

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT
PROBATE AND FAMILY COURT DEPARTMENT

 (COUNTY) DIVISION

DOCKET NO.

John T. Plaintiff,)
 Plaintiff)
)
v.)
)
Mary T. Defendant,)
 Defendant)

)

DOMESTIC RELATIONS ORDER

As a part of the final Judgment in this matter, pursuant to M.G.L. Chapter 208, Section 34, governing the division of marital property between spouses and former spouses in divorce actions, and the decision of the Supreme Judicial Court, Contributory Retirement Board of Arlington v. Mangiacotti, 406 Mass. 184 (1989) it is hereby ORDERED as follows:

1. For the purposes of this ORDER, the following terms are defined:
 - a. “Retirement Plan” shall refer to the **XXXXXXXX** Retirement System (M.G.L. Chapter 32);
 - b. “Plan Administrator” shall refer to the **XXXXXXXX** Retirement Board, **Address, City, State, Zip**;
 - c. “Participant” shall refer to John T. Plaintiff, 1 Litigation Drive, Boston, Massachusetts 01111; Social Security Number XXX-XX-1234, date of birth MM/DD/YY;
 - d. “Alternate Payee” shall refer to Mary T. Defendant, 1 Litigation Drive, Boston, Massachusetts 01111; Social Security Number XXX-XX-1234; date of birth MM/DD/YY;
 - e. “Alternate Payee’s Benefit” shall refer to the separate benefit to be established and administered for the Alternate Payee pursuant to paragraph 3 of this Order.

2. The Plan Administrator is advised that the Alternate Payee and the Participant have agreed on allocating the retirement benefit of the Participant under the Retirement Plan which had accrued as of (**agreed upon date**). Such benefit shall be reduced to reflect the election of Option C (or Option B in the event of the remarriage of the Alternate Payee prior to

Participant's actual retirement) pursuant to Paragraph 7. The Participant is further required to elect Option C (or B) on the prescribed form issued by the **XXXXXXXXXX** Retirement Board.

3. The Alternate Payee is awarded all right, title, and interest in and to the Alternate Payee's Benefit as defined in Paragraph 5 of this Order, commencing at the Participant's actual retirement date and continuing while both parties are alive.

4. The **XXXXXXXXXX** Retirement Board shall pay directly to the Alternate Payee the Alternate Payee's Benefit, awarded by this Order, commencing concurrently with the Participant's benefit and continuing until the first death of either the Participant or the Alternate Payee.

5. The Alternate Payee's Benefit shall be equal to **XX%** of the Marital Portion of the Participant's benefit commencing at the time of the Participant's actual retirement. The Marital Portion of the Participant's benefit is the benefit which the Participant would have received at **his/her** actual retirement date in the absence of this Order, assuming that the Participant's employment terminated as of the date of divorce. Such benefit shall be reduced to reflect the election of Option C (or Option B in the event of the remarriage of the Alternate Payee prior to Participant's actual retirement) pursuant to Paragraph 7.

6. In the event that the Participant receives a disability benefit from the **XXXXXXX** Retirement Board, due to either accidental or ordinary disability, the Alternate payee's Benefit shall be equal to **XX%** of the Marital Portion of the Participant's disability benefit commencing at the time of the Participant's disability retirement. For purposes of ordinary or accidental disability, the Marital Portion shall mean a fraction, the numerator of which is the Participant's number of years and months of credited service through (**agreed upon date**); and the denominator of which shall be the Participant's total number of years and months of service through the date of **his/her** disability. However for purposes of determining the portion of the accidental disability benefit payable to the Alternate Payee, such fraction shall be applied only to the amount of disability benefit which would have been payable for ordinary disability rather than the actual amount payable for accidental disability; the Participant shall retain 100% of the excess of the amount of the accidental disability benefit over the amount of the benefit which would have been payable for ordinary disability.

7. The Participant hereby elects to receive his retirement benefit under Option C (or Option B in the event that the Alternate Payee has remarried prior to the Participant's actual retirement) of the Retirement Plan, provided that the Alternate Payee is living and has not remarried at the time of **his/her** retirement. The Participant hereby designates the Alternate Payee as the beneficiary for the death benefit under Option C (or Option B in the event that the Alternate Payee has remarried prior to the Participant's actual retirement) of the Retirement Plan, provided that the Alternate Payee is living and has not remarried at the time of **his/her** retirement. The Participant is further required to designate the Alternate Payee as the beneficiary on the prescribed form issued by the **XXXXXXXXXX** Retirement Board. In the alternative, in the event the Alternate Payee has become ineligible to receive the Option C survivor benefit by

virtue of remarriage prior to the Participant's retirement, the Participant hereby agrees to elect to receive **his/her** retirement benefit under Option B and to designate the Alternate Payee as the beneficiary for the Participant's available Option B death benefit. The designation of the Alternate Payee as the beneficiary shall be continued and maintained in full force and effect during **his/her** lifetime.

8. In the event the Participant elects to receive a return of **his/her** accumulated contributions and interest prior to **his/her** retirement or death, the Alternate Payee's benefit shall equal **XX%** of the Participant's benefit which had accrued as of (**agreed upon date**), commencing at the time the distribution is made to the Participant.

9. The Participant hereby designates the Alternate Payee as the beneficiary for a death benefit pursuant to M.G.L. Chapter 32, Section 12(2)(d), provided that the Alternate Payee is living and has not remarried at the time of the Participant's death. Such death benefit is to be payable to the Alternate Payee in the event that the Participant should die prior to retiring and receiving **his/her** retirement benefit. In the alternative, in the event the Alternate Payee becomes ineligible to receive the death benefit provided in Section 12(2)(d) by virtue of **his/her** remarriage, the Alternate Payee shall receive **XX%** of the Participant's contributions through (**agreed upon date**) together with the interest credited on such contributions through the date of the Participant's death. The Participant is further required to designate the Alternate Payee as the beneficiary on the prescribed form issued by the **XXXXXXXXXX** Retirement Board. Such death benefit shall be payable to the Alternate Payee if the Participant should die prior to retiring and commencing receipt of **his/her** retirement benefit. The designation of the Alternate Payee as the beneficiary shall be continued and maintained in full force and effect during **his/her** lifetime, or until the commencement of benefit payments to both the Participant and the Alternate Payee upon the retirement of the Participant. The Alternate Payee also acknowledges that her interests pursuant to any benefit designation pursuant to M.G.L. c. 32, § 12(2)(d) may be defeated by a subsequent spouse of the Petitioner who is eligible for a benefit pursuant to Section 12(2)(d), and who so elects.

10. The parties acknowledge that the distribution of benefits to the Alternate Payee contemplated in Paragraph 9 of this Order may be voided by operation of law if, at the time of the Participant's death, **he/she** is married to a spouse who is eligible to receive a member-survivor allowance under the provisions of M.G.L. c. 32, § 12(2)(d) and who so elects.

11. Nothing in this Order shall be construed to require the Retirement Plan or Plan Administrator:

- a. To provide to the Alternate Payee any type or form of benefit or any option not otherwise provided under the Retirement Plan;
- b. To provide to the Alternate Payee increased benefits (determined on the basis of actuarial equivalence stated in the Retirement Plan); or

- c. To pay any benefits to the Alternate Payee which are required to be paid to another alternate payee under another order previously determined to be a Domestic Relations Order sanctioned by the Supreme Judicial Court, Contributory Retirement Board of Arlington v. Mangiacotti, 406 Mass. 184 (1989).

12. The Alternate Payee shall be entitled to receive a pro rata share of any subsequent cost-of-living increases which may be granted on benefits which are in pay status.

13. The Alternate Payee shall include the entire taxable portion of his/her retirement benefits if, as and when received, in his/her gross taxable income. For purposes of section 72 and 402(a)(9) of the Internal Revenue Code, the Alternate Payee shall be treated as the distributee of any distribution or payment made to said Alternate Payee under this Order. Said retirement benefits, when paid, shall not be taxable income or a deduction on the Participant's tax return.

14. It is intended that this Order qualify as a "Domestic Relations Order" sanctioned by the Supreme Judicial Court, Contributory Retirement Board of Arlington v. Mangiacotti, 406 Mass 184 (1989), and the provisions of this Order shall be interpreted and complied with in a manner consistent therewith.

15. The Court retains jurisdiction over this matter to amend this Order to establish or maintain its status as a Domestic Relations Order sanctioned by the Supreme Judicial Court, Contributory Retirement Board of Arlington v. Mangiacotti, 406 Mass. 184 (1989), and pursuant to M.G.L. Chapter 32, M.G.L. Chapter 208, Section 34, and in light of any subsequent legislation or appellate court ruling. In the event this Order is held not to be a Domestic Relations Order sanctioned by the Supreme Judicial Court, Contributory Retirement Board of Arlington v. Mangiacotti, 406 Mass. 184 (1989), the parties hereby agree to submit to and request the Probate Court to make it a Domestic Relations Order sanctioned by the Supreme Judicial Court, Contributory Retirement Board of Arlington v. Mangiacotti, 406 Mass. 184 (1989) in such a manner that will reflect the parties' intent as herein expressed and thereafter to enter an Order modifying the Domestic Relations Order entered by the Court, said Modification Order to be entered nunc pro tunc if appropriate.

SO ORDERED

Justice, Probate and Family Court
Department, (County) Division

Dated: _____