

**SETTLEMENT AGREEMENT AND GENERAL RELEASE**

This Settlement Agreement and General Release ("Agreement") is made and entered into this 16<sup>th</sup> day of August, 2012, by and between:

Plaintiff: Pamela Lowe ("Lowe"); and

Coleman ("Coleman"), Jerry Whitehead ("Whitehead"), Gary Blick ("Blick"),  
"Defendants").

**RECITALS**

A. WHEREAS, Lowe served as Director of ITD from January 2007 to July 2009, when the existing ITD Board decided to terminate Lowe's employment as Director;

B. WHEREAS, Lowe thereafter filed a lawsuit against ITD and the Board Members, including now former Board Chairman, Darrell Manning, former Board Members Gary Blick and Neil Miller, current Board Chairman Jerry Whitehead, and current Board Members James Coleman and Lee Gagner;

C. WHEREAS, the lawsuit filed by Lowe is now pending in the United States District Court for the District of Idaho and is styled as *Lowe v. Idaho Transportation Department, et al.*, Case No. 09-653-S-REB ("Lawsuit");

D. WHEREAS, on March 31, 2012, the Court granted Lowe's motion for partial summary judgment on one legal claim at issue in this case: finding that the language of Idaho Code § 40-503 provides the Director of ITD with an expectation of continued employment such that he or she has a property right in continued employment;

E. WHEREAS, pursuant to the Court's Scheduling Order the parties engaged in a mediation on July 11, 2012, in a good faith attempt to resolve the Lawsuit without further proceedings or appeal;

F. WHEREAS, based on the result of the lengthy mediation, the parties, without conceding liability or admitting any wrongdoing, and both parties simply wanting to buy their peace through the resolution of the Lawsuit, have determined that it is in their respective best interests to reach a full and

final compromise and settlement of all disputes or claims related in any way to the Lawsuit or arising from the Lawsuit and any and all other claims one party may have against another party or its affiliates as further set forth below, and in consideration of the mutual covenants herein contained and for other good and valuable consideration, the parties to this Agreement agree as follows:

### AGREEMENT

1. Mutual General Release to and by the Parties to this Agreement. In consideration for the agreement and the payments made hereunder, Lowe hereby forever releases and discharges Defendants, and any or all past, present or future Board Members, Idaho state officials, officers, representatives, agents, or employees, independent contractors, other agents, clients, subordinates, assigns, consultants, attorneys, insurers, predecessors-in-interest and/or successors-in-interest, either directly or vicariously, from any and all obligations, damages, losses, liabilities, suits, debts and demands, of whatever character in law or in equity, known or unknown related to her employment at and separation from the Idaho Transportation Department. Defendants hereby forever release and discharge Lowe including any or all agents, clients, subordinates, assigns, consultants, attorneys, insurers, predecessors-in-interest and/or successors-in-interest, either directly or vicariously, from any and all obligations, damages, losses, liabilities, suits, debts and demands, of whatever character in law or in equity, known or unknown related to her employment at and separation from the Idaho Transportation Department.

2. No Admission of Liability. This Agreement reflects, among other things, the compromise and settlement of disputed claims. Neither this Agreement nor any action taken to carry out this Agreement, is, or may be construed as, or may be used as, an admission or concession by or against any party of any alleged fault, wrongdoing, or liability whatsoever. Instead, the parties simply want to buy their peace through the resolution of the Lawsuit and disputes between the parties.

3. Payment. Defendants hereby agree to pay within 30 days of the parties' execution of the Agreement a lump sum and periodic payments with the total combined present value of \$750,000.00 ("Settlement Sum") as follows: (a) Defendants shall pay \$187,500.00 by check made payable to

Strindberg & Scholnick, LLC ("S&S") for attorney fees, and Defendants will issue a Form 1099-MISC in this amount to S&S; and (b) periodic payments to Lowe according to this Schedule of Payments (the "Periodic Payments") beginning 10/1/2013, \$5,045.98 per month for 10 years certain only, last payment due 09/01/2023 (120 guaranteed payments). The Periodic Payments are made part of this Agreement. The total cost to the Defendants for the Periodic Payments is \$562,500.00, disclosure of which has been required as a condition of settlement. No part of the funds being paid by the Defendants to provide future Periodic Payments may be paid directly to Lowe.

4. Non-Qualified Assignment. The parties hereto acknowledge and agree that Defendants shall make a non-qualified assignment of the Defendants' liability to make the periodic payments required herein. Such assignment, when made, shall be accepted by Lowe without right of rejection and shall completely release and discharge Defendants from such obligations hereunder as are assigned to *BARCO ASSIGNMENTS, LTD.* (the "Assignee"). Lowe recognizes that, as a result of the required assignment, the Assignee shall be the sole obligor with respect to the Periodic Payments obligation, and that all other releases that pertain to the liability of Defendants shall thereupon become final, irrevocable, and absolute. The parties further acknowledge and agree that when the liability to make the Periodic Payments is assigned by way of a Non-Qualified Assignment: (a) Periodic Payments from the Assignee cannot be accelerated, deferred, increased or decreased by Lowe or any Payee nor shall Lowe or any Payee have the power to sell or mortgage or encumber same, or any part thereof, nor anticipate the same, or any part hereof, by assignment or otherwise; and (b) the Assignee's obligation for payment of the Periodic Payments is no greater than the obligation of the person originally liable (whether by suit or agreement) for payment and from whom the obligation was assigned.

5. Right to Purchase an Annuity. Lowe and Defendants acknowledge and agree that the Assignee reserve the right to fund its liability to make periodic payments through the purchase of an annuity policy from *LIBERTY LIFE ASSURANCE COMPANY OF BOSTON* (the "Annuity Issuer"). The Assignee shall be the owner of the Annuity policy and shall have all the rights of ownership. The

Assignee may have the Annuity Issuer mail payments directly to Lowe. Lowe shall be responsible for maintaining the currency of the proper mailing address and mortality information with the Annuity Issuer.

6. Lowe's Beneficiary. Any payments to be made after Lowe's death pursuant to the terms of this Agreement shall be made to such person or entity as shall be designated in writing by Lowe to Defendants' Assignee. If no such person or entity is so designated by Lowe, such payments shall be made to Lowe's Estate. No such designation, nor any revocation thereof, shall be effective unless it is in writing and delivered to the Defendants' Assignee. The designation must be in a form acceptable to the Defendants' Assignee, but in no event shall the request of Lowe be unreasonably withheld or denied.

7. Discharge of Obligation. The obligation of the Assignee to make each Periodic Payment shall be fully discharged upon the mailing of a valid check or electronic funds transfer in the amount of such payment on or before the due date to the last address on record for Lowe with the Annuity Issuer. If Lowe notifies the Assignee that any check or electronic funds transfer was not received, the Assignee shall direct the Annuity Issuer to initiate a stop payment action and, upon confirmation that such check was not previously negotiated or electronic funds transfers deposited, shall have the Annuity Issuer process a replacement payment.

8. Responsibility for Taxes and Indemnification. Lowe acknowledges and agrees that she is solely and entirely responsible for the payment and discharge of all federal, state, and local taxes, if any, which may at any time be found to be due upon or as a result of the Settlement Sum that is paid under this Agreement, and Lowe agrees to defend, indemnify, and hold harmless the Defendants and any entity, agency, or department of the State of Idaho from any claim or liability for any such taxes and related penalties and/or interest, in the event such taxes, penalties, and/or interest are assessed or attempted to be assessed by the United States Internal Revenue Service or any other taxing authority.

9. Dismissal of Lawsuit With Prejudice. The parties hereby agree and covenant that they will cause the Lawsuit to be dismissed, with prejudice. Lowe agrees to file a stipulation of dismissal with the Court within five business days after proof of payments set forth in Section 3 above.

10. Retirement Benefits. ITD agrees that nothing herein is intended to have any effect on the retirement benefits, to which Lowe is entitled or may become entitled because of her employment at ITD.

11. Employment Reference. ITD will provide the attached letter, signed by the Chairman of the Board of ITD, as the official employment reference for Lowe. The parties further agree that any oral representation by ITD will be consistent with that letter.

12. Non-Disparagement. Both Parties agree that they will not disparage the other Party, or otherwise make any statement which could injure the personal or business reputation of any of them.

13. Prospective Employers. Subject to the provisions of Section 12 above, the Parties agree that Ms. Lowe shall be able to discuss her ITD employment, termination and the resulting litigation with any prospective employers.

14. Cooperation. The parties to this Agreement agree to cooperate fully and execute any and all supplementary documents and to take any and all additional actions that may be necessary or appropriate to give full force and effect to the terms and intent of this Agreement, which are not inconsistent with its terms.

15. Governing Law, Jurisdiction, and Venue. This Agreement shall be construed and enforced in accordance with the laws of the State of Idaho, without regard to conflicts of law rules.

16. Attorney Fees. Each party to this Agreement shall bear its own costs and attorney fees incurred in bringing, defending, negotiating, settling, or in any other way related to the Lawsuit, except as set forth herein. However, should any party to this Agreement employ an attorney for the purpose of enforcing or construing this Agreement in any legal proceeding whatsoever, including insolvency, bankruptcy, arbitration, declaratory relief, or other litigation, the prevailing party shall be entitled to receive from the other party or parties thereto reimbursement for all reasonable attorney fees and costs incurred in connection therewith.

17. Cost of Mediation. The parties agree that Defendants and Lowe will bear equally the fees and expenses of the mediation held on July 11, 2012, half paid by Defendants and half paid by Lowe.

18. Successors and Assigns. All terms of this Agreement shall be binding upon and inure to the benefit of and be enforceable by the parties hereto and their respective legal representatives, successors, and assigns.

19. Entire Agreement. This Agreement contains the entire agreement between the parties relating to the transaction contemplated hereby, and all prior contemporaneous agreements, understandings, representations, and statements, oral or written, are merged herein. Each party expressly warrants that it has read and fully understands this Agreement, has consulted with legal counsel of its own choosing; that it is not executing this Agreement in reliance on any promises, representations, or inducements other than those contained herein; and that it is executing this Agreement voluntarily, free of any duress or coercion. All parties and signatories to this Agreement acknowledge and agree that the terms of this Agreement are contractual and not mere recital and that execution of this Agreement may affect rights and liabilities of substantial extent and degree and with the full understanding of that fact, they represent that the covenants and releases provided for in this Agreement are in their respective best interests. The parties further agree that this Agreement has been jointly drafted and shall not be construed against any party on account of drafting of this Agreement.

20. Severability. The provision and terms of this Agreement are severable, existing separately from one another, and if any part of the Agreement is found to be unenforceable, the other paragraphs shall remain fully valid and enforceable.

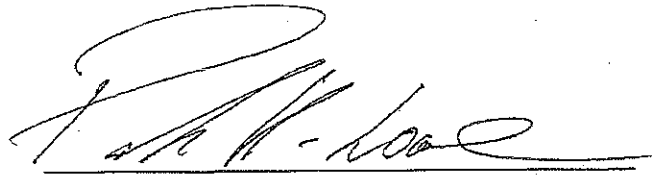
21. Paragraph Headings. The paragraph headings in this Agreement, and the order of the paragraphs, are for convenience only. They are not part of this Agreement and shall not be used in interpreting the Agreement.

22. Counterparts. This Agreement may be executed in identical counterparts, and such duly executed counterparts shall have full validity, force and effect.

23. Effective Dates. The parties to this Agreement agree that this Agreement takes effect as of the complete execution hereof.

8-16-12

Dated



Pamela Lowe

Dated

Darrell Manning

Dated

James Coleman

Dated

Jerry Whitehead

Dated

Gary Blick

Dated

Neil Miller

Dated

Lee Gagner

IDAHO TRANSPORTATION DEPARTMENT

Dated


By: Jerry Whitehead  
Its: Chairman of the Board

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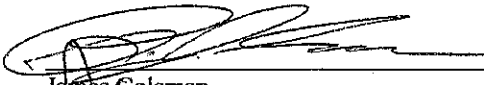
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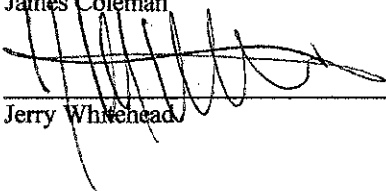
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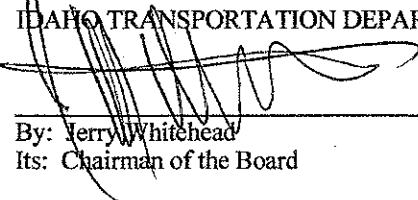
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Lee Gagner

Dated 8/16/12

IDAHO TRANSPORTATION DEPARTMENT  
  
By: Jerry Whitehead  
Its: Chairman of the Board

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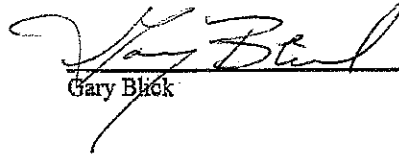
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