

11/99

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

ASSIGNMENT OF APPLICATION FOR PERMIT

To change the ownership of an application for permit

I, Scott McIlhenny, hereby assign to Jeanette McIlhenny
of, 213 Bayhorse Road Bellevue Id. 788-2131
(Full Address) (Phone)

All my right, title, and interest in and to Application for Permit No. 37-8811
to appropriate the public waters of the State of Idaho.

OR (for partial assignments)

The following described portion of my right, title, and interest in and to Application for Permit No. _____ to appropriate the public waters of the State of Idaho.
(Describe portion of the application for permit assigned, listing the number of acres in each 40 acre subdivision, point of diversion location, and amount of the water in cubic feet per second.)

Made this 17th day of May, 2007.

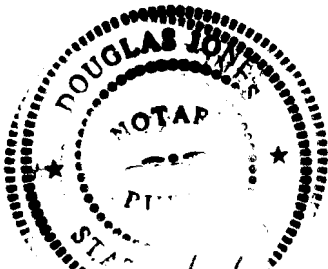
Jeanette McIlhenny
Applicant(s)

State of Idaho)

County of Twin Falls)ss

On this 17th day of May, 2007, personally appeared before me the signer(s) of the above instrument, who duly acknowledged to me that he (she) (they) executed the same.

SEAL



Douglas Jones
Notary Public residing at
Buhl

My commission expires: 8/8/2013

RECEIVED
MAY 17 2007

See attached
divorce decree

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BLAINE

JEANETTE MARIE McILHENNY,)

Plaintiff,)

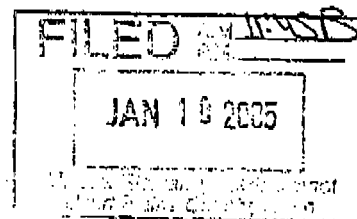
vs.)

SCOTT KENLEY McILHENNY,)

Defendant.)

Case No. CV-04-1191

DECREE OF DIVORCE



This matter came before the court for on the Plaintiff's Verified Complaint for Divorce filed by the Plaintiff through her attorney of record, Jennifer L. K. Haemmerle of the firm Haemmerle & Haemmerle, PLLC.

The Court has received of record an original Acceptance of Service, Waiver of Time and Notice, Consent to Entry of Default and Entry of Decree/Judgment and Consent to Jurisdiction, executed by the Defendant, and has received the original Marriage Settlement Agreement executed by the Plaintiff and Defendant. The court has also received a motion of the Plaintiff seeking entry default of the Defendant and entry of Decree of Divorce incorporating the original Marriage Settlement Agreement.

The Court, has reviewed the Marriage Settlement Agreement ("Agreement") and finds the same to be fair and equitable. The court further finds that it has jurisdiction over both parties, their child, and the property of the parties. The matter having been fully submitted to this Court for entry of final judgment and decree,

NOW THEREFORE, by reason of law and the premises the court finds as follows:

1. Plaintiff and Defendant are, and for a period of more than six (6) weeks prior to filing of the Complaint for Divorce, have been residents of the State of Idaho, county of Blaine.
2. Plaintiff and Defendant were married on the 13th day of October, 1985, and ever since said date have been Wife and Husband.
3. At no time during these proceedings has Plaintiff or Defendant been a member of the Armed Forces of the United States, and none of the provisions of the Soldiers and Sailors Civil

DECREE OF DIVORCE - 1

Relief Act or amendments thereto are applicable to this action.

4. There is one (1) minor child born of this marriage subject to the jurisdiction of this court in matters regarding support and custody, namely: Leah Rose McIlhenny, born February 9, 1989. There is one other child of the parties born of this marriage who is no longer a minor and therefore not subject to the jurisdiction of this court regarding issues of child custody and support, but for whom the parties have entered into certain agreements regarding their parental obligations, namely Dylan McIlhenny, born May 9, 1986.

5. Plaintiff and Defendant have entered into a written Marriage Settlement Agreement which:

- a. Fully and fairly provides for the division or allocation of community property assets and liabilities;
- b. Fully and fairly confirms their separate property interests;
- c. Fully and fairly provides for the custody, care and support of the minor child of the marriage; and other parental obligations for the child who is no longer a minor;
- d. And otherwise fully and fairly settles and relinquishes all marital rights against each other.

6. During the course of the marriage, certain irreconcilable differences have arisen creating substantial reasons for not continuing this marriage, and establishing sufficient grounds for the dissolution of this marriage.

IT IS THEREFORE, ORDERED, ADJUDGED AND DECREED, that

A. The bonds of matrimony heretofore and now existing between the parties are dissolved and forever set aside and Plaintiff and Defendant are granted a divorce, absolute, from each other on the grounds of irreconcilable differences.

B. The Marriage Settlement Agreement Attached hereto as exhibit A is hereby adopted, confirmed and merged into this Decree of Divorce and shall be enforced as an Order of this court as though all of its terms and provisions were set forth fully herein.

C The community property of the parties be divided as follows:

- 1. Wife shall receive as her sole and separate property the personal property and accounts and real property as set forth in the Marriage Settlement Agreement and subject to any obligations set forth therein.

DECREE OF DIVORCE - 2

2. Husband shall receive as his sole and separate property the personal property and accounts and real property as set forth in the Marriage Settlement Agreement and subject to any obligations set forth therein.

D. The separate property of each party is confirmed to them as set forth in the Marriage Settlement Agreement.

E. The community obligations of the parties be divided as follows:

1. Wife shall assume and pay as her sole and separate liability and hold Husband harmless from the debts and obligations assigned to her and assumed by her as set forth in the Marriage Settlement Agreement.

2. Husband shall assume and pay as his sole and separate liability and hold Wife harmless from the debts and obligations assigned to him and assumed by him as set forth in the Marriage Settlement Agreement.

F. The parties have reached an agreement regarding the custody of the minor child, and therefore it is ordered that the parties shall have joint legal and physical custody of the child, as more particularly set forth in the Marriage Settlement Agreement.

G. The parties have reached an agreement regarding the care, support and maintenance of their minor children, and therefore it is ordered that the parties shall have the obligations of support, care and maintenance of the minor child as set forth more particularly in the Marriage Settlement Agreement.

H. Any agreements regarding the children beyond their minorities shall be as set forth in the Marriage Settlement Agreement.

I. The parties are notified of automatic income withholding on the child support obligations pursuant to Idaho Code Section 32-1205 as follows:

"NOTICE OF AUTOMATIC AND IMMEDIATE INCOME WITHHOLDING

This support order is enforceable by automatic and immediate income withholding as of the effective date of this order under Chapter 12, Title 32, Idaho Code. This automatic and immediate income withholding shall be issued by the department of health and welfare or other obligee to your employer or other person who pays your income, without additional notice to you."

J. The parties are notified of possible automatic medical support order obligations as follows:

"NOTICE OF MEDICAL SUPPORT ORDER

DECREE OF DIVORCE - 3

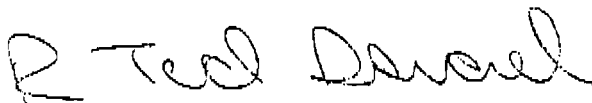
Failure to provide medical insurance coverage may result in the direct enforcement of a medical support order by either the obligee or the Department of Health and Welfare. A national medical support notice will be sent to you employer, requiring your employer to enroll the child in a health plan benefit plan as provided by sections 32-1214A through 32-1214K, Idaho Code and applicable rules of the Department."

K. All other rights and obligations between the parties shall be as set forth with more particularity in the Marriage Settlement Agreement.

L. Each party shall bear his or her own attorneys fees, if any, incurred to date in securing this Decree of Divorce, except Husband shall make full payment to Wife of attorney fees as set forth in the Marriage Settlement Agreement and Wife shall have judgment against the Husband for the same until paid in full.

IT IS SO ORDERED, ADJUDGED AND DECREED.

DATED this 7 day of Jan, 2005.



Honorable R. Ted Israel
Magistrate Judge

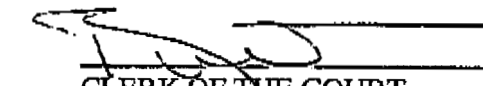
CERTIFICATE OF SERVICE

I hereby certify that on the 10 day of January, 2005, I served a true and correct copy of the within and foregoing document upon the attorney(s) named below in the manner noted:

Jennifer L. K. Haemmerle (attorney for Plaintiff)
Haemmerle & Haemmerle, PLLC
P. O. Box 1800
Hailey, ID 83333

Scott K. McIlhenny (Defendant)
1340 Blue Lakes Drive
Hailey, ID 83333

- X By depositing copies of the same in the United States Mail, postage prepaid, at the post office at Hailey, Idaho.
- _____ By hand delivering copies of the same to the office of the attorney(s) at his offices in Hailey, Idaho.
- _____ By telecopying copies of same to said attorney(s) at the telecopier number _____, and by then mailing copies of the same in the United States Mail, postage prepaid, at the post office at Hailey, Idaho.


CLERK OF THE COURT
BY: DEPUTY CLERK

1. Property to Husband Husband shall receive as his sole and separate property, effective upon the execution of this Agreement, the intangible personal property set forth as follows:

a. All right, title and interest in QWEST Savings and Investment Plan, acct. number 538-58-****. Current balance appx. \$24,696.09.

b. All right, title and interest in Edward Jones account/portfolio/money market acct. # 605-93592-1-3 appx. balance \$222,921.74.

2. Property to Wife Wife shall receive as her sole and separate property, effective upon the execution of this Agreement, the intangible personal property set forth as follows:

a. All right, title and interest in her PERSI Choice Plan, acct. No. 149386, appx. balance (\$734.51).

b. All right title and interest in that certain American Funds 401(k) account in her name, acct. #s 63468911 and 63658407; confirmed to the Wife as her separate property and is not an award or allocation of community property and will not count as a community property allocation.

C. REAL PROPERTY

1. Property to Husband The Husband shall receive as his sole and separate property the community real property described as:

a. BELLEVUE PROPERTY: Lots N 45 of 2, S 18' of 3, Block 70, City of Bellevue.

And having an address of 417 S. 5th Street, Bellevue, ID 83313.

a. For the purposes of this agreement, the fair market value of the real property and improvements is deemed to be \$210,000.00.

b. WOODSIDE PROPERTY: Lot 3, Block 72, WOODSIDE SUBDIVISION FINAL PLAT NO. 19, BLANE COUNTY, IDAHO, according to the official plat thereof, on file in the office of the County Recorder, recorded December 28, 1973, as Instrument No. 152514, records of Blaine County, Idaho.

And having an address of 1340 Blue Lake Drive, Hailey, ID 83333.

a. For the purposes of this agreement, the fair market value of the real property and improvements is deemed to be \$350,000.00.

2. Property to Wife The Wife shall receive as her sole and separate property the community real property described as:

a. MULDOON PROPERTY. The Wife shall receive as her sole and separate property the community real property described as:

Lot 52 of MULDOON RANCH SUBDIVISION NO. 2, according to the official plat thereof, recorded as Instrument No. 149860, records of Blaine County, Idaho.

And having an address of:

213 Bay Horse Road, Blaine County, 83313.

With all appurtenances, improvements and water rights.

For the purposes of this agreement, the fair market value of the real property and improvements and inclusive of water rights is deemed to be \$700,000.00.

D. NATURE OF PROPERTY RECEIVED Each party confirms that the personal and real property received pursuant to this Agreement shall be that party's sole and separate property. The parties shall each execute any and all titles or deeds or other documents of ownership upon, upon request of the other party, necessary or convenient to effect the transfer of property set forth herein.

E. ADDITIONAL COMMUNITY PROPERTY Should additional community property be discovered or located in the future which is not listed in this Agreement or should it be determined by a court of competent jurisdiction there exists additional community property which is not listed in this Agreement, such community property shall be divided equally between Husband and Wife immediately upon its identification or determination unless it is shown such community property was known to one of the parties at the time this Agreement was executed and not revealed to the other party. If this occurs, regardless of when the property is discovery, the parties agree and the court is directed to make an unequal division of this community property in favor of the innocent party.

6. Designation and Division of Community Liabilities and Separate Liabilities.

A. DEBTS ASSUMED BY HUSBAND. Husband shall assume and pay as his sole and separate liabilities and hold Wife harmless from the following liabilities:

1. All liability, debt and obligations associated with or arising from the property received by him as a result of this divorce action, except as assumed by Wife herein.

2. Any debt or obligation incurred by him, in his name or on his behalf since the separation of the parties in June 1, 2003, except as assumed by Wife herein.

3. **MORTGAGE ON 213 Bay Horse Road - Countrywide Home Loan** Acct. Number 048790766, (balance approximately <\$188,131.82>. Husband shall have full responsibility for servicing this debt, although the Wife shall reside in the home secured by the same, and **Husband shall satisfy this debt in full** by refinance against his own properties, or by any other method, no later than six (6) months from the date of the entry of the Decree of Divorce.

B. DEBTS ASSUMED BY WIFE Wife shall assume and pay as her sole and separate liabilities and hold Husband harmless from the following Liabilities:

1. All liability, debt and obligations associated with or arising from the property received by her as a result of this divorce action, except as assumed by Husband herein.

2. Any debt or obligation incurred by her, in her name or on her behalf since the separation of the parties, June 1, 2003, except as assumed by Husband herein.

3. **HOME EQUITY LOAN ON 231 Bay Horse Road - Countrywide Home Equity** Acct. Number 002934875, (balance approximately \$99,999.00) Wife shall have full responsibility for servicing this debt, and **shall satisfy this debt in full** by refinance against her own property, or by any other method, no later than six (6) months from the date of the entry of the Decree of Divorce.

C. UNLISTED OR UNDISCLOSED LIABILITIES If liabilities exist which are not listed herein, the party who failed to exercise due diligence in the finding and disclosure of any such liabilities shall assume complete responsibility for said undisclosed liabilities.

D. INDEMNIFICATION Each party shall indemnify the other and hold the other harmless from all obligations hereby assumed and shall take all steps reasonably required to inform creditors of the assumption of the liabilities by the parties.

7. **Equalization.** As and for the equalization of the division and allocation of assets and debts to be assumed and satisfied as set forth herein, the Husband shall owe to the Wife, and **shall pay concurrent with the execution of this agreement** the sum of \$13,500.00 and the sum of \$1000.00 for attorney fees incurred herein, for a total amount due to Wife, from Husband upon the execution of this agreement of \$14,500.00 (fourteen thousand five hundred and 00/100 dollars). Wife shall have judgment against the Husband and his property pursuant to decree of divorce for the same unless and until satisfied in full. Such payment, in full by Husband shall be deemed to satisfy the equalization, reimbursement obligation of Husband and attorney fee obligation of Husband. *All equalization sum due upon refinance. JMSW*

8. **No Spousal Maintenance** - Neither party shall have an award of spousal support or maintenance or alimony from the other.

9. Tax Matters.

A. COMMUNITY FILINGS During the period of their marriage, through the tax year ending December 31, 2003, the parties have filed certain income tax returns. If a deficiency assessment is proposed by any taxing authority on any of the returns filed during the period of the marriage (and provided that the tax returns pertain to income, deductions, credit or other matters arising during the period of the marriage), the party receiving notice of that proposed deficiency assessment shall give the other party immediate notice thereof in writing. For any return filed during the marital community, the parties shall share equally in any refund received or tax payment due.

For the tax year ending December 31, 2004, the parties shall file separate returns, and each shall pay the tax due or receive the refund due on his or her own income as his or her own separate debt or separate property. If still married as of December 31, 2004, the parties shall file as married filing separately and shall cooperate with each other to exchange information to complete such filings; and shall pay such tax due or have such refunds as set forth herein.

B. SEPARATE FILINGS The parties agree that for the calendar year ending 2005, and each year thereafter they shall file separate tax returns.

C. CHILD TAX CREDITS AND DEPENDENCY EXEMPTION As set forth above, the parties shall claim the children for child tax credit and dependency exemption as follows:

C.1. Leah - For the tax year December 31, 2004, Wife shall claim Leah for the tax dependency exemption and credit. For the tax year ending December 31, 2005, and each year thereafter until Leah reaches the age of 18 years, Husband shall be entitled to claim Leah as a dependent on any state and federal tax returns he may file. The monthly Child Support Obligation is adjusted to reflect this allocation.

Commencing the year that Leah turns 18 years of age, Wife shall be entitled to claim Leah as a dependent child that year, and each year thereafter, if otherwise allowed by law.

Each party shall sign any such declarations as may be from time to time required by the Internal Revenue Service. Nothing herein shall be construed to prohibit or limit the ability of either of the parties to deduct medical expenses or other expenses incurred by the children and actually paid by that party if otherwise allowed by law.

C.2 Dylan - For the tax year ending December 31, 2004, and each year thereafter Wife shall be entitled to claim Dylan as a dependent child on any state and federal tax returns she may file, if otherwise allowed by law.

Each party shall sign any such declarations as may be from time to time required by the Internal Revenue Service. Nothing herein shall be construed to prohibit or limit the ability of either of the parties to deduct medical expenses or other expenses incurred by the children

and actually paid by that party if otherwise allowed by law.

D. TAX LIABILITY AND PENALTIES FOR PROPERTY TRANSFER The transfer of property between the parties as provided for in this Agreement is done incident to the divorce of the parties. Neither party shall seek a stepped-up basis in connection with the transfer of any of the assets pursuant to this Agreement. Each party shall be solely responsible for paying any income tax and capital gains tax, or any other penalty, arising out the taxable disposition of any property awarded to that party pursuant to this Agreement.

E. INNOCENT SPOUSE Nothing herein shall constitute a waiver on the part of either spouse to claim the status of "innocent spouse" (or any comparable status under State law) as that status is defined by Federal law (or State law, if applicable) in any proceeding before the appropriate taxing authority.

10. **Social Security Benefits.** The parties hereby specifically reserve any and all rights each may have pursuant to the Federal Social Security Act and any other federal law related to the Social Security Act.

11. **Mutual Estate Release.** Both parties mutually release one another from any and all claims on the property of the other, whether real or personal and whether now or hereafter acquired. Each party shall have the unrestricted right to dispose of their property, free from any claim or demand of the other, so that their estates shall be distributed and belong to the persons who become entitled thereto, whether by will, devise, bequest, intestacy or otherwise under the laws of any jurisdiction. Both parties expressly waive and relinquish any and all right to inherit the estate of the other, to take property from the other by devise or bequest (unless by a Will executed subsequently to the effective date of this Agreement) or to claim any family allowance or other elective share under the laws of any jurisdiction. Both parties expressly waive and relinquish any right of administration of the estate of the other under the laws of any jurisdiction.

12. **Mutual General Release.** Husband and Wife mutually release one another from any and all known civil causes of actions, claims, demands, damages, costs, attorneys' fees, expenses and compensation of any kind on account of or which in any manner arose directly or indirectly from the relationship during the period of the marriage. Nothing herein shall be construed as barring the filing of any action for divorce or proceeding with any pending action for divorce.

13. **Warranties of the Parties.**

A. NO UNLAWFUL INDUCEMENT Husband and Wife represent and declare to one another that no promises, warranties or representations of any character or nature have been made to induce either party to enter into this Agreement, other than herein contained; that each of the parties acknowledges that each is entering into this Agreement of their own free will and accord without coercion; that each believes the Agreement to be fair, just and reasonable; and that each is signing this Agreement freely and voluntarily.

B. COMPLETE AGREEMENT This Agreement is entire and complete and embodies all understandings and agreements between the parties. No representations, agreements, undertakings or warranties of any kind or nature have been made to the other party to induce the making of this Agreement, except as is expressly set forth in this Agreement. Neither of the parties shall assert that there are any other agreements, oral or written, existing between them. No oral statement or prior written matter outside of this Agreement shall have any force or effect. This Agreement shall not be amended, modified or discharged or terminated orally. Any waiver by either party of any provision of this Agreement, or of any right hereunder, shall not be deemed a continuing waiver and shall not prevent or estop such party from thereafter enforcing such provision or right, and the failure of either party to insist in any one or more instances upon the strict performance of any of the terms or provisions of this Agreement by the other party shall not be construed as a waiver or relinquishment for the future of any of such terms or provisions, but the same shall continue in full force and effect.

C. COMPLETE DISCLOSURE Both parties warrant to each other that they have made a complete and full disclosure and representation of their assets and liabilities to the extent necessary for this Agreement and both parties are fully satisfied that they have examined all pertinent documents and have all the necessary information with which to be properly informed and advised regarding the financial status of each party so that the parties are relying on said information in entering into this Agreement.

D. LIABILITY ON FAILURE TO DISCLOSE Both parties warrant to each other that neither has incurred, and each covenants that they shall not incur, any liability or obligation on which the other may become liable; and each covenants and agrees that if any claim, action, or proceeding shall be brought hereafter seeking to hold one of the parties liable on account of a debt, liability, act or omission of the other party, the party causing such claim, action, or proceeding, shall at their sole expense defend the other party against any such claim or demand, whether or not well founded, and hold such innocent party free and harmless therefrom.

E. PROPERTY ACQUIRED AFTER AGREEMENT The parties agree that any property acquired by either of them from and after the date of execution of this Agreement shall be the sole and separate property of the one so acquiring it; and each party waives any and all property rights in and to such future acquisitions of property as the sole and separate property of the one acquiring same from the date of execution of this Agreement.

14. Execution of Further Instruments. Husband and Wife agree that they will immediately, upon request of the other, execute and deliver any other or further instruments necessary or convenient to carry out the provisions of this Agreement, including but not limited to instruments or documents of ownership such as deeds and titles.

15. Decree of Divorce. This Agreement shall be incorporated and merged in full or by reference in any final judgment or decree of divorce divorcing the parties entered by a court of competent jurisdiction.

16. Legal Representation. The parties acknowledge that Jennifer L. K. Haemmerle of the firm Haemmerle & Haemmerle, PLLC, Attorneys at Law, has represented Wife in the preparation of this Agreement. The Husband is aware of his right to independent representation and has chosen to represent himself in this matter. No presumption shall exist in favor of or against any party to this Agreement as a result of the drafting and preparation of the documents.

17. Attorneys Fees. **Concurrent with the execution of this agreement, Husband shall pay to Wife the sum of \$1000.00** as and for partial reimbursement to her for her attorney fees incurred in this matter up to obtaining the Decree of Divorce. Such payment shall be made in full at the time of the execution of this agreement. Other than this payment from Husband to Wife, each party agrees to bear his or her own attorneys fees and costs incurred in this matter. However, in the event that either party hereto employs an attorney to enforce any right or duty arising out of this Agreement, the prevailing party in such dispute shall be entitled to be paid reasonable costs and attorney's fees by the nonprevailing party, whether litigation is commenced or not.

18. Applicable Law. The laws of the State of Idaho shall govern all matters affecting the interpretation of this Agreement and the rights of the parties hereto.

19. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators and assigns.

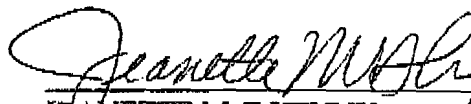
20. Notices. All notices required to be given shall be either personally delivered to receiving party or mailed by certified mail, return receipt requested, duly directed to the receiving party at their last known respective address. The parties shall from time to time specify any other addresses by which notice is to be sent.

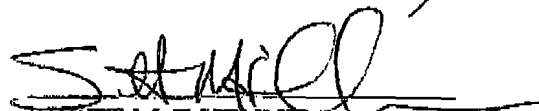
21. Severability. If any of the provisions of this Agreement are held to be invalid or unenforceable, all other provisions hereof shall nevertheless continue in full force and effect.

22. Exhibits. Any exhibits attached to this Agreement are incorporated into this Agreement by this reference hereto.

23. Effect of Copy or Fax. A copy of this agreement shall have the same force and effect as an original; and a copy or fax of a signature shall be considered to be an original signature.

IN WITNESS WHEREOF, the parties have executed this Agreement the day and year above written.


JEANETTE McILHENNY


SCOTT McILHENNY

STATE OF IDAHO

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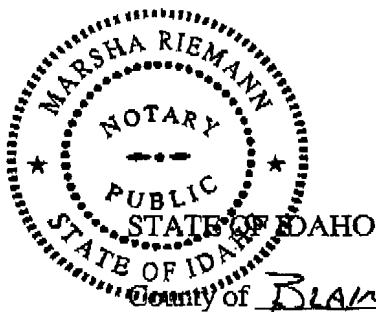
) ss.

County of BLAINE

)

On this 20 day of DECEMBER, 2004, before me, a Notary Public in and for said State, personally appeared JEANETTE MCILHENNY known to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that she executed the same.

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



Marsha Rieman
 NOTARY PUBLIC FOR: Idaho
 Residing at Hailey
 Commission Expires 1/30/2009

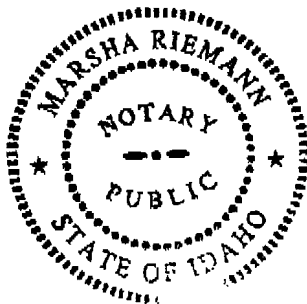
)

) ss.

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On this 20 day of DECEMBER, 2004, before me, a Notary Public in and for said State, personally appeared SCOTT MCILHENNY known to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same.

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



Marsha Rieman
 NOTARY PUBLIC FOR: Idaho
 Residing at Hailey
 Commission Expires 1/30/2009

ORIGINAL

MARRIAGE SETTLEMENT AGREEMENT

DATED 12-20-04

THIS AGREEMENT is made and entered into by JEANETTE MARIE McILHENNY a resident of the State of Idaho, (hereinafter referred to as the "Wife" or "Mother"), and SCOTT KENLEY McILHENNY a resident of the State of Idaho, (hereinafter referred to as the "Husband" or "Father"), concerning their marital property rights and the support, maintenance and child custody rights arising from their marital relationship.

RECITALS

The parties hereto make this Agreement this 20 day of December with reference to the following facts:

WHEREAS, the parties were married on the 13th day of October, 1985, and ever since that date have been Husband and Wife.

WHEREAS, there is one child born of the marriage, namely Leah Rose McIlhenny born February 9, 1989, who is still a minor child subject to the jurisdiction of the court in matters regarding support and custody. The is another child, namely Dylan McIlhenny, born May 9, 1986, who is no longer a minor child subject to the jurisdiction of the court in matters regarding support and custody. However, the parties have entered into certain agreements regarding their parental obligations to Dylan as part of the consideration for the this agreement as set forth in full herein. The Wife is not now pregnant.

WHEREAS, irreconcilable differences have arisen between the parties which render it impossible for the parties to continue to live together as Husband and Wife. As a result the parties have separated and desire a divorce.

WHEREAS, the parties desire to agree on a fair and equitable division of their property and debts.

NOW, THEREFORE, in consideration of the mutual promises, covenants and conditions set forth herein, the parties agree as follows:

1. Living Separate. Each party may continue to live separate and apart from the other for the rest of their lives in all respects as unmarried. Each party shall be free from all restraint, interference or control, direct or indirect, by the other party.

2. Child Custody.

A. – JOINT LEGAL CUSTODY - The legal custody of the child of the parties hereto, during her minority, shall be joint between the parties. All factors contained in Idaho Code Section 32-717B have been met for joint custody to be granted and believe that it is in the best

interest of the child that the child's health, education, and welfare be entrusted equally to Mother and Father. Both Mother and Father shall be responsible for decisions relating to the child's education, upbringing, health, religion, safety and welfare.

B. – JOINT PHYSICAL CUSTODY - The parties shall share joint physical custody of the child. The child shall reside substantially with the Mother. The child shall reside with the Father on a basis that Mother and Father shall agree is in the child's best interest. For the purposes of this agreement, it is assumed that the Father's custodial time shall constitute approximately ten percent (10%) of the total custodial time.

The holidays, the child's birthday, and the parties' birthdays, shall be shared substantially equally between the parties as well, by either sharing or alternating when each parent shall have Leah for a holiday, birthday, or other special event.

2) PARENTING PLAN – Each party shall have liberal and frequent contact and access to the child. Each party shall consent to all reasonable requests of the other party with regard to access and contact with the child, and shall cooperate fully with each other. To that end the parties agree to and adopt the Parent Plan Agreement which has been completed and is attached hereto as **Exhibit A (four pages)**, as if set forth fully herein. EXCEPT THAT PROVISIONS RELATING TO THE SUPPORT OF THE CHILD, HEALTH INSURANCE COVERAGE, HEALTH AND MEDICAL EXPENSES, TAX DEPENDENCY EXEMPTION, AND ALL OTHER MATTERS RELATING TO SUPPORT SHALL BE GOVERNED BY THE EXPRESS PROVISIONS OF THIS AGREEMENT AND THE CHILD SUPPORT GUIDELINES ATTACHED HERETO AS EXHIBIT B, AND NOT BY EXHIBIT A.

3. Child Support

A. BASIC SUPPORT - Commencing retroactive to the first day of October, 2004, and on the first day of each month thereafter, Father shall pay a monthly child support in the amount of **\$508.00** per month for the support, care and maintenance of the child. The monthly support obligation is also adjusted for the basic amount based upon the Idaho Child Support Guidelines, custody and income levels and the tax dependency exemption; all as set forth on the attached child support document exhibits.

B. PLACE OF PAYMENTS - All child support payments shall be made to the State of Idaho, Department of Health and Welfare, Child Support Receipting, P. O. 70008, Boise, Idaho 83707. Each payment shall be made payable to State of Idaho, Department of Health and Welfare, and shall note the parties names and case number. The Plaintiff shall complete and file with the court a Child Support Order Transmittal Form, and shall advise the Department of her change of address and any other information that may be required.

C. AUTOMATIC INCOME WITHHOLDING - The parties acknowledge automatic income withholding on the child support obligations pursuant to Idaho Code Section 32-1205 as follows:

'NOTICE OF AUTOMATIC AND IMMEDIATE INCOME WITHHOLDING'

"This support order is enforceable by automatic and immediate income withholding as of the effective date of this order under Chapter 12, Title 32, Idaho Code. This automatic and immediate income withholding shall be issued by the department of health and welfare or other obligee to your employer or other person who pays your income, without additional notice to you."

D. HEALTH INSURANCE - The Husband shall maintain and keep in full force and effect, and pay all premiums and related costs for a comprehensive medical insurance policy covering the minor child. At the time of this agreement, the cost of the health insurance premium is an employment benefit that is provided at no cost to Husband. At such time as there may be a charge for the premium to which ever party is providing the insurance, the other party shall reimburse to the providing party an amount of the monthly premium in his or her own proportion to their respective gross income levels as determined for child support purposes. Such insurance plan may be available through either parties' employer or independently. At this time, those proportions are as follows:

Husband: 57%
Wife: 43%

E. MEDICAL SUPPORT ORDER- The parties acknowledge possible medical support order/obligations pursuant to Idaho Code Section 32-1214F, as follows:

"Failure to provide medical insurance coverage may result in the direct enforcement of a medical support order by either the obligee or the Department of Health and Welfare. A national medical support notice will be sent to your employer requiring your employer to enroll the child in a health benefit plan as provided by Sections 32-1214A through 12-1214K, Idaho Code, and applicable rules of the Department."

F. HEALTH EXPENSES/ REIMBURSEMENT - Copies of the medical insurance policies, insurance cards and any other documents provided by any insurer shall be provided to both parties. The parties shall cooperate fully with one another to process any and all insurance claims for reimbursement of such medical expenses. Each party agrees to immediately reimburse their share of any medical expenses paid directly by the other party upon receipt of a copy of the medical bill and proof of payment.

Any medical or dental care expenses for the child not covered or paid by the insurance, including but not limited to deductible amounts, orthodontic, optical and dental, psychiatric, psychological, special education, addiction treatment, or counseling in any form, shall be shared by the parties in proportion to their respective gross income levels as determined for child support purposes. Such payments shall be made directly between the parties or as otherwise provided herein. At this time, those proportions are as follows:

Husband: 57%
Wife: 43%

G. LIMITS ON HEALTH CARE EXPENSES – Any claimed health care expense for the children (whether denominated as psychiatric, psychologist, special education, addiction treatment, or counseling in any form, and including regular medical or dental care), whether or not covered by insurance, which would result in an actual out-of-pocket expense of over \$500.00 to the parent who did not incur or consent to the expense, must be approved in advance, in writing, by both parties or by prior court order; unless incurred by the party in the case of emergency treatment as set forth below. Relief may be granted by the Court for failure to comply under extraordinary circumstances, including but not limited to emergency or urgent care treatment, and the Court may in its discretion apportion the incurred expense in some percentage other than that in the existing order, and in so doing, may consider whether consent was unreasonably requested or withheld.

H. TAX DEPENDENCY EXEMPTIONS/CREDITS -

H.1. Leah - For the tax year December 31, 2004, Wife shall claim Leah for the tax dependency exemption and credit. For the tax year ending December 31, 2005, and each year thereafter until Leah reaches the age of 18 years, Husband shall be entitled to claim Leah as a dependent on any state and federal tax returns he may file. The monthly Child Support Obligation is adjusted to reflect this allocation.

Commencing the year that Leah turns 18 years of age, Wife shall be entitled to claim Leah as a dependent child that year, and each year thereafter, if otherwise allowed by law.

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Each party shall sign any such declarations as may be from time to time required by the Internal Revenue Service. Nothing herein shall be construed to prohibit or limit the ability of either of the parties to deduct medical expenses or other expenses incurred by the children and actually paid by that party if otherwise allowed by law.

H.2 Dylan - For the tax year ending December 31, 2004, and each year thereafter Wife shall be entitled to claim Dylan as a dependent child on any state and federal tax returns she may file, if otherwise allowed by law.

Each party shall sign any such declarations as may be from time to time required by the Internal Revenue Service. Nothing herein shall be construed to prohibit or limit the ability of either of the parties to deduct medical expenses or other expenses incurred by the children and actually paid by that party if otherwise allowed by law.

I. – EXHIBITS – Case Summary; Child Support Calculations; Affidavit Verifying Income; Child Support Order; Adjustments to Child Support and Recap of Obligations; Shared Split or Mixed Custody Worksheet; - attached hereto in their entirety as **Exhibit B**.

J. – EXCHANGE INCOME INFORMATION - Upon the written request of either party, the parties will provide and exchange information verifying their income for the current and previous tax year.

4. Payment of College Expenses:

A. In consideration of the terms of this agreement, Husband and Wife agree to each pay in full, one half of the student tuition or student fees for each child, Dylan and Leah to pursue a higher education. For the purposes of this Agreement, higher education shall include and shall be limited to four (4) years of continuous attendance as a full time student, at any accredited college or university, or junior or community college, trade schools or technical institutions of the United States, **as the parties shall both agree in advance in writing that Dylan or Leah shall attend.** Higher education may include, **at the absolute discretion and advance written agreement of both parties,** pursuit of higher degrees including but not limited to any master's degree or professional degree up to, and including all doctorate work.

B. Upon the **advance written agreement of the parties** only, their joint obligation of payment of higher education expenses may also include cost of room and board, books, student activity fees, parking, lab costs, a discretionary spending allowance, health insurance, and the cost of travel to/from such institute.

5. Division of Community Property and Confirmation of Separate Property.

A. PERSONAL PROPERTY – TANGIBLE -

1. Property to Husband Husband shall receive as his sole and separate property, effective upon the execution of this Agreement, the tangible personal property set forth as follows:

- a. All personal property currently in his possession.
- b. 1997 Chevy Dually, approximate fair market value (Blue Book)
\$13,000.00.

2. Property to Wife Wife shall receive as her sole and separate property, effective upon the execution of this Agreement, the tangible personal property set forth as follows:

- a. All personal property currently in her possession.
- b. 1993 Nissan Altima VIN # 1N4BU31FOPC231707
approximate fair market value (Blue Book) \$2,225.00
- c. Commencing the year 2005, and each year thereafter until no longer allowed by law or company policy, Husband shall distribute to Wife, as her community share, six (6) guest passes for travel on Horizon Airlines, and/or its successor.

B. PERSONAL PROPERTY – INTANGIBLE

1. Property to Husband Husband shall receive as his sole and separate property, effective upon the execution of this Agreement, the intangible personal property set forth as follows:

a. All right, title and interest in QWEST Savings and Investment Plan, acct. number 538-58-****. Current balance appx. \$24,696.09.

b. All right, title and interest in Edward Jones account/portfolio/money market acct. # 605-93592-1-3 appx. balance \$222,921.74.

2. Property to Wife Wife shall receive as her sole and separate property, effective upon the execution of this Agreement, the intangible personal property set forth as follows:

a. All right, title and interest in her PERSI Choice Plan, acct. No. 149386, appx. balance (\$734.51).

b. All right title and interest in that certain American Funds 401(k) account in her name, acct. #s 63468911 and 63658407; confirmed to the Wife as her separate property and is not an award or allocation of community property and will not count as a community property allocation.

C. REAL PROPERTY

1. Property to Husband The Husband shall receive as his sole and separate property the community real property described as:

a. BELLEVUE PROPERTY: Lots N 45 of 2, S 18' of 3, Block 70, City of Bellevue.

And having an address of 417 S. 5th Street, Bellevue, ID 83313.

a. For the purposes of this agreement, the fair market value of the real property and improvements is deemed to be \$210,000.00.

b. WOODSIDE PROPERTY: Lot 3, Block 72, WOODSIDE SUBDIVISION FINAL PLAT NO. 19, BLANE COUNTY, IDAHO, according to the official plat thereof, on file in the office of the County Recorder, recorded December 28, 1973, as Instrument No. 152514, records of Blaine County, Idaho.

And having an address of 1340 Blue Lake Drive, Hailey, ID 83333.

a. For the purposes of this agreement, the fair market value of the real property and improvements is deemed to be \$350,000.00.

2. Property to Wife The Wife shall receive as her sole and separate property the community real property described as:

a. MULDOON PROPERTY. The Wife shall receive as her sole and separate property the community real property described as:

Lot 52 of MULDOON RANCH SUBDIVISION NO. 2, according to the official plat thereof, recorded as Instrument No. 149860, records of Blaine County, Idaho.

And having an address of:

213 Bay Horse Road, Blaine County, 83313.

With all appurtenances, improvements and water rights.

For the purposes of this agreement, the fair market value of the real property and improvements and inclusive of water rights is deemed to be \$700,000.00.

D. NATURE OF PROPERTY RECEIVED Each party confirms that the personal and real property received pursuant to this Agreement shall be that party's sole and separate property. The parties shall each execute any and all titles or deeds or other documents of ownership upon, upon request of the other party, necessary or convenient to effect the transfer of property set forth herein.

E. ADDITIONAL COMMUNITY PROPERTY Should additional community property be discovered or located in the future which is not listed in this Agreement or should it be determined by a court of competent jurisdiction there exists additional community property which is not listed in this Agreement, such community property shall be divided equally between Husband and Wife immediately upon its identification or determination unless it is shown such community property was known to one of the parties at the time this Agreement was executed and not revealed to the other party. If this occurs, regardless of when the property is discovery, the parties agree and the court is directed to make an unequal division of this community property in favor of the innocent party.

6. Designation and Division of Community Liabilities and Separate Liabilities.

A. DEBTS ASSUMED BY HUSBAND. Husband shall assume and pay as his sole and separate liabilities and hold Wife harmless from the following liabilities:

1. All liability, debt and obligations associated with or arising from the property received by him as a result of this divorce action, except as assumed by Wife herein.

2. Any debt or obligation incurred by him, in his name or on his behalf since the separation of the parties in June 1, 2003, except as assumed by Wife herein.

3. MORTGAGE ON 213 Bay Horse Road - Countrywide Home Loan Acct. Number 048790766, (balance approximately <\$188,131.82>. Husband shall have full responsibility for servicing this debt, although the Wife shall reside in the home secured by the same, and Husband **shall satisfy this debt in full** by refinance against his own properties, or by any other method, no later than six (6) months from the date of the entry of the Decree of Divorce.

B. DEBTS ASSUMED BY WIFE Wife shall assume and pay as her sole and separate liabilities and hold Husband harmless from the following Liabilities:

1. All liability, debt and obligations associated with or arising from the property received by her as a result of this divorce action, except as assumed by Husband herein.

2. Any debt or obligation incurred by her, in her name or on her behalf since the separation of the parties, June 1, 2003, except as assumed by Husband herein.

3. HOME EQUITY LOAN ON 231 Bay Horse Road - Countrywide Home Equity Acct. Number 002934875, (balance approximately \$99,999.00) Wife shall have full responsibility for servicing this debt, and **shall satisfy this debt in full** by refinance against her own property, or by any other method, no later than six (6) months from the date of the entry of the Decree of Divorce.

C. UNLISTED OR UNDISCLOSED LIABILITIES If liabilities exist which are not listed herein, the party who failed to exercise due diligence in the finding and disclosure of any such liabilities shall assume complete responsibility for said undisclosed liabilities.

D. INDEMNIFICATION Each party shall indemnify the other and hold the other harmless from all obligations hereby assumed and shall take all steps reasonably required to inform creditors of the assumption of the liabilities by the parties.

7. Equalization. As and for the equalization of the division and allocation of assets and debts to be assumed and satisfied as set forth herein, the Husband shall owe to the Wife, and **shall pay concurrent with the execution of this agreement** the sum of **\$13,500.00 and the sum of \$1000.00 for attorney fees incurred herein, for a total amount due to Wife, from Husband upon the execution of this agreement of \$14,500.00 (fourteen thousand five hundred and 00/100 dollars)**. Wife shall have judgment against the Husband and his property pursuant to decree of divorce for the same unless and until satisfied in full. Such payment, in full by Husband shall be deemed to satisfy the equalization, reimbursement obligation of Husband and attorney fee obligation of Husband. *ALL equalization sum due upon refinance. JMSW*

8. No Spousal Maintenance - Neither party shall have an award of spousal support or maintenance or alimony from the other.

9. Tax Matters.

A. COMMUNITY FILINGS During the period of their marriage, through the tax year ending December 31, 2003, the parties have filed certain income tax returns. If a deficiency assessment is proposed by any taxing authority on any of the returns filed during the period of the marriage (and provided that the tax returns pertain to income, deductions, credit or other matters arising during the period of the marriage), the party receiving notice of that proposed deficiency assessment shall give the other party immediate notice thereof in writing. For any return filed during the marital community, the parties shall share equally in any refund received or tax payment due.

For the tax year ending December 31, 2004, the parties shall file separate returns, and each shall pay the tax due or receive the refund due on his or her own income as his or her own separate debt or separate property. If still married as of December 31, 2004, the parties shall file as married filing separately and shall cooperate with each other to exchange information to complete such filings; and shall pay such tax due or have such refunds as set forth herein.

B. SEPARATE FILINGS The parties agree that for the calendar year ending 2005, and each year thereafter they shall file separate tax returns.

C. CHILD TAX CREDITS AND DEPENDENCY EXEMPTION As set forth above, the parties shall claim the children for child tax credit and dependency exemption as follows:

C.1. Leah - For the tax year December 31, 2004, Wife shall claim Leah for the tax dependency exemption and credit. For the tax year ending December 31, 2005, and each year thereafter until Leah reaches the age of 18 years, Husband shall be entitled to claim Leah as a dependent on any state and federal tax returns he may file. The monthly Child Support Obligation is adjusted to reflect this allocation.

Commencing the year that Leah turns 18 years of age, Wife shall be entitled to claim Leah as a dependent child that year, and each year thereafter, if otherwise allowed by law.

Each party shall sign any such declarations as may be from time to time required by the Internal Revenue Service. Nothing herein shall be construed to prohibit or limit the ability of either of the parties to deduct medical expenses or other expenses incurred by the children and actually paid by that party if otherwise allowed by law.

C.2 Dylan - For the tax year ending December 31, 2004, and each year thereafter Wife shall be entitled to claim Dylan as a dependent child on any state and federal tax returns she may file, if otherwise allowed by law.

Each party shall sign any such declarations as may be from time to time required by the Internal Revenue Service. Nothing herein shall be construed to prohibit or limit the ability of either of the parties to deduct medical expenses or other expenses incurred by the children

and actually paid by that party if otherwise allowed by law.

D. TAX LIABILITY AND PENALTIES FOR PROPERTY TRANSFER The transfer of property between the parties as provided for in this Agreement is done incident to the divorce of the parties. Neither party shall seek a stepped-up basis in connection with the transfer of any of the assets pursuant to this Agreement. Each party shall be solely responsible for paying any income tax and capital gains tax, or any other penalty, arising out the taxable disposition of any property awarded to that party pursuant to this Agreement.

E. INNOCENT SPOUSE Nothing herein shall constitute a waiver on the part of either spouse to claim the status of "innocent spouse" (or any comparable status under State law) as that status is defined by Federal law (or State law, if applicable) in any proceeding before the appropriate taxing authority.

10. Social Security Benefits. The parties hereby specifically reserve any and all rights each may have pursuant to the Federal Social Security Act and any other federal law related to the Social Security Act.

11. Mutual Estate Release. Both parties mutually release one another from any and all claims on the property of the other, whether real or personal and whether now or hereafter acquired. Each party shall have the unrestricted right to dispose of their property, free from any claim or demand of the other, so that their estates shall be distributed and belong to the persons who become entitled thereto, whether by will, devise, bequest, intestacy or otherwise under the laws of any jurisdiction. Both parties expressly waive and relinquish any and all right to inherit the estate of the other, to take property from the other by devise or bequest (unless by a Will executed subsequently to the effective date of this Agreement) or to claim any family allowance or other elective share under the laws of any jurisdiction. Both parties expressly waive and relinquish any right of administration of the estate of the other under the laws of any jurisdiction.

12. Mutual General Release. Husband and Wife mutually release one another from any and all known civil causes of actions, claims, demands, damages, costs, attorneys' fees, expenses and compensation of any kind on account of or which in any manner arose directly or indirectly from the relationship during the period of the marriage. Nothing herein shall be construed as barring the filing of any action for divorce or proceeding with any pending action for divorce.

13. Warranties of the Parties.

A. NO UNLAWFUL INDUCEMENT Husband and Wife represent and declare to one another that no promises, warranties or representations of any character or nature have been made to induce either party to enter into this Agreement, other than herein contained; that each of the parties acknowledges that each is entering into this Agreement of their own free will and accord without coercion; that each believes the Agreement to be fair, just and reasonable; and that each is signing this Agreement freely and voluntarily.

B. COMPLETE AGREEMENT This Agreement is entire and complete and embodies all understandings and agreements between the parties. No representations, agreements, undertakings or warranties of any kind or nature have been made to the other party to induce the making of this Agreement, except as is expressly set forth in this Agreement. Neither of the parties shall assert that there are any other agreements, oral or written, existing between them. No oral statement or prior written matter outside of this Agreement shall have any force or effect. This Agreement shall not be amended, modified or discharged or terminated orally. Any waiver by either party of any provision of this Agreement, or of any right hereunder, shall not be deemed a continuing waiver and shall not prevent or estop such party from thereafter enforcing such provision or right, and the failure of either party to insist in any one or more instances upon the strict performance of any of the terms or provisions of this Agreement by the other party shall not be construed as a waiver or relinquishment for the future of any of such terms or provisions, but the same shall continue in full force and effect.

C. COMPLETE DISCLOSURE Both parties warrant to each other that they have made a complete and full disclosure and representation of their assets and liabilities to the extent necessary for this Agreement and both parties are fully satisfied that they have examined all pertinent documents and have all the necessary information with which to be properly informed and advised regarding the financial status of each party so that the parties are relying on said information in entering into this Agreement.

D. LIABILITY ON FAILURE TO DISCLOSE Both parties warrant to each other that neither has incurred, and each covenants that they shall not incur, any liability or obligation on which the other may become liable; and each covenants and agrees that if any claim, action, or proceeding shall be brought hereafter seeking to hold one of the parties liable on account of a debt, liability, act or omission of the other party, the party causing such claim, action, or proceeding, shall at their sole expense defend the other party against any such claim or demand, whether or not well founded, and hold such innocent party free and harmless therefrom.

E. PROPERTY ACQUIRED AFTER AGREEMENT The parties agree that any property acquired by either of them from and after the date of execution of this Agreement shall be the sole and separate property of the one so acquiring it; and each party waives any and all property rights in and to such future acquisitions of property as the sole and separate property of the one acquiring same from the date of execution of this Agreement.

14. Execution of Further Instruments. Husband and Wife agree that they will immediately, upon request of the other, execute and deliver any other or further instruments necessary or convenient to carry out the provisions of this Agreement, including but not limited to instruments or documents of ownership such as deeds and titles.

15. Decree of Divorce. This Agreement shall be incorporated and merged in full or by reference in any final judgment or decree of divorce divorcing the parties entered by a court of competent jurisdiction.

16. Legal Representation. The parties acknowledge that Jennifer L. K. Haemmerle of the firm Haemmerle & Haemmerle, PLLC, Attorneys at Law, has represented Wife in the preparation of this Agreement. The Husband is aware of his right to independent representation and has chosen to represent himself in this matter. No presumption shall exist in favor of or against any party to this Agreement as a result of the drafting and preparation of the documents.

17. Attorneys Fees. **Concurrent with the execution of this agreement, Husband shall pay to Wife the sum of \$1000.00** as and for partial reimbursement to her for her attorney fees incurred in this matter up to obtaining the Decree of Divorce. Such payment shall be made in full at the time of the execution of this agreement. Other than this payment from Husband to Wife, each party agrees to bear his or her own attorneys fees and costs incurred in this matter. However, in the event that either party hereto employs an attorney to enforce any right or duty arising out of this Agreement, the prevailing party in such dispute shall be entitled to be paid reasonable costs and attorney's fees by the nonprevailing party, whether litigation is commenced or not.

18. Applicable Law. The laws of the State of Idaho shall govern all matters affecting the interpretation of this Agreement and the rights of the parties hereto.

19. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators and assigns.

20. Notices. All notices required to be given shall be either personally delivered to receiving party or mailed by certified mail, return receipt requested, duly directed to the receiving party at their last known respective address. The parties shall from time to time specify any other addresses by which notice is to be sent.

21. Severability. If any of the provisions of this Agreement are held to be invalid or unenforceable, all other provisions hereof shall nevertheless continue in full force and effect.

22. Exhibits. Any exhibits attached to this Agreement are incorporated into this Agreement by this reference hereto.

23. Effect of Copy or Fax A copy of this agreement shall have the same force and effect as an original; and a copy or fax of a signature shall be considered to be an original signature.

IN WITNESS WHEREOF, the parties have executed this Agreement the day and year above written.


JEANETTE McILHENNY


SCOTT McILHENNY