

## RETAINER AGREEMENT

### **1. Names and Addresses of parties entering into the agreement**

THIS AGREEMENT FOR LEGAL SERVICES by and between Domenick Napoletano, Esq., 351 Court Street Brooklyn, New York 11231 and The City of Long Beach New York whose address is 1 West Chester Street Long Beach New York 11561 This agreement constitutes a binding legal contract and should be reviewed carefully.

### **2. Nature of the services to be rendered**

a. The client retains the Law Firm or to render services in connection with:

- (1) To assist in the negotiation of the lease and/or licensing agreement between the City of Long Beach and the Martin Luther King Center, Inc. and/or;
- (2) The prosecution of a certain eviction proceeding to be commenced in the District Court Nassau County.

b. It is further understood that:

- (1) This agreement does not apply to any appeals or post-judgment actions, proceedings, or applications and that, if such engagement were to be accepted by this firm in the future, the firm's representation would have to be evidenced by execution of another and separate Retainer Agreement. However, this retainer agreement in no way obligates the firm to accept any such engagement in the future;

c. The client authorizes the Law Firm to take any steps which, after consultation with the client are deemed necessary or appropriate to protect the client's interest in the matter.

### **3. Amount of the advance retainer, if any, and what it is intended to cover.**

a. In order for us to begin our representation you have agreed to pay us and we have agreed to accept a retainer payment of **\$5,000.00** plus filing costs and the cost of service of process. The amount of our eventual fee will be based upon our regular schedule of established hourly time charges, along with any out-of-pocket disbursements (such as court costs, messenger services, transcripts of proceedings, long distance telephone calls, telexes, process service fees, mileage, deposition and court transcripts, and excess postage) which are incurred in your behalf.

b. The client further understands that the hourly rates apply to all time expended relative to the client's matter, including but not limited to, office meetings and conferences, telephone calls and conferences, either placed by or placed to the client, or otherwise made or had on the client's behalf or related to the client's matter, preparation, review and revision of correspondence, pleadings, motions, disclosure demands and responses, affidavits and affirmations, or any other documents, memoranda, or papers relative to the client's matter, legal research, court appearances, conferences, file review,

preparation time, travel time, and any other time expended on behalf of or in connection with the client's matter.

**4. The circumstances under which any portion of the advance retainer may be refunded. Should the attorney withdraw from the case or be discharged prior to the depletion of the advance retainer, the written retainer agreement shall provide how the attorney's fees and expenses are to be determined, and the remainder of the advance retainer shall be refunded to the client.**

a. In the event that we obtain a disposition either by way of a settlement agreement or by judgment by the court of the issues involved in your case, the aforementioned retainer fee shall also be the minimum fee charged to you, i.e., there will be no refund of the retainer fee. However, notwithstanding the above, if you discontinue our services prior to a disposition of your matter by agreement or judgment of the court, or if this firm is relieved as your attorneys by court order, any unearned portion of the retainer fee you advanced to this firm shall be refunded to you.

An example of how the minimum fee operates is as follows: If the firm resolves the matter with the expenditure of only 5 hours of time, there would be no refund to the client even though the time charges add up to less than the minimum fee.

Notwithstanding the above, if the attorney-client relationship is terminated without your matter having been concluded, e.g., if you were to discharge the Law Firm as your attorneys, or if the Law Firm were to withdraw its representation, a fair and reasonable fee would be determined in accordance with legally accepted standards. Presently, the legally recognized elements of a reasonable fee, as set forth in the Code of Professional Responsibility, are as follows:

- The time and labor required the novelty and difficulty of the questions involved and the skill requisite to perform the legal services properly.  
'The likelihood, if apparent or made known to the client, that the acceptance of the particular employment will preclude other employment by the lawyer. (You should know that the Law Firm, by accepting retention as your attorney, is clearly precluded from representing the opposing party against you.)

"The fee customarily charged in the locality for similar legal services".

- The amount involved and the results obtained.
- The time limitations imposed by the client or by circumstances.
- The nature and length of the professional relationship with the client.
- The experience, reputation and ability of the lawyer or lawyers performing the services.

**5. The client's right to cancel the agreement at any time; how the attorney's fee will be determined and paid should the client discharge the attorney at any time during the representation.**

a. You have the absolute right to cancel this retainer agreement at any time. Should you exercise this right, you will be charged only the fee expenses (time charges and disbursements) incurred within that period, based upon the hourly rates set forth in this retainer agreement, and the balance of the retainer fee, if any, will be promptly refunded to you. Presently, the legally recognized elements of a reasonable fee, as set forth in the Code of Professional Responsibility, are as follows:

- The time and labor required the novelty and difficulty of the questions involved and the skill requisite to perform the legal services properly.
  - The likelihood, if apparent or made known to the client, that the acceptance of the particular employment will preclude other employment by the lawyer. (You should know that the Law Firm, by accepting retention as your attorney, is clearly precluded from representing the opposing party against you.)
- The fee customarily charged in the locality for similar legal services.
- The amount involved and the results obtained.
  - The time limitations imposed by the client or by circumstances.
  - The nature and length of the professional relationship with the client.
  - The experience, reputation and ability of the lawyer or lawyers performing the services.

**6. How the attorney will be paid through the conclusion of the case after the retainer is depleted; whether the client will be asked to pay another lump sum;**

a. You agree to pay us such additional fees and to reimburse us for our advances on your behalf that may be due from time to time not later than 30 days from the date that we shall submit a bill to you for same. If an amount due to us is not paid within 30 days after our statement to you of the amount due, interest at one half of the prevailing statutory rate as set forth in the Civil Practice Law and Rules shall be added to the balance due to us.

**7. The hourly rate of each person whose time may be charged to the client; any out-of-pocket disbursements for which the client will be required to reimburse the attorney. Any changes in such rates or fees shall be incorporated into a written agreement constituting an amendment to the original agreement, which must be signed by the client before it may take effect.**

a. The retainer fee shall be credited toward an hourly rate of **\$455.00** per hour for time I expend.

b. In addition to the foregoing, your responsibility will include direct payment or reimbursement of this firm for disbursements advanced on your behalf, the same to include, but not necessarily be limited to, court filing fees, recording fees, charges of process servers, travel expenses, copying costs, messenger services, necessary secretarial overtime, transcripts and the customary fees of stenographers referable to examinations before trial in the event such examinations are utilized; any stenographer retained by this firm for such examinations requires a \$300.00 deposit for scheduled half day

examinations, and \$600.00 for the full day. It is specifically understood and agreed that such payment shall be made by you directly to the stenographer prior to commencing such examination, and the same shall apply to all court filing fees.

c. Each letter will be billed at a minimum of .05 minutes of an hour. Each email will be billed at a minimum of 0.05 minutes of an hour. These amounts have been arrived at as a result of calculating the time involved in retrieving the file, and examining the documents or letters required to dictate the letters or emails or respond to the Call, in addition to the time required to consider the problem arising from or to be dealt with in the call, letter or email.

d. The hourly rates set forth in this retainer agreement will remain in effect throughout the period of our representation for the matter set forth in this retainer agreement, unless changed by mutual consent of you and our firm, in which event any modification of the hourly rates shall be reduced to writing and signed by you and our firm.

**8. Any clause providing for a fee in addition to the agreed-upon rate, such as a reasonable minimum fee clause, must be defined in plain language and set forth the circumstances under which such fee may be incurred and how it will be calculated.**

**9. Frequency of Itemized billing, which shall be at least every 60 days; the client may not be charged for time spent in discussion of the bills received.**

a. You will be billed periodically, generally each month but in no event less frequently than every 60 days. Included in the billing will be a detailed explanation of the services rendered, by whom rendered, and the disbursements incurred by our firm in connection with your matter. Upon receipt of our bill, you are expected to review the bill and promptly bring to our attention any objections you raise to our bill. You will not be charged for time expended in discussing with us any aspect of the bill rendered to you.

**10. Client's right to be provided with copies of correspondence and documents relating to the case, and to be kept apprised of the status of the case.**

a. We shall keep you informed of the status of your case, and agree to explain the laws pertinent to your situation, the available course of action, and the attendant risks. We shall notify you promptly of any developments in your case, including court appearances, and will be available for meetings and telephone conversations with you at mutually convenient times. We do insist that appointments be made for personal visits to our offices. Copies of all papers will be billed a reasonable photocopy charge (at present, .10 cents per page) for these materials which will be included in your periodic billing, said rate and billing does not apply to digital or pdf documents.

**11. Whether and under what circumstances the attorney might seek a security interest from the client, which can be obtained only upon court approval**

**and on notice to the adversary.**

a. While we expect to be paid the fees due us in timely fashion, in situations where the client does not have funds readily available to pay additional fees as they accrue, we may, as an accommodation, agree to take as a security interest in the form of a confession of judgment, promissory note. You are advised that any such security interest can be granted to us only with the permission of the justice assigned to your case upon an application on notice to the opposing party.

**12. Under what circumstances the attorney might seek to withdraw from the case for nonpayment of fees and the attorney's right to seek a charging lien from the court.**

a. You are advised that if, in the judgment of this firm, we decide that there has been an irretrievable breakdown in the attorney-client relationship, or a material breach of the terms of this retainer agreement, we may decide to make application to the court in which your action is pending to be relieved as your attorneys. In such event, you will be provided with notice of the application and an opportunity to be heard. Should any fees be due and owing to this firm at the time of our discharge, we shall have the right, in addition to any other remedy, to seek a charging lien, i.e., a lien upon the property that is awarded to you as a result of equitable distribution in the final order or judgment in your case. No such lien may attach to maintenance or child support payments.

b. In the event that any bill from the Law Firm remains unpaid beyond a 30 day period, the client agrees that the Law Firm may withdraw its representation, at the option of the firm. In the event that an action is pending, and absent your consent, an application must be made to the Court for such withdrawal. Where the fee is unpaid for the period set forth above, the client acknowledges that in connection with any such withdrawal application, that the account delinquency shall be good cause for withdrawal.

**13. Should a dispute arise concerning the attorney's fee, the client may seek arbitration, which is binding upon both attorney and client; the attorney shall provide information concerning fee arbitration in the event of such dispute or upon the client's request.**

While we seek to avoid any disputes with our clients, and rarely have such disputes, in the event such a dispute does arise, you are advised that you have the right at your election, to seek arbitration to resolve the fee dispute. In such event, we shall advise you in writing by certified mail that you have 30 days from receipt of such notice in which to elect to resolve the dispute by arbitration, and we shall enclose a copy of the arbitration rules and a form for requesting arbitration. The decision resulting from arbitration is binding upon both you and this firm.

**ADDITIONAL DISCRETIONARY PROVISIONS**

**1. Appeal (flat fee)**

- a. This letter will confirm that you have not retained this firm to prosecute an appeal to the Appellate Division.
- b. The above fee covers only this one appeal to the Appellate Division and not other or further appeals. No motions in any court or any other proceedings are included in the fee.
- c. You understand that your adversary may cross-appeal from all or any part of the judgment (order) of the Supreme Court from which (s)he feels aggrieved. (S)he may also make a claim against you for legal services and expenses in connection with the appeal.

**2. Retention of Experts**

- a. You have been advised that in order for us to properly protect your interests, it may be necessary to retain outside experts such as appraisers, actuaries and accountants. You will be responsible for the costs incurred for any such service which in some cases may have to be paid in advance depending upon the requirements of the particular expert. No expert or appraiser shall be retained without your prior approval.

**3. Other Attorneys in Firm Rendering Services**

- a. It is further specifically understood and agreed that the undersigned partner will be in charge of, and responsible for, the administration of your matter, but it may well be assigned to an associate of this firm for day-to-day services, including, but not limited to, telephone calls and various paperwork. All of the same, however, shall be reviewed by the partner in charge.

**4. Acknowledgement and Understanding**

- a. The client acknowledges that he or she has read this agreement in its entirety, has had full opportunity to consider its terms, and has had full and satisfactory explanation of same, and fully understands its terms and agrees to such terms.
- b. The client fully understands and acknowledges that there are no additional or different terms of agreements other than those expressly set forth in this written agreement.
- c. The client acknowledges that he or she was provided with and read the Statement of Client's Rights and Responsibilities, a copy of which is attached to their Retainer Agreement.

We have informed you that pursuant to court rule, we are required, as your attorneys, to certify court papers submitted by you which contain statements of fact, and specifically to certify that we have no knowledge that the substance of the submission is false.

Accordingly, you agree to provide us with complete and accurate information which forms the basis of court papers and to certify in writing to us, prior to the time the papers are actually submitted to the Court, the accuracy of the court submissions which we prepare on your behalf, and which you shall review and sign.

**5. No guarantees**

It is specifically acknowledged by you that this Firm has made no representations to you, express or implied, concerning the outcome of the litigation presently pending or hereafter to be commenced between you and your spouse. You further acknowledge that this Firm has not guaranteed and cannot guarantee the success of any action taken by the Firm on your behalf during such litigation with respect to any matter therein, including without limitation issues of spousal and/or child support, custody and/or visitation, exclusive occupancy of the marital premises, equitable distribution of marital assets, the declaration of separate property, counsel fees and/or a trial.

**6. Closing:**

You are aware of the hazards of litigation and acknowledge that we have made no guarantees in the disposition of any phase of the matter for which you have retained this office. If this fee arrangement meets with your approval, kindly sign your name where indicated on the copy of this letter and return same to me in the envelope enclosed for your convenience. Your acknowledge that pursuant to court rule, a copy of this retainer letter is required to be filed with the court in which your action is pending.

Kindly indicate your understanding and acceptance of the above by signing the letter below where indicated. We look forward to being of service to you in connection with this matter.

Very truly yours,

*Domenick Napoletano*

**DOMENICK NAPOLETANO, Esq.**

**I HAVE READ AND UNDERSTAND THE ABOVE LETTER, I HAVE RECEIVED A COPY AND ACCEPT AND AGREE TO ALL OF ITS TERMS.**

**The City of Long Beach**

By  \_\_\_\_\_  
Donna M. Gayden City Manager

**Dated: April 12, 2022**