

**UNIT SALES AGREEMENT  
DISCOVERY PARK CONDOMINIUM  
NOTICE TO PURCHASER  
(Right of Cancellation)**

By signing a Unit Sales Agreement you are incurring a contractual obligation to purchase an interest in a condominium. However, you have the right to cancel this Agreement for any reason for five (5) business days (excluding Saturdays and holidays) after whichever of the following is last to occur:

- (1) Signing by the Purchaser of the Unit Sales Agreement;
- (2) Signing by the Purchaser of the receipt for the Disclosure Statement, if any; or
- (3) Signing by the Purchaser of the receipt for a copy of the Condominium Declaration and Bylaws and any amendments or supplements thereto affecting the unit.

To cancel this Agreement, you must give written notice to the Developer or the agent of the Developer at the following address:

**ETRUSCAN VENTURES, LLC  
9999 SW Wilshire Street, Suite 208  
Portland, Oregon 97225**

**(Suggested Procedure)**

Before executing this Agreement, or before the cancellation period ends, you should do the following:

- (1) Carefully examine the Disclosure Statement, if any, issued by the real estate commissioner on the condominium and all accompanying information delivered by the Developer. Oregon law requires the Developer to deliver to you a copy of the Declaration and Bylaws of the condominium and any supplements and amendments thereto affecting the unit prior to the time the Unit Sales Agreement is fully executed by all parties. A copy of the Declaration and Bylaws, and any supplements and amendments thereto are available from the association for examination and duplication, at a reasonable fee, upon your written request.
- (2) Inquire of your Lender whether you can get adequate financing on an acceptable basis.
- (3) Inquire of the Developer and the Lender what the amount of the closing costs will be.

Oregon law requires that you immediately be given a copy of this notice and a copy of the Unit Sales Agreement when it has been fully executed by all parties.

**DISCOVERY PARK CONDOMINIUM**

**Unit Sales Agreement**

**DATED:** \_\_\_\_\_, 20\_\_\_\_

**BETWEEN:** **ETRUSCAN VENTURES, LLC**  
9999 SW Wilshire Street, Suite 208  
Portland, Oregon 97225  
E-mail: \_\_\_\_\_

**SELLER**

**AND:** \_\_\_\_\_  
\_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_

Telephone No. \_\_\_\_\_  
\_\_\_\_\_

Fax No. \_\_\_\_\_  
\_\_\_\_\_

E-mail: \_\_\_\_\_

**PURCHASER**

This Agreement provides for the acquisition by Purchaser of \_\_\_\_\_ Unit \_\_\_\_\_ of Discovery Park Condominium, a condominium located in Multnomah County, Oregon (the “**Condominium**”), including the general and limited common elements pertaining to such unit for a total purchase price of \$\_\_\_\_\_. The estimated amount of the initial annual assessment of the association of unit owners (the “**Association**”) for this unit is \$\_\_\_\_\_. Estimated assessments due at closing: \$\_\_\_\_\_ Working Capital Assessment (equal to 1/6th of the annual assessment), and \$\_\_\_\_\_ as half of the next year’s annual assessment for the current year, prorated from the time assessments for the unit start to accrue.  Closing will occur by the date set forth in a written notice from Seller to Purchaser of the date certain by which the Home (as defined below) will be substantially complete and ready for occupancy. The Home is expected to be ready for occupancy by approximately \_\_\_\_\_, 20\_\_\_.  The Home is now substantially complete and ready for occupancy; closing will occur by \_\_\_\_\_, 20\_\_\_. Additional terms, if any, are set forth in the attached Addendum A.

**TERMS OF PAYMENT AS FOLLOWS:**

(To be payable to and deposited with Escrow Agent)

Earnest money ..... \$ \_\_\_\_\_

Additional down payment due at Closing, for purchase money loan.....\$ \_\_\_\_\_

Balance        due        at        Closing,        in        immediately        available  
funds.....\$ \_\_\_\_\_

**TOTAL PURCHASE PRICE**.....\$ \_\_\_\_\_

This sale is subject to the following terms and conditions:

1. **AGREEMENT TO SELL AND BUY.** Seller will sell to Purchaser and Purchaser will buy from Seller the Condominium unit referenced above, along with such unit's interest in the common elements of the Condominium and the right to use those limited common elements that pertain to such unit (collectively, the "**Home**").

2. **PURCHASE PRICE.** The purchase price for the Home is the purchase price set forth above.

3. **PAYMENT OF PURCHASE PRICE.** The total purchase price in the amount set forth above will be paid as follows:

3.1 **Earnest Money.** Purchaser has paid or within the time provided above will pay the total earnest money specified above. If Seller fails to execute this Agreement within 10 days following its execution by Purchaser, any earnest money paid by Purchaser will be returned. Within two business days of execution of this Agreement by Seller, Purchase must pay into an escrow account with First American Title Insurance Company (the "**Escrow Agent**") the entire Earnest Money deposit. Purchaser instructs the Escrow Agent to hold and use such sums and all other sums deposited under this Agreement pursuant to the escrow agreement between the Escrow Agent and Seller (the "**Escrow Agreement**").

3.2 **Credit Approval; Financing Contingency.** Immediately after Purchaser's execution of this Agreement, Purchaser must (i) provide Seller with a pre-approval letter reasonably satisfactory to Seller and (ii) apply for a loan from an institutional lender, and (iii) within three days after the date this Agreement has been fully signed by both parties, order an appraisal of the Unit. If Purchaser plans to pay in cash without obtaining financing, Purchaser must furnish Seller with any credit information or statement of availability of funds requested by Seller. Either with evidence of loan approval or proof of funds, Purchaser must have satisfied Seller of Purchaser's ability to pay within 30 days after the date this Agreement has been fully signed by both parties. If Purchaser is unable to obtain a loan on terms satisfactory to Purchaser or to satisfy Seller of Purchaser's availability of funds and ability to pay within such 30-day period after making diligent efforts to do so, either party may elect to terminate this Agreement by written notice to the other party given prior to the expiration of such 30-day period, in which case this Agreement will terminate and Purchaser's earnest money will be refunded, unless the time for obtaining credit approval is extended by the parties in writing. **If this Agreement has not been so terminated within such 30-day period, then Purchaser's financing contingency will be deemed waived. Thereafter,**

**if Purchaser is unable to close the purchase because of inability to obtain a satisfactory loan, a change in financial status, a change in loan terms, or any other reason (other than a breach of this Agreement by Seller or dissatisfaction of any other condition to Purchaser's obligation to close this transaction), then Purchaser's earnest money deposit will be paid to and retained by Seller in accordance with Section 4 below.**

By way of requesting further assurances, prior to the closing date, Seller may deliver to Purchaser a written request that Purchaser provide to Seller and the Escrow Agent a copy of a loan commitment or statement of availability of funds sufficient to complete the purchase. Within five days after delivery of such request is delivered or no less than five days before the closing date, whichever is sooner, Purchaser must provide to Seller and the Escrow Agent a copy of such evidence of financing.

**3.3     Balance of Purchase Price.** The entire unpaid balance of the total purchase price as set forth above will be paid (a) within the above specified number of days after written notice by Seller to Purchaser that the Home will be substantially complete and ready for occupancy by such date and that Seller is prepared and willing to close, or (b) by the closing date set forth on Page 1 above, whichever is checked on page one. Purchaser will cause the balance of the purchase price to be deposited with the Escrow Agent on or before such due date in immediately available funds.

#### **4.     CONSTRUCTION.**

**4.1     Square Footage.** Condominium unit square footage may be different from the square footage shown on plans and specifications or advertising brochures, which are based on good faith estimates and on architectural measurement standards, rather than condominium survey standards. Minor variations in sizes may be seen even between Homes having the same floor plan. **Seller does not guarantee any specific square footage.**

**4.2     Acoustics, Light, Air and View.** Purchaser acknowledges that as is typical in residential condominiums, the Homes are not sound-proof or odor-proof and Seller makes no warranty or representation regarding the degree to which noise or odors will infiltrate the Home. Home occupants may hear some degree of noise from the nearby streets, from nearby homes, and from nearby common elements. The Association, and not Seller, will have the responsibility of enforcing rules against disturbing other members of the Association; however, noise occurring outside the Home may be audible inside the Home. Purchaser should make Purchaser's own determination as to the acceptability of noise levels in the Home. Purchaser also acknowledges that any removal of the finished flooring or other alterations within the Home or Condominium may adversely affect the noise levels within the Home. In addition, future development may affect the light, air or view from the Home or Condominium. **Seller makes no representation or warranty regarding the existence of or changes in the level of noise, light, air or view benefiting or burdening the Home specifically or the Condominium generally.** In addition, Purchaser acknowledges that the Seller will have no liability if the current level of noise, light, air or view affecting the Home changes due to future developments.

**4.3     Purchaser's Access During Construction.** Prior to occupancy and during the construction, Purchaser is expressly denied access to the construction site at any time without the express consent of Seller and a prearranged appointment with Seller at such times and on such

days as Seller may deem appropriate, in Seller's sole discretion. Seller has the right to limit the number of individuals allowed access to the site at any prearranged appointment. Purchaser hereby acknowledges that during construction, due to hazardous conditions and insurance and security requirements, there may be periods when the site cannot be accessed, and Seller has no obligation to provide access to the site for Purchaser's inspection prior to the inspection in Section 6. Access to the site is at Purchaser's and Purchaser's representatives' sole risk. Purchaser and Purchaser's representatives waive all claims against Seller and Seller's contractors, subcontractors, employees, and agents, and their respective employees and agents, for personal injury or property damage arising during any such access.

**4.4     Control of Construction.** Control, direction, and supervision of all construction personnel at the construction site lie exclusively with Seller. Purchaser may not issue any instructions to, or otherwise interfere with construction personnel. Purchaser may not perform any work or engage Seller's contractors or other contractors, interior decorators or others to perform work in or about the Home until title is transferred to Purchaser at closing.

**4.5     Substantial Completion.** Seller will use Seller's best efforts to substantially complete construction of the Home together with the portion of the common elements that materially affect the enjoyment of the Home by the date indicated on page one of this Agreement but does not warrant that construction will be substantially complete by such date. For purposes of this Agreement, "substantially complete" means that the Home is ready for occupancy, even though one or more minor items of work remain to be completed or corrected, provided Seller agrees in writing to complete or correct such minor items within a reasonable time thereafter.

**4.6     Delays.** The estimated completion date set forth above is an estimate only, and Seller does not guarantee a completion date. Notice of the closing date will be given not less than 15 days prior to completion of the Home. Seller may extend the completion date for delays arising from any act or failure to act of Purchaser, labor disputes, accidents, fire or other casualty, weather conditions, and unavailability of materials, subcontractors or circumstances beyond Seller's control. If delays caused by Purchaser increase Seller's expenses, including but not limited to additional construction financing expense or increased subcontractor or material expense, Seller will be entitled to additional payment, which will be paid by Purchaser at closing. Seller will not be liable for damages or otherwise for any failure to timely complete construction due to conditions or circumstances beyond Seller's control.

**4.7     Continuing Construction.** Purchaser understands that construction work on the Condominium may continue for a period following closing. Seller and its agents, contractors and employees have the right to enter the Condominium as necessary to complete the Condominium, but will take reasonable measures relative to the safety of Purchaser and Purchaser's family, lessees, guests and invitees, who must remain outside of any fenced or posted construction areas and any other area in which work is being performed pending completion of the Condominium.

**5.     OWNER'S PREVENTATIVE MAINTENANCE PLAN.** On or before closing of the sale to Purchaser, Seller may deliver to Purchaser an Owner's Preventative Maintenance Plan describing periodic inspections and maintenance as required to keep the Home in good condition. Purchaser understands and agrees that if the Association or Purchaser fails to follow the inspection and maintenance recommendations contained in the Owner's Preventative Maintenance Plan,

neither Purchaser nor the Association will have any claim against Seller or its design professionals, contractors and subcontractors and their consultants, including without limitation, all of their officers, members, managers, directors, employees, agents, brokers and affiliates, for loss or damage to the extent that they result from failure to follow the Maintenance Plan or Owner's Preventative Maintenance Plan and will indemnify such persons and entities from and against claims by the Association, unit owners or other persons or entities for loss or damage resulting from such failure. Nothing in this paragraph may be construed to limit the statutory warranty provided in Section 1 below.

PURCHASER'S INITIALS: \_\_\_\_\_

## 6. INSPECTION AND ACCEPTANCE OF HOME

6.1 **Professional Inspection.** At Purchaser's expense, Purchaser may have the Home and common elements of the Condominium inspected by one or more professionals of Purchaser's choice. Any such inspection must occur within 10 business days of (i) mutual acceptance of this Agreement, if on page 1 above the box is checked indicating the Home is substantially complete, or (ii) notice to Purchaser of the completion date, if on page 1 above the box is checked indicating that at the time this Agreement the Home was not substantially complete (the "**Inspection Period**") . Seller will provide access to the Condominium by appointment for Purchaser and Purchaser's inspector, but if invasive testing is conducted, Purchaser must restore the Condominium to the condition it was in before the testing. Purchaser will have only the Inspection Period in which to complete all inspections of the Home and common elements. If Purchaser is not satisfied with the inspection report(s), Purchaser must notify Seller in writing of such unsatisfactory conditions along with a copy of the report, before expiration of the Inspection Period. Unless the parties have entered a written modification of this Agreement prior to the expiration of the Inspection Period, Purchaser will have the right to notify Seller in writing of Buyer's unconditional disapproval of the Home and common elements and Buyer's intent to terminate this Agreement, in which case, all earnest money deposits will be refunded to Purchaser, and this Agreement will be terminated except for those provisions that expressly survive termination or closing as of the date of such notice. If Seller has received no notice from Purchaser before 5:00 p.m. Pacific Time on the 10<sup>th</sup> day of the Inspection Period, Purchaser will be deemed to have accepted the condition of the Home and common elements. By way of clarification, the Inspection Period will terminate upon mutual execution of a modification to this Agreement addressing the inspection report(s) and Purchaser's requested repairs, in the case where Purchaser and Seller mutually agree to modify this Agreement.

6.2 **Acceptance of Home.** During Seller's normal weekday hours, and no sooner than 10 days prior to the anticipated closing date, Purchaser will inspect the Home and common elements with a designated representative of Seller and have the opportunity at that time to note any defects in construction and to be oriented to the appropriate Home maintenance items. Purchaser and Seller will sign a form of Acceptance of Unit in which the parties will note items to be completed or corrected, which Seller will correct prior to closing or as soon as reasonably practicable thereafter. Except for any defects noted on the inspection and acceptance form and defects warranted against pursuant to this Agreement, Purchaser agrees to accept the Home and Condominium in the condition existing on the date of inspection, and that completion or correction of the listed items will in no way delay or interfere with a timely closing.

**6.3     Purchaser's Right of Inspection.** Purchaser warrants that Purchaser has had, or will have had, at closing adequate opportunity to investigate the condition of the Home and common elements in accordance with Section 4, and Purchaser is relying solely on this independent investigation in purchasing the Home.

**6.4     Mold and Dry Rot.** Purchaser acknowledges that mold is a commonly occurring natural substance that can grow in the Home and the common elements where water infiltration and humidity exist. Purchaser understands and agrees that Seller will not be liable for any property damage or bodily injury suffered by the Home's occupants and resulting from the presence of mold. In addition to mold, water leakage over time can lead to dry rot or other damage. Seller can give no assurance that mold, dry rot or water damage or leakage has not occurred or will not occur in the future. Purchaser should satisfy his or her self (personally or through a qualified inspector) as to the existence or absence of mold, dry rot, or water intrusion. **Seller expressly disclaims any liability for mold, dry rot or water damage.** Purchaser is hereby advised to regularly cause the Home and its private limited common element yard to be inspected for mold, dry rot, water intrusion, or water detention. Purchaser should take prompt action to remedy underlying water infiltration and humidity conditions that may arise from construction conditions, living conditions or personal living habits, which may cause any mold or dry rot and thereby avoid any possibility of damage or injury from long-term exposure to mold or damage to the Home from dry rot or water intrusion. Seller will not be responsible for consequential damages such as damages to personal property, personal injury, loss of income or emotional distress.

**6.5     Seller's Continuing Right of Inspection.** By appointment arranged in advance, Seller, its agents and assigns, have the continuing right, but not the obligation, after the closing date to enter the Home and the common elements at reasonable times to inspect, identify and/or correct any conditions for which Seller could potentially be responsible under the law.

## **7.     CLOSING PROCEDURE.**

**7.1     Closing.** The sale will be closed by whichever of the dates described in Section 3 is marked on page one, or as soon thereafter as the declaration submitting the Homes and the land in the Condominium to condominium ownership has been recorded. Closing will occur at the offices of First American Title Insurance Company, 2112 NE 42<sup>nd</sup> Avenue, Portland, Oregon 97213.

**7.2     Deed.** At closing, upon payment of the purchase price, Seller will convey the Home to Purchaser by warranty deed free and clear of any liens and encumbrances, except the Condominium documents, the provisions of the Oregon Condominium Act, any utility or access easements of record, any taxes that are a lien but not yet due, and any other liens, restrictions, covenants or other encumbrances of record (other than Seller's financing). Any existing trust deed on the Condominium will be released from individual Homes as they are sold upon payment of a portion of the sales price to the lender or lender will have otherwise agreed to partial releases of its deed of trust when Homes are sold. Closing of this sale is conditioned upon release of the Home from any such trust deed.

**7.3     Possession; Closing Costs.** Seller will deliver to Purchaser possession of the Home on or before the date of closing. Taxes and rentals, if any, will be prorated as of (a) date of closing, (b) date of possession, except when such possession is pursuant to a rental agreement, or

(c) the date within which closing must occur as provided in Section 7, whichever is first. Seller is responsible for the payment of the premium for the owner's standard title insurance policy (except for the cost of any construction lien coverage required by Section 7, which will be the Purchaser's responsibility), the recording fees for any partial releases or satisfaction of a Seller loan, any broker's commission and Seller's half of the escrow fee. Purchaser is responsible for (i) the recording fee for the deed and warranty, (ii) any sales or transfer tax, (iii) initial contribution to the working capital of the Association equal to 1/6<sup>th</sup> of the regular annual Association assessments, (iv) 1/12<sup>th</sup> of the annual assessment for the Home, pro-rated over 30 days if applicable (v) half of the annual assessment for the Home, (v) Purchaser's half of the escrow fee, (vi) any additional premium for title insurance coverage for construction liens under Section 7, and (vii) all fees, costs and expenses in connection with Purchaser's loan, if any, including the premium for any mortgagee's title insurance policy.

**7.4     Title Insurance.** Within a reasonable time after recording of the deed to Purchaser, Seller will furnish Purchaser with an owner's policy of title insurance in the amount of the total purchase price, insuring marketable title of the Home in Purchaser, except for the usual printed exceptions in such policies and those items mentioned in Section 7 above. If closing occurs within three months following completion of construction, the title insurance policy may not contain any exception for filed or unfiled claims of construction liens.

**7.5     Recordation of Warranty.** Pursuant to ORS 701.605 and 205.246(1)(y), at closing the parties will execute and record a warranty containing the provisions of Sections 2, 3 and 6 of this Agreement.

**8.     RIGHTS RESERVED BY SELLER.** Seller reserves the following rights:

**1.1     Variations from or Changes or Modifications to Plans and Specifications.** The Condominium may or may not be built according to the specific plans and specifications in existence on the date of the Agreement, and in any case, no building is built 100 per cent in accordance with its plans and specifications. Seller reserves the right to substitute materials and the right to make changes or modifications in the detail of the plans and specifications of the Home and Condominium as Seller, in Seller's sole opinion, deems appropriate. In the event of a variation, change or modification that materially and adversely reduces the value of the Home, Purchaser will have the right to terminate this Agreement by notice to Seller and the Escrow Agent given not later than the earlier of (a) within 10 days after notice of the change was given to Purchaser, or (b) at the time of Purchaser's inspection and acceptance of the Home. In the event of such termination, Purchaser's sole remedy will be the return of the earnest money Purchaser previously paid to the Escrow Agent. If Purchaser fails to terminate this Agreement within such period, Purchaser will be deemed to have accepted such changes and modifications. This Agreement will not be affected by nor will consent of or notice to Purchaser be required with respect to minor variations in Home size or modifications to the design, plan or appearance of other Homes within the Condominium.

**1.2     Change or Modification to Governing Documents.** Seller reserves the right to modify the documents described in Section 7 below, as well as the plat for the Condominium. In the event of a modification of any of these documents prior to closing that materially and adversely affects Purchaser, Seller will give Purchaser notice of such modification and Purchaser will have the right to terminate this Agreement by notice to Seller and the Escrow Agent

given during the period ending 10 days after Seller's notice to Purchaser. In the event of such termination, Purchaser's sole remedy will be the return of the earnest money Purchaser previously paid to the Escrow Agent. If Purchaser fails to terminate this Agreement during that 10-day period, Purchaser will be deemed to have accepted such modifications. This Agreement will not be affected by nor will the consent of or notice to Purchaser be required with respect to (i) modifications of these documents not materially and adversely affecting Purchaser, (ii) reasonable changes to these documents as required by governmental authorities, lenders, or title insurance companies, or (iii) any changes to conform to or utilize the provisions of the Oregon Condominium Act or applicable federal or state law, FannieMae guidelines or FannieMae, Federal Housing Authority or Veterans Affairs regulations, or any amendments or revisions thereto.

**1.3 Adoption of Bylaws and Rules and Regulations.** Seller reserves the right to adopt, on behalf of Purchaser and all other buyers of Homes in the Condominium, the initial bylaws and administrative rules and regulations of the Association.

**1.4 Appointment of Interim Board of Directors.** Seller reserves the right to appoint an interim board of directors of the Association, which directors will serve until their successors have been elected as provided in the bylaws.

## **2. STATUTORY WARRANTY.**

**2.1 Express Warranty.** Pursuant to ORS 100.185, Seller warrants to Purchaser for a period of one year from date of possession that the Home and related limited common elements sold under this Agreement are and will be free of defects in materials or workmanship. In addition, Seller warrants that the general common elements are and will be free of defects in materials or workmanship for a period of one year from the date of the first conveyance of a Home in the Condominium to a buyer or one year from the date of completion of the specific general common element, whichever is later. This warranty applies only to those items that are integral component parts of the Home's structure and is not applicable to "consumer products" as defined in the Magnuson-Moss Warranty Act. The latter items may be covered by manufacturer's warranties, which are available for inspection at Seller's office.

**2.2 Seller's Obligations and Limitations on Seller's Obligations.** In the event of any defects covered by such warranty, Seller, at Seller's option, must either repair or replace the defective item. Seller will be responsible for repairing any actual damages directly resulting from the defect but will not be responsible for any consequential damages arising out of such defect. Seller will not be responsible for any damages resulting from lack of or improper maintenance or monitoring of the Home or the Condominium by Purchaser or the Association or from failure of Purchaser or the Association to provide Seller with prompt notice of the defect; provided, however that failure to follow the owner's Maintenance Plan provided by Seller will not limit the statutory warranties provided in Section 9.1 during the period of such warranties. See the attached Disclaimer and Waiver – Mold and Dry Rot for additional limitations on claims for mold and dry rot damage.

**2.3 Implied Warranties Excluded.** THIS WARRANTY IS GIVEN BY SELLER AND ACCEPTED BY PURCHASER IN LIEU OF ANY IMPLIED WARRANTIES AND THE IMPLIED WARRANTIES OF MERCHANTABILITY AND OF FITNESS FOR A PARTICULAR PURPOSE ARE EXCLUDED.

**2.4     Association as Beneficiary.** The Association is a beneficiary of this warranty with respect to the general common elements.

**2.5     Time Within Which Claims Must Be Asserted.** A written claim reasonably specifying a breach of this warranty on the Home and the related limited common elements must be delivered to Seller before the expiration of such warranty. A written claim reasonably specifying a breach of the warranty on the general common elements must be delivered to Seller within two years of expiration of such warranty, but the claim must be for a defect existing prior to the expiration of the warranty. An action to enforce the warranty may not be commenced later than four years after expiration of the warranty or the claim will be time-barred.

**2.6     Procedure for Asserting Claims; Seller's Right to View, Inspect and Respond.** Purchaser may not commence litigation against Seller or any contractor, subcontractor or supplier for construction defects unless Purchaser has given written notice of the claim and permitted them to view, inspect, and respond to the claimed defect, as provided in ORS 701.560 to 701.595.

**2.7     Personal Property.** Purchaser acknowledges that any warranties on appliances, equipment, and other consumer products as defined in the Magnuson-Moss Warranty Act or the Uniform Commercial Code installed in the Home are those of the manufacturer or supplier only and that Seller does not warrant such items, but to the extent assignable, these manufacturers' or suppliers' warranties will be assigned to Purchaser effective on the closing date. Seller will reasonably cooperate with any such claims Purchaser may elect to pursue against the manufacturer, provided there is no cost or liability to Seller. If Seller receives any payment from a manufacturer after closing resulting from product deficiencies applicable to the Home, Seller will deliver the payment to Purchaser after deduction of Seller's costs. Seller does not represent or guarantee the existence or validity of any manufacturer or supplier warranties or the performance by any manufacturer or supplier of its warranty obligations. With respect to any manufactured products, Purchaser expressly assumes the risk, as against Seller, that such products may be deficient, substandard or defective. Purchaser also acknowledges that the warranty of all appliances, equipment and other consumer products placed in the common elements by Seller, if any, are those of the manufacturer or supplier only and that Seller does not warrant such items.

**2.8     Express Home Warranty.** In addition to Seller's statutory warranty above, Seller will provide Purchaser with an Express Home Warranty from Seller. Purchaser has been provided a sample form of the Express Home Warranty and has read and understands its terms, conditions, and warranty exclusions.

**3.     CLAIMS OTHER THAN CLAIMS BASED ON STATUTORY WARRANTY.**

**3.1     Release and Waiver of Past, Present, and Future Claims Other Than Statutory Warranty Claims Regarding Condition of the Home and Common Elements.** Except with respect to warranty claims under Section 2 above, Purchaser hereby releases and waives any claim whenever arising against Seller or its agents, brokers, successors, employees, affiliates, contractors, representatives, officers, directors, members and managers, against any contractors, subcontractors, suppliers, consultants or design professionals of every tier performing any work or services in connection with the

**Condominium at any time pursuant to this Agreement, and their insurers and reinsurers, or against the Association or any board member thereof (collectively, the “Seller Parties”), relating to or arising from the condition of the Home and common elements at any time.** This waiver is absolute and unconditional, and this release and waiver applies whether or not Purchaser has knowledge of any actual or potential cause of action for such claims. This waiver applies to claims under any legal theory, including but not limited to negligence, negligence per se, negligent misrepresentation, defective construction, breach of contract or express or implied warranty (except as set forth in Section 2 above), unlawful trade practice, breach of fiduciary duty, strict liability, nuisance, trespass or any other theory, whether arising from statute, contract, tort or otherwise. This waiver includes, without limitation, claims relating to construction defects, design defects, inspection defects or negligence, water intrusion, mold, mildew, dry rot, fungus and/or odors in the Home or common elements; products or conditions in the Home or common elements, including for example carbon monoxide, radon or carpet glue; noise or sound transmission; loss of use; emotional distress; incidental or consequential damages; attorneys’ fees and costs; or relocation expenses (temporary or otherwise). Purchaser acknowledges that Seller would have required a significantly higher purchase price for the Home if Purchaser refused to accept the Home and common elements on such basis, required any further warranty, or declined to provide the foregoing release and waiver. This release and waiver is binding upon Purchaser, all successor owners, buyers or occupants of the Home, the Association, and their respective employees, contractors, property managers, brokers, heirs, successors, assigns, guests and invitees. Purchaser agrees that claims of the Association are derivative of claims of unit owners and that the Association is bound by the foregoing waiver. This waiver acts as a complete bar and defense against any released or waived claim. Purchaser agrees to require this release and waiver be included as a term in any future sale or lease of the Home or the Condominium, and that Purchaser will indemnify, defend, reimburse and hold the Seller Parties harmless from any claim, suit, demand, damage, liability or expense resulting from the failure to do so. **Purchaser acknowledges that Purchaser has read and understands this waiver, that it has had an opportunity to seek and consult counsel regarding this waiver and will have further opportunity to do so until the expiration of Purchaser’s five-day right of cancellation set forth in the Notice to Purchaser (Right of Cancellation) attached to the front of this Agreement.**

**3.2 Time Within Which Claims Must be Asserted.** It is the intent of the parties that the releases and waivers of claims in this Section 3 be comprehensive and final. To the extent that it is determined that any claim against any Seller Party, under any legal theory, including, without limitation, those claims listed in Section 3 above, survives the foregoing release and waiver for any reason, such claim must be brought under the initial dispute resolution procedures set forth in Section 10.2(a) of the Bylaws within 90 days after the date the Association or Purchaser knew or reasonably should have known of facts sufficient to put them on notice of the claim, **or if earlier**, with respect to the Home and related limited common elements, by no later than the first anniversary of the closing date of this sale or, with respect to the general common elements, within 90 days after the date of the turnover meeting as described in Section 2.2 of the Bylaws. Any arbitration or litigation based on such claims must be instituted within 90 days after completion of the mediation proceedings under Section 10.2(b) of the Bylaws, or if shorter, the applicable statute of limitations.

**Any and all such claims not brought within these time limits will be deemed time-barred, regardless of when the Association or owners actually discovered the alleged basis for the claim. Because there are no general common elements other than the land in**

the Condominium and any utility lines or connections shared by the Homes and the shared driveway, the Association has no standing to pursue claims on behalf of the owners of the Homes in the Condominium. Purchaser waives and hereby releases forever any right for the Association to make any claim regarding the condition, known or unknown, now or in the future, of the Condominium or the Home on Purchaser's behalf.

PURCHASER'S INITIALS: \_\_\_\_\_

**3.3     Procedure for asserting claims; Seller's right to view, inspect and respond.** Purchaser may not commence litigation against Seller or any contractor, subcontractor or supplier for construction defects unless Purchaser has given written notice of the claim and permitted them to view, inspect and respond to the claimed defect, as provided in ORS 701.560 to 701.595.

**4.     DEFAULT.**

**4.1     By Seller.** In the event of Seller's default under this Agreement, Purchaser will have the right to terminate this Agreement. Upon termination Purchaser will be entitled to recover the entire amount paid to the Escrow Agent. In no event, however, will Purchaser be entitled to special or consequential damages beyond actual damages for the breach. Special or consequential damages for purposes of this Agreement will include, without limitation, any loss of use, income, or profit, emotional distress, moving or lodging expenses, and any loss of or damage to property.

**4.2     By Purchaser.** Time of Purchaser's performance is of the essence of this Agreement. If Purchaser fails to make any deposit or other payment required under this Agreement within the time set forth in this Agreement, Seller may declare Purchaser to be in default and the entire amount deposited by Purchaser may, at Seller's option, be forfeited to Seller and retained by Seller as liquidated damages on account of failure of Purchaser to comply with the terms of this Agreement. The parties acknowledge the difficulty of determining the actual damages caused by a default and the reasonableness of such deposits as an estimate of such damages. Such remedy is in addition to any other remedies of Seller, including Seller's right to specifically enforce Purchaser's performance. If Purchaser fails to deposit the balance of the purchase price with the Escrow Agent within the time set for closing under Section 7 above, Seller may, in lieu of terminating this Agreement, require Purchaser to pay to Seller at closing \$100 per day. Seller's election not to terminate will not preclude Seller from thereafter electing to terminate this Agreement and declare a forfeiture or seek other recourse against Purchaser, provided Purchaser still has not fully performed.

**5.     DISPUTE RESOLUTION – OTHER THAN FOR NEGLIGENT OR DEFECTIVE CONSTRUCTION OR CONDITION, OR BREACH OF FIDUCIARY DUTY, OR CLAIMS RELATED THERETO.**

**5.1     Dispute Resolution.** Seller and Purchaser agree that claims, controversies and disputes for enforcement, rescission, or interpretation of this Agreement (collectively, "Claims"), relating directly or indirectly to this Agreement or the transactions contemplated by this Agreement will be resolved in accordance with the procedures set forth in this Section 10, which expressly survive closing. Neither the filing of a notice of pending action ("lis pendens") nor the application to any court for the issuance of any provisional process or similar remedy described in

the Oregon or Federal Rules of Civil Procedures will constitute a waiver of the right or duty to utilize the procedures specified in this Section 5.

**5.2 Mediation.** The parties will first attempt in good faith to resolve the Claims. If the parties are unable to resolve the Claims, the parties will then engage in mediation to resolve the Claims. The fees of any mediator and the costs of mediation will be divided and paid equally by the parties. Each party will pay its own attorneys' fees and costs in connection with any mediation. Completion of the mediation process under this section will be a condition precedent to the filing of any arbitration or litigation proceedings under this Agreement (except as otherwise provided expressly herein) or any claims relating to the matter with the Oregon Construction Contractors Board, and Purchaser waives any right to file any such claims if Purchaser has not fully complied with this section. The following matters, however, are not subject to the requirement for mediation: (a) any termination of this Agreement for failure to close the purchase within the time required by this Agreement, (b) any proceeding to collect, interpret or enforce any mortgage, trust deed, land sale contract or recorded construction lien; (c) a forcible entry and detainer action; (d) any matter subject to other dispute resolution procedures specifically set forth in the Condominium documents, (e) any dispute solely between REALTORS® that is subject to the Professional Standards of Arbitration provisions of the National Association of REALTORS®, (f) all claims within the jurisdiction of the Small Claims Court, which must be brought and decided there, in lieu of arbitration or litigation in any other court of law, and (g) claims for negligent or defective construction or condition as described in Section 11 below, which are subject to the dispute resolutions set forth in that Section.

**5.3 Claims' Resolution; Venue.** Jurisdiction and venue for any Claim that has not been resolved by mediation will be solely and exclusively in Circuit Court of Multnomah County, Oregon. The parties hereby waive trial by jury and agree that any matter hereunder will be determined by a judge sitting without a jury.

**5.4 Third Party Claims.** Upon demand by any party, claims between or among the parties and third parties will be submitted in a single, consolidated litigation.

**5.5 Attorneys' Fees and Costs.** A party's attorneys' fees and any and all costs of litigation or of otherwise bringing a claim or enforcing this Agreement will be paid by that party, except as provided in Section 12.2(e) above.

**5.6 Confidentiality.** Purchaser must keep all discussions of disputes with Seller and Seller's representatives, all settlements, judgments and decisions confidential and will not disclose any such information, whether directly or indirectly to any third parties other than Purchaser's attorneys and consultants, unless compelled to do so by an order of a court of competent jurisdiction. Purchaser agrees that if Purchaser breaches this confidentiality obligation that Seller is entitled to seek and obtain any and all equitable remedies, including injunctive relief and specific performance, and Purchaser hereby waives any claim or defense that Seller has an adequate remedy at law for any such breach. Purchaser agrees that Seller is not be required to post any bond or other security in connection with any such equitable relief.

**6. DISPUTE RESOLUTION-CLAIMS FOR NEGLIGENT OR DEFECTIVE CONSTRUCTION OR CONDITION, BREACH OF FIDUCIARY DUTY, OR RELATED CLAIMS.** Any claim by the Association or any owner against Seller or any contractor,

subcontractor, supplier, consultant or design professional of every tier performing any work or services in connection with the Condominium or the Home, and their agents, brokers, successors, employees, affiliates, representatives, officers, directors, managers and members, and their insurers and reinsurers, related to the design, construction or condition of the Condominium or the Home, including, but not limited to, claims for defective or negligent construction or design, or failure to repair or disclose a defective condition, or fraud in connection with the condition of the Home or the Condominium, including contract claims of misrepresentation, fraud, or claims of conflict of interest or breach of fiduciary duty, regarding or related in any way to the design, construction, or condition of the Condominium and Home must be resolved in accordance with the dispute resolution procedures set forth in Section 10 of the Bylaws. Claims brought under this Section 6 may not be subject to arbitration unless the parties, including any third parties to the dispute, agree to binding arbitration in writing. In respect of any Claims brought under this Section 13, each party will pay its own attorneys' fees and all its own expenses related to bringing a Claim, enforcing this Agreement, or otherwise taking legal action against the other party and to the full extent permitted by law, each party waives any statutory right to such fees or costs.

## 7. GENERAL PROVISIONS.

7.1 **Notice.** Notices to either party under this Agreement must be made in writing and will be effective when actually delivered if delivered in person, or when a delivered receipt is received by the sender of delivery by electronic mail, or when deposited in the United States mail, postage prepaid, addressed to the addresses stated in this Agreement, or otherwise as either party may designate by written notice to the other.

7.2 **Assignment.** Without Seller's prior written consent, Purchaser will not assign this Agreement prior to delivery of the deed to Purchaser, except by devise or inheritance. Subject to such limitation, this Agreement is binding on and inures to the benefit of the parties, their successors and assigns. Seller's refusal to consent to an assignment of this Agreement will not entitle Purchaser to terminate this Agreement, or give Purchaser any rights or claims for damages against Seller. Seller may assign its rights under this Agreement to a successor developer. If any such assignment is made by Seller for financing, then Purchaser hereby agrees to recognize the rights of the lender under the assignment and other loan documents. In the event of a conflict between this section and any other section of this Agreement, this section will prevail.

7.3 **Waiver.** Waiver of performance of any provision of this Agreement will not be a waiver of or prejudice the party's right otherwise to require performance of the same provision or any other provision.

7.4 **Inspection of Documents.** Seller has furnished to Purchaser the following documents: (i) State of Oregon disclosure statement for Discovery Park Condominium, (ii) copies of the proposed or final Declaration Submitting Discovery Park Condominium to Condominium Ownership, (iii) the Bylaws of the Association, and (iv) the Escrow Agreement. Purchaser has received and read such documents and accepts and agrees to be bound by the provisions contained in them.

7.5 **Risk of Loss, Casualty.** Seller bears the risk of loss to the Home until closing. After closing, Purchaser bears all such risk of loss. If, prior to closing, casualty by fire or otherwise damages more than 20 percent of the building in which the Home is located, or more

than 30 percent of the Home, then Seller will have the right to terminate this Agreement by giving notice to Purchaser within 20 days after the date of the casualty damage. With any such notice, Seller will return to Purchaser any earnest money deposited under this Agreement. Purchaser acknowledges that Purchaser will have no other remedy for Seller's failure to proceed to close this sale because of such damage, and the parties will be released from all other obligations under this Agreement. If (i) the casualty damage exceeds the percentage limitations set forth above, and if Seller does not give Purchaser notice of Seller's intent to terminate this Agreement within 20 days as provided above, or (ii) the casualty damage does not exceed such percentage limitations set forth above, then in either case, Seller will repair the damage and rebuild the Home as soon as reasonably practicable, and the closing will be delayed as necessary to allow the completion of such repair and rebuilding work. The architects who designed the Condominium is the sole party responsible for determining the percentage of damage for purposes of this section.

**7.6     Survival.** All provisions of this Agreement, the full performance of which are not required prior to or at closing, will survive closing and conveyance of title to Purchaser of the Home, and will be fully enforceable thereafter, except as provided expressly in this Agreement.

**7.7     Invalidity.** If any provision of this Agreement is held to be unenforceable or contrary to any present or future statute, law, ordinance or regulation, the provision of this Agreement that is so affected may be curtailed and limited only to the extent necessary to bring this Agreement within the requirements of the law, and the purchase price set forth herein will be adjusted to reflect the greater or lesser obligations and risks imposed on the respective parties as a result of such modification of this Agreement.

**7.8     Compliance with Laws.** It is the intention of the parties that this Agreement will be in compliance with all applicable laws and regulations. In the event this Agreement or any provision of this Agreement is determined to be in violation of any applicable law or regulation, then this Agreement or the provision will be deemed modified to the extent necessary to comply with such law or regulation.

**7.9     Association Assessments.** Even though there are only 12 Homes in the Condominium, applicable law requires Seller as the declarant of the Condominium to establish a nonprofit corporation to be the association of unit owners. Pursuant to the Declaration, Bylaws and Oregon Condominium Act, all owners of Homes in the Condominium are obligated to pay assessments imposed by the Association to meet the Condominium operating expenses. The amount of the assessment is a percentage of the annual budget for the Condominium, which has been estimated by Seller as the developer. The amount of the initial budget is attached to the Disclosure Statement. Seller does not represent or guarantee that the assessment, based on such estimated budget, will be sufficient to meet the common expenses of the Condominium. After all amounts necessary for insurance and common expenses for administration are more precisely determined, and any additional items are included, the assessment may be amended by the Board of Directors to reflect such changes. The assessment does not cover, among other things, the following items, which will be an expense of each owner of a Home: property taxes, insurance on the Home against fire and casualty, insurance on furniture, clothing and other personal property located within the Home, electricity, telephone, cable television and internet service, and natural gas.

**7.10    Insulation.** The various parts of the Condominium will contain the following types, thicknesses, and R-values of insulation:

<u>Exterior Walls:</u>	R-21	Batt	5.5 inches
<u>Ceilings</u>	R-49	Blown in	15 inches
<u>Floors:</u>	R-30	Batt	10 inches
<u>Slab Edge:</u>	R-15	Batt	3 inches

**7.11 Entire Agreement.** This Agreement constitutes the entire agreement between Purchaser and Seller with respect to the matters contemplated by this Agreement, and there are no other agreements, understandings, warranties or representations between Purchaser and Seller except as set forth in or referred to in this Agreement. This Agreement may not be amended except by a written instrument executed by both Purchaser and Seller.

#### **7.12 Representations.**

(a) **By Seller.** Purchaser acknowledges that this Agreement supersedes any prior written or oral representations, warranties or statements of either Seller, any member of Seller other than the manager, or any agent, contractor, sub-contractor, or job superintendent, in connection with any aspect of the Home or Condominium, and that Purchaser is not relying on any such representation by either Seller, any employee of Seller or any agent, except as set forth in this Agreement or in the Disclosure Statement delivered simultaneously herewith. Purchaser and all agents of Purchaser acknowledge that no sales agent, job superintendent, contractor, or sub-contractor has the authority to make, or has made, any agreement, promise, or representations or statements on behalf of Seller of the Home. Purchaser understands and acknowledges that any statements made orally in the past or future, or statements contained in marketing literature (including Seller's website, if any), flyers, advertisements and listing agreements are not representations and are subject to changes, and therefore, are not to be interpreted to expand or modify any terms or conditions contained in this Agreement. Neither Seller nor Seller's agent makes any representations as to the school district. Purchaser should verify school district information with the school district because school boundaries can change.

(b) **By Purchaser.** Purchaser represents that there are no contingencies unless shown in this Agreement. For example, if Purchaser is relying on gift funds, Seller is entitled to rely on Purchaser's representation that gift funds are already in place and that performance of this Agreement is not "subject to" Purchaser's arranging gift funds.

**7.13 Notice Required by Statute.** ORS 93.040 requires that the following provision be inserted in all instruments contracting to convey fee title to real property:

**THE PROPERTY DESCRIBED IN THIS INSTRUMENT MAY NOT BE  
WITHIN A FIRE PROTECTION DISTRICT PROTECTING  
STRUCTURES. THE PROPERTY IS SUBJECT TO LAND USE LAWS  
AND REGULATIONS THAT, IN FARM OR FOREST ZONES, MAY  
NOT AUTHORIZE CONSTRUCTION OR SITING OF A RESIDENCE  
AND THAT LIMIT LAWSUITS AGAINST FARMING OR FOREST  
PRACTICES, AS DEFINED IN ORS 30.930, IN ALL ZONES. BEFORE  
SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON**

TRANSFERRING FEE TITLE SHOULD INQUIRE ABOUT THE PERSON'S RIGHTS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009 AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY THAT THE UNIT OF LAND BEING TRANSFERRED IS A LAWFULLY ESTABLISHED LOT OR PARCEL, AS DEFINED IN ORS 92.010 OR 215.010, TO VERIFY THE APPROVED USES OF THE LOT OR PARCEL, TO VERIFY THE EXISTENCE OF FIRE PROTECTION FOR STRUCTURES AND TO INQUIRE ABOUT THE RIGHTS OF NEIGHBORING PROPERTY OWNERS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009 AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010.

**Purchaser** has executed this Agreement this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.  
This offer from **Purchaser** will expire at \_\_\_\_\_ am/pm on \_\_\_\_\_, 20\_\_\_\_\_.

**Purchaser** has executed this Agreement this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.  
and hereby accepts Seller's counter-offer submitted on this Agreement. Purchaser certifies that Purchaser has received and read the State of Oregon Disclosure Statement, Condominium Declaration, the Bylaws and the Escrow Agreement and accepts and agrees to be bound by the provisions contained in such documents.

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

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

**Seller** hereby counters the offer from Purchaser dated \_\_\_\_\_, 20\_\_\_\_ on OREF form \_\_\_\_\_ by executing this Agreement this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_. This counter offer from Seller will expire at \_\_\_\_\_ am/pm on \_\_\_\_\_, 20\_\_\_\_\_.

**Seller** hereby accepts the foregoing offer and has executed this Agreement this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

**Seller** does not accept the foregoing offer but makes the attached counteroffer this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

**Seller** hereby rejects the foregoing offer in whole as of \_\_\_\_\_, 20\_\_\_\_\_.

**ETRUSCAN VENTURES, LLC,**  
an Oregon limited liability company

By: \_\_\_\_\_  
A. Neil Thogerson, Member

The following Final Agency Acknowledgment will be attached to the Unit Sales Agreement between **ETRUSCAN VENTURES, LLC**, an Oregon limited liability company (“**Seller**”) and \_\_\_\_\_ (“**Buyer**”) pertaining to the sale of Homes in Discovery Park Condominium.

### **FINAL AGENCY ACKNOWLEDGEMENT**

Both Buyer and Seller acknowledge having received the Oregon Real Estate Agency Disclosure Pamphlet, and hereby acknowledge and consent to the following agency relationships in this transaction:

1. \_\_\_\_\_ (Name of Selling Licensee) of \_\_\_\_\_ (Name of Real Estate Firm) is the agent of (check one)  The Buyer exclusively.  The Seller exclusively (“**Seller Agency**”).  Both the Buyer and the Seller (“**Disclosed Limited Agency**”).
2. \_\_\_\_\_ (Name of Listing Licensee) of \_\_\_\_\_ (Name of Real Estate Firm) is the agent of (check one)  The Seller exclusively.  Both the Buyer and the Seller (“**Disclosed Limited Agency**”).
3. If both parties are each represented by one or more licensees in the same real estate firm, and the licensees are supervised by the same principal broker in that real estate firm, Buyer and Seller acknowledge that said principal broker will become the disclosed limited agent for both Buyer and Seller as more fully explained in the disclosed Limited Agency Agreements that have been reviewed and signed by Buyer, Seller and Licensee(s).

Buyer will sign this acknowledgement at the time of signing this Agreement before submission to Seller. Seller will sign this acknowledgement at the time this Agreement is first submitted to Seller, even if this Agreement will be rejected or a counteroffer will be made. Seller’s signature to this Final Agency Acknowledgement will not constitute acceptance of the Agreement or any terms therein.

#### **ACKNOWLEDGED**

Buyer: \_\_\_\_\_ Print \_\_\_\_\_ Dated: \_\_\_\_\_

Buyer: \_\_\_\_\_ Print \_\_\_\_\_ Dated: \_\_\_\_\_

Seller: **ETRUSCAN VENTURES, LLC,**  
an Oregon limited liability company

By: \_\_\_\_\_  
A. Neil Thogerson, Member

Dated: \_\_\_\_\_

### **CO-OP SALES**

This is a co-op transaction between \_\_\_\_\_  
(Listing Agent) and \_\_\_\_\_ (Selling  
Agent). Selling Agent to receive a commission in the amount of \_\_\_\_\_% of purchase  
price, to be deducted from the commission otherwise payable to Listing Agent.

Selling Agent's address:

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Phone Number: \_\_\_\_\_

Fax Number: \_\_\_\_\_

Listing Agent's Initials:

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Selling Agent's Initials:

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## **DISCLAIMER AND WAIVER – MOLD AND DRY ROT DAMAGES**

Purchaser acknowledges the following: mold is a naturally occurring fungus. New construction is not, and cannot be, designed to exclude mold growth. Under certain conditions, mold can grow in residential homes. Moisture, which contributes to mold growth, is the only factor which can be controlled in its setting. It is the responsibility of the owner to control the environment in such a manner so as to reduce or eliminate mold growth. Good housekeeping and homeowner maintenance practices are essential in the effort to prevent or eliminate mold growth and dry rot associated with such growth. If moisture conditions are not regulated mold and mold growth can occur within 24 to 48 hours.

The responsibility of Seller is limited to those issues Seller can control during construction. Once construction is completed and the owner takes occupancy, the owner is responsible for regulating the moisture conditions associated with the Home. It is the express responsibility of the owner and the Association, as applicable, to properly monitor, manage, and maintain the Condominium after purchase. This includes, but is not limited to, the elimination of all sources of moisture; instituting and maintaining a regular program of caulking, sealing and replacing as needed all surfaces, including but not limited to roofs, decks, doors, vents, and window and wall systems; as well as monitoring for signs of water intrusion, moisture, mold, or dry rot. Additionally, it is the exclusive responsibility of the owner and the Association, as applicable, to properly ventilate the inside of living spaces in the Home so as to prevent moist air from condensing within the Home or on its surfaces.

Seller's responsibility for mold or dry rot is and will be limited to such damage as may be caused by construction means and methods outside the generally accepted construction standards at the time of construction and will not apply to damage relating to mold or dry rot (a) caused by sources other than deficiencies in the construction means and methods, including, but not limited to, living conditions or personal living habits, (b) to the extent resulting from failure of the unit owner or the Association to properly manage and maintain the Condominium and the Home, respectively, including without limitation, failure to regularly inspect for water intrusion or to maintain caulking and seals designed to prevent moisture intrusion, or (c) to the extent resulting from failure to promptly notify the Seller of evidence of moisture penetration, mold or dry rot or to permit Seller to inspect or remedy such situations. Seller's responsibility is limited to correcting the purported construction means or method and repairing the resulting damage, if any, to the Condominium. The Seller will NOT be responsible under any legal theory (including claims in contract, tort or otherwise) for consequential damages such as damages to personal property, relocation costs/expenses, personal injury or illness, loss of income, or emotional distress. Claims regarding mold or dry rot must be asserted within the time periods and in the same manner as any other warranty claims as provided in the statutory warranty contained in Section 9 of the Unit Sales Agreement.

The Purchaser hereby expressly WAIVES all claims and causes of action against the Seller in connection with mold or dry rot or other fungal growth and any damages related thereto, except to the extent expressly set forth in this Addendum.

This Addendum is hereby appended to and made a part of the Unit Sales Agreement. The consideration for this Disclaimer and Waiver will be the same consideration as stated in the Unit Sales Agreement. Should any term or provision of this Addendum be ruled invalid or unenforceable

by a court of competent jurisdiction, the remainder of this Addendum will nonetheless remain in full force and effect.

The undersigned acknowledge receipt of this Addendum. The undersigned have carefully read and reviewed its contents and agree to its provisions.

**PURCHASER:**

**SELLER:**

**ETRUSCAN VENTURES, LLC,**  
an Oregon limited liability company

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

By: \_\_\_\_\_  
A. Neil Thogerson, Member

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



# Notice of Procedure

## Regarding Residential Construction Arbitrations and Lawsuits

(ORS 701.330 (2))

Oregon law contains important requirements that homeowners must follow before starting an arbitration or court action against any contractor, subcontractor, or supplier (materials or equipment) for construction defects.

**Before you start an arbitration or court action, you must do the following:**

1. Deliver a written notice of any conditions that you believe are defective to the contractor, subcontractor, or supplier that you believe is responsible for the alleged defect.
2. Allow the contractor, subcontractor, supplier, or its agent, to visually inspect the possible defects and also allow the contractor, subcontractor, or supplier to do reasonable testing.
3. Provide the contractor, subcontractor, supplier, or its agent, the opportunity to make an offer to repair or pay for the defects. You are not obligated to accept any offer made.

There are strict procedures and deadlines that must be followed under Oregon law. Failure to follow those procedures or meet those deadlines will affect your right to start an arbitration or court action.

**You should contact an attorney** for information on the procedures and deadlines required under Oregon law.

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**Your contractor is supplying this notice to you as required by Oregon law.**

<b>SELLER:</b> CCB# _____	<b>PURCHASER:</b>
<b>ETRUSCAN VENTURES, LLC,</b> an Oregon limited liability company	Print Homeowner Names (as it appears on contract)
By: _____ A. Neil Thogerson, Member	Signature _____ Date _____
Date: _____	Signature _____ Date _____

## **Notice of Compliance with the Homebuyer Protection Act (HPA)(ORS 87.007)**

In compliance with Oregon law, the below mentioned Seller has selected to comply with the requirements of ORS 87.007

<b>1. ADDRESS or DESCRIPTION OF PROPERTY</b>		
Address or Location	City, State	Zip Code
<b>2. DATE OF PURCHASE (choose one)</b>		
<p>A. <input type="checkbox"/> ORS 87.007 (which includes the provisions listed in part B of this form) does not apply to the sale of the above described Property</p>		
<p>B. <input type="checkbox"/> ORS 87.007 applies to the sale of the above described Property. Seller complied with ORS 87.007(2) by (check which <u>one</u> applies):</p> <ol style="list-style-type: none"><li>1. <input type="checkbox"/> <b>Title Insurance</b> as provided for in ORS 87.007(2)(a).</li><li>2. <input type="checkbox"/> <b>Retained in Escrow</b> not less than 25 percent of the sale price as provided for in ORS 87.007(2)(b).</li><li>3. <input type="checkbox"/> <b>Bond or Letter of Credit</b> as provided for in ORS 87.007(2)(c).</li><li>4. <input type="checkbox"/> <b>Written Waivers</b> received from every person claiming a lien as provided for in ORS 87.007(2)(d).</li><li>5. <input type="checkbox"/> <b>Completed Sale After the Deadline</b> for perfecting liens as provided for in ORS 87.007(2)(e).</li></ol>		
<b>3. SELLER INFORMATION</b>		
Company Name (if applicable)		
Agent of Company or Individual Seller		
Title of Company Agent (if applicable)		

Signature \_\_\_\_\_ Date \_\_\_\_\_

<b>4. BUYER INFORMATION</b>		
Buyer Name		
Agent of Company or Individual Buyer		
Title of Company Agent (if applicable)		

Signature \_\_\_\_\_ Date \_\_\_\_\_

# Instructions

These instructions are provided to assist sellers of residential property with the Oregon Homebuyer Protection Act (HPA), codified in ORS 87.007. The HPA protects residential property buyers against construction liens filed in county records after the sale of the property where such liens arise out of new construction, additions or remodeling within 90 days of the date of the sale.

## Disclaimer

These instructions do not constitute legal advice. For questions, please contact an attorney.

## Who must complete this form?

A residential property owner selling –

- A new single family residence, condominium unit or residential building (containing four or fewer dwelling units), or
- An existing single family residence, condominium unit or residential building (containing four or fewer dwelling units) that had at least \$50,000 worth of improvements, additions or remodeling completed within 90 days of the date of the sale.

## Instructions for Section A

If the property fits the description above, but the seller knows that no person may file a lien against the property, the seller may check the box in Section A of the form.

## Instructions for Section B

If the seller knows that it is possible for someone to file a lien against the property, the seller must check Section B of the form and at least one corresponding box that applies to the action the seller took, or will take, to comply with the HPA.

**Box 1 Title Insurance** – The seller has or will purchase or provide an owner's extended coverage title insurance policy or equivalent that does not except filed or unfiled claims of lien. A standard title insurance or a lender's title insurance policy may not be sufficient. See ORS 87.007(2)(a).

**Box 2 Retain in Escrow** – The seller will arrange to retain in escrow an amount of not less than 25 percent of the sales price of the property. The escrow will pay any claims of lien not paid by the seller filed after the date of the sale. Any unused funds will be released to the seller upon fulfillment of the following conditions:

Claims of lien have not been filed against the property and at least 90 days have passed since the date the construction was completed.

One or more claims of lien were filed against the property, at least 135 days have passed since the date the liens were filed, and the liens were released or waived. See ORS 87.007(2)(b).

**Box 3 Bond or Letter of Credit** – The seller has or will maintain a bond or letter of credit. A Construction Contractors Board bond, required for licensure under ORS chapter 701, is not sufficient. See ORS 87.007(2)(c).

**Box 4 Written Waivers** – The seller has or will obtain written waivers from every subcontractor or supplier who claims liens of \$5,000 or more. Provide copies of the waivers to the buyer no later than the date of the sale. (The CCB recommends consulting an attorney for assistance with preparing forms for waivers). See ORS 87.007(2)(d).

**Box 5 Completed Sale after the Deadline** – The sale will not be completed until at least 75 days after the completion of all construction. See ORS 87.007(2)(e).

Additional Instructions: The seller and the buyer must sign and date the form on or before the closing date of the sale. Both parties should retain a copy of the form. **Compliance with the HPA is the sole responsibility of the seller.**

**RECEIPT FOR CONDOMINIUM DOCUMENTS**

We hereby acknowledge receipt of a copy of the Declaration Submitting Discovery Park Condominium to Condominium Ownership, Bylaws of Discovery Park Condominium Owners Association, and Escrow Agreement for the Condominium. We also acknowledge receipt of a copy of the Disclosure Statement issued by the Oregon Real Estate Commissioner on \_\_\_\_\_, 20\_\_\_\_\_. Purchaser has elected to receive these documents:  in electronic format  in hard copy.

We further acknowledge that such documents were delivered to us prior to the time the unit sales agreement was fully executed by all parties.

**DATED** this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.  
\_\_\_\_\_  
\_\_\_\_\_

**PURCHASER**

SELLER IS REQUIRED TO RETAIN THIS RECEIPT FOR THREE YEARS.

**RECEIPT FOR EXECUTED COPY OF UNIT SALES AGREEMENT**

We acknowledge receipt of a fully executed copy of the unit sales agreement relating to our purchase of Unit \_\_\_\_, Discovery Park Condominium, together with the "Notice to Purchaser" attached thereto.

**DATED** this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
\_\_\_\_\_  
**PURCHASER**