

**THIS MODEL IS PROVIDED FOR THE CONVENIENCE OF ATTORNEYS REPRESENTING PARTICIPANTS AND/OR ALTERNATE PAYEES. THE PROVISION OF THIS MODEL SHOULD NOT BE CONSTRUED AS A RECOMMENDATION OR ADVICE TO ANY PERSON. COMPLIANCE WITH THIS FORM IS REQUIRED BY NYCPPF.**

At an IAS Part **[insert applicable number if filing in New York state]** \_\_\_\_\_ of the \_\_\_\_\_ Court of the State of \_\_\_\_\_, held in and for the County of \_\_\_\_\_, at the \_\_\_\_\_ County Courthouse, (address: \_\_\_\_\_), on this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Present: Honorable \_\_\_\_\_

\_\_\_\_\_x

Index No.: \_\_\_\_\_

[Plaintiff name]

Plaintiff,

-against-

DOMESTIC RELATIONS ORDER

[Defendant's name]

Defendant,

\_\_\_\_\_x

This Order is directed to the New York City Police Pension Fund.

Wherein this court retains jurisdiction over the case and the parties above-named having now stipulated to the entry of such an order upon the terms hereinafter provided, and due deliberation having been given thereto;

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NOW, on a motion of \_\_\_\_\_ of the law firm of \_\_\_\_\_, attorney for \_\_\_\_\_ [party represented], it is hereby;

**ORDERED**, that the following facts are hereby found to be established for the purpose of this order:

1. The parties were married on **[insert date]**\_\_\_\_\_;
2. This action for divorce was commenced on **[insert date]**\_\_\_\_\_;
3. The name of the Plan to which this order applies is New York City Police Pension Fund[hereinafter referred to as "the Pension Fund"].
4. The name of the employee/former employee ("Participant") who is a Participant in the Pension Fund is \_\_\_\_\_.
5. Participant is a member in the following Pension Fund plan **[identify the name and tier of Participant's plan]** \_\_\_\_\_.
6. The name of the non-employee spouse ("Alternate Payee") who is afforded a share of the Participant's interest in the Fund by this order is \_\_\_\_\_ .
7. The current and last known mailing address of the Participant is \_\_\_\_\_; his/her Social Security number is \_\_\_\_\_; and his/her date of birth is \_\_\_\_\_.
8. The current and last known mailing address of the Alternate Payee is \_\_\_\_\_; his/her Social Security number is \_\_\_\_\_; and his/her date of birth is \_\_\_\_\_.
9. This Order pertains to that portion of the Participant's retirement benefits which shall be subject to the distribution under Section 236(B)(5) of the Domestic Relations Law of the State of New York.
10. The Benefits allocable to the Participant by reason of his/her participation in the Fund, to the extent they have accrued during the parties' marriage, are marital property within the meaning of the Domestic Relations Law Section 236(B)(1)(c);
11. This Order is intended to satisfy the requirements for a Qualified Domestic Relations Order ("QDRO") within the meaning of Internal Revenue Code Section 414(p), and the Court

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retains jurisdiction to modify this Order for the purpose of complying with such requirements; and it is further

**ORDERED**, that the Participant's retirement benefits with the New York City Police Pension Fund, to the extent which they have accrued during the marriage, are marital property.

**ORDERED**, that the Court \_\_\_has/\_\_\_has not (select which applies) determined the Variable Supplements Fund ("VSF") to constitute marital property; and it is further

**ORDERED**, that the Court \_\_\_has/\_\_\_has not (select which applies) determined the Participant's DROP account to constitute marital property; and it is further

**ORDERED**, that the term "Retirement Allowance" means the total amount payable to the Participant by the Fund pursuant to the terms of the Fund, and \_\_\_does/\_\_\_does not (select which applies) include any Cost of Living Adjustments (COLA) [or Escalation if Tier 3] which are now, or may hereafter be, available or offered to the Participant; and it is further

**ORDERED**, that the term "Retirement Allowance" means the total amount payable to the Participant by the Fund pursuant to the terms of the Fund, and, if applicable, shall be deemed to include any Cost of Living Adjustments (COLA) or Escalation [only if Tier 3] which are now, or may hereafter be, available or offered to the Participant; and it is further

**[Tier 2 ONLY] ORDERED**, that the Participant may take pension loans or any other action which might reduce the total pension amount payable, but when calculating for the purposes of this Order, the Alternate Payee's portion of the pension, these reductions \_\_\_shall/ \_\_\_ shall not be excluded; and it is further

**[Tier 2 ONLY] ORDERED**, that the Participant is not required to enroll or cease participation in any voluntary contribution programs, but when calculating for the purposes of this Order, the Alternate Payee's portion of the pension, these contributions, \_\_\_shall/ \_\_\_ shall not be included if made; and it is further

**ORDERED**, that should the Participant retire on a disability pension, the Alternate Payee \_\_\_shall/ \_\_\_shall not receive a share of the disability pension attributable to the Participant's earnings and years of credited service only. Said share shall be calculated in the same manner as service based pension would be based on the member's eligibly at separation, i.e. a Vested or Service Retirement; and it is further

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**[Choose only one method described below.]**

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**[Method 1. For parties with a *Majauskas* ruling, use the following:]**

**ORDERED**, that the term "Coverture Fraction" shall be defined to mean a fraction which represents that portion of the of the Participant's retirement benefit acquired during the parties' marriage. The numerator of said fraction is the total credited service with the Fund from the later of the Participant's membership date or the parties' date of marriage, that being **[insert date of marriage]** \_\_\_\_\_, up to **(a)** the date of the division of marital assets, that being **[insert date of division of assets]** \_\_\_\_\_; or **(b)** the Participant's date of retirement, termination of employment, or death, whichever is earlier. The denominator of said fraction is the total credited service from the Participant's membership date, or equated membership date up to the date of retirement, termination of employment, or death; and it is further

**ORDERED**, that at such time the Participant has retired from and is actually receiving a Retirement Allowance from the Pension Fund, in accordance with the formula devised in the case of *Majauskas v. Majauskas*, 61 N.Y.2d 481, 474 N.Y.S. 2d 699 (1984), the said Pension Fund, is hereby directed to pay to the Alternate Payee that portion of the Participant's monthly Retirement Allowance which is equal to fifty percent (50%) of the product obtained by multiplying the Retirement Allowance due to the Participant by the Coverture Fraction.

**ORDERED**, that the Alternate Payee \_\_\_shall/\_\_\_shall not be entitled to receive the same percentage defined above of Variable Supplements Fund benefit if it becomes payable to the Participant.

**ORDERED**, that the Pension Fund \_\_\_shall/\_\_\_shall not (select which applies) allocate any post-tax basis between Participant and the Alternate Payee on a *pro rata* basis based upon the Coverture Fraction; and it is further

**[Method 2. For parties that have agreed to set a percentage, use the following (NOTE: This method only applies to Participants who are still employed or who have not yet retired):]**

**ORDERED**, that at such time the Participant has retired from and is actually receiving a Retirement Allowance from the Pension Fund, said Pension Fund is hereby directed to pay to the Alternate Payee that portion of the Participant's monthly Retirement Allowance which is equal to \_\_\_\_\_ percent (\_\_\_%) of the monthly Retirement Allowance due to the Participant.

**ORDERED**, that the Alternate Payee \_\_\_shall/\_\_\_shall not be entitled to receive the same percentage defined above of Variable Supplements Fund benefit if it becomes payable to the Participant.

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**ORDERED**, that the Pension Fund \_\_\_\_shall/\_\_\_\_shall not (select which applies) allocate any post-tax basis between Participant and the Alternate Payee on a *pro rata* basis based upon the same percentage; and it is further

**[Method 3. For parties that have agreed to a fixed dollar amount, or Participants who have retired and are already in pay status, use the following:]**

**ORDERED**, that at such time the Participant has retired from and is actually receiving a Retirement Allowance from the Fund, said Fund is hereby directed to pay to the Alternate Payee that portion of the Participant's monthly Retirement Allowance which is equal to \$\_\_\_\_\_; and it is

**ORDERED**, that if a Participant has retired and is currently receiving a Retirement Allowance from the Fund, said Fund is hereby directed to pay to the Alternate Payee that portion of the Participant's monthly Retirement Allowance which is equal to \$\_\_\_\_\_; and it is

**ORDERED**, that the Alternate Payee \_\_\_\_shall/\_\_\_\_shall not be entitled to payments in the amount of \$\_\_\_\_\_ from the Variable Supplements Fund benefit if it becomes payable to the Participant.

**ORDERED**, that the Alternate Payee \_\_\_\_shall/\_\_\_\_shall not be entitled to payments in the amount of \_\_\_\_\_% from any Cost of Living Adjustments or Escalation, as applicable, made to the Participant's benefits if it becomes payable to the Participant.

**ORDERED**, that the Pension Fund \_\_\_\_shall/\_\_\_\_shall not (select which applies) allocate any post-tax basis between Participant and the Alternate Payee as follows \_\_\_\_\_; and it is further

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**ORDERED**, that the Pension Fund Administrator issue separate checks to the Participant and Alternate Payee for their respective interests in the Fund, and, if applicable, the VSF, as soon as administratively practicable, upon receipt of a certified DRO; and it is further

**ORDERED**, that the Participant is hereby directed to designate the Alternate Payee as the beneficiary of the Participant's pre-retirement survivor benefit, so that in the event the Participant dies prior to his/her retirement, the Alternate Payee shall receive a portion of the pre-retirement death benefit, that being **[insert the Coverture Fraction or a set percent (\_\_\_%) depending on the parties' agreement]** \_\_\_\_\_. Within 15 days after this Order is signed by the Court, the Participant shall complete and submit all necessary Designation of Beneficiary forms as required by the Fund to ensure compliance with this provision. Within 15 days after said Designation of Beneficiary forms have been filed with the Fund, the Participant shall provide copies of the Designation of Beneficiary forms (time stamped by the Fund) to both the Alternate

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Payee and his/her attorney, via Certified Mail, the Fund is not responsible for enforcing beneficiary designation; and it is further

**ORDERED**, that in the event the Participant's employment is terminated prior to the time that he/she becomes vested in a retirement benefit, and he/she becomes eligible to receive a return of his/her accumulated annual contributions plus interest, the Alternate Payee shall receive (pick one) \_\_\_\_\_% of the accumulated annual contributions plus interest accrued during the marital period or \_\_\_\_\_% of the balance on the date of termination, as well as a *pro rata* share of any investment in the contract; and it is further

**ORDERED**, that the Participant is hereby directed to designate the Alternate Payee as beneficiary of the Participant's pension with the Pension Fund. At the time of his/her retirement, the Participant is directed to choose the following option: **[insert pension option number]** \_\_\_\_\_. The cost of the option shall be borne **[identify whether the cost will be borne "equally" or "proportionately" between Participant and Alternate Spouse, or if one party will solely bear the cost]** \_\_\_\_\_. The Fund is not responsible for enforcing option selection and the parties understand the option election is irrevocable; and it is further

**ORDERED**, that, if eligible, the Participant shall have the right to choose the "Pop-Up Modification", so that, in the event the Alternate Payee dies while the pension is in pay status, the retirement allowance reverts back to the Maximum Retirement Allowance. The Additional cost of the Pop-Up Modification shall be borne **[identify whether the cost will be borne "equally" or "proportionately" between Participant and Alternate Spouse, or if one party will solely bear the cost]** \_\_\_\_\_; and it is further

**ORDERED**, that, subject to the Participant's selection of a Pop-Up Modification, in the event the Alternate Payee dies prior to commencement of benefits to him/her, the Participant shall have the option to receive full benefits and choose any pension option available, and this DRO shall be void; and it is further

**ORDERED**, that the Alternate Payee/Member is entitled to monthly arrears in the amount of \$\_\_\_\_\_, to be paid at the rate of \$\_\_\_\_\_ per month. Alternate Payee/Member is entitled to VSF arrears in the amount of \$\_\_\_\_\_, to be paid at the rate of \$\_\_\_\_\_ per year.

**ORDERED**, that payment of a benefits to the Alternate Payee shall commence at the same time the Participant's benefit commences under the Plan; and it is further

**ORDERED**, that each party shall be responsible for any taxes on his/her respective share; and it is further

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**ORDERED**, that should the law or regulations of the Pension Fund or its rules and procedures regarding the acceptance and implementation of a QDRO or a Domestic Relations Order ("DRO") be modified or otherwise revised subsequent to the acceptance of this DRO so that the provisions herein are binding and obligating to the Participant, may also be made a binding obligation on the Pension Fund, then this DRO shall automatically become a binding obligation on the Pension Fund; and it is further

**ORDERED**, that if the Participant predeceases the Alternate Payee, and at the time of the Participant's retirement, he/she shall chose a death benefit option naming the Alternate Payee as beneficiary, the benefits shall continue to the Alternate Payee under said option; and it is further

**ORDERED**, that nothing contained in this Order shall be construed to require the Pension Fund or Pension Fund Administrator to:

- a) Provide to the Alternate Payee any form, type, or amount of benefit, or any option, not otherwise provided for under the Pension Fund;
- b) Provide to the Alternate Payee increased benefits determined on the basis of actuarial value; or
- c) Require the payment of benefits to the Alternate Payee which are required to be paid to another Alternate Payee under another Order previously determined to be a certified DRO; and it is further

**ORDERED**, that the Fund shall have no obligation or responsibility as a consequence of this action apart from the specific directions contained in this Order; and it is further

**ORDERED**, that this Order is to be deemed appropriate to effectuate the division of the retirement benefits earned by the Participant, pursuant to his/her participation in the Pension Fund; and it is further

**ORDERED**, that a Court certified copy of this Order shall be served upon the New York City Police Pension Fund, located at 233 Broadway, 25<sup>th</sup> Floor, New York, New York 10279, by **[insert name]** \_\_\_\_\_; and it is further

**ORDERED**, that, in the event of a change of name or address of the Alternate Payee, he/she will promptly notify, in writing, the New York City Police Pension Fund, located at 233 Broadway, New York, New York 10279; and it is further

**ORDERED**, that the service of a **[insert appropriate county name]** \_\_\_\_\_ County Clerk's certified copy of the Order, by certified mail, return receipt requested, upon the

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New York City Police Pension Fund, 233 Broadway, New York, New York 10279, shall be deemed to be good and sufficient service hereof as if it were personally serviced in the State of New York; and it is further

**ORDERED**, that this Court retains jurisdiction to implement and supervise the payment of retirement benefits as provided herein should either party or the Pension Fund Administrator make such application, and the Court determines such to be appropriate and necessary.

ENTER:

\_\_\_\_\_

Hon. \_\_\_\_\_

(Title, Court) \_\_\_\_\_

**Please submit a DRO which follows this Model to the Police Pension Fund (ATTN: Legal, 233 Broadway, 25<sup>th</sup> Floor, NY, NY 10279) for approval prior to submission to the Court. The Fund does not review the order for fairness or to ensure that the order comports with the parties' settlement agreement; rather, the Fund's review is to ensure the proposed DRO complies with Pension Fund rules and with New York state law.**