

Heartwood Phase 2 Homebuyers Agreement

This Heartwood Phase 2 Homebuyers Agreement (the “Phase 2 Homebuyers Agreement”) is entered into this ___ day of _____, 2021 by and between Tara Development, LLC (the “Developer”) and _____ (“Phase 2 Homebuyer”) (collectively, the “Parties”).

RECITALS

A. Developer’s Managing Member (Bruce “Mac” Thomson) managed the development of Heartwood Ranch Phase 1 and is now in the process of planning for and developing Phase 2 of Heartwood Ranch (“Phase 2”). Phase 2 will consist of approximately 14 separate lots (the “Lots”) contained on the parcel located near the Heartwood Ranch Phase 1 development.

B. There has been substantial interest by members of the public in the planning and development of Phase 2. Developer desires to allow for members of the public to reserve the right to purchase one of the Lots, while providing updates to and receiving input from such people throughout the planning and development process.

C. Phase 2 Homebuyer desires to reserve one of the Lots according to the terms provided for herein.

NOW THEREFORE, in consideration of the mutual covenants, agreements and releases herein set forth, and intending to be legally bound by the terms hereof, the Parties agree as follows:

1. **Lot Selection Reservation.** Phase 2 Homebuyer hereby reserves one of the Lots to be platted as part of Phase 2. The precise locations and layout of the Lots is currently unknown; however, Phase 2 Homebuyer shall be able to select one of the Lots based on the Phase 2 Homebuyer’s existing position in the selection queue. The selection queue (“Selection Queue”) is a list created by Developer that ranks Phase 2 Homebuyers. Up through 08/31/21, the Selection Queue rank is based on the date of becoming Phase 2 Associate Members. After 08/31/21, additional Phase 2 Homebuyers are added to bottom of the Selection Queue based on the date of completing Heartwood’s Prospective Member Checklist, signing and submitting this Agreement, and paying the Developer a \$12,000 Deposit (detailed below). Phase 2 Homebuyer will be removed from the Selection Queue for failure to submit payment as required in Paragraph 6 below or failure to comply with this Phase 2 Homebuyers Agreement. Phase 2 Homebuyer may request a copy of the Selection Queue from Developer at anytime.

2. **Lot Selection.** Developer will provide notice and updates to Phase 2 Homebuyer throughout the planning and development process for Phase 2. Upon final plat approval by La Plata County for Phase 2, Developer will provide Phase 2 Homebuyer with notice of such approval. Developer’s notice will include a copy of the final approved plat for Phase 2. Upon receipt of the notice of the final plat approval for Phase 2, Phase 2 Homebuyer will have twenty-one (21) days to provide Developer with a list, ranking Phase 2 Homebuyer’s preference for selection of one of the Lots. After receiving notice of Phase 2 Homebuyer’s lot selection preferences, Developer will identify one of the Lots and provide Phase 2 Homebuyer with notice of an assignment of the right to purchase said lot (the “Assigned Lot”). The order of selection and assignment of the Lots will be based on Phase 2 Homebuyer’s position on Selection Queue.

3. **Timing of Purchase of the Lots and Home.** Subsequent to Developer’s assignment of the Lots, Developer will provide notice to the Phase 2 Homebuyer identifying the right to enter into a contract to purchase the Assigned Lot with a constructed home in the form attached hereto as Addendum

A (the "Contract"). The Parties agree that the Contract contains all material terms for the purchase of the Assigned Lot and home. Developer's notice shall include the Contract and a timeframe in which Phase 2 Homebuyer has the right to execute the Contract. Phase 2 Homebuyer and Developer will be obligated to execute the Contract within the timeframe provided by Developer in its notice. In the event that Phase 2 Homebuyer does not execute the Contract within the timeframe provided by Developer, then this Phase 2 Homebuyers Agreement will automatically terminate and any money submitted by Phase 2 Homebuyer to Developer as required herein will be retained by Developer.

4. **Home Design.** Phase 2 Homebuyer shall be provided the opportunity to provide input into the home design of the home to be built on the Assigned Lot, as described in the Contract. Developer will provide Phase 2 Homebuyer with different home designs to select from, with options and upgrades. The home design will be selected prior to execution of the Contract. Developer shall have sole discretion of choosing the home designs that Phase 2 Homebuyer may choose from as well as the upgrades and options offered.

5. **Purchase Price.** The Purchase Price (as defined in the Contract) for the Assigned Lot and home shall be based on the Developer's development costs for Phase 2, which shall include, but not be limited to: the costs of engineers, surveyors, architects, attorneys, and other costs incurred in conjunction with the development; the construction costs of potable water system, septic system, roads, parking, irrigation water system, and other infrastructure; the construction cost of the Phase 2 Homebuyer's home; overhead and administrative costs such as project manager compensation, assistant project manager compensation, interest, marketing, early bird credits, permits, insurance, and contingency; \$55,000, which represents the Phase 2 Homebuyer's share of the cost of the land, common house, workshop, greenhouse, yurt, trails, water rights, barns, tennis court, and all other assets held by the Heartwood Ranch Homeowners Association. Project manager compensation will be paid to Bruce "Mac" Thomson and set at \$5000 per month beginning in January 2018 and ending in the month when the 14th (last) Phase 2 home is sold. The contingency cost represents unanticipated development costs at the time of entering into the Contract. A 10% contingency cost will be added to all future development cost estimates at the time of entering into the Contract. Prior to lot selection, a premium or discount will be calculated for each lot by the Developer based on lot aesthetics, size, privacy, and other factors impacting the desirability of the lots. The Purchase Price for the Assigned Lot will be increased in the case of a lot premium or decreased in the case of a lot discount. In addition, the Purchase Price shall include the Developer's profit, which is set at 3% of the Purchase Price. Phase 2 Homebuyer understands and agrees that as of the date of this Phase 2 Homebuyers Agreement the Purchase Price is unknown and cannot be predicted. Phase 2 Homebuyer fully understands the risk associated with the uncertainty of costs and has properly weighed the individual risks prior to executing this Phase 2 Homebuyers Agreement. Developer shall have full discretion in deciding on development costs to be incurred, except as otherwise provided herein, but will endeavor to keep costs down while also striving to develop a high quality community and houses that meet or exceed those in the Phase I development. After Developer provides notice of the right to execute the Contract, Phase 2 Homebuyer, upon request, may review Developer's financial records detailing the costs of the Phase 2 development.

6. **Consideration.** In consideration of the rights provided for herein, Phase 2 Homebuyer shall pay Developer Twelve Thousand Dollars (\$12,000) (the "Deposit") at the time of execution of the Agreement. The Deposit shall be fully refundable **only if** Developer does not provide Phase 2 Homebuyer with a right to execute the Contract prior to March 1, 2027.

7. **Home Design Deposit.** Phase 2 Homebuyer will be required to submit an additional \$1,000 deposit at the time that house design begins. Developer shall provide Phase 2 Homebuyer with notice of the anticipated date for the commencement of the home design process and Phase 2 Homebuyer will then have ten (10) days from the date of the notice to submit the additional \$1,000 deposit. The home design deposit shall be refundable only if Developer does not provide Phase 2 Homebuyer with a right to execute the Contract prior to March 1, 2027.

8. **Homebuyer Credit and Early Bird Credit.** Phase 2 Homebuyer shall receive a credit against the Purchase Price for all amounts paid to Developer under this Phase 2 Homebuyers Agreement, as identified in the Contract. In addition, Phase 2 Homebuyer shall receive an early bird credit of \$7,000 to be credited against the Purchase Price.

9. **Termination.** Phase 2 Homebuyer may terminate this Phase 2 Homebuyers Agreement at anytime by providing written notice to Developer; however, in such case, Phase 2 Homebuyer shall not be refunded any money deposited with Developer under this Phase 2 Homebuyers Agreement. Developer may terminate this Phase 2 Homebuyers Agreement at anytime by providing written notice to Phase 2 Homebuyer, and in such case, Developer shall return all money deposited by Phase 2 Homebuyer under this Phase 2 Homebuyers Agreement within thirty (30) days of termination.

10. **No Partnership.** The Parties agree that nothing herein shall be considered to create a partnership or any other business relationship between Developer and Phase 2 Homebuyer. While Developer welcomes suggestions from Phase 2 Homebuyer in the development of Phase 2, all decisions regarding the layout and timing of Phase 2 development are in the sole discretion of Developer. In addition, Developer shall have the sole discretion in determining the contractors, materials and means used in the development of Phase 2 and the construction of the house on the Assigned Lot. Phase 2 Homebuyer agrees and understands that Phase 2 may not be developed and there is no guarantee that Phase 2 or the house on the Assigned Lot is ever constructed. Phase 2 Homebuyer agrees to release and hold harmless Developer, its agents, employees, members and managers from any and all damages or claims that result from the failure of Developer to develop Phase 2 or execute the Contract with Phase 2 Homebuyer. The forgoing is not intended to and does not alter or impair Phase 2 Homebuyer's rights to a refund of any deposits as permitted herein.

11. **Entire Agreement and Future Modification.** Phase 2 Homebuyer hereby represents and warrants that no promise or inducement not expressed herein has been made by Developer to cause or influence her/him/it to enter into this Phase 2 Homebuyers Agreement. All materials previously provided by Developer to Phase 2 Homebuyer are for general informational purposes and because of the uncertainty of the Phase 2 development, Developer does not warrant or represent that any of the information provided is accurate or can be relied on for any purpose. Additionally, this Phase 2 Homebuyers Agreement shall not be amended or modified except pursuant to a written instrument signed by the parties hereto, and any future communications/information provided by Developer regarding the development of Phase 2 are for informational purposes and Phase 2 Homebuyer agrees that such communications/information cannot be relied on by Phase 2 Homebuyer. Phase 2 Homebuyer agrees that he/she/it have independently evaluated the Phase 2 development, have weighed any and all risks, and made an informed decision prior to entering into this Phase 2 Homebuyers Agreement.

12. **Assignment.** Phase 2 Homebuyer shall not be permitted to assign this Phase 2 Homebuyers Agreement to any person. Any assignment of this Phase 2 Homebuyers Agreement by Phase 2 Homebuyer shall result in the immediate and automatic termination of this Phase 2 Homebuyers Agreement.

13. **General.**

(a) Non-Waiver. Any failure by either party to enforce the other party’s strict performance of any provision of this Phase 2 Homebuyers Agreement shall not constitute a waiver of its right to subsequently enforce such provision or any other provision of this Phase 2 Homebuyers Agreement. No waiver under this Phase 2 Homebuyers Agreement shall be effective or binding unless set forth in a written instrument signed by the parties hereto.

(b) Governing Law. This Phase 2 Homebuyers Agreement is made under, and shall be construed according to, the laws of the State of Colorado except for its conflicts of laws principles. Each party hereby irrevocably consents to the exclusive jurisdiction of the state courts located in La Plata County, Colorado for any action or proceeding arising between the parties or with respect to the subject matter hereof. THE PARTIES HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY RIGHT THAT ANY PARTY MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT.

(c) Attorneys’ Fees. In any dispute among the parties arising under this Phase 2 Homebuyers Agreement, the substantially prevailing party shall be awarded its reasonable attorneys’ fees and other costs of litigation in addition to all other remedies.

(d) Representations. Each party warrants the following facts and shall indemnify and hold the other party harmless for its reliance thereon: (a) the party has the power and authority to enter into this Phase 2 Homebuyers Agreement; (b) the individual signing on behalf of such party has the power and authority to execute this Phase 2 Homebuyers Agreement; (c) entering into this Phase 2 Homebuyers Agreement will not result in a breach or violation of any other agreement to which such party is bound; and (d) this Phase 2 Homebuyers Agreement is a valid and binding agreement on such party, enforceable in accordance with its terms (except as may be limited by principles of equity).

IN WITNESS WHEREOF, the parties have executed this Phase 2 Homebuyers Agreement on the date first written above.

DEVELOPER

By: _____
Its:

PHASE 2 HOMEBUYER:

By: _____

By: _____