

AGREEMENT TO CLOSE LAW PRACTICE IN THE FUTURE¹

This Agreement is entered into this ____ day of _____, 20____, by and between _____ (“Planning Attorney”), an individual admitted and licensed to practice as an attorney in the Courts of the Georgia and whose office for the practice of law is located at _____, and (“Closing Attorney”), an individual admitted and licensed to practice as an attorney in the Courts of the State of Georgia and whose office for the practice of law is located at _____.

RECITALS

WHEREAS, Planning Attorney is a sole practitioner engaged in the practice of law; and

WHEREAS, Planning Attorney recognizes the importance of protecting the interests of his clients in the event that he is unable to practice law by reason of his death, disability, incapacity or other inability to act; and

WHEREAS, Planning Attorney wishes to plan for the orderly closing of his law practice if he is unable to practice law for any of the above stated reasons; and

WHEREAS, Planning Attorney has requested Closing Attorney to as his agent to take all reasonable actions deemed necessary by Closing Attorney to close Planning Attorney’s practice on account of his inability to act and Closing Attorney has consented to this appointment; and

WHEREAS, Planning Attorney and Closing Attorney hereby enter into this Agreement to define their rights and obligations in connection with the closing of Planning Attorney’s practice.

1. **Effective Date.** This Agreement shall become effective only upon Planning Attorney’s death, disability, incapacity or other inability to act, as determined in accordance with paragraph. The appointment and authority of Closing Attorney shall remain in full force and effect as long as it is reasonable to carry out the terms of this Agreement, or unless sooner terminated pursuant to paragraphs 8 or 9.
2. **Determination of Death, Disability, Incapacity.** Closing Attorney shall make the determination that Planning Attorney is dead, disabled, incapacitated or otherwise unable to practice law, and if disabled or incapacitated that such disability or incapacity is permanent in nature or likely to continue indefinitely. Closing Attorney shall base this determination on communications with the members of Planning Attorney’s family, if available, and at least one written opinion of a licensed physician or other medical professional who either diagnosed, treated or was responsible for the medical care of

¹ To ensure compliance with HIPAA, the Planning Attorney, upon execution of the Agreement to Close Law Practice, should also sign two written authorizations, one to the health care provider, the second with the provider line blank, identifying the Closing Attorney and authorizing the disclosure of information relating to the Planning Attorney’s capacity to practice law upon request by Closing Attorney. See HIPAA release form.

Planning Attorney. As part of the process of determining whether Planning Attorney is disabled, incapacitated, or otherwise unable to continue the practice of law, all individually identifiable health information and medical records may be released to Closing Attorney, even though the authority of the Closing Attorney has not yet become effective. This release and authorization applies to any information governed by the Health Insurance Portability and Accountability Act of 1996 (HIPAA), as amended 42 U.S.C. § 201 and 45 C.F.R. § 160. In reaching the reasonable determination that Planning Attorney is unable to practice law by reason of his death, disability, incapacity or other inability to act, Closing Attorney may also consider the opinions of colleagues, employees, friends or other individuals with whom Planning Attorney maintained a continuous and close relationship. In the event of Planning Attorney's death, Closing Attorney's authority to act under this agreement shall be confirmed in writing by the representative of Planning Attorney's estate. Closing Attorney shall sign an affidavit stating the facts upon which his determination is based, and such affidavit shall, for the purposes of this agreement, be conclusive proof that Planning Attorney is disabled, incapacitated, or otherwise unable to continue the practice of law.

3. **General Power and Appointment of Closing Attorney as Attorney-in-Fact.** Upon reaching the determination that Planning Attorney is unable to continue the practice of law by reason of disability, incapacity or other inability to as provided herein, and is unable to close his practice, Planning Attorney consents to and authorizes Closing Attorney to take all reasonable actions to close Planning Attorney's law practice. Planning Attorney appoints Closing Attorney as his attorney-in-fact with full power to do and accomplish all of the actions expressed and implied by this Agreement as fully and completely as Planning Attorney would do personally but for his inability.
4. **Specific Powers.** Planning Attorney consents to and authorizes the following actions by Closing Attorney in addition to any other actions Closing Attorney in his sole discretion deems reasonable to carry out the terms of this Agreement:
 - a. **Access to Planning Attorney's Office.** To enter Planning Attorney's office and use his equipment and supplies as needed to close Planning Attorney's practice.
 - b. **Designation as Signatory on Financial Accounts.** To replace Planning Attorney as signatory on all of Planning Attorney's law office accounts with any bank or financial institution may rely on this authorization unless such bank or financial institution has actual knowledge that this Agreement has been terminated or is no longer in effect.
 - c. **Opening of Mail and/or Emails.** To receive, sign for open and review Planning Attorney's law practice mails and emails and to process and respond to them, as necessary.
 - d. **Possession of Property.** To take possession, custody and control over all of Planning Attorney's property relating to his law practice, real and personal, including client files and records.

- e. **Access to and Inventory/Examination of Files.** To enter any storage location where Planning Attorney maintained his files and to inventory and examine all client case files, including client interest with a specific file or client, he shall assign the file to the Successor Closing Attorney in accordance with paragraph 8(b). Any confidential information learned by the Closing Attorney must not be revealed by him and consideration must be given as to whether the Closing Attorney may continue to represent his own client.
- f. **Notification to Clients.** To notify clients, potential clients and those who appear to be clients, of Planning Attorney's death, disability, incapacity or other inability to act, and to take whatever action Closing Attorney deems appropriate to protect the interests of the clients, including advising clients to obtain substitute counsel.
- g. **Transfer of Files.** To safeguard files and arrange for their return to clients, obtain consent from clients to transfer files to new attorneys, transfer files and property to clients or their new attorneys and to obtain receipts therefor.
- h. **Storage of Files and Attorney's Records.** To arrange for storage of closed files, unclaimed files, and records that must be preserved for six (6) years under Rule 1.15(I)(a) of the Georgia Rules of Professional Conduct.
- i. **Transfer of Original Documents.** To arrange for and transfer to clients all original documents including wills, trusts and deeds, unless other acceptable arrangements can be made.
- j. **Extensions of Time.** To obtain client's consent for extensions of time, contact opposing counsel and courts/administrative agencies to obtain extensions of time, and apply for extensions of time, if necessary, pending employment of new counsel by clients.
- k. **Litigation.** To file motions, pleadings, appear before court, and take any other necessary steps where the clients' interests must be immediately protected pending retention of other counsel.
- l. **Notification to Courts and Others.** To contact all appropriate agencies, courts, adversaries and other attorneys, professional membership organizations such as the State Bar of Georgia or local bar associations, the Office of Court Administration, and any other individual or organization that may be affected by Closing Attorney's inability to practice law and advise them of Planning Attorney's death or other inability to act and further advise that Planning Attorney has given this authorization to Closing Attorney.
- m. **Collection of Fees and Return of Client Funds.** To send out invoices for unbilled work by Planning Attorney and outstanding invoices, to prepare an accounting for clients on retainer, including return of client funds, to collect fees and accounts

receivables and, if deemed necessary or appropriate by Closing Attorney, to arbitrate or litigate fee disputes or otherwise collect accounts receivables on behalf of Planning Attorney or Planning Attorney's estate and to prepare an accounting of each client's escrow fund and arrange for transfer of escrow funds, including obtaining consent from clients to transfer escrow funds and acknowledge receipt of escrow funds by Planning Attorney, other counsel or client.

- n. **Payment of Business Expenses to Creditors.** To pay business expenses such as office rent, rent for any leased equipment, library expenses, salaries to employees or other personnel, to determine the nature and amount of all claims of creditors including clients of Planning Attorney and to pay or settle same.
- o. **Personnel.** To continue the employment of Planning Attorney's employees and other personnel to the extent necessary to assist Closing Attorney in the performance of his duties, to compensate and to terminate such employees or other personnel, to employ new employees or other personnel if their employment is reasonably necessary to Closing Attorney's performance of his duties hereunder, to employ or dismiss agents, accountants, attorneys or others and to reasonably compensate them.
- p. **Termination of Obligations.** To terminate or cancel legal, commercial or business obligations of Planning Attorney including, if reasonable under the circumstances, terminating, cancelling, extending or modifying any office lease or lease of equipment, such as a copier, computer or other equipment.
- q. **Insurance.** To purchase, renew, maintain, cancel, make claims against or collect benefits under fire, casualty, professional liability, or other office insurance of Planning Attorney, to notify any professional liability insurance carriers of Planning Attorney's coverage, including the addition of Closing Attorney as an insured under said policy.
- r. **Taxes.** To prepare, execute file or amend income, information or other tax returns or forms and to act on behalf of Planning Attorney's law practice in dealing with the Internal Revenue Service, any division of the Georgia Department of Revenue, or any office of any other tax department or agency.
- s. **Settlement of Claims.** To settle, compromise, or submit to arbitration or mediation all debts, taxes, accounts, claims, or disputes between Planning Attorney's law practice and any other person or entity and to commence or defend all actions affecting Planning Attorney's law practice.
- t. **Execution of Instruments.** To execute, as Planning Attorney's attorney-in-fact, any deed, contract, affidavit or other instrument on behalf of Planning Attorney.
- u. **Attorney as Fiduciary.** To resign any position which Planning Attorney holds as a fiduciary, such as executor or trustee, and to notify other named fiduciaries, if

any, and beneficiaries of the estate or trust; if the trust or will does not name a successor fiduciary, to apply to the court for appointment of a successor fiduciary and to confer with the personal representative of the Planning Attorney's estate with respect to the obligation of such personal representative to account for the assets of the estate or trust that Planning Attorney was administering.

- v. **Power of Sale and Disposition.** To sell or otherwise arrange for disposition of the Planning Attorney's furniture, books or other personal property, whether located in Planning Attorney's law office or off-site, so long as such property is incidental to his law practice.
- w. **Representation of Planning Attorney's Clients.** To provide legal services to Planning Attorney's clients, provided that Closing Attorney has no conflict of interest, obtains the consent of Planning Attorney's clients, and does not engage in conduct that violates Rules 1.7, 1.8, and 1.10, respectively, of the Georgia Rules of Professional Conduct. If Planning Attorney's clients engage Closing Attorney to perform legal services, Closing Attorney shall have the right to payment for such services from such clients.
- x. **Access to Safe Deposit Box.** To open Planning Attorney's safe deposit box used for his law practice, to inventory same, and to arrange for the return of property to clients.

5. **Preservation of Attorney-Client Privilege and Confidences and Secrets of Client.** Closing Attorney shall maintain the confidences and secrets of a client and protect the attorney-client privilege as if Closing Attorney represented the clients of Planning Attorney.

6. **Sale of Planning Attorney's Practice.** In the event of Planning Attorney's death, disability, incapacity, or other inability to act, Closing Attorney shall have the power to sell Planning Attorney's law practice in accordance with Rule 1.17 of the Georgia Rules of Professional Conduct. In the case of the death of Planning Attorney, the sale shall be approved by the Executor or Administrator of Planning Attorney's estate or other personal representative of the deceased Planning Attorney. Such power shall include, without limitation, the authority to sell all assets of the Planning Attorney's practice such as good will; client files and fixed assets such as furniture and books; to advertise Planning Attorney's law practice; to arrange for appraisals; and to retain professionals such as lawyers and accountants to assist Closing Attorney in the sale of the practice. Upon the sale of the practice, Closing Attorney will pay Planning Attorney or Planning Attorney's estate all net proceeds of sale.

[Note: Planning Attorney should consider adding a provision to his Will specifying the manner in which the sale of the law practice shall be conducted, such as whether the sale shall be consummated by Closing Attorney, Executor or Administrator and by what method of valuation.]

7. Compensation. Closing Attorney shall be paid reasonable compensation for the services performed in closing the law practice of Planning Attorney. Such compensation shall be based upon the time allocated to and complexity associated with successfully closing the law practice. Closing Attorney agrees to maintain accurate and complete time records for the purpose of determining his compensation. Closing Attorney's compensation shall be paid from the funds of Planning Attorney's law practice.

8. **Resignation of Closing Attorney and Appointment of Successor Closing Attorney.**

a. Prior to the effective date of this agreement, Closing Attorney may resign at any time by giving written notice to Planning Attorney. After the effective date of this Agreement, Closing Attorney may resign by giving sixty (60) days written notice to Planning Attorney, or if Planning Attorney is deceased to Planning Attorney's Executor or Administrator, subject to any ethical or professional obligation to continue or complete any matter to which Closing Attorney assumed responsibility.

b. If Closing Attorney resigns or otherwise is unable to serve, Planning Attorney appoints _____ as Successor Closing Attorney, and Successor Closing Attorney consents to this appointment as evidenced by his signature to this Agreement. Successor Closing Attorney shall have all the rights and powers, and be subject to all the duties and obligations of Closing Attorney. During the tenure of Closing Attorney, Successor Closing Attorney shall review and take any necessary action with respect to those client files of Planning Attorney in which Closing Attorney identifies a conflict or potential conflict of interest.

c. In the event of Closing Attorney's resignation or inability to serve, Closing Attorney shall provide five (5) days written notice thereof to Successor Closing Attorney at his address set forth below.

d. Closing Attorney or Successor Closing Attorney shall not be required to post any bond or other security to act in their capacity.

9. **Liability and Indemnification of Closing Attorney.** Closing Attorney shall not be liable to Planning Attorney or Planning Attorney's estate for any act or failure to act in the performance of his duties hereunder, except for willful misconduct or gross negligence. Planning Attorney agrees to indemnify and hold harmless Closing Party from any claims, loss or damage arising out of any act or omission by Closing Attorney under this Agreement, except for liability or expense arising from Closing Attorney's willful misconduct or gross negligence. This indemnification does not extend to any acts, errors or omissions of Closing Attorney while rendering or failing to render professional services as attorney for former clients of Planning Attorney.

10. **Revocation, Amendment and Termination.**

a. After the effective date of this Agreement, Planning Attorney may at any time remove or replace Closing Attorney or Successor Closing Attorney, or revoke,

amend or alter this Agreement by written instrument delivered to Closing Attorney and Successor Attorney, and such removal, replacement or revocation, as the case may be, shall be effective within three (3) days of the transmission of such written instrument to Closing Attorney and Successor Closing Attorney; provided, however, that any amendment modifying Closing Attorney's obligations hereunder or his compensation hereunder shall require Closing Attorney's prior written consent to be made effective.

- b. This Agreement shall terminate upon (i) delivery of written notice of termination by Planning Attorney to Closing Attorney and Successor Closing Attorney; in accordance with this Section 10; or (ii) delivery of a written notice of termination to Closing Attorney by the Executor or Administrator of Planning Attorney's estate upon a showing of good cause, or by a Guardian of the property of Planning Attorney appointed under § 29-4-42.

11. **Miscellaneous.**

- a. This Agreement shall be governed and interpreted in all respects by the laws of the State of Georgia.
- b. Whenever necessary or appropriate for the interpretation of this Agreement, the gender herein shall be deemed to include the other gender and the use of either the singular or the plural shall be deemed to include the other.
- c. The paragraph headings are for convenience only and are not to be relied upon for interpretation of this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written.

Planning Attorney Date _____
[INSERT ADDRESS & OTHER CONTACT INFO]

Closing Attorney Date _____
[INSERT ADDRESS & OTHER CONTACT INFO]

Successor Closing Attorney Date _____
[INSERT ADDRESS & OTHER CONTACT INFO]