

1 John D. Vaughn, State Bar No. 171801  
Jeffrey A. Feasby, State Bar No. 208759  
2 Christopher W. Rowlett, State Bar No. 257357  
PEREZ VAUGHN & FEASBY Inc.  
3 600 B Street, Suite 2100  
San Diego, California 92101  
4 Telephone: 619-784-3550  
Facsimile: 619-460-0437  
5 E-Mail: [vaughn@pvflaw.com](mailto:vaughn@pvflaw.com)

6 Jeffrey L. Fillerup, State Bar No. 120543  
E-Mail: [jeff.fillerup@dentons.com](mailto:jeff.fillerup@dentons.com)  
7 Dentons US LLP  
One Market Plaza Spear Tower  
8 24th Floor  
San Francisco, California 94105  
9 Telephone: 415.356.4625  
Facsimile: 619.267.4198

10  
11 Attorneys for Defendant and Counterclaimant  
Windermere Real Estate Services Company  
12

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

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

19 Plaintiffs,

20 v.

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

23 Defendant.  
24  
25

26 **AND RELATED COUNTERCLAIMS**  
27  
28

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

Hon. Manual L. Real

**DECLARATION OF PAUL S.  
DRAYNA IN SUPPORT OF  
COUNTERCLAIMANT  
WINDERMERE REAL ESTATE  
SERVICES COMPANY'S  
OPPOSITION TO COUNTER-  
DEFENDANTS' MOTION IN  
LIMINE TO EXCLUDE EVIDENCE  
OF LOANS**

Date: May 1, 2017

Time: 10:00 a.m.

Courtroom: 880

Complaint Filed: September 17, 2015

1 I, Paul S. Drayna, declare as follows:

2 1. I am an attorney admitted to practice in all Washington state courts, as  
3 well as the United States District Court for the Western District of Washington. The  
4 statements in this declaration are based upon my personal knowledge, and if called  
5 as a witness, I could testify competently thereto.

6 2. I am General Counsel for Counterclaimant Windermere Real Estate  
7 Services Company ("WSC") in this action and I have served full-time in that  
8 position since 2007, after serving as part-time outside General Counsel since 2003.  
9 As General Counsel for WSC, I am responsible for overseeing all legal matters for  
10 WSC, including but not limited to contract negotiations and litigation. As a part of  
11 my duties, I have been involved in the negotiation of various contracts between  
12 WSC and the Counter-Defendants, Robert L. Bennion, Joseph R. Deville, Bennion  
13 & Deville Fine Homes, Inc., Windermere Services Southern California, Inc., and  
14 Bennion & Deville Fine Homes SoCal, Inc. I am the custodian of those and other of  
15 WSC's legal business records. I also have first-hand knowledge regarding the facts  
16 underlying the allegations made by the respective parties in this case. I am also  
17 familiar with the contracts between the parties, which I maintain for WSC. All of  
18 the documents attached to this declaration are maintained by me as custodian of  
19 WSC's legal and related documents.

20 3. Counter-Defendants Bennion & Deville Fine Homes, Inc. ("B&D Fines  
21 Homes") and Bennion & Deville Fine Homes SoCal, Inc. ("B&D Fine Homes  
22 SoCal") are former franchisees of WSC. Counter Defendants Robert L. Bennion  
23 ("Bennion") and Joseph R. Deville ("Deville") are principals of these former  
24 franchisees.

25 4. Attached hereto as Exhibit A is a true and correct copy of the  
26 Agreement for Forgiveness of Franchise Fees – 2006 dated August 10, 2007,  
27 between WSC, Windermere Services Southern California ("WSSC"), B&D Fines  
28 Homes, Bennion, and Deville.

1           5.     Attached hereto as Exhibit B is a true and correct copy of the  
2 Agreement for Deferral of Franchise Fees – 2007 dated August 30, 2007 between  
3 WSC, WSSC, B&D Fine Homes, Bennion, and Deville.

4           6.     Attached hereto as Exhibit C is a true and correct copy of the June 6,  
5 2011 Promissory Note – Line of Credit between Bennion, Deville, and Washington  
6 Loan Company, Inc.

7           7.     Attached hereto as Exhibit D is a true and correct copy of the  
8 December 18, 2012 Agreement Modifying Windermere Real Estate Franchise  
9 License Agreements between WSC and Counter-Defendants WSSC, B&D Fine  
10 Homes, and B&D Fine Homes SoCal (the “Modification Agreement”).

11          8.     Over the course of WSC’s relationship with Bennion and Deville and  
12 their related entities, WSC’s principals extended a number of personal loans to  
13 Bennion and Deville totaling over \$1 million. One of those loans had a balloon  
14 payment that was due on March 1, 2014. In 2014, Bennion and Deville asked to  
15 have the loan extended by three years, amortizing the balloon payment over 36  
16 monthly payments. I was involved in these negotiations. In the context of these  
17 negotiations, a number of other issues came up, including claims by Bennion and  
18 Deville that WSC had breached the Modification Agreement, and claims by WSC  
19 that B&D Fine Homes and B&D Fine Homes SoCal had improperly classified some  
20 of its offices as “satellites” as opposed to “branches” for which license fees would  
21 be due.

22     ///

23     ///

24     ///

25     ///

26     ///

27     ///

28     ///

1           9.     Attached hereto as Exhibit E is a true and correct copy of a June 3,  
2 2014 email from me to Mr. Sunderland, counsel for Bennion and Deville, which  
3 attaches a letter from Michael Teather, a representative of WSC, to Mr. Sunderland.

4           I declare under penalty of perjury under the laws of the United States of  
5 America that the forgoing is true and correct, executed this 10th day of April, 2017,  
6 at Seattle, Washington.



---

Paul S. Drayna

# EXHIBIT A





**LICENSEE:**

BENNION & DEVILLE FINE HOMES, INC.

Joseph E Devilli

By Joseph R. Deville  
Its President

## PERSONAL GUARANTY BY PRINCIPALS OF LICENSEE

The following individuals are Shareholders, Partners or Members of Licensee. Each has a financial interest in Licensee, has had the opportunity to read the Agreement to which this Personal Guaranty is attached, and acknowledges that he/she will personally benefit from the Agreement.

By signing below, each individual acknowledges that he or she is a party to this Agreement, is personally bound by its terms, and hereby unconditionally personally guarantees performance of the Original License and this Agreement by Licensee.

Robert L. Dunn

Robert L. Bennion

Date: 8-27-07

Joseph E Deville

Joseph R. Deville

Date: 8-27-07

# EXHIBIT B



## AGREEMENT FOR DEFERRAL OF FRANCHISE FEES - 2007

THIS AGREEMENT is made and entered into as of August 30, 2007 by and between WINDERMERE REAL ESTATE SERVICES COMPANY, a Washington corporation ("WSC"); WINDERMERE SERVICES SOUTHERN CALIFORNIA, INC. ("Area Representative"); Bennion & Deville Fine Homes, Inc., dba Windermere Real Estate/Coachella Valley ("Licensee"); and the individual principals of Licensee identified below.

### RECITALS

WSC and Licensee entered into a Windermere Real Estate License Agreement dated August 1, 2001 (the "Original License"), which granted Licensee permission to engage in the real estate brokerage business using the Windermere Trademark and the Windermere System.

The Original License (and any subsequent amendments thereto) requires Licensee to pay ongoing franchise License Fees and certain other Additional Fees to WSC and/or Area Representative, as consideration for Licensee's use of the Windermere Trademark and the Windermere System.

Due to financial hardship, Licensee has requested deferral of License Fees for a period of time. WSC and Area Representative are willing to grant the requested deferral fees on certain terms. Therefore, in consideration of the mutual promises and covenants set forth herein, the parties now agree as follows.

### AGREEMENT

1. Deferral of Franchise License Fees; Interest to accrue. WSC and Area Representative agree that Licensee may defer payment of franchise fees for the months of January 2007 through December 2007, inclusive. This is a temporary deferral of payment only, not a forgiveness of the amounts due, meaning that these fees must be paid in full at a later date on the terms set forth below. Fees deferred shall accrue interest at the Prime Rate as announced by Wells Fargo Bank in Seattle, Washington from the date the fees were due (the 15<sup>th</sup> day of the following month) until fully repaid. For example, fees for January 2007 shall accrue interest beginning on their due date of February 15, 2007. Unpaid interest shall be compounded (added to principal) on the last day of each month. The interest rate shall be adjusted contemporaneously with each and every adjustment to the Prime Rate announced by Wells Fargo. Licensee shall resume paying its License Fees starting with January 2008 fees, which are due and shall be paid by February 15, 2008.

FRANCHISE FEE  
DEFERRAL AGREEMENT

1

Exhibit

24

WSC 15

WITNESS: Deville  
DATE: 07/26/16  
Shari Stellhorn  
CSR No. 2807

2. Repayment. The outstanding principal and accrued interest shall be amortized over 60 months, with monthly payments of principal and interest beginning on June 30, 2008, and continuing on the last day of each month thereafter. The full remaining balance of deferred fees and interest shall be due in full on or before May 31, 2013. Notwithstanding the foregoing, if the Original License expires or is terminated for any reason before the deferred fees have been fully repaid, then all principal and interest shall be due in full immediately upon the termination or expiration of the Original License. Any amounts not paid within ten days after the expiration or termination of the Original License shall thereafter accrue interest at twelve percent per annum, or the maximum legal rate, whichever is less, until fully paid.
3. Fee reports to be submitted and all other fees to remain current. During the period of License Fee deferral, Licensee shall continue to timely submit its Monthly Statistical Report (MSR) to Area Representative, and shall timely remit in full payment of all Additional Fees (including without limitation technology fees, marketing and/or administration fees, courier and publications fees, etc.) on a monthly basis, per the Original License and any subsequent addenda thereto. If Licensee fails to submit any report, or pay any Additional Fees when due, this Deferral Agreement shall immediately terminate, and all deferred fees and accrued interest shall become immediately due and payable, with penalties and interest as provided in the Original License, as amended.
4. Windermere Foundation. During the term of this Deferral Agreement, Licensee shall continue to collect and remit contributions to the Windermere Foundation on the same basis as prior to the effective date of this Agreement. If Licensee fails to timely remit Windermere Foundation contributions this Agreement shall terminate, and all deferred fees shall become immediately due and payable with penalties and interest, as provided in the Original License, as amended.
5. Costs Advanced. From time to time, WSC and/or Area Representative may advance certain costs on behalf of Licensee. These amounts are invoiced to Licensee monthly, and are referred to as "Owner Billings." Licensee must continue to timely pay all Owner Billings in full within 60 days after invoiced by WSC and/or Area Representative. If Licensee fails to pay any Owner Billings in full when due then this Agreement shall immediately terminate, and all deferred fees plus accrued interest shall become immediately due and owing with penalties and interest, as provided in the Original License as amended.

6. As of the date hereof, the individual principals of Licensee are as follows:


Name	Percent Interest
Robert L. Bennion	50%
Joseph R. Deville	50%

This Agreement is conditioned upon its execution by all individual principals named above, in their personal capacities, confirming their agreement to be personally bound by the terms of this Agreement and to be personally liable for any breach thereof by Licensee.

#### EXECUTION

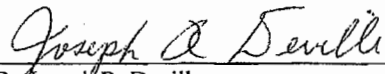
##### WSC:

WINDERMERE REAL ESTATE SERVICES COMPANY

  
 By Geoffrey P. Wood  
 Its Chief Executive Officer

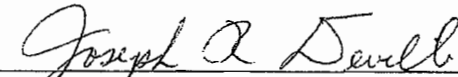
##### AREA REPRESENTATIVE

WINDERMERE SERVICES SOUTHERN CALIFORNIA, INC.

  
 By Joseph R. Deville  
 Its President

##### LICENSEE:

BENNION & DEVILLE FINE HOMES, INC.

  
 By Joseph R. Deville  
 Its President

FRANCHISE FEE  
 DEFERRAL AGREEMENT



# EXHIBIT C

PAID  
6/8/14

**PROMISSORY NOTE – LINE OF CREDIT**

**\$250,000.00**

**Seattle, WA**

**June 6, 2011**

FOR VALUE RECEIVED, Robert L. Bennion and Joseph R. Deville, two single persons, jointly and severally ("Borrower"), hereby promise to pay to the order of WASHINGTON LOAN COMPANY, INC., a Washington corporation (hereinafter, together with its successors and assigns, including each owner and holder from time to time of this Note, called "Lender"), the principal sum of up to two hundred fifty thousand dollars and zero cents (\$250,000.00), together with interest on the unpaid principal balance, at such interest rates and payable on such dates as provided in this Note. All payments due pursuant to this Note shall be payable in lawful currency of the United States of America at the office of Lender located at 5424 Sand Point Way NE, Seattle, WA 98105, or at such other place as the holder hereof may from time to time designate in writing, not later than 5:00 p.m. on the day when due in accordance with this Note.

**1. Certain Definitions.** As used in this Note, the following terms shall have the following meanings:

"Business Day" shall mean a day on which commercial banks are not authorized or required by law to close in Seattle, Washington.

"Loan Documents" shall mean this Note, together with the Loan Agreement, Assignment Agreement and the Security Agreement referenced below.

**2. Line of Credit.** The purpose of this Note is to establish a Line of Credit. Borrowers may borrow up to the maximum principal amount stated above by requesting draws in writing, along with such backup documentation as required by Lender to approve such draws. Lender shall maintain a ledger of all draws and payments made by Borrower, and Borrower agrees that such ledger shall represent the balance owing under this Note. Each time an additional draw is made against the Line of Credit, Lender shall generate and provide to Borrower a new payment schedule showing the payments due from Borrower.

**3. Applicable Interest Rate.** Except as otherwise specifically set forth herein, the outstanding principal balance of this Note shall bear interest from **JUNE 8, 2011** the Prime Rate as announced from time to time by Wells Fargo Bank, plus two percent (2%) per annum, adjusted quarterly on January 1, April 1, July 1 and October 1 of each year until all amounts owing under this Note have been fully repaid; PROVIDED that in no event shall the rate on this note be less than six percent (6%) per annum.

**3. Payment of the Note.** Borrower shall make payments as follows:

Start Date	End Date	Amount
July 1, 2011	February 1, 2012	Accrued interest, plus \$1,250.00 principal.
March 1, 2012	--	\$50,000 balloon

April 1, 2012	July 1, 2012	Accrued interest, plus \$1,250.00 principal.
August 1, 2012	---	\$50,000 balloon
September 1, 2012	February 1, 2012	Accrued interest, plus \$1,250.00 principal.
March 1, 2013	--	\$50,000 balloon
April 1, 2013	July 1, 2013	Accrued interest, plus \$1,250.00 principal.
August 1, 2013	---	\$50,000 balloon
September 1, 2013	April 1, 2014	Accrued interest, plus \$1,250.00 principal.
May 1, 2014	---	Final balloon payment: full remaining balance due.

All payments by Borrower shall be applied first to any and all late charges and/or costs of collection, then to interest, and any balance shall be applied to reduction of the principal balance of this Note. Payments shall be considered late if not paid on or prior to the fifth (5<sup>th</sup>) day of each month.

4. **Prepayment.** Any amount due hereunder may be prepaid without penalty.

5. **Provisions Applicable Generally.**

5.1 **Security.** This Note is secured by an Assignment Agreement and a Security Agreement of even date.

5.2 **Late Charges.** Should any payment due under this Note be delinquent, then a one-time late charge of two hundred fifty dollars (\$250.00) shall be added to the payment amount.

5.3 **Default Interest.** In the event that Borrower fails to cure any monetary or non-monetary default under this Note, or any other Loan Document within the applicable cure period, if any, then the unpaid principal balance due under the Note and all accrued interest thereon, shall thereafter accrue interest at the Default Interest Rate from the date of default until the earlier of: (i) the date the default is cured, or (ii) the date the principal and all other amounts due under the Note, the Mortgage and the other Loan Documents are paid in full. "Default Interest Rate" shall mean a rate of interest equal to the lesser of (i) twelve percent (12%) per annum, or (ii) the maximum rate payable by Borrower under applicable law.

5.4 **No Usury.** In no event shall the total amount of all charges payable under this Note or under any of the other Loan Documents which are or could be held to be in the nature of interest exceed the maximum rate permitted to be charged under applicable law. Should Lender receive any payment which is in excess of that permitted to be charged under any such applicable law, such payment shall have been, and shall be deemed to have been, made in error and shall be applied to reduction of the principal balance of this Note,

and this Note and the other Loan Documents shall be deemed to be reformed to comply with the then applicable laws. If at any time following any reduction in the interest rate payable by Borrower pursuant to this paragraph the maximum interest rate established by applicable law is increased or eliminated, then the interest rate payable hereunder shall be readjusted, to the extent permitted by applicable law, so that the total amount of interest payable hereunder shall be equal to the amount of interest which would have been paid by Borrower without giving effect to the applicable usury laws theretofore in effect. Borrower further agrees that in determining whether or not any interest payable under this Note or any of the other Loan Documents exceeds the maximum rate permitted by law, any non-principal payment (except payments specifically stated in this Note or in any other Loan Document to be "interest"), including, without limitation, prepayment fees and late charges, shall be deemed, to the extent permitted by law, to be an expense, fee, premium or penalty rather than interest.

**5.5 Acceleration.** If Borrower fails to pay when due any sum due to Lender under this Note, or any sum due under any other Loan Document, when such payment is due; or If Borrower fails to perform by the appointed time any other obligation, covenant, agreement duty or undertaking on its part to be paid or performed under this Note or any of the other Loan Documents, then Lender may at its option give Borrower written notice of default. If the default is not fully corrected by Borrower within ten (10) days after such written notice, then without further notice or opportunity to cure, at the option of Lender, the entire unpaid principal balance of this Note, together with accrued and unpaid interest and all other sums owed under this Note and the other Loan Documents shall become immediately due and payable. Neither the failure of Lender to exercise Lender's option to accelerate the indebtedness evidenced by this Note or to exercise any other right, remedy or option granted to Lender hereunder or under any other Loan Document, nor the acceptance by Lender of partial payments or partial performance, shall constitute a waiver of any such default.

**5.6 Set-off.** Borrower hereby irrevocably authorizes and directs Lender at any time, and from time to time, upon the occurrence and continuation of a default under this Note, subject to any applicable notice requirements and cure periods, without notice to Borrower and to the fullest extent permitted by law, to set off and apply any and all deposits at any time held by Lender, and other indebtedness at any time owing by Lender to or for the credit or account of Borrower, against any and all obligations of Borrower now or hereafter existing under this Note, irrespective of whether or not Lender shall have made any demand under this Note and although such obligations may be contingent or unmatured. Lender agrees promptly to notify Borrower after any such set-off and application made by Lender, provided that the failure to give such notice shall not affect the validity of such set-off and application. The rights of Lender under this paragraph are in addition to other rights and remedies (including, without limitation, other rights of set-off) which Lender may have.

**5.7 Time is of the Essence.** Time is of the essence as to all dates set forth in this Note, subject to any applicable grace period expressly provided herein; **provided, however,** that whenever any payment to be made under this Note shall be stated to be due on a day other than a Business Day, such payment may be made on the next

succeeding Business Day, and such extension of time shall in such case be included in the computation of interest payable hereunder.

**5.8 Waiver.** No provision of this Note may be waived, changed, modified or discharged without an agreement in writing signed by the party against whom enforcement of such waiver, change, modification or discharge is sought.

**5.9 Cumulative Remedies.** The remedies of Lender, as provided in this Note or in any of the other Loan Documents, shall be cumulative and concurrent, and may be pursued singly, successively, or together at the sole discretion of Lender, and may be exercised as often as occasion therefore shall occur; and the failure to exercise any such right or remedy shall in no event be construed as a waiver or release thereof. Nothing herein contained shall be construed as limiting the holder of this Note to the remedies mentioned above.

**5.10 Waiver of Presentment, Etc.** Borrower hereby waives presentment for payment, demand, protest and notice of demand, protest and nonpayment and any other notice not expressly provided for herein. No failure to accelerate the indebtedness evidenced hereby by reason of any default, acceptance of a past due installment following the expiration of any cure or reinstatement period provided by this Note, any Loan Document or applicable law, or indulgences granted from time to time shall be construed (i) as a novation of this Note or as a reinstatement of the indebtedness evidenced hereby or as a waiver of such right of acceleration or of the right of Lender thereafter to insist upon strict compliance with the terms of this Note, or (ii) to prevent the exercise of such right of acceleration or any other right granted hereunder or by the laws of the State of Washington. Borrower hereby expressly waives the benefit of any statute or rule of law or equity now provided, or which may hereafter be provided, which would produce a result contrary to or in conflict with the foregoing.

**5.11 Extension of Time, Etc.** Borrower agrees that its liability shall not be in any manner affected by any indulgence, extension of time, renewal, waiver, or modification granted or consented to by the Lender; and Borrower consents to any indulgences and all extensions of time, renewals, waivers, or modifications that may be granted by Lender with respect to the payment or other provisions of this Note, and to any substitution, exchange or release of the collateral, or any part thereof, with or without substitution, and agrees to the addition or release of any makers, endorsers, guarantors, or sureties, all whether primarily or secondarily liable, without notice to Borrower and without affecting its liability hereunder.

**5.12 Costs and Expenses.** Borrower shall reimburse Lender upon demand for the amount of all costs and expenses, including, without limitation, attorneys' fees and costs, paid or incurred in connection with the collection of any sum in default under this Note, the Mortgage or any other Loan Document, or any litigation or dispute which Lender becomes a party to or otherwise becomes involved with, which is in any way related to Lender's rights under this Note, the Mortgage or any other Loan Document, or any other action undertaken to protect Lender's rights under this Note, the Mortgage or any other Loan

Document, and such amounts shall be added to the indebtedness and secured by the lien of the Mortgage. Notwithstanding the foregoing, if any party hereto shall bring any action for any relief arising out of or related to this Note, the Mortgage or any other of the Loan Documents against the other party hereto, the party that substantially prevails in such action shall be entitled to recover reasonable attorneys' fees and all other costs allowed by the court.

**5.13 Successors And Assigns.** The obligations of Borrower hereunder shall be binding upon, and the rights and remedies of Lender hereunder shall inure to the benefit of, their respective successors, assigns, heirs, legatees, distributees and legal representatives.

**5.14 Captions.** The headings and captions of the paragraphs of this Note are included for convenience of reference only, and are not to be construed as defining, limiting or affecting in any other way, the scope or intent of the provisions of this Note.

**5.15 Governing Law.** This Note shall be construed and enforced in accordance with the laws of the State of Washington. Venue for any action arising from this Note shall be in King County Superior Court, in Seattle, Washington.

**5.16 Business Purpose.** Borrower confirms, represents and warrants that the proceeds of the Loan are to be used for business purposes only, and not for personal or household purposes.

**5.17 Credit Agreement Notice.** NOTICE: ORAL AGREEMENTS, PROMISES OR COMMITMENTS TO LEND MONEY, TO EXTEND CREDIT, TO MODIFY OR AMEND THE TERMS UNDER WHICH MONEY WAS LENT OR CREDIT WAS EXTENDED, TO RELEASE ANY GUARANTOR OR CONSIGNEE, TO FORBEAR WITH RESPECT TO THE REPAYMENT OF ANY DEBT OR THE EXERCISE OF ANY REMEDY, OR TO MAKE ANY OTHER FINANCIAL ACCOMMODATION PERTAINING TO A DEBT OR OTHER EXTENSION OF CREDIT ARE NOT ENFORCEABLE UNDER WASHINGTON LAW.

IN WITNESS WHEREOF, Borrower has executed this Note as of the date first above written.

  
Robert L. Bennion

  
Joseph R. Deville

PAID  
6/6/11

## LOAN AGREEMENT

THIS LOAN AGREEMENT is made June 6, 2011 by and between Robert L. Bennion and Joseph R. Deville, two single persons, jointly and severally ("Borrower"); and WASHINGTON LOAN COMPANY, INC., a Washington corporation, having an address at 5424 Sand Point Way NE, Seattle, WA 98105 (hereinafter "Lender"), concerning Lender's Loan to Borrower of even date.

### RECITALS

1. Borrowers are the majority stockholders of Bennion & Deville Fine Homes, Inc., a California corporation d/b/a Windermere Real Estate Coachella Valley (the "Business").
2. Borrowers have requested, and Lender has agreed to extend a line of credit to Borrowers in the principal amount of up to \$250,000.00, for purposes of start-up capital for the Business to open new locations in Southern California.

NOW THEREFORE, in consideration of the mutual covenants and agreements set forth herein, the parties agree as follows.

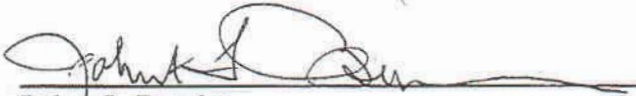
### AGREEMENT

1. Lender agrees to lend, and Borrower agrees to borrow the principal sum of up to two hundred fifty thousand dollars and zero cents (\$250,000.00).
2. Borrower agrees to execute this Agreement, along with a promissory note (the "Note"), as well as an Assignment Agreement and Security Agreement of even date. All of the foregoing shall be collectively referred to herein as the "Loan Documents," and the transactions contemplated herein shall be referred to as the "Loan."
3. As security for the Note, Borrowers agree to execute an Assignment Agreement to assign to Lender all future real estate commissions payable to Borrowers from any licensed real estate broker in any state, whether said commissions are paid to Borrowers directly, or through any third party or entity. Borrowers, together with Bennion & Deville, Inc., a Washington corporation (BDI), shall also execute a Security Agreement of even date, granting Lender a security interest in all future real estate commissions payable to Borrowers or to BDI, pursuant to Article 9 of the Uniform Commercial Code.
4. Borrowers agree that until the Loan has been fully repaid, Borrowers will meet with representatives of Lender at any time at Lender's request, and at said meetings Borrowers will provide full access to the financial statements and other accounting records of the Business.

5. Borrower confirms, represents and warrants that the proceeds of the Loan are to be deposited in an account of the Business, to be used for business purposes only, and not for personal or household purposes.
6. NOTICE: ORAL AGREEMENTS, PROMISES OR COMMITMENTS TO LEND MONEY, TO EXTEND CREDIT, TO MODIFY OR AMEND THE TERMS UNDER WHICH MONEY WAS LENT OR CREDIT WAS EXTENDED, TO RELEASE ANY GUARANTOR OR CONSIGNEE, TO FORBEAR WITH RESPECT TO THE REPAYMENT OF ANY DEBT OR THE EXERCISE OF ANY REMEDY, OR TO MAKE ANY OTHER FINANCIAL ACCOMMODATION PERTAINING TO A DEBT OR OTHER EXTENSION OF CREDIT ARE NOT ENFORCEABLE UNDER WASHINGTON LAW.
7. Complete Agreement. This Agreement, together with the other Loan Documents, constitute the sole agreement between the parties relating to the subject matter hereof and supersedes all prior understandings, writings, proposals, representations or communications, oral or written, of any party.
8. No Third Person Shall Have Any Rights Hereunder. This Agreement is made entirely for the benefit of the Borrower, the Lender and its successors in interest, and no third person shall have any rights hereunder. Neither this Agreement nor the proceeds of the loan shall be assignable without Lender's prior written consent; and any attempt at assignment without such consent shall be void. The Lender need not recognize anyone but the Borrower in dealing with the loan.
9. Attorneys' Fees. Should any complaint be filed or any claim be made arising out of the alleged breach of any of the provisions of this Agreement or for the purpose of enforcing any of its provisions, the prevailing party shall be entitled to recover its reasonable attorneys' fees from the other party as determined by the trial court. If any appeal is taken from the decision of the trial court, the prevailing party shall also be entitled to recover its additional attorneys' fees on appeal as determined by the appellate court.
10. Duty to Execute Further Necessary Documentation. The parties agree to cooperate fully and to execute all documentation that may be necessary to implement the terms of this Agreement.
11. Counterparts and Facsimile Transmissions. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, and all of which taken together shall constitute a single instrument. A signature of a party received by facsimile transmission shall be deemed an original signature, and shall have binding effect.

12. Choice of Law and Forum. This Agreement shall be interpreted in accordance with the laws of the State of Washington. Any action related to or arising from any of the Loan Documents shall be brought in King County Superior Court, State of Washington.
13. Read and Understood; Advice of Counsel. Borrower has read and fully understands this Agreement and has had the opportunity to review this Agreement with independent legal counsel with respect to its terms prior to signing. Each party further understands that this Agreement affects important legal rights, and consents hereto of his or her own free will and judgment.

BORROWERS:

  
Robert L. Bennion

  
Joseph R. Deville

## ASSIGNMENT AGREEMENT

This ASSIGNMENT AGREEMENT ("Assignment"), dated June 6, 2011, is made by Robert L. Bennion and Joseph R. Deville, two single persons, jointly and severally ("Borrowers") in favor of WASHINGTON LOAN COMPANY, INC., a Washington corporation, having an address at 5424 Sand Point Way NE, Seattle, WA 98105 (hereinafter "Lender").

### RECITALS

A. Lender has agreed to extend a line of credit to Borrower in the amount of \$250,000.00 (the "Loan"), which will be evidenced by that certain Promissory Note of even date herewith (the "Note") executed by Borrower in favor of Lender in the amount of the Loan and bearing interest and being payable as set forth therein.

B. The Loan will be secured, in part, by this Assignment, as well as by a Security Agreement of even date, all of which together with the Note and a Loan Agreement of even date constitute the "Loan Documents."

C. Borrowers are the majority stockholders of Bennion & Deville Fine Homes, Inc., a California corporation doing business as Windermere Real Estate Coachella Valley (the "Business"). The Loan is for purposes of an funding expansion of the Business, particularly in Carlsbad, CA.

D. As security for the Note, and as a material inducement to Lender to make the Loan to Borrowers, the Borrowers have agreed to assign to Lender all right, title and interest in and to the Borrowers' future real estate commissions, whether paid to them personally or through a third party or entity.

### AGREEMENT

NOW, THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Borrower hereby agrees as follows:

#### 1. DEFINITIONS.

Capitalized terms used herein shall have the respective meanings given them in the Note, unless otherwise defined herein. The term "including" shall mean "including, without limitation."

#### 2. ASSIGNMENT.

2.1. To further secure the obligations of Borrower under the Note and other Loan Documents, Borrower hereby assigns, transfers, conveys and sets over to Lender all of Borrower's right, title and interest in or to all future real estate commissions payable to Borrowers from any licensed real estate broker in any state, whether said commissions are paid to Borrowers directly, or through any third party or entity.

2.2. This Assignment is a present, absolute, unconditional and irrevocable assignment, and is not a contingent assignment. The rights of Lender in and to the documents assigned herein are not dependent upon the absence or occurrence of any event. Notwithstanding the foregoing, Lender shall take no action to enforce this Assignment unless a Default occurs under the Note, or any of the other Loan Documents, and such Default is not timely cured, if applicable.

### 3. AGREEMENTS OF BORROWER.

Borrower hereby agrees as follows:

(a) Borrower shall faithfully perform and discharge all obligations of the Borrower, and shall give prompt written notice to Lender of any notice of Borrower's default received from any other creditor and shall furnish Lender with a complete copy of said notice. Following any such notice, upon the request of Lender, Borrower shall promptly make available for inspection and audit by Lender all financial records of Borrower.

(b) Nothing herein shall be construed to impose any liability or obligation on Lender under or with respect to any third party. Borrower shall indemnify and hold Lender harmless from and against any and all liabilities, losses and damages (including attorneys' fees) that Lender may incur by reason of this Assignment, and of and from any and all claims and demands whatsoever that may be asserted against Lender by reason of any alleged obligations to be performed or discharged by Lender under this Assignment. All payments received by Lender in connection with the assigned documents may be applied by Lender in its discretion in satisfaction of any such liability, loss, damage, claim, demand, costs, expense or fees. Borrower shall appear in and defend, at no cost to Lender, any action or proceeding arising under or in any manner connected with this Agreement. If requested by Lender, Borrower shall enforce any contracts and all remedies available to Borrower against any parties obligated or indebted to Borrower.

### 4. EVENT OF DEFAULT.

The following shall constitute an Event of Default hereunder: (i) the occurrence of an Event of Default under any Loan Document; or (ii) if at any time any representation or warranty made by Borrower in this Assignment shall be or become materially incorrect; or (iii) the breach of any agreement by Borrower under this Assignment.

### 5. REMEDIES OF LENDER.

Upon the occurrence of an Event of Default, Lender shall have the rights and remedies, all of which are cumulative, as provided under the Loan Documents, or any other agreement between Borrower and Lender, or otherwise available at law or in equity of by statute.

### 6. RELEASE.

The assignment contained herein and all rights assigned to Lender shall cease and terminate upon the satisfaction of all Obligations of Borrower under the Note and other Loan Documents. Lender shall notify the Borrower when all such obligations have been fully satisfied. It is expressly

understood that no judgment or decree that may be entered on any Obligation arising under the Note or any Loan Document shall operate to abrogate or lessen the effect of this Assignment, but that the same shall continue in full force and effect as herein provided. The provisions of this Assignment shall also remain in full force and effect during the pendency of any proceedings arising from or related to the Note or other Loan Documents, unless all Obligations of Borrower have been fully satisfied. Lender may take or release other security for the Secured Obligations, may release any party primarily or secondarily liable therefor and may apply any other security held by it to the satisfaction of Secured Obligations, without prejudice to any of its rights under this Assignment.

**7. NO WAIVER.**

Nothing contained in this Assignment and no act done or omitted by Lender pursuant to the powers and rights granted it hereunder shall prejudice or be deemed to be a waiver by Lender of its rights and remedies under the Loan Documents. A waiver by Lender of its rights hereunder or of a breach of any of the covenants and agreements contained herein to be performed by Borrower shall not be construed as a waiver of such rights in any succeeding instance or of any succeeding breach of the same or other covenants, agreements, restrictions or conditions.

**8. FURTHER ASSURANCES.**

Borrower hereby agrees that it shall, whenever and as often as it shall be requested to do so by Lender, execute, acknowledge and deliver, or cause to be executed, acknowledged, and delivered, any and all such further conveyances, approvals, consents, memoranda of the subject matter hereof, duplicate originals hereof, and any and all other documents and to do any and all other acts as may be reasonably necessary or appropriate to carry out the terms of this Assignment.

**9. NOTICES.**

All notices, consents or communications permitted required under this Assignment shall be in writing and shall be deemed to have been properly given and received if sent by hand delivery, overnight carrier or U.S. Express Mail, or certified mail, postage prepaid, as specified in the Mortgage.

**10. GOVERNING LAWS; SEVERABILITY.**

This Assignment shall be governed by and construed under the laws of the State of Washington. In case any of the provisions of this Assignment shall at any time be held by a court of competent jurisdiction to be illegal, invalid, or unenforceable for any reason, such illegality, invalidity or unenforceability shall not affect the remaining provisions of this Assignment, and this Assignment shall be construed and enforced as if all such legal, invalid or unenforceable provisions had never been inserted herein.

**11. ASSIGNMENT BY LENDER.**


Lender shall have the right to assign Lender's right, title and interest under this Assignment to any subsequent holder of the Note or any participating interest therein. Any subsequent assignee shall have all the rights and powers herein provided to Lender.

**12. SUCCESSORS.**

This Assignment shall inure to the benefit of and be binding upon Borrower and Lender, and their respective heirs, successors, legal representatives and assigns.

IN WITNESS WHEREOF, Borrower has executed this Assignment as of the date first set forth above.

**BORROWERS:**

  
Robert L. Bennion

  
Joseph R. Deville

**SECURITY AGREEMENT  
ALL PERSONAL PROPERTY ASSETS**

This SECURITY AGREEMENT is made as of June 6, 2011, between Robert L. Bennion and Joseph R. Deville, two single persons, jointly and severally (collectively the "Debtor"), Bennion & Deville, Inc., a Washington corporation, and WASHINGTON LOAN COMPANY, INC., a Washington corporation (the "Secured Party").

WHEREAS, the Debtor as Maker has executed a Loan Agreement and Promissory Note of even date (together with this document collectively referred to as the "Loan Documents"), under which Debtor has borrowed certain sums from Secured Party; and

WHEREAS Bennion & Deville, Inc. is a Washington Corporation owned by Debtor (hereafter "BDI"); and

WHEREAS, as material consideration for the Secured Party's willingness to make the loan to the Debtor the Debtor has agreed to that Debtor and BDI will execute and deliver to the Secured Party a security agreement in substantially the form hereof; and

WHEREAS, the Debtor and BDI wish to grant a security interest in favor of the Secured Party as herein provided;

NOW, THEREFORE, in consideration of the promises contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Definitions. The term "State," as used herein, means the State of Washington. All terms defined in the Uniform Commercial Code of the State and used herein shall have the same definitions herein as specified therein. However, if a term is defined in Article 9 of the Uniform Commercial Code of the State differently than in another Article of the Uniform Commercial Code of the State, the term has the meaning specified in Article 9. The term "Obligations," as used herein, means all of the indebtedness, obligations and liabilities of the Debtor to the Secured Party, individually or collectively, whether direct or indirect, joint or several, absolute or contingent, due or to become due, now existing or hereafter arising under or in respect of the Loan Documents or other instruments or agreements executed and delivered pursuant thereto or in connection therewith or this Agreement, and the term "Event of Default," as used herein, means the failure of the Debtor to pay or perform any of the Obligations as and when due to be paid or performed under the terms of the Loan Documents.

2. Grant of Security Interest. The Debtor and BDI hereby grant to the Secured Party, to secure the payment and performance in full of all of the Obligations, a security interest in and so pledges and assigns to the Secured Party the following properties, assets and rights of the Debtor and BDI, wherever located, whether now owned or hereafter acquired or arising, and all proceeds and products thereof (all of the same being hereinafter called the "Collateral"): all of Borrower's right, title and interest in or to all future real estate commissions payable to Borrowers from any

licensed real estate broker in any state, whether said commissions are paid to Borrowers directly, or through any third party or entity.

3. Authorization to File Financing Statements. The Debtor and BDI hereby irrevocably authorizes the Secured Party at any time and from time to time to file in any filing office in any Uniform Commercial Code jurisdiction any initial financing statements and amendments thereto that (a) indicate the Collateral (i) as all assets of the Debtor and BDI or words of similar effect, regardless of whether any particular asset comprised in the Collateral falls within the scope of Article 9 of the Uniform Commercial Code of the State or such jurisdiction, or (ii) as being of an equal or lesser scope or with greater detail, and (b) provide any other information required by part 5 of Article 9 of the Uniform Commercial Code of the State, or such other jurisdiction, for the sufficiency or filing office acceptance of any financing statement or amendment, including (i) whether the Debtor or BDI is an organization, the type of organization and any organizational identification number issued to the Debtor or BDI and, (ii) in the case of a financing statement filed as a fixture filing or indicating Collateral as as-extracted collateral or timber to be cut, a sufficient description of real property to which the Collateral relates. The Debtor and BDI agree to furnish any such information to the Secured Party promptly upon the Secured Party's request.

4. Rights and Remedies. If an Event of Default shall have occurred and be continuing, the Secured Party, without any other notice to or demand upon the Debtor or BDI, shall have in any jurisdiction in which enforcement hereof is sought, in addition to all other rights and remedies, the rights and remedies of a secured party under the Uniform Commercial Code of the State and any additional rights and remedies which may be provided to a secured party in any jurisdiction in which Collateral is located, including, without limitation, the right to take possession of the Collateral, and for that purpose the Secured Party may, so far as the Debtor or BDI can give authority therefor, enter upon any premises on which the Collateral may be situated and remove the same therefrom. The Secured Party may in its discretion require the Debtor or BDI to assemble all or any part of the Collateral at such location or locations within the jurisdiction(s) of the Debtor's or BDI's principal office(s) or at such other locations as the Secured Party may reasonably designate. Unless the Collateral is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market, the Secured Party shall give to the Debtor or BDI at least five Business Days prior written notice of the time and place of any public sale of Collateral or of the time after which any private sale or any other intended disposition is to be made. The Debtor hereby acknowledges that five Business Days prior written notice of such sale or sales shall be reasonable notice. In addition, the Debtor and BDI waive any and all rights that it may have to a judicial hearing in advance of the enforcement of any of the Secured Party's rights and remedies hereunder, including, without limitation, its right following an Event of Default to take immediate possession of the Collateral and to exercise its rights and remedies with respect thereto.

5. No Waiver by Secured Party, etc. The Secured Party shall not be deemed to have waived any of its rights or remedies in respect of the Obligations or the Collateral unless such waiver shall be in writing and signed by the Secured Party. No delay or omission on the part of the Secured Party in exercising any right or remedy shall operate as a waiver of such right or remedy or any other right or remedy. A waiver on any one occasion shall not be construed as a bar to or waiver of any right or remedy on any future occasion. All rights and remedies of the Secured Party with respect to the Obligations or the Collateral, whether evidenced hereby or by any other instrument or

papers, shall be cumulative and may be exercised singularly, alternatively, successively or concurrently at such time or at such times as the Secured Party deems expedient.

6. Suretyship Waivers. The Debtor and BDI waive demand, notice, protest, notice of acceptance of this Agreement, notice of loans made, credit extended, Collateral received or delivered or other action taken in reliance hereon and all other demands and notices of any description. With respect to both the Obligations and the Collateral, the Debtor and BDI assents to any extension or postponement of the time of payment or any other indulgence, to any substitution, exchange or release of or failure to perfect any security interest in any Collateral, to the addition or release of any party or person primarily or secondarily liable, to the acceptance of partial payment thereon and the settlement, compromising or adjusting of any thereof, all in such manner and at such time or times as the Secured Party may deem advisable. The Secured Party shall have no duty as to the collection or protection of the Collateral or any income therefrom, the preservation of rights against prior parties, or the preservation of any rights pertaining thereto beyond the safe custody thereof as set forth in Section 11.2. The Debtor and BDI further waive any and all other suretyship defenses.


7. Proceeds of Dispositions; Expenses. The Debtor and BDI shall pay to the Secured Party on demand any and all expenses, including reasonable attorneys' fees and disbursements, incurred or paid by the Secured Party in protecting, preserving or enforcing the Secured Party's rights and remedies under or in respect of any of the Obligations or any of the Collateral. After deducting all of said expenses, the residue of any proceeds of collection or sale or other disposition of the Collateral shall, to the extent actually received in cash, be applied to the payment of the Obligations in such order or preference as the Secured Party may determine, proper allowance and provision being made for any Obligations not then due. Upon the final payment and satisfaction in full of all of the Obligations and after making any payments required by Article 9 of the Uniform Commercial Code of the State, as revised, any excess shall be returned to the Debtor. In the absence of final payment and satisfaction in full of all of the Obligations, the Debtor shall remain liable for any deficiency.

8. Overdue Amounts. Until paid, all amounts past due and payable by the Debtor hereunder shall be a debt secured by the Collateral and shall bear, whether before or after judgment, interest at the applicable judgment rate in the State.

9. Governing Law; Consent to Jurisdiction. THIS AGREEMENT IS INTENDED TO TAKE EFFECT AS A SEALED INSTRUMENT AND SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF WASHINGTON. The Debtor and BDI agree that any action or claim arising out of, or any dispute in connection with, this Agreement, any rights, remedies, obligations, or duties hereunder, or the performance or enforcement hereof or thereof, may be brought in the courts of the State or any federal court sitting therein and consents to the non-exclusive jurisdiction of such court and to service of process in any such suit being made upon the Debtor or BDI by mail at the address specified in the Loan Documents. The Debtor hereby waives any objection that it may now or hereafter have to the venue of any such suit or any such court or that such suit is brought in an inconvenient court.

10. Miscellaneous. The headings of each section of this Agreement are for convenience only and shall not define or limit the provisions thereof. This Agreement and all rights and obligations hereunder shall be binding upon the Debtor and its respective successors and assigns, and shall inure to the benefit of the Secured Party and its successors and assigns. If any term of this Agreement shall be held to be invalid, illegal or unenforceable, the validity of all other terms hereof shall in no way be affected thereby, and this Agreement shall be construed and be enforceable as if such invalid, illegal or unenforceable term had not been included herein. The Debtor and BDI acknowledge receipt of a copy of this Agreement.

IN WITNESS WHEREOF, intending to be legally bound, the Debtor has caused this Agreement to be duly executed as of the date first above written.

  
Robert L. Bennion, a single man

  
Joseph R. Deville, a single man

BENNION & DEVILLE, INC., a Washington corporation

  
Joseph R. Deville, its President

STATE OF WASHINGTON     )  
  ) ss.  
COUNTY OF KING         )

Before me, the undersigned, a Notary Public in and for the State aforesaid, on this   JUNE   day of ~~February~~ 2011, personally appeared Robert L. Bennion, and who, being by me duly sworn, each deposed and said that he is the individual named herein, and that said instrument was signed and sealed by him, and that he acknowledged said instrument to be his free and voluntary act for the purposes mentioned herein.

Print Name: \_\_\_\_\_  
Notary Public in and for the State of Washington  
Residing at \_\_\_\_\_  
My commission expires: \_\_\_\_\_

# CALIFORNIA ALL-PURPOSE CERTIFICATE OF ACKNOWLEDGMENT

State of California

County of Riverside

On June 8 2011 before me, David Lehmann Notary Public  
(Here insert name and title of the officer)

personally appeared Robert L. Bennion + Joseph R. Deville

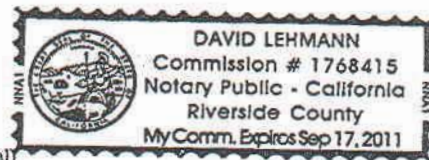
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), 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.

David Lehmann  
Signature of Notary Public

(Notary Seal)



## ADDITIONAL OPTIONAL INFORMATION

### DESCRIPTION OF THE ATTACHED DOCUMENT

(Title or description of attached document)

(Title or description of attached document continued)

Number of Pages \_\_\_\_\_ Document Date \_\_\_\_\_

(Additional information)

### CAPACITY CLAIMED BY THE SIGNER

- ☐ Individual (s)  
☐ Corporate Officer

(Title)

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

### INSTRUCTIONS FOR COMPLETING THIS FORM

Any acknowledgment completed in California must contain verbiage exactly as appears above in the notary section or a separate acknowledgment form must be properly completed and attached to that document. The only exception is if a document is to be recorded outside of California. In such instances, any alternative acknowledgment verbiage as may be printed on such a document so long as the verbiage does not require the notary to do something that is illegal for a notary in California (i.e. certifying the authorized capacity of the signer). Please check the document carefully for proper notarial wording and attach this form if required.

- 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

# EXHIBIT D

## 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 windmerewatch.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 windmerewatch.

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 Fines Homes, Inc., dba Windermere Real Estate Southern

#### 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@windermersocal.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

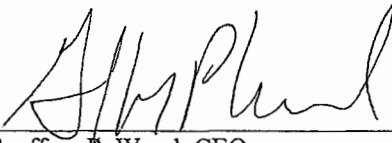
enter into this Agreement or as to its meaning or effect, which are not contained herein. It is the Parties' intent that any ambiguity or conflicting term between this Agreement and any other document or other agreement between the Parties shall be construed such that the terms within this Agreement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

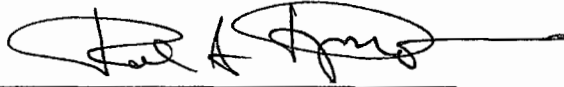
Dated: \_\_\_\_\_, 2012

\_\_\_\_\_  
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 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

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	\$399,960
CV Ongoing Franchise Fees	\$202,500	\$202,500	\$405,000
CV Technology Fees	\$155,075	\$0	\$155,075
CV TOTAL	\$357,575	\$202,500	\$560,075
SoCal Ongoing Franchise Fees	\$85,000	\$85,000	\$170,000
SoCal Technology Fees	\$21,025	\$0	\$21,025
SOCAL TOTAL	\$106,025	\$85,000	\$191,025
TOTAL FEES TO BE WAIVED	\$863,560	\$287,500	\$1,151,060

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

\* 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.

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

\_\_\_\_\_  
Geoffrey P. Wood, CEO  
Windermere Real Estate Services Company

Dated: 12-20, 2012

Joseph R. Deville  
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: 12-20, 2012

Robert L. Bennion  
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: 12-20, 2012

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

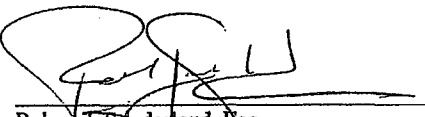
Agreement to Modify Windermere Real Estate License Agreements

**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 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

# EXHIBIT E

**Paul Drayna**

---

**From:** Paul Drayna  
**Sent:** Tuesday, June 03, 2014 12:14  
**To:** Robert Sunderland (rsunderland@sunmclaw.com)  
**Cc:** Mike Teather  
**Subject:** Amendment to promissory note  
**Attachments:** 20140603115916374.pdf; K053014 amend prom note.pdf

Robert:

Mike Teather asked me to send you the amendment to the 2009 promissory note, along with the attached cover letter from Mike. If you have any questions of course don't hesitate to call.

---

Paul S. Drayna, General Counsel  
Windermere Services Co.  
5424 Sand Point Way NE  
Seattle, WA 98105  
206.527.3801  
[pdrayna@windermere.com](mailto:pdrayna@windermere.com)

The information contained in this transmission may contain privileged and confidential information. It is intended only for the use of the person(s) named above. If you are not the intended recipient, you are hereby notified that any review, dissemination, distribution or duplication of this communication is strictly prohibited. If you are not the intended recipient, please contact the sender by reply email and destroy all copies of the original message.



June 3, 2014

Mr. Robert J. Sunderland  
Sunderland | McCutchan, LLP  
11770 Bernardo Plaza Court, Suite 250  
San Diego, CA 92128

Re: WSC / Bennion & Deville

Dear Robert:

I am writing to summarize the status of our recent discussions. I have appreciated the professional and cordial tone of our dialogue so far, in particular our meeting in person with Mr. Deville last week. I believe that all current issues have been resolved, and that a foundation has been set for better communications going forward. In the interest of avoiding misunderstandings I thought it would be helpful to summarize where I believe we stand.

1. Balloon Payment on 2009 Loan

In January 2009 your clients executed a Promissory Note and related loan documents for a loan in the original principal amount of \$501,000, from CARMED, LLC, as an emergency cash infusion for their Coachella Valley company. The loan was later transferred to JFF, LLC. The note provided that the full remaining balance of principal, interest and all other amounts was due in full no later than March 1, 2014. Your clients have requested a 36-month extension of this loan, fully amortizing the remaining balance over that period. Enclosed with this letter is a document to formally amend the note accordingly. Please have your clients sign and return this document as soon as possible.

2. Windermere Watch

In a series of communications starting in January this year both you and your clients asserted that you believed WSC had breached the terms of the agreement made in December 2012, in which WSC agreed to make commercially reasonable efforts to address the ongoing activities of Gary Kruger and his Windermere Watch web site. Your clients demanded reimbursement for sums they had spent on SEO totaling \$64,113. As a result of our discussions WSC agreed that your clients could deduct that amount as a credit from the past due franchise fees owing to WSC. Your clients ended up taking a total credit of \$85,280, which included other expenses not previously discussed. WSC agreed to this.

It is my understanding that WSC's agreement to the loan extension and the \$85,280 fee credit resolves all current issues, and that as of the date of this letter WSC is not in breach of any

Mr. Robert J. Sunderland  
June 3, 2014  
Page 2

obligations – contractual or otherwise – owed to your clients. Barring any material change in Mr. Kruger's activities, we have agreed that there is nothing further that WSC can or should be doing with regard to Windermere Watch at this time, and that your clients will bear the expense of any ongoing SEO efforts on their part without taking further credits or offsets from amounts they owe to WSC. We agreed that ongoing SEO expenses will be more than offset by the substantial discounts in both franchise and technology fees granted to your clients.

### 3. Reporting of Branches and Satellites

There were a number of offices opened in both San Diego and Coachella Valley without the prior written consent of WSC. WSC questioned whether some of these locations should be treated as full branches, and pay the monthly flat franchise fee. After our discussion last week we agreed that all locations your clients are currently reporting as satellites are indeed satellites at this time – although it is anticipated one location in San Diego will become a full branch in the near future. Thank you again for helping us to clarify this issue. WSC will send an addendum to the franchise agreements updating the list of branches and satellites for both of your clients' companies. Going forward to avoid further miscommunications in this area, we would ask that additional locations be approved in advance by WSC, as required by the franchise agreements. We would also like to list all of your clients' offices on [www.windermere.com](http://www.windermere.com). We think this is good for both them, and for us.

If this letter does not accurately summarize the status of the issues above, or if you believe there are any material issues I've omitted, please let me know. Otherwise I will look forward to continuing our discussions concerning Windermere's future in Southern California, and Mr. Deville's succession planning. Again, my sincere thanks to both you and Mr. Deville for the positive dialogue so far.

Sincerely,

WINDERMERE SERVICES CO.

577

Michael J. Teather  
Senior Vice President – Client Services

**AMENDMENT TO PROMISSORY NOTE**

**\$330,739.35**

**Seattle, WA**

**May 23, 2014**

This is an amendment to that certain Promissory Note (the "Note") dated January 13, 2009 between Robert L. Bennion and Joseph R. Deville, two single persons, jointly and severally ("Borrower"), and CARMED, LLC, a Washington limited liability company ("Lender"), in the original principal sum of five hundred one thousand dollars and zero cents (\$501,000.00).

**RECITALS**

- A. CARMED, LLC assigned the Note to JFF, LLC, a Washington limited liability company in September 2013, and since that time JFF has been and remains the Lender. Hereafter all references to "Lender" shall mean JFF, LLC, its successors and assigns.
- B. The Note provided that it was due in full no later than March 1, 2014. Borrowers have requested an extension to the Note, which Lender has agreed to grant.

Now therefore it is agreed as follows:

- 1. The last payment made by Borrowers was received on May 23, 2014. Borrowers acknowledge and agree that the remaining principal balance as of that date is \$330,739.35. Said amount shall be amortized with interest from May 23, 2014 over thirty-six (36) months. Borrower shall make monthly payments of ten thousand, two hundred, twenty-seven dollars and eighty-five cents (\$10,227.85) commencing on June 30, 2014 and continuing on the last day of each calendar month thereafter. The full remaining principal balance of this Note, together with all accrued and unpaid interest thereon, and any and all other sums due under this Note or the other Loan Documents, shall be due and payable in full on or before May 31, 2017.
- 2. Except as expressly modified herein, all terms of the Note and other Loan Documents (including without limitation the Security Agreement and Assignment Agreements dated January 13, 2009) remain unchanged, and remain in full force and effect.

BORROWER	BORROWER	LENDER
Joseph R. Deville	Robert L. Bennion	JFF, LLC By Geoffrey P. Wood Its Manager
Date:	Date:	Date: