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*Attorneys for Plaintiffs and Counter-Defendants*

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

BENNION & DEVILLE FINE  
HOMES, INC., a California  
corporation, BENNION & DEVILLE  
FINE HOMES SOCAL, INC., a  
California corporation, WINDERMERE  
SERVICES SOUTHERN  
CALIFORNIA, INC., a California  
corporation,

Plaintiffs,

v.

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

Defendant.

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

*Hon. Manual L. Real*

**DECLARATION OF JOSEPH R. "BOB"  
DEVILLE IN SUPPORT OF PLAINTIFFS  
AND COUNTER-DEFENDANTS'  
MOTION IN LIMINE TO PRECLUDE  
WSC FROM INTRODUCING  
EVIDENCE AND ARGUING THAT B&D  
FINE HOMES WAS OBLIGATED TO  
TRANSFER DOMAINS AND EVIDENCE  
OF EXPENSES FOR OBTAINING  
DOMAIN NAMES**

Date: May 15, 2017

Time: 10:00 a.m.

Courtroom: 880

Action Filed: September 17, 2015

Pretrial Conf.: November 14, 2016

Trial: January 31, 2017

**AND RELATED COUNTERCLAIMS**

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

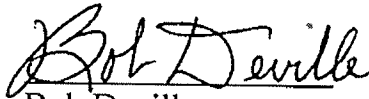
2 1. I am a counter-defendant in the above-named action. I am also a co-owner  
3 and President of Plaintiffs and Counter-Defendants Bennion & Deville Fine Homes, Inc.  
4 ("B&D Fine Homes"), Bennion & Deville Fine Homes SoCal, Inc. ("B&D SoCal"), and  
5 Windermere Services Southern California, Inc. ("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 in  
10 Limine to Preclude Windermere Real Estate Services Company from introducing any  
11 evidence, testimony, argument, or comment that B&D Fine Homes was obligated to  
12 transfer of the Windermere mark, and evidence of expenses associated with retrieving  
13 domain names. The statements in this declaration are based upon my personal  
14 knowledge, and if called as a witness, I could testify competently thereto.

15 3. On August 1, 2001, B&D Fine Homes and Windermere Real Estate  
16 Services Company ("WSC") entered into the Coachella Valley franchise agreement  
17 ("Coachella Valley FA"). A true and correct copy of the Coachella Valley FA is attached  
18 hereto as Exhibit A. The Coachella Valley FA does not require that B&D Fine Homes  
19 transfer the Windermere mark upon termination. (*See Ex. A.*)

20 4. B&D Fine Homes operated the Windermere franchise. It owned and  
21 operated several domains. These domains were not used or operated by any other entity,  
22 including the parties to this case.

23 I declare under penalty of perjury under the laws of the United States of America  
24 that the foregoing is true and correct and that this Declaration was executed this 17th day  
25 of April, 2017 in Rancho Mirage, California.

26   
27 Bob Deville  
28

# EXHIBIT A

EXHIBIT A

WINDERMERE REAL ESTATE  
LICENSE AGREEMENT

THIS AGREEMENT is made and entered into as of August 1, 2001, between WINDERMERE REAL ESTATE SERVICES COMPANY, a Washington corporation ("WSC"), and Bennion & Deville Fine Homes, Inc., dba Windermere Real Estate / Coachella Valley ("Licensee"), and Joseph R Deville and Robert L. Bennion the principals of Licensee.

RECITALS:

A. WSC is the owner of (i) the trade name "Windermere Real Estate", "Windermere", the Windermere Real Estate and related and associated trademarks, service marks and logotypes (herein collectively referred to as the "Trademark"), (ii) the standards, methods, procedures, techniques, specifications and programs developed by WSC for the establishment, operation and promotion of independently owned real estate brokerage offices, as those standards, methods, procedures, techniques, specifications and programs may be added to, changed, modified, withdrawn or otherwise revised by WSC (herein collectively referred to as the "Windermere System"), and (iii) all goodwill connected with the Trademark and the Windermere System, and WSC has the exclusive right to use and license others to use the Trademark and the Windermere System.

B. WSC has been organized and staffed to provide services to Licensee and other licensees for their mutual benefit so as to enhance the effectiveness, efficiency and profitability of operations of Licensee and other licensees.

C. WSC expressly disclaims the making of any representation, warranty or guaranty, express or implied, with respect to the revenues, profits or success of the business venture contemplated by this Agreement. Licensee acknowledges that it has not received or relied upon any such representations, warranty or guaranty, and has not received or relied on any representations concerning the license by WSC or its officers, directors, employees or agents, that are contrary to the statements made in the Offering Circular provided by WSC or to the terms of this Agreement.

D. Licensee desires to obtain and benefit from the right to use the Trademark and the Windermere System and the services to be provided by WSC under the terms set forth in this Agreement.

IN CONSIDERATION OF THE MUTUAL COVENANTS contained herein and for other good and valuable consideration, the parties agree as set forth below.

1. **Provision of Services.** WSC will provide a variety of services to Licensee for the benefit of Licensee and other licensees, designed to complement the real estate brokerage business activities of Licensee and to enhance its profitability. Except where notified in advance that a specific charge will be assessed to Licensee, all services provided by WSC shall be without additional cost and shall be included in the fee provided for in Section 5.

2. **Grant of License.** Subject to the terms and conditions specified herein, WSC hereby grants to Licensee the revocable and non-exclusive right during the term of this Agreement to use the Trademark and Windermere System in the conduct of real estate brokerage and sales activities at the following address(s):

850 N Palm Canyon Dr.

Palm Springs, CA 92262

Licensee must receive the approval and permission of WSC to open any additional branch offices or to relocate any office. Licensee agrees that during the entire term of this Agreement, including the period of notice of expiration of the term, Licensee will in good faith actively and with Licensee's best efforts engage in the real estate brokerage business using the Trademark, and will not, either directly or indirectly, (i) engage in any other competing real estate brokerage activity in this state or (ii) sell all or any part of Licensee's real estate brokerage business or operating assets (including pending sales and listings) to a person or entity engaged in the real estate brokerage business.

3. **Ownership of Trademark.** WSC expressly reserves the sole and exclusive ownership of the name and any associated trademark, service mark, logotype or trade name using the words "Windermere Real Estate", "Windermere" or any form thereof or variation thereon (the "Trademark") and the Windermere System. Licensee agrees not to use such name or any combination of the words, with or without any other word or words, as part of its corporate name or for the purpose of advertising its business, except in accordance with this Agreement, and in accordance with all approved reasonable standards of usage issued from time to time in writing by WSC. Upon request by WSC, Licensee shall cooperate fully and in good faith assist WSC to the extent necessary in the procurement of any protection of or to protect any of WSC's rights in and to the Trademark and the Windermere System or any rights pertaining thereto.

4. **Protection of Trademark.** The parties recognize the importance of the protection and maintenance of the quality image and reputation associated with the name Windermere Real Estate. In furtherance of that objective, so long as this Agreement remains in full force and effect, WSC shall approve reasonable standards of operation and service of the Licensee, including the issuance of guidelines with respect to the form, content, image and style of advertising materials including signs and signage, and the standardized use of the Trademark. Licensee agrees to conform to such standards, methods, guidelines and procedures, and agrees to instruct and keep its sales force and employees fully informed of all such methods and procedures, as shall from time to time be promulgated by WSC. Licensee acknowledges that the Trademark and the business reputation and methods employed by WSC are of considerable value, and Licensee agrees to follow all reasonable directions and recommendations made by WSC, so that the operation of Licensee's business will in no way damage the reputation of WSC, or the Trademark. If, in the judgment of WSC, it becomes necessary or desirable to modify the Trademark, Licensee will comply with the modification and will bear its own expense in connection with the modification and conversion.

Licensee must notify WSC of any challenge to Licensee's use of the Trademark. If Licensee becomes subject to a restraint on its use of the Trademark in connection with its real estate brokerage business, WSC has the right and obligation and will defend the suit at its own expense. WSC has the right to take any action, in its discretion and consistent with good business judgment to prevent infringement of the Trademark or unfair competition against Windermere licensees. If Licensee is awarded monetary recovery in any legal proceeding, WSC reserves the right to obtain reimbursement of its expenses from Licensee out of any monetary recovery awarded to Licensee as a result of WSC's intervention.

5. **License Fees.** For the services provided by WSC and for the use of the Trademark and Windermere System, Licensee agrees to pay to WSC a non-refundable initial fee in the amount of \$15,000.00 in cash upon signing this Agreement. Thereafter, Licensee agrees to pay to WSC license fees in an amount equal to five percent (5%) of the gross revenues earned and received by Licensee during the term of this Agreement, or, alternatively, in an amount equal to \$200.00 multiplied by the number of sales agents licensed to Licensee at any time during the month, depending on the geographical location of the franchise office and at WSC's discretion. Such fees shall be paid by Licensee on a monthly basis within fifteen (15) days after the close of any calendar month, or at such other convenient intervals as may be mutually agreed to by the parties. License fees not paid within ten days of the date due will be subject to a late fee equal to ten percent (10%) of the delinquent amount. License fees more than twenty days late shall bear interest thereafter at the

lower of either the highest lawful rate or eighteen percent (18%) per annum. Licensee agrees to submit such reports regarding its gross commissions as WSC may reasonably request, including complete federal income tax returns, state tax returns or filings, complete annual financial statements submitted within 90 days of Licensee's year end, and periodic interim period statements of income and expense, all prepared in accordance with generally accepted accounting principles. WSC or its designated agents shall have the right to inspect and audit the books and records of Licensee at reasonable times and upon reasonable notice. In the event any audit should disclose that Licensee has underreported gross commissions by two percent (2%) or more, then Licensee shall promptly pay to WSC the fees, costs and expenses incurred in connection with the audit.

In the event of the expiration or termination of the term of this Agreement, WSC shall be entitled to receive the fee with respect to all listings and sales pending as of the date of termination. All such post-expiration or post-termination fees shall be due and payable at the time the commissions are received or receivable by Licensee. If after the expiration or termination date of this Agreement Licensee sells any part of its operating assets including, for instance, any part of Licensee's listings and sales agreements pending as of the date of expiration or termination, Licensee shall nevertheless continue to be obligated to make payment of all post expiration or termination fees with respect to pending listings and sales as though Licensee still owned them. After the expiration or termination date Licensee shall continue to submit reports and WSC shall continue to have the right to inspect the books and records of Licensee insofar as they pertain to activities and/or revenues in connection with listings, and sales pending as of the date of expiration or termination.

6. **Term and Expiration or Termination.** The term of this Agreement begins on its date and continues until it expires or is terminated as provided in this Section. The term of this Agreement expires when either Licensee or WSC give written notice to the other party, of expiration of the term and a period of six months has elapsed from the date of the notice of expiration. Such notice must be given at least six months prior to the expiration date specified in the notice. No cause shall be required for any party to give notice of expiration of the term, it being understood and agreed that the provisions of this paragraph are to provide for an agreed method of establishing an expiration date of the term of this Agreement; consequently, whether or not there is then a breach of this Agreement or other cause or motive for an expiration notice, is irrelevant.

WSC may terminate the term of this Agreement by written notice to Licensee, on account of a material default by Licensee. Licensee shall have 15 days after notice from WSC of the default, to cure any of the following defaults, which the

parties agree are material: non-payment of fees, failure to comply with guidelines regarding the proper use of the Trademark, or failure to maintain required insurance. Licensee shall have 30 days after such notice of the default, to cure any other material default.

WSC may terminate the term of this Agreement upon written notice to Licensee and without opportunity to cure, if:

(a) There is a material default by Licensee and Licensee has had two or more prior material defaults under this Agreement, even though Licensee cured those prior defaults;

(b) Licensee is adjudicated bankrupt or insolvent;

(c) Licensee makes an assignment for the benefit of creditors or similar disposition of the assets of Licensee's business;

(d) Licensee abandons Licensee's real estate brokerage business;

(e) Licensee assigns or attempts to transfer or assign the license without the written consent of WSC; or

(f) Licensee is convicted of or pleads guilty or no contest to a charge of violation of any law relating to the regulation of Licensee's real estate brokerage business.

The term of this Agreement shall continue until it expires or it is terminated as provided in this Section.

7. **Discontinuance Upon Termination.** In the event of termination of the term of this Agreement, Licensee shall (upon termination) discontinue all use of the Trademark, the name "Windermere Real Estate", or variations of the name, including the name "Windermere", and use of the Windermere System. Without limiting the generality of the foregoing Licensee and, if Licensee is incorporated or a limited liability company, Licensee's shareholder(s) and director(s) or member(s) and/or manager(s) covenant and agree to cause the Articles of Incorporation or Certificate of Formation of Licensee to be amended to change the name of the entity if it contains the word "Windermere".

8. **Non-Transferability - Right of First Refusal.** This license is not transferable without the written consent of WSC, which consent will not unreasonably be withheld. A change of at least fifty percent (50%) of the ownership of Licensee, if Licensee is a corporation, limited liability company, or a partnership, shall be considered a transfer or assignment for purposes of this provision. This license will terminate unless



transferred to an approved transferee within six months of the death or incapacity of an individual Licensee.

In the event of (i) any proposed transfer as described in the preceding paragraph or (ii) the receipt by Licensee at any time during the term of this Agreement of a bona fide offer which Licensee desires to accept from a third party to purchase all or any portion of Licensee's operating assets without the license, WSC or its assignee shall have a right of first refusal to acquire the interest or operating assets as described herein. Licensee shall deliver to WSC a written notice setting forth all of the terms of the proposed transfer of the license (including transfer of fifty percent or more of the ownership of Licensee) or a copy of the signed offer to purchase operating assets without the license, together with all available pertinent information regarding the proposed transferee or purchaser. WSC shall have seven days after receipt of the notice or copy of the offer to give written notice to Licensee of its intent to exercise the right of first refusal on the same terms as proposed or as contained in the offer, except that WSC may substitute cash of equivalent value for any non-cash term to acquire the interest or assets. Thereafter the parties shall proceed to close the transaction on the earlier of a date six months following WSC's notice of election to exercise the right of first refusal or, if a notice of expiration of the term has previously been given, on the expiration date. It is agreed that neither an exercise of the right of first refusal by WSC or its assignee, nor in the absence of such an exercise, the acceptance by Licensee of a bona fide offer of a third party to purchase operating assets without the license, shall in any way diminish the obligation of Licensee to actively engage in the real estate brokerage business during the full term of this Agreement, including any period of notice of expiration of the term. In the event that WSC declines to exercise its right of first refusal Licensee may proceed with the contemplated transaction on the terms stated in the written notice. If the terms are revised in any material manner WSC shall have a right of refusal with respect to the modified offer and Licensee will again comply with the provisions of this Section.

9. **Relationship of Parties.** Licensee is not and shall not hold itself out as a legal representative, employee, joint venturer, partner or agent of WSC for any purpose whatsoever. Licensee is an independent contractor and is in no way authorized to make any contract, agreement, warranty or representation on behalf of WSC or to create any obligation, express or implied, on behalf of WSC.

10. **Indemnification - Insurance.** Licensee agrees to indemnify WSC from and against any and all claims made against it based upon, arising out of, or in any way related to the operation of Licensee's business including, but not limited to, any intentional act, negligent act, error or omission by Licensee

or any of its agents, employees, licensees, or independent contractors, together with all attorney's fees, costs and other expenses reasonably incurred by or on behalf of WSC in the investigation of or defense against any such claim.

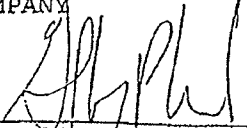
Licensee agrees to maintain and keep in force during the term of this Agreement, for the mutual benefit of WSC and the Licensee, all forms of necessary business insurance, with deductible provisions acceptable to WSC, including, but not limited to: Worker's Compensation insurance as required by law, comprehensive general liability insurance in the minimum amount of \$1,000,000, property damage insurance in the minimum amount of \$500,000; and professional liability errors and omissions insurance coverage in the minimum amount of \$250,000 per occurrence. The insurance policies shall name WSC as an additional insured. WSC reserves the right to increase from time to time the minimum required levels of insurance coverage.

11. **Costs and Attorneys' Fees.** In the event that any suit or action is instituted for breach of, to enforce or to obtain a declaration of rights under this Agreement, including but not limited to suit for preliminary injunction, the substantially prevailing party shall be entitled to be reimbursed by the non-prevailing party for all costs, including reasonable attorneys' fees, incurred in connection with such suit or action, including any appeal therefrom.

12. **Integration and Amendments.** This Agreement contains the entire agreement between WSC on the one hand, and Licensee on the other, regarding the subject matter thereof, and supersedes all prior or contemporaneous oral or written representations or agreements, which are merged into and superseded by this Agreement. Any amendments or additions to this Agreement must be in writing and signed by WSC, Licensee and all other signatories to this Agreement.

WSC:

WINDERMERE REAL ESTATE SERVICES  
COMPANY


By   
Geoffrey P. Wood  
President

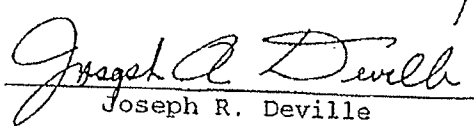
\_\_\_\_\_  
Principal (Shareholder, Partner  
or Member) of Licensee

\_\_\_\_\_  
Principal (Shareholder, Partner  
or Member) of Licensee

\_\_\_\_\_  
Principal (Shareholder, Partner  
or Member) of Licensee

LICENSEE:

\_\_\_\_\_  
By   
Robert L. Bennion

  
Joseph R. Deville

\_\_\_\_\_  
Principal (Shareholder, Partner  
or Member) of Licensee

\_\_\_\_\_  
Principal (Shareholder, Partner  
or Member) of Licensee

## AFFILIATE FEE SCHEDULE

**Licensed Designation:** Windermere Real Estate/Coachella Valley  
**Name of Office:** Palm Springs-Coachella Valley  
**Office Opening Date:** August 1, 2001

The first month for which fees are due is August, 2001. Fees are to be reported and paid by the 15<sup>th</sup> of the month following the month in which they accrue, i.e. fees for January are due by February 15th.

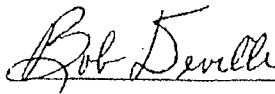
- **Technology Fee:** \$10 per month per licensed agent and agent assistant
- **Windermere License Fee Transition Discount:** 90% of monthly Gross Commission Income for first two months, 75% the second two months, 50% the third two months, 25% for the seventh and eighth month
- **Administrative Fee:** \$25 per agent per month
- **Windermere Foundation Fee:** \$7.50 per transaction side for each closed transaction

*Please note: the Transition Discount applies to monthly license fee only and declines over an 8 month period.*

Your payments should be payable to **Windermere Services Co.** and sent with your accounting information to the following address:

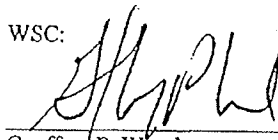
Windermere Services Co.  
5424 Sand Point Way NE  
Seattle, WA 98105  
(206/527-3801)

LICENSEE:



Partner  
Bennion & Deville Fine Homes, Inc.  
dba Windermere Real Estate/Coachella Valley

WSC:



Geoffrey P. Wood  
President  
Windermere Real Estate Services, Inc.