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IN THE FIFTH JUDICIAL DISTRICT COURT FOR WASHINGTON COUNTY

STATE OF UTAH

In the Matter of the Marriage of
HOLLY BURNINGHAM, Petitioner,
and
ACEY ORTON BURNINGHAM,
Respondent.

DECREE OF DIVORCE

Civil No. 234500624

Judge Jay Winward

The above-captioned matter was submitted to the Court for entry of a Decree of Divorce without a hearing, pursuant to Rule 104 of the Utah Rules of Civil Procedure. The Court, having reviewed the Stipulated Settlement Agreement executed by the parties, entered the Findings of Fact and Conclusions of Law, the Court now ORDERS, ADJUDGES AND DECREES as follows:

1. The parties have experienced difficulties and differences that cannot be reconciled and that have prevented the parties from pursuing a viable marriage relationship. The parties are awarded a divorce on the grounds of irreconcilable differences.

CHILDREN

2. As issue of their marriage, the parties are parents of two minor children, R.B. born September 2006 and M.B. born May 2015. No other children are expected.

CUSTODY AND PARENT-TIME

3. Petitioner and Respondent are awarded joint legal and physical custody of the children, pursuant to the parenting plan set forth below.

4. The parties shall share parent-time on an alternating week-on/week-off basis, from Sunday at 7:00 PM, to the following Sunday at 7:00 PM. So long as the Respondent continues to reside in the marital residence, Respondent's residence shall be designated as the children's primary residence. Notwithstanding the same, both parties will take the oldest child's age and preferences as it relates to her parent-time schedule into consideration (*i.e.* Petitioner will not force the child to follow the week-on-week-off schedule).

5. The parties shall enjoy parent-time with the minor children on designated holidays in accordance with Utah Code Ann. § 30-3-35(13), as amended, as set forth in the table below, or as the parties may agree.

HOLIDAY	PETITIONER	RESPONDENT
Dr. Martin Luther King, Jr. Day (1) Holiday begins Friday at: (a) 9 a.m. if school is not in session and the parent can be with the child; (b) the time that school is regularly dismissed; or (c) 6 p.m. at the election of the parent granted the holiday. (2) Holiday ends at 7 p.m. on the day before school resumes.	Even-numbered years	Odd-numbered years
President's Day (1) Holiday begins Friday at: (a) 9 a.m. if school is not in session and the parent can be with the child;	Odd-numbered years	Even-numbered years

(b) the time that school is regularly dismissed; or (c) 6 p.m. at the election of the parent granted the holiday. (2) Holiday ends at 7 p.m. on the day before school resumes.		
Spring Break (1) Holiday begins at 6 p.m. on the day that school dismisses for spring break. (2) Holiday ends at 7 p.m. on the day before school resumes.	Even-numbered years	Odd-numbered years
Memorial Day (1) Holiday begins Friday at: (a) 9 a.m. if school is not in session and the parent can be with the child; (b) the time that school is regularly dismissed; or (c) 6 p.m. at the election of the parent granted the holiday. (2) Holiday ends at 7 p.m. on the day before school resumes.	Odd-numbered years	Even-numbered years
Independence Day (1) Holiday begins on July 3rd at 6 p.m. (2) Holiday ends on July 5th at 6 p.m.	Even-numbered years	Odd-numbered years
Pioneer Day (1) Holiday begins on July 23rd at 6 p.m. (2) Holiday ends on July 25th at 6 p.m.	Odd-numbered years	Even-numbered years
Labor Day (1) Holiday begins on Friday at: (a) 9 a.m. if school is not in session and the parent can be with the child; (b) the time that school is regularly dismissed; or (c) 6 p.m. at the election of the parent granted the holiday. (2) Holiday ends at 7 p.m. on the day before school resumes.	Even-numbered years	Odd-numbered years
Columbus Day (1) Holiday begins at 6 p.m. on the day before Columbus Day. (2) Holiday ends at 7 p.m. on Columbus Day.	Odd-numbered years	Even-numbered years
Fall Break (1) Holiday begins at 6 p.m. on the day	Even-numbered years	Odd-numbered years

school is dismissed for fall break. (2) Holiday ends at 7 p.m. on the day before school resumes.		
Halloween (1) Holiday begins on October 31st or the day that Halloween is traditionally celebrated in the local community: (a) at the time that school is dismissed; or (b) at 4 p.m. if there is no school. (2) Holiday ends at 9 p.m. on the same day the holiday begins.	Odd-numbered years	Even-numbered years
Veterans Day (1) Holiday begins at 6 p.m. on the day before Veterans Day. (2) Holiday ends at 7 p.m. on Veterans Day.	Even-numbered years	Odd-numbered years
Thanksgiving (1) Holiday begins on Wednesday at: (a) 6 p.m.; or (b) the time school is regularly dismissed for Thanksgiving at the election of the parent granted the holiday. (2) Holiday ends at 7 p.m. on the night before school resumes.	Odd-numbered years	Even-numbered years
Winter Break (First Half) (1) Holiday begins at: (a) 6 p.m. on the day on that school dismisses for winter break; or (b) the time school is regularly dismissed on the day that school dismisses for winter break at the election of the parent granted the holiday. (2) Holiday ends on December 27 th at 7 p.m.	Even-numbered years	Odd-numbered years
Winter Break (Second Half) (1) Holiday begins on December 27 th at 7 p.m. (2) Holiday ends at 7 p.m. on the night before school resumes.	Odd-numbered years	Even-numbered years
Day of Child's Birthday (1) Holiday begins at 3 p.m. (2) Holiday ends at 9 p.m.	Even-numbered years	Odd-numbered years
Day Before or After Child's Birthday (1) Holiday begins at 3 p.m. (2) Holiday ends at 9 p.m.	Odd-numbered years	Even-numbered years

Mother's Day (1) Holiday begins on Mother's Day at 9 a.m. (2) Holiday ends on Mother's Day at 7 p.m.	Every Year	
Father's Day (1) Holiday begins on Father's Day at 9 a.m. (2) Holiday ends on Father's Day at 7 p.m.		Every Year

The above holiday schedule shall take priority over the parties' regular parent-time schedule as set forth above.

6. The parties shall have extended parent-time with the children during the summer as they may agree, subject to each party having 50% of the summer, with each party having a two-week period of uninterrupted time for vacations, alternating first preference for said vacation timeframes. Respondent shall have the preference in odd-numbered years and Petitioner in even-numbered years. The electing party shall designate his or her proposed uninterrupted vacation time by April 1st of that year or forfeit his or her right for the preference. The second party shall have until April 15th.

7. The parties shall allow telephone and virtual parent-time with the minor children in accordance with Utah Code Ann. § 30-3-35(11), as amended, and as modified below:

- a. Telephone contact should be at reasonable hours and for a reasonable duration. To the extent the children have a cell phone, the parties will allow the children to keep their phone in their possession, except to enforce reasonable restrictions on said use, and will not confiscate the same.
- b. Virtual parent-time, if the equipment is reasonably available, should be at reasonable hours and for reasonable duration.

CHILD SUPPORT

8. Neither party is awarded child support in light of the custody awards herein.

PARENTING PLAN

9. The parties shall abide by the parenting plan set forth herein, submitted here in good faith.

10. Special consideration shall be given by each party to make the children available to attend family functions including funerals, weddings, family reunions, religious holidays, important ceremonies, and other significant events in the life of the children or in the life of either party which may inadvertently conflict with the parent-time schedule.

11. Both parties shall notify one another within 48 hours of receiving notice of all significant school, social, sports, and community functions in which the children are participating or being honored, and both parties shall be entitled to attend and participate fully.

12. Both parties shall have access directly to all school reports and medical records and shall notify the other party immediately in the event of a medical emergency involving the children while in their custody.

13. Each party shall provide the other with his or her current address and telephone number, email address, and other virtual parent-time access information within 24 hours of any change.

14. Although the parties are free to travel out of state with the children without getting "permission" of the other parent during their regularly scheduled parent-time, when traveling outside the state in which that party resides with the children, that parent shall provide

the other parent with (1) travel dates, (2) location(s) of where the children will be, and (3) contact information for reaching the children.

15. Day-to-day decisions regarding the care, control and discipline of the parties' children should be made by the parent with whom the children reside/are residing at the time.

16. Each party shall reasonably discuss all non-emergency health care issues for the children and other major decisions affecting the children, and any and all discretionary decisions regarding the children having a financial impact on both parties. Such financial decisions include, but are not limited to, extra-curricular activities, sports, summer activities, braces, glasses, etc. for the children.

17. Each party shall make reasonable efforts to notify one another of the children's medical and dental appointments, parent-teacher conferences, school events and performances, parent volunteer opportunities, church events and activities, and any medical or other emergencies.

18. Each party shall notify each other of any significant illness the children may have when they are at their individual homes.

19. The children shall be allowed to contact either party as they please, and neither party shall restrict the children's ability to communicate with the other parent.

20. The parties shall not expose the children to alcohol use, illegal drug use, pornography, illegal activity, or abusive relationships.

21. If the parent with residential responsibility will be absent from the children for four (4) hours or more, then that parent should offer the other parent parent-time with the

children. Family members, spouses of the parties, or other third parties approved in advance by both parties may watch the children as necessary.

22. The parties shall not disparage each other in the presence of the children, nor allow third parties to do so, and shall not discuss the divorce action or terms of the settlement or the Decree with the children.

23. The parents should mutually discuss the significant decisions regarding the children, including, but not limited to, the children's education, health care, and religious upbringing. If they cannot come to an agreement, the parties shall schedule mediation, as provided below. Either parent may make emergency decisions regarding the health or safety of the children.

24. Should either parent feel that a decision made under this parenting plan is contrary to the best interests of the children, that parent should arrange for mediation of the matter through a mutually agreed-upon mediator or mediation service before involving the court. Should the parents be unable to agree upon a mediator or mediation service, the parent requesting mediation should arrange for mediation through a court-approved mediator or mediation service. A written record should be prepared of any agreement reached in mediation and a copy provided to each parent and filed with the court. The parties shall share the costs of mediation equally.

25. The parties shall share their parenting "rules" with each other and cooperate with each other in good faith to make their parenting rules consistent with each other as much as possible, specifically with regard to curfews and similar matters. Both parties shall have access to the passwords protecting the children's electronic devices.

26. All communications about the children will be between the parties only. The parties should not use the children as messengers to communicate with each other. Unless ordered by a court, the parties should not use any third party as a messenger to communicate with each other.

27. Parent-time exchanges should take place at the curbside of the parent who then has custody of the children. The parties should be allowed to send family members to pick up or drop off the children should the need arise.

DEBT ALLOCATION

28. Each party is solely responsible for the debt associated with any property awarded to them in the Decree and indemnify and hold the other harmless therefrom.

29. Each party is responsible for any debt incurred post-filing of the divorce action and indemnify and hold the other harmless therefrom.

30. Petitioner is solely responsible for her Citi and Bank of America credit card debt; Respondent shall be solely responsible for all other marital debt, including, but not limited to the MACU debt. The parties shall indemnify and hold the other harmless with respect to these debt obligations.

PROPERTY DIVISION

31. Petitioner and Respondent own real property located at 2314 S 1880 E, Saint George, Utah 84790 (“residence”), and more particularly described as follows:

All of Lot Seven (7), SAGE HOLLOW SUBDIVISION, according to the Official Plat thereof, on file in the Office of the Recorder of Washington County, State of Utah.

Tax/Parcel ID No.: SG-SHWS-7

32. Respondent is awarded exclusive use and possession of the residence, including any and all equity and debt thereon, free and clear of any claim from Petitioner, subject to Petitioner's equity interest in the same.

33. Respondent shall pay Petitioner a total of \$189,000.00 for her equity interest as follows:

- a. \$50,000 to be paid by March 22, 2024. In the event that Respondent fails to make this payment, the residence will be immediately listed for sale with a listing agent of the Petitioner's choice. Both parties will do all that is necessary to market and show the residence as the listing agent directs. Once the residence is sold, Petitioner will be entitled to the first \$189,000.00 of the net sales proceeds and Respondent will be awarded the remaining balance;
- b. In the event that Respondent has made the above-referenced payment of \$50,000.00 by March 22, 2024, the remaining \$139,000 shall be broken up into periodic payments and paid as follows:
 - i. \$20,000 on or before June 30, 2024;
 - ii. \$20,000 on or before September 30, 2024;
 - iii. \$20,000 on or before December 31, 2024;
 - iv. \$20,000 on or before February 28, 2025;
 - v. \$20,000 on or before April 30, 2025;
 - vi. \$20,000 on or before June 30, 2025; and
 - vii. \$19,000 on or before August 30, 2025.

To secure these periodic payments, Petitioner will remain on title of the residence, unless Respondent obtains re-financing to pay Petitioner, and the refinance requires the same. In this event, Respondent shall execute a Confession of Judgment in the amount of \$139,000.00 which Petitioner may record against the residence and execute/foreclose against if any periodic payment is more than 30 days late, subject to any credits for payments made. Notwithstanding the same, should Petitioner prefer, the residence will be listed for sale at fair market price as set forth in subparagraph 35(a), and Petitioner will receive the first portion of the net sales proceeds in the amount Respondent owes the Petitioner as set forth herein under 35(a) and (b). In the event that Respondent fails to make any periodic payment, interest will accrue at the statutory rate from the date of the late or missed payment.

- c. With the exception of obtaining refinancing to retire the debt out of Petitioner's name and pay Petitioner as set forth herein, Respondent will not further encumber the residence without Petitioner's written consent.
- d. Regardless, the residence will be refinanced out of Petitioner's name on or before December 31, 2025.

34. The parties shall meet within 30 days of entry of the Decree to equitably divide all the furnishings, furniture, art, appliances, books, bedding and linens, photography, electronics, equipment, and kitchenware. In the event the parties cannot come to a final agreement regarding the division of personal property, they will submit the matter for judicial determination.

35. Respondent is awarded:

- a. the ski boat;
- b. the houseboat share;
- c. Buick Riviera (inherited property);
- d. his share of the Panguitch lot (inherited property);
- e. the five horses; and,
- f. the motorcycles.

36. All debt associated with any of the property awarded to the Respondent herein, shall be refinanced or retired out of Petitioner's name on or before December 31, 2025. In the event that Respondent is ever more than 30 days late on a payment associated with any of the debt in her name, and said default is not timely cured pursuant to the terms of the applicable loan documents, Petitioner will be allowed to take possession of the property encumbered by the debt, sell the item, retire the debt and retain any proceeds therefrom.

37. Petitioner is awarded:

- a. the Toyota Tacoma;
- b. the vacation timeshare; and,
- c. all cash proceeds from the sale of the Kia Optima.

38. Each party is awarded his or her own personal effects, clothing, and family heirlooms.

39. Each party is responsible for transferring the ownership of any assets awarded to them as needed and shall cooperate in signing whatever documents necessary to remove the other from title once the debt associated with the asset has been retired or refinanced out of the other parties' name.

RETIREMENT, INVESTMENTS, AND OTHER FINANCIAL ASSETS

40. There are no retirement accounts, investment/brokerage accounts, or pensions to divide.

41. Each party is awarded the funds in any checking and savings accounts held in his or her name, individually or jointly with another. Neither party has disclosed or is aware of any substantial balance that is being held in one parties' name.

42. Each party is awarded any life insurance policies in his or her name.

BUSINESS INTEREST

43. Respondent is awarded all interest and equity in his companies, AB Landworks & Maintenance, LLC and AB Stoneworks, LLC, as his sole and separate property, subject to Petitioner's equity interest in the same. Respondent will indemnify and hold the Petitioner harmless from any debt or liability associated with these companies.

44. Respondent shall pay Petitioner, as and for her equity interest in the above businesses, as follows:

a. \$91,000 to be paid over six (6) years, as follows:

i. Beginning January 1, 2024, \$833 per month for a period of sixty (60) months, with a balloon payment of \$41,020.00 to be paid on or before December 31, 2029.

ii. The \$833 monthly payments shall be paid one-half on or before the 5th day of each month, and the other half on or before the 20th day of each month. If any payment is 30 days delinquent, that payment shall be considered late.

iii. To secure the payments, Respondent shall execute a Confession of Judgment in the amount of \$91,000.00, bearing no interest, which Petitioner may record and execute against if payment is late, as defined above, subject to any credits for payments made. Statutory interest will begin to accrue on the date any payment is considered late.

ALIMONY

45. Respondent shall pay Petitioner alimony in the amount of \$2,167 per month for a period of twenty-four (24) months effective January 1, 2024. Alimony shall be paid one-half on or before the 5th day of each month, and the other half on or before the 20th day of each month. These payments shall be made via direct deposit, or if Petitioner elects, via ORS.

46. Alimony shall automatically terminate earlier than the above-referenced date upon Petitioner's death or remarriage, or upon a finding of cohabitation retroactive to the date the cohabitation commenced.

INSURANCE

47. The parties are ordered to comply with Utah Code § 78B-12-212.

48. The parties are ordered to provide health care coverage for medical expenses for the minor children if insurance is available to the parents at a reasonable cost. Respondent's health, hospital, or dental insurance plan should be designated the primary plan and Petitioner's plan, when and if she secures one, should be designated the secondary.

49. The parties shall share equally all the out-of-pocket costs of the premium actually paid by Respondent for the children's portion of insurance, as of entry of the decree.

50. Each party should equally share all reasonable and necessary uninsured and unreimbursed medical and dental expenses incurred for a dependent child, including deductibles and copayments unless the court finds good cause to order otherwise, as of entry of the decree or earlier if temporary orders are granted.

51. The parent ordered to maintain insurance shall provide verification of coverage to the other parent, or to the Office of Recovery Services under Title IV of the Social Security Act, 42 U.S.C. Sec. 601 et seq., upon initial enrollment of the dependent child, and after initial enrollment on or before January 2 of each calendar year. The parent shall notify the other parent, or the Office of Recovery Services under Title IV of the Social Security Act, 42 U.S.C. Sec. 601 et seq., of any change of insurance carrier, premium, or benefits within 30 calendar days of the date the parent first knew or should have known of the change.

52. A parent who incurs medical expenses shall provide written verification of the cost and payment of medical expenses to the other parent within 30 days of the end of the month in which the payment was incurred.

TAX ISSUES

53. The parties shall file married filing separately for the year 2023 and shall cooperate expeditiously with their accountant to this end. Each party will be solely responsible for any individual tax debt, or entitled to their own return. This will also allow Petitioner to obtain affordable health insurance on the marketplace for herself and the children for 2024.

54. The parties shall alternate the tax deductions and child tax credits for the parties' minor children for both Federal and State tax purposes, with Respondent claiming R.B. in 2024,

if possible, and Petitioner claiming M.B., and then Respondent claiming M.B. in 2025, Petitioner claiming M.B. in 2026, and so on in alternating fashion.

55. The parties shall timely execute the necessary IRS and accounting forms, including form 8332, to effectuate these provisions, as may be necessary.

MISCELLANEOUS

56. Both parties shall be ordered to sign and to execute whatever documents are necessary to implement the provisions of the divorce decree. Should a party fail to execute a document within 60 days of the entry of the decree, the other party may bring an Order to Show Cause at the expense of the disobedient party and seek that the Court appoint some other person to execute the document pursuant to Rule 70 of the Utah Rules of Civil Procedure. Any document executed pursuant to Rule 70 has the same effect as if executed by the disobedient party.

57. Each party is responsible for his or her own attorney fees and costs incurred herein.

58. This Decree and the conforming Findings of Fact and Conclusions of Law may be entered by the Court immediately without a hearing.

SO ORDERED.

*******END OF DECREE*******

In accordance with Utah R. Civ. P. 10(e) and Utah State District Courts E-filing Standard No. 4, this Order does not bear the handwritten signature of the Court but instead displays an electronic signature at the top of this Order.

Approved as to form:

/s/ Nicolas Turner*

Nicolas Turner
Attorney for Petitioner
**E-signed with email permission*
given on 03/27/2024

CERTIFICATE OF SERVICE

I hereby certify that on March 27, 2024, I caused a true and correct copy of the foregoing
[proposed] **DECREE OF DIVORCE** to be served upon the following by the method indicated:

Nicolas Turner
TURNER LAW, PC
nick@turneratlaw.com
Attorney for Petitioner

☒ Electronic Filing
☐ Email
☐ U.S. Mail

/s/ Francesca Alas
Paralegal