

**BUY-SELL AGREEMENT OF  
Cedar Homes, LLC**

LAW OFFICES  
**TRULUCK THOMASON**

# **BUY-SELL AGREEMENT of Cedar Homes, LLC**

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# **Buy-Sell Agreement OF Cedar Homes, LLC**

This Buy-Sell Agreement of Cedar Homes, LLC (**Agreement**) is made on \_\_\_\_\_, 20\_\_\_\_, by Zohar Holdings, LLC and NEXOS Holding, LLC (individually, a **Member** and collectively, the **Members**), and Cedar Homes, LLC, a South Carolina limited liability company (**Company**). For purposes of this Agreement, the term *Member* or *Members* also includes any other person who becomes or is required to become a party to this Agreement.

The purpose of this Agreement is to ensure the successful and harmonious ownership and management of the Company by providing restrictions with respect to the purchase and sale of a Member's interest in the Company upon the occurrence of a Triggering Event as defined in this Agreement.

The parties agree as follows.

## **Article One Company Ownership**

### **Section 1.01 Membership Interests**

For purposes of this Agreement, any ownership interest in the Company, including rights to distributions or allocations of profits and losses, or management rights as a Member, is referred to as a Membership Interest. These ownership interests are detailed in the Company's Operating Agreement dated \_\_\_\_\_, 20\_\_\_\_ (**Operating Agreement**). Each Member's interest is set forth in Exhibit A.

### **Section 1.02 After-Acquired Interests**

If the Membership Interests change due to distributions paid in Membership Interests, membership interest splits, additional acquisitions or combinations of Membership Interests, reclassifications, recapitalizations, mergers, consolidations, or reorganizations, this Agreement applies to all of the resulting equity securities, but not to any resulting debt obligations.

## **Article Two Membership Interest Transfer Restrictions**

### **Section 2.01 General Prohibition on Membership Interest Transfers**

While this Agreement is in effect, no Member has any right to sell, gift, assign, encumber, transfer, or otherwise dispose of their Membership Interests except as provided in this Agreement. This provision does not prohibit or restrict the Company's right to issue Membership Interests in the Company.

## **Section 2.02 Encumbrance Restrictions on Membership Interests**

A Member may not mortgage, pledge, or otherwise encumber their Membership Interests without the prior written consent of Members owning 100 percent of the outstanding Membership Interests of the Company, including the Membership Interests that are proposed to be mortgaged, pledged, or otherwise encumbered. Each Member may grant or deny consent. This consent is not an amendment to this Agreement for purposes of Section 9.14.

## **Section 2.03 Eligible Subchapter S Corporation Member**

Despite anything to the contrary in this Agreement, anytime that the Company has an election to be treated as a subchapter S corporation under the Code, no Member may transfer, or agree to transfer, the Member's Membership Interests, either during the Member's lifetime or by operation of Member's will, revocable living trust, or other instrument, unless the transferee is qualified under the Code to be a subchapter S corporation Member.

## **Section 2.04 Effect of Improper Transfer**

Any attempted transfer of Membership Interests in violation of this article and/or Article Six is null and void ab initio. No such transfer or admission may be recorded on the Company's books, and the purported transferee or Member in any such transfer will not be treated (and, in the case of a transfer, the purported transferor will continue to be treated) as the owner of such Membership Interests for all purposes of this Agreement. If the ownership of Membership Interests is in doubt, or if there is reasonable doubt as to who may receive a distribution attributable to Membership Interests, the Company may accumulate the amounts to be distributed until this issue is finally determined and resolved.

# **Article Three**

## **Events Requiring Purchase and Sale of a Member's Membership Interests**

Despite any other provisions of this Agreement, if any of the following Triggering Events occur, the provisions of this article will apply.

## **Section 3.01 Triggering Events**

For purposes of this article, any of the following circumstances is a *Triggering Event*:

- a. The bankruptcy of a Member or other involuntary transfer of Membership Interests to the Member's creditors.
- b. Any individual, entity, organization, or agency obtaining a Member's Membership Interest as a result of any unappealable court order, levy, charging order or other transfer that the Company is required by law to recognize.
- c. The voluntary dissolution of a Member that is an entity.
- d. The involuntary dissolution of a Member that is an entity.
- e. The winding up of a Member that is an entity.

- f. A Member's attempt to conduct an Improper Transfer as described in Article two.
- g. A Member's failure to comply with any mandatory provisions of this Agreement

### **Section 3.02 Offer to Sell**

If a Triggering Event occurs, the Member whose Membership Interests are subject to a transfer described in this article must immediately offer all of the Membership Interests in the Company that the Member owns at the time of the Triggering Event (*Offered Membership Interests*) for sale by notice to the Company and to the remaining Member. The price will be determined by operation of Article Four and by the other terms in this Agreement. The Company will have sixty days after notice is given in which to elect to buy all or any of the Offered Membership Interests.

The remaining Member will have sixty days after the option period expires to elect to buy all or any of the Offered Membership Interests that the Company did not exercise its option to buy.

### **Section 3.03 Accepting the Offer**

To accept this offer, each offeree must give notice to the Member offering their Membership Interests for sale within the time provided, stating the amount of Membership Interests that the offeree wants to purchase, subject to the other provisions of this article. The Company has the first right to purchase any Offered Membership Interests, and then the remaining Member has the right to purchase any remaining Membership Interests. If not accepted, the offer expires at the end of the sixty-day period.

After this procedure is repeated to conclusion, any remaining unpurchased Membership Interests may be disposed of in accordance with the terms of this Agreement, but the purchase price may not be less than, and the terms of purchase for such Membership Interests may not be more favorable than, the purchase price and the terms of purchase that would have been applicable to the other Members had they purchased the same.

### **Section 3.04 No Voting Rights during Purchase-Option Period**

Until the Membership Interests that are subject to this article have been repurchased as provided in this Agreement, the transferee will not be allowed to exercise any vote attributable to the transferred Membership Interests.

## **Article Four Purchase Price**

### **Section 4.01 Determination of Purchase Price**

Except as otherwise provided in this Agreement, the purchase price for each Membership Interest purchased under this Agreement will be determined by first valuing the entire Company and then dividing that value by the number of issued and outstanding Membership Interests. The price per Membership Interest is then multiplied by the number of Membership Interests being purchased.

If a purchase is triggered due to the Involuntary Transfer of a Member, the total value of the Company will equal the Net Book Value of the Company as of the last day of the month immediately preceding the month in which an option or obligation to purchase arises.

## **Section 4.02 Net Book Value**

Except as otherwise provided in this Agreement, *Net Book Value* of the Company is the book value of its assets less its liabilities using the method of accounting under which the Company is normally maintained.

## **Section 4.03 Insurance Policies Excluded**

For purposes of valuing its Membership Interests, any cash surrender value or death benefits received or to be received with respect to life insurance or disability buyout policies insuring the selling Member that are owned by the Company are specifically excluded from the Company's assets and will not be added to the Company's valuation.

## **Section 4.04 Reduction in Purchase Price in Certain Circumstances**

Despite any other provision in this Agreement to the contrary, if an event listed in Article Three occurs and triggers a purchase, the purchase price of a Member's Membership Interests will be calculated by taking into account all applicable discounts for lack of control, lack of marketability, and similar discounts.

# **Article Five Payment Terms**

## **Section 5.01 Payment Terms for Offered Membership Interests**

If the Company or Members elect to accept and purchase Offered Membership Interests as provided above in Article Three, then the Company or a purchasing Member may pay the applicable Purchase Price in (a) one lump sum by certified or official bank check or by wire transfer of immediately available funds or (b) installment payments evidenced by a promissory note made at the time of purchase, which shall bear interest at the then existing prime interest rate per annum. If paid in installment payments, the Purchase Price plus accrued interest shall be paid in accordance with the below table.

<b><u>Value of Company Pursuant to Article VII</u></b>	<b><u>Repayment Term</u></b>
\$0.00 - \$250,000.00	24 equal monthly installments
\$250,000.01 - \$500,000.00	36 equal monthly installments
\$500,000.01 - \$1,000,000.00	48 equal monthly installments

\$1,000,000.01 <	60 equal monthly installments
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In the instance of payment in installments, the aforementioned promissory note must provide for a sixty-day right to cure after notice of any default on any payment before acceleration of the unpaid balance of principal and interest. The purchaser may prepay the note in whole or in part at any time without penalty.

### **Section 5.02     Closing and Closing Date**

If the Company or Members elect to accept and purchase Offered Membership Interests as provided above in Article Three, Closing must take place at the Company's principal office within sixty days after the date of the expiration or acceptance of the offer. At the Closing, the purchaser shall deliver payment of the Purchase Price either by delivery of a lump sum payment or by delivery of a promissory note, in either instance in accordance with the payment terms above. Also at closing, the selling Member shall deliver the properly endorsed purchased Membership Interests to the purchaser, together with all instruments necessary to accomplish this transfer. These instruments include powers of attorney, letters testamentary, and letters of administration. Each Manager must immediately thereafter transfer the ownership of these Membership Interests to the purchaser in the proportions set forth in this Agreement. The Company must promptly issue a certificate or other appropriate legal document in the name of each purchaser evidencing the transferred Membership Interests and deliver the certificate or document to the purchaser.

## **Article Six**

### **Right of First Refusal**

### **Section 6.01    Company and Members Right of First Refusal**

No Member may transfer any Membership Interests without first offering in writing to sell the Membership Interests to the Company and to the other Member as provided in this article.

### **Section 6.02    Notice of Intent to Transfer**

Before transferring any Membership Interests, a Member must first give notice of their intent to transfer to the Company and the other Member. Any notice of intent to transfer must include a copy of any written offer to purchase the Membership Interests that the Member has received. If the Member received only an oral offer, a written explanation of the oral offer must be attached to the notice. The written explanation must completely detail the purchase price and payment terms.

### **Section 6.03    Company's Right to Purchase**

The Company has the first right to purchase all or any portion of the Membership Interests for the lower of the purchase price stated in the offer or in this Agreement except as the Company may

elect to modify the terms under Section 6.05. The Company may exercise this first right to purchase by giving written notice of the Company's intent to purchase to the selling Member within sixty days of receiving the written notice of the offer.

#### **Section 6.04 Members' Right to Purchase**

If the Company does not provide written notice of an intent to purchase the Membership Interests within sixty days of receiving the written notice of the offer or if the Company provides written notice of an intent not to purchase the Membership Interests, the remaining Member may purchase any portion of the Membership Interests for the lower of the purchase price stated in the offer or in this Agreement except as the Company may elect to modify the terms under Section 6.05. A Member may exercise this right to purchase by giving notice of intent to purchase to the selling Member within one hundred twenty days of receiving the written notice of the offer.

#### **Section 6.05 Payment and Closing Terms under Priority Right to Purchase**

If the Company or Members exercise the right to purchase a Membership Interest as provided above in this Article Six, then the payment terms and closing shall be the same as set forth above in Article 5 and shall not deviate therefrom.

#### **Section 6.06 Transfer to Third Party after Non-exercise of Priority Right**

If neither the Company nor the remaining Member exercise their respective priority right to purchase the Membership Interests, the selling Member may transfer its Membership Interests to the party that made the original offer for the purchase price and on the terms in the original offer.

Any transfer to a third party under this section must close within thirty days from the earlier of

the date on which priority rights of the Company and the remaining Member to purchase expire, and

the date on which the Company and the remaining Member have provided written notice of their intent not to exercise their respective priority rights to purchase.

If the Membership Interests are not sold to the prospective purchaser within the specified time, the Company and the remaining Member will again be offered an opportunity to exercise their respective priority rights to purchase the Membership Interests under Section 6.03 and Section 6.04.

### **Article Seven**

#### **Further Assurances; Attorney-in-Fact**

#### **Section 7.01 Acting to Fully Effectuate Purpose of Agreement**

Each party agrees that on the written request of any other party of this Agreement, they will meet the reasonable requests of any other party to this Agreement in order to fully effect the purpose of this Agreement. This includes signing and delivering additional documents and taking further actions or causing further actions to be taken by others.

## **Section 7.02 Appointing Attorney-in-Fact**

If an event listed in Article Three occurs that obligates a Member to sell or offer their Membership Interests of the Company to either the Company or the other Member, and the Company or the other Member is required or agrees to purchase these shares, then the selling Member and the purchaser appoint Each Manager as attorney-in-fact for the selling Member, and the purchaser, respectively. The attorney-in-fact appointment is for the purpose of signing documents or instruments, such as certificates and Membership Interest powers, and taking any other action that Each Manager determines to be necessary to effect the sale and purchase of shares under this Agreement. As a result of any such sale by the selling Member and purchase by the Company or the other Member, the selling Member will no longer be a Member of the Company if the purchase price for the selling Member's shares is deposited in a bank or with an escrow agent for delivery to the selling Member. This appointment of Each Manager as attorney-in-fact is irrevocable and coupled with an interest. Each party releases Each Manager from any claims, causes of action, and demands at any time arising out of or with respect to any actions taken by Each Manager under this section, except to the extent caused by Each Manager's gross negligence or willful misconduct.

## **Section 7.03 Assuming Responsibility**

Nothing in Section 7.02 requires Each Manager to take any action or to assume any responsibility with respect to the transactions contemplated by this Agreement. Before taking any of these actions, Each Manager may give written notice to all parties, notifying them that the action will be taken, and giving them the right to object to or complete the transaction without Each Manager's involvement. But failure to give this notice or to take action regardless of any objections or other requirements stated by a party will not affect Each Manager's rights under this article.

## **Section 7.04 Limiting Authority of Attorney-in-Fact**

Nothing in Section 7.02 allows Each Manager to act as attorney-in-fact for any Member for any purpose other than to effect a sale and purchase as provided in this Agreement. For example, Each Manager has no power to agree to any purchase price for a Member's Membership Interests or to waive any of a Member's rights.

# **Article Eight**

## **Dispute Resolution**

This article supersedes any rules governing mediation or arbitration under the law of the State of South Carolina or any other jurisdiction.

## **Section 8.01 Resolving Disputes among Members and within the Company**

The Members must use the procedure outlined in this article to resolve any dispute, contest, or claim that may result among any of the Members or between one or more of the Members and the Company that may relate to this Agreement. The purpose of the alternative dispute resolution procedures in this article is to resolve all disputes, contests, and claims without litigation.

## **Section 8.02 Notice of Controversy and Designating Authorized Representatives**

Any person (**Claimant**) who has any dispute relating to this Agreement must provide written notice to all Members and to any other person who has an interest in the controversy (**Respondents**) describing the general nature of the controversy. The notice must designate an Independent Person as an authorized representative who is empowered to fully settle the controversy on behalf of the Claimant. Two or more Claimants may designate a common authorized representative.

Each Respondent must also designate an Independent Person as an authorized representative who is empowered to fully settle the controversy on behalf of the Respondent. Two or more Respondents may designate a common authorized representative.

Written notice of the designation of the authorized representatives must be delivered to each party within ten business days from the date the Respondents receive notice of the controversy.

## **Section 8.03 Beginning the Dispute Resolution Procedure**

The authorized representatives must conduct an initial meeting within thirty days from the date the Claimant's notice is delivered to the Respondents. The authorized representatives are entitled to collect and review all relevant evidence pertaining to the controversy and to negotiate and resolve the controversy. Resolution of any controversy by the authorized representatives is conclusive and binds all parties. If the authorized representatives do not resolve the controversy within thirty days from the date of their initial meeting, they must discontinue direct negotiations and submit the controversy to mediation.

## **Section 8.04 Selecting a Mediator**

Within five days of discontinuing direct negotiations, the authorized representatives must exchange written lists of natural persons whom they consider to be qualified to serve as a mediator. Within fifteen days after they exchange these lists, the authorized representatives must agree upon one mediator to mediate the controversy. If the authorized representatives do not agree on a mediator, the controversy will be submitted to binding arbitration under Section 8.10.

## **Section 8.05 Time and Place for Mediation Conference**

The authorized representatives must promptly designate a mutually convenient time and place for the mediation. If the authorized representatives fail to do so, the controversy will be submitted to binding arbitration under Section 8.10.

## **Section 8.06 Discovery and Exchange of Information**

The authorized representatives are entitled to fully discover, obtain, and review all information relevant to resolving any controversy.

## **Section 8.07 Delivery of Written Summaries; Authority to Obtain Professional Assistance**

At least seven days before the first mediation conference, each authorized representative must deliver to the mediator a concise written summary of fact and law about the issues. The authorized

representatives and the mediator may retain legal counsel, accountants, appraisers, and other experts whose opinions may assist the mediator in resolving the controversy.

### **Section 8.08 Conducting Mediation**

The mediator must determine the format for mediation conferences, ensuring that authorized representatives have an equal opportunity to review the evidence and any relevant technical and legal presentations. The mediator must determine the time schedule for resolving the mediation and shall attempt to facilitate the parties' efforts to achieve final resolution of all disputed issues. If the mediator is unable to facilitate a final resolution of all issues, the unresolved issues will be submitted to arbitration under Section 8.10.

### **Section 8.09 Final Determinations Bind All Parties**

Any final determination made by the authorized representatives or arbitrator binds each party who receives notice of a controversy, even if the party does not respond or designate a representative or if the party's authorized representative fails or refuses to participate in the designation of a mediator.

### **Section 8.10 Arbitration**

If any controversy is not finally resolved according to the alternative dispute resolution procedures in this article, the parties to the controversy must submit to mandatory and binding arbitration. The controversy will be settled by arbitration according to the Commercial Arbitration Rules of the American Arbitration Association. The arbitrator's judgment may be entered in any court having competent jurisdiction. If the arbitrator determines that the evidence produced through the arbitration process is insufficient to support a decision, the arbitrator may conclude the arbitration proceedings without a decision.

### **Section 8.11 Settlement during Mediation or Arbitration**

At any time before the conclusion of any mediation or arbitration, the authorized representatives may enter an agreement to resolve the controversy. Any settlement agreement will be conclusive and binds all parties.

### **Section 8.12 Qualified Appraisals**

If a Qualified Appraisal of the value of a Member's Membership Interests is required in order to resolve a dispute, each of the parties to the dispute may choose a Qualified Appraiser to provide a valuation. In the alternative, the parties may agree to select one Qualified Appraiser. The mediator or arbitrator will determine to what extent the Qualified Appraisal will be used in resolving any dispute.

### **Section 8.13 Right to Seek Equitable Relief**

If a party materially breaches this Agreement and if the other parties determine in good faith that immediate relief is necessary, the parties alleging the material breach may seek temporary restraining orders, preliminary injunctions, or similar temporary and equitable relief in a court of competent jurisdiction.

## **Section 8.14 Prevailing Party Is Entitled to Recover All Reasonable Costs**

The prevailing party in any dispute between any Member and the Company or between the Members themselves is entitled to recover from the losing party all reasonable costs incurred, including any attorney's fees and any costs of mediation, arbitration, court fees, appraisals, and expert witnesses.

# **Article Nine General Matters**

## **Section 9.01 Transfers from Custodianships or Trusts**

Despite any provision in this Agreement to the contrary, any Membership Interests held by a custodian for a minor under the laws of any state is fully transferable and assignable to the minor when the minor reaches the age of termination of the custodianship under the applicable statute without an offer being made to the Company or other Members.

## **Section 9.02 Company Inability to Purchase**

If the Company becomes obligated to purchase Membership Interests under this Agreement,

the Company will purchase as many of the Membership Interests as it may do so legally, and

the Company and the remaining Member agree to take all reasonable action in order to maximize the number of Membership Interests that the Company may purchase and to maximize the Company's ability to pay for the Membership Interests.

The obligations under this section will survive the Closing of the Company's purchase of these Membership Interests.

## **Section 9.03 Agreement Binding**

This Agreement binds the Members, their Legal Representatives, successors, and assigns. The Members, the Personal Representative of any deceased Member, and all other parties bound by this Agreement must promptly sign and deliver all papers or instruments necessary or desired to carry out the provisions of this Agreement.

## **Section 9.04 Entire Agreement**

This Agreement, together with the Operating Agreement, and all related Exhibits, Schedules, and other agreements specifically referred to in this Agreement, constitutes the sole and entire agreement of its parties with respect to the Agreement's subject matter. This Agreement supersedes all prior and contemporaneous understandings, agreements, representations, and warranties with respect to the subject matter. As between or among the parties, oral statements or prior written material not specifically incorporated into this Agreement have no force or effect. The parties specifically acknowledge that, in entering into and executing this Agreement, each is relying solely upon the representations and agreements contained in this Agreement and no others.

## **Section 9.05 Governing Law**

This Agreement is governed, construed, and administered according to the laws of the State of South Carolina, as from time to time amended, and any applicable federal law. No effect is given to any choice-of-law or conflict-of-law provision or rule (whether of the State of South Carolina or any other jurisdiction) that would cause the application of the law of any jurisdiction other than those of the State of South Carolina.

## **Section 9.06 Venue; Submission to Jurisdiction**

A cause of action arising out of this Agreement includes any cause of action seeking to enforce any provision of or based on any matter arising out of or in connection with this Agreement or the transactions contemplated by it. Except as provided in Article Eight, the parties agree that any suit, action, or proceeding, whether in contract, tort, or otherwise, arising out of this Agreement must be brought in a state or federal court or courts located in State of South Carolina if one of these courts has subject-matter jurisdiction over the suit, action, or proceeding. Any cause of action arising out of this Agreement is deemed to have arisen from a transaction of business in the State of South Carolina.

Each party irrevocably consents to the jurisdiction of these courts (and their respective appellate courts) in any cause of action arising out of this Agreement. To the fullest extent permitted by Applicable Law, each party irrevocably waives any objection that it may have now or later to the venue of any action arising out of this Agreement in any of these courts, including an inconvenient-forum petition.

Service of process, summons, notice, or other document sent by registered mail to the address set forth in Section 9.10 is effective service of process for any suit, action, or other proceeding brought in any court.

## **Section 9.07 Waiver of Jury Trial**

Each party to this Agreement acknowledges and agrees that any controversy arising out of this Agreement is likely to involve complicated issues. Therefore, each party irrevocably and unconditionally waives any right it may have to a trial by jury for any cause of action arising out of this Agreement.

## **Section 9.08 Equitable Remedies**

Each party to this Agreement acknowledges that its breach or threatened breach of any of its obligations under this Agreement would give rise to irreparable harm to the other parties and monetary damages would not be an adequate remedy. Therefore, each party to this Agreement agrees that if any party breaches or threatens to breach any of its obligations, each of the other parties to this Agreement will be entitled to equitable relief, including a temporary restraining order, an injunction, specific performance, and any other equitable relief available from a court of competent jurisdiction (without any requirement to post bond). These equitable remedies are in addition to all other rights and remedies that may be available in respect of the breach.

## **Section 9.09 Attorney's Fees**

If any party to this Agreement institutes any legal cause of action, including arbitration, against another party arising out of or relating to this Agreement, the prevailing party will be entitled to

the costs incurred in conducting the cause of action, including reasonable attorneys fees and expenses and court costs.

### **Section 9.10 Notices**

Unless otherwise stated, all notices, requests, consents, claims, demands, waivers, and other communications called for under this Agreement must be in writing and will be deemed to have been given

- when delivered by hand (with written confirmation of receipt);
- when received by the addressee if sent by a nationally recognized overnight courier (receipt requested);
- on the date sent by facsimile or email (with confirmation of transmission) if sent during recipient's normal business hours, and on the next business day if sent after normal business hours of the recipient; or
- on the fifth day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid.

If notice is required to be given to a minor or incapacitated individual, notice must be given to the minor or incapacitated individual's parent or Legal Representative.

The written notice must be sent to the respective parties at the party's last known address (or at the address a party has specified in a notice given in accordance with this section). Each Member must notify the Company in writing within five days of any change to the Member's address. Notice to the Company and Members must be addressed as follows:

If to the Company

Address:                   3 Boyce Ave  
                                Greenville, South Carolina 29601

Attention:                 Truluck Thomason, LLC

If to Zohar Holdings, LLC

Address:                 213 East Butler Rd Suite B1  
                              Mauldin, South Carolina 29662

If to Nexos Holding, LLC

Address:                 3 Boyce Ave  
                              Greenville, South Carolina 29601

## **Section 9.11 Severability**

The invalidity or unenforceability of any provision of this Agreement does not affect the validity or enforceability of any other provision of this Agreement. If a court of competent jurisdiction determines that any provision is invalid, the remaining provisions of this Agreement are to be construed as if the invalid provision had never been included in this Agreement.

## **Section 9.12 Multiple Originals; Validity of Copies**

This Agreement may be signed in any number of counterparts, each of which will be deemed an original. Any person may rely on a copy of this Agreement that any party certifies to be a true copy to the same effect as if it were an original.

## **Section 9.13 Representation by Truluck Thomason**

Each party acknowledges that the Agreement was prepared by Truluck Thomason, legal counsel representing the Company. Further, each party acknowledges that this legal counsel was acting solely on behalf of the Company and not on behalf of the Members individually or collectively. Each party has been advised by the Company to seek independent legal and financial counsel with respect to their signing of the Agreement and has had the opportunity to do so. The statements made in this paragraph may be relied upon by the Company and by Truluck Thomason or its successors in interest.

## **Section 9.14 Amending and Terminating This Agreement**

Except as otherwise provided in this document, this Agreement may be amended at any time and in any particular manner by a written instrument signed by all parties.

This Agreement will terminate under any of the following conditions:

- on the written agreement of all parties or
- on the sale of all of a Member's Membership Interests under this Agreement, except to the extent that this Agreement governs the terms of the sale.

# **Article Ten**

## **Definitions And Interpretation**

### **Section 10.01 Definitions**

For purposes of this Agreement, the following terms have the following meanings.

#### **(a) Act**

*Act* means the South Carolina Limited Liability Company Act, as amended from time to time.

#### **(b) Agreement**

*Agreement* means this Buy-Sell Agreement of Cedar Homes, LLC, as amended from time to time.

**(c) Applicable Law**

*Applicable Law* means the Act, the Code, the Securities Act, all pertinent provisions of any agreements with any Governmental Authority and all pertinent provisions of any Governmental Authority's

constitutions, treaties, statutes, laws, common law, rules, regulations, decrees, ordinances, codes, proclamations, declarations, or orders;

consents or approvals; and

orders, decisions, advisory opinions, interpretative opinions, injunctions, judgments, awards, and decrees.

**(d) Articles of Organization**

*Articles of Organization* means the Articles of Organization filed with the South Carolina as required by the Act, or any other similar instrument required to be filed by the laws of any other state in which the Company intends to conduct business.

**(e) Closing**

*Closing* means completion of one or more transactions of purchase and sale contemplated in this Agreement.

**(f) Closing Date**

*Closing Date* means the date of any Closing as specified in this Agreement.

**(g) Code**

References to the *Code* or to its provisions are to the Internal Revenue Code of 1986, as amended from time to time, and any corresponding Treasury Regulations. References to the *Treasury Regulations* are to the Treasury Regulations under the Code in effect. If a particular provision of the Code is renumbered or a subsequent federal tax law supersedes the Code, any reference is to the renumbered provision or to the corresponding provision of the subsequent law, unless the result would be clearly contrary to the Members' intent as expressed in this Agreement. The same rule applies to Treasury Regulations references.

**(h) Confidential Information**

*Confidential Information* means trade secrets, proprietary information, and other information belonging to the Company that are not generally known to the public, including information about business plans, financial statements, and other information provided under this Agreement, operating practices and methods, expansion plans, strategic plans, marketing plans, contracts, customer lists, or other business documents that the Company treats as confidential, in any format whatsoever including oral, written, and electronic. Examples of Confidential Information include the following items, which are not exhaustive:

all information, formulae, compilations, software programs (including object codes and source codes), devices, methods, techniques, drawings, plans, experimental and research work, inventions, patterns, processes and know-how—whether or not patentable and whether or not at a commercial stage—related to Company

the names, buying habits, or practices of any customers of Company

marketing methods and related data of Company  
the names of any vendors or suppliers of Company  
the cost of materials to Company  
the prices Company obtains or has obtained or at which it sells or has sold its products or services  
lists or other written records used in the business of Company  
compensation paid to employees and other employment terms of Company  
all information that Company has a legal obligation to treat as confidential or that Company treats as proprietary  
any other confidential information concerning the business of Company, their manners of operation, or other confidential data of any kind, nature, or description

**(i) Company**

*Company* means Cedar Homes, LLC, a South Carolina limited liability company.

**(j) Manager**

*Director* means any individual or legal entity designated in the Operating Agreement as a Director.

**(k) Governmental Authority**

*Governmental Authority* means any local, state, federal, or foreign government or its political subdivision; any agency or instrumentality of a government or its political subdivision; or any self-regulated organization or other nongovernmental regulatory authority or quasi-Governmental Authority whose rules, regulations, or orders have the force of law. Governmental Authority also means any arbitrator, court, or tribunal of competent jurisdiction.

**(l) Independent Person**

*Independent Person* means any person who is not related to or subordinate to a claimant or respondent and has no personal or financial stake in the resolution of the controversy other than fair and reasonable compensation for services provided to resolve the controversy.

**(m) Legal Representative**

With respect to any individual, *Legal Representative* means a person's guardian, conservator, executor, administrator, trustee, or any other person representing a person or the person's estate. With respect to any person, *Legal Representative* means all directors, officers, employees, consultants, financial advisors, counsel, accountants, and other agents of the person.

**(n) Manager**

*Manager* means any individual or legal entity designated in the Operating Agreement as a Manager.

**(o) Member**

*Member* means any person designated in this Agreement as a Member.

**(p) Membership Interest**

*Membership Interest* is defined in Section 1.01

**(q) Net Book Value**

*Net Book Value* is defined in Section 4.

**(r) Offered Membership Interests**

*Offered Membership Interests* is defined in Section 3.01.

**(s) Qualified Appraiser and Qualified Appraisal**

A *Qualified Appraiser* means an appraiser who is a member of the American Society of Appraisers, Business Valuations Division, and accredited to perform business appraisals or valuations by this organization; or alternatively, a certified public accountant accredited in business valuation by the American Institute of Certified Public Accountants. A *Qualified Appraisal* means any appraisal performed by a Qualified Appraiser.

**(t) Triggering Event**

*Triggering Event* is defined in Article Three.

## **Section 10.02 Interpretation**

The following general provisions and rules of construction apply to this Agreement.

**(a) Singular and Plural; Gender**

Unless the context requires otherwise, words denoting the singular may be construed as plural and words of the plural may be construed as denoting the singular. Words of one gender may be construed as denoting another gender as is appropriate within the context. The word *or*, when used in a list of more than two items, may function as both a conjunction and a disjunction as the context requires or permits.

**(b) Headings of Articles, Sections, and Subsections**

The headings of articles, sections, and subsections used within this Agreement are included solely for the reader's convenience and reference. They have no significance in the interpretation or construction of this Agreement.

**(c) Days and Business Days**

In this Agreement, *days*, without further qualification, means calendar days, and *business days* means any day other than a Saturday, Sunday, or a day on which national banks are allowed by the Federal Reserve to be closed.

**(d) Delivery**

*Delivery* is taken in its ordinary sense and includes

personal delivery to a party;

mailing by certified United States mail to the last known address of the party to whom delivery is made, with return receipt requested to the party making delivery; facsimile transmission to a party when receipt is confirmed in writing or by electronic transmission back to the sending party; or  
electronic mail transmission to a party when receipt is confirmed in writing or by electronic mail transmission back to the sending party.

The effective date of delivery is the date of personal delivery or the date of the return receipt, if received by the sending party. If no return receipt is provided, the effective date is the date the transmission would have normally been received by certified mail if there is evidence of mailing.

**(e)     Include, Includes, and Including**

In this Agreement, the words *include*, *includes*, and *including* mean “include without limitation,” “includes without limitation,” and “including without limitation,” respectively. *Include*, *includes*, and *including* are words of illustration and enlargement, not words of limitation or exclusivity.

**(f)     Words of Obligation and Discretion**

Unless otherwise specifically provided in this Agreement or by the context in which used, the word *must* is used to impose a duty, to command, to direct, or to require. Terms such as *may*, *is authorized to*, *is permitted to*, *is allowed to*, *has the right to*, or any variation or other words of discretion are used to allow, to permit, or to provide the discretion to choose what should be done in a particular situation, without any other requirement. Unless the decision of another party is expressly required by this Agreement, words of permission give the decision maker the sole and absolute discretion to make the decision required in the context.

**(g)     References to Transfer, Transferor, and Transferee**

In this Agreement, *transfer* includes any direct or indirect sale, transfer, assignment, pledge, encumbrance, hypothecation, or other disposition or attempted disposition. The term includes any involuntary transfer, such as a transfer that occurs by operation of law. If a person enters into a contract, option, or other arrangement or understanding to make a transfer, that contract, option, or other arrangement or understanding will itself be considered a *transfer*. When used as a verb, *transfer* has a correlative meaning. A person who makes a transfer may be referred to as a *transferor*, and a person who receives a transfer may be referred to as a *transferee*.

**(h)     References to Property or Assets**

Any reference in this Agreement to *property* or *assets*, without further qualification, must be construed broadly to include, as to any person, all property of any kind—real or personal, tangible or intangible, legal or equitable—whether now owned or subsequently acquired. The following items are each considered *assets* or *property* of a person: money, stock, accounts receivable, contract rights, franchises, value as a going concern, causes of action, undivided fractional ownership interests, intellectual property rights, and anything of any value that can be made available for or appropriated to the payment of debts.

**(i) References to Individuals and Entities**

Unless further qualified in the context, any reference in this Agreement to a *person, party, or individual*, or the use of indefinite pronouns like *anyone, everyone, someone, or no one* must be construed broadly to include any individual, trust, estate, partnership, association, company, corporation, or other entity or nonentity capable of having legal rights and duties. *Person*, without further qualification, has the same broad meaning as defined in Code § 7701(a)(1) and includes any individual, trust, estate, partnership, association, company, or corporation. The Company and its successors and assigns, and each Member or Assignee and their successors, assigns, heirs, and personal representatives, are all considered *persons* for purposes of this Agreement. *Natural person* is used to distinguish a human being from a *juridical person*, such as a trust, estate, partnership, association, company, or corporation.

**(j) Internal References**

Unless the context otherwise requires,

reference to articles, sections, exhibits, and schedules means the articles and sections of, and exhibits and schedules attached to, this Agreement;

reference to an agreement, instrument or other document means the agreement, instrument, or other document as amended, supplemented, and modified from time to time to the extent permitted by its provisions; and

reference to a statute means the statute as amended from time to time and includes any successor legislation to it and any regulations promulgated under it.

The exhibits and schedules referred to in this Agreement must be construed with, and as, an integral part of this Agreement to the same extent as if they were set forth verbatim in this Agreement.

**(k) No Presumption against Drafting Party**

This Agreement is to be construed without giving force to any presumption or rule requiring construction or interpretation against the drafting party. No party may claim that an ambiguity in this Agreement should be construed against any other party or that there was any coercion, duress (economic or otherwise), negligent misrepresentation, or fraud (including fraud in the inducement) affecting the validity or enforcement of this Agreement.

The parties signed this Agreement on the date written above.

**COMPANY:**

Cedar Homes, LLC

**MEMBERS:**

Zohar Holdings, LLC

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

Nexos Holding, LLC

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

**EXHIBIT A**  
**Ownership of MEMBERSHIP INTERESTS**

<u>Member</u>	<u>Interest Owned</u>
Zohar Holdings, LLC	60%
Nexos Holding, LLC	40%