

AGREEMENT, made this day of , 1997 between DONNA M. POOLE, residing at 186 Temple Hill Road, New Windsor, New York 12553 (hereinafter called the "Wife") and THOMAS R. POOLE, residing at 5 Dogwood Road, Mahopac, New York 10541 (hereinafter called the "Husband").

W I T N E S S E T H :

WHEREAS, the parties were married on November 22, 1980 in the City of Yonkers, County of Westchester, State of New York, and

WHEREAS, there are two (2) children of the marriage to wit:
THOMAS R. POOLE,II, born November 13, 1981 and CHRISTOPHER J. POOLE, born June 21, 1983, and Marylou Arlenu Poole born March 29, 1996, and

WHEREAS, certain unhappy and irreconcilable differences have arisen between the parties as a result of which the parties have separated and intend to live separate and apart for the rest of their lives; and

WHEREAS, they desire to adjust and settle by agreement rights, and their respective duties and obligations arising in their marriage; and

WHEREAS, the parties acknowledge that the following applicable factors which are set forth in the Section 236 B (5) and (6) of the Domestic Relations Law of the State of New York have been fully explained to them and taken into consideration in determining disposition of marital property and maintenance:

- (1) the income and property of each party at the time of marriage, and at the time of the commencement of the action;
- (2) the duration of the marriage and the age and health of both parties;
- (3) the present and future capacity of the person having need to be self-supporting;
- (4) the period of time and training necessary to enable the person having need to become self-supporting;
- (5) the presence of children of the marriage in the respective homes of the parties;
- (6) the standard of living established during the marriage where practical and relevant;
- (7) the tax consequences to each party;
- (8) contributions and services of the party seeking maintenance as a spouse, parent, wage earner and homemaker, and to the career or career potential of the other party;
- (9) any equitable claim to, interest in, or direct or indirect contribution made to the acquisition of such marital property by the party not having title, including joint efforts or expenditures and contributions and services as a spouse, parent,

wage earner and homemaker, and to the career or career potential of the other party;

- (10) the liquid or non-liquid character of all marital property;
- (11) the probable future financial circumstances of each party;
- (12) the economic desirability of retaining assets intact and free from any claim or interference by the other party;
- (13) the loss of inheritance and pension rights upon dissolution of the marriage as of the date of dissolution;
- (14) other factors which were relevant and particular to the marital relationship of the parties.

NOW, THEREFORE, in consideration of the mutual covenants, promises, agreements and provisions herein contained, and other agree as follows:

ARTICLE I SEPARATE RESIDENCE

The parties may and shall, at all times hereafter, live and continue to live separate and apart. Each shall be free from any restriction, interference, authority or control, direct or indirect, by the other, as fully as if he or she were unmarried. Each may, for his or her support, use and benefit, conduct, carry on and engage in any business, profession, trade or employment which to him or her may seem advisable, without any restriction, interference, authority, or control, direct or indirect, by the other. Neither of the parties shall compel or attempt to compel the other to cohabit or dwell with him or her by any action or proceeding for the restoration of conjugal rights or by any means whatsoever. Neither of the parties shall molest or harass the other.

**ARTICLE II
MARITAL RESIDENCE**

The parties have been living in their separate apartments and agree that they shall be individually responsible for their own rents and expenses related to their living accommodations.

**ARTICLE III
MAINTENANCE**

The Husband does not seek maintenance from the Wife and he does hereby irrevocably waive any support from her now or in the future.

The Wife does not seek maintenance from the Husband and she does hereby irrevocably waive any support from him now and in the future.

**ARTICLE IV
CUSTODY**

A. The Husband shall have sole custody of THOMAS R. POOLE, II and CHRISTOPHER J. POOLE, hereinafter referred to as the Children.

The Husband was granted custody of Marylou Arlena Poole by the Family Court, Orange County on August 15, 1996.

B. To the extent possible, the parties desire that their Children be given the fullest opportunity to have the care, affection, supervision and guidance of both parents.

C. Neither party shall do anything which may estrange their Children from the other party, to injure the option of the Child as to the mother or the father.

D. In the event of illness of the either Child or of any other circumstances seriously affecting the Child's health or welfare, either party having knowledge thereof shall, to the extent practicable, promptly advise the other party of such illness or other circumstances, and the parties shall promptly decide upon the proper medical attention or other care required. Each of the parties will at all times keep the other informed of his or her place of residence and business, and shall promptly notify the other or any change, giving the address and telephone number of any new place of residence or business.

E. Each parent shall be entitled to complete and full information from any physician, dentist, consultants, or specialists attending each Child for any reason whatsoever and to have copies of any reports given to them, or any of them, to either parent. The parent receiving such information or reports shall immediately advise the other parent of the contents, or supply him or her with a copy of it if it is in his or her possession.

F. Both parents shall be entitled to complete and full information as to the each Child's progress in school.

ARTICLE V CHILD SUPPORT

The parties have been advised of the Child Support Standards Act (CSSA) and all of its provisions, which set forth guidelines for child support obligations, and acknowledge that said CSSA has been fully explained to their satisfaction. With said knowledge and understanding of the CSSA, the parties have voluntarily entered into this agreement, containing the provisions for child support as set forth herein. More

particularly, the parties acknowledge that the CSSA presumptively sets the needs of three children of the parties at 29% of the combined parental income up to \$80,000.00 per year and an additional discretionary sum for combined parental income over \$80,000.00 per year. Because the Husband shall have physical custody of the Children and because of the fact that the Wife's income is less than \$10,000.00 per year, the Husband hereby waives any rights he may have to receive child support payments from the Wife on behalf of the Children.

The parties agree that in the event that the Wife's income from any source shall exceed \$20,000.00 annually that child support payments shall be paid on a monthly bases and be computed on a yearly bases using the formula as set forth in the Domestic Relations Law Section 240.

The parties agree that commencing in 1995 the Husband shall take the Children as exemptions on his Federal and State Income Tax Returns.

In the event child support payments are made they shall continue until the occurrence of the earlier of the following emancipation events with respect to each Child:

- (1) Marriage of the Child.
- (2) Full-time self-supporting employment.
- (3) Attaining the age of 18 years if not attending college on full-time basis. In the event that th Child is attending college, the child support shall continue until the Child reaches 21 years of age.
- (4) Death of the Child.
- (5) Death of the Husband or Wife.

The parties agree that the costs of college education, tuition and room and board for each Child will be shared in proportion to the yearly gross income as reported on their respective Federal 1040 Income Tax Returns.

The parties agree that in light of the additional expenses for the Child's college education, that they will reduce child support payments, if any, when each Child attends college.

ARTICLE VI VISITATION

A. The Husband and Wife shall arrange visitation with the Children at reasonable times to be mutually agreed upon by the parties. The visitation schedules of the parties shall not, however, interfere with the education of the Children. The parties agree to cooperate with each other in such a fashion as to advance the emotional and physical wellbeing of the Children, and to afford them the affection of both parents and a sense of security. Said visitation shall be arranged in conformity with Family Court, Orange County Order dated December 18, 1996, F.F. No. 23666, Docket No. N-150-96.

ARTICLE VII PERSONAL PROPERTY

Husband and Wife have divided between them all of the household furniture and furnishings which were locate in the marital residence, cars and all bank accounts and each shall be the sole and exclusive owner of those items presently in their possession. Attached Schedule "A" lists additional division of the personal property between the parties.

**ARTICLE VIII
INSURANCE**

A. Life Insurance: The Husband presently has life insurance coverage through his employer in the sum of \$ _____ which insurance shall be paid into a trust for the benefit of his children. This obligation shall continue until each Child is emancipated as per Article V.

B. Health Insurance: The Husband shall maintain health insurance for the Children and the Wife. In the event of a divorce, the Wife shall be responsible for own health insurance. The Wife shall be responsible for her medical expenses not covered by the Husband's medical insurance. The parties agree to be equally responsible for the Children's medical and dental expenses not covered by insurance.

**ARTICLE IX
DEBTS**

A. Both parties agree that neither will at any time in the future incur or contract any debt or obligation whatsoever for which the other, or his or her legal representative, or his or her property or estate, is now or may become liable. Both covenant further that each will at all times keep the other free, harmless and indemnified of and from any and all debts, charges and liabilities hereafter incurred by either, and to refrain from the use of the credit of the other in any manner whatsoever.

B. The Wife agrees to return all credit cards which are issued in the Husband's name to him at the time of the execution of this Agreement.

C. The Husband agrees to return all credit cards which are issued in the Wife's name to her at the time of the execution of this Agreement.

ARTICLE X

MUTUAL RELEASE AND DISCHARGE OF CLAIMS IN ESTATE

Each party hereby releases, waives and relinquishes an and all rights which he or she may now have, or may hereafter acquire, as the other party's spouse under the present or future laws of any jurisdiction (a) to share in the estate of the other party upon the latter's death; and (b) to act as executor or administrator of the other party's estate. This provision is intended to, and shall constitute, a mutual waiver by the parties to take against each other's Will, now or hereafter in force, under the present or future laws of any jurisdiction whatsoever. The parties intend, by the aforescribed waiver and release, to relinquish any and all rights in and to each other's estate including the right of set-off now provided in Section 5-3.1 of the Estates, Powers and Trusts Law of the State of New York, any and all distributive shares presently provided in Section 4-1.1 of the Estates, Powers and Trusts Law and all rights of election presently provided for in Section 5-1.1A of said Law or any prior or subsequent similar provision of law of this or any other jurisdiction. However, the foregoing shall not bar a claim on the part of either party against the other for any cause or causes arising out of a breach of this Agreement during the lifetime of the deceased party against whose estate such claim may be made.

**ARTICLE XI
VOLUNTARY EXECTION**

A. The Husband has been represented by DENIS J. TIMONE, ESQ., FITZMAURICE & TIMONE, P. C., 111 Lake Avenue, P. O. Box 124, Tuckahoe, NY 10707-0124.

B. The Wife has been advised to obtain independent legal counsel and she has chosen not to do so.

C. Both parties acknowledge that they are entering into this agreement freely and voluntarily; that each has ascertained and weighed all the facts and circumstances likely to influence his and her judgment herein; that each has been duly apprised of his and her respective legal rights; that all the provisons hereof as well as all questions pertinent hereto have been fully and satisfactorily explained to each of them; that the legal and practical effect of this agreement in each and every respect, and the financial status of the parties and the financial consequences of this agreement have been fully explained to each party; that each party has given due consideration to the provisions hereof, each party deeming and acknowledging that it is a fair and equitable agreement and not the result of any fraud, duress or undue influence exercised by either party upon the other person or persons upon either.

D. The parties, in the negotiation, formation and execution of this agreement have enjoyed full disclosure of the assets and other financial data pertinent hereto and ha been fully prised of their rights and obligations under Domestic Relations Law Section 236,

Part B (known as the "Equitable Distribution Law") and in arriving at the terms hereve taken into consideration such factors as a Court is required to consider pursuant to mestic Relations Law Section 236, Part B (5) (d), (6) and (7). The parties each believe that the terms of this agreement are fair and reasonable at this time and they make this Agreement in full and complete satisfaction of any and all claims which each party may have against the other, including rights of equitable distribution under applicable present and future law, rights to distribution of property, rights to payments, rights to distributive shares, rights to pensions, life insurance, health and hospital care insurance, etc., and instead make such financial provisions and property distributions as may be set forth herein.

E. Each of the parties hereby agree to be responsible for their own counsel fees and costs incurred in connection with this matter.

ARTICLE XII INCOME TAX RETURNS

If in connection with any joint income tax returns heretofore or hereafter filed by the Husband and Wife there is any deficiency assessment, the amount ultimately determined to be due thereon, including penalties and interest, shall be paid by the Husband unless and to the extent that the same has been caused by the failure or neglect of the Wife to disclose any income which should have been included on such returns or to the extent that any deductions solely allocable to her income are disallowed, and the Husband, to the extent that the same has not been caused by any such failure or neglect of the Wife, hereby

**ARTICLE XIV
RELEASE OF LIABILITY TO EACH OTHER**

It is the intention of the parties that, except as otherwise provided in this agreement, all liability of whatsoever nature on the part of the Husband to the Wife, and on the part of the Wife to the Husband, past, present, or future, actual or potential, inchoate or consummate, whether arising from the relationship of Husband and Wife or otherwise, shall cease and terminate absolutely and forever.

**ARTICLE XV
MODIFICATION AND WAIVER**

This agreement constitutes the entire agreement of the parties with respect to the subject matter hereof. No modification, waiver or discharge of any of the terms of this agreement shall be valid unless in writing and executed with the same formality as this agreement. No waiver of any breach, condition, provision or term hereunder, or default hereunder, shall be deemed a waiver of any subsequent breach, condition, provision or term hereof or default of the same or similar nature.

**ARTICLE XVI
LEGAL INTERPRETATION**

This agreement and all of the rights and obligations of the parties hereunder shall be construed according to the laws of the State of New York as an agreement made and to be performed within said State.

**ARTICLE XVI
NECESSARY DOCUMENTS**

Each party shall at the request of the other, execute, acknowledge, and deliver any documents which may reasonably be necessary to give full force and effect to this agreement.

**ARTICLE XIII
POSSIBLE INVALIDITY**

In case any provision of this agreement should be held to be contrary to, or invalid under the law of any country, state, or jurisdiction, such illegality or invalidity shall not affect in any way any other provision hereof, all of which shall continue, nevertheless, in full force and effect; any provision which is held to be illegal or invalid in any country, state or other jurisdiction shall, nevertheless, remain in full force and effect in any country, state or jurisdiction in which such provision is legal and valid.

**ARTICLE XIX
RECONCILIATION AND MATRIMONIAL DECREES**

This agreement shall not be invalidated or otherwise affected by a reconciliation between the parties hereto or a resumption of marital relations between them unless said reconciliation or said resumption be documented by a written statement executed and acknowledged by the parties with respect to said reconciliation and resumption of marital relations, setting forth that this agreement is being canceled.

**ARTICLE XX
INDEPENDENT COVENANT**

Each of the respective rights and obligations of the parties hereunder shall be deemed independent, and may be enforced independently, irrespective of any of the other rights and obligations set forth herein.

**ARTICLE XXI
ENTIRE UNDERSTANDING**

This agreement contains the entire understanding of the parties who hereby acknowledge that there have been and are no representations, warranties, covenants or undertakings other than those expressly set forth herein.

**ARTICLE XXII
MUTUAL RELEASE AND DISCHARGE OF GENERAL CLAIMS**

A. The Husband and Wife represent that there are no debts incurred by either party up to the date of the signing of this agreement for which the other shall be responsible, other than those set forth herein.

B. Subject to the provisions of this agreement, each party hereby demises, releases and forever discharges the other of and from all cause or causes of action, claims, rights or demands whatsoever, in law or in equity, which either of the parties hereto ever had, or now has, against the other, except any or all cause or causes of action for divorce or separation, and any defenses either may have for any divorce or separation action now pending, or hereafter brought by the other.

IN WITNESS WHEREOF, the parties hereto have hereunto set their respective hands and seals the day and year first above written, they hereby acknowledging that the provisions of this agreement shall be binding upon their respective heirs, next of kin, executors and administrators.

DONNA M. POOLE

THOMAS R. POOLE

STATE OF NEW YORK)
) ss.:
COUNTY OF WESTCHESTER)

On the day of , 1997, before me personally came **DONNA M. POOLE**, to me known to be the individual described herein and acknowledged that she executed the same.

STATE OF NEW YORK)
) ss.:
COUNTY OF WESTCHESTER)

On the day of , 1997, before me personally came, **THOMAS R. POOLE**, to me known to be the individual described herein and acknowledged that he executed the same.

**SCHEDULE A
PERSONAL PROPERTY**