

2007-011889

Klamath County, Oregon

Trust Deed



07/02/2007 03:33:14 PM

Fee: \$56.00

After recording, return to:

Daniel J. Cavanaugh
Ann L. Hilton-Cavanaugh
425 North 5th Street
Klamath Falls, OR 97601

1st-1024320

Dated as of: June 25, 2007

Between: **Advantage Equities LLC 6338** ("Grantor")
One Centerpointe Drive, Suite 300
Lake Oswego, Oregon 97035

First American Title Insurance ("Trustee")
404 Main Street Suite 1
Klamath Falls, OR 97601

And: **Daniel J. Cavanaugh** ("Exchangor")
Ann L. Hilton-Cavanaugh
425 North 5th Street
Klamath Falls, OR 97601

1. **The Collateral.** For a valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Grantor hereby:

1.1 Mortgages, transfers, assigns, and conveys in trust to Trustee with power of sale upon default for the benefit of Beneficiary its interest in the land described in A portion of Exhibit A, attached hereto and made a part hereof by this reference, and all buildings, structures, improvements (including asphaltic paving for parking), fixtures, minerals, hydrocarbons, and landscaping now or hereafter located thereon, all roads, rights-of-way, easements, access rights, water rights, appurtenances, tenements, hereditaments, and licenses now or hereafter belonging thereto and all leases, rents, royalties, issues, profits, and proceeds therefrom, specifically including, but not limited to, all insurance and condemnation proceeds and awards (the "Real Property");

1.2 Conveys, transfers, and assigns to Beneficiary all existing and future leases, rental agreements, and similar contracts and all maintenance, security, and janitorial contracts relating to all or any part of the Real Property or to the use or enjoyment thereof, any contracts for the sale of the Real Property, and all income, royalties, and profits arising from the Real Property, and all rights and remedies related thereto, specifically including the right to demand, sue for and/or collect rent and other payments due from lessees or tenants, subject only to a limited license reserved to Grantor to collect and properly apply said rents and payments prior to Grantor's default hereunder (the "Leases and Contracts"); and

1.3 Pledges and grants to Beneficiary pursuant to Article 9 of the Uniform Commercial Code as adopted in Oregon a security interest in and to all present and after-acquired goods (including materials and supplies), fixtures, equipment, vehicles, furniture, furnishings owned by Grantors, or any of them, and used or for use in connection with the Real Property, accounts and all general intangibles, including leases and rents, arising from or related to the Real Property (the "Personal Property"),

2. **Obligations Secured.** The above-described collateral is given to secure the obligations of Grantor under the Exchange Agreement dated as of May 30, 2007.

3. **Grantor's Representations and Warranties.** Grantor represents and warrants:

3.1 Grantor has an option to purchase the Real Property in fee simple and has the right and authority to convey its interest in the Real Property as provided herein; and

3.2 The Real Property now is free and clear of all liens and encumbrances except encumbrances of record.

4. **Promise to Perform.** Grantor will strictly and punctually perform all additional obligations, covenants and agreements that are contained in this Trust Deed, the Note, the Exchange Agreement, and any other instrument or agreement between Grantor and Beneficiary.

5. **Encumbrances and Compliance with Law.**

5.1 Grantor shall pay all taxes, assessments, and other charges of every nature (including utilities) which may be levied or assessed upon or against the Real Property, or any part thereof, when due and payable according to law. Grantor shall promptly pay and satisfy all construction liens and other liens or encumbrances that are or might by operation of law or otherwise become a prior lien on the Real Property.

5.2 Grantor shall comply with all existing and future laws, orders, and regulations of all governmental bodies that affect the Real Property or the use thereof.

5.3 Grantor shall indemnify and hold Trustee and Beneficiary harmless from all costs incurred in connection with such taxes, assessments, charges, compliance with governmental requirements, liens, and encumbrances. Grantor shall defend Beneficiary's rights against any and all liens and encumbrances.

5.4 Grantor shall not be deemed in default hereunder by reason of failure to pay any taxes, assessments, liens, or other charges levied, assessed or imposed upon or against the Real Property when due and payable so long as Grantor is contesting such taxes, assessments, liens or charges in good faith by appropriate means and Grantor provides to Beneficiary cash deposits or bonds in the amount of the taxes, assessments, liens, or other charges being contested.

6. Protection of Real Property.

6.1 Grantor shall keep all improvements on the Real Property in good order and repair and shall not commit or suffer any waste of the Real Property.

6.2 Grantor shall not do or allow any act or omission, including removal or alteration of improvements, which shall materially reduce the security value of the Real Property.

6.3 Grantor shall afford Beneficiary the right to enter upon and inspect the Real Property at all reasonable times.

7. **Insurance.** Grantor shall keep all improvements now or hereafter on the Real Property insured against loss or damage by fire with extended coverage indorsement by a responsible insurance company satisfactory to Beneficiary in an amount equal to the full replacement value of the improvements. The insurance policy shall name Grantor, Beneficiary and the holder of any prior mortgage or trust deed insured parties as their respective interests may appear and provide that such insurance coverage shall not be canceled without at least 15 days' prior written notice having been given to Beneficiary. Grantor shall give prompt notice to Beneficiary of any insured or uninsured casualty.

WARNING: Unless Grantor provides Beneficiary with evidence of insurance coverage as required by the contract or loan agreement between them, Beneficiary may purchase insurance at Grantor's expense to protect Beneficiary's interest. This insurance may, but need not, also protect Grantor's interest. If the collateral becomes damaged, the coverage purchased by Beneficiary may not pay any claim made by or against Grantor. Grantor may later cancel the coverage by providing evidence that Grantor has obtained property coverage elsewhere. Grantor is responsible for the cost of any insurance coverage purchased by Beneficiary, which cost may be added to Grantor's contract or loan balance. If it is so added, the interest rate on the underlying contract or loan will apply to it. The effective date of coverage may be the date Grantor's prior coverage lapsed or the date Grantor failed to provide proof of coverage. The coverage Beneficiary purchases may be considerably more expensive than insurance Grantor might otherwise obtain alone and may not satisfy any need for property damage coverage or any mandatory liability insurance requirements imposed by applicable law.

8. **Proceeds of Insurance or Condemnation.** In the event of any condemnation under the power of eminent domain or insured casualty, all proceeds may, at the option of Beneficiary and the holder of any prior mortgage or trust deed, be applied either to repairs,

restoration or replacement of improvements or to payment of the debts secured by this Trust Deed and any prior mortgage or trust deed. Beneficiary is hereby appointed Grantor's agent to collect, apply and disburse all proceeds payable as a result of either condemnation or insured casualty.

9. Performance of Grantor's Obligations by Beneficiary. If Grantor allows insurance coverage to expire or fails or refuses to pay taxes, assessments, charges, liens or encumbrances or to comply with governmental requirements, Beneficiary may, but shall not be required to, procure, pay, or perform the same and the amount of such payment or cost of such procurement or performance, together with interest thereon at the rate provided for in the Exchange Agreement, shall be immediately due and payable by Grantor to Beneficiary and secured by the lien of this Trust Deed. Performance by Beneficiary shall not be deemed a waiver of any rights Beneficiary may have on account of Grantor's failure to timely perform.

10. Default. Time is of the essence. Occurrence of one or more of the following shall constitute an event of default:

10.1 Grantor shall fail to make any of the payments provided for in the Exchange Agreement promptly when due or Grantor shall fail to satisfy and discharge when due Grantor's other debts and liabilities to Beneficiary;

10.2 Grantor shall fail to perform any covenant or agreement contained herein or in any other agreement between Grantor and Beneficiary within ten days after receipt of written notice of failure to perform the same;

10.3 Grantor shall sell, transfer, convey, contract to sell or convey, lease, or encumber the Real Property or any interest therein voluntarily, involuntarily, or by operation of law without the prior written consent of Beneficiary;

10.4 Default on any obligation secured by a lien, mortgage, trust deed, or other encumbrance which has or may have priority over this Trust Deed, or the commencement of any action to foreclose any such prior encumbrance;

10.5 Grantor becomes insolvent or unable to pay debts as they mature, makes an assignment for the benefit of creditors or petitions for or becomes the subject of any federal or state law receivership, insolvency, liquidation, or reorganization proceeding or case; or

10.6 The Real Property is destroyed or substantially damaged or the security value thereof materially reduced.

11. Remedies. In the event of a default hereunder, Beneficiary shall have the option to declare all debts and liabilities of Grantor to Beneficiary immediately due and payable and this Trust Deed by reason thereof may be foreclosed at any time thereafter either by advertisement and sale in the manner provided in the laws of Oregon or by civil action as a mortgage. In addition, Beneficiary, either directly or through a receiver appointed by the presiding judge of the circuit court for the county in which the Real Property is located, may take possession of the Real Property upon Grantor's default hereunder (whether or not the apparent value of the Real Property exceeds the debts and liabilities of Grantor to Beneficiary), collect the rents and profits

therefrom and apply the same, after payment of costs, charges and expenses, to the payments of amounts due to Beneficiary during the pendency of any foreclosure either by advertisement and sale or by civil action. Any receiver appointed may serve without bond.

12. Reinstatement. In the event Beneficiary elects to foreclose this Trust Deed by advertisement and sale in the manner provided in the laws of Oregon, Grantor and certain other persons specified by those statutes shall have the right, at any time prior to five days before the date set by Trustee for the trustee's sale, to cure Grantor's default by payment to Beneficiary of the entire amount then due, other than such portion of the principal of the Exchange Agreement and any other instruments secured by this Trust Deed as would not then be due had no default occurred, plus all costs and expenses incurred and all fees provided by those statutes.

13. Assignment of Rents and Profits.

13.1 All of the existing and future leases, rents, royalties, income, and profits of Real Property that arise from its use or occupancy are hereby absolutely and presently assigned to Beneficiary. However, until Grantor is in default under this Trust Deed, Grantor shall have a license to collect and receive those rents, royalties, income, and profits. Upon any default by Grantor, Beneficiary may terminate Grantor's license in its discretion at any time without prior notice to Grantor and may thereafter collect the rents, royalties, income and profits itself or by an agent or receiver. No action taken by Beneficiary to collect any rents, royalties, income or profits shall make Beneficiary a "mortgagee-in-possession" of Real Property, unless Beneficiary personally or by agent enters into actual possession of Real Property. Possession by a court-appointed receiver shall not be considered possession by Beneficiary. All rents, royalties, income, and profits collected by Beneficiary or a receiver shall be applied first to pay all expenses of collection, and then to the payment of all costs of operation and management of Real Property, and then to the payment of the indebtedness and obligations secured by this Trust Deed.

13.2 Grantor shall not execute any leases or occupancy agreements affecting any of Real Property except in a form approved by Beneficiary. Without the prior written consent of Beneficiary, Grantor shall not accept prepayments of rent exceeding one month under any leases or occupancy agreements affecting any of Real Property, nor modify or amend any such leases or occupancy agreements, nor in any manner impair Beneficiary's interest in the rents, royalties, income and profits of Real Property. Grantor shall at all times perform all covenants of the lessor under any such leases or occupancy agreements. Upon Beneficiary's request, Grantor shall execute and deliver to Beneficiary for recordation an assignment of leases and a financing statement in form acceptable to Beneficiary evidencing the assignment provided for herein.

14. Security Agreement and Assignment. This Trust Deed, without affecting its validity as a real estate trust deed and mortgage, is also executed and shall be construed as a security agreement under the Oregon Uniform Commercial Code granting to Beneficiary a security interest in all the Personal Property and an assignment to Beneficiary in and to any "contract vendor" or similar interest of Grantor in and to the Real Property. In addition to the rights and remedies provided herein, Beneficiary shall have all the rights and remedies granted by such Uniform Commercial Code; and reasonable notice, when notice is required, shall be ten

days. Grantor covenants and agrees to execute and file financing statements and similar instruments deemed necessary or desirable by Beneficiary to perfect, continue and renew said security interest and assignment.

15. Consent to Modifications. In the event Beneficiary consents to the transfer of the Real Property or any part thereof or any interest therein, and such a transfer is made, Beneficiary may, without notice to Grantor or any one else, once or often, extend the time of payment or grant renewals of the debt hereby secured for any term, execute releases or partial releases from the lien of this Trust Deed or in any other respect modify the terms hereof without thereby affecting the personal primary liability of Grantor for the payment of the debts and performance of the obligations hereby secured.

16. Waiver. No covenant, agreement, or condition of this Trust Deed shall be deemed waived unless expressly waived in writing by Beneficiary. The failure of Beneficiary at any time to require strict performance by Grantor of any covenant, agreement or condition shall not estop or otherwise affect Beneficiary's right to enforce the same nor shall any acceptance of partial payment on account, waiver or forbearance by Beneficiary be held to be a waiver of Grantor's default or the covenant, agreement or condition itself or any future failure to perform the same.

17. Foreclosure Costs. In the event civil action is instituted to foreclose this Trust Deed as a mortgage, which results in judgment against Grantor, Grantor agrees to pay all costs and disbursements allowed by law and such sum as the trial judge or appeal court may adjudge reasonable as attorney fees in such action, together with reasonable costs incurred by Beneficiary for title reports and title search, all such sums to be secured by the lien of this Trust Deed and included in the decree of foreclosure.

18. Indemnification. Grantor shall protect, defend, indemnify, and save harmless Beneficiary from and against all liabilities, obligations, claims, damages, penalties, causes of action, costs, and expenses (including without limitation reasonable attorneys' fees and expenses), imposed upon or incurred by or asserted against Beneficiary by reason of (a) ownership of this Trust Deed, the Real Property, the Personal Property, or the Leases and Contracts, or any interest therein; (b) any accident, injury to or death of persons, or loss of or damage to property occurring in, on, or about the Real Property or any part thereof or on the adjoining sidewalks, curbs, adjacent property, or adjacent parking areas, streets or ways; (c) any use, nonuse, or condition in, on, or about the Real Property or any part thereof or on the adjoining sidewalks, curbs, adjacent property, or adjacent parking areas, streets or ways; (d) any failure on the part of Grantor to perform or comply with any of the terms of this Trust Deed; (e) performance of any labor or services or the furnishing of any materials or other property in respect of the Real Property or any part thereof; (f) the presence, disposal, escape, seepage, leakage, spillage, discharge, emission, release, or threatened release of any hazardous materials on, from, or affecting the Real Property or any other property or the presence of asbestos on the Real Property or the presence of underground storage tanks in the Real Property; (g) any personal injury (including wrongful death) or property damage (real or personal) arising out of or related to such hazardous materials or asbestos; (h) any lawsuit brought or threatened, settlement reached, or government order relating to such hazardous materials, asbestos, or storage tanks; or (i) any violation of laws, orders, regulations, requirements, or demands of government

authorities, which are based upon or in any way related to such hazardous materials, asbestos, or storage tanks including, without limitation, the costs and expenses of any remedial action, attorney and consultant fees, investigation and laboratory fees, court costs, and litigation expenses. Any amounts payable to Beneficiary by reason of the application of this section shall be secured by this Trust Deed and shall become immediately due and payable and shall bear interest at the rate of interest under the Exchange Agreement from the date loss or damage is sustained by Beneficiary until paid. The obligations and liabilities of Grantor under this section shall survive any termination, satisfaction, assignment, entry of a judgment of foreclosure or delivery of a deed in lieu of foreclosure of this Trust Deed.

19. Notice. Whenever any notice, demand, or request is required by the terms hereof or by any law now in existence or hereafter enacted, the notice, demand, or request shall be sufficient if actually furnished to Grantor or mailed to Grantor by certified mail, return receipt requested, in a postage prepaid envelope addressed to the last address of Grantor shown in Beneficiary's records.

20. Binding Effect. This Trust Deed, and the warranties, covenants, and agreements made herein, shall bind Grantor and Grantor's personal representatives, heirs, successors, and assigns and inure to the benefit of Trustee, successor trustees, Beneficiary and Beneficiary's personal representatives, heirs, successors, and assigns.

21. Limitation of Liability. The obligations of Beneficiary under this Agreement are without recourse to Grantor; in the event of a default under this Agreement by Grantor, Grantor shall not be liable for any money damages. Without waiving or impairing the obligations representing this Agreement, Beneficiary agrees that Grantor's only recourse to enforce payment of this Agreement shall be to exercise its rights such that no money judgment is due to Beneficiary.

IN WITNESS WHEREOF, Grantor has executed this Trust Deed as of the date first above written.

AdvantageEquities LLC 6338

By: [Signature]
Mindy A. Cornelius, Exchange Coordinator

STATE OF OREGON)
) SS
COUNTY OF CLACKAMAS)

The foregoing instrument was acknowledged before me this 25th day of JUNE 25th, 2007, by MINDY A. CORNELIUS as EXCHANGE COORDINATOR of Equity Advantage, Incorporated.



[Signature]
Notary Public for OREGON
My commission expires: OCTOBER 15, 2010

EXHIBIT A

LEGAL DESCRIPTION:

LOTS 9, 10 & 11, BLOCK 1, TRACT 1174-COLLEGE INDUSTRIAL PARK, ACCORDING TO THE OFFICIAL PLAT THEREOF ON FILE IN THE OFFICE OF THE COUNTY CLERK OF KLAMATH COUNTY, OREGON.