

**PIAZZA ESCONDIDA CONDOMINIUMS**  
**AGREEMENT OF SALE AND PURCHASE: BASIC TERMS**

<b>Seller:</b>	TONE VENTURES, LLC, a Texas limited liability company 6300 Escondido Drive, El Paso, TX 79912 Ph: (512) _____ Fax: (512) _____
<b>Buyer:</b>	_____ _____ Ph: _____ Fax: _____ Cell: _____ email address: _____
<b>Unit:</b>	Unit ____ in Piazza Escondida Condominiums: Address: _____  <input type="checkbox"/> Attached Unit OR <input type="checkbox"/> Live/Work OR  <input type="checkbox"/> Detached Unit
<b>Title Company:</b>	Great Western Abstract & Title Company Attn: Vanessa Parga 6350 Escondido Drive Suite D23 El Paso, Texas 79912 Phone: 915-317-1880 Fax: 319-581-7669 email: <a href="mailto:vparga@gwafc.com">vparga@gwafc.com</a>
<b>Earnest Money:</b>	\$ _____, due and payable on the Effective Date (the "Earnest Money").
<b><u>PURCHASE PRICE:</u></b>	<b>Purchase Price:</b> \$ _____
<b>Method of Purchase (select one):</b>	<input type="checkbox"/> Cash <input type="checkbox"/> Financing (See <i>Section 2.04</i> )
<b>Parking Space(s) and Storage Space Assigned to Unit:</b>	Parking Space No. _____ Storage Space No. _____ <input type="checkbox"/> Not Applicable (See <i>Section 1.03</i> )
<b>Closing Date (select one):</b>	<input type="checkbox"/> <b>OPTION A (CERTIFICATE OF OCCUPANCY NOT YET ISSUED):</b> The Closing Date shall occur within fifteen (15) days after issuance by the City of El Paso of a Certificate of Occupancy for the Unit (See <i>Section 5.01</i> )  <input type="checkbox"/> <b>OPTION B (CERTIFICATE OF OCCUPANCY ISSUED):</b> The Closing Date shall occur on _____ (indicate date) (See <i>Section 5.01</i> )
<b>Effective Date:</b>	_____ (To be filled in with date last party signs)
<b>Unit Classification :</b>	<input type="checkbox"/> owner occupied <input type="checkbox"/> investment

BUYER: \_\_\_\_\_  
SELLER: \_\_\_\_\_

PIAZZA ESCONDIDA CONDOMINIUMS

AGREEMENT OF SALE AND PURCHASE

THIS AGREEMENT OF SALE AND PURCHASE (this “**Agreement**”) is entered into between **TONE VENTURES, LLC**, a Texas limited liability company (“**Seller**”), and the “**Buyer**” identified on the Basic Terms to this Agreement, and is as follows:

**I.**

SALE AND PURCHASE

**1.01. Purchase and Sale of Unit.** Seller sells and agrees to convey to Buyer, and Buyer purchases from Seller, the Unit for the Purchase Price and subject to the terms specified in this Agreement.

**1.02. Common Elements.** The Unit will be conveyed with an undivided interest in the common elements, as identified and allocated to the Unit in the Regime, defined and described in *Section 1.05* below.

**1.03. Assignment of Parking Space and Storage Space.**

Not Applicable

Seller has reserved the right under the Declaration (defined below) to assign one or more parking spaces and/or storage spaces for the exclusive use of the Unit. At Closing, Seller will assign the parking space and/or storage space identified in the Basic Terms, utilizing Seller’s prescribed form, depicted on the *Parking and/or Storage Depiction Addendum* attached hereto as Exhibit “A”.

**1.04. Condominium Documents.** The Unit is located in the Piazza Escondida Condominiums (the “**Regime**”), a condominium project located in El Paso County, Texas, established by that certain Declaration of Condominium Regime for the Piazza Escondida Condominiums, recorded in the Official Public Records of El Paso County, Texas (collectively, the “**Declaration**”). The Regime has been established upon certain real property in El Paso County, Texas, as more particularly described in the Declaration (the “**Property**”). Capitalized terms used but not defined in this Agreement have the meanings ascribed to such terms in the Declaration.

**1.05. Condominium Information Statement.** BUYER ACKNOWLEDGES THAT SELLER HAS PROVIDED TO BUYER, PRIOR TO BUYER’S EXECUTION OF THIS AGREEMENT, A COPY OF THE CONDOMINIUM INFORMATION STATEMENT FOR THE PIAZZA ESCONDIDA CONDOMINIUMS, WHICH INCLUDES: (I) THE DECLARATION; (II) THE CERTIFICATE OF FORMATION FOR THE PIAZZA ESCONDIDA CONDOMINIUM COMMUNITY, INC., A TEXAS NON-PROFIT CORPORATION (THE “ASSOCIATION”); (III) THE COMMUNITY MANUAL FOR THE ASSOCIATION (WHICH

BUYER:\_\_\_\_  
SELLER:\_\_\_\_

INCLUDES THE BYLAWS AND RULES AND REGULATIONS OF THE ASSOCIATION); (IV) THE PROJECTED BUDGET OF THE ASSOCIATION; AND (V) ALL EXHIBITS ATTACHED TO THE CONDOMINIUM INFORMATION STATEMENT OR ANY OF THE AFORE-MENTIONED DOCUMENTS (COLLECTIVELY, THE CONDOMINIUM INFORMATION STATEMENT AND THE ITEMS LISTED IN (I) THROUGH (V) ABOVE ARE REFERRED TO HEREIN AS THE "CONDOMINIUM DOCUMENTS").

**BUYER ACKNOWLEDGES SELLER'S RECOMMENDATION THAT BUYER READ THE CONDOMINIUM INFORMATION STATEMENT BEFORE SIGNING THIS CONTRACT.** Prior to execution of this Agreement, Buyer has executed a certificate acknowledging Buyer's receipt of the Condominium Information Statement. At Closing, Seller may again require Buyer to sign a certificate acknowledging Buyer's receipt of the Condominium Information Statement.

If Chapter 207 of the Texas Property Code, titled "Disclosure of Information by Property Owners Association", applies to this transaction, the Condominium Information Statement constitutes the "resale certificate" required by Chapter 207, although this is not a resale transaction and the Seller, as "Declarant" pursuant to the Declaration, issues the Condominium Information Statement.

II.

**PURCHASE PRICE; EARNEST MONEY; FINANCING**

**2.01. Purchase Price.** The Purchase Price is payable in full in cash or other readily available funds at the Closing. Buyer may obtain financing for a portion of the Purchase Price, the remainder to be paid by Buyer in cash.

**2.02. Finish-Out.** Buyer has decided upon finish-out items and options which are shown in the Floor Plan and Finish-out Specifications, attached hereto as Exhibit "B". The price for any finish-out items and options are included in the Purchase Price. In the event that Buyer desires any revisions or changes ("**Change Order**") to the finish-out items and options as agreed upon in the Floor Plan and Finish-Out Specifications, Buyer and Seller shall execute a Change Order Addendum, in the form attached hereto as Exhibit "C", which will become part of this Agreement, which addendum identifies the Change Order and all prices associated with the Change Order selected by Buyer (the "**Change Order Payment**"). The Change Order Addendum will only be effective and deemed a part of this Agreement if one hundred percent (100%) of the Change Order Payment is paid in full by Buyer to Seller upon the execution of the Change Order Addendum. Payments made to Seller for any Change Orders are nonrefundable and do not constitute Earnest Money. IF BUYER TERMINATES THE AGREEMENT OR DEFAULTS UNDER THE AGREEMENT, BUYER WILL NOT BE ENTITLED TO ANY REFUND OF ANY PORTION OF THE CHANGE ORDER PAYMENT PREVIOUSLY REMITTED TO SELLER.

**2.03. Earnest Money.** In order to secure Buyer's performance under this Agreement, Buyer has deposited the Earnest Money, in cash or other good and readily available funds, with

BUYER:\_\_\_\_  
SELLER:\_\_\_\_

the Title Company. The Earnest Money need not be deposited into an interest bearing account. If the Earnest Money is deposited into an interest bearing account, Buyer will not be entitled to receive any interest accrued on the Earnest Money while deposited with the Title Company, but all interest accrued thereon will be considered Earnest Money. The Earnest Money will be held by the Title Company and released or applied in accordance with the terms and provisions of this Agreement.

**2.04. Financing.** If Buyer intends to finance any portion of the Purchase Price, then within three (3) days after the Effective Date, Buyer shall apply for such financing. If Buyer is unable to obtain financing approval within ten (10) days after the Effective Date (the "**Financing Period**"), then Buyer may terminate this Agreement by providing written notice of termination to Seller which written notice must be received by Seller prior to expiration of the Financing Period, in which case the Earnest Money paid by Buyer to Seller shall be refunded to Buyer, and Seller and Buyer will have no further rights or obligations under this Agreement except for those rights and obligations that expressly survive the termination of this Agreement. If Buyer fails to terminate this Agreement on or before expiration of the Financing Period as a result of Buyer's failure to obtain financing approval, Buyer hereby expressly acknowledges that Buyer's obligation to consummate the transaction contemplated by this Agreement is not conditioned on Buyer's ability to obtain financing of the Purchase Price.

### III.

#### UNIT COMPLETION

**3.01. Materials, Equipment and Fixtures.** Seller reserves the right to substitute material, equipment, and fixtures of similar appearance, quality or design should Seller be unable to obtain the material, equipment, and/or fixtures set forth in the Floor Plan and Finish-Out Specifications through unavailability, model changes, or any other circumstance. Buyer understands and agrees that materials used in construction and completion may vary somewhat from any samples provided, and that such variations are inherent in manufacturing and shall not be grounds for any refusal by Buyer to accept the Unit in its actual as-built configuration.

**3.02. Certificate of Occupancy.** Seller will be responsible for obtaining a Certificate of Occupancy from the City of El Paso for the Unit prior to Closing.

**3.03. Inspection.** At least five (5) days prior to Closing, Seller will notify Buyer of the date and time of the inspection of the Unit (the "**Inspection Date**"). The inspection will occur between 8:00 am and 5:00 pm on a weekday. On the Inspection Date, Buyer and Seller will inspect the Unit, complete, and execute the Orientation Addendum attached hereto as Exhibit "D". All items listed on the Orientation Addendum must be agreed upon by Buyer and Seller (the "**Agreed Punch List Items**"). Any Agreed Punch List Items which are incomplete at Closing will not constitute a default under the terms and provisions of this Agreement, delay Closing, or entitle Buyer to withhold any portion of the Purchase Price at the Closing. Buyer acknowledges that Seller will make reasonable and good faith efforts to complete all Agreed Punch List Items within sixty (60) days after Closing, subject to an extension for "*force majeure*" as defined in

Section 8.05. Seller's obligation to complete the Agreed Punch List Items will expressly survive Closing. Buyer acknowledges that Buyer's failure to attend the scheduled inspection will constitute Buyer's acceptance of the condition of the Unit as of the date of the inspection and Seller shall not be obligated to schedule another inspection prior to Closing.

3.04. **Insulation.** The type, thickness and R-Value of the insulation to be installed in each part of the Unit is set forth on the Insulation Addendum attached hereto as Exhibit "E".

#### IV.

#### TITLE AND SURVEY

4.01. **Title Commitment.** Within ten (10) days from the Effective Date, Seller will cause the Title Company to issue and deliver to Buyer a title commitment (the "**Commitment**") by the terms of which the Title Company agrees to issue to Buyer an owner's policy of title insurance (the "**Title Policy**") on the standard form promulgated by the State Board of Insurance of Texas at Closing, insuring Buyer's fee simple title to be good and indefeasible, subject to the terms of such policy and the exceptions set forth therein. The Condominium Documents and the standard, printed form exceptions will constitute permitted exceptions to both the Commitment and the Title Policy. As required by the Real Estate Settlement Procedures Act of 1974, Buyer acknowledges that Seller has not directly or indirectly required Buyer, as a condition of sale, to purchase either an owner's or mortgagee's title insurance policy from any particular title company.

4.02. **Plats and Plans.** Buyer acknowledges that the Condominium Documents include the plats and plans (the "**Plats and Plans**") pertaining to the Unit. Any additional survey of the Unit will be the sole obligation of Buyer, will be done at Buyer's sole cost and expense, and will in no event delay Closing. Buyer acknowledges that the square footage of the Unit may be measured different ways for different purposes, such as for conveyance purposes, tax purposes, appraisal purposes, sales purposes, and for purposes of carpeting and paint. The legal boundaries of the Unit are measured using horizontal (upper and lower) and vertical (parametrical, or side-to-side) boundaries established by the Declaration. As a consequence, the legal boundaries of the Unit for purposes of conveyance may be different from the area which may be used for actual living purposes or as calculated for appraisal or any other purpose. For example, portions of the Unit will include areas not otherwise accessible by the Buyer or apparent from a visual inspection of the Unit, e.g., portions of walls will be included within the legal boundaries of the Unit. Buyer has, or will have had prior to Closing, the opportunity to inspect the Unit, and upon acquiring the Unit, Buyer hereby expressly waives any claim or demand against Seller, the Listing Broker, or any third party for any difference, shortage or discrepancy between the actual physical and accessible area of the Unit as constructed and the legal boundaries of the Unit as determined by the Declaration and depicted on the final Plats and Plans.

**4.03. Permitted Exceptions.** Within seven (7) days after the Commitment has been delivered, Buyer may provide Seller with written notice of any objections (“**Objections**”) which Buyer has to exceptions shown on the Commitment, other than those permitted under *Section 4.01* or this *Section 4.03*. Seller will have no obligation to cure or remove any Objections, but, if Seller elects not to cure any one or more Objections, then Buyer may, within five (5) days thereafter, elect to terminate this Agreement by giving Seller written notice of termination, in which case the Earnest Money paid by Buyer to Seller, will be returned to Buyer, and Seller and Buyer will have no further obligations hereunder. If Buyer fails to give written notice of termination within such five (5) day period, all Objections will be deemed waived. The term “**Permitted Exceptions**”, as used herein, will include: (a) all exceptions that are set forth on the Commitment which are not timely objected to by Buyer during the objection period herein provided; (b) any exceptions or conditions waived or deemed waived by Buyer; (c) the terms and provisions of the Condominium Documents; (d) any exceptions applicable to the Property which have no material adverse effect on the use of the Unit for residential purposes; (e) all easements or encumbrances affecting the Property and/or the Unit on the Effective Date.

**4.04. Seller’s Obligation to Discharge Certain Encumbrances.** Notwithstanding any provision of this Agreement to the contrary, if there are any mechanic’s or materialmen’s liens or mortgages, deeds of trust, or other instruments creating a lien against all or any part of the Unit at Closing (other than any liens created by the Declaration, liens arising due to any third-party financing obtained by Buyer or any other acts of Buyer, or any liens which are the subject of Permitted Exceptions), Seller will be obligated to discharge such encumbrances of record even if Buyer fails to object to such encumbrances.

V.

**CLOSING**

**5.01. Closing Date.**

(a) The closing of the transaction contemplated by this Agreement is referred to herein as the “**Closing**”, and the date on which the closing occurs is referred to as the “**Closing Date**”.

(b) If “Option A” for the Closing Date has been selected on the Basic Terms of this Agreement, then the Closing of the purchase and sale contemplated by this Agreement shall take place on or before fifteen (15) days after Seller has obtained a Certificate of Occupancy from the City of El Paso for the Unit. A Certificate of Occupancy, as used in this Agreement and the Basic Terms, includes a Temporary Certificate of Occupancy issued by the City of El Paso provided that such certificate permits the Purchaser to occupy the Unit for residential purposes. The Closing shall take place at such specific reasonable time, date, and place as shall be designated by Seller at least three (3) days prior thereto.

(c) If “Option B” for the Closing Date has been selected on the Basic Terms of this Agreement, then the Closing shall take place on the Closing Date specified on the Basic Terms of

this Agreement at such specific reasonable time and place as shall be designated by Seller at least three (3) days prior thereto.

(d) Regardless of which option for the Closing Date has been selected on the Basic Terms of this Agreement, Seller shall, in any event, be obligated to complete construction of the Unit such that it is ready for occupancy within two (2) years from the date of execution of this Agreement by the Buyer; subject, however, to delays caused by “*force majeure*” events as defined in *Section 8.05* or other delays that are legally recognized as defenses to contract actions under Texas law based upon impossibility of performance. In the event that Seller fails or refuses to comply with Seller’s obligations under this *Section 5.01(d)*, Buyer will have any and all rights afforded Buyer pursuant to Texas law to enforce Seller’s obligation to complete the Unit.

**5.02. Closing Disclaimer.** During construction of the project, it is difficult to estimate an exact Closing Date for a particular Unit due to numerous factors outside Seller’s control. All representations of completion or closing dates are estimates that are subject to change. For that reason, the Closing Date is based on events rather than calendar dates. Seller is not liable to Buyer for expenses or lost opportunities relating to or resulting from delays in completing the Unit or scheduling the Closing Date. **BUYER IS ADVISED TO WAIT FOR CONFIRMATION OF CLOSING DATE FROM THE SELLER BEFORE SCHEDULING A MOVE INTO THE UNIT.**

**5.03. Seller’s Closing Obligations.** At the Closing, Seller will, at Seller’s sole cost and expense:

- (a) execute and deliver to Buyer a special warranty deed on Seller’s prescribed form;
- (b) execute and deliver any documents contemplated by this Agreement to be executed and delivered at Closing;
- (c) deliver physical possession of the Unit to Buyer;
- (d) deliver evidence of Seller’s authority to act in form reasonably satisfactory to Buyer and the Title Company; and
- (e) execute and deliver to Buyer a “non-foreign” certificate sufficient to establish that withholding of tax is not required in connection with this transaction.

**5.04. Buyer’s Closing Obligations.** At the Closing, Buyer will, at Buyer’s sole cost and expense:

- (a) deliver the Purchase Price to the Title Company for disbursement in accordance with the terms and provisions of this Agreement;
- (b) deliver such evidence of Buyer’s authority to act hereunder as Seller and the Title Company may reasonably require for the Closing;

- (c) execute and deliver any documents contemplated by this Agreement to be executed and delivered at Closing; and
- (d) execute and deliver such other documents and instruments as reasonably required by Seller and the Title Company to consummate the transaction contemplated by this Agreement.

**5.05. Purchase Expenses.** Unless provided otherwise by this Agreement, closing costs will be allocated between Seller and Buyer in the customary manner for this type of transaction.

- (a) Seller's Expenses include: (1) the basic premium for the Title Policy; (2) expenses incident to completing the Unit; and (2) all other expenses required by this Agreement to be paid by Seller.
- (b) Buyer's Expenses include: (1) any endorsements to the Title Policy, recording fees, escrow fees, and the tax deletion (2) any escrow fee charged by the Title Company; (3) all other expenses required by this Agreement to be paid by Buyer; (4) a closing document preparation fee equal to \$250.00; (5) an amount equal to one month of the estimated monthly assessments applicable to the Unit as a working capital fee payable to Piazza Escondida Condominium Community, Inc. (the "**Association**") which will not be applied as a credit against assessments otherwise due and payable by Buyer pursuant to the Condominium Documents; (6) an amount equal to two months of the estimated monthly assessments applicable to the Unit as a reserve capital fee payable to the Association which will not be applied as a credit against assessments otherwise due and payable by Buyer pursuant to the Condominium Documents; and (7) all expenses incident to the financing of the Unit, including without limitation the mortgagee title policy.

**5.06. Buyer's Share of Insurance Premium.** In addition to the expenses for which Buyer is responsible pursuant to *Section 5.05(b)*, Buyer acknowledges that Seller, in its capacity as the "Declarant" pursuant to the Declaration, and for the benefit of the Association, will pay for certain insurance on behalf of the Association in accordance with the Declaration and Section 82.111 of the Texas Uniform Condominium Act. At Closing, Buyer will be obligated to pay to Seller a share of any annual premium paid by Seller for such insurance, which amount will in no event exceed \$\_\_\_\_\_. The reimbursement of insurance premiums paid by Buyer will be retained by Seller and not remitted to the Association, and in no circumstance or event will Buyer be entitled to any refund of any such amounts so paid.

**5.07. Prorations.** If, on the Closing Date, the Unit is separately assessed for property taxes and the actual taxes attributable to the Unit have been determined by the El Paso County Appraisal District, then the taxes attributable to the Unit will be prorated between Seller and Buyer as of the Closing Date, and such proration will be final. If, on the Closing Date, the Unit has not been separately assessed for property taxes and/or the actual taxes attributable to the Unit have not yet been determined by the El Paso County Appraisal District, Seller may reasonably estimate the amount of such taxes attributable to the Unit, which estimate will be apportioned to the Closing Date with a credit to Seller for the period of time from the Closing Date to the end of

BUYER:\_\_\_\_  
SELLER:\_\_\_\_



the Closing year. Upon receipt of the actual tax bill that includes the Unit, a re-proration and adjustment will be made at the request of either Seller or Buyer upon presentation of actual tax bills and any payment required as a result of the re-proration shall be made within thirty (30) calendar days following demand therefore. The provisions of this *Section 5.07* will survive the Closing.

**5.08. Condemnation or Destruction.** If, prior to the Closing, any governmental or other entity having condemnation authority institutes an eminent domain proceeding with regard to all or any part of the Unit and the proceeding is not dismissed at least ten (10) days prior to the Closing Date, Buyer may elect by delivering written notice to Seller at least ten (10) days prior to the Closing Date to either (a) terminate this Agreement and receive a refund of the Earnest Money; or (b) proceed to the Closing and receive an assignment of all of Seller's right, title and interest in and to all condemnation proceeds payable with respect to the Unit. If Buyer fails to timely notify Seller of its election as provided in the immediately preceding sentence, Buyer will be deemed to have elected the option described in clause (b) above. If any portion of the Unit is damaged or destroyed prior to the Closing, Buyer may elect by giving written notice to Seller within ten (10) days after Buyer's receipt of written notice from Seller of the damage or destruction to either (x) terminate this Agreement and receive a refund the Earnest Money; or (y) proceed to the Closing and receive from Seller (i) an amount equal to any insurance proceeds actually received by Seller prior to the Closing with respect to the damage to the Unit up to the amount of the Purchase Price and net of Seller's reasonable collection costs, including attorney's fees, and if no such proceeds have been awarded to Seller as of the Closing Date, Buyer will receive an assignment of all of Seller's right, title and interest in and to all insurance proceeds payable with respect to damage to the Unit, and (ii) a credit against the Purchase Price in an amount equal to any insurance deductible paid by Seller in connection with the damage to the Unit (or a prorata portion thereof if the insurance deductible paid by Seller applies to damage to property other than the Unit). If Buyer fails to timely notify Seller of its election as provided in the immediately preceding sentence, Buyer will be deemed to have elected the option described in clause (y) above. Seller will have no obligation to make any repairs to the Unit following a casualty, but if Seller elects to perform any repairs to the Unit as a result of a casualty, Seller will be entitled to deduct its costs and expenses from any amount to which Buyer is entitled under clause (y) above, which right will survive the Closing.

## VI.

### WARRANTY

**6.01. Limited Warranty.** Buyer acknowledges and agrees that the only express warranty given by Seller to Buyer relating to the unit and/or improvements is that limited warranty described in the attached Limited Warranty Addendum attached hereto as Exhibit "F". Buyer acknowledges that the terms of such Limited Warranty Addendum are clear, specific, and sufficiently detailed to establish the only standards of construction which Seller is obligated to meet.

For breach of the limited warranty, damages incurred by Buyer are limited to the lesser of the cost to repair or replace the defective item or the decrease in the market value of the item

BUYER: \_\_\_\_\_

SELLER: \_\_\_\_\_

affected because of the defect. In no case shall Seller be liable to Buyer for punitive, incidental, speculative or consequential damages as a result of any breach of the limited warranty. Seller disclaims all other warranties, written or oral, express or implied (other than the warranty of title set forth in the deed for the unit), including warranties of merchantability and warranties of fitness for a particular use, regarding the improvements, fixtures, equipment, materials, or other property located on or being a part of the real property sold to Buyer pursuant to this agreement. No sample or model has been made part of the basis of the bargain or has created or amounted to an express warranty that the whole of the goods would conform to any such sample or model.

Buyer, by signing this Agreement, waives any claim or cause of action against Seller and any contractors or vendors hired by Seller under any theory of implied warranty of good and workmanlike construction and that any such implied warranty, to the extent it exists in Texas, is expressly replaced by the terms of the limited warranty. Seller specifically disclaims, and Buyer specifically waives and releases Seller and any contractor or vendor hired by Seller, from any claims or liability for incidental, special, indirect, or consequential damages to any person or real or personal property, including the real property underlying the Regime, resulting from a defect or flaw in any construction or materials. Seller makes no representation or warranty concerning any geological or environmental matters and specifically excludes geological and environmental matters from the limited warranty. Buyer hereby acknowledges and accepts such disclaimers and waives any and all rights Buyer may have by virtue of the representations and warranties disclaimed. Except as otherwise provided in the limited warranty, Buyer assumes the risk of damage occurring on or in the Unit after Closing, regardless of the cause.

**6.02. Third-Party 10 Year Structural Warranty.** At Closing, Seller will provide to Buyer a ten (10) year structural warranty (the “**Structural Warranty**”) for the Unit provided by a third-party unrelated to the Seller, e.g., Bonded Builder. Buyer acknowledges and agrees that the third-party warranty provider, and not Seller, is providing the Structural Warranty and that Buyer may be required to execute the Structural Warranty acknowledging the terms and provisions thereof. In addition, Buyer will be required to comply with certain provisions in the event a claim is made under the Structural Warranty, and may be required to submit any such claim to mediation or binding arbitration which may differ from the dispute resolution provisions set forth in this Agreement or the Declaration. In the event Buyer refuses to execute the documents necessary or required by the third-party warranty provider as a condition to issuance of the Structural Warranty to Buyer, Seller shall have no obligation to provide the Structural Warranty to Buyer pursuant to this *Section 6.02* and Buyer will be required to close the purchase of the Unit.

**6.03. Assignable Warranties.** At Closing, Seller will assign to Buyer all assignable manufacturer warranties on equipment and consumer products incorporated into the improvements, such as refrigerators, ranges, dishwashers, and other appliances or equipment. Seller makes no warranties of any kind, express or implied, concerning the equipment or consumer products and expressly disclaims all implied warranties of merchantability, fitness of use for a particular purpose, and any other warranties to the fullest extent permitted by state or federal law. Buyer understands that the warranty period is defined in each warranty and shall begin to run from a date which may be a different date than the date of Closing.

BUYER:\_\_\_\_  
SELLER:\_\_\_\_

**THE TERMS AND PROVISIONS OF THIS ARTICLE VI WILL EXPRESSLY SURVIVE CLOSING.**

**VII.**

**REMEDIES; DISPUTE RESOLUTION**

**7.01. Seller Default.** In the event Seller fails or refuses to comply with Seller's obligations under this Agreement, then Buyer must provide Seller with written notice of such default ("**Seller Default Notice**"). The Seller Default Notice must include a description of the default being alleged by Buyer. Seller will have thirty (30) days from receipt of the Seller Default Notice to cure any default specified therein. If Seller fails, refuses, or is unable to cure the specified default within such thirty (30) day period, Buyer may terminate this Agreement by written notice to Seller whereupon the Earnest Money and any Change Order Payment paid by Buyer to Seller will be returned to Buyer. Upon termination of this Agreement, neither Seller nor Buyer will have any further rights or obligations hereunder. Buyer's right to terminate this Agreement and receive the Earnest Money and any Change Order Payment is Buyer's sole and exclusive remedy in the event Seller fails or refuses to comply with Seller's obligations under this Agreement.

**7.02. Buyer's Default.** In the event Buyer fails or refuses to comply with Buyer's obligations under this Agreement, then Seller must provide Buyer with written notice of such default ("**Buyer Default Notice**"). The Buyer Default Notice must include a description of the default being alleged by Seller. Buyer will have seven (7) days from receipt of the Buyer Default Notice to cure any default specified therein. If Buyer fails, refuses, or is unable to cure the specified default within such seven (7) day period, Seller may: (i) terminate this Agreement by written notice to Buyer with Seller being entitled to retain, as damages, the Earnest Money and any Change Order Payment; **OR** (ii) enforce specific performance of Buyer's obligations under this Agreement. Upon termination of this Agreement neither Seller nor Buyer will have any further rights or obligations hereunder. Seller's rights under this *Section 7.02* are Seller's sole and exclusive remedies in the event Buyer fails or refuses to comply with Buyer's obligations under this Agreement.

**7.03. Attorney's Fees.** If a legal proceeding is commenced in connection with a dispute between Seller or Buyer arising in connection with this Agreement, the prevailing party in the proceeding will be entitled to recover from the non-prevailing party its reasonable attorney's fees, expenses and court costs. This *Section 7.03* will survive the Closing or earlier termination of this Agreement.

**7.04. Dispute Resolution.**

- (a) **Prior to Closing.** If a pre-Closing dispute relating to this transaction cannot be completely resolved to the satisfaction of both parties prior to Closing, then Seller, at Seller's sole discretion, may, on giving written notice to Buyer, terminate this Agreement and refund the Earnest Money and any Change Order

Payment to Buyer, notwithstanding anything to the contrary in this Agreement. Buyer will have no cause of action against Seller because of such termination.

- (b) After Closing. After Closing, the parties agree to mediate and arbitrate any disputes and Claims (as defined in Article 20 of the Declaration) in accordance the Declaration, as applicable. Buyer acknowledges that any construction defect pertaining to the Unit or common elements will be resolved by mediation and binding arbitration. The procedures regarding mediation and arbitration are set forth in Article 20 of the Declaration. By executing this Agreement, Buyer acknowledges that Buyer has read Article 20 of the Declaration.
- (c) Association as Exclusive Party for Certain Claims. The Association is the exclusive representative of all Unit owners for the assertion of any claim and/or cause of action related to the common elements (including limited common elements) within the Regime. The Buyer hereby appoints the Association to exclusively act as its agent and attorney-in-fact (which power of attorney is coupled with an interest and shall be irrevocable) with respect to the above referenced claims and/or causes of action including the right to compromise and settle the same. Buyer shall not assert a claim or cause of action relating to the common elements (including the limited common elements) except through the Association. As more specifically provided in Article 20 of the Declaration, certain claims, including claims brought by the Association must be resolved by binding arbitration.
- (d) **WAIVER OF JURY TRIAL. SELLER AND BUYER EACH KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES THE RIGHT TO A TRIAL BY JURY WITH RESPECT TO ANY "CLAIM" AS DEFINED IN ARTICLE 20 OF THE DECLARATION.**
- (e) Survival. The provisions of this *Section 7.04* survive Closing or termination of this Agreement.

## VIII.

### MISCELLANEOUS PROVISIONS

**8.01. Disclosures.** Certain disclosures regarding the Unit and the Regime are set forth in the Declaration and are hereby incorporated herein by reference (collectively, the "**Condominium Documents Disclosures**"). Buyer acknowledges that the Disclosures apply to the Unit and that Buyer has read the Condominium Documents Disclosures.

**8.02. Entire Agreement.** THIS AGREEMENT REPRESENTS THE FINAL AGREEMENT BETWEEN SELLER AND BUYER AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES. NEITHER THIS AGREEMENT NOR ANY PROVISION HEREOF MAY BE WAIVED, MODIFIED, AMENDED, DISCHARGED OR TERMINATED EXCEPT BY AN INSTRUMENT IN

WRITING SIGNED BY THE PARTY AGAINST WHOM THE ENFORCEMENT OF SUCH WAIVER, MODIFICATION, AMENDMENT, DISCHARGE OR TERMINATION IS SOUGHT AND THEN ONLY TO THE EXTENT SET FORTH IN SUCH INSTRUMENT. NO BROKER, SALESMAN, EMPLOYEE, REPRESENTATIVE OR AGENT OF SELLER HAS AUTHORITY TO MODIFY THE TERMS HEREIN NOR ANY AUTHORITY WHATSOEVER TO MAKE ANY REFERENCE, REPRESENTATION OR AGREEMENT NOT CONTAINED IN THIS AGREEMENT, AND NO REFERENCE, REPRESENTATION OR AGREEMENT NOT CONTAINED HEREIN SHALL BE BINDING UPON SELLER OR IN ANY WAY AFFECT THE VALIDITY OF THIS AGREEMENT OR FORM ANY PART HEREOF. PURCHASER ACKNOWLEDGES THAT NO REPRESENTATIONS HAVE BEEN MADE BY SELLER OR ON BEHALF OF SELLER BY ANY BROKERS, AGENTS, EMPLOYEES OR REPRESENTATIVES OF SELLER OR IN ANY MARKETING OR OTHER MATERIALS IN ORDER TO INDUCE BUYER TO ENTER INTO THIS AGREEMENT EXCEPT AS OTHERWISE EXPRESSLY STATED HEREIN. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, BUYER ACKNOWLEDGES THAT NEITHER SELLER NOR ANY BROKER, AGENT, EMPLOYEE OR REPRESENTATIVE OF SELLER HAS (A) MADE ANY REPRESENTATION OR STATEMENT TO BUYER OF THE INVESTMENT POTENTIAL OR RESALE AT ANY FUTURE DATE, AT A PROFIT OR OTHERWISE, OF THE UNIT; (B) RENDERED ANY ADVICE OR EXPRESSED ANY OPINIONS TO BUYER REGARDING ANY TAX CONSEQUENCES OF OWNERSHIP OF THE UNIT, OR (C) MADE ANY STATEMENT OR REPRESENTATION NOT SET FORTH IN THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, ANY STATEMENT OR REPRESENTATION AS TO THE VIEWS FROM THE UNIT NOT BEING IMPACTED IN THE FUTURE. BUYER ACKNOWLEDGES THAT BUYER HAS READ AND UNDERSTANDS EACH AND EVERY PART OF THIS AGREEMENT. THE PROVISIONS OF THIS SECTION 8.02 SHALL SURVIVE THE CLOSING OR EARLIER TERMINATION OF THIS AGREEMENT.

**8.03. Brokerage and Agency.** In no event shall Seller have any obligation to pay any real estate commission except in the event of the closing of this transaction in accordance with the terms of this Agreement. If Buyer worked with or was represented by a broker, a disclosure of such brokerage relationship set forth in the Broker Addendum, attached hereto as Exhibit "G", shall be a part of this Agreement. If no such brokerage relationship exists, there shall be no Broker Addendum attached to this Agreement, and Buyer acknowledges that Buyer is solely responsible for protecting Buyer's interests and no broker shall be entitled to any commission.

Except as set forth in this Section 8.03 or on the Broker Addendum attached to this Agreement, Buyer and Seller represent and warrant to the other that each party has not dealt with another broker, agent, or finder in connection with this transaction and BUYER AND SELLER COVENANT AND AGREE, EACH TO THE OTHER, TO INDEMNIFY AND HOLD EACH OTHER HARMLESS FROM ANY AND ALL LOSSES, DAMAGES, COSTS AND EXPENSES INCLUDING, BUT NOT LIMITED TO, ATTORNEYS' FEES AND COURT COSTS THAT MAY BE INCURRED OR SUFFERED AS A RESULT OF ANY CLAIM FOR ANY FEE, COMMISSION, OR SIMILAR COMPENSATION WITH RESPECT TO THIS TRANSACTION MADE BY ANY PERSON OR ENTITY AND ARISING THROUGH THE ACTIONS OF THE INDEMNIFYING PARTY, WHETHER OR NOT SUCH CLAIM FOR ANY FEE, COMMISSION, OR SIMILAR COMPENSATION WITH RESPECT TO THIS TRANSACTION MADE BY ANY

BUYER:\_\_\_\_  
SELLER:\_\_\_\_

PERSON OR ENTITY IS MERITORIOUS. THE PROVISIONS OF THIS SECTION 8.03 SHALL SURVIVE THE CLOSING OR EARLIER TERMINATION OF THIS AGREEMENT.

BY ITS EXECUTION OF THIS AGREEMENT, BUYER ACKNOWLEDGES THAT, AT THE TIME OF EXECUTION OF THIS AGREEMENT, BUYER WAS ADVISED BY THIS WRITING THAT BUYER SHOULD HAVE AN ATTORNEY OF ITS OWN SELECTION EXAMINE AN ABSTRACT OF TITLE TO THE SUBJECT PROPERTY OR BUYER SHOULD BE FURNISHED WITH OR OBTAIN A POLICY OF TITLE INSURANCE COVERING THE UNIT.

**8.04. Disclaimer.** Buyer acknowledges that Buyer has not relied upon any advice, representations or statements of a Broker. The term “**Broker**” as used herein, shall mean any broker representing Buyer, if applicable. Buyer agrees that Broker is not responsible to advise Buyer and Seller on any matter, including but not limited to the following: any matter which could have been revealed through a survey, title search or inspection of the Unit; the condition of the Unit, any portion thereof, or any item therein; the necessity or cost of any repairs to the Unit; hazardous or toxic materials; the tax or legal consequences of this transaction; the availability and cost of utilities or community amenities; the appraised or future value of the Unit; any existing condition(s) of the Property; the terms, conditions and availability of financing; and the uses and zoning of the Property whether permitted or proposed. Buyer acknowledges that Broker is not an experts with respect to the above matters and that, if any of these matters or any other matters are of concern to Buyer, Buyer shall seek independent expert advice relative thereto.

**8.05 Force Majeure.** Force majeure events include events beyond Seller's control, including without limitation, impossibility of performance, acts of God, fire or other casualty loss, strikes, boycotts, non-availability of materials or labor for which no substitute of equal quality and price is available, and acts of governmental agencies asserting jurisdiction over the Property.

**8.06. STATUTORY NOTICE OF MEMBERSHIP IN PROPERTY OWNERS ASSOCIATION.** As a Buyer of property in the residential community in which this property is located, you are obligated to be a member of the Association. Restrictive covenants governing the use and occupancy of the property and the dedicatory instruments governing the establishment, maintenance, and operation of the Property have or will be recorded in the Official Public Records of El Paso County, Texas. Copies of the restrictive covenants and dedicatory instrument may be obtained from the county clerk after recordation. You are obligated to pay assessments to the Association. The amount of each assessment is subject to change. Your failure to pay assessments to the Association could result in a lien on and the foreclosure of your Unit.

**8.07. Effective Date.** The “**Effective Date of this Agreement**” refers to the date on which this Agreement has been fully executed by both Seller and Buyer.

**8.08. Unsold Units.** Seller retains the right to enter into leases with any third parties for the occupancy of any Unit so retained or acquired by Seller and not sold to any Buyer.

BUYER:\_\_\_\_  
SELLER:\_\_\_\_

8.09. **Declarant's Rights.** Seller hereby gives Buyer notice that Seller has reserved certain rights as the "Declarant" under the Condominium Documents. Each Buyer is advised to review the Condominium Documents and Condominium Information Statement carefully for a description of these rights.

8.10. **Buyer's Access to the Unit.** Buyer agrees not to enter the Unit during construction without the express written consent of Seller unless accompanied by an employee of designated representative of Seller. Buyer agrees that any entry onto the Unit is at Buyer's own risk. BUYER HEREBY WAIVES ANY AND ALL CLAIMS AGAINST SELLER FOR INJURY OR DAMAGE TO PERSON OR PROPERTY ARISING FROM ANY SUCH ENTRY BY BUYER. BUYER SHALL DEFEND, INDEMNIFY AND HOLD SELLER HARMLESS AGAINST ANY INJURY, LOSS, DAMAGE OR EXPENSE TO PERSONS OR PROPERTY ARISING FROM ANY ENTRY ON TO THE PROPERTY, WHETHER BY BUYER, ANY OTHER PERSON ACCOMPANYING BUYER, OR ANY PERSON ENTERING THE PROPERTY AT BUYER'S DIRECTION, PRIOR TO CLOSING, **IN ALL CASES REGARDLESS OF THE CAUSE OR OF ANY CONCURRENT OR CONTRIBUTING FAULT OR NEGLIGENCE OF SELLER OR ANY BREACH OR FAILURE TO COMPLY WITH ANY OF THE PROVISIONS OF THE CONTRACT BY SELLER.** THIS SECTION 8.10 WILL SURVIVE THE CLOSING OR EARLIER TERMINATION OF THIS AGREEMENT.

8.11. **Binding Effect.** This Agreement will inure to the benefit of and be binding upon the heirs, successors and permitted assigns of Buyer and Seller. This Section 8.11 will survive the Closing or earlier termination of this Agreement.

8.12. **Notice.** Each notice, except for oral notice of Closing Date and the inspection as provided in Section 3.04, required or permitted to be given hereunder must comply with the requirements of this Section. Each such notice shall be in writing and shall be delivered either by personally delivering it by hand or Federal Express or similar courier service to the person to whom notice is directed, or by **electronic mail**, or by facsimile transmission, or by depositing it with the United States Postal Service, certified mail, return receipt requested, with adequate postage prepaid, addressed to the appropriate party (and marked to a particular individual's attention). Such notice shall be deemed delivered at the time of personal or **electronic delivery** or, if mailed, when it is deposited as provided above, but the time period in which a response to any such notice must be given or any action taken with respect thereto shall commence to run from the date it is personally delivered or, if mailed, the date of receipt of the notice by the addressee thereof, as evidenced by the return receipt. Notwithstanding the above, notice by facsimile transmission shall be deemed to have been given as of the date and time it is transmitted if the sending facsimile machine produces a written confirmation with a date, time and telephone number to which the notice was sent. Rejection or other refusal by the addressee to accept the notice shall be deemed to be receipt of the notice. In addition, the inability to deliver the notice because of a change of address of the party to which no notice was given to the other party as provided below shall be deemed to be the receipt of the notice sent. The addresses of the parties to which notice is to be sent shall be those set forth on the signature page herein. Such addresses may be changed by either party by designating the change of address to the other party in writing. Notwithstanding anything to the contrary herein, in the event Seller requests Buyer provide consent to any item related to this Agreement, the consent by Buyer shall be deemed implied and consented to if Buyer

BUYER:\_\_\_\_  
SELLER:\_\_\_\_

fails to submit a response to any written request for consent within fifteen (15) days after Buyer receives notice of the requested consent.

**8.13. Holidays and Weekends.** If any date or any period provided in this Agreement ends on a Saturday, Sunday, or legal holiday, the applicable period will be extended to the first business day following that Saturday, Sunday, or legal holiday. This *Section 8.13* will survive the Closing or earlier termination of this Agreement.

**8.14. Time.** Time is of the essence in all things pertaining to the performance of this Agreement. This *Section 8.14* will survive the Closing or earlier termination of this Agreement.

**8.15. Assignment.** Buyer may not assign its interest in this Agreement without Seller's prior written consent, which Seller may withhold in its sole and absolute discretion. Seller shall have the right to freely assign its interest in this Agreement without Buyer's consent, and following any such assignment by Seller, Seller shall be released from all rights and obligations under this Agreement, and Buyer shall look solely to Seller's assignee for performance of Seller's obligations. Seller shall also have the right to collaterally assign its interest in this Agreement as security for any financing obtained by Seller. This *Section 8.15* will survive the Closing or earlier termination of this Agreement.

**8.16. Utility Related Matters.** Buyer shall be responsible, at Buyer's sole cost and expense, for all utility deposits, account transfer fees, and subsequent usage incurred in connection with the delivery of utility services to the Unit. In addition, Buyer will also be responsible, at Buyer's sole cost and expense for all inspection fees and other governmental fees or charges of any kind or nature associated with Buyer's ownership of the Unit after Closing. Buyer understands and hereby acknowledges that Seller will retain all reimbursements from any utility service provider to the extent such reimbursements relate to improvements within the Project constructed by Seller or any predecessor developer. This *Section 8.16* will survive the Closing or earlier termination of this Agreement.

**8.17. Miscellaneous Provisions.** This Agreement may be signed in multiple counterparts, or in multiple originals. This Agreement must be construed and enforced according to the laws of the State of Texas. A court's invalidation of any provision of this Agreement does not invalidate any other provision, which remains in full force and effect. The effect of a general statement is not limited by the enumeration of specific matters similar to the general. Section captions are inserted only for convenience and are in no way to be construed as defining or modifying the text to which they refer. Unless the context provides otherwise, a reference to a gender includes all genders. Similarly, a reference to the singular includes the plural, the plural the singular, where the same would be appropriate. The rule of construction that ambiguities in a document are construed against the party who drafted it will not be applied in interpreting this Agreement.

**8.18. No Recording.** Buyer may not file this Agreement or any memorandum or notice of this Agreement in any public record. If Buyer so files, Seller may terminate this Agreement and file a notice of termination. This *Section 8.19* will survive the Closing or earlier termination of this Agreement.

BUYER:\_\_\_\_  
SELLER:\_\_\_\_



8.19. **Special Provisions.** (Insert only factual statements and business details applicable to the sale). \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

8.20. **Addenda.** The following marked addenda are attached to this Agreement and incorporated herein for all purposes:

- Parking Depiction Addendum - Exhibit "A"
- Floor Plan and Finish-Out Specifications – Exhibit "B" **(Signed by Buyer)**
- Change Order Addendum – Exhibit "C" **(Optional - Signed by Buyer and Seller if changes to Exhibit B are selected)**
- Orientation Addendum – Exhibit "D" **(Signed by Buyer upon completion of inspection)**
- Insulation Addendum – Exhibit "E"
- Limited Warranty Addendum - Exhibit "F" **(Signed and delivered by Seller at Closing)**
- Broker Addendum - Exhibit "G" **(Executed/Completed by Buyer and Seller)**

*SIGNATURES APPEAR ON FOLLOWING PAGE*

**SELLER:**

**TONE VENTURES, LLC,**  
a Texas limited liability company

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

***BUYER'S SIGNATURE APPEARS ON FOLLOWING PAGE***

BUYER: \_\_\_\_\_

SELLER: \_\_\_\_\_

**RCLA NOTICE TO BUYER: This Agreement is subject to Chapter 27 of the Texas Property Code, the Residential Construction Liability Act. The provisions of that chapter may affect your right to recover damages arising from the performance of this Agreement. If you have a complaint concerning a construction defect arising from the performance of this Agreement and that defect has not been corrected through normal warranty service, you must provide the notice required by Chapter 27 of the Texas Property Code to the contractor by certified mail, return receipt requested, not later than the 60th day before the date you file suit to recover damages in a court of law or initiate arbitration. The notice must refer to Chapter 27 of the Texas Property Code and must describe the construction defect. If requested by the contractor, you must provide the contractor an opportunity to inspect and cure the defect as provided by Section 27.004 of the Texas Property Code.**

BUYER:

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_

Date: \_\_\_\_\_

BUYER: \_\_\_\_  
SELLER: \_\_\_\_

**TITLE COMPANY RECEIPT**

\_\_\_\_\_ acknowledges receipt of this Agreement, executed and, if needed, initialed, by both Seller and Buyer this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

BUYER: \_\_\_\_\_

SELLER: \_\_\_\_\_

EXHIBIT "A"

PARKING AND/OR STORAGE DEPICTION ADDENDUM

PARKING DEPICTION ADDENDUM – EXHIBIT "A"

BUYER: \_\_\_\_\_  
SELLER: \_\_\_\_\_

UNIT: \_\_\_\_\_

**EXHIBIT "B"**

**FLOOR PLAN AND FINISH-OUT SPECIFICATIONS**

*[ATTACH FLOOR PLAN AND FINISH-OUT SPECIFICATIONS FOR UNIT]*

FLOOR PLAN AND FINISH-OUT SPECIFICATIONS – EXHIBIT "B"

BUYER: \_\_\_\_\_  
SELLER: \_\_\_\_\_

UNIT: \_\_\_\_\_

**EXHIBIT "C"**

**CHANGE ORDER ADDENDUM**

This Change Order Addendum to Agreement of Sale and Purchase (this "**Addendum**") is made by and between **TONE VENTURES, LLC**, a Texas limited liability company, as "**Seller**", and \_\_\_\_\_, as "**Buyer**", and is as follows:

1. **Incorporation into Agreement.** This Addendum is intended to be attached and incorporated into for all purposes that one certain Agreement of Sale and Purchase (the "**Agreement**"), between Seller and Buyer concerning the sale and purchase of a Unit in the Piazza Escondida Condominiums (the "**Unit**"). In the event of a conflict between the terms and provisions of the Agreement and those contained in this Addendum, the terms of this Addendum are intended to be, and shall be construed as, controlling.

2. **Change Order.** Pursuant to *Section 2.02* of the Agreement, Buyer has requested that certain revisions or changes be made to the Floor Plan and Finish-Out Specifications, as attached as Exhibit B to the Agreement, to be incorporated into the Unit. The changes or revisions selected by Buyer are described on Attachment 1, attached hereto and incorporated herein by reference (the "**Change Order**"). The additional consideration for the Change Order is \$ \_\_\_\_\_, one hundred percent (100%) of which must be paid in full by Buyer to Seller upon the execution of this Addendum (the "**Change Order Payment**") The Purchase Price will automatically be increased to include the Change Order Payment in addition to the base price set forth in the Agreement. Any real estate commission due under the Agreement will be computed on the basis of the Base Price as set forth in the Basic Terms of the Agreement excluding the Change Order Payment. Payments made to Seller for Change Orders are nonrefundable and do not constitute Earnest Money. **IF BUYER TERMINATES THE AGREEMENT OR DEFAULTS UNDER THE AGREEMENT, BUYER WILL NOT BE ENTITLED TO ANY REFUND OF ANY PORTION OF THE CHANGE ORDER PAYMENT REMITTED TO SELLER.**

3. **Defined Terms.** All terms used but not defined in this Addendum shall have the meanings given to them in the Agreement.

4. **Counterparts.** This Addendum may be executed in multiple counterparts (including, without limitation, facsimile counterparts), each of which shall constitute an original and all of which in the aggregate shall constitute but one agreement.

**[SIGNATURE PAGE FOLLOWS]**

CHANGE ORDER ADDENDUM – EXHIBIT "C"

BUYER: \_\_\_\_\_  
SELLER: \_\_\_\_\_

Executed to be effective as of the Effective Date of the Agreement.

**SELLER:**

**TONE VENTURES, LLC,**  
a Texas limited liability company

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**BUYER:**

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Date: \_\_\_\_\_

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Date: \_\_\_\_\_

CHANGE ORDER ADDENDUM – EXHIBIT “C”

BUYER: \_\_\_\_\_  
SELLER: \_\_\_\_\_



ATTACHMENT 1

CHANGE ORDER SELECTIONS

<input type="checkbox"/>	_____	\$ _____
<input type="checkbox"/>	_____	\$ _____
<input type="checkbox"/>	_____	\$ _____
<input type="checkbox"/>	_____	\$ _____
<input type="checkbox"/>	_____	\$ _____
<input type="checkbox"/>	_____	\$ _____

Change Order Payment \$ \_\_\_\_\_

Seller and Buyer(s), each intending to be legally bound, do hereby covenant and agree that the Purchase Price set forth in the Agreement will be increased by the Change Order Payment set forth herein. Seller retains the right to substitute selections for comparable materials of comparable value. By signing this Addendum, Buyer(s) acknowledge(s) that the Change Order indicated has been reviewed and all selections are accurate.

CHANGE ORDER ADDENDUM – EXHIBIT “C”

BUYER: \_\_\_\_\_  
SELLER: \_\_\_\_\_

EXHIBIT "D"

SIGNED UPON COMPLETION OF UNIT INSPECTION

**ORIENTATION ADDENDUM**

**Home Owner:** \_\_\_\_\_

**Phone Number(s):** \_\_\_\_\_

**Unit Number:** \_\_\_\_\_

Congratulations on the purchase of your new home at the Piazza Escondida Condominiums. In preparation for Closing, **TONE VENTURES, LLC** (hereinafter called "Seller") would like to familiarize you with some of the more important components of your home. Your Inspection Coordinator will review the following information with you:

- a. Water Shutoff (s)
- b. Breaker Box (electrical service panel)
- c. Cabinets & Counter Tops
- d. Appliances
- e. Flooring
- f. Window System
- g. Garbage Disposal
- h. Finish and paint
- i. Thermostat
- j. GFIC outlets (protected outlets)
- k. Ventilation and Fans
- l. Condensation Drains

By signing below, you acknowledge and agree that you have been oriented to the items **a** through **j** listed above, and that you were afforded the opportunity to ask questions about them.

**APPROVAL:** The undersigned Buyer, after thoroughly inspecting the improvements within the Unit (the "**Improvements**"), finds them fully completed pursuant to the Agreement of Sale and Purchase by and between Buyer and Seller and satisfactory, except for the items specifically listed as Agreed Punch List Items below. Buyer acknowledges and agrees that Buyer's possession of the Unit constitutes Buyer's acceptance of all Improvements and all conditions or circumstances existing in the Unit and Buyer waives and releases Seller, its agents, employees and subcontractors, and any broker, from any claim, rights of action or suits seeking rescission of this Agreement, damages or other relief based upon, or relating to, all Improvements and all conditions or circumstances existing in the Unit, except as may be covered by any express warranty under this Agreement, or the Agreed Punch List Items listed below.

ORIENTATION ADDENDUM – EXHIBIT "D"

BUYER: \_\_\_\_\_  
SELLER: \_\_\_\_\_

**AGREED PUNCH LIST ITEMS:**

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**SIGNED UPON COMPLETION OF UNIT INSPECTION**

**Buyer:** \_\_\_\_\_  
(Please Print) (Please Sign)

**Date:** \_\_\_\_\_

**Buyer:** \_\_\_\_\_  
(Please Print) (Please Sign)

**Date:** \_\_\_\_\_

**Seller Representative:** \_\_\_\_\_  
(Please Print) (Please Sign)

**Date:** \_\_\_\_\_

ORIENTATION ADDENDUM – EXHIBIT “D”

BUYER: \_\_\_\_\_  
SELLER: \_\_\_\_\_

**EXHIBIT "E"**

**INSULATION ADDENDUM**

Listed below is certain information regarding the insulation installed or to be installed in each part of the improvements located on the Property.

(a) INSERT

(b) INSERT

(R-Value means resistance to heat flow; the higher the R-Value, the greater the insulating power.)

All stated R-Values are based on information provided by the manufacturer of the insulation. Notwithstanding the foregoing, the insulation installed in certain areas may be of lesser thickness and R-Value than indicated because the structural integrity or design of the Property does not permit any greater thickness.

INSULATION ADDENDUM – EXHIBIT "E"

BUYER: \_\_\_\_\_  
SELLER: \_\_\_\_\_

EXHIBIT "F"

TO BE EXECUTED AND DELIVERED BY SELLER AT CLOSING

Unit: \_\_\_\_\_ Parking Space: \_\_\_\_\_

**LIMITED WARRANTY ADDENDUM**

This limited warranty ("**Limited Warranty**") constitutes the sole and only warranty regarding the labor and materials used in the construction of above-described Unit, Parking Space, and appurtenant common elements (collectively, the "**Subject Property**") pursuant to the provisions of that certain Piazza Escondida Condominiums Agreement of Sale and Purchase between Buyer and Seller.

Seller warrants that all construction and materials incorporated in and made a part of the Subject Property shall remain free from material defect in workmanship and quality for a period of two (2) years from the date of Closing. A "material defect" means a defect that either fails to conform to the latest version of the plans and specifications for the Subject Property as of the date of this Limited Warranty or fails to conform to the standard of quality of construction of residential condominiums prevalent in El Paso County, Texas as of the date of this Limited Warranty. Buyer must give Seller written notice of any material defect within ten (10) days after Buyer's discovery of the defect; provided, in any event that such notice must be given prior to expiration of this Limited Warranty. Any such notice shall be addressed to Seller at the address set forth below or such other address for notice furnished to Buyer in writing. Buyer's sole remedy (in lieu of all remedies implied by law or otherwise) against Seller in connection with such material defects shall be to require Seller to correct the defect in material or workmanship. Seller shall determine, in Seller's sole discretion, whether any material defect covered by this Limited Warranty shall be repaired or replaced.

Consumer Products (as such term is used and defined by the Federal Trade Commission) that are covered by the Magnuson-Moss Warranty Act when sold as part of a home are EXCLUDED from this Limited Warranty. Such Consumer Products are covered solely to the extent of any manufacturers' and/or suppliers' warranties. Buyer's sole remedy for the malfunction or defect in materials or workmanship of equipment or appliances installed in the Subject Property by Seller or its agents or subcontractors ("**Installers**"), are specifically limited to the warranty provided by the manufacturer of such equipment or appliance, unless such claimed defect is or was caused by installation by Installers, in which event, this Limited Warranty applies. For purposes of illustration and not by way of limitation, such appliances and equipment include the following: refrigerators, freezers, vent fans, ice makers, microwave ovens, conventional ovens, range tops, dishwashers, garbage disposals, trash compactors, clothes washers and dryers, heating and air conditioning units, hot water heaters, garage door openers, intercom systems, security systems and audio and video equipment.

This Limited Warranty gives Buyer specific legal rights and Buyer may also have other rights under Texas law.

LIMITED WARRANTY ADDENDUM – EXHIBIT "F"

BUYER: \_\_\_\_\_

SELLER: \_\_\_\_\_

The following are limitations to or exceptions from the warranty:

A. All claims under this warranty **MUST BE MADE IN WRITING** and delivered to Seller prior to expiration of this Limited Warranty. The written notice must identify the nature of the defect, the date the defect first occurred, the loss or damage claimed, the times that the Seller may have access to the Subject Property to inspect the loss or damage and, if necessary, take corrective action.

Buyer must:

- 1) Contact Seller, Seller, or its representatives, in the most expeditious manner possible;
- 2) Do everything within the Buyer's power to mitigate any damage being caused by the problem;
- 3) Mitigation must be accomplished with prudence and with due regard for relative costs. Seller shall only bear those Buyer-incurred costs that are reasonable and competitive in the opinion of Seller.

B. Seller must be given reasonable time to correct defects to allow subcontractors and vendors to correct defects. Buyer acknowledges that work and materials originally supplied through subcontractors and vendors may be warranted to Seller by the subcontractors and vendors. Service by these third parties is not one hundred percent (100%) under the control of Seller and may not always be as prompt as desired by Buyer or Seller.

C. No wood items (other than doors, windows, wood cabinets and countertops) are guaranteed against warping, splitting, shrinking or other characteristics known to be common to wood at this particular locale and climate.

D. Cosmetic cracks in sheetrock, wood trim, caulking, or tile grout joints caused by the normal drying out and settling of wood frame construction are not covered under this warranty. Cosmetic cracks or separation in the surface of ceramic tile installed directly on to the concrete foundation or wood floor decking caused by normal expansion and contraction of the foundation and framing are not covered under this warranty. Exposed concrete is not warranted against cosmetic cracking or variations in color.

E. All items which were contracted for directly by Buyer, whether administered by Seller or not, are **NOT** warranted by Seller. This exclusion includes modifications or changes to the original construction.

F. Any item which is a change order to the standard specifications but are performed at cost, without profit or at minimal charge as an accommodation to Buyer, carry no warranty by Seller.

G. This Limited Warranty is personal to Buyer and may not be assigned. No assignment shall be permitted without the prior written consent of Seller.

LIMITED WARRANTY ADDENDUM – EXHIBIT “F”

BUYER: \_\_\_\_\_

SELLER: \_\_\_\_\_

H. The introduction of excessive water into the Subject Property must not occur.

I. Normal settling of the Subject Property within tolerances generally acceptable under the building standards in effect for the geographic area in which the Subject Property is situated.

FOR BREACH OF THIS LIMITED WARRANTY, DAMAGES INCURRED BY BUYER ARE LIMITED TO THE LESSER OF THE COST TO REPAIR OR REPLACE THE DEFECTIVE ITEM OR THE DECREASE IN THE MARKET VALUE OF THE ITEM AFFECTED BECAUSE OF THE DEFECT. IN NO CASE SHALL SELLER BE LIABLE TO BUYER FOR PUNITIVE, INCIDENTAL, SPECULATIVE OR CONSEQUENTIAL DAMAGES AS A RESULT OF ANY BREACH OF THIS LIMITED WARRANTY.

SELLER DISCLAIMS ALL OTHER WARRANTIES, WRITTEN OR ORAL, EXPRESS OR IMPLIED (OTHER THAN THE WARRANTY OF TITLE SET FORTH IN THE DEED FOR THE UNIT), INCLUDING WARRANTIES OF MERCHANTABILITY AND WARRANTIES OF FITNESS FOR A PARTICULAR USE, REGARDING THE IMPROVEMENTS, FIXTURES, EQUIPMENT, MATERIALS, OR OTHER PROPERTY LOCATED ON OR BEING A PART OF THE REAL PROPERTY SOLD TO BUYER PURSUANT TO THE PURCHASE AND SALE AGREEMENT. NO SAMPLE OR MODEL HAS BEEN MADE PART OF THE BASIS OF THE BARGAIN OR HAS CREATED OR AMOUNTED TO AN EXPRESS WARRANTY THAT THE WHOLE OF THE GOODS WOULD CONFORM TO ANY SUCH SAMPLE OR MODEL.

BUYER, BY SIGNING THIS LIMITED WARRANTY, WAIVES ANY CLAIM OR CAUSE OF ACTION AGAINST SELLER AND ANY CONTRACTORS OR VENDORS HIRED BY SELLER UNDER ANY THEORY OF IMPLIED WARRANTY OF GOOD AND WORKMANLIKE CONSTRUCTION AND THAT ANY SUCH IMPLIED WARRANTY, TO THE EXTENT IT EXISTS IN TEXAS, IS EXPRESSLY REPLACED BY THE TERMS OF THIS LIMITED WARRANTY.

SELLER SPECIFICALLY DISCLAIMS, AND BUYER SPECIFICALLY WAIVES AND RELEASES SELLER AND ANY CONTRACTOR OR VENDOR HIRED BY SELLER FROM, ANY CLAIMS OR LIABILITY FOR INCIDENTAL, SPECIAL, INDIRECT, OR CONSEQUENTIAL DAMAGES TO ANY PERSON OR REAL OR PERSONAL PROPERTY, INCLUDING THE REAL PROPERTY UNDERLYING THE REGIME, RESULTING FROM A DEFECT OR FLAW IN ANY CONSTRUCTION OR MATERIALS.

SELLER MAKES NO REPRESENTATION OR WARRANTY CONCERNING ANY GEOLOGICAL OR ENVIRONMENTAL MATTERS AND SPECIFICALLY EXCLUDES GEOLOGICAL AND ENVIRONMENTAL MATTERS FROM THIS LIMITED WARRANTY.

BUYER HEREBY ACKNOWLEDGES AND ACCEPTS SUCH DISCLAIMERS AND WAIVES ANY AND ALL RIGHTS BUYER MAY HAVE BY VIRTUE OF THE REPRESENTATIONS AND WARRANTIES DISCLAIMED. EXCEPT AS OTHERWISE PROVIDED IN THIS LIMITED WARRANTY, BUYER ASSUMES THE RISK OF DAMAGE OCCURRING ON OR IN THE SUBJECT PROPERTY AFTER THE CLOSING, REGARDLESS OF THE CAUSE.

LIMITED WARRANTY ADDENDUM – EXHIBIT “F”

BUYER: \_\_\_\_\_

SELLER: \_\_\_\_\_

\*NOTE: This Limited Warranty has been prepared to comply with the disclosure requirements of the federal Magnuson-Moss Warranty - Federal Trade Improvement Act (15 U.S.C. § 2301, as amended).

LIMITED WARRANTY ADDENDUM – EXHIBIT “F”

BUYER:\_\_\_\_  
SELLER:\_\_\_\_



**EXHIBIT "G"**

**COMPLETED AT CONTRACT EXECUTION**

**BROKER ADDENDUM**

Listing Broker, \_\_\_\_\_, has agreed to pay Other Broker (as defined below) \_\_\_\_\_% of the Base Purchase Price when the Listing Broker fee is received. The Title Company is authorized and directed to pay the Other Broker from the Listing Broker fee at Closing.

**BROKER:**

\_\_\_\_\_  
License No. \_\_\_\_\_

Broker represents:

Buyer only as Buyer's agent

\_\_\_\_\_  
Associate Telephone

\_\_\_\_\_  
\_\_\_\_\_  
Other Broker's Address

\_\_\_\_\_  
Facsimile

\_\_\_\_\_  
Email Address

BROKER ADDENDUM – EXHIBIT "G"

BUYER:\_\_\_\_\_  
SELLER:\_\_\_\_\_