

## DURABLE FINANCIAL POWER OF ATTORNEY

**Patricia Mary Jean O'Rourke**

KNOW ALL PERSONS that I, **Patricia Mary Jean O'Rourke**, the principal, of Portland, Maine, appoint, **Maria Timberlake**, of **Freeville**, New York, as my Agent to act in my name and for my benefit in a fiduciary capacity.

### I. GENERAL POWERS

I confer upon my Agent full power to administer my personal and business affairs and to deal with all of my property, whether standing in my name alone or in a name with any other person(s). I intend this authority to grant all of the authorities set forth in the Maine Uniform Power of Attorney Act, 18-A M.R.S.A. § 5-931 et seq. My Agent shall on my behalf have full power to exercise or perform any act, power, duty, right or obligation whatsoever that I now have or may hereinafter acquire, relating to any person, matter, transaction, or property, real or personal, tangible, intangible or mixed, now owned or hereafter acquired by me, as I might or could do if personally present, including without limitation, and by way of example the following specifically enumerated powers to:

- a. Real property: All powers described in 18-A M.R.S.A. § 5-934
- b. Tangible personal property: All powers described in 18-A M.R.S.A. § 5-935
- c. Stocks and Bonds: All powers described in 18-A M.R.S.A. § 5-936
- d. Commodities and Options: All powers described in 18-A M.R.S.A. § 5-937
- e. Banks and other financial institutions: All powers described in 18-A M.R.S.A. § 5-938
- f. Operation of entity or business: All powers described in 18-A M.R.S.A. § 5-939
- g. Insurance and annuities: All powers described in 18-A M.R.S.A. § 5-940
- h. Estates, trusts and other beneficial interests: All powers described in 18-A M.R.S.A. § 5-941
- i. Claims and litigation: All powers described in 18-A M.R.S.A. § 5-942
- j. Personal and family maintenance: All powers described in 18-A M.R.S.A. § 5-943
- k. Benefits from governmental programs or civil or military service: All powers described in 18-A M.R.S.A. § 5-944
- l. Retirement plans: All powers described in 18-A M.R.S.A. § 5-945
- m. Taxes: All powers described in 18-A M.R.S.A. § 5-946.

### II. ADDITIONAL POWERS

In addition to, but not in limitation of, the general powers set forth in the statutory sections cited above, I grant to my Agent the following additional powers:

- a. **Trust creation and asset transfer and withdrawal:** To create any trust, revocable or irrevocable, with such trustee(s) as my Agent shall select, for my benefit and/or the benefit of one or more members of my issue including my Agent, that I may have the power to create myself; to amend, revoke or terminate such trust(s) or any other trust

that I may have the power to amend or revoke; to transfer any and all of my tangible, intangible, or mixed personal property or real property, including rights to receive income or assets from any source, to any such trusts; to withdraw and/or receive the income or corpus of any trust over which I may have a right of receipt or withdrawal; to request and receive the income or corpus of any trust with respect to which the trustee thereof has the discretionary power to make distributions to or on my behalf; to execute and deliver to the trustee(s) a receipt and release or similar document for the income or corpus so received; and to exercise such powers as my Agent deems appropriate in her sole discretion.

The fact that my said Agent may be a remainder man or beneficiary in connection with any such transfers hereunder shall not affect the validity thereof, nor, by itself, constitute a breach of the Agent's fiduciary duty hereunder.

- b. **Gift making power:** To make gifts of personal interests from my property to any one or more of my children, grandchildren, or spouses or issue of any of the foregoing relatives, friends and next-of-kin, or to any trust for the exclusive benefit of any or more of them, and it shall not be necessary that such donees receive equal amounts. To make gifts from any property to one or more charitable organizations, the choice of such organizations and the amount of such gifts to be determined in the sole discretions of my said Agent. In making gifts hereunder, my Agent shall take into account my known objectives, including but not limited to, my prior pattern of giving, the desirability of income tax deductions for the current year, the desirability of the reduction or elimination of federal and/or state estate or inheritance taxes on my estate, and the desirability of the reduction of exposure of my estate to long-term care expenses. Without limiting the generality of the foregoing, my Agent shall also be mindful of transfer tax considerations, including but not limited to the transfer tax exclusions available under Internal Revenue Code Section 2503(b) and Section 2503(e); providing that my Agent may make gifts beyond the exclusion amount if deemed advisable. If my Agent makes gifts to minors, such gifts may be made directly to the minor, to a parent, guardian or next friend of the minor, or under the Uniform Gifts to Minors Act or the Uniform Transfers to Minors Acts. To exercise any power of appointment I may have under the terms of any will or trust.

To create or change the form of ownership of any asset so as to create a right of survivorship.

The fact that my said Agent may be a recipient of gifts or survivorship interests hereunder shall not affect the validity thereof, nor, by itself constitute a breach of the Agent's fiduciary duty hereunder.

- c. **Designate beneficiaries:** To designate and/or change the ownership or beneficiary designations on any insurance policy, annuity contract, pension benefit, retirement plan account or other contract or policy, and the fact that my said Agent may be a beneficiary shall not affect the validity thereof, nor, by itself, constitute a breach of the Agent's fiduciary duty hereunder.

- d. **Waive rights under joint and survivor annuity:** To waive my rights to be a beneficiary under any joint and survivor annuity, including a survivor benefit under a retirement plan.
- e. **Fiduciary positions:**
- a. To decline, resign or renounce any fiduciary positions to which I have been or may be appointed, including (but not limited to) personal representative, trustee, guardian, agent and officer or director of a corporation or political or governmental body
  - b. To file an accounting with a court of competent jurisdiction or settle on a receipt and release or such other informal method as my Agent shall deem appropriate;
  - c. To exercise fiduciary powers that I have the authority to delegate.
- f. **Releases and disclaimers:**
- a. To release, renounce or disclaim on my behalf any property or interest in property or powers to which for any reason and by any means I may become entitled, whether by gift, testate or intestate succession;
  - b. To convey or release any contingent or expectant interest in property, marital property rights and any rights of survivorship incident to a joint tenancy or a tenancy by entirety; to release or abandon any property or interest in property or powers which I may now or hereafter own, including any interests in or rights over trusts (including the right to alter, amend, revoke or terminate) and in exercising such discretion, my Agent may take into account such matters, including but not limited to, any reduction in estate or inheritance taxes on my estate, and the effect of such release, renunciation or disclaimer upon persons interested in my estate and persons who would receive the renounced or disclaimed property.
  - c. The fact that my said Agent may be a beneficiary of any property interest hereunder shall not affect the validity thereof, nor, by itself, constitute a break of the Agent's fiduciary duty hereunder.
- g. **Statutory Rights:** To exercise any statutorily authorized rights, including but not limited to the right to elective share, homestead allowance, tangible property allowance and family allowance.
- h. **Intangible personal property:**
- a. Promissory notes: as to any promissory note receivable, secured or unsecured, to collect, compromise, endorse, borrow against, encumber, release or recover that note and any deed of trust.
  - b. Borrowing/pledge: To borrow money for my account upon such terms and conditions as my Agent shall deem appropriate and to secure such borrowing

by the granting of security interests in any property or interests in property which I may now or hereafter own; to sell, pledge, or hypothecate all or any bonds, shares of stock, partnership interests, limited liability company interests, or other securities belonging to me; to borrow money upon any life insurance policies owned by me upon my life, or the life of any other person, for any purpose and to grant a security interest in such policy to secure any such loans; and no insurance company shall be under any obligation whatsoever to determine the need for such loan or the application of the proceeds by my Agent; to execute all instruments necessary or convenient for such purposes and to give receipts and discharges for all cash payments.

- c. Loans: to make loans, secured or unsecured, in such amounts, upon such terms, with or without interest and to such firms, corporations, and persons as my Agent deems appropriate; to renew, extend and modify any such loans or loans that I have previously made; to guarantee the obligations of any such person; to consent to the renewal, extension and modification of such obligations.
  - d. Personal Property: As to personal property, whether tangible, intangible or mixed, to buy, sell, lease sublease and release to recover possession of by all lawful means to collect, sue for, receive any income of any kind and profits therefrom; to maintain, protect, repair, preserve, insure, alter or improve all or any part thereof; to sell and to buy the same or other personal property; to mortgage and/or grant security interests in any personal property or intangible snow or hereinafter owned by me, whether acquired by me or for me by my Agent.
- i. **Employment of Agents:** My Agent is authorized to employ, compensate, and terminate the services of lawyers, accountants, financial and investment advisors, brokers, case managers, doctors and nurses.
  - j. **MaineCare/Medicaid:** My Agent shall have the authority to utilize all lawful means and methods to establish and preserve MaineCare/Medicaid benefits for me and to recover such assets and/or rights, qualify for me for such benefits and claim such benefits on my behalf. The authority granted herein shall include but not be limited to a complete divestment and/or gifting of all my assets, converting my assets into those which do not disqualify me from receiving such benefits or divesting me of such assets. In any divestment actions or asset conversions, I direct that my Agent, to the extent reasonably possible, avoid disrupting the dispositive provisions of any estate plan of mine known to my Agent whether or not any such estate plan is embodied in a Will, a trust, non-probate property or otherwise. If it is necessary to disrupt such plan, my Agent is directed to use his or her best efforts to restore such plan as and when the opportunity to do so is available. If a transfer of cash by my agent is made to a pecuniary legatee under my Will, my Agent shall ensure that such transfer is deemed a satisfaction of such legacy, pro tanto.

- k. **Appointment of Conservator:** In the event that it becomes necessary to have a Conservator appointed on my behalf, it is my desire that my then serving Agent be appointed in that capacity.
- l. **Release:** I authorize any lawyer(s) of whom I have been a client to release to my Agent all information and photocopies of any records which my Agent may request. In addition, any and all third parties from whom my Agent may request information of any kind or nature, are hereby authorized to provide, release and deliver such information to my Agent without limitation and are released from legal liability whatsoever to me, my estate, or my heirs, successors or assigns for complying with the request of my Agent.
- m. **Attorney Authorized to Work with Agent:** I hereby authorize any attorney that I have retained to represent me, to advise and represent my Agent, and any successor Agent, in his/her capacity as Agent and with regard to his/her fiduciary obligations to me. I waive any potential conflict of interest that might arise as a result of this representation.

### III. AGENT SPECIFIC

My Agent and/or successor Agent, shall not be liable for acts done in good faith, or for errors in judgment, and shall have power to bind me or my property without binding my Agent personally. I expressly exclude the requirements of 18-A M.R.S.A. 5-914(b)(2) and (b)(4).

My Agent shall be entitled to reimbursement for all reasonable costs and expenses actually incurred and paid by my Agent on my behalf and, in addition, my Agent shall be entitled to receive reasonable compensation for services.

### IV. INTERPRETATION

This instrument is to be construed and interpreted as a general durable power of attorney. It is executed in the State of Maine and the laws of the State of Maine shall govern all questions as to the validity of this power and the construction of its provisions. If any part of any provision of this instrument shall be invalid or unenforceable under applicable law, such part shall be ineffective to the extent of such invalidity only, without in any way affecting the remaining parts of such provision or the remaining provisions of this instrument. Amendments to this Power of Attorney shall be made in writing by me personally (not my Agent) and shall be attached to the original of this Power of Attorney.

**As provided for under 18-A M.R.S.A. § 5-906(d), a photocopy or electronically transmitted copy of the original of this Power of Attorney has the same effect as the original**

## V. STATUTORY NOTICES

Notice to the Principal: As the "Principal" you are using this power of attorney to grant power to another person (called the Agent) to make decisions about your property and to use your property on your behalf. Under this power of attorney you give your Agent broad and sweeping powers to sell or otherwise dispose of your property without notice to you. Under this document your Agent will continue to have these powers after you become incapacitated. The powers that you give your Agent are explained more fully in the Maine Uniform Power of Attorney Act, Maine Revised Statutes, Title 18-A, Article 5, Part 9. You have the right to revoke this power of attorney at any time as long as you are not incapacitated. If there is anything about this power of attorney that you do not understand you should ask a lawyer to explain it to you.

Notice to the Agent: As the "Agent" you are given power under this power of attorney to make decisions about the property belonging to the Principal and to dispose of the Principal's property on the Principal's behalf in accordance with the terms of this power of attorney. This power of attorney is valid only if the Principal is of sound mind when the Principal signs it. When you accept the authority granted under this power of attorney a special legal relationship is created between you and the Principal. This relationship imposes upon you legal duties that continue until you resign or the power of attorney is terminated or revoked. The duties are more fully explained in the Maine Uniform Power of Attorney Act, Maine Revised Statutes, Title 18-A, Article 5, Part 9 and Title 18-B, sections 802 to 807 and Title 18-B, chapter 9. As the Agent, you are generally not entitled to use the Principal's property for your own benefit or to make gifts to yourself or others unless the power of attorney gives you such authority. If you violate your duty under this power of attorney you may be liable for damages and may be subject to criminal prosecution. You must stop acting on behalf of the Principal if you learn of any event that terminates this power of attorney or your authority under this power of attorney. Events of termination are more fully explained in the Maine Uniform Power of Attorney Act and include, but are not limited to, revocation of your authority or of the power of attorney by the Principal, the death of the Principal or the commencement of divorce proceedings between you and the Principal. If there is anything about this power of attorney or your duties under it that you do not understand you should ask a lawyer to explain it to you.

## VI. SUCCESSOR AGENT:

In the event that Maria Timberlake becomes, ill, incapacitated or dies, I appoint, Christina Phillips to assume duties as my attorney-in-fact. My Agent may resign by written resignation attached to this instrument. My successor Agent shall have all the powers and duties given to or imposed upon the original Agent.

## VII. EFFECTIVE DATE and DURABILITY:

This Durable Financial Power of Attorney shall take effect when executed by me. The rights, power and authority herein granted shall remain in full force and effect until terminated by a written Revocation of Power of Attorney, signed by me, or of reliable notification of my death. This Power of Attorney shall not be affected by my subsequent disability or incapacity. Lapse of time shall not affect the validity of this Instrument.

IN WITNESS WHEREOF, I have hereunto set my signature this 14<sup>th</sup> day of February, 2013.

Patricia O'Rourke  
Patricia Mary Jean O'Rourke

Dated: 2/14/13  
In witness hereof:

Dated: 2/14/13  
In witness hereof:

Lucy J. Rhodes  
Printed Name:  
LUCY J RHODES

Sharleen Garvey  
Printed Name:  
SHARLEEN GARVEY

STATE OF MAINE,  
CUMBERLAND, ss.

On the 14<sup>th</sup> day of February 2013, personally appeared the above named, Patricia  
Mary Jean O'Rourke, and acknowledged the foregoing instrument to be her free act and deed.

Before me,

[Signature]  
Notary Public/Attorney at Law  
BAR No. 8440