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Pro Se

IN THE FOURTH JUDICIAL DISTRICT COURT
 OF UTAH COUNTY, STATE OF UTAH
 Fourth District Court, 125 North 100 West, Provo UT 84601

Richard M Birdzell Sr,
 Petitioner,

vs.

Kathy D Birdzell,
 Respondent.

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**DECREE OF DIVORCE
 AND JUDGMENT**

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Case No. _____

Commissioner: _____

Judge: _____

The above-entitled matter came on before the court on Petitioner's Affidavit for Entry of Divorce Decree in accordance with Rule 104, Utah Rules of Civil Procedure. The parties have completed the class entitled, "Shared Parenting for Divorcing Parents" or have a signed order waiving the class on file with the court. The Court, having found and entered its Findings of Fact and Conclusions of Law and being otherwise fully advised, it is hereby,

ORDERED, ADJUDGED AND DECREED:

That the Petitioner is awarded a Decree of Divorce from the Respondent, to become final upon signature and entry.

1. The personal property of the parties is distributed as follows:

Description of Item	Item Becomes Sole Property of
Kitchen Table and chairs	Respondent
Treadmill	Respondent
Her shelves	Respondent
Her personal effects	Respondent
All remaining furniture, household items and other personal property	Petitioner

All other personal property is divided as the parties have already divided it.

2. Each party is ordered to assume and pay debts and hold the other harmless from liability as follows:

To Whom Debt is Owed	Description of Debt	Petitioner Will Pay	Respondent Will Pay
Chase Mortgage	1st Mortgage	100%	0%
SLS Mortgage	2nd Mortgage	100%	0%
AMC Mortgage	Loan from Deanna Birdzell	100%	0%
American Express	Credit card	100%	0%
Deanna Birdzell	Liz wedding	100%	0%
Nebo Credit Union	Signature Loan	100%	0%
Nebo Credit Union	Kawasaki	100%	0%
Nebo Credit Union	Suzuki	100%	0%
RC Willey	Furniture	100%	0%
Aspire	Credit Card	0%	100%
Kathy's medical bills	\$1,100	100%	

All other debts are the responsibility of the person incurring the debt.

3. During the course of the marriage, the parties acquired the following real property:

a. A home located at 912 W 1420 S, Payson, UTAH 84651 more particularly described by the following legal description: *Lot 168, Plat C, Maples at Brookside PRD Amended*

b. Petitioner shall receive sole and exclusive ownership of this real property. Respondent shall receive one half of the equity existing in the property as of the date

of the entry of the Decree of Divorce. The equity at the time of the divorce is \$20,000.00. Respondent's share of the equity is \$10,000.00. Respondent shall sign a Quit-Claim deed to the Petitioner at the time the divorce is entered, but shall retain an equitable lien against the property in the amount of \$10,000.00. Upon Petitioner paying the equitable lien amount Respondent shall sign a second Quit-Claim deed removing the lien from the property.

4. The Respondent is awarded a sum of not less than \$600 per month as alimony from the Petitioner. Alimony payments shall begin the month immediately following the entry of the order for alimony. The monthly alimony 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 custodial parent uses the Office of Recovery Services to collect support. Alimony due and not paid on or before the 5th day of the month is delinquent on the 6th day of the month. Alimony due and not paid on or before the 20th day of the month is delinquent on the 21st day of the month. Should the custodial parent use the Office of Recovery Services to collect support, alimony shall be due on the first day of each month and delinquent on the first day of the following month. Petitioner's alimony obligation shall terminate upon Respondent's remarriage, cohabitation, or on 02/01/2010, whichever occurs first.

5. The parties have not acquired any interest in any retirement program (including military retirement), nor have they acquired any interest in any pension or profit sharing plan during the course of the marriage.

6. There has/have been 1 child(ren) born of this marriage:

NAME	DATE OF BIRTH
Joshua W Birdzell	12/07/1989

6.1 Both parents are awarded the joint legal custody of the minor child(ren), but the Petitioner is awarded the sole physical custody of the child(ren), subject to the Respondent's right to

parent-time with the child(ren) at reasonable times and places. Pursuant to Utah Code Ann. § 30-3-10.1 et seq., the court orders the following parenting plan:

- a. The parents will discuss with each other and mutually decide the significant decisions regarding the child(ren), including, but not limited to, the child(ren)'s education, health care, and religious upbringing. Either parent may make emergency decisions regarding the health or safety of the child(ren).
- b. Day to day decisions regarding the care, control and discipline of the parties' child(ren) will be made by the parent with whom the child(ren) resides/are residing at the time.
- c. Any parental duties or rights not specifically addressed in this plan shall be discussed and mutually decided by both parents.
- d. Should the parties have a dispute regarding parenting of the child(ren), the Petitioner will make the final decision.
- e. Should either parent feel that a decision made under paragraphs a, b, c, and d above is contrary to the best interests of the child(ren), that parent may arrange for mediation of the matter through a mutually agreed upon mediator or mediation service. Should the parties be unable to agree upon a mediator or mediation service, the parent requesting mediation will arrange for mediation through a court-approved mediation service. A written record shall be prepared of any agreement reached in mediation and a copy provided to each party. The parent requesting mediation is responsible for the costs of mediation, unless no agreement is reached in the mediation process, in which case the parents shall share the costs of mediation equally. No dispute may be presented to the Court in this matter without a good faith attempt by both parents to resolve the issue through mediation. If the court finds that a parent has used or frustrated the dispute resolution

process without good reason, the court may award attorney's fees and financial sanctions to the prevailing parent. The Court has the right of review from the mediation process.

f. In addition to the terms set out in paragraphs a. through e. above, the court orders the following provisions be part of the parties' parenting plan: *No additional provisions.*

g. If a parent fails to comply with a provision of this parenting plan, the other parent's obligations under the parenting plan are not affected.

7. If the parties reside in the same state and within 150 miles of each other, reasonable parent-time shall be as the parties agree. If the parties do not agree, the following schedule shall be considered the minimum parent-time to which the noncustodial parent and the child shall be entitled:

FOR CHILDREN UNDER 5 MONTHS OF AGE:

- Weekly:** Six hours of parent-time per week, specified by the court or the noncustodial parent preferably, divided into three parent-time periods and to take place in the custodial home, established child care setting or other environment familiar to the child.
- Holidays:** Two hours on the holidays indicated on Holiday Schedule below, to take place preferably in the custodial home, established child care setting or other environment familiar to the child.

FOR CHILDREN 5 MONTHS TO UNDER 10 MONTHS OF AGE:

- Weekly:** Nine hours of parent-time per week, specified by the court or the noncustodial parent preferably, divided into three parent-time periods and to take place in the custodial home, established child care setting or other environment familiar to the child.
- Holidays:** Two hours on the holidays indicated on Holiday Schedule below, to take place preferably in the custodial home, established child care setting or other environment familiar to the child.

FOR CHILDREN 10 MONTHS TO UNDER 18 MONTHS OF AGE:

- Weekly:** One 8 hour visit per week to be specified by the noncustodial parent or the court; and
One 3 hour visit per week to be specified by the noncustodial parent or the court.
- Holidays:** Eight hours on the holidays indicated on Holiday Schedule below, and
- Telephone contact:** Brief phone contact with noncustodial parent at least two times per week.

FOR CHILDREN 18 MONTHS TO UNDER 3 YEARS OF AGE:

Midweek: One weekday evening for two hours between 5:30 - 8:30 p.m. to be specified by the noncustodial parent or the court.

Alternate Weekends: Beginning on the first weekend after the entry of the decree from 6:00 p.m. Friday until 7:00 p.m. Sunday continuing each year.

Holiday Parent-time: Holidays as specified on Holiday Schedule below.

Extended Parent-time: Two one-week periods, separated by at least four weeks, at the option of the noncustodial parent;

- a. one week shall be uninterrupted time for the noncustodial parent;
- b. the remaining week shall be subject to parent-time for the custodial parent consistent with these guidelines; and
- c. the custodial parent shall have an identical one-week period of uninterrupted time for vacation.

Notification of extended parent-time or vacation weeks with the child shall be provided at least 30 days in advance to the other parent.

Telephone contact: Brief phone contact with noncustodial parent at least two times per week.

FOR CHILDREN 3 YEARS TO UNDER 5 YEARS OF AGE:

Midweek: One weekday evening from 5:30 - 8:30 p.m. to be specified by the noncustodial parent or court.

Alternate Weekends: Beginning on the first weekend after the entry of the decree from 6:00 p.m. on Friday until 7:00 p.m. on Sunday continuing each year.

Holiday Parent-time: Holidays as specified on Holiday Schedule below.

Extended Parent-time: Two two-week periods, separated by at least four weeks, at the option of the noncustodial parent;

- a. one two-week period shall be uninterrupted time for the noncustodial parent;
- b. the remaining two-week period shall be subject to parent-time for the custodial parent consistent to these guidelines; and
- c. the custodial parent shall have an identical two-week period of uninterrupted time for vacation.

A parent shall notify the other parent at least 30 days in advance of extended parent-time or vacation weeks.

Telephone contact: Shall be at reasonable hours and for reasonable duration.

FOR CHILDREN 5 YEARS TO 18 YEARS OF AGE:

Midweek: One weekday evening to be specified by the noncustodial parent or the court from 5:30 - 8:30 p.m.

Alternate Weekends: Beginning on the first weekend after the entry of the decree from 6:00 p.m. on Friday until 7:00 p.m. on Sunday continuing each year.

Holiday Parent-time: Holidays as specified on Holiday Schedule below.

Extended Parent-time: Extended parent-time with the noncustodial parent may be up to four weeks consecutive at the option of the noncustodial parent;

- two weeks shall be uninterrupted time for the noncustodial parent;
- the remaining two weeks shall be subject to parent-time for the custodial parent consistent to these guidelines; and
- the custodial parent shall have an identical two-week period of uninterrupted time during the children's summer vacation from school for purposes of vacation.

If the child is enrolled in **year-round school**, the noncustodial parent's extended parent-time shall be $\frac{1}{2}$ of the vacation time for year-round school breaks, provided the custodial parent has holiday and phone visits;

Notification of extended parent-time or vacation weeks with the child shall be provided at least 30 days in advance to the other parent.

Telephone contact: Shall be at reasonable hours and for reasonable duration.

HOLIDAY SCHEDULE FOR NONCUSTODIAL PARENTS

- Holidays take precedence over the weekend parent-time, and changes shall not be made in the regular rotation of the alternating weekend parent-time schedule.
- If a holiday falls on a regular scheduled school day, the noncustodial parent shall be responsible for the child's attendance at school for that school day.
- If a holiday falls on a weekend or on a Friday or Monday and the total holiday period extends beyond that time so that the child is free from school and the parent is free from work, the noncustodial parent is entitled to this lengthier holiday period.

Odd Numbered Years

Child's birthday, on the day before or after the actual birthdate from 3 p.m. to 9 p.m.

Even Numbered Years

Child's birthday on the actual birthdate from 3 p.m. to 9 p.m.

Note: At the discretion of the noncustodial parent, that parent may take other siblings along for the birthday.

Human Rights Day - 6 p.m. the day before until 7 p.m. on the holiday

Presidents Day – from 6 p.m. day before until 7 p.m. on the holiday

Easter – from 6 p.m. Fri. until Sun. 7 p.m. unless holiday extends for lengthier period of time to which parent is completely entitled

Memorial Day – from 6 p.m. Fri. until Mon. 7 p.m. unless holiday extends for lengthier period of time to which parent is completely entitled

July 24th – from 6 p.m. day before until 11 p.m. on the holiday

Veterans Day – from 6 p.m. the day before until 11 p.m. on the holiday

July 4th – from 6 p.m. day before until 11:00 p.m. on the holiday

Labor Day – from 6 p.m. Fri. until Mon. at 7 p.m. unless the holiday extends for lengthier period of time to which parent is entitled

UEA weekend (Fall break) – from 6 p.m. Wed. until Sun. 7 p.m. unless holiday extends for lengthier period of time to which parent is entitled

Columbus Day – from 6 p.m. day before until 7 p.m. on the holiday

Thanksgiving – from Wed. 7 p.m. to Sun. 7 p.m.

Christmas School Vacation: means the time period beginning on the evening the child gets out of school for the Christmas school break until the evening before the children return to school, except for Christmas Eve, Christmas Day and New Year's Day:

Christmas - first portion of school vacation plus Christmas Eve and Christmas Day until 1 p.m. so that entire holiday is equally divided

Christmas Vacation - second portion of school vacation plus Christmas day from 1 p.m. until 9 p.m. the day before children return to school so that entire holiday is equally divided

Father's Day: with natural or adoptive father every year from 9 a.m. to 7 p.m. on holiday

Mother's Day: with natural or adoptive mother every year from 9 a.m. to 7 p.m. on holiday

FOR ALL CHILDREN:

- Special consideration shall be given by each parent to make the child(ren) available to attend family functions including funerals, weddings, family reunions, religious holidays, important ceremonies, and other significant events in the life of the child(ren) or in the life of either parent which may inadvertently conflict with the parent-time schedule.
- The noncustodial parent shall pick up the child(ren) at the times specified and return the child(ren) at the times specified, and the child's regular school hours shall not be interrupted.
- The custodial parent shall have the child ready for parent-time at the time the child(ren) are to be picked up and shall be present at the custodial home or shall make reasonable alternate arrangements to receive the child(ren) at the time they are returned.
- Neither parent-time nor child support is to be withheld due to either parent's failure to comply with a

court-ordered parent-time schedule.

- The custodial parent shall notify the noncustodial parent within 24 hours of receiving notice of all significant school, social, sports, and community functions in which the child is participating or being honored, and the noncustodial parent shall be entitled to attend and participate fully.
- The noncustodial parent shall have access directly to all school reports including preschool and daycare reports and medical records and shall be notified immediately by the custodial parent in the event of a medical emergency.
- Each parent shall provide the other with his or her current address and telephone number within 24 hours of any change.
- Each parent shall permit and encourage liberal telephone contact during reasonable hours and uncensored mail privileges with the child.
- Each parent shall be entitled to an equal division of major religious holidays celebrated by the parents, and the parent who celebrates a religious holiday that the other parent does not celebrate shall have the right to be together with the child on the religious holiday.
- When parent-time has not taken place for an extended period of time and the child(ren) lack an appropriate bond with the noncustodial parent, both parents shall consider the possible adverse effects on the child(ren) and gradually reintroduce an appropriate parent-time plan for the noncustodial parent.
- For emergency purposes, whenever the child(ren) travel with either parent, all of the following will be provided to the other parent:
 - a. an itinerary of travel dates;
 - b. destinations;
 - c. places where the child or traveling parent can be reached; and
 - d. the name and telephone number of an available third person who would be knowledgeable of the child(ren)'s location.
- A child under the age of five shall not travel unchaperoned.

FOR DAY CARE:

- Parental care shall be presumed to be better care for the child than surrogate care and the parties shall cooperate in allowing the noncustodial parent, if willing and able, to provide child care.
- Each parent shall provide all surrogate care providers with the name, current address, and telephone number of the other parent and shall provide the noncustodial parent with the name, current address, and telephone number of all surrogate care providers.

7.1. Respondent will pick up, deliver and return the children for all parent time unless the parties make other arrangements.

7.2 If either party moves from the state of Utah or 150 miles or more from their residence specified in the Court's Decree, that parent shall provide if possible 60 days advance written notice of the intended relocation to the other parent. The written notice of relocation shall contain statements affirming that:

a. the parent-time provisions in Utah Code § 30-3-37(5) or a schedule approved by both parties will be followed; and

b. neither parent will interfere with the other's parental rights pursuant to court ordered parent-time arrangements, or the schedule approved by both parties.

A parent who fails to comply with the notice of relocation shall be in contempt of the Court's order.

7.3 If either parent lives more than 150 miles away from the other parent or if both parents live in separate states or countries, parent time shall be as the parties agree. If they are unable to agree, the following shall be the minimum parent-time allowed to the non-custodial parent:

a. in years ending in odd number, the child shall spend the following holidays with the noncustodial parent:

- i. Thanksgiving holiday beginning Wednesday until Sunday; and
- ii. the fall school break, if applicable, beginning the last day of school before the holiday until the day before school resumes;

b. in years ending in an even number, the child shall spend the following holidays with the noncustodial parent:

- i. the entire winter school break period; and
- ii. Spring break beginning the last day of school before the holiday until the day before school resumes; and

c. extended parent-time equal to $\frac{1}{2}$ of the summer or off-track time for consecutive weeks. The week before school begins may not be counted as part of the summer or off-track period. The parties shall mutually agree on this extended time each year. If they are unable to agree, the noncustodial parent shall select the dates for the extended time period.

7.4 If either parent lives more than 150 miles away from the other parent or if both parents live in separate states, the parent who moved shall pay all of the costs for the child(ren)'s travel expenses for parent time except one-half of the expenses for the summer or off-track time shall be paid by the other parent.

a. If the noncustodial parent has been found in contempt for not being current on all support obligations, that parent shall be responsible for all of the child's travel expenses relating to the parent time schedule in this order.

b. Reimbursement by either responsible party to the other for the child's travel expenses shall be made within 30 days of receipt of documents detailing those expenses.

8. Pursuant to Utah Code § 78-45-7.5 Petitioner's total countable gross monthly income for child support purposes is \$8,333.00. Petitioner's base child support amount using the sole custody calculation is \$652.68 per month. The Petitioner receives the following gross monthly income from all sources:

a. The Petitioner is employed at Barber Brothers Motor Co and grosses \$8,333.00 per month working the equivalent of one full-time 40-hour a week job or less.

8.1 Pursuant to Utah Code § 78-45-7.5 Respondent's total countable gross monthly income for child support purposes is \$1,386.67. Respondent's base child support amount using the sole custody calculation is \$124.32 per month. The Respondent receives the following gross monthly income from all sources:

a. The Respondent is employed at Stricklytrakin. Petitioner estimates Respondent earns \$8.00 per hour, works 40 hours per week, and therefore grosses \$1,386.67 per month. The Petitioner estimates that the Respondent earns this amount because: *During mediation she claimed she was earning \$8.00 per hour. She is capable of working 40 hours per week.*

8.2 Pursuant to U.C.A. § 78-45-7 et seq. (1953 as amended) the Respondent is ordered to pay to the Petitioner as and for child support:

a. A sum of not less than \$124.32 per month as base support for the minor child(ren) of the parties, pursuant to the Uniform Child Support Guidelines until said child(ren) become 18 years of age, or have graduated from high school during the child(ren)'s normal and expected year of graduation, whichever occurs later.

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 sole custody worksheet was used in calculating the child support in this matter. Petitioner's base child support amount is \$652.68 per month. Respondent's base child support amount is \$124.32 per month. If the physical living arrangements of a child changes from what is ordered (not including temporary changes for parent-time or

visitation), then pursuant to Utah Code § 78-45-4.4 a parent whom the child is not residing with is required to pay to whoever the child is residing with the amount of support set out above for that parent and described as “the base child support amount.” The parent shall automatically begin paying this base support amount without the need to modify this child support order.

d. The sole physical custody worksheet was used in calculating the base child support award. The base child support award shall be reduced by 50% for each minor child for time periods during which such minor child is with the non-custodial parent by court order or written agreement signed by the parties for at least 25 of any 30 consecutive days. The base child support award shall be reduced by 25% for each minor child for time periods during which such minor child is with the non-custodial parent by court order or written agreement signed by the parties for at least 12 of any 30 consecutive days. Normal parent-time and holiday parent-time with the custodial parent shall not be considered an interruption of the consecutive day requirement for the non-custodial parent. If the dependent child is a recipient of cash assistance from the state of Utah through the T.A.N.F. or F.E.P. programs, any agreement by the parties for reduction of child support during extended parent-time shall be approved by the Office of Recovery Services.

e. The person entitled to receive child support shall be entitled to mandatory income withholding relief pursuant to U.C.A. § 62A-11 parts 4 and 5 (1953 as amended), and any Federal and State tax refunds or rebates due the non-custodial parent may be intercepted by the State of Utah and applied to existing child support arrearages. 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 shall be made to the Office of Recovery Services, P.O. Box 45011, Salt Lake City, UT 84145-0111, 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 non-custodial parent in addition to the base child support obligation.

f. The issue of child support arrearages may be determined by further judicial or administrative process.

g. Each of the parties is under mutual obligation to notify the other within ten (10) days of any change in monthly income.

h. Under Utah Code §§ 78-45-7.2(6) and (8), the parties have a right to modify this child support order after three years from the date of its entry if upon review there is a difference of 10% or more 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.

i. Under Utah Code §§ 78-45-7.2(7) and (8), the parties have a right to modify this child support order at any time 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 ability of a parent to earn; (v) material changes in the medical needs of the child; and (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 children 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.

8.3 The Petitioner is entitled to claim the parties' minor child(ren) as dependent(s) for tax purposes.

8.4 Pursuant to U.C.A. § 78-45-7.15 (1953) as amended:

a. Petitioner is required to maintain insurance for medical expenses for the benefit of the minor children where available at reasonable cost.

b. Both parties shall share equally the out-of-pocket costs of the premium actually paid by a parent for the children's portion of the insurance.

c. Both parties shall share equally all reasonable and necessary uninsured medical expenses, including deductibles and co-payments, incurred for the minor children and actually paid by the parties.

d. The 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 payment.

e. A parent incurring medical expenses may be denied the right to receive credit for the expenses or to recover the other parent's share of the expenses if that parent fails to comply with the Subparagraph "d" above.

9. Both parties are ordered to sign and fully execute whatever documents are necessary for the implementation of the provisions of this divorce decree. Should a party fail to execute a document within 60 days of the entry of this divorce 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.

10. Prior to any Petition being filed to change any provision of the final Decree of Divorce, the parties must attempt to resolve the issue through mediation.

DATED this 25 day of Jan, 2007

BY THE COURT


DISTRICT COURT JUDGE

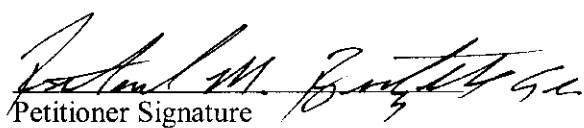
Approved as to form:

Respondent's Signature

CERTIFICATE OF MAILING/DELIVERY

On this 23rd day of January, 2007, a true and correct copy of the foregoing Decree of Divorce and Judgment was mailed, postage prepaid or delivered to Respondent at:

Kathy D Birdzell
3 Benchmark Village
Tooele, Utah 84074


Petitioner Signature