

POWER OF ATTORNEY  
AND  
NOMINATION OF GUARDIAN AND CONSERVATOR

\_\_\_\_\_ (Principal) hereby grants to his wife, \_\_\_\_\_, (Agent) full Power of Attorney to handle Principal's personal, business, and financial affairs, should Principal become mentally or physically incompetent to do so personally. This would include (1) all medical decisions regarding Principal's health and health care (2) Principle's living arrangements (3) selling, transferring, purchasing, and granting a security interest in Principal's real estate and securities and (4) opening, closing, depositing into and withdrawing assets from Principal's bank and securities accounts.

Principal desires that Agent handle Principal's affairs without the involvement of the court system, unless involvement of the court system is necessary to (a) enforce a decision of an arbitrator handling an arbitration proceeding pursuant to the arbitration provisions in this Power of Attorney, or (b) compel a third party to accept the authority of Agent to handle Principal's affairs pursuant to this Power of Attorney.

If, however, for some unforeseen reason appointment of a guardianship or conservatorship over the person and affairs of Principal is necessary, Principal desires Agent be appointed guardian or conservator, and that Agent act without being bonded.

If \_\_\_\_\_ (wife) is unable or unwilling to act as Agent, guardian or conservator, Principal (1) grants full Power of Attorney to handle Principal's personal, business, and financial affairs should Principal become mentally or physically incompetent to do so personally to his daughter, \_\_\_\_\_ (daughter), who shall have all of the authority of Agent specified above, and (2) desires that (daughter) be appointed guardian or conservator, and that she act without being bonded.

If \_\_\_\_\_(daughter) is unable or unwilling to act as Agent, guardian or conservator, Principal grants full Power of Attorney to handle Principal's personal, business, and financial affairs should Principal become mentally or physically incompetent to do so personally to his son, \_\_\_\_\_ (son), who shall have all of the authority of Agent specified above, and (2) desires that (son) be appointed guardian or conservator, and that he can act without being bonded.

Principal desires that this Power of Attorney be a durable one, which means it will not terminate upon the mental or physical incompetency of Principal; but shall commence upon Principal becoming mentally or physically incompetent.

If there is a dispute as to whether (1) Principal is mentally or physically incapacitated to handle Principal's own affairs, (2) Principal is mentally and physically capable of handling some, but not all, of Principal's affairs, (3) Agent is properly handling Principal's affairs or (4) Agent's authority to handle Principal's affairs should be terminated because of the improper handling of Principal's affairs, it shall first be submitted to mediation facilitated by a South Dakota attorney, if Principal has the mental capacity to meaningfully participate. If the mediation does not occur because of Principal's mental incapacity to meaningfully participate, or the mediation failed to resolve the dispute, the dispute shall be determined by an attorney acting as an arbitrator in a private arbitration proceeding utilizing the laws of the State of South Dakota. The arbitrator's decision shall be binding for six months. Thereafter, if the dispute remains, the issue can again be presented to the arbitrator every 6 months.

Principal and Agent shall initially split the cost of the mediator and arbitrator, but the arbitrator can require the losing party to pay all the fees of the arbitrator and/or mediator, if the

arbitrator determines that there was no substantial legal or factual basis for the position taken by the person the arbitrator rules against.

It is the desire of Principal that, if Principal is found to be mentally or physically incompetent after arbitration, this Power of Attorney shall become effective. It is not Principal's desire that a guardian or conservator be appointed.

Agent shall, to the extent known, consider Principal's expressed desires and personal values when making decisions regarding Principal's affairs. Agent shall act in Principal's best interests. Agent shall exercise reasonable care, diligence, and prudence in handling Principal's affairs.

Agent shall use Principal's assets for (1) Principal's support, care, and health; and (2) support of any legal dependents of Principal who are under 18 years of age.

Agent shall exercise authority only to the extent necessitated by Principal's limitations, and shall encourage Principal, to the extent Principal is able, to (1) participate in decisions regarding Principal's affairs (2) act on Principal's own behalf, and (3) develop or regain the capacity to manage Principal's health care, living arrangements, assets, business affairs, and financial affairs.

In making expenditures, Agent shall consider the value and type of assets owned by Principal, the probable time that Principal will need to use his or her assets for his or her own support, care and health, and Principal's accustomed manner of living.

Agent shall provide Principal and the following person(s) at least an annual report summarizing (1) what assets and liabilities Principal has (2) how Agent handled Principal's income and expenses since the last report and (3) Principal's health condition, medical care, and living situation: \_\_\_\_\_.

Being placed under oath by the undersigned Notary Public, I declare that (1) this document is my Power of Attorney and Nomination of Guardian and Conservator, (2) I am over 18 years of age, (3) I am of sound mind, and (4) I sign this document willingly, without any constraint or undue influence.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_\_\_. \_\_\_\_\_  
Principal

Being placed under oath by the undersigned Notary Public, we declare that Principal willingly, without any constraint or undue influence, signed this document in our presence; that Principal asked us to witness Principal’s signing of this document and to sign it as witnesses; that, in Principal’s presence, we signed this document after Principal signed it; and that to the best of our knowledge Principal is over 18 years of age and of sound mind.

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Witness

STATE OF SOUTH DAKOTA     )  
  :SS  
COUNTY OF MINNEHAHA     )

Subscribed and sworn to before me by Principal and witnesses on the \_\_\_\_\_ day  
of \_\_\_\_\_, 200\_\_.

\_\_\_\_\_  
Notary Public

My Commission Expires:

\_\_\_\_\_  
(SEAL)