

THIS CONTRACT IS SUBJECT TO ARBITRATION
UNDER THE FEDERAL ARBITRATION ACT

RETAINER AGREEMENT

Mail or Fax to: William P. Kelly, Esq.
McCarthy | Kelly LLP
52 Duane Street – 7th Floor
New York, NY 10007
Tel: (212) 732-5040
Fax: (212) 732-6323

WHEREAS, the undersigned (“Client”) agrees to retain the law firm of McCarthy | Kelly LLP (“Firm”) (collectively “Parties”) as attorneys in the prosecution of all claims for property damage and for all insurance claims arising out of “Superstorm Sandy” damage occurring on or about October and November 2012 (“Agreement”). This Agreement does not contemplate representation of Client in any ancillary proceedings or counterclaims absent expressed written agreement by Firm. Further the Parties specifically agree as follows:

1. Attorneys’ Fees: Although Firm has advised the Client of the right to retain a Firm under an arrangement whereby Firm would be compensated on the basis of the reasonable value of services rendered or on an hourly rate, Client agrees that Firm shall be paid as follows: An undivided one-third (33.33%) in and to any recovery Client may have in this matter from any party through claims management services. Firm will provide case management services as a third party administrator for the client, to evaluate and manage the processing of a first party insurance claims for the client. As part of these claims management services, Firm will retain independent insurance adjusters, consult and/or negotiate with managers and/or third party administrators on the claim. Firm will compile damages and process the claim pursuant to the policy in compliance with all state and federal laws. Firm will perform actions necessary to manage the insurance process for the best interests of the client and if Firm and client determine that litigation is necessary to fully pursue all rights to any proceeds or recovery due to client, Firm agrees to provide legal services to client and to file suit on client’s behalf and provide all legal services to litigate and pursue any claims arising from client’s claim. The fee will be calculated on the gross amount of the recovery in any settlement or judgment before deduction of costs, expenses, liens, reimbursement of benefits, subrogated claims or any other deductions. Client hereby assigns the fee described above whether such recovery is obtained by payment, settlement, compromise or judgment and further recognize such interests of Firm in accordance with any applicable state and federal laws.

2. Costs and Expenses: Firm will advance all costs associated with your case. Firm will be reimbursed for any costs advanced on behalf of the Client in the event of recovery. However, in the event there is no recovery, the client shall have no liability for any disbursements made on the client’s behalf. In no case will the client be responsible for any expenses in the excess of the settlement or award, if any. Further, the parties expressly understand that, in the event that no recovery is obtained on the Client’s claim, the attorney will not charge the Client for Firm’s time, services, fees, costs, or other expense which may have been advanced.

3. Attorneys’ Lien: Firm is given a lien on the claim or cause of action, on any sum recovered by way of settlement, and on any judgment that may be recovered, for the sum and share mentioned above as the attorney’s fee. The Client further agrees that the attorney shall have all general, possessory, or retaining liens and all special or charging liens known to the common law. Computation of the lien will be made after deducting from the amount of recovery and returning to Firm any costs or other expenses advanced by Firm, as herein provided. Firm shall be entitled to his or her full contingent share of any settlement or judgment on the claim for prosecution of which the attorney is hereby retained, notwithstanding the Client may discharge the attorney or obtain a substitution of attorney before such settlement is made or judgment is had.

4. Tax Advice: The Client understands that Firm will not provide any advice regarding the tax consequences of accepting money from a settlement or award. CLIENT SHOULD CONTACT A TAX PROFESSIONAL REGARDING ANY TAX CONCERNS REGARDING ANY SETTLEMENT PRIOR TO THE SETTLEMENT.

5. Termination: Firm expressly reserves the right to withdraw its representation at any time upon reasonable notification to Client subject to applicable ethical rules, if any. Should Client terminate Firm, Firm shall continue to be entitled to its legal fees on any and all sums recovered as a result of claims as detailed in paragraph 3 of this Agreement.

6. Appeals: The above contingency fee does not contemplate any appeal. Firm is under no duty to perfect or prosecute any such appeal until a satisfactory fee arrangement is made in writing regarding costs and attorneys’ fees.

7. Statute of Limitations: Client understands that the Statute of Limitations period for the case must be investigated and that this Agreement is made subject to that investigation as well as an investigation of the entire case. Client understands that the statute of limitations may have run on the case and agrees to hold Firm harmless in the event the Statute of Limitations has run for any reason.

8. No Guarantee of Final Outcome: No attorney can accurately predict the outcome of any legal matter; accordingly, Firm makes no express or implied representations as to the final outcome of this matter. Client further understands that it must immediately report any changes in its address or telephone number to Firm.

9. Approval Necessary for Settlement: The Client hereby grants Firm power of attorney so that it may have full authority to prepare, sign and file all legal instruments, pleadings, drafts, authorizations, and papers as shall be reasonably necessary to conclude the representation including settlement and/or reducing to possession any and all monies or other things of value due to the Client under its claim as fully as the Client could do so. Firm is also authorized and empowered to act as the Client’s sole negotiator in any and all negotiations concerning the subject of this Agreement.

10. Association with other Attorneys: Firm may, at their own expense, use or associate other attorneys and other Firms in the representation of the Client. The Client understands that Firm is a limited liability partnership with a number of attorneys. Several of those attorneys may work on Client's case.

11. Associate Counsel: Another Attorney and/or other Firm may participate in the division of fees in this case and assume joint responsibility for the representation of the Client, either in the event that Firm retains associate counsel or that the Client later chooses new counsel, provided that the total fee to the Client does not decrease as a result of the division of fees and that the attorneys involved have agreed to the division of fees and assumption of joint responsibility.

12. New York Law Applies: This Agreement shall be construed under and in accordance with the laws of the State of New York and the rights, duties and obligations of Client and of Firm's representation of the Client and the laws of the State of New York shall govern regarding anything covered by this Agreement.

13. Arbitration: Any and all disputes, controversies, claims or demands arising out of or relating to (1) this Agreement or (2) any provision hereof or (3) the providing of services by Firm to Client or (4) the relationship between the Parties, whether in contract, tort or otherwise, at law or in equity, for damages or any other relief, shall be resolved by binding arbitration pursuant to the Federal Arbitration Act in accordance with the Commercial Arbitration Rules then in effect with the American Arbitration Association. The Arbitration panel will consist of three arbitrators. Client shall not file a class action against at Firm or seek to assert any claims or demands against Firm by or through a class action, either as the named plaintiff or as a member of the class, but rather shall submit his/her claims or demands to binding arbitration). This arbitration provision shall be enforceable in either federal or state court in New York County, New York pursuant to the substantive federal laws established by the Federal Arbitration Act. Any party to any award rendered in such arbitration proceeding may seek a judgment upon the award and any Supreme Court in New York County, New York having jurisdiction may enter that judgment.

14. Parties Bound: This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, executors, administrators, legal representative, successors and assigns.

15. Legal Construction: In case any one or more of the provisions contained in this Agreement shall for any reason be held invalid, illegal or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provisions thereof and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

16. Prior Agreements Superseded: This Agreement constitutes the sole and only Agreement of the Parties hereto and supersede any prior understandings or written or oral agreement between the parties respecting the within subject matter. This Agreement may only be revised in writing.

I certify and acknowledge that I have had the opportunity to read this Agreement. I further state that I have voluntarily entered into this Agreement, that I have been advised that I may seek legal counsel to review this Agreement before signing, and that I am fully aware of the terms and conditions contained herein.

SIGNED AND ACCEPTED ON THIS day of _____, 2015

<u>Signature:</u>	McCarthy Kelly LLP
<u>Client:</u>	By: William P. Kelly
<u>Address:</u>	52 Duane Street New York, NY 10007
<u>Tel (Home):</u>	(212) 732-5040
<u>Tel (Cell):</u>	
<u>Email:</u>	bk@mccarthykelly.com

SANDY QUESTIONNAIRE

1. Name:
(Please indicate **all** named insureds)

Mailing Address:

Home Telephone:

Cell phone/other:

E-mail:

Address of Loss (**damaged** property address):

Own Rent

Do you have a mortgage on the property? Yes No

What was the approximate value of your home pre-Sandy (What could you have sold the house for):

2. If Hurricane Sandy damaged your home or business, what percentage of the damage was caused by wind and what percentage was caused by flood:

_____ % wind damage

What type of damage was caused by wind? _____

_____ % flood damage

How much flood water did you have? _____

Is there any **wind** damage to your home that **exceeds** the amount the insurance company has paid you to date?

Yes No

Do you have any estimates to prove this? Yes No

Is there any **flood** damage to your home that **exceeds** the amount the insurance company has paid you to date?

Yes No

Do you have any estimates to prove this? Yes No

3. Who is your **homeowner's** insurance company?

Name:

Address:

Policy No.:

Agent Name, Address and Phone number:

4. Who is your **flood** insurance company?

Name:

Address:

Policy No.:

Agent Name, Address and Phone number:

5. What are your **homeowner's** insurance policy limits (as of 10/29/2012)?

Structure:

Contents:

Loss of Use (ALE):

Do you have a **windstorm exclusion/endorsement** in your **homeowner's** policy?

Yes No Don't Know

How much has your **homeowner's** insurance company paid you to date for your **wind** loss?

Structure:

Contents:

Loss of Use (ALE):

6. What are your **flood** insurance policy limits (as of 10/29/2012)?

Structure

Contents

How much has your **flood** insurance company paid you to date for your **flood** loss?

Structure

Contents

7. Was a Professional Engineer sent to your home by your **insurance carrier** to perform a structural (foundation) inspection?

Yes No

If Yes, please indicate the engineering firm sent by the insurance carrier:

Was your flood claim **denied** (in whole or in part) based on this engineering report? Yes No

Do you have a copy of the engineering report? Yes No

8. Did you hire a Professional Engineer to perform a structural (foundation) inspection?

Yes No

If Yes, please indicate the engineering firm you hired:

Do you have a copy of the engineering report? Yes No

9. Was your home demolished? Yes No

If Yes, what was the date of the demolition?

If No, have you made any repairs to the property? Yes No

If you have made repairs to the property, please indicate the status of repairs (e.g., 100% complete, 50% complete, etc.):

If no repairs have been made, please indicate why:

10. Does the property contain a basement? Yes No

11. How many feet of water entered the basement (if applicable)? How many feet of water entered the main level of the property?

12. Please describe the damages to your property:

13. Did you hire a Public Adjuster to evaluate your Sandy-related damages? Yes No

If Yes, please indicate the name, address and phone number of P.A.:

14. Have you filed a lawsuit for your Sandy-related damages? Yes No

If Yes, was suit filed against your homeowner's insurance carrier, your flood insurance carrier or both? _____

Is the lawsuit(s) still pending? Yes No

15. Do you have a copy of the following?

A. All correspondence to and from insurance company? Yes No

B. All reports/estimates prepared by the insurance company? Yes No

C. All repair estimates, receipts, and/or repair bills? Yes No

D. All payments made by the insurance company? Yes No

16. Describe complaints with your insurer:

How much do you think you are owed by the insurance company?

Homeowner's

Flood

Comments:

Dated this _____ day of _____, 2015.