

## CONTRACTOR AGREEMENT

**THIS AGREEMENT** made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2013, by and between Dana Point Condominium Association, an Illinois condominium unit owners' association (hereinafter referred to as "Association"), and A Plus Tuckpointing, Inc., whose principal place of business is located at 388 Monaco Drive,, Suite 101, Roselle, Illinois 60172 (hereinafter referred to as "Contractor").

### WITNESSETH

**WHEREAS**, the Association is the entity responsible for the maintenance, service and operation of the common elements of the Association, and the Board of Managers of the Association has deemed it necessary or desirable for the Association to contract for certain services and/or construction, maintenance or repair work to be performed in the Common Elements as more fully described herein; and

**WHEREAS**, the Contractor is in the business of providing the services and/or construction, maintenance or repair work and desires to provide the services as more fully described and in accordance with the terms and conditions herein; and

**NOW, THEREFORE**, in consideration of the mutual obligations and promises of the parties herein set forth and other good and valuable considerations, it is hereby agreed by and between the Association and Contractor as follows:

#### **1. SCOPE OF SERVICES**

a) Contractor hereby covenants and agrees to provide services set forth in the attached Schedule A, which shall include, but not be limited to procedures and specifications (hereinafter referred to as the "Project"). The procedures and specifications included in Schedule A, if any, shall be approved by the Association. All work done hereunder shall in all respects conform to and be in accordance with the procedures and specifications previously approved by the Association and with the requirements of this agreement. The original plans, procedures and specifications and any necessary blueprints, shall be signed by Contractor and an Association representative and shall remain on file at the offices of Association. The Contractor shall have the right at any and all reasonable times during the services to be provided, to inspect and study said plans, procedures, blueprints and specifications and to make and retain copies of all or portions thereof, and Association will at all times make such plans, procedures and specifications available to the Contractor. The aforesaid Schedule A, including all plans, procedures and specifications contained therein, are by this reference incorporated and made a part hereof as if fully set forth herein.

b) The services and specifications shall include the obligation of Contractor to visit the site of the proposed Project, fully acquaint and familiarize itself with the conditions as they exist and the character of the operations to be carried on under the proposed contract, and make such investigation as it may see fit so that it shall fully understand the facilities, physical conditions and

restrictions attending the Project under the Agreement. Each subcontractor shall also thoroughly examine and become familiar with the drawings and specifications.

c) By submitting a proposal and signing the Agreement, the Contractor agrees that it has carefully examined the specifications and procedures, and that from its own investigation it has satisfied itself as to the nature and location of the Project, the general and local conditions, and all matters which may in any way have an effect the Project or its performance, and that as a result of such examination and investigation it fully understands the intent and purpose of the documents and conditions of the Agreement. Claims for additional compensation or extension of time because of any failure to follow the foregoing procedure and to familiarize itself with the Agreement and all conditions related to the Project will not be allowed.

d) The procedures and specifications are "scope" documents which indicate the general scope of the Project in terms of the repair concept, the services which are required, the dimensions of the building or buildings, the type of structural, mechanical systems and/or an outline of major architectural elements of construction. As "scope" documents the drawings, procedures and specifications do not necessarily indicate or describe all work required to the full performance and completion of the Project. This Agreement is based on the agreement and understanding that the Contractor is to furnish all items required for proper completion of the Project without adjustment to price. It is intended that all services and work be of sound and quality construction and the Contractor shall be responsible for the inclusion of adequate amounts to cover the services and/or the installation of all items indicated, described or implied in the Project.

e) Generally, the specifications describe services and/or work which cannot be readily indicated on the drawings, and indicate types, qualities and methods of services and/or installation of the various materials and equipment required for the Project. It is not intended to mention every service and/or item of work in the specifications which can be adequately shown on the drawings nor to show on the drawings all items of work described or required by the specifications even if they are of such nature that they could have been in the drawings. It is understood between the parties that all work necessary to produce a finished job shall be provided by the Contractor whether or not the work is expressly covered in the procedures, specifications and drawings.

f) Any reference to standard specifications of any society, institute, association or governmental authority is a reference to the standard specifications of such organization that are in effect at the date of the Contractor's proposal. If such specifications are revised prior to completion of any part of the Project to which such revision would pertain, the Contractor may perform such work in accordance with the revised specifications.

g) The Contractor shall report directly to and accept direction only from the Board of the Association or its designated agent. Regular contact with the Board or its designated agent is to be maintained each day work is performed under this Agreement, to receive any instructions and to report on delays in work due to any of the conditions set forth herein. Contractor, its agents and employees, shall address all comments related to the Association or the performance of this Agreement solely to the Board or its designated agent.

## **2. PAYMENT SCHEDULE AND BILLING**

Subject to the provisions hereof and to all credits due the Association for services, material, fixtures and supplies which may be furnished by the Association, the Association agrees to pay the Contractor, and the Contractor agrees to accept the amounts specified in Schedule B attached hereto which shall be paid in accordance with the payment schedule also specified in Schedule B in accordance with all requirements of this Agreement and for all services, materials, fixtures, supplies, equipment or services to be sold, supplied or performed hereunder, except as otherwise provided herein.

## **3. COMPLETION SCHEDULE**

a) Contractor covenants and agrees to complete all services to be provided hereunder in accordance with the attached Schedule A and the plans and specifications incorporated therein in accordance with the completion schedule set forth in Schedule C attached hereto and by this reference made a part hereof as if fully set forth herein.

## **4. PAYMENT CONDITIONS**

### **4.1 Invoices**

As a condition precedent to the receipt and payment of each of the payments provided for in this agreement, Contractor shall have performed the services substantially in accordance with the procedures and specifications set forth in Schedule A.

As a condition precedent to the receipt and payment of each of the payments provided for in this agreement, Contractor shall deliver to the Association, at least fifteen (15) days prior to the payment date specified, invoices for the services provided and work performed and appropriate affidavits and sworn statements of the Contractor supported by good and sufficient waivers of lien from Contractor, and from any Subcontractors and Materialmen, if any, all properly drafted in accordance with and sufficient to waive all liens under the Mechanics' Lien Law of Illinois and in forms satisfactory to a title insurance company registered in the State of Illinois such as Chicago Title Insurance Company, for the purposes of issuance of extended title insurance coverage over mechanics' liens if such coverage were to be requested from said title company. All such documents shall cover all of the work performed and all materials delivered to the job, and shall be sufficient to cover the quantities and costs of materials in all invoices which have not been covered by previously submitted documents.

### **4.2 Acceptance**

Payment for all work shall be subject to approval and acceptance, of all work and/or services performed, by the Board of the Association or its designated agent prior to payment. All inspection of the work completed, prior to approval and acceptance, are to be made within fifteen (15) working days of receipt by the Association of invoice for said work. In addition, Contractor agrees to be available for any inspection of the work, as needed and/or as requested by the Association.

5. **LIENS**

All property, whether real, common, personal or mixed and whether to be constructed, erected, sold, conveyed and/or transferred, pursuant to the provisions of this Agreement, by Contractor to or on the behalf of the Association shall be free and clear of all liens and encumbrances arising as a result of work performed by Contractor, including, by way of enumeration and not limitation, Mechanics' Liens, Materialmen's Liens, and security interest, and/or claims therefor (and there shall not exist any basis for the assertion of any such lien or claim) at the time of consummation of the services provided hereunder.

Contractor further agrees that no lien or claim of any kind whatsoever shall be filed by him or any subcontractor under him, or by any other person, firm or corporation, against the property, equipment, and improvements of the Association's unit owners of record, including but not limited to, the common elements and the units, or against any other property belonging to the unit owners for any work, materials or services performed hereunder. Contractor further agrees to pay all costs and expenses, including all attorneys' fees for the Association and/or the unit owners to defend against and/or remove any such liens and claims and to pay any damages incurred as a result of any restraint of alienation by unit owners as a result thereof. The above does not preclude or prevent Contractor from bringing suit against the Association for monies due and owing for services rendered or for enforcement of valid mechanics's liens against real property actually owned by the Association.

6. **CONTRACTOR SUPERVISION**

The Contractor shall supervise and direct the work using its best skill and attention. Contractor shall employ and direct such personnel as it requires to perform the specified services and will at all times pertinent hereto act as and be an independent contractor with regard to this Agreement. To that end Contractor shall be solely responsible for all means, methods, techniques, sequences and/or procedures and for coordinating all portions of the work under this Agreement and shall have the sole right to hire and discharge its employees and other personnel. If the Contractor is not a corporation, Contractor hereby acknowledges and understands that because he or she provides the services herein as an independent contractor and not as an employee of the Association, Contractor must pay for all federal and state withholding and income taxes, social security and/or self-employment taxes, unemployment insurance and any other taxes arising by virtue of payments to the Contractor by the Association. Contractor shall provide to the Association copies of all documents which he or she files in connection with payment of any of the foregoing, within ten (10) days of said filing or mailing, together with proof of payment where applicable. In the event Contractor fails to provide sufficient evidence of payment of all required taxes, Association shall have the right to withhold funds from the contract sum and the right to pay such withheld funds for any and all taxes, penalties and interest which may be due and owing. Contractor hereby agrees that he or she will indemnify and hold harmless the Association from any and all fines, penalties and other damages incurred by the Association with respect to the failure of Contractor to comply with this paragraph.

7. **FEES, PERMITS, AND TAXES**

Contractor shall, prior to commencement of any of the work and services to be performed hereunder, secure and pay for or cause to be secured and paid for all permits and licenses and shall pay for all inspection fees necessary for the prosecution of the work to be performed hereunder and shall pay all sales, consumer, use, Old Age Benefit, Unemployment Compensation and other similar taxes required by any local, state or federal laws which are necessary for the prosecution and performance of the work to be provided hereunder. Contractor shall give all notices required by, and shall comply with, all laws, ordinances, rules, codes, regulations and legal requirements bearing on the work to be performed hereunder. Contractor may bill Association for the cost of the Permit.

8. **CONTRACTOR EXPENSES AND SERVICES**

Contractor shall provide and promptly pay for all labor, materials, equipment, tools, transportation and other facilities necessary for the execution and completion of the work to be performed hereunder. It is the essence of this Agreement that both materials and workmanship shall be of the highest quality in all respects and shall be of the best of their respective kind, new, fully up to grade, and in conformity with the requirements of Schedule A, including the procedures and specifications therein. All work not conforming to these standards shall be considered defective. Contractor shall, if required, furnish satisfactory evidence as to the kind and quality of materials required to be furnished by Contractor and/or Subcontractors pursuant to this Agreement. All labor shall be performed in the best and most workmanlike manner by employees skilled in their respective trades. The standards of the work required throughout shall be of such grade as will bring results of the first class only.

9. **SUBCONTRACTING AND ASSIGNMENT**

Contractor shall not, in whole or in part, assign or subcontract any of the services to be performed hereunder nor shall Contractor assign any monies to become due hereunder from Association without, in each case, the prior written consent of the Association. In the absence of such prior written consent, Association shall not be obligated to recognize any such assignment or subcontract, and any such assignment or attempted assignment of this Agreement, in whole or in part, shall be of no force and effect and shall enable the Association to cancel this Agreement at will.

Any other references to subcontractors or subcontracting contained elsewhere herein are intended solely for the protection and indemnification of the Association and do not imply any right whatsoever on behalf of the Contractor either to assign or subcontract any of the services to be performed hereunder.

Subject to the foregoing, this Agreement shall be binding upon and inure to the benefit of the parties hereto, and their respective successors, assigns, personal representatives and heirs.

## **10. SAFETY PRECAUTIONS**

The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Project and all work being done pursuant to this Agreement. It shall take all reasonable precautions for the safety of, and shall provide all reasonable protection to prevent damage, injury or loss to (1) all employees on the job, all unit owners and the general public or other persons who may be affected thereby; (2) all work and all materials to be utilized for the performance thereof; and (3) other property at or adjacent to the premises. Contractor shall comply with all applicable laws, ordinances, rules, regulations and orders of any public authority having jurisdiction over the safety of persons or property or to protect them from injury, damage or loss. Damage or loss to any property caused in whole or in part by the Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable, shall be remedied by the Contractor.

## **11. DEFECTIVE WORK AND MATERIALS**

The Association and/or its agent shall have full and complete access to inspect the work being performed and materials used therein at all times. Any damaged or defective materials and/or work and any materials and/or work which does not conform with the requirements of this Agreement, or with Schedule A and the procedures and specifications incorporated therein, or which, in the Association's or the Association's agent's reasonable opinion, is defective due to negligence, poor or faulty workmanship or faulty materials, shall be promptly removed, replaced and/or corrected at Contractor's own expense upon written notice by the Association or the Association's agent. Any defective, damaged or non-conforming work and/or materials which create a potential hazard are to be corrected immediately upon verbal notice to Contractor and if not done, the Association and/or its agent, shall have the right to have said work and/or material corrected by another contractor of its choice and to deduct the costs of correction and all costs associated therewith from the payment due and owing the Contractor without prejudice to any other rights granted in this Agreement.

If any work has been covered contrary to the specific requirements of the Agreement or instructions of the Association before it has been observed by the Association, such work must, if required by the Association, be uncovered for its observation and covering replaced, at the expense of the Contractor without reimbursement under the Agreement.

If any questioned work has been covered up which has not been specifically required to be observed by the Association prior to being covered, the Association may request to see the work in question and it shall be uncovered by the Contractor as directed. If such work is found to be in accordance with the requirements of the Agreement, the Association shall reimburse the Contractor for the cost of such uncovering and recovering. If such work is found to be not in accordance with the Agreement, the cost of uncovering, replacement and recovering shall be borne by the Contractor without reimbursement under the Agreement.

If the Contractor fails to correct defective work or persistently fails to supply materials or equipment in accordance with the Agreement, the Association may stop the Project, or any portion thereof until the cause for such failure has been eliminated or may terminate this Agreement.



The Association retains the right to hire an independent contractor to fulfill any obligations of this Agreement not performed by Contractor and to deduct any costs and expenses and all monies paid out to said independent contractor from monies owed to Contractor. The Association further retains the right to proceed against Contractor for any costs and expenses incurred over and above the amounts owed to Contractor which were retained by the Association.

## **12. INDEMNIFICATION**

The Contractor shall indemnify and hold harmless the Association and its agent from and against all claims, damages, losses and expenses including attorneys' fees arising out of or resulting from the performance or non-performance of the Project, provided that any such claim, damage, loss or expense is (a) attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Project itself) including the loss of the use resulting therefrom and (b) caused in whole, or in part, by any negligent act or omission of the Contractor, any Subcontractors, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by any party indemnified hereunder.

It is also expressly agreed that Contractors will indemnify and hold the Association and its designated agent harmless from any and all claims of malfeasance or misfeasance by Contractor's employees or subcontractors and their employees, and from any and all claims and demands whatsoever, including, but not limited to, workman's compensation claims, E.E.O.C. claims, unemployment claims, withholding and Social Security claims.

In any and all claims against the Association or its agents, by any employee of the Contractor, by any Subcontractor, by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable, the indemnification obligation under this paragraph shall not be limited in any way by a limitation on the amount or type of damages, compensation, or benefits payable by or for the Contractor or any Subcontractor under any Workman's Compensation Act, Disability Benefit Acts or other employee benefit acts.

## **13. INSURANCE**

Contractor agrees that it, will at or before the time work is commenced hereunder, take out and keep in force at all times for the duration of all work agreed to be performed hereunder and for a term of one (1) year after completion thereof, and will cause any subcontractor to take out and keep in force, policies of insurance by a responsible insurance company or companies, acceptable to the Association, licensed to do business in Illinois, insuring the contractors and subcontractor's employees or their beneficiaries, for such compensation as they are entitled to under the Workmen's Compensation Act and such other policies of insurance as may be required under any other or similar acts or laws of the State of Illinois applying to employees.

Contractor further agrees to take out, and to cause each subcontractor to take out, promptly and keep in force at all times for the duration of the work to be performed hereunder and for a period of one (1) year thereafter, and naming as additional insured the Association, Lieberman Management Services, Inc. and their agents, a protective policy or policies of insurance from claims

under any applicable Workmen's Occupational Diseases Act, statutes imposing liability for structural or scaffolding work, excavating and from any other claims for damages to property or for bodily injury, including death, which may arise from the work to be performed hereunder as a result of intentional or unintentional acts, conduct or inaction, whether such operations be by Contractor, its subcontractors, architect or anyone directly or indirectly employed by any of them or Association or Association's agents. Such insurance shall cover all contractual obligations which the Contractor has assumed hereunder and in connection with the work and Workmen's Compensation, Umbrella and Comprehensive or Commercial General Liability Insurance, including automobile, for bodily injury, including death and property damage in the amounts hereinafter set forth, and an all-risk and construction hazards policy, including coverage for fire, other catastrophe, vandalism, and malicious mischief, covering the Project, all work to be performed, the work-site and the common elements, and all operations hereunder, whether such work or operations be performed by Contractor, subcontractors, architects or anyone directly or indirectly employed by any of them or Association or Association's agents. The amounts of the aforesaid insurance shall be as follows:

(A)	State and applicable federal Workmen's Compensation and Occupational Disease	Statutory Limits
(B)	Employer's liability, accident and disease	\$1,000,000.00
(C)	Comprehensive or Commercial General Liability (including premises, operations, protective policy; products and completed operations; broad form property damage).	
	Property Damage	\$1,000,000.00
	Bodily Injury	\$1,000,000.00
(D)	Business Automobile Liability (including owned, unowned and hired vehicles)	\$1,000,000.00
(E)	All-Risk & Construction Hazards	\$1,000,000.00
(F)	Umbrella Policy (additional coverage of all risks above)	\$1,000,000.00

The premium for all the insurance required under this section shall be paid by Contractor at least ten (10) days prior to initiating any work under the Project. The coverage provided above shall be written for not less than the limits of liability specified and the aggregate coverage for general liability set forth above shall not be combined into a single general aggregate. A project limit endorsement is required for all coverage so that the aggregates provided shall contain all



generally applicable conditions, definitions, exclusions, and endorsements and shall name the Association and its agents as protected parties. Contractor shall be responsible for payment of all applicable deductibles and retention for self-insured hazards which shall not exceed the amount of one thousand dollars (\$1,000.00). At least ten (10) days prior to initiating the Project, Contractor shall supply to the Association, in duplicate, complete photocopies of Workmen's Compensation, and other insurance policies required to be procured by it and maintained by it under this Agreement. All such policies shall contain a provision that coverage cannot be reduced or canceled without thirty (30) days' prior written notice to the Association and its agents.

#### **14. REMOVAL OF WASTE**

The Contractor, at all times, shall keep the Association property and premises free from accumulation of waste materials or rubbish caused by its operations.

Storage of other materials and equipment, if required, shall be in such places as agreed by and between the parties hereto. However, if in the opinion of the Association, job conditions require accessibility to any area occupied by the Contractor's materials, equipment or facilities, these shall then be moved at once by Contractor at its own expense, to an area approved by the Association. Such storage area shall be kept clean, and all damage thereto or to its surroundings shall be remedied by the Contractor.

At the completion of the work required hereunder, the Contractor shall remove all waste materials and rubbish from and about the work-site and the common elements as well as all tools, construction equipment, machinery and/or surplus materials. Contractor shall leave the Association areas clean and substantially in conformance with the condition of the Association property prior to its initiating work under this Agreement.

#### **15. DISPUTES**

In the event of a dispute or disagreement between the Association or its designated agent and the Contractor with respect to the conformity of the work and materials provided under this Agreement and the procedures and specifications incorporated herein, or the quality of the workmanship provided, the determination of the Association selected consulting engineer shall be binding upon the parties. In the event that the Association is forced to proceed against Contractor in court in order to enforce or protect any and all rights it has or may have against Contractor, and if the outcome of such action is favorable to the Association, then Contractor shall be required to pay all costs and expenses therefor, including attorneys' fees, to the Association.

Furthermore, in the event of any such dispute or disagreement, Contractor shall in no case permit same to delay work, but shall notify the Association that it is proceeding under protest.

#### **16. TERMINATION/DEFAULT**

(A) Association shall, in addition to any other rights it may have at law or in equity, have the right to terminate all or any part of this Agreement immediately and serve written notice thereof for the following reasons:

(1) If the work to be performed hereunder has not been completed in accordance with the scope of services and completion schedule as provided in herein except, however, for the occurrence of any of the following:

a. The imposition of any governmental bureau, department, or subdivision thereof of a restriction on the manufacture, sale, distribution or use of materials necessary for completion of the work hereunder; or

b. The inability of the Contractor to obtain materials from its usual sources due to strikes, lockouts, war, military operations, or national emergencies; or

c. The inability of the Contractor to perform said services due to severe weather conditions, including, but not limited to, continual and heavy rainfall and high winds. Contractor shall make reasonable efforts to comply with the completion schedule. However, the completion schedule will be extended, if necessary, by the number of days that the Contractor was unable to perform due to severe weather conditions.

(2) If a petition in bankruptcy shall be filed on or against Contractor, or if Contractor shall be adjudged bankrupt, or if it shall make a general assignment of the benefit of its creditors, or if a receiver shall be appointed on account of its insolvency, unless the receiver or trustee in bankruptcy agrees to accept all the terms and conditions of this Agreement.

(3) If Contractor does not have the insurance required in this agreement, if the insurance is canceled or it is not renewed, or if Association is advised that Contractor's insurance will terminate on a specified date.

(B) In addition to and separate from any other rights and duties provided, if Contractor shall refuse, neglect or fail to perform, observe and keep any of the covenants, agreements, terms or conditions contained herein or its part to be performed, observed and kept, and such refusal, neglect or failure shall be evidenced either by Contractor's failure to appear at the Association premises within three (3) consecutive days, or by its failure to provide all the services required by the schedules attached to this Agreement in accordance with the time limits set forth therein, and such refusal, neglect or failure shall continue for a period of five (5) days after written notice to Contractor by Association thereof; or if the Contractor shall persistently, unreasonably and continuously refuses to perform its duties or fail in any respect to prosecute the work with promptness and diligence as agreed to herein following a period of five (5) days after written notice thereof to Contractor by Association, Association shall have the right, in addition to any rights or remedies it may have in law or in equity, to terminate this Agreement immediately without further notice.

(C) In addition to and separate from any other rights and duties provided, if, upon inspection of the premises, Association or its designated agent finds certain areas not completed

in accordance with this Agreement, Contractor shall be notified of this fact. Contractor shall then have forty-eight (48) hours in which to correct the problem. In the event the problem is not corrected within the forty-eight (48) hour period, thirty percent (30%) of all monies due to Contractor will be withheld by the Association, provided that the thirty percent (30%) amount is insufficient, then the Association may withhold all monies due to Contractor. Association or its designated agent shall notify Contractor in writing of any problem not corrected within the aforesaid forty-eight (48) hour period for which monies are being withheld. In the event Contractor then fails to correct the problem within twenty-four (24) hours of said second written notification, at the option of the Association, Contractor immediately may be declared in default without further notice, and all rights hereunder shall be terminated and no further sums shall be due Contractor pursuant to this Agreement, including any monies withheld by the Association.

(D) Notwithstanding any other term contained herein, Association may terminate this Agreement at any time, without cause and without liability, by providing written notice to the Contractor of termination without cause. The Notice of Termination without cause shall be effective immediately and the Association shall have no further liability to the Contractor. Upon the giving of the Notice of Termination Without Cause, Contractor shall only be paid for work and materials performed and supplied prior to the date of the Notice of Termination Without Cause.

(E) The Association, upon terminating this Agreement in any of the aforesaid manners, and without prejudice to any other rights or remedies it may have at law or in equity, may correct, repair or replace defective work and may complete the unfinished work by whatever method or methods and/or by using any contractor, contractors or any other means the Association may deem expedient. Any and all expenses and costs so incurred, direct or indirect, foreseeable and unforeseeable, including any management costs and expenses and all legal costs and expenses, including counsel fees, shall be borne by the Contractor and shall be recoverable by the Association in any action brought. Furthermore, the Association, without prejudice to any other rights or remedies it may have at law or in equity, shall have the right, in addition to the aforementioned right, to bring any action for specific performance to this Agreement and/or for damages due to Contractor's failure to complete this Agreement, for monies paid to Contractor by Association, and for defective material or services. In any such suits, Contractor agrees to pay all damages both foreseeable and unforeseeable, direct and indirect, for all incidental and consequential Association losses, all management expenses and fees incurred and all legal costs and charges, including counsel fees incurred by the Association. In any such action brought, contractor hereby irrevocably waives trial by jury.

(F) The right of the Association to require strict performance and observance of any obligations hereunder shall not be affected in any way by any previous waiver, forbearance or course of dealing, nor will it affect the Association's right to bring suit for any default or breach of this Agreement.

(G) Upon termination of this Agreement for any reason whatsoever, the Contractor agrees to deliver all Association keys, equipment and miscellaneous property then in the possession of the Contractor to the person designated by the Association, and within fifteen (15) days to submit a final statement and accounting as of the date of termination.

(H) Each remedy and termination provision contained in this section is not exclusive, but is in addition to any other such provisions contained elsewhere herein. Furthermore, Association reserves the exclusive right to determine which remedies or termination provisions to apply in any given situation. In the event of any termination, Contractor shall be paid only for such materials and services as the Association reasonably determines have actually been provided and to utilize any or all of the provisions independently, simultaneously or in any combination the Association chooses.

#### **17. CODE COMPLIANCE**

The Contractor guarantees and warrants to the Association and the Association's agent that the work to be performed by Contractor and all Subcontractors hereunder will, prior to, during, and upon completion, comply and confirm with all applicable Federal, State, County and Municipal laws, codes, rules, regulations, statutes and ordinances. Contractor further agrees to arrange for any and all inspection, examinations and the like of the work performed hereunder and of the materials provided, which may be required either prior to, upon or following completion of the work and for obtaining any and all licenses, permits and the like which may be required in order to evidence that the work and materials are in conformity with and comply with the aforesaid laws, codes, rules, regulations, statutes and ordinances.

#### **18. GUARANTEES**

Contractor shall guarantee all work performed and materials and equipment furnished under his Contract against defects in materials and workmanship for a period of one (1) year from the date of Final Acceptance of the completed work by Association, or for a longer period if so specified or shorter period if otherwise specified in the specifications, provided, however, that if such equipment or portion of the work is found after such Final Acceptance not to comply with the Agreement, the guarantee period thereon shall commence with the date it is corrected to comply with the Agreement. Reference is made to other sections of the specifications for specific performance and time guarantees as may be required therein over and above the one (1) year general guarantee specified above. Prior to final payment the Contractor shall file with the Association written guarantees obtained from any subcontractors as required.

Contractor shall, within a reasonable time after receipt of written notice thereof, make good any defects in materials, equipment and workmanship to its work which may develop within periods for which said materials, equipment and workmanship are guaranteed, and also make good any damage to other work caused by the repairing of such defects at his own expense, and without reimbursement under the Agreement.

The foregoing remedies shall not deprive the Association of any action, right or remedy otherwise available to it for breach of any of the provisions of the Agreement by the Contractor and the periods referred to above, or such longer time as may be specified elsewhere, shall not be construed as a limitation on the time in which the Association may pursue such other action, right or remedy against Contractor.

In the event that certain materials or methods used by the Contractor carry guarantees or warranties in excess of those stated herein, the Contractor shall provide the Association with such guarantees and warranties in writing.

**19. ROYALTIES AND PATENTS**

The Contractor shall pay all royalties and license fees applicable to the Project. Contractor shall defend and shall indemnify and save the Association harmless from any and all suits, demands, or claims or infringements or any patent rights except if a particular design, process or product is specified. If such specification is made and the Contractor has reason to believe it is an infringement of a patent, the Contractor shall notify the Association.

**20. TIME OF ESSENCE**

Time shall be of the essence of this Agreement. It is expressly understood and agreed that any waiver on the part of the Association of any term, provision, or covenant of this Agreement shall not constitute a precedent nor bind the Association to a waiver of any succeeding breach of the same or any other of the terms, provisions or covenants of this Agreement.

**21. PRIOR AGREEMENTS**

All prior agreements between the parties, oral or written, are hereby superseded, extinguished and merged into this Agreement, and there are not agreements, or understandings, express or implied, oral or written, except as set forth herein.

**22. NOTICES**

All notices required or permitted to be sent hereunder may be sent in writing to the parties at the following addresses:

ASSOCIATION:	Dana Point Condominium Association c/o Lieberman Management Services, Inc. 1519 E. Central Rd. Arlington Heights, Illinois 60005
--------------	---

With a copy to:	Dickler, Kahn, Slowikowski & Zavell, Ltd. 85 W. Algonquin Road Suite 420 Arlington Heights, Illinois 60005
-----------------	---

CONTRACTOR:	A Plus Tuckpointing, Inc. 388 Monaco Dr., Suite 101 Roselle, Illinois 60172
-------------	---

or such other address as either party may designate by written notice to the other party. Notices may be sent and shall be deemed delivered by using any of the following methods:

(1) Registered or certified mail, return receipt requested, postage prepaid, upon deposit in the United States Mail; or

(2) Telegram or mailgram, upon dictation or delivery of the notice to Western Union; or

(3) By personal delivery to an officer or authorized agent of either party or by delivery or deposit of the notice at the address of the party listed above.

## **23. PUBLICITY**

Contractor shall not, without prior written consent of the Association, in any manner advertise or publish the fact that the Association has entered into this Agreement with Contractor.

## **24. GRATUITIES**

Contractor warrants that neither it nor any of its employees, agents or representatives have offered or given any gratuities to Association employees, agents or representatives with a view towards securing this Agreement or securing favorable treatment with respect thereto. For a breach or violation of this warranty, Association shall have the right to terminate this Agreement without liability, or in its discretion, to deduct from the contract price or consideration, or otherwise to recover the full amount of any such gratuity, commission, percentage or contingent fees.

## **25. ACCESS TO PREMISES**

The Association hereby grants Contractor, its representatives and employees, a revocable license for ingress and egress at all reasonable times through the common elements of the Association solely for the purposes of performing the work under this Agreement. This license shall remain in effect for the period of employment specified herein and shall terminate immediately upon expiration or termination of this Agreement for any reason whatsoever.

## **26. AGREEMENT CHANGES**

Any alteration of or addition to any term, condition, or provision of this Agreement, or any alteration of or addition to any other Schedules attached hereto, or to any of the procedures and specifications incorporated therein specifically including, but not limited to any alterations or additions involving additional costs, shall be made only after written authorization by the Board of the Association through its designated agent.

## **27. MISCELLANEOUS**



a) Whenever necessary or proper herein, singular imports the plural or vice versa, and the masculine, feminine or neuter expression are interchangeable. Any reference to paragraph numbers in this Agreement shall be deemed to be of paragraphs of this Agreement. The paragraph titles or the section headings appearing in this Agreement have been inserted for the purposes of convenience and ready reference. They do not purport to, and shall not be deemed to define, limit or extend the scope or intent of the clauses to which they appertain.

b) This Agreement may be executed in one or more counterparts, all of which shall be deemed as one original document.

c) If any covenant, condition or term of this Agreement or the application thereof, to any person, firm or corporation or to any circumstances, shall to any extent be invalid or unenforceable, the remainder of this Agreement, or the application of such covenant, condition or term to persons, firms or corporations or to circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby. Each covenant, condition or term of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

d) This Agreement shall be governed by and construed in accordance with the laws of the State of Illinois.

**IN WITNESS WHEREOF**, the parties hereto set their hands and seals the date and year first above written.

DANA POINT CONDOMINIUM  
ASSOCIATION:

BY: \_\_\_\_\_

\_\_\_\_\_  
(Title)

A PLUS TUCKPOINTING, INC.:

BY: \_\_\_\_\_

\_\_\_\_\_  
(Title)

If a party is a sole proprietorship, this agreement should be signed by its owner. If a party is a partnership, this agreement should be signed by one of its general partners. If a party is a corporation, this agreement should be signed by its president and secretary or other officers authorized by its Board. By signing this agreement on behalf of a party, the individual represents and warrants that he or she is authorized to sign on behalf of the party.

## SCHEDULE A

I. Association hereby agrees to employ Contractor to perform the following described project upon the terms and conditions set forth in this Agreement and the schedules attached thereto:

Description of Project: **Masonry Project**

Location: Dana Point Condominium Association

Except as otherwise provided herein, Contractor shall furnish all labor, materials, scaffolding, and other miscellaneous items necessary to complete the work specified.

II. For purposes of this Agreement the Board's designated agent shall be: Lisette Ray, or the Association's president or other officer or agent as may be appointed in writing by the Association's Board.

III. The requirements, specifications, plans, procedures and drawings of the Project are as follows:

Exhibits A-1 through A-3 attached to this Schedule A.

IV. It is expressly understood and agreed that substantial completion under this Agreement shall not be deemed to have occurred unless and until the Project to be developed herein has been constructed and exists, operates and/or functions reliably and strictly within the minimal performance standards set forth in the exhibits attached hereto.

**A PLUS TUCKPOINTING INC.**  
**388 MONACO DR. SUITE 101**  
**ROSELLE, IL 60172**  
**Phone 630-529-1868 fax 630-529-1870**

**Dana Point Condominium Association**  
**lrav@LMSnet.com**

**job address:**  
**Arlington Heights, IL**

### **Contractor Agreement**

This agreement made on July 26, 2013, by and between **A- Plus Tuckpointing, Inc.**, hereinafter called the Contractor, and **Dana Point Condominium Association**, hereinafter called the Owner

WITNESSETH, that the Contractor and the Owner for the Considerations named agree as follows:

#### **Article 1. SCOPE OF THE WORK**

The Contractor shall furnish all of the materials and perform masonry work described:

**Description spec as per your e mail on 7/18/2013**

- |  |           |
|--|-----------|
| 1) 1605 unit #420C                                     | \$950.00  |
| 24 gauge steel coping has been installed in this area. |           |
| 2) 1605 unit #409                                      | \$1550.00 |
| 24 gauge steel coping                                  | \$350.00  |
| 3) 1615 unit #420C                                     | \$2900.00 |
| 24 gauge steel coping                                  | \$350.00  |
| 4) 1615 unit #407A                                     | \$950.00  |
| 24 gauge steel coping                                  | \$350.00  |
| 5) 1515 unit #451                                      | \$2100.00 |
| 24 gauge steel coping                                  | \$350.00  |
| 6) 1515 unit #459B                                     | \$2900.00 |
| 24 gauge steel coping                                  | \$350.00  |
| 7) 1515 unit #462 464B                                 | \$950.00  |
| 24 gauge steel coping                                  | \$350.00  |
| 8) 1515 unit #466B north                               | \$2900.00 |



24 gauge steel coping	\$350.00
9) 1515 unit #466B east	\$950.00
24 gauge steel coping	\$350.00
10) 1515 unit #420C	\$2900.00
24 gauge steel coping	\$350.00
11) 1515 unit #407A	\$950.00
24 gauge steel coping	\$350.00
12) 1505 unit #413B	\$2900.00
24 gauge steel coping	\$350.00
13) 1405 unit#407A	\$2900.00
24 gauge steel coping	\$350.00
14) 1605 unit #320C	\$950.00
24 gauge steel coping	\$350.00

As per your spec email 7/18/2013

1515 unit #417 & #419	\$950.00
1605 unit #421	\$550.00

60' lift two week rental \$1700.00 will cover the work on all 17 units.

as annexed hereto as it pertains to work to be performed on property located at:  
Arlington Heights, IL

**Article 2. ~~TIME OF COMPLETION~~**

~~The work to be performed under this Contract shall be commenced in a timely fashion upon receipt of a signed contract, or within a time frame mutually agreed upon between the Owner and the Contractor. The following constitutes substantial commencement of work pursuant to this proposal and contract.~~

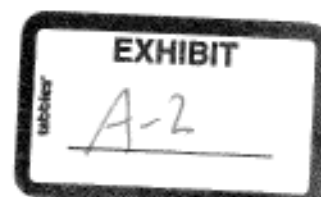
---

**Article 3. THE CONTRACT PRICE**

The owner shall pay the Contractor for the material and labor to be performed under the Contract the sum of :

See above ..... (\$)

**Article 4. PROGRESS PAYMENTS**



Payments of the Contract price of projects with a duration that exceeds 28 calendar days shall be paid in the manner following:  
Monthly draws will be submitted using a schedule of values which is pro rated according to the percentage of work complete on that particular item. A standard AIA draw format will be used.

#### **Article 5. GENERAL PROVISIONS**

1. All work shall be completed in a workman-like manner and in compliance with all building codes and other applicable laws .
2. The Contractor shall furnish a detailed description of the work to be performed.
3. To the extent required by law all work shall be performed by individuals duly licensed and authorized by law to perform said work.
4. Contractor may at its discretion engage subcontractors to perform work hereunder, provided Contractor shall fully pay said subcontractor and in all instances remain responsible for the proper completion of the Contract.
5. Contractor shall furnish Owner appropriate releases or waivers of lien for all work performed or materials provided, ~~at the time the next periodic payment shall be due.~~
6. All change orders shall be in writing and signed both by Owner and Contractor and shall be incorporated in and become part of the contract.
7. Contractor warrants it is adequately insured for injury to its employees and others incurring loss or injury as a result of the acts of Contractor or its employees of subcontractors.
8. Contractor shall obtain necessary permits, ~~at an additional cost to the Owner. This cost will be billed at a time and material rate.~~
9. Contractor agrees to remove all debris related to his work and leave the premises in a broom clean condition.
10. ~~In the event Owner shall fail to pay any periodic or installment payment due hereunder, Contractor may cease work without breach pending payment or resolution of any dispute. All payments are due no later than 30 days after original date of invoice. Any delinquent balances are subject to a penalty of 1.5% (18% annually) on the delinquent amount.~~
11. ~~All disputes hereunder shall be resolved by binding arbitration in accordance with rules of the American Arbitration Association.~~
12. Contractor shall not be liable for any delay due to circumstances beyond control including strikes, ~~casualty~~ or general unavailability of resources or materials.
13. Contractor warrants all work for a period of 12 months following completion.

#### **ARTICLE 6. OTHER TERMS**

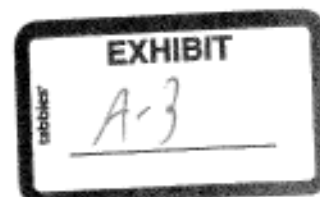
Signed:

\_\_\_\_\_  
A- Plus Tuckpointing Representative

\_\_\_\_\_  
Date

\_\_\_\_\_  
Owner

\_\_\_\_\_  
Date



## SCHEDULE B

### PAYMENT SCHEDULE OR BILLING

I. Contractor agrees to accept the amount(s) specified below, paid in accordance with providing the services specified in Schedule A and for all the fixtures, materials, supplies, equipment and services to be sold, supplied and/or performed hereunder and for complying with all the general terms and conditions of this Agreement.

II. Contractor agrees to accept the contract sum in the amount of \$34,500.00 for the work to be performed under this Agreement.

III. Any alterations or deviation from the above specifications involving extra cost will become an extra charge over and above the agreed upon price, and will be executed only upon written orders.

IV. Invoices and routine correspondence to the Association shall be sent to the following:

Dana Point Condominium Association  
c/o Lieberman Management Services, Inc.  
1519 E. Central Rd.  
Arlington Heights, IL 60005

V. The terms and payment schedule of this Agreement are as follows:

A. The Association shall make monthly progress payments with respect to work actually performed and materials actually provided and incorporated in the Work, according to invoices supplied by the Contractor in accordance with Paragraph 4 of this Agreement.

C. Final payment, constituting the entire unpaid balance of the contract sum, shall be made by the Association to the Contractor upon substantial completion of the work, approval by the Association, and final performance of this Agreement.



SCHEDULE C  
COMPLETION SCHEDULE

I. Hours of Work

The hours of work for performing services hereunder shall be from 8:00 a.m. to 5:00 p.m. and during the days of Monday through Friday, except legal holidays. Deviation from this work schedule by Contractor requires prior written authorization by the Board or its designated agent.

II. Completion Requirements:

Work will commence no later than \_\_\_\_ ( ) calendar days after execution of this Agreement and the work shall be substantially completed no later than \_\_\_\_ ( ) calendar days after execution of this Agreement.