

5-20-2016

Fisher v. Garrison Property and Cas. Ins. Clerk's Record Dckt. 44117

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IN THE SUPREME COURT OF THE STATE OF IDAHO

SHAMMIE L. FISHER,

Plaintiff-Appellant,

vs.

GARRISON PROPERTY AND
CASUALTY INSURANCE COMPANY,

Defendant-Respondent.

Supreme Court Case No. 44117

CLERK'S RECORD ON APPEAL

Appeal from the District Court of the Fourth Judicial District, in and for the County of Ada.

HONORABLE PATRICK H. OWEN

JAMES G. REID
JENNIFER REID MAHONEY

ATTORNEY FOR APPELLANT

BOISE, IDAHO

MATTHEW L. WALTERS
CRAIG R. YABUI

ATTORNEY FOR RESPONDENT

BOISE, IDAHO

Shammie L Fisher vs. Usaa Casualty Insurance Company, Garrison Property And Casualty Insurance Company

Date	Code	User	Judge
5/27/2015	NCOC	CCBARRSA	New Case Filed - Other Claims
	COMP	CCBARRSA	Complaint Filed No SMFI
5/28/2015	SMFI	CCBARRSA	Summons Filed
6/1/2015	NOTC	CCVIDASL	Notice of Service of Summons and Complaint 5.29.15
6/24/2015	NOAP	CCMYERHK	Notice Of Appearance (Yabui for USAA)
7/10/2015	ANSW	CCSNELNJ	Answer to Complaint and Demand for Jury Trial (Matthew Walters for USSA Casuaulti Insurance Co.
7/16/2015	NOTC	DCJOHNSI	Notice of Status Conf
	HRSC	DCJOHNSI	Hearing Scheduled (Status by Phone 08/18/2015 03:00 PM)
7/20/2015	MOTN	CCGRANTR	Motion to Amend Complaint
	STIP	CCGRANTR	Stipulation to File Amended Complaint
7/21/2015	ORDR	DCJOHNSI	Order Granting Motion to File Amended Complaint
7/27/2015	AMCO	CCGRANTR	Amended Complaint and Demand for Jury Trial
7/31/2015	ANSW	CCMARTJD	Answer (Yabui for Garrison Property)
8/18/2015	HRHD	DCJOHNSI	Hearing result for Status by Phone scheduled on 08/18/2015 03:00 PM: Hearing Held
8/25/2015	OGPS	DCJOHNSI	Order Governing Proceedings and Setting Trial
	HRSC	DCJOHNSI	Hearing Scheduled (Jury Trial 08/01/2016 09:00 AM)
	HRSC	DCJOHNSI	Hearing Scheduled (Pretrial Conference 07/18/2016 03:00 PM)
	HRSC	DCJOHNSI	Hearing Scheduled (Status by Phone 06/23/2016 03:00 PM)
9/1/2015	MOTN	TCMEREKV	Motion For Partial Summary Judgment
	AFFD	TCMEREKV	Affidavit Of Shammie L. Fisher In Support Of Motion For Partial Summary Judgment
	MEMO	TCMEREKV	Memorandum In Support Of Motion For Partial Summary Judgment
	NOTH	TCMEREKV	Notice Of Hearing RE: Motion For Summary Judgment 10.1.15 @ 4:00 PM
	HRSC	TCMEREKV	Hearing Scheduled (Motion for Summary Judgment 10/01/2015 04:00 PM)
9/2/2015	NOTS	CCHOLDKJ	Notice Of Service
9/8/2015	HRVC	DCJOHNSI	Hearing result for Motion for Summary Judgment scheduled on 10/01/2015 04:00 PM: Hearing Vacated
9/30/2015	NOTS	CCGRANTR	Notice Of Service
10/1/2015	AMEN	CCHEATJL	Amended Notice Of Service

Shammie L Fisher vs. Usaa Casualty Insurance Company, Garrison Property And Casualty Insurance Company

Date	Code	User		Judge
10/8/2015	NOTS	CCVIDASL	Notice Of Service	Patrick H. Owen
12/1/2015	NOTH	TCLAFFSD	Notice Of Hearing	Patrick H. Owen
	HRSC	TCLAFFSD	Hearing Scheduled (Motion for Summary Judgment 01/28/2016 03:00 PM)	Patrick H. Owen
12/31/2015	MOSJ	CCGARCOS	Defendant's Motion For Summary Judgment	Patrick H. Owen
	AFFD	CCGARCOS	Affidavit of Craig R Yabui in Support of Defendant's Motion for Summary Judgment	Patrick H. Owen
	MEMO	CCGARCOS	Memorandum in Support of Defendant's Motion for Summary Judgment and in Opposition to Plaintiff's Motion for Partial Summary Judgment	Patrick H. Owen
	NOTH	CCGARCOS	Notice Of Hearing on Defendant's Motion for Summary Judgment	Patrick H. Owen
1/5/2016	AMEN	CCWRIGRM	Amended Notice of Hearing (02/01/16 @ 3:30pm)	Patrick H. Owen
	HRSC	CCWRIGRM	Hearing Scheduled (Motion for Summary Judgment 02/01/2016 03:30 PM) Amended Notice	Patrick H. Owen
	HRVC	DCJOHNSI	Hearing result for Motion for Summary Judgment scheduled on 01/28/2016 03:00 PM: Hearing Vacated	Patrick H. Owen
1/15/2016	MEMO	TCLAFFSD	Memorandum In Opposition To Defendant's Motion To Summary Judgment	Patrick H. Owen
1/20/2016	AMEN	CCMARTJD	Amended Notice of Hearing on Motion for Summary Judgment (2.1.16@3:30pm)	Patrick H. Owen
1/25/2016	REPL	CCLOWEAD	Reply Memorandum in Support of Defendant's Motion for Summary Judgment	Patrick H. Owen
2/1/2016	DCHH	DCJOHNSI	Hearing result for Motion for Summary Judgment scheduled on 02/01/2016 03:30 PM: District Court Hearing Held Court Reporter: redlich Number of Transcript Pages for this hearing estimated: and Amended Notice of Hearing on Motion for Summary Judgment -50	Patrick H. Owen
2/3/2016	STIP	CCBUTTAR	Stipulation To Amend Deadlines Re: Expert Disclosures	Patrick H. Owen
2/4/2016	MISC	DCJOHNSI	Request for Additional Briefing	Patrick H. Owen
2/8/2016	ORDR	DCJOHNSI	Order Amending Expert Disclosure Deadlines	Patrick H. Owen
2/12/2016	BREF	CCFERGLL	Defendents Additional Briefing RE Motion For Summary Judgment	Patrick H. Owen
2/16/2016	MEMO	TCLAFFSD	Supplemental Memorandum Re: Motions for Summary Judgment	Patrick H. Owen
2/25/2016	MEMO	DCJOHNSI	Memorandum Decision and Order re: Cross Motions for Summary Judgment	Patrick H. Owen
3/25/2016	HRVC	DCJOHNSI	Hearing result for Status by Phone scheduled on 06/23/2016 03:00 PM: Hearing Vacated	Patrick H. Owen

Shammie L Fisher vs. Usaa Casualty Insurance Company, Garrison Property And Casualty Insurance Company

Date	Code	User		Judge
3/25/2016	HRVC	DCJOHNSI	Hearing result for Jury Trial scheduled on 08/01/2016 09:00 AM: Hearing Vacated	Patrick H. Owen
	HRVC	DCJOHNSI	Hearing result for Pretrial Conference scheduled on 07/18/2016 03:00 PM: Hearing Vacated	Patrick H. Owen
	JDMT	DCJOHNSI	Final Judgment	Patrick H. Owen
	CDIS	DCJOHNSI	Civil Disposition entered for: Garrison Property And Casualty Insurance Company, Defendant; Usaa Casualty Insurance Company, Defendant; Fisher, Shammie L, Plaintiff. Filing date: 3/25/2016	Patrick H. Owen
	STAT	DCJOHNSI	STATUS CHANGED: Closed	Patrick H. Owen
4/13/2016	NOTA	TCSIMOSL	NOTICE OF APPEAL	Patrick H. Owen
	APSC	TCSIMOSL	Appealed To The Supreme Court	Patrick H. Owen
5/4/2016	NOTA	CCBUTTAR	Amended NOTICE OF APPEAL	Patrick H. Owen

No SMFI

NO _____ FILED 3:45
A.M. _____ P.M.

MAY 27 2015

CHRISTOPHER D. RICH, Clerk
By SANTIAGO BARRIOS
DEPUTY

JAMES G. REID, ISB # 1372
JENNIFER REID MAHONEY, ISB # 5207
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Attorneys for Plaintiff

PATRICK H. OWEN

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

SHAMMIE L. FISHER;

Plaintiff,

vs.

USAA CASUALTY INSURANCE
COMPANY;

Defendant.

Case No. CV OC 1508979

COMPLAINT AND DEMAND FOR
JURY TRIAL

COMES NOW the Plaintiff, SHAMMIE L. FISHER, by and through her attorneys of record, Kaufman Reid, PLLC, and as a complaint and cause of action against Defendant, hereby alleges as follows:

PARTIES

1

Plaintiff, Shammie L. Fisher, is, and at all material times herein was, an Idaho resident residing in Boise, Ada County. Shammie Fisher is married to Michael Royce, a resident of Ada County, Idaho. At the time the insurance policy at issue in this case was issued, Shammie Fisher was

COMPLAINT AND DEMAND FOR JURY TRIAL - 1

SAB

unmarried.

2

Defendant, USAA Casualty Insurance Company was at all times material hereto, a Texas Corporation, doing business in Ada County, Idaho, and registered with the Idaho Department of Insurance.

JURISDICTION AND VENUE

3

Defendant is an out of state corporation doing business in the State of Idaho and registered with the Idaho Department of Insurance, as such, this Court has personal jurisdiction in this case.

4

The cause of action in this case arose in Ada County, Idaho, and thus venue is properly in this Court pursuant to Idaho Code § 41-1838.

STATEMENT OF FACTS

5

On or about November 5, 2008, Defendant issued Plaintiff a Homeowners Insurance Policy (hereafter the "Policy") for her residence located at 2510 N. 34th Street, Boise, Idaho, 83703. Plaintiff continued to be insured by USAA continuously through the date of loss in this case. The Policy in effect from the period March 8, 2013 to March 8, 2014, is attached hereto as Exhibit A in incorporated herein by reference.

6

The Policy states in the Declarations that the Described Location is 2510 N. 34th Street, Boise, Ada County, Idaho. *See* Policy, Declarations.

7

At the time the Policy was issued, the Described Location was used principally for dwelling purposes.

8

Coverage A provides that the Policy covers “the dwelling on the Described Location shown in the Declarations, used principally for dwelling purposes, including structures attached to the dwelling”. Policy, at 2.

9

Coverage C also provides coverage for personal property of the insured. Policy, at 2.

10

In February of 2012, Plaintiff signed a contract for lease to own (“Lease”) of the Property with Ron Reynosa (“Mr. Reynosa”). The Lease was for a 1 year term, ending on March 31st, 2013, with the option for a 6 month extension ending on Sept 1, 2013.

11

Within the first two months, Plaintiff was notified that the entire home had been leveled by Mr. Reynosa, destroying both the structure and the personal property therein. Plaintiff had no knowledge that Mr. Reynosa intended to destroy the home when he leased the Property.

12

Mr. Reynosa subsequently defaulted on the Lease and left town, informing Plaintiff in September 2013 that he did not intend to rebuild the home he had destroyed.

13

The Policy does not state that it does not apply to the Described Location in the event that

it is leased to a third party. Additionally, Defendant and its agents did not inform Plaintiff, either at the time the insurance contract was entered into, or at any other time, that she needed to obtain a different policy if she were to lease the Property to a third party.

14

On or about September 27, 2013, Plaintiff submitted a Proof of Loss to Defendant, seeking coverage under the Policy for the losses to the dwelling and the personal property therein. By letter of December 5, 2013, Defendant denied coverage for the loss.

CLAIMS FOR RELIEF - COUNT ONE

BREACH OF CONTRACT

15

Plaintiff restates and realleges the allegations contained in paragraphs 1-14 above, as if fully set forth herein.

16

Defendant's failure to provide coverage for the loss is a breach of the contract of insurance between the parties.

17

Plaintiff has been damaged by the breach of contract in an amount to be proven with specificity at trial, but in an amount greater than \$25,000.00.

CLAIMS FOR RELIEF - COUNT TWO

BREACH OF THE COVENANT OF GOOD FAITH AND FAIR DEALING

18

Plaintiff restates and realleges the allegations contained in paragraphs 1-17 above, as if

fully set forth herein.

19

Implied in every contract in the State of Idaho is a covenant of good faith and fair dealing. Defendant had a duty, pursuant to its insurance contract with Plaintiff, to act in good faith and deal fairly with Plaintiff.

20

Defendant's failure to abide by the terms of the insurance contract and its denial of coverage breached the duty of good faith and fair dealing inherent in the agreement between the parties.

21

As a result of Defendant's breach, Plaintiff has been damaged in an amount to be proven at trial.

ATTORNEY FEES AND COURT COSTS

22

Plaintiff has been required to retain the attorney services of Kaufman Reid, PLLC, in order to prosecute and maintain this action.

23

Plaintiff is entitled to an award of court costs incurred herein, pursuant to Rule 54(d) of the IDAHO RULES OF CIVIL PROCEDURE, and to an award of reasonable litigation expenses and attorney fees incurred herein, pursuant to IDAHO CODE § 41-1839, and Rule 54(e) of the IDAHO RULES OF CIVIL PROCEDURE.

DEMAND FOR JURY TRIAL

Plaintiff hereby makes **DEMAND FOR JURY TRIAL** of all contested matters in this action and does not consent to any jury panel consisting of fewer than twelve (12) jurors.

WHEREFORE, Plaintiff **PRAYS** that the Court enter its decree, judgment, or order providing Plaintiff with the following relief:

1. For judgment against Defendant for breach of contract and breach of the covenant of good faith and fair dealing and for an award of damages in an amount to be proven at trial;
2. For an award of court costs and attorney fees incurred by Plaintiff relative to this action; and
3. For such other and further relief as the Court deems just and appropriate under the circumstances.

DATED this 27 day of May, 2015.

KAUFMAN REID, PLLC

by: _____

James G. Reid



FIRE POLICY PACKET

GAR 01634 13 15 80A
EFFECTIVE: 03-08-13 TO: 03-08-14

SHAMMIE L FISHER
13534 W ACORN ST
BOISE ID 83713-0874

IMPORTANT MESSAGES

Attached are your policy documents and other information you may find helpful concerning your insurance coverages and premiums. Please take a few minutes to review them, and then file them with your policy records.

- 1) We are making changes to your Personal Liability coverage. Please review the enclosed "Changes to Your Personal Liability Coverage Notice". The notice will explain any changes including any reductions in coverage.
- 2) USAA considers many factors when determining your premium. Maintaining your property to reduce the probability of loss is one of the most important steps you can take. A history of claim activity may affect your coverage.
- 3) Go to usaa.com to view policy coverages and home features.
- 4) Your policy does NOT cover loss due to flood from any source. For information about obtaining flood coverage from the National Flood Insurance Program (NFIP), call USAA at (800) 531-8722, or contact the NFIP directly.

If you already have a flood policy, you should review it to make sure you have the appropriate coverage and limits. No automatic increases or adjustments are applied to your policy. Coverage for loss of household contents due to flood may be available at an additional cost. If you have questions, please call a member service representative at the phone number above.

THIS IS NOT A BILL. Any premium charge or return for this policy will be reflected on your next regular monthly statement.

RECEIVE THIS DOCUMENT AND OTHERS ELECTRONICALLY. SIGN UP AT usaa.com.

For U.S. CALLS: Policy Service (800) 531-8111. Claims (800) 531-8222.

Thank you for letting us serve you. We appreciate your business.

DPCS1

53276-0507

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GARRISON PROPERTY AND CASUALTY INSURANCE COMPANY
 9800 Fredericksburg Road - San Antonio, Texas 78288

DWELLING POLICY

THIS RENEWAL Declaration replaces all prior Declarations, if any.

Insured's Name and Mailing Address

SHAMMIE L FISHER
 13534 W ACORN ST
 BOISE ID 83713-0874

RENEWAL OF Policy Number

GAR 01634 13 15 80A

POLICY PERIOD: 12:01 A.M. Standard Time
 at the Described Location

From: 03-08-13 To: 03-08-14 1 Year

Named Insured: SHAMMIE L FISHER

Described Location:

2510 N 34TH ST
 BOISE, ADA, ID 83703-5528

Legal Description:

This insurance applies to the Described Location, Coverage for which a Limit of Liability is shown and Perils Insured Against for which a Premium is stated.

PERILS INSURED AGAINST	FIRE OR LIGHTNING	EXTENDED COVERAGE	SPECIAL FORM
PREMIUM	\$140.76	\$245.88	\$255.99

TOTAL ANNUAL PREMIUM \$667.13

Coverages

- A. DWELLING
- L. PERSONAL LIABILITY
- M. MEDICAL PAYMENTS

Limit of Liability

\$172,000
 \$300,000
 \$5,000

In case of loss under this policy we cover only that part of the loss over the deductible stated.

DEDUCTIBLE(S): \$500

Form and Endorsements made a part of this policy at time of issue:
 SEE ATTACHED DP-END

MORTGAGEE

AMERICA'S SERVICING COMPANY
 ITS SUCCESSORS AND/OR ASSIGNS
 PO BOX 5106
 SPRINGFIELD, OH 45501-5106

LOAN NUMBER: 1205093993

In WITNESS WHEREOF, this policy is signed on 01-07-13

Steven Alan Bennett
 Steven Alan Bennett, Secretary

Stuart Parker
 Stuart Parker, President

DP-D Ed. 1-89

ATTACH THIS DECLARATION TO PREVIOUS POLICY



GARRISON PROPERTY AND CASUALTY INSURANCE COMPANY
ENDORSEMENT DECLARATIONS

Specifically listed below are the Declarations and premiums for endorsements made a part of this policy at the time of issue. The endorsements are attached stating terms and conditions.

RENEWAL OF	Policy Number	Policy Term:	03-08-13	03-08-14
GAR	01634 13 15 80A	Inception		Expiration

SECOND MORTGAGEE:

LOAN NUMBER: 0056796139

FIRST HORIZON HOME LOANS CORPORATION
 ITS SUCCESSORS AND/OR ASSIGNS
 PO BOX 7481
 SPRINGFIELD, OH 45501-7481

REMAIN IN EFFECT (REFER TO PREVIOUS POLICY):

DP 00 03 (07-88); DL 24 01 (12-02); DL 24 11 (12-02); DL 24 14 (12-02)
 DP FLDA3 (01-07); DP ID (10-06); DP 04 LA (03-08); DP-978 (07-00); ESA (02-05)
 FI-MLD89 (08-03)

ENDORSEMENTS ADDED:

DL APL02 (11-12)

ADDITIONAL COVERAGE INFORMATION:

DL 24 01 (12-02)	- PERSONAL LIABILITY	
	TERM PREMIUM \$	24.50
DL 24 11 (12-02)	- PREMISES LIABILITY	
	TERM PREMIUM :	INCLUDED
DL 24 14 (12-02)	- LIABILITY LOSS ASSESSMENT	
	COVERAGE LIMIT :	\$10,000
	TERM PREMIUM :	INCLUDED
DP 04 LA (03-08)	- LOSS ASSESSMENT PROPERTY COVERAGE	
	COVERAGE LIMIT :	\$10,000
	APPLIES TO DWELLING COVERAGE A	
	TERM PREMIUM :	INCLUDED
DP-978 (07-00)	- ADJUSTED BUILDING COST ENDORSEMENT	
	TERM PREMIUM:	INCLUDED

DL APL02 (11-12)

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

Amendment to Personal Liability

(DL 24 01)

EXCLUSIONS

E. Coverage L - Personal Liability And Coverage M - Medical Payments to Others

Item 7. Sexual Molestation, Corporal Punishment Or Physical Or Mental Abuse is deleted and replaced by the following:

7. Sexual Misconduct, Sexual Harassment, Sexual Molestation, Or Physical Or Mental Abuse

"Bodily injury" or "property damage" arising out of any actual, alleged, or threatened:

- a. Sexual misconduct; or
- b. Sexual harassment; or
- c. Sexual molestation; or
- d. Physical or mental abuse.

The following exclusions are added:

Pollutants

"Bodily injury" or "property damage" arising out of any actual, alleged, or threatened discharge, dispersal, release, escape, seepage or migration of pollutants however caused and whenever occurring. This includes any loss, cost or expense arising out of any:

- a. Request, demand or order that any "insured" or others test for, monitor, clean up, remove, contain, treat, detoxify, or assess the effects of pollutants; or

- b. Claim or suit by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of pollutants.

Pollutants means any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed.

Lead

"Bodily injury" or "property damage" arising directly or indirectly, in whole or in part, out of the actual, alleged or threatened inhalation of, ingestion of, contact with, exposure to, existence of or presence of lead paint, dust, chips, or other lead-based products.

Asbestos

"Bodily injury" or "property damage" arising directly or indirectly, in whole or in part, out of actual, alleged or threatened inhalation of, ingestion of, contact with, exposure to, existence of, or presence of asbestos.

Fungus, Wet or Dry Rot, or Bacteria

"Bodily injury" or "property damage" arising out of directly or indirectly, in whole or in part, out of actual, alleged or threatened inhalation of, ingestions of, contact with, exposure to, existence of or presence of any fungus, wet or dry rot or bacteria.

DL APL02 (11-12)

126435-0912__01
Page 1 of 2

Fungus means any microorganism or by-product of any microorganism, including, but is not limited to mold, mildew, fungi, mycotoxins and spores.

Failure to Disclose

"Bodily injury" or "property damage" arising out of your failure, intentionally or unintentionally, to disclose information regarding the sale or transfer of real or personal property.

Criminal Acts

"Bodily injury" or "property damage" arising out of or caused by the commission of, attempting to flee from, or avoiding apprehension for a criminal act for which intent is a necessary element.

F. Coverage L - Personal Liability

The following exclusion is added:

Punitive, exemplary or multiple damages, prejudgment interest, fines, or penalties.

Except as specifically modified in this endorsement, all provisions of the policy to which this endorsement is attached also apply to this endorsement.

CHANGES TO YOUR PERSONAL LIABILITY COVERAGE NOTICE

We are making changes to your Dwelling Policy as a part of a change affecting all Dwelling Policies. The changes are intended to make the liability coverage consistent with the similar coverage provided under the Homeowner policy. These changes will apply upon the effective date of the enclosed new policy. These changes include reductions in coverage. If you want to accept this new policy, no action is required on your part other than payment of premiums. If you have any questions, call a member service representative at 1-800-531-USAA (8722). We value your business and look forward to continuing to serve your financial needs.

The tables below illustrate the changes we have made to the Dwelling Policy.

Exclusions Added	
Pollutants	Bodily injury or property damage arising out of any actual, alleged, or threatened discharge, dispersal, release, escape, seepage or migration of pollutants.
Lead	Bodily injury or property damage arising out of exposure to lead paint, dust, chips, or other lead-based products.
Asbestos	Bodily injury or property damage arising out of exposure to asbestos.
Fungus, Wet or Dry Rot, or Bacteria	Bodily injury or property damage arising out of exposure to fungus, wet or dry rot or bacteria.
Failure to disclose	Bodily injury or property damage arising out of failure to disclose information regarding the sale or transfer of property.
Criminal Acts	Bodily injury or property damage arising out of the commission of a criminal act.
Punitive or exemplary damages, fines, or penalties	Specifically excluded.

Exclusions Revised	
Current Exclusion	New Exclusion
Bodily injury or property damage arising out of any Sexual Molestation, Corporal Punishment or Physical or Mental Abuse	Bodily injury or property damage arising out of any actual, alleged, or threatened Sexual Misconduct, Sexual Harassment, Sexual Molestation, or Physical or Mental Abuse

Your Home Characteristics

Our mission at USAA is to help protect your financial security. One way we do this is by helping you determine if you're adequately covered in the event of a loss. The estimated minimum rebuilding cost of your home is based on your home characteristics, but only you can decide if this is enough coverage. Our estimates are based on average construction costs and labor costs for geographic areas and may not reflect the unique features of your home or the area you live in.

On the back of this page, you'll find your home characteristics. If any of the information is incorrect, the rebuilding cost may be affected, so please revise any inaccuracies by:

- Logging on to usaa.com, selecting your policy and then Home Characteristics, or
- Calling us at 1-800-531-USAA (8722).

Should I adjust the coverage on my flood or wind policy?

If you have a separate flood or wind policy for this property, please call your agent or insurer to confirm that your coverage is adequate. For flood or wind policies serviced by the USAA General Agency, please call 1-800-531-8444 for flood policies or 1-800-531-8883 for wind policies. Wind coverage is available in Alabama, Florida, North Carolina, South Carolina, Texas and Mississippi.

Your Home Characteristics

YEAR BUILT: 1965

STORIES: 1.0

*SQUARE FEET: 1152

*Total Square Footage: Includes garage square footage if there is living space that is heated or cooled above the garage. It does not include a finished basement or attic.

FOUNDATION(S) : CRAWLSPACE
SLAB

EXTERIOR WALL: WOOD SIDING

ROOF COVERING: TAR AND GRAVEL

GARAGE TYPE: ATTACHED GARAGE - 1 CAR

INTERIOR WALL PARTITIONS: DRYWALL

INTERIOR WALL COVERINGS: PAINT

FLOOR COVERINGS: HARDWOOD
VINYL

KITCHEN: 1 STANDARD

BATHROOMS: 1 STANDARD

FIREPLACE: 1

HEAT & AIR: HEATING - GAS

CENTRAL AIR CONDITIONING - SAME DUCT

WIRED FOR CENTRAL ALARM: NO



YOUR DWELLING POLICY

READ YOUR POLICY, DECLARATIONS AND ENDORSEMENTS CAREFULLY.

The Dwelling Policy insurance contract between you and us consists of this policy plus your Declarations page and any applicable forms and endorsements. The QUICK REFERENCE section below outlines information contained in the Declarations and the major parts of the policy.

QUICK REFERENCE

Beginning On Page	DECLARATIONS PAGE
	Your Name and Address Described Location Policy Period Coverages, Amounts of Insurance and Premiums Forms and Endorsements
2	AGREEMENT
	DEFINITIONS
	COVERAGES
	Property Coverages Fair Rental Value/Additional Living Expense Other Coverages Debris Removal Improvements, Alterations and Additions World-Wide Coverage Fire Department Service Charge
5	PERILS INSURED AGAINST
7	GENERAL EXCLUSIONS
8	CONDITIONS
	Policy Period Insurable Interest Duties After Loss Loss Settlement Mortgage Clause Cancellation Non-Renewal

RECIPROCAL PROVISIONS...
apply when United Services Automobile Association, or USAA, is named on the Declarations as the Company.

A non-assessable policy

Reciprocals

Special definitions and provisions

Plan of operation

In your policy these sets of words have the same meaning: Policy means Contract; You, Your or Insured means Subscriber. We, us, our, USAA or Company means Reciprocal or Interinsurance Exchange; Premium means Deposit; President means Attorney-in-Fact.

Your Policy is issued as part of an Interinsurance Exchange by the President of USAA as Attorney-in-Fact under the authority given him by the subscribers.

No Contingent Liability: You are liable only for the amount of your premium since USAA has a free surplus in excess of the amount required by Article 19.03 of the Texas Insurance Code of 1951, as amended.

Participation: By purchasing this policy, you are a member of USAA and subject to its bylaws. You are entitled to dividends as may be declared by us, after approval as required by the Texas Insurance Code of 1951, as amended.

AGREEMENT

We will provide the insurance described in this policy in return for the premium and compliance with all applicable provisions of this policy.

DEFINITIONS

In this policy, "you" and "your" refer to the "named insured" shown in the Declarations and the spouse if a resident of the same household. "We," "us" and "our" refer to the Company providing this insurance.

COVERAGES

This insurance applies to the Described Location, Coverages for which a Limit of Liability is shown and Perils Insured Against for which a Premium is stated.

COVERAGE A - Dwelling

We cover:

1. ~~the dwelling on the Described Location shown in the Declarations used principally for dwelling purposes, including structures attached to the dwelling;~~
2. materials and supplies located on or next to the Described Location used to construct, alter or repair the dwelling or other structures on the Described Location; and
3. if not otherwise covered in this policy, building equipment and outdoor equipment used for the service of and located on the Described Location.

This coverage does not apply to land, including land on which the dwelling is located.

COVERAGE B - Other Structures

We cover other structures on the Described Location, set apart from the dwelling by clear space. This includes structures connected to the dwelling by only a fence, utility line, or similar connection.

This coverage does not apply to land, including land on which the other structures are located.

We do not cover other structures:

1. used in whole or in part for commercial, manufacturing or farming purposes; or
2. rented or held for rental to any person not a tenant of the dwelling, unless used solely as a private garage.

COVERAGE C - Personal Property

We cover personal property, usual to the occupancy as a dwelling and owned or used by you or members of your family residing with you while it is on the Described Location. At your request, we will cover personal property owned by a guest or servant while the property is on the Described Location.

Property Not Covered. We do not cover:

1. accounts, bank notes, bills, bullion, coins, currency, deeds, evidences of debt, gold other than goldware, letters of credit, manuscripts, medals, money, notes other than bank notes, passports, personal records, platinum, securities, silver other than silverware, tickets and stamps;
2. animals, birds or fish;
3. aircraft and parts. Aircraft means any contrivance used or designed for flight, except model or hobby aircraft not used or designed to carry people or cargo;
4. motor vehicles or all other motorized land conveyances. This includes:
 - a. their equipment and accessories; or
 - b. any device or instrument for the transmitting, recording, receiving or reproduction of sound or pictures which is operated by power from the electrical system of motor vehicles or all other motorized land conveyances, including:
 - (1) accessories or antennas; or

- (2) tapes, wires, records, discs or other media for use with any such device or instrument;

while in or upon the vehicle or conveyance.

We do cover vehicles or conveyances not subject to motor vehicle registration which are:

- a. used to service the Described Location; or
 - b. designed for assisting the handicapped;
5. watercraft, other than rowboats and canoes;
6. data, including data stored in:
- a. books of account, drawings or other paper records; or
 - b. electronic data processing tapes, wires, records, discs or other software media.

However, we do cover the cost of blank recording or storage media, and of pre-recorded computer programs available on the retail market;

7. credit cards or fund transfer cards.

If you remove personal property from the Described Location to a newly acquired principal residence, the Coverage C limit of liability will apply at each residence for the 30 days immediately after you begin to move the property there. This time period will not extend beyond the termination of this policy. Our liability is limited to the proportion of the limit of liability that the value at each residence bears to the total value of all personal property covered by this policy.

COVERAGE D - Fair Rental Value

If a loss to property described in Coverage A, B or C by a Peril Insured Against under this policy, makes that part of the Described Location rented to others or held for rental by you unfit for its normal use, we cover its:

Fair Rental Value, meaning the fair rental value of that part of the Described Location rented to others or held for rental by you less any expenses that do not continue while that part of the Described Location rented or held for rental is not fit to live in.

Payment will be for the shortest time required to repair or replace that part of the Described Location rented or held for rental.

If a civil authority prohibits you from use of the Described Location as a result of direct damage to a neighboring location by a Peril Insured Against in this policy, we cover the Fair Rental Value loss for no more than two weeks.

The periods of time referenced above are not limited by the expiration of this policy.

~~We do not cover loss or expense due to cancellation of a lease or agreement.~~

COVERAGE E - Additional Living Expense

If a loss to property described in Coverage A, B or C by a Peril Insured Against under this policy makes the Described Location unfit for its normal use, we cover you:

Additional Living Expense, meaning any necessary increase in living expenses incurred by you so that your household can maintain its normal standard of living.

Payment will be for the shortest time required to repair or replace the Described Location or, if you permanently relocate, the shortest time required for your household to settle elsewhere.

If a civil authority prohibits you from use of the Described Location as a result of direct damage to a neighboring location by a Peril Insured Against in this policy, we cover the Additional Living Expense loss for no more than two weeks.

The periods of time referenced above are not limited by the expiration of this policy.

We do not cover loss or expense due to cancellation of a lease or agreement.

OTHER COVERAGES

1. **Other Structures.** You may use up to 10% of the Coverage A limit of liability for loss by a Peril Insured Against to other structures described in Coverage B.

Use of this coverage does not reduce the Coverage A limit of liability for the same loss.

2. **Debris Removal.** We will pay your reasonable expense for the removal of:
 - a. debris of covered property if a Peril Insured Against causes the loss; or

- b. ash, dust or particles from a volcanic eruption that has caused direct loss to a building or property contained in a building.

Debris removal expense is included in the limit of liability applying to the damaged property.

- 3. **Improvements, Alterations and Additions.** If you are a tenant of the Described Location, you may use up to 10% of the Coverage C limit of liability for loss by a Peril Insured Against to improvements, alterations and additions, made or acquired at your expense, to that part of the Described Location used only by you.

Use of this coverage does not reduce the Coverage C limit of liability for the same loss.

- 4. **World-Wide Coverage.** You may use up to 10% of the Coverage C limit of liability for loss by a Peril Insured Against to property covered under Coverage C except rowboats and canoes, while anywhere in the world.

Use of this coverage reduces the Coverage C limit of liability for the same loss.

- 5. **Rental Value and Additional Living Expense.** You may use up to 10% of the Coverage A limit of liability for loss of both fair rental value as described in Coverage D and additional living expense as described in Coverage E.

Use of this coverage does not reduce the Coverage A limit of liability for the same loss.

- 6. **Reasonable Repairs.** In the event that covered property is damaged by an applicable Peril Insured Against, we will pay the reasonable cost incurred by you for necessary measures taken solely to protect against further damage. If the measures taken involve repair to other damaged property, we will pay for those measures only if that property is covered under this policy and the damage to that property is caused by an applicable Peril Insured Against.

This coverage:

- a. does not increase the limit of liability that applies to the covered property;

- b. does not relieve you of your duties, in case of a loss to covered property, as set forth in Condition 4.b.

- 7. **Property Removed.** We insure covered property against direct loss from any cause while being removed from a premises endangered by a Peril Insured Against and for no more than 30 days while removed.

This coverage does not change the limit of liability that applies to the property being removed.

- 8. **Trees, Shrubs and Other Plants.** We cover trees, shrubs, plants or lawns, on the Described Location for loss caused by the following Perils Insured Against: Fire or lightning, Explosion, Riot or civil commotion, Aircraft, Vehicles not owned or operated by you or a resident of the Described Location or Vandalism or malicious mischief, including damage during a burglary or attempted burglary, but not theft of property.

The limit of liability for this coverage will not be more than 5% of the Coverage A limit of liability, or more than \$500 for any one tree, shrub or plant. We do not cover property grown for commercial purposes.

This coverage is additional insurance.

- 9. **Fire Department Service Charge.** We will pay up to \$500 for your liability assumed by contract or agreement for fire department charges incurred when the fire department is called to save or protect covered property from a Peril Insured Against. We do not cover fire department service charges if the property is located within the limits of the city, municipality or protection district furnishing the fire department response.

This coverage is additional insurance. No deductible applies to this coverage.

- 10. **Collapse.** We insure for risk of direct physical loss to covered property involving collapse of a building or any part of a building caused only by one or more of the following:

- a. Perils Insured Against in Coverage C - Personal Property. These perils apply to covered building and personal property for loss insured by this Other Coverage;
- b. hidden decay;
- c. hidden insect or vermin damage;

- d. weight of contents, equipment, animals or people;
- e. weight of rain which collects on a roof;
- f. use of defective material or methods in construction, remodeling or renovation if the collapse occurs during the course of the construction, remodeling or renovation.

Loss to an awning, fence, patio, pavement, swimming pool, underground pipe, flue, drain, cesspool, septic tank, foundation, retaining wall, bulkhead, pier, wharf or dock is not included under items b, c, d, e and f unless the loss is a direct result of the collapse of a building.

Collapse does not include settling, cracking, shrinking, bulging or expansion.

This coverage does not increase the limit of liability applying to the damaged covered property.

11. Glass or Safety Glazing Material. We cover:

- a. the breakage of glass or safety glazing material which is part of a covered building, storm door or storm window; and
- b. damage to covered property by glass or safety glazing material which is part of a building, storm door or storm window.

This coverage does not include loss on the Described Location if the dwelling has been vacant for more than 30 consecutive days immediately before the loss. A dwelling being constructed is not considered vacant.

Loss for damage to glass will be settled on the basis of replacement with safety glazing materials when required by ordinance or law.

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

PERILS INSURED AGAINST

**COVERAGE A - DWELLING and
COVERAGE B - OTHER STRUCTURES**

We insure against risk of direct loss to property described in Coverages A and B only if that loss is a physical loss to property; however, we do not insure loss:

- 1. involving collapse, other than as provided in Other Coverages 10;
- 2. caused by:
 - a. freezing of a plumbing, heating, air conditioning or automatic fire protective sprinkler system or of a household appliance, or by discharge, leakage or overflow from within the system or appliance caused by freezing. This exclusion applies only while the dwelling is vacant, unoccupied or being constructed unless you have used reasonable care to:
 - (1) maintain heat in the building; or
 - (2) shut off the water supply and drain the system and appliances of water;
 - b. freezing, thawing, pressure or weight of water or ice, whether driven by wind or not, to a:
 - (1) fence, pavement, patio or swimming pool;
 - (2) foundation, retaining wall or bulkhead; or
 - (3) pier, wharf or dock;

- c. theft of property not part of a covered building or structure;
- d. theft in or to a dwelling or structure under construction;
- e. wind, hail, ice, snow or sleet to:
 - (1) outdoor radio and television antennas and aerials including their lead-in wiring, masts or towers; or
 - (2) trees, shrubs, plants or lawns;
- f. vandalism and malicious mischief, theft or attempted theft **if the dwelling has been vacant for more than 30 consecutive days immediately before the loss.** A dwelling being constructed is not considered vacant;
- g. constant or repeated seepage or leakage of water or steam over a period of weeks, months or years from within a plumbing, heating, air conditioning or automatic fire protective sprinkler system or from within a household appliance;
- h. (1) wear and tear, marring, deterioration;

- (2) inherent vice, latent defect, mechanical breakdown;
- (3) smog, rust or other corrosion, mold, wet or dry rot;
- (4) smoke from agricultural smudging or industrial operations;
- (5) discharge, dispersal, seepage, migration release or escape of pollutants.
Pollutants means any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed;
- (6) settling, shrinking, bulging or expansion, including resultant cracking, of pavements, patios, foundations, walls, floors, roofs or ceilings; or
- (7) birds, vermin, rodents, insects or domestic animals.

If any of these cause water damage not otherwise excluded, from a plumbing, heating, air conditioning or automatic fire protective sprinkler system or household appliance, we cover loss caused by the water including the cost of tearing out and replacing any part of a building necessary to repair the system or appliance. We do not cover loss to the system or appliance from which this water escaped.

3. excluded under General Exclusions.

Under Items 1 and 2, any ensuing loss to property described in Coverages A and B not excluded or excepted in this policy is covered.

COVERAGE C - PERSONAL PROPERTY

We insure for direct physical loss to the property described in Coverage C caused by a peril listed below unless the loss is excluded in the General Exclusions.

- 1. Fire or lightning.
- 2. Windstorm or hail.

This peril does not include loss to:

- a. property contained in a building caused by rain, snow, sleet, sand or dust unless the direct force of wind or hail damages the building causing an opening in a roof or wall and the rain, snow, sleet, sand or dust enters through this opening;

- b. canoes and rowboats; or
- c. trees, shrubs or plants.

- 3. Explosion.
- 4. Riot or civil commotion.
- 5. Aircraft, including self-propelled missiles and spacecraft.
- 6. Vehicles.

- 7. Smoke, meaning sudden and accidental damage from smoke.
This peril does not include loss caused by smoke from agricultural smudging or industrial operations.

- 8. Vandalism or malicious mischief.
This peril does not include loss by pilferage, theft, burglary or larceny.

- 9. Damage by Burglars, meaning damage to covered property caused by Burglars.
This peril does not include:

- a. theft of property; or
- b. damage caused by burglars to property on the Described Location if the dwelling has been vacant for more than 30 consecutive days immediately before the damage occurs. A dwelling being constructed is not considered vacant.

- 10. Falling Objects.
This peril does not include loss to property contained in the building unless the roof or an outside wall of the building is first damaged by a falling object.

Damage to the falling object itself is not covered.

- 11. Weight of ice, snow or sleet which causes damage to property contained in the building.

- 12. Accidental discharge or overflow of water or steam from within a plumbing, heating, air conditioning or automatic fire protective sprinkler system or from within a household appliance.

This peril does not include loss:

- a. to the system or appliance from which the water or steam escaped;
- b. caused by or resulting from freezing except as provided in the peril of freezing below; or

- c. on the Described Location caused by accidental discharge or overflow which occurs off the Described Location.

In this peril, a plumbing system does not include a sump, sump pump or related equipment.

- 13. Sudden and accidental tearing apart, cracking, burning or bulging of a steam or hot water heating system, an air conditioning or automatic fire protective sprinkler system, or an appliance for heating water.

This peril does not include loss caused by or resulting from freezing except as provided in the peril of freezing below.

- 14. Freezing of a plumbing, heating, air conditioning or automatic fire protective sprinkler system or of a household appliance.

This peril does not include loss on the Described Location while the dwelling is unoccupied or being constructed, unless you have used reasonable care to:

- a. maintain heat in the building; or
- b. shut off the water supply and drain the system and appliances of water.

- 15. Sudden and accidental damage from artificially generated electrical current.

This peril does not include loss to a tube, transistor or similar electronic component.

- 16. Volcanic Eruption other than loss caused by earthquake, land shock waves or tremors.

GENERAL EXCLUSIONS

- 1. ~~We do not insure for loss caused directly or indirectly by any of the following.~~ Such loss is excluded regardless of any other cause or event contributing concurrently or in any sequence to the loss.

- a. Ordinance or Law, meaning enforcement of any ordinance or law regulating the use, construction, repair, or demolition of a building or other structure, unless specifically provided under this policy.

- b. Earth Movement, meaning earthquake including land shock waves or tremors before, during or after a volcanic eruption; landslide; mine subsidence; mudflow; earth sinking, rising or shifting; unless direct loss by:

- (1) fire;
- (2) explosion; or
- (3) breakage of glass or safety glazing material which is part of a building, storm door or storm window;

ensues and then we will pay only for the ensuing loss.

- c. Water Damage, meaning:

- (1) flood, surface water, waves, tidal water, overflow of a body of water, or spray from any of these, whether or not driven by wind;

- (2) water which backs up through sewers or drains or which overflows from a sump; or

- (3) water below the surface of the ground, including water which exerts pressure on or seeps or leaks through a building, sidewalk, driveway, foundation, swimming pool or other structure.

Direct loss by fire or explosion resulting from water damage is covered.

- d. Power Failure, meaning the failure of power or other utility service if the failure takes place off the Described Location. But, if a Peril Insured Against ensues on the Described Location, we will pay only for that ensuing loss.

- e. Neglect, meaning your neglect to use all reasonable means to save and preserve property at and after the time of a loss.

- f. War, including undeclared war, civil war, insurrection, rebellion, revolution, warlike act by a military force or military personnel, destruction or seizure or use for a military purpose, and including any consequence of any of these. Discharge of a nuclear weapon will be deemed a warlike act even if accidental.

- g. Nuclear Hazard, to the extent set forth in the Nuclear Hazard Clause of the Conditions.

~~h. Intentional Loss, meaning any loss arising out of any act committed:~~

~~(1) by, or at the direction of, you or any person or organization named as an additional insured; and~~

~~(2) with the intent to cause a loss.~~

2. We do not insure for loss to property described in Coverages A and B caused by any of the following. However, any ensuing loss to property described in Coverages A and B not excluded or excepted in this policy is covered.

a. **Weather conditions.** However, this exclusion only applies if weather conditions contribute in any way with a cause or event excluded in paragraph 1. above to produce the loss;

b. Acts or decisions, including the failure to act or decide, of any person, group, organization or governmental body;

~~c. Faulty, inadequate or defective:~~

~~(1) planning, zoning, development, surveying, siting;~~

~~(2) design, specifications, workmanship, repair, construction, renovation, remodeling, grading, compaction;~~

~~(3) materials used in repair, construction, renovation or remodeling; or~~

~~(4) maintenance;~~

of part or all of any property whether on or off the Described Location.

CONDITIONS

1. **Policy Period.** This policy applies only to loss which occurs during the policy period.

2. **Insurable Interest and Limit of Liability.** Even if more than one person has an insurable interest in the property covered, we will not be liable in any one loss:

a. for an amount greater than the interest of a person insured under this policy; or

b. for more than the applicable limit of liability.

3. **Concealment or Fraud.** The entire policy will be void if, whether before or after a loss, you have:

a. intentionally concealed or misrepresented any material fact or circumstance;

b. engaged in fraudulent conduct; or

c. made false statements;

relating to this insurance.

4. **Your Duties After Loss.** In case of a loss to covered property, you must see that the following are done:

a. give prompt notice to us or our agent;

b. (1) protect the property from further damage;

(2) make reasonable and necessary repairs to protect the property; and

(3) keep an accurate record of repair expenses;

c. prepare an inventory of damaged personal property showing the quantity, description, actual cash value and amount of loss. Attach all bills, receipts and related documents that justify the figures in the inventory;

d. as often as we reasonably require:

(1) show the damaged property;

(2) provide us with records and documents we request and permit us to make copies; and

(3) submit to examination under oath, while not in the presence of any other named insured, and sign the same;

e. send to us, within 60 days after our request, your signed, sworn proof of loss which sets forth, to the best of your knowledge and belief:

(1) the time and cause of loss;

(2) your interest and that of all others in the property involved and all liens on the property;

(3) other insurance which may cover the loss;

(4) changes in title or occupancy of the property during the term of the policy;

(5) specifications of damaged buildings and detailed repair estimates;

- (6) the inventory of damaged personal property described in 4c;
 - (7) receipts for additional living expenses incurred and records that support the fair rental value loss.
5. **Loss Settlement.** Covered property losses are settled as follows:
- a. (1) Personal property;
 - (2) Awnings, carpeting, household appliances, outdoor antennas and outdoor equipment, whether or not attached to buildings; and
 - (3) Structures that are not buildings;
 - at actual cash value at the time of loss but not more than the amount required to repair or replace.
 - b. Buildings under Coverage A or B at replacement cost without deduction for depreciation, subject to the following:
 - (1) If, at the time of loss, the amount of insurance in this policy on the damaged building is 80% or more of the full replacement cost of the building immediately before the loss, we will pay the cost to repair or replace, after application of deductible and without deduction for depreciation, but not more than the least of the following amounts:
 - (a) the limit of liability under this policy that applies to the building;
 - (b) the replacement cost of that part of the building damaged for like construction and use on the same premises; or
 - (c) the necessary amount actually spent to repair or replace the damaged building.
 - (2) If, at the time of loss, the amount of insurance in this policy on the damaged building is less than 80% of the full replacement cost of the building immediately before the loss, we will pay the greater of the following amounts, but not more than the limit of liability under this policy that applies to the building:
 - (a) the actual cash value of that part of the building damaged; or
 - (b) that proportion of the cost to repair or replace, after application of deductible and without deduction for depreciation, that part of the building damaged, which the total amount of insurance in this policy on the damaged building bears to 80% of the replacement cost of the building.
- (3) To determine the amount of insurance required to equal 80% of the full replacement cost of the building immediately before the loss, do not include the value of:
- (a) excavations, foundations, piers or any supports which are below the undersurface of the lowest basement floor;
 - (b) those supports in (a) above which are below the surface of the ground inside the foundation walls, if there is no basement; and
 - (c) underground flues, pipes, wiring and drains.
- (4) We will pay no more than the actual cash value of the damage unless:
- (a) actual repair or replacement is complete; or
 - (b) the cost to repair or replace the damage is both:
 - (i) less than 5% of the amount of insurance in this policy on the building; and
 - (ii) less than \$2500.
- (5) You may disregard the replacement cost loss settlement provisions and make claim under this policy for loss or damage to buildings on an actual cash value basis. You may then make claim within 180 days after loss for any additional liability on a replacement cost basis.
6. **Loss to a Pair or Set.** In case of loss to a pair or set we may elect to:
- a. repair or replace any part to restore the pair or set to its value before the loss; or
 - b. pay the difference between actual cash value of the property before and after the loss.

7. **Glass Replacement.** Loss for damage to glass caused by a Peril Insured Against will be settled on the basis of replacement with safety glazing materials when required by ordinance or law.

8. **Appraisal.** If you and we fail to agree on the amount of loss, either may demand an appraisal of the loss. In this event, each party will choose a competent appraiser within 20 days after receiving a written request from the other. The two appraisers will choose an umpire. If they cannot agree upon an umpire within 15 days, you or we may request that the choice be made by a judge of a court of record in the state where the Described Location is located. The appraisers will separately set the amount of loss. If the appraisers submit a written report of an agreement to us, the amount agreed upon will be the amount of loss. If they fail to agree, they will submit their differences to the umpire. A decision agreed to by any two will set the amount of loss.

Each party will:

- a. pay its own appraiser; and
- b. bear the other expenses of the appraisal and umpire equally.

9. **Other Insurance.** If property covered by this policy is also covered by other fire insurance, we will pay only the proportion of a loss caused by any peril insured against under this policy that the limit of liability applying under this policy bears to the total amount of fire insurance covering the property.

10. **Subrogation.** You may waive in writing before a loss all rights of recovery against any person. If not waived, we may require an assignment of rights of recovery for a loss to the extent that payment is made by us.

If an assignment is sought, the person insured must sign and deliver all related papers and cooperate with us.

11. **Suit Against Us.** No action can be brought unless the policy provisions have been complied with and the action is started within one year after the date of loss.

12. **Our Option.** If we give you written notice within 30 days after we receive your signed, sworn proof of loss, we may repair or replace any part of the damaged property with like property.

13. **Loss Payment.** We will adjust all losses with you. We will pay you unless some other person is named in the policy or is legally entitled to receive payment. Loss will be payable 60 days after we receive your proof of loss and:

- a. reach an agreement with you;
- b. there is an entry of a final judgment; or
- c. there is a filing of an appraisal award with us.

14. **Abandonment of Property.** We need not accept any property abandoned by you.

15. **Mortgage Clause.**

The word "mortgagee" includes trustee.

If a mortgagee is named in this policy, any loss payable under Coverage A or B will be paid to the mortgagee and you, as interests appear. If more than one mortgagee is named, the order of payment will be the same as the order of precedence of the mortgages.

If we deny your claim, that denial will not apply to a valid claim of the mortgagee, if the mortgagee:

- a. notifies us of any change in ownership, occupancy or substantial change in risk of which the mortgagee is aware;
- b. pays any premium due under this policy on demand if you have neglected to pay the premium; and
- c. submits a signed, sworn statement of loss within 60 days after receiving notice from us of your failure to do so. Policy conditions relating to Appraisal, Suit Against Us and Loss Payment apply to the mortgagee.

If we decide to cancel or not to renew this policy, the mortgagee will be notified at least 10 days before the date cancellation or nonrenewal takes effect.

If we pay the mortgagee for any loss and deny payment to you:

- a. we are subrogated to all the rights of the mortgagee granted under the mortgage on the property; or
- b. at our option, we may pay to the mortgagee the whole principal on the mortgage plus any accrued interest. In this event, we will receive a full assignment and transfer of the mortgage and all securities held as collateral to the mortgage debt.

Subrogation will not impair the right of the mortgagee to recover the full amount of the mortgagee's claim.

16. **No Benefit to Bailee.** We will not recognize any assignment or grant any coverage that benefits a person or organization holding, storing or moving property for a fee regardless of any other provision of this policy.

17. **Cancellation.**

- a. You may cancel this policy at any time by returning it to us or by letting us know in writing of the date cancellation is to take effect.
- b. We may cancel this policy only for the reasons stated below by letting you know in writing of the date cancellation takes effect. This cancellation notice may be delivered to you, or mailed to you at your mailing address shown in the Declarations.

Proof of mailing will be sufficient proof of notice.

- (1) When you have not paid the premium, we may cancel at any time by letting you know at least 10 days before the date cancellation takes effect.
- (2) When this policy has been in effect for less than 60 days and is not a renewal with us, we may cancel for any reason by letting you know at least 10 days before the date cancellation takes effect.
- (3) When this policy has been in effect for 60 days or more, or at any time if it is a renewal with us, we may cancel:
 - (a) if there has been a material misrepresentation of fact which

if known to us would have caused us not to issue the policy; or

- (b) If the risk has changed substantially since the policy was issued.

This can be done by letting you know at least 30 days before the date cancellation takes effect.

- (4) When this policy is written for a period of more than one year, we may cancel for any reason at anniversary by letting you know at least 30 days before the date cancellation takes effect.

- c. When this policy is cancelled, the premium for the period from the date of cancellation to the expiration date will be refunded pro rata.

- d. If the return premium is not refunded with the notice of cancellation or when this policy is returned to us, we will refund it within a reasonable time after the date cancellation takes effect.

18. **Non-Renewal.** We may elect not to renew this policy. We may do so by delivering to you, or mailing to you at your mailing address shown in the Declarations, written notice at least 30 days before the expiration date of this policy. Proof of mailing will be sufficient proof of notice.

19. **Liberalization Clause.** If we make a change which broadens coverage under this edition of our policy without additional premium charge, that change will automatically apply to your insurance as of the date we implement the change in your state, provided that this implementation date falls within 60 days prior to or during the policy period stated in the Declarations.

This Liberalization Clause does not apply to changes implemented through introduction of a subsequent edition of our policy.

20. **Waiver or Change of Policy Provisions.** A waiver or change of a provision of this policy must be in writing by us to be valid. Our request for an appraisal or examination will not waive any of our rights.

21. **Assignment.** Assignment of this policy will not be valid unless we give our written consent.

22. Death. If you die, we insure:

- a. your legal representatives but only with respect to the property of the deceased covered under the policy at the time of death;
- b. with respect to your property, the person having proper temporary custody of the property until appointment and qualification of a legal representative.

23. Nuclear Hazard Clause.

- a. "Nuclear Hazard" means any nuclear reaction, radiation or radioactive contamination, all whether controlled or uncontrolled or however caused, or any consequence of any of these.
- b. Loss caused by the nuclear hazard will not be considered loss caused by fire, explosion, or smoke, whether these perils are specifically named in or otherwise included within the Perils Insured Against.

- c. This policy does not apply to loss caused directly or indirectly by nuclear hazard, except that direct loss by fire resulting from the nuclear hazard is covered.

24. Recovered Property. If you or we recover any property for which we have made payment under this policy, you or we will notify the other of the recovery. At your option, the property will be returned to or retained by you or it will become our property. If the recovered property is returned to or retained by you, the loss payment will be adjusted based on the amount you received for the recovered property.

25. Volcanic Eruption Period. One or more volcanic eruptions that occur within a 72-hour period will be considered as one volcanic eruption.

ORIGINAL

NO. _____ FILED _____
A.M. _____ P.M. *444*

JUL 10 2015

CHRISTOPHER D. RICH, Clerk
By TENILLE GRANT
DEPUTY

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IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

SHAMMIE L. FISHER,

Plaintiff,

vs.

USAA CASUALTY INSURANCE
COMPANY,

Defendant.

Case No. CV-OC-1508979

ANSWER TO COMPLAINT AND
DEMAND FOR JURY TRIAL

Defendant, USAA Casualty Insurance Company ("USAA"), by and through its counsel of record, Elam & Burke P.A., and for its answer to Plaintiff's Complaint and Demand for Jury Trial ("Complaint"), admits, denies, and alleges as follows:

FIRST DEFENSE

Plaintiff's Complaint fails to state a claim against USAA upon which relief can be granted.

SECOND DEFENSE

USAA denies each and every allegation contained in the Complaint not specifically admitted herein.

ANSWER TO COMPLAINT AND DEMAND FOR JURY TRIAL - 1

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THIRD DEFENSE

1. In answer to paragraph 1 of the Complaint, USAA admits that Ms. Fisher was/is a resident of Idaho and that she was the named insured on several insurance policies issued for the described location of 2510 N 34th St. Boise, Idaho 83703-5528 (the "Property"). USAA is without sufficient knowledge to form a belief as to the remaining allegations in paragraph 1 and, therefore, denies the same.

2. In answer to paragraph 2 of the Complaint, USAA admits the allegations contained therein.

3. In answer to paragraph 3 of the Complaint, USAA admits the allegations contained therein.

4. In answer to paragraph 4 of the Complaint, USAA admits that venue in Ada County is proper.

5. In answer to paragraph 5 of the Complaint, USAA admits it issued Homeowners Policy, Policy No. CIC 01634 13 15 90A, for the Property to named insured, Shammie Fisher, with effective dates of November 5, 2008, to November 5, 2009. USAA denies that the Property continued to be insured by USAA continuously through the date of loss in this case. From March 8, 2012, to March 8, 2013, and again from March 8, 2013, to March 8, 2014, the Property was insured by Garrison Property and Casualty Company under Policy No. GAR 0163413 15 80A. In response to the final sentence of paragraph 5, USAA admits that the copy of the "Policy" attached as Exhibit A to the Complaint speaks for itself and that no further response from USAA is required.

6. In answer to paragraph 6 of the Complaint, USAA admits that the “Policy” speaks for itself and that no further response from USAA is required.

7. In answer to paragraph 7 of the Complaint, USAA is without sufficient knowledge or information to form a belief as to the truth of the allegations contained therein and, therefore, denies the same.

8. In answer to paragraph 8 of the Complaint, USAA admits that the “Policy” speaks for itself and that no further response from USAA is required.

9. In answer to paragraph 9 of the Complaint, USAA admits that the “Policy” speaks for itself and that no further response from USAA is required.

10. In answer to paragraph 10 of the Complaint, USAA is without sufficient knowledge or information to form a belief as to the truth of the allegations contained therein and, therefore, denies the same.

11. In answer to paragraph 11 of the Complaint, USAA is without sufficient knowledge or information to form a belief as to the truth of the allegations contained therein and, therefore, denies the same.

12. In answer to paragraph 12 of the Complaint, USAA is without sufficient knowledge or information to form a belief as to the truth of the allegations contained therein and, therefore, denies the same.

13. In answer to paragraph 13 of the Complaint, USAA admits that the “Policy” speaks for itself and that no further response from USAA is required. In response to the remaining allegations contained in paragraph 13 of the Complaint, USAA is without sufficient

knowledge or information to form a belief as to the truth of those allegations and, therefore, denies the same.

14. In answer to paragraph 14 of the Complaint, USAA admits that a letter from Spink Butler, LLP dated September 27, 2013, was mailed to USAA and admits that in a letter dated December 5, 2013, Garrison Property and Casualty Insurance Company disclaimed coverage for the loss.

CLAIMS FOR RELIEF – COUNT ONE
BREACH OF CONTRACT

15. In answer to paragraph 15 of the Complaint, USAA incorporates its responses to paragraphs 1 through 14 as if fully set forth herein.

16. In answer to paragraph 16 of the Complaint, USAA denies the allegations contained therein.

17. In answer to paragraph 17 of the Complaint, USAA denies the allegations contained therein.

CLAIMS FOR RELIEF – COUNT TWO
BREACH OF THE COVENANT OF GOOD FAITH AND FAIR DEALING

18. In answer to paragraph 18 of the Complaint, USAA incorporates its responses to paragraphs 1 through 17 as if fully set forth herein.

19. The allegations contained in paragraph 19 of the Complaint call for a legal conclusion to which no response is required, but, to the extent the remaining allegations require a response, USAA denies the same.

20. In answer to paragraph 20 of the Complaint, USAA denies the allegations contained therein.

21. In answer to paragraph 21 of the Complaint, USAA denies the allegations contained therein.

ATTORNEY FEES AND COURT COSTS

22. In answer to paragraph 22 of the Complaint, USAA admits that Ms. Fisher has retained the services of Kaufman Reid, PLLC.

23. In answer to paragraph 23 of the Complaint, USAA denies the allegations contained therein.

FIRST AFFIRMATIVE DEFENSE

That the policy issued by Garrison Property and Casualty Company to Ms. Fisher does not provide COVERAGE A – DWELLING or COVERAGE B – OTHER STRUCTURES for:

- d. theft in or to a dwelling or structure under construction;

SECOND AFFIRMATIVE DEFENSE

That under the policy issued by Garrison Property and Casualty Company to Ms. Fisher, COVERAGE C – PERSONAL PROPERTY provides as follows:

COVERAGE C – PERSONAL PROPERTY

We insure for direct physical loss to the property described in Coverage C caused by a peril listed below unless the loss is excluded in the General Exclusions

...

8. Vandalism or malicious mischief.

This peril does not include loss by pilferage, theft, burglary or larceny.

9. Damage by Burglars, meaning damage to covered property caused by Burglars.

This peril does not include:

- a. theft of property; or

(emphasis in original).

THIRD AFFIRMATIVE DEFENSE

That the policy issued by Garrison Property and Casualty Company to Ms. Fisher does not provide any coverage for:

- h. Intentional Loss**, meaning any loss arising out of any act committed:
 - (1) by or at the direction of you or any person or organization named as an additional insured; and
 - (2) with the intent to cause a loss.

(emphasis in original).

FOURTH AFFIRMATIVE DEFENSE

That the policy issued by Garrison Property and Casualty Company to Ms. Fisher does not provide COVERAGE A – DWELLING or COVERAGE B – OTHER STRUCTURES for:

- c. Faulty, Inadequate or defective;**
 - ...
 - (2) design, specifications, workmanship, repair, construction, renovation, remodeling, grading, compaction;
 - (3) materials used in repair, construction, renovation or remodeling; or
 - (4) maintenance;
- of part or all of any property whether on or off the Described Location.

(emphasis in original).

FIFTH AFFIRMATIVE DEFENSE

That the damages alleged in the Complaint reasonably could have been avoided by Ms. Fisher.

SIXTH AFFIRMATIVE DEFENSE

USAA is not a party to the contract that forms the basis of the Complaint and Ms. Fisher has failed to join an indispensable party.

SEVENTH AFFIRMATIVE DEFENSE

Ms. Fisher expressly or impliedly gave her consent for all of the conduct giving rise to her alleged loss.

EIGHTH AFFIRMATIVE DEFENSE

Ms. Fisher failed to give prompt notice to Garrison Property and Casualty Company or its agent regarding the loss that occurred in or around May 2012 and failed to protect the property from further loss as required under the policy.

NINTH AFFIRMATIVE DEFENSE

Ms. Fisher failed to take reasonable steps to mitigate her alleged damages.

RESERVATION

USAA reserves the right, after discovery, to amend this Answer to add additional affirmative defenses supported by the facts, and a failure to include all such defenses in this Answer shall not be deemed a waiver of any right to further amend this Answer.

REQUEST FOR ATTORNEY FEES

USAA hereby requests that it be awarded its attorney fees and costs incurred herein pursuant to Section 12-121 of the Idaho Code, and Rule 54 of the Idaho Rules of Civil Procedure.

WHEREFORE, USAA prays for judgment as follows:

1. That Ms. Fisher take nothing by way of the Complaint;
2. That the Complaint be dismissed with prejudice;
3. That USAA be awarded its costs, including attorney fees, in defending this action;


and

4. For such other and further relief that the Court deems just and proper.

DATED this 10th day of July, 2015.

ELAM & BURKE, P.A.

By: _____

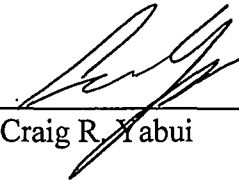

Craig R. Yabui, Of the Firm
Attorneys for Defendant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 10th day of July, 2015, I caused a true and correct copy of the above and foregoing instrument to be served upon the following in the manner indicated below:

James G. Reid
Jennifer Reid Mahoney
KAUFMAN REID, PLLC
1211 W. MYRTLE ST., STE. 350
Boise, Idaho 83702

[] U.S. Mail
[] Hand Delivery
[] Federal Express
[✓] Via Facsimile



Craig R. Yabui

4847-8141-5717, v. 1

RECEIVED

JUL 20 2015

Ada County Clerk

JAMES G. REID, ISB # 1372
JENNIFER REID MAHONEY, ISB # 5207
KAUFMAN REID, PLLC
1211 W. Myrtle St., Suite 350
Boise, Idaho 83702
Telephone: (208) 342-4591
Facsimile: (208) 342-4657
E-mail: jreid@krlawboise.com

Attorneys for Plaintiff

NO. _____ FILED _____
A.M. _____ P.M. 4:00

JUL 21 2015

CHRISTOPHER D. RICH, Clerk
By INGA JOHNSON
DEPUTY

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

SHAMMIE L. FISHER;

Plaintiff,

vs.

USAA CASUALTY INSURANCE
COMPANY;

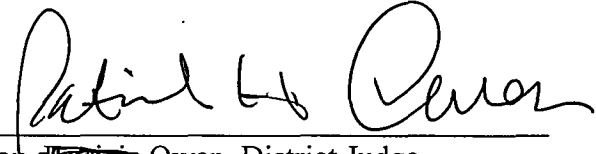
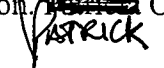
Defendant.

Case No. CV OC 1508979

ORDER GRANTING MOTION
TO FILE AMENDED COMPLAINT

Based upon the Stipulation of the parties and good cause appearing, IT IS HEREBY
ORDERED that Plaintiff's Motion to Amend its Complaint be granted and that Plaintiff may file
an Amended Complaint in the form as set forth in Exhibit A to Plaintiff's Motion.

DATED THIS 21 day of July, 2015.


Hon. ~~Patrick~~ Owen, District Judge


CERTIFICATE OF SERVICE

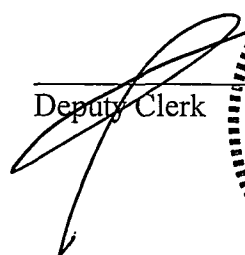
I, the undersigned, hereby certify that on the 22 day of July, 2015, a true and correct copy of the above and foregoing document was served upon the following by:

James G. Reid
Kaufman Reid, PLLC
1211 W. Myrtle St., Suite 350
Boise, ID 83702

- US Mail
- Overnight Mail
- Hand Delivery
- Facsimile 208-342-4657

Matthew L. Walters
Craig R. Yabui
Elam & Burke, P.A.
251 E. Front Street, Suite 300
P O Box 1539
Boise, ID 83701

- US Mail
- Overnight Mail
- Hand Delivery
- Facsimile 208-384-5844

CHRISTOPHER D. RICH

Deputy Clerk
INGA JOHNSON
CLERK OF THE STATE
4TH JUDICIAL DISTRICT COURT
IDAHO

JAMES G. REID, ISB # 1372
JENNIFER REID MAHONEY, ISB # 5207
KAUFMAN REID, PLLC
1211 W. Myrtle St., Suite 350
Boise, Idaho 83702
Telephone: (208) 342-4591
Facsimile: (208) 342-4657
E-mail: jreid@krlawboise.com

Attorneys for Plaintiff

NO. _____ FILED _____
A.M. _____ P.M. 151
JUL 27 2015
CHRISTOPHER D. RICH, Clerk
By TENILLE GRANT
DEPUTY

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

SHAMMIE L. FISHER;

Plaintiff,

vs.

**GARRISON PROPERTY AND
CASUALTY INSURANCE COMPANY;**

Defendant.

Case No. CV OC 1508979

**AMENDED COMPLAINT AND
DEMAND FOR JURY TRIAL**

COMES NOW the Plaintiff, SHAMMIE L. FISHER, by and through her attorneys of record, Kaufman Reid, PLLC, and as a complaint and cause of action against Defendant, hereby alleges as follows:

PARTIES

1

Plaintiff, Shammie L. Fisher, is, and at all material times herein was, an Idaho resident residing in Boise, Ada County. Shammie Fisher is married to Michael Royce, a resident of Ada County, Idaho. At the time the insurance policy at issue in this case was issued, Shammie Fisher was

AMENDED COMPLAINT AND DEMAND FOR JURY TRIAL - 1

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Th

unmarried.

2

Defendant Garrison Property and Casualty Insurance Company (hereinafter "Garrison") was at all times material hereto, a Texas Corporation, doing business in Ada County, Idaho, and registered with the Idaho Department of Insurance.

JURISDICTION AND VENUE

3

Defendant is an out of state corporation doing business in the State of Idaho and registered with the Idaho Department of Insurance, as such, this Court has personal jurisdiction in this case.

4

The cause of action in this case arose in Ada County, Idaho, and thus venue is properly in this Court pursuant to Idaho Code § 41-1838.

STATEMENT OF FACTS

5

On or about November 5, 2008, USAA Casualty Insurance Company issued Plaintiff a Homeowners Insurance Policy for her residence located at 2510 N. 34th Street, Boise, Idaho, 83703. The policy was renewed annually by USAA and/or for Garrison Property and Casualty Company. The Policy in effect from the period March 8, 2013 to March 8, 2014, is attached hereto as Exhibit A and incorporated herein by reference.

6

The Policy states in the Declarations that the Described Location is 2510 N. 34th Street, Boise, Ada County, Idaho. *See* Policy, Declarations.

7

At the time the Policy was issued, the Described Location was used principally for dwelling purposes.

8

Coverage A provides that the Policy covers “the dwelling on the Described Location shown in the Declarations, used principally for dwelling purposes, including structures attached to the dwelling”. Policy, at 2.

9

Coverage C also provides coverage for personal property of the insured. Policy, at 2.

10

In February of 2012, Plaintiff signed a contract for lease to own (“Lease”) of the Property with Ron Reynosa (“Mr. Reynosa”). The Lease was for a 1 year term, ending on March 31st, 2013, with the option for a 6 month extension ending on Sept 1, 2013.

11

Within the first two months, Plaintiff was notified that the entire home had been leveled by Mr. Reynosa, destroying both the structure and the personal property therein. Plaintiff had no knowledge that Mr. Reynosa intended to destroy the home when he leased the Property.

12

Mr. Reynosa subsequently defaulted on the Lease and left town, informing Plaintiff in September 2013 that he did not intend to rebuild the home he had destroyed.

13

The Policy does not state that it does not apply to the Described Location in the event that

it is leased to a third party. Additionally, Defendant and its agents did not inform Plaintiff, either at the time the insurance contract was entered into, or at any other time, that she needed to obtain a different policy if she were to lease the Property to a third party.

14

On or about September 27, 2013, Plaintiff submitted a Proof of Loss seeking coverage under the Policy for the losses to the dwelling and the personal property therein. By letter of December 5, 2013, Garrison denied coverage for the loss.

CLAIMS FOR RELIEF - COUNT ONE

BREACH OF CONTRACT

15

Plaintiff restates and realleges the allegations contained in paragraphs 1-14 above, as if fully set forth herein.

16

Defendant's failure to provide coverage for the loss is a breach of the contract of insurance between the parties.

17

Plaintiff has been damaged by the breach of contract in an amount to be proven with specificity at trial, but in an amount greater than \$25,000.00.

CLAIMS FOR RELIEF - COUNT TWO

BREACH OF THE COVENANT OF GOOD FAITH AND FAIR DEALING

18

Plaintiff restates and realleges the allegations contained in paragraphs 1-17 above, as if fully set forth herein.

19

Implied in every contract in the State of Idaho is a covenant of good faith and fair dealing. Defendant had a duty, pursuant to its insurance contract with Plaintiff, to act in good faith and deal fairly with Plaintiff.

20

Defendant's failure to abide by the terms of the insurance contract and its denial of coverage breached the duty of good faith and fair dealing inherent in the agreement between the parties.

21

As a result of Defendant's breach, Plaintiff has been damaged in an amount to be proven at trial.

ATTORNEY FEES AND COURT COSTS

22

Plaintiff has been required to retain the attorney services of Kaufman Reid, PLLC, in order to prosecute and maintain this action.

23

Plaintiff is entitled to an award of court costs incurred herein, pursuant to Rule 54(d) of the IDAHO RULES OF CIVIL PROCEDURE, and to an award of reasonable litigation expenses and attorney fees incurred herein, pursuant to IDAHO CODE § 41-1839, and Rule 54(e) of the IDAHO RULES OF CIVIL PROCEDURE.

DEMAND FOR JURY TRIAL

Plaintiff hereby makes **DEMAND FOR JURY TRIAL** of all contested matters in this action and does not consent to any jury panel consisting of fewer than twelve (12) jurors.

WHEREFORE, Plaintiff **PRAYS** that the Court enter its decree, judgment, or order providing Plaintiff with the following relief:

1. For judgment against Defendant for breach of contract and breach of the covenant of good faith and fair dealing and for an award of damages in an amount to be proven at trial;
2. For an award of court costs and attorney fees incurred by Plaintiff relative to this action; and
3. For such other and further relief as the Court deems just and appropriate under the circumstances.

DATED this 27 day of July, 2015.

KAUFMAN REID, PLLC

by: _____

James G. Reid

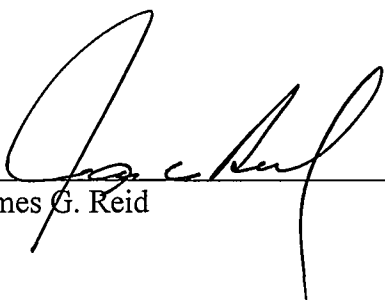
CERTIFICATE OF SERVICE

I hereby certify that on the 27 day of July, 2015, a true and correct copy of the foregoing was served upon all parties listed below by:

- U. S. mail, postage prepaid
- hand delivery

- e-mail
- facsimile

Matthew L. Walters
Craig R. Yabui
Elam & Burke, P.A.
251 East Front Street, Suite 300
P.O. Box 1539
Boise, ID 83701



James G. Reid



FIRE POLICY PACKET

GAR 01634 13 15 80A
EFFECTIVE: 03-06-13 TO: 03-03-14

SHAMMIE L FISHER
13534 W ACORN ST
BOISE ID 83713-0874

IMPORTANT MESSAGES

Attached are your policy documents and other information you may find helpful concerning your insurance coverages and premiums. Please take a few minutes to review them, and then file them with your policy records.

- 1) We are making changes to your Personal Liability coverage. Please review the enclosed "Changes to Your Personal Liability Coverage Notice". The notice will explain any changes including any reductions in coverage.
- 2) USAA considers many factors when determining your premium. Maintaining your property to reduce the probability of loss is one of the most important steps you can take. A history of claim activity may affect your coverage.
- 3) Go to usaa.com to view policy coverages and home features.
- 4) Your policy does NOT cover loss due to flood from any source. For information about obtaining flood coverage from the National Flood Insurance Program (NFIP), call USAA at (800) 531-8722, or contact the NFIP directly.

If you already have a flood policy, you should review it to make sure you have the appropriate coverage and limits. No automatic increases or adjustments are applied to your policy. Coverage for loss of household contents due to flood may be available at an additional cost. If you have questions, please call a member service representative at the phone number above.

THIS IS NOT A BILL. Any premium charge or return for this policy will be reflected on your next regular monthly statement.

RECEIVE THIS DOCUMENT AND OTHERS ELECTRONICALLY SIGN UP AT usaa.com.

For U.S. CALLS: Policy Service (800) 531-8111. Claims (800) 531-8222.

Thank you for letting us serve you. We appreciate your business.

DPCS1

53276-0507

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GARRISON PROPERTY AND CASUALTY INSURANCE COMPANY
 9800 Fredericksburg Road - San Antonio, Texas 78288

DWELLING POLICY

THIS RENEWAL Declaration replaces all prior Declarations, if any.

Insured's Name and Mailing Address

SHAMMIE L FISHER
 13534 W ACORN ST
 BOISE ID 83713-0874

RENEWAL OF Policy Number

GAR 01634 13 15 80A

POLICY PERIOD: 12:01 A.M. Standard Time
 at the Described Location

From 03-08-13 To 03-08-14 1 Year

Named Insured: SHAMMIE L FISHER

Described Location:

2510 N 34TH ST
 BOISE, ADA, ID 83703-5528

Legal Description:

This insurance applies to the Described Location, Coverage for which a Limit of Liability is shown and Perils Insured Against for which a Premium is stated.

PERILS INSURED AGAINST	FIRE OR LIGHTNING	EXTENDED COVERAGE	SPECIAL FORM
PREMIUM	\$140.76	\$245.88	\$255.99

TOTAL ANNUAL PREMIUM \$667.13

Coverages

- A. DWELLING
- L. PERSONAL LIABILITY
- M. MEDICAL PAYMENTS

Limit of Liability

\$172,000
 \$300,000
 \$5,000

In case of loss under this policy we cover only that part of the loss over the deductible stated.

DEDUCTIBLE(S): \$500

Form and Endorsements made a part of this policy at time of issue
 SEE ATTACHED DP-END

MORTGAGEE

AMERICA'S SERVICING COMPANY
 ITS SUCCESSORS AND/OR ASSIGNS
 PO BOX 5106
 SPRINGFIELD, OH 45501-5106

LOAN NUMBER: 1205093993

In WITNESS WHEREOF, this policy is signed on 01-07-13

Steven Alan Bennett
 Steven Alan Bennett, Secretary

Stuart Parker
 Stuart Parker, President

DP-D Ed. 1-89

ATTACH THIS DECLARATION TO PREVIOUS POLICY



GARRISON PROPERTY AND CASUALTY INSURANCE COMPANY
 ENDORSEMENT DECLARATIONS

Specifically listed below are the Declarations and premiums for endorsements made a part of this policy at the time of issue. The endorsements are attached stating terms and conditions.

RENEWAL OF	Policy Number	Policy Term:	03-06-13	03-06-14
GAR	01634 13 15 80A	Inception		Expiration

SECOND MORTGAGEE:

LOAN NUMBER: 0056796139

FIRST HORIZON HOME LOANS CORPORATION
 ITS SUCCESSORS AND/OR ASSIGNS
 PO BOX 7481
 SPRINGFIELD, OH 45501-7481

REMAIN IN EFFECT (REFER TO PREVIOUS POLICY):

DP 00 03 (07-88); DL 24 01 (12-02); DL 24 11 (12-02); DL 24 14 (12-02)
 DP FLDA3 (01-07); DP ID (10-05); DP 04 LA (03-08); DP-978 (07-00); ESA (02-05)
 FI-MLD89 (08-03)

ENDORSEMENTS ADDED:

DL APL02 (11-12)

ADDITIONAL COVERAGE INFORMATION:

- DL 24 01 (12-02) - PERSONAL LIABILITY
 TERM PREMIUM \$ 24.50
- DL 24 11 (12-02) - PREMISES LIABILITY
 TERM PREMIUM : INCLUDED
- DL 24 14 (12-02) - LIABILITY LOSS ASSESSMENT
 COVERAGE LIMIT : \$10,000
 TERM PREMIUM :INCLUDED
- DP 04 LA (03-08) - LOSS ASSESSMENT PROPERTY COVERAGE
 COVERAGE LIMIT : \$10,000
 APPLIES TO DWELLING COVERAGE A
 TERM PREMIUM : INCLUDED
- DP-978 (07-00) - ADJUSTED BUILDING COST ENDORSEMENT
 TERM PREMIUM: INCLUDED

DL APL02 (11-12)

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

Amendment to Personal Liability

(DL 24 01)

EXCLUSIONS

E. Coverage L - Personal Liability And Coverage M - Medical Payments to Others

Item 7. Sexual Molestation, Corporal Punishment Or Physical Or Mental Abuse is deleted and replaced by the following:

7. Sexual Misconduct, Sexual Harassment, Sexual Molestation, Or Physical Or Mental Abuse

"Bodily injury" or "property damage" arising out of any actual, alleged, or threatened:

- a. Sexual misconduct; or
- b. Sexual harassment; or
- c. Sexual molestation; or
- d. Physical or mental abuse.

The following exclusions are added:

Pollutants

"Bodily injury" or "property damage" arising out of any actual, alleged, or threatened discharge, dispersal, release, escape, seepage or migration of pollutants however caused and whenever occurring. This includes any loss, cost or expense arising out of any:

- a. Request, demand or order that any "insured" or others test for, monitor, clean up, remove, contain, treat, detoxify, or assess the effects of pollutants; or

- b. Claim or suit by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of pollutants.

Pollutants means any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed.

Lead

"Bodily injury" or "property damage" arising directly or indirectly, in whole or in part, out of the actual, alleged or threatened inhalation of, ingestion of, contact with, exposure to, existence of or presence of lead paint, dust, chips, or other lead-based products.

Asbestos

"Bodily injury" or "property damage" arising directly or indirectly, in whole or in part, out of actual, alleged or threatened inhalation of, ingestion of, contact with, exposure to, existence of, or presence of asbestos.

Fungus, Wet or Dry Rot, or Bacteria

"Bodily injury" or "property damage" arising out of directly or indirectly, in whole or in part, out of actual, alleged or threatened inhalation of, ingestions of, contact with, exposure to, existence of or presence of any fungus, wet or dry rot or bacteria.

DL APL02 (11-12)

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Page 1 of 2

Fungus means any microorganism or by-product of any microorganism, including, but is not limited to mold, mildew, fungi, mycotoxins and spores.

Failure to Disclose

"Bodily injury" or "property damage" arising out of your failure, intentionally or unintentionally, to disclose information regarding the sale or transfer of real or personal property.

Criminal Acts

"Bodily injury" or "property damage" arising out of or caused by the commission of, attempting to flee from, or avoiding apprehension for a criminal act for which intent is a necessary element.

F. Coverage L - Personal Liability

The following exclusion is added:

Punitive, exemplary or multiple damages, prejudgment interest, fines, or penalties.

Except as specifically modified in this endorsement, all provisions of the policy to which this endorsement is attached also apply to this endorsement.

CHANGES TO YOUR PERSONAL LIABILITY COVERAGE NOTICE

We are making changes to your Dwelling Policy as a part of a change affecting all Dwelling Policies. The changes are intended to make the liability coverage consistent with the similar coverage provided under the Homeowner policy. These changes will apply upon the effective date of the enclosed new policy. These changes include reductions in coverage. If you want to accept this new policy, no action is required on your part other than payment of premiums. If you have any questions, call a member service representative at 1-800-531-USAA (8722). We value your business and look forward to continuing to serve your financial needs.

The tables below illustrate the changes we have made to the Dwelling Policy.

Exclusions Added	
Pollutants	Bodily injury or property damage arising out of any actual, alleged, or threatened discharge, dispersal, release, escape, seepage or migration of pollutants.
Lead	Bodily injury or property damage arising out of exposure to lead paint, dust, chips, or other lead-based products.
Asbestos	Bodily injury or property damage arising out of exposure to asbestos.
Fungus, Wet or Dry Rot, or Bacteria	Bodily injury or property damage arising out of exposure to fungus, wet or dry rot or bacteria.
Failure to disclose	Bodily injury or property damage arising out of failure to disclose information regarding the sale or transfer of property.
Criminal Acts	Bodily injury or property damage arising out of the commission of a criminal act.
Punitive or exemplary damages, fines, or penalties	Specifically excluded.

Exclusions Revised	
Current Exclusion	New Exclusion
Bodily injury or property damage arising out of any Sexual Molestation, Corporal Punishment or Physical or Mental Abuse	Bodily injury or property damage arising out of any actual, alleged, or threatened Sexual Misconduct, Sexual Harassment, Sexual Molestation, or Physical or Mental Abuse

Your Home Characteristics

Our mission at USAA is to help protect your financial security. One way we do this is by helping you determine if you're adequately covered in the event of a loss. The estimated minimum rebuilding cost of your home is based on your home characteristics, but only you can decide if this is enough coverage. Our estimates are based on average construction costs and labor costs for geographic areas and may not reflect the unique features of your home or the area you live in.

On the back of this page, you'll find your home characteristics. If any of the information is incorrect, the rebuilding cost may be affected, so please revise any inaccuracies by:

- Logging on to usaa.com, selecting your policy and then Home Characteristics, or
- Calling us at 1-800-531-USAA (8722).

Should I adjust the coverage on my flood or wind policy?

If you have a separate flood or wind policy for this property, please call your agent or insurer to confirm that your coverage is adequate. For flood or wind policies serviced by the USAA General Agency, please call 1-800-531-8444 for flood policies or 1-800-531-8883 for wind policies. Wind coverage is available in Alabama, Florida, North Carolina, South Carolina, Texas and Mississippi.

Your Home Characteristics

YEAR BUILT: 1965

STORIES: 1.0

*SQUARE FEET: 1152

*Total Square Footage: Includes garage square footage if there is living space that is heated or cooled above the garage. It does not include a finished basement or attic.

FOUNDATION(S) : CRAWLSPACE
SLAB

EXTERIOR WALL: WOOD SIDING

ROOF COVERING: TAR AND GRAVEL

GARAGE TYPE: ATTACHED GARAGE - 1 CAR

INTERIOR WALL PARTITIONS: DRYWALL

INTERIOR WALL COVERINGS: PAINT

FLOOR COVERINGS: HARDWOOD
VINYL

KITCHEN: 1 STANDARD

BATHROOMS: 1 STANDARD

FIREPLACE: 1

HEAT & AIR: HEATING - GAS

CENTRAL AIR CONDITIONING - SAME DUCT

WIRED FOR CENTRAL ALARM: NO



YOUR DWELLING POLICY

READ YOUR POLICY, DECLARATIONS AND ENDORSEMENTS CAREFULLY.

The Dwelling Policy insurance contract between you and us consists of this policy plus your Declarations page and any applicable forms and endorsements. The QUICK REFERENCE section below outlines information contained in the Declarations and the major parts of the policy.

QUICK REFERENCE	
Beginning On Page	<p>DECLARATIONS PAGE</p> <p>Your Name and Address Described Location Policy Period Coverages, Amounts of Insurance and Premiums Forms and Endorsements</p>
	<p>2 AGREEMENT</p>
	<p>DEFINITIONS</p>
	<p>COVERAGES</p> <p>Property Coverages Fair Rental Value/Additional Living Expense Other Coverages Debris Removal Improvements, Alterations and Additions World-Wide Coverage Fire Department Service Charge</p>
	<p>5 PERILS INSURED AGAINST</p>
	<p>7 GENERAL EXCLUSIONS</p>
	<p>8 CONDITIONS</p> <p>Policy Period Insurable Interest Duties After Loss Loss Settlement Mortgage Clause Cancellation Non-Renewal</p>

RECIPROCAL PROVISIONS...
apply when United Services Automobile Association, or USAA, is named on the Declarations as the Company.

A non-assessable policy

Reciprocals

Special definitions and provisions

Plan of operation

In your policy these sets of words have the same meaning: Policy means Contract; You, Your or Insured means Subscriber. We, us, our, USAA or Company means Reciprocal or Interinsurance Exchange; Premium means Deposit; President means Attorney-in-Fact.

Your Policy is issued as part of an Interinsurance Exchange by the President of USAA as Attorney-in-Fact under the authority given him by the subscribers.

No Contingent Liability: You are liable only for the amount of your premium since USAA has a free surplus in excess of the amount required by Article 19.03 of the Texas Insurance Code of 1951, as amended.

Participation: By purchasing this policy, you are a member of USAA and subject to its bylaws. You are entitled to dividends as may be declared by us, after approval as required by the Texas Insurance Code of 1951, as amended.

AGREEMENT

We will provide the insurance described in this policy in return for the premium and compliance with all applicable provisions of this policy.

DEFINITIONS

In this policy, "you" and "your" refer to the "named insured" shown in the Declarations and the spouse if a resident of the same household. "We," "us" and "our" refer to the Company providing this insurance.

COVERAGES

This insurance applies to the Described Location, Coverages for which a Limit of Liability is shown and Perils Insured Against for which a Premium is stated.

COVERAGE A - Dwelling

We cover:

1. the dwelling on the Described Location shown in the Declarations, used principally for dwelling purposes, including structures attached to the dwelling;
2. materials and supplies located on or next to the Described Location used to construct, alter or repair the dwelling or other structures on the Described Location; and
3. if not otherwise covered in this policy, building equipment and outdoor equipment used for the service of and located on the Described Location.

This coverage does not apply to land, including land on which the dwelling is located.

COVERAGE B - Other Structures

We cover other structures on the Described Location, set apart from the dwelling by clear space. This includes structures connected to the dwelling by only a fence, utility line, or similar connection.

This coverage does not apply to land, including land on which the other structures are located

We do not cover other structures

1. used in whole or in part for commercial, manufacturing or farming purposes; or
2. rented or held for rental to any person not a tenant of the dwelling, unless used solely as a private garage.

COVERAGE C - Personal Property

We cover personal property, usual to the occupancy as a dwelling and owned or used by you or members of your family residing with you while it is on the Described Location. At your request, we will cover personal property owned by a guest or servant while the property is on the Described Location.

Property Not Covered. We do not cover:

1. accounts, bank notes, bills, bullion, coins, currency, deeds, evidences of debt, gold other than goldware, letters of credit, manuscripts, medals, money, notes other than bank notes, passports, personal records, platinum, securities, silver other than silverware, tickets and stamps;
2. animals, birds or fish;
3. aircraft and parts. Aircraft means any contrivance used or designed for flight, except model or hobby aircraft not used or designed to carry people or cargo;
4. motor vehicles or all other motorized land conveyances. This includes:
 - a their equipment and accessories; or
 - b any device or instrument for the transmitting, recording, receiving or reproduction of sound or pictures which is operated by power from the electrical system of motor vehicles or all other motorized land conveyances, including:
 - (1) accessories or antennas; or

- (2) tapes, wires, records, discs or other media for use with any such device or instrument;

while in or upon the vehicle or conveyance.

We do cover vehicles or conveyances not subject to motor vehicle registration which are:

- a. used to service the Described Location; or
 - b. designed for assisting the handicapped;
5. watercraft, other than rowboats and canoes;
6. data, including data stored in:
- a. books of account, drawings or other paper records; or
 - b. electronic data processing tapes, wires, records, discs or other software media.

However, we do cover the cost of blank recording or storage media, and of pre-recorded computer programs available on the retail market;

- 7. credit cards or fund transfer cards.

If you remove personal property from the Described Location to a newly acquired principal residence, the Coverage C limit of liability will apply at each residence for the 30 days immediately after you begin to move the property there. This time period will not extend beyond the termination of this policy. Our liability is limited to the proportion of the limit of liability that the value at each residence bears to the total value of all personal property covered by this policy.

COVERAGE D - Fair Rental Value

If a loss to property described in Coverage A, B or C by a Peril Insured Against under this policy makes that part of the Described Location rented to others or held for rental by you unfit for its normal use, we cover its:

Fair Rental Value, meaning the fair rental value of that part of the Described Location rented to others or held for rental by you less any expenses that do not continue while that part of the Described Location rented or held for rental is not fit to live in.

Payment will be for the shortest time required to repair or replace that part of the Described Location rented or held for rental.

If a civil authority prohibits you from use of the Described Location as a result of direct damage to a neighboring location by a Peril Insured Against in this policy, we cover the Fair Rental Value loss for no more than two weeks.

The periods of time referenced above are not limited by the expiration of this policy.

We do not cover loss or expense due to cancellation of a lease or agreement.

COVERAGE E - Additional Living Expense

If a loss to property described in Coverage A, B or C by a Peril Insured Against under this policy makes the Described Location unfit for its normal use, we cover you:

Additional Living Expense, meaning any necessary increase in living expenses incurred by you so that your household can maintain its normal standard of living.

Payment will be for the shortest time required to repair or replace the Described Location or, if you permanently relocate, the shortest time required for your household to settle elsewhere.

If a civil authority prohibits you from use of the Described Location as a result of direct damage to a neighboring location by a Peril Insured Against in this policy, we cover the Additional Living Expense loss for no more than two weeks.

The periods of time referenced above are not limited by the expiration of this policy.

We do not cover loss or expense due to cancellation of a lease or agreement.

OTHER COVERAGES

- 1. **Other Structures.** You may use up to 10% of the Coverage A limit of liability for loss by a Peril Insured Against to other structures described in Coverage B.

Use of this coverage does not reduce the Coverage A limit of liability for the same loss.

- 2. **Debris Removal.** We will pay your reasonable expense for the removal of:

- a. debris of covered property if a Peril Insured Against causes the loss; or

- b. ash, dust or particles from a volcanic eruption that has caused direct loss to a building or property contained in a building.

Debris removal expense is included in the limit of liability applying to the damaged property.

3. **Improvements, Alterations and Additions.** If you are a tenant of the Described Location, you may use up to 10% of the Coverage C limit of liability for loss by a Peril Insured Against to improvements, alterations and additions, made or acquired at your expense, to that part of the Described Location used only by you.

Use of this coverage does not reduce the Coverage C limit of liability for the same loss.

4. **World-Wide Coverage.** You may use up to 10% of the Coverage C limit of liability for loss by a Peril Insured Against to property covered under Coverage C except rowboats and canoes, while anywhere in the world.

Use of this coverage reduces the Coverage C limit of liability for the same loss.

5. **Rental Value and Additional Living Expense.** You may use up to 10% of the Coverage A limit of liability for loss of both fair rental value as described in Coverage D and additional living expense as described in Coverage E.

Use of this coverage does not reduce the Coverage A limit of liability for the same loss.

6. **Reasonable Repairs.** In the event that covered property is damaged by an applicable Peril Insured Against, we will pay the reasonable cost incurred by you for necessary measures taken solely to protect against further damage. If the measures taken involve repair to other damaged property, we will pay for those measures only if that property is covered under this policy and the damage to that property is caused by an applicable Peril Insured Against.

This coverage:

- a. does not increase the limit of liability that applies to the covered property;

- b. does not relieve you of your duties, in case of a loss to covered property, as set forth in Condition 4.b.

7. **Property Removed.** We insure covered property against direct loss from any cause while being removed from a premises endangered by a Peril Insured Against and for no more than 30 days while removed.

This coverage does not change the limit of liability that applies to the property being removed.

8. **Trees, Shrubs and Other Plants.** We cover trees, shrubs, plants or lawns, on the Described Location for loss caused by the following Perils Insured Against: Fire or lightning, Explosion, Riot or civil commotion, Aircraft, Vehicles not owned or operated by you or a resident of the Described Location or Vandalism or malicious mischief, including damage during a burglary or attempted burglary, but not theft of property.

The limit of liability for this coverage will not be more than 5% of the Coverage A limit of liability, or more than \$500 for any one tree, shrub or plant. We do not cover property grown for commercial purposes.

This coverage is additional insurance.

9. **Fire Department Service Charge.** We will pay up to \$500 for your liability assumed by contract or agreement for fire department charges incurred when the fire department is called to save or protect covered property from a Peril Insured Against. We do not cover fire department service charges if the property is located within the limits of the city, municipality or protection district furnishing the fire department response.

This coverage is additional insurance. No deductible applies to this coverage.

10. **Collapse.** We insure for risk of direct physical loss to covered property involving collapse of a building or any part of a building caused only by one or more of the following:

- a. Perils Insured Against in Coverage C - Personal Property. These perils apply to covered building and personal property for loss insured by this Other Coverage;
- b. hidden decay;
- c. hidden insect or vermin damage;

- d. weight of contents, equipment, animals or people;
- e. weight of rain which collects on a roof;
- f. use of defective material or methods in construction, remodeling or renovation if the collapse occurs during the course of the construction, remodeling or renovation.

Loss to an awning, fence, patio, pavement, swimming pool, underground pipe, flue, drain, cesspool, septic tank, foundation, retaining wall, bulkhead, pier, wharf or dock is not included under items b, c, d, e and f unless the loss is a direct result of the collapse of a building.

Collapse does not include settling, cracking, shrinking, bulging or expansion.

This coverage does not increase the limit of liability applying to the damaged covered property.

11. Glass or Safety Glazing Material. We cover:

- a. the breakage of glass or safety glazing material which is part of a covered building, storm door or storm window; and
- b. damage to covered property by glass or safety glazing material which is part of a building, storm door or storm window.

This coverage does not include loss on the Described Location if the dwelling has been vacant for more than 30 consecutive days immediately before the loss. A dwelling being constructed is not considered vacant.

Loss for damage to glass will be settled on the basis of replacement with safety glazing materials when required by ordinance or law.

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

PERILS INSURED AGAINST

**COVERAGE A - DWELLING and
COVERAGE B - OTHER STRUCTURES**

We insure against risk of direct loss to property described in Coverages A and B only if that loss is a physical loss to property; however, we do not insure loss:

- 1. involving collapse, other than as provided in Other Coverages 10;
- 2. caused by:
 - a. freezing of a plumbing, heating, air conditioning or automatic fire protective sprinkler system or of a household appliance, or by discharge, leakage or overflow from within the system or appliance caused by freezing. This exclusion applies only while the dwelling is vacant, unoccupied or being constructed unless you have used reasonable care to:
 - (1) maintain heat in the building; or
 - (2) shut off the water supply and drain the system and appliances of water;
 - b. freezing, thawing, pressure or weight of water or ice, whether driven by wind or not, to a:
 - (1) fence, pavement, patio or swimming pool;
 - (2) foundation, retaining wall or bulkhead; or
 - (3) pier, wharf or dock;

- c. theft of property not part of a covered building or structure;
- d. theft in or to a dwelling or structure under construction;
- e. wind, hail, ice, snow or sleet to:
 - (1) outdoor radio and television antennas and aeriels including their lead-in wiring, masts or towers; or
 - (2) trees, shrubs, plants or lawns;
- f. vandalism and malicious mischief, theft or attempted theft if the dwelling has been vacant for more than 30 consecutive days immediately before the loss. A dwelling being constructed is not considered vacant;
- g. constant or repeated seepage or leakage of water or steam over a period of weeks, months or years from within a plumbing, heating, air conditioning or automatic fire protective sprinkler system or from within a household appliance;
- h. (1) wear and tear, marring, deterioration,

- (2) inherent vice, latent defect, mechanical breakdown;
- (3) smog, rust or other corrosion, mold, wet or dry rot;
- (4) smoke from agricultural smudging or industrial operations;
- (5) discharge, dispersal, seepage, migration release or escape of pollutants.
Pollutants means any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed;
- (6) settling, shrinking, bulging or expansion, including resultant cracking, of pavements, patios, foundations, walls, floors, roofs or ceilings; or
- (7) birds, vermin, rodents, insects or domestic animals.

If any of these cause water damage not otherwise excluded, from a plumbing, heating, air conditioning or automatic fire protective sprinkler system or household appliance, we cover loss caused by the water including the cost of tearing out and replacing any part of a building necessary to repair the system or appliance. We do not cover loss to the system or appliance from which this water escaped.

3. excluded under General Exclusions.

Under Items 1 and 2, any ensuing loss to property described in Coverages A and B not excluded or excepted in this policy is covered.

COVERAGE C - PERSONAL PROPERTY

We insure for direct physical loss to the property described in Coverage C caused by a peril listed below unless the loss is excluded in the General Exclusions.

- 1. Fire or lightning.
- 2. Windstorm or hail.

This peril does not include loss to

- a. property contained in a building caused by rain, snow, sleet, sand or dust unless the direct force of wind or hail damages the building causing an opening in a roof or wall and the rain, snow, sleet, sand or dust enters through this opening;

- b. canoes and rowboats; or
- c. trees, shrubs or plants.

- 3. Explosion.
- 4. Riot or civil commotion.
- 5. Aircraft, including self-propelled missiles and spacecraft.
- 6. Vehicles.
- 7. Smoke, meaning sudden and accidental damage from smoke.
This peril does not include loss caused by smoke from agricultural smudging or industrial operations.
- 8. Vandalism or malicious mischief.
This peril does not include loss by pilferage, theft, burglary or larceny.
- 9. Damage by Burglars, meaning damage to covered property caused by Burglars.
This peril does not include:
 - a. theft of property; or
 - b. damage caused by burglars to property on the Described Location if the dwelling has been vacant for more than 30 consecutive days immediately before the damage occurs. A dwelling being constructed is not considered vacant.
- 10. Falling Objects.
This peril does not include loss to property contained in the building unless the roof or an outside wall of the building is first damaged by a falling object.
Damage to the falling object itself is not covered.
- 11. Weight of ice, snow or sleet which causes damage to property contained in the building.
- 12. Accidental discharge or overflow of water or steam from within a plumbing, heating, air conditioning or automatic fire protective sprinkler system or from within a household appliance.
This peril does not include loss:
 - a. to the system or appliance from which the water or steam escaped;
 - b. caused by or resulting from freezing except as provided in the peril of freezing below; or

- c. on the Described Location caused by accidental discharge or overflow which occurs off the Described Location.

In this peril, a plumbing system does not include a sump, sump pump or related equipment.

13. Sudden and accidental tearing apart, cracking, burning or bulging of a steam or hot water heating system, an air conditioning or automatic fire protective sprinkler system, or an appliance for heating water.

This peril does not include loss caused by or resulting from freezing except as provided in the peril of freezing below.

14. Freezing of a plumbing, heating, air conditioning or automatic fire protective sprinkler system or of a household appliance.

This peril does not include loss on the Described Location while the dwelling is unoccupied or being constructed, unless you have used reasonable care to:

- a. maintain heat in the building; or
b. shut off the water supply and drain the system and appliances of water.

15. Sudden and accidental damage from artificially generated electrical current.

This peril does not include loss to a tube, transistor or similar electronic component.

16. Volcanic Eruption other than loss caused by earthquake, land shock waves or tremors.

GENERAL EXCLUSIONS

1. We do not insure for loss caused directly or indirectly by any of the following. Such loss is excluded regardless of any other cause or event contributing concurrently or in any sequence to the loss.

- a. Ordinance or Law, meaning enforcement of any ordinance or law regulating the use, construction, repair, or demolition of a building or other structure, unless specifically provided under this policy.

- b. Earth Movement, meaning earthquake including land shock waves or tremors before, during or after a volcanic eruption; landslide; mine subsidence; mudflow; earth sinking, rising or shifting; unless direct loss by:

- (1) fire;
(2) explosion; or
(3) breakage of glass or safety glazing material which is part of a building, storm door or storm window;

ensues and then we will pay only for the ensuing loss.

- c. Water Damage, meaning:

- (1) flood, surface water, waves, tidal water, overflow of a body of water, or spray from any of these, whether or not driven by wind;

- (2) water which backs up through sewers or drains or which overflows from a sump; or

- (3) water below the surface of the ground, including water which exerts pressure on or seeps or leaks through a building, sidewalk, driveway, foundation, swimming pool or other structure.

Direct loss by fire or explosion resulting from water damage is covered.

- d. Power Failure, meaning the failure of power or other utility service if the failure takes place off the Described Location. But, if a Peril Insured Against ensues on the Described Location, we will pay only for that ensuing loss.

- e. Neglect, meaning your neglect to use all reasonable means to save and preserve property at and after the time of a loss.

- f. War, including undeclared war, civil war, insurrection, rebellion, revolution, warlike act by a military force or military personnel, destruction or seizure or use for a military purpose, and including any consequence of any of these. Discharge of a nuclear weapon will be deemed a warlike act even if accidental.

- g. Nuclear Hazard, to the extent set forth in the Nuclear Hazard Clause of the Conditions.

- h. **Intentional Loss**, meaning any loss arising out of any act committed:
- (1) by or at the direction of you or any person or organization named as an additional insured; and
 - (2) with the intent to cause a loss.
2. We do not insure for loss to property described in Coverages A and B caused by any of the following. However, any ensuing loss to property described in Coverages A and B not excluded or excepted in this policy is covered.
- a. **Weather conditions.** However, this exclusion only applies if weather conditions contribute in any way with a cause or event excluded in paragraph 1. above to produce the loss;
 - b. **Acts or decisions**, including the failure to act or decide, of any person, group, organization or governmental body;
 - c. **Faulty, inadequate or defective;**
 - (1) planning, zoning, development, surveying, siting;
 - (2) design, specifications, workmanship, repair, construction, renovation, remodeling, grading, compaction;
 - (3) materials used in repair, construction, renovation or remodeling; or
 - (4) maintenance;
of part or all of any property whether on or off the Described Location.

CONDITIONS

1. **Policy Period.** This policy applies only to loss which occurs during the policy period.
2. **Insurable Interest and Limit of Liability.** Even if more than one person has an insurable interest in the property covered, we will not be liable in any one loss:
 - a. for an amount greater than the interest of a person insured under this policy; or
 - b. for more than the applicable limit of liability
3. **Concealment or Fraud.** The entire policy will be void if, whether before or after a loss, you have:
 - a. intentionally concealed or misrepresented any material fact or circumstance;
 - b. engaged in fraudulent conduct; or
 - c. made false statements;
relating to this insurance.
4. **Your Duties After Loss.** In case of a loss to covered property, you must see that the following are done:
 - a. give prompt notice to us or our agent;
 - b. (1) protect the property from further damage;
 - (2) make reasonable and necessary repairs to protect the property; and
 - (3) keep an accurate record of repair expenses;
 - c. prepare an inventory of damaged personal property showing the quantity, description, actual cash value and amount of loss. Attach all bills, receipts and related documents that justify the figures in the inventory;
 - d. as often as we reasonably require:
 - (1) show the damaged property;
 - (2) provide us with records and documents we request and permit us to make copies; and
 - (3) submit to examination under oath, while not in the presence of any other named insured, and sign the same;
 - e. send to us, within 60 days after our request, your signed, sworn proof of loss which sets forth, to the best of your knowledge and belief:
 - (1) the time and cause of loss;
 - (2) your interest and that of all others in the property involved and all liens on the property;
 - (3) other insurance which may cover the loss;
 - (4) changes in title or occupancy of the property during the term of the policy;
 - (5) specifications of damaged buildings and detailed repair estimates;

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- (6) the inventory of damaged personal property described in 4c;
 - (7) receipts for additional living expenses incurred and records that support the fair rental value loss.
5. **Loss Settlement.** Covered property losses are settled as follows:
- a. (1) Personal property;
 - (2) Awnings, carpeting, household appliances, outdoor antennas and outdoor equipment, whether or not attached to buildings; and
 - (3) Structures that are not buildings;
 - at actual cash value at the time of loss but not more than the amount required to repair or replace.
 - b. Buildings under Coverage A or B at replacement cost without deduction for depreciation, subject to the following:
 - (1) If, at the time of loss, the amount of insurance in this policy on the damaged building is 80% or more of the full replacement cost of the building immediately before the loss, we will pay the cost to repair or replace, after application of deductible and without deduction for depreciation, but not more than the least of the following amounts:
 - (a) the limit of liability under this policy that applies to the building;
 - (b) the replacement cost of that part of the building damaged for like construction and use on the same premises; or
 - (c) the necessary amount actually spent to repair or replace the damaged building.
 - (2) If, at the time of loss, the amount of insurance in this policy on the damaged building is less than 80% of the full replacement cost of the building immediately before the loss, we will pay the greater of the following amounts, but not more than the limit of liability under this policy that applies to the building:
 - (a) the actual cash value of that part of the building damaged; or
 - (b) that proportion of the cost to repair or replace, after application of deductible and without deduction for depreciation, that part of the building damaged, which the total amount of insurance in this policy on the damaged building bears to 80% of the replacement cost of the building.
- (3) To determine the amount of insurance required to equal 80% of the full replacement cost of the building immediately before the loss, do not include the value of:
- (a) excavations, foundations, piers or any supports which are below the undersurface of the lowest basement floor;
 - (b) those supports in (a) above which are below the surface of the ground inside the foundation walls, if there is no basement; and
 - (c) underground flues, pipes, wiring and drains.
- (4) We will pay no more than the actual cash value of the damage unless:
- (a) actual repair or replacement is complete; or
 - (b) the cost to repair or replace the damage is both:
 - (i) less than 5% of the amount of insurance in this policy on the building; and
 - (ii) less than \$2500.
- (5) You may disregard the replacement cost loss settlement provisions and make claim under this policy for loss or damage to buildings on an actual cash value basis. You may then make claim within 180 days after loss for any additional liability on a replacement cost basis.
6. **Loss to a Pair or Set.** In case of loss to a pair or set we may elect to:
- a. repair or replace any part to restore the pair or set to its value before the loss; or
 - b. pay the difference between actual cash value of the property before and after the loss.

7. **Glass Replacement.** Loss for damage to glass caused by a Peril Insured Against will be settled on the basis of replacement with safety glazing materials when required by ordinance or law.

8. **Appraisal.** If you and we fail to agree on the amount of loss, either may demand an appraisal of the loss. In this event, each party will choose a competent appraiser within 20 days after receiving a written request from the other. The two appraisers will choose an umpire. If they cannot agree upon an umpire within 15 days, you or we may request that the choice be made by a judge of a court of record in the state where the Described Location is located. The appraisers will separately set the amount of loss. If the appraisers submit a written report of an agreement to us, the amount agreed upon will be the amount of loss. If they fail to agree, they will submit their differences to the umpire. A decision agreed to by any two will set the amount of loss.

Each party will:

- a. pay its own appraiser; and
- b. bear the other expenses of the appraisal and umpire equally.

9. **Other Insurance.** If property covered by this policy is also covered by other fire insurance, we will pay only the proportion of a loss caused by any peril insured against under this policy that the limit of liability applying under this policy bears to the total amount of fire insurance covering the property.

10. **Subrogation.** You may waive in writing before a loss all rights of recovery against any person. If not waived, we may require an assignment of rights of recovery for a loss to the extent that payment is made by us.

If an assignment is sought, the person insured must sign and deliver all related papers and cooperate with us.

11. **Suit Against Us.** No action can be brought unless the policy provisions have been complied with and the action is started within one year after the date of loss.

12. **Our Option.** If we give you written notice within 30 days after we receive your signed, sworn proof of loss, we may repair or replace any part of the damaged property with like property.

13. **Loss Payment.** We will adjust all losses with you. We will pay you unless some other person is named in the policy or is legally entitled to receive payment. Loss will be payable 60 days after we receive your proof of loss and:

- a. reach an agreement with you;
- b. there is an entry of a final judgment; or
- c. there is a filing of an appraisal award with us.

14. **Abandonment of Property.** We need not accept any property abandoned by you.

15. **Mortgage Clause.**

The word "mortgagee" includes trustee.

If a mortgagee is named in this policy, any loss payable under Coverage A or B will be paid to the mortgagee and you, as interests appear. If more than one mortgagee is named, the order of payment will be the same as the order of precedence of the mortgages.

If we deny your claim, that denial will not apply to a valid claim of the mortgagee, if the mortgagee:

- a. notifies us of any change in ownership, occupancy or substantial change in risk of which the mortgagee is aware;
- b. pays any premium due under this policy on demand if you have neglected to pay the premium; and
- c. submits a signed, sworn statement of loss within 60 days after receiving notice from us of your failure to do so. Policy conditions relating to Appraisal, Suit Against Us and Loss Payment apply to the mortgagee.

If we decide to cancel or not to renew this policy, the mortgagee will be notified at least 10 days before the date cancellation or nonrenewal takes effect.

If we pay the mortgagee for any loss and deny payment to you:

- a. we are subrogated to all the rights of the mortgagee granted under the mortgage on the property; or
- b. at our option, we may pay to the mortgagee the whole principal on the mortgage plus any accrued interest. In this event, we will receive a full assignment and transfer of the mortgage and all securities held as collateral to the mortgage debt.

Subrogation will not impair the right of the mortgagee to recover the full amount of the mortgagee's claim.

16. **No Benefit to Bailee.** We will not recognize any assignment or grant any coverage that benefits a person or organization holding, storing or moving property for a fee regardless of any other provision of this policy.
17. **Cancellation.**

- a. You may cancel this policy at any time by returning it to us or by letting us know in writing of the date cancellation is to take effect.
- b. We may cancel this policy only for the reasons stated below by letting you know in writing of the date cancellation takes effect. This cancellation notice may be delivered to you, or mailed to you at your mailing address shown in the Declarations.

Proof of mailing will be sufficient proof of notice.

- (1) When you have not paid the premium, we may cancel at any time by letting you know at least 10 days before the date cancellation takes effect.
- (2) When this policy has been in effect for less than 60 days and is not a renewal with us, we may cancel for any reason by letting you know at least 10 days before the date cancellation takes effect.
- (3) When this policy has been in effect for 60 days or more, or at any time if it is a renewal with us, we may cancel:
 - (a) if there has been a material misrepresentation of fact which

if known to us would have caused us not to issue the policy; or

- (b) if the risk has changed substantially since the policy was issued.

This can be done by letting you know at least 30 days before the date cancellation takes effect.

- (4) When this policy is written for a period of more than one year, we may cancel for any reason at anniversary by letting you know at least 30 days before the date cancellation takes effect.

- c. When this policy is cancelled, the premium for the period from the date of cancellation to the expiration date will be refunded pro rata.
- d. If the return premium is not refunded with the notice of cancellation or when this policy is returned to us, we will refund it within a reasonable time after the date cancellation takes effect.

18. **Non-Renewal.** We may elect not to renew this policy. We may do so by delivering to you, or mailing to you at your mailing address shown in the Declarations, written notice at least 30 days before the expiration date of this policy. Proof of mailing will be sufficient proof of notice.

19. **Liberalization Clause.** If we make a change which broadens coverage under this edition of our policy without additional premium charge, that change will automatically apply to your insurance as of the date we implement the change in your state, provided that this implementation date falls within 60 days prior to or during the policy period stated in the Declarations.

This Liberalization Clause does not apply to changes implemented through introduction of a subsequent edition of our policy.

20. **Waiver or Change of Policy Provisions.** A waiver or change of a provision of this policy must be in writing by us to be valid. Our request for an appraisal or examination will not waive any of our rights.
21. **Assignment.** Assignment of this policy will not be valid unless we give our written consent.

22. Death. If you die, we insure:

- a. your legal representatives but only with respect to the property of the deceased covered under the policy at the time of death;
- b. with respect to your property, the person having proper temporary custody of the property until appointment and qualification of a legal representative.

23. Nuclear Hazard Clause.

- a. "Nuclear Hazard" means any nuclear reaction, radiation or radioactive contamination, all whether controlled or uncontrolled or however caused, or any consequence of any of these.
- b. Loss caused by the nuclear hazard will not be considered loss caused by fire, explosion, or smoke, whether these perils are specifically named in or otherwise included within the Perils Insured Against.

c. This policy does not apply to loss caused directly or indirectly by nuclear hazard, except that direct loss by fire resulting from the nuclear hazard is covered.

24. Recovered Property. If you or we recover any property for which we have made payment under this policy, you or we will notify the other of the recovery. At your option, the property will be returned to or retained by you or it will become our property. If the recovered property is returned to or retained by you, the loss payment will be adjusted based on the amount you received for the recovered property.

25. Volcanic Eruption Period. One or more volcanic eruptions that occur within a 72-hour period will be considered as one volcanic eruption.

NO. _____
FILED _____
AM. _____ PM. _____

JUL 31 2015

CHRISTOPHER D. RICH, Clerk
By JAMIE MARTIN
DEPUTY

Matthew L. Walters, ISB # 6599
Craig R. Yabui, ISB # 7706
ELAM & BURKE, P.A.
251 East Front Street, Suite 300
Post Office Box 1539
Boise, Idaho 83701-1539
Telephone: (208) 343-5454
Facsimile: (208) 384-5844

Attorneys for Defendant

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

SHAMMIE L. FISHER,

Plaintiff,

vs.

GARRISON PROPERTY AND CASUALTY
INSURANCE COMPANY,

Defendant.

Case No. CV-OC-1508979

ANSWER TO AMENDED COMPLAINT
AND DEMAND FOR JURY TRIAL

Defendant, Garrison Property and Casualty Insurance Company ("Garrison"), by and through its counsel of record, Elam & Burke P.A., and for its answer to Plaintiff's Amended Complaint and Demand for Jury Trial ("Complaint"), admits, denies, and alleges as follows:

FIRST DEFENSE

Plaintiff's Complaint fails to state a claim against Garrison upon which relief can be granted.

SECOND DEFENSE

Garrison denies each and every allegation contained in the Complaint not specifically admitted herein.

THIRD DEFENSE

1. In answer to paragraph 1 of the Complaint, Garrison admits that Ms. Fisher was/is a resident of Idaho and that she was the named insured on several insurance policies issued for the described location of 2510 N 34th St. Boise, Idaho 83703-5528 (the "Property"). Garrison is without sufficient knowledge to form a belief as to the remaining allegations in paragraph 1 and, therefore, denies the same.

2. In answer to paragraph 2 of the Complaint, Garrison admits the allegations contained therein.

3. In answer to paragraph 3 of the Complaint, Garrison admits the allegations contained therein.

4. In answer to paragraph 4 of the Complaint, Garrison admits that venue in Ada County is proper.

5. In answer to paragraph 5 of the Complaint, Garrison admits that USAA Casualty Insurance Company issued Homeowners Policy, Policy No. CIC 01634 13 15 90A, for the Property to named insured, Shammie Fisher, with effective dates of November 5, 2008, to November 5, 2009. From March 8, 2012, to March 8, 2013, and again from March 8, 2013, to March 8, 2014, the Property was insured by Garrison under Policy No. GAR 0163413 15 80A. In response to the final sentence of paragraph 5, Garrison admits that the copy of the "Policy" attached as Exhibit A to the Complaint speaks for itself and that no further response from Garrison is required.

6. In answer to paragraph 6 of the Complaint, Garrison admits that the "Policy" speaks for itself and that no further response from Garrison is required.

7. In answer to paragraph 7 of the Complaint, Garrison is without sufficient knowledge or information to form a belief as to the truth of the allegations contained therein and, therefore, denies the same.

8. In answer to paragraph 8 of the Complaint, Garrison admits that the “Policy” speaks for itself and that no further response from Garrison is required.

9. In answer to paragraph 9 of the Complaint, USAA admits that the “Policy” speaks for itself and that no further response from USAA is required.

10. In answer to paragraph 10 of the Complaint, Garrison is without sufficient knowledge or information to form a belief as to the truth of the allegations contained therein and, therefore, denies the same.

11. In answer to paragraph 11 of the Complaint, Garrison is without sufficient knowledge or information to form a belief as to the truth of the allegations contained therein and, therefore, denies the same.

12. In answer to paragraph 12 of the Complaint, Garrison is without sufficient knowledge or information to form a belief as to the truth of the allegations contained therein and, therefore, denies the same.

13. In answer to paragraph 13 of the Complaint, Garrison admits that the “Policy” speaks for itself and that no further response from Garrison is required. In response to the remaining allegations contained in paragraph 13 of the Complaint, Garrison is without sufficient knowledge or information to form a belief as to the truth of those allegations and, therefore, denies the same.

14. In answer to paragraph 14 of the Complaint, Garrison admits that a letter from Spink Butler, LLP dated September 27, 2013, was mailed to USAA Casualty Insurance Company and admits that in a letter dated December 5, 2013, Garrison disclaimed coverage for the loss.

CLAIMS FOR RELIEF – COUNT ONE
BREACH OF CONTRACT

15. In answer to paragraph 15 of the Complaint, Garrison incorporates its responses to paragraphs 1 through 14 as if fully set forth herein.

16. In answer to paragraph 16 of the Complaint, Garrison denies the allegations contained therein.

17. In answer to paragraph 17 of the Complaint, Garrison denies the allegations contained therein.

CLAIMS FOR RELIEF – COUNT TWO
BREACH OF THE COVENANT OF GOOD FAITH AND FAIR DEALING

18. In answer to paragraph 18 of the Complaint, GarrisonA incorporates its responses to paragraphs 1 through 17 as if fully set forth herein.

19. The allegations contained in paragraph 19 of the Complaint call for a legal conclusion to which no response is required, but, to the extent the remaining allegations require a response, Garrison denies the same.

20. In answer to paragraph 20 of the Complaint, Garrison denies the allegations contained therein.

21. In answer to paragraph 21 of the Complaint, Garrison denies the allegations contained therein.

ATTORNEY FEES AND COURT COSTS

22. In answer to paragraph 22 of the Complaint, Garrison admits that Ms. Fisher has retained the services of Kaufman Reid, PLLC.

23. In answer to paragraph 23 of the Complaint, Garrison denies the allegations contained therein.

FIRST AFFIRMATIVE DEFENSE

That the policy issued by Garrison to Ms. Fisher does not provide COVERAGE A – DWELLING or COVERAGE B – OTHER STRUCTURES for:

- d. theft in or to a dwelling or structure under construction;

SECOND AFFIRMATIVE DEFENSE

That under the policy issued by Garrison to Ms. Fisher, COVERAGE C – PERSONAL PROPERTY provides as follows:

COVERAGE C – PERSONAL PROPERTY

We insure for direct physical loss to the property described in Coverage C caused by a peril listed below unless the loss is excluded in the General Exclusions

...

8. Vandalism or malicious mischief.

This peril does not include loss by pilferage, theft, burglary or larceny.

9. Damage by Burglars, meaning damage to covered property caused by Burglars.

This peril does not include:

- a. theft of property; or

(emphasis in original).

THIRD AFFIRMATIVE DEFENSE

That the policy issued by Garrison to Ms. Fisher does not provide any coverage for:

- h. Intentional Loss**, meaning any loss arising out of any act committed:
 - (1) by or at the direction of you or any person or organization named as an additional insured; and
 - (2) with the intent to cause a loss.

(emphasis in original).

FOURTH AFFIRMATIVE DEFENSE

That the policy issued by Garrison to Ms. Fisher does not provide COVERAGE A – DWELLING or COVERAGE B – OTHER STRUCTURES for:

- c. Faulty, Inadequate or defective;**
 - ...
 - (2) design, specifications, workmanship, repair, construction, renovation, remodeling, grading, compaction;
 - (3) materials used in repair, construction, renovation or remodeling; or
 - (4) maintenance;
- of part or all of any property whether on or off the Described Location.

(emphasis in original).

FIFTH AFFIRMATIVE DEFENSE

That the damages alleged in the Complaint reasonably could have been avoided by Ms. Fisher.

SIXTH AFFIRMATIVE DEFENSE

Ms. Fisher expressly or impliedly gave her consent for all of the conduct giving rise to her alleged loss.

SEVENTH AFFIRMATIVE DEFENSE

Ms. Fisher failed to give prompt notice to Garrison or its agent regarding the loss that occurred in or around May 2012 and failed to protect the property from further loss as required under the policy.

EIGHTH AFFIRMATIVE DEFENSE

Ms. Fisher failed to take reasonable steps to mitigate her alleged damages.

RESERVATION

Garrison reserves the right, after discovery, to amend this Answer to add additional affirmative defenses supported by the facts, and a failure to include all such defenses in this Answer shall not be deemed a waiver of any right to further amend this Answer.

REQUEST FOR ATTORNEY FEES

Garrison hereby requests that it be awarded its attorney fees and costs incurred herein pursuant to Section 12-121 of the Idaho Code, and Rule 54 of the Idaho Rules of Civil Procedure.

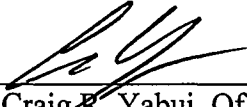
WHEREFORE, Garrison prays for judgment as follows:

1. That Ms. Fisher take nothing by way of the Complaint;
2. That the Complaint be dismissed with prejudice;
3. That Garrison be awarded its costs, including attorney fees, in defending this action; and
4. For such other and further relief that the Court deems just and proper.

DATED this 31st day of July, 2015.

ELAM & BURKE, P.A.

By: _____

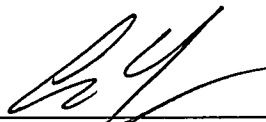

Craig R. Yabui, Of the Firm
Attorneys for Defendant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 31st day of July, 2015, I caused a true and correct copy of the above and foregoing instrument to be served upon the following in the manner indicated below:

James G. Reid
Jennifer Reid Mahoney
KAUFMAN REID, PLLC
1211 W. MYRTLE ST., STE. 350
Boise, Idaho 83702

- U.S. Mail
- Hand Delivery
- Federal Express
- Via Facsimile



Craig R. Yabui

4830-7511-2486, v. 1

JAMES G. REID, ISB #1372
JENNIFER REID MAHONEY, ISB #5207
KAUFMAN REID PLLC
1211 W. Myrtle, Suite 350
Boise, Idaho 83702
Telephone: (208) 342-4591
Facsimile: (208) 342-4657

SEP 01 2015

CHRISTOPHER D. RICH, Clerk
By **TENILLE GRANT**
DEPUTY

Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

SHAMMIE L. FISHER;

Plaintiff,

vs.

**GARRISON PROPERTY AND
CASUALTY INSURANCE COMPANY;**

Defendant.

Case No. CV OC 1508979

**MOTION FOR PARTIAL
SUMMARY JUDGMENT**

COMES NOW, Plaintiff, Shammie L. Fisher, by and through her attorneys of record, Kaufman Reid, PLLC, and moves for partial summary judgment, seeking a ruling from the Court that the insurance Policy issued to Plaintiff by Defendant provides coverage for the losses enumerated in the Complaint.

This motion is made pursuant to Rule 56, Idaho Rules of Civil Procedure, on the basis that there is no dispute as to the material facts in this matter.

This motion is supported by the Memorandum in Support of Motion for Summary Judgment and the Affidavit of Shammie Fisher in Support of Motion for Summary Judgment,

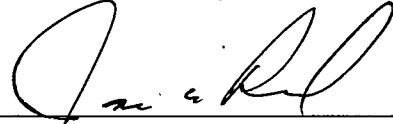
filed herewith.

Oral argument is requested.

Dated this 1 day of September, 2015.

KAUFMAN REID, PLLC

by:



James G. Reid


Attorneys for Defendant

CERTIFICATE OF SERVICE

This will certify that I have on the 1 day of September, 2015, mailed a true and correct copy of the foregoing upon the following:

- | | |
|--|---------------------------------------|
| <input checked="" type="checkbox"/> U.S. mail, postage prepaid | <input type="checkbox"/> express mail |
| <input checked="" type="checkbox"/> hand delivery | <input type="checkbox"/> facsimile |

Matthew L. Walters
Craig R. Yabui
Elam & Burke, P.A.
251 East Front Street, Suite 300
P.O. Box 1539
Boise, ID 83701



James G. Reid

JAMES G. REID, ISB #1372
JENNIFER REID MAHONEY, ISB #5207
KAUFMAN REID PLLC
1211 W. Myrtle, Suite 350
Boise, Idaho 83702
Telephone: (208) 342-4591
Facsimile: (208) 342-4657

NO. _____
FILED _____
A.M. _____ P.M. *228*
SEP 01 2015
CHRISTOPHER D. RICH, Clerk
By TAVILLE GRANT
DEPUTY

Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

SHAMMIE L. FISHER;

Plaintiff,

vs.

**GARRISON PROPERTY AND
CASUALTY INSURANCE COMPANY;**

Defendant.

Case No. CV OC 1508979

**AFFIDAVIT OF SHAMMIE L. FISHER
IN SUPPORT OF MOTION FOR
PARTIAL SUMMARY JUDGMENT**

STATE OF IDAHO)
) ss.
COUNTY OF ADA)

SHAMMIE L. FISHER, being first duly sworn upon oath, deposes and says:

1. I am the above-named Plaintiff in this matter. I am competent to testify herein, and I make the statements contained in this affidavit based upon my personal knowledge and belief.

2. I am the owner of real property located at 2510 N. 34th Street, Boise, Idaho. When

AFFIDAVIT OF SHAMMIE L. FISHER IN SUPPORT OF MOTION FOR PARTIAL
SUMMARY JUDGMENT - 1

I purchased the property, I obtained a homeowner's insurance policy with USAA Casualty Insurance Company. At that time, I used the house at 2510 N. 34th Street as my primary residence.

3. Subsequently, I married Michael Royce and decided to sell my residence at 2510 N. 34th Street. I entered into a Real Estate Purchase and Sale Agreement and related documents with Ron Reynoso, in January 2012, for a lease to own the Property. A copy of the Real Estate Purchase and Sale Agreement, Counterclaim, RE-11 Addendums LP, 1 and 2, and disclosure forms are attached hereto as Exhibit A.

4. The Lease was for a 1 year term, ending on March 31st, 2013, with the option for a 6 month extension ending on Sept 1, 2013. A true and correct copy of the Rental Agreement is attached hereto as Exhibit B. *See also* RE-11 Addendum LP, attached as Exhibit A hereto.

5. Within the first two months, I was notified that the entire home had been destroyed by Mr. Reynosa, including the structure and the fixtures therein. Photographs of the property before the destruction are attached hereto as Exhibit C, and photographs of the property after the destruction are attached hereto as Exhibit D.

6. I had no knowledge that Mr. Reynosa intended to destroy the home when he leased the Property and he was not authorized to do so.

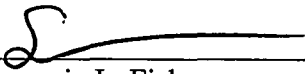
7. When asked about the destruction of the property, Mr. Reynoso promised he would rebuild it. However, in August 2013, Mr. Reynoso informed me that he was leaving the house and walking away. At that point, I made a claim against my insurance policy for the loss, which was denied.

8. Addendum LP to the Real Estate Purchase and Sale Agreement contains the agreement with respect to the lease of the Property. It acknowledges that Mr. Reynoso intended to “make certain improvements to the property upon possession, with the intent to sell the property for a profit” A copy of RE-11 Addendum LP is included in the purchase documents attached hereto as Exhibit A.

9. The “improvements” which were discussed with Mr. Reynoso included new flooring, countertops, light fixtures, paint and other cosmetic improvements. Mr. Reynoso was not authorized to perform of any work to remodel tear down or reconstruct the residence or to perform any structural work, nor did we discuss his doing such work until after he had destroyed the house. In fact, Mr. Reynoso had represented to me that he would be residing in the property during the lease term while he was making “improvements.”

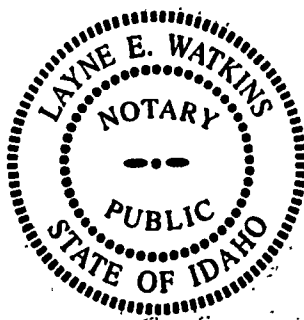
Further your affiant saith not.

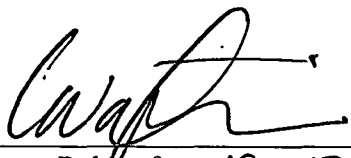
DATED this 31 day of August, 2015.



Shammie L. Fisher

SUBSCRIBED AND SWORN to before me this 31 day of August, 2015.





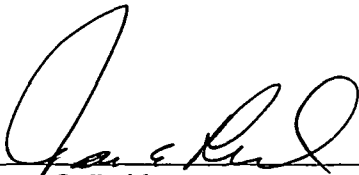
Notary Public for IDAHO
Residing in the State of Idaho
My Commission Expires: 7/20/16

CERTIFICATE OF SERVICE

This will certify that I have on the 1 day of ~~August~~^{Sept.}, 2015, mailed a true and correct copy of the foregoing upon the following:

- U. S. mail, postage prepaid express mail
 hand delivery facsimile

Matthew L. Walters
Craig R. Yabui
Elam & Burke, P.A.
251 East Front Street, Suite 300
P.O. Box 1539
Boise, ID 83701





James G. Reid

Exhibit A

JULY 2011 EDITION
Page 1 of 7

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.

1 ID# rey98472499 DATE 01/23/2012
 2
 3 LISTING AGENCY Keller Williams Realty Boise Office Phone # 472-8618 Fax # 672-9111
 4 Listing Agent Van States E-Mail van@kw.com Phone # 867-6645
 5 SELLING AGENCY Keller Williams Realty Boise Office Phone # 472-8602 Fax # 639-6200
 6 Selling Agent Stacie Cudmore E-Mail stacie@kwboise.com Phone # 484-5402

7
 8 1. BUYER: Ron Reynoso
 9 (Hereinafter called "BUYER") agrees to purchase, and the undersigned SELLER agrees to sell the following described real estate hereinafter referred to as
 10 "PROPERTY" COMMONLY KNOWN AS 2510 N 34th Street
 11 Boise City Ada County, ID, Zip 83703 legally described as: Lot 5 Blk 2 ILO Larson Sub

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

13
 14 2. \$ 153,000 PURCHASE PRICE: One hundred and fifty-three thousand DOLLARS,
 15 payable upon the following TERMS AND CONDITIONS (not including closing costs):

16 3. FINANCIAL TERMS: Note: A+C+D+E must add up to total purchase price.
 17
 18 (A). \$ 2000 EARNEST MONEY: BUYER hereby deposits two thousand
 19 DOLLARS as Earnest Money evidenced by: cash personal check cashier's check note (due date): _____
 20 other _____ and a receipt is hereby acknowledged. Earnest Money to be
 21 deposited in trust account upon receipt, or upon acceptance by BUYER and SELLER and shall be held by: Listing Broker Selling Broker
 22 other _____ for the benefit of the parties hereto.
 23 THE RESPONSIBLE BROKER SHALL BE: Erica Hill

24
 25 (B). ALL CASH OFFER: NO YES If this is an all cash offer do not complete Sections 3C and 3D, fill blanks with "0" (ZERO). IF CASH
 26 OFFER, BUYER'S OBLIGATION TO CLOSE SHALL NOT BE SUBJECT TO ANY FINANCIAL CONTINGENCY. BUYER agrees to provide SELLER
 27 within _____ business days (five (5) if left blank) from the date of acceptance of this agreement by all parties, evidence of sufficient funds and/or proceeds
 28 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
 29 the sale of BUYER'S current residence or other property to be sold.

30
 31 (C). \$ 145,350 NEW LOAN PROCEEDS: This Agreement is contingent upon BUYER obtaining the following financing:
 32 FIRST LOAN of \$ _____ not including mortgage insurance, through FHA, VA, CONVENTIONAL, IHFA, RURAL
 33 DEVELOPMENT, OTHER _____ with interest not to exceed 5 % for a period of
 34 30 year(s) at: Fixed Rate Other _____. In the event BUYER is unable, after exercising good faith efforts, to obtain the indicated
 35 financing, BUYER's Earnest Money may be returned at BUYER'S request. BUYER shall pay no more than 0 point(s) plus origination fee if any.
 36 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
 37 N/A.

38
 39 SECOND LOAN of \$ NA with interest not to exceed _____ % for a period of _____ year(s) at: Fixed Rate
 40 Other _____. BUYER shall pay no more than _____ point(s) plus origination fee if any. SELLER shall pay no more than
 41 _____ point(s). Any reduction in points shall first accrue to the benefit of the BUYER SELLER Divided Equally N/A.

42
 43 LOAN APPLICATION: BUYER has applied shall apply for such loan(s) within 260 business days (five (5) if left blank) of SELLER'S acceptance.
 44 Within _____ business days (ten (10) if left blank) of final acceptance of all parties, BUYER agrees to furnish SELLER with a written confirmation
 45 showing lender approval of credit report, income verification, debt ratios, and evidence of sufficient funds and/or proceeds necessary
 46 to close transaction in a manner acceptable to the SELLER(S) and subject only to satisfactory appraisal and final lender underwriting. If such
 47 written confirmation is not received by SELLER(S) within the strict time allotted, SELLER(S) may at their option cancel this agreement by notifying
 48 BUYER(S) in writing of such cancellation within _____ business days (three (3) if left blank) after written confirmation was required. If SELLER does not
 49 cancel within the strict time period specified as set forth herein, SELLER shall be deemed to have accepted such written confirmation of lender approval
 50 and shall be deemed to have elected to proceed with the transaction. SELLER'S approval shall not be unreasonably withheld. If an appraisal is
 51 required by lender, the PROPERTY must appraise at not less than purchase price or BUYER'S Earnest Money may be returned at BUYER'S
 52 request. BUYER may also apply for a loan with different conditions and costs and close transaction provided all other terms and conditions of this
 53 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
 54 that notwithstanding any other provisions of this contract, BUYER shall not be obligated to complete the purchase of the PROPERTY described herein or
 55 to incur any penalty or forfeiture of Earnest Money deposits or otherwise unless BUYER has been given in accordance with HUD/FHA or VA
 56 requirements a written statement by the Federal Housing Commissioner, Veterans Administration or a Direct Endorsement lender setting forth the
 57 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.
 58
 59
 60

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

64
 65 (E). \$ 7150 APPROXIMATE FUNDS DUE FROM BUYERS AT CLOSING (Not including closing cost(s); Cash at
 66 closing to be paid by BUYER at closing in GOOD FUNDS, includes: cash, electronic transfer funds, certified check or cashier's check. NOTE: If
 67 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)
 68 shall be adjusted at closing of escrow in: Cash Other _____

BUYER'S Initials (RR) Date 01/23/2012 1:32 PM
 SELLER'S Initials (ST) Date 01/25/2012 8:10 PM

PROPERTY ADDRESS: 2510 N 34th Street, Boise, ID 83703

ID#: rey98472499

69 4. OTHER TERMS AND/OR CONDITIONS: This Agreement is made subject to the following special terms, considerations and/or contingencies which
70 must be satisfied prior to closing

- 71 1. This is a lease purchase in conjunction with the attached lease agreement.
72 2. Earnest money to be increased to a total of \$10,000 upon removal of the inspection contingency. At that point, earnest money
73 shall be deemed consideration for the lease purchase terms and shall be released to the sellers and be nonrefundable. Buyer to
74 receive credit for released earnest money at the close of escrow.
75 3. Please see attached addendum #LP for lease purchase terms.

76
77
78
79
80 5. ITEMS INCLUDED & EXCLUDED IN THIS SALE: All existing fixtures and fittings that are attached to the PROPERTY are INCLUDED IN THE
81 PURCHASE PRICE (unless excluded below), and shall be transferred free of liens. These include, but are not limited to, all seller-owned attached floor
82 coverings, attached television antennae, satellite dish, attached plumbing, bathroom and lighting fixtures, window screens, screen doors, storm doors, storm
83 windows, window coverings, garage door opener(s) and transmitter(s), exterior trees, plants or shrubbery, water heating apparatus and fixtures, attached
84 fireplace equipment, awnings, venting, cooling and heating systems, all ranges, ovens, built-in dishwashers, fuel tanks and irrigation fixtures and
85 equipment, that are now on or used in connection with the PROPERTY and shall be included in the sale unless otherwise provided herein, BUYER should
86 satisfy himself/herself that the condition of the included items is acceptable. It is agreed that any item included in this section is of nominal value less than \$100.

87 (A). ADDITIONAL ITEMS SPECIFICALLY INCLUDED IN THIS SALE:

88 hot tub (as-is) and shed

89 (B). ITEMS SPECIFICALLY EXCLUDED IN THIS SALE:

90 swing set

91
92
93
94 6. MINERAL RIGHTS: Any and all mineral rights appurtenant to the PROPERTY are included in and are part of the sale of this PROPERTY unless
95 otherwise agreed to by the parties in writing.

96
97
98 7. WATER RIGHTS: Any and all water rights including but not limited to water systems, wells, springs, lakes, streams, ponds, rivers, ditches, ditch rights,
99 and the like, if any, appurtenant to the PROPERTY are included in and are a part of the sale of this PROPERTY unless otherwise agreed to by the parties in
100 writing.

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

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

110 (A). PRELIMINARY TITLE COMMITMENT: Prior to closing the transaction, SELLER or BUYER shall furnish to BUYER a preliminary commitment
111 of a title insurance policy showing the condition of the title to said PROPERTY. BUYER shall have 5 business days (five (5) if left blank) from receipt
112 of the preliminary commitment or not fewer than twenty-four (24) hours prior to closing, within which to object in writing to the condition of the title as set
113 forth in the preliminary commitment. If BUYER does not so object, BUYER shall be deemed to have accepted the conditions of the title. It is agreed that if
114 the title of said PROPERTY is not marketable, or cannot be made so within 5 business days (five (5) if left blank) after notice containing a written
115 statement of defect is delivered to SELLER, BUYER'S Earnest Money deposit will be returned to BUYER and SELLER shall pay for the cost of title
116 insurance cancellation fee, escrow and legal fees, if any.

117 (B). TITLE COMPANY: The parties agree that Title One-Pam Bigelow Title Company
118 located at Eagle/Ovstrand shall provide the title policy and preliminary report of commitment.

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

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

BUYER'S Initials (RR) (UNWR) X () Date 01/23/2012 1:32 PM

SELLER'S Initials (S7) (2E1C) X () Date 01/25/2012 9:10 PM

PROPERTY ADDRESS: 2510 N 34th Street, Boise, ID 83703

ID#: rey98472499

10. INSPECTION:

(A). BUYER chooses [X] to have inspection [] not to have inspection. If BUYER chooses not to have inspection, skip Section 10C. BUYER shall have the right to conduct inspections, investigations, tests, surveys and other studies at BUYER'S expense. BUYER shall, within 5 business days (ten [10] if left blank) 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. SELLER shall make PROPERTY available for inspection and agrees to accept the responsibility and expense for making sure all the utilities are turned on for the inspection except for phone and cable. Some inspections, investigations, tests, surveys and other studies may require additional days to complete. The parties agree that unless specifically set forth below, the above timeframe for investigations, tests, surveys and other studies shall govern.

Additional inspections/timeframes:

The buyer reserves the right to cancel this contract in writing during the inspection period stated in section 10, line 139 due to dissatisfaction with any inspection result. In this event, the buyer shall receive a full refund of the earnest money.

(B). FHA INSPECTION REQUIREMENT, if applicable: "For Your Protection: Get a Home Inspection", HUD 92564-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 3 business days (three [3] if left blank) in which to respond in writing. SELLER, at their option, may correct the items as specified by BUYER'S in their letter or may elect not to do so. If SELLER agrees to correct the items asked for in BUYER'S letter, then both parties agree that they will continue with the transaction and proceed to closing. This will remove BUYER'S inspection contingency.

3). If 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 3 business days (three [3] if left blank) 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.

11. LEAD PAINT DISCLOSURE: The subject PROPERTY [X] is [] is not defined as "Target Housing" regarding lead-based paint or lead-based paint hazards. The term lead-based paint hazards is intended to identify lead-based paint and all residual lead-containing dusts and soils regardless of the source of the lead. 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 1/31/12 or the contingency will terminate, (d) that BUYER hereby [] waives [X] does not waive this right, (e) that if test results show unacceptable amounts of lead-based paint on the PROPERTY, 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. Additionally, if any structure was built before 1978 and is a residential home, apartment or child-occupied facility such as a school or day-care center, federal law requires contractors that disturb lead-based paint in that structure to provide the owner with a "Renovate Right" pamphlet. The contractor shall be certified and follow specific work practices to prevent lead contamination.

12. MOLD DISCLAIMER: BUYER is hereby advised that mold and/or other microorganisms may exist at the Property. Upon closing BUYER acknowledges and agrees to accept full responsibility and risk for any matters that may result from mold and/ or other microorganisms and to hold SELLER and any Broker or agent representing SELLER or BUYER harmless from any liability or damages (financial or otherwise) relating to such matters.

13. 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.

BUYER'S Initials ([X] UNWS) Date 01/23/2012 1:32 PM

SELLER'S Initials ([X] S7 2E1C) Date 01/25/2012 9:10 PM

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PROPERTY ADDRESS: 2510 N 34th Street, Boise, ID 83703

ID#: rey98472499

14. SELLER'S PROPERTY CONDITION DISCLOSURE FORM: If required by Title 55, Chapter 25 Idaho Code SELLER shall within ten (10) calendar days after execution of this Agreement provide to BUYER or BUYER'S agent, "Seller's Property Condition Disclosure Form" or other acceptable form prior to signing this Agreement: Yes No N/A

15. COVENANTS, CONDITIONS AND RESTRICTIONS (CC&Rs): As part of the BUYER'S inspection of the PROPERTY as set forth in Section 10, BUYER is responsible for obtaining and reviewing a copy of any CC&Rs which may affect the PROPERTY. BUYER shall have 10 business days (ten [10] if left blank) (but in no event shall such time period exceed that time period set forth for inspections in Section 10) to review and approve of any such CC&Rs that may affect the PROPERTY. Unless BUYER delivers to SELLER a written and signed objection to the terms of any applicable CC&Rs with particularity describing BUYER's reasonable objections within such time period as set forth above, BUYER shall be deemed to have conclusively waived any objection to the terms of any CC&Rs affecting the PROPERTY.

16. 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, Bylaws 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 \$ _____ per _____ BUYER SELLER N/A to pay Homeowner's Association SET UP FEE of \$ _____ and/or PROPERTY TRANSFER FEES of \$ _____ at closing.

17. HOME WARRANTY PLAN: Home Warranty Plans available for purchase can vary in many respects including, but not limited to, scope of coverage, options, exclusions, limitations, service fees, and pre-existing conditions. BUYER and SELLER are advised to investigate Home Warranty Plans before purchasing a plan and BUYER and SELLER acknowledge that Home Warranty Plans vary from plan to plan. Further, BUYER and SELLER acknowledge that a Home Warranty Plan is separate and apart from any terms contained within this Real Estate Purchase and Sale Agreement and does not create any warranties, including, without limitation, any warranty of habitability, agreements or representations not expressly set forth herein. A Home Warranty Plan will will not be included in this transaction. BUYER SELLER shall order a Home Warranty Plan which shall be issued by a company selected by BUYER SELLER. The cost of the Home Warranty Plan shall not exceed \$ _____ and shall be paid for at closing by BUYER SELLER.

18. COSTS PAID BY: The parties agree to pay the following costs as indicated below. None of the costs to be paid by the parties in this section creates an inspection or performance obligation other than strictly for the payment of costs. There may be other costs incurred in addition to those set forth below. Such costs may be required by the lender, by law, or by other such circumstances.

Table with 10 columns: Item, BUYER, SELLER, Shared Equally, N/A, Item, BUYER, SELLER, Shared Equally, N/A. Rows include Appraisal Fee, Appraisal Re-inspection Fee, Closing Escrow Fee, Lender Document Preparation Fee, Tax Service Fee, Flood Certification/Tracking Fee, Lender Required Inspections, Attorney Contract Preparation or Review Fee, Survey, etc.

Upon closing SELLER agrees to pay up to EITHER 3 % (N/A if left blank) of the purchase price OR \$ _____ (N/A if left blank) of lender-approved BUYER'S closing costs, lender fees, and prepaid costs which includes but is not limited to those items in BUYER columns marked above.

19. OCCUPANCY: BUYER does does not intend to occupy PROPERTY as BUYER'S primary residence.

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

21. FINAL WALK THROUGH: The SELLER grants BUYER and any representative of BUYER reasonable access to conduct a final walk through inspection of the PROPERTY approximately 2 calendar days (three [3] if left blank) prior to close of escrow, NOT AS A CONTINGENCY OF THE SALE, but for purposes of satisfying BUYER that any repairs agreed to in writing by BUYER and SELLER have been completed and PROPERTY are in substantially the same condition as on the date this offer is made. SELLER shall make PROPERTY available for the final walk through and agrees 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.

BUYER'S Initials (RR UNWB) Date 01/23/2012 1:32 PM

SELLER'S Initials (S7 2E1C) Date 01/25/2012 9:10 PM

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PROPERTY ADDRESS: 2510 N 34th Street , Boise, ID 83703

ID#: rey98472499

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

248 23. FORECLOSURE NOTICE: If the PROPERTY described above is currently involved in a foreclosure proceeding (pursuant to Idaho Code § 45-1506)
249 any contract or agreement with the owner or owners of record that involves the transfer of any interest in residential real property, as defined in § 45-
250 525(5)(b), Idaho Code, subject to foreclosure must be in writing and must be accompanied by and affixed to RE-42 Property Foreclosure Disclosure Form.

251 24. MECHANIC'S LIENS - GENERAL CONTRACTOR DISCLOSURE STATEMENT NOTICE: BUYER and SELLER are hereby notified that,
252 subject to Idaho Code §45-525 et seq., a "General Contractor" must provide a Disclosure Statement to a homeowner that describes certain rights afforded to
253 the homeowner (e.g. lien waivers, general liability insurance, extended policies of title insurance, surety bonds, and sub-contractor information). The
254 Disclosure Statement must be given to a homeowner prior to the General Contractor entering into an amount exceeding \$2,000 with a
255 homeowner for construction, alteration, repair, or other improvements to real property, or with a residential real property purchaser for the purchase and sale
256 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 information on
257 your behalf. You are advised to consult with any General Contractor subject to Idaho Code §45-525 et seq. regarding the General Contractor Disclosure
258 Statement.

259 25. SALES PRICE INFORMATION: Pursuant to Idaho Code § 64-2083(6)(d), a "sold" price of real property is not confidential client information.

260 26. TRANSMISSION OF DOCUMENTS: Facsimile or electronic transmission of any signed original document, and retransmission of any signed
261 facsimile or electronic transmission shall be the same as delivery of an original. At the request of either the BUYER or SELLER, or the LENDER, or the
262 Closing Agency, the BUYER and SELLER will confirm facsimile or electronic transmitted signatures by signing an original document.

263 27. BUSINESS DAYS: 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
264 PROPERTY is physically located. A business day shall not include any Saturday or Sunday, nor shall a business day include any legal holiday recognized
265 by the state of Idaho as found in Idaho Code §73-108. The time in which any act required under this agreement is to be performed shall be computed by
266 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
267 time for performance shall be the next subsequent business day.

268 28. CALENDAR DAYS: A calendar day is herein defined as Monday through Sunday, midnight to midnight, in the local time zone where the subject real
269 PROPERTY is physically located. A calendar day shall include any legal holiday. The time in which any act required under this agreement is to be performed
270 shall be computed by excluding the date of execution and including the last day, thus the first day shall be the day after the date of execution. Any reference
271 to "day" or "days" in this agreement means the same as calendar day, unless specifically enumerated as a "business day."

272 29. ATTORNEY'S FEES: If either party initiates or defends any arbitration or legal action or proceedings which are in any way connected with this
273 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
274 on appeal.

275 30. DEFAULT: If BUYER defaults in the performance of this Agreement, SELLER has the option of: (1) accepting the Earnest Money as liquidated
276 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
277 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
278 on behalf of SELLER and BUYER related to the transaction, including, without limitation, the costs of title insurance, escrow fees, appraisal, credit report
279 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
280 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
281 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
282 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
283 incurred by SELLER'S Broker on behalf of SELLER and BUYER related to the transaction, including, without limitation, the costs of brokerage fee, title
284 insurance, escrow fees, appraisal, credit report fees, inspection fees and attorney's fees, with any balance of the Earnest Money to be held pending
285 resolution of the matter. If SELLER defaults, having approved said sale and fails to consummate the same as herein agreed, BUYER'S Earnest Money
286 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,
287 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
288 entitled.

289 31. EARNEST MONEY DISPUTE / INTERPLEADER: Notwithstanding any termination of this contract, BUYER and SELLER agree that in the event
290 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
291 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
292 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
293 jurisdiction and shall recover court costs and reasonable attorney's fees.

294 32. COUNTERPARTS: This Agreement may be executed in counterparts. Executing an agreement in counterparts shall mean the signature of two
295 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
296 shall together constitute one and the same instrument.

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

BUYER'S Initials (RR) X () Date 01/23/2012 1:32 PM

SELLER'S Initials (S7) X () Date 01/25/2012 9:10 PM

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PROPERTY ADDRESS: 2610 N 34th Street, Boise, ID 83703

ID#: rey98472499

311 34. 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
312 unenforceable in any respect, the validity, legality or enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

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

Section 1:

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

Section 2:

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

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

337 36. CLOSING: On or before the closing date, BUYER and SELLER shall deposit with the closing agency all funds and instruments necessary to complete
338 this transaction. Closing means the date on which all documents are either recorded or accepted by an escrow agent and the sale proceeds are
339 available to SELLER. The closing shall be no later than (Date) 1/31/13

341 The parties agree that the CLOSING AGENCY for this transaction shall be Title One-Pam Bigelow
342 located at Eagle/Overland

345 If a long-term escrow / collection is involved, then the long-term escrow holder shall be

347 37. POSSESSION: BUYER shall be entitled to possession upon closing or date 2/28/12 time 5:00 A.M. P.M. Property
348 taxes and water assessments (using the last available assessment as a basis), rents, interest and reserves, liens, encumbrances or obligations assumed,
349 fuel in fuel tank, and utilities shall be prorated as of March 1, 2012

352 38. ASSIGNMENT: This Agreement and any rights or interests created herein may may not be sold, transferred, or otherwise assigned.

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

360 40. TIME IS OF THE ESSENCE IN THIS AGREEMENT.

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

367 42. ACCEPTANCE: This offer is made subject to the acceptance of SELLER and BUYER on or before (Date) 1/25/12 at (Local Time in
368 which PROPERTY is located) 6:00 A.M. P.M. If acceptance of this Agreement is not received within the time specified, the offer is
369 withdrawn and the entire Earnest Money, if any, shall be refunded to BUYER on demand.

BUYER'S Initials (RR UNWB) Date 01/23/2012 1:32 PM

SELLER'S Initials (SF 2E1C) Date 01/25/2012 9:10 PM

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PROPERTY ADDRESS: 2510 N 34th Street, Boise, ID 83703

ID#: rey98472498

43. BUYER'S SIGNATURES:

SEE ATTACHED BUYER'S ADDENDUM(S): 2 (Specify number of BUYER addendum(s) attached.)

BUYER does not currently hold an active Idaho real estate license.

BUYER Signature [Redacted]

BUYER (Print Name) Ron Reynoso

Date _____ Time _____ A.M. P.M.

Phone # 863-9727 Cell # _____

Address _____

City _____ State _____ Zip _____

E-Mail _____

Fax # _____

BUYER does not currently hold an active Idaho real estate license.

BUYER Signature [Signature] 01/23/2012 eSigned UNW8-9Y @ 1:32 PM MST

BUYER (Print Name) _____

Date _____ Time _____ A.M. P.M.

Phone # _____ Cell # _____

Address _____

City _____ State _____ Zip _____

E-Mail _____

Fax # _____

44. 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 does not currently hold an active Idaho real estate license.

SELLER Signature [Signature] 01/26/2012 eSigned 2E1C-TG @ 9:10 PM MST

SELLER (Print Name) _____

Date _____ Time _____ A.M. P.M.

Phone # _____ Cell # _____

Address _____

City _____ State _____ Zip _____

E-Mail _____

Fax # _____

CONTRACTOR REGISTRATION # (if applicable) _____

SELLER does not currently hold an active Idaho real estate license.

SELLER Signature [Redacted]

SELLER (Print Name) _____

Date _____ Time _____ A.M. P.M.

Phone # _____ Cell # _____

Address _____

City _____ State _____ Zip _____

E-Mail _____



Fax # _____

CONTRACTOR REGISTRATION # (if applicable) _____

JULY 2011 EDITION
Page 1 of 1

RE-13 COUNTER OFFER # 1 (1,2,3 etc.)
THIS COUNTER OFFER SUPERSEDES ALL PRIOR COUNTER OFFERS

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 a COUNTER OFFER to the Purchase and Sale Agreement Dated: 01/23/12
 2
 3 ADDRESS: 2510 N 34th Street, Boise, ID 83703 ID#: Rey98472499
 4
 5 BUYER: Ron Reynoso
 6
 7 SELLER: Shammlie Fisher
 8

9 The parties accept all of the terms and conditions in the above-designated Purchase and Sale Agreement with the following changes:
 10 This is a SELLER counter offer. The SELLER reserves the right to withdraw this offer or accept any other offers prior to the receipt of a
 11 true copy of signed acceptance of this Counter Offer within the time frame specified herein.
 12 This is a BUYER counter offer. The undersigned BUYER reserves the right to withdraw this offer at any time prior to the receipt of a
 13 true copy of signed acceptance of this Counter Offer within the time frame specified herein.

- 14 1. Sales Price to be \$153,000.00, and at this price the Seller shall not pay a 3% credit at the close of escrow towards the Buyer's
 15 closing costs and or prepaid items per the Purchase and Sale Agreement.
- 16 2. Paragraph 35 of The Purchase and Sale Agreement shall be marked "B" for both Buyer and Seller in sections 1 and 2, as the
 17 Brokerage working with the Buyer and Seller are acting as Limited Dual Agents without an ASSIGNED AGENT.
- 18 3. Close of escrow to be on or before 03/31/13. On line 38 of Addendum #1, delete "January" and insert "March".
 19
- 20 4. Regarding item #11 of Addendum #1: Once the \$10,000.00 Non-Refundable consideration has been released to the Seller, a
 21 total of \$5,000.00 shall be released to Keller Williams Realty Boise to be split between the brokerage and the Buyer's and Seller's
 22 agent, for services rendered. The balance of the broker fees, which would be a total of \$4,180.00 (to be split between the Keller
 23 Williams
 24 Realty Boise and the Buyer's and Seller's agent) shall be due only upon the close of escrow.
- 25 5. Should the Buyer use any Sub-Contractors while making improvements to this property, all disbursements are to be made by
 26 TitleOne and said Sub-Contractors will be required to sign Lien-Waivers upon picking up their checks.
- 27 6. Should the Buyer desire long term escrow or account servicing to handle rent collection and/or payment of the Seller's two
 28 mortgages, that shall be at the Buyer's expense.
- 29 7. Buyer and Seller are aware that they are each taking on risk in this transaction and have been advised to seek legal counsel
 30 prior to signing and accepting this offer.
- 31 8. All other terms and conditions remain the same.

32 To the extent the terms of this Counter Offer modify or conflict with any provisions of the Purchase and Sale Agreement including all prior
 33 Addendums, the terms in this Counter Offer shall control. All other terms of the Purchase and Sale Agreement including all prior
 34 Addendums not modified by this Counter Offer shall remain the same. Buyer and Seller acknowledge the down payment and/or loan
 35 amount on Page 1 of Purchase & Sale Agreement may change if purchase price is changed as part of this Counter Offer. Upon its
 36 execution by both parties, this agreement is made an integral part of the aforementioned Agreement.

37 If a signed acceptance is not delivered on or before (date): 01/27/12 at 8:00 A.M. P.M.
 38 this Counter Offer shall be deemed to have expired.

39 DELIVERY: Delivery shall be to the agent/broker working with the maker of the Counter Offer in person, by mail, facsimile or electronic
 40 transmission of any signed original document, and retransmission of any signed original document. Retransmission of any signed facsimile
 41 or electronic transmission shall be deemed to be the same as delivery of an original.

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 53 SELLER Shammlie Fisher 01/25/2012
 54 eSigned DADE-GE @ 9:06 PM MST
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 60 BUYER Ron Reynoso 01/28/2012
 eSigned 6VPQ-XZ @ 5:37 PM MST

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ADDENDUM # LP (All addendums shall be numbered sequentially.) **JULY 2011 EDITION**
 Page 1 of 1

RE-11 ADDENDUM

Kidaho Association of REALTORS® 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.

Date: 1/23/12

This is an ADDENDUM to the Purchase and Sale Agreement Other
 ("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 to change, correct or revise the agreement (such as modification, addition or deletion of a term)).

AGREEMENT DATED: 1/23/12 ID # rey98472499

ADDRESS: 2610 N 34th Street, Boise, ID 83703

BUYER(S): Ron Reynoso

SELLER(S): Shammlie Fisher

- The undersigned parties hereby agree as follows:
- 1.) Buyer shall lease the property from March 1, 2012 until March 31, 2013. The lease will terminate at the close of escrow.
 - 2.) Buyer shall obtain tenant's insurance for the full term of the lease period. Buyer hereby agrees to hold Sellers harmless from all liability resulting from Buyer's occupancy of the property during the lease period. Seller agrees to maintain their hazard insurance and keep current on their property taxes. As tenant makes improvements to the property, the seller agrees to increase home owner's insurance to cover the modified improvements. Buyer will give a monthly update when improvements are made.
 - 3.) The inspection contingency shall be satisfied prior to the Buyer's occupancy of the property.
 - 4.) The Purchase and Sale Agreement is contingent upon Buyer's and Seller's written acceptance of a lease agreement on or before January 31, 2012. If the lease agreement is not agreed upon in writing is not by both parties by this time, then this purchase and sale agreement shall be void and the Earnest Money shall be returned to the Buyer.
 - 5.) The monthly lease payment in the amount of \$1000. Rent shall be due on the first of the month. See lease agreement.
 - 6.) This Purchase and Sale agreement is contingent upon Seller providing evidence satisfactory to the Buyer that the Seller is not in default on any notes associated with the property. And that there are no liens on the property.
 - 7.) Seller agrees not to encumber the property with any additional liens or notes during the lease period.
 - 8.) Any improvements to the property made by the Buyer during the lease period are forfeit to the Seller in the event the Buyer does not complete the purchase transaction. Seller is not responsible to reimburse Buyer any costs of improvements.
 - 9.) Buyer intends to make certain improvements to the property upon possession, with the intent to sell the property for a profit which might be prior to the end of the lease period. The buyer is required to give a monthly update for plans/upgrades. Buyer may market the property for resale prior to the end of the rental period with the intent to sell the property.
 - 10.) The buyer intends to close on this property sooner than March 31, 2013 if possible. In the event that buyer is unable to close before January 31, 2013 the seller agrees to extend the lease agreement on a month to month basis until buyer closes on property. This time period not to exceed September 1, 2013.
 - 11.) The earnest money in the amount of \$10,000 becomes non-refundable after the release of the inspection period. Of this amount, \$3090 shall be released to the brokerage, Keller Williams Realty Boise, to the buying agent for services rendered in facilitating the lease provisions of this agreement. The balance of \$7400 shall immediately be released to the seller. The remaining \$1500 in commissions shall become due and payable to the buyer's agent only upon the buyer's closing of the property. The full amount of the earnest money shall be applied to the purchase price as a credit to the buyer at closing.


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: Ron Reynoso 01/23/2012
 eSigned T8PW-OD @ 1:18 PM MST

BUYER: _____

SELLER: Shammlie Fisher 01/28/2012
 eSigned WFBE-UQ @ 4:39 PM MST

SELLER: _____

	ADDENDUM # 1 (All addendums shall be numbered sequentially.)	JULY 2011 EDITION Page 1 of 1
RE-11 ADDENDUM		
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 Date: _____

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

6
7 AGREEMENT DATED: 01/23/12 ID # Rey98472499

8 ADDRESS: 2510 N 34th Street, Boise, ID 83703

9 BUYER(S): Ron Reynoso


10
11 SELLER(S): Shammie Fisher


12
13 The undersigned parties hereby agree as follows:

- 14 1. The Buyer hereby removes the inspection contingency.
- 15 2. There is a total of \$10,000.00 in Non-Refundable consideration. Of that, \$5,000.00 is to be released to the Seller, and \$5,000.00
16 shall be released to Keller Williams Realty Boise to be split between the Brokerage and the Buyer's and the Seller's agents for
17 services rendered. The balance of the broker fees, which will be a total of \$4,180.00 shall be due only upon the close of escrow.
18 The full amount of the earnest money shall be applied to the purchase price as a credit to the Buyer at the close of escrow.
- 19 3. All other terms and conditions remain the same.

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

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53 BUYER: _____

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55 BUYER:  eSigned VWZG-3S @ 11:02 AM MST 02/12/2012


56
57
58 SELLER:  eSigned FYRW-MV @ 7:49 PM MST 02/18/2012

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61 SELLER: _____

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ADDENDUM # 2 (All addendums shall be numbered sequentially.) JULY 2011 EDITION
Page 1 of 1

RE-11 ADDENDUM

Idaho Association of REALTORS® 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 Date: 2/29/12

2 This is an ADDENDUM to the Purchase and Sale Agreement Other
3 ("Addendum" means that the information below is added material for the agreement (such as lists or descriptions) and/or means (the form is
4 being used to change, correct or revise the agreement (such as modification, addition or deletion of a term)).
5

6 **AGREEMENT DATED:** 01/23/12 **ID #** Rey98472499

7 **ADDRESS:** 2510 N 34th Street, Boise, ID 83703

8 **BUYER(S):** Ron Reynoso

9 **SELLER(S):** Shamile Fisher

10 The undersigned parties hereby agree as follows:

11 The Buyer and Seller agree to change the lease start date to March 15, 2012. Rent will be pro-rated accordingly.

12 All other terms and conditions remain the same.

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48 To the extent the terms of this ADDENDUM modify or conflict with any provisions of the Purchase and Sale Agreement including all prior
49 Addendums or Counter Offers, these terms shall control. All other terms of the Purchase and Sale Agreement including all prior
50 Addendums or Counter Offers not modified by this ADDENDUM shall remain the same. Upon its execution by both parties, this agreement
51 is made an integral part of the aforementioned Agreement.
52

53 **BUYER:** Ron Reynoso 03/13/2012
54 eSigned EFOL-2T @ 9:23 AM MDT

55 **BUYER:** _____

56 **SELLER:** _____

57 **SELLER:** _____

DISCLOSURE OF INFORMATION ON LEAD-BASED PAINT AND LEAD-BASED PAINT HAZARDS

LEAD WARNING STATEMENT

Every purchaser of any interest in residential real property on which a residential dwelling was built prior to 1978 is notified that such property may present exposure to lead from lead-based paint that may place young children at risk of developing lead poisoning. Lead poisoning in young children may produce permanent neurological damage, including learning disabilities, reduced intelligence quotient, behavioral problems, and impaired memory. Lead poisoning also poses a particular risk to pregnant women. The seller of any interest in residential real property is required to provide the buyer with any information on lead-based paint hazards from risk assessments or inspections in the seller's possession and notify the buyer of any known lead-based paint hazards. A risk assessment or inspection for possible lead-based hazards is recommended prior to purchase.

Address or Legal Description of Subject Property: 2510 N. 34th St. Boise ID 83703

SELLER'S DISCLOSURE (initial)

RR (a) Presence of lead-based paint and/or lead-based paint hazards (check one below):
 Known lead-based paint and/or lead-based paint hazards are present in the housing (explain):

 Seller has no knowledge of lead-based paint and/or lead-based paint hazards in the housing.

RR (b) Records and reports available to the seller (check one below):
 Seller has provided purchaser with all available records and reports pertaining to lead-based paint and/or lead-base paint hazards in the housing (list documents below):

 Seller has no reports or records pertaining to lead-based paint and/or lead-based paint hazards in the housing

PURCHASER'S ACKNOWLEDGMENT (initial)

RR (c) Purchaser has received copies of all information listed above.
RR (d) Purchaser has received the pamphlet *Protect Your Family from Lead in Your Home*.
RR (e) Purchaser has (check one below):
 Received a 10-day opportunity (or mutually agreed upon period) to conduct a risk assessment or inspection for the presence of lead-based paint and/or lead-based paint hazards; OR
 Waived the opportunity to conduct a risk assessment or inspection for the presence of lead-based paint and/or lead-based paint hazards

AGENT'S ACKNOWLEDGMENT (initial)

SC (f) Agent has informed the seller of the seller's obligations under EPA Rules & Regulations and is aware of his/her responsibility to ensure compliance
LKVY

CERTIFICATION OF ACCURACY

The following parties have reviewed the information above and certify to the best of their knowledge, that the information provided by the signatory is true and accurate.

Seller *[Signature]* Date 6-20-11


Ron Reynoso 01/23/2012 1/23/12
 eSigned HKOK-0X @ 1:33 PM MST
 Purchaser Date

Seller *[Signature]* Date 6/20/11
 Agent Date

Stacie Cadmore 01/23/2012 1/23/12
 eSigned ASVV-PE @ 2:16 PM MST
 Agent Date


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 April 1999

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RE-25 SELLER'S PROPERTY CONDITION DISCLOSURE FORM

JULY 2010 EDITION
Page 1 of 4



Seller's Name(s): Shammie Fisher Date: 06/20/11

Property Address: 2510 N. 34th St.

Section 55-2501, et seq., Idaho Code, requires SELLERS of residential real property to complete a property condition disclosure form and deliver a signed and dated copy of the completed disclosure form to each prospective transferee or his agent within ten (10) calendar days of transferor's acceptance of transferee's offer. "Residential Real Property" means real property that is improved by a building or other 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 which has a combined residential and commercial use. **THE PURPOSE OF THE STATEMENT:** This is a statement made by the SELLER of the conditions and information concerning the property known by the SELLER. This is NOT a statement of any agent representing the SELLER and no agent is authorized to make representations, or verify representations, concerning the condition of the property. Unless otherwise advised, the SELLER does not possess any expertise in construction, architectural, engineering or any other specific areas related to the construction or condition of the improvements on the property. Other than having lived at or owning the property, the SELLER possesses no greater knowledge than that which could be obtained upon careful inspection of the property by the potential BUYER. Unless otherwise advised, the SELLER has not conducted any inspection of generally inaccessible areas such as the foundation or roof. This disclosure is not a warranty of any kind by the SELLER or by any agent representing the SELLER in this transaction. It is not a substitute for any inspections. The BUYER is encouraged to obtain his/her own professional inspections.

Notwithstanding that transfer of newly constructed residential real property that previously has not been inhabited is exempt from disclosure pursuant to section 55-2505, Idaho Code, SELLERS of such newly constructed and non-exempt existing residential real property shall disclose information regarding annexation and city services in the form as prescribed in questions 1, 2, and 3.

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?
 Yes No Do Not Know The property is already within city limits
2. Does the property, if not within city limits, receive any city services, thus making it legally subject to annexation by the city?
 Yes No Do Not Know The property is already within city limits
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?
 Yes No Do Not Know The property is already within city limits

THE FOLLOWING ARE IN THE CONDITIONS INDICATED:

APPLIANCES SECTION	None/Not Included	Working	Not Working	Do Not Know	Remarks
Built-in Vacuum System	✓				
Clothes Dryer	✓				
Clothes Washer	✓				
Dishwasher		✓			
Disposal		✓			
Refrigerator	✓				
Kitchen Vent Fan/Hood		✓			
Microwave Oven		✓			
Oven(s)/ Range(s)/Cook top(s)		✓			
Trash Compactor		✓			
Freezer (chest or upright)	✓				
ELECTRICAL SYSTEMS SECTION	None/Not Included	Working	Not Working	Do Not Know	Remarks
Air Purifier	✓				
Security System(s)	✓				
Ceiling Fan(s)	✓				
Garage Door Opener(s)/Control(s)	✓				
Inside Telephone Wiring/Jacks		✓			
Aluminum Wiring				✓	
Intercom System	✓				
Light Fixtures		✓			
Sauna	✓				
Smoke Detector(s)/Fire Alarm(s)		✓			
Bath Vent Fan(s)	✓				
220 Volt Outlet(s)	✓				
TV Antenna/Dish/Controls	✓				
Switches and Outlets		✓			

SELLER'S Initials (RF) () Date 6-20-11 BUYER'S Initials (RR) (3N27) Date 1/23/12

PROPERTY ADDRESS: 2510 N. 34th St.

HEATING & COOLING SYSTEMS SECTION		None/Not Included	Working	Not Working	Do Not Know	Remarks	
Attic Fan(s)		✓					
Central Air Conditioning			✓				
Room Air Conditioner(s)		✓					
Evaporative Cooler(s)		✓					
Fireplace(s)			✓				
Fireplace Insert(s)		✓					
Furnace/Heating System(s)			✓				
Humidifier(s)		✓					
Wood/Pellet Stove(s)		✓					
Air Cleaner(s)		✓					
MOISTURE & DRAINAGE CONDITIONS SECTION		Yes	No	Do Not Know	Remarks		
Is the property located in a floodplain?			✓				
Are you aware of any site drainage problems?			✓				
Has there been any water intrusion or moisture related damage to any portion of the property, including, but not limited to, the crawspace, floors, walls, ceilings, siding, or basement, based on flooding; moisture seepage, moisture condensation, a sewer overflow/ backup, or leaking pipes, plumbing fixtures, appliances, or moisture related damage from other causes?			✓				
Have you had the property inspected for the existence of any types of mold?			✓				
If the property has been inspected for mold, is a copy of the inspection report available?			✓				
Are you aware of the existence of any mold-related problems on any interior portion of the property, including but not limited to, floors, walls, ceilings, basement, crawlspaces, and attics, or any mold-related structural damage?			✓				
Have you ever had any water intrusion, moisture related damage, mold or mold-related problems on the property remediated, repaired, fixed or replaced?			✓				
FUEL TANK SECTION		N/A (/)	Propane ()	Oil ()	Diesel ()	Gasoline ()	Other ()
Location:							
Size:							
In Use: () Not In Use: ()		Above Ground: () Buried: ()		Owned: () Leased: ()			
WATER & SEWER SYSTEMS SECTION		None/Not Included	Working	Not Working	Do Not Know	Remarks	
Hot Tub/Spa and Equipment			✓				
Pool and Pool Equipment		✓					
Plumbing System - Faucets and Fixtures			✓				
Water Heater(s)			✓				
Water Softener (owned)		✓					
Water Softener (leased)		✓					
Septic System		✓					
Sump Pump/Lift Pump		✓					
Landscape Sprinkler System			✓				
WATER & SEWER SYSTEM TYPE SECTION		Public System	Community System	Private System	Cistern	Other	
Domestic Water Provided By:		✓					
Irrigation Water Provided By:		✓					
Property Sewer Provided By:		✓					
If Septic System, Date Last Pumped							
ROOF SECTION: Age (if known):		Yes	No	Do Not Know	Remarks		
Is there present damage to the roof?			✓				
Does the roof leak?			✓				
SIDING SECTION: Age (if known):							
Are there any problems with the siding?			✓				

SELLER'S Initials (RR) (WUEB) Date 10-20-11 BUYER'S Initials (RR) (WUEB) Date 1/23/12

JULY 2010 EDITION

RE-26 SELLER'S PROPERTY CONDITION DISCLOSURE FORM

Page 3 of 4

PROPERTY ADDRESS: 2510 N. 34th St.

	Yes	No	Do Not Know	Remarks
HAZARDOUS CONDITIONS SECTION				
Are you aware of any asbestos or other toxic or hazardous materials on the property?		✓		
Has the property ever been used as an illegal drug manufacturing site?		✓		
Are you aware of any current or previous insect, rodent or other pest infestation(s) on the property?		✓		
Have you ever had the property serviced by an exterminator or had the property otherwise remediated for insect, rodent or other pest infestation(s)?		✓		
Is there any damage due to wind, fire, or flood?		✓		
OTHER DISCLOSURES SECTION				
Are there any conditions that may affect your ability to clear title such as encroachments, easements, zoning violations, lot line disputes, restrictive covenants, etc.?		✓		
Has the property been surveyed since you owned it?		✓		
Have you received any notices by any governmental or quasi-governmental entity affecting this property; i.e. Local Improvement District (LID) or zoning changes, etc.?		✓		
Are there any structural problems with the improvements?		✓		
Are there any structural problems with the foundation?		✓		
Have any substantial additions or alterations been made without a building permit?		✓		
Has the fireplace/wood stove/chimney/flue been inspected?		✓		
Has the fireplace/wood stove/chimney/flue been cleaned?		✓		
Have you ever filed a homeowner's insurance claim on the property?		✓		
ADDITIONAL REMARKS AND/OR EXPLANATIONS SECTION: Please list any other existing problems that you know of concerning the property including legal, physical, product defects or others that are not already listed. (Use additional pages if necessary.)				

The referenced property herein is exempt from the code because of Section 55-2505 for any of the following reasons:

- A transfer pursuant to court order including, but not limited to a transfer ordered by a probate court during the administration of the decedent's estate, a transfer pursuant to a writ of execution, a transfer by a trustee in bankruptcy, a transfer as a result of the exercise of the power of eminent domain, and a transfer that results from a decree for a specific performance of a contract or other agreement between persons;
- A transfer to a mortgagee by a mortgagor by deed in lieu of foreclosure or in satisfaction of the mortgage debt;
- A transfer to a beneficiary of a deed of trust by trustor in default;
- A transfer by a foreclosure sale that follows a default in the satisfaction of an obligation secured by a mortgage;
- A transfer by a sale under a power of sale following a default in the satisfaction of an obligation that is secured by a deed of trust or another instrument containing a power of sale occurring within one (1) year of foreclosure on the default;
- A transfer by a mortgagee, or beneficiary under a deed of trust, who has acquired the residential real property at a sale conducted pursuant to a power of sale under a mortgage or deed of trust or who has acquired the residential real property by a deed in lieu of foreclosure;
- A transfer by a fiduciary in the course of the administration of a decedent's estate, a guardianship, a conservatorship or a trust;
- A transfer from one (1) co-owner to one (1) or more other co-owners;
- A transfer made to the transferor's spouse or to one (1) or more persons in the lineal line of consanguinity of one (1) or more of the transferors;
- A transfer between spouses or former spouses as a result of a decree of divorce, dissolution of marriage, annulment or legal separation or as a result of a property settlement agreement incidental to a decree of divorce, dissolution of marriage, annulment or legal separation;
- A transfer to or from the state, a political subdivision of the state, or another governmental entity;
- A transfer that involved newly constructed residential real property, that previously has not been inhabited, except as required by questions 1, 2 and 3;
- A transfer to a transferee who has occupied the property as a personal residence for one (1) or more years immediately prior to the transfer;
- A transfer from a transferor who has both not occupied the property as a personal residence within one (1) year immediately prior to the transfer and has acquired the property through inheritance or devise;
- A transfer by a relocation company to a transferee within one (1) year from the date that the previous owner occupied the property;
- A transfer from a decedent's estate;

SELLER'S Initials (RR) (YF&U) Date 6-20-11 BUYER'S Initials (RR) (YF&U) Date 1/23/12

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JULY 2010 EDITION

RE-25 SELLER'S PROPERTY CONDITION DISCLOSURE FORM

Page 4 of 4

PROPERTY ADDRESS: 2510 N. 34th St.

The SELLER certifies that the information herein is true and correct to the best of the SELLER'S knowledge as of the date signed by the SELLER. The SELLER is familiar with the residential property and each act performed in making a disclosure of an item of information is made and performed in good faith.

SELLER and BUYER understand and acknowledge that the statements contained herein are the representations of the SELLER regarding the condition of the property. No statement made herein is a statement of a SELLER'S agent or agents, and no agent is authorized to make any statement or verify any statement relating to the condition of the property. SELLER and BUYER also understand and acknowledge that SELLER in no way warrants or guarantees the above information regarding the property. SELLER and BUYER also understand and acknowledge that, unless otherwise specifically set forth, no agent of the SELLER is an expert in environmental or other conditions which are or may be hazardous to human health, and which may exist on the property. BUYER MAY, AT BUYER'S OPTION AND EXPENSE, CONSULT WITH ANY INDEPENDENT QUALIFIED INSPECTOR TO ASSESS OR DETECT THE PRESENCE OF SUCH KNOWN OR SUSPECTED HAZARDOUS CONDITIONS.

SELLER and BUYER understand that Listing Broker and Selling Broker in no way warrant or guarantee the above information on the property.

SELLER hereby acknowledges receipt of a copy of this form:

SELLER [Signature] DATE 10-20-11 SELLER _____ DATE _____

BUYER hereby acknowledges receipt of a copy of this disclosure form and does hereby WAIVE NOT WAIVE the right to rescind the related purchase 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, 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 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 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 BUYER. If no signed notice of rescission is received by the SELLER within the three (3) business day period, BUYER'S right

[Signature] Ron Reynolds 01/23/2012 1/23/12
Signed EBKH-QX @ 1:30 PM MST
BUYER _____ DATE _____ BUYER _____ DATE _____

AMENDED DISCLOSURE FORM: Subsequent to the delivery of the initial SELLER'S Property Condition Disclosure Form previously acknowledged, SELLER hereby makes the following amendments. (Attach additional pages if necessary.) Other than those amendments made below, the SELLER states that there have 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 TO SIGN BELOW.

SELLER hereby acknowledges receipt of this amended form:

SELLER _____ DATE _____ SELLER _____ DATE _____

BUYER hereby acknowledges receipt of a copy of the amended disclosure form and does hereby WAIVE NOT WAIVE the right to rescind the related 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 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 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 delivery, ordinary or certified mail, or facsimile transmission. BUYER'S rescission must 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 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.

BUYER _____ DATE _____ BUYER _____ DATE _____

Company Keller Williams Realty S/N: PCE5-60336
Provided by: Van States Printed using Software from Professional Computer Forms Co. v. 7/10

Exhibit B

Rental Agreement

Move in date: March 1, 2012

THIS AGREEMENT, Made this 23rd day of January, between Shammie Fisher, hereafter called "Owner," and Ron Reynoso, hereafter called "Tenant."

IN CONSIDERATION of the payment of the rentals and the covenants herein contained in the part of the Tenant, Owner hereby rents and demises to Tenant the following-described premises, situated in Boise (city), Ada (county), Idaho. Apartment number _____ Street Address 2510 N 34th Street Zip 83703

1. TERM. A "month" for the purposes of this agreement commences on the first day of the calendar month, and ends on the last day of the same calendar month. This tenancy, and Tenant's obligation to pay rental as hereafter provided, shall continue until terminated in the manner set forth in this agreement.

2. MINIMUM TERM. If Tenant is obligated to rent the premises for a minimum term, check here and fill in Minimum Term: NA Months. The minimum term obligation under this agreement will be completed on March 31st, 2013. Should Tenant fail to occupy the premises for the minimum term for any reason, such shall be a breach of this agreement, and there will be an administrative charge to cover Owner's administrative, clerical, transportation, and other miscellaneous costs which will be incurred, and Tenant shall be liable for Owner's damages resulting from such breach (some examples of Owner's damages would be loss of rent until the unit is re-rented or the completion of the minimum term, whichever is less; advertising costs; utility costs while vacant; transportation costs to show the unit; etc.).

3. RENT

a. As rental for the subject premises, Tenant agrees to pay Owner the sum of \$ 1000 per month.

b. DISCOUNT RENT (Check here if applicable): There will be a \$ N/A discount from rent if Tenant _____

c. Rent shall be paid at the following address: TBD or any such address as Owner may from time to time designate as the place for payment of rent.

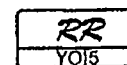
d. **RENT IS DUE ON THE FIRST DAY OF EACH CALENDER MONTH.** If the initial term of the rental commences other than on the first day of the calendar month, Tenant's rent until the first day of the following calendar month shall be a pro rata portion of a full month's rental, calculated on a daily basis (using a 30 day month) from the commencement date until the first day of the following calendar month, and shall be payable in advance. Rent not paid by the 5th calendar day of the month shall incur a \$5.00 per day late fee, computed on a daily basis from the 1st day of the rental month and continuing until rent for that month has been paid in full including all late fees. When rent or any other charges are in arrears, all payment made shall be applied first to any outstanding debts in the order they were incurred, and then to the current month's rent. Discount rent shall be abated until back rent with interest has been paid in full. Should Tenant fail to take care of Minor Maintenance Problems as agreed above while the Discount Rent is in abatement, Tenant will be charge the additional amount stated in 3.b.

4. OWNER'S AGENT All notices and communication to the owner shall be directed to the attention of NA, who is the duly authorized agent of Owners. All notices and communication from said agent to Tenant shall be deemed notices from Owner.

5. SECURITY/CLEANING DEPOSIT. Tenant shall pay a security deposit of \$ NA. This deposit shall be held by Owner (Owner may commingle the same with other funds) and shall be returned to Tenant at the termination of the Rental Agreement less any deductions for cleaning, repairs, damages, etc., unless Tenant be in default or breach hereof. The deposit shall be applied toward the administrative charge (if any), then Owner's costs for damages, repairs, cleaning and unpaid rents, in that order, and any balance remaining shall be returned to Tenant within 30 days after the premises have been vacated by Tenant. UNDER NO CIRCUMSTANCES SHALL SUCH SECURITY DEPOSIT BE APPLIED BY TENANT FOR PAYMENT OF THE LAST MONTH'S RENTAL. Upon vacating unit, it will be inspected and if necessary, repaired and cleaned by Owner or Owner's agent. A charge will be made for repair of any damage beyond that of reasonable wear and tear due to passage of time, and for cleaning. Tenant is encouraged to be present at the inspection. Tenant should contact Owner or Owners agent at least 4 days in advance to arrange an inspection time.

6. OWNER'S AGREEMENT:

- a. **PEACE AND QUIET.** So long as Tenant shall not be in breach or default hereby, Tenant shall have the continued peaceful and quiet enjoyment of the premises.
- b. **MAJOR REPAIRS.** Tenant shall be responsible for all major repairs to the premises
- c. **MINOR REPAIRS.** All repairs shall be paid by the tenant. Owner shall be notified by tenant of the repair prior to the work being done and repairs are to be accomplished in a workman like manner.
- d. **RISK OF LOSS.** During the time that Tenant is in occupancy of the premises, Owner shall have the risk of loss to the premises,



(but not Tenants property therein) resulting from fire, windstorm, hail, lightning, or like casualty, and in the event of damage or destruction from such cause, Owner shall at Owner's option, repair or replace the same, or declare this agreement terminated as of the date of such loss or destruction. Should owner fail to promptly repair or replace any such loss or destruction, Tenant may at Tenant's option declare this agreement terminated. All rental due from Tenant during any period the premises are rendered untenantable by reason of such loss or destruction shall be abated.

7. TENANT'S AGREEMENTS

a. CONDITION AND INVENTORY. Tenant agrees that:

(1) Rental unit is to be clean and in good state of repair, with all appliances, plumbing, and light fixtures in working order, and clean filters in the heating system where applicable. Any exceptions shall be noted on inventory sheet or brought to attention of Owner or Owner's agent within 3 days after taking possession.

(2) Smoke detectors, when present, are in proper working order and henceforth Tenant agrees to keep electricity and gas provided either through Public Utility Company or battery as applicable.

(3) That all personal property now upon the premises shall remain on the premises. If separate inventory has been prepared, check here , and attach.

b. USE

(1) **TENANT'S PROPERTY.** Owner is not responsible for Tenant's personal property. Tenant agrees to be responsible for keeping or not keeping his/her property insured against all damages.

(Waiver or Subrogation) Owner shall not be liable for damages or losses to person or property of Tenant caused by other residents or other persons. Owner shall not be liable for personal injury or damages or loss of Tenant's personal property from theft, vandalism, fire, water, rain hail smoke, explosions, sonic booms, or other causes whatsoever unless the same is due to the negligence of Owner. Owner shall not be responsible for any of Tenant's property lost or stolen either from Tenant's rented premises or from any parking, storage, or common area in or about the building premises, and Tenant assumes all responsibility for the security and safekeeping of any such property.

(2) **OCCUPANTS AND TENANTS.** The premises shall be occupied as living quarters for not more than 1 persons. Only those persons who have signed this rental agreement and their minor children/foster children may reside here. Guests may stay for a maximum of two weeks unless there is prior approval from Owner. If unauthorized persons stay in the unit longer than 2 weeks, cumulatively (within one year) or consecutively. Owner has the option of requiring them to sign this rental agreement, or terminating this agreement in the entirety.

(3) **UNLAWFUL OR HAZARDOUS USE.** Tenant shall make no unlawful use of the premises, nor conduct any illegal activities on the premises, nor shall any nuisance be maintained or any dangerous activities or use carried on which will or can have an adverse affect on fire insurance ratings or constitute any hazard to persons or to the premises.

(4) **PETS.** Pets are not permitted, unless approved by Owner/Manager. If pets are permitted (check here) only those kind and number of pets listed below are permitted and Tenant agrees to sign a pet agreement and pay an additional deposit of \$ NA.

(5) **UTILITIES.** Tenant shall pay all utilities with respect to the premises, except the following, which will be furnished by Owner: None-NA if utilities are furnished, or to the extent utilities are furnished, Tenant agrees to conserve the same. Should Tenant's usage be excessive in the opinion of Owner, Owner reserves the right to make an extra charge for excessive use. If utilities essential to the heating of the premises are not furnished, Tenant agrees to provide said utilities and to pay promptly all charges therefore which shall be made by the utility company furnishing the same. Tenant is responsible for insuring that heat is maintained in the unit to prevent damage from freezing. Tenant expressly assumes that risk of loss of damage to the premises, and shall pay for all such loss or damages caused by any freezing which results from Tenants failure to provide proper heating or other action by Tenant (including loss of heating because utilities were shut off due to nonpayment of bills if Tenant is responsible for paying those bills.)

(6) **LOUD NOISE.** Tenant agrees not to play any musical instrument, stereo, CD, cassette, radio, or television loud enough to be heard by neighbors or other tenants during the hours after 10:30 P.M. until 8:00 A.M. and Tenant shall exercise reasonable care so as not to disturb other tenants or neighbors at any time of the day or night.

(7) **SIGNS.** Tenant shall not post any signs or advertising material at any location in or upon the premises.

(8) **ASSIGNMENT; SUBLEASE.** Tenant shall not assign this agreement, nor sublease the premises, or any part thereof, without the prior written consent of Owner.

(9) **INSPECTION.** Tenant agrees that Owner or Owner's authorized agent may enter the premises at reasonable times and intervals to inspect, repair, and maintain the same, or to show the property to any prospective buyer, or any loan or insurance agent. After notice of termination of this tenancy has been given by either party, Owner may show the premises to any prospective Tenant.

(10) **RULES.** If the rented premises are a unit of multiple dwelling, Tenant agrees to abide by such reasonable rules and regulations as Owner may from time to time establish for all tenants of such multiple dwellings.

(11) **BAD CHECKS.** In the event the Tenant's bank dishonors his or her check, the Tenant agrees to pay to the Owner \$40.00 for each occurrence to cover Owners administrative costs.

(8) TERMINATION.

a. **TENANT RESPONSIBLE FOR CLEANING AND REPAIRING ON MOVE OUT.** A termination of this tenancy for any reason. Tenant shall return said premises to Owner in as good condition as when received, reasonable wear and tear excepted. Tenant shall leave an operating light bulb in each light socket upon vacating the premises. If Tenant shall leave the premises in a condition contrary to the requirements of this agreement at the termination hereof, Tenant agrees to pay the costs of cleaning, repairing, or replacing as necessary to correct such condition, and agrees that the security deposit paid to Owner may applied to such purpose to the extent necessary. Tenant further agrees to be responsible for Owner's loss of rental income during any period which is reasonably required to perform such cleaning or repairs and agrees that the security deposit paid to Owner may also be applied toward the same.

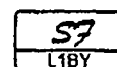
b. **RETURN OF KEYS.** Tenant must return all keys upon vacating the rental. If all keys are not returned, Owner may have locks re-keyed and Tenants will be responsible for the costs of such re-keying.

c. **PERSONAL PROPERTY LEFT ON PREMISES.** Should tenant leave personal property on the premises after relinquishing tenancy, Owner may store the property on the premises for not more than 30 days at the rate of \$8 per day or, may remove and dispose of the property as provided in paragraph 14.

9. DEFAULT BY TENANT. In the event of Tenant's default in payment of rental, or a breach of any of the other terms and conditions of this agreement and Tenant's tenancy hereunder may be terminated upon 3 days notice in writing given by Owner, or Owner's agent, to Tenant. Tenant shall, by the end of the third day following the delivery of any such notice, either deliver up possession to Owner, or correct the matter in default. Should Owner be compelled to institute a legal action to recover possession of the premises by reason of nonpayment of rental by the Tenant, and should Tenant tender payment of rental after commencement of such legal action, Owner shall not be required to accept such payment of rental after commencement of such legal action, Owner shall not be required to accept such payment unless, Tenant pays the entire rental in default plus all actual attorney's fees, court costs, and service fees incurred by owner in said legal action up to said time. Any acceptance by Owner of any amount: (a.) shall be totally at Owner's option and such payment shall be applied first to attorney's fees, court costs, and service fees incurred by Owner in said legal action, then to rental; and (b.) shall not operate to stay said legal proceedings or as any waiver of Owner's right to possession of the premises (e.g. Owner need not dismiss an eviction lawsuit even if the full aforementioned sum is paid.

10. NOTICES. Notwithstanding and contrary provision of statute, law or custom, all notices of default, notices of termination, or other notices hereunder shall be given as herein provided. All notices shall be in writing. Notices to Owner shall be deemed given when delivered personally to Owner's agent, or in person in charge of Owners offices at the address herein stated at which rentals shall be paid. All notices to Tenant may be served by mail, by depositing the same in the United States Mail, postage fully prepaid, addressed to Tenant at the post office address of the rental premises unless otherwise provided by law. Mailed notices shall be deemed delivered on the date following the date of mailing of the same, and Owner shall not be required to prove delivery to Tenant. If the premises are occupied by husband and wife, each spouse appoints the other as his or her agent for the purposes of receiving notices hereunder. If the premises are occupied by more than one person, not husband and wife, as co-tenants appoints the other (s) as his or her agent for the purposes of receiving notices hereunder.

11. VACATING WITHOUT PROPER NOTICE. Should Tenant vacate the premises without giving the required 30 days notice to owner:(a.) Tenant shall be liable to Owner for 30 days rental and all utility changes form the date Tenant does give notice to intent to terminate or from the date of actual termination, whichever occurs first, or from the date Owner becomes aware of the termination if no notice is given. Owner shall, however, not hold Tenant liable for rent for any period during which the premises have been re-rented and Owner is actually being paid rent by a new tenant. (b.) Tenant shall be responsible for all damages resulting from theft and from shut off of utilities (including but not



limited to frozen and/or burst water pipes) until such time as the Owner becomes aware of the premises being vacated and has sufficient time to retake possession of said premises and make appropriate arrangements for necessary utility services.

12. ABANDONMENT. Should Tenant be in default under the terms of this Rental Agreement and should Tenant be personally absent from the premises (whether or not items of personal property have been left at the said premises) during 7 consecutive days while so in default, the parties hereto agree that unless Tenant has given Owner notice to the contrary along with a valid address at which the Tenant can be located during the period of absence, Tenant shall at Owner's option, be deemed to have abandoned the rental premises. On or after the 8th day of such abandonment, Owner may enter into and take possession of the premises, without necessity of resorting to any legal process, and may re-rent said premises. Personal property removed to storage will be held and disposed of as prescribed in paragraph 14 below. For the purposes only of computing damages to the Owner in conjunction with Section 11 above and this Section. Tenant, shall be deemed to have given a 30 day notice of termination on the 8th day of Tenant's un-notified absence from the premises while in default. If Tenant is in default under the terms of this Rental Agreement and the premises appear to be empty, Owner may enter the premises for the purposes of inspecting and maintaining the unit. If upon inspection, no items of personal property have been left at the said premises, Owner may deem Tenant to have abandoned the rented premises and Owner may take immediate possession of the premises, without necessity of resorting to any legal process, and may re-rent said premises.

13. SECURITY INTEREST TO OWNER. Tenant hereby grants to Owner a security interest in all personal property which Tenant may at any time bring into or upon the rented premises, to secure for the full performance by Tenant of all the terms and conditions of this agreement, and the payment of all sums which may at any time be due to Owner hereunder, and agrees that in the event of default by Tenant hereunder, Owner may enforce such security interest in the manner provided by law.

14. STORAGE AND DISPOSAL OF PERSONAL PROPERTY. Personal property removed from the premises or stored on the premises under paragraphs 8,d, 12, or 13, above will be stored at Tenant's expense for a maximum of 30 days. If the personal property has not been claimed by the tenant during the 30 day period (by paying any sums owed Owner plus the storage and transportation charges) the personal property will be sold at auction to the highest bidder and proceeds of the sale will be used to pay for the storage, transportation, and auction fees, and the balance will be applied to satisfy any unpaid sums due to Owner. Any balance remaining will be mailed to Tenant at Tenant's last known address.

15. FORBEARANCE NOT A WAIVER. Any forbearance by Owner or failure by Owner to strictly enforce all the terms and conditions of this agreement shall not under any circumstances be construed as a waiver of Owner's right to strictly enforce all of such terms and conditions in the event of any further, continued, or additional default by Tenant.

16. ATTORNEYS FEES AND COURT COSTS. Should either party be required to bring any suit to enforce the provisions hereof or to seek damages for any breach hereof, the prevailing party in such suit shall be entitled to recover reasonable attorneys fees from the other party in such amount as shall be fixed by the court in such suit. Owner and Tenant expressly contract that, if it becomes necessary for Owner to commence a legal action to recover possession of the premises by reason of nonpayment or other breach of this agreement by Tenant (Unlawful Detainer action), Tenant agrees to pay the reasonable attorney's fees incurred by Owner bringing such action to recover possession, and agrees that the Court may award such attorney's fees as cost in such legal action.

17. SEVERABILITY. If any provision hereof shall be held by any Court to be unlawful. All the remaining provisions of the agreement shall remain in full force and affect. Any provision which is contrary to the Uniform Consumer Credit Code of the State of Idaho shall be deemed deleted here from and shall have no lawful force and effect, but all the remaining provisions hereof shall be effective.

18. AGREEMENT BINDING ON HEIRS, ETC. This agreement shall inure to the benefit of, and be binding upon, the heirs, personal representatives, successors and assigns of all parties hereto.

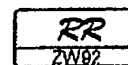
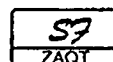
19. ADDITIONAL AGREEMENTS: ___

Tenants shall be responsible for landscape watering, grass cutting, fertilizing, winterizing of hose bibs and sprinkler system. Tenants shall maintain the interior and exterior of the premises in as good condition as they were at the commencement of the lease.

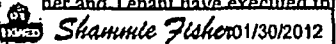
In the event that Tenants wish to renew or extend this lease Tenants shall give Owner at least 60 days written notice prior to the lease expiration date and the parties shall negotiate the terms of any renewal or extension.


*****This is a lease-purchase in accordance with the RE-21 dated 1/16/12 with ID #rey98472499 between the same parties. Any breach or default on this lease agreement will be considered a default on the purchase and sale agreement. A total of \$1000 is due prior to the move in date of March 1, 2012.*****

Except as listed above, the instrument constitutes the entire agreement between Owner and Tenant and there are no other promises or agreements whatsoever.



IN WITNESS WHEREOF: ~~Owner and Tenant have executed this~~ agreement as of the day and year first above written.

OWNER:  01/30/2012
eSigned CDT@-ST @ 6:48 PM MST

BY:  01/30/2012 TITLE: Owner

TENANT: eSigned 9ALM-XB @ 7:53 PM MST TENANT: _____

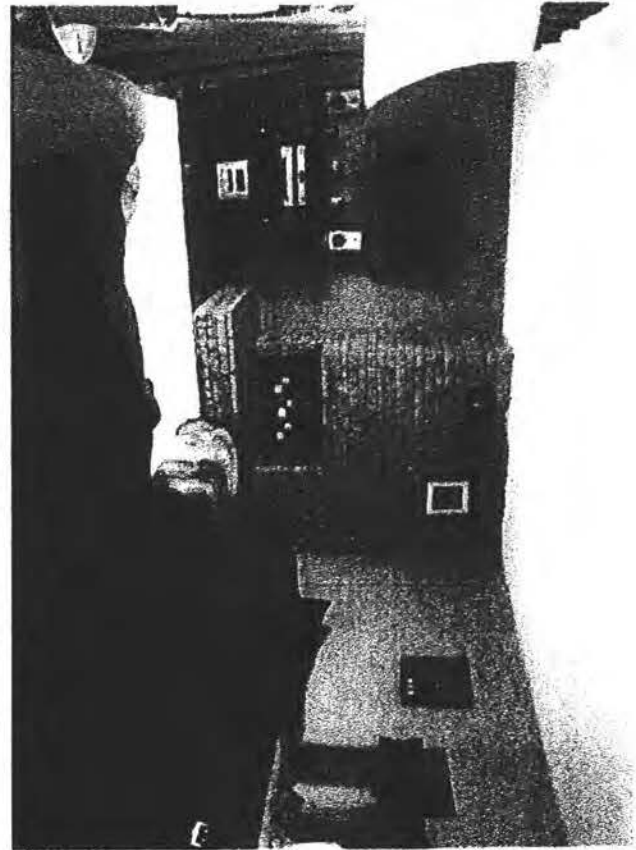
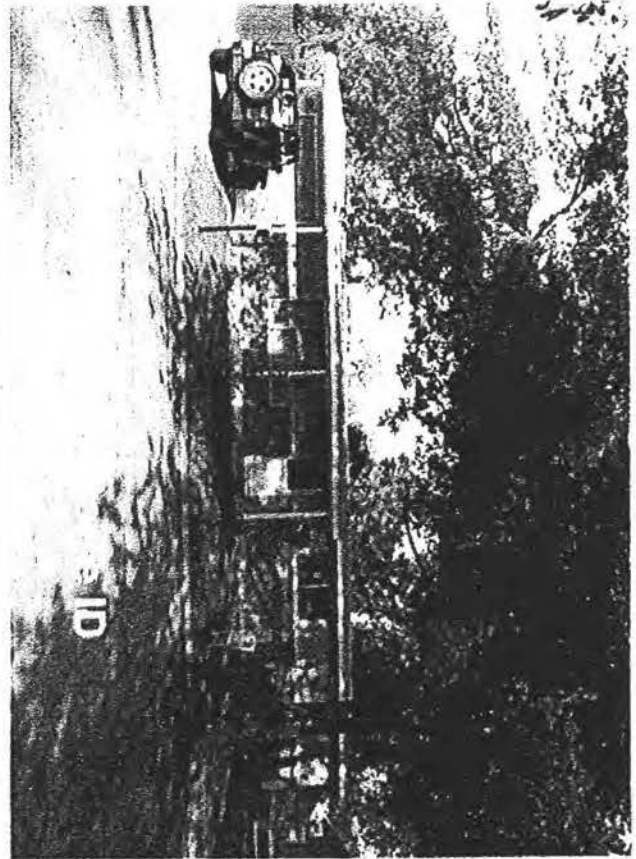
TENANT: _____ TENANT: _____

NOTICE TO TENANTS. Should you not pay rent as agreed upon in this contract and should owners of the property be compelled to institute legal proceedings against you to regain possession of your unit your responsibility may include the following:
The law provides that you may be liable: (1.) To pay the unpaid rent plus interest at the legal rate. (2.) To pay court costs and to pay Sheriff's fees. (3.) To pay Attorney's fees. (4.) To pay triple damages for unlawful Detainer of the unit.
To enforce any Judgements against you the following may be done: (1.) Your property may be seized by the Sheriff, sold and the proceeds applied in satisfaction of the judgement. (2.) Your wages may be subjected to garnishment. (3.) A lien of record may be placed against you which will be binding against you and any property that you own for 5 years thereafter. Such property can be seized at any time in the future (up to 5 years) to satisfy the Judgement against you plus interest. Such judgement lien can be renewed for additional 5-year periods.

DR# 318-994

Photos of Residence Prior to Demolition

Provided by Michael Royce

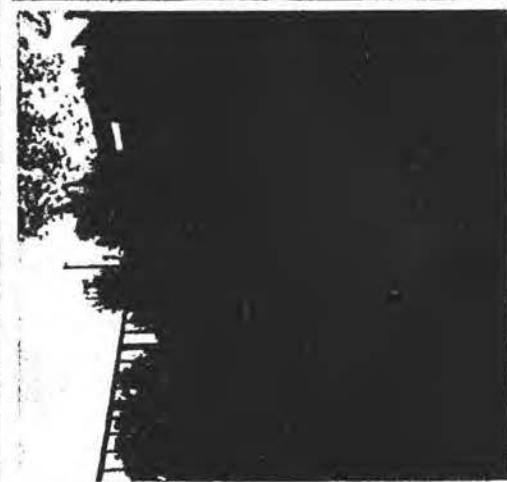
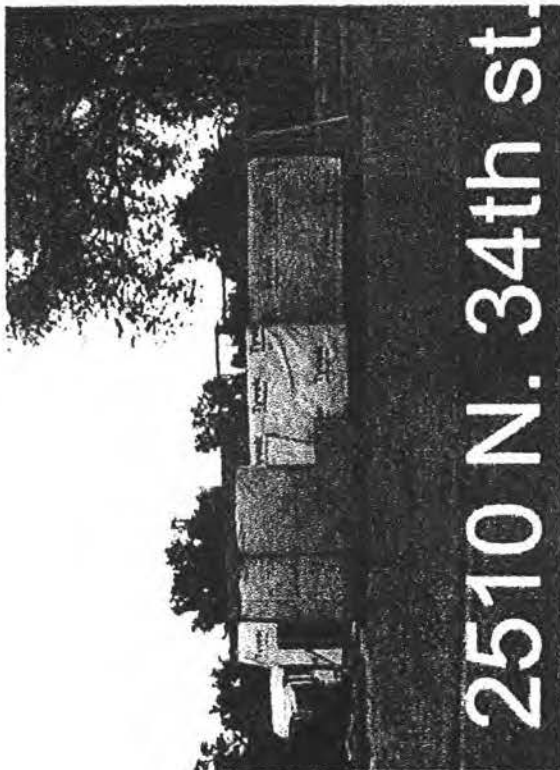
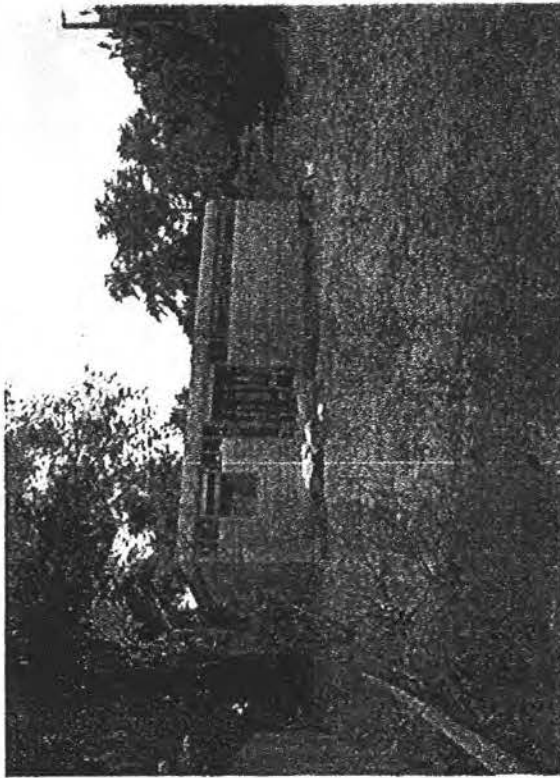


DR# 318-994

Photos of "New" Residence (Under Construction) on Property

Provided by Michael Royce

318994





BOISE POLICE DEPARTMENT CASE STATUS REPORT

Division: CID

DR #: 318-994

Specific Crime(s): Grand Theft	
Location of Occurrence: 2510 N. 34 th St.; Boise, ID	
Victim Name – Last, First, Middle (Firm if Business): Michael Royce	
Date & Time Occurred: 1/12 - 8/13	Date & Time of This Report: 8/26/13

Case Status:			
<input type="checkbox"/> Cleared by Exception	<input type="checkbox"/> Summoned or Cited	<input type="checkbox"/> Inactive	<input type="checkbox"/> Referred to Outside Agency
<input type="checkbox"/> Cleared By Arrest	<input checked="" type="checkbox"/> Unfounded or Civil	<input type="checkbox"/> Information Only	<input type="checkbox"/> Submit to Prosecutor for Warrant

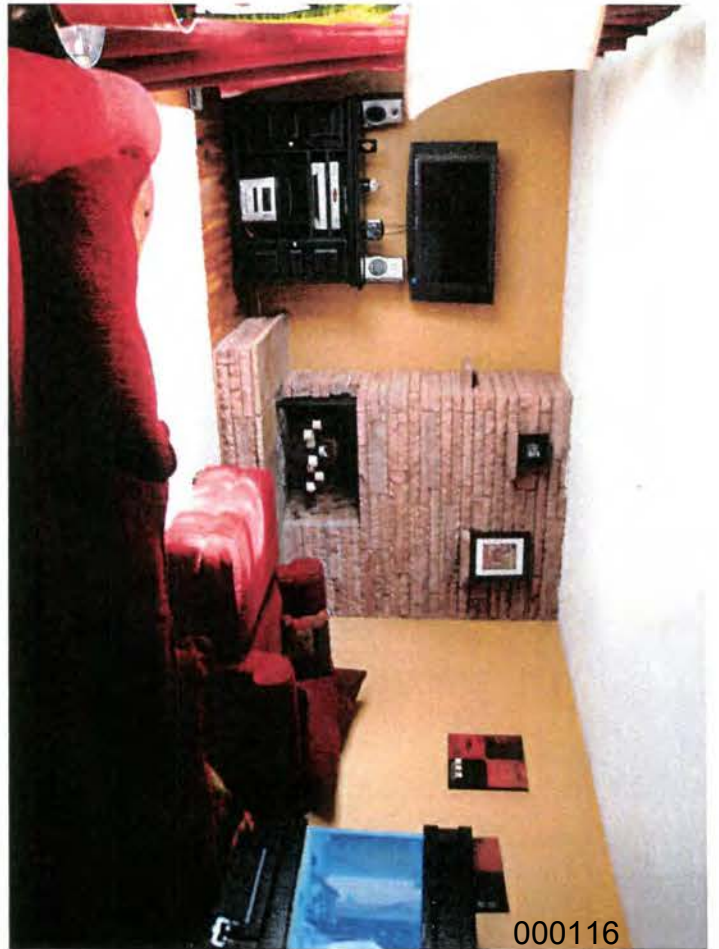
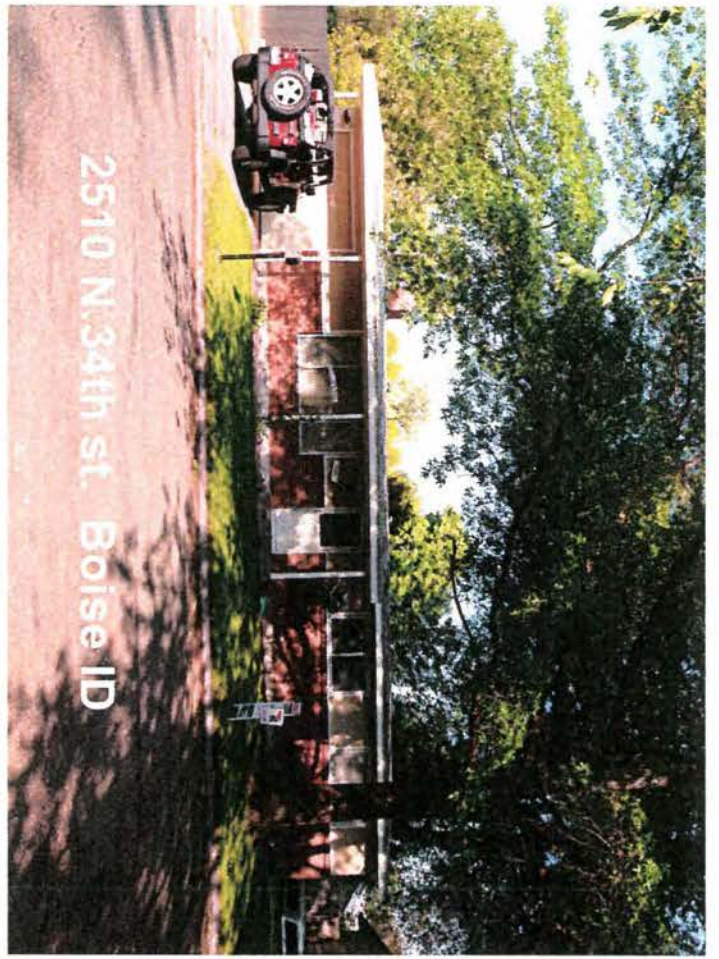
Suspect(s) - Last, First, Middle	D.O.B.	Age	Race	Arrest Date	Initiating Officer Ada	Det / Case Officer Ada
[REDACTED]	[REDACTED]				435	435

Additional Cases Cleared:

<p>Additional Information (Describe any additional or different modus operandi factors, descriptions of vehicles, tools or property disclosed by further investigation and any changes or reductions in original charge):</p> <p>Civil</p> <p>Per the Ada County Prosecutor's Office, the situation needs to be handled in Civil Court</p> <p>See Narrative</p>

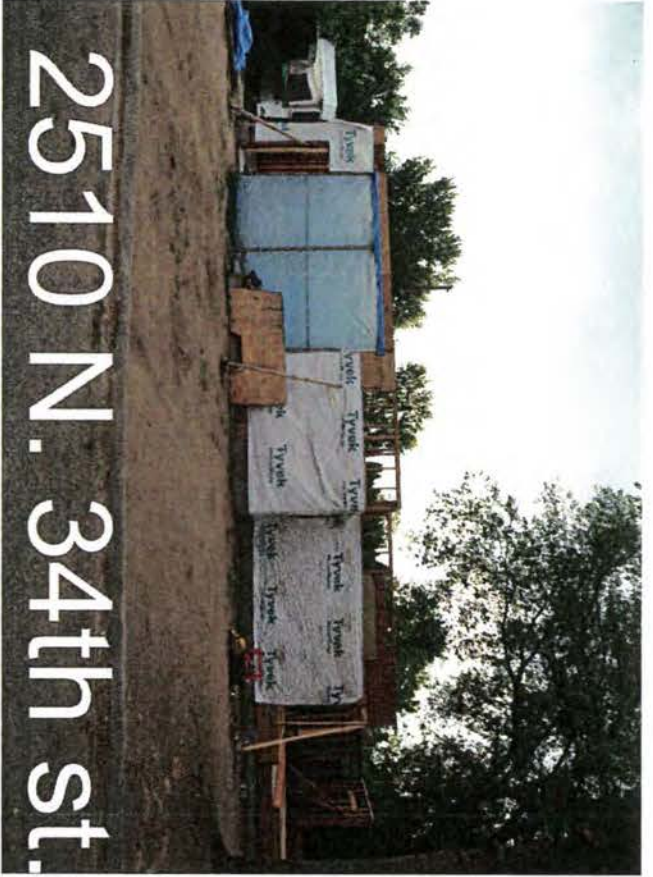
Reporting Officer: W. Spain *WS* Ada: 435
 Supervisor: B. Lee *BL* Ada: 577 *AL*

Exhibit C

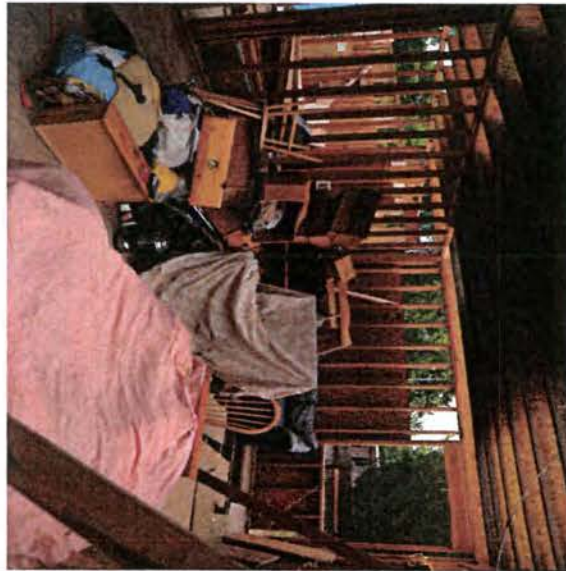
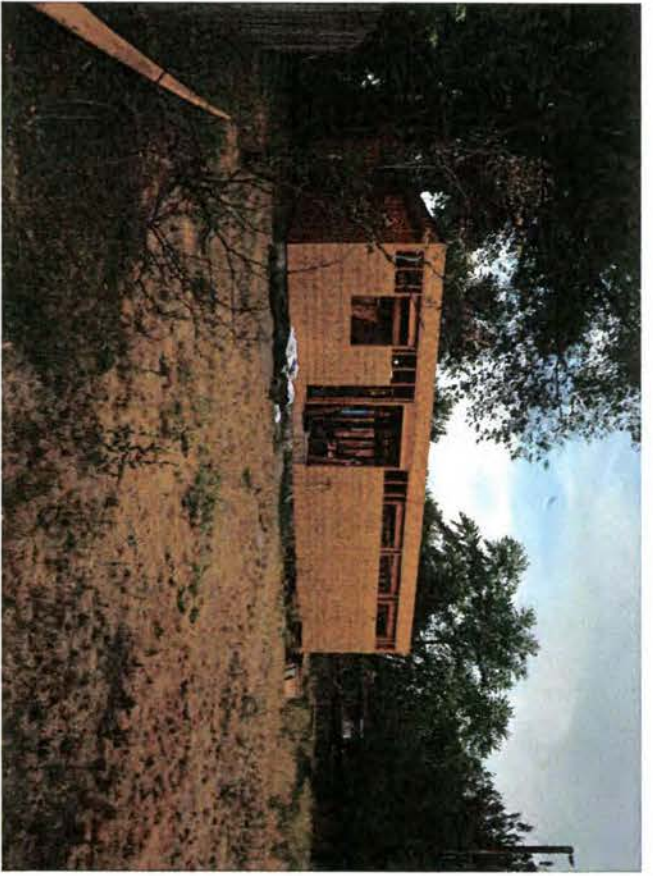


000116

Exhibit D



2510 N. 34th St.



JAMES G. REID, ISB #1372
JENNIFER REID MAHONEY, ISB #5207
KAUFMAN REID PLLC
1211 W. Myrtle, Suite 350
Boise, Idaho 83702
Telephone: (208) 342-4591
Facsimile: (208) 342-4657

Attorneys for Plaintiff

NO. _____ FILED _____
A.M. _____ P.M. 228

SEP 01 2015

CHRISTOPHER D. RICH, Clerk
By TENILLE GRANT
DEPUTY

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

SHAMMIE L. FISHER;

Plaintiff,

vs.

**GARRISON PROPERTY AND
CASUALTY INSURANCE COMPANY;**

Defendant.

Case No. CV OC 1508979

**MEMORANDUM IN SUPPORT OF
MOTION FOR PARTIAL SUMMARY
JUDGMENT**

COMES NOW, Plaintiff, Shammie L. Fisher, by and through her attorneys of record, Kaufman Reid, PLLC, and submits the following Memorandum in Support of Motion for Partial Summary Judgment. Plaintiff's Motion for Summary Judgment seeks judgment on the issue of insurance coverage.

I. SUMMARY AND BACKGROUND

Plaintiff Shammie Fisher owns real property located at 2510 N. 34th Street, Boise, Idaho. On or about November 5, 2008, USAA Casualty Insurance Company issued Plaintiff a Homeowners Insurance Policy for the residence located at 2510 N. 34th Street, which at that time

MEMORANDUM IN SUPPORT OF MOTION FOR PARTIAL SUMMARY JUDGMENT - 1

000119

was her primary residence. The Policy was renewed annually by USAA and/or for Garrison Property and Casualty Company (hereafter "Garrison"). The Policy in effect from the period March 8, 2013 to March 8, 2014, is attached to the Amended Complaint as Exhibit A.

The Policy states in the Declarations that the Described Location is 2510 N. 34th Street, Boise, Ada County, Idaho. *See* Policy, Declarations. At the time the Policy was issued, the Described Location was used principally for dwelling purposes. Amended Complaint, at ¶. 7; *Aff. of Shammie Fisher* at ¶ 2.

In February of 2012, Plaintiff signed a contract for lease to own ("Lease") of the Property with Ron Reynosa ("Reynosa"). The Lease was for a 1 year term, ending on March 31st, 2013, with the option for a 6 month extension ending on Sept 1, 2013. *See Aff. of Shammie Fisher*, at ¶ 3-4, and Ex. A. Within the first two months, Plaintiff was notified that the entire home had been leveled by Mr. Reynosa, destroying both the structure and the fixtures therein. *Id.* at ¶ 5. Photographs of the property before and after the destruction are attached as Exhibits B and C, to *Aff. of Shammie Fisher*. Plaintiff had no knowledge that Mr. Reynosa intended to destroy the home when he leased the Property. *Id.* at ¶ 6.

Reynosa subsequently defaulted on the Lease and left town, informing Plaintiff in September 2013 that he did not intend to rebuild the home he had destroyed. *Id.* at ¶ 7.

On or about September 27, 2013, Plaintiff submitted a Proof of Loss seeking coverage under the Policy for the losses to the dwelling and the personal property therein. By letter of December 5, 2013, Garrison denied coverage for the loss. Amended Complaint, at ¶. 14; *Answer to Amended Complaint*, at ¶ 14.

By this action, Plaintiff seeks an order from the Court that her property losses for both the

structure and the fixtures attached thereto are covered under the Policy and seeks damages for said losses. This partial motion for summary judgment seeks an order from the Court that the losses are covered under the Policy.

II. ARGUMENT

A. Standard

Rule 56(c) of the Idaho Rules of Civil Procedure directs the trial court to enter summary judgment “when the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue of material fact and that the moving party is entitled to a judgment as a matter of law.” *City of Chubbuck v. City of Pocatello*, 127 Idaho 198, 200, 899 P.2d 411, 413 (1995) (quoting IRCP 56(c)).

B. The Policy Provides Coverage for Plaintiff’s Claims

In general, “policies of insurance, as other contracts, are to be construed in their ordinary meaning, and where the language employed is clear and unambiguous, there is no occasion to construe a policy differently than manifested by the plain words therein.” *Porter v. Farmers Ins. Co. of Idaho*, 102 Idaho 132, 136 (1981). However, the Idaho Supreme Court has clearly explained certain special rules to be applied relative to construction of policies of insurance -

Interpretation of an ambiguous document presents a question of fact. On the other hand, interpretation of an unambiguous document is a question of law. Further, insurance policies are a matter of contract between the insurer and the insured. So, interpretation of an unambiguous insurance contract is a question of law subject to free review. But, where there is an ambiguity in an insurance contract, special rules of construction apply to protect the insured. Under these special rules, insurance policies are to be construed most liberally in favor of recovery, with all ambiguities being resolved in favor of the insured. Finally, the meaning of the insurance policy and the intent of the parties must be determined

from the plain meaning of the insurance policy's own words.

Hall v. Farmers Alliance Mut. Ins. Co., 145 Idaho 313, 179 P.3d 276 (2008). The foregoing rules apply to construction of the applicable Policy provisions. In this case, the clear language of the Policy provides coverage for Plaintiff's loss.

1. Relevant Policy Language

There is no dispute as to the Policy in place at the time of the loss. *See* Amended Complaint, at 5, Ex A; Answer at 5. A copy of GAR 0163413 is attached as Exhibit A to the Amended Complaint in this matter and is attached hereto for ease of reference.

The Named Insured in the Policy is Shammie L. Fisher and the Described Location is 2510 N. 34th Street, Boise, Ada, ID. Policy Declarations, at 3. The Dwelling Policy provides coverage for the following:

We cover:

1. The Dwelling on the Described Location shown in the Declarations, used principally for dwelling purposes, including structures attached to the dwelling;

Policy, at 2. There is no dispute in this case that the dwelling on the Described Location was completely destroyed. Additionally, there is no dispute that the dwelling was used principally for dwelling purposes. In the Real Estate Purchase and Sale Agreement between Plaintiff and Reynoso, Mr. Reynoso stated that he did intend to occupy the property as his primary residence. *See* Real Estate Purchase and Sale Agreement ("Purchase and Sale Agreement") at 4, ¶ 19.

There is no evidence that prior to its destruction that the dwelling was not in fact being used as a dwelling. Accordingly, there is coverage for the loss of the dwelling under Coverage A, Dwelling.

Defendant in this case argues that the loss is not a covered loss for the reason that the Policy does not cover loss to the dwelling caused by “d. theft to a dwelling or structure under construction;”. Policy, at 5. However, there is no evidence in this case that the dwelling was a “dwelling or structure under construction.” Rather, this was a dwelling which had been completed and used as a residence for a number of years, including the time that Plaintiff had used it as her primary residence. Fisher Aff., at 2. Mr. Reynoso entered into a lease/purchase agreement, wherein he stated that he was going to use the dwelling as his personal residence.

The Purchase and Sale Agreement did contain a provision regarding improvements Mr. Reynoso intended to make to the property. Specifically, the RE-11 Addendum signed by the parties provided that “Buyer intends to make certain improvements to the property upon possession, with the intent to sell the property for a profit . . . the Buyer is required to give a monthly update for plans/upgrades.” *Id.* at 1, ¶ 9. The “improvements” to the property contemplated by the parties included such things as new flooring or upgrades to the kitchen and bathroom floors and counters. Fisher Aff., at ¶ 9. There was no discussion or agreement for the Buyer to demolish or rebuild any portion of the premises or remodel the structure. *Id.* This is consistent with the fact that the Buyer indicated that he intended to use the property as his primary residence during the term of the lease/purchase. *See id.*; Purchase and Sale Agreement (“Purchase and Sale Agreement”), at 4, ¶ 19. Moreover, there is no evidence in this case that at the time the dwelling and fixtures attached thereto were destroyed that the dwelling was “under construction” or that there was “theft.”

Accordingly, the undisputed facts in this case support the conclusion that the dwelling was not “under construction” such that the exclusion for theft to a dwelling or structure under

construction would apply.

The items of property lost by the Plaintiff included the dwelling itself and fixtures within the dwelling, including: a dishwasher; disposal; kitchen vent and fan hood; microwave; trash compactor; and hot tub. These items were attached to the property and were fixtures. Thus, they are considered real property, not personal property. A fixture is personal property attached to land or a building and regarded as an irremovable part of the real property, such as a fireplace built into a home. *See Black's Law Dictionary* 652 (7th ed. 1999). For an object to become a fixture, thus becoming part of the realty, three essential elements must concur: (1) annexation to the realty, either actual or constructive; (2) adaptation or application to the use or purpose to which that part of the realty to which it is connected is appropriated; and (3) intention to make the article a permanent accession to the freehold. *Everitt v. Higgins*, 122 Idaho 708, 711, 838 P.2d 311, 314 (Ct. App. 1992). In this case, the items listed above were fixtures and were specifically listed in the Purchase and Sale Agreement as part of the sale. *See Purchase and Sale Agreement*, at 2, ¶ 5, 5(a); *and see Seller's Property Condition Disclosure Form*, at 1. Accordingly, these items are covered under Coverage A Dwelling, as the dwelling . . . and structures attached to the dwelling". The items are not reasonably considered Personal Property, and the exclusions relating to Personal Property in the Policy do not apply here.

2. The Exclusions Relied Upon By Garrison Do Not Apply

In its Answer to the Amended Complaint, Garrison raises several exclusions as defenses to coverage. The exclusions cited by Garrison do not apply under the undisputed facts in this case.

First, it is important to note that Garrison bears the burden of proving that its asserted

exclusions are applicable in this case:

Furthermore, an insurance policy will generally be construed so that the insurer bears the burden of proving that the asserted exclusion is applicable.

Perry v. Farm Bureau Mut. Ins. Co., 130 Idaho 100, 103, 936 P.2d 1342, 1345 (Ct. App. 1997) (citing *Viani v. Aetna Ins. Co.*, 95 Idaho 22, 501 P.2d 706 (1972); *Harman v. Northwestern Mutual Life Ins. Co.*, 91 Idaho 719, 429 P.2d 849 (1967)). Garrison cannot meet that burden in this case.

The first exclusion raised by Garrison as a basis for denying coverage for the dwelling and fixtures is the exclusion for intentional loss, which provides:

We do not insure for loss caused directly or indirectly by any of the following.

...

h. **Intentional Loss**, meaning any loss arising out of any act committed:

- (1) by or at the direction of you or any person or organization named as an additional insured; and
- (2) with the intent to cause a loss.

Policy, at 7-8.

In this case, there is absolutely no evidence that Ron Reynoso destroyed the dwelling and fixtures at the Insured Location “at the direction” of Plaintiff or that Plaintiff directed the destruction of her property with “intent to cause a loss.” The undisputed facts demonstrate that Ron Reynoso leased the property with the intent to purchase it, that he represented to the Plaintiff that he would live in the dwelling during the time he leased it as his primary residence, that he would make certain improvements to the dwelling such as updating the flooring, bathroom and kitchen countertops and other cosmetic “improvements” and would be attempting to resell the

property at a later date. *See* Fisher Aff., at ¶ 6, 9, and Ex. A. There is absolutely no evidence that Ron Reynoso was authorized to tear down or otherwise destroy the dwelling or fixtures or that Plaintiff was aware he intended to do so. *Id.* at ¶ 6, 9. Likewise, there is no evidence that Plaintiff directed him to destroy the property with the intent to cause a loss. Accordingly, the exclusion for intentional loss does not apply.

Next, Garrison cites the exclusion for faulty or inadequate repair, renovation or remodeling, which provides:

We do not insure for loss to property described in Coverages A and B caused by . . .

c. **Faulty, inadequate or defective;**

...

- (2) design, specifications, workmanship, repair, construction, renovation, remodeling, grading, compaction;
- (3) materials used in repair, construction, renovation or remodeling; or
- (4) maintenance;

of part or all of any property whether on or off the Described Location.

Policy, at 8. The exclusion for faulty, inadequate or defective maintenance does not apply at all in this case as there are no claims involving maintenance of the dwelling. Likewise, there are not claims based upon faulty, inadequate or defective materials used in construction. Rather, the claim in this case is that Ron Reynoso tore down Plaintiff's dwelling and destroyed it and the fixtures in it, without authorization or direction to do so.

Garrison appears to take the position that Reynoso was involved in some sort of a

construction or remodel project that was authorized by the Plaintiff and that the complete destruction of the residence was due to faulty, inadequate or defective renovation or remodeling. This is not supported by the undisputed facts. First, it is undisputed that Reynoso was not authorized to destroy the entire residence and was not hired to perform a “remodel or renovation.” Rather, he was authorized, while living in the house as a residence to make certain “improvements.” Plaintiff has explained that those “improvements” included such things as new flooring, paint, lighting and countertops. The authorized “improvements” did not include any tear-down or renovation of the structure. Fisher, at ¶ 9.

This case is similar to *Home Savings of Am. v. Cont'l Ins. Co.*, wherein a lender sought recovery under an insurance policy for the destruction of a residence by the insured for redevelopment purposes. 104 Cal.Rptr. 2d 790 (Ct.App. 2001). In *Home Savings*, an insured transferred title and moved out. The home was then demolished for redevelopment. The lien holder sought damages under the policy for the destruction of its security. The insurer argued that the exclusion for faulty or inadequate renovation, development or remodeling applied. The court held that the exclusion did not apply, and explained:

[W]e find that simply excluding damages flowing from faulty construction is insufficient to exclude the loss caused by a third party's intentional destruction of a secured residence.

Id. at 803. Similarly, in this case, excluding damages for inadequate remodel of the residence is insufficient to exclude the loss caused by a third party, Ron Reynoso's, intentional destruction of the residence.

Similarly, in *Husband v. LaFayette Ins., Co.*, a court held that in order for the exclusion for faulty or inadequate renovation or remodel to apply, the alterations must be undertaken by

the insured or someone authorized by the insured. 635 So.2d 309, 311 (La.App. 1994).

Specifically, the court agreed with the following conclusion of the trial court:

This court interprets the exclusion contained in the pertinent policy provisions to apply to situations where the insured or someone authorized by the insured contracts for alterations to the property and is dissatisfied with the quality of the performance under that contract. The insurer by this exclusion intended to prevent the expansion of coverage under the policy to insuring the quality of a contractual undertaking by the insured of someone authorized by him.

However, in this case the alterations were undertaken without authorization and in direct conflict with the terms of the lease, and therefore fall outside the exclusion of the policy.

Id., 635 So. 2d at 311 (emphasis added). In this case, the exclusion for faulty or inadequate remodel or repair does not apply because the destruction of the insured dwelling by Ron Reynoso was not done at the direction or with the authorization of the insured. Fisher Aff, at ¶ 9.

Accordingly, there are no exclusions which apply under the facts of this case and Plaintiff is entitled to summary judgment on the issue of coverage for the claimed loss.

III. CONCLUSION

Based upon the foregoing, Plaintiff's motion for partial summary judgment should be granted.

Dated this 1 day of September, 2015.

KAUFMAN REID, PLLC

by: _____

James G. Reid

Attorneys for Defendant

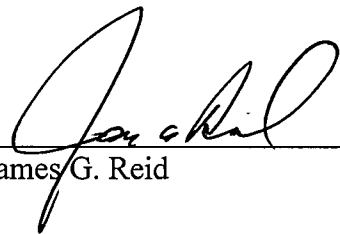
CERTIFICATE OF SERVICE

This will certify that I have on the 1 day of September, 2015, mailed a true and correct copy of the foregoing upon the following:

U. S. mail, postage prepaid
 hand delivery

express mail
 facsimile

Matthew L. Walters
Craig R. Yabui
Elam & Burke, P.A.
251 East Front Street, Suite 300
P.O. Box 1539
Boise, ID 83701



James G. Reid



FIRE POLICY PACKET

GAR 01634 13 15 80A
EFFECTIVE: 03-08-13 TO: 03-03-14

SHAMMIE L FISHER
13534 W ACORN ST
BOISE ID 83713-0874

IMPORTANT MESSAGES

Attached are your policy documents and other information you may find helpful concerning your insurance coverages and premiums. Please take a few minutes to review them, and then file them with your policy records.

- 1) We are making changes to your Personal Liability coverage. Please review the enclosed "Changes to Your Personal Liability Coverage Notice". The notice will explain any changes including any reductions in coverage.
- 2) USAA considers many factors when determining your premium. Maintaining your property to reduce the probability of loss is one of the most important steps you can take. A history of claim activity may affect your coverage.
- 3) Go to usaa.com to view policy coverages and home features.
- 4) Your policy does NOT cover loss due to flood from any source. For information about obtaining flood coverage from the National Flood Insurance Program (NFIP), call USAA at (800) 531-8722, or contact the NFIP directly.

If you already have a flood policy, you should review it to make sure you have the appropriate coverage and limits. No automatic increases or adjustments are applied to your policy. Coverage for loss of household contents due to flood may be available at an additional cost. If you have questions, please call a member service representative at the phone number above.

THIS IS NOT A BILL. Any premium charge or return for this policy will be reflected on your next regular monthly statement.

RECEIVE THIS DOCUMENT AND OTHERS ELECTRONICALLY. SIGN UP AT usaa.com.

For U.S. CALLS: Policy Service (800) 531-8111. Claims (800) 531-8222.

Thank you for letting us serve you. We appreciate your business.

DPCS1

53276-0507

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GARRISON PROPERTY AND CASUALTY INSURANCE COMPANY
 9800 Fredericksburg Road - San Antonio, Texas 78288

DWELLING POLICY

THIS RENEWAL Declarations replaces all prior Declarations, if any.

Insured's Name and Mailing Address

SHAMMIE L FISHER
 13534 W ACORN ST
 BOISE ID 83713-0874

RENEWAL OF Policy Number

GAR 01634 13 15 80A

POLICY PERIOD: 12:01 A.M. Standard Time
 at the Described Location

From 03-08-13 To 03-08-14 1 Year

Named Insured: SHAMMIE L FISHER

Described Location:

2510 N 34TH ST
 BOISE, ADA, ID 83703-5528

Legal Description:

This insurance applies to the Described Location, Coverage for which a Limit of Liability is shown and Perils Insured Against for which a Premium is stated.

PERILS INSURED AGAINST	FIRE OR LIGHTNING	EXTENDED COVERAGE	SPECIAL FORM
PREMIUM	\$140.76	\$245.88	\$255.99

TOTAL ANNUAL PREMIUM \$667.13

Coverages

- A. DWELLING
- L. PERSONAL LIABILITY
- M. MEDICAL PAYMENTS

Limit of Liability

\$172,000
 \$300,000
 \$5,000

In case of loss under this policy we cover only that part of the loss over the deductible stated.

DEDUCTIBLE(S) \$500

Form and Endorsements made a part of this policy at time of issue:
 SEE ATTACHED DP-END

MORTGAGEE

LOAN NUMBER: 1205093993

AMERICA'S SERVICING COMPANY
 ITS SUCCESSORS AND/OR ASSIGNS
 PO BOX 5106
 SPRINGFIELD, OH 45501-5106

In WITNESS WHEREOF, this policy is signed on 01-07-13

Steven Alan Bennett
 Steven Alan Bennett, Secretary

Stuart Parker
 Stuart Parker, President

DP-D Ed. 1-89

ATTACH THIS DECLARATION TO PREVIOUS POLICY



GARRISON PROPERTY AND CASUALTY INSURANCE COMPANY
 ENDORSEMENT DECLARATIONS

Specifically listed below are the Declarations and premiums for endorsements made a part of this policy at the time of issue. The endorsements are attached stating terms and conditions.

RENEWAL OF	Policy Number	Policy Term:	03-08-13	03-08-14
GAR	01634 13 15 80A	Inception		Expiration

SECOND MORTGAGEE:

LOAN NUMBER: 0056796139

FIRST HORIZON HOME LOANS CORPORATION
 ITS SUCCESSORS AND/OR ASSIGNS
 PO BOX 7481
 SPRINGFIELD, OH 45501-7481

REMAIN IN EFFECT (REFER TO PREVIOUS POLICY):

DP 00 03 (07-88); DL 24 01 (12-02); DL 24 11 (12-02); DL 24 14 (12-02)
 DP FLDA3 (01-07); DP ID (10-05); DP 04 LA (03-08); DP-978 (07-00); ESA (02-05)
 FI-MLD89 (08-03)

ENDORSEMENTS ADDED:

DL APL02 (11-12)

ADDITIONAL COVERAGE INFORMATION:

DL 24 01 (12-02)	- PERSONAL LIABILITY	
	TERM PREMIUM \$	24.50
DL 24 11 (12-02)	- PREMISES LIABILITY	
	TERM PREMIUM :	INCLUDED
DL 24 14 (12-02)	- LIABILITY LOSS ASSESSMENT	
	COVERAGE LIMIT :	\$10,000
	TERM PREMIUM :	INCLUDED
DP 04 LA (03-08)	- LOSS ASSESSMENT PROPERTY COVERAGE	
	COVERAGE LIMIT :	\$10,000
	APPLIES TO DWELLING COVERAGE A	
	TERM PREMIUM :	INCLUDED
DP-978 (07-00)	- ADJUSTED BUILDING COST ENDORSEMENT	
	TERM PREMIUM:	INCLUDED

DL APL02 (11-12)

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

Amendment to Personal Liability

(DL 24 01)

EXCLUSIONS

E. Coverage L - Personal Liability And Coverage M - Medical Payments to Others

Item 7. Sexual Molestation, Corporal Punishment Or Physical Or Mental Abuse is deleted and replaced by the following:

7. Sexual Misconduct, Sexual Harassment, Sexual Molestation, Or Physical Or Mental Abuse

"Bodily injury" or "property damage" arising out of any actual, alleged, or threatened:

- a. Sexual misconduct; or
- b. Sexual harassment; or
- c. Sexual molestation; or
- d. Physical or mental abuse.

The following exclusions are added:

Pollutants

"Bodily injury" or "property damage" arising out of any actual, alleged, or threatened discharge, dispersal, release, escape, seepage or migration of pollutants however caused and whenever occurring. This includes any loss, cost or expense arising out of any:

- a. Request, demand or order that any "insured" or others test for, monitor, clean up, remove, contain, treat, detoxify, or assess the effects of pollutants; or

- b. Claim or suit by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of pollutants.

Pollutants means any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed.

Lead

"Bodily injury" or "property damage" arising directly or indirectly, in whole or in part, out of the actual, alleged or threatened inhalation of, ingestion of, contact with, exposure to, existence of or presence of lead paint, dust, chips, or other lead-based products.

Asbestos

"Bodily injury" or "property damage" arising directly or indirectly, in whole or in part, out of actual, alleged or threatened inhalation of, ingestion of, contact with, exposure to, existence of, or presence of asbestos.

Fungus, Wet or Dry Rot, or Bacteria

"Bodily injury" or "property damage" arising out of directly or indirectly, in whole or in part, out of actual, alleged or threatened inhalation of, ingestions of, contact with, exposure to, existence of or presence of any fungus, wet or dry rot or bacteria.

DL APL02 (11-12)

126435-0912_01
Page 1 of 2

EXHIBIT A
000134

Fungus means any microorganism or by-product of any microorganism, including, but is not limited to mold, mildew, fungi, mycotoxins and spores.

Failure to Disclose

"Bodily injury" or "property damage" arising out of your failure, intentionally or unintentionally, to disclose information regarding the sale or transfer of real or personal property.

Criminal Acts

"Bodily injury" or "property damage" arising out of or caused by the commission of, attempting to flee from, or avoiding apprehension for a criminal act for which intent is a necessary element.

F. Coverage L - Personal Liability

The following exclusion is added:

Punitive, exemplary or multiple damages, prejudgment interest, fines, or penalties.

Except as specifically modified in this endorsement, all provisions of the policy to which this endorsement is attached also apply to this endorsement.

CHANGES TO YOUR PERSONAL LIABILITY COVERAGE NOTICE

We are making changes to your Dwelling Policy as a part of a change affecting all Dwelling Policies. The changes are intended to make the liability coverage consistent with the similar coverage provided under the Homeowner policy. These changes will apply upon the effective date of the enclosed new policy. These changes include reductions in coverage. If you want to accept this new policy, no action is required on your part other than payment of premiums. If you have any questions, call a member service representative at 1-800-531-USAA (8722). We value your business and look forward to continuing to serve your financial needs.

The tables below illustrate the changes we have made to the Dwelling Policy.

Exclusions Added	
Pollutants	Bodily injury or property damage arising out of any actual, alleged, or threatened discharge, dispersal, release, escape, seepage or migration of pollutants.
Lead	Bodily injury or property damage arising out of exposure to lead paint, dust, chips, or other lead-based products.
Asbestos	Bodily injury or property damage arising out of exposure to asbestos.
Fungus, Wet or Dry Rot, or Bacteria	Bodily injury or property damage arising out of exposure to fungus, wet or dry rot or bacteria.
Failure to disclose	Bodily injury or property damage arising out of failure to disclose information regarding the sale or transfer of property.
Criminal Acts	Bodily injury or property damage arising out of the commission of a criminal act.
Punitive or exemplary damages, fines, or penalties	Specifically excluded.

Exclusions Revised	
Current Exclusion	New Exclusion
Bodily injury or property damage arising out of any Sexual Molestation, Corporal Punishment or Physical or Mental Abuse	Bodily injury or property damage arising out of any actual, alleged, or threatened Sexual Misconduct, Sexual Harassment, Sexual Molestation, or Physical or Mental Abuse

Your Home Characteristics

Our mission at USAA is to help protect your financial security. One way we do this is by helping you determine if you're adequately covered in the event of a loss. The estimated minimum rebuilding cost of your home is based on your home characteristics, but only you can decide if this is enough coverage. Our estimates are based on average construction costs and labor costs for geographic areas and may not reflect the unique features of your home or the area you live in.

On the back of this page, you'll find your home characteristics. If any of the information is incorrect, the rebuilding cost may be affected, so please revise any inaccuracies by:

- Logging on to usaa.com, selecting your policy and then Home Characteristics, or
- Calling us at 1-800-531-USAA (8722).

Should I adjust the coverage on my flood or wind policy?

If you have a separate flood or wind policy for this property, please call your agent or insurer to confirm that your coverage is adequate. For flood or wind policies serviced by the USAA General Agency, please call 1-800-531-8444 for flood policies or 1-800-531-8883 for wind policies. Wind coverage is available in Alabama, Florida, North Carolina, South Carolina, Texas and Mississippi.

Your Home Characteristics

YEAR BUILT: 1965

STORIES: 1.0

*SQUARE FEET: 1152

*Total Square Footage: Includes garage square footage if there is living space that is heated or cooled above the garage. It does not include a finished basement or attic.

FOUNDATION(S) : CRAWLSPACE
SLAB

EXTERIOR WALL: WOOD SIDING

ROOF COVERING: TAR AND GRAVEL

GARAGE TYPE: ATTACHED GARAGE - 1 CAR

INTERIOR WALL PARTITIONS: DRYWALL

INTERIOR WALL COVERINGS: PAINT

FLOOR COVERINGS: HARDWOOD
VINYL

KITCHEN: 1 STANDARD

BATHROOMS: 1 STANDARD

FIREPLACE: 1

HEAT & AIR: HEATING - GAS

CENTRAL AIR CONDITIONING - SAME DUCT

WIRED FOR CENTRAL ALARM: NO



YOUR DWELLING POLICY

READ YOUR POLICY, DECLARATIONS AND ENDORSEMENTS CAREFULLY.

The Dwelling Policy insurance contract between you and us consists of this policy plus your Declarations page and any applicable forms and endorsements. The QUICK REFERENCE section below outlines information contained in the Declarations and the major parts of the policy.

QUICK REFERENCE	
	<p>DECLARATIONS PAGE</p> <p>Your Name and Address Described Location Policy Period Coverages, Amounts of Insurance and Premiums Forms and Endorsements</p>
	<p>Beginning On Page</p>
2	<p>AGREEMENT</p> <p>DEFINITIONS</p> <p>COVERAGES</p> <p>Property Coverages Fair Rental Value/Additional Living Expense Other Coverages Debris Removal Improvements, Alterations and Additions World-Wide Coverage Fire Department Service Charge</p>
5	<p>PERILS INSURED AGAINST</p>
7	<p>GENERAL EXCLUSIONS</p>
8	<p>CONDITIONS</p> <p>Policy Period Insurable Interest Duties After Loss Loss Settlement Mortgage Clause Cancellation Non-Renewal</p>

RECIPROCAL PROVISIONS...
apply when United Services Automobile Association, or USAA, is named on the Declarations as the Company.

A non-assessable policy

Reciprocals

Special definitions and provisions

Plan of operation

In your policy these sets of words have the same meaning: Policy means Contract; You, Your or Insured means Subscriber. We, us, our, USAA or Company means Reciprocal or Interinsurance Exchange; Premium means Deposit; President means Attorney-in-Fact.

Your Policy is issued as part of an Interinsurance Exchange by the President of USAA as Attorney-in-Fact under the authority given him by the subscribers.

No Contingent Liability: You are liable only for the amount of your premium since USAA has a free surplus in excess of the amount required by Article 19.03 of the Texas Insurance Code of 1951, as amended.

Participation: By purchasing this policy, you are a member of USAA and subject to its bylaws. You are entitled to dividends as may be declared by us, after approval as required by the Texas Insurance Code of 1951, as amended.

AGREEMENT

We will provide the insurance described in this policy in return for the premium and compliance with all applicable provisions of this policy.

DEFINITIONS

In this policy, "you" and "your" refer to the "named insured" shown in the Declarations and the spouse if a resident of the same household. "We," "us" and "our" refer to the Company providing this insurance.

COVERAGES

This insurance applies to the Described Location, Coverages for which a Limit of Liability is shown and Perils Insured Against for which a Premium is stated.

COVERAGE A - Dwelling

We cover:

1. the dwelling on the Described Location shown in the Declarations, used principally for dwelling purposes, including structures attached to the dwelling;
2. materials and supplies located on or next to the Described Location used to construct, alter or repair the dwelling or other structures on the Described Location; and
3. if not otherwise covered in this policy, building equipment and outdoor equipment used for the service of and located on the Described Location.

This coverage does not apply to land, including land on which the dwelling is located.

COVERAGE B - Other Structures

We cover other structures on the Described Location, set apart from the dwelling by clear space. This includes structures connected to the dwelling by only a fence, utility line, or similar connection.

This coverage does not apply to land, including land on which the other structures are located.

We do not cover other structures,

1. used in whole or in part for commercial, manufacturing or farming purposes; or
2. rented or held for rental to any person not a tenant of the dwelling, unless used solely as a private garage.

COVERAGE C - Personal Property

We cover personal property, usual to the occupancy as a dwelling and owned or used by you or members of your family residing with you while it is on the Described Location. At your request, we will cover personal property owned by a guest or servant while the property is on the Described Location.

Property Not Covered. We do not cover:

1. accounts, bank notes, bills, bullion, coins, currency, deeds, evidences of debt, gold other than goldware, letters of credit, manuscripts, medals, money, notes other than bank notes, passports, personal records, platinum, securities, silver other than silverware, tickets and stamps;
2. animals, birds or fish;
3. aircraft and parts. Aircraft means any contrivance used or designed for flight, except model or hobby aircraft not used or designed to carry people or cargo;
4. motor vehicles or all other motorized land conveyances. This includes:
 - a. their equipment and accessories; or
 - b. any device or instrument for the transmitting, recording, receiving or reproduction of sound or pictures which is operated by power from the electrical system of motor vehicles or all other motorized land conveyances, including:
 - (1) accessories or antennas; or

- (2) tapes, wires, records, discs or other media for use with any such device or instrument;

while in or upon the vehicle or conveyance.

We do cover vehicles or conveyances not subject to motor vehicle registration which are:

- a. used to service the Described Location; or
 - b. designed for assisting the handicapped;
5. watercraft, other than rowboats and canoes;
 6. data, including data stored in:
 - a. books of account, drawings or other paper records; or
 - b. electronic data processing tapes, wires, records, discs or other software media.

However, we do cover the cost of blank recording or storage media, and of pre-recorded computer programs available on the retail market;

7. credit cards or fund transfer cards.

If you remove personal property from the Described Location to a newly acquired principal residence, the Coverage C limit of liability will apply at each residence for the 30 days immediately after you begin to move the property there. This time period will not extend beyond the termination of this policy. Our liability is limited to the proportion of the limit of liability that the value at each residence bears to the total value of all personal property covered by this policy.

COVERAGE D - Fair Rental Value

If a loss to property described in Coverage A, B, or C by a Peril Insured Against under this policy makes that part of the Described Location rented to others or held for rental by you unfit for its normal use, we cover its:

Fair Rental Value, meaning the fair rental value of that part of the Described Location rented to others or held for rental by you less any expenses that do not continue while that part of the Described Location rented or held for rental is not fit to live in.

Payment will be for the shortest time required to repair or replace that part of the Described Location rented or held for rental.

If a civil authority prohibits you from use of the Described Location as a result of direct damage to a neighboring location by a Peril Insured Against in this policy, we cover the Fair Rental Value loss for no more than two weeks.

The periods of time referenced above are not limited by the expiration of this policy.

~~We do not cover loss or expense due to cancellation of a lease or agreement.~~

COVERAGE E - Additional Living Expense

If a loss to property described in Coverage A, B or C by a Peril Insured Against under this policy makes the Described Location unfit for its normal use, we cover your:

Additional Living Expense, meaning any necessary increase in living expenses incurred by you so that your household can maintain its normal standard of living.

Payment will be for the shortest time required to repair or replace the Described Location or, if you permanently relocate, the shortest time required for your household to settle elsewhere.

If a civil authority prohibits you from use of the Described Location as a result of direct damage to a neighboring location by a Peril Insured Against in this policy, we cover the Additional Living Expense loss for no more than two weeks.

The periods of time referenced above are not limited by the expiration of this policy.

~~We do not cover loss or expense due to cancellation of a lease or agreement.~~

OTHER COVERAGES

1. **Other Structures.** You may use up to 10% of the Coverage A limit of liability for loss by a Peril Insured Against to other structures described in Coverage B.

Use of this coverage does not reduce the Coverage A limit of liability for the same loss.

2. **Debris Removal.** We will pay your reasonable expense for the removal of:
 - a. debris of covered property if a Peril Insured Against causes the loss; or

- b. ash, dust or particles from a volcanic eruption that has caused direct loss to a building or property contained in a building.

Debris removal expense is included in the limit of liability applying to the damaged property.

- 3. **Improvements, Alterations and Additions.** If you are a tenant of the Described Location, you may use up to 10% of the Coverage C limit of liability for loss by a Peril Insured Against to improvements, alterations and additions, made or acquired at your expense, to that part of the Described Location used only by you.

Use of this coverage does not reduce the Coverage C limit of liability for the same loss.

- 4. **World-Wide Coverage.** You may use up to 10% of the Coverage C limit of liability for loss by a Peril Insured Against to property covered under Coverage C except rowboats and canoes, while anywhere in the world.

Use of this coverage reduces the Coverage C limit of liability for the same loss.

- 5. **Rental Value and Additional Living Expense.** You may use up to 10% of the Coverage A limit of liability for loss of both fair rental value as described in Coverage D and additional living expense as described in Coverage E.

Use of this coverage does not reduce the Coverage A limit of liability for the same loss.

- 6. **Reasonable Repairs.** In the event that covered property is damaged by an applicable Peril Insured Against, we will pay the reasonable cost incurred by you for necessary measures taken solely to protect against further damage. If the measures taken involve repair to other damaged property, we will pay for those measures only if that property is covered under this policy and the damage to that property is caused by an applicable Peril Insured Against.

This coverage:

- a. does not increase the limit of liability that applies to the covered property;

- b. does not relieve you of your duties, in case of a loss to covered property, as set forth in Condition 4.b.

- 7. **Property Removed.** We insure covered property against direct loss from any cause while being removed from a premises endangered by a Peril Insured Against and for no more than 30 days while removed.

This coverage does not change the limit of liability that applies to the property being removed.

- 8. **Trees, Shrubs and Other Plants.** We cover trees, shrubs, plants or lawns, on the Described Location for loss caused by the following Perils Insured Against: Fire or lightning, Explosion, Riot or civil commotion, Aircraft, Vehicles not owned or operated by you or a resident of the Described Location or Vandalism or malicious mischief, including damage during a burglary or attempted burglary, but not theft of property.

The limit of liability for this coverage will not be more than 5% of the Coverage A limit of liability, or more than \$500 for any one tree, shrub or plant. We do not cover property grown for commercial purposes.

This coverage is additional insurance.

- 9. **Fire Department Service Charge.** We will pay up to \$500 for your liability assumed by contract or agreement for fire department charges incurred when the fire department is called to save or protect covered property from a Peril Insured Against. We do not cover fire department service charges if the property is located within the limits of the city, municipality or protection district furnishing the fire department response.

This coverage is additional insurance. No deductible applies to this coverage.

- 10. **Collapse.** We insure for risk of direct physical loss to covered property involving collapse of a building or any part of a building caused only by one or more of the following:

- a. Perils Insured Against in Coverage C - Personal Property. These perils apply to covered building and personal property for loss insured by this Other Coverage;
- b. hidden decay;
- c. hidden insect or vermin damage;

- d. weight of contents, equipment, animals or people;
- e. weight of rain which collects on a roof;
- f. use of defective material or methods in construction, remodeling or renovation if the collapse occurs during the course of the construction, remodeling or renovation.

Loss to an awning, fence, patio, pavement, swimming pool, underground pipe, flue, drain, cesspool, septic tank, foundation, retaining wall, bulkhead, pier, wharf or dock is not included under items b, c, d, e and f unless the loss is a direct result of the collapse of a building.

Collapse does not include settling, cracking, shrinking, bulging or expansion.

This coverage does not increase the limit of liability applying to the damaged covered property.

11. Glass or Safety Glazing Material. We cover:

- a. the breakage of glass or safety glazing material which is part of a covered building, storm door or storm window; and
- b. damage to covered property by glass or safety glazing material which is part of a building, storm door or storm window.

This coverage does not include loss on the Described Location if the dwelling has been vacant for more than 30 consecutive days immediately before the loss. A dwelling being constructed is not considered vacant.

Loss for damage to glass will be settled on the basis of replacement with safety glazing materials when required by ordinance or law.

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

PERILS INSURED AGAINST

**COVERAGE A - DWELLING and
COVERAGE B - OTHER STRUCTURES**

We insure against risk of direct loss to property described in Coverages A and B only if that loss is a physical loss to property; however, we do not insure loss:

- 1. involving collapse, other than as provided in Other Coverages 10;
- 2. caused by:
 - a. freezing of a plumbing, heating, air conditioning or automatic fire protective sprinkler system or of a household appliance, or by discharge, leakage or overflow from within the system or appliance caused by freezing. This exclusion applies only while the dwelling is vacant, unoccupied or being constructed unless you have used reasonable care to:
 - (1) maintain heat in the building; or
 - (2) shut off the water supply and drain the system and appliances of water;
 - b. freezing, thawing, pressure or weight of water or ice, whether driven by wind or not, to a:
 - (1) fence, pavement, patio or swimming pool;
 - (2) foundation, retaining wall or bulkhead; or
 - (3) pier, wharf or dock;

- c. theft of property not part of a covered building or structure;
- d. theft in or to a dwelling or structure under construction;
- e. wind, hail, ice, snow or sleet to:
 - (1) outdoor radio and television antennas and aeriads including their lead-in wiring, masts or towers; or
 - (2) trees, shrubs, plants or lawns;
- f. vandalism and malicious mischief, theft or attempted theft if the dwelling has been vacant for more than 30 consecutive days immediately before the loss. A dwelling being constructed is not considered vacant;
- g. constant or repeated seepage or leakage of water or steam over a period of weeks, months or years from within a plumbing, heating, air conditioning or automatic fire protective sprinkler system or from within a household appliance;
- h. (1) wear and tear, marring, deterioration,

- (2) inherent vice, latent defect, mechanical breakdown;
- (3) smog, rust or other corrosion, mold, wet or dry rot;
- (4) smoke from agricultural smudging or industrial operations;
- (5) discharge, dispersal, seepage, migration release or escape of pollutants.
Pollutants means any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed;
- (6) settling, shrinking, bulging or expansion, including resultant cracking, of pavements, patios, foundations, walls, floors, roofs or ceilings; or
- (7) birds, vermin, rodents, insects or domestic animals.

If any of these cause water damage not otherwise excluded, from a plumbing, heating, air conditioning or automatic fire protective sprinkler system or household appliance, we cover loss caused by the water including the cost of tearing out and replacing any part of a building necessary to repair the system or appliance. We do not cover loss to the system or appliance from which this water escaped.

3. excluded under General Exclusions.

Under items 1 and 2, any ensuing loss to property described in Coverages A and B not excluded or excepted in this policy is covered.

COVERAGE C - PERSONAL PROPERTY

We insure for direct physical loss to the property described in Coverage C caused by a peril listed below unless the loss is excluded in the General Exclusions.

- 1. Fire or lightning.
- 2. Windstorm or hail.

This peril does not include loss to:

- a. property contained in a building caused by rain, snow, sleet, sand or dust unless the direct force of wind or hail damages the building causing an opening in a roof or wall and the rain, snow, sleet, sand or dust enters through this opening;

- b. canoes and rowboats; or
- c. trees, shrubs or plants.
- 3. Explosion.
- 4. Riot or civil commotion.
- 5. Aircraft, including self-propelled missiles and spacecraft.
- 6. Vehicles.
- 7. Smoke, meaning sudden and accidental damage from smoke.
This peril does not include loss caused by smoke from agricultural smudging or industrial operations.
- 8. Vandalism or malicious mischief.
This peril does not include loss by pilferage, theft, burglary or larceny.
- 9. Damage by Burglars, meaning damage to covered property caused by Burglars.
This peril does not include:
 - a. theft of property; or
 - b. damage caused by burglars to property on the Described Location if the dwelling has been vacant for more than 30 consecutive days immediately before the damage occurs. A dwelling being constructed is not considered vacant.
- 10. Falling Objects.
This peril does not include loss to property contained in the building unless the roof or an outside wall of the building is first damaged by a falling object.
Damage to the falling object itself is not covered.
- 11. Weight of ice, snow or sleet which causes damage to property contained in the building.
- 12. Accidental discharge or overflow of water or steam from within a plumbing, heating, air conditioning or automatic fire protective sprinkler system or from within a household appliance.
This peril does not include loss:
 - a. to the system or appliance from which the water or steam escaped;
 - b. caused by or resulting from freezing except as provided in the peril of freezing below; or

- c. on the Described Location caused by
- accidental discharge or overflow which
occurs off the Described Location.

In this peril, a plumbing system does not
include a sump, sump pump or related
equipment.

13. Sudden and accidental tearing apart,
cracking, burning or bulging of a steam or
hot water heating system, an air conditioning
or automatic fire protective sprinkler
system, or an appliance for heating water.

This peril does not include loss caused by
or resulting from freezing except as
provided in the peril of freezing below.

14. Freezing of a plumbing, heating, air
conditioning or automatic fire protective
sprinkler system or of a household
appliance.

This peril does not include loss on the
Described Location while the dwelling is
unoccupied or being constructed, unless
you have used reasonable care to:

- a. maintain heat in the building; or
b. shut off the water supply and drain the
system and appliances of water.
15. Sudden and accidental damage from
artificially generated electrical current.

This peril does not include loss to a tube,
transistor or similar electronic component.

16. Volcanic Eruption other than loss caused
by earthquake, land shock waves or
tremors.

GENERAL EXCLUSIONS

1. We do not insure for loss caused directly
or indirectly by any of the following. Such
loss is excluded regardless of any other
cause or event contributing concurrently or
in any sequence to the loss.

- a. Ordinance or Law, meaning enforce-
ment of any ordinance or law regulating
the use, construction, repair, or
demolition of a building or other
structure, unless specifically provided
under this policy.

- b. Earth Movement, meaning earthquake
including land shock waves or tremors
before, during or after a volcanic
eruption; landslide; mine subsidence;
mudflow; earth sinking, rising or shifting;
unless direct loss by:

- (1) fire;
(2) explosion; or
(3) breakage of glass or safety glazing
material which is part of a building,
storm door or storm window;

ensues and then we will pay only for the
ensuing loss.

- c. Water Damage, meaning:

- (1) flood, surface water, waves, tidal
water, overflow of a body of water,
or spray from any of these, whether
or not driven by wind;

- (2) water which backs up through
sewers or drains, or which
overflows from a sump; or

- (3) water below the surface of the
ground, including water which exerts
pressure on or seeps or leaks
through a building, sidewalk,
driveway, foundation, swimming
pool or other structure.

Direct loss by fire or explosion resulting
from water damage is covered.

- d. Power Failure, meaning the failure of
power or other utility service if the
failure takes place off the Described
Location. But, if a Peril Insured Against
ensues on the Described Location, we
will pay only for that ensuing loss.

- e. Neglect, meaning your neglect to use all
reasonable means to save and preserve
property at and after the time of a loss.

- f. War, including undeclared war, civil war,
insurrection, rebellion, revolution,
warlike act by a military force or military
personnel, destruction or seizure or use
for a military purpose, and including any
consequence of any of these. Discharge
of a nuclear weapon will be deemed a
warlike act even if accidental.

- g. Nuclear Hazard, to the extent set forth
in the Nuclear Hazard Clause of the
Conditions.

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- h. Intentional Loss, meaning any loss arising out of any act committed:**
- (1) by or at the direction of you or any person or organization named as an additional insured; and
 - (2) with the intent to cause a loss.
2. We do not insure for loss to property described in Coverages A and B caused by any of the following. However, any ensuing loss to property described in Coverages A and B not excluded or excepted in this policy is covered.
- a. **Weather conditions.** However, this exclusion only applies if weather conditions contribute in any way with a cause or event excluded in paragraph 1. above to produce the loss;
 - b. Acts or decisions, including the failure to act or decide, of any person, group, organization or governmental body;
 - c. **Faulty, inadequate or defective:**
 - (1) planning, zoning, development, surveying, siting;
 - (2) design, specifications, workmanship, repair, construction, renovation, remodeling, grading, compaction;
 - (3) materials used in repair, construction, renovation or remodeling; or
 - (4) maintenance;
of part or all of any property whether on or off the Described Location.

CONDITIONS

1. **Policy Period.** This policy applies only to loss which occurs during the policy period.
2. **Insurable Interest and Limit of Liability.** Even if more than one person has an insurable interest in the property covered, we will not be liable in any one loss:
 - a. for an amount greater than the interest of a person insured under this policy; or
 - b. for more than the applicable limit of liability.
3. **Concealment or Fraud.** The entire policy will be void if, whether before or after a loss, you have:
 - a. intentionally concealed or misrepresented any material fact or circumstance;
 - b. engaged in fraudulent conduct; or
 - c. made false statements;
relating to this insurance.
4. **Your Duties After Loss.** In case of a loss to covered property, you must see that the following are done:
 - a. give prompt notice to us or our agent;
 - b. (1) protect the property from further damage;
 - (2) make reasonable and necessary repairs to protect the property; and
 - (3) keep an accurate record of repair expenses;
 - c. prepare an inventory of damaged personal property showing the quantity, description, actual cash value and amount of loss. Attach all bills, receipts and related documents that justify the figures in the inventory;
 - d. as often as we reasonably require:
 - (1) show the damaged property;
 - (2) provide us with records and documents we request and permit us to make copies; and
 - (3) submit to examination under oath, while not in the presence of any other named insured, and sign the same;
 - e. send to us, within 60 days after our request, your signed, sworn proof of loss which sets forth, to the best of your knowledge and belief:
 - (1) the time and cause of loss;
 - (2) your interest and that of all others in the property involved and all liens on the property;
 - (3) other insurance which may cover the loss;
 - (4) changes in title or occupancy of the property during the term of the policy;
 - (5) specifications of damaged buildings and detailed repair estimates;

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- (6) the inventory of damaged personal property described in 4c;
 - (7) receipts for additional living expenses incurred and records that support the fair rental value loss.
5. **Loss Settlement.** Covered property losses are settled as follows:
- a. (1) Personal property;
 - (2) Awnings, carpeting, household appliances, outdoor antennas and outdoor equipment, whether or not attached to buildings; and
 - (3) Structures that are not buildings;
 - at actual cash value at the time of loss but not more than the amount required to repair or replace.
 - b. Buildings under Coverage A or B at replacement cost without deduction for depreciation, subject to the following:
 - (1) If, at the time of loss, the amount of insurance in this policy on the damaged building is 80% or more of the full replacement cost of the building immediately before the loss, we will pay the cost to repair or replace, after application of deductible and without deduction for depreciation, but not more than the least of the following amounts:
 - (a) the limit of liability under this policy that applies to the building;
 - (b) the replacement cost of that part of the building damaged for like construction and use on the same premises; or
 - (c) the necessary amount actually spent to repair or replace the damaged building.
 - (2) If, at the time of loss, the amount of insurance in this policy on the damaged building is less than 80% of the full replacement cost of the building immediately before the loss, we will pay the greater of the following amounts, but not more than the limit of liability under this policy that applies to the building:
 - (a) the actual cash value of that part of the building damaged; or
 - (b) that proportion of the cost to repair or replace, after application of deductible and without deduction for depreciation, that part of the building damaged, which the total amount of insurance in this policy on the damaged building bears to 80% of the replacement cost of the building.
 - (3) To determine the amount of insurance required to equal 80% of the full replacement cost of the building immediately before the loss, do not include the value of:
 - (a) excavations, foundations, piers or any supports which are below the undersurface of the lowest basement floor;
 - (b) those supports in (a) above which are below the surface of the ground inside the foundation walls, if there is no basement; and
 - (c) underground flues, pipes, wiring and drains.
 - (4) We will pay no more than the actual cash value of the damage unless:
 - (a) actual repair or replacement is complete; or
 - (b) the cost to repair or replace the damage is both:
 - (i) less than 5% of the amount of insurance in this policy on the building; and
 - (ii) less than \$2500.
 - (5) You may disregard the replacement cost loss settlement provisions and make claim under this policy for loss or damage to buildings on an actual cash value basis. You may then make claim within 180 days after loss for any additional liability on a replacement cost basis.
6. **Loss to a Pair or Set.** In case of loss to a pair or set we may elect to:
- a. repair or replace any part to restore the pair or set to its value before the loss; or
 - b. pay the difference between actual cash value of the property before and after the loss.

7. **Glass Replacement.** Loss for damage to glass caused by a Peril Insured Against will be settled on the basis of replacement with safety glazing materials when required by ordinance or law.

8. **Appraisal.** If you and we fail to agree on the amount of loss, either may demand an appraisal of the loss. In this event, each party will choose a competent appraiser within 20 days after receiving a written request from the other. The two appraisers will choose an umpire. If they cannot agree upon an umpire within 15 days, you or we may request that the choice be made by a judge of a court of record in the state where the Described Location is located. The appraisers will separately set the amount of loss. If the appraisers submit a written report of an agreement to us, the amount agreed upon will be the amount of loss. If they fail to agree, they will submit their differences to the umpire. A decision agreed to by any two will set the amount of loss.

Each party will:

- a. pay its own appraiser; and
- b. bear the other expenses of the appraisal and umpire equally.

9. **Other Insurance.** If property covered by this policy is also covered by other fire insurance, we will pay only the proportion of a loss caused by any peril insured against under this policy that the limit of liability applying under this policy bears to the total amount of fire insurance covering the property.

10. **Subrogation.** You may waive in writing before a loss all rights of recovery against any person. If not waived, we may require an assignment of rights of recovery for a loss to the extent that payment is made by us.

If an assignment is sought, the person insured must sign and deliver all related papers and cooperate with us.

11. **Suit Against Us.** No action can be brought unless the policy provisions have been complied with and the action is started within one year after the date of loss.

12. **Our Option.** If we give you written notice within 30 days after we receive your signed, sworn proof of loss, we may repair or replace any part of the damaged property with like property.

13. **Loss Payment.** We will adjust all losses with you. We will pay you unless some other person is named in the policy or is legally entitled to receive payment. Loss will be payable 60 days after we receive your proof of loss and:

- a. reach an agreement with you;
- b. there is an entry of a final judgment; or
- c. there is a filing of an appraisal award with us.

14. **Abandonment of Property.** We need not accept any property abandoned by you.

15. **Mortgage Clause.**

The word "mortgagee" includes trustee.

If a mortgagee is named in this policy, any loss payable under Coverage A or B will be paid to the mortgagee and you, as interests appear. If more than one mortgagee is named, the order of payment will be the same as the order of precedence of the mortgages.

If we deny your claim, that denial will not apply to a valid claim of the mortgagee, if the mortgagee:

- a. notifies us of any change in ownership, occupancy or substantial change in risk of which the mortgagee is aware;
- b. pays any premium due under this policy on demand if you have neglected to pay the premium; and
- c. submits a signed, sworn statement of loss within 60 days after receiving notice from us of your failure to do so. Policy conditions relating to Appraisal, Suit Against Us and Loss Payment apply to the mortgagee.

If we decide to cancel or not to renew this policy, the mortgagee will be notified at least 10 days before the date cancellation or nonrenewal takes effect.

If we pay the mortgagee for any loss and deny payment to you:

- a. we are subrogated to all the rights of the mortgagee granted under the mortgage on the property; or
- b. at our option, we may pay to the mortgagee the whole principal on the mortgage plus any accrued interest. In this event, we will receive a full assignment and transfer of the mortgage and all securities held as collateral to the mortgage debt.

Subrogation will not impair the right of the mortgagee to recover the full amount of the mortgagee's claim.

16. **No Benefit to Bailee.** We will not recognize any assignment or grant any coverage that benefits a person or organization holding, storing or moving property for a fee regardless of any other provision of this policy.

17. **Cancellation.**

- a. You may cancel this policy at any time by returning it to us or by letting us know in writing of the date cancellation is to take effect.
- b. We may cancel this policy only for the reasons stated below by letting you know in writing of the date cancellation takes effect. This cancellation notice may be delivered to you, or mailed to you at your mailing address shown in the Declarations.

Proof of mailing will be sufficient proof of notice.

- (1) When you have not paid the premium, we may cancel at any time by letting you know at least 10 days before the date cancellation takes effect.
- (2) When this policy has been in effect for less than 60 days and is not a renewal with us, we may cancel for any reason by letting you know at least 10 days before the date cancellation takes effect.
- (3) When this policy has been in effect for 60 days or more, or at any time if it is a renewal with us, we may cancel:
 - (a) if there has been a material misrepresentation of fact which

if known to us would have caused us not to issue the policy; or

- (b) if the risk has changed substantially since the policy was issued.

This can be done by letting you know at least 30 days before the date cancellation takes effect.

- (4) When this policy is written for a period of more than one year, we may cancel for any reason at anniversary by letting you know at least 30 days before the date cancellation takes effect.

- c. When this policy is cancelled, the premium for the period from the date of cancellation to the expiration date will be refunded pro rata.
- d. If the return premium is not refunded with the notice of cancellation or when this policy is returned to us, we will refund it within a reasonable time after the date cancellation takes effect.

18. **Non-Renewal.** We may elect not to renew this policy. We may do so by delivering to you, or mailing to you at your mailing address shown in the Declarations, written notice at least 30 days before the expiration date of this policy. Proof of mailing will be sufficient proof of notice.

19. **Liberalization Clause.** If we make a change which broadens coverage under this edition of our policy without additional premium charge, that change will automatically apply to your insurance as of the date we implement the change in your state, provided that this implementation date falls within 60 days prior to or during the policy period stated in the Declarations.

This Liberalization Clause does not apply to changes implemented through introduction of a subsequent edition of our policy.

20. **Waiver or Change of Policy Provisions.** A waiver or change of a provision of this policy must be in writing by us to be valid. Our request for an appraisal or examination will not waive any of our rights.

21. **Assignment.** Assignment of this policy will not be valid unless we give our written consent.

DEC 31 2015

CHRISTOPHER D. RICH, Clerk
By SANTIAGO BARRIOS
DEPUTY

Matthew L. Walters, ISB # 6599
Craig R. Yabui, ISB # 7706
ELAM & BURKE, P.A.
251 East Front Street, Suite 300
Post Office Box 1539
Boise, Idaho 83701-1539
Telephone: (208) 343-5454
Facsimile: (208) 384-5844

Attorneys for Defendant

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

SHAMMIE L. FISHER,

Plaintiff,

vs.

GARRISON PROPERTY AND CASUALTY
INSURANCE COMPANY,

Defendant.

Case No. CV-OC-1508979

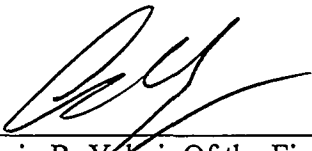
DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT

Defendant Garrison Property and Casualty Insurance Company ("Garrison"), by and through its attorneys of record, Elam & Burke, P.A., and pursuant to Rule 56 of the Idaho Rules of Civil Procedure, respectfully moves this Court for summary judgment in favor of Garrison on the grounds and for the reasons that there is no genuine issue of material fact, and Garrison is entitled to judgment as a matter of law.

This Motion is made and based upon the records, files, and pleadings in the above-entitled matter, together with the Memorandum in Support of Motion for Summary Judgment and the supporting affidavit filed contemporaneously herewith.

DATED this 30th day of December, 2015.

ELAM & BURKE, P.A.

By: 


Craig R. Yabui, Of the Firm
Attorneys for Defendant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 31st day of December, 2015, I caused a true and correct copy of the above and foregoing instrument to be served upon the following in the manner indicated below:

James G. Reid
Jennifer Reid Mahoney
KAUFMAN REID, PLLC
1211 W. Myrtle St., Ste. 350
Boise, Idaho 83702

U.S. Mail
 Hand Delivery
 Federal Express
 Via Facsimile



Craig R. Yabui

4834-4618-9612, v. 1

DEC 31 2015

CHRISTOPHER D. RICH, Clerk
By SANTIAGO BARRIOS
DEPUTY

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Craig R. Yabui, ISB # 7706
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Attorneys for Defendant

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

SHAMMIE L. FISHER,

Plaintiff,

vs.

GARRISON PROPERTY AND CASUALTY
INSURANCE COMPANY,

Defendant.

Case No. CV-OC-1508979

AFFIDAVIT OF CRAIG R. YABUI IN
SUPPORT OF DEFENDANT'S MOTION
FOR SUMMARY JUDGMENT

STATE OF IDAHO)
) ss.
County of Ada)

CRAIG R. YABUI, being first duly sworn, deposes and says as follows:

1. I am an attorney with the firm of Elam & Burke, P.A., and am one of the attorneys for the Defendant in the above-entitled action.

2. I am familiar with the files generated in this action, have knowledge of the contents thereof, and make this affidavit based upon my personal knowledge in support of Defendant's Motion for Summary Judgment filed concurrently herewith.


AFFIDAVIT OF CRAIG R. YABUI IN SUPPORT OF DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT - 1

3. From March 8, 2012, to March 8, 2013, Plaintiff Shammie Fisher had an insurance policy with Defendant Garrison Property and Casualty Insurance Company on the real property at issue in the above-captioned matter. Attached hereto as "Exhibit A" is a true and correct copy of the declarations page for the policy in effect during those dates.

4. On September 30, 2015, Ms. Fisher served Plaintiff's Responses to Defendant's First Set of Interrogatories, Requests for Production of Documents and Requests for Admission to Defendant [sic] ("Plaintiff's Written Discovery Responses"). Attached hereto as "Exhibit B" is a true and correct copy of Plaintiff's Written Discovery Responses.

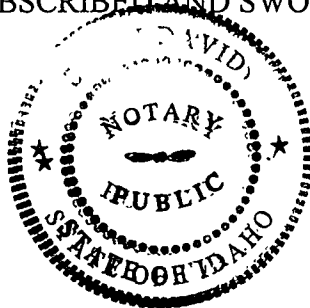
5. On October 8, 2015, Ms. Fisher served Plaintiff's First Supplemental Responses to Defendant's First Set of Interrogatories, Requests for Production of Documents and Requests for Admission to Defendant [sic] ("Plaintiff's Supplemental Written Discovery Responses"). Attached hereto as "Exhibit C" are true and correct copies of documents bates labeled Fisher 82, 84, 90, 116, 118-119, and 126 produced with Plaintiff's Supplemental Written Discovery Responses.

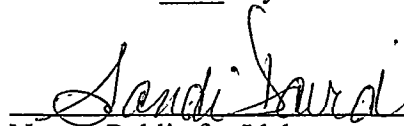
DATED this 30th day of December, 2015.



Craig R. Yabui

SUBSCRIBED AND SWORN to before me this 30th day of December, 2015.





Notary Public for Idaho
My Commission Expires: 10/18/2017

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 31st day of December, 2015, I caused a true and correct copy of the above and foregoing instrument to be served upon the following in the manner indicated below:

James G. Reid
Jennifer Reid Mahoney
KAUFMAN REID, PLLC
1211 W. Myrtle St., Ste. 350
Boise, Idaho 83702

U.S. Mail
 Hand Delivery
 Federal Express
 Via Facsimile



Craig R. Yabui

4845-3874-0268, v. 1



GARRISON PROPERTY AND CASUALTY INSURANCE COMPANY
9800 Fredericksburg Road - San Antonio, Texas 78288

DWELLING POLICY

THIS Declaration replaces all prior Declarations, if any.

Insured's Name and Mailing Address

SHAMMIE L FISHER
13534 W ACORN ST
BOISE ID 83713-0874

Policy Number

GAR 01634 13 15 80A

POLICY PERIOD: 12:01 A.M. Standard Time
at the Described Location

From 03-08-12 To 03-08-13 1 Year

Named Insured: SHAMMIE L FISHER

Described Location:

2510 N 34TH ST
BOISE, ADA, ID 83703-5528

Legal Description:

This insurance applies to the Described Location, Coverage for which a Limit of Liability is shown and Perils Insured Against for which a Premium is stated.

PERILS INSURED AGAINST	FIRE OR LIGHTNING	EXTENDED COVERAGE	SPECIAL FORM
PREMIUM	\$140.76	\$181.88	\$188.62

TOTAL ANNUAL PREMIUM \$535.76

Coverages

- A. DWELLING
- L. PERSONAL LIABILITY
- M. MEDICAL PAYMENTS

Limit of Liability

- \$172,000
- \$300,000
- \$5,000

In case of loss under this policy we cover only that part of the loss over the deductible stated.

DEDUCTIBLE(S) \$500

Form and Endorsements made a part of this policy at time of issue:

DP 00 03 (07-88); DL 24 01 (12-02); DL 24 11 (12-02); DL 24 14 (12-02); DP FLDA3 (01-07)
DP ID (10-06); DP 04 LA (03-08); DP-978 (07-00); ESA (02-05); FI-MLD89 (08-03)

MORTGAGEE

LOAN NUMBER: 1205093993

AMERICA'S SERVICING COMPANY
ITS SUCCESSORS AND/OR ASSIGNS
PO BOX 5106
SPRINGFIELD, OH 45501-5106

In WITNESS WHEREOF, this policy is signed on 03-07-12

Steven Alan Bennett
Steven Alan Bennett, Secretary

Stuart Parker
Stuart Parker, President

DP-D Ed 1-89

EXHIBIT A

0901119c927335f8

USAA Confidential

000155
USAA 0304

SEP 30 2015

JAMES G. REID, ISB # 1372
JENNIFER REID MAHONEY, ISB # 5207
KAUFMAN REID, PLLC
1211 W. Myrtle St., Suite 350
Boise, Idaho 83702
Telephone: (208) 342-4591
Facsimile: (208) 342-4657
E-mail: jreid@krlawboise.com

Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

SHAMMIE L. FISHER;

Plaintiff,

vs.

**GARRISON PROPERTY AND
CASUALTY INSURANCE COMPANY;**

Defendant.

Case No. CV OC 1508979

**PLAINTIFF'S RESPONSES TO
DEFENDANT'S FIRST SET OF
INTERROGATORIES, REQUESTS FOR
PRODUCTION OF DOCUMENTS AND
REQUESTS FOR ADMISSIONS TO
DEFENDANT**

COMES NOW Plaintiff, Shammie L. Fisher, by and through undersigned counsel of record, and answer and respond to Defendant's First Set of Interrogatories, Requests for Production of Documents and Requests for Admissions as follows:

GENERAL STATEMENT

Plaintiff provides this response to each request in Defendant's First Set of Interrogatories, Requests for Production of Documents and Requests for Admissions. These responses are made

PLAINTIFF'S RESPONSES TO DEFENDANT'S FIRST SET OF INTERROGATORIES,
REQUESTS FOR PRODUCTION OF DOCUMENTS AND REQUESTS FOR ADMISSION
TO DEFENDANT - 1

EXHIBIT 56

solely for the purpose of this action. Each response is subject to all objections as to competence, relevance, materiality, propriety and admissibility, and to any and all other objections on any grounds that would require the exclusion of any statements contained herein if such request for the production of documents were asked of, or statements contained herein were made by, a witness testifying in court, all of which objections and grounds are hereby expressly reserved and may be interposed at the time of trial.

The following responses are based upon information and writings presently available to and located by the Plaintiff and her counsel. Plaintiff has not completed investigation of the facts relating to this case, has not completed discovery in this action, and has not completed preparation for trial. The documents that will be produced in response to these Requests are those documents which were located upon reasonable search of Plaintiff's files as they are kept in the ordinary course, and the files of those individuals most likely to have responsive documents which were located upon reasonable search of Plaintiff's files as they are kept in the ordinary course, and the files of those individuals most likely to have responsive documents. Plaintiff objects to these Requests to the extent that any Request calls for a search of all files or all locations of the Plaintiff. The Responses given herein are without prejudice to Plaintiff's right to produce any subsequently discovered documents or to revise these Responses if further discovery so indicates.

These responses shall not be deemed to constitute admissions (i) that any particular document or thing exists, is relevant, non-privileged, or admissible in evidence, or (ii) that any statement or characterization in the Requests is accurate or complete.

PLAINTIFF'S RESPONSES TO DEFENDANT'S FIRST SET OF INTERROGATORIES,
REQUESTS FOR PRODUCTION OF DOCUMENTS AND REQUESTS FOR ADMISSION
TO DEFENDANT - 2

Documents that are being produced by the Plaintiff in response to these Requests will be made available to counsel for copying and inspection at the undersigned's office at a date and time mutually agreeable to the parties. Or, if requested, copies of documents being produced can be delivered, without inspection, subject to reimbursement for reasonable and necessary costs of production.

GENERAL OBJECTIONS

1. Plaintiff object to Defendant's Interrogatories, Requests for Production of Documents and Requests for Admissions to the extent that they seek information already in the possession of Defendant or in the possession of third parties from which such information may be more readily and/or cost effectively obtained. Such Interrogatories and Requests are designed for no other purpose than to burden and harass the Plaintiff; therefore, they are improper.

2. Plaintiff objects to Defendant's Interrogatories and Requests for Production to the extent that they purport to require the Plaintiff to provide detailed information in a form or manner not required by the Idaho Rules of Civil Procedure.

3. Plaintiff objects to Defendant's Interrogatories and Requests for Production of Documents to the extent that they seek documents or information protected by (a) by the attorney/client privilege, (b) under the work produce doctrine, under the exceptions to discovery set forth in the Idaho Rules of Civil Procedure, the Idaho Rules of Evidence or other rules applicable to this action, (d) by state or federal statutes and regulations, and/or (e) due to their confidential nature or the confidential information contained herein.

4. Plaintiff objects to Defendant's Interrogatories pursuant to Rule 33(d) of the Idaho

Rules of Civil Procedure to the extent that they purport to require the Plaintiff to repeat in detailed narrative form information which can be derived or ascertained from the medical, business, or other records of the Plaintiff. An undertaking of such nature is not only unnecessary, wasteful and duplicative, but also is designed to burden and harass the Plaintiff. The burden of deriving or ascertaining the answers to these Interrogatories is substantially the same or less for Defendant based on a review of the applicable documents.

5. Plaintiff objects to Defendant's Interrogatories and Request for Production of Documents to the extent they seek the identification, description or contents of documents not within Plaintiff's possession, custody or control.

6. Plaintiff objects to Defendant's Interrogatories, Requests for Production of Documents and Requests for Admissions to the extent they purport to seek information beyond the scope of the Complaint filed in this action. Plaintiff further objects to Defendant's Interrogatories, Requests for Production of Documents and Requests for Admission to the extent they purport to elicit information that is confidential and proprietary, not relevant to any issue in this action, or not reasonably calculated to lead to the discovery of admissible evidence.

7. Plaintiff objects to Defendant's Interrogatories, Requests for Production of Documents and Requests for Admissions to the extent that any particular request contained therein is unduly burdensome, vague, ambiguous, overbroad, unintelligible or lacking specificity required by the Idaho Rules of Civil Procedure.

8. Plaintiff objects to Defendant's Interrogatories, Requests for Production of Documents and Requests for Admissions to the extent they are duplicative, cumulative, and

PLAINTIFF'S RESPONSES TO DEFENDANT'S FIRST SET OF INTERROGATORIES,
REQUESTS FOR PRODUCTION OF DOCUMENTS AND REQUESTS FOR ADMISSION
TO DEFENDANT - 4

redundant or seek to elicit repetitive information.

9. Plaintiff objects to Defendant's Interrogatories, Requests for Production of Documents and Requests for Admissions to the extent they purport to require the Plaintiff to apply or set forth conclusions of law to ultimate issues for trial and/or to apply the law to facts as presently known.

10. All responses set forth below are subject to and without waiving any of the foregoing general objections and to the other more specific objections set forth below. The Plaintiff will not in every instance repeat or specifically incorporate these objections although they are intended to apply throughout.

11. The Plaintiff's response to any of these discovery requests does not constitute a waiver of its right to object to any future, additional or supplemental requests covering the same or similar subject matter.

INTERROGATORIES

INTERROGATORY NO. 1: Please state the name, address, and telephone number of each and every person known to you who has knowledge of, or who purports to have any knowledge of, any of the facts surrounding the allegations in the Amended Complaint. By this interrogatory, Defendant seeks the names, addresses, and telephone numbers of all possible witnesses who have any knowledge of all facts pertinent to both damages and liability.

ANSWER: The following persons may have knowledge of the facts in this matter:

1. Plaintiff, Shammie Fisher, contact through counsel.
2. Michael Royce, contact through counsel.

PLAINTIFF'S RESPONSES TO DEFENDANT'S FIRST SET OF INTERROGATORIES,
REQUESTS FOR PRODUCTION OF DOCUMENTS AND REQUESTS FOR ADMISSION
TO DEFENDANT - 5

3. Stacie Cudmore States, Keller Williams Real Estate, 1065 S Allante Ave, Boise, ID, 83709, (208) 672-9000.
4. Van States, Keller Williams Real Estate, 1065 S Allante Ave, Boise, ID, 83709, (208) 391-5331.
5. Cindy McInnis, (208) 867-6857.
6. Joe Venneman, City of Boise, (208) 794-1195.
7. Ron Reynoso, last known telephone (208) 713-7993; (208) 863-9727.

Discovery is ongoing and this Response will be supplemented as additional persons with knowledge become known to Plaintiff.

INTERROGATORY NO. 2: Please provide all known addresses, telephone numbers and email addresses for Ron Reynoso or Reynoso Tile & Construction.

ANSWER: Plaintiff does not have any contact information for Ron Reynoso, with the exception of his last known telephone numbers, provided above.

INTERROGATORY NO. 3: Please provide the month and year when you first met or communications with Ron Reynoso or Reynoso Tile & Construction.

ANSWER: Plaintiff first communicated with Ron Reynoso in approximately January 2012.

INTERROGATORY NO. 4: Please provide the month and year when you reviewed the building/architect plans Ron Reynoso used, or intended to use, in relation to the real property located at 2510 North 34th Street, Boise, Idaho (the "Property").

ANSWER: Plaintiff has never reviewed or been provided any building/architect plans by

Ron Reynoso.

REQUESTS FOR PRODUCTION

REQUEST FOR PRODUCTION NO. 1: Please produce copies of all documents you allege support the allegations set for in the Amended Complaint.

RESPONSE: Plaintiff objects to this Request to the extent it seeks information protected by the attorney-client privilege and/ or work product doctrine. Without waiving said objection, see attached documents.

REQUEST FOR PRODUCTION NO. 2: Please produce copies of all written communications between you and your spouse and Ron Reynoso and his agents over the past five years. Please refer above for the definition of “communications.”

RESPONSE: See attached.

REQUEST FOR PRODUCTION NO. 3: Please produce copies of all “monthly updates” provided to you or your spouse by Ron Reynoso as required under the RE-21 Real Estate Purchase and Sale Agreement and its addenda. If any “monthly updates” were verbal, please identify the date and substance of any such verbal “monthly update.”

RESPONSE: Copies of texts between Plaintiff and Ron Reynoso are attached.

REQUEST FOR PRODUCTION NO. 4: Please produce copies of all written agreements between you and Ron Reynoso concerning the Property.

RESPONSE: See attached.

REQUEST FOR PRODUCTION NO. 5: Please produce copies of all permits issues by the City of Boise Planning & Development Services department for the Property from January 1,

PLAINTIFF'S RESPONSES TO DEFENDANT'S FIRST SET OF INTERROGATORIES,
REQUESTS FOR PRODUCTION OF DOCUMENTS AND REQUESTS FOR ADMISSION
TO DEFENDANT - 7

2012, to the present.

RESPONSE: See attached.

REQUEST FOR PRODUCTION NO. 6: Please produce copies of all building/architect plans provided to you by Ron Reynoso for the Property.

RESPONSE: Plaintiff was never provided any building/architect plans by Ron Reynoso for the Property.

REQUEST FOR PRODUCTION NO. 7: Please produce copies of any building/architect plans you had commissioned for use by Ron Reynoso for the Property.

RESPONSE: Plaintiff did not have any building/architect plans commissioned for use by Ron Reynoso for the Property.

REQUEST FOR PRODUCTION NO. 8: Other than communications with your attorneys, please produce copies of all written communications of any kind between you and any person or entity in relations to the construction being performed at the Property. This request includes, but is not limited to, any written communications with neighbors, realtors, and friends. Please refer above for the definition of "communications."

RESPONSE: See attached.

REQUESTS FOR ADMISSION

REQUEST FOR ADMISSION NO. 1: Admit that, to you personal knowledge, Ron Reynoso maintained a separate residence and never resided at the Property.

RESPONSE: Deny.

REQUEST FOR ADMISSION NO. 2: Admit that, as of January 23, 2012, you knew

PLAINTIFF'S RESPONSES TO DEFENDANT'S FIRST SET OF INTERROGATORIES,
REQUESTS FOR PRODUCTION OF DOCUMENTS AND REQUESTS FOR ADMISSION
TO DEFENDANT - 8

that Mr. Reynoso planned to make renovations or improvements to the Property. If you deny this request for admission, please identify the date when you became aware of these facts.

RESPONSE: Deny. As of January 25, 2012, Plaintiff was only aware that Reynoso was going to make “certain improvements” to the property as detailed in the Affidavit of Shammie Fisher, filed in this matter.

REQUEST FOR ADMISSION NO. 3: Admit that, as of January 23, 2012, you consented to Mr. Reynoso making renovations or improvements to the Property. If you deny this request for admission, please identify the date when you consented to Mr. Reynoso making renovations or improvements to the Property.

RESPONSE: Deny. As of January 25, 2012, Plaintiff was only aware that Reynoso was going to make “certain improvements” to the property as detailed in the Affidavit of Shammie Fisher, filed in this matter. Plaintiff never did consent to Reynoso making any renovations. After Reynoso destroyed the residence, Plaintiff consented to allowing him time to fix the damage he had caused to the Property.

REQUEST FOR ADMISSION NO. 4: Admit that within “the first two months” of executing the “contract for lease to own” with Ron Reynoso you knew that the dwelling located at 2510 North 34th Street, Boise, Idaho “had been leveled.”

RESPONSE: Admit.

REQUEST FOR ADMISSION NO. 5: Admit that when you learned that the dwelling located at 2510 North 34th Street, Boise, Idaho “had been leveled” you did not declare Ron Reynoso to be in breach of any agreement with him.

PLAINTIFF’S RESPONSES TO DEFENDANT’S FIRST SET OF INTERROGATORIES,
REQUESTS FOR PRODUCTION OF DOCUMENTS AND REQUESTS FOR ADMISSION
TO DEFENDANT - 9

RESPONSE: Admit. Plaintiff did not declare him in default of the agreement because he promised to fix the damage he had caused and he continued to make rent payments under the agreement.

REQUEST FOR ADMISSION NO. 6: Admit that once you learned that the dwelling located at 2510 North 34th Street, Boise, Idaho “had been leveled” you consented to him continuing the renovations or improvements to the property.

RESPONSE: Admit only that after Ron Reynoso leveled the Property, Plaintiff agreed to allow him time to attempt to fix the damage.

REQUEST FOR ADMISSION NO. 7: Admit that you are making a claim for personal property under Cover C.

RESPONSE: Admit that Plaintiff is making a claim for attached fixtures, which she believes are covered under Coverage A. To the extent that Coverage C may apply to those fixtures, Plaintiff is making a claim under Coverage C.

REQUEST FOR ADMISSION NO. 8: Admit that prior to September 2013, neither you nor your agents provided notice to Defendant that you considered the destruction of the dwelling located at 2510 North 34th Street, Boise, Idaho to constitute a loss under any insurance policy.

RESPONSE: Admit.

REQUEST FOR ADMISSION NO. 9: Admit that, regardless of the state of repair at this time of the Property, if Ron Reynoso had closed on the “contract for lease to own,” you would not have made a claim of loss with Defendant.

RESPONSE: Admit. Plaintiff would no longer have owned the Property and would not

PLAINTIFF’S RESPONSES TO DEFENDANT’S FIRST SET OF INTERROGATORIES,
REQUESTS FOR PRODUCTION OF DOCUMENTS AND REQUESTS FOR ADMISSION
TO DEFENDANT - 10

have been permitted to make a claim under the Policy.

REQUEST FOR ADMISSION NO. 10: Admit you knew City of Boise Building Permit No. BL012-00844 had been issued for the Property.

RESPONSE: Deny.

REQUEST FOR ADMISSION NO. 11: Admit you never objected to the issuance of City of Boise Building Permit No. BL012-00844 before or after it was issued.

RESPONSE: Deny.

DATED this 30 day of September, 2015.

Kaufman Reid, PLLC

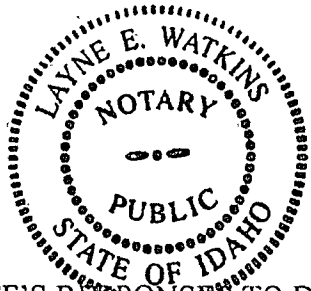
By: [Signature]
James G. Reid

STATE OF IDAHO)
County of ADA))ss.

The undersigned, being first duly sworn, says that the facts set forth in the foregoing Answer and Responses are true, accurate, and complete to the best of the undersigned's knowledge and belief.

[Signature]
Shammie Fisher

SUBSCRIBED AND SWORN to before me this 30 day of Sept., 2001.



[Signature]
NOTARY PUBLIC FOR IDAHO
Residing at: BOISE, ID
My Commission Expires: 7/20/16

PLAINTIFF'S RESPONSES TO DEFENDANT'S FIRST SET OF INTERROGATORIES, REQUESTS FOR PRODUCTION OF DOCUMENTS AND REQUESTS FOR ADMISSION TO DEFENDANT - 11

OCT 12 2015

Scanned
OCRed
uploaded
calendar

JAMES G. REID, ISB # 1372
JENNIFER REID MAHONEY, ISB # 5207
KAUFMAN REID, PLLC
1211 W. Myrtle St., Suite 350
Boise, Idaho 83702
Telephone: (208) 342-4591
Facsimile: (208) 342-4657
E-mail: jreid@krlawboise.com

Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

SHAMMIE L. FISHER;

Plaintiff,

vs.

GARRISON PROPERTY AND
CASUALTY INSURANCE COMPANY;

Defendant.

Case No. CV OC 1508979

PLAINTIFF'S FIRST SUPPLEMENTAL
RESPONSES TO DEFENDANT'S FIRST
SET OF INTERROGATORIES,
REQUESTS FOR PRODUCTION OF
DOCUMENTS AND REQUESTS FOR
ADMISSIONS TO DEFENDANT

COMES NOW the Plaintiff, by and through her attorneys of record, Kaufman Reid.
PLLC, and hereby supplements her response to Plaintiff's First Set of Interrogatories, Requests
for Production of Documents and Requests for Admission as follows:

REQUEST FOR PRODUCTION NO. 2: Please produce copies of all written
communications between you and your spouse and Ron Reynoso and his agents over the past five
years. Please refer above for the definition of "communications"

PLAINTIFF'S FIRST SUPPLEMENTAL RESPONSES TO DEFENDANT'S FIRST SET OF
INTERROGATORIES, REQUESTS FOR PRODUCTION OF DOCUMENTS AND
REQUESTS FOR ADMISSIONS TO DEFENDANT - 1

000167
EXHIBIT C

messages

RON

Details

Jun 8, 2012, 7:44 PM

Hi Ron, I rec'd a letter today from low's for concrete. It states a lien on the property if it is not paid in 5 days. Total owed is \$1,424.94.

Jun 10, 2012, 9:47 AM

Hi Ron, I rec'd a letter on friday from low's for concrete. It states a lien will be put on the property if it is not paid in 5 days. Total owed is \$1,424.94.

Jun 10, 2012, 5:20 PM

Sorry it will be paid
tomorrow had an

~~issue with the lender being~~

FISHER - 82

000168

Messages 11/11 Details

Jun 10, 2012, 5:20 PM

Sorry it will be paid
tomorrow had an
issue with a lender being
on time

Jun 14, 2012, 9:19 PM

Saw a sign that said a
stop work order issued.
Just checking to make
sure all is good.

Jul 3, 2012, 9:45 AM

Rent due please!

Jul 7, 2012, 12:04 PM

Shammie Ill have at
least 500 wed. Shoud I
Just bring that wed?
..Good chance. Ill have it.

Messages From Details

Sep 7, 2012, 12:26 PM

Shammie will drop off
Mon. thankr

Sep 7, 2012, 2:48 PM

How's progress going
with the house?

We start framing middle
next week. Car accdt put
me out of work 4 5 wks.
Was going 2 put on the
market oct 1st now mid
nov maybe sooner

Sorry to hear about ur
accident.. Glad ur ok.)

Lady ran a red lite 28th
state at noon 7/21 glad i
wasn.t.killed_____

Mar 18, 2013, 5:13 PM

Got check today. Thank u!

Cool. What r ur thoughts on the house ins thing?

It's already included in my mortgage which comes out every 1st. Right now the coverage far exceeds what is currently there. As more gets built, I will increase it, but it's easier for me not to have to worry about it.

Awesome

Apr 5, 2013, 3:56 PM

Messages From Details

Apr 20, 2013, 9:15 AM

Shammie Putting 500 in
2dayr mail. Hope u and
ur baby girl r well.

Apr 25, 2013, 8:48 PM

U should get it tomw
Shammie

Apr 26, 2013, 9:17 AM

Just checking 2 c r u ok?

May 16, 2013, 6:13 PM

Hi Ron, just checking on
rent this month. Also
how are things
progressing on the
house?

.t.need.the.loan/.also.

Messages

11/11

Details

May 16, 2013, 6:13 PM

Hi Ron, just checking on
rent this month. Also
how are things
progressing on the
house?

t need the loan/ also
very possible. I m still
giving u 5k either way.

Was dropping 700in
mlbx in morning. Other
300 next Tues. Been
back little over a wk.
getting ready to frame
2nd flr/already
started.Plan on putting
the

roof on in 2 wks/around
Mem day. Working w

messages

Home

Details

Jul 5, 2013, 9:25 PM

When do u get back into town? Can we get together and go over ur thoughts with the house?

Hoping late next wk.
Yes on the meeting. Can my invstr realtr john hueger come

U bet! Also I noticed tonight that some if ur walls r missing that u out up on the house.

Jul 6, 2013, 2:00 PM

The archt drew two story walls for entry. I changed it thru city and cut them.

DEC 31 2015

CHRISTOPHER D. RICH, Clerk
By SANTIAGO BARRIOS
DEPUTY

Matthew L. Walters, ISB # 6599
Craig R. Yabui, ISB # 7706
ELAM & BURKE, P.A.
251 East Front Street, Suite 300
Post Office Box 1539
Boise, Idaho 83701-1539
Telephone: (208) 343-5454
Facsimile: (208) 384-5844

Attorneys for Defendant

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

SHAMMIE L. FISHER,

Plaintiff,

vs.

GARRISON PROPERTY AND CASUALTY
INSURANCE COMPANY,

Defendant.

Case No. CV-OC-1508979

MEMORANDUM IN SUPPORT OF
DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT AND IN
OPPOSITION TO PLAINTIFF'S MOTION
FOR PARTIAL SUMMARY JUDGMENT

I. INTRODUCTION

Defendant Garrison Property and Casualty Insurance Company ("Garrison"), by and through its counsel of record, Elam & Burke P.A., submits this Memorandum in Support of Defendant's Motion for Summary Judgment and in Opposition to Plaintiff's Motion for Partial Summary Judgment. Garrison seeks an Order denying Ms. Fisher's motion and granting judgment in its favor on all causes of action set forth in Ms. Fisher's Amended Complaint and Demand for Jury Trial ("Amended Complaint").

Ms. Fisher alleges two causes of action against Garrison: (1) breach of contract; and (2) breach of the covenant of good faith and fair dealing. The dispositive issue to both causes of

action and Ms. Fisher's Motion for Partial Summary Judgment is whether there is coverage for her claimed loss. The answer to this question is no. This is not a case where Ms. Fisher discovered damage caused by a tenant and immediately made a claim with her insurer. Instead, this is a case where Ms. Fisher entered into an agreement with her tenant that expressly provided for the tenant making improvements to the property and when those improvements were not completed over sixteen months later, Ms. Fisher decided to make a claim under her insurance policy. Coverage for that type of risk is not what Ms. Fisher contracted for with Garrison and, regardless of how Ms. Fisher attempts to frame the facts, coverage is not available.

II. BACKGROUND

In February 2012, Ms. Fisher (as seller) and Ron Reynoso (as buyer) executed a Real Estate Purchase and Sale Agreement, along with addenda (collectively the "Sales Contract"), in relation to Ms. Fisher's home located at 2510 N. 34th Street, Boise, Idaho (the "Property"). (*See* Affidavit of Shammie L. Fisher in Support of Motion for Partial Summary Judgment ("Fisher Affidavit"), Ex. A.) The Sales Contract established a lease-to-own arrangement for a one-year period with the option for a six-month extension. (*See* Amended Complaint, ¶ 10; Fisher Affidavit, Ex. A.) Addendum # LP to the Sales Contract provides as follows:

9.) Buyer intends to make certain improvements to the property upon possession, with the intent to sell the property for a profit which might be prior to the end of the lease period. The buyer is required to give a monthly update for plans/upgrades. Buyer may market the property for resale prior to the end of the rental period with the intent to sell the property.

(Fisher Affidavit, Ex. A.)

According to Ms. Fisher, "[w]ithin the first two months, Plaintiff was notified that the entire home had been leveled by Mr. Reynosa [sic], destroying both the structure and the fixtures therein." (Memorandum in Support of Motion for Partial Summary Judgment ("Fisher

Memorandum”), p. 2.) Upon notice that “both the structure and fixtures therein” had been destroyed, Ms. Fisher did not make a claim with Garrison.¹ At the time, Ms. Fisher had a policy with Garrison with effective dates of “03-08-12 TO 03-08-13.” (Yabui Affidavit, Ex. A.) Ms. Fisher also did not eject Mr. Reynoso from the Property or declare a breach of the Sales Contract. (Yabui Affidavit, Ex. B.) Instead, she continued receiving rent from Mr. Reynoso through June 2013 and monitored his progress on the Property:

Jun 8, 2012, 7:44 PM

Hi Ron. I rec'd a letter today from low's for concrete. It states a lien on the property if it is not paid in 5 days. Total owed is \$1,424.94.

Jun 14, 2012, 9:19 PM

Saw a sign that said a stop work order issued. Just checking to make sure all is good.

¹ (Affidavit of Craig R. Yabui in Support of Motion for Summary Judgment (“Yabui Affidavit”), Ex. B, Response to Request for Admission No. 8) (“**REQUEST FOR ADMISSION NO. 8:** Admit that prior to September 2013, neither you nor your agents provided notice to Defendant that you considered the destruction of the dwelling located at 2510 North 34th Street, Boise, Idaho to constitute a loss under any insurance policy. **RESPONSE:** Admit.” (emphasis in original)).

Sep 7, 2012, 2:48 PM

How's progress going with the house?

Mar 18, 2013, 5:13 PM

Got check today. Thank u!

Cool. What r ur thoughts on the house ins thing?

It's already included in my mortgage which comes out every 1st. Right now the coverage far exceeds what is currently there. As more gets built, I will increase it, but it's easier for me not to have to worry about it.

Awesome

May 16, 2013, 6:13 PM

Hi Ron, just checking on rent this month. Also how are things progressing on the house?

Jul 5, 2013, 9:25 PM

When do u get back into town? Can we get together and go over ur thoughts with the house?

(Yabui Affidavit, Ex. C.)

Ms. Fisher did not decide to notify or make a claim with Garrison until September 27, 2013 (over one year after being notified that the home had been leveled). (Amended Complaint, ¶ 14.) Ms. Fisher is claiming a loss of “the dwelling itself and fixtures within the dwelling” under an insurance policy with Garrison “in effect from the period March 8, 2013 to March 8, 2014” (the “Policy”). (Fisher Memorandum, pp. 2, 6; *see also* Amended Complaint, Ex. A.) However, the only reason for making a claim at that time was because Mr. Reynoso had informed Ms. Fisher that he was no longer going to make payments under the lease and was abandoning the project. (*See* Amended Complaint, ¶ 12.) In other words, the destruction of the Property did not trigger Ms. Fisher to make a claim, but instead, the failure of Mr. Reynoso to continue or finish construction on the Property caused Ms. Fisher to make her claim with Garrison.

Garrison denied the claim on December 5, 2013, and Ms. Fisher filed suit on May 27, 2015. (*See* Amended Complaint, ¶ 14; *see also* Complaint and Demand for Jury Trial.) Despite originally citing personal property coverage (Coverage C) in the Amended Complaint, Ms. Fisher now concedes that she is not making a claim for personal property loss in this case. (Fisher Memorandum, p. 6) (arguing that all items Ms. Fisher originally claimed as personal

property are “fixtures” and “are not reasonably considered Personal Property, and the exclusions relating to Personal Property in the Policy do not apply here.”) Thus, the only issue to be decided by the Court is whether there is coverage for the dwelling and fixtures under the circumstances of the case.

III. SUMMARY JUDGMENT STANDARD

Rule 56 of the Idaho Rules of Civil Procedure governs motions for summary judgment.

Rule 56(c) provides in relevant part:

The judgment sought shall be rendered forthwith 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.

I.R.C.P. 56(c).

When a party moves for summary judgment under Rule 56(b), the non-moving party “must not rest on mere speculation because a mere scintilla of evidence is not enough to create a genuine issue of fact.” *McCoy v. Lyons*, 120 Idaho 765, 769, 820 P.2d 360, 364 (1991). The non-moving party must set forth specific facts which show a genuine issue. *Verbillis v. Dependable Appliance Co.*, 107 Idaho 335, 689 P.2d 227 (Ct.App. 1984). Rule 56(e) of the Idaho Rules of Civil Procedure states in pertinent part:

When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of that party's pleadings, but the party's response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If the party does not so respond, summary judgment, if appropriate, shall be entered against the party.

I.R.C.P. 56(e).

In addition, the moving party is entitled to judgment as a matter of law when the non-moving 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, 267 (2000); *Badell v. Beeks*, 115 Idaho 101, 107, 765 P.2d 126, 127 (1988).

IV. ANALYSIS

A. **The Breach of Contract Cause of Action Fails as a Matter of Law Because The Faulty, Inadequate, or Defective Work Exclusion Precludes Coverage for Ms. Fisher’s Claim.**

“Because an insurance policy is a contract, the rights and remedies of the parties are established within the four corners of the policy.” *McGilvray v. Farmers New World Life Ins. Co.*, 136 Idaho 39, 44, 28 P.3d 380 (2001) (citations omitted). “Where the language of an insurance policy is susceptible to but one meaning, it must be given that effect.” *Id.* (citation omitted, emphasis added). The intent of the parties to an insurance policy must be determined from the plain meaning of the insurance policy’s own words. *National Union Fire Ins. Co. of Pittsburgh v. Dixon*, 141 Idaho 537, 540, 112 P.3d 825 (2005) (citation omitted).

It must first be established that a claim is covered under the terms of an insurance policy before a party may recover on a breach of contract claim. *Robinson v. State Farm Mut. Auto. Ins. Co.*, 137 Idaho 173, 180, 45 P.3d 829 (2002). The burden of proving coverage of a claim under an insurance policy rests with the party seeking to recover policy benefits. *See Harman v. Northwestern Mut. Life Ins. Co.*, 91 Idaho 719, 720, 429 P.2d 849 (1967) (citations omitted).

“A breach of contract is non-performance of any contractual duty of immediate performance.” *Idaho Power Co. v. Cogeneration, Inc.*, 134 Idaho 738, 746, 9 P.3d 1204 (2000) *reh’g denied* (citations omitted). “It is a failure, without legal excuse, to perform any promise, which forms the whole or part of a contract.” *Id.* (citation omitted). “The burden of proving the existence of a contract and fact of its breach is upon the plaintiff, and once those facts are

established, the defendant has [the] burden of pleading and proving affirmative defenses, which legally excuse performance.” *Id.* at 747 (citation omitted).

The parties do not dispute the validity of the Policy or Ms. Fisher’s status as an insured. The only dispute is whether coverage for the claimed loss is precluded under any exclusions contained in the Policy.

Ms. Fisher’s claim was not covered and, therefore, Garrison cannot be found in breach of the Policy. The relevant Policy exclusion provides as follows:

2. We do not insure for loss to property described in Coverages A and B caused by any of the following...

c. **Faulty, Inadequate or defective;**

...

(2) design, specifications, workmanship, repair, construction, renovation, remodeling, grading, compaction;

(3) materials used in repair, construction, renovation or remodeling; or

(4) maintenance;

of part or all of any property whether on or off the Described Location.

(Amended Complaint, Ex. A) (emphasis in original).

Ms. Fisher cites *Home Savings of America, F.S.B. v. Continental Ins. Co.*, 87 Cal.App.4th 835 (2001) and *Husband v. Lafayette Ins. Co.*, 635 So.2d 309 (1994) in support of her coverage argument. (Fisher Memorandum, pp. 9-10.) Both cases are distinguishable because they involved situations where the insureds were completely unaware of the work being performed on the properties and made claims upon discovering what had occurred. Those cases also did not involve situations where the insured entered into agreements with the third-parties who caused

the alleged damage. For example, in *Home Savings*, the mortgagee/bank did not know that the mortgaged home had been demolished to build new townhomes until the loan was in default and the bank/mortgagee began foreclosure proceedings. *Continental*, 87 Cal.App.4th at 839 (“In the fall of 1996, Home Savings began foreclosure proceedings. For the first time, Home Savings learned of the transfer of title and demolition of the residence.”) The mortgagee/bank therefore could not be reasonably charged with a role in what occurred at the property.

Similarly, in *Lafayette*, the insured landlord was not aware of shoddy renovations until the tenant moved out of the rental. *Lafayette*, 635 So.2d at 311 (“Shortly after signing the lease, and without the knowledge or approval of the plaintiffs, Harris made many significant alterations to the décor of the house.”) Under an identical exclusion to the one found in the Policy, the lack of notice by the insured landlord was the dispositive issue and the Court held “the so-called renovations performed by Harris were not excluded from coverage because these renovations were not approved by the insured.” *Id.* The Court recognized that the “insurer by this exclusion intended to prevent the expansion of coverage under the policy to insuring the quality of a contractual undertaking by the insured of someone authorized by him.” *Id.*

Ms. Fisher tries to analogize the facts of the present matter to *Continental* and *Lafayette* by arguing that “the claim in this case is that Ron Reynoso tore down Plaintiff’s dwelling and destroyed it and the fixtures in it, without authorization or direction to do so.” (Fisher Memorandum, p. 8.) However, unlike the lender/mortgagee in *Continental* and the landlord in *Lafayette*, Ms. Fisher was not ignorant of what was occurring at the Property and she did not make a claim upon discovering that the dwelling and its fixtures had been destroyed. Instead, Ms. Fisher waited approximately 16 months before making a claim or otherwise notifying Garrison that the demolition had occurred. During that time Ms. Fisher monitored Mr.

Reynoso's progress "with the house" and was considering whether the work being done could increase the coverage necessary for the Property. (Yabui Affidavit, Ex. C.) She claims she did not declare Mr. Reynoso to be in breach of the Sales Contract upon being notified of the demolition "because he agreed to fix the damage he had caused and he continued to make rent payments under the agreement." (Yabui Affidavit, Ex. B.) However, this is no help to Ms. Fisher. Regardless of whether the work being done on the Property is considered part of the improvements under the Sales Contract or a new repair agreement with Mr. Reynoso, there is no reasonable dispute that the loss relates to faulty, inadequate, or defective work performed by Mr. Reynoso, which was contracted for by Ms. Fisher. This removes this case from the holdings in *Home Savings and Lafayette*.

The most instructive case regarding Ms. Fisher's claim is *Wilson v. Farmers Ins. Exch.*, 102 Cal.App.4th 1171 (2002). In *Wilson*, the insured sold a house to Bruce Wampler and agreed to carry a second mortgage on the property behind a first mortgage in favor of the insured's grandmother. *Id.* at 1172. The house was insured under an all-risk homeowner's policy issued by Farmers. *Id.* at 1173. After the sale, the insured saw that Bruce Wampler's son, Chris, was remodeling the house, including replacing some exterior walls and part of the foundation and putting in new plumbing. *Id.* Later, the insured saw most of the exterior walls of the house had been stripped down to the studs. *Id.* The insured was in agreement with the remodeling work because the Wampers told him they were improving the property and were going to put the house back together. *Id.*

The insured eventually became concerned about the impairment of his security because Wampler had stopped making payments on the loans and had ceased any further renovation of the house. *Id.* The insured acquired the property by foreclosure when the renovation was still

unfinished. *Id.* Claims submitted to Farmers were denied. A lawsuit was filed and Farmers was granted summary judgment on the issue of coverage. *Id.*

On appeal, the insured argued the holding in *Continental* supported a finding of coverage.

The Court disagreed for the following reasons:

First, to the extent the court in *Home Savings* may have suggested the exclusion at issue both here and there did not apply because it is limited to loss caused by “faulty construction,” we disagree with that suggestion because by its terms the exclusion applies more broadly to any loss caused by faulty, inadequate, or defective workmanship, repair, construction, renovation, or remodeling.

Second, and more importantly, the factual distinctions between this case and *Home Savings* compel a different result here. In *Home Savings*, the insured home was not simply renovated or remodeled; it was completely destroyed, including its foundation. When the bank foreclosed, all there was on the property was a new slab and possibly some rough plumbing...**Also, the demolition was accomplished not by the named insured with the mortgagee’s knowledge, as here, but by a third party entirely without the bank’s knowledge.** It was reasonable for the *Home Savings* court to conclude that the total destruction of the insured home by a third party without the bank’s knowledge was not a risk the bank should have reasonably understood was excluded from coverage under the “inadequate renovation” exclusion...**Here, on the other hand, plaintiffs reasonably should have known a renovation project undertaken by or on behalf of the named insured with their knowledge, which involved some demolition but not the complete destruction of the house, gave rise to a risk that was excluded from coverage under the “inadequate renovation” exclusion.** The risk was that the renovation or remodeling would be performed defectively or inadequately, leaving the house in a state of disrepair that reduced its value. This is exactly the sort of risk of loss expressly encompassed by the “inadequate renovation” exclusion, and exactly the sort of loss plaintiffs suffered when Wampler abandoned his renovation of the house before it was completed.

Id. at 1175-76 (emphasis added).

The Court also analyzed *Lafayette* and distinguished its holding as follows:

Our decision is consistent with *Husband* because here, in contrast to the situation in *Husband*, the renovation was undertaken by the son of the named insured, with the knowledge and implicit approval of the mortgagees because they believed the renovation would enhance the value of the home, which was the security for their loans. **Where, as here, the named insured or someone authorized by the named insured engages in renovation or remodeling with the knowledge and**

approval of the mortgagee, the “inadequate renovation” exclusion precludes the mortgagee who is later dissatisfied with the quality of the insured’s performance of the renovation from claiming coverage because the renovation has left the property worth less than it was before.

Id. at 1176-77 (emphasis added).

Similar to *Wilson*, there is no dispute that the Sales Contract contemplated Mr. Reynoso “intends to make certain improvements to the property upon possession, with the intent to sell the property for a profit.” (Fisher Affidavit, Ex. A.) Ms. Fisher also agreed “to increase home owner’s insurance to cover the modified improvements.” (*Id.*) Whether Ms. Fisher knew that those “improvements” included the demolition of the dwelling and its fixtures is irrelevant because Mr. Reynoso continued “the renovation or remodeling with the knowledge and approval” of Ms. Fisher. *Wilson*, 102 Cal.App.4th at 1177. There is no coverage for Ms. Fisher’s claim and her cause of action for breach of contract should be dismissed as a matter of law.

B. Ms. Fisher’s Breach of Contract Cause of Action Also Fails Under the Intentional Loss Exclusion.

The Policy excludes loss caused directly or indirectly by Intentional Loss, which is defined as follows:

- h. Intentional Loss**, meaning any loss arising out of any act committed:
 - (1) by or at the direction of you or any person or organization named as an additional insured; and
 - (2) with the intent to cause a loss.

(Amended Complaint, Ex. A) (emphasis in original).

Ms. Fisher attempts to avoid application of the Intentional Loss exclusion by arguing, “there is absolutely no evidence that Ron Reynoso destroyed the dwelling and

fixtures at the Insured Location ‘at the direction’ of Plaintiff or that Plaintiff directed the destruction of her property with ‘intent to cause a loss.’” (Fisher Memorandum, p. 7.)

Ms. Fisher’s argument is simply an attempt to reframe the facts and ignore her true relationship with Mr. Reynoso and the work he was performing on the Property.

The Sales Contract itself is a clear demonstration that Mr. Reynoso’s conduct was committed at Ms. Fisher’s direction because in it she is contracting with Mr. Reynoso to “make certain improvements to the property upon possession, with the intent to sell the property for a profit.” (See Fisher Affidavit, Ex. A.) Ms. Fisher may be disappointed with the state of the work performed at the time Mr. Reynoso walked away from the project, but there is no denying that the work itself, *i.e.*, the loss, was intentionally done at her direction.

C. **Ms. Fisher’s Breach of the Covenant of Good Faith and Fair Dealing Cause of Action Should be Dismissed Because her Claim was Not Covered Under the Policy**

Count Two in the Amended Complaint is a cause of action for “Breach of the Covenant of Good Faith and Fair Dealing.” (Amended Complaint, pp. 4-5.) While there is an implied duty of good faith and fair dealing implied in all contracts, the standard applied to typical contracts (employment, commercial, real estate, etc.) does not apply to insurance policies. Instead, in the insurer-insured context, the Idaho Supreme Court has created the tort of bad faith and established the specific elements that must be proven before an insured may recover for a breach of the implied covenant of good faith and fair dealing.

The Idaho Supreme Court first recognized the tort of bad faith in *White v. Unigard Mut. Ins. Co.*, 112 Idaho 94, 730 P.2d 1014 (1986). In *White*, the Court held that “where an insurer ‘intentionally and unreasonably denies or delays payment’ on a claim, and in the process harms

the claimant in such a way not fully compensable at contract, the claimant can bring an action in tort to recover for the harm done.” *White*, 112 Idaho at 98, 730 P.2d at 1018. The tort of bad faith arises out of insurers’ “duty to act in good faith with their insureds.” *White*, 112 Idaho at 96, 730 P.2d at 1016 (citation omitted). “Such a duty is beyond that which the policy imposes by itself – the duty to defend, settle, and pay – but is a duty imposed by law on an insurer to act fairly and in good faith in discharging its contractual responsibilities.” *Id.* (citation omitted). “If that duty is breached, instead of treating the claim as a breach of the covenant of good faith and fair dealing under the guise of a contract claim, the Court has held that an action can be brought as a tort claim.” *Robinson v. State Farm Mut, Auto, Ins. Co.*, 137 Idaho 173, 179, 45 P.3d 829, 835 (2002) (emphasis added).

“A plaintiff can bring one of two types of bad faith claims: unreasonable denial or unreasonable delay.” *Id.* at 178, 45 P.3d at 834. To recover on a claim of the tort of bad faith, a plaintiff must prove: (1) that the insurer intentionally and unreasonably denied or delayed payment; (2) that the insured’s claim was not fairly debatable; (3) that the insurer’s denial or delay was not the result of good faith mistake; and (4) the resulting harm was not fully compensable by contract damages. *Lovey v. Regence Blue Shield of Idaho*, 139 Idaho 37, 48, 72 P.3d 877, 888 (2003). However, a bad faith claim can only be sustained if an insurer fails to pay or delays paying a covered claim:

Fundamental to the claim of bad faith is the idea that **there must be coverage of the claim under the policy.** If that be the case and the insured proves the other elements of a bad faith claim as this Court has outlined them, the insured may recover damages for the tort of bad faith that extend beyond contract damages.

Robinson, 137 Idaho at 178, 45 P.3d at 834 (emphasis added); *see also Wells v. United States Life Ins. Co.*, 119 Idaho 160, 166, 804 P.2d 333, 339 (Ct.App. 1991) (“Because the respondents

were not obligated to pay the appellant's claim under the policy, they are not subject to liability for their alleged bad faith refusal to do so.")

Ms. Fisher appears to allege a claim for breach of the implied covenant of good faith and fair dealing under contract law because she fails to allege the required elements for the tort of bad faith. (See Amended Complaint, ¶¶ 18-21.) However, she is precluded from making such a claim based upon the holding in *White* and its progeny which limits Ms. Fisher to a claim for the tort of bad faith. This alone warrants the dismissal of the cause of action for breach of the covenant of good faith and fair dealing.

Nevertheless, even if Ms. Fisher's cause of action for breach of the covenant of good faith and fair dealing can be construed as a claim for the tort of bad faith, it still fails as a matter of law. As demonstrated above, Ms. Fisher's claim was not covered under the Policy. Therefore, Ms. Fisher is unable to make the fundamental showing for a tortious bad faith claim and the cause of action for breach of the covenant of good faith and fair dealing should be dismissed.

V. CONCLUSION

Based on the foregoing, Garrison respectfully requests that this Court grant its Motion for Summary Judgment, deny Ms. Fisher's Motion for Partial Summary Judgment, and dismiss the Amended Complaint.

DATED this 30th day of December, 2015.

ELAM & BURKE, P.A.

By: 

Craig R. Yabui, Of the Firm
Attorneys for Defendant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 31st day of December, 2015, I caused a true and correct copy of the above and foregoing instrument to be served upon the following in the manner indicated below:

James G. Reid
Jennifer Reid Mahoney
KAUFMAN REID, PLLC
1211 W. Myrtle St., Ste. 350
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U.S. Mail
 Hand Delivery
 Federal Express
 Via Facsimile



Craig R. Yabui

4821-6937-3226, v. 1

Owens
Law Clerk
ORB
1-19-16

NO. _____ FILED _____
A.M. _____ P.M. _____

JAN 15 2016

CHRISTOPHER D. RICH, Clerk
By STACEY LAFFERTY
DEPUTY

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Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

SHAMMIE L. FISHER;

Plaintiff,

vs.

**GARRISON PROPERTY AND
CASUALTY INSURANCE COMPANY;**

Defendant.

Case No. CV OC 1508979

**MEMORANDUM IN OPPOSITION TO
DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT**

COMES NOW, Plaintiff, Shammie L. Fisher, by and through her attorneys of record,
Kaufman Reid, PLLC, and submits the following Memorandum in Opposition to Defendant's
Motion for Summary Judgment.

I. SUMMARY

The parties have filed cross motions for summary judgment on the issue of insurance
coverage for the loss of Plaintiff's real property and fixtures located at 2510 N. 34th Street, Boise,
Idaho. Defendant does not dispute the validity of the Policy or Plaintiff's status as an insured,

MEMORANDUM IN OPPOSITION TO DEFENDANT'S MOTION FOR SUMMARY
JUDGMENT - 1

and argues only that coverage is precluded under one of two exclusions contained in the Policy. Def. Memo., at 8. Specifically, Defendant argues that the exclusion for faulty, inadequate or defective renovation or remodeling, or that the exclusion for intentional loss preclude coverage. They do not.

This case is not one where the insured hired or contracted with a third party to do repairs or renovations that were either incomplete or poorly done. This is a case where a lessee/buyer, who was to be living in the residence and had the option of making cosmetic improvements while residing there, tore the residence down to the foundation. This act of destruction was not part of any valid contract, was unauthorized and was done without the knowledge of the Plaintiff. After the destruction was discovered, the Plaintiff did not then enter into a “contract” with the lessee to have the damage repaired. Rather, she allowed the lessee to continue to pay rent and attempt to fix the property damage he had caused in an attempt to mitigate her damages. This is not the type of factual situation that is covered by the exclusions in the Policy and Defendant’s motion for summary judgment should be denied and Plaintiff’s motion for partial summary judgment should be granted.

II. ARGUMENT

A. The Exclusion For Faulty or Inadequate Renovation or Repair Does Not Apply

Defendant does not dispute that the Policy covers the loss, but rather, asserts that the exclusions in the Policy preclude coverage. It is important to note that Defendant bears the burden of proving that its asserted exclusions are applicable in this case:

Furthermore, an insurance policy will generally be construed so that the insurer bears the burden of proving that the asserted exclusion is applicable.

Perry v. Farm Bureau Mut. Ins. Co., 130 Idaho 100, 103, 936 P.2d 1342, 1345 (Ct. App. 1997) (citing *Viani v. Aetna Ins. Co.*, 95 Idaho 22, 501 P.2d 706 (1972); *Harman v. Northwestern Mutual Life Ins. Co.*, 91 Idaho 719, 429 P.2d 849 (1967)).

Defendant first argues that the exclusion for faulty or inadequate repair, renovation or remodeling, applies in this case. That exclusion provides:

We do not insure for loss to property described in Coverages A and B caused by . . .

c. Faulty, inadequate or defective;

. . .

- (2) design, specifications, workmanship, repair, construction, renovation, remodeling, grading, compaction;
- (3) materials used in repair, construction, renovation or remodeling; or
- (4) maintenance;

of part or all of any property whether on or off the Described Location.

Policy, at 8. Defendant argues that Plaintiff contracted with Ron Reynoso to make improvements and that she was aware of the work being done on the Property, and thus concludes that the exclusion applies. However, this characterization of events is not supported by the undisputed facts, and, in fact, is contradicted by the undisputed facts.

First, it is undisputed that Reynoso was not authorized to destroy the entire residence and

was not hired to perform a “remodel or renovation.” Rather, he was authorized, while living in the house as a residence, to make certain cosmetic “improvements.” Plaintiff has explained that those “improvements” included such things as new flooring, paint, lighting and countertops. The authorized “improvements” did not include any tear-down or renovation of the structure. Fisher Aff., at ¶ 9.

Defendant argues that the holdings in *Home Savings of Am. v. Cont’l Ins. Co.*, wherein a lender sought recovery under an insurance policy for the destruction of a residence by the insured for redevelopment purposes, 104 Cal.Rptr. 2d 790 (Ct.App. 2001), and in *Husband v. LaFayette Ins., Co.*, wherein a court held that in order for the exclusion for faulty or inadequate renovation or remodel to apply, the alterations must be undertaken **by the insured or someone authorized by the insured**, 635 So.2d 309, 311 (La.App. 1994) do not apply in this case because those cases involved situations where the insureds were completely unaware of the work being done and made claims upon discovering what had occurred and because in this case Plaintiff had entered into a contract with the party causing the damage. However, it is clear in this case that Plaintiff did not know about the demolition until it was complete and did not authorize it. Thus, she did not have any say as to whether the property would be torn down and, like the insureds in the cases cited, was unaware of the work being performed on her property until it was too late to stop it.

Additionally, Plaintiff never “contracted” with Reynoso or hired him to do any remodeling. Rather, she contracted to sell her property to Reynoso and to lease it to him prior to the sale. As a part of the transaction, he was allowed to make cosmetic upgrades to the Property.

However, Reynoso was not required to make those cosmetic improvements under the contract and Plaintiff did not hire him to make those improvements. Rather, as a tenant and future purchaser, he was allowed to make cosmetic improvements at his own cost if he chose. He was not to be compensated. *See* Real Estate Purchase Agreement. Thus, it cannot be said that Plaintiff “contracted” with Reynoso to make repairs or do remodeling. Additionally, the undisputed evidence demonstrates that she was unaware of his plans to demolish the structure and fixtures therein until they were gone, and it was too late to do anything about it.

After Plaintiff was made aware that the Property had been leveled, she did not make an insurance claim. However, this does not defeat her claim or make the cases cited above inapplicable. Defendant argues that the failure to make a claim means that Plaintiff somehow “agreed” to allow Reynoso to renovate the home. The facts do not support this conclusion. The reason that Plaintiff did not kick Reynoso out and make an insurance claim at the start was that she was attempting to mitigate her damages by allowing Reynoso to attempt to fix the damage he had done to the Property. This attempt to mitigate her damages by allowing Reynoso to fix the damage he had caused cannot be seen as an “agreement” between Plaintiff and Reynoso for repairs to the Property. Reynoso was not to be paid for the work he did. Rather, once the Property had been destroyed, Plaintiff made every attempt to mitigate her damages by allowing him to remain on the Property and fix his damage. When it became clear that he would not fix the damage, and it became clear the extent of her damages, Plaintiff then made a claim against her insurance company. Prior to the time the claim was made, her damages were not ascertainable because she believed Ron Reynoso would fix the damage he had caused. When he

did not, the amount her damages due to his destruction of her Property was known, and she made a claim. The texts between Plaintiff and Reynoso demonstrate only that Plaintiff was checking to see if the damage to the house was being fixed. They do not show any agreement between Reynoso and the Plaintiff, and are not evidence that Plaintiff authorized the destruction of the residence or was aware of it before it occurred.

Defendant directs the Court to *Wilson v. Farmers Ins. Exchange* in support of its claim that the exclusion applies. 102 Cal.App.4th 1171, 126 Cal.Rptr.2d 305 (2002). However, *Wilson* is distinguishable in one crucial aspect: the insured in *Wilson* knew of the destruction of the property. In fact, he watched the destruction of the property and was in agreement with it:

In February 1997, Wilson saw that Bruce Wampler's son, Chris, was remodeling the house, including replacing some exterior walls and part of the foundation and putting in new plumbing. Around March 1997, Wilson saw most of the exterior walls of the house had been stripped down to the studs.

Id. at 1173, 126 Cal.Rptr.2d 306. Thus, in *Wilson*, the insured watched over a period of a month as the property was partially torn down, and he did not stop it because he had agreed to the remodel. The court cited the language in *Husband v. Lafayette Ins. Co.*, that the exclusion for faulty construction or remodeling applied "to situations where the insured of someone authorized by the insured contracts for alteration to the property and is dissatisfied with the quality of the performance under that contract." 635 So.2d 309, 311 (La.Ct.App. 1994). The *Wilson* court agreed with the general statement of law in *Husband*, and then held that under the facts in *Wilson*, the exclusion applied because the insured had knowledge of and authorized the renovation. In fact, the insured in *Wilson* watched as the property was partially torn down and

did not stop the destruction because he had agreed to the remodel.

This is not the situation in this case. In this case, Plaintiff did not sit idly by and watch as her property was torn down to the foundation. She did not drive by, as the insured in *Wilson* did, over the course of a month and watch as her property was torn down. In fact, the undisputed facts demonstrate that Plaintiff was not aware that Reynoso was going to attempt to tear down and remodel the house and that she was not aware of his intent to destroy the structure until after she was notified of its complete destruction. Fisher Aff., at ¶ 5. Plaintiff did not have an opportunity to stop the destruction of her property and prior to its destruction she did not have any agreement with Reynoso to have the structure itself remodeled and he was not authorized to destroy it. *Id.* at 6. Plaintiff was not a willing participant in the destruction of her residence in this case, as the insured in *Wilson* was, she was a victim.

After the unauthorized destruction of the property, Plaintiff was between a rock and a hard place. She had a property that had been a livable residence that had been leveled without her knowledge or consent. But she also had a tenant, who said he was willing to continue to pay rent and promised that he would fix the destruction he had caused. The fact that Plaintiff chose to attempt to mitigate her damages by continuing to collect rent and allowing Reynoso to attempt to fix the damage cannot be seen as a “contract” or an “agreement” for Reynoso to remodel the home such that the exclusion in the insurance policy would apply.

Contrary to the assertions made by the Defendant in its brief, this case is more like the factual situations in *Home Savings of Am. v. Cont'l Ins. Co.*, 104 Cal.Rptr. 2d 790 (Ct.App. 2001) and *Husband v. LaFayette Ins., Co.*, 635 So.2d 309, 311 (La.App. 1994). Specifically, the

reasoning of the *Husband* court is compelling:

This court interprets the exclusion contained in the pertinent policy provisions to apply to situations where the insured or someone authorized by the insured contracts for alterations to the property and is dissatisfied with the quality of the performance under that contract. The insurer by this exclusion intended to prevent the expansion of coverage under the policy to insuring the quality of a contractual undertaking by the insured of someone authorized by him.

However, in this case the alterations were undertaken without authorization and in direct conflict with the terms of the lease, and therefore fall outside the exclusion of the policy.

Id., 635 So. 2d at 311 (emphasis added). Essentially, where an insured or someone authorized by the insured undertakes to remodel a property, the resultant damages are excluded. Where, as in this case, a remodel or construction project is undertaken without the authorization or consent of the insured, and in conflict with the terms of the lease, they fall outside the exclusion. It is important to note that the lease agreement between the parties contemplated that Reynoso was to live in the property as his residence, not that he was going to tear it down to the foundation. Thus, his actions actually conflicted with the agreement between the parties, were taken without authorization or consent, and caused the damage alleged herein.

Based upon the foregoing, the exclusion for faulty, inadequate or defective repair, construction, renovation and remodeling does not apply under the facts in this case.

B. The Intentional Loss Exclusion Does Not Apply In This Case

The second exclusion raised by Defendant as a basis for denying coverage for the dwelling and fixtures is the exclusion for intentional loss, which provides:

We do not insure for loss caused directly or indirectly by any of the following.

- ...
- h. **Intentional Loss**, meaning any loss arising out of any act committed:
- (1) by or at the direction of you or any person or organization named as an additional insured; and
 - (2) with the intent to cause a loss.

Policy, at 7-8.

Defendant argues that Plaintiff “contracted” with Ron Reynoso to make certain improvements to the Property and thus concludes that the destruction of the property was done at her direction. First, there is no evidence that Plaintiff “contracted” with Ron Reynoso to make improvements to the Property. Reynoso was authorized to make some cosmetic improvements if he so chose while residing in the Property. However, the purpose of the Real Estate Purchase Agreement was to sell the Property and to Lease it to Reynoso prior to a sale. The purpose of the contract was not for Plaintiff to hire Reynoso to perform repair or remodel services. Authorizing a tenant to make cosmetic improvements to a property while living in it is very different from hiring someone to make repairs or improvements to the Property. Making the cosmetic improvements was not required under the contract between Plaintiff and Reynoso, nor was Reynoso to be compensated for any improvements he made. He was merely authorized under the contract to make cosmetic improvements if he chose to for his own benefit. The Purchase and Sale Agreement’s provision regarding improvements Mr. Reynoso intended to make to the property provided only that “Buyer intends to make certain improvements to the property upon possession, with the intent to sell the property for a profit . . . the Buyer is required to give a monthly update for plans/upgrades.” Purchase and Sale Agreement, at 1, ¶ 9. The “improvements” to the property contemplated by the parties included such things as new flooring

or upgrades to the kitchen and bathroom floors and counters. Fisher Aff., at ¶ 9. There was no discussion or agreement for the Buyer to demolish or rebuild any portion of the premises or remodel the structure. *Id.* This is consistent with the fact that the Buyer indicated that he intended to use the property as his primary residence during the term of the lease/purchase. *See id.*; Purchase and Sale Agreement (“Purchase and Sale Agreement”), at 4, ¶ 19.

Next, Defendant’s claim ignores the second part of the exclusion that requires not only that the action be taken at the direction of the insured but that it be taken “with the intent to cause a loss.” There can be no claim in this case that the mere fact that Plaintiff had authorized Ron Reynoso to make “certain improvements” to the dwelling that were cosmetic in nature translates to her directing the actions of Ron Reynoso with the “intent to cause a loss.” In fact, the undisputed facts demonstrate that Ron Reynoso leased the property with the intent to purchase it, and that he represented to the Plaintiff that he would live in the dwelling during the time he leased it as his primary residence. The fact that Plaintiff reasonably believed Ron Reynoso was going to live in the dwelling as his primary residence demonstrates that she did not direct that he destroy it with the intent to cause a loss under the Policy. There is simply no evidence that Plaintiff directed, or even authorized, him to destroy the property with the intent to cause a loss. Accordingly, the exclusion for intentional loss does not apply.

C. **Plaintiff Has A Valid Claim for Breach of the Covenant of Good Faith and Fair Dealing**

Defendant argues that Plaintiff cannot state a claim for breach of the covenant of good faith and fair dealing because in the context of an insurance contract, an insured is able to bring a bad faith claim in tort. The case law cited by Defendant in its brief does not support its

conclusion that the claim for breach of the covenant of good faith and fair dealing “does not apply to insurance policies.” Def. Memo., at 13. While Idaho case law does indicate that under an insurance contract a tort claim can be brought based upon a breach, it does not state that a bad faith claim in tort somehow usurps the traditional contractual claims and remedies. The Idaho courts have held:

The insurer has a duty to provide coverage if conditions are met under the insurance contract. If that duty is breached, instead of treating the claim as a breach of the covenant of good faith and fair dealing under the guise of a contract claim, the Court has held that an action can be brought as a tort claim.

Robinson v. State Farm Mut. Auto. Ins. Co., 137 Idaho 173, 179, 45 P.3d 829, 835 (2002)

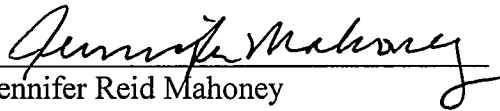
(emphasis added). Thus, a claim for bad faith breach of contract in the context of an insurance claim can be brought as a tort claim but there is no requirement that it must be brought as a tort claim and there is no discussion in *Robinson* of doing away with the covenant of good faith and fair dealing in insurance contracts. In this case, Plaintiff is pursuing a claim for breach of contract and breach of the covenant of good faith and fair dealing, both of which are supported by the denial of coverage in this case.

III. CONCLUSION

Based upon the foregoing, Defendant’s Motion for Summary Judgment should be denied, and Plaintiff’s motion for partial summary judgment should be granted.

Dated this 15th day of January, 2016.

KAUFMAN REID, PLLC

by: 
Jennifer Reid Mahoney
Attorneys for Defendant

CERTIFICATE OF SERVICE

This will certify that I have on the 15th day of January, 2016, mailed a true and correct copy of the foregoing upon the following:

- | | |
|---|---------------------------------------|
| <input checked="" type="checkbox"/> U. S. mail, postage prepaid | <input type="checkbox"/> express mail |
| <input type="checkbox"/> hand delivery | <input type="checkbox"/> facsimile |

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NO. _____
FILED _____
A.M. _____

JAN 25 2016

CHRISTOPHER D. RICH, Clerk
By JAMIE MARTIN
DEPUTY

Attorneys for Defendant

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

SHAMMIE L. FISHER,

Plaintiff,

vs.

GARRISON PROPERTY AND CASUALTY
INSURANCE COMPANY,

Defendant.

Case No. CV-OC-1508979

REPLY MEMORANDUM IN SUPPORT OF
DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT

I. INTRODUCTION

Defendant Garrison Property and Casualty Insurance Company ("Garrison"), by and through its counsel of record, Elam & Burke P.A., submits this Reply Memorandum in Support of Defendant's Motion for Summary Judgment. Garrison seeks an Order granting judgment in its favor on all causes of action set forth in Ms. Fisher's Amended Complaint and Demand for Jury Trial ("Amended Complaint").

Plaintiff Shammie Fisher entered into a contract with a bad party. However, contrary to the allegations in the Amended Complaint, the bad party was Ron Reynoso, not Garrison, and the contract she should seek enforcement of is the Sales Contract, not the Policy. Ms. Fisher did

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not contract with Garrison to insure Mr. Reynoso's construction work. Nevertheless, that is exactly what Ms. Fisher is claiming in this matter. Unambiguous exclusions in the Policy preclude Ms. Fisher from creating coverage where none exists and, therefore, Ms. Fisher's Amended Complaint should be dismissed.

II. ANALYSIS

A. Ms. Fisher's Loss Was Not the Demolition of the Property.

Ms. Fisher seeks to avoid application of the faulty, inadequate, or defective work exclusion by misdirecting the Court to the scope of her contract with Mr. Reynoso. (*See* Memorandum in Opposition to Defendant's Motion for Summary Judgment ("Fisher Opposition"), pp. 2-11 (arguing that her contract did not contemplate the demolition of the Property, but only "cosmetic" improvements.)) However, Ms. Fisher's argument is misplaced. Whether Ms. Fisher agreed to "cosmetic" improvements or a complete demolition and renovation of the Property is irrelevant to the application of the exclusion because the loss was not the demolition of the Property; the loss was the failure of Mr. Reynoso to complete the work. Ms. Fisher herself demonstrated this fact by failing to claim a loss until 16 months after the demolition of the Property, failing to declare Mr. Reynoso in breach of contract, and by seeking coverage under the Policy in effect at the time she claimed a loss, not the policy in effect at the time of the demolition.

When an insured such as Ms. Fisher is aware of the work being performed on her property and only declares a loss when that work is not completed, the faulty, inadequate, or defective work exclusion precludes coverage. *See Wilson v. Farmers Ins. Exch.*, 102 Cal.App.4th 1171, 176-77 (2002) ("Where, as here, the named insured or someone authorized by the named insured engages in renovation or remodeling with the knowledge and approval of the mortgagee,

the 'inadequate renovation' exclusion precludes the mortgagee who is later dissatisfied with the quality of the insured's performance of the renovation from claiming coverage because the renovation has left the property worth less than it was before.") Garrison did not insure Mr. Reynoso's work and coverage for Ms. Fisher's claim should be denied as a matter of law.

B. The Intentional Loss Exclusion Applies to Ms. Fisher's Claim.

Ms. Fisher's argument regarding the intentional loss exclusion similarly fails because her understanding of the loss is incorrect. The failure to complete the work on the Property was the loss, not the demolition. There is no dispute that the work on the Property was done at the direction of Ms. Fisher and that it was intentional. Only the result of that work was unintended. As such, the intentional loss exclusion applies and precludes coverage for Ms. Fisher's claim.

C. Ms. Fisher's Breach of the Covenant of Good Faith and Fair Dealing Cause of Action Should be Dismissed Because her Claim was Not Covered Under the Policy.

Garrison is not arguing that the implied covenant of good faith and fair dealing does not apply in the insurer-insured context. Instead, relying upon well-established Idaho precedent, it is arguing that in order for an insured to pursue a claim for breach of that covenant, she must plead and prove the elements of the tort of bad faith, which is a cause of action specifically created by the Idaho Supreme Court for contracts between an insurer and its insured. *See Robinson v. State Farm Mut, Auto, Ins. Co.*, 137 Idaho 173, 179, 45 P.3d 829, 835 (2002).

Regardless, Ms. Fisher's claim for breach of the implied covenant of good faith and fair dealing fails whether it is viewed as a contract or tort claim. The implied covenant of good faith and fair dealing does not provide Ms. Fisher with benefits she never possessed under the Policy. *See Idaho First Nat. Bank v. Bliss Valley Foods, Inc.*, 121 Idaho 266, 289, 824 P.2d 841, 864 (1991) ("There is no basis for claiming implied terms contrary to the express rights contained in


the parties' agreement.”) (citation omitted); *Robinson*, 137 Idaho at 178, 45 P.3d at 834 (“Fundamental to the claim of bad faith is the idea that there must be coverage of the claim under the policy.”) Because there is no coverage for Ms. Fisher’s claim, there can be no breach of the implied covenant of good faith and fair dealing.

III. CONCLUSION

Based on the foregoing, Garrison respectfully requests that this Court grant its Motion for Summary Judgment, deny Ms. Fisher’s Motion for Partial Summary Judgment, and dismiss the Amended Complaint.

DATED this 25th day of January, 2016.

ELAM & BURKE, P.A.


By: 

Craig R. Yabui, Of the Firm
Attorneys for Defendant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 25th day of January, 2016, I caused a true and correct copy of the above and foregoing instrument to be served upon the following in the manner indicated below:

James G. Reid	<input type="checkbox"/> U.S. Mail
Jennifer Reid Mahoney	<input type="checkbox"/> Hand Delivery
KAUFMAN REID, PLLC	<input type="checkbox"/> Federal Express
1211 W. Myrtle St., Ste. 350	<input checked="" type="checkbox"/> Via Facsimile
Boise, Idaho 83702	



Craig R. Yabui

4848-9758-1100, v. 1

FEB 04 2016

CHRISTOPHER D. RICH, Clerk
By INGA JOHNSON
DEPUTY

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

SHAMMIE L. FISHER,

Plaintiff,

vs.

GARRISON PROPERTY AND
CASUALTY INSURANCE COMPANY,

Defendant.

Case No. CV OC 2015 08979

REQUEST FOR ADDITIONAL BRIEFING

At the summary judgment hearing on February 1, 2016, the Court pointed out that the Dwelling Policy had an exclusion, General Exclusion 1.h., at p. 8 of the policy, that excluded coverage for any loss caused, in part, by or at the direction of the insured. The Court also pointed out that the other relevant exclusion, General Exclusion 2.c., "faulty, inadequate or defective" construction or remodeling activities, was not expressly limited to activities done by or at the direction of the insured. The Court asked Mr. Reid whether the absence of any mention of the insured in this exclusion was relevant to the construction of General Exclusion 2.c.

Because this question was not addressed in the briefing, the Court would like some additional briefing on the following question:


8.

1 "Where General Exclusion 1.h. is directly tied to activities of the insured, should the
2 Court consider it significant that General Exclusion 2.c. is not directly tied to activities of the
3 insured?"

4 The parties shall have ten (10) days from the entry of this request to file any
5 supplemental memorandum, limited to seven (7) pages.

6 IT IS SO ORDERED.

7 Dated this 4 day of February, 2016.

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10 PATRICK H. OWEN
11 District Judge
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CERTIFICATE OF MAILING


I, Christopher D. Rich, the undersigned authority, do hereby certify that I have mailed, by United States Mail, a true and correct copy of the within instrument as notice pursuant to Rule 77(d) I.R.C.P. to each of the attorneys of record or parties in this cause in envelopes addressed as follows:

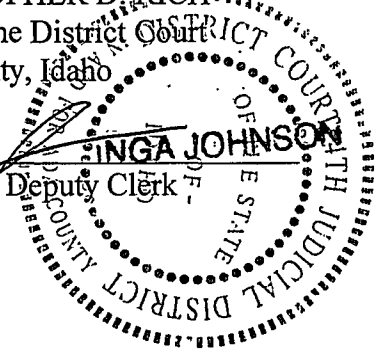
JAMES GARRISON REID
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CRAIG RICHARD YABUI
ELAM & BURKE, PA
PO BOX 1539
BOISE, ID 83701

CHRISTOPHER D. RICH
Clerk of the District Court
Ada County, Idaho

Date: 2/5/16

By: 
INGA JOHNSON
Deputy Clerk



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Owen
LAW CLERK
& JUDGE

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NO. _____ FILED _____
A.M. _____ P.M. _____

FEB 12 2016

CHRISTOPHER D. RICH, Clerk
By STACEY LAFFERTY
DEPUTY

Attorneys for Defendant

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

SHAMMIE L. FISHER,

Plaintiff,

vs.

GARRISON PROPERTY AND CASUALTY
INSURANCE COMPANY,

Defendant.

Case No. CV-OC-1508979

DEFENDANT'S ADDITIONAL BRIEFING
RE: MOTION FOR SUMMARY
JUDGMENT

INTRODUCTION

Defendant Garrison Property and Casualty Insurance Company ("Garrison"), by and through its counsel of record, Elam & Burke P.A., submits this additional briefing in response to the Court's Request for Additional Briefing filed February 4, 2016.

The Request for Additional Briefing provides: "Where General Exclusion 1.h. is directly tied to activities of the insured, should the Court consider it significant that General Exclusion 2.c. is not directly tied to activities of the insured?" The short answer to this question is, yes. Both the express language of General Exclusion 2.c. and the cases interpreting it demonstrate that Ms. Fisher's claimed loss is excluded from coverage regardless of whether she was directly

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involved in the construction being performed by Ron Reynoso. So long as Ms. Fisher's claimed loss resulted from faulty, inadequate, or defective workmanship, repair, construction, renovation, remodeling, etc., there is no coverage.

Ms. Fisher does not dispute that Mr. Reynoso's leveling of the house and subsequent work constituted construction, renovation, repair, or remodeling. In other words, Ms. Fisher is not alleging that Mr. Reynoso accidentally leveled the house or did so with an improper purpose. It is also undisputed that Mr. Reynoso's work was faulty, inadequate, and/or defective. Therefore, no matter how Ms. Fisher seeks to frame the facts, there is no coverage for her claim.

ANALYSIS

The issue regarding the lack of a direct tie between General Exclusion 2.c. and the activities of the insured was specifically raised in *Stephens v. Liberty Mutual*, 2008 WL 480287 (N.D. Calif. 2008). In *Stephens*, the insureds owned a building in San Francisco, California adjacent to a building owned by the Olympic Club. *Stephens*, 2008 WL 480287 at *1. The Olympic Club commenced a construction project on its property and in the process damaged the insureds' building. *Id.* The insureds sought coverage under two insurance policies covering their building. *Id.* Both claims were denied, breach of contract actions were filed, and both insurers filed motions for summary judgment.

At issue under the Westchester Fire Insurance Company policy was the applicability of exclusion 3.c., which is identical to General Exclusion 2.c.:

c. Faulty, inadequate or defective:

(1) Planning, zoning, development, surveying, siting;

(2) Design, specifications, workmanship, repair, construction, renovation, remodeling, grading, compaction;

(3) Materials used in repair, construction, renovation or remodeling; or

(4) Maintenance;

of part or all of any property on or off the described premises.

Id. at *12.

The insureds first argued that the exclusion was ambiguous. *Id.* at *12. The district court was unpersuaded. *Id.* at 14 (“Courts have previously found policy language virtually identical to the language in Westchester’s policy to be unambiguous in situations involving third-party negligence.”) (citing *Tzung v. State Farm Fire and Cas. Co.*, 873 F.2d 1338, 1341 (9th Cir. 1989).)

The insureds next argued that the cases cited by Westchester, including *Wilson v. Farmers Ins. Exch.*, 102 Cal.App.4th 1171 (2002), which is relied upon by Garrison in the present matter, were inapplicable:

Plaintiffs contend that *Wilson* does not control because in that case, the named insured authorized the renovations, whereas in the present case, the Academy never agreed or contracted to have its building struck with heavy machinery, used for storage of construction material, or damaged as a result of the negligent activity of the Olympic Club or Plant Construction.

Stephens, 2008 WL 480287 at *14.

The Court was again unpersuaded and recognized that the issue was whether coverage was excluded under the policy as written and “[r]esolving that question does not depend on determining whether plaintiffs or the Olympic Club authorized the construction or hired the contractor.” *Id.* at 15. Based on the allegations in the pleadings and the admissions of the insureds, the Court granted summary judgment in favor of Westchester because there was no dispute that the insureds were seeking coverage on a loss resulting from faulty, inadequate or defective construction. Most importantly, that construction was being done on a neighboring property without any involvement by the insureds. *Id.* at 16.

The Washington Court of Appeals similarly applied the faulty workmanship exclusion in a case where the insured had no involvement in the activity giving rise to the loss. *Capelouto v. Valley Forge Ins. Co.*, 98 Wash.App. 7, 990 P.2d 414 (1999). In *Capelouto*, the insured owned a retail business in Seattle, Washington that was damaged by raw sewage that had overflowed from his toilet. *Capelouto*, 98 Wash.App. at 10, 990 P.2d at 416. At the time, King Construction had been replacing sewer pipes under the road and caused a sewer backup by installing an inadequate bypass pump on the sewer pipe. *Id.* at 11, 990 P.2d at 416. The insured rejected a settlement offer with the City and King Construction and, instead, turned to his own insurance companies to cover the damage. *Id.*

The Court examined an identical exclusion to General Exclusion 2.c. and reached the same conclusion as the Court in *Stephens*. The “plain meaning of the exclusion indicates that the claimed loss, damage caused by the contractor’s use of an inadequate pump on a sewer replacement project off of the insured’s premises, is not covered.” *Id.* at 14, 990 P.2d at 418. Again, it did not matter that the construction took place off premises without any involvement by the insured.

Consistent with both California and Washington, Idaho law recognizes that where “policy language is found to be unambiguous, this Court is to construe the policy as written, ‘and the Court by construction cannot create a liability not assumed by the insurer nor make a new contract for the parties, or one different from that plainly intended, nor add words to the contract of insurance to either create or avoid liability.’” *Armstrong v. Farmers Ins. Co. of Idaho*, 147 Idaho 67, 69, 205 P.3d 1203, 1205 (2009). Ms. Fisher has never argued that General Exclusion 2.c. is ambiguous. There is similarly no dispute that the work performed by Ron Reynoso was construction, renovation, or remodeling. Thus, under the plain language of General Exclusion


2.c., there is no coverage for Ms. Fisher's claimed loss regardless of whether she was involved in that process or not.¹

CONCLUSION

Based on the foregoing and the prior authority cited by Garrison in support of its Motion for Summary Judgment and in opposition to Ms. Fisher's Motion for Partial Summary Judgment, the Court should enter judgment in favor of Garrison.

DATED this 12th day of February, 2016.

ELAM & BURKE, P.A.

By: 


Craig R. Yabui, Of the Firm
Attorneys for Defendant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 12th day of February, 2016, I caused a true and correct copy of the above and foregoing instrument to be served upon the following in the manner indicated below:

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Jennifer Reid Mahoney
KAUFMAN REID, PLLC
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Boise, Idaho 83702

U.S. Mail
 Hand Delivery
 Federal Express
 Via Facsimile



¹ However, even if a notice or agreement requirement is inferred into General Exclusion 2.c., Ms. Fisher's claim still fails under the holding in *Wilson v. Farmers Ins. Exch.*, 102 Cal.App.4th 1171 (2002). Regardless of whether Ms. Fisher had prior knowledge that Mr. Reynoso was going to level the home and rebuild it, she agreed to the construction for 16 months and only claimed a loss when Mr. Reynoso failed to finish the work. In reality, Ms. Fisher is trying to recover from Garrison on a business deal that went bad. That is a business loss, not an insurance loss.

open
law clerk
8/2/17/16

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NO. _____
FILED
A.M. _____ P.M. 328

FEB 16 2016

CHRISTOPHER D. RICH, Clerk
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Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

SHAMMIE L. FISHER;

Plaintiff,

vs.

**GARRISON PROPERTY AND
CASUALTY INSURANCE COMPANY;**

Defendant.

Case No. CV OC 1508979

**SUPPLEMENTAL MEMORANDUM RE:
MOTIONS FOR SUMMARY
JUDGMENT**

COMES NOW, Plaintiff, Shammie L. Fisher, by and through her attorneys of record, Kaufman Reid, PLLC, and pursuant to the Court's February 4, 2016, Request for Additional Briefing, submits the following Supplemental Memorandum Re: Motions for Summary Judgment.

I. DISCUSSION

Following the February 1, 2016, hearing on the parties' cross motions for summary judgment, the Court requested additional briefing on the following issue:

Where General Exclusion 1.h is directly tied to activities of the

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insured, should the Court consider it significant that General

Exclusion 2.c is not directly tied to activities of the insured?

In answer to the Court's question, it is not significant that the language in the exclusions differs.

As noted in prior briefing, Defendant bears the burden of proving that its asserted exclusions are applicable in this case:

Furthermore, an insurance policy will generally be construed so that the insurer bears the burden of proving that the asserted exclusion is applicable.

Perry v. Farm Bureau Mut. Ins. Co., 130 Idaho 100, 103, 936 P.2d 1342, 1345 (Ct. App. 1997) (citing *Viani v. Aetna Ins. Co.*, 95 Idaho 22, 501 P.2d 706 (1972); *Harman v. Northwestern Mutual Life Ins. Co.*, 91 Idaho 719, 429 P.2d 849 (1967)). Defendant cannot meet that burden with respect to either exclusion it claims applies in this case.

The exclusion for faulty, inadequate or defective repair or remodeling provides:

We do not insure for loss to property described in Coverages A and B caused by . . .

c. **Faulty, inadequate or defective;**

...

- (2) design, specifications, workmanship, repair, construction, renovation, remodeling, grading, compaction;
- (3) materials used in repair, construction, renovation or remodeling; or
- (4) maintenance;

of part or all of any property whether on or off the Described Location.

Policy, at 8. The exclusion for intentional loss provides:

We do not insure for loss caused directly or indirectly by any of the following.

- ...
- h. **Intentional Loss**, meaning any loss arising out of any act committed:
- (1) by or at the direction of you or any person or organization named as an additional insured; and
 - (2) with the intent to cause a loss.

Policy, at 7-8. The term “intentional loss” is defined as something done “by or at the direction of the insured.” The language “by or at the direction of the insured” is not the language of the exclusion so much as the definition of “intentional loss,” which is what is being excluded.

Because it is unclear what “intentional loss” might be, and because an intentional loss could be caused by a third party, there is a definition that notes it requires two elements: (1) an act committed by or at the direction of the insured, (2) with the intent to cause a loss.

In the exclusion regarding faulty, inadequate or defective repair or remodel, there is no need to provide such a definition because it is clear and generally understood that repairs and remodeling are done either by the insured or in the context of a contract for work to be performed on the insured’s property. As explained by the Louisiana Court of Appeal, interpreting a policy with identical language to the policy in this case, alterations undertaken without authorization of the insured fall outside the exclusion:

This court interprets the exclusion contained in the pertinent policy provisions to apply to situations where the insured or someone authorized by the insured contracts for alterations to the property and is dissatisfied with the quality of the performance under that contract. The insurer by this exclusion intended to prevent the expansion of coverage under the policy to insuring the quality of a contractual undertaking by the insured of someone authorized by him.

However, in this case the alterations were undertaken without authorization and in direct conflict with the terms of the lease, and

therefore fall outside the exclusion of the policy.

Husband v. Lafayette Ins. Co., 635 So. 2d 309, 311 (La.App. 1994). The exclusion in the policy in *Husband* did not contain language to the effect that faulty repairs or alterations done “by or at the direction of the insured” were not covered by the exclusion, but the court interpreted the exclusion as applying only “to situations where the insured or someone authorized by the insured contracts for alterations to the property and is dissatisfied with the quality of the performance under that contract.” *Id.* Similarly, in this case, the fact that the exclusion for faulty, inadequate or defective repair or remodel does not contain a definition of those terms (like the intentional loss exclusion provides a definition of intentional loss) it is clear that the exclusion is only meant to apply to “to situations where the insured or someone authorized by the insured contracts for alterations to the property and is dissatisfied with the quality of the performance under that contract.” The clear evidence in this case demonstrates that Plaintiff did not authorize or contract with Reynoso to destroy her house.

The California Court of Appeal cited this same language with approval in *Wilson v. Farmers Ins. Exchange*, when it explained that “[o]ur interpretation of the ‘inadequate renovation’ exclusion is consistent with the only other case we have found in this area – *Husband v. Lafayette Ins. Co.* . . .” 102 Cal.App.4th 1171, 1175, 126 Cal.Rptr.2d 305, 309 (Cal.App. 2002). The court in *Wilson* went on to cite with approval the same language quoted above. *Id.* Essentially, what the courts in *Husband* and *Wilson* are saying is that they define or interpret faulty or inadequate construction, repair or remodel to mean situations where an insured or someone the insured authorizes or hires does work on the property.

The First Circuit Court of Appeals has also cited the same language from *Husband* and

has held that “the faulty workmanship policy exclusion was ‘intended to prevent the expansion of coverage under the policy to insuring the quality of a contractual undertaking by the insured or someone authorized by him.’” *Fidelity Coop. Bank v. Nova Cas. Co.*, 726 F.3d 31, 38 (1st Cir. 2013) (quoting *Husband v. Lafayette Ins. Co.*, 635 So. 2d 309, 311 (La.Ct.App. 1994)). In *Fidelity*, a prior owner of property had made a roof repair. After the property was sold, there was a major storm and the roof leaked causing extensive water damage. The insurer argued that the exclusion for faulty workmanship or repair precluded coverage because the drain on the roof repair was too small and thus the damage was caused by faulty workmanship. The court noted that “the undisputed evidence on record [was] that the roof was repaired prior to the Knowles’ ownership, and that the Knowles did not repair, renovate or replace the roof or its drain” *Id.* Because the work on the roof was not a contractual undertaking by the insured or someone authorized by the insured, the exclusion did not apply. Similarly, in this case, the exclusion for faulty workmanship, renovation or repair is “intended to prevent the expansion of coverage under the policy to insuring the quality of a contractual undertaking by the insured or someone authorized by him.” *Id.* Because there was no contractual undertaking by Plaintiff to have her home remodeled by Reynoso, and because Reynoso destroyed the home without her authorization, the exclusion does not apply (despite the fact that it does not contain language “by or at the direction of the insured” like the definition of “intentional loss” does).

Finally, the Supreme Court of New York has reached the same conclusion as to the meaning of the policy exclusion for “faulty, inadequate or defective . . . design, specifications, workmanship, repair, construction, renovation or remodeling, grading, compaction” *11 Essex St. Corp. v. Tower Ins. Co. of New York*, 2005 N.Y. Misc. LEXIS 3556, 234 N.Y.L.J. 115

(S.Ct. New York 2005). In *11 Essex St. Corp.*, the defendant argued that the “faulty workmanship” exclusion (identical to the exclusion in this case) applied to preclude coverage for damage to the building of its insured, which was allegedly caused by negligent construction at an adjacent work site. *Id.* at 3556, *2. In holding that the exclusion did not apply, the court cited *Husband* as follows:

Following the principles of construction, this court is persuaded that the faulty workmanship exclusion applies to situations only “where the insured or someone authorized by the insured contracts for alterations to the property and is dissatisfied with the quality of the performance under that contract.”

Id. at 3556, *5 (quoting *Husband v. Lafayette Ins. Co.*, 635 So. 2d 309, 311 (La.Ct.App. 1994)).

Thus, because the work at the adjacent site that allegedly caused the damage was not done by the insured or someone authorized by the insured, the exclusion did not apply.

The cases cited above demonstrate that the plain meaning of the faulty or inadequate repair or renovation exclusion is to apply only to situations where the insured or someone authorized by the insured contracts for alterations to the property and is dissatisfied with the quality of the performance under that contract. There is no need for additional language in the exclusion stating that the work be done by or at the direction of the insured.

II. CONCLUSION

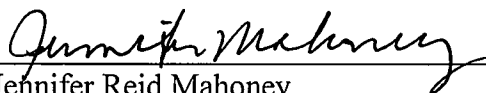
In sum, it is not significant that the exclusion for “intentional loss” contains a definition of intentional loss that includes a requirement that the loss be by or at the direction of the insured and the faulty or inadequate repair or remodel exclusion does not contain a definition of “faulty, inadequate or defective . . . repair, construction, renovation, [or] remodeling.” An intentional loss could be done by a third party, and thus, there is a need to define that phase in the exclusion to

mean only intentional losses done by or at the direction of the insured. The faulty workmanship exclusion does not require such a definition because repairs and remodeling work are understood to be done by or at the direction of the insured. In fact, that exclusion has been interpreted by a number of other jurisdictions to mean only work authorized by or undertaken by the insured. Courts interpreting the exclusion uniformly hold that the exclusion applies only “to situations where the insured or someone authorized by the insured contracts for alterations to the property and is dissatisfied with the quality of the performance under that contract.” *Husband, supra*. Thus, in this case, the exclusion does not apply because the destruction of the residence was not done by or at the direction of the insured and this case is not about the insured being unhappy with the quality of the performance under a contract for repair or remodel.

Based upon the foregoing, the exclusion for faulty, inadequate or defective repair, construction, renovation and remodeling does not apply under the facts in this case.

Dated this 16th day of February, 2016.

KAUFMAN REID, PLLC

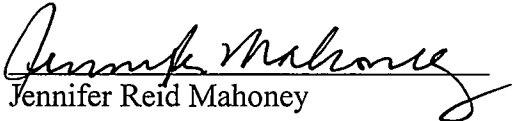
by: 
Jennifer Reid Mahoney
Attorneys for Defendant

CERTIFICATE OF SERVICE

This will certify that I have on the 16th day of February, 2016, mailed a true and correct copy of the foregoing upon the following:

- U. S. mail, postage prepaid express mail
 hand delivery facsimile

Matthew L. Walters
Craig R. Yabui
Elam & Burke, P.A.
251 East Front Street, Suite 300
P.O. Box 1539
Boise, ID 83701


Jennifer Reid Mahoney

FEB 25 2016

CHRISTOPHER D. BICH, Clerk
By INGA JOHNSON
DEPUTY

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

SHAMMIE L. FISHER,
Plaintiff,

Case No. CV OC 2015 08979

vs.,

MEMORANDUM DECISION AND ORDER
RE: CROSS MOTIONS FOR SUMMARY
JUDGMENT AS TO COVERAGE

GARRISON PROPERTY AND
CASUALTY INSURANCE COMPANY,
Defendant.

This is an action by an insured, Plaintiff Shammie L. Fisher ("Fisher"), against her insurer, Defendant Garrison Property and Casualty Insurance Company ("Garrison"), in which Fisher alleges Garrison wrongfully denied a claim for damage to her residence. For determination are cross motions for summary judgment as to coverage. As explained more fully below, Fisher's motion is granted in part, and Garrison's motion is granted in part.

Facts and Prior Proceedings

Fisher owned a residence located at 2510 N. 34th Street in Boise. In 2012, Fisher entered into an agreement with Ron Reynosa ("Reynosa"). The agreement is reflected in (1) a Real Estate Purchase and Sale Agreement dated January 23, 2012; (2) an Addendum dated January 23, 2012; (3) a Counter Offer dated January 25, 2012; (4) an Addendum dated February 6, 2012; (5) an Addendum dated March 13, 2012; and (6) a Rental Agreement signed January

1 30, 2012.¹ The lease was for a term beginning on March 15, 2012 and ending on March 31,
2 2013. The lease could be extended to September 1, 2013. Reynosa had the right to purchase
3 the property during the lease term for \$153,000.00. The Addendum dated January 23, 2012 has
4 the following provision:

5 9) Buyer intends to make certain improvements to the property upon possession,
6 with the intent to sell the property for a profit which might be prior to the end of
7 the lease period. The buyer is required to give a monthly update for
8 plans/upgrades. Buyer may market the property for resale prior to the end of the
9 rental period with the intent to sell the property.

10 Fisher asserts she understood that Reynosa only planned to make minor cosmetic
11 improvements. Fisher Affidavit at ¶ 9.

12 Fisher asserts that within two (2) months of the commencement of the lease, she
13 discovered that Reynosa had torn down the entire residence. Fisher Affidavit at ¶ 5. Fisher
14 asserts Reynosa did so without her permission and that he had no authority to do so. *Id.* at ¶¶ 6,
15 9. After discovering that her residence had been demolished, Fisher states that Reynosa
16 promised to rebuild the residence. *Id.* at ¶ 7. Reynosa undertook some construction activities at
17 the site but never completed rebuilding the residence. Fisher asserts in August 2013, Reynosa
18 abandoned the property and ceased all building activities. *Id.* Photographs attached to the
19 Fisher Affidavit depict the condition of the property when Reynosa ceased building activities.
20 The photographs depict an unfinished structure, exterior and interior framing incomplete, no
21

22
23 ¹ Copies are attached as Exhibit A to the September 1, 2015 Affidavit of Shammie L. Fisher (hereinafter "Fisher
24 Affidavit").

1 siding, no ceiling, no roof, no finish on any interior or exterior surface, no appliances, no
2 cabinets and no functional plumbing or residential electrical service. The rough framing of the
3 exterior and interior of the structure is incomplete. The structure cannot be occupied in the
4 condition depicted in the photographs.

5 During the Reynosa lease term, Fisher's residence was insured through a Dwelling
6 Policy issued by or on behalf of Garrison.² Fisher submitted a Proof of Loss under the
7 Dwelling Policy on or about September 27, 2013. Amended Complaint at ¶ 14. Garrison
8 denied the claim. Answer to Amended Complaint at ¶ 14.

9
10 Fisher filed this action on May 27, 2015. On September 1, 2015 Fisher filed a motion
11 for summary judgment as to coverage under the Dwelling Policy. The motion was supported by
12 a memorandum and Fisher's Affidavit. On December 31, 2015, Garrison filed a cross motion
13 for summary judgment, supported by a memorandum in support of Garrison's motion for
14 summary judgment and in opposition to Fisher's motion for summary judgment, along with an
15 Affidavit of Counsel with several attachments. On January 15, 2016, Fisher filed an opposition
16 to Garrison's motion for summary judgment. On January 25, 2016, Garrison filed a reply
17 memorandum in support of its motion for summary judgment. The Court has reviewed all of
18 these submissions.

19
20 The Court conducted a hearing into these matters on February 1, 2016. James G. Reid,
21 Kaufman Reid, PLLC, appeared and argued for Fisher. Matthew C. Parks, Elam & Burke,

22
23

² A copy of the Dwelling Policy is included as part of Exhibit A to the Amended Complaint.

1 P.A., appeared and argued for Garrison. On February 4, 2016, the Court requested additional
2 briefing as to an issue relating to one of the policy exclusions. Garrison filed a supplemental
3 brief on February 12, 2016. Fisher filed a supplemental brief on February 16, 2016. The Court
4 has received and reviewed the additional briefing and has taken the matters under advisement.

5 **Legal Standards**

6 **A. Summary Judgment**

7 Summary judgment is appropriate when “the pleadings, depositions, and admissions on
8 file, together with the affidavits, if any, show that there is no genuine issue as to any material fact
9 and that the moving party is entitled to a judgment as a matter of law.” I.R.C.P. 56(c).

10 Generally, the burden of proof is on the moving party to demonstrate the absence of a genuine
11 issue of material fact. *Rouse v. Household Fin. Corp.*, 144 Idaho 68, 70, 156 P.3d 569, 571
12 (2007) (citing *Evans v. Griswold*, 129 Idaho 902, 905, 935 P.2d 165, 168 (1997)). In construing
13 the facts, the court normally must draw all reasonable inferences in a light most favorable to the
14 non-moving party. *Mackay v. Four Rivers Packing Co.*, 145 Idaho 408, 410, 179 P.3d 1064,
15 1066 (2008). If reasonable people can reach different factual conclusions, then the motion must
16 be denied. *Ashby v. Hubbard*, 100 Idaho 67, 69, 593 P.2d 402, 404 (1979). “Once the moving
17 party establishes the absence of a genuine issue of material fact, the burden shifts to the non-
18 moving party to show that a genuine issue of material fact does exist.” *Kiebert v. Goss*, 144
19 Idaho 225, 227, 159 P.3d 862, 864 (2007).
20
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1 Where “the party moving for summary judgment will not carry the burden of production
2 or proof at trial, the genuine issue of material fact burden may be met by establishing the
3 absence of evidence on an element that the non-moving party will be required to prove at trial.”
4 *Heath v. Honker's Mini-Mart, Inc.*, 134 Idaho 711, 712, 8 P.3d 1254, 1255 (Ct. App. 2000).
5 “Such an absence of evidence may be established either by an affirmative showing with the
6 moving party's own evidence or by a review of all the nonmoving party's evidence and the
7 contention that such proof of an element is lacking.” *Id.* (citing *Dunnick v. Elder*, 126 Idaho
8 308, 311, 882 P.2d 475, 478 (Ct.App.1994); *see also, Withers v. Bogus Basin Recreational*
9 *Ass'n, Inc.*, 144 Idaho 78, 80, 156 P.3d 579, 581 (2007) (quoting *Baxter v. Craney*, 135 Idaho
10 166, 170, 16 P.3d 263, 267 (2000)).
11

12 Once such an absence of evidence has been established, the burden then shifts to the
13 party opposing the motion to establish, through admissible evidence, that there is indeed a
14 genuine issue for trial. In opposing summary judgment, the non-moving party “must respond to
15 the summary judgment motion with specific facts showing there is a genuine issue for trial.”
16 *Brown v. City of Pocatello*, 148 Idaho 802, 806, 229 P.3d 1164, 1166 (2010) (quoting *Tuttle v.*
17 *Sudenga Indus., Inc.*, 125 Idaho 145, 150, 868 P.2d 473, 478 (1994)). “[A] mere scintilla of
18 evidence or only slight doubt as to the facts is insufficient to withstand summary judgment;
19 there must be sufficient evidence upon which a jury could reasonably return a verdict resisting
20 the motion.” *Id.* (quoting *Harpole v. State*, 131 Idaho 437, 439, 958 P.2d 594, 596 (1998)).
21
22
23

1 **B. Insurance Coverage and Exclusions**

2 In the absence of any ambiguity in the language, the burden is on the insured to
3 demonstrate that a loss is within the general coverage provision of an insurance contract.
4 *Buckley v. Orem*, 112 Idaho 117, 122, 730 P.2d 1037, 1042 (Ct.App.1986). If a loss is
5 covered, the insurer bears the burden to show that an exclusion applies. *Id. See also Perry v.*
6 *Farm Bureau Mut. Ins. Co. of Idaho*, 130 Idaho 100, 103, 936 P.2d 1342, 1345 (1997).

7 **Discussion and Analysis**

8 The Dwelling Policy has several coverages including Coverage A – Dwelling, which
9 provides insurance as follows:

10 We cover:

- 11
- 12 1. The dwelling on the Described Location³ shown in the Declarations for
13 dwelling purposes, including structures attached to the dwelling: . . .

14 Pg. 3 of Policy Packet. The Dwelling Policy provides for insurance as follows:

15 We insure against risk of direct loss to property described in Coverage A . . .
16 only if that loss is a physical loss to property . . .

17 Dwelling Policy at pg. 5. Fisher argues she is entitled to summary judgment that the direct loss
18 to her residence is a covered event under the insurance policy. Garrison offers no opposition to
19 this argument.⁴ The Court has reviewed the above provisions of the Dwelling Policy, and finds

20

21 ³ The Dwelling Policy defines the Described Location as “2510 N. 34th Street, Boise, Ada, ID 83703-5528”, which
22 is the address of Fisher’s property.

23 ⁴ Garrison essentially admits that there is coverage by stating: “The only dispute is whether coverage for the
24 claimed loss is precluded under any exclusions contained in the Policy.” Memorandum in Support of Defendant’s
25 Motion for Summary Judgment and in Opposition to Plaintiff’s Motion for Partial Summary Judgment at p. 8.

1 that the language is unambiguous. There is no genuine issue of any material fact; the direct loss
2 to the residence is a loss covered by the policy. The Court will grant partial summary to Fisher
3 as to this issue.

4 As explained above, if the loss is covered, the burden shifts to the insurer to
5 demonstrate that an exclusion applies. Garrison asserts that coverage is excluded based upon
6 two (2) of the General Exclusions in the Dwelling Policy. General Exclusion 1.c. provides as
7 follows:

- 8
- 9 1. We do not insure for loss caused directly or indirectly by any of the
10 following. Such loss is excluded regardless of any other cause or event
11 contributing concurrently or in any sequence to the loss.

12 h. Intentional Loss, meaning any loss arising out of any act committed:

- 13
- 14 (1) by or at the direction of you . . .
 - 15 (2) with the intent to cause a loss.

16 Dwelling Policy at pp. 7-8. This will be referred to herein as the “intentional loss” exclusion.

17 General Exclusion 2.h. provides as follows:

- 18
- 19 2. We do not insure for loss to property described in Coverage . . . A . . .
20 caused by any of the following. . . .

21 c. Faulty, inadequate or defective; . . .

- 22
- 23 (2) design, specifications, workmanship, repair, construction, renovation,
24 remodeling, grading, compaction; . . .

25 of part or all of any property whether on or off the Described Location.

Dwelling Policy at P. 8. This will be referred to herein as the “faulty, inadequate or
defective work” exclusion.

1 **A. The intentional loss exclusion.**

2 Fisher argues that Reynosa demolished the house without her knowledge or approval,
3 and, for that reason, the intentional loss exclusion does not apply. Fisher claims she understood
4 Reynosa intended only minor and cosmetic improvements and Fisher asserts that she had no
5 knowledge that Reynosa intended to destroy the home and she did not authorize its destruction.
6 Fisher claims Reynosa promised to rebuild the house, and she relied on this promise until
7 Reynosa walked away from the residence. Fisher argues that she had no choice but to agree to
8 permit Reynosa to rebuild the house because she had a duty to mitigate or minimize the
9 insurance loss by permitting Reynosa to rebuild the residence.⁵
10

11 Garrison argues the evidence demonstrates the loss was caused by activities which were
12 authorized by Fisher. In support of this argument, Garrison cites to the following facts:

- 13 1. Fisher's agreement with Reynosa permitted Reynosa to construct
14 improvements to the residence.
- 15 2. The loss occurred, and Fisher had direct knowledge of the loss, within 60
16 days of the commencement of Reynosa's lease in 2012.
- 17 3. Fisher did not submit a claim at the time she learned of the loss in 2012.
18

19 Fisher did not submit a claim of loss until September 27, 2013, after
20

21

22 ⁵ The policy requires the insured to give "prompt notice" of any loss, protect the property from further loss and
23 make "reasonable and necessary" repairs to the property. Dwelling Policy at p. 8, Conditions 4. These duties were
24 not addressed in the cross motions for summary judgment but were raised in the Answer as Affirmative Defenses.
25 Answer to Amended Complaint at p. 7, Fifth, Sixth, Seventh and Eighth Affirmative Defenses.

1 Reynosa abandoned the project. The claim of loss was submitted
2 approximately 16 months after Fisher became aware of the loss. Answer to
3 Complaint at p. 4, ¶ 14.⁶

- 4 4. Fisher consented to Reynosa's plan to rebuild the residence.
5 5. While Reynosa was rebuilding the residence, Fisher remained in regular
6 contact with Reynosa about the progress of the construction activities

7 Memorandum in Support of Defendant's Motion for Summary Judgment and in Opposition to
8 Plaintiff's Motion for Partial Summary Judgment at pp. 3-5. Garrison argues these facts
9 support only one inference: that the demolition of the residence and subsequent construction
10 activities were done with the knowledge and consent of Fisher. As a result, Garrison argues
11 that the loss was caused directly or indirectly by activities authorized by Fisher and is excluded
12 by the intentional loss exclusion.
13

14 Viewing this evidence in the light most favorable to Fisher, and drawing all inferences
15 in favor of Fisher, the Court concludes that whether Reynosa's activities were authorized by
16 Fisher presents genuine issues of material fact which preclude summary judgment on the issue
17 of whether the intentional loss exclusion applies. Accordingly, the Court will deny summary
18 judgment on whether the intentional loss exclusion applies.
19
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22
23 ⁶ "... [Garrison] admits that a letter from [Fisher's counsel] dated September 27, 2013, was mailed to [Garrison] and admits that in a letter dated December 5, 2013, Garrison Property and Casualty Insurance Company disclaimed coverage for the loss."

1 However, in this case the alterations were undertaken without authorization and
2 in direct conflict with the terms of the lease, and therefore fall outside the
 exclusion of the policy.

3 *Husband v. Lafayette Ins. Co.*, 635 So. 2d 309, 311 (La. Ct. App. 1994).⁷ In her supplemental
4 brief, Fisher cites to two additional (2) cases which cite to and relied on the reasoning of
5 *Husband: Fidelity Coop. Bank v. Nova Cas. Co.*, 726 F.2d 31, 318 (1st Cir. 2013) and *11 Essex*
6 *St. Corp. v. Tower Ins. Co. of New York*, 2005 N.Y. Misc. LEXIS 3556, 234 N.Y.L.J. 115
7 (S.Ct. N.Y. 2005).

9 In *Home Savings of America*, the mortgagee was a named insured in the owners'
10 homeowner's policy. The owners conveyed the property to an entity controlled by a family
11 trust without the knowledge of the mortgagee. The new owner demolished the residence as part
12 of a plan to construct new townhomes. The original owners defaulted. The mortgagee did not
13 learn of the demolition of the property until the default. The mortgagee foreclosed resulting in
14 a deficiency judgment. The owner made a claim for the foreclosure deficiency under the
15 homeowner's policy which was denied. The mortgagee filed an action against the insurer. The
16 trial court found for the insurer. Much of the *Home Savings of America* appeal decision relates
17 to a discussion of the rights of a mortgagee named as insured, an issue not presented in this
18 case. The insurance policy also contained a faulty, inadequate or defective work exclusion that
19

21
22 ⁷ The appellate court also discussed another provision which referred to the phrase "ensuing loss". Unfortunately,
23 the court did not quote any part of the provision, so it is difficult to determine whether this was significant. While
24 the appellate court agreed with the trial court that this phrase was ambiguous, the correctness of the conclusion that
25 the phrase was ambiguous was not part of the decision. *Id.* at 312.

1 appears very similar or identical to the provision in Fisher's Dwelling Policy. The appellate
2 court relied on a number of automobile insurance cases and ruled as follows:

3 Viewing the Continental policy's faulty construction exclusion in light of the
4 automobile arson cases, we conclude the faulty construction exclusion is
5 insufficient to preclude Home Savings's recovery as mortgagee for a third party's
6 intentional demolition of the insured residence. Just as several courts have
7 concluded that simply excluding acts of conversion is insufficient to exclude the
insured's intentional arson of a secured automobile, we find that simply
excluding damages flowing from faulty construction is insufficient to exclude
the loss caused by a third party's intentional demolition of a secured residence.

8 *Id.* at 854. The court found that the faulty, inadequate or defective work exclusion would not
9 preclude coverage for a named insured mortgagee who had no role in the demolition or
10 subsequent remodeling activities.

11 Garrison argues there is no coverage for the loss because the loss resulted from
12 Reynosa's faulty, inadequate or defective work which was authorized and approved by Fisher.
13 As discussed above, Fisher asserts that she did not authorize or approve the decision to
14 demolish the entire residence. However, once the house was destroyed, Garrison concedes that
15 she agreed with Reynosa's plans to rebuild because she felt she had no real choice.
16

17 Garrison cites to a California appellate decision which upheld the faulty, inadequate or
18 defective work exclusion where the insured knew about remodeling activities and approved.
19 *Wilson v. Farmers Ins. Exch.*, 102 Cal.App.4th 1171, 126 Cal.Reptr.2d 305 (2002). In *Wilson*,
20 the seller/mortgagee of a house authorized renovations which the buyer never completed,
21 resulting in a loss in the value of the property. The seller/mortgagee was a named insured in the
22 homeowner's insurance policy. The appellate court denied coverage on the basis of a faulty,
23

1 inadequate or defective work exclusion because the mortgagee authorized the work.⁸ The court
2 stated: “An unfinished renovation or remodeling project that leaves the house in disrepair is
3 plainly “inadequate.” *Wilson v. Farmers Ins. Exch.*, 102 Cal. App. 4th 1171, 1174, 126 Cal.
4 Rptr. 2d 305, ___ (2002).

5 In its supplemental brief, Garrison cites to additional cases in which courts have
6 declined coverage on the basis of a faulty, inadequate or defective work exclusion regardless of
7 whether the insured had any involvement in or consented to the work. *See, Stephens v. Liberty*
8 *Mutual*, 2008 WL 480287 (N.D. Ca. 2008); and *Capelouto v. Valley Forge Ins. Co.*, 990 P.2d.
9 414, 98 Wash.App. 7 (1999). In *Stephens*, the insureds owned a building which was damaged
10 by the demolition of an adjacent building and construction of a new structure on the adjacent
11 property. The insureds had no role in the demolition or construction activities. The insureds
12 made a claim under the property insurance which was denied. The insured filed suit. It appears
13 the policy contained a faulty, inadequate or defective work exclusion provision that is identical
14 to the provision in Fisher’s Dwelling Policy. The court found the language of the faulty,
15 inadequate or defective work exclusion provision was clear and unambiguous. The exclusion
16 applied to any and all faulty, inadequate or defective work, and it was not relevant whether the
17 insured had any involvement in the work. The court granted summary judgment for the insurer.
18
19 *Id.* at *16. The court was aware of the ruling in *Wilson*, above, and determined that the
20 reasoning of *Wilson* was not supported by the unambiguous language of the exclusion.
21
22

23 ⁸ The precise language of the exclusion is not set forth in the opinion, but it appears similar to the provision here.

1 In *Capelouto*, the insured owned a commercial building that was damaged by sewage
2 introduced into his building by an inadequate pump installed on a portion of the sewer system
3 about 110 feet from the insured's property. The insured had no role in the repair or
4 maintenance of the sewer line. The insurer denied the claim for loss, in part, relying on the
5 faulty, inadequate or defective work exclusion provision in the insurance policy, which appears
6 identical to the provision in this case. The court found the provision unambiguous and
7 excluded coverage for inadequate repair or maintenance work. The fact that the owner did not
8 have any involvement in the activity which caused the damage was not a factor in the court's
9 reasoning.
10

11 In this case, the Court has considered the language of the faulty, inadequate or defective
12 work exclusion, and finds that the language is clear and unambiguous. There is an exclusion
13 for any loss attributable to faulty, inadequate or defective work. The Court finds that the loss
14 here was caused directly by faulty inadequate or defective work as set forth in the exclusion.
15 The policy excludes coverage for any and all faulty, inadequate and/or defective work.
16

17 The conclusion that the faulty, inadequate or defective work exclusion provision is
18 unambiguous is further supported by reviewing the language of the intentional loss provision.
19 In that exclusion, whether an intentional loss was excluded depended expressly upon whether
20 the loss arose out of an act committed "by or at the direction of the [insured]". The faulty,
21 inadequate or defective work exclusion provision makes no mention of whether the work
22 activity was done by or at the direction of the insured. The presence of this language in one
23

1 exclusion and the absence of this language in another exclusion is telling. The absence of this
2 language supports the conclusion that the policy did not intend to condition the faulty,
3 inadequate or defective work exclusion on whether any work was undertaken by or on behalf of
4 the insured.

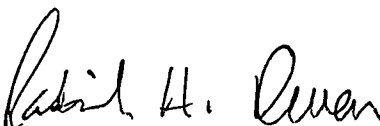
5 The Court concludes that there is no genuine issue of material fact as to whether the
6 faulty, inadequate or defective work exclusion applies; it does. Accordingly, the Court will
7 grant summary judgment to Garrison on this issue.

8 **Conclusion**

9
10 Fisher has demonstrated that the direct loss was covered under the policy. Garrison has
11 shown that the faulty, inadequate or defective work exclusion applies to Reynosa's incomplete
12 construction work. The Court has found that there are genuine issues of material fact as to
13 whether the intentional loss exclusion applies.

14 IT IS SO ORDERED.

15 Dated this 25 day of February, 2016.

16
17 

18 PATRICK H. OWEN
19 District Judge

CERTIFICATE OF MAILING

I, Christopher D. Rich, the undersigned authority, do hereby certify that I have mailed, by United States Mail, a true and correct copy of the within instrument as notice pursuant to Rule 77(d) I.R.C.P. to each of the attorneys of record or parties in this cause in envelopes addressed as follows:

JAMES GARRISON REID
KAUFMAN REID, PLLC
1211 W. MYRTLE STREET, STE. 350
BOISE, ID 83702

CRAIG RICHARD YABUI
ELAM & BURKE, PA
PO BOX 1539
BOISE, ID 83701

CHRISTOPHER D. RICH
Clerk of the District Court
Ada County, Idaho

By: _____



Date: 2/24/16

RECEIVED
MAR 03 2016
Ada County Clerk

NO. _____ FILED
A.M. 10:40 P.M. _____

MAR 25 2016

CHRISTOPHER D. RICH, Clerk
By INGA JOHNSON
DEPUTY

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

SHAMMIE L. FISHER,

Plaintiff,

vs.

GARRISON PROPERTY AND CASUALTY
INSURANCE COMPANY,

Defendant.

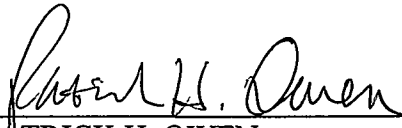
Case No. CV-OC-1508979

FINAL JUDGMENT

JUDGMENT IS ENTERED AS FOLLOWS:

Plaintiff's Amended Complaint and Demand for Jury Trial is dismissed with prejudice.

DATED this 25 day of March, 2016.



PATRICK H. OWEN
District Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 25 day of March, 2016, I caused a true and correct copy of the above and foregoing instrument to be served upon the following in the manner indicated below:

James G. Reid
Jennifer Reid Mahoney
KAUFMAN REID, PLLC
1211 W. Myrtle St., Ste. 350
Boise, Idaho 83702

- U.S. Mail
- Hand Delivery
- Federal Express
- Via Facsimile

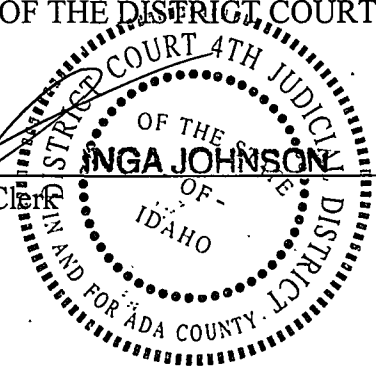
Craig R. Yabui
ELAM & BURKE, P.A.
P.O. Box 1539
Boise, Idaho 83701

- U.S. Mail
- Hand Delivery
- Federal Express
- Via Facsimile

CHRISTOPHER D. RICH

CLERK OF THE DISTRICT COURT

By: _____
Deputy Clerk



4832-7234-2318, v. 1

JAMES G. REID, ISB # 1372
JENNIFER REID MAHONEY, ISB # 5207
KAUFMAN REID, PLLC
1211 W. Myrtle St., Suite 350
Boise, Idaho 83702
Telephone: (208) 342-4591
Facsimile: (208) 342-4657
E-mail: jreid@krlawboise.com

NO. _____
A.M. _____ FILED P.M. 402

APR 13 2016

CHRISTOPHER D. RICH, Clerk
By STEPHANIE VIDAOK
DEPUTY

Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

SHAMMIE L. FISHER;

Plaintiff/Appellant,

vs.

**USAA CASUALTY INSURANCE
COMPANY;**

Defendant/Respondent.

Case No. CV OC 1508979

NOTICE OF APPEAL

TO: THE ABOVE-NAMED RESPONDENT, USAA CASUALTY INSURANCE COMPANY, AND THE PARTY'S ATTORNEY, AND THE CLERK OF THE ABOVE-TITLED COURT.

NOTICE IS HEREBY GIVEN THAT:

1. The above-named Appellant, Shammie L. Fisher, appeals against the above-named Respondent to the Idaho Supreme Court from the Final Judgment entered in the above titled action on the 25th day of March, 2016, Honorable Judge Patrick H. Owen presiding.
2. The appeal is on both issues of law and fact
3. The Appellant is represented by James G. Reid and Jennifer Reid Mahoney of

Kaufman Reid, PLLC, 1211 W. Myrtle, Suite 350, Boise, Idaho 83702, Telephone: 208-342-4591, email: jreid@krlawboise.com and jmahoney@krlawboise.com .

4. The Respondent is represented by Matthew L. Walters and Craig R. Yabui of Elam & Burke, P.A., 251 E. Front Street, Suite 300, Boise, Idaho 83702, Telephone: 208-343-5454, email: mlw@elamburke.com and cry@elamburke.com .

5. The party has a right to appeal to the Idaho Supreme Court, and the Judgment described in paragraph 1 above is appealable under and pursuant to Rule 11(a)(1), I.A.R.

6. Appellant provides the following as a preliminary statement of the issues on appeal; provided, any such list of issues on appeal shall not prevent the Appellant from asserting other issues on appeal:

(a) Did the District Court err when it determined that the insurance policy did not provide insurance coverage for Plaintiff's claimed losses to real and personal property.

7. Appellant is not aware of any transcript from any hearings having been prepared and no transcripts are requested.

8. The Appellant requests the following documents to be included in the Clerk's record in addition to those automatically included in the Clerk's record pursuant to Rule 28 I.A.R.:

(a) Complaint;

(b) Answer to Complaint and Demand for Jury Trial;

(c) Order Granting Motion to File Amended Complaint;

(d) Amended Complaint and Demand for Jury Trial;

(e) Answer (Yabui for Garrison Property);

(f) Motion for Partial Summary Judgment;

(g) Affidavit of Shammie L. Fisher in Support of Motion for Partial Summary Judgment;

- (h) Memorandum in Support of Motion for Partial Summary Judgment;
- (i) Defendant's Motion for Summary Judgment;
- (j) Affidavit of Craig R. Yabui in Support of Defendant's Motion for Summary Judgment;
- (k) Memorandum in Support of Defendant's Motion for Summary Judgment and in Opposition to Plaintiff's Motion for Partial Summary Judgment;
- (l) Memorandum in Opposition to Defendant's Motion to Summary Judgment;
- (m) Reply Memorandum in Support of Defendant's Motion for Summary Judgment;
- (n) Request for Additional Briefing;
- (o) Defendant's Additional Briefing re Motion for Summary Judgment;
- (p) Supplemental Memorandum re Motions for Summary Judgment;
- (q) Memorandum Decision and Order re Cross Motions for Summary Judgment; and
- (r) Final Judgment.
- (s) All pleadings, including Court's Memorandum Decision dated February 25, 2016.

9. I certify:

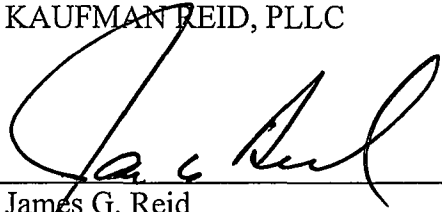
- (a) That a copy of this Notice of Appeal has been served on the reporter.
- (b) That the estimated fee for preparation of the Clerk's record will be paid within the time required by rule after notice to Appellant of the amount of the estimated fee.
- (c) That the Appellate filing fee has been paid.
- (d) That service has been made upon all parties required to be served pursuant to Rule

20.

Dated this 13th day of April, 2016.

KAUFMAN REID, PLLC

By: _____


James G. Reid
Attorneys for Defendant

CERTIFICATE OF SERVICE

I hereby certify that on the 13th day of April, 2016, a true and correct copy of the foregoing was served upon all parties listed below by:

Matthew L. Walters
Craig R. Yabui
Elam & Burke, P.A.
251 East Front Street, Suite 300
P.O. Box 1539
Boise, ID 83701

U.S. Mail, Postage Prepaid
 Overnight Delivery
 Hand Delivery
 Facsimile, 208-384-5844
 Electronic Mail
mlw@elamburke.com
cry@elamburke.com



James G. Reid

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May 3, 2016 5:22:03 PM MDT

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MAY 04 2016

CHRISTOPHER D. RICH, Clerk
By SARAH TAYLOR
DEPUTY

JAMES G. REID, ISB # 1372
JENNIFER REID MAHONEY, ISB # 5207
KAUFMAN REID, PLLC
1211 W. Myrtle St., Suite 350
Boise, Idaho 83702
Telephone: (208) 342-4591
Facsimile: (208) 342-4657
E-mail: jreid@krlawboise.com

Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

SHAMMIE L. FISHER;

Plaintiff/Appellant,

vs.

GARRISON PROPERTY AND
CASUALTY INSURANCE COMPANY;

Defendant/Respondent.

Case No. CV OC 1508979

AMENDED NOTICE OF APPEAL

TO: THE ABOVE-NAMED RESPONDENT, GARRISON PROPERTY AND
CASUALTY INSURANCE COMPANY, AND THE PARTY'S ATTORNEY, AND
THE CLERK OF THE ABOVE-TITLED COURT.

NOTICE IS HEREBY GIVEN THAT:

1. The above-named Appellant, Shammie L. Fisher, appeals against the above-named Respondent to the Idaho Supreme Court from the Final Judgment entered in the above titled action on the 25th day of March, 2016, Honorable Judge Patrick H. Owen presiding.
2. The appeal is on both issues of law and fact
3. The Appellant is represented by James G. Reid and Jennifer Reid Mahoney of

Kaufman Reid, PLLC, 1211 W. Myrtle, Suite 350, Boise, Idaho 83702, Telephone: 208-342-4591, email: jreid@krlawboise.com and jmahoney@krlawboise.com .

4. The Respondent is represented by Matthew L. Walters and Craig R. Yabui of Elam & Burke, P.A., 251 E. Front Street, Suite 300, Boise, Idaho 83702, Telephone: 208-343-5454, email: mlw@elamburke.com and cry@elamburke.com .

5. The party has a right to appeal to the Idaho Supreme Court, and the Judgment described in paragraph 1 above is appealable under and pursuant to Rule 11(a)(1), I.A.R.

6. Appellant provides the following as a preliminary statement of the issues on appeal; provided, any such list of issues on appeal shall not prevent the Appellant from asserting other issues on appeal:

(a) Did the District Court err when it determined that the insurance policy did not provide insurance coverage for Plaintiff's claimed losses to real and personal property.

7. Appellant is not aware of any transcript from any hearings having been prepared and no transcripts are requested.

8. The Appellant requests the following documents to be included in the Clerk's record in addition to those automatically included in the Clerk's record pursuant to Rule 28 I.A.R.:

- (a) Complaint;
- (b) Answer to Complaint and Demand for Jury Trial;
- (c) Order Granting Motion to File Amended Complaint;
- (d) Amended Complaint and Demand for Jury Trial;
- (e) Answer (Yabui for Garrison Property);
- (f) Motion for Partial Summary Judgment;
- (g) Affidavit of Shammie L. Fisher in Support of Motion for Partial Summary Judgment;

- (h) Memorandum in Support of Motion for Partial Summary Judgment;
- (i) Defendant's Motion for Summary Judgment;
- (j) Affidavit of Craig R. Yabui in Support of Defendant's Motion for Summary Judgment;
- (k) Memorandum in Support of Defendant's Motion for Summary Judgment and in Opposition to Plaintiff's Motion for Partial Summary Judgment;
- (l) Memorandum in Opposition to Defendant's Motion to Summary Judgment;
- (m) Reply Memorandum in Support of Defendant's Motion for Summary Judgment;
- (n) Request for Additional Briefing;
- (o) Defendant's Additional Briefing re Motion for Summary Judgment;
- (p) Supplemental Memorandum re Motions for Summary Judgment;
- (q) Memorandum Decision and Order re Cross Motions for Summary Judgment; and
- (r) Final Judgment.
- (s) All pleadings, including Court's Memorandum Decision dated February 25, 2016.

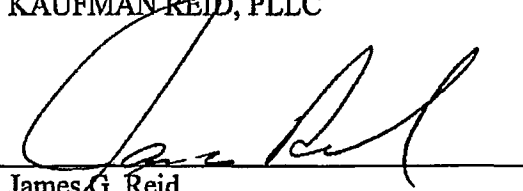
9. I certify:

- (a) That a copy of this Notice of Appeal has been served on the reporter.
- (b) That the estimated fee for preparation of the Clerk's record will be paid within the time required by rule after notice to Appellant of the amount of the estimated fee.
- (c) That the Appellate filing fee has been paid.
- (d) That service has been made upon all parties required to be served pursuant to Rule

20.

Dated this 3rd day of May, 2016.

KAUFMAN REID, PLLC


By: 
James G. Reid
Attorneys for Defendant

CERTIFICATE OF SERVICE

I hereby certify that on the 3rd day of May, 2016, a true and correct copy of the foregoing was served upon all parties listed below by:

Matthew L. Walters
Craig R. Yabui
Elam & Burke, P.A.
251 East Front Street, Suite 300
P.O. Box 1539
Boise, ID 83701

U.S. Mail, Postage Prepaid
 Overnight Delivery
 Hand Delivery
 Facsimile, 208-384-5844
 Electronic Mail
mlw@elamburke.com
cry@elamburke.com


James G. Reid

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

SHAMMIE L. FISHER,

Plaintiff-Appellant,
vs.

GARRISON PROPERTY AND
CASUALTY INSURANCE COMPANY,

Defendant-Respondent.

Supreme Court Case No. 44117

CERTIFICATE OF EXHIBITS

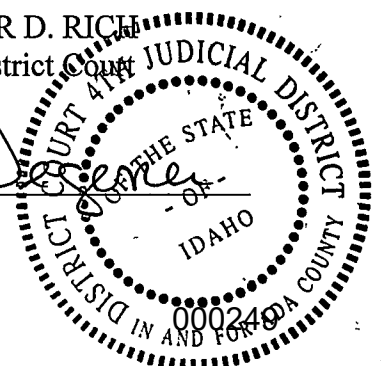
I, CHRISTOPHER D. RICH, Clerk of the District Court of the Fourth Judicial District of the State of Idaho in and for the County of Ada, do hereby certify:

There were no exhibits offered for identification or admitted into evidence during the course of this action.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the said Court this 20th day of May, 2016.

CHRISTOPHER D. RICH
Clerk of the District Court

By *K. W. Jensen*
Deputy Clerk



CERTIFICATE OF EXHIBITS

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

SHAMMIE L. FISHER,

Plaintiff-Appellant,
vs.

GARRISON PROPERTY AND
CASUALTY INSURANCE COMPANY,

Defendant-Respondent.

Supreme Court Case No. 44117

CERTIFICATE OF SERVICE

I, CHRISTOPHER D. RICH, the undersigned authority, do hereby certify that I have personally served or mailed, by either United States Mail or Interdepartmental Mail, one copy of the following:

CLERK'S RECORD

to each of the Attorneys of Record in this cause as follows:

JAMES G. REID
JENNIFER REID MAHONEY

ATTORNEY FOR APPELLANT

BOISE, IDAHO

MATTHEW L. WALTERS
CRAIG R. YABUI

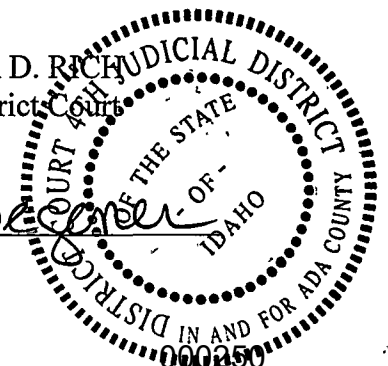
ATTORNEY FOR RESPONDENT

BOISE, IDAHO

Date of Service: MAY 20 2016

CHRISTOPHER D. RICH
Clerk of the District Court

By *K. Wagner*
Deputy Clerk



CERTIFICATE OF SERVICE

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

SHAMMIE L. FISHER,

Plaintiff-Appellant,

vs.

GARRISON PROPERTY AND
CASUALTY INSURANCE COMPANY,

Defendant-Respondent.

Supreme Court Case No. 44117

Supreme Court Case No. ^

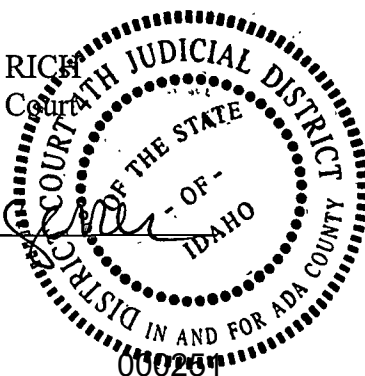
CERTIFICATE TO RECORD

I, CHRISTOPHER D. RICH, Clerk of the District Court of the Fourth Judicial District of the State of Idaho, in and for the County of Ada, do hereby certify that the above and foregoing record in the above-entitled cause was compiled under my direction and is a true and correct record of the pleadings and documents that are automatically required under Rule 28 of the Idaho Appellate Rules, as well as those requested by Counsel.

I FURTHER CERTIFY, that the Notice of Appeal was filed in the District Court on the 13th day of April, 2016.

CHRISTOPHER D. RICH
Clerk of the District Court

By *K. Weir*
Deputy Clerk



CERTIFICATE TO RECORD