

# DEED OF TRUST AND ASSIGNMENT OF RENTS

58389

K-52333

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☐ LINE OF CREDIT INSTRUMENT (if Checked)

THIS DEED OF TRUST (hereinafter referred to as "Security Instrument") is made this 14th day of May 1998 among the Grantor JAMES G. KUHN AND ROBERTA D. KUHN, an estate in fee simple as tenants by the entirety; (herein "Borrower"), First American Title Insurance Company of Oregon (herein "Trustee"), and the Beneficiary,

Advanta Finance Corp., a corporation organized and existing under the laws of Nevada, whose address is 1500 Valley River Drive, Suite 310, Eugene, OR 97401 (herein "Lender").

BORROWER, in consideration of the indebtedness herein recited and the trust herein created, irrevocably grants and conveys to Trustee, in trust, with power of sale, the following described property ("Property") located in the County of Klamath State of Oregon and which Property is not currently used for agricultural, timber or grazing purposes:

## SEE "SCHEDULE A"

Together with the buildings and improvements thereon, and the rights, alleys, ways, waters, privileges, appurtenances and advantages thereto belonging or in anywise appertaining, in order to secure repayment of the indebtedness evidenced by Borrower's:

☐ **LINE OF CREDIT INSTRUMENT.** If checked, Revolving Loan Agreement of even date herewith, which obligates Lender, subject to the conditions stated therein, to advance to Borrower up to a Credit Limit of \$\_\_\_\_\_, plus finance and other charges due and payable on\_\_\_\_\_. The Agreement contains a late charge of 5% of the payment, not to exceed \$50, if payment is made more than 15 days late.

☒ If checked, Note of even date herewith, in the principal sum of \$ 71,250.00, payable in monthly installments of principal and interest, with the balance of the indebtedness, if not sooner paid, due and payable on 05/20/28. The Note contains a late charge of 5% of the payment, not to exceed \$50, if payment is made more than 15 days late.

This Deed of Trust also secures any extensions, future advances, renewals, modifications, or refinancing thereof; and the payment of all other sums, with interest thereon, advanced in accordance herewith to protect the security of this Security Instrument and the performance of the covenants and agreements herein contained.

☒ If checked, the Revolving Loan Agreement or Note contains provisions for a variable rate. The payment amount or term of the indebtedness may vary, as may the amount of interest secured by this Security Instrument.

As additional security for payment of the aforesaid indebtedness, Borrower hereby presently and absolutely assigns to Lender all rents, profits, rights and benefits accruing under all leases now or hereafter placed on said Property, and the lessee, assignee or sublessee is hereby directed on production of this Security Instrument, or certified copy thereof, to pay said rents, profits, rights and benefits to Lender. In the event of default in the covenants and conditions of this Security Instrument, or other obligation secured hereby, Lender shall have the right peaceably to enter upon and take possession of said Property and assume control of the transactions having to do with rents and profits, to collect the same and to apply them to payment of the aforesaid indebtedness.

Provided that if the said Borrower, executors, administrators, or assigns, shall well and truly pay, or cause to be paid, the aforesaid indebtedness stated above and all the installments of interest thereon, when and as each of them shall respectively be due and payable as aforesaid, and shall perform each and all of the covenants herein on their part to be performed, then this Security Instrument shall be void.

BORROWER COVENANTS that Borrower is lawfully seised of the estate hereby conveyed and has the right to grant and convey the Property and that the Property is unencumbered, except for encumbrances of record. Borrower warrants and will defend generally the title to the Property against all claims and demands, subject to any encumbrances of record.

Borrower and Lender further covenant and agree as follows:

- 1. Payment of Principal and Interest; Prepayment and Late Charges.** Borrower shall promptly pay when due the principal of and interest on the debt evidenced by the Revolving Loan Agreement or Note and any prepayment, late and other charges due thereunder.
- 2. Application of Payments.** Unless applicable law provides otherwise, all payments received by Lender shall be applied: first to any late or other charges due under the Revolving Loan Agreement or Note; second, to interest due; and last to principal due.
- 3. Charges; Liens.** Borrower shall pay all taxes, assessments, charges, fines and impositions attributable to the Property which may attain priority over this Security Instrument, and leasehold payments or ground rents, if any. Borrower shall pay these obligations on time directly to the person owed payment. Borrower shall promptly furnish to Lender all notices of amounts to be paid under this paragraph. Upon Borrower making these payments directly, Borrower shall promptly furnish to Lender receipts evidencing the payments. Borrower shall promptly discharge any lien which has priority over this Security Instrument unless Borrower: (a) agrees in writing to the payment of the obligation secured by the lien in a manner acceptable to Lender; (b) contests in good faith the lien by, or defends against enforcement of the lien in, legal proceedings which in the Lender's opinion operate to prevent the enforcement of the lien; or (c) secures from the holder of the lien an agreement satisfactory to Lender subordinating the lien to this Security Instrument. If Lender determines that any part of the Property is subject to a lien which may attain priority over this Security Instrument Lender may give borrower a notice identifying the lien. Borrower shall satisfy the lien or take one or more of the actions set forth above within 10 days of the giving of notice.
- 4. Hazard or Property Insurance.** Borrower shall keep the improvements now existing or hereafter erected on the Property insured against loss by fire, hazards included within the term "extended coverage" and any other hazards, including floods or flooding, for which Lender requires insurance. The insurance shall be maintained in the amounts and for the periods that Lender requires. The Insurance carrier providing the insurance shall be chosen by Borrower subject to Lender's approval which shall not be unreasonably withheld. If Borrower fails to maintain coverage described above, Lender may, at Lender's option, obtain coverage to protect Lender's rights in the Property in accordance with paragraph 6. All insurance policies and renewals shall be acceptable to Lender and shall include a standard mortgage clause. Lender shall have the right to hold the policies and renewals. If Lender requires, Borrower shall promptly give to Lender all receipts of paid premiums and renewal notices. In the event of loss, Borrower shall give prompt notice to the insurance carrier and Lender. Lender may make proof of loss if not made promptly by Borrower. Unless Lender and Borrower otherwise agree in writing, insurance proceeds shall be applied to restoration or repair of the Property damaged, if the restoration or repair is economically feasible and Lender's security is not lessened. If the restoration or repair is not economically feasible or Lender's security would be lessened, the insurance proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with any excess paid to Borrower. If Borrower abandons the Property, or does not answer within 30 days a notice from Lender that the insurance carrier has offered to settle a claim, then Lender may collect the insurance proceeds. Lender may use the proceeds to repair or restore the Property or to pay sums secured by this Security Instrument, whether or not then due. The 30-day period will begin when the notice is given. Unless Lender and Borrower otherwise agree in writing, any application of proceeds to principal shall not extend or postpone the due date of the monthly payments or change the amount of the payments due Lender. If the Property is acquired by Lender hereunder, Borrower's right to any insurance policies and proceeds resulting from damage to the Property prior to the acquisition shall pass to Lender to the extent of the sums secured by this Security Instrument immediately prior to the acquisition.

- 5. Preservation, Maintenance and Protection of the Property; Borrower's Loan Application; Leaseholds.** Borrower shall not destroy, damage or impair the Property, allow the Property to deteriorate, or commit waste on the Property. Borrower shall be in default if any forfeiture action or proceeding, whether civil or criminal, is begun that in Lender's good faith judgment could result in forfeiture of the Property or otherwise materially impair the lien created by this Security Instrument or Lender's security interest. Borrower may cure such a default and reinstate, as provided herein, by causing the action or proceeding to be dismissed with a ruling that, in Lender's good faith determination, precludes forfeiture of the Borrower's interest in the Property or other material impairment of the lien created by this Security Instrument or Lender's security interest. Borrower shall also be in default if Borrower, during the loan application process, gave materially false or inaccurate information or statements to Lender (or failed to provide Lender with any information) in connection with the loan evidenced by the Revolving Loan Agreement or Note, including, but not limited to, representations concerning Borrower's occupancy of the Property as a principal residence. If this Security Instrument is on a leasehold, Borrower shall comply with all the provisions of the lease. If Borrower acquires fee title to the Property, the leasehold and the fee title shall not merge unless Lender agrees to the merger in writing.
- 6. Protection of Lender's Rights in the Property.** If Borrower fails to perform the covenants and agreements contained in this Security Instrument, or there is a legal proceeding that may significantly affect Lender's rights in the Property (such as a proceeding in bankruptcy, probate, for condemnation or forfeiture or to enforce laws or regulations), then Lender may do and pay for whatever is necessary to protect the value of the Property and Lender's rights in the Property. Lender's actions may include paying any sums secured by a lien which has priority over this Security Instrument, appearing in court, paying reasonable attorneys' fees and entering on the Property to make repairs. Although Lender may take action under this paragraph 6, Lender does not have to do so. Any amounts disbursed by Lender under this paragraph 6 shall become additional debt of Borrower secured by this Security Instrument. Unless Borrower and Lender agree to other terms of payment, these amounts shall bear interest from the date of disbursement at the Revolving Loan Agreement or Note rate and shall be payable, with interest, upon notice from Lender to Borrower requesting payment.
- 7. Inspection.** Lender or its agent may make reasonable entries upon and inspections of the Property. Lender shall give Borrower notice at the time of or prior to an inspection specifying reasonable cause for the inspection.
- 8. Condemnation.** The proceeds of any award or claim for damages, direct or consequential, in connection with any condemnation or other taking of any part of the Property, or for conveyance in lieu of condemnation, are hereby assigned and shall be paid to Lender. In the event of a total taking of the property, the proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with any excess paid to Borrower. In the event of a partial taking of the Property in which the fair market value of the Property immediately before the taking is equal to or greater than the amount of the sums secured by this Security Instrument immediately before the taking, unless Borrower and Lender otherwise agree in writing, the sums secured by this Security Instrument shall be reduced by the amount of the proceeds multiplied by the following fraction: (a) the total amount of the sums secured immediately before the taking, divided by (b) the fair market value of the Property immediately before the taking. Any balance shall be paid to Borrower. In the event of a partial taking of the Property in which the fair market value of the Property immediately before the taking is less than the amount of the sums secured immediately before the taking, unless Borrower and Lender otherwise agree in writing or unless applicable law otherwise provides, the proceeds shall be applied to the sums secured by this Security Instrument whether or not the sums are then due. If the Property is abandoned by Borrower, or if, after notice by Lender to Borrower that the condemnor offers to make an award or settle a claim for damages, Borrower fails to respond to Lender within 30 days after the date the notice is given, Lender is authorized to collect and apply the proceeds, at its option, either to restoration or repair of the Property or to the sums secured by this Security Instrument, whether or not then due. Unless Lender and Borrower otherwise agree in writing, any application of proceeds to principal shall not extend or postpone the due date of the monthly payments or change the amount of such payments due Lender.
- 9. Borrower Not Released; Forbearance By Lender Not a Waiver.** Extension of the time for payment or modification of amortization of the sums secured by this Security Instrument granted by Lender to any successor in interest of Borrower shall not operate to release the liability of the original Borrower or Borrower's successors in interest. Lender shall not be required to commence proceedings against any successor in interest or refuse to extend time for payment or otherwise modify amortization of the sums secured by this Security Instrument by reason of any demand made by the original Borrower or Borrower's successors in interest. Any forbearance by Lender in exercising any right or remedy shall not be a waiver of or preclude the exercise of any right or remedy.
- 10. Successors and Assigns Bound; Joint and Several Liability; Co-signers.** The covenants and agreements of this Security Instrument shall bind and benefit the successors and assigns of Lender and Borrower, subject to the provisions of paragraph 15. Borrower's covenants and agreements shall be joint and several. Any Borrower who co-signs this Security Instrument but does not execute the Revolving Loan Agreement or Note: (a) is co-signing this Security Instrument only to mortgage, grant and convey that Borrower's interest in the Property under the terms of this Security Instrument; (b) is not personally obligated to pay the sums secured by this Security Instrument; and (c) agrees that Lender and any other Borrower may agree to extend, modify, forbear or make any accommodations with regard to the terms of this Security Instrument or the Revolving Loan Agreement or Note without that Borrower's consent.
- 11. Loan Charges.** If the loan secured by this Security Instrument is subject to a law which sets maximum loan charges, and that law is finally interpreted so that the interest or other loan charges collected or to be collected in connection with the loan exceed the permitted limits, then: (a) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit, and (b) any sums already collected from Borrower which exceeded permitted limits will be refunded to Borrower. Lender may choose to make this refund by reducing the principal owed under the Revolving Loan Agreement or Note or by making a direct payment to Borrower. If a refund reduces principal, the reduction will be treated as a partial prepayment without any prepayment charge under the Revolving Loan Agreement or Note.
- 12. Notices.** Any notice to Borrower provided for in this Security Instrument shall be given by delivering it or by mailing it by first class mail unless applicable law requires use of another method. The notice shall be directed to the Property Address or any other address Borrower designates by notice to Lender. Any notice to Lender shall be given by first class mail to Lender's address stated herein or any other address Lender designates by notice to Borrower. Any notice provided for in this Security Instrument shall be deemed to have been given to Borrower or Lender when given as provided in this paragraph.
- 13. Governing Law; Severability.** This Security Instrument shall be governed by the law of the state of Oregon. In the event that any provision or clause of this Security Instrument or the Revolving Loan Agreement or Note conflicts with applicable law, such conflict shall not affect other provisions of this Security Instrument and the Revolving Loan Agreement or Note are declared to be severable.
- 14. Borrower's Copy.** Borrower shall be given one conformed copy of the Revolving Loan Agreement or Note and of this Security Instrument.
- 15. Transfer of the Property or a Beneficial Interest in Borrower.** If all or any part of the Property or any interest in it is sold or transferred (or if a beneficial interest in Borrower is sold or transferred and Borrower is not a natural person) without Lender's prior written consent, Lender may, at its option, require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if exercise is prohibited by applicable law as of the date of this Security Instrument. If Lender exercises this option, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is delivered or mailed within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.
- 16. Borrower's Right to Reinstate.** If Borrower meets certain conditions, Borrower shall have the right to have enforcement of this Security Instrument discontinued at any time prior to the earlier of: (a) 5 days (or such other period as applicable law may specify for reinstatement) before sale of the Property pursuant to any power of sale contained in this Security Instrument; or (b) entry of a judgment enforcing this Security Instrument. Those conditions are that Borrower: (a) pays Lender all sums which then would be due under this Security Instrument and the Revolving Loan Agreement or Note as if no acceleration had occurred; (b) cures any default of any other covenants or agreements; (c) pays all expenses incurred in enforcing this Security Instrument, including, but not limited to, reasonable attorneys' fees; and (d) takes such action as Lender may reasonably require to assure that the lien of this Security Instrument, Lender's rights in the Property and Borrower's obligation to pay the sums secured by this Security Instrument shall continue unchanged. Upon reinstatement by Borrower, this Security Instrument and the obligations secured hereby shall remain fully effective as if no acceleration had occurred. However, this right to reinstate shall not apply in the case of acceleration under paragraph 15.
- 17. Sale of Revolving Loan Agreement or Note; Change of Loan Servicer.** The Revolving Loan Agreement or Note or a partial interest in the Revolving Loan Agreement or Note (together with this Security Instrument) may be sold one or more times without prior notice to Borrower. A sale may result in a change in the entity (known as the "Loan Servicer") that collects monthly payments due under the Revolving Loan Agreement or Note and this Security Instrument. There also may be one or more changes of the Loan Servicer unrelated to a sale of the Revolving Loan Agreement or Note. If there is a change of the Loan Servicer, Borrower will be given written notice of the change in accordance with applicable law. The notice will state the name and address of the new Loan Servicer and the address to which payments should be made. The notice will also contain any other information required by applicable law.
- 18. Hazardous Substances.** Borrower shall not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances on or in the Property. Borrower shall not do, nor allow anyone else to do, anything affecting the Property that is in violation of any Environmental Law. The preceding two sentences shall not apply to the presence, use, or storage on the Property of small quantities of Hazardous Substances that are generally recognized to be appropriate to normal residential uses and to maintenance of the Property. Borrower shall promptly give Lender written notice of any investigation, claim, demand, lawsuit or other action by any governmental or regulatory agency or private party involving the Property and any Hazardous Substance or Environmental Law of which Borrower has actual knowledge. If Borrower learns, or is notified by any governmental or regulatory authority, that any removal or other remediation of any Hazardous Substance affecting the Property is necessary, Borrower shall promptly take all necessary remedial actions in accordance with Environmental Law. As used in this paragraph, "Hazardous Substances" are those substances defined as toxic or hazardous substances by Environmental Law and the following substances: gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials. As used in this paragraph, "Environmental Law" means state and federal laws and laws that relate to health, safety or environmental protection.

## ADDITIONAL TERMS

**19. Acceleration; Remedies.** Lender shall give notice to Borrower prior to acceleration following Borrower's breach of any covenant or agreement in this Security Instrument (but not prior to acceleration under paragraph 15 unless applicable law provides otherwise). The notice shall specify: (a) the default; (b) the action required to cure the default; (c) a date, not less than 30 days from the date the notice is given to Borrower, by which the default must be cured; and (d) that failure to cure the default on or before the date specified in the notice may result in acceleration of the sums secured by this Security Instrument and sale of the Property. The notice shall further inform Borrower of the right to reinstate after acceleration and the right to bring a court action to assert the non-existence of a default or any other defense of Borrower to acceleration and sale. If the default is not cured on or before the date specified in the notice, Lender, at its option, may require immediate payment in full of all sums secured by this Security Instrument without further demand and may invoke the power of sale and any other remedies permitted by applicable law. Lender shall be entitled to collect all expenses incurred in pursuing the remedies provided in this paragraph, including, but not limited to, reasonable attorneys' fees and costs of title evidence. If the power of sale is invoked, Trustee shall execute a written notice of the occurrence of an event of default and of the election to cause the Property to be sold and shall record such notice in each county in which any part of the Property is located. Lender or Trustee shall mail notice of such notice in the manner prescribed by applicable law to Borrower and to the other persons prescribed by applicable law. Trustee, without demand on Borrower, shall sell the Property at public auction to the highest bidder at the time and place and under the terms designated in the notice of sale in one or more parcels and in any order Trustee determines. Trustee may in accordance with applicable law, postpone sale of all or any parcel of the Property by public announcement at the time and place of any previously scheduled sale. Lender or its designee may purchase the Property at any sale. Trustee shall deliver to the purchaser Trustee's deed conveying the property without any covenant or warranty, expressed or implied. The recitals in the Trustee's deed shall be prima facie evidence of the truth of the statements made therein. Trustee shall apply the proceeds of the sale in the following order: (a) to all expenses of the sale, including, but not limited to, reasonable Trustee's and attorney's fees; (b) to all sums secured by the Security Instrument; and (c) any excess to the person or persons legally entitled to it or, if permitted by law, to the county clerk of the county in which the sale took place.

**20. Reconveyance.** Upon payment of all sums secured by this Security Instrument, Lender shall request Trustee to reconvey the Property and shall surrender this Security Instrument and all notes evidencing debt secured by this Security Instrument to Trustee. Trustee shall reconvey the Property without warranty and without charge to the person or persons legally entitled to it. Such person or persons shall pay any recordation costs.

**21. Substitute Trustee.** Lender, at its option, may from time to time remove Trustee and appoint a successor trustee to any Trustee appointed hereunder. Without conveyance of the Property, the successor trustee shall succeed to all the title, power and duties conferred upon Trustee herein and by applicable law.

**22. Requests for Notices.** Borrower requests that copies of the notices of default and sale be sent to Borrower's address provided under paragraph 12 hereof.

BY SIGNING BELOW, Borrower accepts and agrees to the terms and conditions contained in this Security Instrument and in any rider(s) executed by Borrower and recorded with it.

WITNESS:

James G. Kuhn  
Robert D. Kuhn

James G. Kuhn (Seal)  
Robert D. Kuhn (Seal)  
 Borrower

REQUEST FOR NOTICE OF DEFAULT  
 AND FORECLOSURE UNDER SUPERIOR  
 MORTGAGES OR DEEDS OF TRUST

Borrower and Lender request the holder of any mortgage, deed of trust or other encumbrance with a lien which was priority over this Deed of Trust to give Notice to Lender, at Lender's address set forth on page one of this Deed of Trust of any default under the superior encumbrance and of any sale or other foreclosure action.

STATE OF OREGON, Lane

County ss:

The foregoing instrument was acknowledged before me this 14th day of May  
 19 98, by James G. Kuhn & Robert D. Kuhn

WITNESS my hand and official seal.

My Commission expires:

Martha D. Price  
 Notary Public



## REQUEST FOR FULL RECONVEYANCE

TO: \_\_\_\_\_, TRUSTEE: Dated \_\_\_\_\_

The undersigned is the legal owner and holder of all indebtedness secured by this Deed of Trust. All sums secured by said Deed of Trust have been fully paid and satisfied; and you are hereby requested and directed, on payment to you of any sums owing to you under the terms of said Deed of Trust, to cancel all evidences of indebtedness, secured by said Deed of Trust, delivered to you herewith together with said Deed of Trust, and to reconvey, without warranty, to the parties designated by the terms of said Deed of Trust, the estate now held by you under the same.

MAIL RECONVEYANCE TO:

Advanta Finance Corp.

Manager

Do not lose or destroy this Deed of Trust OR THE NOTE which it secures. Both must be delivered to the Trustee for cancellation before reconveyance will be made.

16957

## SCHEDULE A

Name of Borrower(s) JAMES G. KUHN AND ROBERTA D. KUHNOrder Number K-52333

## Legal Description of Real Property:

Lot 5, Block 1, CASA MANANA, according to the official plat thereof on file in the office of the County Clerk of Klamath County, Oregon.

Tax Account No.: 3909-002AA-00600

Real Property  
Commonly Known As: 5617 Casa Way, Klamath Falls, OR 97603

STATE OF OREGON: COUNTY OF KLAMATH: ss.

Filed for record at request of First American Title the 19th day  
of May A.D., 19 98 at 11:12 o'clock A. M., and duly recorded in Vol. M98  
of Mortgages on Page 16954

FEE \$25.00

By Bernetha G. Letsch, County Clerk  
Kathleen Ross