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IN THE FIFTH JUDICIAL DISTRICT COURT
IN AND FOR WASHINGTON COUNTY, STATE OF UTAH

In the Matter of the Marriage of:

BRITTANY BRIANN BENWAY,

Petitioner,

and

JAMES MORRISON BENWAY II,

Respondent.

DECREE OF DIVORCE

Civil No. 244500704

Honorable Eric Gentry

Respondent, James Morrison Benway II, by and through his counsel of record, Anthony P. Werrett of Ruesch Reeve Werrett & Jones, PLLC, submits this Decree of Divorce for the Court's review and approval. The Court, having entered its Findings of Facts and Conclusions of Law, for good cause appearing hereby ORDERS, ADJUDGES, and DECREES:

DIVORCE

1. The Parties are hereby granted a Decree of Divorce dissolving the bonds of matrimony that heretofore existed, on the grounds of irreconcilable differences.

CHILD, CUSTODY, CHILD SUPPORT, AND PARENTING TIME

2. Pursuant to Utah Code Annotated § 81-9-303, the Parties are awarded joint legal custody and joint physical custody of the Parties' Minor Child with the Respondent's reasonable exercise of

parent time more expressly as set forth below.

3. The Respondent is awarded weekday overnight parent time every Monday overnight to Tuesday @ 9AM. If school is in session for the Parties' Minor Child, the Respondent shall drop off the Parties' Minor Child at school (otherwise, the drop off at 9 AM shall occur at the Petitioner's home). Therefore, the Respondent's Monday parent-time shall be understood to begin after the Parties' Minor Child is released from school, or at 5 PM. If either school is not in session OR the Respondent cannot pick up the Parties' Minor Child because of his work schedule, then the Respondent's Monday afternoon exercise of parent time shall be understood to begin at 5 PM, and end on the following day -- Tuesday morning, as set forth above, at 9 AM.

4. In the second week and for ALL alternating weeks thereafter, the Respondent shall be entitled to exercise parent-time from Friday afternoon once the Parties' Minor Child is released from school, or at 5 PM (depending on the Respondent's discretion). The Respondent's exercise of alternating weekend parent time shall then continue from Friday through the following Monday morning at 9 AM when the Respondent drops the Parties' Minor Child off at school. If school is not in session on that Monday, the Petitioner shall keep the Parties' Minor Child until Tuesday for drop off either at school or on Tuesday morning at the Petitioner's home at 9 AM.

5. Holiday Parent Time - Holiday parent time shall always trump and supersede normal parent time. The Parties shall exercise holiday parent-time as follows:

Holiday	Holiday Time Period	RESPONDENT is Granted Holiday in:	PETITIONER is Granted Holiday in:
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 minor child; (b) the time that school is regularly	Odd years	Even years

	<p>dismissed; or (c) 6 p.m. at the election of the parent granted the holiday.</p> <p>(2) Holiday ends: (a) upon delivering of the minor child to school on the day following Dr. Martin Luther King Jr. Day; or (b) at 8 a.m. on the day following Dr. Martin Luther King Jr. Day if there is no school.</p>		
President's Day	<p>(1) Holiday begins Friday at: (a) 9 a.m. if school is not in session and the parent can be with the minor 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: (a) upon delivering the minor child to school on the day following President's Day; or (b) at 8 a.m. on the day following President's Day if there is no school.</p>	Even years	Odd years
Spring Break	<p>(1) Holiday begins at 6 p.m. on the day that school dismisses for spring break.</p> <p>(2) Holiday ends: (a) upon delivering the minor child to school on the day following the end of spring break; or (b) at 8 a.m. on the day following the end of spring break if there is no school.</p>	Odd years	Even years
Memorial Day	<p>(1) Holiday begins Friday at: (a) 9 a.m. if school is not in session and the parent can be with the minor child; (b) the time that school is regularly dismissed; or (c) 6 p.m. at the election of the parent granted</p>	Even years	Odd years

	the holiday. (2) Holiday ends: (a) upon delivering the minor child to school on the day following Memorial Day; or (b) at 8 a.m. on the day following Memorial Day if there is no school.		
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.	All years if noncustodial parent is the mother or other parent designated in the order.	All years if custodial parent is the mother or other parent designated in the order.
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.	All years if noncustodial parent is the father or other parent designated in the order.	All years if custodial parent is the father or other parent designated in the order.
Juneteenth National Freedom Day	(1) Holiday begins at: (a) 6 p.m. on the day before Juneteenth National Freedom Day if the day before Juneteenth National Freedom Day is not Father's Day; or (b) 9 a.m. on Juneteenth National Freedom Day if the day before Juneteenth National Freedom Day is Father's Day. (2) Holiday ends at 6 p.m. on the day following Juneteenth National Freedom Day.	Even years	Odd years
Independence Day	(1) Holiday begins on July 3rd at 6 p.m. (2) Holiday ends on July 5th at 6 p.m.	Odd years	Even years
Pioneer Day	(1) Holiday begins on July 23rd at 6 p.m. (2) Holiday ends on July 25th at 6 p.m.	Even years	Odd years
Labor Day	(1) Holiday begins Friday at: (a) 9 a.m. if school is not in session and the parent can be	Odd years	Even years

	with the minor 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: (a) upon delivering the minor child to school on the day following Labor Day; or (b) at 8 a.m. on the day following Labor Day if there is no school.		
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.	Even years	Odd years
Fall Break	(1) Holiday begins at 6 p.m. on the day school is dismissed for fall break. (2) Holiday ends: (a) upon delivering the minor child to school on the day following the end of fall break; or (b) at 8 a.m. on the day following the end of fall break if there is no school.	Odd years	Even years
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.	Even years	Odd 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.	Odd years	Even years

Thanksgiving	<p>(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.</p> <p>(2) Holiday ends: (a) upon delivering the minor child to school on the Monday following Thanksgiving; or (b) at 8 a.m. on the Monday following Thanksgiving if there is no school.</p>	Even years	Odd years
Winter Break (First Half)	<p>(1) Holiday begins at: (a) 6 p.m. on the day 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.</p> <p>(2) Holiday ends on December 27th at 7 p.m.</p>	Odd years	Even years
Christmas Day	<p>HYBRID PARENT TIME: The parent NOT designated to exercise parent-time on December 25th in a given year is entitled to a three (3) hour visit with the minor child beginning at 12 p.m. and ending at 3 p.m. (<u>So long as the exercising parent that year is enjoying the Christmas Holiday within fifty (50) miles of the non-exercising parent</u>)</p>	Even years	Odd Years
Winter Break (Second Half)	<p>(1) Holiday begins on December 27th at 7 p.m.</p> <p>(2) Holiday ends upon delivering the minor child to</p>	Even years	Odd years

	school on the day that school resumes after the winter break.		
Day of Minor Child's Birthday	(1) Holiday begins at 3 p.m. (2) Holiday ends at 9 p.m.	Even years	Odd years
Day Before or After Minor Child's Birthday	(1) Holiday begins at 3 p.m. (2) Holiday ends at 9 p.m.	Odd years	Even years

6. Parent time costs shall be allocated pursuant to the statute.

7. Parenting Plan. Unless the Parties mutually agree otherwise, the Parties shall abide by the following parenting plan:

- a. Special consideration will be given by each Party to make the child available to attend family functions including funerals, weddings, family reunions, religious holidays, important ceremonies, and other significant events in the life of the child or in the life of either Party which may inadvertently conflict with the parent-time schedule.
- b. Both Parties shall notify one another within forty-eight (48) hours of receiving notice of all significant school, social, sports, and community functions in which the child is participating or being honored, and both Parties are entitled to attend and participate fully.
- c. 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 child while in their custody.
- d. 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 twenty-four (24) hours of any change.

e. Each Party will permit and encourage during reasonable hours, reasonable and uncensored communications between the other party and the Parties' Minor Child.

f. Each Party shall provide all surrogate care providers with the name, current address, and telephone number of the other Party, and both Parties shall provide the other Party with the name, current address, and telephone number of all surrogate care providers.

g. During the time that the Parties' Minor Child is with either of the Parties, the day-to-day decisions will be made by the Party who has the child with him or her. Both the Petitioner and the Respondent have the right to make emergency decisions affecting the health, safety or welfare of the child when the child is in his or her care.

h. Both Parties shall discuss all non-emergency health care issues of the child, other major decisions affecting the child, and any discretionary decisions having a financial impact on both Parties in advance, in an attempt to reach a mutual agreement. Such financial decisions include, but are not limited to, extra-curricular activities, braces, glasses, contact lenses, etc.

i. In the event that a joint decision cannot be reached, the Parties are required to submit the issue to mediation and split the costs equally. If mediation is

unsuccessful, the Parties may submit the matter for judicial review.

j. The Petitioner and the Respondent shall make reasonable efforts to notify one another of the child's medical and dental appointments, parent teacher conferences, school events and performances, athletic events, parent volunteer opportunities, church events and other activities related thereto.

k. Both Parties shall use their best efforts to communicate and share information with each other on a frequent basis regarding the child's development, schoolwork, medical, dental, therapy and any other information appropriate to share with the other Party.

l. Both Parties shall notify each other of any significant illness the child may have when they are at their individual homes.

m. Both Parties shall discuss any problems either of them is experiencing with disciplining the child and provide a united front regarding the same.

n. Each Party is restrained from speaking in a disparaging manner concerning the other party in the presence of the Parties' Minor Child.

Further, each of the Parties is obligated to exercise their best efforts in preventing friends, relatives, or other family members from speaking disparagingly of the other Party in the presence of the Parties' Minor Child.

o. Whenever the child travels outside the state of either Party's residence with either Party, the traveling Party shall notify the other Party in advance of the following:

i. itinerary of travel dates;

ii. destinations; and

iii. places where the child or the parent can be reached.

p. The Parties shall not expose the child to alcohol abuse, illegal drug use, illegal activity, abusive relationships, inappropriate sexual relationships, or any type of sexual behavior.

q. Both Parties shall keep the child out of adult issues or disputes between the Parties and shall not communicate with the other Party through the child.

r. Both Parties shall encourage a relationship with the other Party and do nothing to diminish the love and respect the child has for the other Party.

s. Both Parties shall be restricted from exposing the child to any inappropriate forms of entertainment, sexual material, or overly violent media.

t. Both Parties are entitled to the right of first refusal for any periods of time in excess of three (3) hours when the person then with custody of the child is not able to be personally present to supervise the child. In this event, the Party exercising the right of first refusal is responsible for the transportation of the child for both pick up and drop off.

u. Both Parties shall use appropriate child restraints (child car seats) when transporting the child.

8. Although presently the Respondent ONLY generates between \$1,500.00 to \$3,000.00 per month, by mutual agreement and the stipulation of the Parties, the Respondent's gross monthly income should be imputed at \$4,000.00. The Petitioner's gross monthly income is \$3,467.00. Pursuant to the Utah Code § 81-6-101 *et seq.* it is reasonable and proper that the Respondent be ordered to pay the Petitioner child support in the amount of \$476.00 per month. However, in the overall physical, mental and emotional best interest of the Parties' Minor Child, and as part of a mutual settlement, the Respondent shall pay an upward deviation of child support in the amount of **\$600.00** per month. This amount shall be payable one-half on the 5th and 20th calendar days of the immediate month which follows the Court's entry of this Decree of Divorce and continuing thereafter for each consecutive month until the Parties' Minor Child attains the age of eighteen or graduates from high school in their normal graduating years, whichever is later.

a. At the time a child is no longer eligible to receive child support, the child support amount for the remaining children who are eligible to receive support should be automatically adjusted to reflect the base child support obligation shown in the table for that number of children. This should be done by using the appropriate calculation and worksheet pursuant to Utah Code Annotated § 81-6-213. The child support for the remaining children may not be reduced by a per child amount, *i.e.*, the obligor parent may not divide the base child support award by the number of children and subtract that amount from the prior child support obligation.

b. Child support payments shall begin the month immediately following the entry of the order for child support. The monthly child support 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, unless the custodial parent uses the Office of Recovery Services to collect support. Child support due and not paid on or before the 5th day of the month is delinquent on the 6th day of the month. Child support due and not paid on or before the 20th day of the month is delinquent on the 21st day of the month.

c. The person entitled to receive child support is entitled to mandatory income withholding relief pursuant to relevant Utah Statute. Any Federal and State tax refunds or rebates due to the non-custodial parent may be intercepted by the State of Utah and applied to existing child support arrearage. This income withholding procedure shall apply to existing and future payors. All withheld income shall be submitted to the Office of Recovery Services until such time as the non-custodial parent no longer owes child support to the person entitled to receive child support. All child support payments should be made to the Office of Recovery Services, P.O. Box 45011, Salt Lake City, UT 84145-011, unless the Office of Recovery Services gives notice that payments should be sent elsewhere. Should mandatory income withholding be implemented by the Office of Recovery Services, child support shall be due on the first day of each month and delinquent on the first day of the following month. All administrative fees and costs of income withholding assessed by

the Office of Recovery Services shall be paid by the Respondent.

d. The issue of child support arrearage may be determined by further judicial or administrative process.

e. Under Utah Code Annotated § 81-6-212, the Parties have a right to adjust this child support order by motion after three (3) years from the date of its entry if: (1) upon review there is a difference of 10% or more between the amount previously ordered and the new amount of child support under the Utah child support guidelines, calculated using the appropriate child support worksheet; (2) the difference is not of a temporary nature, and; (3) the amount previously ordered does not deviate from the child support guidelines. Under Utah Code Annotated § 81-6-101 *et seq.*, if the child receives TANF funds at the time an adjustment is sought, the Office of Recovery Services should review the order, and if appropriate, move the court to adjust the amount.

f. Under Utah Code Annotated § 81-6-212, the Parties have a right to modify this child support order at any time by petition if there has been a substantial change in circumstances because of: (i) material changes in custody; (ii) material changes in the relative wealth or assets of the parties; (iii) material changes of 30% or more in the income of a parent; (iv) material changes in the employment potential and ability of a parent to earn; (v) material changes in the medical needs of the child; or (vi) material changes in the legal responsibilities of either parent for the support of others, and, the change in (i) through (vi) results in a 15% or more difference between the amount

previously ordered and the new amount of child support, calculated using the appropriate child support worksheet, and the difference is not of a temporary nature. In a proceeding to modify an existing award, consideration of natural or adoptive child other than those in common to both parties may be applied to mitigate an increase in the child support award but may not be applied to justify a decrease in the award.

9. The Parties are mutually ordered not to possess, use, or consume any illicit drugs or alcohol when that party has physical custody or is exercising his/her parent time with the Parties' Minor Child.

INSURANCE, EXPENSES, AND TAX EXEMPTION

10. Medical and dental insurance shall be provided for the Minor Child in accordance with the provisions of Utah Code Annotated § 81-6-208. The Parties shall share equally the cost of the out-of-pocket portion of the insurance premiums attributable to the Minor Child actually paid by the party providing insurance consistent with Utah Code Annotated § 81-6-208(3)(d).

11. The Parties shall share equally in all reasonable and necessary uninsured expenses, including but not limited to, medical, dental, orthodontics, and/or optometry expenses, including deductibles and copayments, incurred for the Parties' Minor Child. Written verification shall be provided to the non-incurring party within thirty (30) days of paying such expense. Payment from the non-incurring party shall be paid to the incurring party within ten (10) days of receipt of such written verification.

12. The Petitioner is entitled to claim the Parties' Minor Child for the dependency exemptions OR Child Tax Credit which is attributable to the Parties' Minor Child on her federal and state

income tax returns every EVEN filing year. The Respondent is entitled to claim the Parties' Minor child for the dependency exemptions OR the Child Tax Credit which is attributable to the Parties' Minor Child on his federal and state income tax returns every ODD filing year.

DIVISION OF PERSONAL PROPERTY

13. Personal Property. Each of the Parties entered this marriage with personal property, belongings and effects. Said separate, pre-marital personal properties, belongings, and effects shall remain the personal property of the person who entered the marriage with the same as his/her sole and separate property.

14. The Petitioner is awarded ALL household furnishings excluding the following (which are expressly set forth below), which are exclusively awarded to the Respondent:

- a. The Juicer;
- b. Kitchen hutch;
- c. 52' Samsung TV;
- d. Cedar shelf; and
- e. One-half of the tools and equipment currently located in the Marital Home or the garage. The Petitioner is entitled to the other one-half of the tools and equipment.

15. During the marriage, the Parties acquired marital personal property. The Respondent is awarded the 2021 Hyundai into his name. The Respondent shall hold the Petitioner 100% harmless from any taxes, liens, obligations, or encumbrances which may be owed thereon. The Petitioner is ordered to provide the vehicle to the Respondent by NO LATER than Saturday, December 28, 2024.

16. The Petitioner is awarded the 2016 Ford Explorer, subject to any debts or encumbrances thereon. This vehicle is currently not operational, and the Petitioner shall pay the monthly payment of approximately \$380.00 (as part of the settlement of the marital estate between the Parties). Once the vehicle is fixed and operational, the Petitioner may have the option of selling the vehicle or maintaining it for her own personal use. After the marital home is sold and the equity and proceeds are properly allocated (at closing) the Respondent will contribute \$4,000.00 to assist the Petitioner with paying for the transmission on the 2016 Ford Explorer. The Petitioner is ordered to front and be liable/responsible for 100% of the remaining debt and encumbrance which is currently owed against this vehicle.

17. The 2011 Toyota Camry is awarded to Jasmine, free and clear of any claim from either Party. The vehicle's title shall be transferred into Jasmine's name.

18. As set forth above, each party that is awarded a vehicle shall hold the other party harmless from any taxes, liens, balances, and/or encumbrances which may exist against said vehicle.

DIVISION OF REAL PROPERTY

19. Real Property. During the course of the Parties' marriage, the Parties acquired real property located at 1414 Toltec Circle, St. George, Utah, 84780 ("Marital Home"). Within fourteen (14) days of the execution of the Verified Stipulated Amended Settlement Agreement, the Marital Home shall be immediately listed for sale. Pursuant to market forces, the Marital Home shall be immediately listed, meaning placed on the market for sale. Pursuant to current market forces and reasonable estimates, the Parties' Marital Home shall be listed at a sales price of no less than \$500,000.00 for the first one hundred and twenty (120) days OR IF the Parties can mutually agree in writing for a different requested price/amount, that is sanctioned as well. If the real

property remains on the market after the first one hundred and twenty (120) days, the Parties may then mutually agree to reasonably adjust the sales price to make the property more marketable and attractive to potential buyers. To the Parties' best knowledge, the creditor will begin foreclosure proceedings by December 31, 2024, which provides the Parties a critical window of time to work together in order to salvage their respective percentage and stake in the equity of the Marital Home.

20. Until such time that the Marital Home is sold, the Petitioner is allowed to continue to enjoy the sole use and occupation of the property. During that time, the Petitioner shall make earnest efforts to maintain the upkeep of the Marital Home and prepare it for sale. The Petitioner shall also be solely responsible for any and all expenses relating to the property, including but not limited to (i) the timely payment of all mortgage payments, (ii) the associated utility payments, (iii) any required upkeep and maintenance as well as improvement costs, (IF required to prepare the Marital Home for sale). Basically, the Petitioner is responsible/liable for ALL reasonably related and associated costs and expenses other than the Respondent shall be 100% liable/responsible for the property taxes which are associated with the Parties' Marital Home.

21. Any proceeds from the sale of the Marital Home shall first be applied to any accounts owing to the property, including but not limited to the mortgage and any arrearage which is due and owing. Once these debts have been fully satisfied, the Parties shall each be awarded one-half of the remaining proceeds from the sale of the Marital Home. It is anticipated (as set forth above in paragraph No. 15) that the Petitioner shall use a portion of the proceeds awarded to her to pay off the 2016 Ford Explorer. The Respondent shall contribute \$4,000.00 of the home's sale proceeds (at final closing) for the purpose of assisting in the repair of the 2016 Ford Explorer's

transmission.

DIVISION OF BUSINESS

22. The Respondent is awarded 100% of any and all business interests in his name, now or in the future, including retaining possession, occupation, ownership privileges, rights, and title. However, the Respondent's "rights" shall be construed to be subject to any mortgage(s), taxes, liens, debts, deficits, promissory notes, loans, and/or any other encumbrances which may at this time or in the future be against the property.

23. The Respondent shall hold the Petitioner 100% harmless from any responsibility, liability, debt, deficit, loan, promissory note, or any encumbrances that may exist against the Business.

DEBT ALLOCATION AND FINANCIAL ISSUES

24. Financial Accounts. Any funds within the Parties' bank accounts shall be divided between the Parties as follows:

Account	Petitioner	Respondent
	0%	100%
	0%	100%

25. Marital Debt, Joint Credit Cards, and Financial Obligations. Other than the mortgage liability, the Respondent shall be responsible for ONLY the debt which is currently in his own name. Other than the mortgage liability and the Ford Explorer, the Petitioner shall be ONLY responsible for the debt in her own name.

26. Separate Debt. Each party shall be responsible and liable for their own debts, if any, which have been incurred in their own names; and carefully examined and scrutinized to determine

which party incurred the debt and for what purpose. In such a case, the Petitioner and the Respondent shall be 100% liable and responsible for the debt which each has incurred and hold the other party harmless therefrom.

27. Creditor Notification. Consistent with Utah Code Annotated § 81-4-204(1)(d), the Parties are required to notify their respective creditors or obligees in writing regarding the Court's allocations of debts, obligations, and liabilities and provide their respective creditors their own current address.

28. Alimony. Pursuant to the Parties' Verified Stipulated Amended Settlement Agreement, the Respondent shall pay the Petitioner \$400.00 per month for two years as and for purposes of an alimony award. The Respondent's obligations shall begin the month following the Court's execution of this Decree of Divorce. As such, the Respondent's upwardly deviated child support obligation of \$600.00 per month to the Petitioner, combined with the award of \$400.00 per month to the Petitioner in the form of alimony, shall be cumulatively interpreted as the Respondent paying \$1,000.00 per month to the Petitioner for two (2) years from one month AFTER the Court's execution of the Decree of Divorce. At the end of this two-year period, the Respondent's \$400.00 alimony obligation shall terminate without any additional action taken by either party. IF the Petitioner during the next two years chooses to either cohabit or remarry, the alimony portion of the obligation (which is set forth above) shall as a matter of law immediately terminate.

29. Attorney Fees. Both parties shall be responsible for their own attorney's fees, costs, and expenditures incurred in this matter.

30. The Petitioner and the Respondent are ordered to cooperate, sign, execute, record, and

transfer any documents which are legally required to effectuate what is duly reflected in this Court's executed Decree of Divorce.

31. The Petitioner may keep/retain her married name or resume the use of her pre-marital name at her sole election.

END OF ORDER – DATE AND COURT SIGNATURE APPEAR AT TOP OF FIRST PAGE

Approved as to form and content:

/s/ Peter L. Stack*

Peter L. Stack

Attorney for Petitioner

*Signed electronically with permission via email from Peter L. Stack.