Box 36 61A/173

IN THE PROBATE COURT FOR DAVIDSON COUNTY, TENNESSEE

ROBERT L. ENGLAND, III,
Plaintiff,
vs.
PHYLLIS K. ENGLAND,
Defendant.

NO. 89D-4964

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FINAL DECREE

This cause came to be heard on the 29th day of April, 1991, before the Honorable James R. Everett, Jr., Judge of the Probate Court for Davidson County, Tennessee, upon the original complaint for divorce filed by the plaintiff herein, upon the Marital Dissolution Agreement executed by the parties, upon the testimony of the plaintiff in open Court, and the entire record in this cause, from all of which it appears to the Court that there exists such irreconcilable differences between the parties as would entitle the plaintiff to an absolute divorce, that the parties by written agreement have made adequate and sufficient provision for the custody and support of the parties' minor child, for the equitable settlement of their property rights and all rights of support between them, and that the 90 day waiting period, as required by statute, has elapsed.

It is therefore, **ORDERED, ADJUDGED AND DECREED** that the bonds of matrimony heretofore existing between the parties be and the same are hereby forever and perpetually dissolved and that the plaintiff, Robert L. England, III, is granted an absolute divorce from the defendant, Phyllis K. England, and each party is restored to all the rights and privileges of an unmarried person.

It is further **ORDERED, ADJUDGED AND DECREED** that the Marital Dissolution Agreement heretofore executed by the parties is hereby approved by the Court and each and every provision of said agreement is hereby made a specific order and decree of the Court. The Marital Dissolution Agreement in words and figures is as follows:

IN THE PROBATE COURT FOR DAVIDSON COUNTY, TENNESSEE

ROBERT L. ENGLAND, III,
Plaintiff,
vs.
PHYLLIS K. ENGLAND,
Defendant.

NO. 89D-4964

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MARITAL DISSOLUTION AGREEMENT

This agreement made and entered into on this the 14th day of April, 1991, by and between PHYLLIS K. ENGLAND, (hereinafter referred to as Wife), and ROBERT L. ENGLAND, III, (hereinafter referred to as Husband).

WHEREAS, the parties were married on December 3, 1966, in Bryson City, N.C.; and

WHEREAS, there is one minor child of the parties, Michael Kirk England, born January 7, 1974 and one son of the parties who is no longer a minor; and

WHEREAS, the parties in consequence of disputes, unhappy moments, and irreconcilable differences have separated and wish to make arrangements in connection therewith, including a settlement of the property rights, obligations of support and rights to custody of the minor child, and other rights and obligations of the marital relationship, they have agreed upon the following as evidenced by their signatures hereto, and they contract as follows:

It is, therefore, AGREED that for and in consideration of the mutual promises herein contained as follows:

1. Child Custody: The parties agree that they are both fit and proper persons to have the legal custody of their minor child, Michael Kirk England. It is in the present best interest of the minor child that care and custody be retained by the parents jointly. The Wife shall have primary physical custody of the minor child with the Husband to have reasonable visitation. The parties acknowledge that the minor child, Kirk, is a teenager with certain school and extracurricular obligations and visitation shall be scheduled based upon Kirk's availability.

2, Child Support: The Husband agrees to pay child support to the Wife in the amount of $1,000.00 (one thousand dollars) per

month. The parties acknowledge that they have not applied the child support guidelines, as required by T.C.A. § 36-5-101, in calculating the amount of support to be paid in this matter, due to the relative income earning capacity of the parties, and due to the marital debts undertaken by each party, and due to the extension of child support beyond the mandatory age of 18 years.

3. In addition to the above, Husband shall continue payment of monthly child support on behalf of the minor child, Kirk, until January, 1995, so long as Kirk maintains a residence at the home of the Wife. In the event that Wife should remarry, the child support due and owing shall be decreased from $1,000.00 per month to $800.00 per month. In the event that Kirk fails to maintain a residence at the home of the Wife, monthly child support shall cease.

4. The Wife shall maintain health insurance on the parties minor child in such amounts as is available through her employment, and the Husband shall be liable for all uncovered medical, dental, optic, pharmaceutical, psychiatric, psychological or other uncovered expenses for said minor child up to a maximum of $500.00 per year, after which amount both parties shall be liable for one half of all such uncovered expenses.

5. The Husband agrees to pay college tuition, fees, books and room and boarding expenses for Kirk. While in college, the child must maintain a C or better average, and be enrolled as a full-time student as defined by the college Kirk attends, making the normally scheduled progress toward receiving his degree. If Kirk fails to maintain the foregoing conditions during majority, then payment shall cease. The Husband's obligation to these expenses shall be limited by the then-prevailing costs were Kirk to attend the largest public university of the state wherein Kirk is domiciled at the time he enters college. The Husband's obligation to pay said expenses shall terminate upon Kirk reaching age twenty-five (25).

6. The Husband will maintain title on the Pontiac Sunbird, or a suitable replacement vehicle, and the insurance on same, for the use and benefit of Kirk. Title to be transferred to Kirk upon graduation from high school, with the Husband to maintain insurance

on the vehicle while Kirk complies with the provisions as set forth in Paragraph #5.

7. Property Division: Husband shall pay to the Wife the sum of $10,000.00 (ten thousand dollars) upon her execution of this Agreement.

8. The parties have divided between themselves the personal property and belongings acquired during the marriage and each party makes no claim to any property in the possession of the other party.

9. The Husband shall maintain two (2) existing life insurance policies with New York Life Insurance Co. and one (1) existing policy with First Colony, all three (3) of which are assigned to First American National Bank ("Bank") for indebtednesses owed by Husband to the Bank and either co-signed or guaranteed by Wife. The Husband shall list the Wife as alternate beneficiary thereon, so long as Wife remains as an obligor on said indebtednesses with the Bank. To the extent that the Wife is released from said indebtednesses and upon proof of said release, the Husband may reduce the amount of the insurance coverage upon which Wife is to be named as an alternate beneficiary to an amount equal the amount of indebtedness for which Wife remains liable. In addition, the Husband shall provide separate life insurance on his life in the initial amount of Three Hundred Fifty Thousand and 00/100 ($350,000.00) Dollars and shall name the Wife as the primary beneficiary thereon, with the parties' two (2) sons to be named as contingent beneficiaries. Upon satisfaction or payment of all or a portion of the child support and alimony obligations pursuant to this Agreement, the Husband may reduce, or terminate such additional coverage, to an amount equal to the gross amount (not present value) of his remaining support and alimony obligations, as appropriate.

10. In addition to the above, the Wife shall retain as her sole and separate property the Honda Accord, VIN #1HGCB7659LA048860, free from all claims of the Husband, to be titled in her name only, and Wife shall further be liable for all indebtedness and insurance thereon, and to hold Husband harmless on same.

11. Husband shall retain all interest in the 16.67 shares of Sumner Employment Exchange, Inc. and all of the shares of Holman Seed, Inc., and the Certificate of Deposit at First American Bank, subject to the terms and conditions hereinafter contained.

12. Each party shall retain any and all pensions and other IRA accounts in their individual names.

13. Husband shall immediately reimburse Wife for $1,065.00 (one thousand sixty five dollars) which was garnished from her salary in September, 1990 for delinquent taxes for 1985.

14. Husband shall be liable for any and all marital debt, and any and all debts incurred in his name alone, including all outstanding corporate debt upon which Wife's name appears either primarily or as guarantor and he shall agree to indemnify and hold her harmless thereon.

15. The parties hereto agree that neither party shall charge or cause to be charged to the other party any purchases which either of them may make after this agreement is entered into and shall not create any engagements or obligations in the name of or against the other nor shall either party hereafter secure or attempt to secure any credit upon or in connection with the other. Each warrants that there are no charges on the other's credit that have not been fully revealed to the other. If there are any such unrevealed charges, the party making those charges shall be responsible for payment of those unrevealed charges. Further, the Husband shall make a good faith effort to have the Wife's name removed from liability on the business debts immediately, but shall affirmatively agree to have such releases obtained no later than January 1, 1992.

16. Real Property: The parties own certain real property located on Stokesmont Drive, which property is and shall continue to be listed for sale. Wife has previously vacated said property, and Husband has had and shall continue to have the use and possession of the property pending sale. Upon sale, parties shall split all proceeds equally, with the Husband to be given credit for any and all payments toward the principal made from April 1, 1991 to date of sale. In the event that the property remains unsold one year from the date of this agreement, or in the event that the

Husband desires to purchase from Wife her equity in said property, the Husband shall pay to the Wife one-half of the equity in the property effective that date, based upon an independent appraisal as to the then present fair market value of said property. Upon payment of such equity, the Wife shall sign over all interest in said property to Husband.

17. The parties acknowledge that there are certain warehouses on Chestnut Street which constitute marital property which shall be retained by the Husband, and he shall be liable for any and all outstanding debts thereon. The Wife agrees to transfer all rights, title and interest which she may have to the Husband by quitclaim deed.

18. Alimony: Husband shall pay to the Wife periodic alimony of $15,000.00 (fifteen thousand dollars) per year, with the first such payment due and owing on December 1, 1991, and each subsequent payment due and owing on December 1st of each subsequent year. The Husband's obligation to pay alimony as described in this paragraph shall not exceed $150,000.00. The parties agree that such sum shall remain due and owing despite the remarriage of the Wife, but shall terminate in the event of her death.

19. Husband further agrees to pay to the Wife periodic alimony in the amount of $500,00 (five hundred dollars) per month, the first such payment to be due and owing on May 1, 1991. In the event that Kirk shall maintain an alternate residence, and monthly child support payments have ceased, alimony shall be increased to $1,000.00 (one thousand dollars) per month for the remainder of the term. All alimony obligations of the Husband pursuant to this paragraph shall terminate upon the death or remarriage of the Wife, or on January, 1995, whichever event occurs first.

20. Non-Dischargeability: With respect to each party's responsibility for the payments of certain debts and liabilities, and their obligation to hold the other harmless for the payment thereof, the parties understand and agree that their obligation is a non-dischargeable debt under the Bankruptcy Code, such debt being in the nature of support and maintenance by providing for payment of debts by the obligor, relieving the other party of such payments

and is in lieu of greater child support or alimony, not as division of marital property.

21. Tax Liabilities: Each of the parties shall file separate income tax returns for the year 1991, and all subsequent years, and neither of them shall claim any deduction or credit as a result of the marital relationship thereon. If in connection with any joint Federal Income Tax returns heretofore filed by the parties, there is a deficiency assessment, the amount ultimately determined to be due thereon shall be born by the Husband without offset against the Wife. Husband and Wife each represents and warrants to the other that all Federal Income Tax returns during the marriage are, in all respects, true, correct and complete and fully and accurately reflect the income and deductions for those years.

22. The Husband shall cause to be prepared federal income tax returns for both parties for the tax years 1988, 1989 and 1990, and shall be liable for any and all taxes due thereon.

23. The Wife shall have the right to claim the minor child, Kirk, as a deduction on her federal income tax returns for the tax years 1991, 1992 and 1993; the Husband shall have the right to claim the minor child, Kirk, as a deduction on his federal income tax return for all subsequent years, so long as Kirk remains a dependent.

24. Restraining Provisions: Both parties agree not to molest, harass, interfere with or impose any restraint upon the other. Neither of them shall compel or endeavor to compel the other to cohabit or dwell with him or her by any legal proceeding for restitution of conjugal rights or otherwise, whatsoever.

25. Modification: A modification or waiver of any of the provisions of this Agreement shall be effective only if made in writing and executed with the same formality as this Agreement. Failure of either party to insist upon strict performance of any of the provisions of this Agreement shall not be construed to be a waiver of any subsequent default of the same or similar nature.

26. Severance: Should the Court hold that any portion of this Agreement is invalid, the remainder shall be in full force and effect and the invalid portion shall be struck from the Agreement or modified as the Court shall order.

27. Non-Compliance: Should either party incur any expenses or legal fees as a result of the breach of any portion of this Agreement by the other party, the Court shall award reasonable attorney fees and suit expenses to the non-defaulting party which are reasonably incurred. Further, if the Husband or Wife should violate any provisions of this Agreement, and as a result thereof, the other spouse is obligated to make payments to others, the spouse shall have the right of reimbursement for any such payment made to others.

28. Waiver: Subject to the provisions of this Agreement, each party has released and discharged and by this Agreement, does for himself or herself, and his or her heirs, legal representative, executor, administrator, assigns, releases and discharges the other of and from all causes of action, claims, rights or demands whatsoever, in law or equity, which either of the parties ever had or has against the other, except for any cause or causes of action for divorce. Except as here and otherwise provided, each party may dispose of his or her own property in any way, and each party hereby waives or relinquishes any and all rights he or she may have in the property of the estate of the other.

29. Necessary Documents: Each party at the request of the other will execute and deliver all documents which may be reasonably necessary to give full force and effect to this Agreement. Further, Husband agrees to notify all creditors that he is solely responsible for such debt, and shall provide proof of such notification to the other party upon request.

30. Divorce Action: It is agreed between the parties that this Marital Dissolution Agreement shall be filed in a divorce action between the parties wherein the Husband appears as Plaintiff/Counter Defendant, and the Wife as Defendant/Counter-Plaintiff, and the cause shall proceed to hearing on the grounds of irreconcilable differences. Further, if consistent with the rules of practice of the Court granting such decree of absolute divorce, the provisions of this Agreement and the substance thereof, shall be incorporated into such decree, but notwithstanding such incorporation, this Agreement shall not be merged into

such decree, but shall in all respects provide the same and be forever binding and conclusive upon the parties.

31. Attorney Fees and Costs: It is agreed between the parties that Wife is represented by Charles Hill Beaty and Husband is represented by Douglas A. Brace Husband will pay Wife's attorney fees of $5,000.00 (five thousand dollars) as alimony in gross. It is also agreed between the parties that the Husband shall pay his own attorney fee in connection with this divorce. The Husband shall pay the court costs in this cause.

32. Voluntary Execution: This Agreement contains the entire understanding between the parties. There are no representations, warranties, covenants or undertakings other than those expressly set forth herein and each party enters into this Contract voluntarily, advisedly, and with the full knowledge of the financial condition, nature and character and value of the other's estate. The law of the State of Tennessee shall govern this Agreement in all respects. Each party is aware of the tax consequences of this Agreement. In some instances it represents a compromise of disputed issues. Each believes the terms and conditions to be fair and equitable under the circumstances. No coercion or undue influence has been used by or against the other party in making this agreement, other than the representations set forth herein. Each party acknowledges that he or she executed this Agreement as his or her own free act and deed.

Robert L. England III
ROBERT L. ENGLAND III

Phyllis K. England
PHYLLIS K. ENGLAND

STATE OF TENNESSEE
COUNTY OF DAVIDSON

Personally appeared before me, the undersigned Notary Public, ROBERT L. ENGLAND III, to me known to be, or proved on satisfactory evidence, the person described herein as Husband, who made oath that he had read the foregoing Marital Dissolution Agreement, and acknowledged that he executed the same as his own free act and deed this 19th day of April, 1991.

Notary Public
My commission expires: 3/26/94

STATE OF TENNESSEE
COUNTY OF SUMNER

Personally appeared before me, the undersigned Notary Public, PHYLLIS K. ENGLAND, to me known to be, or proved on satisfactory evidence, the person described herein as Wife, who made oath that she had read the foregoing Marital Dissolution Agreement, and acknowledged that she executed the same as her own free act and deed this 19th day of April, 1991.

Sue H. Dunning
Notary Public
My commission expires: 6/25/92

It is further **ORDERED, ADJUDGED AND DECREED** that the cost of this cause shall be and is hereby taxed to the plaintiff, and that execution may issue to enforce any of the provisions of this decree.

Entered this 29 day of April, 1991.

JUDGE JAMES R. EVERETT, JR.

APPROVED FOR ENTRY BY:

ORTALE, KELLEY, HERBERT & CRAWFORD

David B. Scott, Reg. No. 12240
Attorney for Plaintiff
Third Floor, Noel Place
200 Fourth Avenue North
Nashville, TN 37219-0375
(615) 256-9999

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that a true and exact copy of the foregoing was forwarded, by United States Mail, postage prepaid, to Sue Hynds Dunning, Attorney for Plaintiff, Beaty & Oldham, First Tennessee Bank Building, 668 Nashville Pike, Gallatin, TN 37066 on this 29th day of April, 1991.

David B. Scott

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TENNESSEE REFERENCE

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WILLIAM Z. WILSON II REGISTER
DAVIDSON COUNTY, TN

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STATE OF TENNESSEE

I, **GEORGE L. ROOKER,** *Clerk of the Circuit Court for Davidson County, in the State aforesaid, do hereby certify that the foregoing is a true and correct copy of the Order heretofore entered in the* Probate *Circuit Court for Davidson County, Tennessee, on the* Twenty-ninth *day of* April, 19 91, *in Case Number* 89D-4964 *between* Robert L. England, III *Plaintiff, and* Phyllis K. England *Defendant, as same remains of record in Book* 61A, *Page* 173 *of the Minutes of said Court.*

IN TESTIMONY WHEREOF, *I hereunto subscribe my name and affix the seal of said Court, at office, in Nashville, the* 4th *day of* May *in the year one thousand nine hundred and* Ninety-two *and in the* 216th *year of American Independence.*

GEORGE L. ROOKER, *Clerk,*

By J. Clary *D.C.*

Form #GR-117