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20 Attorneys for Receiver  
21 KRISTA FREITAG

22 UNITED STATES DISTRICT COURT  
23 SOUTHERN DISTRICT OF CALIFORNIA

24 SECURITIES AND EXCHANGE  
25 COMMISSION,

26 Plaintiff,

27 v.

28 GINA CHAMPION-CAIN and ANI  
DEVELOPMENT, LLC,

Defendants,

AMERICAN NATIONAL  
INVESTMENTS, INC.,

Relief Defendant.

Case No. 3:19-cv-01628-LAB-AHG

**DECLARATION OF KRISTA L.  
FREITAG IN SUPPORT OF  
RECEIVER'S MOTION TO AMEND  
ORDER GRANTING RECEIVER'S  
MOTION FOR APPROVAL OF SALE  
OF 737 WINDEMERE COURT  
PROPERTY**

Date: September 18, 2020

Time: 2:00 p.m.

Courtroom: TBD

Mag. Judge: Hon. Allison H. Goddard

**DECLARATION OF KRISTA L. FREITAG**

I, Krista L. Freitag, declare:

1. I am the Court-appointed permanent receiver (the "Receiver") for Defendant ANI Development, LLC, Relief Defendant American National Investments, Inc., and their subsidiaries and affiliates ("Receivership Entities"). I make this declaration in support of the of the Receiver's Motion to Amend Order Granting Receiver's Motion for Approval of Sale of 737 Windemere Court Property ("Motion"). I have personal knowledge of the facts stated herein, and if called upon to do so, I could and would personally and competently testify to them.

2. I previously moved for approval of the sale of the property located at 737 Windemere Court, San Diego ("Prior Sale Motion"), which motion was recently granted ("Sale Approval Order"). Dkt. 367, 434. However, after filing the Prior Sale Motion, I learned that a disputed Deed of Trust which was recorded against the property located at 737 Windemere Court ("Windemere Court Property") and another receivership vacation rental property located at 750 Yarmouth Court, San Diego (also in the Mission Beach neighborhood) by investor Charles Riharb is now showing up on title to the Windemere Court Property (a prior preliminary title report my staff obtained did not show the disputed Deed of Trust). The title company has advised my staff that it will not insure clear title if the disputed Deed of Trust is not released by Mr. Riharb or removed from title to the Windemere Court Property by Court order.

3. I, through my counsel, reached out to counsel for Mr. Riharb to discuss an interim resolution pursuant to which I would agree to set aside a certain amount of the proceeds from the sales of the Windemere Court and Yarmouth Court Properties pending resolution of the disputed Deed of Trust. However, despite several follow-up attempts to reach Mr. Riharb through his counsel, Mr. Riharb has not yet responded to this proposal. Accordingly, I'm now seeking to amend the Sale Approval Order such that the sale is free and clear of Mr. Riharb's disputed Deed of

1 Trust. Fortunately, Buyer has agreed to extend the closing date for the sale to allow  
2 time for this Motion to be decided by the Court.

3 4. Mr. Riharb is an investor in the ANI liquor license lending scheme. The  
4 disputed Deed of Trust, which purports to secure a loan from Mr. Riharb to ANI in  
5 the amount of \$1,574,762.60, was recorded by Mr. Riharb after the Securities and  
6 Exchange Commission ("SEC") had publicly filed its Complaint in this action and on  
7 the same day I was appointed as Receiver (September 3, 2019). After learning of the  
8 purported Deed of Trust, my counsel discussed it with counsel for Gina Champion-  
9 Cain. During that discussion, I understand that Ms. Champion-Cain's counsel  
10 explained that Ms. Champion-Cain had told Mr. Riharb that the SEC had filed this  
11 action against her and that there would soon be a receiver appointed. Nevertheless,  
12 Mr. Riharb prepared the Deed of Trust using a form filled in by hand, drove to San  
13 Diego on September 2, 2019 (Mr. Riharb resides in Goleta, California according to  
14 the Deed of Trust), confronted Ms. Champion-Cain (with a mobile notary public  
15 present) and insisted that she immediately sign the Deed of Trust. I understand that  
16 Ms. Champion-Cain explained through her counsel, that she felt pressured and  
17 signed reluctantly. A copy of the recorded Deed of Trust is attached hereto as  
18 Exhibit A.


19 5. My counsel also spoke to Mr. Riharb and his counsel about the Deed of  
20 Trust. I understand that Mr. Riharb claims Ms. Champion-Cain previously agreed to  
21 provide him with the purported Deed of Trust to secure his investment with ANI if  
22 he had not been paid back on his investment by August 2019. Mr. Riharb claims he  
23 was not repaid by August 2019 and therefore is entitled to the purported Deed of  
24 Trust based on that agreement.

25 6. In an effort to reach an interim resolution, I, through my counsel, have  
26 offered to set aside the amount of \$1,105,000 in receivership estate funds, which  
27 represents my reasonable estimate of the hypothetical net sale proceeds from the  
28 pending sale of the Windemere Court Property (approximately \$599,000) and the

1 anticipated sale of the Yarmouth Court Property (approximately \$506,000), based on  
2 the release prices for the two properties in the Axos Bank loan agreement, less the  
3 premium added to each principal release price. As noted above, despite several  
4 follow-up communications with Mr. Riharb's counsel, Mr. Riharb has not yet  
5 responded to this proposal.

6 I declare under penalty of perjury under the laws of the United States of  
7 America that the foregoing is true and correct.

8 Executed this 28<sup>th</sup> day of August 2020, at Los Angeles County, California.

9   
10 KRISTA L. FREITAG  
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**EXHIBIT INDEX**

<b>EXHIBIT NO.</b>	<b>DESCRIPTION</b>	<b>PAGE NO.</b>
Exhibit A	Deed of Trust	6

# EXHIBIT A

# EXHIBIT A

PLEASE COMPLETE THIS INFORMATION.

RECORDING REQUESTED BY:

*Charles Riharb*

AND WHEN RECORDED MAIL TO:

*Charles Riharb  
512 Vereda del Cierro  
Goleta CA 93117*

DOC# 2019-0376706



Sep 03, 2019 08:25 AM

OFFICIAL RECORDS

Ernest J. Dronenburg, Jr.,

SAN DIEGO COUNTY RECORDER

FEES: \$202.00 (SB2 Atkins: \$150.00)

PCOR: N/A

PAGES: 8

THIS SPACE FOR RECORDER'S USE ONLY

*Deed of Trust And Assignment of Rents securing a*  
(Please fill in document title(s) on this line)

*promissory note*

*Between Windmere Court LLC, Gina Champion - GRN & Charles Riharb  
Dated 9/2/2019*

THIS PAGE ADDED TO PROVIDE ADEQUATE SPACE FOR RECORDING INFORMATION  
(Additional recording fee applies)

9/95  
Rec.Form #R25

Recording requested by:

CHARLES R. HARB

And when recorded, mail to:

CHARLES R. HARB512 VEREDA del CIERVOGOLETA CA 93117

For recorder's use

**DEED OF TRUST AND  
ASSIGNMENT OF RENTS  
SECURING A PROMISSORY  
NOTE****Declaration of Exemption From Gov't Code § 27388.1 Fee**

- ☐ Transfer is exempt from fee per GC § 27388.1(a)(2):  
☐ recorded concurrently "in connection with" transfer subject to DTT  
☐ recorded concurrently "in connection with" a transfer of residential dwelling to an owner-occupier  
☐ Transfer is exempt from fee per GC 27388.1(a)(1):  
☐ Fee cap of \$225.00 reached ☐ Not related to real property

This Deed of Trust, made 9/2/2019, between WIND MERE COCLRT LLC, whose address is 3515 HANCOCK ST SAN DIEGO CA 92110, as the Trustor, FIRST AMERICAN TITLE COMPANY, a California Corporation, as the Trustee, and Charles Riharb, whose address is 512 Vereda del Ciervo, Goleta, CA 93117 as the Beneficiary.

**1. Trustor hereby IRREVOCABLY GRANTS TO TRUSTEE IN TRUST, WITH POWER OF SALE,**

1.1 the real property in the City of SAN DIEGO, County of SAN DIEGO, California, referred to as: 737 WINDMERE CT. SAN DIEGO CA 92109  
2nd D BLK: 238 TR 1809 BOOK 1651  
(See ATTACHMENT A)

APN: 423 5511 000

1.2 TOGETHER WITH the rents, issues and profits of the real property, subject to the provisions of §3.4, herein to collect and apply the rents, issues and profits,

**1.3 For the purpose of securing payment of:**

- a) the indebtedness evidenced by a promissory note of the same date executed by Trustor, in the sum of \$ 1,574,762.00;  
b) Any additional sums and interest hereafter loaned by Beneficiary to the then record Owner of the real property, evidenced by a promissory note or notes, referencing this Deed of Trust as security for payment;  
c) The Beneficiary's charge for a statement regarding the secured obligations requested by or for Trustor; and  
d) The performance of each agreement contained in this Deed of Trust.

**2. To protect the security of this Deed of Trust, Trustor agrees:**

**2.1 CONDITION OF PROPERTY** – To keep the property in good condition and repair; not to remove or demolish any building; to complete and restore any building which may be constructed, damaged or destroyed; to comply with all laws affecting the property or requiring any alterations or improvements to be made; not to commit or permit waste; to cultivate, irrigate, fertilize, fumigate, prune and do all other acts which from the character or use of the property may be reasonably necessary.

**2.2 HAZARD INSURANCE** – Trustor will continuously maintain hazard insurance against loss by fire, hazards included within the term "extended coverage," and any other hazards for which Beneficiary requires insurance. The insurance will be maintained in the amounts and for the periods Beneficiary requires. The insurance carrier providing the insurance will be chosen by



Trustor, subject to Beneficiary's approval, which will not be unreasonably withheld. All insurance policies will be acceptable to Beneficiary, and contain loss payable clauses acceptable to Beneficiary. Beneficiary will have the right to hold policies and renewals.

In the event of loss, Trustor will give prompt notice to the insurance carrier and Beneficiary. Beneficiary may make proof of loss if not made promptly by Trustor. Beneficiary may place the proceeds in a non-interest bearing account to be used for the cost of reconstruction of the damaged improvements. If Trustor fails to reconstruct, Beneficiary may receive and apply the loan proceeds to the principal debt hereby secured, without a showing of impairment.

**2.3 ATTORNEY FEES** – To appear in and defend any action or proceeding purporting to affect the security, or the rights and powers of Beneficiary or Trustee; and to pay all costs and expenses, including cost of evidencing title and attorney fees in a reasonable sum, in any such action or proceeding in which Beneficiary or Trustee may appear.

**2.4 TAXES AND SENIOR ENCUMBERANCES** – To pay at least 10 days before delinquency: all taxes and assessments affecting the property, including water stock assessments when due, all encumbrances, charges and liens, with interest, on the property which are or appear to be senior to this Deed of Trust; and all expenses of this Deed of Trust.

**2.5 ACTS AND ADVANCES TO PROTECT THE SECURITY** – If Trustor fails to make any payment or to perform any act provided for in this Deed of Trust, then Beneficiary or Trustee may, without obligation to do so, and with or without notice or demand upon Trustor, and without releasing Trustor from any obligation under this Deed of Trust:

- a) Make or do the same to the extent either deems necessary to protect the security, Beneficiary or Trustee being authorized to enter upon the property to do so;
- b) Appear in or commence any action or proceeding purporting to affect the security, or the rights or powers of Beneficiary or Trustee;
- c) Pay, purchase, contest or settle any encumbrance, charge or lien that appears to be senior to this Deed of Trust.

In exercising the power of this provision, Beneficiary or Trustee may incur necessary expenses, including reasonable attorney fees.

Trustor to immediately pay all sums expended by Beneficiary or Trustee provided for in this Deed of Trust, with interest from date of expenditure at the same rate as the principal debt hereby secured.

**3. It is further mutually agreed that:**

**3.1 ASSIGNMENT OF DAMAGES** – Any award of damages made in connection with:

- a) Condemnation for use of or injury to the property by the public, or conveyance in lieu of condemnation; or
- b) Injury to the property by any third party;

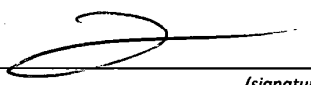
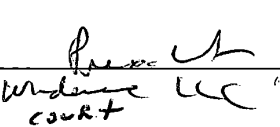
is assigned to Beneficiary, who may apply or release the proceeds of such an award in the same manner and with the same effect as above provided for the disposition of hazard insurance proceeds.

**3.2 WAIVER** – By accepting payment of any sum due after its due date, Beneficiary does not waive Beneficiary's right to either require prompt payment when due of all other sums or to declare a default for failure to pay. Beneficiary may waive a default of any agreement of this Deed of Trust, by consent or acquiescence, without waiving any prior or subsequent default.

**3.3 DUE-ON-SALE** – If Trustor decides to sell, transfer or convey any interest in the property, legal or equitable, either voluntarily or by operation of law, then Beneficiary may, at Beneficiary's option, declare all sums secured by this Deed of Trust immediately due and payable.

**3.4 ASSIGNMENT OF RENTS** – Trustor hereby assigns and transfers to Beneficiary all right, title and interest in rents generated by the property, including rents now due, past due, or to become due under any use of the property, to be applied to the obligations secured by this Deed of Trust.

- a) Prior to a default on this Deed of Trust by Trustor, Trustor will collect and retain the rents  
 b) On default by Trustor, Beneficiary will immediately be entitled to possession of all unpaid rents.
- 3.5 ACCELERATION** – If payment of any indebtedness or performance of any agreement secured by this Deed of Trust is in default, Beneficiary may at Beneficiary's option, with or without notice to Trustor, declare all sums secured immediately due and payable by:
- a) Commencing suit for their recovery or for foreclosure of this Deed of Trust  
 b) Delivering to Trustee a written notice declaring a default with demand for sale; a written Notice of Default and election to sell to be recorded by Trustee.
- 3.6 TRUSTEE'S SALE** – On default of any obligation secured by this Deed of Trust and acceleration of all sums due, Beneficiary may instruct Trustee to proceed with a sale of the secured property under the power of sale granted herein, noticed and held in accordance with California Civil Code §2924 et seq.
- 3.7 TRUSTOR'S OFFSET STATEMENT** - Within 10 days of Trustor's receipt of a written request by Beneficiary, Trustor will execute a written estoppel affidavit identifying for the benefit of any assignee or successor in interest of Beneficiary: the then owner of the secured property; the terms of the secured note, including its remaining principal balance; any taxes or assessments due on the secured property; that the secured note is valid and the Trustor received full and valid consideration for it; and that Trustor understands the note and this Deed of Trust are being assigned.
- 4. ADDENDA** – If any of the following addenda are executed by Trustor and recorded together with this Deed of Trust, the covenants and agreements of each will incorporate, amend and supplement the agreements of this Deed of Trust (check applicable boxes by hand): ☐ owner-occupancy rider; ☐ all-inclusive trust deed addendum; ☐ impounds for taxes and insurance addendum ☐ Private Mortgage Insurance (PMI) rider ☐ other:
- 5. RECONVEYANCE** – Upon written request from Beneficiary stating that all sums secured by this Deed of Trust have been paid, surrender of this Deed of Trust and the note to Trustee for cancellation, and payment of Trustee's fees, Trustee will reconvey the property held under this Deed of Trust.
- 6. SUCCESSORS, ASSIGNS AND PLEDGEES** – This Deed of Trust applies to, inures to the benefit of, and binds all parties hereto, their heirs, legatees, devisees, administrators, executors, successors and assigns. The term Beneficiary will mean the holders and owner of the secured note, or, if the note has been pledged, the pledgee.
- 7. TRUSTEE'S FORECLOSURE NOTICES** – The undersigned Trustor(s) requests a copy of any Notice of Default and of any Notice of Sale hereunder be mailed to Trustor at the address herein set forth.

Date: 9-2-19 Trustor:   President  
Gina Champion - CMAA (signature) Windemere LLC Windemere Court  
court LLC

Date: \_\_\_\_\_ Trustor: \_\_\_\_\_  
 (signature)

**Attachment A – Property Description**

Attached and incorporated into Deed of Trust and Assignment of Rents Securing Promissory Note, Dated 9-2-2019

Property Address: 737 Windemere Ct, San Diego, CA 92109

Parcel ID: 423-551-10-00

State: CA

County: San Diego

City: San Diego

Subdivision: Mission Beach

Brief Description LOT D BLK 238 TR 1809

Book: 1651

Tract Number 1809

Block 238

Lot D

Latitude 32.78838

Longitude -117.254066

Block 238 LOT D of Tract 1809 Subdivision Mission Beach, County of San Diego, State of California as shown on a map recorded in Book 1651, in the office of the County Recorder of San Diego County, California.

Property Owner: WINDEMERE COURT LLC

Mailing Address: 3515 Hancock St. Ste 200 San Diego, CA 92110

# CALIFORNIA ALL- PURPOSE CERTIFICATE OF ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California }

County of SAN DIEGO }

On 9/2/19 before me, LORI J. LEIB  
(Here insert name and title of the officer)

personally appeared GINA CHAMPION - CAIN and CHARLES MARTIN RICHARD, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

*Lori J. Leib*

Notary Public Signature

(Notary Public Seal)



## ADDITIONAL OPTIONAL INFORMATION

### DESCRIPTION OF THE ATTACHED DOCUMENT

DEED OF TRUST and ASSIGNMENT  
(Title or description of attached document)

OF REMS  
(Title or description of attached document continued)

Number of Pages 4 Document Date 9/2/2019

### CAPACITY CLAIMED BY THE SIGNER

- ☒ Individual (s)  
☒ Corporate Officer

(Title)

- ☐ Partner(s)  
☐ Attorney-in-Fact  
☐ Trustee(s)  
☐ Other \_\_\_\_\_

## INSTRUCTIONS FOR COMPLETING THIS FORM

*This form complies with current California statutes regarding notary wording and, if needed, should be completed and attached to the document. Acknowledgments from other states may be completed for documents being sent to that state so long as the wording does not require the California notary to violate California notary law.*

- State and County information must be the State and County where the document signer(s) personally appeared before the notary public for acknowledgment.
- Date of notarization must be the date that the signer(s) personally appeared which must also be the same date the acknowledgment is completed.
- The notary public must print his or her name as it appears within his or her commission followed by a comma and then your title (notary public).
- Print the name(s) of document signer(s) who personally appear at the time of notarization.
- Indicate the correct singular or plural forms by crossing off incorrect forms (i.e. he/she/they, is /are ) or circling the correct forms. Failure to correctly indicate this information may lead to rejection of document recording.
- The notary seal impression must be clear and photographically reproducible. Impression must not cover text or lines. If seal impression smudges, re-seal if a sufficient area permits, otherwise complete a different acknowledgment form.
- Signature of the notary public must match the signature on file with the office of the county clerk.
  - ❖ Additional information is not required but could help to ensure this acknowledgment is not misused or attached to a different document.
  - ❖ Indicate title or type of attached document, number of pages and date.
  - ❖ Indicate the capacity claimed by the signer. If the claimed capacity is a corporate officer, indicate the title (i.e. CEO, CFO, Secretary).
- Securely attach this document to the signed document with a staple.

**Promissory Note Secured by Deed of Trust**  
**(Page 1 of 2)**

1. For value received, ☒ I individually <sup>Winderere Court, LLC And</sup> ~~and~~ <sup>Gina Chapman-Lain</sup> ☒ We jointly and severally promise to pay to the order of Charles Riharb at 512 Vereda del Ciervo, Goleta, CA 93117 \$ 1,574,762 with interest at the rate of 6% per year: [choose one]

- ☐ from the date this note is signed until the date it is due or is paid in full, whichever date occurs last.  
☒ from the date this note is signed until the date it is paid in full.

2. The signer(s) of this note also agree that this note shall be paid in installments plus a final balloon payment at end of a 24 month term, which include principal and interest, of not less than \$1,000 per month, due on the first day of each month, with the final balloon payment of the remaining balance of principal and interest. Furthermore, payments shall be made until such time as the principal and interest are paid in full which may be less but not more than 24 months.

3. If any installment payment due under this note is not received by the holder within 5 days of its due date, the entire amount of unpaid principal shall become immediately due and payable at the option of the holder without prior notice to the signer(s) of this note.

4. All outstanding principal, together with all accrued and unpaid Interest on the unpaid principal balance of this Note and all other sums then owed with respect to this Note, will be immediately due and payable upon the sale, transfer, assignment, hypothecation, or conveyance, including bankruptcy and receivership whether voluntary, involuntary or by operation of law (a "Transfer"), of all or any part of the real property described in the Deed of Trust (the "Property"), or any interest in the Property, to any person or entity who is not the Borrower, except to the extent prohibited by law. Borrower must notify Lender promptly in writing of any transaction or event, which may give rise to a Transfer

5. If the holder(s) of this note prevail(s) in a lawsuit to collect on it, the signer(s) agree(s) to pay the holder(s)' attorney fees in an amount the court finds to be just and reasonable.

737 WINDMERE CT San Diego CA 92109 APN 423 5511000

Page 2 of 2

6. Signer(s) agree(s) that until such time as the principal and interest owed under this note are paid in full, the note shall be secured by a deed of trust to real property commonly known as <sup>count</sup>  
address 737 WINDMERE CT, San Diego CA 92109, owned by WINDMERE LLC, executed on September 2, 2019, at San Diego, San Diego County, and recorded on in the records of ~~San Diego~~ <sup>San Diego</sup> County, California.

Borrowers: Gina Champion-Cain  
+ Windmere Court LLCLenders: Charles Martin Riharb  
San Diego

9-2-19 jointly + severally;

9-2-2019

Date signed

Date signed

San Diego, CA  
Location signed (city or county)San Diego CA  
Location signed (city or county)

Borrower's Address

Borrower's Address

3515 Kneeland St.  
San Diego CA 92110Lenders 512 VERDA DE CIERVO  
San Diego CA 92117

By:

By:

Signature of Borrower Windmere LLCSignature of ~~Borrower~~ LenderGina Champion-Cain  
Gina Champion-Cain, President  
Windmere Court, LLCCharles Riharb

A Notary Public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

County of SAN DIEGO

On 9/2/2019 before me, LORI J. LEIB, personally appeared Gina Champion-Cain and Charles Martin Riharb, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

NOTARY SEAL

WITNESS my hand and official seal.

Lori J. Leib  
Signature of Notary

