

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF KLAMATH

Department of Domestic Relations

In the Matter of the Marriage of)

JOHN R. EARP,)

Case No. 9300473CV

Petitioner,)

MARITAL SETTLEMENT
AGREEMENT

and)

SYLVIA M. EARP,)

Respondent.)

THIS AGREEMENT is made and entered into as of ^{the}~~this~~ / day of November,
1994, by and between Sylvia M. Earp (Wife) and John R. Earp (Husband).

RECITALS:

The parties were married in Bonanza, Oregon, on September 25, 1976, and have since
been and now are husband and wife.

Marital differences have arisen between the parties. Husband has initiated a suit for
Dissolution of Marriage in the above-entitled matter.

There have been three (3) children as issue of this marriage, who are: Kevin Earp, born
September 18, 1978, Heidi Earp, born April 23, 1981; and Shawn Earp, born August 14,
1982. No other children are expected.

The parties now desire to make a complete and final settlement of all their property
rights and claims of any kind and character between them, including issues concerning children

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1 - MARITAL SETTLEMENT AGREEMENT

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1 and spousal support. The parties have agreed upon the terms of a marital settlement agreement,
2 and in the event that the Court should grant a Decree of Dissolution of Marriage in this matter,
3 now, therefore, it is agreed by and between the parties hereto as follows:

4 1. WARRANTY OF MUTUAL DISCLOSURE. The parties warrant to each
5 other that they have disclosed all assets and obligations of the parties or of either of them within
6 their knowledge and that they have not unreasonably overstated or understated the value of any
7 asset or the amount of any obligation. They further warrant that they have not transferred or
8 placed in the hands of any other person under express or implied agreement, trust or under-
9 standing any asset of the parties without full disclosure each to the other.

10 Income. The parties' monthly income as of the date of settlement (August 3,
11 1994) as to the Husband was \$1012.00, and as to the Wife was \$1,000.00.

12 2. ISSUES RELATING TO THE CHILDREN.

13 A. Custody. Wife shall have legal and physical custody of the parties'
14 children, subject to the reasonable visitation rights as set out in Section 2 B.

15 B. Visitation. Husband shall have reasonable and seasonable visitation.
16 Husband acknowledges that Wife needs the children in the summer months to assist in the
17 operation of the farm. He will cooperate in arranging summer visitation in a manner that will
18 not interfere with the farm operations. Notwithstanding the foregoing, Husband shall have
19 specifically the rights as enumerated in ORS 107.154 as follows:

20 107.154 Effect of order granting sole custody of minor child to one parent on
21 authority of other parent. Unless otherwise ordered by the court, an order of sole custody to one parent
22 shall not deprive the other parent of the following authority:

23 (1) To inspect and receive school records and to consult with school staff concerning the
24 child's welfare and education, to the same extent as the custodial parent may inspect and receive such records and
consult with such staff;

25 (2) To inspect and receive governmental agency and law enforcement records concerning
26 the child to the same extent as the custodial parent may inspect and receive such records;

(3) To consult with any person who may provide care or treatment for the child and to inspect and receive the child's medical, dental and psychological records, to the same extent as the custodial parent may consult with such person and inspect and receive such records;

(4) To authorize emergency medical, dental, psychological, psychiatric or other health care for the child if the custodial parent is, for practical purposes, unavailable; or

(5) To apply to be the child's conservator, guardian ad litem or both. [1987 c.795 Subsection 3]

C. Child Support.

(1) Pursuant to OAR 137-50-320 through OAR 137-50-490 and ORS 25.270 through ORS 25.285 (Child Support Guidelines), Husband shall pay to Wife an amount set by the Uniform Support Guidelines per month per child for the support of said children until each child attains the age of 18 years, is fully emancipated or for as long as he or she is a "child attending school" as defined in ORS 107.108.

(2) Husband shall make all child support payments on or before the 1st day of the month for which such support is due, and shall make support payments to the Department of Human Resources, P.O. Box 14506, Salem, Oregon 97309, for appropriate distribution. The Department of Human Resources shall provide the collection, accounting, and enforcement services for said child support. However, until an account is actually established and Husband receives notice thereof, including the account number, Husband shall make child support payments directly to Wife at her current address.

(3) Beginning November 1, 1994, Husband shall pay to Wife child support in the amount of \$238.00 per month. Due to the fact that the parties' incomes have changed during the pendency of these proceedings, either of the parties may apply to the Court to request review of the child support amount ordered to be paid, immediately upon entry of this Judgment, without further showing of a substantial change in the circumstances of the parties; all of such support shall be payable until each child attains the age of 18 years, is fully emancipated, or for as long as he or she is a "child attending school" as defined in ORS

1 107.108."

2 NOTICE OF INCOME WITHHOLDING

3 The support order is enforceable by income withholding under ORS
4 25.318, 25.351 to 25.367 and 25.722. Withholding shall occur immediately,
5 whenever there are arrearages at least equal to the support payments for one
6 month, whenever the obligated person requests such withholding or whenever
7 the obligee requests withholding for good cause. The District Attorney or, as
appropriate, the Support Enforcement Division of the Department of Justice,
will assist in securing such withholding. Exceptions may apply in some
circumstances.

8 EXCEPTION TO WITHHOLDING

9 The parties request that withholding not be initiated. Pursuant to ORS
10 25.311 *et. seq.*, there are no child support arrearages owing, obligor has not
11 been previously granted an exemption from withholding, and the parties have
agreed in writing, as evidenced by their signatures below, to an alternative
arrangement for the payment of child support.

12 NOTICE TO PETITIONER AND RESPONDENT

13 Payment of support shall be made as provided in this judgment. The
14 giving of gifts or making purchases of food, clothing, and the like does not
15 fulfill the obligation to pay support.

16 Payment of support must be made as it becomes due. Failure to secure
17 visitation or denial of rights of visitation are not excuses for nonpayment. You
must seek relief through a proper motion filed with the court if you have a
problem with visitation.

18 The payment of support takes priority over payment of debts and other
19 obligations. A party who remarries after dissolution and accepts additional
20 obligations of support does so with the full knowledge of his or her prior
obligations under this proceeding.

21 Child support is based on annual income. It is the responsibility of a
22 person with seasonal employment to budget income so that payments are made
regularly throughout the year as ordered.

23 D. Medical Insurance.

24 (1) As long as said children are eligible for support under the
25 provisions of Paragraph C, Wife agrees to provide medical insurance so long as it is provided
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1 through her employment, for their benefit. Both parties shall pay their pro rata percentage of
2 the children's insurance premiums as set forth in the Uniform Support Guidelines. Each party
3 shall be responsible for one-half of the cost of any uninsured medical, dental, orthodontic,
4 optical, psychiatric and other related expenses, incurred after December 1, 1994.

5 (2) Each party shall be obligated to give written notice to the other
6 upon termination and/or change of medical and/or dental insurance benefits.

7 (3) Each party shall be obligated to give written notice to the other
8 regarding any uninsured elective medical and/or dental procedures.

9 **E. Death Benefits.**

10 (1) Each party shall maintain a life insurance policy insuring his own
11 life in an amount not less than \$50,000, and shall designate the children as primary beneficiaries
12 and the other party as custodian for the primary beneficiaries. The custodian shall be assigned a
13 collateral security interest in the policy.

14 (2) Each party shall require his/her insurance company to provide the
15 other party thirty (30) days' written notice prior to cancellation of the policy. Each party shall
16 have the right to receive accidental death benefits from the other's policy, if ever paid, said
17 funds to be used for the benefit of the children as per his or her discretion.

18 (3) During the term of the obligation to maintain insurance, each
19 party shall furnish to the other, upon reasonable request, a copy of such policy or policies, or
20 evidence that proper life insurance is in force, with the appropriate beneficiary designation in
21 effect.

22 (4) A constructive trust shall be imposed over the proceeds of any
23 insurance owned by either party at the time of his/her death if such party fails to maintain
24 insurance in said amount, or if said insurance is in force but another beneficiary is designated to
25 receive said funds.
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1 (5) The parties are prohibited from borrowing any monies from or
2 against said policies which will reduce the death benefit of such policies to an amount below
3 that required by this Agreement.

4 (6) The parties shall be required to provide a certified copy of this
5 Judgment of Dissolution to the appropriate life insurance companies in accordance with the
6 provisions of ORS 107.810-107.830, notify said companies as to the terms of the Judgment of
7 Dissolution regarding life insurance and instruct them to update their records to guarantee
8 compliance herewith. Each party shall provide the other proof of compliance with this
9 provision within sixty (60) days of the date of this Judgment of Dissolution.

10 F. Tax Provisions. Wife shall be entitled to claim the dependency
11 exemption for the children on her state and federal income tax returns beginning with the tax
12 year 1994.

13 3. SPOUSAL SUPPORT. The parties hereby agree to waive any right to
14 spousal support as a contribution from the other party. Both parties acknowledge that under
15 current Oregon law such a waiver precludes them from asking for support in the future.

16 4. PERSONAL PROPERTY. Wife is awarded the personal property in her
17 possession, included but not limited to:

- 18 A. Klamath First Federal Checking Account No. 0970051140;
- 19 B. Klamath First Federal Savings Account 0980029664;
- 20 C. Klamath First Federal Savings Account No. 090060400.

21 Husband is awarded the personal property in his possession, included but not limited to:

- 22 A. Bank of America checking account no. 2878204917;
- 23 B. Bank of America savings account no. 2878704630;

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1 5. REAL PROPERTY.

2 A. R.E. Partnership. Each party is awarded their interest in R.E. Ranch
3 equal to \$85,738.00. Wife will buy and Husband will sell his interest in the partnership for the
4 amount of \$100,000.00 to be paid as follows. Wife will make a good faith effort to obtain a
5 loan which will enable her to pay the \$100,000.00 payment in a lump sum. She will have six
6 (6) months from the effective date of the decree of dissolution in order to obtain this loan. If
7 Wife is unable to obtain the loan for the lump sum she will make monthly payments spread
8 equally over a period of ten years at the statutory interest rate. If Wife pays the above amount
9 at an earlier date, there will be no prepayment penalty. Both parties recognize that the sale of
10 Husband's partnership interest to Wife shall not be considered a property division and shall be a
11 taxable event to both parties.

12 B. Inheritance. Wife has an expectancy in an inheritance from Wife's
13 mother Rose Rosandich. Wife shall receive this inheritance free of interest in or obligation to
14 Husband. Wife agrees to assume and hold Husband harmless from any claims or liabilities
15 allegedly owing the Estate of Rose Rosandich and, particularly, the \$42,000.00 note.

16 6. MISCELLANEOUS PROPERTY.

17 A. Pension Plans. Husband shall receive his Individual Retirement
18 Account with Edward D. Jones (Euro-Pacific) as his sole and separate property, free and clear
19 of any right, title or interest of Wife.

20 B. IRA's. Wife shall receive her individual IRA's, namely American
21 Mutual Account No. 58165093-03, Euro-Pacific Growth Account No. 58165093-16,
22 Prudential Utility Fund No. 002-3800071228-9, and Klamath First Federal Account No.
23 C7404437, 7405740 and 7405028 as her sole and separate property, free and clear of any right,
24 title or interest of Husband.

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1 7. **LIABILITIES.** The parties have certain marital debts which should be
2 divided as follows:

3 A. The parties agree to assume and be individually responsible for any and
4 all debts incurred by themselves at their direction since their separation in January, 1993, and
5 shall indemnify and hold the other harmless from any liability thereon except those as set forth
6 in Paragraph 2 D.

7 B. Whenever one party is required by the terms of this Agreement to
8 assume responsibility for paying certain debts and/or indemnify and hold the other party
9 harmless from any liability therefor, such obligation shall be deemed to be a support obligation
10 under 11 U.S.C. subsection 523(5) which is not dischargeable in bankruptcy as to the other
11 party.

12 C. The parties agree that the obligation to hold the other harmless as set out
13 in this Agreement means specifically to indemnify the other from any liability thereon upon the
14 debt including all reasonable costs, attorney fees, judgments and liens incurred by the
15 non-responsible party as a result of the responsible party's failure to pay such indebtedness.

16 8. **MAIDEN NAME.** Respondent's maiden name of Rosandich shall be restored
17 to her.

18 9. **ATTORNEY FEES.** Each party shall pay his or her own attorney fees and
19 costs and disbursements arising from the dissolution of the marriage. In addition, in any suit,
20 action or other proceeding, or any appeal from the decision thereof instituted to establish, obtain
21 or enforce any rights resulting from this Agreement or to obtain damages resulting from the
22 breach of this Agreement, the prevailing party shall be entitled to recover from the adverse
23 party, in addition to costs and disbursements, an award of reasonable attorney fees to be set by
24 the Trial or Appellate Court in each suit, action or proceeding. It is further specifically agreed
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1 that any action for bankruptcy by the other party shall not invalidate the obligation of that party
2 to hold the other harmless as set out in this Agreement.

3 10. RELEASE OF RIGHTS. The parties acknowledge that the provisions of this
4 Agreement are fair, adequate and satisfactory based upon the warranties made in Paragraph 1 as
5 to full disclosure. Except as otherwise provided herein, each party does hereby release the
6 other from any liability, debts or obligations of any kind or character heretofore incurred from
7 any and all claims and demands. It is understood that this Agreement is intended to settle the
8 rights of the parties in all respects.

9 11. ADVICE OF COUNSEL. Each of the parties has had independent counsel
10 or the opportunity to consult with such counsel in the preparation and negotiation of this
11 Agreement. Each party agrees that this Agreement and all of its terms and conditions have been
12 made and entered into without undue influence, fraud, coercion or misrepresentation.

13 12. NECESSARY DOCUMENTS. Each party shall execute and deliver to the
14 other party any documents that may be reasonably required to accomplish the intentions of this
15 instrument and shall do all things necessary to effectuate this Agreement within thirty (30) days
16 from the date of this Agreement or from the date of the Decree of Dissolution signed by the
17 Court, whichever shall first occur. If either party shall fail to comply with the provisions of this
18 paragraph and of the Agreement, this Agreement shall constitute an actual grant, assignment and
19 conveyance of the property rights in such manner and with such force and effect as shall be
20 necessary to effectuate the terms of this Agreement in accordance with ORCP 78.

22 13. INCORPORATION INTO DECREE. Each party shall, at any hearing on
23 any domestic relations suit between them, ask the Court to approve, ratify and confirm this
24 Agreement, to incorporate it in any Decree entered therein and to require each party to comply
25 with all of the terms thereof.

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1 14. **BINDING UPON SUCCESSORS.** Each and every provision hereto shall
2 inure to the benefit of and shall be binding upon the heirs, assigns, personal representatives and
3 all the successors in interest of the parties.

4 15. **RIGHT TO CONTEST.** Nothing herein contained shall limit the right of
5 either party to contest any domestic relations suit between them or to file a countersuit against
6 the other party, but at any hearing on such suit this Agreement shall be considered a full and
7 complete settlement of all property rights between the parties and in such case neither party shall
8 maintain any claim or demand whatsoever against the other for property, support, suit money or
9 attorney fees not provided for in this Agreement.

10 16. **APPLICABLE LAW.** This Agreement shall be construed as being governed
11 in accordance with the laws of the State of Oregon.

12 17. **SEVERABILITY AND ENFORCEABILITY** If any provision of this
13 Agreement is held to be invalid or unenforceable, all of the other provisions shall nevertheless
14 continue in full force and effect. If a party is required to seek the assistance of the Court to
15 enforce any part of this Decree, the prevailing party may recover reasonable attorney fees for
16 such proceeding.

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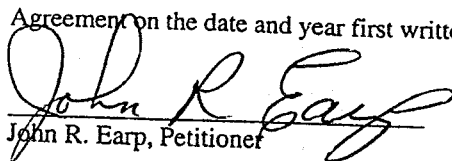
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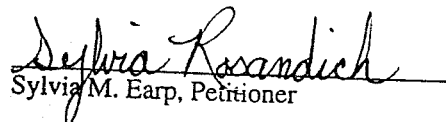
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1 18. **EFFECTIVE DATE.** This Agreement shall become binding upon the parties
2 immediately upon the execution of this Agreement.

3 IN WITNESS WHEREOF, the parties have signed and acknowledged this
4 Agreement on the date and year first written above.

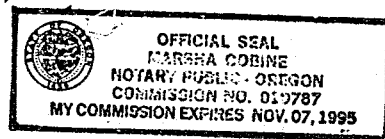
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6 John R. Earp, Petitioner

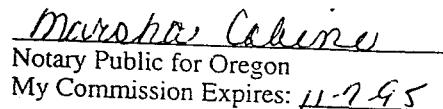

Sylvia M. Earp, Petitioner

7 STATE OF OREGON)
8) ss.
9 County of Klamath)

10 Personally appeared before me the above-named John R. Earp and
11 acknowledged the foregoing instrument to be his voluntary act and deed.

12 Dated this 2nd day of February, 1994. 1995.

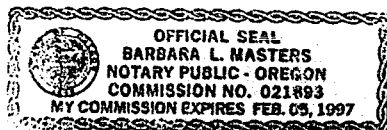


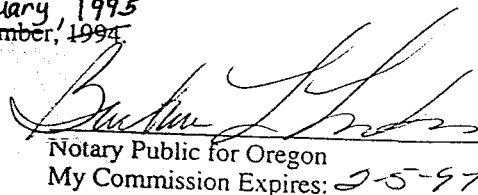
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15 Notary Public for Oregon
My Commission Expires: 11-7-95

16 STATE OF OREGON)
17) ss.
18 County of Klamath)

19 Personally appeared before me the above-named Sylvia M. Earp and
20 acknowledged the foregoing instrument to be her voluntary act and deed.

21 Dated this 7 day of February, 1995.
22 ~~November, 1994~~



24 
25 Notary Public for Oregon
26 My Commission Expires: 2-5-97

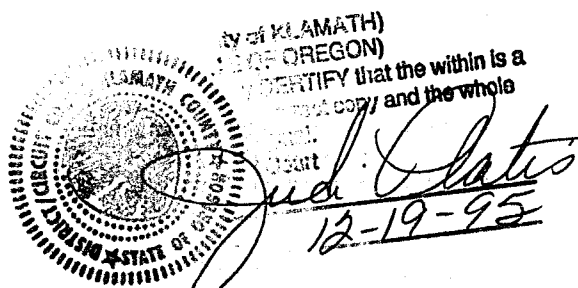
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STATE OF OREGON: COUNTY OF KLAMATH: ss.

Filed for record at request of Brandsness & Brandsness the 19th day
 of December A.D., 19 95 at 1:09 o'clock P M., and duly recorded in Vol. M95,
 of Miscellaneous on Page 34522.

FEE \$60.00

Bernetha G. Letsch, County Clerk
 By Pauline Mulendore

Return: Brandsness & Brandsness, 411 Pine St., Klamath Falls, OR 97601