

## **Separate Interest form -- this form cannot be used when the Participant is already retired and in pay status**

**NOTE: This is an example of the form of a qualified domestic relations order only. It is the responsibility of the participant and alternate payee to determine the terms of their divorce and to ensure that those terms are adequately and accurately reflected in the QDRO. A participant or alternate payee should consult his or her own attorney, and it may be helpful to have any draft QDRO reviewed by the Fund Office before seeking court approval. The Plan reserves the right to reject a QDRO in any particular case, even if its terms reflect this example. This form is for the “separate interest” approach. (updated 01/14/2021)**

Present:

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Index No.:

Plaintiff,

QUALIFIED DOMESTIC RELATIONS ORDER

v.

Defendant.

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**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”), section 414(p) of the Internal Revenue Code of 1986 (“Code”). This QDRO is granted in accordance with Section 236, Part B of the Consolidated Laws of New York, or other applicable state domestic relations law which relate to marital property rights, child support, or spousal support between spouses and former spouses in matrimonial actions.

1. **Identification of the Plan.** This Order applies to benefits under the North Atlantic States Carpenters Pension Plan (the “Plan”). The "Plan Administrator" is the Board of Trustees, c/o North Atlantic States Carpenters Pension Plan, 270 Motor Parkway, Hauppauge, NY 11788. Any changes in Plan Administrator, Plan Sponsor, or name of the Plan shall not affect the Alternate Payee’s rights as stipulated under this Order. The Plan is a defined benefit plan to which are credited employer contributions, periodically paid under the terms of collective bargaining agreements. Under the Plan, monthly pensions for retiring vested participants are calculated from pension credit rates published in the Plan which are a function of working contribution rates, years of pension credit, and specific credit rate levels based on total hours worked during defined calendar periods.
2. **Identification of Participant.** [Name of the Participant] is hereafter referred to as the “Participant.” The Participant's address is [specify address]. The last four digits of the Participant's Social Security Number are [specify last four digits of Social Security Number]. The Participant’s full social security number and date of birth shall be provided to the Plan in a separate addendum. In the event the Participant has a change in address, the Participant shall promptly notify the Plan in writing of the new address.

The Participant is a Member of the North Atlantic States Carpenters Local Union # [\_\_\_\_]. The Participant [is] or [is not] fully vested in the benefits accrued by him or her under the Plan as of the date of this instrument. No payments will be made pursuant to this Order to either party prior to the date upon which the Participant achieves vested status.

3. **Identification of Alternate Payee.** [Name of the Alternate Payee] is hereafter referred to as the “Alternate Payee.” The Alternate Payee's address is [specify address]. The last four digits of the

Alternate Payee's Social Security Number are [specify last four digits of Social Security Number]. The Alternate Payee's full social security number and date of birth shall be provided to the Plan in a separate addendum. The Alternate Payee is the [spouse/former spouse/child/other dependent] of the Participant. In the event the Alternate Payee has a change in address, the Alternate Payee shall promptly notify the Plan in writing of the new address.

4. **Marriage Date.** The Participant and the Alternate Payee were married on [date], at [location].
5. **Pursuant to State Domestic Relations Law.** This Order is entered pursuant to the authority granted in the applicable domestic relations law of the State of New York, specifically, to Section 236, Part B of the Consolidated Laws of New York.
6. **For Provision of Marital Property Rights.** This Order relates to the provision of marital property rights and/or spousal support to the Alternate Payee as a result of a Judgment of Divorce between the Participant and the Alternate Payee, dated [date].
7. **Providing for Payments to the Alternate Payee.** The Alternate Payee is entitled to a portion of the Participant's Accrued Benefit under this Plan as set forth below. The Plan Administrator is hereby directed to pay the Alternate Payee's share directly to the Alternate Payee. This Order applies from the date of Judgment of Divorce between the Participant and the Alternate Payee, dated [date], until such time as all benefits due the Alternate Payee have been distributed.
8. **Amount of Participant's Benefit Assigned to Alternate Payee (Post-Retirement Benefits Only).**
  - A. The Alternate Payee is assigned [\_\_\_\_\_ % of the Participant's vested accrued benefit in the Plan as of \_\_\_\_\_ (insert date, such as date of divorce)] OR [\_\_\_\_\_ % of the Participant's vested accrued benefit in the Plan earned from the date of the marriage to the date of the divorce calculated as of the date of the divorce] OR [\_\_\_\_\_ % of the product of the Marital Portion multiplied by the Participant's vested accrued benefit in the Plan determined as of the date of commencement of retirement benefits to the Participant or the Alternate Payee, whichever is earlier. The "Marital Portion" is a fraction, the numerator of which is \_\_\_\_ (you must insert a number, such as the number of months during which the Participant participated in the Plan during the marriage) and the denominator of which is the total number of months of the Participant's participation in the Plan up through the month preceding commencement of retirement benefits to the Participant or Alternate Payee, whichever is earlier] (the "Assigned Benefit"). The Alternate Payee [shall /shall not] be entitled to any formula rate increases under the Plan that are applicable to the Assigned Benefit. The Participant and the Alternate Payee were married on \_\_\_\_ and were granted a divorce on \_\_\_\_ [insert appropriate dates].
  - B. The Alternate Payee's Assigned Benefit shall commence in accordance with Section 10 of this Order and shall be payable for the life of the Alternate Payee, unless the Alternate Payee elects a form of benefit available under the Plan which provides

otherwise. In the event of the death of the Participant prior to commencement of retirement benefits to both the Participant and Alternate Payee, this Section 8 shall not apply and instead the provisions of Section 13 of this Order shall apply. For purposes of the benefits assigned to the Alternate Payee by this Section 8, the Alternate Payee shall not be treated as the spouse or surviving spouse of the Participant for purposes of any ERISA required qualified joint and survivor annuity or any qualified optional survivor annuity that may be provided by the Plan. The foregoing provisions of this Section shall be subject to, and the benefits of the Alternate Payee may be reduced by, Section 9 of this Order.

**9. ERISA and Other Limitations on Assignment.**

- A. Prior Encumbrances. If the Participant's benefit is levied upon or garnished by the Internal Revenue Service, the priority of such IRS levy or garnishment, and this Order, shall be determined under applicable law, and the benefits assigned to the Alternate Payee hereunder shall be reduced if necessary to satisfy a lien superior to that of this Order as determined under applicable law. In no event will the Plan be required to pay an amount to the Alternate Payee where the Plan is required to pay such amount to another person whose right to such amount has priority under applicable law.
- B. Reduction for Income Tax Withholding. Such payment from the Plan to the Alternate Payee pursuant to this Order shall be subject to reduction for applicable federal and state income tax withholding requirements.
- C. Reductions Required By ERISA or the Code. Nothing in this Order shall require the Plan:
  - i. To pay any benefits not permitted under the Code or ERISA;
  - ii. To provide for any type or form of benefit or any option not provided by the Plan to a beneficiary under the Plan (except as required by this Order consistent with ERISA 206(d)(3)(E));
  - iii. To provide increased benefits (determined on the basis of actuarial value); or
  - iv. 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.
- D. Actuarial Reductions. The Plan will actuarially adjust the Assigned Benefit of the Alternate Payee to reflect the life expectancy of the Alternate Payee in order to ensure that the Plan does not pay increased benefits (determined on the basis of actuarial value). The Plan's actuary shall determine the assumptions to be used in determining actuarial equivalence.

**10. Commencement Date of Benefits.** The Plan shall commence payment of retirement benefits assigned under Section 8 to the Alternate Payee on such future date as the Alternate Payee elects, subject to each of the following:

- A. The Alternate Payee shall comply with any Plan requirements or procedures regarding

completion of application forms or other forms or elections.

- B. No distribution shall commence to the Alternate Payee before the Participant's "earliest retirement age" as defined in section 414(p) of the Internal Revenue Code of 1986 and ERISA section 206(d)(3).
  - C. Any actuarial reduction required to the benefits of the Alternate Payee, such as for early commencement of benefits or for selection of a Plan option requiring actuarial reduction, shall be applied solely to the Alternate Payee's benefit.
  - D. Payment of benefits to the Alternate Payee shall not include any Plan subsidy for early retirement unless the Participant is eligible for such subsidy at the time of first commencement of benefits to the Alternate Payee.
  - E. The Alternate Payee must start receiving his or her Assigned Benefit no later than the Participant's Required Beginning Date.
11. **Form of Benefit.** With respect to the Assigned Benefit set forth in Section 8, the Alternate Payee may select a form of benefit applicable to the Alternate Payee's circumstances under the Plan, except that under no circumstances will the Plan be required to pay benefits in the form of a qualified joint and survivor annuity or qualified optional survivor annuity with respect to the Alternate Payee and the Alternate Payee's subsequent spouse.
12. **Death of the Alternate Payee.** If the Alternate Payee dies before the commencement of benefits to the Alternate Payee, the benefit assigned to the Alternate Payee pursuant to Section 8 above shall revert back to the Participant. If the Alternate Payee dies after the commencement of benefits to the Alternate Payee, payments to the Alternate Payee shall terminate and the Plan shall have no further obligation to the Alternate Payee thereafter or to any further person claiming by or through the Alternate Payee unless the Alternate Payee has selected a form of benefit providing for payment of benefits after the Alternate Payee's death.
13. **Spousal Rights of Former Spouse as Alternate Payee for Purposes of Pre-Retirement Death Benefits.** If the Participant dies prior to commencement of retirement benefits to both the Participant and Alternate Payee, the benefits assigned under Section 8 of this Order shall not be payable, and the Plan shall treat the Alternate Payee as the Participant's surviving spouse for purposes of the Participant's qualified preretirement survivor annuity (the "Pre-Retirement Spouse Benefit") based upon that portion of the Participant's vested accrued benefit that is subject to assignment to the Alternate Payee under Section 8 of this Order, provided the Participant satisfies the eligibility requirements for such benefit. If the Participant dies after either the Participant's or the Alternate Payee's commencement of benefits, the Participant's death shall have no effect on the Alternate Payee's Assigned Benefit under Section 8 of this Order.
14. **Rights of Subsequent Spouse Superseded.** This Order shall supersede the rights of any subsequent spouse of the Participant, or any other designated beneficiary of the Participant, with respect to amounts assigned to the Alternate Payee by this Order.

15. **Service/Rules of Interpretation.** A certified copy of this Order shall be served upon the Plan Administrator, and this Order shall not become effective as to the Plan or Plan Administrator until actually received by the Plan Administrator. The Plan Administrator shall interpret this Order consistent with the discretion accorded to the Plan Administrator under the Plan instruments.
16. **Erroneous Payment.** In the event the Plan inadvertently pays to the Participant any benefits which have been assigned to the Alternate Payee in accordance with this order, the Participant shall immediately return the erroneous payment to the Plan for correction of the error within ten (10) days of receipt. In the event the Plan inadvertently pays to the Alternate Payee any benefits which belong to the Participant in accordance with this order, the Alternate Payee shall immediately return the erroneous payment to the Plan for correction of the error within ten (10) days of receipt.
17. **Reservation of Jurisdiction.** The Court reserves jurisdiction to amend this Order to establish or maintain its status as a QDRO under ERISA and the Code.
18. **Plan Termination.** In the event of a Plan termination, the Alternate Payee shall be entitled to receive his or her portion of the Participant benefits as stipulated herein in accordance with the Plan's termination provisions for participants and beneficiaries.
19. From the date of this Order and thereafter, the Participant shall have no further right or interest in the portion of the Participant's accrued benefit under the Plan which is assigned to the Alternate Payee pursuant to Section 8, above. Except as otherwise provided in Section 13 of this Order, the Alternate Payee shall have no further right or interest in the portion of the Participant's accrued benefit under the Plan which is not assigned pursuant to Section 8 above. Except as otherwise provided in Section 13 of this Order, nothing in this Order shall restrict the Participant's ability to obtain a distribution under the Plan or designate a beneficiary under the Plan, with respect to the Participant's remaining accrued benefit determined after assignment to the Alternate Payee.

IT IS SO ORDERED:

Date: \_\_\_\_\_  
JUDGE

**[Note: a certified or attested to copy of the order must be provided to the Plan].**