

SETTLEMENT AGREEMENT

This SETTLEMENT AGREEMENT (hereinafter "Agreement") is entered into effective as of the 30TH day of July, 1987, by and between JUDITH ANN EVITT ("Wife") of Maricopa County, Arizona, and CHARLES H. EVITT ("Husband") of Maricopa County, Arizona.

R E C I T A L S :

A. The parties are husband and wife, having been married to each other on or about December 31, 1972, at Buffalo, Wyoming.

B. There are no children born as issue of their marriage or adopted by them. Wife is not now pregnant.

C. Certain irreconcilable differences have arisen between the parties, and they have found themselves unable to continue living together. Such differences have rendered the continuance of the marital relationship impossible and have irretrievably broken the marriage between the parties.

D. The parties have acquired certain separate, community and other joint property which they seek to separate and divide and to make a full, complete and final adjustment of all rights thereto, and the parties have incurred certain community and other joint debts and obligations which they seek to separate and dispose of the liability therefor.

E. Wife has instituted an action for dissolution of the marriage between the parties in the Superior Court of Maricopa County, State of Arizona, entitled "In Re the Marriage of JUDITH ANN EVITT, Petitioner, and CHARLES H. EVITT, Respondent.", No. DR-238994. It is the intention of the parties hereto that this Agreement shall be submitted to the Court for approval and attached as an exhibit in connection with entry of a Judgment and Decree of Dissolution of Marriage ("Decree") in the above-captioned matter, but shall not be merged into the Decree and shall retain its character as a separately enforceable and self-sustaining contract.

F. The parties are desirous of settling their differences amicably by entering into this Settlement Agreement.

G. The parties, by this Agreement, intend to effect an equitable division of the community, joint and common property acquired and obligations incurred by them during the existence of their marriage, and to confirm the sole and separate nature of Husband's separate property.

H. The parties, by this Agreement, intend to provide for all matters dependent upon and arising out of their marital relationship.

COVENANTS

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the parties agree as follows:

1. Incorporation. The Recitals herein shall be

considered a part of this Agreement.

2. No Harassment or Molestation. The parties shall live separate and apart and neither party shall harass, molest or annoy the other.

3. Wife's Sole and Separate Property. Husband does hereby assign, grant, convey and transfer to Wife, as and for her sole and separate property, all of Husband's right, title and interest in and to the property described on Exhibit A hereto.

4. Husband's Sole and Separate Property. Wife does hereby assign, grant, convey and transfer to Husband, as and for his sole and separate property, all of Wife's right, title and interest in and to the property described on Exhibit B hereto.

5. Family Residence. The family residence located at 6611 East Peak View Road, Cave Creek, Arizona, shall continue to be held by the parties as joint tenants with the right of survivorship. The property consisting of the residence, out buildings and approximately ten (10) acres of ground will be immediately placed on the market for sale. However, no sale shall be consummated without the joint agreement of the parties as to its terms and conditions or upon an order of the Court if either party elects to seek a forced judicial sale of the property. If Wife becomes entitled to a real estate commission as a broker, salesman, lister or otherwise, the commission

payable to Wife shall be her sole and separate property.

A. Occupancy Prior to Sale, Upkeep and Expenses.

During the period from November 15th of each year until May 15th of the succeeding year, Husband shall be entitled to exclusive occupancy of the family residence. During the period from May 15th to November 15th of each year, Wife shall be entitled to the exclusive use of the family residence. Husband shall be responsible for the payment of all utilities, taxes and pool service while he occupies the residence. He shall pay all telephone charges while Wife occupies it. Husband shall pay the first one hundred dollars (\$100.00) of telephone charges each month and Wife shall pay any excess. Until July 1, 1988, or upon the sale of the residence, whichever is first to occur, all costs and expenses for improvements and/or repairs to the family residence shall be borne by the Husband. In the event the residence is not sold prior to July 1, 1988, all monies expended by Husband subsequent to that date for improvements and/or repairs, shall be fully reimbursed to Husband out of the net proceeds received upon the sale of the residence.

B. Substitute Living Accommodations. Until the residence is sold but not beyond May 15, 1990, Husband shall pay to Wife the sum of four hundred fifty dollars (\$450.00) per month to defray Wife's living expenses during the period that Husband is exclusively occupying the family residence.

6. Husband's Assumption of Debts. In addition to the

debts otherwise referred to in this Agreement, Husband shall pay the debts described on Exhibit C and shall hold Wife harmless therefrom; and Husband shall pay any indebtedness incurred by him after the date of this Agreement.

7. Wife's Assumption of Debts. In addition to the debts otherwise referred to in this Agreement, Wife shall pay the debts described on Exhibit D and shall hold Husband harmless therefrom; and Wife shall pay any indebtedness incurred by her after the date of this Agreement.

8. Spousal Maintenance. Husband shall pay to Wife as spousal maintenance, the sum of two thousand two hundred dollars (\$2,200.00) per month for thirty-six (36) months; provided however, that Husband's obligation to pay spousal maintenance shall earlier terminate upon the death of either party, the remarriage of Wife or further order of a court of competent jurisdiction. Spousal maintenance payments shall commence on the 15th day of the month following the entry of the Decree of Dissolution of the marriage of the parties and shall continue monthly thereafter.

9. Additional Payment to Wife. In addition to the property being assigned to the Wife herein and on Exhibit A hereof, Husband agrees to pay to Wife the sum of twenty-four thousand dollars (\$24,000.00), in furtherance of an equitable division of community and/or joint property of the parties.

Further, in order to equalize division of community

and/or joint property of the parties, Husband agrees to pay one-half (1/2) of the Wife's attorney's fees incurred in connection with the case of Russ McClure v. Evitt, which fees are presently in the approximate total sum of \$12,000.00.

10. Death Benefits to the Wife. If Wife shall survive Husband, Husband agrees to provide Wife, as additional adjustment of the property rights of Wife, the sum of \$150,000.00 upon Husband's death. This provision shall be deemed satisfied if Husband provides insurance proceeds from any existing policy of life insurance or any new policy which Husband may from time to time obtain, including policies in which the Wife is now or in the future may be named as the owner and/or the beneficiary.

11. College Education for the Wife. Commencing on the date of entry of the Decree of Dissolution of Marriage between the parties hereto, Husband agrees to provide Wife with the cost of tuition, as an Arizona resident, of a secondary education at Arizona State University. Wife may attend any other learning institution of her choosing, provided, however, that the difference between an Arizona State University resident tuition and tuition at the educational institution of Wife's choosing shall be borne by the Wife.

Husband further agrees to prepay the cost of Wife's educational expenses, including books and related items, so long as wife maintains a 2.5 grade point average; carries a

minimum of six (6) credit hours per semester; has been, except for summer school, a student each semester and completes her program by June 1, 1992.

11. Attorney's Fees. Each party shall each pay and be responsible for their own attorney's fees and expenses incurred in connection with the negotiation and preparation of this Agreement and/or the prosecution of the dissolution of the marriage pending between the parties.

In the event either party is required to bring legal action against the other party to enforce any of his or her rights under this Agreement, the prevailing party shall be entitled to recover from the other all reasonable costs and expenses incurred in bringing such an action, including, but not limited to, reasonable attorneys' fees.

12. Release of Claims. Subject to the provisions of this Agreement, each party hereby (a) releases the other from all further claims, rights, liabilities or obligations arising out of their marriage, or the division of property and obligations herein provided; and (b) releases any and all interest, estate, claim or otherwise, he or she may now or hereafter have, in any earnings and all property, real, personal, mixed, wheresoever situated, now owned, or hereafter acquired by or on behalf of the other party. Except as otherwise provided for herein, all property assigned to either party herein and all further income, benefits, and property

accruing to either party subsequent to the date of this Agreement shall be the sole and separate property of the party receiving the same, free and clear of any claim or right of the other party except as specified herein. Each party agrees that the other party may convey or otherwise dispose of or deal with their property and income now owned, hereafter acquired, or assigned to them herein as if he or she had never been married to the other.

13. Execution of Documents. Each of the parties shall execute any and all documents and other instruments necessary to effectuate the intent and purpose of this Agreement including, but not limited to, all instruments, conveyances, powers of attorney, authorizations, indemnities, and other similar documents reasonably required to give effect to this Agreement.

14. Modifications in Writing. Both parties agree that any changes in the terms and conditions of this Agreement, to be effective, shall be in writing executed by both parties or their designated counsel, and shall become a part of this original Agreement and approved by the Court.

15. Successors. Each and every covenant and condition herein contained shall inure to the benefit of, and shall be binding upon, the heirs, legatees, devisees, assigns, administrators, executors, and successors in interest of the parties hereto.

16. Entire Agreement. This Agreement is intended to be a full, complete, and final agreement between the parties mentioned herein and supersedes all prior understandings or agreements, whether oral or in writing, pertaining to the subject matter contained herein.

17. Equitable Division. Each of the parties acknowledges that the division of property and payments provided for in this Agreement are intended to accomplish a fair and equitable division of the community, joint and common property of Husband and Wife, as transfers "incident to divorce" and not as a purchase or sale of property by either of them. Neither party shall treat the division of property provided for herein as a sale or as giving rise to a gain or loss for federal income tax purposes or as entitling them to an adjustment in the basis for federal income tax purposes of any item of property retained by them.

18. Full Disclosure. This Agreement is entered into based upon each party having a full disclosure to the other party of all property owned by each of them separately, as community property, jointly, or in any other nature, having made a full disclosure of all property of which each of them has a beneficial interest, and having made full disclosure of all income and employment benefits presently being earned by each of them. Except as specifically identified herein, the parties represent that they have no knowledge of any funds held

in any joint account of the parties at any bank, savings and loan institution, or other financial institution. Both parties do, by execution of this Agreement, represent, warrant and guarantee that there is no other property owned in any manner by the parties other than the property mentioned in this Agreement, or any property in anyone else's name in which any other party has a beneficial interest. This Agreement further is entered into based upon each party having made a full disclosure to the other party of all debts, obligations, judgments and liens which have been incurred by them separately, as community debts or obligations, jointly or in any other nature, having made a full disclosure of all property on which such debts, obligations, liens or encumbrances exist as an encumbrance, and having guaranteed that the property assigned and transferred herein is not subject to any debts, obligations, liens or encumbrances except as otherwise specifically set forth herein or previously disclosed. Both of the parties have relied upon this disclosure and have entered into this Agreement in full reliance thereon.

Notwithstanding the foregoing each party (a) acknowledges that they are not relying on any fiduciary duty or representation of the other concerning the value of any asset divided, awarded or assigned herein, and (b) warrants that they have made their own independent determination concerning the value of any asset and the extent of any obligation.

19. Voluntariness and Advice of Counsel. This Agreement is made and entered into voluntarily by both parties, free and clear from any duress or influence on the party by the other. Each party warrants that he/she has read this Agreement in its entirety. Wife acknowledges that she has been advised and understands that this Agreement was prepared by the attorneys for Husband; that she has retained an attorney to represent her in the preparation hereof and that she desires to execute this Agreement after seeking and receiving independent advice.

20. Indemnity. The duty created in this Agreement for either party to indemnify the other shall include payment of the liability or obligation itself, defense of the other party against any claim concerning the liability or obligations (if the other party, in his/her sole discretion, requests the indemnifying party to provide a defense), and payment of all reasonable costs and expenses incurred by the other party, either before or after a court action has been commenced, in connection with any claim asserted against the other party concerning the liability or obligation indemnified against including, but not limited to, the other party's reasonable attorneys' fees (if the other party, in their sole discretion, elects to employ their own counsel to render advice in connection with or in defense of any claim), reasonable litigation and defense expenses, or reasonable settlement payments.

21. No Waiver by Failure to Act. Neither any failure nor any delay on the part of either party hereto in exercising any rights hereunder shall operate as a waiver thereof; nor shall any single or partial exercise of any right hereunder preclude any other or further exercise thereof or the exercise of any other right.

22. Exhibits. Exhibits "A", "B", "C" and "D" attached hereto are incorporated herein by reference and expressly made a part of this Agreement as if fully set forth herein.

23. Governing Law. This Agreement shall be construed and interpreted in accordance with the laws of the State of Arizona. This Agreement and its exhibits were drafted by attorneys for Petitioner as a matter of convenience only and shall not be construed for or against any party on that account.

24. Effective Date of Agreement. The effective date of this Agreement shall be the date first set forth on Page 1 herein, irrespective of the dates on which this Agreement is executed by the parties.

25. Miscellaneous Provisions.

(a) The paragraph headings used herein are for convenience and reference only and are not intended to define, limit or describe the scope or intent of any provisions of the Agreement.

(b) This Agreement shall not be interpreted as creat-

ing in any third party or class of persons not parties hereto or expressly designated herein any right or benefit of any kind or nature whatsoever.

(c) This Agreement shall apply to the parties according to the context hereof, and without regard to the number or gender of the words or expressions made herein.

(d) This Agreement constitutes a settlement document and shall not constitute an admission of any fact by any party and shall not be admissible in any proceeding except a proceeding commenced to enforce any rights under this Agreement or resulting from any alleged breach of this Agreement.

(e) Time is of the essence of this Agreement and each term and provision hereof.

(f) This Agreement may be recorded by any party in any jurisdiction and, in the absence of any appropriate deed, bill of sale, title certificate, or other conveyance document required or necessary to give effect to this Agreement, this Agreement may serve as, and shall constitute such a conveyance document. The parties hereto acknowledge that, upon execution, this document constitutes a full conveyance of the real and personal property which is the subject of this Agreement, subject only to performance by the parties of their respective obligations under this Agreement.

26. Non-Merger. This Agreement shall be filed in the pending action for dissolution of the marriage of the parties

for the consent, approval and ratification by the Court; provided, however, that this Agreement shall not be merged into any Decree and shall remain a separately enforceable self-sustaining contract.

IN WITNESS WHEREOF, the parties have hereunto set their hands on the date and year written below.

DATED this 30TH day of JULY, 1987.

Judith A. Evitt
JUDITH ANN EVITT

Charles H. Evitt
CHARLES H. EVITT

STATE OF ARIZONA)
 : SS
COUNTY OF MARICOPA)

This instrument was acknowledged before me this 30TH
day of JULY, 1987, by JUDITH ANN EVITT.

[Signature]
NOTARY PUBLIC

My Commission Expires:

My Commission Expires June 5, 1990

STATE OF ARIZONA)
 : SS
COUNTY OF MARICOPA)

This instrument was acknowledged before me this 13TH
day of July, 1987, by CHARLES H. EVITT.

[Signature]
NOTARY PUBLIC

My Commission Expires:

JAN. 7, 1991

ACCEPTED AND APPROVED:

BELLAMAK & MITCHELL

By Ferris W. Bellamak
FERRIS W. BELLAMAK
Attorneys for CHARLES H. EVITT

Robert A. Jensen
ROBERT A. JENSEN
Attorney for JUDITH ANN EVITT

EXHIBIT A
PROPERTY TO THE WIFE

1. All items of personalty located in the residence located at 6611 East Peak View Road, Cave Creek, Arizona, not specifically awarded to the Husband.

2. The following furniture presently located in the residence located in Buffalo, Wyoming:

- A. Oriental rug;
- B. One-half the Waterford crystal;
- C. Lennox china;
- D. Wife's gun collection consisting of a Colt pistol and Winchester rifles;
- E. Miscellaneous bric-a-brac.

3. The following specific items located in the Arizona residence:

- A. Louis DeMayo painting.
- B. Two brass pots.
- C. Bronze cactus sculpture.
- D. Silk ficus tree.
- E. Hersty grandfather clock.
- F. One Valcheff painting in hall (Indian woman).
- G. One coffee table.

4. One-half of the proceeds realized from the sale of two paintings by Bill Hampton.

EXHIBIT B
PROPERTY TO THE HUSBAND

1. The following items located in the Arizona residence:
 - A. Walnut roll top desk and chair.
 - B. Walnut bedroom furniture in bedroom utilized by Husband.
 - C. One-half of the paintings, sculptures and other works of art presently located in the residence.
 - D. All of the horses and tack presently located on the premises at 6611 East Peak View Road, Cave Creek, Arizona.
 - E. All furniture in the family room.
 - F. Leather sofa and chairs.
 - G. Television.
 - H. Buckeye cocktail table.
 - I. Antique oak drop leaf table.
 - J. Stiffel floor lamp.
 - K. Barbeque grill and patio furniture.
 - L. Brass bed.
 - M. Two lamp tables.
 - N. Two lamps.
 - O. Twin beds.
 - P. All bedding.
2. All real property, wherever located, the title to which is in the name of Husband only.
3. All corporate shares of stock, bank accounts, I.R.A. accounts, partnership interests, and, generally, each and every item of personal property, including choses in action, the title to or possession of which is presently in the name of Husband only, livestock, automobiles, recreational vehicles, tools and personalty of a similar nature.
4. Any personal property in the State of Wyoming in which the Wife may heretofore have or claimed an interest, except those items specifically awarded to the Wife on Exhibit A hereof.
5. Jade horse.
6. All works of art not specifically awarded to the Wife herein.

EXHIBIT C
DEBTS TO BE PAID BY HUSBAND

Any and all debts and obligations incurred by the
Husband from and after the date of this Agreement.

EXHIBIT D
DEBTS TO BE PAID BY WIFE

Any and all debts and obligations incurred by the Wife
from and after the date of this Agreement.