

## **STRUCTURAL CONSULTATION AGREEMENT**

**PROJECT NAME:** The Dana Point Condominium Association  
**PROJECT LOCATION:** 1519 E. Central Road, Arlington Heights, IL 60005  
**PROJECT DESCRIPTION:** PARKING GARAGE STRUCTURAL ANALYSIS  
**PROJECT NO.:** 1416\_00\_2013

This Agreement is made and entered into this 8th day of May, 2013 by and among The Dana Point Condominium Association in Arlington Heights, IL ("Client") in care of Lieberman Management Services and J. Hershey Architecture, Inc., having an office at 615 Park Avenue, Suite 200, Libertyville, Illinois 60048 ("Consultant").

### **SCOPE OF SERVICES**

#### **PHASE 1: Evaluation and Written Report**

1. The Consultant shall have a senior level Licensed Architect and a senior level Licensed Structural Engineer perform a site visit to review the failing structural headers at the garage overhead doors and other related issues at the parking garages of the subject property.
2. The Consultant shall review construction drawings and documents of the existing building which may be provided by property management for the Consultant's reference if available.
3. The Consultant shall prepare a written Letter Report documenting Consultant's findings as a result of the site visit. Color photographs with captions shall be included with the Report for reference.

#### **PHASE 2: Repair / Replacement Specification and Project Manual**

1. To be determined

#### **PHASE 3: Project Management**

1. To be determined

### **SERVICES EXCLUDED**

1. Any work not outlined under Scope of Services is excluded.

The Consultant may provide the above excluded services as outlined under "Additional Services."

### **DELIVERY SCHEDULE**

#### **PHASE 1: Evaluation and Written Report**

The Consultant will endeavor to visit the site within five (5) business days from receipt of a signed Agreement. The Consultant will endeavor to submit the full written report to the Client within ten (10) business days from the site visit.

### **COMPENSATION / SCHEDULE OF FEES**

#### **PHASE 1: Evaluation and Written Report**

Compensation to the Consultant for Phase 1 shall be invoiced based on the fixed sum of <b>\$1,500.00</b>
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The above Fee includes any related expenses such as travel incurred by the Consultant; as well as, the preparation and submission of the full written Report complete with photographs in an electronic Adobe PDF format. Note: Printed copies of the Report may be provided upon request at an additional cost.

### **ADDITIONAL SERVICES**

Additional architectural services such as Repair Specifications and Project Management can be performed if requested and will be billed at an agreed on fixed fee or at the following rates:

- Principal..... \$200.00/hour
- Senior Licensed Architect/Engineer..... \$150.00/hour
- Senior Architectural Staff..... \$125.00/hour
- Junior Architectural Staff..... \$75.00/hour
- Office Administrator..... \$50.00/hour

This Agreement is entered into as of the date and year first written above.

CLIENT:

*Dana Ainkanda DSSA*  
*Angie L...*  
Authorized Representative *President*

Acceptance Date: *7/20/13*

CONSULTANT:

J. HERSHEY ARCHITECTURE, INC

*John M. Hershey*

John M. Hershey, AIA, LEED AP  
President

The General Conditions on the following pages shall apply:

### General Conditions

The indicated fees are subject to the Client's executing and returning the Agreement within 30 days of the Agreement date.

Consultant's fees are due upon Client receipt of each Report, Set of Drawings or other Document. Client does hereby assure prompt payment of all compensation and fees due and payable to Consultant pursuant to the terms, provisions, and conditions of this Agreement. Amounts due and unpaid after (30) days from invoice date shall bear interest at the maximum legal rate permissible under state law. When amounts are due and unpaid in excess of (30) thirty days from the invoice date, Consultant shall have the right to retain all documents and materials prepared by Consultant and suspend performance until Client's default is cured. Consultant shall be entitled to recover all costs, including attorney's fees, incurred in enforcing payment under this agreement.

Consultant agrees to abide by the standards of professional practice in the provision of all services to be provided as outlined in this Agreement. Consultant will strive to perform services under this Agreement in a manner consistent with that level of care and skill ordinarily exercised by members of the profession currently practicing in the same locality under similar conditions. No other representation, expressed or implied, and no warranty or guarantee is included or intended in this Agreement, or in any report, opinion, document, or otherwise.

It is understood and hereby agreed to that the findings of the investigation and resulting Report are not intended to warrant or guarantee the performance of any property component. In addition, it is understood that the Consultant may not be able to gain access to all areas, that no equipment will be operated or tested by the Consultant, that no construction materials will be removed, and that no tests will be performed by the Consultant. It is also understood that the Report findings are based on the conditions observed at the time of the site visit, and that conditions often change with the passage of time.

Client understands and agrees that the services outlined herein and the resulting Report are for the exclusive use of the Client. Client and persons claiming through Client agree to limit the liability of the Consultant for all claims arising out of, in connection with, or resulting from the performance of this Agreement to the amount of fees paid under this Agreement. It is further understood and agreed upon by all parties that the Consultant is a corporation, and that any claim made arising out of an act or omission of any director, principal, or employee of the Consultant, in the execution of performance of this Agreement, shall be made against the corporation and not against the director, officer, principal, or employee.

In the event that it becomes necessary for the Consultant to retain an attorney to collect payments for services rendered or expenses incurred under this Agreement, Consultant shall be entitled to recover all reasonable attorney's fees and related expenses, including costs of appeal and related attorney's fees.

If any portion of this Agreement is determined to be legally unenforceable, such determination shall be the sole basis to render that portion to be null and void; however, the remainder of the Agreement shall survive and remain in full force. For the purposes of the Agreement, venue shall be Lake County, Illinois.

The Consultant shall not be responsible for concealed or unknown conditions. The Consultant shall have no responsibility for the discovery, presence, handling, removal or disposal of, or exposure of persons to hazardous materials in any form at the project site.

The Client shall provide prompt written notice to the Consultant if the Client becomes aware of any fault or defect in the Project, including any errors, omissions or inconsistencies in the Consultant's Instruments of Service.

The Consultant shall review laws, codes, and regulations applicable to the Consultant's services. The Consultant shall respond in the design of the Project to requirements imposed by governmental authorities having jurisdiction over the project.

The Consultant shall be entitled to rely on the accuracy and completeness of services and information furnished by the Client. The Consultant shall provide prompt written notice to the Client if the Consultant becomes aware of any errors, omissions or inconsistencies in such services or information.

This Agreement shall be governed by the law of the principal place of business of the Consultant.

Drawings, specifications and other documents, including those in electronic form, prepared by the Consultant and the Consultant's consultants are Instruments of Service for use solely with respect to this Project. The Consultant and the Consultant's consultants shall be deemed the authors and owners of their respective Instruments of Service and shall retain all common law, statutory and other reserved rights, including copyrights.

No fixed limit of construction cost has been established as a condition of this agreement, although the Consultant shall advise the Client during the course of the drawings of his opinion of the approximate project cost. It is recognized that neither the Consultant nor the Client has control over the cost of labor, materials or equipment, over the Contractor(s)' methods of determining bid prices, or over competitive bidding, market or negotiating conditions. Accordingly, the Consultant cannot and does not warrant or represent that bids or negotiated prices will not vary from any statement of construction cost. The Cost of the Work shall be the total cost or, to the extent the Project is not completed, the estimated cost to the Client of all elements of the Project designed or specified by the Consultant. The Cost of the Work shall include the cost at current market rates of labor and materials furnished by the Client and equipment designed, specified, selected or specially provided for by the Consultant, including the costs of management or supervision of construction or installation provided by a separate construction manager or contractor, plus a reasonable allowance for their overhead and profit. In addition, a reasonable allowance for contingencies shall be included for market conditions at the time of bidding and for changes in the Work. The Cost of the Work does not include the compensation of the Consultant and the Consultant's consultants, the costs of the land, rights-of-way and financing or other costs that are the responsibility of the Client.

The Consultant shall not have control over or charge of and shall not be responsible for construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, since these are solely the Contractor(s)' responsibility under the Contract for Construction. The Consultant shall not be responsible for the Contractor(s)' schedules or failure to carry out the Work in accordance with the Contract Documents. The Consultant shall not have control over or charge of acts or omissions of the Contractor, Subcontractors, or their agents or employees, or of any other persons performing portions of the Work. The Consultant shall not be "in charge" of the Work as the term is defined in the Illinois Structural Work Act.

The Consultant shall not be responsible for errors and mistakes made during construction by the Contractor(s). Client's sole remedy for construction defects shall be against the Contractor(s), but the Consultant, as an additional service, will perform any requested service to assist the Client in prosecuting his claim.

If the Client requests the Consultant to execute certificates, the proposed language of such certificates shall be submitted to the Consultant for review at least 14 days prior to the requested dates of execution. The Consultant shall not be required to execute certificates that would require knowledge, services or responsibilities beyond the scope of this Agreement.

The Consultant shall have the right to install a sign at the project location that is visible to the public for the purpose of advertising the Consultant's company and contact information. The sign shall remain in place for the duration of the project and shall not be discarded. The Consultant shall be responsible for installation and removal of the sign.

The Consultant shall have the right to include photographic or artistic representations of the design of the Project among the Consultant's promotional and professional materials. The Consultant shall be given reasonable access to the completed Project to make such representations. However, the Consultant's materials shall not include the Client's confidential or proprietary information if the Client has previously advised the Consultant in writing of the specific information considered by the Client to be confidential or proprietary. The Client shall provide professional credit for the Consultant in the Client's promotional materials for the Project.

If the Client fails to make payments to the Consultant in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at the Consultant's option, cause for suspension of performance of services under this Agreement. If the Consultant elects to suspend services, prior to suspension of services, the Consultant shall give seven days' written notice to the Client. In the event of a suspension of services, the Consultant shall have no liability to the Client for delay or damage caused the Client because of such suspension of services. Before resuming services, the Consultant shall be paid all sums due prior to suspension and any expenses incurred in the interruption and resumption of the Consultant's services. The Consultant's fees for the remaining services and the time schedules shall be equitably adjusted.

If the Project is suspended by the Client for more than 30 consecutive days, the Consultant shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, the Consultant shall be compensated for expenses incurred in the interruption and resumption of the Consultant's services. The Consultant's fees for the remaining services and the time schedules shall be equitably adjusted.

If the Project is suspended or the Consultant's services are suspended for more than 90 consecutive days, the Consultant may terminate this Agreement by giving not less than 7 days' written notice.

This Agreement may be terminated by either party upon not less than seven days' written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination.

This Agreement may be terminated by the Client upon not less than seven days' written notice to the Consultant for the Client's convenience and without cause.

In the event of termination not the fault of the Consultant, the Consultant shall be compensated for services performed prior to termination, together with Reimbursable Expenses then due and all Termination Expenses as defined below.

Termination Expenses are in addition to compensation for the services of the Agreement and include expenses directly attributable to termination for which the Consultant is not otherwise compensated, plus an amount for the Consultant's anticipated profit on the value of the services not performed by the Consultant.

No deductions shall be made from the Consultant's compensation on account of penalty, liquidated damages or other sums withheld from payments to contractors, or on account of the cost of changes in the Work other than those for which the Consultant has been adjudged to be liable.

This Agreement represents the entire and integrated Agreement between the Client and the Consultant and supersedes all prior negotiations, representations, or agreements either written or oral. This Agreement may be amended only by written instrument signed by both Client and Consultant.

## ADDENDUM

In consideration of the mutual covenants and promises of the parties hereunder, this Addendum shall be incorporated into and made a part of the Structural Consultation Agreement (the "Agreement") between J. Hershey Architecture("Consultant") and Dana Point Condominium Association (the "Association" or "Client"). To the extent there is any inconsistency between this Addendum and any part of the Agreement, this Addendum shall control.

I Consultant shall only perform and provide the services identified in Phase 1 of Scope of Services set forth in the Agreement. A separate contract shall be prepared and executed for any other services to the extent the Client retains the Consultant for additional services.

II The Agreement is modified as follows:

- a) The Agreement at the section entitled "General Conditions" shall be modified so that the sixth paragraph (on Page 3 of the Agreement) shall read as follows (strikeout are words deleted, underline are words added):

In the event that it becomes necessary for the Consultant to retain an attorney to collect payments for services rendered or expenses incurred under this Agreement, or either party brings legal action to enforce this Agreement, Consultant the prevailing party in the action shall be entitled to recover all reasonable attorney's fees and related expenses, including costs of appeal and related attorney's fees.

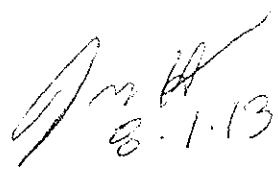
- b) The Agreement at the section entitled "General Conditions" shall be modified so that the second paragraph (on Page 3 of the Agreement) is modified by deleting the last sentence (relating to attorneys fees ).

- c) The Agreement at the section entitled "General Conditions" shall be modified so that the fifth, sixth and seventh paragraphs on Page 5 of the Agreement, shall read as follows (strikeout are words deleted, underline are words added):

This Agreement may be terminated by Client upon not less than seven days' written notice to the Consultant for the Client's convenience and without cause, and without payment of a penalty, termination, or cancellation fee or expenses.

In the event of termination not the fault of the Consultant, the Consultant shall be compensated for services performed prior to termination, but in no event shall such compensation exceed the fee identified in the Compensation/Schedule of Fees set forth on Page 2 of the Agreement, together with Reimbursable Expenses then due ~~and all Termination Expenses as defined below.~~

~~Termination Expenses are in addition to compensation for services of the Agreement and include expenses directly attributable to termination for which the Consultant is not otherwise compensated, plus an amount for the Consultant's anticipated profit on the value of services not performed by the Consultant.~~



- III. Prior to commencement of work, the Consultant shall provide an updated Certificate of Insurance evidencing that all policies of insurance are current and in effect. Consultant shall provide an updated certificate at any time upon request by the Client.

DANA POINT CONDOMINIUM  
ASSOCIATION (Client):

J. HERSHEY ARCHITECTURE, INC.

By: Angie S.

By: [Signature]

Title: President

Title: PRESIDENT

Date: 8/1/13

Date: 8.1.13