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Agreement for Life Care Plan

This is an agreement between the **ELDER LAW PRACTICE of DAVID L. MCGUFFEY, LLC** (“We” or “Us”) and **John Smith** and Sally Smith (“You”) for services We will provide to You. This Agreement is entered into as of 30 October 2009.

Services To Be Provided. You agree that we will represent you in the development, preparation, implementation, and monitoring of a Life Care Plan. This plan and all services provided are for the sole benefit of John Smith or Sally Smith. For individuals who now have or may have chronic long-term care needs, a Life Care Plan will help you plan for current and future needs. A Life Care Plan includes assistance with coordination of community resources, and identifying payor sources (such as Medicaid, drug discount programs, and the like); where appropriate, we will assist you in accessing those benefits programs. After the development of a Life Care Plan, it can be used by you as a guide towards maintaining the highest quality of life.

Goals of the Plan: (1) promoting your good health, safety, and well-being at all times; (2) assisting with health care and long-term care decision making for the remainder of your lifetime; (3) identifying and accessing good long-term care, whether at home or outside of the home, and identifying all potential sources of payment for such care; (4) attaining eligibility for Medicaid and other public benefits programs for which you may be entitled; (5) protecting family wealth for your benefit and the benefit of your heirs. Please take note that the protection of family wealth is not the primary goal and that this is a life care plan, not an asset protection plan. We recommend that you always spend whatever money is necessary to provide for your good health, safety and well-being.

Our Services Include: Consultations, drafting and implementation of a coordinated Life Care Plan designed to achieve the goals above. Our fee includes all necessary legal documents such as wills and powers of attorney, trusts and the like to achieve the goals we agree on in your Plan; assistance in asset restructuring; and plan-related research, conferences, telephone calls, and the like ordinary and necessary to implement and monitor the Plan. Our goal is to design a plan that improves your situation and then to educate you concerning how it should be implemented. In some cases, we will assist you with the implementation (e.g., if your plan includes Medicaid, then we would assist you in applying for Medicaid). In other cases, we would assist you in planning and restructuring your estate to achieve eligibility for benefits, but we would not make the application for you (e.g., Veteran’s benefits). In many instances, we will provide you

with education designed to help you achieve your goals (e.g., caregiver coaching and the like).

We do not offer a one-size fits all plan. Your plan will be unique for you and will be based on, among other things, preferences you express. We will provide you with our advice concerning possible planning options, but often we are *balancing risks* (e.g., sometimes an action helps us accelerate Medicaid eligibility, but triggers a tax liability). Our focus will remain on you, your preferences and maintaining resources that can be used for your benefit as we balance risks.

If your plan includes Medicaid eligibility, we will represent you through the *first fair hearing* level to determine the validity of any strategy that you follow at our advice in order to qualify for Medicaid nursing home benefits and protect your assets from Medicaid estate recovery. This Agreement does not cover additional fair hearings or appeals beyond the fair hearing.

Your Plan includes the services of our Elder Care Coordinators. An Elder Care Coordinator will be assigned to work with you in the development and implementation of your Plan. Although Mr. McGuffey is available for meetings, our practice is structured as a planning practice and to allow Mr. McGuffey to work with a broad range of clients; for that reason, your Elder Care Coordinator will be your primary contact with our firm and will work directly under the supervision of David L. McGuffey, Attorney.

Plan services do **not** include: litigation of any kind (hearings, trials, appeals) unless we specifically agree to it in a separate written agreement; conservatorships, guardianships and probate court work is not included; nursing home discharge hearings; detailed tax planning, preparation and filing of state and federal income, gift, or estate tax returns; Social Security claims; preparation, presentation or prosecution of a claim for Veteran's benefits; and any matters involving travel more than 100 miles from our office in Dalton, Georgia (in which case an additional fee may be charged); extensive care assessment and management services. Although we will provide some case management advice, if you request intensive case management assistance, then an additional fee may apply (See Section 7 below). We will not offer advice regarding investments and financial planning. Our Elder Care Coordinators do not provide personal, hands-on care, or medical care; but do provide coordination, management, and assessment services designed to help you develop and implement our plan. The purpose of involving our Elder Care Coordinators is to assist Mr. McGuffey in serving as your health care advocate. We are a law firm and, therefore, any assessment we perform is to assist us in providing legal services. Although we will educate you concerning your health care rights, we do NOT provide any health care services.

1. **Additional Services.** The scope of our representation is strictly limited to this Agreement and this Agreement relates to planning your estate. If you need any other services which may or may not be related to the above matter, you should speak with us about a new agreement, which would have a separate fee, and which must be agreed to in writing signed by you and by us.
2. **Fees.** The fee for the services described above (the "Plan") is \$_____, due on signing. Thereafter, unless otherwise agreed, you will not owe us any additional legal fee for what we do for you under the Plan. Fees are earned when you pay them to us and are not refundable. We do not begin any work until the fee quoted above is paid.

There may be instances where we would be required to produce an invoice for services rendered on an hourly basis. You understand that if for any reason we are required to bill at an hourly rate, Mr. McGuffey's hourly fee is \$350 and each Elder Care Coordinator's hourly fee is \$100; hourly fees are subject to increase at any time. You understand and agree that we are providing services at current market value and that our fee represents the market value of our services.

3. **Costs and Expenses.** The fee does not include out of pocket costs or expenses that we may have to spend on your behalf. In addition to our fees, you must pay (if these are a part of your Plan) such costs and expenses as court costs, accountants' fees, appraisers' fees, title search fees, recording fees, overnight delivery charges, and any other expenses that are reasonably related to your Plan. You will be advised of any expenses before charges are incurred.
4. **No Guarantee.** We will provide conscientious, competent, and diligent services and at all times will seek to achieve solutions that are just and reasonable for you. However, because of the uncertainty of legal matters, especially pertaining to the public benefits laws, the interpretation and changes in the law and many unknown factors, we cannot and do not warrant, predict, or guarantee results or the final outcome of any matter.
5. **When this Agreement Ends.** Most of our initial planning work will take place within the first 90 days after you hire us and, thereafter, we are primarily monitoring your plan. Our obligation to provide services under this Agreement ends upon the earlier of (i) your death; (ii) 2 years after this agreement is executed; or (iii) any change in your marital status. Our obligation to perform services under the Plan also ends if you move out of the State of Georgia. Our obligation may also end for any reason in which we are unable to provide services to you because it is impractical, impossible, unlawful, or unethical, or if you intentionally provide us with incorrect information. Our obligation ends when we have done everything we agreed to do under the Plan, and there is nothing else for us to do for you. Our obligation also ends if you terminate our services. If you apply for Medicaid, this Agreement does not constitute a countable resource under the Medicaid rules and, therefore, our obligation under this agreement terminates even if we continue to provide some services on a *pro bono* basis.
6. **Extending this Agreement.** In our experience, most of our clients do not require representation for more than two to five years. However, if your situation is different and you continue to require planning services after the expiration of this Agreement, then we will review your circumstances with you and discuss extending your representation on an hourly basis, a monthly basis or for an additional flat fee.
7. **Intensive Case Management.** Beyond developing the Life Care Plan, providing legal services associated with implementing it, most of what we do is educational as we work to empower you to participate effectively in the long-term care system. As such, we are not agreeing to do things that you could do for yourself; instead, we are agreeing to teach you how to do things the right way and serve as your advocate as we guide you through the process. In assisting you, we routinely do things such as counsel with you concerning your health care rights, help you identify providers who can supply home health care, assisted living care and nursing home care. We

routinely help review contracts with health care providers. We are also, for example, available to go with you to evaluate a long term facility so you know what to look for, or to attend an initial care plan meeting to help you understand the process. Sometimes, however, our clients request more intensive services. Extensive case management services would include visiting multiple long-term care facilities, attending care plan meetings other than an initial meeting where we teach you the process and other than meetings involving a dispute with a facility. Intensive case management services would also include securing documentation that you should be able to secure without our assistance, such as insurance policies, financial accounts, deeds and other records. Although we are willing to assist you, these additional services beyond education and empowerment would be subject to an additional hourly fee. We will speak with you about these matters before charging an additional fee so you are not surprised with a bill. You should keep in mind, however, that even if you request these additional case management services, we are not health care providers so our purpose is not to replace any health care services or to provide any personal care services; rather, we would be assisting you in coordinating communication between providers and in evaluating your rights as you interact with health care providers.

8. **This and That.** The fee you pay for the Life Care Plan is based upon the accuracy and completeness of the information you provided to us. The fee may be adjusted (up or down) to account for deviations from the original information. In part, this is because revised disclosures must be made to Medicaid and other agencies if inaccurate information is given to us. We include, as a *pro bono* matter, a “final meeting.” This meeting takes place after your death with your family or other representatives. At the final meeting, we review what needs to be done (if anything) to administer your estate and will usually offer our help if your family needs our services with those things, such as title transfers, probate or non-probate, and the like. However, the Life Care Plan fee does not cover these services.
9. **Duty to Provide Correct Information and to Update.** If part of your Plan includes an application for public benefits such as Medicaid, you agree that you will provide us with accurate information prior to the application for public benefits. You also agree to promptly disclose any change in financial condition to Medicaid officials within 10 days.
10. **Elder-Centered Approach:** We are an Elder Law firm. We will not knowingly take a position that harms a person who is elderly or who has special needs. Our goal is to improve the quality of life for those we serve. By entering into this Agreement with us, you expressly authorize us to act in your best interests at all times in order to further this goal.
11. **Family Agreement:** You warrant that you have advised us if any of your family members object to our planning approach and that you will immediately advise us if any of your family members raise an objection. One of our goals in planning for you is to preserve family relationships and, therefore, we strive, where possible, to assist you in that regard. A secondary concern is to avoid unnecessary litigation, particularly over matters that can be cleared up through family agreement. Your agreement to bring these matters to our attention does not mean that we insist upon

you resolving family disagreements; the decision regarding how to address disagreements is yours and yours alone, but we cannot provide you with advice if you do not bring them to our attention.

12. **Fraudulent Conveyances.** We will not knowingly assist you in transferring assets for the purpose of avoiding payment to legitimate creditors. Any asset protection strategies we employ may or may not protect assets under the Medicaid rules, but they do not prevent other creditors from asserting claims. It is imperative that you pay all legitimate debts before you employ any strategy that includes a transfer of assets. If you have questions about whether debts are legitimate, please ask us. Similarly, if your Agent transfers assets in a manner that would change your estate plan, then disappointed heirs might contend that your Agent engaged in fraud, undue influence or coercion even though failure to do so might result in dissipation of your estate paying nursing home bills. To prevent this from happening, we strongly advise you to consult with other family members before taking any such action.
13. **Estate Administration and Distributions.** After the death of someone we are planning for, probate is often unnecessary. That does not, however, mean that potential heirs cannot assert a claim against the decedent's assets. If you ask us to employ an asset protection plan that reduces or eliminates the probate estate, then you must satisfy any legal obligation owed to other heirs. Failure to do so may result in contested probate litigation. In this regard, we remind you that our representation ends at your death and any work we perform probating your estate is subject to an additional fee.
14. **Fiduciary Conflict Waiver:** You hereby authorize us to represent any fiduciary of yours (such as an attorney-in-fact under a durable power of attorney) and to release any and all information and documentation to such fiduciary without limitation in regard to such representation. It is understood that providing advice to your fiduciary may cause a conflict of interest to arise. You have carefully considered the possibility of a conflict between yourself and your fiduciary. By signing this Agreement, you acknowledge that such conflicts may arise and waive such conflicts of interest as they apply to us.
15. **Communication with Caregivers and Family Members:** You have the right to keep your confidential matters private. However, sometimes it is beneficial, for you, if we communicate with your family and, in particular, those who are your caregivers. Please indicate whether you authorize us to communicate and work with persons holding a power of attorney for finances or for health care.
 - I authorize you to communicate and work with persons holding a power of attorney over my finances and health care.
 - I do not authorize you to communicate and work with persons holding a power of attorney over my finances and health care.

Signatures. You and we have read and agree to this Agreement. You have been given a copy of this Agreement. You understand that you can review this Agreement with another attorney before retaining us.

Elder Law Practice of David L. McGuffey, LLC

By _____ Dated _____
David L. McGuffey, Attorney

By _____ Dated _____
Your Name or
Attorney-in-Fact under a Power of Attorney

Exhibit A to Fee Agreement

Real Estate and Insurance Matters

Mr. McGuffey holds a Georgia real estate license (#332690) and a Georgia insurance license for life and health (#761518). Accordingly, although you are under no obligation to do so, you may request his services in listing property for sale, or in purchasing life insurance, health insurance, supplemental insurance, long-term care insurance and annuities. You may also use any other agent you choose to use in securing these services. If you request these services from Mr. McGuffey, then by initialing below you understand that Mr. McGuffey may be entitled to a separate fee in connection with providing those services. Typically this would be a referral fee paid by a co-operating real estate agent or insurance agent.

Fees for Intensive Case Management

If you request intensive case management as described above, then an additional fee may apply. For example, if you ask us to attend every care plan meeting at a facility, then we would charge a fee for attending meetings other than (1) an initial meeting where we assist you in learning how to participate effectively; and (2) meetings where we are working with you to resolve a dispute. Similarly, although we will be evaluating and organizing information, our fee does not cover contacting various insurance companies, financial institutions and the like to track down the information necessary to assist you since most of this information should already be in your possession.

If you request intensive case management, then those services are generally provided by one of our care coordinators working under Mr. McGuffey's supervision. We bill our care coordinators at an hourly rate of \$150. We will speak with you about these matters before charging an additional fee so you are not surprised.

Initials