



Level 1 Reserve Study
Stephanie Terrace
Condominiums
15000 SW Farmington Road
Beaverton, OR 97007

PONO Building Consultants Proposal

Level 1 Reserve Study

January 22, 2020

Stephanie Terrace COA
c/o Stephanie McPhail
Superior Community Management
PO Box 4585
Tualatin, OR 97062

Sent Via Email: stephanie@superiorcommunity.com
Ref #: 20200122-STC-001

Dear Stephanie and Board of Directors,

We are pleased to provide you with the enclosed proposal for a Level 1 Reserve Study at Stephanie Terrace Condominiums. We have included our pricing for Level 3 and Level 2 updates as well. The property was constructed in 1984. It consists of 14 two-story wood framed buildings and 54 units. The exterior is composed of vinyl cladding, vinyl frame windows, and steep slope composition roofs. Thank you for considering PONO Building Consultants, LLC ("PONO") to assist you with these services.

PONO was founded by two experienced Community Association professionals. Alika Nee has over 15 years of experience in building envelope consulting, construction, and estimating. Brad Finson is an experienced manager of Condominium and Homeowners' Associations, with a degree in Real Estate and Construction Management. PONO's reserve study services utilize their experience in these fields to deliver a study that evidences our understanding of building systems, as well as the components a Board needs in a study to successfully plan. PONO uses SmartProperty Reserve Study software (see demonstration at www.smartproperty.com/features/).

INITIALS _____

SCOPE OF SERVICES

PONO recommends that we perform the following tasks in order to provide a Level 1 Reserve Study:

Background Document Review:

Prior to the site visit, PONO to review governing documents (Declarations & Bylaws) to determine Association's maintenance responsibilities, as well as any construction design documents and building permits that are available/applicable to establish age of commonly maintained components.

Field Work:

PONO to visit property to perform:

- Visual review of common elements
- Inventory and photo documentation of commonly maintained components
- Field measurements, counts, and takeoffs of commonly maintained components

Reserve Study Preparation

PONO will prepare a Reserve Study report, using SmartProperty Reserve Study software, including:

- Common element components maintained by Association
- Remaining useful life, actual life, anticipated costs, basis for anticipated costs, and description/photo of each item
- Funding model(s) for Board to consider future contributions to reserve fund
- Provide a draft study to the Board and meet with the Board or Committee (up to 3 hours) to discuss feedback and the study. Additional meeting time on a T&M basis.
- Incorporate feedback into study and revise content to produce final Reserve Study report

Assumptions

In order to complete the above scope of services, the following assumptions are made:

- Association will provide access to areas needed to properly survey all common elements.
- Observations will be made from ground level and from ladders.
- Board or Management will provide Declarations & Bylaws.

- Board or Management are responsible for coordinating access to any individual units or limited common elements (attics, balconies, etc. only accessible through a unit).
- Two rounds of revisions will be made base on feedback received from Board or Committees.
- Final product will be provided to Board and/or Management in PDF format and cloud-based format.
- Excludes additional time or expense for further investigation or services not necessary to prepare the Reserve Study (i.e. time spent inspecting a roof leak and preparing a scope of repair).

COMPENSATION

Client will be billed at a Flat Rate/Not to Exceed basis.

Please check the box next to the preferred option:

- Level 1 Reserve Study/On-Site Update: **\$2,500** (1st year of new study)
- Level 2 Reserve Study/On-Site Update: **\$1,250** (recommended every 3rd year)
- Level 3 Reserve Study/Off-Site Update: **\$850** (recommended all other years)
- 3-year Commitment (Year 1 - Level 1, Year 2 - Level 3, Year 3 - Level 3): **10% discount, billed annually**

If specific services are not selected, PONO will proceed with Level 1 Reserve Study.

SCHEDULE

PONO is available to schedule this work upon acceptance of the proposal terms. **This proposal is valid for sixty (60) days.**

First budget year of new study **(please indicate start date of budget)**

ADDITIONAL SERVICES

PONO Building Consultants, LLC is an exterior envelope consulting firm that specializes in evaluating, diagnosing, and suggesting repairs for existing buildings that are not adequately and properly performing. Following our evaluations, we are qualified to provide additional services such as scope of repair preparation, construction document preparation, contractor bid solicitation, and contract administration. These additional items can be proposed separately on an as-needed basis or performed on a time and cost basis at the request of the Client.

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LIMITATIONS

The scope of work is intended to provide the Client with the listed services as described in this proposal. Our services do not include items not mentioned, including but not limited to, structural, fire and life safety, mechanical, plumbing, electrical, or any other services not specifically mentioned. Also, note that PONO does not provide construction services or construction management. Our contract administration role, if applicable, is to verify that the contractor is performing work in accordance with the design intent. The contractor will be responsible to have his or her own Quality Assurance/Quality Control protocol. PONO can only observe what is visible and available during site visit and is not responsible for items not observed or completed during visit. Work performed after site visit or that is concealed cannot be observed or reviewed. This proposal was generated based on the information available to us as provided by the Client.

CLIENT ACKNOWLEDGEMENT

Client acknowledges they have read and agreed to the attached "PONO Agreement - Terms & Conditions." By signing below and initialing at the bottom right of each Agreement page, Client authorizes PONO to commence services. Please return a signed copy of all documents to PONO.

PONO Building Consultants	Client: Stephanie Terrace COA c/o: Stephanie McPhail, Superior
By: _____	By: _____
Alika Nee (Printed Name)	_____ (Printed Name)
Title: Owner	Title: _____
Email: alika@ponobuildingconsultants.com	Email: _____
Date: _____	Date: _____

Thank you for the opportunity to provide this proposal. Please let us know if you have any questions, concerns, or if you need additional information.

Sincerely,

PONO Building Consultants
Brad Finson, Owner/Reserve Study Services

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Terms & Conditions

PONO Building Consultants, Inc. ("PONO") and the "Client" agrees to the following terms and conditions:

1. **Definition of Agreement.** When the term "Agreement" is used herein, such term shall include and refer to this Project Agreement (Terms and Conditions) and the PONO Proposal ("Scope of Work") and any amendments, modifications, or additions to any of these documents to which the parties agree in compliance with Section 16 below.
2. **Services Provided.** Client hires PONO to perform the services provided in the attached Proposal, as it may be amended from time to time. The services may be referred to in this Agreement as the "Project."
3. **Compensation.** PONO's compensation for the Project shall be as described in the Proposal. Client acknowledges that PONO periodically adjusts the hourly rates and costs provided in the Rate Schedule, consistent with market conditions, employee performance reviews, and the procurement of new equipment. PONO will bill Client for the work PONO performs on the Project at the hourly rates and costs in effect at the time the work is performed.
4. **Billing and Payment.** PONO will provide Client with an invoice for the services PONO has performed and the costs it has advanced on the Project during the prior month. Client agrees to pay PONO for such services and costs upon receipt of invoice. If the invoice has not been paid in full within forty-five (45) days, Client's account will become delinquent. If Client's account becomes delinquent PONO will assess interest at the rate of one percent (1%) per month against any past due amounts. If necessary, collection fees will be added to the outstanding invoiced amount. If the account remains past due, PONO may cease all work on the Project and retain all records and work product related to the Project, until the account is brought current.
5. **Retainer.** Client shall provide a retainer if requested in the proposal. PONO will hold this retainer until it completes the Project, or its services are terminated, as provided in Section 13 below. At such time, the retainer will be credited against any remaining unpaid invoices and the balance will be released to Client.
6. **Insurance.** PONO presently has insurance coverage as follows: (a) Workers' Compensation -- \$500,000; (b) Comprehensive General Liability -- \$1M per occurrence and \$2M in the aggregate; (c) Automobile -- \$1M combined; and (d) Professional Liability -- \$1m per claim and \$1m in the aggregate. PONO currently maintains coverage to work on condominiums and multi-family buildings and will maintain such coverage at all material times during its work on this project and any applicable warranty period.
7. **No Warranties and No Third-Party Beneficiaries.** PONO will perform the services provided in the Scope of Work in accordance with current generally accepted practices using that degree of care and skill ordinarily exercised under similar circumstances by members of its profession. PONO does not make or intend to make any warranty, expressed or implied, by performing any of the services provided in the Scope of Work within the limitations of scope, budget, and schedule as controlled by Client. Specifically, Client acknowledges that building forensics is an inexact process based in part in a process of elimination and therefore PONO does not warrant or guaranty that it will locate all the preexisting and hidden conditions of the building which is the subject of the Project. Further, the parties do not intend, and no such intent shall be inferred, that PONO assume a direct obligation to any third party by entering into this Agreement.
8. **Limitation of Liability.** The Parties agree that the liability of PONO (which includes PONO's shareholders, directors, officers, employees, and agents) to Client for any loss or damage (personal or property) of Client related in any way to PONO's performance or nonperformance under this agreement shall be limited to the following provisions (additional coverage and premiums are available upon request):
 - **8.1 Industry Standard Limitation:** PONO and Client have discussed and have agreed: (i) To the fullest extent permitted by law, Client agrees to limit the liability of PONO, its officers, employees, and sub-consultants to Client, all landowners, contractors, subcontractors, lenders, suppliers, manufacturers, third parties, and their employees such that the total aggregate liability, including attorney's fees and costs shall not exceed the limits of PONO's available insurance coverage, notwithstanding whether a particular claim is covered by that policy. (ii) PONO is not responsible for the acts, errors or omissions of Client, any contractor or supplier. (iii) Client shall give written notice to PONO of any claim of negligent act, error or omission within one (1) year after substantial completion of the project. Failure to give notice herein required shall constitute a waiver of claims by Client.
 - **8.2 Additional Coverage for Fee:** If Client desires additional liability coverage, above the industry standard "fees paid limitation" described in section client may request such coverage and PONO will seek professional and general liability insurance coverage for the greater requested limits, if available. The cost to obtain the additional insurance coverage shall be paid by Client.
 - **8.3 Consequential Damages:** Both parties waive all damages for consequential damages (as used here "consequential damages" shall not mean property damage relating to water intrusion) against each other. Client acknowledges that the parties have mutually negotiated the limitations provided in Section 8 and Client accepts such limitations.

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9. Indemnification.

- 9.1 Indemnification of Client. PONO shall defend, indemnify, and hold Client harmless from and against any and all claims, suits, actions, losses, costs, penalties, damage of whatsoever kind or nature, or liability to or by third parties for damages to property, including loss of use thereof, injuries to persons, including death, and from any other claims, suits, or liability arising out of PONO (or any of its employees, agents, or independent contractors) performing any work on the Project (collectively referred to herein as a "PONO Claim"). PONO's duties to so defend, indemnify, and hold Client harmless shall apply regardless of whether the circumstances giving rise to the PONO Claim were known or unknown. Provided, however, that PONO's duty to defend, indemnify, and hold Client harmless as provided herein shall not apply to a PONO Claim if the PONO Claim is caused by or results from the negligence of Client, its agents, its employees, or its independent contractors (other than PONO and its agents, employees, or independent contractors). Provided further, however, that if the PONO Claim is caused by or results from the concurrent negligence of PONO (including its agents, employees, or independent contractors) and Client (including its residents or tenants together with any of their licensees or invitees), employees, agents, or independent contractors (other than PONO and its agents, employees, or independent contractors) the defense, indemnification, and hold harmless obligations provided for herein shall only be applicable to the extent of the negligence of each party (which includes, in the case of PONO, its agents, employees, or independent contractors, and, in the case of Client, its residents or tenants (together with any of their licensees or invitees), employees, agents, or independent contractors (other than PONO and its agents, employees, or independent contractors)).
- 9.2 Indemnification of PONO. Client shall defend, indemnify, and hold PONO harmless from and against any and all claims, suits, actions, losses, costs, penalties, damage of whatsoever kind or nature, or liability to or by third parties for damages to property, including loss of use thereof, injuries to persons, including death, and from any other claims, suits or liability arising out of any negligence or intentional misconduct of Client (including any of its residents or tenants (together with any of their licensees, or invitees) employees, agents, or independent contractors (other than PONO and its agents, employees, or independent contractors)) at the Project (collectively referred to herein as a "Client Claim"). Client's duties to so defend, indemnify, and hold PONO harmless shall apply regardless of whether the circumstances giving rise to Client Claim were known or unknown. Provided, however, that Client's duty to defend, indemnify and hold PONO harmless as provided herein shall not apply to a Client Claim if Client Claim is caused by or results from the sole negligence of PONO, its agents, its employees, or independent contractors. Provided further, however, that is Client Claim is caused by or results from the concurrent negligence of PONO (including its agents, employees, or independent contractors (other than PONO and its agents, employees, or independent contractors)) and Client (including its residents or tenants (together with any of their licensees or invitees), employees, agents, or independent contractors) the defense, indemnification, and hold harmless obligations provided for herein shall only be applicable to the extent of the negligence of each party (which includes, in the case of PONO, its agents, employees, or independent contractors and, in the case of Client, its residents or tenants (together with any of their licensees or invitees), employees, agents, or independent contractors (other than PONO and its agents, employees, or independent contractors)).
- 9.3 Additional Indemnification, Hold Harmless, and Defense Terms. The following additional terms shall apply to the parties' indemnification, hold harmless, and defense obligations provided in this Section 9:
 - 9.3.1 Each party's duty to defend, indemnify, and hold the other party harmless shall include such other party's personnel-related costs, reasonable attorney fees, court costs, and all other PONO or Client Claim-related expenses, as applicable.
 - 9.3.2 Each party's duty to defend the other party pursuant to this Section is entirely separate and independent from each party's duty to indemnify and hold the other party harmless and, thus, the obligations to defend and/or indemnify and hold harmless may arise at different times. Such defense obligation includes, but is not limited to, the obligation to defend the other party with respect to any alternative dispute resolution proceeding provided for in this Agreement as well as matters related to investigation and resolution to any PONO or Client Claim.
 - 9.3.3 Each party acknowledges that it has mutually negotiated regarding the provisions of this section and each party's waiver of its immunity under industrial insurance and each party voluntarily accepts the provisions of this section and waives its industrial insurance immunity as set forth above.
 - 9.3.4 The provisions of this Section shall apply to any PONO or Client Claim which arises after this Agreement is terminated.

10. Dispute Resolution.

- 10.1 Negotiation. In the event there is a dispute between the parties arising out of or relating to this Agreement, the parties shall attempt in good faith to resolve the dispute promptly by negotiation. Either party may give the other party written notice that a dispute exists (which is referred to herein as a "Notice of Dispute"). The Notice of Dispute shall include a statement of such party's position. Within ten (10) days of the delivery of a Notice of Dispute, the parties will meet at a mutually acceptable time and place and attempt to resolve the dispute. All documents and other information or data on which each party relies concerning the dispute shall be furnished or made available on reasonable terms to the other party at least five (5) business days before the first meeting of the parties.
- 10.2 Mediation. Except for a dispute only involving Client's failure fully to pay PONO pursuant to the Agreement for PONO's performance of work on the Project, if the dispute has not been resolved by negotiation within twenty (20) days after the delivery of a Notice of Dispute, the parties agree that all disputes or claims relating to this Agreement shall be submitted to mediation consistent with the construction industry mediation procedures (except to the extent such procedures conflict with the terms of this Subsection 10.2, in which case the terms of this Subsection 10.2 shall control), and if the dispute is not resolved through mediation, then it shall be submitted to the arbitrator for final and binding arbitration. The mediation session shall be conducted in the location nearest to the project, or at a location mutually agreed to. The parties agree to participate in the mediation in good faith and to share equally in its costs. With respect to any dispute only involving Client's failure fully to pay PONO pursuant to the Agreement for PONO's performance of work on the Project, if such dispute is not resolved pursuant to the procedure provided in Subsection 10.1, then such dispute shall be resolved in any court of competent jurisdiction, with jurisdiction in the state the project was performed in.
- 10.3 Arbitration. Except for a dispute only involving Client's failure fully to pay PONO pursuant to the Agreement for PONO's performance of work on the Project, all disputes, claims, or controversies relating to this Agreement that are not resolved by agreement of the parties shall be submitted to final and binding arbitration. Neither party shall be prohibited, however, from seeking the following provisional or expedited relief in a judicial proceeding: judicial foreclosure of a security interest or mortgage claims in bankruptcy court, and preliminary injunction or restraint to prevent irreparable harm pending resolution by arbitration. Questions of arbitrability or the scope of the parties' agreement to arbitrate shall be determined by the arbitrator. Either party may initiate arbitration with respect to the matters submitted to mediation. Unless otherwise agreed in writing by the parties, the mediator shall be disqualified from serving as arbitrator in the case. The arbitration will be conducted before a single arbitrator. The arbitration proceedings will be conducted in the location nearest the project or at a location mutually agreed to. The parties will cooperate with one another in selecting an arbitrator and in scheduling the arbitration proceedings. The parties agree to participate in the arbitration in good faith. To the fullest extent permitted by law, the parties waive any right to claim any punitive or exemplary damages against each other. The prevailing party shall be awarded its costs, fees, and expenses, including reasonable attorney fees, incurred in connection with the arbitration and in the court confirmation and enforcement of any award. A judgment entered upon and confirming any arbitration award shall be binding, final, and non-appealable and both parties waive any right to a jury trial. The provisions of this Subsection 10.3 and any award of the arbitrator may be enforced by any court of competent jurisdiction.
- 10.4 Attorney's Fees, Costs and Expenses. Should litigation or arbitration occur between the parties, all reasonable litigation or arbitration expenses, collection expenses, witness fees, court costs, and attorney's fees incurred by the prevailing party shall be paid by the non prevailing party to the prevailing party.

11. Notices. Any notice required under this Agreement shall be in writing addressed to the appropriate party at its address set forth in the proposal and either delivered personally to that party or mailed by registered or certified mail, postage prepaid, or by commercial courier services. All notices shall be effective as of the date of receipt.

12. Survival and Severability. The terms and conditions of this Agreement shall survive the completion of the Project and the termination of this Agreement, whether for cause or for convenience. If any term or condition of this Agreement is ever held to be unenforceable, all remaining terms and conditions shall continue in full force and effect.

13. Termination.

- 13.1 Either party may terminate this Agreement by providing the other party with written notice at least ten days before the termination date provided in the notice. PONO shall be paid for services performed and costs incurred up to the termination date.

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- 13.2 If this Agreement is terminated by Client in the absence of default by PONO, PONO shall be entitled to their anticipated profit of fifteen percent (15%) of the value of services not performed.
- 13.3 The time expended and costs incurred by PONO shall be billed up to the date of termination. All such time and costs shall be paid by Client pursuant to the terms and conditions of this Agreement.

14. Acceptance. By signing this Agreement, Client agrees the terms and conditions of this Agreement are acceptable and approved. If Client is a legal entity (e.g. a corporation, partnership, or limited liability company), then the person who signs on behalf of Client certifies that he or she has the authority to bind Client to the terms and conditions of this

Agreement. If Client is a legal entity and it claims at any time that the person who signed this Agreement lacked the authority to do so, PONO may name such person, in addition to Client, in any lawsuit or arbitration which arises relating to this Agreement and seek to hold such person liable, along with Client, in such proceeding. Upon PONO's receipt of this fully

executed Agreement and any required retainer, PONO shall have authority to commence the work provided in the Scope of Work.

15. Ownership of Work Product. Ownership of the originals of any reports, data, studies, surveys, charts, maps, drawings, specifications, figures, photographs, memoranda, and any other documents which PONO develops, compiles, or produces in connection with this Agreement (hereafter, "Instruments of Service"), whether or not completed, shall be vested in PONO. Methodology, materials, software, logic, and systems developed in connection with this Agreement are the property of PONO, including the right to revise or publish the same without limitation. PONO grants to Client a nonexclusive license to reproduce the PONO Instruments of Service solely for purposes of constructing, using and maintaining the Project, provided that Client shall comply with all obligations, including prompt payment of all sums when due, under this Agreement. Any termination of this Agreement prior to completion of the Project shall terminate this license. If owner decides to terminate the relationship after the design phase and before the construction phase the Client holds PONO harmless for any use of the work product.

16. Modifications. This Agreement represents the entire and integrated Agreement between the parties hereto and supersedes all prior negotiations, representations, or agreements, either written or oral. Except as provided in Section 3 above regarding the periodic adjustment of PONO's compensation, this Agreement may only be amended, modified, or added to by written instrument properly signed by both parties. The parties acknowledge the general contract rule

that a clause in a contract, such as this one, prohibiting oral modifications is itself generally subject to oral modification. However, in order to ensure certainty as to the terms and conditions of this Agreement, the parties waive this general contract rule.

17. Assignment. Neither party may assign all or a portion of its rights under this Agreement or delegate all or a portion of its obligations under this Agreement without the express written consent of the other party.

18. Independent Review. The parties acknowledge that they have read this Agreement and fully understand its terms, and that they have had the full opportunity to be advised by their independent legal counsel. The parties waive the general rule of construction, therefore, that an agreement shall be construed against its drafter.

19. Client Materials Retention. Client provided plans, photos, and samples of the project will be discarded 90 days after completion of the PONO report or conclusion of services unless Client advises PONO in writing.

20. Site Safety & Means and Methods. Client agrees that the project contractor(s) shall be solely responsible for job site conditions, including safety in, on and about the site, safety of all persons and property during the performance of the work, in compliance with applicable regulations. Under no circumstances, shall PONO services include any review of the

adequacy of the contractor's safety measure in, on, or about the construction site. PONO shall not be held in any way responsible for or to guarantee any contractor's work, nor to assume the responsibility for the means, methods, techniques, sequencing, or application used by any contractor nor to assume responsibility for a contractor's compliance with laws and regulations. On-site services provided by PONO shall not relieve Client's construction contractor of its responsibilities to perform the construction work in accordance with Client's construction agreement, the project drawings and specifications, and applicable laws. All field review services are provided to determine that the construction is being performed in general conformance with the design documents. The Client acknowledges that such field reviews shall comprise a sampling of the work and that PONO cannot be responsible for the contractor's omissions.

21. Fees & Reimbursable Expenses:

- 21.1 Schedule of Fees. When fees for the services are based on the actual hours worked on the project by staff personnel, the billing rates will be in accordance with the fee schedule below:
 - Principal: \$150/hr.
 - Senior Technical Consultant: \$150/hr.
 - Project Manager: \$120/hr.

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- Project Coordinator/Admin: \$110/hr.
 - Meeting Attendance during business hours (9:00am-4:00pm) for all staff: \$100/hr.
 - Meeting Attendance outside of business hours for all staff: \$200/hr.
- 21.3 Expert Witness & Consulting Fees. PONO's fees for expert or fact testimony (Deposition, Arbitration, and Trial) are 1.5 times the standard hourly rates provided above, and they are not contingent upon the outcome of the matter. The following minimums apply:
 - Deposition, Arbitration, and Trial – four-hour minimum.
 - Travel, testimony preparation time, and time spent responding to subpoena/discovery requests are billed at PONO's standard hourly rates.
- 21.4 Subcontracted Services. Some projects require PONO to obtain certain subcontracted services, and PONO may do so at their discretion. Client shall either reimburse these subcontractors directly or reimburse PONO at the cost of these subcontractors plus administrative fees below.
- 21.5 Project Reimbursable for Materials, Equipment, Etc. Reimbursable expenses are in addition to compensation for PONO's professional services and include expenses incurred directly related to the Project, such as mileage for meetings or site visits not included in the original scope (at applicable federal rate), report and photo production of items not included in the original scope, color copies at \$0.89/ page, B & W copies at \$0.15/ page, and large scale drawing sheets at \$4.35/ page, and Project related travel costs. Special equipment or testing fees will be billed at cost.
- 21.6 Storage of Project Materials or Components. At Client's request, actual building components will be stored for further testing, trial exhibits, or any other project means. Monthly fees and disposal costs will apply.
- 21.7 Additional Insurance and Bonding. At Client's request, additional levels of insurance coverage than is normally carried, performance bonds, payment bonds, or other employee related testing or screening costs will be reimbursable costs.
- 21.8 Administrative. Client agrees that any such subcontractor or reimbursable costs which PONO incurs and pays in connection with the project are merely advances of costs by PONO and Client shall be obligated to reimburse PONO for such costs. All additional subcontracted or reimbursable expenses will incur an administrative fee of 15% of the expenses incurred.
- 21.9 Hazardous Materials: Client assumes full responsibility and costs for compliance with the provisions of RCRA/Asbestos/Lead, and any other federal or state statute or regulation governing the sampling, handling, treatment, storage and disposal of pollutants.