

Skamania County, WA
Total: \$112.50
TRST
Pgs=9

2020-001492

06/22/2020 02:47 PM

Request of: COLUMBIA GORGE TITLE



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**AFTER RECORDING,
RETURN TO:**

Timothy L. Blair, P.C.
Lake View Village
385 First Street, Suite 221
Lake Oswego, Oregon 97034

DEED OF TRUST

DATE:

6/22/2020

PARTIES:

JAPACHE RECORD COMPANY LLC, a
Washington limited liability company
13018 NE 13th Ave.
Vancouver, Washington 98685

“Grantor”

ZIVIO, LLC, an Oregon limited liability company
6735 SW Raleighwood Ln.
Portland, Oregon 97225

“Beneficiary”

FIDELITY NATIONAL TITLE INSURANCE COMPANY

“Trustee”

Vancouver, Washington

LOT 4 DIAMOND CREEK LOVE BR 3/P4 433
FULL LEGAL PAGE 01 PARCEL # 07052200070300

WHEREAS, pursuant to those certain terms and conditions under a Promissory Note, dated of even date herewith, by and between Grantor and Beneficiary, the Grantor is indebted to Beneficiary in the sum of \$175,000.00. Such amount is payable with interest thereon according to the terms of a Promissory Note given to evidence such indebtedness, and under which the final payment of principal and interest will be due on or before June 30, 2030. The Promissory Note, and any notes given in renewal, modification, substitution, or addition to the promissory note originally issued, is referred to herein as “Note”;

NOW THEREFORE, FOR VALUE RECEIVED, Grantor gives this Deed of Trust ("**Deed of Trust**") to secure payment of the Note and performance of all obligations of Grantor under the Deed of Trust and the Note on the following terms and conditions:

1. **Conveyance of Property.** Grantor conveys to Trustee, in trust, with power of sale, the real property ("**Property**") located in Skamania County, Washington, described as:

A tract of land in the Southwest Quarter of Section 23, Township 7 North, Range 5 East of the Willamette Meridian, in the County of Skamania State of Washington, described as follows:

Lot 4 of the Diamond Creek Cove Short Plat, recorded in Book 3 of Short Plats, Page 432, Skamania County Records

together with all appurtenances, tenements, hereditaments, rents, issues, profits, water rights, easements or privileges now or hereafter belonging to, derived from or in any way appertaining to the Property.

2. **Security.** This Deed of Trust is intended to secure the payment of the Note, as well as such additional money, if any, as may be loaned hereafter by the Beneficiary to the Grantor or others having an interest in the Property as may be evidenced by a note or notes.

3. **Other Assets.** This Deed of Trust shall also include all other personal property contained on the Property including lighting, heating, ventilating, air conditioning, refrigerating, watering and irrigation apparatus, equipment and fixtures, together with all awnings, venetian blinds, floor coverings in places such as wall-to-wall carpeting and linoleum, shades, ranges, dishwashers, refrigerators now or hereafter installed or used in connection with the Property, including all interest therein that the Grantor has or may hereafter acquire, which fixtures and chattels shall as between the parties be regarded as a part of the real estate. All replacements and additions shall be covered by this Deed of Trust. All of the foregoing referred to in this Deed of Trust shall also be referred to as the "**Property**".

4. **Final Payment.** The final payment of principal and interest thereon, if not sooner paid, is due and payable on June 30, 2030.

5. **Grantor's Title.** Grantor hereby covenants to and with Trustee and Beneficiary that Grantor is lawfully seized in fee simple of the Property and has a valid unencumbered title thereof and will warrant and forever defend the same against all persons. Grantor has the right to grant and convey the Property. Grantor warrants and will defend the title to the Property against all claims and demands.

6. **Grantor's Agreement.** Grantor agrees as follows:

6.1 Grantor will pay the Note according to the terms thereof;

6.2 Grantor will pay all taxes, assessments, and other charges which may be levied or assessed against the Property when due;

6.3 Grantor will promptly discharge any liens against the Property which are superior to the lien of this Deed of Trust;

6.4 Grantor will keep the buildings now on or which may hereafter be erected on the Property insured in favor of Beneficiary against loss or damage by fire, with extended coverage, in the sum of \$175,000.00, in a company acceptable to Beneficiary; and will name Beneficiary as an additional insured as Beneficiary's interest may appear;

6.5 Grantor will keep the building and improvements on the Property in good repair and will not commit or suffer any waste of the Property.

7. **Trustee's Acts.** Upon written request of Beneficiary, Trustee may:

7.1 Consent to the making of any map or plat of the Property;

7.2 Join in granting any easement or creating any restriction thereof;

7.3 Join in any subordination or other agreement affecting this Deed of Trust or the lien hereof;

7.4 Reconvey, without warranty, all or any part of the Property.

8. **Reconveyance, Trustee's Fees.** Grantee in any reconveyance may be described as the "person or persons legally entitled thereto", and the recitals therein of any matters or facts shall be conclusive proof of the truthfulness thereof. Trustee fees for any of the services in this paragraph shall be in an amount fixed by statute; if there be a statute governing the same, or otherwise a reasonable amount.

9. **Time of Essence.** Time is of the essence hereof and upon default by Grantor in the payment of the Note or in the performance of any covenant herein, Beneficiary may declare all sums secured hereby immediately due and payable and may deliver to Trustee a written notice of default and election to sell the Property. Upon delivery of the notice of default and election to sell, Beneficiary shall deposit with Trustee this Deed of Trust and all promissory notes and documents evidencing expenditures secured hereby, whereupon Trustee shall fix the time and place of sale and give notice thereof as then required by law.

10. **Insurance.** If the Property is damaged because of fire or other risk covered by insurance, the proceeds of the insurance shall first be applied against the cost of repair, and any amount not required for those purposes shall be paid to Beneficiary and applied against the payments last becoming due on the Note; but if the insurance proceeds shall be insufficient for such repairs, Grantors shall pay the difference. If damage to the improvements is so extensive as to constitute total destruction, so that repair is not feasible, the insurance proceeds shall be paid to Beneficiary and applied against the payments last coming due on the Note, and any excess over the balance thereof shall be paid to Grantors. In the event that Grantors shall fail to file any proof of loss or to endorse any check, draft, or warrant payable to Grantors arising from such loss, Grantors hereby name and constitute Beneficiary as Grantors' attorney-in-fact to make such proof of loss and to endorse such check, draft, or warrant and apply the proceeds as provided herein.

11. **Eminent Domain.** In the event that all or any portion of the Property shall be taken by eminent domain, Beneficiary shall have the right to require that all or any portion of the moneys payable as compensation for such taking, in excess of the amount required to pay reasonable costs and attorney fees incurred by the Grantor in such proceedings, shall be paid to Beneficiary and applied by it first to any costs and expenses necessarily paid or incurred by Beneficiary in such proceedings, and the balance shall be applied to the Note against the payments last becoming due thereon.
12. **Casualty Damage.** If the Property is damaged because of fire or other risk covered by insurance, the proceeds of the insurance shall first be applied against the cost of repair, and any amount not required for those purposes shall be paid to Beneficiary and applied against the payments last becoming due on the Note; but if the insurance proceeds shall be insufficient for such repairs, Grantor shall pay the difference. If damage to the improvements is so extensive as to constitute total destruction, so that repair is not feasible, the insurance proceeds shall be paid to Beneficiary and applied against the payments last coming due on the Note, and any excess over the balance thereof shall be paid to Grantor. In the event that Grantor shall fail to file any proof of loss or to endorse any check, draft or warrant payable to Grantor arising from such loss, Grantor hereby names and constitutes Beneficiary as Grantor's attorney-in-fact to make such proof of loss and to endorse such check, draft or warrant and apply the proceeds as provided herein.
13. **Payment.** Grantor shall pay according to the terms thereof any prior Deed of Trust or other lien now or hereafter existing against the Property. In the event that Grantor shall fail to pay any sum due upon any such prior lien promptly when due, Beneficiary may pay the same and Grantor shall reimburse Beneficiary the amount thereof upon demand, and Beneficiary may add the amount thereof to the debt secured by this Deed of Trust and the same shall bear interest at the rate specified in the Note attached hereto, without waiver, however, of any right arising to the Beneficiary for Grantor's breach hereof.
14. **Additional Security.** As additional security, Grantor hereby assigns to Beneficiary all rents, royalties and other payments, including payments on contracts of sale, arising from the Property and, if included in such rent, royalty or other payment, from any personal property located thereon. Until Grantor shall default in the payment of the Note, Grantor shall have the right to collect all such rents, royalties and other payments earned prior to default as they become due. Upon default Beneficiary may at any time without notice, either in person or by agent and without regard to the adequacy of the security for the Note, enter upon and take possession of the Property and sue for or otherwise collect the rents, royalties and other payments and apply the same, less costs and expenses of operation and collection, including reasonable attorney fees, upon the Note.
15. **Receiver.** In the event a suit is instituted to foreclose this Deed of Trust, Grantor consents to the appointment by the Court of a receiver to collect the rents, royalties and other payments due with respect to the Property, without notice to Grantor, upon the giving of such receiver's bond and upon such terms and conditions as may be fixed by the Court.
16. **Nonwaiver.** Grantor agrees that failure of Beneficiary at any time to require performance by Grantor of any provision of this Deed of Trust or the Note shall in no way effect Beneficiary's right hereunder to enforce the same, nor shall any waiver by the Beneficiary of any breach of any

provision hereof be held to be a waiver of any succeeding breach of any such provision, or as a waiver of the provision itself.

17. **Default.** In the event Grantor shall default in the payment of any sum due under the terms of the Note or in the performance of any covenant of this Deed of Trust, Beneficiary shall give Grantor not less than 15 days' written notice specifying the default, and Grantor shall have an additional 15 days' in which to make the payment or perform such covenant, or to enter upon such performance and diligently pursue the same to completion, and if Grantor shall fail to do so, then Beneficiary shall have the right to declare the entire unpaid balance of the Note immediately due and payable and to pursue Beneficiary's remedies provided herein.

18. **Remedies.** Time is of the essence of this Deed of Trust and upon default by Grantors as provided above, Beneficiary shall have the following remedies:

18.1 To declare the entire unpaid balance of the Note immediately due and payable.

18.2 To enter upon and take possession of the Property or any part thereof and sue or otherwise collect the rents, issues, and profits, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection, upon any indebtedness secured hereby.

18.3 To elect to proceed to foreclose this Deed of Trust judicially or by advertisement and sale. In the event Beneficiary elects to foreclose by advertisement and sale, Beneficiary or Trustee shall execute and record written notice of default and the election to sell the Property to satisfy the obligation secured hereby, and Trustee shall fix the time and place of sale and give notice of the sale as required by law and proceed to foreclose this Deed of Trust as provided by Washington law.

18.4 Any other remedies provided hereunder or by Washington law.

18.5 All remedies under this Deed of Trust are cumulative and not exclusive. Any elections to pursue one remedy shall not preclude the exercise of any other remedy.

19. **Deed in Lieu of Foreclosure.** Upon default and the giving of the 15-day notice thereof, Grantor shall have the option within the 15-day period to deed the Property to the Beneficiary by a form of estoppel deed in lieu of foreclosure, and Beneficiary shall accept the deed and become entitled to the immediate possession of the Property.

20. **No Deficiency Judgment.** Beneficiary shall not have any deficiency judgment against Grantor for any principal interest, court costs or attorney fees due with respect to the Note or this Deed of Trust; also, Beneficiary's sole remedy shall be that of foreclosure, and Beneficiary shall not waive Beneficiary's security and sue Grantor upon the Note.

21. **Transfer.**

21.1 This Deed of Trust and the Note are personal to the Grantor and in the event of any transfer of the Property, or any part thereof, without the consent of Beneficiary, the entire unpaid balance of the Deed of Trust and the Note shall become immediately due and payable.

21.2 "Transfer" shall mean a sale, assignment, contract, subcontract, lease for a term (including renewal periods) exceeding three (3) years, lease with option to purchase, devise, passage by intestate succession, gift, encumbrance or other transfer, whether voluntary or involuntary, absolutely, for security or otherwise.

21.3 Beneficiary may require such personal and financial information concerning Grantor's prospective assignee, subcontractee or other transferee as a prudent lender would require of a prospective borrower.

21.4 As a condition to Beneficiary's consent, Beneficiary may elect to increase the interest rate hereunder up to the maximum legal rate of interest from the date of each such transfer. Any such increase shall entitle Beneficiary to increase monthly payments hereunder so as to retire the obligation within the stipulated time provided for herein.

21.5 Grantor and any other person or persons at any time obligated for the performance of the terms of this Deed of Trust and the Note hereby waive notice of and consent to any and all extensions and modification of this Deed of Trust or the Note granted by Beneficiary at the request of any person now or hereafter obligated on this Deed of Trust and the Note, and agree that any such extensions or modifications shall not in any way release, discharge or otherwise affect the liability of any person at anytime obligated hereunder.

21.6 No assignment, subcontract or other transfer shall relieve Grantor from liability for full performances of all its obligations hereunder unless the Beneficiary's written consent expressly so provides.

21.7 Consent by Beneficiary to one assignment, contract, subcontract or other transfer shall not constitute consent to further assignments, contracts, subcontracts or other transfers or waiver of this paragraph.

21.8 Any attempted assignment, contract, subcontract or other transfer in violation of this Section 21 shall be void and of no effect with respect to Beneficiary.

22. **Expenses and Attorney Fees.** If Beneficiary refers the Note or this Deed of Trust to an attorney for collection or seeks legal advice following a default; if Beneficiary is the prevailing party in any litigation instituted in connection with the Note or this Deed of Trust; or if Beneficiary or any other person initiates any judicial or non-judicial action, suit, or proceeding in connection with the Property, Note or Deed of Trust (including but not limited to proceedings under federal bankruptcy law, eminent domain, under probate proceedings, or in connection with any state or federal tax lien), and an attorney is employed by Beneficiary to (1) appear in any such action suit, or proceeding or (2) reclaim, seek relief from a judicial or statutory stay, sequester, protect, preserve, or enforce Beneficiary's interests, then in any such event Grantors shall pay reasonable attorney fees, costs, and expenses incurred by Beneficiary or its attorney in connection with the above-mentioned events or any appeals related to such events, including but not limited to costs incurred in searching records, the cost of title reports, and the cost of surveyors' reports. Such amounts shall be secured by this Deed of Trust and, if not paid upon demand, shall bear interest at the rate specified in the Note.

23. **Expenditure by Beneficiary.** If Grantors fail to comply with any provision of this Deed of Trust, Beneficiary may elect to take the required action on Grantors' behalf, and any amount that Beneficiary expends in so doing shall be added to the indebtedness. Such action by Beneficiary shall not constitute a cure or waiver of the default or any other right or remedy which Beneficiary may have on account of Grantors' default.

24. **Notices.** Any notice under this Deed shall be in writing and shall be effective when either delivered in person or, if mailed, shall be deemed effective on the second day after deposited as registered or certified mail, postage prepaid, addressed to the party at the address stated in this deed. Any party may change its address for notices by written notice to the other.

25. **Changes in Writing.** This Deed of Trust and any of its terms may only be changed, waived, discharged or terminated by an instrument in writing signed by the party against which enforcement of the change, waiver, discharge or termination is sought. Any agreement subsequently made by Grantors or Beneficiary relating to this Deed of Trust shall be superior to the rights of the holder of any intervening lien or encumbrance.

26. **Trustee's Acceptance.** The Trustee accepts this trust when this Deed of Trust, duly executed and acknowledged, is made a public record as provided by law.

27. **Successors.** This Deed of Trust inures to the benefit of and binds the parties hereto, their heirs, devisees, administrators, executors, successors and assigns.

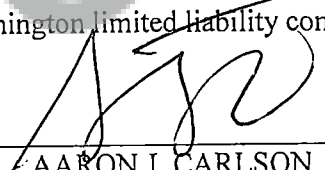
28. **Gender; Number.** Whenever the context so requires, the masculine gender includes the feminine and/or neuter, and the singular includes the plural.

29. **Captions.** All captions used herein are intended solely for convenience of reference and shall in no way limit any of the provisions of this Deed of Trust.

IN WITNESS WHEREOF, Grantor has executed this Deed of Trust on June 19, 2020

GRANTOR:

JAPACHE RECORD COMPANY LLC, a
Washington limited liability company

By: 
Its: Member

State of Washington

County of Clark

This instrument was acknowledged before me on June 19, 2020 by Aaron J. Carlson
as Member of Japache Record Company, LLC, a Washington limited liability company.

Cindy M Schaffner
Notary Public - State of Washington
My commission expires: 5/29/23

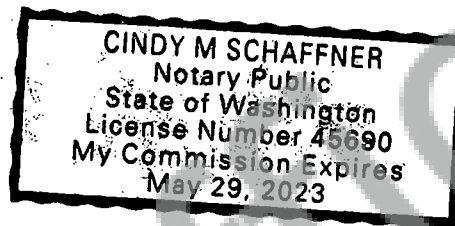


EXHIBIT "A"

A tract of land in the Southwest Quarter of the Southwest Quarter of Section 23, Township 7 North, Range 5 East of the Willamette Meridian, in the County of Skamania, State of Washington, described as follows:

Lot 4 of the Diamond Creek Cove Short Plat, recorded in Book 3 of Short Plats, Page 432, Skamania County Records.

Unofficial
Copy