

MODEL ODRO FOR SEPARATE INTEREST

**UNITED FOOD AND COMMERCIAL WORKERS UNIONS
AND EMPLOYERS MIDWEST PENSION FUND**

[Insert Court Name]

In Re Marriage of:

Petitioner,

QUALIFIED DOMESTIC RELATIONS ORDER

and

Case No.: _____

Respondent.

This matter was heard by the Court on _____ **[date]**, and the Court took evidence and filed its Findings of Fact, Conclusions of Law and Judgment. The purpose of this domestic relations order (the "Order") is to assign to the Alternate Payee an interest in the Participant's retirement benefit in the plan named below for the provision of **[child support] [alimony payments] [marital property rights]**.

This Order is made pursuant to the authority of _____ **[cite statute section(s)]**, part of the domestic relations law of the State of _____ **[name state]**.

The following are the terms and conditions of this Order:

A. Factual Information.

1. The "Participant" means the party who is the participant in the retirement plan to which this Order applies. In this matter, the Participant is the **[Petitioner]** **[Respondent]**. Identifying information for the Participant follows:

Participant's Name

Address

City, State, Zip

Date of Birth

Social Security Number *[for security purposes, you may provide the Date of Birth and Social Security number in a separate attachment]*

2. The "Alternate Payee" is ***[the spouse] [former spouse] [a minor child] [other dependent]*** of the Participant and is the ***[Petitioner] [Respondent]*** in this matter. Identifying information for the Alternate Payee follows:

Alternate Payee's Name

Address

City, State, Zip

Date of Birth

Social Security Number *[for security purposes, you may provide the Date of Birth and Social Security number in a separate attachment]*

3. The date of marriage is _____ ***[date of marriage]***. The date of dissolution of the marriage is _____ ***[date of divorce]***.

4. The name of the Plan to which this Order applies is the United Food and Commercial Workers Unions and Employers Midwest Pension Fund (the "Plan"). This Order also applies to benefits accrued by the Participant under a predecessor qualified retirement plan that were transferred into this Plan. The terms of this Order shall apply to any successor to the Plan to which liability for the Participant's benefits is transferred. Any changes in the Plan Administrator, Plan sponsor or name of the Plan will not affect the Alternate Payee's rights awarded under this Order.

5. The name and address of the Plan Administrator follows:

Board of Trustees

United Food and Commercial Workers

Unions and Employers Midwest Pension Fund

2625 Butterfield Rd, Suite 208E

Oak Brook, IL 60523

www.ufcwmidwest.org

B. Assignment of Benefits.

1. Basic Award.

[Option 1 – Percentage of total vested accrued benefit]

The Plan shall pay directly to the Alternate Payee _____% of the Participant's accrued vested benefit as of _____ (the "Assignment Date").

[Drafting Note: the Assignment Date is typically the date of dissolution of marriage or legal separation.]

[Option 2 – Percentage based on Marital Fraction]

The Plan shall pay directly to the Alternate Payee _____% of the marital portion of the Participant's vested benefit accrued under the Plan as of the Assignment Date. The "marital portion" is determined by multiplying the Participant's accrued benefit by a fraction (not greater than 1.0) whose numerator is the Participant's credited service in the Plan earned between _____ *[Date of Marriage]* and the _____ *[Date of Dissolution of Marriage]*, and whose denominator is the Participant's total credited service earned through the Assignment Date. The Assignment Date is _____. ***[Drafting Note: The Assignment Date is usually expressed as either the Date of***

Dissolution of Marriage, or "the date the Participant ceases to accrue benefits under the Plan or, if earlier, the date the Alternate Payee commences benefits."

[Add to both options]

The benefit payable to the Alternate Payee shall be the actuarial equivalent (as defined by the Plan) of the amount of the Participant's vested accrued benefit awarded above, taking into account the Alternate Payee's age and life expectancy, the form of benefit elected and the date payments begin.

2. Early Retirement Subsidy.

[Option 1]

The Alternate Payee shall not share in any early retirement subsidy that may be available to the Participant.

[Option 2]

The Alternate Payee shall share proportionately in any early retirement subsidy(ies) that applies to the Participant's benefit, provided the Alternate Payee's benefit commences on or after the Participant's annuity starting date. Otherwise, the Alternate Payee's benefit will be reduced for early payment as required by the Plan if the Alternate Payee elects payment before the earlier of the Participant's normal retirement date or the date the Participant elects payment.

{[Drafting note: Use if Benefit to be Recalculated] If the Participant subsequently retires under an early retirement, the Alternate Payee's benefit will be recalculated with the subsidized factor for payments beginning on or after the Participant's annuity starting date.}

3. Pre-Retirement Rate Increases. The Alternate Payee's benefit shall ***{not}*** include a proportional share of any benefit accrual rate increases occurring subsequent to the Assignment Date but prior to the earliest commencement of benefits to either the Alternate Payee or the Participant.
4. Post-Retirement Increases. The Alternate Payee's benefit shall ***{not}*** include a proportional share of the marital interest of any post-retirement increase(s) awarded the Participant after the Assignment Date.
5. Form of Benefit. The Alternate Payee may elect to receive a distribution of his or her interest in accordance with the terms of the Plan and in any distribution form available under the Plan, other than a joint and survivor pension covering a subsequent spouse of the Alternate Payee.
6. Benefit Commencement Date. The Alternate Payee may elect to begin receiving payments as soon as administratively feasible following the later of (a) the date the Participant attains "Earliest Retirement Age" as defined by Internal Revenue Code section 414(p)(4)(B) or (b) the date the Plan Administrator issues a formal written determination that the Order is a Qualified Domestic Relations Order and any related review period has either expired or been waived by the parties to this Order. If the Alternate Payee does not elect an earlier commencement date, distribution of the Alternate Payee's interest must begin no later than the required beginning date specified by the Internal Revenue Code. The Alternate

Payee must file notification with the Plan Administrator at least 90 days prior to the requested commencement date.

7. De Minimis Payments. The Alternate Payee's benefit will be subject to a mandatory cash-out if it falls below the de minimis benefit rules of Internal Revenue Code section 417(e) as adopted by the Plan.
8. Death of Alternate Payee. The Alternate Payee's benefit will revert to the Participant if the Alternate Payee dies before either the Alternate Payee or the Participant begins receiving any distributions from the Plan. If the Alternate Payee dies after either the Participant or the Alternate Payee commences benefits, then the Alternate Payee's benefit will not be restored to the Participant. Once the Alternate Payee enters pay status, any death benefit will depend on the form of benefit the Alternate Payee elected.
9. Death of Participant. If the Participant is vested but dies before attaining Earliest Retirement Age, any separate interest benefits awarded under this Order shall become null and void. Instead, the Alternate Payee shall be treated as the "surviving spouse" pursuant to Internal Revenue Code section 414(p)(5) and the continuing retirement benefit awarded to the Alternate Payee will be limited to a preretirement survivor annuity based on the Alternate Payee's marital interest in the Participant's benefit. Any survivor annuity available to a surviving spouse of the Participant subsequent to the Alternate Payee (if any) shall be based only on the amount of benefit remaining to the Participant, apart from the amount separately awarded to the Alternate Payee.

If the Participant dies after attaining Earliest Retirement Age, the Participant's death will have no effect on the Alternate Payee's benefit.

10. Plan Termination. If the Plan terminates after this Order is approved and before amounts are paid in full to the Alternate Payee and, at termination, the Plan has unfunded liabilities that are to be paid by the Pension Benefit Guaranty Corporation, any reductions in the benefits payable under the Plan with respect to the Participant shall be applied proportionately to both the Participant and the Alternate Payee based on their respective interests.

- C. Taxes. The Alternate Payee is responsible for any taxes due on the Alternate Payee's distributed interest in the Plan. The Participant will not be responsible for taxes on payments to the Alternate Payee, nor may the Participant claim such payments as tax deductible for income tax purposes.
- D. Repayment of Wrongful Benefits. The Alternate Payee or the Participant under this Order will promptly repay to the Plan any benefits wrongfully or mistakenly received from the Plan.
- E. Status of the Order. This Order is intended to constitute a Qualified Domestic Relations Order pursuant to Internal Revenue Code section 414(p) [26 USC § 414(p)] and section 206(d) of the Employee Retirement Income Security Act [29 USC § 1056(d)]. This Order will be administered and interpreted in conformity with these statutes, as amended from time to time, and any applicable regulations. If, for any reason, any part of this order can reasonably be interpreted to have more than one meaning, but only one of the possible meanings would make the order qualified, then the order shall be interpreted in the way that would make it qualified.

- F. **Jurisdiction.** The Court retains jurisdiction to amend this Order, but only for the purpose of establishing or maintaining its qualification as a Qualified Domestic Relations Order; provided that: (a) no such amendment will require the Plan to provide any type or form of benefit, or any option not otherwise provided under the Plan and (b) no such amendment or the right of the Court to amend will invalidate this Order as "qualified."
- G. **Notification of Permanent Address.** The Participant and the Alternate Payee will at all times keep the Plan Administrator informed of their respective permanent addresses.
- H. **Copy to Plan Administrator.** A certified copy of this Order will be provided to the Plan Administrator. This Order will take effect immediately and remain in effect until further Order of the Court.

Dated this _____ day of _____, 20__.

BY THE COURT

Drafted by:

Approved as to form by:

 Attorney for **[Participant] [Alternate Payee]**
 State Bar ID Number _____
 Address _____
 City, State, Zip Code _____
 Telephone Number _____

 Attorney for **[Participant] [Alternate Payee]**
 State Bar ID Number _____
 Address _____
 City, State, Zip Code _____
 Telephone Number _____

This form is intended as a guideline only; its use is not required. While use of the model form will generally result in a QDRO, it will not serve the needs of all individuals nor will it fit all circumstances. Submitting a draft proposed QDRO for review by the Plan Administrator prior to execution by the Court may be helpful.