

The following is provided for helpful informational purposes only and should not be construed or relied on as legal advice provided by the Fund, the Plan or the Board of Trustees.

SECTION – 5 MODEL ORDERS

[NOTE: This model is provided to assist practitioners with drafting a QDRO that may be acceptable to the Plan. It is in no way meant to be a required form, nor is it intended to cover every situation in a marital property separation agreement. The Trustees do not intend to, nor do they provide legal advice through providing the use of these models]

MODEL QDRO 1 — PARTICIPANT NOT YET IN PAY STATUS

In the _____ Court of _____,

State of _____

_____, Plaintiff)

vs,) Case No. _____

_____, Defendant)

QUALIFIED DOMESTIC RELATIONS ORDER

This Order is intended to be a qualified domestic relations order (“QDRO”), as that term is defined in section 206(d) of the Employee Retirement Income Security Act of 1974 (“ERISA”) and section 414(p) of the Internal Revenue Code of 1986 (“Code”). This QDRO is granted in accordance with [applicable state domestic relations law citations], which relate to marital property rights, child support, and/or spousal support between spouses and former spouses in matrimonial actions.

1. Identification of Plan: This order applies to benefits under the International Union of Operating Engineers Local 4 and Its Branches Pension Plan.

Plan Administrator:

Board of Trustees, International Union of Operating Engineers Local 4 and Its Branches Pension Plan

Pension Fund Office
16 Trotter Drive
P.O. Box 680
Medway MA 02053-0680

2. Identification of Participant and Alternate Payee:

a. **Plan Participant Information:** The Plan Participant is _____ (name) whose current mailing address _____

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His/her date of birth is _____, and his/her Social Security Number is _____.

b. **Alternate Payee Information:** The Alternate Payee is _____ (name) _____, whose current mailing address is _____. Her/his date of birth is _____, and her/his Social Security Number is _____.

3. **Date of Marriage And Divorce:** The Plan Participant and the Alternate Payee were married on _____, [and were granted a divorce on _____.]

4. **Assignment Of Benefits To Alternate Payee:** The Alternate Payee is hereby assigned a portion of the pension benefit that would otherwise be payable to the Plan Participant. The Fund is to make payment of the Alternate Payee's benefit directly to her.

5. **Formula For Determining Alternate Payee Benefit:** The Fund shall determine the Alternate Payee's portion of the Participant's benefit as follows:

Instructions: Following are three sample formulas listed below which are commonly used in domestic relations orders for defined benefit plans. To be qualified, the order must contain ONE formula which will instruct the Fund in how to determine the Alternate Payee's portion of the Participant's benefit. All three formulas are acceptable for use in either the dividing or sharing method of division. The parties are NOT required to use any of the sample formulas, nor must the percentage assigned to the Alternate Payee be 50%. The parties may use any formula, provided it is calculable under the Plan. Please refer to Section 4 of these procedures for further information.

$$50\% \times \frac{\text{Pension Credit Accrued During Marriage}}{\text{Total Pension Credit on Pension Effective Date}} \times \text{Benefit Amount on Pension Effective Date}$$

OR

50% of the benefit accrued by the Participant from the date of marriage to the date of divorce

OR

50% of the benefit accrued by the Participant at retirement

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6. Form Of Payment To Alternate Payee: The Alternate Payee shall receive her benefit as

Instructions: There are two commonly used methods for dividing the Participant's benefit. The parties must decide whether they wish to assign the Alternate Payee a share of the Participant's pension [use language in first or second box] or a separate entitlement [use language in third box]. Please refer to Section 4 of these procedures for further details about each method.

If the parties choose, the order can give the Alternate Payee the right to Post-Retirement Surviving Spouse Benefits. Thus, even if the order used the Sharing Method and the Participant predeceased the Alternate Payee after starting to get benefits, if the order gave the Alternate Payee an entitlement to a Post-Retirement Surviving Spouse Pension, she would continue to receive a benefit for her life but only if the participant has not already elected another form of benefit and was in pay status when the QDRO became effective. Please see Section 4 of these procedures for more information.

[Sharing Method with 80% or [66 2/3% if applicable] Husband and Wife Election]

a share of each payment to which the Plan Participant is entitled. The portion of the Participant's benefit assigned to the Alternate Payee through this Qualified Domestic Relations Order will be paid to her/him in the 80% [or 66 2/3% if applicable] Husband and Wife Pension form with the Alternate Payee treated as the Participant's Qualified Spouse for purposes of entitlement to the Surviving Spouse Pension should the Participant die prior to the Alternate Payee. At her/his death, no further benefits will be payable on the Alternate Payee's behalf.

[Sharing Method with Other Election Form]

a share of each payment to which the Plan Participant is entitled. The portion of the Participant's benefits assigned to the Alternate Payee through this Qualified Domestic Relations Order will be paid to her in the form of benefit elected by the Participant. Benefits shall cease to the Alternate Payee upon the death of the Participant unless the Alternate Payee was named as the Beneficiary under an optional form of payment, providing for such death benefit

OR

[Dividing Method]

a separate entitlement, payable for her lifetime. The Alternate Payee may choose to have her benefit paid in any form available to her under the Plan*, with the exception of the 80% or 66 2/3% Husband and Wife Pension or the 50%, 66 2/3% or 100% Joint and Survivor Option, with a subsequent spouse. Survivor benefits, if any, will be paid in accordance with the form of payment and elected by the Alternate Payee and will be payable to her designated beneficiary(ies).

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7. Form Of Payment For Participant: The Participant may elect any form of payment available to him under the Plan for the portion of his benefit not assigned to the Alternate Payee under this order. This entitlement includes the right to elect a Surviving Spouse form of payment for a subsequent spouse.

8. Commencement Of Payments To Alternate Payee: The Alternate Payee may, upon written application, choose to begin receiving her/his portion of the Participant's benefits on or after the Participant's earliest retirement age, even if the Participant has not separated from service at that time. Earliest retirement age is defined as the earlier of (i) the date on which the Participant is entitled to a distribution under the Plan or (ii) the later of (I) the date the participant attains age 50, or (II) the earliest date on which the participant could begin receiving benefits under the plan if the Participant separated from service. Should the Alternate Payee die prior to her pension Effective Date, her portion will revert to the Participant. If the Alternate Payee has not entered pay status prior to the Participant's Pension Effective Date, she will begin receiving her portion of the Participant's benefit as of her Pension Effective Date.

Important Information about Payments to Alternate Payee – Paragraph 8: If the order uses the Sharing Method, the Alternate Payee may only begin receiving benefits when the Participant actually retires and begins to receive benefits and paragraph 8 must be revised accordingly. Additionally the order must identify the benefit form in which the Alternate Payee is to share or should state that the form of election is to be determined by the Participant. If the order uses the Dividing Method, the Alternate Payee can start to receive benefits at any time once the Participant becomes eligible to do so, and she must start to receive benefits by his Required Beginning Date. Please refer to Section 4 of these procedures for more information.

9. Early Retirement Subsidy:

Instructions: Paragraph 9 Early Retirement Subsidy is only used with a Separate Interest QDRO.

Should the Alternate Payee choose to begin receiving her benefit prior to the time the Participant submits an application and chooses a Pension Effective Date she will not be entitled at that time to any early retirement subsidy for which the Plan Participant may later become entitled. If she has not entered pay status prior to the Participant's Pension Effective Date for his/her benefit, the Alternate Payee [use EITHER *will* OR *will not*] be entitled to any Early Retirement Subsidy attributable to her proportional entitlement for which the Participant is otherwise eligible.

Important Information about the Early Retirement Subsidy – Paragraph 9: The order should state whether or not the Alternate Payee is to be entitled to the Early Retirement Subsidy. Although Paragraph 9 of this model order is not required, if the order uses the Sharing Method, the Alternate Payee will have an entitlement to the early retirement subsidy. If the order uses the Dividing Method, the Alternate Payee will not have an entitlement to the subsidy **unless** the order explicitly says that she is to have an entitlement to it. The amount of the Alternate Payee's entitlement to the subsidy will be proportionate to her portion of the benefit, unless the order says otherwise.

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10. Pensioner Increases: After the Participant enters pay status, the Alternate Payee [use EITHER will OR will not] be entitled to any benefit improvements attributable to her/his proportional entitlement for which the Participant is otherwise eligible.

Important Information about Pensioner Increases – Paragraph 10: The order should state whether or not the Alternate Payee is to be entitled to future pensioner increases. Although Paragraph 10 of this model order is not required, if the order uses the Sharing Method, the Alternate Payee will have an entitlement to a proportionate amount of such increases **unless** the order says that she does not have an entitlement to them. If the order uses the Dividing Method, the Alternate Payee will not have an entitlement to such increases **unless** the order explicitly says that she is to have an entitlement to them.

11. Preretirement Surviving Spouse Pension: In the event the Participant dies prior to the date the Alternate Payee establishes her Pension Effective Date, the Fund shall treat her as the Qualified Surviving Spouse of the Participant for purposes of the Preretirement Surviving Spouse Pension. Should such a benefit become payable to the Alternate Payee, upon application, she shall be entitled to receive a 100% Husband and Wife Pension payable for her life, based on that portion of the Participant's benefit set out in Paragraph 5 of the order.

Important Information about the Preretirement Surviving Spouse Pension – Paragraph 11: Neither the Retirement Equity Act nor the International Union of Operating Engineers Local 4 and Its Branches Pension Plan require that an Alternate Payee be treated as the Surviving Spouse of the Participant for Preretirement Surviving Spouse Annuity purposes. Thus, Paragraph 11 of this model order is not required. However, the parties should be aware that in a defined benefit plan such as this one, should the Participant die prior to the Alternate Payee beginning to receive her/his portion, she would have no entitlement to benefits under the domestic relations order unless the Fund is required to treat her/him as a Qualified Spouse for purposes of the Preretirement Surviving Spouse Pension.

The order may designate the Alternate Payee as the Surviving Spouse for the Preretirement Surviving Spouse Pension based upon the Participant's entire benefit if the Participant dies before the effective date of the Alternate Payee's benefits. If the Participant dies after the Effective Date of the Alternate Payee's benefits, but before his Pension Effective Date, the Preretirement Surviving Spouse Pension must be based only on the portion of the pension remaining to the Participant. Should the Alternate Payee be granted such Preretirement Surviving Spouse Pension benefits, there would be no survivor benefits payable to the Participant's surviving spouse at the time of his/her death.

12. Federal Tax Reporting: For Federal income tax purposes, the Alternate Payee and not the Plan Participant shall be treated as the distributee of all benefits made by the Fund to the Alternate Payee pursuant to this order. The Fund will issue a 1099R to the Alternate Payee at the end of each calendar year and report such income to the IRS under the Alternate Payee's name and Social Security Number.

13. Right To Amend: The Court retains jurisdiction over this matter to amend this order if necessary, provided the Plan Administrator qualifies the amended Order, to establish or maintain its qualification as

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a Qualified Domestic Relations Order under the Retirement Equity Act and the rules of the International Union of Operating Engineers Local 4 and Its Branches Pension Plan.

14. Compliance with Applicable Law: The parties to this Order intend that it comply with applicable provisions of ERISA and the Code. Nothing in this Order shall require the Plan:

- a. To pay any benefits not permitted under the Internal Revenue Code or ERISA;
- b. To provide any type or form of benefits or any option not provided by the Plan;
- c. To pay total benefits with the value in excess of the value of the benefits the Participant otherwise would receive under the Plan;
- d. To pay benefits to the Alternate Payee that are required to be paid to another alternate payee under another QDRO that is in effect prior to this Order.

SO ORDERED, this _____ day of _____, 20_____.

Judge

Plan Participant

Attorney for Participant/Address

Alternate Payee

Attorney for Alternate Payee/Address