5. That the subject property of this litigation, namely, 3709 East 319 North, Rigby, Idaho, is located in Jefferson County.

6. That both jurisdiction and venue are proper in this action.

7. That pursuant to Idaho Code § 6-2503, Plaintiff's served written notice of the ensuing claim on the construction professional, Shippen Construction, Inc., and Robert Shippen, by mailing a copy to Robert Shippen by certified mail on the Idaho corporation's registered agent. Attached hereto as Exhibit "A" is a copy of such attempt to comply with the Notice and Opportunity to Repair Act, together with a acknowledgment of receipt.

8. Plaintiffs received a letter from Dunn Law Offices, PLLC on November 19, 2008, which volunteers to accept service of a complaint against Defendants, lists defenses Defendants will raise if a complaint is filed (none of which notify Plaintiffs that they have allegedly attempted to sue the wrong entity), and fails to assert any willingness to repair or remedy the construction defect. Plaintiffs therefore have brought this action against Defendants in compliance with the Act.

9. That, upon information and belief, Marriott Homes, LLC is a closely held limited liability company wherein Robert and Jorja Shippen are the only members or constitute a majority of the members in the company. Additionally, Robert Shippen is the registered agent for Marriott Homes, LLC, and Marriot Homes, LLC shares the same physical address as Shippen Construction, Inc. Therefore, Marriott Homes, LCC was also on notice of the ensuing claim prior to its filing.

COUNT ONE: BREACH OF EXPRESS WARRANTY

10. Plaintiffs hereby incorporate and re-allege paragraphs 1 - 9 and further plead and AMENDED COMPLAINT

allege as follows:

11. On June 17, 2007, Plaintiffs and Defendants (Shippen Construction, Inc.; and/or Robert and Jorja Shippen, husband or wife; and/or Robert and Jorja Shippen d/b/a Shippen Construction; and/or Robert Shippen; and/or Marriott Homes, LLC) entered a real estate contract for the purchase and sale of a residence and real property commonly referred to as 319 N. 3709 E., Rigby, ID 83442 (hereinafter "the Property"). This purchase and sale agreement was amended on June 18, 2007 and then again on July 2, 2007.

12. The Purchase and Sale Contract expressly extends a builder's warranty on the Property for a minimum of one year.

13. Additionally, on August 8, 2006, Defendants, through its/their authorized agents, listed the Property for sale on the Multiple Listing Service (hereinafter "MLS") in Idaho.

14. That MLS listing specifically stated twice that the Property had never had sub water flooding issues, when in fact it had.

15. That MLS listing also stated twice that the Builder would install a leaching system to give the buyer peace of mind against flooding.

16. The MLS listing served as an express warranty, warranting that the Property had never flooded and would not flood.

17. After the Plaintiffs' July 2, 2007 purchase of the Property, they learned from a neighbor that the Property's basement had flooded in August of 2006, contrary to the representation in the MLS listing.

18. Despite the installment of a leaching system, the Property flooded again in August of 2007 and September of 2007 (within the one year warranty period) and continues to flood

frequently from seeping groundwater today.

19. The express warranties were therefore breached to the extent the Defendants misrepresented that the house had not flooded and would not flood.

20. These express warranties were further breached when the house flooded in August and September of 2007 and thereafter, subsequent to the time of the sale.

21. As a result of this flooding, Plaintiffs have suffered damages in an amount in excess of \$10,000, which shall be proven at trial.

COUNT TWO: BREACH OF IMPLIED WARRANTY

22. Plaintiffs hereby incorporate and re-allege paragraphs 1 - 21 and further plead and allege as follows:

23. Implied in every newly constructed residence lies an implied warranty of habitability. Defendants (Shippen Construction, Inc.; and/or Robert and Jorja Shippen, husband or wife; and/or Robert and Jorja Shippen d/b/a Shippen Construction; and/or Robert Shippen; and/or Marriott Homes, LLC) therefore extended a implied warranty of habitability to Plaintiffs.

24. That implied warranty was breached when the residence flooded in August and September of 2007 and each time it has flooded thereafter.

25. Such continual flooding results in the uninhabitability of the entire residence.

26. As a result of this flooding, Plaintiffs have suffered damages in an amount in excess of \$10,000, which shall be proven at trial.

COUNT THREE: BREACH OF THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING

27. Plaintiffs hereby incorporate and re-allege paragraphs 1 - 26 and further plead and allege as follows:

28. Implied in every contract is a covenant of good faith and fair dealing.

29. Defendants (Shippen Construction, Inc.; and/or Robert and Jorja Shippen, husband or wife; and/or Robert and Jorja Shippen d/b/a Shippen Construction; and/or Robert Shippen; and/or Marriott Homes, LLC) represented to Plaintiffs that the Property Plaintiffs were about to purchase had not flooded, when in fact it had flooded.

30. Defendants further represented that a leaching system was installed to prevent snow run off and to give peace of mind against sub-water flooding.

31. Defendants breached its/their implied covenant of good faith and fair dealing by misrepresenting the condition of and flooding history of the Property.

32. As a result of this breach, Plaintiffs have suffered damages in an amount in excess of \$10,000, which shall be proven at trial.

**COUNT FOUR: FRAUDULENT
CONCEALMENT OF KNOWN DEFECT**

33. Plaintiffs hereby incorporate and re-allege paragraphs 1- 32 and further plead and allege as follows:

34. Defendants (Shippen Construction, Inc.; and/or Robert and Jorja Shippen, husband or wife; and/or Robert and Jorja Shippen d/b/a Shippen Construction; and/or Robert Shippen; and/or Marriott Homes, LLC) knowingly concealed the following facts from Plaintiffs:

- a) Defendants concealed the fact that the property had flooded prior to the sale by representing that it had not flooded.
- b) Defendants knowingly installed a sump pump under the false stated premise that it was intended for winter snow run off.

35. The condition of the Property and these statements were material to the purchase

309

of the Property.

36. At the time these statements were made, Defendants knew the statements were false and Plaintiffs did not.

37. Defendants intended for the Plaintiffs to rely on these statements.

38. Plaintiffs did in fact rely on these statements.

39. Plaintiffs' reliance was reasonable.

40. As a proximate result of Defendants' misrepresentations, Plaintiffs suffered damages in excess of \$10,000.00, in an amount to be proven at trial.

**COUNT FIVE: FRAUDULENT
MISREPRESENTATION OF KNOWN FACT**

41. Plaintiffs hereby incorporates and re-allege paragraphs 1- 40 and further plead and allege as follows:

42. Defendants (Shippen Construction, Inc.; and/or Robert and Jorja Shippen, husband or wife; and/or Robert and Jorja Shippen d/b/a Shippen Construction; and/or Robert Shippen; and/or Marriott Homes, LLC) knowingly misrepresented the following facts to Plaintiffs:

- a) Defendants misrepresented in their MLS listing that the Property had never flooded prior to the sale, when in fact it had.
- b) Defendants misrepresented that a sump pump was installed for winter snow runoff, when it was actually installed to remove ground water.
- c) Defendants misrepresented that subsequent flooding in August of 2007 was the result of a nearby canal rupture.

43. These statements were material to the purchase of the Property.

44. At the time these statements were made, Defendants knew the statements were

false and Plaintiffs did not.

45. Defendants intended for the Plaintiffs to rely on these statements.

46. Plaintiffs did in fact rely on these statements.

47. Plaintiffs' reliance was reasonable.

48. As a proximate result of Defendants' misrepresentations, Plaintiffs suffered damages in excess of \$10,000.00, in an amount to be proven at trial.

COUNT SIX: FRAUD IN THE INDUCEMENT

55. Plaintiffs hereby incorporate and re-allege paragraphs 1 - 48 and further plead and allege as follows:

56. Defendants (Shippen Construction, Inc.; and/or Robert and Jorja Shippen, husband or wife; and/or Robert and Jorja Shippen d/b/a Shippen Construction; and/or Robert Shippen; and/or Marriott Homes, LLC) knowingly misrepresented the following facts from Plaintiffs:

- a) Defendants misrepresented in their MLS listing that the Property had never flooded prior to the sale, when in fact it had.
- b) Defendants misrepresented that a sump pump/leaching system was installed for winter snow runoff, when it was actually installed to remove ground water.

57. The condition of the Property and these statements were material to the purchase of the Property.

58. At the time these statements were made, Defendants knew the statements were false and Plaintiffs did not.

59. Defendants intended for the Plaintiffs to rely on these statements to induce

31

Plaintiffs to purchase the property.

60. Plaintiffs did in fact rely on these statements.

61. Plaintiffs' reliance was reasonable.

62. As a proximate result of Defendants' misrepresentations, Plaintiffs suffered damages in excess of \$10,000.00, in an amount to be proven at trial.

COUNT SEVEN: UNJUST ENRICHMENT

63. Plaintiffs hereby incorporate and re-allege paragraphs 1 - 63 and further plead and allege as follows:

64. Defendants (Shippen Construction, Inc.; and/or Robert and Jorja Shippen, husband or wife; and/or Robert and Jorja Shippen d/b/a Shippen Construction; and/or Robert Shippen; and/or Marriott Homes, LLC) were unjustly enriched by obtaining the agreed upon purchase price of the residence of \$272,000, in exchange for a house that representedly had no history of flooding and upon guarantees that the house would not flood.

65. Plaintiffs detrimentally relied on Defendants' representations regarding the Property.

66. Because Defendants misrepresented the status of the house, Defendants obtained a higher purchase price for the house than they would have received had Defendants made the flooding disclosure. This resulted in unjust enrichment to the Defendants.

67. But for Defendants' misrepresentation, Plaintiffs would not have even purchased the Property.

68. That as a proximate result of Defendants' misrepresentations, Defendants were unjustly enriched in excess of \$10,000.00, in an amount to be proven at trial.

**COUNT EIGHT: ALTER EGO
(Veil Piercing)**

69. Plaintiffs hereby incorporate and re-allege paragraphs 1 - 68 and further plead and allege as follows:

70. That defendant Robert and/or Jorja Shippen maintains such a unity of interest in defendants Shippen Construction, Inc. and in Marriott Homes, LLC that the individuality of such entities has ceased.

71. That the fiction of a separate existence between said Robert and/or Jorja Shippen and said defendant entities would perpetuate fraud or an inequitable result to the extent Robert and/or Jorja Shippen intend to rely on corporate or limited liability status solely as a shield against liability of the breaches and fraud heretofore mentioned.

72. Based on information and belief, the value of the Defendant entities has been filtered or siphoned to Robert and/or Jorja Shippen for personal use, rendering the viability of any judgment as enforceable only against Robert and/or Jorja Shippen.

73. That the damages and claims for liability (including, but not limited to, misrepresentation, concealment of a know defect and fraud in the inducement) sought forth above against Marriott Homes, LLC and/or Shippen Construction, Inc., should be imposed upon Robert Shippen under the theory of alter ego or corporate veil piercing.

ATTORNEY'S FEES

Plaintiffs have been required to retain an attorney to prosecute this action and are entitled to costs and attorney fees pursuant to Idaho Code §12-120 and §12-121 and I.R.C.P. 54. Further, Plaintiffs are entitled to attorneys fees pursuant to the parties' purchase and sale agreement of the Property. In the event this matter is taken by default, Plaintiffs are entitled to a reasonable

attorney fee of \$2,500.00, and such additional amount in the event this matter is contested.

WHEREFORE, Plaintiff prays for judgment as follows:

A. That the contract for the sale of the Property be rescinded, with all title and obligations on the Property being reinstated to Defendants, relieving Plaintiffs of any future obligations on the residence;

B. That Plaintiffs additionally be awarded money damages in an amount to reflect their improvements on the property in an amount in excess of \$10,000 to be proven at trial;

C. That Plaintiffs additionally be awarded money damages in an amount to reflect Plaintiff's efforts to mitigate the damage to the Property as a result of the flooding;

D. That, in the event the contract is not rescinded, Plaintiffs receive damages in excess of \$10,000.00 in an amount to be proven at trial;

E. That in the event the contract is not rescinded, Defendants be ordered to repair and restore the Property to the extent reasonably possible to ensure continuing and uninterrupted habitability thereof;

F. For attorneys fees in the amount of \$2,500.00 in the event this matter is taken by Default, and such additional amounts that may be incurred in the event this matter is contested; and

G. For such other relief as the Court deems just and proper.

DATED this 6 day of October, 2009.


WESTON S. DAVIS, ESQ.

CERTIFICATE OF SERVICE

I hereby certify that I served a true copy of the foregoing document upon the following this 6 day of October 2009, by hand delivery, mailing with the necessary postage affixed thereto, facsimile, or overnight mail.

Robin D. Dunn
P.O. Box 277
477 Pleasant Country Lane
Rigby, ID 83442-0277

Hon. Gregory Moeller
Madison County Courthouse
P. O. Box 389
Rexburg, ID 83440

- Mailing
 Hand Delivery
 Fax
 Overnight Mail


WESTON S. DAVIS, ESQ.

L:\wsd\~ Clients\7411.1 Goodspeed\Complaint (Amended).wpd

WESTON S. DAVIS, ESQ (ISB No. 7449)
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Idaho Falls, Idaho 83405-1630
Telephone (208) 522-3001
Fax (208) 523-7254

Attorneys for Plaintiff

2009 OCT -9 P. 11:45
DISTRICT COURT
JEFFERSON COUNTY, IDAHO

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF JEFFERSON

WILLIAM SHAWN GOODSPEED and
SHELLEE BETH GOODSPEED, husband and
wife,

Plaintiffs,

vs.

SHIPPEN CONSTRUCTION, INC., an Idaho
corporation, and ROBERT and JORJA
SHIPPEN, husband and wife,

Defendants.

Case No.: CV-09-015

**REPLY TO MOTION TO
DISCARD AND TO
MEMORANDUM ON REQUESTS
FOR ADMISSIONS**

COME Plaintiffs, by and through counsel of record, Weston S. Davis, Esq. of Nelson Hall Parry Tucker, P.A. and replies to Defendant Motion to Discard and Memorandum on Requests for Admission, pursuant to this Court's order that Plaintiffs may reply to Defendant's supplemental briefing on the admission of the requests for admission, as follows:

Defendants' Motion under I.R.C.P. 36(b) is untimely as Plaintiffs moved to have these requests for admission entered on July 13, 2009 and as the Court has already heard Plaintiffs'

motion on two occasions. Only now, after substantial expense to Plaintiffs, do the Defendants submit a motion to withdraw the admissions. Defendant's motion to withdraw is therefore untimely; substantial time and effort has already been expended to obtain an order deeming the requests as admitted. Such action causes prejudice to the Plaintiffs.

In the *Quirring* case cited by Defendant, such was not the case. In that case, the oral motion to deem the requests admitted and the oral motion to withdraw the requests were instantaneously made at the time of trial. *Quirring v. Quirring*, 130 Idaho 560, 565, 944 P.2d 695, 700 (1997). Thus, in that case, even though the motion to deem the requests was made at the time of trial, the opposing party might anticipate under I.R.C.P. 36(b) that a motion to withdraw the admissions might also be made at the time of trial. However, in this case, Plaintiffs filed their motion to deem the requests for admission admitted several months ago and have already had two hearings addressing the matter without Defendants' requesting a withdrawal of the Requests for Admission. At the very least, Plaintiffs have suffered the prejudice of lost attorneys fees incurred after filing their Motion to Deem Admitted Plaintiff's Requests for Admission to Defendants.

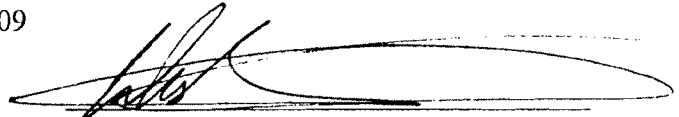
Additionally, at the conclusion of the September 28, 2009 hearing, Plaintiff's counsel notified this Court that Defendants have not presented any evidence that Plaintiffs had named the incorrect parties to the lawsuit and therefore an order deeming the requests for admission was appropriate. Thus, this Court gave Defendants fourteen (14) days from the date of the hearing to produce evidence that Robert Shippen, Jorja Shippen, and Shippen Construction, Inc. were not proper parties to the action and to present argument that the requests for admission should not be deemed admitted. Defendants have failed to introduce any physical evidence to show that Robert

Shippen, Jorja Shippen, and Shippen Construction, Inc. are not in fact the correct parties to the lawsuit.

As a final matter, Plaintiffs object to the offset request in fees requested by Defendants' counsel for having to answer an amended complaint, as the Defendants still have not provided any physical evidence that the Plaintiffs have named the improper parties. Further, the standard for an amendment of a complaint is a liberal standard and is generally granted as a matter of course. See I.R.C.P. 15(a).

Therefore, Plaintiffs respectfully request Plaintiff's Requests for Admission be deemed admitted. In the alternative, Plaintiffs request an award of fees for time and expenses of pursuing admission of Plaintiffs' requests.

DATED this 6 day of October, 2009


WESTON S. DAVIS, ESQ.

CERTIFICATE OF SERVICE

I hereby certify that I served a true copy of the foregoing document upon the following this 6 day of October 2009, by hand delivery, mailing with the necessary postage affixed thereto, facsimile, or overnight mail.

Robin D. Dunn
P.O. Box 277
477 Pleasant Country Lane
Rigby, ID 83442-0277

Hon. Gregory Moeller
Madison County Courthouse
P. O. Box 389
Rexburg, ID 83440

- Mailing
 Hand Delivery
 Fax
 Overnight Mail


WESTON S. DAVIS, ESQ.

L:\wsd\~ Clients\7411.1 Goodspeed\RfA Deem Admitted (Reply).wpd

WESTON S. DAVIS, ESQ. (ISB. No. 7449)
ANDERSON NELSON HALL SMITH, P.A.
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NOV 19 2009 11:57
CLERK OF DISTRICT COURT
JEFFERSON COUNTY, IDAHO

Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF JEFFERSON

WILLIAM SHAWN GOODSPEED and
SHELLEE BETH GOODSPEED, husband and
wife,

Plaintiffs,

vs.

SHIPPEN CONSTRUCTION, INC., an Idaho
corporation, ROBERT and JORJA SHIPPEN,
husband and wife, ROBERT and JORJA
SHIPPEN, dba SHIPPEN CONSTRUCTION,
ROBERT SHIPPEN, an individual, and
MARRIOTT HOMES, LLC.

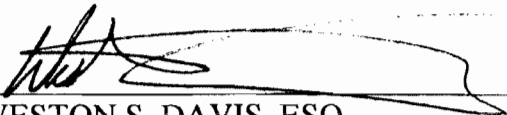
Defendants.

Case No.: CV-09-015

**SECOND NOTICE OF INTENT TO
TAKE DEFAULT**

NOTICE IS HEREBY GIVEN, pursuant to Idaho Rule of Civil Procedure 55, that Plaintiff herein named has been served with an Amended Complaint in the above-entitled action, and having failed to answer or otherwise plead or defend in said action, Defendant shall, on or after November 5, 2009, file default against Plaintiff and move the Court for default judgment.

DATED this 26 day of October, 2009.

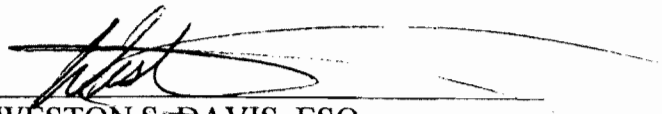

WESTON S. DAVIS, ESQ.

CERTIFICATE OF SERVICE

I hereby certify that I served a true copy of the foregoing document upon the following this 26 day of October 2009, by hand delivery, mailing with the necessary postage affixed thereto, facsimile, or overnight mail.

Robin D. Dunn
P.O. Box 277
477 Pleasant Country Lane
Rigby, ID 83442-0277

- Mailing
- Hand Delivery
- Fax
- Overnight Mail


WESTON S. DAVIS, ESQ.

L:\wsd\~ Clients\7411.1 Goodspeed\Notice Intent Default2.wpd

DUNN LAW OFFICES, PLLC
 Robin D. Dunn, Esq., ISB # 2903
 Amelia A. Sheets, Esq., ISB #5899
 P.O. Box 277
 477 Pleasant Country Lane
 Rigby, Idaho 83442
 (208) 745-9202 (t)
 (208) 745-8160 (f)

2009 NOV -6 PM 4:50
 DISTRICT COURT
 JEFFERSON COUNTY, IDAHO

Attorneys for Defendants

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE
 STATE OF IDAHO, IN AND FOR THE COUNTY OF JEFFERSON

WILLIAM SHAWN GOODSPEED and)
 SHELLEE BETH GOODSPEED,)
 husband and wife,)
)
 Plaintiffs,)

Case No. CV 09-015

DEFENDANTS' ANSWER
 TO AMENDED COMPLAINT

vs.)

SHIPPEN CONSTRUCTION, INC., an)
 Idaho corporation, and ROBERT and)
 JORJA SHIPPEN, husband and wife,)
)
 Defendants.)

COMES NOW, defendants, by and through the undersigned attorney of record, and answer that Complaint on file herein as follows:

I

The Complaint on file herein fails to state an adequate cause for which relief may be granted and should be dismissed pursuant to the Idaho Rules of Civil Procedure, Rule (12)(6).

II

Robert and Jorja Shippen, husband and wife, are not involved in this Complaint and



should be dismissed, with prejudice and an appropriate award of fees and costs.

III

The defendants herein do not waive any defenses by answering this Complaint and more particular, the following: jurisdiction both – subject and personal; failure to join indispensable parties and/or the defense of statute of limitation and/or laches.

IV

Shippen Construction, Inc. and/or Robert and Jorja Shippen d/b/a Shippen Construction are not proper parties to this action and should be dismissed from this action.

V

The defendants reserve the right, after appropriate discovery, to assert counterclaims and/or alternate pleading based upon discovery.

VI

The defendants herein deny each and every allegation of the Complaint on file unless specifically admitted hereafter.

VII

The defendants answer and each and every paragraph of the Complaint on file herein according to the numerical reference set forth by plaintiffs as follows:

1. Admit;
2. Admit;
3. Admit;
4. Marriot Homes, LLC is a limited liability company and not a corporation.
5. Neither admit nor deny as the subject property should not be a matter of litigation.

6. Jurisdiction over real property is subject to Idaho Code Section and venue is

DEFENDANTS' ANSWER TO AMENDED COMPLAINT – Page 2



appropriate where the defendants reside. It is believed that these two (2) concepts are properly plead in the above action, but the defendants deny based upon the fact that the same are legal conclusions.

7. Mr. Shippen has received a written notice, but deny that the notice is appropriate as no cause of action exists against Robert and Jorja Shippen and that the Shippen Construction claim is without merit.
8. The defendants admit that they have accepted service, but deny the remainder of said allegation.
9. Admit that Marriott Homes, LLC is a limited liability company with members of Robert and Jorja Shippen. The balance of the paragraph is denied.
10. Defendants reincorporate and re-allege answers previously set forth in paragraphs 1 through 9.
11. A contract for real estate sale was entered into, but the particulars are unknown to the defendants without review of said contract. As such, the defendants admit that a real estate venture was entered into between the parties and believe the residence and property are not properly before the court.
12. Deny that a builder's warranty applies to all aspects of a building and is specific in nature.
13. As to the exact date contained in this paragraph, the defendants are unsure, but admit the balance of said paragraph.
14. Deny.
15. The exact nature of the leaching system was discussed, but the particulars are uncertain as to these answering parties.

16. Deny.

17. The defendants are without knowledge and, therefore, deny the same.

18. The defendants are without knowledge and, therefore, deny the same.

19. Deny.

20. Deny.

21. Deny.

22. Defendants re-allege paragraphs answered 1 through 21 as though full set forth hereafter.

23. Deny.

24. Deny.

25. Deny.

26. Deny.

27. Defendants re-allege paragraphs answered 1 through 26 and incorporate the same herein.

28. Deny.

29. Deny.

30. Deny.

31. Deny.

32. Deny.

33. Defendants re-allege paragraphs answered 1 through 32 and incorporate the same herein.

34. Deny.

35. Deny.

36. Deny.



37. Deny.

38. Deny.

39. Deny.

40. Deny.

41. Defendants re-allege paragraphs answered 1 through 40 and incorporate the same herein.

42. Deny.

43. Deny.

44. Deny.

45. Deny.

46. Deny.

47. Deny.

48. Deny.

55. {sic} Defendants re-allege paragraphs answered 1 through 48 and incorporate the same herein.

56. {sic} Deny.

57. {sic} Deny.

58. {sic} Deny.

59. {sic} Deny.

60. 61, 62, {sic} Deny.

63. {sic} Defendants re-allege paragraphs answered 1 through 62 and incorporate the same herein.

64-68. {sic} Deny.

69. {sic} Defendants re-allege paragraphs answered 1 through 68 and incorporate the
DEFENDANTS' ANSWER TO AMENDED COMPLAINT – Page 5



same herein.

70-73. {sic} Deny.

Defendants have been made aware that an attorney represents plaintiffs, but deny the plaintiffs should have set forth this Complaint and therefore deny the same as a request for fees is not appropriate.

FIRST AFFIRMATIVE DEFENSE

The written sales agreement specifically requires and requests the plaintiffs to inspect and cause inspections to be made upon the real property in question. As such, the plaintiffs are without a cause of action for which relief may be granted.

SECOND AFFIRMATIVE DEFENSE

The defendants have given no specific warranties for sub-water control as such are acts of God and not within the control of builder.

THIRD AFFIRMATIVE DEFENSE

The plaintiffs are estopped from asserting their claims herein and the defendants rely upon detrimental reliance, estoppel and other similar defenses.

FOURTH AFFIRMATIVE DEFENSE

The defendants reserve the right to set forth additional defenses based upon adequate discovery.

JURY TRIAL

The defendants request a trial by jury.

ATTORNEY FEES

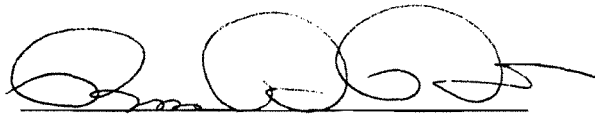
The defendants herein request attorney fees as are recoverable by contract, statute, rule and/or case law developed in the State of Idaho.



WHEREFORE, defendants having fully answered the Complaint on file herein,
requests and prays for relief as follows:

1. That the Complaint on file herein be dismissed with prejudice;
2. That the defendants, each and everyone of them, be awarded attorney fees,
reasonable costs of court and other such expenses are necessarily recoverable in
defending this action;
3. For all relief that is just in the premises.

DATED this 5th day of November, 2009.



Robin D. Dunn, Esq.
DUNN LAW OFFICES, PLLC

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 6th day of November, 2009 a true and correct
copy of the foregoing was delivered to the following persons(s) by:

- Hand Delivery
 Postage-prepaid mail
 Facsimile Transmission



Robin D. Dunn, Esq.
DUNN LAW OFFICES, PLLC

Weston S. Davis, Esq.
P.O. Box 51630
Idaho Falls, ID 83405



FILED IN CHAMBERS AT REXBURG,
MADISON COUNTY, IDAHO.

Date: November 13, 2009

Time: 2:40 p.m.

By: Gregory W. Moll
DISTRICT JUDGE

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR JEFFERSON COUNTY

WILLIAM SHAWN GOODSPEED and)
SHELLEE BETH GOODSPEED,)
Husband and wife,)
Plaintiffs,)

CV-09-015

v.)

**ORDER ON MOTION TO
ALLOW ANSWERS TO
REQUESTS FOR ADMISSIONS**

SHIPPEN CONSTRUCTION, INC.)
an Idaho corporation; ROBERT and)
JORJA SHIPPEN, husband and wife;)
ROBERT and JORJA SHIPPEN dba)
SHIPPEN CONSTRUCTION; ROBERT)
SHIPPEN, an individual; and MARRIOTT)
HOMES, LLC,)
Defendants.)

INTRODUCTION

William and Shellee Goodspeed ("Goodspeeds") purchased certain real property from Robert and Jorja Shippen ("Shippens") in June of 2007. The Goodspeeds later discovered that the property had flooding issues from groundwater seepage. There has been some confusion as to the Shippens' role in the transactions underlying the Goodspeeds' lawsuit.

The Goodspeeds have alleged eight causes of action against Shippens and various contractors: Count One, Breach of Express Warranty; Count Two, Breach of Implied Warranty; Count Three, Breach of the Implied Covenant of Good Faith and Fair Dealing; Count Four, Fraudulent Concealment of Known Defect; Count Five, Fraudulent

Misrepresentation of Known Fact; Count Six, Fraud in the Inducement; Count Seven, Unjust Enrichment; and Count Eight, Alter Ego (Veil Piercing).¹

On May 14, 2009, the Goodspeeds served Defendants with discovery requests that included requests for admission. Defendants failed to respond to these requests. Two months after serving the requests for admissions, on July 13, 2009, the Goodspeeds moved the Court to deem the requests admitted due to Defendants' failure to timely respond. This apparently stirred Defendants to serve their answers to the requests for admission on July 16, 2009. On July 30, 2009, Defendants filed a motion to allow the late answers to stand. Defendants later filed a motion to discard requests for admissions and allow answers to stand. The Court held a hearing on September 28, 2009. This opinion addresses both Defendants' motion to discard the admissions and Plaintiffs' motion to deem admitted their requests for admissions.

The Court notes that several other issues were decided at the September 28 hearing. Defendants had filed a motion to dismiss that had been converted to a summary judgment motion. The basis for Defendants' summary judgment motion was that the Goodspeeds had failed to join the proper defendant. However, on September 28 the Court granted the Goodspeeds' motion to amend their complaint to include defendant Marriott Homes, LLC. Because the Court granted the Goodspeeds' motion to amend complaint to include the allegedly missing defendant, the Court ruled at the September 28 hearing that summary judgment was denied.² Also at that hearing, the Court denied a motion to strike and denied the Goodspeeds' motion to disqualify Defendants' counsel.

The only issue remaining after the hearing was the Goodspeeds' motion to deem their requests admitted. Defendants were given 14 days from September 28 to submit supplemental material relating to the motion to deem admitted.³ All supplemental material has been received.

¹ Amended Complaint (Oct. 9, 2009).

² Minute Entry on Motions (July 29, 2009)

³ Minute Entry on Motions (Sept. 30, 2009).

DISCUSSION

I. The Court allows Shippens' July 16, 2009 responses to stand.

The issue has been extensively argued and briefed by both sides. Idaho Rule of Civil Procedure 36(a) states that requests for admission will be deemed admitted unless the party receiving the requests serves an answer or objection under oath within 30 days. The effect of this rule, and the procedure for changing an admission, is set forth in Rule 36(b):

Any matter admitted under this rule is conclusively established unless the court on motion permits withdrawal or amendment of the admission. Subject to the provisions of Rule 16 governing amendment of a pre-trial order, the court *may* permit withdrawal or amendment when the presentation of the merits of the action will be subserved thereby and the party who obtained the admission fails to satisfy the court that withdrawal or amendment will prejudice that party in maintaining an action or defense on the merits.⁴

The use of the term *may* in this rule strongly implies that this a discretionary issue for the Court. As with all discretionary decisions, this requires the Court to (1) rightly perceive the issue as one of discretion, (2) act within the outer boundaries of the discretion allotted, and (3) reach the decision through the exercise of reason. *Associates Northwest, Inc. v. Beets*, 112 Idaho 603, 605, 733 P.2d 824, 826 (Ct. App. 1987).

The Idaho Supreme Court provided guidance to the Court in exercising its reasoned discretion under Rule 36(b) in the case of *Quiring v. Quiring*, 130 Idaho 560, 944 P.2d 695 (1997). The Court focused on the two-part analysis contained in the rule:

Two requirements must be met before an admission may be amended or withdrawn pursuant to Rule 36(b): (1) presentation of the merits must be promoted, and (2) the party who obtained the admission must not be prejudiced by the withdrawal.

130 Idaho at 564, 944 P.2d 699. Both prongs of this analysis must be established in order to permit withdrawal of the admissions.

⁴ I.R.C.P. 36(b), emphasis added.

The Idaho Supreme Court then defined the first prong (presentation on the merits) by citing with approval the following analysis from the Ninth Circuit:

The Ninth Circuit has said that the first half of the Rule 36(b) test is “satisfied when upholding the admissions would practically eliminate any presentation of the merits of the case.” *Hadley v. United States*, 45 F.3d 1345, 1348 (1995).

Id. The Court also found persuasive the Ninth Circuit’s analysis of the second prong (prejudice):

“Prejudice” as contemplated in F.R.C.P. 36(b) is “not simply that the party who obtained the admission will now have to convince the factfinder of its truth. Rather, it relates to the difficulty a party may face in proving its case, e.g., caused by the unavailability of key witnesses, because of the sudden need to obtain evidence’ with respect to the questions previously deemed admitted.” *Hadley*, 45 F.3d at 1348 (quoting *Brook Village N. Assoc. v. General Elec. Co.*, 686 F.2d 66, 70 (1st Cir.1982)). “The party who obtained the admission has the burden of proving that withdrawal of the admission would prejudice the party’s case.” *Id.* Again, these federal decisions are persuasive and consistent with I.R.C.P. 36(b).

130 Idaho at 564-565, 944 P.2d 699-700.

Applying this reasoning, the Court finds and concludes that allowing the late responses to the requests for admission to stand will promote a presentation on the merits. Based upon the arguments of counsel, and the pleadings in the file, it appears that the actual merits of the case will not be addressed if the requests are deemed admitted. If the Court upholds these admissions, it will be required to accept as true certain admissions which both parties appear to concede have no basis in fact. Trials are, or should be, quests for the truth. This goal will not be realized if the Court must rely upon legal fictions which may have no semblance with reality.

More importantly, the Court can discern no prejudice to Plaintiffs. The Court first acknowledges that the facts in *Quiring* are quite different from the case in hand. In *Quiring*, the motion to deem admitted was filed very shortly before the trial began. In the case at hand, the motion to deem admitted was filed before the trial has even been scheduled. Therefore, Plaintiffs still have ample time to prepare their case. Plaintiffs

have presented no evidence or argument to the Court suggesting that any necessary witnesses are now unavailable or necessary evidence inaccessible. If the Court allows the late answers to stand, the hurdle the Goodspeeds must surmount to win this case is no higher than it was when they first filed their complaint. Therefore, the Court finds little or no prejudice to Plaintiffs in allowing the late response to the request for admissions.

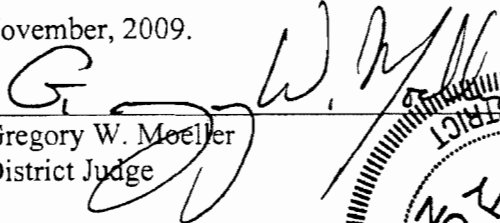
The Court would feel very differently if it appeared the delay in answering was the result of an intentional tactical decision or discovery gamesmanship intended to prejudice the opposing party. Here, however, it appears to have been the result of an innocent oversight by counsel. An appropriate sanction in the form of attorney's fees and costs has already been imposed.

CONCLUSION

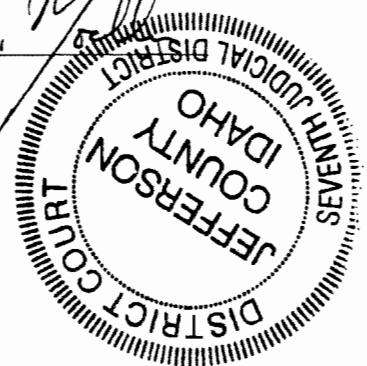
Defendants' motion to discard requests for admissions and allow answers to stand is GRANTED. Plaintiffs' motion to deem admitted is DENIED. Again, Defendants' summary judgment motion was DENIED from the bench at the September 28, 2009 hearing because the Court found an issue of fact as to the identity of the proper defendant.

IT IS SO ORDERED.

DATED this 13th day of November, 2009.



Gregory W. Moeller
District Judge



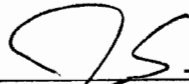
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing ORDER was this
13 day of November, 2009 served upon the following individuals by U.S. mail unless
otherwise indicated:

Robin D. Dunn
Amelia A. Sheets
DUNN LAW OFFICES, PLLC
P.O. Box 277
Rigby, ID 83442
Attorneys for Defendants

Weston S. Davis
NELSON, HALL, PARRY, TUCKER, P.A.
P.O. Box 51630
Idaho Falls, ID 83405-1630
Attorneys for Plaintiff

By:



Deputy Clerk

WESTON S. DAVIS, ESQ (ISB No. 7449)
NELSON HALL PARRY TUCKER, P.A.
490 Memorial Drive
Post Office Box 51630
Idaho Falls, Idaho 83405-1630
Telephone (208) 522-3001
Fax (208) 523-7254

2010 JAN 15 PM 1:54
DISTRICT COURT
JEFFERSON COUNTY, IDAHO

Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF JEFFERSON

WILLIAM SHAWN GOODSPEED and
SHELLEE BETH GOODSPEED, husband
and wife,

Plaintiffs,

vs.

SHIPPEN CONSTRUCTION, INC., an
Idaho corporation, ROBERT and JORJA
SHIPPEN, husband and wife, ROBERT and
JORJA SHIPPEN, dba SHIPPEN
CONSTRUCTION, ROBERT SHIPPEN, an
individual, and MARRIOTT HOMES, LLC.

Defendants.

Case No.: CV-09-015

**NOTICE OF ISSUE AND
REQUEST FOR TRIAL SETTING**

Plaintiff represents that this action is at issue and requests that trial be set in this
action and states as follows:

1. Type of action: Contract /Construction.
2. Court or jury case: Jury.
3. Jury timely demanded: Yes.
4. Name and address of opposing counsel:

Robin D. Dunn
477 Pleasant Country Lane
P.O. Box 277, Rigby, Idaho 83442

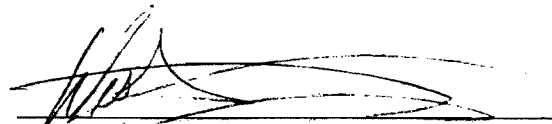
5. Estimated trial time: Five (5) days.
6. Trial dates NOT available to counsel requesting trial setting:

February 2-3, 16, 24-26, 2010
March 22-26, 2010
May 11, 17, 24, 2010

7. Name of member of firm or associate who will try case: Weston S. Davis.
8. Pre-trial requested: Yes.

I certify that the case is at issue as to both parties.

DATED this 13 day of January, 2010.



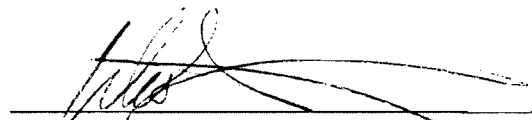
Weston S. Davis

CERTIFICATE OF SERVICE

I hereby certify that I served a true copy of the foregoing document upon the following this 13 day of January, 2010, by hand delivery, mailing with the necessary postage affixed thereto, facsimile, or overnight mail.

Robin D. Dunn
P.O. Box 277
477 Pleasant Country Lane
Rigby, ID 83442-0277

- Mailing
- Hand Delivery
- Fax
- Overnight Mail



Weston S. Davis

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WESTON S. DAVIS, ESQ (ISB No. 7449)
NELSON HALL PARRY TUCKER, P.A.
490 Memorial Drive
Post Office Box 51630
Idaho Falls, Idaho 83405-1630
Telephone (208) 522-3001
Fax (208) 523-7254

2010 JAN 25 PM 3:14
DISTRICT COURT
JEFFERSON COUNTY, IDAHO

Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF JEFFERSON

WILLIAM SHAWN GOODSPEED and
SHELLEE BETH GOODSPEED, husband and
wife,

Plaintiffs,

vs.

SHIPPEN CONSTRUCTION, INC., an Idaho
corporation, ROBERT and JORJA SHIPPEN,
husband and wife, ROBERT and JORJA
SHIPPEN, dba SHIPPEN CONSTRUCTION,
ROBERT SHIPPEN, an individual, and
MARRIOTT HOMES, LLC.

Defendants.

Case No.: CV-09-015

**NOTICE OF DEPOSITION
DUCES TECUM**

PLEASE TAKE NOTICE that Plaintiffs, by and through their attorney of record, Nelson Hall Parry Tucker, P.A., will take the deposition on oral examination of Defendant, ROBERT SHIPPEN, before a Certified Court Reporter in and for the State of Idaho on Wednesday, February 24, 2010, at 9:00 a.m., at the law offices of Robin D. Dunn, 477 Pleasant Country Lane, Rigby, Idaho, at which time and place you are invited to appear and cross-examine.


The deponent shall produce and permit inspection and copying, at the time of the deposition all records, documents or correspondence relating to the subject matter of this litigation and all

documents requested for production that have not yet been produced.

Additionally, you are requested to bring the following documents:

- All of your personal and business tax returns in which you have any interest for the past four (4) years and also produce your current pay stub(s) from all sources showing your year to date income.
- All corporate documents for any business in which you have any interest for the past four (4) years, including, but not limited to financial reports (including all digital files and accountings), annual meeting minutes, board meeting minutes, and board resolutions.
- For all assets you presently own or owned during or since January 1, 2006, produce all titles, registrations, bills of sale or other evidence of ownership and all receipts, invoices, or other documentation.
- For all outstanding financial obligations in the past four (4) years produce the current billing statements or other evidence of the debt and current balance of the debt.
- All documents related to any and all insurance policies that may provide coverage for the issues in this matter, as identified in the Plaintiff's Complaint.
- Copies of all checks written by any of the named defendants for the construction of the Subject Real Property (3709 E. 319 N. Rigby, ID 83442).

DATED this 20 day of January, 2010.


WESTON S. DAVIS, ESQ.

CERTIFICATE OF SERVICE

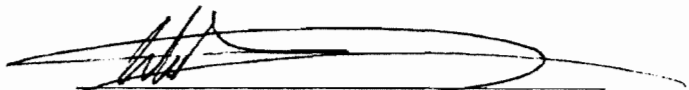
I hereby certify that I served a true copy of the foregoing document upon the following this 20 day of January, 2010, by hand delivery, mailing with the necessary postage affixed thereto, facsimile, or overnight mail.

Robin D. Dunn
P.O. Box 277
477 Pleasant Country Lane
Rigby, ID 83442-0277

- Mailing
- Hand Delivery
- Fax
- E-Mail
- Overnight Mail
- Courthouse Box

T & T Reporting
525 Park Avenue
P.O. Box 51020
Idaho Falls, ID 83405-1020

- Mailing
- Hand Delivery
- Fax
- E-Mail
- Overnight Mail
- Courthouse Box


WESTON S. DAVIS

WESTON S. DAVIS, ESQ (ISB No. 7449)
NELSON HALL PARRY TUCKER, P.A.
490 Memorial Drive
Post Office Box 51630
Idaho Falls, Idaho 83405-1630
Telephone (208) 522-3001
Fax (208) 523-7254

2010 JAN 25 PM 3: 14

DISTRICT COURT
JEFFERSON COUNTY, IDAHO

Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF JEFFERSON

WILLIAM SHAWN GOODSPEED and
SHELLEE BETH GOODSPEED, husband and
wife,

Plaintiffs,

vs.

SHIPPEN CONSTRUCTION, INC., an Idaho
corporation, ROBERT and JORJA SHIPPEN,
husband and wife, ROBERT and JORJA
SHIPPEN, dba SHIPPEN CONSTRUCTION,
ROBERT SHIPPEN, an individual, and
MARRIOTT HOMES, LLC.

Defendants.

Case No.: CV-09-015

**NOTICE OF DEPOSITION
DUCES TECUM**

PLEASE TAKE NOTICE that Plaintiffs, by and through their attorney of record, Nelson Hall Parry Tucker, P.A., will take the deposition on oral examination of NICHOLAS SHIPPEN, before a Certified Court Reporter in and for the State of Idaho on Thursday, February 25, 2010, at 9:30 a.m., at the law offices of Robin D. Dunn, 477 Pleasant Country Lane, Rigby, Idaho, at which time and place you are invited to appear and cross-examine.

The deponent shall produce and permit inspection and copying, at the time of the deposition all records, documents or correspondence relating to the subject matter of this litigation and all

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documents requested for production that have not yet been produced.

Additionally, you are requested to bring the following documents:

- Any and all pay information regarding payment to you for the years 2006 and 2007 including, but not limited to, any and all pay stubs for the years 2006 and 2007, any and all W-2 tax forms reflecting your work for the years 2006 and 2007, any and all 1099 tax forms reflecting your work for the years 2006 and 2007, and any and all other tax documents reflecting your income for the years 2006 and 2007.
- Any and all documents in your possession regarding any flooding, water damage clean up, or water repair on the Subject Real Property (3709 E. 319 N. Rigby, ID 83442) including, but not limited to, phone messages, text messages, notes, correspondence, and digital or hard copy photographs.
- Any and all phone records for any of your phone numbers for the months of July 2006 through October of 2006.

DATED this 20 day of January, 2010.


WESTON S. DAVIS, ESQ.

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CERTIFICATE OF SERVICE

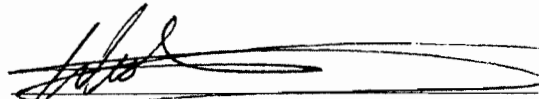
I hereby certify that I served a true copy of the foregoing document upon the following this 20 day of January, 2010, by hand delivery, mailing with the necessary postage affixed thereto, facsimile, or overnight mail.

Robin D. Dunn
P.O. Box 277
477 Pleasant Country Lane
Rigby, ID 83442-0277

- Mailing
- Hand Delivery
- Fax
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- Overnight Mail
- Courthouse Box

T & T Reporting
525 Park Avenue
P.O. Box 51020
Idaho Falls, ID 83405-1020

- Mailing
- Hand Delivery
- Fax
- E-Mail
- Overnight Mail
- Courthouse Box


WESTON S. DAVIS

L:\wsdl- Clients\7411.1 Goodspeed\Not of Depo DT (Shippen (Nick)).wpd

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