

## CITY OF PENDLETON OREGON

### MULTIPLE ADVANCE NOTE

Pendleton, Oregon

(Date)

\$ 749,999

(Amount)

For value received, the undersigned **Pendleton Homes, LLC**, 306 Riverwood Ct., Umatilla OR 97882 (**Borrower**), promises to pay to Lender, **City of Pendleton (Lender)**, its successors and assigns, at its office located at 500 SW Dorion Ave., Pendleton, Oregon, not more than **Seven Hundred Forty Nine Thousand, Nine Hundred Ninety Nine and No/100** (\$ 749,999.00) or so much as may be outstanding from time to time, together with interest thereon at the rate set out below. Interest will accrue on the outstanding unpaid principal balance for each day that any amount is outstanding and will continue to accrue until this note is paid in full.

This promissory note evidences a **Fixed Rate Loan** on which the interest rate will be at a fixed rate of **five percent (5%)** per annum. Interest will accrue upon the determination of substantial completion of the Roadway, as defined in the Development and Loan Agreement, by the City Engineer.

Interest shall be calculated on this promissory note on the basis of 365/365 (daily accrual).

Borrower will pay this note on the following date or under the following schedule:

1. Borrower will receive a **Street Upgrade Credit** against the principal amount as follows: Upon completion of the 44 foot wide roadway, as described in the Development Agreement between the parties, the City will credit to the then loan balance, the cost of the pavement and rock base used which is in excess of that cost for a 36 foot wide residential street. That credit will not exceed 18.1818% of the cost per lineal foot of the asphalt and road base costs, calculated from the bids used by Developer in the construction and provided to City for calculation of said credit.
2. Borrower will pay toward principal, and accrued interest thereon, in not less than incremental

payments of \$11,166 within 15 days of the sale by Developer of the first 60 lots or portions of lots within the subdivision Property, and upon application to the City by Developer for permit for development of any lot or portion of lot which has not been sold within the Property. In any event, a foregoing described incremental payment must be paid by Developer to City for the first 60 of either sale or development of lots. All principal and accrued interest shall be paid within 3 years of the Commencement Date of the Development Agreement between Developer and City, when all outstanding balances shall be due.

3. Borrower may make any other payment of principal and interest at any time.

Borrower's last payment, due not longer than 3 years after the Commencement Date of the Development and Loan Agreement between the parties, will be for all the principal amount and all accrued interest, together with all other sums owing under this note, which Borrower has not paid before that date. Payments will be applied first to late charges, then to accrued unpaid interest, and any remaining amount to principal.

**THIS IS NOT A REVOLVING LINE OF CREDIT. ONCE THE TOTAL AMOUNT OF PRINCIPAL HAS BEEN ADVANCED, PAYMENTS OF PRINCIPAL DO NOT ENTITLE BORROWER TO FURTHER ADVANCES.**

Advances (made for the purpose of financing street construction) under this note must be made by written request and accompanied by the invoices of subcontractors and material suppliers, and will not exceed the percentage of the sum of \$749,999.00 divided by the total cost of Developer's total roadway construction bid.

The unpaid principal balance owing on this note at any time may be evidenced by endorsements on this note or by Lender's internal records, including printout upon request. Early payments will not, unless agreed in writing, relieve Borrower of Borrower's obligation to continue to make payments under the payment schedule. Rather, they will reduce the principal amount due and Borrower will make fewer payments.

#### Late Charge

Borrower's payment will be late if not received within 10 days of the due date. If a payment is late, Borrower will be charged a late payment fee equal to five percent (5%) of the late payment, but not less than \$100.00, whichever is less, as compensation for additional collection efforts.

#### Definitions

The term "**Indebtedness**" as used herein shall mean the Indebtedness evidenced by this Note, including principal, interest, service fees, late payment charges, and expenses including but not limited to the expenses related to the care and preservation of Collateral and interest at the note

rate thereon, whether contingent, now due or hereafter to become due. The term "**Undersigned**" shall mean the borrower under this Note.

#### Prepayment

The Undersigned, at its option, may at any time and without penalty, make advance payment of all or any part of the principal on the loan then remaining unpaid. In the case of partial prepayment, LENDER will provide to Undersigned a revised repayment schedule.

#### Acceleration

The Indebtedness shall immediately become due and payable, upon the appointment of a receiver or liquidator, whether voluntary or involuntary, for the Undersigned or for any of its property, or upon the filing of a petition by or against the Undersigned under the provisions of any State or Federal insolvency law or under the provisions of the Bankruptcy Code of 1978, or upon the making by the Undersigned of an assignment for the benefit of its creditors, or LENDER is authorized to declare all or any part of the Indebtedness immediately due and payable upon the happening of any of the following events:

- (1) Failure to pay any part of the Indebtedness when due;
- (2) nonperformance by the Undersigned of any agreement with, or any condition imposed by LENDER including the failure of Undersigned to diligently pursue construction of the street, as described in the Development Agreement between Lender and Undersigned, for more than a period of 12 months, subject to extension by mutual agreement of the parties;
- (3) failure of the Undersigned or any person acting on behalf of the Undersigned to disclose any material fact, in any application, declaration or other document delivered to LENDER or any misrepresentation by or for the benefit of the Undersigned in such document;
- (4) the reorganization, merger, or consolidation of the Undersigned without prior written consent of LENDER, or the making of an agreement therefore;
- (5) the sale of the lots or parcels within the Property with making the payment as described in Section 1 above;
- (6) the institution of any suit affecting the Undersigned deemed by LENDER to affect adversely its interest hereunder in the Collateral or otherwise;
- (7) any change in the respective ownerships of the Undersigned;
- (8) any other event prohibited by any other instrument or agreement between LENDER and UNDERSIGNED; or
- (9) the failure by UNDERSIGNED to timely make any required payment or tax remittance arising out of UNDERSIGNED'S ownership of the Property described in the Development Agreement between the parties.
- (10) any violation by the Undersigned of regulations pertaining to this loan.

LENDER's failure to exercise its rights under this paragraph shall not constitute a waiver thereof.

Upon acceleration pursuant to this paragraph, the indebtedness shall be computed in the same manner as is set forth for the prepayment amount in the preceding paragraph captioned "Prepayment".

The rights of LENDER hereunder shall not be impaired by any indulgence, including but not limited to (a) any renewal, extension, or modification which LENDER may grant with respect to the Indebtedness or any part thereof, or (b) any surrender, compromise, release, exchange, or substitution which LENDER may grant in respect of the Collateral, or (c) any indulgence granted in respect to any endorser, guarantor, or surety. LENDER or any assignee of this Note, the Collateral, any guaranty, and any other document (or any of them), sold, transferred, or pledged, shall forthwith become vested with and entitled to exercise all the powers and rights given by this Note as if said purchaser, transferee, or pledgee were originally named as payee in this Note.

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Borrower

\_\_\_\_\_  
Date

\_\_\_\_\_  
Borrower

\_\_\_\_\_  
Date