

South Dakota Durable Financial Power of Attorney

Principal and Agent or Co-Agents

I, _____, (hereinafter the "Principal" presently residing at

_____,

in the State of South Dakota, on this _____ day of _____, 20____, hereby revoke all prior durable financial power of attorney documents executed by me and hereby appoint as my attorney-in-fact (hereinafter my "Agent") to make financial decisions on my behalf as described in this document:

Name of Agent: _____ Phone Number: _____

Address: _____

-OR-

I appoint the following individuals as my "co-attorneys-in-fact" (hereinafter my "Co-Agents"):

[include full name, address and telephone number for each Co-Agent] to make financial decisions on my behalf as described in this document. Each Co-Agent may exercise its authority independently. If a Co-Agent(s) fails or ceases to serve, the remaining Co-Agent(s) may continue to act under the power of attorney without a successor for the Co-Agent(s) who failed or ceased to serve.

Successor Agent - An Agent may resign by giving notice to the Principal. If the Principal is incapacitated, then notice shall be provided to the Principal's guardian, if a guardian has been appointed for the Principal; and a Co-Agent or Successor Agent. If there is no guardian, Co-Agent, or Successor Agent, then notice shall be provided to the Principal's caregiver, another person reasonably believed by the Agent to have sufficient interest in the Principal's welfare; or a governmental agency having authority to protect the welfare of the Principal.

If my Agent or all Co-Agents resign, die, become incapacitated, are not qualified to serve, or decline to serve, I appoint as my Successor Agent to make financial decisions on my behalf as described in this document:

Name of Successor Agent: _____ Phone Number: _____

Address: _____

My Successor Agent has the same authority as that granted to the original Agent or Co-Agents; and may not act until the predecessor Agent or Co-Agents have resigned, have died, have become incapacitated, ~~are not qualified to serve, or have declined to serve.~~ A Successor Agent who is named in a

power of attorney to succeed an Agent or Co-Agents who have failed or ceased to serve is not liable for the actions taken by a previous Agent or Co-Agents. The use of the term “Agent” applies to Co-Agent(s) and Successor Agent(s).

Nomination of Guardian / Conservator – If there is ever a need for me to have a conservator or guardian of my estate or person, I nominate the above individual(s) named in “Principal and Agent or Co-Agents” and “Successor Agent” to serve in that capacity in the same order of preference unless the court finds good cause for the above named individuals not to act in that capacity.

Governing Law – This Durable Financial Power of Attorney and the actions of my Agent are governed by the laws of the State of South Dakota. My Agent should review the Codified Laws, Title 59, Chapters 1 through 7, including subsequent amendments and all other relevant laws to ensure the Agent’s conduct is in compliance with the laws of the State of South Dakota.

Effective Date – This Durable Financial Power of Attorney is exercisable when executed will continue until my death or revocation. This Durable Financial Power of Attorney is not terminated by my subsequent incapacity.

Termination of power of attorney or Agent's authority. This power of attorney terminates when the Principal dies; a court appoints a limited conservator, conservator, limited guardian, or guardian of the Principal's estate or other fiduciary charged with the management of some or all of the Principal's property, unless the court specifically provides that the power of attorney shall remain in effect; the Principal revokes the power of attorney; or the Principal revokes the Agent's authority or the Agent dies, becomes incapacitated, or resigns, and the power of attorney does not provide for another Agent to act under the power of attorney.

An Agent's authority terminates when the Principal revokes the authority; the Agent dies, becomes incapacitated, or resigns. If an Agent is the spouse of the principal, the Agent’s authority terminates when an action is filed for the dissolution or annulment of the Agent's marriage to the Principal or upon the filing of an action for separate maintenance, unless the power of attorney otherwise provides.

An Agent's authority is exercisable until the authority terminates under this section, notwithstanding a lapse of time since the execution of the power of attorney.

Termination of an Agent's authority or of a power of attorney is not effective as to the Agent or another person that, without actual knowledge of the termination, acts in good faith under the power of attorney. An act so performed, unless otherwise invalid or unenforceable, binds the Principal and the Principal's successors in interest.

Agent’s Duties – An Agent that has accepted appointment shall:

- Act in accordance with the Principal's reasonable expectations to the extent actually known by the Agent and, otherwise, in the Principal's best interest;
- Act in good faith;
- Act only within the scope of authority granted in the power of attorney;

- Act loyally for the Principal's benefit;
- Act so as not to create a conflict of interest that impairs the Agent's ability to act impartially in the Principal's best interest;
- Act with the care, competence, and diligence ordinarily exercised by Agents in similar circumstances;
- Keep a record of all receipts, disbursements, and transactions made on behalf of the Principal;
- Cooperate with a person that has authority to make health-care decisions for the Principal to carry out the Principal's reasonable expectations to the extent actually known by the Agent and, otherwise, act in the Principal's best interest; and
- Attempt to preserve the Principal's estate plan, to the extent actually known by the Agent, if preserving the plan is consistent with the Principal's best interest based on all relevant factors, including:
 - The value and nature of the Principal's property;
 - The Principal's foreseeable obligations and need for maintenance;
 - Minimization of taxes, including income, estate, inheritance, generation-skipping transfer, and gift taxes; and
 - Eligibility for a benefit, a program, or assistance under a statute or regulation.

An Agent that acts in good faith is not liable to any beneficiary of the Principal's estate plan for failure to preserve the plan.

An Agent that acts with care, competence, and diligence for the best interest of the Principal is not liable solely because the Agent also benefits from the act or has an individual or conflicting interest in relation to the property or affairs of the Principal.

If an Agent is selected by the Principal because of special skills or expertise possessed by the Agent or in reliance on the Agent's representation that the Agent has special skills or expertise, the special skills or expertise must be considered in determining whether the Agent has acted with care, competence, and diligence under the circumstances.

Absent a breach of duty to the Principal, an Agent is not liable if the value of the Principal's property declines.

An Agent that exercises authority to delegate to another person the authority granted by the Principal or that engages another person on behalf of the Principal is not liable for an act, error of judgment, or default of that person if the Agent exercises care, competence, and diligence in selecting and monitoring the person.

An Agent is not required to disclose receipts, disbursements, or transactions conducted on behalf of the Principal unless ordered by a court or requested by the Principal, a guardian, a conservator, another fiduciary acting for the Principal, a governmental agency having authority to protect the welfare of the Principal, or, upon the death of the Principal, by the personal representative or successor in interest of the Principal's estate. If so requested, within thirty (30) days the Agent shall comply with the request or

provide a writing or other record substantiating why additional time is needed and shall comply with the request within an additional thirty (30) days.

An Agent that has actual knowledge of a breach or imminent breach of fiduciary duty by another Agent of the same Principal shall notify the Principal and, if the Principal is incapacitated, take any action reasonably appropriate in the circumstances to safeguard the Principal's best interest. An Agent that fails to notify the Principal or take action as required by this subsection is liable for the reasonably foreseeable damages that could have been avoided if the Agent had notified the Principal or taken such action.

Agent's Specific Powers – The Principal shall initial next to each power that the Principal authorizes the Agent to have and shall strike through any power that the Principal does not authorize the Agent to have:

_____ **(a) Real estate transactions.** The Agent is authorized to: buy, sell, exchange, rent and lease real estate; collect all rent, sale proceeds and earnings from real estate; convey, assign and accept title to real estate; grant easements, create conditions and release rights of homestead with respect to real estate; create land trusts and exercise all powers under land trusts; hold, possess, maintain, repair, improve, subdivide, manage, operate and insure real estate; pay, contest, protest and compromise real estate taxes and assessments; and, in general, exercise all powers with respect to real estate which the Principal could if present and under no disability.

_____ **(b) Financial institution transactions.** The Agent is authorized to: open, close, continue and control all accounts and deposits in any type of financial institution (which term includes, without limitation, banks, trust companies, savings and building and loan associations, credit unions and brokerage firms); deposit in and withdraw from and write checks on any financial institution account or deposit; and, in general, exercise all powers with respect to financial institution transactions which the Principal could if present and under no disability. This authorization shall also apply to any Totten Trust, Payable on Death Account, or comparable trust account arrangement where the terms of such trust are contained entirely on the financial institution's signature card, insofar as an Agent shall be permitted to withdraw income or Principal from such account; and, in general, exercise all powers with respect to financial institution transactions which the Principal could if present and under no disability.

_____ **(c) Stock and bond transactions.** The Agent is authorized to: buy and sell all types of securities (which term includes, without limitation, stocks, bonds, mutual funds and all other types of investment securities and financial instruments); collect, hold and safekeep all dividends, interest, earnings, proceeds of sale, distributions, shares, certificates and other evidences of ownership paid or distributed with respect to securities; exercise all voting rights with respect to securities in person or by proxy, enter into voting trusts and consent to limitations on the right to vote; and, in general, exercise all powers with respect to securities which the Principal could if present and under no disability.

_____ **(d) Tangible personal property transactions.** The Agent is authorized to: buy and sell, lease, exchange, collect, possess and take title to all tangible personal property; move, store, ship, restore, maintain, repair, improve, manage, preserve, insure and safekeep tangible personal property;

and, in general, exercise all powers with respect to tangible personal property which the Principal could if present and under no disability.

_____ **(e) Safe deposit box transactions.** The Agent is authorized to: open, continue and have access to all safe deposit boxes; sign, renew, release or terminate any safe deposit contract; drill or surrender any safe deposit box; and, in general, exercise all powers with respect to safe deposit matters which the Principal could if present and under no disability.

_____ **(f) Insurance and annuity transactions.** The Agent is authorized to: procure, acquire, continue, renew, terminate or otherwise deal with any type of insurance or annuity contract (which terms include, without limitation, life, accident, health, disability, automobile casualty, property or liability insurance); pay premiums or assessments on or surrender and collect all distributions, proceeds or benefits payable under any insurance or annuity contract; and, in general, exercise all powers with respect to insurance and annuity contracts which the Principal could if present and under no disability.

_____ **(g) Retirement plan transactions.** The Agent is authorized to: contribute to, withdraw from and deposit funds in any type of retirement plan (which term includes, without limitation, any tax qualified or nonqualified pension, profit sharing, stock bonus, employee savings and other retirement plan, individual retirement account, deferred compensation plan and any other type of employee benefit plan); select and change payment options for the Principal under any retirement plan; make rollover contributions from any retirement plan to other retirement plans or individual retirement accounts; exercise all investment powers available under any type of self-directed retirement plan; and, in general, exercise all powers with respect to retirement plans and retirement plan account balances which the Principal could if present and under no disability.

_____ **(h) Social Security, unemployment and military service benefits.** The Agent is authorized to: prepare, sign and file any claim or application for Social Security, unemployment or military service benefits; sue for, settle or abandon any claims to any benefit or assistance under any federal, state, local or foreign statute or regulation; control, deposit to any account, collect, receipt for, and take title to and hold all benefits under any Social Security, unemployment, military service or other state, federal, local or foreign statute or regulation; and, in general, exercise all powers with respect to Social Security, unemployment, military service and governmental benefits which the Principal could if present and under no disability.

_____ **(i) Tax matters.** The Agent is authorized to: sign, verify and file all the Principal's federal, state and local income, gift, estate, property and other tax returns, including joint returns and declarations of estimated tax; pay all taxes; claim, sue for and receive all tax refunds; examine and copy all the Principal's tax returns and records; represent the Principal before any federal, state or local revenue agency or taxing body and sign and deliver all tax powers of attorney on behalf of the Principal that may be necessary for such purposes; waive rights and sign all documents on behalf of the Principal as required to settle, pay and determine all tax liabilities; and, in general, exercise all powers with respect to tax matters which the Principal could if present and under no disability.

_____ **(j) Claims and litigation.** The Agent is authorized to: institute, prosecute, defend, abandon, compromise, arbitrate, settle and dispose of any claim in favor of or against the Principal or any property interests of the Principal; collect and receipt for any claim or settlement proceeds and waive or release all rights of the Principal; employ attorneys and others and enter into contingency agreements and other contracts as necessary in connection with litigation; and, in general, exercise all powers with respect to claims and litigation which the Principal could if present and under no disability. This power of attorney does not authorize the Agent to appear in court or any tribunal as an attorney-at-law for the Principal or otherwise to engage in the practice of law without being a licensed attorney who is authorized to practice law.

_____ **(k) Commodity and option transactions.** The Agent is authorized to: buy, sell, exchange, assign, convey, settle and exercise commodities futures contracts and call and put options on stocks and stock indices traded on a regulated options exchange and collect and receipt for all proceeds of any such transactions; establish or continue option accounts for the Principal with any securities or futures broker; and, in general, exercise all powers with respect to commodities and options which the Principal could if present and under no disability.

_____ **(l) Business operations.** The Agent is authorized to: organize or continue and conduct any business (which term includes, without limitation, any farming, manufacturing, service, mining, retailing or other type of business operation) in any form, whether as a proprietorship, joint venture, partnership, corporation, trust or other legal entity; operate, buy, sell, expand, contract, terminate or liquidate any business; direct, control, supervise, manage or participate in the operation of any business and engage, compensate and discharge business managers, employees, Agents, attorneys, accountants and consultants; and, in general, exercise all powers with respect to business interests and operations which the Principal could if present and under no disability.

_____ **(m) Borrowing transactions.** The Agent is authorized to: borrow money; mortgage or pledge any real estate or tangible or intangible personal property as security for such purposes; sign, renew, extend, pay and satisfy any notes or other forms of obligation; and, in present and under no disability.

_____ **(n) Estate transactions.** The Agent is authorized to: accept, receipt for, exercise, release, reject, renounce, assign, disclaim, demand, sue for, claim and recover any legacy, bequest, devise, gift or other property interest or payment due or payable to or for the Principal; assert any interest in and exercise any power over any trust, estate or property subject to fiduciary control; establish a revocable trust solely for the benefit of the Principal that terminates at the death of the Principal and is then distributable to the legal representative of the estate of the Principal; and, in general, exercise all powers with respect to estates and trusts which the Principal could if present and under no disability; provided, however, that the Agent may not make or change a will and may not revoke or amend a trust revocable or amendable by the Principal or require the trustee of any trust for the benefit of the Principal to pay income or Principal to the Agent unless specific authority to that end is given, and specific reference to the trust is made, in the statutory property power form.

_____ **(o) Gifts.** As used in this section, a gift "for the benefit of" a person includes a gift to a trust, an account under the South Dakota Uniform Transfers to Minors Act and a tuition savings account or prepaid tuition plan as defined under 26 United States Code, Section 529, as amended. My Agent may make a gift of the my property only as my Agent determines such gift is consistent with my objectives known by my Agent and, if unknown, as my Agent determines is consistent with my objectives based on all relevant factors, including: the value and nature of the my property; my foreseeable obligations and need for maintenance; minimization of taxes, including income, estate, inheritance, generation-skipping transfer and gift taxes; eligibility for a benefit, a program or assistance under a statute, rule or regulation; and my personal history of making or joining in making gifts.

Reimbursement and Compensation of Agent – An Agent is entitled to reimbursement of expenses reasonably incurred on behalf of the Principal and to compensation that is reasonable under the circumstances.

Agent's Acceptance of Appointment — A person accepts appointment as an Agent under a power of attorney by exercising authority or performing duties as an Agent or by any other assertion or conduct indicating acceptance.

Exoneration of Agent and Agent's Liability — The Agent is liable only if the Agent acts in bad faith. This exoneration is binding on the Principal and the Principal's successors in interest. An Agent that violates this chapter is liable to the Principal or the Principal's successors in interest for the amount required to restore the value of the Principal's property to what it would have been had the violation not occurred; and reimburse the Principal or the Principal's successors in interest for the attorney's fees and costs paid on the Agent's behalf.

Agent's Resignation— An Agent may resign by giving notice to the Principal, to the guardian if the Principal is incapacitated and one has been appointed for the Principal, and to any Co-Agent, or if none, the next Successor Agent. If there is no Successor Agent, the Agent shall provide notice to the Principal's caregiver; another person listed in the power of attorney as having sufficient interest in the Principal's welfare to receive the resignation; or a governmental agency having authority to protect the welfare of the Principal.

Signature & Acknowledgement

I am the maker of this instrument and am fully informed as to all the contents of this Durable Financial Power of Attorney. I understand the full import of this grant of powers to my Agent(s).

Principal's Signature _____ Date _____

The following subscribing witnesses have appeared before the Notary Public and swear that he or she witnessed the maker of this instrument execute the instrument as the maker's own act.

First Witness _____

Address _____

Telephone _____

Signature _____ Date _____

Second Witness _____

Address _____

Telephone _____

Signature _____ Date _____

STATE OF SOUTH DAKOTA

COUNTY OF _____

The maker and the witnesses personally appeared before me and the foregoing instrument was

acknowledged before me on this the ____ day of _____ (month), 20____ (year), by

_____ (name of Notary Public). I am satisfied that the person(s) who made the acknowledgment or proof was the maker of or the witness to the instrument.

(Signature of Notary Public - State of South Dakota)

(Print, Type, or Stamp
Commissioned Name of Notary Public)