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12                  *Attorneys for Plaintiffs and Counter-Defendants*

13                  **UNITED STATES DISTRICT COURT**  
14                  **CENTRAL DISTRICT OF CALIFORNIA**

15                  BENNION & DEVILLE FINE  
16                  HOMES, INC., a California  
17                  corporation, BENNION & DEVILLE  
18                  FINE HOMES SOCAL, INC., a  
19                  California corporation, WINDERMERE  
20                  SERVICES SOUTHERN  
21                  CALIFORNIA, INC., a California  
22                  corporation,

23                  Plaintiffs,

24                  v.

25                  WINDERMERE REAL ESTATE  
26                  SERVICES COMPANY, a Washington  
27                  corporation; and DOES 1-10

28                  Defendant.

29                  AND RELATED COUNTERCLAIMS

30                  Case No. 5:15-CV-01921 R (KKx)

31                  *Hon. Manual L. Real*

32                  **DECLARATION OF JOSEPH R.  
33                  DEVILLE IN SUPPORT OF  
34                  PLAINTIFFS AND COUNTER-  
35                  DEFENDANTS' MOTION FOR  
36                  PARTIAL SUMMARY JUDGMENT**

37                  Date:         November 21, 2016  
38                  Time:         10:00 a.m.  
39                  Courtroom: 8

40                  Action Filed: September 17, 2015  
41                  Pretrial Conf.: November 14, 2016  
42                  Trial:         January 31, 2017

1 I, Joseph R. "Bob" Deville, state as follows:

2 1. I am a counter-defendant in the above-named action. I am also a co-owner  
3 and President of Plaintiffs and Counter-Defendants Bennion & Deville Fine Homes, Inc.  
4 ("B&D Fine Homes"), Bennion & Deville Fine Homes SoCal, Inc. ("B&D SoCal"), and  
5 Windermere Services Southern California, Inc. ("Services SoCal") (collectively,  
6 "Plaintiffs"). Co-owner Robert Bennion ("Bennion") and I manage the day-to-day affairs  
7 of Plaintiffs and are ultimately responsible for the conduct of Plaintiffs. Plaintiffs,  
8 Bennion, and I are collectively referred to herein as the "B&D Parties."

9 2. I have created this declaration in support of the B&D Parties' Motion for  
10 Partial Summary Judgment of the First Amended Counterclaim ("FACC"). The  
11 statements in this declaration are based upon my personal knowledge, and if called as a  
12 witness, I could testify competently thereto.

13 3. I have thoroughly reviewed and am intimately familiar with the factual  
14 allegations and claims asserted by Windermere Real Estate Services Company ("WSC")  
15 in the FACC and testify as follows:

16 A. **WSC's Fourth Claim For Breach Of The Modification Agreement**

17 4. WSC's fourth claim for relief alleges that B&D Fine Homes, B&D SoCal  
18 and Services SoCal breached the Agreement Modifying Windermere Real Estate  
19 Franchise License Agreement (hereafter, the "Modification Agreement") by "failing to  
20 remain with the Windermere System for the five (5) year period mandated by the  
21 Modification Agreement." See D.E. 16, ¶ 161.

22 5. I am very familiar with the Modification Agreement, participated in its  
23 drafting and negotiation, and signed the document on December 20, 2012 on behalf of  
24 Services SoCal, B&D Fine Homes, and B&D SoCal. A true and accurate copy of the  
25 Modification Agreement is attached hereto as Exhibit A. The Modification Agreement  
26 has also been submitted to the Court as "Exhibit G" to the First Amended Complaint  
27 [D.E. 31-2], and as "Exhibit N" to the FACC [D.E. 16-14].

1           6. The section of the Modification Agreement containing the five year  
2 provision at issue in the FACC is Section 3(E).

3           7. Services SoCal is not and was never intended to be a party to Section 3(E).  
4 Instead, only B&D Fine Homes and B&D SoCal – *i.e.*, the franchisee entities – were to  
5 stay in the Windermere System for the five year period identified in Section 3(E). *See Ex.*  
6 A, § 3(E).

7           8. This was my understanding at the time the Modification Agreement was  
8 entered into and was made clear by the following language of the Modification  
9 Agreement:

- 10           a. Section 3(E) provides that “B&D covenant to remain as  
11           Windermere Real Estate franchisees for five years from the date of  
12           execution of this Agreement.”
- 13           b. Breach of Section 3(E) gives rise to the liquidated damages set  
14           forth in Section 3(F) of the Modification Agreement.
- 15           c. Section 3(F) provides that, “[i]n the event B&D terminates its  
16           franchise with WSC prior to the expiration of five years from the  
17           date of execution of this Agreement by all Parties, the waiver and  
18           [monetary concessions provided for in the Modification  
19           Agreement] shall be prorated against the total elapsed years from  
20           said date [...].”
- 21           d. The term “B&D” is expressly defined in the first paragraph of the  
22           Modification Agreement to include only B&D Fine Homes and  
23           B&D SoCal.
- 24           e. Services SoCal is not included in the definition of “B&D” and,  
25           instead, is separately defined in the opening paragraph of the  
26           Modification Agreement as the “Area Representative.”

27           (See Ex. A.)

28

1       8. Because Services SoCal was not required to stay in the Windermere System  
2 for the five year period identified in Section 3(E) of the Modification Agreement, WSC's  
3 claim that Services SoCal breached the Modification Agreement for leaving the  
4 Windermere System prior to the expiration of the five year period is without merit.

5 **B. WSC's Claimed Breach For "Tradename And Trademark Infringement"**

6       9. WSC has asserted breach of contract claims against each of the B&D Parties  
7 for allegedly misusing the Windermere name and mark on websites and in domain names  
8 following the September 30, 2015 termination of the parties' relationships. *See* FACC, ¶¶  
9 118-124, 133-139, 148-156. As explained below and in the concurrently filed declaration  
10 of Eric Forsberg, the only B&D Party to use the Windermere name and mark on websites  
11 and domain names – *at any time* – was B&D Fine Homes, not B&D SoCal, Services  
12 SoCal, Bennion or me.

13      10. Eric Forsberg is an employee of B&D Fine Homes and serves as its Director  
14 of Technology. I am very familiar with Mr. Forsberg's job duties and execution of those  
15 duties as I created the Director of Technology position for B&D Fine Homes, hired Mr.  
16 Forsberg, and he reports directly to me in my role as President of B&D Fine Homes.

17      11. Part of Mr. Forsberg's job duties include the control and maintenance of all  
18 websites owned by and registered to B&D Fine Homes and all activities on those  
19 websites. As the President and co-owner of B&D Fine Homes and supervisor of Mr.  
20 Forsberg, I am aware that all 314 domain names generally referenced by WSC in the  
21 FACC (*see* FACC, ¶ 156) – including the Windermeresocal.com website (*see* FACC, ¶¶  
22 123, 138, 153) – were owned by and registered to B&D Fine Homes only.

23      12. I am also well aware as the person responsible for the day-to-day dealings of  
24 Services SoCal and B&D SoCal that neither of these companies have ever owned or  
25 operated a website using the Windermere name or mark.

26      13. I have never personally controlled any websites or domain names, including  
27 those with the Windermere name or mark. Likewise, I know of no websites ever owned  
28 or controlled by Bennion. Bennion and I have had a close relationship for over 25 years

and served as business partners for over 20 years. If he owned any websites or domain names, I would know about it. He has not.

14. I have reviewed all of the materials provided by WSC and was personal present at all of the depositions of WSC's corporate representatives and have not seen or heard any evidence that contradicts my above statements.

15. WSC's allegations that Services SoCal, B&D SoCal, Bennion or myself ever owned or controlled any websites or domains using the Windermere name and mark is factually incorrect.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that this Declaration was executed this 24th day of October, 2016 in Rancho Mirage, California.

  
Bob Deville

# **EXHIBIT A**

## **AGREEMENT MODIFYING WINDERMERE REAL ESTATE FRANCHISE LICENSE AGREEMENTS**

This "Agreement" is entered into as of December 18, 2012 by and among Windermere Real Estate Services Company, a Washington Corporation (referred to herein as "WSC"); Windermere Services Southern California, Inc., a California corporation ("Area Representative"); Bennion & Deville Fine Homes, Inc., a California corporation dba Windermere Real Estate Coachella Valley and/or Windermere Real Estate SoCal, and Bennion & Deville Fine Homes SoCal Inc., dba Windermere Real Estate SoCal (collectively referred to herein as "B&D"). The above-named persons and/or entities are sometimes collectively referred to as "the Parties".

### **Recitals**

WSC entered into a Windermere Real Estate License Agreement with Bennion & Deville Fine Homes, Inc. dated August 1, 2001. Area Representative was not a party to that original license agreement, but was subsequently added as a party by subsequent addenda thereto.

WSC and Area Representative entered into a Windermere Real Estate Franchise License Agreement with Bennion & Deville Fine Homes SoCal, Inc., dated March 29, 2011.

These agreements, as previously amended, are hereby collectively referred to as the "License Agreements." The Parties hereto desire to modify certain terms and conditions of the License Agreements.

Wherein an individual named Gary Kruger previously filed a lawsuit in Washington State Superior Court bearing case number 05-2-34433-4 SEA naming Windermere Real Estate Northeast, Inc., George Rudiger, Joan Whittaker and Windermere Real Estate Services Company alleging misrepresentation and/or other causes of action.

Wherein subsequent to the dismissal of the aforementioned lawsuit, Mr. Kruger and/or associates of Mr. Kruger have continuously engaged in an anti-marketing campaign against Windermere Real Estate Services Company and its franchisees including the utilization of web-based information and various website postings targeting Windermere (see [www.windermerewatch.com](http://www.windermerewatch.com) and [www.windermerewatch2.com](http://www.windermerewatch2.com)).

Wherein B&D believe that Windermere Watch has resulted in significant lost revenue to B&D.

Wherein the Parties contend that Mr. Kruger and/or others' actions through the Windermere Watch websites violate State (California & Washington) and/or federal laws.

Wherein through this Agreement, the Parties further intend to modify the terms and conditions of the License Agreements, as well as that certain Promissory Note dated

**Agreement to Modify Windermere Real Estate License Agreements**

December 31, 2008 in the original principal sum of \$465,308.37, executed by Bennion & Deville Fine Homes, Inc. as Maker.

NOW, THEREFORE, for and in consideration of the promises and terms set forth herein, the undersigned Parties agree as follows:

**TERMS & CONDITIONS**

**1. Incorporation of Recitals.** The above recitals are incorporated herein by reference.

**2. Benefit of Counsel.** The Parties acknowledge that they have had the opportunity to and have in fact obtained the advice of legal counsel prior to entering into this Agreement. Each of the Parties hereto executes this Agreement with full knowledge of its significance and with the express intention of affecting its legal consequences.

**3. Consideration.** In consideration for the full and timely performance of each of the terms and conditions of this Agreement in the manner prescribed herein, the Parties agree to the following:

**A. Windermere Watch:** WSC agrees that it shall make commercially reasonable efforts to actively pursue counter-marketing, and other methods seeking to curtail the anti-marketing activities undertaken by Gary Kruger, his Associates, Windermere Watch and/or the agents of the foregoing persons. Such efforts may include litigation, at WSC's discretion. WSC shall pay all attorney's fees, costs, and other third party fees and costs associated with addressing Windermere Watch as contemplated herein. WSC shall seek input, suggestion and confer with B&D prior to taking action(s) regarding Gary Kruger and Windermere Watch. WSC covenants that it shall indemnify B&D and its directors, officers, owners and shareholders in any demand, action, proceeding, mediation, arbitration, lawsuit and/or Complaint of any nature whatsoever asserted by Gary Kruger, his Associates, Windermere Watch and/or the agents of the foregoing persons. Said indemnity includes the payment of Attorney's Fees and other costs/fees necessary to defend B&D, and its directors, officers, owners and shareholders and/or the payment of any judgment, settlement and/or award against the foregoing Parties. The indemnity shall not apply however to any claims arising from actions by B&D, or any of its shareholders, officers, directors or agents, which were not authorized in advance by WSC. B&D acknowledges that WSC has not and cannot guarantee any particular outcome of the efforts contemplated herein. The failure of WSC to eliminate windermerewatch.com shall not constitute a breach of this Agreement, so long as WSC has made commercially reasonable efforts to curtail the impact of the activities of Kruger and/or windermerewatch.

**B. Waiver of Unpaid Franchise & Technology Fees:** WSC and Area Representative hereby agree to waive and forgive Past Due Franchise Fees, and Technology Fees owing under the License Agreements in the sum total of

**Agreement to Modify Windermere Real Estate License Agreements**

\$1,151,060. A detailed breakdown of the amounts forgiven is attached as Exhibit A, and the amounts waived are summarized as follows:

(i) **Promissory Note:** Waiver and forgiveness of the complete unpaid balance remaining from original note dated December 31, 2008 including all past due fees and accrued interest with a present balance left of \$399,960.00.

(ii) **Franchise & Technology Fees for Bennion & Deville Fine Homes SoCal Inc., dba Windermere Real Estate SoCal:** Waiver and forgiveness of all Past Due Franchise and Technology Fees as well as all related charges for late fees and/or interest through March 31, 2012 in the amount of \$191,025.00 including any accrued late fees, interest and/or claims for recapture of previously discounted fees.

(iii) **Franchise & Technology Fees for Bennion & Deville Fine Homes, Inc., dba Windermere Real Estate Coachella Valley:** Waiver and forgiveness of all Past Due Franchise and Technology Fees as well as all related charges for late fees and/or interest through March 31, 2012 in the amount of \$560,075.00 including any accrued late fees, interest and/or claims for recapture of previously discounted fees.

**C. Ramp up and Payment of Fees for April 2012 through present.**

In addition, WSC and Area Representative agree to grant B&D a temporary reduction in Ongoing Franchise License Fees for a period of eight months. The "ramp up" reduction shall be applied retroactively as follows:

Months	Discount
April and May 2012	90%
June and July 2012	75%
August and September 2012	50%
October and November 2012	25%

Effective with fees for December 2012 (due in January 2013), Ongoing Franchise Fees shall revert to the full amount with no discount. WSC and Area Representative acknowledge that B&D has already paid fees for April through July 2012, inclusive, with the discounts applied. In consideration of the accommodations granted herein, B&D agrees to pay all fees for August through November 2012 to WSC and/or Area Representative no later than December 31, 2012. A detailed breakdown of the amounts owing through October is attached hereto as Exhibit A, but B&D acknowledge this does not include fees for November 2012 which have not yet been reported.

**D. Limitation & Cap Regarding Future Technology Fees:**

Bennion & Deville Fine Homes, Inc., dba Windermere Real Estate Southern  
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**Agreement to Modify Windermere Real Estate License Agreements**

California and/or Windermere Real Estate Coachella Valley and Bennion & Deville SoCal Inc., dba Windermere Real Estate SoCal collectively shall be required to pay no more than a total \$25,000 per month of Technology Fees for a period of five years from the date of execution of this Agreement by all Parties. Said fees are to be calculated on the basis of \$25.00 per Agent.

**E. Five Year Term From B&D:** In exchange for consideration contained within Sections 3, B-C inclusive, and subject to Section 3, E herein, B&D covenant to remain as Windermere Real Estate franchisees for five years from the date of execution of this Agreement by all Parties. This term shall automatically expire in the event WSC becomes insolvent, files bankruptcy, fails to maintain proper licensing as required by State and/or Federal Regulations (provided that expiration of WSC's license(s) to sell new franchises in California shall not be considered such a failure for purposes of this Agreement), sells more than 50% of its interest in WSC or assigns the day-to-day administration and/or management of WSC's activity to any other entity without approval of B&D and/or if it is adjudicated that WSC has committed a material, uncured breach of this Agreement.

**F. Liquidated Damages Clause:** In the event B&D terminates its franchise with WSC prior to the expiration of five years from the date of execution of this Agreement by all Parties, the waiver and forgiveness as set forth within Sections 3, B (i)-(iii) shall be pro-rated against the total elapsed years from said date (including any increment thereof) on a straight line basis with no additional interest and/or other accrued fees.

**G. Personal Guarantee.** WSC and Area Representative agree that neither Robert L. Bennion nor Joseph R. Deville shall be personally liable for any of the amounts forgiven and/or waived pursuant to Sections 3, B (i)-(iii) above. All prior personal guarantees of said amounts are hereby released. The personal guarantees set forth in the License Agreements, and prior addenda thereto, shall continue to apply to amounts that become due and owing under the License Agreements on or after April 1, 2012.

**4. Warranty of Non-Reliance.** Each Party hereto represents and warrants that they have selected and retained their own experts and consultants to inspect, analyze and advise them regarding the nature, extent and cause of the alleged problems which are the subject of the this Agreement. Each Party further represents and warrants that they are not relying upon any representation, opinion, conclusion, recommendation or estimate expressed by or provided by any other Party and/or any other Party's experts or consultants.

**5. Warranty of Non-Assignment.** Each Party hereto represents and warrants that it has not sold, transferred, conveyed, assigned or hypothecated any of the rights, claims, or causes of action for the payments contemplated within Section 3, B (i)-(iii) herein.

Agreement to Modify Windermere Real Estate License Agreements

6. **No Admission of Liability.** The Parties acknowledge that the execution of this Agreement restructures previous obligations as to and between the Parties but said Agreement shall at no time and in any manner to be considered as an admission of liability or responsibility on the part of any Party.

7. **Attorney's Fees.** Notwithstanding the term contained within Section 3, A herein pertaining to the payment of attorney's fees and costs regarding Gary Kruger and Windermere Watch, the Parties hereto acknowledge and agree that each of them are to bear their own costs, expenses and attorney's fees arising out of or connected with the negotiation, drafting and execution of this Agreement, except that, in the event any action is brought by any Party hereto to enforce this Agreement the prevailing Party shall be entitled to reasonable attorney's fees and costs in addition to all other relief to which the Party or those Parties may be entitled.

8. **Construction of Agreement.** This Agreement shall be construed in accordance with its fair meaning, the captions being for the convenience of the Parties only and not intended to describe or define the provision in the portions of the Agreement to which they pertain. Each Party has agreed to the use of the particular language of the provisions of this Agreement, and any question of doubtful interpretation shall not be resolved by any rule of interpretation providing for interpretation against the Party who causes an uncertainty to exist or against the draftsman. The Parties further agree that Civil Code Section 1654, or any similar common law or equitable principle, is not applicable to this Agreement. Therefore, the terms of this Agreement have been freely negotiated by the Parties and this Agreement shall not be construed against any other Party or drafter. Nothing in this Agreement shall affect in any way those certain Loan Agreements, Promissory Notes and related documents between Robert L Bennion and Joseph R. Deville as Borrowers, and CARMED, LLC or Washington Loan Company, Inc. as Lenders.

9. **Governing Law.** This Agreement is made and entered into in the State of California and shall in all respects be interpreted, enforced, and governed under the laws of the State of California. By signing this Agreement, the Parties select Riverside County Superior Court – Main in Riverside, California, and/or U.S. District Court located in Los Angeles, California as the proper and sole venue for any action filed to enforce, construe, or interpret this and/or any previous agreement(s) between the Parties.

10. **Binding Effect.** This Agreement shall be binding upon and inure to the benefit of the Parties and each of their respective heirs, executors, administrators, trustors, trustees, beneficiaries, predecessors, successors, assigns, partners, affiliates and related entities, officers, directors, principals, agents, servants, employees, representatives, and all persons, firms, associates and/or corporations connected with them including without limitation their insurers, sureties, and attorneys.

11. **Severability.** If any provision, or any part thereof, of this Agreement shall for any reason be held to be invalid, unenforceable or contrary to public policy or any law, then the remainder of this Agreement shall not be affected thereby.

Agreement to Modify Windermere Real Estate License Agreements

**12. Effective Date.** The Parties hereto deem this Agreement to be signed as of the latest day, month and year on which a Party executes this Agreement.

**13. Notices.** Communications between the parties to this agreement must be in writing and must be delivered personally, sent by first class mail, by facsimile, or by Federal Express to the following addresses:

**If to WSC:** Geoffrey P. Wood, CEO  
Windermere Real Estate Services Company  
5424 Sand Point Way NE  
Tel: (206) 527-3801  
Fax: (206) 526-7629  
E-Mail: gwood@windermere.com

**If to B&D:** Joseph R. Deville, President  
Bennion & Deville Fine Homes, Inc.  
71691 Highway 111  
Rancho Mirage, CA 92270  
Tel: (760) 770-6801  
Fax: (760) 770-6951  
E-Mail: bdeville@windermeresocal.com

A party may change the listed address by written notice to the others. Communications are effective when actually received.

**14. Counterparts.** This Agreement may be executed in several counterparts and all so executed shall constitute one agreement, which shall be binding upon all parties hereto, notwithstanding that all Parties' signatures do not appear on the same page. If an original signature is affixed by a Party to a counterpart of this Agreement, and a facsimile and/or electronic file (such as a "pdf" or "tif" file as attached to an e-mail) of such originally executed counterpart signature is thereafter telecopied or e-mailed to a Party or Parties' attorneys of record, the telecopied facsimile or e-mail shall be afforded the same validity as the originally executed counterpart, and may be relied upon by all Parties for any and all purposes relating to the Agreement.

**15. Confidentiality.** The terms of the Agreement include information of a proprietary and/or confidential nature. The Parties expressly understand and agree that it shall constitute a breach of the Agreement to disclose the terms of the same except to the Parties' attorneys and/or accountants or as may be required under a Court Order, subpoena and/or pursuant to an action to enforce the terms of the Agreement.

**16. Entire Agreement.** The Parties hereto have entered into this Agreement after extensive review and discussion. The Parties have incorporated the sum and substance of all such discussions and representations leading up to this Agreement within this document. As such, this Agreement constitutes the entire agreement to modify any previous obligations between the Parties hereto and as such, there are no other representations, agreements or promises, either written or oral, either as an inducement to

**Agreement to Modify Windermere Real Estate License Agreements**

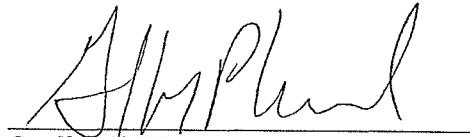
enter into this Agreement or as to its meaning or effect, which are not contained herein. It is the Parties' intent that any ambiguity or conflicting term between this Agreement and any other document or other agreement between the Parties shall be construed such that the terms within this Agreement supersede, control and take priority over any such conflicting term.

**17. Warranty of Authority.** Each individual executing this document on behalf of any Party represents that he/she has been authorized by said Party to execute this document, and does so execute this document on behalf of said Party.

**18. Amendment.** This Agreement may only be modified if the modification is in writing and is signed by the Party against whom enforcement is sought.

**Party Signatures:**

Dated: Dec. 21, 2012



Geoffrey P. Wood, CEO  
Windermere Real Estate Services Company

Dated: \_\_\_\_\_, 2012

Joseph R. Deville, President  
Bennion & Deville Fines Homes, Inc., dba  
Windermere Real Estate Coachella Valley and/or  
Windermere Real Estate SoCal; and Bennion &  
Deville Fine Homes SoCal Inc., dba Windermere  
Real Estate SoCal

Dated: \_\_\_\_\_, 2012

Robert L. Bennion, Officer  
Bennion & Deville Fines Homes, Inc., dba  
Windermere Real Estate Coachella Valley and/or  
Windermere Real Estate SoCal; and Bennion &  
Deville Fine Homes SoCal Inc., dba Windermere  
Real Estate SoCal

Dated: \_\_\_\_\_, 2012

Joseph R. Deville, President  
Windermere Services Southern California, Inc.

Agreement to Modify Windermere Real Estate License Agreements

**Approved for Form:**

Dated: Dec-21, 2012



Paul S. Drayna, WSBA#26636  
General Counsel for Windermere Real Estate  
Services Company

Dated: \_\_\_\_\_, 2012

Robert J. Sunderland, Esq.  
Sunderland | McCutchan, LLP  
Counsel for Bennion & Deville Fine Homes, Inc.,  
dba Windermere Real Estate Coachella Valley  
and/or Windermere Real Estate SoCal; and Bennion  
& Deville Fine Homes SoCal Inc., dba Windermere  
Real Estate SoCal

**Agreement to Modify Windermere Real Estate License Agreements**

**EXHIBIT A TO AGREEMENT MODIFYING FRANCHISE AGREEMENTS**

**AMOUNTS TO BE WAIVED (Through 3/31/12)**

Source	WSC	WSSC	Total
Promissory Note dated 12/31/08	\$399,960	\$0	<b>\$399,960</b>
CV Ongoing Franchise Fees	\$202,500	\$202,500	<b>\$405,000</b>
CV Technology Fees	\$155,075	\$0	<b>\$155,075</b>
<b>CV TOTAL</b>	<b>\$357,575</b>	<b>\$202,500</b>	<b>\$560,075</b>
SoCal Ongoing Franchise Fees	\$85,000	\$85,000	<b>\$170,000</b>
SoCal Technology Fees	\$21,025	\$0	<b>\$21,025</b>
<b>SOCAL TOTAL</b>	<b>\$106,025</b>	<b>\$85,000</b>	<b>\$191,025</b>
<b>TOTAL FEES TO BE WAIVED</b>	<b>\$863,560</b>	<b>\$287,500</b>	<b>\$1,151,060</b>

**AMOUNTS TO BE PAID BY 12/31/12\***

CV Ongoing Franchise Fees	\$39,375	\$39,375	\$78,750
CV Technology Fees	\$53,775	\$0	\$53,775
<b>CV TOTAL</b>	<b>\$93,150</b>	<b>\$39,375</b>	<b>\$132,525</b>
SoCal Ongoing Franchise Fees	\$17,500	\$17,500	\$35,000
SoCal Technology Fees	\$13,550	\$0	\$13,550
<b>SOCAL TOTAL</b>	<b>\$31,050</b>	<b>\$17,500</b>	<b>\$48,550</b>
<b>TOTAL DUE BY 12/31</b>	<b>\$124,200</b>	<b>\$56,875</b>	<b>\$181,075</b>

\* These figures do not include fees for November 2012, which have not yet been reported, but which are also due in full no later than 12/31/12.

**Agreement to Modify Windermere Real Estate License Agreements**

enter into this Agreement or as to its meaning or effect, which are not contained herein. It is the Parties' intent that any ambiguity or conflicting term between this Agreement and any other document or other agreement between the Parties shall be construed such that the terms within this Agreement supersede, control and take priority over any such conflicting term.

**17. Warranty of Authority.** Each individual executing this document on behalf of any Party represents that he/she has been authorized by said Party to execute this document, and does so execute this document on behalf of said Party.

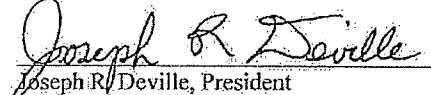
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**Party Signatures:**

Dated: \_\_\_\_\_, 2012

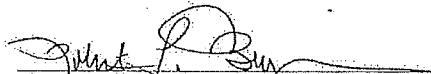
Geoffrey P. Wood, CEO  
Windermere Real Estate Services Company

Dated: 12-20, 2012

  
Joseph R. Deville, President

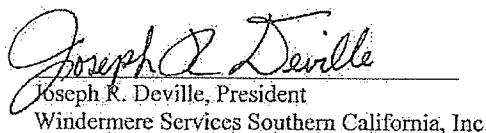
Bennion & Deville Fine Homes, Inc., dba Windermere Real Estate Coachella Valley and/or Windermere Real Estate SoCal; and Bennion & Deville Fine Homes SoCal Inc., dba Windermere Real Estate SoCal

Dated: 12-20, 2012

  
Robert L. Bennion, Officer

Bennion & Deville Fine Homes, Inc., dba Windermere Real Estate Coachella Valley and/or Windermere Real Estate SoCal; and Bennion & Deville Fine Homes SoCal Inc., dba Windermere Real Estate SoCal

Dated: 12-20, 2012

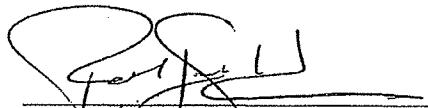
  
Joseph R. Deville, President  
Windermere Services Southern California, Inc.

Agreement to Modify Windermere Real Estate License Agreements

Approved for Form:

Dated: \_\_\_\_\_, 2012

Paul S. Drayna, WSBA#26636  
General Counsel for Windermere Real Estate  
Services Company



Dated: 21 December, 2012

Robert J. Sunderland, Esq.  
Sunderland McCutchan, LLP  
Counsel for Bennion & Deville Fine Homes, Inc.,  
dba Windermere Real Estate Coachella Valley  
and/or Windermere Real Estate SoCal; and Bennion  
& Deville Fine Homes SoCal Inc., dba Windermere  
Real Estate SoCal