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ENGINEERING SERVICES AGREEMENT

August 15, 2023

Heritage Village of Palm Beach Lakes Homeowners Association, Inc.  
c/o Sean Leumert, President  
3800 N. Military Trail  
West Palm Beach, FL 33407

Re: Engineering Services

Dear Mr. Leumert:

Thank you for your interest in our firm for engineering services for survey inspection services, and an inspection at a retaining wall. This agreement provides for ANY engineering services requested over time until canceled in writing, or replaced with a newer agreement.

We provide a full range of engineering services, including consulting, investigations, design, construction support, building repairs, construction inspections and oversight, Special Inspector/Threshold Building Inspection services and general structural and civil engineering services. We provide engineering services as needed according to your requests.

- For one inspection and report for the retaining wall, and one building, this is a fixed fee of \$2,000. We can issue a separate report for each.
- For the structural inspections and survey report, based on 300 units (75 buildings), 10 or 15 minutes per unit average, 10-15 site visits, travel time, processing the inspection data, and the report, we estimate about \$29,000, utilizing one or two inspectors each day. This meets the intent of the Milestone Inspection, should the Association get a notice or the law is changed to include homeowner's associations. The survey report has data that can be utilized for the bid/spec package that is used for bidding. These are inspections from the exterior only, with access required at interiors at our discretion based on our observations.
- For repair specifications/bid package, we estimate this to be about \$2,500.
- For help with bidding, we estimate this to be about \$2,000. This is electronic or on-site pre-bid meeting, coordination with contractors, and a bid comparison report.
- For construction support, this can be 20-25% or more of construction value. A better estimation for construction support services can be provided after the extent of damages, construction value, schedule, sequence of work, and extent of Association requests for meetings, etc is known. For the structural inspections and reports, the engineer's time will be based on the extent of repairs needed.
- For HOA's as compared to Condominiums, we have found that during the inspections, dealing with access issues, locked gates, general coordination about specific units and complaints, interruptions and confrontations to our staff from roaming residents can increase engineering costs. To the extent there is clear communication from the Association to the owners, this can reduce expenses. Also, after the work, during a punchlist phase of a project, good communication with the contractor, and resolving non-engineering punchlist or cleanup items with the contractor can reduce expenses.

For Survey Inspection Services:

1. Meet with owner's representative to review conditions, and requests. Review existing drawings and/or previous engineering reports.
2. Conduct observations of all exterior areas to verify conditions and diagnose problems.
3. Conduct survey inspections of all balconies for the type of damage and extent of damages.
4. Provide a survey inspection report for all areas inspected that includes the survey results.

If needed, for Repair Project Services:

5. Provide specifications, drawings and bid documents.
6. Assist in obtaining qualified contractor proposals. Review bids and provide a bid comparison report. Advise on contract items and help with contractor negotiations.
7. Meetings with owner's representatives as requested.

If needed, for Construction Inspection Services:

1. Provide building department required inspections. Building departments require the special inspector engineer to be responsible for structural inspections for all structural work and require timely reports. This includes structural inspections and reports for building department special inspection requirements. This includes site inspections of shoring, rebar, forms and concrete placements. The reports include locations of work, structural approvals, and any observed problems or disapprovals. The inspections will not be full time and the number of reports will be a minimum per building department requirements. Typical Special inspector obligations are as follows:
  - Inspections while contractors working until the issuance of a final inspection certificate. Inspector shall be present at all times that work is in progress for structural components. All other inspections may be made on an as needed basis. Unscheduled compliance inspections will be made at any time to monitor activities.
  - Make a visual inspection of all structural components such as precast concrete, railings, windows and doors which cannot be so inspected after fabrication. This includes verification of shop drawings.
  - Determine and verify that approved shoring plans have been provided. Verify compliance with the shoring plans. Verify that each shoring installation is supervised and inspected by the contractor to be in compliance with the shoring documents.
  - Inspect all steel prior to concrete placement. Be present and monitor all concrete placements. Inspect all structural components such as, but not limited to footers or pilings, slabs- on grade, below grade or above grade, beams and columns, all structural walls (interior exterior and fire rated walls), floor and roof trusses and sheathing (structural interior and exterior).
  - Verify that all materials and methods are according to the plans and specifications.
  - Make written daily field reports and provide weekly reports to the building department.
  - At the completion of the construction work or a project, submit a certificate of code compliance to the building official stating that work was done in compliance with the code and in accordance with the plans and specifications.
  - Remain with the project until issuance of the final certificate of compliance and after contractor calling for final inspection to be made and approved by the building official.
2. Provide contract compliance inspection services. Construction contracts require the engineer to be responsible for contract compliance inspections and oversight and provide the engineer the right to reject work for protection of the owner. The engineer's time can vary significantly based on contractor issues. This includes:
  - Monitoring of work progress, contract costs, cost forecasts, work quality

- Verification of repair quantities and rejection of excessive quantities
  - Help with construction issues, claims and punch list items
  - Early discovery of improper work in time for corrections
  - Attending coordination meetings and phone conferences
  - Review and provide recommendations for change orders
  - Review and provide certifications of contractor progress invoices
  - Rejection of improper contractor invoices
3. Provide additional owner requested services during Construction Project. This includes:
- Attending board meetings or owner meetings
  - Additional Survey Inspections and survey reports
  - Diagnose new problems
  - Provide additional construction drawings, specifications
  - Assist in additional contractor negotiation

### **Billing and Payments**

This agreement provides for services based on request. Work requested will be charged based on time spent at our hourly rates, unless provided for with a written fixed fee. We charge by the hour, in increments of .1 hr for ALL work by ALL personnel, with the exception of answering questions about our engineering agreement, and most clerical work such as emailing reports, and scheduling inspections. We respond to requests from the manager and any board members. Client agrees if a board member makes a request, the board member is representing the board. If unit owners contact us, we inform the Association, and ask if they want us to respond.

- Professional Engineer's time is \$350 per hour.
- Expert witness and dispute resolution services time is \$500 per hour.
- Staff engineer's time is \$200 per hour.
- Building Inspector's and Technician's time is \$150 per hour.
- Clerical personnel time is \$80 per hour.

For electrical engineering work, the above hourly rates will increase 25%.

We charge for all time spent, including preparation of reports, coordination time with clients and contractors, reviewing the project details as needed, travel time or any other time incurred on the client's behalf. Time outside of our office will be charged portal to portal, minimum 2.0 hours. We charge for actual travel expenses when services require extended or overnight stay. Charges for inspections include charges associated with processing inspection data, photos and documents as well as the actual inspection report time.

The above hourly rates are subject to possible increase after 6 months, not to exceed 10% per year. Notice of any increases will be provided at least 30 days prior to increase. For after hours services (M-F before 8am or after 5pm, any Saturday or Sunday or major holiday), we reserve the right to charge our hourly fees at a 50% higher rate than those listed above.

We invoice approximately monthly. The invoices show specific services provided and are intended to keep the client advised in a timely manner of the work done and costs. We also provide copies of all documents sent from our office relative to your projects. The document copies are intended to keep the client advised in a timely manner of the status of work we are doing. We generally send invoices once per month for active jobs for active projects and less frequently for less active projects. Not receiving an invoice for a particular month does not indicate there were no charges for that month.

Payments are due when the Client receives invoices. The Client agrees to pay invoices promptly and within 30 days of receiving invoices. All payments received shall be applied to unpaid invoices as specified with payment, second to unpaid invoices with matching amounts, third to oldest unpaid balances when there is no match with unpaid invoices, fourth as a credit to the clients account.

The Client agrees to pay all undisputed charges. The Client agrees to provide written notification regarding any billing questions or disputes within 30 days of the invoice date. The Client agrees if there is no written notification of billing disputes within 30 days, the client accepts the work and there are no disputes regarding the engineering services on that invoice.

In the event of unpaid, undisputed balances after 60 days: The client agrees to provide a written statement regarding intent to pay and proposed time schedule for making payments. We have the right to stop work. We have the right to charge retainage based on expected future work. We have the right to charge and the client agrees to pay finance charges of 1% per month on unpaid monthly balances calculated per month from the due date. The client agrees to pay undisputed past due amounts and charges before we begin work again.

In the event of any collection disputes, attorneys' fees and collection costs will be paid to the prevailing party. In the event of Chalaire and Associates, Inc. prevailing regarding any such collection disputes, additional hourly time charges at the above referenced rates will be paid to Chalaire and Associates, Inc. by the client for all time spent prosecuting the collection and/or defending the dispute. The entitlement to attorney fees and costs for the prevailing party will include pretrial, trial and appellate levels.

#### General Conditions

All work will be performed under Florida-licensed PE supervision and subject to PE approval. Normally some inspections and coordination work can be done using technicians. The use of staff engineers, building inspectors or technicians is not guaranteed or assured, and will be at the discretion of the Professional Engineers. The Client agrees to be responsible for providing access to building areas as requested for engineering inspections. Investigative and opinion inspections are not destructive, unless specifically provided for and agreed upon using 3<sup>rd</sup> party testing or contractors. Observations are made based on reasonable available access and engineering judgment.

Chalaire & Associates will perform its services in accordance with the Client's requests and directions without regards to any estimates provided. All work provided will be charged based on actual time expended, actual time charges will not be limited by estimates. Any estimates of work provided are based on observable conditions or the Client's descriptions of requested work.

Engineering services will be performed as normally required for the normal progression of work. Inspection time, report preparation time, research time, coordination time or any other time normally required for the client's benefit will be charged. This includes review and reporting of any concerns or problems regarding your construction project. This includes time reviewing construction contracts and documents. This includes time conferring with building officials, contractors, managers or others as required. This includes time spent revising or closing out permit documents. Authorizations from the client for specific engineering services or time on a routine basis will not be required. Significant project delays may increase estimates or fixed fees for construction support engineering during projects. Estimates and fees are based on continual progression of work.

Client agrees to provide a brief history of building repairs, as best as possible, either via email or in person before the inspections.

If notices have been received from building department regarding Re-certifications, Milestone Inspections, Violations, Permit Issues, or Complaints, client agrees to provide us a copy.

For any interior inspections, the Client agrees to provide an escort INTO units to operate doors, blinds, shutters, window dressings, and to communicate with residents. If access cannot be granted due to not having keys available, or locked or malfunctioning window shades, shutters, or doors, or other issues, we will inspect from the exterior only, as best as possible. Attempts should be made to have shutters FULLY opened by owners or maintenance personnel ahead of time. This reduces delays.

If the engineer requires a ladder for any part of inspections, client agrees to provide.

It is very helpful to have the original construction drawings. If they are not in the association's possession, Association agrees to contact the building department to make attempts to locate and obtain the original building drawings. We prefer to have original drawings prior to starting the inspections. They can be emailed or dropped off at our office. If we need to pick them up, it will be charged at our hourly rates.

For repairs, renovations, or new construction projects, any requirements for as built drawings are to be verified by the contractor with the building department and provided by the contractor. The contractor is responsible to comply with as-built drawing requirements. Generally, as-built drawings are not required for repairs projects. Providing as-built drawings is not included in engineering services.

Client acknowledges Engineer may provide copies of any reports to appropriate governmental authorities, at engineer's sole discretion.

#### Other Agreements or Changes

No other agreements or agreement changes will be binding unless in writing and signed by both parties, or signed by the party giving up any rights specified in this agreement.

#### Termination

This agreement may be terminated by either party with seven (7) days written notice. Chalaire and Associates, Inc. shall be entitled to payment for all work performed to date of termination following notice.

#### Insurances

We maintain workers' compensation and liability insurance as required by law. Such insurance's will be maintained at all times during the performance of services.

#### Indemnify / Hold Harmless

If the client does not implement any repairs recommended or required by the engineer, client agrees it will not assert any claims in any way related to those conditions for which repairs were required or recommended, and client will indemnify, defend, and hold harmless Chalaire and Associates, Inc., it's owners, and it's employees from any claim arising out of those conditions.

To the fullest extent permitted by law, Engineer shall indemnify, defend and hold harmless the Association, its directors, officers, members, and their respective employees (hereafter collectively referred to as "Association Related Parties"), from and against all liability, claims,

damages, losses and expenses, including, but not limited to, attorneys' fees, expert witness fees and other consultant fees, but only if such claims, damages, loss or expense are arising out of, relating or resulting from the negligent acts, errors or omissions in the performance of Services rendered by the Engineer and /or its consultants for the Project.

To the fullest extent permitted by law, the Association shall indemnify, defend and hold harmless the Engineer its directors, officers, members, and their respective employees (hereafter collectively referred to as "Engineer Related Parties"), from and against all liability, claims, damages, losses and expenses, including, but not limited to, attorneys' fees, expert witness fees and other consultant fees, but only if such claims, damages, loss or expense are arising out of, relating or resulting from the negligent acts, errors or omissions by the Association relative to the Project.

To the extent that Section 725.06, Florida Statutes applies to this paragraph, the parties hereto specifically acknowledge and agree the foregoing indemnity shall be construed in accordance with Section 725.06, Florida Statutes in force as of the date of this Agreement. In accordance with Section 725.06, Florida Statutes, the indemnification obligations of both the Association and Engineer shall have a monetary limitation of One Million Dollars (\$1,000,000.00) and bears a reasonable commercial relationship to the risks undertaken by each party in accordance with this Agreement and is incorporated by reference into the Agreement. The Indemnification obligations of Engineer and Association shall survive termination or expiration of this Agreement.

**PURSUANT TO F.S. 558.0035, AN INDIVIDUAL  
EMPLOYEE OR AGENT MAY NOT BE HELD  
INDIVIDUALLY LIABLE FOR NEGLIGENCE.**

**INDEPENDENT AND UNRELATED TO F.S. 558.0035,  
ASSOCIATION AGREES NOT TO PURSUE A CLAIM  
AGAINST AN INDIVIDUAL EMPLOYEE OR AGENT  
OF CHALAIRE AND ASSOCIATES, INC.**

#### Successors and Assigns

This Engineering Services Agreement will be binding upon and inure to the benefit of the parties', the heirs, successors, and assigns. Neither Chalaire and Associates, Inc. or the Client will assign this Engineering Services Agreement or any interest hereunder, in whole or part, without the prior written consent of the other, which consent may be withheld for any reason or for no reason.

#### Merger, Integration, Modification and Severability

This Engineering Services Agreement contains the entire understanding between the parties concerning the subject matter hereof and supersedes any prior understanding or contracts between them concerning the subject matter hereof. No changes to the provisions of this Engineering Services Agreement will be binding upon the parties unless made in writing and signed by the party to be bound thereby. In the event that any provision of the Engineering Services Agreement is found to be invalid or unenforceable by a court of competent jurisdiction, all other provisions will remain in full force and effect.

### Waiver of Jury Trial

Each party acknowledges that this Engineering Services Agreement is a sophisticated legal document. Accordingly, justice will best be served if issues regarding this Engineering Services Agreement are heard by a judge in a court proceeding and not a jury. Each party agrees that any claim, demand, action, or cause of action, with respect to any action, proceeding, claim, counterclaim, or cross claim, whether in contract and/or in tort, including, but not limited to those for personal injuries, pain, suffering and wrongful death, based on, arising out of, in connection with or in any way related to this Engineering Services Agreement, the underlying project, any course of action, course of dealing, verbal or written statement, validation, protection, enforcement action or omission of any party will be heard by a judge in a court proceeding and not a jury.

### Jurisdiction and Venue

Any dispute concerning this contract shall be heard in a court of competent jurisdiction in Palm Beach County, Florida.

### Limitation of Liability

To the fullest extent permitted by law, and notwithstanding any other provisions of this Engineering Services Agreement, the total liability, in the aggregate, of Chalaire and Associates, Inc. and its officers, directors, partners, employees and sub-consultants, and any of them, to the Client and anyone claiming by or through the Client, for any and all claims, losses, costs or damages, including attorneys fees and costs and expert witness fees and costs of any nature whatsoever or claims expenses resulting from or in any way related to the underlying project or the Engineering Services Agreement from any cause or causes will not exceed the total compensation received by Chalaire and Associates, Inc. under this Engineering Services Agreement. It is intended that this limitation apply to any and all liability or cause of action however alleged or arising, unless otherwise prohibited by law.

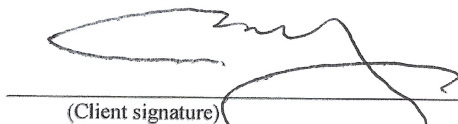
Please consider our offer and respond with your authorization to proceed and agreement to the terms listed above. If there are any questions regarding our services or any other concerns, please do not hesitate to call us. This proposal may be withdrawn at any time.

Sincerely,



Terri Chalaire, P.E., S.I.  
FL PE SI 65587

I hereby authorize Chalaire and Associates, Inc. to proceed and agree to the terms listed above.  
***(Must be a current board member who is an officer or director)***



(Client signature)

Date:

August 16 2023

HERBERT Oldenburg

(Printed name)