

STATE OF NORTH CAROLINA
COUNTY OF LOVE

IN THE GENERAL COURT OF JUSTICE
DISTRICT COURT DIVISION
04 CVD 16546

CLETUS _____,
Plaintiff,)
v.)
ALIFAIR _____,
Defendant.)

**EQUITABLE DISTRIBUTION
ORDER / JUDGMENT**

THIS CAUSE came on for hearing before the undersigned District Court Judge presiding on the parties’ respective claims for equitable distribution, child support, and attorney fees. Plaintiff was present in Court and represented by counsel. Defendant was present and represented by counsel. Based upon the testimony, documentary evidence, demeanor of the witnesses, the pleadings, and other documents of record, the Court enters this Judgment and Order with the following:

FINDINGS OF FACT

1. Plaintiff and Defendant were married on May 26, 1987, and separated on January 28, 2004. The parties are now divorced.
2. Plaintiff and defendant are the parents of three (3) children, namely: Robert L. ____, born April 3, 1988; Katherine S. ____, born March 13, 1990; and Sarah E. ____, born May 23, 1998.
3. The parties’ oldest child, Robert, reached the age of majority during the pendency of this action and graduated from high school in June of 2006. Robert completed his freshman year of college at Appalachian State University in May of 2007.
4. A Final Pretrial Order was signed by the Honorable Judge Justice prior to the beginning of the trial on June 12, 2007.
5. Plaintiff is a Certified Public Accountant. During the marriage of the parties and prior to the date of separation, defendant became a partner in the accounting firm of Koonce, Wooten & Haywood, LLP, (hereafter “KWH”) located in Raleigh North Carolina. The parties retained separate experts to perform a valuation of plaintiff’s ownership interest in KWH. Plaintiff’s expert witness was James B. ____ and defendant’s expert witness was Michael _____. Prior to the date of trial, the parties’ experts discussed their respective expert reports and reached agreement that the Fair Market Value for 100% of the non-controlling and non-marketable interests in Koonce Wooten & Haywood, LLP, as of January 28, 2004, was \$1,989,000.00. The court finds that the Fair Market Value for 100% of the non-controlling and non-marketable interests in Koonce Wooten & Haywood, LLP, as of January 28, 2004, was \$1,989,000.00.
6. In 2003, there were five partners of KWH: Plaintiff, Graham ____, Sherwood ____,

Ernest ____, and Christopher ____. Ernest ____ retired from the partnership effective December 31, 2003. The 2003 Partnership tax return for KWH reflects that the percentage of profit sharing and loss sharing for the year 2003 was as follows: Graham - 27.5%; Plaintiff - 22.0%; Sherwood - 22.0%; Ernest - 19.5%; Christopher - 9.0%.

7. The 2004 Partnership tax return for KWH, for the tax year during which the parties separated, reflects the following profit sharing and loss sharing arrangement: Graham - 38.25%; Plaintiff - 35.75%; Sherwood - 12.0%; Christopher - 14.0%. This profit sharing and loss sharing arrangement allocates a larger percentage to plaintiff than if he had received a proportionate share of Ernest's share upon Ernest's retirement. This larger allocation to plaintiff results from Sherwood's retirement after the 2004 tax season and before the end of the 2004 calendar year. Therefore, the profit sharing and loss sharing allocation set out on the 2004 Partnership return for KWH does not accurately reflect plaintiff's percentage of ownership in KWH as of January 28, 2004.

8. When Ernest ____ retired on December 31, 2003, if the four remaining partners each received a proportionate share of Ernest's 19.5% interest in KWH, their respective profit sharing and loss sharing would have been as follows: Graham - 34.2%; Plaintiff - 27.3%; Sherwood - 27.3%; Christopher - 11.2%. As of the parties' separation on January 28, 2004, no re-negotiation of the profit sharing and loss sharing allocation had occurred to take into account Ernest's retirement. The KWH partners had not agreed to re-allocate the profit sharing and loss sharing in some manner other than a proportionate division of Ernest's interest between the four remaining partners. Plaintiff's ownership interest in KWH was 27.3% when the parties separated on January 28, 2004.

9. The net Fair Market Value of plaintiff's 27.3% ownership interest in KWH as of January 28, 2004, was \$540,540.00 (or 27.3% of \$1,989,000.00, the value of 100% of KWH as of January 28, 2004). Plaintiff's ownership interest in KWH as of January 28, 2004, is marital property. Any increase or decrease in the value of plaintiff's ownership interest in KWH since January 28, 2004, resulted from plaintiff's active efforts after the parties' date of separation and is, therefore, plaintiff's separate property.

10. After the parties separated on January 28, 2004, plaintiff received distributions from KWH totaling \$76,738.00 that resulted from plaintiff's percentage of profit sharing for tax year 2003. These funds are divisible property received by plaintiff after the parties' date of separation as a result of plaintiff's active efforts during the marriage and before the parties' date of separation.

11. At the time of trial, defendant owned 200,000 unit participation rights options to purchase stock in her employers company, Parata Systems. The parties stipulated in the Final Pretrial Order to an equal, 50/50 in-kind distribution of all unit participation rights that are marital property. All of the unit participation rights were granted to the defendant prior to the parties' date of separation. The court finds that all 200,000 unit participation rights are marital property.

12. At the time of the parties' separation, the parties jointly owned as tenants by the

entireties three parcels of residential real property: ___ Kirkwood Court, Raleigh, North Carolina; ___ Huntington Court, Raleigh North Carolina; and ___ Stonehill Drive, Raleigh, North Carolina. The parties stipulated in the Final Pretrial Order signed by Judge Justice on June 12, 2007, that all three of these residential properties are marital property. The property located at ___ Kirkwood Court was the residence where the parties resided with their children prior to the date of separation and is the “former marital residence.” There was no debt secured by the Kirkwood property on the date of separation or as of the date of trial. The other two properties, Stonehill and Huntington, have been used by the parties as rental properties. At the time of the parties’ separation, the parties owed \$93,895.00 for the mortgage secured by the Huntington property and \$1,761.00 for the mortgage secured by the Stonehill property. After the parties’ date of separation and before the date of trial, plaintiff paid \$1,761.00 to pay off the debt secured by the Stonehill property and he received rental income in the total amount of \$8,115.00 from the Stonehill property. After the parties’ date of separation and before the date of trial, plaintiff paid \$27,139 to pay down the principal owed on the Huntington mortgage and he paid an additional \$14,194 in mortgage interest for the Huntington mortgage, resulting in total payments of \$41,333 related to the Huntington mortgage. After the parties’ date of separation and before the date of trial, plaintiff received rental income of \$8,183 from the Huntington property and defendant received rental income of \$4,800 from the Huntington property.

13. After the date of separation and prior to trial, plaintiff paid property taxes for the Kirkwood property of \$1,787; \$3,879 for Huntington’s property taxes; and \$4,147 for Stonehill’s property taxes. After the date of separation and prior to trial, defendant paid property taxes for the Kirkwood property of \$3,698.

14. During the parties’ marriage and before their date of separation, the parties purchased a 1/6 interest in office condos located on Barrett Drive, Raleigh, North Carolina, which served as the office space for plaintiff’s accounting firm, KWH. Plaintiff’s interest in the business condos was purchased shortly before the parties separated for \$90,000 and plaintiff owed \$90,000 on the date of separation for his share of the mortgage secured by the Barrett Drive condos. The parties stipulated in the Final PreTrial Order that the value of plaintiff’s interest in the business condos as of the date of trial was \$76,667. At the time of trial, plaintiff owed \$79,651 for his share of the mortgage secured by the business condos. After the date of separation and prior to trial, plaintiff received rental income of \$31,433 from his interest in the business condos and he paid property taxes of \$2,176 for his interest in the business condos.

15. After the parties’ date of separation, the parties filed joint state and federal tax returns for tax year 2003. The parties owed a joint tax liability of \$31,256 for tax year 2003. Plaintiff paid this joint tax liability in calendar year 2004, after the parties’ date of separation.

16. After the parties’ date of separation, defendant continued to reside primarily in the former marital residence located on Kirkwood Court in Raleigh, North Carolina. Defendant also assumed responsibility for maintaining the Huntington rental property and plaintiff assumed responsibility for the Stonehill rental property. Defendant incurred expenses in the total amount of \$1,321 for routine maintenance and repairs for the Kirkwood home after the parties’ date of separation. However, because defendant was residing in this property as her primary residence, the trial court finds that these expenses are defendant’s separate expenses and not divisible debts

incurred for the benefit of both parties. Defendant incurred expenses in the total amount of \$22,046 for repairs and maintenance for the Huntington rental property, which related to removal of trees, routine repairs, lawn maintenance, and payment of basic utilities while the house was unoccupied to maintain and preserve the Huntington property. These expenses were incurred by defendant after the date of separation for the benefit of both parties.

17. During the parties' marriage and before their date of separation, the parties acquired the property and debts listed below, all of which are marital property and marital debts, with fair market values as of the date of separation as stated below:

___ Kirkwood Court, Raleigh	\$320,000
___ Huntington Court, Raleigh	\$165,000
___ Stonehill Drive, Raleigh	\$176,500
1/6 interest in Barrett Drive condos	\$90,000
Edward Jones Roth IRA - Plaintiff's name	\$20,559
Edward Jones Roth IRA - Defendant's name	\$29,559
GVM - Plaintiff's interest	\$12,000
GVM - Defendant's interest	\$12,000
1999 Plymouth Grand Voyager	\$7,500
1989 Isuzu Trooper	\$1,800
KWH - 27.3% interest	\$540,540
KWH 401(k) - Plaintiff's account	\$200,000
BB&T checking	\$1,892
BB&T checking	\$970
BB&T savings	\$64,872
Parata Systems Unit Participation Rights	Undetermined value
Mortgage for Huntington Court property	<\$93,895>
Mortgage for Stonehill Drive property	<\$1,761>
Mortgage for Barrett Drive condos	<\$90,000>
TOTAL NET MARITAL ESTATE AS OF DOS	\$1,457,536

18. After the parties' date of separation, the parties acquired certain property as a result of passive increases/decreases in the value of marital property or passive income from marital property or as a result of a party's active efforts prior to the date of separation. The property listed below is the divisible property acquired by the parties after the date of separation and before the date of trial:

Barrett Drive - passive decrease in value	<\$13,333>
Edward Jones Roth IRA - P - passive growth	\$6,388
Parata Systems Unit Participation Rights	Undetermined value
Edward Jones Roth IRA - D - passive growth	\$9,603
KWH 401(k) - passive increase in value	\$94,172
Huntington - Rental income	\$12,983
Stonehill - Rental income	\$8,115
Barrett Drive - Rental income	\$31,433

2003 KWH distributions	<u>\$76,738</u>
TOTAL DIVISIBLE PROPERTY	\$226,099

19. After the parties' date of separation, the parties incurred the following divisible debts in the amounts stated below:

DIVISIBLE DEBTS PAID BY PLAINTIFF

Kirkwood - property taxes paid post-DOS	\$1,787
Huntington - property taxes paid post-DOS	\$3,879
Huntington - post-DOS mortgage payments	\$41,333
Stonehill - property taxes paid post-DOS	\$4,147
Barrett Drive - property taxes paid post-DOS	\$2,176
Barrett Drive - post-DOS principal reduction	\$10,349
2003 joint taxes - paid post-DOS	\$31,256

DIVISIBLE DEBTS PAID BY DEFENDANT

Kirkwood - property taxes paid post-DOS	\$3,698
Huntington - post-DOS repair/maintenance	<u>\$22,046</u>

TOTAL DIVISIBLE DEBTS	\$120,671
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20. At the time of the parties' separation, there were nineteen (19) Series EE United States savings bonds issued in the name of the parties' oldest child jointly with defendant. At the time of the parties' separation, there were four (4) Series EE United States savings bonds issued in the name of the parties' second child jointly with defendant. At the time of the parties' separation, defendant owned one (1) Series EE United States savings bond in her name alone (serial number M-0-040-936-339-EE) that was gifted to defendant by defendant's grandmother during the course of the parties' marriage. The Series EE bonds held in Robert's name were gifted to Robert by the parties or by other family members and are Robert's property. The Series EE bonds held in Katherine's name were gifted to Katherine by the parties or by other family members and are Katherine's property. The Series EE bonds held in the names of the children shall be used for the children's educational expenses as set forth in the decretal paragraphs below. The Series EE bond held in defendant's name alone is defendant's separate property.

21. During the parties' marriage and before their separation, plaintiff received decorative ceramic Christmas items (referred to by the parties as part of the "Christmas village") that were given to plaintiff by defendant's family. All such items that were gifted to plaintiff are plaintiff's separate property. Except for said Christmas items, neither party presented any evidence at trial regarding marital and/or divisible household goods or personal property and, therefore, the trial court makes no findings of fact, conclusions of law, or an equitable distribution between the parties of any other items of personal property or household goods.

22. At the time of trial, plaintiff had physical possession of certain items of personal property and household goods belonging to the parties' oldest child. All such items, which are listed below, are Robert's property and shall be returned to Robert as set forth in the decretal

paragraphs below:

- Mini-fridge
- Television
- Computer Speakers
- I-pod Speakers
- Stereo System
- Vacuum
- Microwave
- Blender
- Toaster
- Blue Plastic holder containing movies and Xbox games
- Xbox with 3 controllers
- Remote control for Xbox
- Checkbook
- I-pod FM Transmitter
- Cassette Adapter
- Hammock
- Poster in Frame
- Robert's clothes, books, personal belongings
- Garage door opener for defendant's separate residence

23. This Court has considered all of the evidence and makes the following specific findings concerning all distributional factors upon which evidence was received by the Court

(a) 50-20(c)(1) - The income, property and liabilities of each party at the time the division is to become effective. Plaintiff is a partner in the accounting firm of Koonce Wooten & Haywood, LLP. He earns a substantial income, earning gross income in excess of \$500,000 in tax years 2005 and 2006. Defendant has a doctorate degree and, until May of 2007, was employed full-time earning a gross income of \$108,000 per year. Defendant was laid off from her job in May of 2007 but has obtained new employment and is capable of earning a gross income in the range of \$100,000 per year, taking into account her skills, educational background, and experience. Each party has continued to acquire separate property after the parties' date of separation, in that each party has obtained a new vehicle, a new residence, and has continued to make regular contributions to retirement. The parties generally lived within their means during the marriage and, although both parties have purchased larger and more expensive homes since they separated, both parties continue to live within their financial means.

(b) 50-20(c)(3) - The duration of the marriage and the age and physical and mental health of both parties. The parties had been married for 16 years and 8 months at the time of their separation. Both parties are in good health and are physically and mentally capable of full-time employment. Plaintiff is 45 years old and defendant is 46 years old.

(c) 50-20(c)(5) - The expectation of pension, retirement or other deferred compensation rights that are not marital property. Both parties have contributed to

retirement accounts in his or her respective name since the parties' date of separation. The marital portion of plaintiff's KWH 401(K) will be divided between the parties via QDRO, as set forth in the decretal paragraphs below. The parties stipulated in the Final PreTrial Order that plaintiff's Edward Jones IRA is his separate property; that defendant's Edward Jones IRA is her separate property and that defendant's Edward Jones SEP-IRA is her separate property.

(d) 50-20(c)(7) - Any direct or indirect contribution made by one spouse to help educate or develop the career potential of the other spouse. During the parties' marriage, defendant obtained a Master's Degree and a doctorate degree. Plaintiff provided financial support to the family while defendant obtained her higher educational degrees. As a result of defendant's advanced degrees, she was able to secure higher-paying employment but, due to the parties' separation, plaintiff did not receive the benefits of defendant's increased earning potential.

(e) 50-20(c)(9) - The liquid or nonliquid character of all marital property and divisible property. The parties own four parcels of real property that is marital property. The parties stipulated in the Final PreTrial Order or during closing arguments that plaintiff should receive the Stonehill and Barrett Drive properties and that defendant should receive the Kirkwood and Huntington properties. Plaintiff's partnership interest in KWH, an accounting firm, is not liquid.

(f) 50-20(c)(10) - The difficulty of evaluating any component asset or any interest in a business, corporation or profession, and the economic desirability of retaining such asset or interest, intact and free from any claim or interference by the other party. The parties stipulated in the Final PreTrial Order that plaintiff's partnership interest in KWH should be distributed to plaintiff.

(g) 50-20(c)(11) - The tax consequences to each party, including those federal and State tax consequences that would have been incurred if the marital and divisible property had been sold or liquidated on the date of valuation. Plaintiff presented evidence as to the pre-tax nature of the marital portion of his KWH 401(k) account. The court acknowledges that the funds held in the KWH 401(k) account are pre-tax dollars and that taxes and penalties would be incurred if the account was liquidated and a portion paid to defendant for her marital interest in that account. The court has elected to divide the KWH 401(k) account between the parties pursuant to domestic relations order, as provided in N.C. Gen. Stat. § 50-20.1, so that it is not reasonably likely that plaintiff will incur tax consequences as a result of this equitable distribution.

(h) 50-20(c)(11a) - Acts of either party to maintain, preserve, develop or expand; or to waste, neglect, devalue or convert the marital property or divisible property, or both, during the period after separation of the parties and before the time of distribution. Both parties have paid marital and/or divisible debts to maintain and preserve marital assets from the date of separation through the date of trial, as set forth in the Findings of Fact above.

24. Having considered all of the distributional factors supported by the evidence, this Court finds that an equal division of the net marital and divisible property is equitable.

25. The Court finds that in order to accomplish the distribution of the marital and divisible property determined equitable by the Court, the following assets should be divided equally in-kind between the parties: the date of separation value of plaintiff's KWH 401(k) account and defendant's Parata Systems unit participation rights.

26. The Court finds that, in order to accomplish the distribution of the marital and divisible property determined equitable by the Court, all property not divided equally in kind (as set forth in the preceding paragraph) should be distributed as set forth in the chart below.

<u>Assets / Debts</u> (Marital and/or Divisible)	<u>TO PLAINTIFF</u>	<u>TO DEFENDANT</u>
____ Kirkwood Court		320000
Kirkwood - property taxes	<1787>	<3698>
____ Huntington Court		165000
Huntington - post-DOS rental income	8183	4800
Huntington - post-DOS mortgage payments	<41333>	
Huntington - post-DOS expenses		<22046>
Huntington - mortgage		<66756>
Huntington - property taxes	<3879>	
____ Stonehill Drive	176500	
Stonehill - post-DOS rental income	8115	
Stonehill - post-DOS mortgage payments	<1761>	
Stonehill - property taxes	<4147>	
Barrett Drive condos	76667	
Barrett - post-DOS rental income	31433	
Barrett - post-DOS principal reduction	10349	
Barrett - property taxes	<2176>	

Barrett - mortgage	<79651>	
Edward Jones Roth IRA - Plaintiff	26947	
Edward Jones Roth IRA - Defendant		39162
Parata Systems Unit Participation Rights (200,000 total units, 50/50 in-kind distribution)	50%	50%
GVM - Defendant		12000
GVM - Plaintiff	12000	
1999 Grand Voyager		7500
1989 Isuzu Trooper	1800	
KWH - Plaintiff's interest	540540	
KWH - 2003 post-DOS distributions	76738	
KWH 401(k) (50/50 in-kind distribution via QDRO)	50%	50%
BB&T checking		1892
BB&T checking	970	
BB&T savings		64872
2003 income taxes paid post-DOS	<31256>	
TOTAL	804252	522726

27. The Court further finds that, in order to accomplish the distribution of the marital and divisible property determined equitable by the Court (as set forth in decretal paragraph 27 above), it is necessary and equitable that the plaintiff be ordered to pay a distributive award to defendant in the amount of \$86,763.00 and that this distributive award be paid as set forth in the decretal paragraphs below. This distributive award reflects a credit to plaintiff in the amount of

\$54,000.00 because plaintiff served as the primary source of funds for defendant's education, which allowed defendant to receive higher paying employment; and as a result of the parties' separation, plaintiff was unable to secure the benefit of his contributions and shall receive a credit in the amount of those contributions. Plaintiff has the ability to pay said distributive award to defendant, in that plaintiff earns a substantial income (in excess of \$500,000 annual gross income) and he has the ability to borrow against the Stonehill property in order to satisfy the distributive award owed to defendant.

Based upon the foregoing Findings of Fact, the Court makes the following:

CONCLUSIONS OF LAW

1. This Court has jurisdiction over the parties hereto and the subject matter of this cause.
2. The marital and divisible property of the parties is as set forth in the Findings of Fact above. The values of the marital and divisible property of the parties, both assets and liabilities, are as set forth in the Findings of Fact above.
3. An equal division of the net marital and divisible property is equitable. The division of the marital and divisible property set forth in the decretal paragraphs below is an equitable distribution of the marital and divisible property. This division is fair to both parties based on all of the evidence presented.
4. Such of the Findings of Fact above as are more properly denominated Conclusions of Law are incorporated herein by reference as if set forth in full.

Based upon the foregoing Findings of Fact and Conclusions of Law, IT IS THEREFORE ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

1. Each party is hereby awarded sole ownership of the assets and liabilities listed in his or her respective column on the chart set forth in decretal paragraph 26 above. Plaintiff shall have ownership of all assets and liabilities listed in his column and said items shall be his sole and separate property, free of all claims of defendant. Defendant shall have ownership of all assets and liabilities listed in her column and said items shall be her sole and separate property, free of all claims of plaintiff.
2. Defendant shall execute a special warranty deed(s) transferring all of her right, title, and interest in ___Stonehill Drive, Raleigh, and the Barrett Drive Condos (1/6 interest in the condos located at _56, _58, _60, _62, and _66 Barrett Drive), Raleigh, to plaintiff. Plaintiff's attorney shall prepare and deliver to defendant's attorney any and all deeds or other documentation necessary to convey defendant's interest in said properties to plaintiff, and defendant shall execute said deeds within fifteen (15) days of receiving the deeds from plaintiff's attorney. In the event that defendant's name appears on any mortgage, equity line, or other loan related to and/or secured by any of these properties, plaintiff shall take all necessary steps to remove defendant's name from said debt no later than thirty (30) days following plaintiff's

discovery of the debt held in defendant's name.

3. Plaintiff shall execute a special warranty deed(s) transferring all of his right, title, and interest in ___ Kirkwood Court, Raleigh to defendant. Defendant's attorney shall prepare and deliver to plaintiff's attorney any and all deeds or other documentation necessary to convey plaintiff's interest in said property to defendant, and plaintiff shall execute said deeds within fifteen (15) days of receiving the deeds from defendant's attorney. In the event that plaintiff's name appears on any mortgage, equity line, or other loan related to and/or secured by any of these properties, defendant shall take all necessary steps to remove plaintiff's name from said debt no later than thirty (30) days following defendant's discovery of the debt held in plaintiff's name.

4. Plaintiff shall execute a special warranty deed(s) transferring all of his right, title, and interest in ___ Huntington Court, Raleigh, to defendant. Defendant's attorney shall prepare and deliver to plaintiff's attorney any and all deeds or other documentation necessary to convey plaintiff's interest in said property to defendant, and plaintiff shall execute said deeds within fifteen (15) days of receiving the deeds from defendant's attorney. Defendant shall refinance the existing mortgage secured by this property to completely remove plaintiff's name from said liability within sixty (60) days of the entry of this Order/Judgment.

5. Each party owns an individual interest in a real estate partnership known as GVM. Each party shall retain his or her individual interest in GVM as his or her respective separate property.

6. The parties shall cooperate to redeem all savings bonds in Robert's name and Katherine's name and the proceeds shall be used for Robert's college expenses and Katherine's college expenses, respectively, that are incurred after entry of this Order/Judgment. Each party shall provide to the other party an accounting of any college expenses paid for Robert or Katherine with the proceeds from the savings bonds belonging to that child. Said accounting shall be provided to the other party within thirty (30) days of disbursing the proceeds.

7. Within ten (10) days of the entry of this Order/Judgment, plaintiff shall deliver to defendant the Series EE savings bond (serial number M-0-040-936-339-EE) that was given to defendant by her grandmother, which is defendant's separate property.

8. At the time of the entry of this Order/Judgment, defendant owns 200,000 unit participation rights of Parata Systems, LLC. The participation threshold of all of these designated units is \$0.18 per unit. Each party is hereby awarded fifty percent (50%) of these units. Defendant shall hold plaintiff's fifty percent (50%) share, or 100,000 units, for plaintiff's benefit. Plaintiff shall be entitled to the net proceeds from the exercise of the 100,000 unit participation rights held for his benefit by defendant. Should plaintiff desire or choose to exercise the unit participation rights held for his benefit, plaintiff shall notify defendant and defendant shall exercise said unit participation rights as directed by plaintiff and as permitted by the Parata Systems, LLC 2002 Omnibus Unit Plan Unit Participation Rights Award Agreement. Plaintiff shall be responsible for payment of any cost or expense related to the exercise of the unit participation rights held for his benefit; and to the extent any up-front payment is required in

order to exercise said unit participation rights, plaintiff shall pay said amount to defendant or to Parata Systems, as appropriate, in advance of defendant's exercise of the unit participation rights held for plaintiff's benefit. As used herein, "net proceeds" shall mean the gross proceeds of the sale of the stock resulting from exercise of the unit participation rights, less the following amounts: the participation threshold of \$0.18 for each designated unit; any commissions and/or administrative costs associated with the sale of the stock arising from plaintiff's portion of the designated units and/or sale of resulting stock; and any taxes incurred by defendant by reason of the exercise of the designated unit or sale of the resulting stock. In the event that defendant's exercise of unit participation rights on plaintiff's behalf creates a tax liability for defendant, plaintiff shall reimburse defendant the amount of taxes incurred by defendant as a direct result of the exercise of unit participation rights on plaintiff's behalf, such reimbursement to take place on or before April 15 of the calendar year following the exercise of unit participation rights on plaintiff's behalf. In the alternative, in the event it is possible for plaintiff's fifty percent (50%) share of these units to be transferred into plaintiff's name instead of being held by defendant for plaintiff's benefit, then plaintiff's attorney shall be responsible for taking any necessary steps to transfer plaintiff's units into plaintiff's name within thirty (30) days of the entry of this order; and defendant shall execute any required documentation to complete the transfer of plaintiff's units into plaintiff's name.

9. Plaintiff's account in the Koonce Wooten & Haywood 401K Plan shall be divided equally between the parties as of the date of separation (January 28, 2004). Each party is hereby awarded fifty-percent (50%) of the balance of said account as of the date of separation, together with all gains, losses, income, appreciation, and depreciation accruing on his or her respective share from the date of separation through the date of the division of said account. Plaintiff shall retain as his separate property all contributions made by him to said account following the date of separation, together with all gains, losses, income, appreciation, and depreciation accruing on those post-date-of-separation contributions. Defendant or her counsel shall be responsible for preparing all orders necessary to accomplish this division of plaintiff's account in the Koonce Wooten & Haywood 401K Plan and shall submit these orders to the plaintiff or his counsel for review prior to submission to the Court.

10. Plaintiff shall return all items belonging to the parties' child, Robert, within ten (10) days of the entry of this Order/Judgment.

11. No later than ten (10) days following the entry of this Order/Judgment, defendant shall make available to plaintiff the decorative ceramic Christmas items (referred to by the parties as part of the "Christmas village") that were given to plaintiff by defendant's family.

12. Plaintiff shall pay a lump sum distributive award to defendant in the total amount of \$86,763.00. Plaintiff shall pay this distributive award to defendant no later than sixty (60) days of the entry of this Order/Judgment.

13. Each party shall be solely responsible for all liability associated with the property (both assets and liabilities) awarded or assigned to that party in this Order/Judgment. Each party shall indemnify, defend, and hold the other party harmless from any and all loss or liability associated with the property (both assets and liabilities) awarded or assigned to that party.

14. At the request of the other party, each party shall execute and deliver any and all written instruments or documents reasonably necessary or desirable to effectuate the purposes and provisions of this Order/Judgment.

15. Except as expressly provided otherwise in this Order/Judgment, each party shall be solely responsible for all debts and liabilities incurred by that party following the date of separation (including all charges on any account).

16. The terms of this Order/Judgment are enforceable through the contempt powers of this Court, and also as a judgment of the Court. Each party has the ability to seek enforcement as an order of the Court, or as a judgment, or both, at his or her their respective election.

17. This Order/Judgment resolves all claims related to the parties' respective claims for equitable distribution of marital and divisible property and debts.

This the _____ day of _____, 2007.

District Court Judge Presiding