

**MODEL QDRO
FOR
UFCW LOCAL 1262 AND EMPLOYERS PENSION PLAN**

**[FOR SEPARATE INTEREST QDROs
- CANNOT BE USED IF BENEFITS ARE IN PAY STATUS]**

DISCLAIMER: This model QDRO has not been prepared to comply with the laws of any particular state; this model QDRO is provided for the convenience of the parties and must be modified by the parties to comply with applicable state law. If this model QDRO fails to meet the needs of the Participant or the Alternate Payee, the parties may modify the QDRO as necessary. This model does not include the assignment of any disability benefit that may become payable to the participant.

ELECTRONIC COPY: If you would like an electronic copy of this model QDRO, please contact the Plan Administrator or follow the contact instructions in the transmittal document.

NOTE: PLEASE SEND A DRAFT ORDER TO THE PLAN ADMINISTRATOR FOR REVIEW BEFORE HAVING ANY ORDER EXECUTED.

[Caption must conform to local Court rules]

IN THE COURT OF _____ *[Insert identity of court with jurisdiction.]*

_____ *[Insert Plaintiff's name.]*)

Plaintiff,)

vs.)

_____ *[Insert Defendant's name.]*)

Defendant.)

Case No. _____

[Insert case number.]

JUDGE: _____

[Insert judge's name.]

DOMESTIC RELATIONS ORDER

The *[Plaintiff/Defendant]* is a Participant in the UFCW Local 1262 and Employers Pension Plan, a defined benefit multiemployer pension plan.

This Domestic Relations Order (“Order”) creates and recognizes the existence of the Alternate Payee’s right to receive all or a portion of the Participant’s benefit under the UFCW Local 1262 and Employers Pension Plan and is entered pursuant to the authority granted under the applicable domestic relations laws or community property laws as follows:

[Insert appropriate references to state and state law]

This Order is intended to be a valid domestic relations order under such laws relating to marital property rights, child support, and/or spousal support between spouses and former spouses in matrimonial actions. This Order is intended to be a qualified domestic relations order (a “QDRO”), within the meaning of section 414(p) of the Internal Revenue Code of 1986, as amended (the “Code”), and section 206(d)(3) of the Employee Retirement Income Security Act of 1974, as amended (“ERISA”).

If the Plan Administrator determines that this Order does not constitute a QDRO, and the parties are unable to come to an agreement to remedy the Order such that it does constitute a QDRO, the Alternate Payee and the Participant agree to ask the Court to modify this Order so that it reflects their intent and satisfies applicable requirements under the Code and ERISA. Both parties stipulate that the Court has personal jurisdiction over each of them and jurisdiction over the subject matter of this Order.

NOW, THEREFORE, IT IS ORDERED AND ADJUDGED THAT:

1. Defined Terms. As used in this Order, the following terms have the following meanings:

(a) The term “Participant” means:

[Insert the name, current address, social security number, and date of birth of the Participant.]

(b) The term “Alternate Payee” means:

[Insert the name, current address, social security number, and date of birth of the Alternate Payee.] The Alternate Payee is the ***[Insert the Alternate Payee’s relationship to the Participant]*** of the Participant.

(c) The term “Plan” means the UFCW Local 1262 and Employers Pension Plan or any successor to the Plan.

(d) The term “Plan Administrator” means the Plan Administrator acting on behalf of the Trustees of the UFCW Local 1262 and Employers Pension Plan, 1389 Broad Street, Clifton, NJ 07013. Phone: 973-778-5800; Fax: 973-778-1725.

2. Term of the Marriage. The Participant and the Alternate Payee were married on _____ *[Insert the date of the marriage.]* and were *[legally separated or divorced]* on _____ *[Insert the date of legal separation or divorce.]*

3. Alternate Payee's Separate Interest Benefit. Under the terms of this Order, the Alternate Payee will receive a separate interest benefit from the Plan, to be assigned and determined as provided in Sections 4 and 5 below.

4. Assignment Date. The benefit to be paid to the Alternate Payee will be offset from the Participant's benefit, and vested in the Alternate Payee, as of the Assignment Date. **Note, if 4A is elected (Immediate Assignment), and the Participant dies before the Alternate Payee commences payment of the amount awarded, the Alternate Payee will receive the amount awarded in Section 5. If 4B is elected (Deferred Assignment), and the Participant dies before the Alternate Payee commences payment of the amount awarded, the Alternate Payee will not receive the amount awarded in Section 5, but will receive the amount awarded in Section 12.**

The Alternate Payee's benefit is to be assigned as of either A or B (**choose one**):

4A. The entry date of this Order (conditional upon the Plan Administrator's determination that this Order is qualified) (the "Immediate Assignment Date").

OR

4B. The date that the Participant elects to commence payment of benefits or the date that the Alternate Payee elects to commence payment of benefits, whichever is the first to occur (conditional upon the Plan Administrator's determination that this Order is qualified) (the "Deferred Assignment Date"). If the Alternate Payee or the Participant dies before the Deferred Assignment Date, the Determination Date as provided in Section 5 will be deemed to be no later than the date of such death.

5. Determination of Amount. The Alternate Payee's benefit will be equal to the following portion of the Participant's accrued benefit (the annuity otherwise payable to the Participant at normal retirement date under the Plan in the form of a single life annuity) under the Plan. In no event will the Determination Date specified below be later than the date on which the Alternate Payee's benefit payments begin under the Plan. (**Choose one of the three below**):

5A. ____% of the Participant's vested accrued benefit determined as of _____ (the "Determination Date") *[insert date: e.g., the Participant's termination of employment, the date of marriage dissolution, or the Assignment Date (Immediate or Deferred, as applicable)].*

OR

5B. ____% of the marital portion of the Participant's vested accrued benefit under the Plan determined as of _____ (the "Determination Date") *[insert date:*

e.g., the Participant's termination of employment, the date of marriage dissolution, or the Assignment Date (Immediate or Deferred, as applicable)]. The marital portion will be determined based upon the following formula: the Participant's vested accrued benefit as of the Determination Date is multiplied by a fraction (not to exceed one), the numerator of which is the number of the Participant's months of benefit service under the Plan during the marriage as of the Determination Date, and the denominator of which is the total number of the Participant's months of benefit service under the Plan as of the Determination Date.

OR

5C. ____% of the vested benefit that the Participant accrued under the Plan between the date of marriage or Plan participation, if later, and _____ (the "Determination Date") [*Insert date: e.g., the Participant's termination of employment, the date of marriage dissolution, or the Assignment Date (Immediate or Deferred, as applicable)]*].

6. Adjustments and Taxes. Payment of the Alternate Payee's benefit will be subject to actuarial adjustments (in accordance with the Plan's actuarial factors) as may be required to reflect the age of the Alternate Payee, the form of the benefit payment, and early commencement of benefit payments, if applicable. The Alternate Payee's benefit will be paid directly to the Alternate Payee by the Plan. The Alternate Payee will be required to pay the appropriate taxes on such distribution.

7. Early Retirement Subsidies and Post-Retirement Benefit Increases. If the Alternate Payee elects to have benefit payments begin on the date that the Participant's benefit payments begin, the Alternate Payee's benefits will include a proportional share of any applicable early retirement subsidy to which the Participant is entitled (excluding any unreduced disability benefit), determined as of the date the Alternate Payee's benefit payments begin. If the Alternate Payee elects to have benefit payments begin before the date that the Participant's benefit payments begin, the Alternate Payee's benefits will not include a share of any applicable early retirement subsidy to which the Participant may be or may become entitled. The Alternate Payee's benefits (**check one**) ____ **will** be adjusted or ____ **will not** be adjusted to reflect any such early retirement subsidies payable to the Participant at the time that the Participant commences to receive benefits (excluding any unreduced disability benefit). If the Alternate Payee's benefit is payable in annuity form, the Alternate Payee's benefit will be increased proportionately to reflect any post-retirement increase in the Participant's benefit under the Plan in the same manner as the Participant (such as a cost-of-living adjustment, on an ad hoc or any other basis).

8. Form of Payment to Alternate Payee. The Plan will pay benefits to the Alternate Payee in accordance with the Alternate Payee's election of one of the available benefit payment options provided under the Plan at the time payment of benefits to the Alternate Payee commence; provided that the Alternate Payee is not permitted to elect a joint and survivor annuity payable to the Alternate Payee and the Alternate Payee's spouse. In addition, the Alternate Payee may not elect any form of payment and/or beneficiary that is not permitted

under section 401(a)(9) of the Internal Revenue Code of 1986, as amended, and regulations thereunder. The Alternate Payee's election shall be governed by the applicable provisions and procedures of the Plan relating to such form of payment.

9. Time of Payment to Alternate Payee. The Alternate Payee may request that the Alternate Payee's benefit payments begin at any time on or after the Participant's earliest retirement date as defined in Code Section 414(p)(4)(B) (regardless of whether the Participant's benefit payments have started), and based on the requirements set forth below, but in no event later than the date that the Participant elects to commence payment of benefits.

Under the terms of the Plan, the Alternate Payee may only elect payment of an early retirement pension to commence prior to the Participant's normal retirement date under the Plan within 90 days of: (1) the date that the Participant would first qualify for an earlier retirement benefit if he had terminated employment or, if later, the date that the Order is filed with the Court after being approved as qualified by the Plan Administrator, (2) the date that the Participant terminates employment having qualified for an early retirement pension, or (3) the date that the Participant would first qualify for a service eligible, terminated vested Participant benefit after terminating from service, and having attained age 55 or 62, as applicable. If the Alternate Payee does not apply within 90 days of the applicable date set forth in (1), (2), or (3) above, the Alternate Payee shall not be permitted to commence payment until the Participant's normal retirement date under the Plan.

10. Death of Alternate Payee Before Payments Begin. If the Alternate Payee dies before the Alternate Payee's benefit payments begin (regardless of whether the Participant has commenced payment of benefits), and **Section 4A has been checked**, then the Alternate Payee's benefit will revert to the Plan. If the Alternate Payee dies before the Alternate Payee's benefit payments begin, and before the Participant's benefit payments begin, and **Section 4B has been checked**, then the Alternate Payee's benefit will revert to the Participant.

11. Death of Alternate Payee After Payments Begin. If the Alternate Payee dies after the Alternate Payee's benefit payments begin (regardless of whether the Participant has commenced payment of benefits), any survivor benefits will be paid in accordance with the form of payment elected by the Alternate Payee.

12. Death of Participant Before Payments Begin. If the Participant dies before the Participant's benefit payments begin and before the Alternate Payee's benefit payments begin, and **Section 4A has been checked**, then the Alternate Payee's benefit will not be affected and the Alternate Payee shall be entitled to receive the amount set forth in Section 5. If the Participant dies before the Participant's benefit payments begin and before the Alternate Payee's benefit payments begin, and **Section 4B has been checked**, then instead of the amount awarded in Section 5, the Alternate Payee shall be deemed to be the surviving spouse of the Participant for all or a portion of the Plan's pre-retirement survivor annuity determined as follows (**check one**):

12A. The Alternate Payee is designated as the surviving spouse for all of the Plan's available 50% pre-retirement survivor benefit based upon the Participant's entire benefit that he had accrued as of the date of death.

OR

12B. The Alternate Payee is designated as the surviving spouse for a portion of the Plan's available 50% pre-retirement survivor benefit determined in the same manner as the Alternate Payee's benefit under Section 5.

13. Death of Participant After Payments Begin. If the Participant dies either before or after the Participant's benefit payments begin, but after the Alternate Payee's benefit payments begin, the Alternate Payee's benefit will not be affected and the Alternate Payee shall be entitled to receive the amount set forth in Section 5.

(Check if Applicable): The Participant must elect a joint and survivor annuity with the Alternate Payee as his spouse with respect to the following:

If 5A is checked, the remaining percentage of the Participant's vested accrued benefit (payable to the Participant) determined as of the Determination Date, after assignment to the Alternate Payee; or

OR

If 5B is checked, the remaining amount of the marital portion of the Participant's vested accrued benefit under the Plan (payable to the Participant) determined as of the Determination Date, after taking into account the assignment to the Alternate Payee.

OR

If 5C is checked, the remaining percentage of the vested benefit (payable to the Participant) that the Participant accrued under the Plan between the date of marriage or Plan participation, if later, and the Determination Date, after taking into account the assignment to the Alternate Payee.

14. Alternate Payee Elections. The Alternate Payee must make the necessary election as to the time and form of payment of the Alternate Payee's benefit on the forms provided by the Plan Administrator and submit them in accordance with the administrative procedures established for the Plan.

15. Suspension of Benefits. In the event that the Participant returns to work under conditions for which his benefit payments are suspended under the Plan, the Alternate Payee's benefit shall not be suspended.

16. Payment of Benefits to Alternate Payee While Employed. If the Alternate Payee is employed in service for which benefit payments are suspended under the Plan, the Alternate

Payee's assigned portion of the Participant's benefit shall be suspended until the Alternate Payee is no longer employed in service for which benefit payments are suspended.

17. Small Payments. In the event that the present value of the benefit otherwise payable to the Alternate Payee does not exceed \$5,000, or such other amount as may be specified in the Plan, the Plan shall make a lump sum distribution of the amount when payable under the terms and conditions of the Plan.

18. Effect of Plan Termination. In the event that the Participant's benefits or any portion thereof become payable to the Participant as a result of Plan termination pursuant to Title IV of ERISA, then the Alternate Payee shall be entitled to commence benefits in accordance with the termination procedures of the Plan. Further, should the Participant's benefit be reduced as a result of such termination, and then the amount otherwise payable to the Alternate Payee also shall be reduced to the extent required by the Plan and applicable federal law.

19. ERISA and Code Requirements. This Order is not intended to, and will not be construed in such a manner as to, require the Plan:

- (a) to provide any type or form of benefit option not otherwise provided under the terms of the Plan;
- (b) to provide increased benefits determined on the basis of actuarial value not otherwise available to the Participant; or
- (c) to pay any benefits to the Alternate Payee that are required to be paid to another alternate payee under another order that was previously determined to be a QDRO. By submission of this Order, the parties certify that no such prior order exists purporting to divide the benefits which are the subject of this Order.

20. Benefit Restrictions. Notwithstanding anything herein to the contrary, benefits payable to the Participant and to the Alternate Payee will be subject to:

- (a) the restrictions imposed by section 432 of the Code and applicable regulations; and
- (b) the terms of any rehabilitation plan applicable to the Plan, in effect under ERISA and the Code, if required due to the critical status of the Plan's funding.

21. Address Correction. The Alternate Payee and the Participant will be responsible for notifying the Plan Administrator, in writing, of any changes in their respective mailing addresses.

22. Continued Jurisdiction. The Court retains jurisdiction to enforce, revise, modify or amend this Order insofar as necessary to establish or maintain its qualification as a QDRO.

23. Continued Qualified Status of Order. It is the intention of the parties that this Order continue to qualify as a QDRO. The Plan Administrator reserves the right to reconfirm the qualified status of the Order at the time benefits become payable hereunder.

24. Attorney Designation. The parties have designated the following attorneys as representatives for receipt of copies of notices pertaining to the Order:

For the Alternate Payee:
(Name, address, and phone number)

For the Participant:
(Name, address, and phone number)

IT IS SO ORDERED this _____ day of _____, 20__.

APPROVED:

By: _____

Judge _____ *[Insert judge's name.]*

*[Clerk of Court's
date stamp evidencing
that this Order has
been properly filed
with Court.]*