

MODEL QDRO

[Note: This document shall not be relied upon for legal advice]

[Name of Court]

_____ ,)	CASE NO. _____
)	
Plaintiff,)	JUDGE: _____
)	
v.)	
)	
)	
_____ ,)	QUALIFIED DOMESTIC
)	RELATIONS ORDER
Defendant.)	

IT IS HEREBY ORDERED AS FOLLOWS:

- 1. Effect of this Order as a Qualified Domestic Relations Order:** This Order creates and recognizes the existence of the Alternate Payee’s right to receive a portion of the Participant’s benefits as held under the Excavating and Building Material Drivers Union Local 436 Pension Fund. It is intended that this Order constitute a Qualified Domestic Relations Order (“QDRO”) in accordance with the provisions 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”).

2. **Participant Information:** The name, last known address, Social Security number and date of birth of the “Participant” are:

Name: _____

Address: _____

Social Security No.: _____

Birth Date: _____

The Participant shall have the duty to notify the Plan Administrator in writing of any changes in his mailing address subsequent to the entry of this Order. The Participant designates himself to receive all notices regarding the status of this Order and all matters related thereto.

3. **Alternate Payee Information:** The name, last known address, Social Security number and date of birth of the “Alternate Payee” are:

Name: _____

Address: _____

Social Security No.: _____

Birth Date: _____

The Alternate Payee shall have the duty to notify the Plan Administrator in writing of any changes in her mailing address subsequent to the entry of this Order. The Alternate Payee designates herself to receive all notices regarding the status of this Order and all matters related thereto.

4. **Plan Name:** The name of the plan to which this Order applies is the Excavating and Building Material Drivers Union Local 436 Pension Fund (hereinafter, the “Plan”). The administrative office of the Plan is currently located at 6051 Carey Drive, Cleveland, Ohio 44125.

5. **Pursuant to State Domestic Relations Law:** This Order is entered pursuant to the authority granted in the applicable domestic relations laws of the State of Ohio.

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 final order or decree of divorce or dissolution, as the case may be, between the Participant and Alternate Payee.

7. **Amount of Alternate Payee's Benefit:** Since the Participant has commenced benefits under the Plan, effective as of _____ [date can be no earlier than the date when the Fund office begins to segregate the alternate payee portion], this Order assigns to the Alternate Payee the following amount from the monthly benefit currently being paid to the Participant:

[Identify the dollar or percentage amount to be assigned to Alternate Payee from Participant's monthly retirement payments.]

8. **Shared Interest Approach:** This Order utilizes the so-called "shared interest approach." Therefore, the Alternate Payee shall not have the right to elect a form of benefit. The monthly amount to be paid to the Alternate Payee will be shared from the distribution method as elected by the Participant. Consequently, if the Participant had previously elected a single life annuity (with appropriate spousal consent) then the amount assigned to the Alternate Payee under Section 7 shall cease upon the death of the Participant.

If, however, the Participant is receiving his benefit in a form that provides for surviving spouse benefit (such as a qualified joint and survivor annuity), the Alternate Payee [shall/shall not] be treated as the Participant's surviving spouse for purposes of the Participant's qualified joint-and-survivor annuity.

[If the word "shall" was selected in the preceding sentence, please include following provisions.]

The qualified joint-and-survivor annuity payable to the Alternate Payee as set forth above in this Section 8 shall be based on **all of survivor annuity or specify the dollar amount or percentage portion of survivor annuity**.

9. **Death of Participant:** Except for any survivor benefits that may be payable to the Alternate Payee in accordance with Section 8, if the Participant dies before the Alternate Payee, the amounts assigned to the

Alternate Payee under Section 7 shall cease and the Alternate Payee shall not be entitled to any further payments under this Order.

- 10. Death of Alternate Payee:** If the Alternate Payee dies before the Participant, the monthly amount assigned to the Alternate Payee under this Order shall revert back to the Participant.
- 11. Savings Clause:** This Order is not intended, and shall 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 require the Plan to provide increased benefits determined on the basis of actuarial value; or
 - (c) to require the payment of any benefits to the Alternate Payee that are required to be paid to another Alternate Payee under another order that was previously deemed to be a QDRO.
- 12. Certification of Necessary Information:** All payments made pursuant to this order shall be conditioned on the certification by the Alternate Payee and the Participant to the Plan Administrator of such information as the Plan Administrator may reasonably require from such parties to make the necessary calculation of the benefit amounts contained herein.
- 13. Continued Qualified Status of Order:** It is the intention of the parties that this QDRO continue to qualify as a QDRO under Code Section 414(p) and ERISA Section 206(d), as the same may be amended from time to time, and the provisions hereof shall be administered and interpreted in conformity therewith. The Plan Administrator shall reserve the right to reconfirm the qualified status of the Order at the time benefits become payable hereunder.

The Participant and Alternate Payee shall take such further action as may be necessary to ensure that a prompt determination is made by the Plan Administrator or a court of competent jurisdiction that this Order constitutes a qualified domestic relations order under applicable provisions of ERISA and the Code and that the Plan distributes the assigned benefits of the Alternate Payee to such person when required to do so pursuant to this Order.

- 14. Tax Treatment of Distributions Made Under This Order:** For purposes of Code Sections 402(a)(1) and 72, the Alternate Payee shall be treated as the distributee of any distribution or payments made to the Alternate Payee under the terms of this Order and, as such, will be required to pay the appropriate federal income taxes on such distribution.
- 15. Constructive Receipt:** In the event that the Plan inadvertently pays to the Participant any benefits that are assigned to the Alternate Payee pursuant to the terms of this Order, the Participant shall immediately reimburse the Alternate Payee to the extent that the Participant has received such benefit payments, and shall forthwith pay such amounts so received directly to the Alternate Payee within ten (10) days of receipt.
- 16. Continued Jurisdiction:** The Court shall retain jurisdiction with respect to this Order to the extent required to maintain its qualified status and the original intent of the parties as stipulated herein. The Court shall also retain jurisdiction to enter such further orders as are necessary to enforce the assignment of benefits to the Alternate Payee as set forth herein, including the re-characterization thereof as a division of benefits under another plan, as applicable, or to make an award of alimony, if applicable, in the event that the Participant fails to comply with the provisions contained above requiring said payments to the Alternate Payee.

JUDGE _____

Approved:

Plaintiff

Defendant

Attorney for Plaintiff

Attorney for Defendant