

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: 619-702-8044
Facsimile: 619-460-0437
5 E-Mail: vaughn@pvflaw.com

6 Jeffrey L. Fillerup, State Bar No. 120543
Rincon Law LLP
7 90 New Montgomery St
Suite 1400
8 San Francisco, California 94105
Telephone: (415) 996-8199
9 Facsimile: (415) 996-8280
E-Mail: jfillerup@rinconlawllp.com

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 AND RELATED COUNTERCLAIMS
26
27
28

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

Hon. Manual L. Real

**DECLARATION OF PAUL S.
DRAYNA IN SUPPORT
DEFENDANT AND
COUNTERCLAIMANT
WINDERMERE REAL ESTATE
SERVICES COMPANY'S
MOTIONS *IN LIMINE***

Date: May 15, 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 Plaintiffs and Counter-Defendants Bennion & Deville Fine Homes, Inc.
13 ("B&D Fine Homes"), Bennion & Deville Fine Homes SoCal, Inc. ("B&D SoCal"),
14 and Windermere Services Southern California, Inc. ("WSSC") and Counter-
15 Defendants, Robert L. Bennion and Joseph R. Deville. I am the custodian of those
16 and other of WSC's legal business records. I also have first-hand knowledge
17 regarding the facts underlying the allegations in the Complaint in this action as well
18 as the allegations in WSC's Counterclaim. I am also familiar with the contracts
19 between and among the various parties, which I maintain for WSC.

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. WSSC is WSC's former area
23 representative for Southern California.

24 4. Attached hereto as Exhibit A is a true and correct copy of the May 1,
25 2004 Windermere Real Estate Services Company Area Representation Agreement
26 for the State of California (the "ARA") between WSC and WSSC.

27 ///

28 ///

1 5. Attached hereto as Exhibit B is a true and correct copy of the
2 December 18, 2012 Agreement Modifying Windermere Real Estate Franchise
3 License Agreements between WSC, WSSC, B&D Fines Homes, and B&D SoCal.

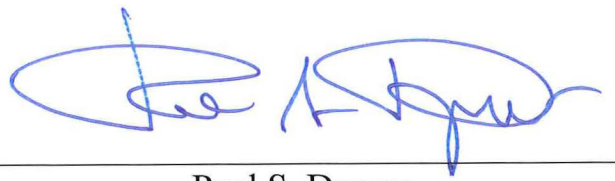
4 6. As a part of WSSC's obligations under the ARA, it was required to
5 provide WSC with its audited financial statements. These audited financial
6 statements were included with the materials that I sent to the State of California as a
7 part of the materials submitted by WSC in order to register its Franchise Disclosure
8 Documents in California. Attached hereto as Exhibit C is WSSC's audited financial
9 statement for the years 2013, 2012, and 2011.

10 7. As WSC franchisees, any new branches that B&D Fines Homes and
11 B&D SoCal sought to open were required to be approved by WSC and were to be
12 identified in an addendum to their respective franchise agreements. WSC and
13 B&D SoCal never entered into addenda regarding either B&D SoCal's Encinitas or
14 Little Italy offices. In addition, those offices were never identified by WSSC in its
15 monthly reports regarding fees owed by WSC's franchisees in Southern California,
16 and B&D SoCal never paid any fees to WSC related to those offices.

17 8. On February 18, 2014, WSC entered into an Amendment to Promissory
18 Note with Windermere Inland Empire, Inc., under which Windermere Inland
19 Empire agreed to 60 monthly payments of \$1,773.33. These payments were
20 guaranteed by Windermere Inland Empire's owners, the Kirkseys. As WSC's area
21 representative, WSSC was entitled to 50% of those payments. In the Spring of
22 2016, the Kirkseys approached me about resolving their debt by a lump-sum
23 payment for less than the total amount then outstanding. WSSC refused the
24 Kirkseys' offer. Although the Kirkseys made a payment on May 9, 2016, they have
25 not made any payments since then.

26 I declare under penalty of perjury under the laws of the United States of
27 America that the forgoing is true and correct, executed this 17th day of April, 2017,
28 at Seattle, Washington.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28



Paul S. Drayna

EXHIBIT A

original 03 Agreement

COPY

WINDERMERE REAL ESTATE SERVICES COMPANY

AREA REPRESENTATION AGREEMENT

FOR THE STATE OF CALIFORNIA

TABLE OF CONTENTS

1.	Definitions.....	1
2.	Grant of Area Representation Rights.....	2
3.	Administration of Windermere System.....	3
4.	Term and Termination.....	4
5.	Anticipated Effective Date.....	6
6.	Retention of Proprietary Interest in Name and Trademark.....	6
7.	Franchise Registration or Compliance.....	7
8.	Terms of Licensees' Agreements.....	7
9.	Area Representation Fee.....	8
10.	Payment, Collection and Allocation of License Fees...	8
11.	Administration Fee.....	8
12.	Windermere Foundation.....	8
13.	Technology Fees.....	9
14.	No Exclusive Territory.....	10
15.	Relationship of Parties.....	10
16.	No Restriction - WSC.....	11
17.	Non-Transferability / Personal Responsibility of Principals / Modifications to Organizational Documents	11
18.	Entire Agreement.....	12
21.	Attorney's Fees and Costs.....	12

AREA REPRESENTATION AGREEMENT

THIS AGREEMENT is to be effective as of the 1st day of MAY, 2004, between WINDERMERE REAL ESTATE SERVICES COMPANY, ("WSC"), a Washington Corporation with its principal place of business at 5424 Sand Point Way N.E., Seattle, Washington, 98105, and Windermere Services Southern California, Inc. ("WSSC" or "Area Representative"), a California corporation with its principal place of business at Palm Sprints, California.

RECITALS

A. WSC owns the Trademark and currently licenses real estate brokerage firms to use the Trademark. WSC desires to expand its operations and licenses into the Region and to have Area Representative offer licenses to use the Trademark in the Region and to administer and provide support and auxiliary services to Windermere licensees in the Region.

THEREFORE, the parties covenant and agree as set forth in this Agreement.

1. Definitions

1.1 "Continuing License Fees" shall refer to the ongoing percentage-based fees paid by licensees on a monthly basis.

1.2 "Gross License Fees" shall mean 100% of the license fees paid by licensees in the Region.

1.3 "Initial License Fees" shall refer to the one-time, lump sum license fees paid by licensees upon the execution of a license agreement.

1.4 "Principals" shall mean the shareholders of Area Representative which at the date of execution of this Agreement are as follows:

Name	% Ownership
Bob Deville	% 50
Bob Bennion	% 50

1.5 "Region" shall mean the State of California.

1.6 "Trademark" shall mean the trade names "Windermere Real Estate", "Windermere" and variations of those names, and all trademarks, service marks, related symbols and logotypes, owned by WSC and used in connection with real estate brokerage services and activities and licensing activities, together with all related names, marks and symbols used in connection with these activities.

1.7 "Windermere System" shall mean 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. These programs include without limitation the Windermere Foundation, Windermere Personal Marketing Programs, Premier Properties Program, Windermere Retirement Plan for Real Estate Salespersons and Windermere salesperson educational formats and outlines.

2. Grant of Area Representation Rights.

WSC hereby grants to Area Representative, and Area Representative hereby accepts the non-exclusive right to offer Windermere licenses to real estate brokerage businesses to use the Trademark and the Windermere System in the Region in accordance with the terms of the Windermere License Agreement. Area Representative agrees not to make or authorize any use, direct or indirect, of the Trademark for any other purpose or in any other manner. Licenses offered will in all cases be subject to the approval of WSC and will be granted and issued by WSC to the licensee.

Area Representative 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 Area Representative's best efforts engage in the business described herein using the Trademark, and will not, either directly or indirectly, (i) engage in any other competing activity or (ii) sell all or any part of Area Representative's business or operating assets to a person or entity engaged in a competing real estate brokerage and/or franchising business.

3. Administration of Windermere System.

WSC hereby delegates to and Area Representative hereby assumes the responsibility for the administration and supervision of the use and display of the Trademark by licensees in the Region, and of the use by them of the Windermere System in the Region and the provision of support and auxiliary services to Windermere licensees in the Region in accordance with this Agreement and the policies and guidelines enunciated from time to time by WSC. Area Representative's responsibilities will include marketing Windermere licenses in the Region; establishing and operating a training, education and professional development program for licensees under the License Agreement and for their respective salespersons; implementing the intra-system referral program; offering Windermere marketing programs and Premier Properties Programs; making available samples of Windermere forms and listing and marketing materials; administering, collecting and remitting contributions to the Windermere Foundation; monitoring licensees' compliance with the errors and omissions and general liability insurance requirements; and coordination of advertising and public relations.

In addition, Area Representative's responsibilities will include the responsibility to receive, collect, account for all license fees, administrative fees, Advertising Fund contributions, and other amounts due under license agreements in the Region, and to remit to WSC its share of such fees. It will be Area Representative's responsibility to monitor and see that its licensees in the Region comply with and conform to the policies and guidelines enunciated by WSC, including those pertaining to the use of the Trademark, the use and display of the Trademark in accordance with standard or authorized formats, the quality of the image projected by licensees and the nature, type and quality of the services offered by licensees.

Area Representative agrees to give prompt, courteous and efficient service, and to be governed by the highest ethical standards of fair dealing and honesty when dealing with the public and all members of the Windermere System in order to preserve and enhance the identity, reputation, quality image and goodwill built by WSC and the value of the Trademark. Area Representative will comply with all

applicable and valid laws and regulations in the conduct of its business.

Area Representative agrees at its expense to have and maintain during the term of this Agreement adequate personnel and resources available to market and service the Trademarks and services and administer the Windermere System in the Region in accordance with the terms and provisions of this Agreement.

WSC will provide to Area Representative initial training for its personnel and will provide servicing support in connection with the marketing, promotion and administration of the Trademark and Windermere System. Specifically, WSC will make available to Area Representative its key people to the extent necessary to assist Area Representative in carrying out its obligations as set forth in this Agreement. WSC will bear the salary costs for its personnel in connection therewith; however, travel and out of pocket expenses for WSC personnel will be reimbursed by Area Representative.

4. Term and Termination.

4.1 General. The parties approach the Transaction with optimism for its success, but recognize that its success depends on a successful and mutually consensual relationship which in turn depends on many intangibles such as philosophies of the parties and interrelationships of the principals of each party. The term of this Agreement shall commence with the "Effective Date" of the Agreement and continue until it is terminated as follows:

(a) At any time by mutual written agreement of the parties.

(b) By either party upon one hundred eighty (180) days written notice to the other party.

(c) By either party upon ninety (90) days written notice to the other party; provided that such termination shall be limited to termination for cause based upon a material breach of the Agreement described in the notice and not cured within the ninety (90) day period. The parties pledge to deal with one another in good faith and each party agrees to give the other reasonable notice and

opportunity to cure any real or perceived default or misperformance or malperformance on either party's part.

(d) By either party without giving prior notice if the other party (i) is adjudicated bankrupt or insolvent, (ii) makes an assignment for the benefit of creditors or similar disposition of the assets of its business, (iii) voluntarily abandons its Franchise or licensing business, or (iv) is (or its principals are) convicted of or pleads guilty or no contest to a charge of violating any franchise laws and regulations and/or any real estate licensing laws and regulations.

4.2 Termination Obligation. In the event either party elects to terminate the Agreement as provided in § 4.1 (b) above (the "Terminating Party"), it is agreed that the other party (the "Terminated Party") will be paid an amount equal to the fair market value of the Terminated Party's interest in the Agreement (the "Termination Obligation"), in accordance with the provisions of this Agreement. The fair market value of the Terminated Party's interest in the Agreement will be determined by mutual agreement of the parties or, if unable to reach agreement, by each party selecting an appraiser and the two appraisers selecting a third appraiser. The fair market value of the Terminated Party's interest will be determined by the appraisers without consideration of speculative factors including, specifically, future revenue. The appraisers shall look at the gross revenues received under the Transaction during the twelve months preceding the termination date from then existing licensees that remain with or affiliate with the Terminating Party. The median appraisal of the three appraisers shall determine price, and each party agrees to be bound by the determination.

There will be no Termination Obligation if the termination by the Terminating Party is made in good faith based upon the material breach of the obligations of the Terminated Party under this Agreement continuing after reasonable notice and opportunity to cure.

4.3 Payment. The Termination Obligation shall be paid in monthly installments solely from Continuing License Fees described below, until paid in full. Monthly installments in an amount equal to twenty-five percent (25%) of the Continuing License Fees, if any, received by the terminating Party from licensees in the

Region existing at the termination date and remaining with or affiliating with the Terminating Party. The monthly payments will be made on the twenty-fifth day of the month following the receipt of the revenues, commencing with the twenty-fifth day of the month following the first full calendar month after the determination of the Termination Obligation. The parties acknowledge that the Termination Obligation is not a purchase transaction but, rather, constitutes a payment of the agreed "run-off" entitlement of the Terminated Party and for tax purposes will be expensed by the Terminating Party and recognized as income by the Terminated Party. The parties acknowledge that this provision has been specifically negotiated, and both parties agree that it constitutes a reasonable and fair liquidated amount as of the date of execution of this agreement.

4.4 No Other Obligation. Except as specifically provided herein neither party will owe any obligation to the other following termination of the Agreement, except for final accounting and settlement of any previously accrued license fees, and excluding any accrued claim for damages and associated attorneys' fees and costs, or otherwise arising by law. In the event of a termination Area Representative will have no interest in the name or Trademark and will discontinue all use of the names and Trademarks, but otherwise will not be bound by any non-competition covenant.

5. Anticipated Effective Date.

The parties desire the Effective Date of the transaction contemplated by this Agreement to be January 1, 2004 and the parties will use their best efforts to comply with all legal and regulatory requirements so as to permit commencement of the Agreement on that date. In the event the parties are unable to meet that effective date it will be as soon thereafter as is possible and mutually agreed by the parties.

6. Retention of Proprietary Interest in Name and Trademark.

Exclusive ownership of the proprietary rights in and to the Windermere Real Estate tradename and Trademarks shall be retained by WSC and the use thereof by Area Representative is by the license granted by WSC under this

Agreement and shall be in accordance with the terms of this Agreement. WSC will have the sole right to file, in its own name, all state and federal trademark and service mark registrations for the Trademark. In the event of a termination of this Agreement for any reason Area Representative will change its name to a name not containing any reference to Windermere or Windermere Real Estate and will discontinue all use or reference to the tradename and Trademark.

7. Franchise Registration or Compliance.

The parties will promptly and diligently commence and pursue the preparation and filing of all Franchise registration statements, disclosure statements, or applications required under the laws of the state of California and/or the United States of America. WSC will be responsible for any registration filing fee and for all legal expenses incurred in the revision and registration of all required disclosure documents, except that Area Representative will pay the cost of its own legal services in connection with review and cooperative efforts in the registration and the preparation of this and other related agreements or documents. The parties will jointly maintain the registration or disclosure documents and all necessary amendments, updates and/or applications for renewal, each bearing their respective costs of preparation of necessary and required audited financial statements. Required audited financial statements shall be provided to WSC not later than March 1 of each year, beginning March 1, 2005.

8. Terms of Licensees' Agreements.

Licenses will be offered to licensees in the Region, other areas or jurisdictions initially for an initial fee of \$15,000.00 (which amount will be subject to prospective change by WSC) and a continuing license or royalty fee of either five percent (5%) of the gross sales commissions ("Gross Commission Income") earned and received by the licensee, or a fixed dollar amount per agent per month. In addition licensees in the Region will be required to pay additional fees as set forth in WSC's Uniform Franchise Offering Circular (UFOC) as currently on file with the State of California, and as revised from time to time.

9. Area Representation Fee.

Initial Fees. Due to the special circumstances of this offering, Area Representative will not be required to pay any initial fee for its Area Representation rights.

10. Payment, Collection and Allocation of License Fees.

The license fees (initial and continuing) as well as all additional fees will be paid by the licensees in the Region to Area Representative which will have responsibility for collecting the fees and any applicable late charges and interest and accounting for them to and for the mutual benefit and account of Area Representative and WSC. Area Representative will provide monthly reports to WSC in a form and format acceptable to WSC. WSC will have the right at reasonable times to inspect, review and copy the books and records of Area Representative. Area Representative will pay WSC 50% of the initial and continuing license fees received by it in cash from a licensee under a License Agreement, as follows. By the 22nd day of each calendar month, Area Representative will pay WSC its 50% share of fees received in cash from licensees that month. Payment will be accompanied by a report showing the source and amount of fees received by Area Representative from each licensee, and by the report provided by the licensee showing its calculation of the percentage fees remitted.

11. Administration Fee.

All licensees in the Region will pay a monthly "Administration Fee" as set forth in the UFOC, and the license agreements executed by each licensee. The Administration Fee shall be one of the additional fees collected by Area Representative and forwarded in full to WSC. WSC may in its discretion use the Administration Fees collected in the Region for any purpose in WSC's sole discretion.

12. Windermere Foundation.

All licensees in the Region and their respective licensed sales agents will participate in the Windermere Foundation program on the same basis as other WSC licensees and their respective sales agents. Area Representative

will implement the Windermere Foundation program with the licensees under this Agreement and their respective sales agents, in accordance with the written guidelines established by WSC or the Windermere Foundation from time to time and applicable and applied consistently to all WSC licensees and their respective licensed sales agents. Under the current program, each sales agent licensed with a WSC licensee contributes \$7.50 for each real estate sales transaction (listing or selling side) in which the sales agent is involved, to the Windermere Foundation. Sales transactions for which a contribution to the foundation needs to be made do not include a licensee's outgoing referral transactions. The amount of the contribution is subject to change from time to time.

WSC shall cause the Windermere Foundation to expend the contributions received by it from the Region, less a portion of the Foundation's administration expenses, on programs presented or conducted by the Windermere Foundation in the Region, in affiliation with Area Representative. The time and amount expended and the programs and location and method of presentation shall be determined by the Windermere Foundation in cooperation with WSC and Area Representative. All such activities, programs and expenditures must be consistent with the Foundation's Bylaws and Articles of Incorporation, must not disqualify the Windermere Foundation for tax exempt treatment for income tax purposes, and may not violate any other applicable state or federal laws.

13. Technology Fees

Licensees in the Region shall pay Technology Fees in an amount determined by WSC, and as disclosed in the UFOC and the license agreements executed by each licensee. Area Representative shall be responsible for collecting all Technology Fees in the region, as one of the additional fees collected by Area Representative and forwarded in full to WSC. The Technology Fee is intended to support the operation and development of WSC's technology systems, including without limitation the public web site operated at www.windermere.com, as well as the Windermere Online Resource Center Intranet system (WORC site). Area Representative acknowledges that features available in and for the Region may be limited due to the currently small number of Windermere licensees in the Region. It is anticipated that technology services available for the Region will expand with the number of licensees. However,

such expansion will be time and cost-intensive, and may require the imposition of additional or increased Technology Fees to fund such development. Area Representative agrees to cooperate with WSC in establishing and implementing a technology strategy for the Region, and in financing the development of technology tools for the Region through increased contributions from Area Representative and/or its licensees in such amounts as determined by WSC and Area Representative.

14. No Exclusive Territory.

The license granted herein is a non-exclusive license to market and service the Trademark and the Windermere System to franchisees and prospective franchisees in the Region. WSC intends to have more than one representative for the Region, and does not intend to assign any representative any particular area or territory. At the time that this Agreement is executed Area Representative has been assigned responsibility for (and the right to collect fees from) the specific franchisees identified in Exhibit A. Additional offices may be added, and offices may be transferred to other representatives, at any time by WSC in WSC's sole judgment. Area Representative agrees to cooperate with WSC in this regard.

Area Representative shall establish and maintain an office in a location to be mutually determined by Area Representative and WSC. Area Representative must receive WSC's permission before opening additional branch offices or relocating any office, but is not restricted from seeking new franchisees from any specific geographical area. Likewise, other representatives in the Region will be free to solicit new franchisees in areas serviced by Area Representative. WSC will determine in its discretion which representative will service each franchisee in the Region, and explicitly reserves the right to reassign franchisees to a different representative at any time in WSC's sole business judgment.

15. Relationship of Parties.

Area Representative will be an independent contractor responsible for exercising full control over the internal management and day-to-day operations of its business and the administration of the Windermere System in the Region. The Agreement does not and will not create a relationship

of principal and agent, joint venture or partnership. Each party will be fully responsible for its own actions and each will agree to indemnify one another for any and all liability incurred by one by virtue of or arising out of the acts of the other. Each party will agree to obtain and keep in force comprehensive general liability insurance, automobile liability insurance and any other insurance required by law, with policy limits in amounts approved by WSC.

16. No Restriction - WSC.

Nothing contained in this Agreement shall be construed to limit the freedom and flexibility of WSC to sell itself or its assets, merge or discontinue business or to liquidate or dissolve.

17. Non-Transferability / Personal Responsibility of Principals / Modifications to Organizational Documents

a. The composition, principals and management of Area Representative has been an essential factor in the determination of WSC to enter into this Agreement. Accordingly the Agreement and Area Representative's rights under the Agreement are non-transferable without the express written consent of WSC, which may be withheld in WSC's sole discretion. Any change of the ownership of Area Representative to ownership outside the group of Principals identified in §1.4 shall be considered a transfer or assignment for this purpose, and a breach of this Agreement.

b. The Principals of Area Representative identified above in §1.4 shall be at all times actively and personally involved in the operation of Area Representative's business, and shall be personally responsible for discharging all duties of the Area Representative set forth herein. In the event any individual Principal identified herein dies, becomes permanently disabled, or ceases to be actively involved in the operation of Area Representative's business, WSC may terminate this Agreement with cause.

c. A copy of Area Representative's organizational document(s) are attached hereto as Exhibit B. Said documents were reviewed and approved by WSC as a pre-condition of the granting of this Agreement, and may not be modified without WSC's prior permission. A violation of

this provision shall be grounds for WSC to terminate this Agreement with cause.

18. **Entire Agreement.**

This Agreement constitutes the entire understanding of the parties and shall be subject to modification or change only in writing and signed by all of the parties.

19. **Waiver.** The waiver of any breach or default under this Agreement will not constitute a waiver of any other right hereunder or any subsequent breach or default.

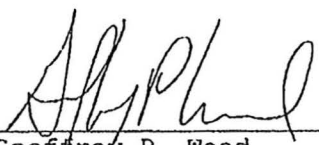
20. **Arbitration.** Except for equitable or injunctive relief involving intellectual property rights, the parties hereto shall submit any other dispute or controversy arising out of or related to this Agreement to binding arbitration before the American Arbitration Association pursuant to the rules of the American Arbitration Association. The decision by the arbitrators shall be binding and conclusive upon the parties, and they shall comply with such decision in good faith, and each party hereby submits itself to the jurisdiction of the courts of the place where the arbitration is held, but only for the entry of judgment with respect to the decision of the arbitrators hereunder. The institution of any arbitration proceeding hereunder shall not relieve either party of its obligations hereunder.

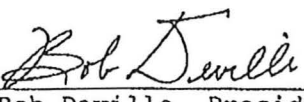
21. **Attorney's Fees and Costs.**

Should any party institute legal proceedings to enforce the terms and conditions of this Agreement or its rights hereunder, the substantially prevailing party shall be entitled to recover all of its reasonable expenses, including attorney fees, court costs and other expenses reasonably and necessarily incurred in connection with such proceedings and any appeal.

WINDERMERE REAL ESTATE
SERVICES COMPANY

AREA REPRESENTATIVE

By 
Geoffrey P. Wood
Chief Executive Officer

By 
Bob Deville, President

Date: 5/1/04

Date: 5-1-04

EXHIBIT A
LIST OF LICENSEES TO BE SERVICED BY AREA REPRESENTATIVE
AND SPECIAL FEE ARRANGEMENTS

<u>Carlsbad/San Diego</u>	Email: carlsbad@windermere.com Phone: (760) 434-4340	Carlsbad/San Diego 355 Carlsbad Village Drive Carlsbad, CA. 92008
<u>Desert Hot Springs</u>	Email: coachellavalley@windermere.com Phone: 760-329-3130	Desert Hot Springs 66337 Pierson Blvd. Desert Hot Springs, CA. 92240
<u>Escondido</u>	Email: escondido@windermere.com Phone: 760-291-1000	Escondido 100 South Escondido Blvd. Escondido, CA. 92025
<u>La Quinta</u>	Email: coachellavalley@windermere.com Phone: 760-564-9685	La Quinta 47-250 Washington Street Ste B La Quinta, CA. 92253
<u>Palm Springs</u>	Email: coachellavalley@windermere.com Phone: 760-327-3990	Palm Springs 850 N Palm Canyon Dr. Palm Springs, CA. 92262
<u>Rancho Mirage</u>	Email: coachellavalley@windermere.com Phone: 760-770-6801	Rancho Mirage 36101 Bob Hope Drive, Suite F-2 Rancho Mirage, CA. 92270
<u>Solana Beach</u>	Email: solana@windermere.com Phone: 858-794-5900	Solana Beach 514 Via de la Valle #102 Solana Beach, CA. 92075

1. San Diego Branches

Effective January 1, 2004, the San Diego offices will be part of Area Representative's Southern California (SCA) region. Windermere Services Northern California, Inc., the Area Representative for Northern California (NCA) will receive one half of license fees generated by the Carlsbad, Escondido and Solana Beach offices until it has received \$35,000 or January 1, 2006 whichever comes first. (Example: \$1,000 income -- \$500 to WSC; \$250 to Area Representative and \$250 to NCA).

2. Coachella Valley Offices Licensing Fees

Area Representative will retain fifty percent (50%) of all licensing fees generated by the Coachella Valley offices beginning January 1, 2004 with the exception of the Palm Springs office which will begin on July 1, 2004.

3. Other Initiation Fees and Licensing Fees

Area Representative and WSC will share all initiation and licensing fees equally for all future Windermere offices in the SCA region.

It is understood that collection of fees will be the responsibility of Area Representative, but Area Representative will not be responsible for payment of uncollectable fees.

4. Administrative Fee

Administrative Fees are currently assessed on a \$25.00 per agent per month basis. The Administrative Fees generated in the State of California will be applied to the region from which the fees were collected with the following exception:

4.1 For the period between 1/1/04 to 12/31/05:

- a. All NCA fees will be applied to the Stanford Cup expenses
- b. Fees generated from 89 SCA agents will be applied to Stanford Cup expenses.
- c. As of 1/1/04 the fees being applied from SCA agents to the Stanford Cup expenses will be reduced by any increase in the NCA agent base of 197. (Example: If agent base in NCA is 197 on 1/1/04 and 200 on 2/1/04, then only fees from 86 agents in SCA will be applied to the NCA Stanford expenses in February.)
- d. SCA participation in Stanford Cup expenses will never exceed 89 agents even if the NCA agent base drops below 197; therefore, the maximum SCA participation in each year would be \$26,700.

4.2 For the period 1/1/06 forward:

100% of SCA fees will be retained for SCA regardless of the NCA agent base.

4.3 Administrative Fee increases:

Administrative Fees are currently set at \$25.00. In the event SCA increases Administrative fees for any reason, 100% of any increased amount shall be retained for SCA. (Example: SCA increases fee to \$45.00: \$20 difference is retained by SCA and \$25.00 is applied to any fees being allocated to NCA.)

4.4 1/1/04: Initial SCA Administrative Fee Pool:
Starting 1/1/04, Administrative Fees from the first 89 SCA agents each month will be divided as set forth herein. Administrative Fees for any additional agents in the SCA area will be credited to the SCA Administrative Fund.

4.5 Accounting
Administrative fees accounting records will be maintained by Windermere Services (WSC). Agent numbers used will be as reported monthly to WSC on the Month End Statistical and Fee Calculation Form.

All fees are paid one month in arrears. For example, fees accrued in January 2004 were paid in February 2004. Accordingly all references in this Agreement to fees for any specified month or period shall be interpreted to mean fees accrued during such time, but paid a month later.

EXHIBIT B
AREA REPRESENTATIVE'S
APPROVED ORGANIZATIONAL DOCUMENTS

EXHIBIT B

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 and 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@windermereocal.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

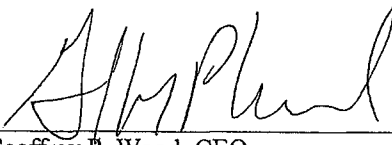
enter into this Agreement or as to its meaning or effect, which are not contained herein. It is the Parties' intent that any ambiguity or conflicting term between this Agreement and any other document or other agreement between the Parties shall be construed such that the terms within this Agreement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

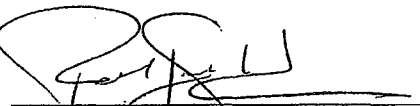
Agreement to Modify Windermere Real Estate License Agreements

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 C

WINDERMERE SERVICES SOUTHERN CALIFORNIA, INC.
FINANCIAL STATEMENTS
FOR THE YEARS ENDED DECEMBER 31, 2013, 2012 and 2011

Exhibit

61

WITNESS: Deville
DATE: 07/27/16
Shari Stelhorn
CSR No. 2807

EXHIBIT

5

tabbies

10-19-16

Shari Stelhorn

WSC 1690

TABLE OF CONTENTS

	<u>PAGE</u>
INDEPENDENT AUDITOR'S REPORT	1
FINANCIAL STATEMENTS:	
Balance sheets	3-4
Statements of operations	5
Statements of changes in stockholders' equity	6
Statements of cash flows	7
Notes to financial statements	8-10

KEITH A. VANCE
Certified Public Accountant

MEMBER
CALIFORNIA SOCIETY OF
CERTIFIED PUBLIC ACCOUNTANTS

619-427-7774
215 CHURCH AVENUE
CHULA VISTA, CALIFORNIA

INDEPENDENT AUDITOR'S REPORT

July 14, 2014

To the Board of Directors and Stockholders of
Windermere Services Southern California, Inc.

Report on the Financial Statements

I have audited the accompanying financial statements of **Windermere Services Southern California, Inc.** which comprise the balance sheets as of December 31, 2013, and 2012, and the related statements of operations, changes in stockholders' equity and cash flows for the years ended 2013, 2012, and 2011 and the related notes to the financial statements.

Management's Responsibility for the Financial Statements

Management is responsible for the preparation and fair presentation of these financial statements in accordance with accounting principles generally accepted in the United States of America; this includes the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error.

Auditor's Responsibility

My responsibility is to express an opinion on these financial statements based on my audit. I conducted my audit in accordance with auditing standards generally accepted in the United States of America. Those standards require that I plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedures selected depend on the auditor's judgment, including the assessment of the risks of material misstatement of the financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the entity's preparation and fair presentation of the financial statements in order to design audit procedures that are appropriate in the

circumstances, but not for the purpose of expressing an opinion on the effectiveness of the entity's internal control. Accordingly, I express no such opinion. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluating the overall presentation of the financial statements.

I believe that the audit evidence I have obtained is sufficient and appropriate to provide a basis for my audit opinion.

Opinion

In my opinion, the financial statements referred to above present fairly, in all material respects, the financial position of **Windermere Services Southern California, Inc.** as of December 31, 2013, 2012 and 2011 and the results of its operations and its cash flows for the years then ended in accordance with accounting principles generally accepted in the United State of America.

Keith A. Vance

WINDERMERE SERVICES SOUTHERN CALIFORNIA, INC.

Balance Sheets

December 31,

	2013	2012
ASSETS		
CURRENT ASSETS:		
Cash	\$ 816	\$ 377
Franchisees settlements	36,000	36,000
Franchisees receivables	1,976	14,168
Franchisee note receivable, related party	-	57,405
Total current assets	<u>38,792</u>	<u>107,950</u>
FURNITURE, FIXTURES, EQUIPMENT AND IMPROVEMENTS, at cost:		
Furniture, fixtures, and equipments	29,379	29,379
Leasehold improvements	<u>10,363</u>	<u>10,363</u>
	39,742	39,742
Less accumulated depreciation	<u>(32,420)</u>	<u>(30,128)</u>
	<u>7,322</u>	<u>9,614</u>
OTHER ASSETS:		
Franchisees settlements	157,000	193,000
Franchisee note receivable, related party	-	991,823
	<u>157,000</u>	<u>1,184,823</u>
TOTAL ASSETS	<u>\$ 203,114</u>	<u>\$ 1,302,387</u>

The accompanying notes are an integral part of these financial statements

WINDERMERE SERVICES SOUTHERN CALIFORNIA, INC.

Balance Sheets

December 31,

LIABILITIES AND STOCKHOLDERS' EQUITY

	<u>2013</u>	<u>2012</u>
CURRENT LIABILITIES:		
Accounts payable	\$ -	\$ 3,648
Total current liabilities	<u>-</u>	<u>3,648</u>
TOTAL LIABILITIES	<u>-</u>	<u>3,648</u>
COMMITMENTS		
STOCKHOLDERS' EQUITY:		
Common stock, \$10 par value; 1000 shares authorized, 100 shares issued and outstanding	10,000	10,000
Additional paid-in capital	77,200	77,200
Retained earnings	<u>115,914</u>	<u>1,211,539</u>
	<u>203,114</u>	<u>1,298,739</u>
TOTAL LIABILITIES AND STOCKHOLDERS' EQUITY	<u>\$ 203,114</u>	<u>\$ 1,302,387</u>

The accompanying notes are an integral part of these financial statements

WINDERMERE SERVICES SOUTHERN CALIFORNIA, INC.

Statements of Operations

For the Years Ended December 31,

	2013	Percent of Sales	2012	Percent of Sales	2011	Percent of Sales
REVENUE	\$ 105,260	100.00	\$ 99,377	100.00	\$ 106,594	100.00
EXPENSES:						
Advertising	2,289	2.17	-	0.00	13,300	12.48
Bank charges	351	0.33	813	0.82	466	0.44
Business taxes	-	0.00	1,912	1.92	800	0.75
Dues and subscriptions	260	0.25	260	0.26	699	0.66
Legal and professional fees	14,533	13.81	52,293	52.62	195,321	183.24
Meals and entertainment	-	0.00	1,389	1.40	2,922	2.74
Miscellaneous	597	0.57	391	0.39	1,180	1.11
Office salaries	52,650	50.02	97,650	98.26	119,620	112.22
Office expense	-	0.00	2,201	2.21	2,833	2.66
Payroll taxes	5,358	5.09	8,407	8.46	21,226	19.91
Payroll service fees	2,634	2.50	2,434	2.45	2,365	2.22
Postage	797	0.76	778	0.78	460	0.43
Rent	-	0.00	14,953	15.05	24,922	23.38
Telephone	4,512	4.29	5,221	5.25	3,980	3.73
Travel	2,574	2.45	4,648	4.68	6,344	5.95
Vehicle expenses	-	0.00	364	0.37	2,310	2.17
	<u>86,555</u>	<u>82.23</u>	<u>193,715</u>	<u>194.93</u>	<u>398,748</u>	<u>374.08</u>
INCOME (LOSS) FROM OPERATIONS	<u>18,705</u>	<u>17.77</u>	<u>(94,338)</u>	<u>-94.93</u>	<u>(292,154)</u>	<u>-274.08</u>
OTHER INCOME (EXPENSES):						
Officers' salaries and related payroll taxes	(129,180)	(122.72)	(129,782)	(130.60)	(129,292)	(121.29)
Owners' retreat and meeting	-	-	-	-	-	-
Depreciation and amortization	(2,295)	(2.18)	(2,295)	(2.31)	(4,279)	(4.01)
Related party debt cancellation	(966,720)	-	-	-	-	-
Interest income	30,095	28.59	60,991	61.37	90,655	85.05
Interest expense	-	0.00	-	0.00	(380)	(0.36)
	<u>(1,068,100)</u>	<u>(96.31)</u>	<u>(71,086)</u>	<u>(71.53)</u>	<u>(43,296)</u>	<u>(40.62)</u>
NET LOSS	<u>\$ (1,049,395)</u>	<u>-78.54</u>	<u>\$ (165,424)</u>	<u>-166.46</u>	<u>\$ (335,450)</u>	<u>-314.70</u>

The accompanying notes are an integral part of these financial statements

WINDERMERE SERVICES SOUTHERN CALIFORNIA, INC.

Statements of Changes in Stockholders' Equity

For the Years Ended December 31, 2013, 2012, and 2011

	Common Stock		Additional	Retained	Total
	Shares	Amount	Paid-in Capital	Earnings	Equity
BALANCE, January 1, 2011	100	\$ 10,000	\$ 77,200	\$ 1,497,211	\$ 1,584,411
Net loss	-	-	-	(335,450)	(335,450)
Contributions from stockholders	-	-	-	-	-
Distributions to stockholders	-	-	-	(10,452)	(10,452)
BALANCE, December 31, 2011	100	\$ 10,000	\$ 77,200	\$ 1,151,309	\$ 1,238,509

	Common Stock		Additional	Retained	Total
	Shares	Amount	Paid-in Capital	Earnings	Equity
BALANCE, January 1, 2012	100	\$ 10,000	\$ 77,200	\$ 1,151,309	\$ 1,238,509
Net loss	-	-	-	(162,242)	(162,242)
Contributions from stockholders	-	-	-	234,072	234,072
Distributions to stockholders	-	-	-	(11,600)	(11,600)
BALANCE, December 31, 2012	100	\$ 10,000	\$ 77,200	\$ 1,211,539	\$ 1,298,739

	Common Stock		Additional	Retained	Total
	Shares	Amount	Paid-in Capital	Earnings	Equity
BALANCE, January 1, 2013	100	\$ 10,000	\$ 77,200	\$ 1,211,539	\$ 1,298,739
Net loss	-	-	-	(1,049,395)	(1,049,395)
Contributions from stockholders	-	-	-	23,100	23,100
Distributions to stockholders	-	-	-	(69,330)	(69,330)
BALANCE, December 31, 2013	100	\$ 10,000	\$ 77,200	\$ 115,914	\$ 203,114

The accompanying notes are an integral part of these financial statements

WINDERMERE SERVICES SOUTHERN CALIFORNIA, INC.

Statements of Cash Flows

For the Years Ended December 31,

	2013	2012	2011
CASH FLOWS FROM OPERATING ACTIVITIES:			
Net loss	\$ (1,049,395)	\$ (162,242)	\$ (335,450)
ADJUSTMENTS TO RECONCILE NET INCOME TO CASH PROVIDED BY OPERATING ACTIVITIES:			
Depreciation and amortization	2,295	2,295	4,279
Related party debt cancellation	966,720	-	-
(INCREASE) DECREASE IN:			
Franchisees receivables/settlements	12,195	114,758	(3,332)
Franchisees receivables, related parties	118,502	61,325	83,374
INCREASE (DECREASE) IN:			
Accounts payable	(3,648)	(134,098)	120,692
Other payables	-	-	-
Advances, related parties	-	(29,143)	29,143
NET CASH PROVIDED (USED) BY OPERATING ACTIVITIES	46,669	(147,105)	(101,294)
CASH FLOWS FROM INVESTING ACTIVITIES:			
NET CASH PROVIDED (USED) BY INVESTING ACTIVITIES	-	-	-
CASH FLOWS FROM FINANCING ACTIVITIES:			
Loan proceeds from (to) stockholders	-	(76,100)	76,100
Contributions from stockholders	23,100	234,072	-
Distributions paid to stockholders	(69,330)	(11,600)	(10,452)
NET CASH PROVIDED (USED) BY FINANCING ACTIVITIES	(46,230)	146,372	65,648
NET INCREASE (DECREASE) IN CASH	439	(733)	(35,646)
CASH, BEGINNING OF YEAR	377	1,110	36,756
CASH, END OF YEAR	\$ 816	\$ 377	\$ 1,110
SUPPLEMENTAL DISCLOSURE OF CASH FLOW INFORMATION:			
California franchise taxes paid	\$ -	\$ 1,600	\$ 800
Interest expense	\$ -	\$ -	\$ -

The accompanying notes are an integral part of these financial statements

WINDERMERE SERVICES SOUTHERN CALIFORNIA, INC.

Notes to Financial Statements

December 31, 2013, 2012, and 2011

1. **SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES**

This summary of significant accounting policies of **Windermere Services Southern California, Inc.** (the Company) is presented to assist in understanding the Company's financial statements. The financial statements and notes are representations of the Company's management who are responsible for the integrity and objectivity of the financial statements.

Nature of Operations- **Windermere Services Southern California, Inc.** is an area representative organized to offer licenses for the use of the **Windermere Real Estate** trademark to real estate brokerages in Southern California. The Company also provides administrative, training, and technology support to the brokerages. Please refer to the license/franchise agreement for details. The Company is a California corporation formed January 1, 2004 and operates in Rancho Mirage, California.

Franchisees Receivables and Settlements- The Company provides trade credits to the affiliated brokerages. Affiliated brokerages remit fees on a monthly basis. Franchisees receivable are stated at the amount management expects to collect from outstanding balances. Management provides for probable uncollectible amounts through a charge to earnings and a credit to a valuation allowance based on its assessment of the current status of individual accounts. Balances still outstanding after management has used reasonable collection efforts are written off through a charge to the valuation allowance and a credit to franchisees receivables. All receivables and settlements were considered fully collectible as of December 31, 2013.

Property and Equipment- Property and equipment are carried at cost. Depreciation of property and equipment is provided using the straight-line method based on the following estimated useful lives:

	<u>Years</u>
Furniture and fixtures	5
Machinery and equipment	2-5
Vehicles	5
Leasehold improvements	5

Expenditures for major renewals and betterments that extend the useful lives of property and equipment are capitalized. Expenditures for maintenance and repairs are charged to expense as incurred.

WINDERMERE SERVICES SOUTHERN CALIFORNIA, INC.

Notes to Financial Statements

December 31, 2013, 2012, and 2011

1. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (continued)

Income Taxes- The Company, with consent of its stockholders, has elected to be taxed under Subchapter S of the Internal Revenue Code. In lieu of corporation income taxes, the stockholders of an S corporation are taxed on their proportionate share of the Company's taxable income. Therefore, no provision or liability for federal income taxes has been included in these financial statements. The Company's federal tax returns for 2012 through 2010 are subject to examination and generally open for examination three years after they are filed. California tax returns are subject to examination for four years after filing.

Cash and Cash Equivalents- The Company considers all short-term debt securities purchased with an original maturity of three months or less to be cash equivalents.

Use of Estimates- The preparation of financial statements in conformity with generally accepted accounting principles requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting period. Actual results could differ from those estimated.

Revenue Recognition- Initial fees related to sales of franchises are nonrefundable and therefore recognized as revenue upon receipt. Continuing royalty or license fees are based on either a flat rate basis per agent or a percentage of gross commission revenue and are recognized when earned. Initial franchise fees received were \$12,500 and \$12,500, during 2013 and 2011, respectively. No Initial franchise fees were received in 2012.

At December 31, 2013, 2 of 5 franchisees were related to the Company. Of the total franchise revenues reported in 2013, 2012, and 2011, \$9,000, \$27,750, and \$22,500 was earned from these related franchisees, respectively.

WINDERMERE SERVICES SOUTHERN CALIFORNIA, INC.

Notes to Financial Statements

December 31, 2013, 2012, and 2011

2. RELATED PARTY TRANSACTIONS

The Company receives revenues from real estate brokerage offices owned and operated by the stockholders. In 2013, 2012, and 2011 these revenues accounted for approximately 9%, 28% and 21% of the total revenues, respectively.

The Company uses office space in a real estate brokerage office owned by the stockholders doing business as a Windermere franchisee. Rent expense was \$0, \$14,953 and \$24,922 for the years ended December 31, 2013, 2012 and 2011, respectively. All future rent and overhead expenses of the company have been effectively waived and any payments representing rent and overhead will be recorded when paid without accrual.

In 2010, the Company entered into a new Franchise Revenue Deferral arrangement with the real estate offices owned and operated by the stockholders. Payments plus accrued interest began in August 2010 and will be amortized over 180 months. Interest is being charged at a rate of 5%. The balance of this agreement at December 31, 2012 and 2011 is \$1,049,228 and \$1,110,553, respectively. By agreement with the related franchisee, this debt was canceled effective August 29, 2013.