

1 ROBERT J. SUNDERLAND, SBN 189214  
ANN MARIE THOMPSON, SBN 152043  
2 SUNDERLAND | McCUTCHAN, LLP  
11770 BERNARDO PLAZA COURT, SUITE 250  
3 SAN DIEGO, CALIFORNIA 92128  
(858) 675-7800 Phone  
4 (858) 675-7807 Fax

**ELECTRONICALLY FILED**

Superior Court of California,  
County of Orange

**01/23/2012 at 10:17:00 AM**

Clerk of the Superior Court  
By James M Haines, Deputy Clerk

5 Attorneys for Defendant/Cross-Complainant BENNION & DEVILLE FINE  
HOMES, INC. DBA WINDERMERE REAL ESTATE COACHELLA VALLEY  
6 (erroneously sued as WINDERMERE REAL ESTATE COACHELLA VALLEY)

7  
8 **SUPERIOR COURT OF CALIFORNIA**

9 **COUNTY OF ORANGE**

10  
11 DANIEL GONZALES, BIANCA FELIX, )  
12 Plaintiffs, )

13 vs. )

14 MIKE BAILEY; JUDITH BAILEY; )  
15 WINDERMERE REAL ESTATE SERVICES )  
16 COMPANY; WINDERMERE REAL ESTATE )  
17 COCAL, INC.; WINDERMERE REAL )  
18 ESTATE COACHCELLA VALLEY; and )  
DOES 1 to 50, inclusive, )

19 Defendants. )

**CASE NO.: 30-2011-00524603**

**CROSS-COMPLAINT OF BENNION &  
DEVILLE FINE HOMES, INC. DBA  
WINDERMERE REAL ESTATE  
COACHELLA VALLEY**

JUDGE: Hon. Charles Margines

DEPT.: C-19

Complaint Filed: 11/22/2011

Trial Date: Not Yet Assigned

20  
21 BENNION & DEVILLE FINE HOMES, )  
22 INC. dba WINDERMERE REAL ESTATE )  
23 COACHELLA VALLEY, )

24 Cross-Complainant, )

25 vs. )

26 MIKE BAILEY; JUDITH BAILEY; RON )  
27 LINDEMANN, and ROES 1 through )  
28 25, inclusive. )

Cross-Defendants. )

1 COMES NOW Defendant/Cross-Complainant, BENNION & DEVILLE  
2 FINE HOMES, INC. DBA WINDERMERE REAL ESTATE COACHELLA VALLEY  
3 (hereinafter referred to as "Cross-Complainant") and upon  
4 information and belief allege as follows:

5 **PRELIMINARY ALLEGATIONS**

6 1. At all times herein mentioned, Cross-Complainant  
7 BENNION & DEVILLE, INC. is and was a duly licensed corporation  
8 under the laws of the State of California, with its principal  
9 place of business in the County of Riverside, State of  
10 California.

11 2. Cross-Complainant is informed and believes that at all  
12 times herein mentioned, Cross-Defendant MIKE BAILEY was an  
13 individual residing in the State of California, County of  
14 Orange.

15 3. Cross-Complainant is informed and believes that at all  
16 times herein mentioned, Cross-Defendant JUDITH BAILEY was an  
17 individual residing in the State of California, County of  
18 Orange.

19 4. At all times herein mentioned, Cross-Defendant RON  
20 LINDEMANN was a licensed real estate agent with the California  
21 Department of Real Estate affiliated with Cross-Complainant.

22 5. Cross-Complainant is unaware of the true names and  
23 capacities of Cross-Defendants sued herein as ROES 1 through 25  
24 inclusive, and therefore sue these Cross-Defendants by such  
25 fictitious names. Cross-Complainant will seek leave to amend  
26 this Cross-Complaint to show the true names and capacities of  
27 such fictitiously named Cross-Defendants when the same has been  
28 ascertained. Cross-Complainant alleges that each of the Cross-

1 Defendants designated herein as a ROE is legally responsible for  
2 each of the acts, circumstances, events, and happenings herein  
3 referred to, by either virtue of their negligence or otherwise.

4 6. Cross-Complainant alleges that at all times herein  
5 mentioned, each Cross-Defendant was the agent and/or employee of  
6 the remaining Cross-Defendants, and in doing the things alleged  
7 herein was acting within the course and scope of such agency  
8 and/or employment.

9 7. Cross-Complainant intends service of this Cross-  
10 Complaint to serve as a formal demand on Cross-Defendants that  
11 they defend, hold harmless and indemnify Cross-Complainant from  
12 the claims and cross-claims being made by Plaintiffs, DANIEL  
13 GONZALES and BIANCA FELIX. Cross-Complainant further demands  
14 that Cross-Defendants reimburse Cross-Complainant for all  
15 damages, judgments, litigation expenses, attorneys' fees and  
16 other claims of Plaintiffs as alleged against Cross-Complainant  
17 in their Complaint. Should Cross-Defendants fail to respond to  
18 this demand or file a responsive pleading to this Cross-  
19 Complaint, Cross-Complainant will assume that Cross-Defendants  
20 have no intention of accepting this demand.

21 **FIRST CAUSE OF ACTION**

22 **(Indemnification against MIKE BAILEY and JUDITH BAILEY)**

23 8. Cross-Complainant incorporates herein by reference the  
24 allegations set forth in Paragraphs 1 through 7, inclusive, as  
25 though fully set forth herein.

26 9. On or about November 22, 2011, Plaintiffs filed their  
27 Complaint for Wrongful Death Due to Negligence in the Orange  
28 County Superior Court, Case No. 30-2011-00524603. Plaintiffs

1 claim that the Defendants were negligent, careless, and reckless  
2 in their ownership, operation, management, control,  
3 modification, repair, rental, leasing, and servicing of the  
4 property located at 12050 Redbud Road, Desert Hot Springs,  
5 California ("Subject Property"), resulting in the drowning death  
6 of their minor child Erik Ryan Gonzales. The specific  
7 allegations of Plaintiffs' Complaint are incorporated herein by  
8 reference, as though fully set forth herein.

9 10. Cross-Complainant was the real estate brokerage with  
10 whom Cross-Defendant RON LINDEMANN was affiliated at the time of  
11 the subject incident. Cross-Defendants MIKE BAILEY and JUDITH  
12 BAILEY owned the Subject Property at the time of the incident.

13 11. Cross-Complainant filed an answer to Plaintiffs'  
14 Complaint, denying that Cross-Complainant is in any way  
15 responsible for the damages, if any, allegedly sustained by  
16 Plaintiffs, and setting forth numerous affirmative defenses.  
17 Cross-Complainant incorporates the allegations set forth in its  
18 Answer as though fully set forth herein.

19 12. Cross-Complainant is informed and believes, and upon  
20 such basis alleges, that Cross-Defendants BAILEY owed duties to  
21 Plaintiffs and failed to fulfill said duties owed to Plaintiffs,  
22 and as a result, their active negligence and/or breach of duty  
23 to Plaintiffs was the proximate and actual cause of Plaintiffs'  
24 damages, if any, as alleged in the Complaint. Cross-Complainant  
25 denies that it was, or is in any way responsible for the events,  
26 happenings or damages mentioned in the underlying Complaint. If  
27 Plaintiffs did indeed sustain any damages as alleged in the  
28

1 Complaint, such damages were caused entirely or partly by Cross-  
2 Defendants BAILEY, and each of them.

3 13. If Cross-Complainant is held responsible to Plaintiffs  
4 for any of the matters alleged therein, Cross-Complainant is  
5 entitled to complete, total or partial indemnity from Cross-  
6 Defendants BAILEY, and each of them, for any and all sums which  
7 Cross-Complainant may be compelled to pay as a result of any  
8 damages, judgments or other awards recovered by Plaintiffs, and  
9 for any and all losses Cross-Complainant may sustain in this  
10 matter because of the conduct of Cross-Defendants BAILEY, and  
11 each of them, which conduct was the proximate and actual cause  
12 of the facts upon which the causes of actions of the underlying  
13 Complaint are alleged.

14 **SECOND CAUSE OF ACTION**

15 **(Equitable Contribution against MIKE BAILEY and JUDITH BAILEY)**

16 14. Cross-Complainant incorporates herein by reference the  
17 allegations set forth in Paragraphs 1 through 13, inclusive, as  
18 though fully set forth herein.

19 15. Cross-Complainant denies any liability or  
20 responsibility whatsoever with respect to the damages allegedly  
21 sustained by Plaintiffs. However, if it should be found that  
22 Cross-Complainant was in some manner responsible for the damages  
23 allegedly sustained by Plaintiffs, then any such damages found  
24 to have been sustained by them in this action were proximately  
25 caused or contributed to by the conduct of Cross-Defendants  
26 BAILEY, and each of them.

27 16. Cross-Complainant is entitled to a determination of a  
28 prorated degree of negligence and/or fault of Cross-Defendants

1 BAILEY so that Cross-Complainant will not be required to pay  
2 more than its pro rata share of any damages, judgment, or other  
3 award recovered by Plaintiffs. Cross-Complainant is entitled to  
4 equitable contribution from the Cross-Defendants BAILEY, and  
5 each of them, in an amount consistent with Cross-Defendants  
6 BAILEY's pro rata degree of negligence and/or fault.

7 **THIRD CAUSE OF ACTION**

8 **(Apportionment of Fault against MIKE BAILEY and JUDITH BAILEY)**

9 17. Cross-Complainant incorporates herein by reference the  
10 allegations set forth in Paragraphs 1 through 16, inclusive, as  
11 though fully set forth herein.

12 18. Cross-Complainant is informed and believes that Cross-  
13 Defendants BAILEY were responsible, in whole or in part, for the  
14 injuries, if any, suffered by Plaintiffs. If Cross-Complainant  
15 is adjudged to be liable to Plaintiffs, Cross-Defendants BAILEY  
16 should be required to:

17 (a) Pay a share of Plaintiff's judgment which is in  
18 proportion to the comparative negligence of the Cross-Defendants  
19 BAILEY in causing Plaintiffs' damages; and,

20 (b) Reimburse Cross-Complainant for any payments it  
21 makes to Plaintiffs in excess of its proportional share of all  
22 Cross-Defendants BAILEY's negligence.

23 **FOURTH CAUSE OF ACTION**

24 **(Breach of Contract as against RON LINDEMANN)**

25 19. Cross-Complainant incorporates herein by reference the  
26 allegations set forth in Paragraphs 1 through 7, inclusive, as  
27 though fully set forth herein.

28

1           20. On or about January 22, 2009, Cross-Complainant  
2 entered into a Broker/Sales Associate Agreement ("Agreement")  
3 with Cross-Defendant RON LINDEMANN, (hereinafter "LINDEMANN").  
4 A true and correct, redacted copy of the Broker/Sales Associate  
5 Agreement, containing relevant provisions, is attached hereto as  
6 Exhibit "A" and incorporated herein by reference.

7           21. The Agreement specifies that:

8                   4. . . . .

9                   Associate shall not engage in any property  
10                   management activities without Broker's  
11                   express written permission, and Associate  
12                   shall defend, indemnify, and hold Broker  
13                   harmless from any and all claims against  
14                   Broker arising from and/or relating to  
15                   Associate's involvement in such activities.

16                   Schedule "E" Associate Acting as Residential  
17                   Leasing Agent states:

18                   . . . Broker issues guidelines or rules and  
19                   regulations pertaining to Residential Lease  
20                   Transactions. Associate agrees to abide by  
21                   them as adopted and modified from time to  
22                   time by Broker.

23           22. On or about November 22, 2011, Plaintiffs filed a  
24 Complaint for Damages in the Orange County Superior Court, Case  
25 No. 30-2011-00524503 wherein they purport to allege causes of  
26 action for Wrongful Death Due to Negligence. Plaintiffs claim  
27 that the Defendants' were negligent, careless, and reckless in  
28 their ownership, operation, management, control, modification,  
repair, rental, leasing, and servicing of the Subject Property  
which caused the fatal drowning of Plaintiffs' minor child Erik  
Ryan Gonzales. The specific allegations of Plaintiffs' Complaint  
are incorporated herein by reference, as though fully set forth

1 herein. Cross-Complainant is informed and believes that Cross-  
2 Defendant LINDEMANN has breached the Broker/Sales Associate  
3 Agreement by engaging in property management activity and lease  
4 transactions without Cross-Complainant's express written  
5 permission.

6 23. Cross-Complainant has performed all conditions,  
7 covenants, and promises required on its part to be performed in  
8 accordance with the terms and conditions of the Broker/Sales  
9 Agreement.

10 24. As a direct and proximate result of Cross-Defendant  
11 LINDEMANN's breach of the Broker/Sales Associate Agreement,  
12 Cross-Complainant has suffered economic damages, including, but  
13 not limited to attorney fees, costs, expenses, suits  
14 liabilities, and claims, the exact amount of which will be  
15 established according to proof at time of trial.

16 **FIFTH CAUSE OF ACTION**

17 **(Express Indemnity as against RON LINDEMANN)**

18 25. Cross-Complainant refers to and incorporates herein by  
19 reference Paragraphs 1 through 7, and 19 through 24 above as  
20 though the same were set forth in full below.

21 26. On or about January 22, 2009, Cross-Complainant  
22 entered into a written Broker/Sales Associate Agreement  
23 ("Agreement") with Cross-Defendant LINDEMANN, containing the  
24 following provisions:

25 4. . . Associate shall not engage in any property  
26 management activities without Broker's  
27 express written permission, and Associate  
28 shall defend, indemnify, and hold Broker  
harmless from any and all claims against  
Broker arising from and/or relating to  
Associate's involvement in such activities.

1 Additionally, the agreement states:

2 12. Indemnification of Broker. Associate  
3 shall indemnify Broker for all Broker's  
4 costs and expenses pertaining to any and  
5 all uninsured and/or denied claims arising  
6 from or relating to Associate's conduct,  
7 including without limitation, Associate's  
8 failure to comply with the terms of this  
9 agreement. In addition, Associate shall pay  
10 all fines, awards or monetary sanctions of  
11 any kind levied against Associate and/or  
12 Broker as a result of Associate's conduct  
13 and understands that Broker shall not pay  
14 any portion whatsoever. Associate  
15 understands that the referenced fines, awards  
16 or monetary sanctions include, without  
17 limitation, multiple listing service  
18 commission awards and/or disciplinary fines  
19 imposed by any Association of Realtors or  
20 MLS, fines for failure to comply with federal  
21 laws and regulations such as lead-based paint  
22 disclosures, telemarketing restrictions, and  
23 RESPA, and violation of state licensing  
24 statutes.

16 . . . .

17  
18 If Associate retains his or her own attorney  
19 to represent Associate, then in addition to  
20 Associate's indemnification obligation  
21 herein, Associate shall bear sole  
22 responsibility for paying that attorney. For  
23 purpose of this section 12, costs and  
24 expenses include, without limitation,  
25 litigation costs and expenses, fines, awards,  
26 judgments, and attorney fees.

24 Schedule "C" Errors and Omission Insurance states:

25 ... When a claim is uncovered or denied or  
26 Associate has failed to comply with the  
27 terms of this Agreement and/or Broker's  
28 E&O policy, this provision shall not apply,  
and Associate shall indemnify Broker in  
accordance with section 12 of this agreement.

1 Schedule "E" Associating Acting as Residential Leasing  
2 Agent states:

3 2. INDEMNITY. If Associate fails to comply  
4 strictly with all requirements imposed by law,  
5 by Broker, or by Broker's error's & omissions  
6 insurance carrier, it may result in denial of  
7 E&O coverage for Associate and/or Broker.  
8 Associate shall indemnify and hold Broker  
9 harmless from all losses (including attorney  
10 fees, judgments, settlements and litigation  
11 costs) arising from Associate's failure to  
12 comply with such requirements.

13 A copy of the agreement is attached hereto and incorporated  
14 herein by this reference as Exhibit "A."

15 27. Plaintiffs have filed a civil action against Cross-  
16 Complainant and Cross-Defendants as referenced above. Cross-  
17 Complainant has been compelled to retain counsel to defend it  
18 against Plaintiffs' claims, and have incurred and continue to  
19 incur attorneys' fees, costs, damage to reputation, and business  
20 loss.

21 28. Cross-Complainant by this action demands that Cross-  
22 Defendant LINDEMANN defend and indemnify Cross-Complainant  
23 against the claims made by Plaintiffs, hold Cross-Complainant  
24 harmless and reimburse Cross-Complainant for any and all sums  
25 incurred to defend the claims made by Plaintiffs and/or paid or  
26 to be paid by way of settlement, judgment or otherwise.

27 /////

28 /////

/////

/////

1 SIXTH CAUSE OF ACTION

2 **(Declaratory Relief Against all Cross-Defendants)**

3 29. Cross-Complainant incorporates herein by reference the  
4 allegations set forth in Paragraphs 1 through 28, inclusive, as  
5 though fully set forth herein.

6 30. An actual controversy has arisen and now exists  
7 between Cross-Complainant and Cross-Defendants, and each of  
8 them, in that Cross-Complainant contends, and Cross-Defendants  
9 deny the following:

10 (a) That, as between Cross-Complainant and Cross-  
11 Defendants, a responsibility, if any, for the damages claimed by  
12 Plaintiffs herein rests entirely or partially on Cross-  
13 Defendants;

14 (b) That as a result, Cross-Defendants, and each of  
15 them, are obligated to totally indemnify or partially indemnify  
16 Cross-Complainant for any sum or sums that Cross-Complainant may  
17 be compelled to pay as a result of any damages, judgment or  
18 other award recovered by Plaintiffs in the underlying action.

19 31. Cross-Complainant desires a judicial determination of  
20 its rights and duties, and the rights and duties of Cross-  
21 Defendants, and each of them, as to the damages complained in  
22 Plaintiffs' Complaint.

23 32. Cross-Complainant in particular desires a declaration  
24 of the respective liabilities of Cross-Complainant and Cross-  
25 Defendants, and each of them, for such damages, if any, and a  
26 declaration of Cross-Defendants' responsibility to indemnify  
27 Cross-Complainant for the sum or sums, which Cross-Complainants  
28

1 may be compelled to pay and for which Cross-Defendants, and each  
2 of them, have been determined responsible.

3 33. Such a declaration is necessary and appropriate at  
4 this time so that Cross-Complainant may ascertain its rights and  
5 duties with respect to the claims made by Plaintiffs in the  
6 action. Additionally, the claims of all parties arise out of  
7 the same transaction and occurrence, and a determination of all  
8 claims in one proceeding is necessary and appropriate in order  
9 to avoid the multiplicity of actions that would otherwise result  
10 if Cross-Complainant were required now to defend against the  
11 claims of Plaintiffs and then bring a separate action against  
12 Cross-Defendants for contribution and indemnification of any sum  
13 or sums which Cross-Complainant may be compelled to pay as a  
14 result of any damages, judgment or other award recovered by  
15 Plaintiffs against Cross-Complainant.

16 **WHEREFORE,** Cross-Complainant prays for judgment against  
17 Cross-Defendants, and each of them, as follows:


- 18 1. Compensatory damages according to proof;
- 19 2. Express Indemnity pursuant to the Broker/Sales Associate  
20 Agreement from all costs, expenses, suits, liabilities,  
21 damages, attorney fees and claims of every type pursuant  
22 to the Broker/Sales Associate Agreement;
- 23 3. Total and complete indemnity for any judgments rendered  
24 against Cross-Complainant;
- 25 4. That judgment be rendered in favor of Cross-Complainant  
26 in the amount that Cross-Complainant may be compelled to  
27 pay as a result of any damages, judgment or other awards  
28 recovered by Plaintiffs, against Cross-Complainant;

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

- 3. That Cross-Defendants, and each of them, contribute their pro rata share according to their respective degree of negligence and/or fault for any damages, judgment or other awards recovered by Plaintiffs, against this Cross-Complainant;
- 5. A judicial determination of Cross-Complainant's and Cross-Defendants' respective liabilities for the damages claimed by Plaintiffs in the action, if any are found to exist;
- 6. For reasonable attorneys' fees and costs of suit incurred herein; and
- 7. For all such other and further relief as the Court may deem proper.

DATED: January 20, 2012

**SUNDERLAND | McCUTCHAN, LLP**

By:   
Robert J. Sunderland  
Ann Marie Thompson  
Attorneys for Defendant/  
Cross-Complainant, BENNION &  
DEVILLE FINE HOMES, INC. DBA  
WINDERMERE REAL ESTATE  
COACHELLA VALLEY

# **EXHIBIT “A”**



## BROKER/SALES ASSOCIATE AGREEMENT

This AGREEMENT is made this 22 day of JANUARY, 2008  
("Anniversary Date") by and between Windermere Real Estate Coachella Valley  
("BROKER"), and RON LINDSMAN ("Associate"). The  
parties hereby agree as follows:

**1. GENERAL.** Each party shall at all times hold a real estate license as required by the real estate licensing authority of the state in which the Broker's office is located. In the event that either party's license expires, or is suspended or revoked by the state licensing authority, the party shall immediately so notify the other party in writing. Broker maintains a real estate office, equipped, furnished and staffed to serve the public and the parties. Both parties agree to exert best efforts to promote the reputation and business of Broker and Associate.

**2. STATUS OF THE PARTIES.** The parties agree that Associate is an independent contractor, is not an employee of Broker and specifically will not be treated as an employee for Federal tax purposes. Broker shall have no responsibility for withholding, reporting or paying Associate's federal, state or local taxes, (including but not limited to Federal income tax, Social Security and unemployment taxes or insurance), which shall be Associate's sole responsibility. Exception: Broker shall withhold and pay state and federal Business and Occupation (B&O) taxes on Associate's share of commissions and fees where and when applicable. Broker and Associate shall each be responsible for payment of their proportionate share of state industrial insurance (worker's compensation), medical aid and supplemental pension fund portions of state industrial insurance where applicable.

**3. BROKER'S RESPONSIBILITY.** Broker shall provide Associate with office equipment, local telephone service, receptionist, business secretarial assistance, office advertising, membership in listing and/or referral services selected by Broker, and use of sales materials.

Associate, through personal contact as well as office meetings, shall have the benefit of Broker's guidance, suggestions and experience in matters of listings, sales, financing, current trends and general aspects of the real estate business.

Broker agrees to promote the image of the parties and office by establishing and maintaining rules regarding office use, days it will be open, advertising, listing and selling procedures and related matters. Broker reserves the right to establish, and Associate agrees to comply with, office procedures for inquiries, leads and similar sales opportunities. Broker may, at his/her discretion, modify any such policies and procedures at any time. Modifications will be communicated to Associate within a reasonable time frame.

#### **4. ASSOCIATE'S RESPONSIBILITIES.**

**Legal Compliance:** Associate agrees to maintain current knowledge of all laws governing licensed real estate salespersons and brokers, and agrees to strict adherence at all times. No Associate may conduct real estate activities under their own license or under any other broker's license during the term of this Agreement.

**Documents and Funds:** Listings, sales and other agreements obtained by Associate shall be in the name of, and the property of, the Broker. All wholly or partially executed instruments,

Initials 



documents and deposits shall be immediately delivered to Broker's possession in accordance with State Law.

**Advertising/Marketing:** Associate agrees to comply with all laws, local ordinances, rules and regulations (including Realtor® Association and MLS rules) regarding restrictions on advertising and signs, and to use only advertising, signs, brochures or other solicitation materials approved by Broker in advance of their use. Broker's authorization is required on all personal marketing materials and all other forms of advertising in any media whatsoever, including without limitation newspapers, magazines, telephone book listings ("white page" business listings and yellow page listings or advertisements), billboards, television, radio, buses, grocery carts, Internet web sites, other online solicitation (e.g. mass e-mail), etc., prior to use by Associate.

Associate agrees to use Broker's legally licensed name designation on all advertising and marketing materials as required by law. Associate also agrees to follow all Windermere policies, together with all policies and procedures published by Broker, concerning the Windermere logo, advertising, signage, and any related topics.

Associate shall not act as a loan officer or as a representative for any mortgage broker, lender, closing agent, or title company. Such activities are not covered by any insurance purchased or maintained by Broker, and Associate shall defend, indemnify, and hold Broker harmless from any and all claims against Broker arising from and/or relating to such activities.

Associate shall not engage in any property management activities without Broker's express written permission, and Associate shall defend, indemnify, and hold Broker harmless from any and all claims against Broker arising from and/or relating to Associate's involvement in such activities.

**Use of Windermere Name:** Associate understands that the name 'Windermere' and the Windermere logo are trademarks of the Windermere Services Company, and are registered with the United States Patent & Trademark Office. Other names and logos used by Broker (including, without limitation, Premier Homes/Estates/Properties; Sea, Sun & Snow; Lifestyle Northwest, etc.) may also be subject to trademark protection at the state and/or federal level. During the term of this Agreement Associate is granted a limited, non-exclusive license to use the Windermere marks in connection with Associate's real estate business, provided that Associate at all times complies with all written policies and procedures governing their use. Associate shall not, without the express written authorization of Broker, allow any third person or entity to use any of the marks, in any form, for any reason; nor shall Associate do anything to imperil or undermine the good will and public esteem of Broker, the brokerage, or the 'Windermere' trade name and marks.

**Standards of Practice:** Associate shall control his/her own work hours and shall have no required floor time. Associate shall conduct business in a professional and courteous manner, acting with respect toward other agents, Associates and clients, and shall make a good faith effort to resolve differences quickly through Broker or Associate's manager.

Though subject to change from time to time, Associate shall abide by Broker's most current "Standards of Practice" guidelines (a copy of which is attached for reference), and agrees to adhere to published grievance or arbitration hearing procedures in the event of disputes involving other Windermere Associates and Broker.

Initials



Absence: Associate shall designate another WRECV associate to perform on his/her behalf when unavailable for any extended period of time. In the event Broker has not been properly notified of another designated associate during an absence, for any reason, Broker reserves the right to assign Associate's current listings and escrows to another WRECV associate. Commission received from these escrows or listings which may eventually enter into escrow shall be dispersed at the sole discretion of Broker.

**5. COMMISSION AGREEMENT.** Windermere Commission Schedule "A" is attached hereto and incorporated in this agreement by reference and summarizes commission shares and conditions.

**6. CONFIDENTIAL INFORMATION.** Associate agrees during the term of this Agreement and thereafter to take all steps reasonably necessary to hold in trust and confidence that what Associate knows or has reason to know is regarded as confidential by Windermere Real Estate Coachella Valley and its clients ("Confidential Information"). Confidential Information includes without limitation business information relating to Windermere Real Estate Coachella Valley services costs, profit or margin information, employee and independent contractor skills and compensation arrangements, mailing lists, finances, customers, marketing and future business and marketing plans.

**7. MEMBERSHIPS.** Broker and Associate are members of the National and State Association of Realtors and subscribe to one or more multiple listing service(s) (MLS). Associate shall pay all Realtor and MLS dues and fees. Associate agrees to abide by the Association of Realtors Code of Ethics, as well as any MLS rules and regulations.

**8. EXPENSES.** Broker shall not be liable to Associate or third parties for expenses incurred by Associate unless otherwise agreed to in writing. Associate shall be responsible for and shall promptly pay all Associate's own expenses. Though subject to change from time to time, "Schedule B" which is attached hereto and incorporated herein by reference, summarizes most goods and services generally used by Associate and specifies who is responsible for payment.

Associate hereby authorizes Broker, at Broker's sole discretion, to advance payment of any expense, dues, fees and charges, (including Association of Realtors dues) whether for accounting convenience of Broker or third party, or because Associate has failed to make such payment promptly. Associate further agrees to reimburse Broker for all B&O taxes (where applicable) assessed to Broker on reimbursements, advances, or payments made on Associate's behalf. Amounts advanced shall be deducted from Associate's first available commissions after payment, or shall be due immediately upon Broker's demand.

**9. WINDERMERE FOUNDATION.** Associate agrees that a portion of the gross listing and/or selling commission from each transaction shall be allocated to the Windermere Foundation (a charitable non-profit organization).

**10. INSURANCE.**

Automobile Liability Insurance: Associate agrees to maintain at all times automobile liability and property insurance, with limits not less than \$250,000/\$500,000/\$100,000 or \$500,000 combined single limit, covering all vehicles which Associate may use in business. Associate agrees to have Broker named as additional insured and shall provide Broker with proof of coverage immediately upon request. Associate shall notify Broker promptly of any accident, loss or incident likely to result in a claim against such policies.

Initials

Handwritten initials in black ink, appearing to be "SA".

3 of 28

Broker Sales Associate Agreement 080229



**Personal Property Insurance:** Associate understands that Broker's property insurance does not cover Associate's personal office equipment and belongings. Associate agrees to hold Broker harmless for damages or losses as a result of storms or other natural disasters, thefts or other mysterious disappearances of equipment and other personal items belonging to Associate. Associate is encouraged to purchase his/her own insurance at his/her own expense.

**Errors and Omissions Insurance:** Broker maintains Errors and Omissions (E&O) Insurance covering claims arising from Associate's conduct in the provision of professional real estate services while Associate is licensed to Broker. On an annual basis, Broker renews its existing policy or purchases a new one. Associate agrees that the policy in effect upon execution of this agreement is incorporated herein as if fully set forth. Associate further agrees that each renewal or new policy shall be incorporated automatically herein. Associate understands that each policy is a claims-made policy, which means that only claims made and tendered during that policy are subject to coverage under that policy. Because a new policy may not afford the same coverage, claims made under a new policy may not be covered. Unless agreed otherwise in writing, Associate shall indemnify Broker for the full amount of the E&O deductible (Broker's E&O Deductible) set forth in the policy.

Associate shall be familiar with and shall comply with all terms of Broker's E&O policy. Broker will make the policy available for Associate's review. Associate understands that certain types of conduct and claims (including, without limitation, intentional misconduct) are routinely excluded from coverage and that exclusions and endorsements may change when E&O policies are renewed or changed.

Associate understands that Broker's E&O insurance does not cover Associate's conduct or activities as, in connection with, or on behalf of mortgage brokers, lenders, title companies, settlement service providers, or providers of other types of related real estate services. Associate shall not enter into any agreement, contract, or relationship for which compensation in any form relating to such real estate services is paid directly or indirectly to Associate.

With respect to any and all uninsured and/or denied claims arising from or related to Associate's conduct, Associate agrees to indemnify Broker for all costs and expenses incurred by Broker, including, without limitation, attorney fees, judgments, fines, and awards.

**11. ASSOCIATE/PRINCIPAL TRANSACTIONS:** Associate shall not represent himself or herself as a principal in any real property transactions without Broker's express written permission. Associate understands that this provision has been included in this Agreement because of substantially higher liability associated with such transactions, and because Broker's E&O insurance may not cover such principal transactions. Accordingly, in the event Broker grants permission for Associate to represent himself or herself, Associate agrees to indemnify Broker for Broker's full E&O deductible (unless agreed otherwise in writing) on all covered claims arising from or related to such transactions. For all non-covered or denied claims, Associate shall indemnify Broker for all Broker's costs and expenses arising from or relating to such transactions.

If Broker does not consent to Associate representing himself or herself, Associate shall be represented by another licensee assigned by Broker and approved by Associate. Associate shall not represent any other principal party to such transaction.

Initials

Handwritten initials in black ink, appearing to be "DK".



Associate shall comply with all rules imposed by Broker and Broker's E&O provider, which rules are incorporated herein by reference. If Associate fails to comply with this paragraph and/or the referenced rules, then Associate shall indemnify Broker for all costs and expenses incurred by Broker pertaining to any claim arising from or related to Associate's conduct and/or role in the transaction. For purposes of this section and the referenced rules, the definition of Associate includes, without limitation, any and all limited liability companies, corporations, partnerships, and/or other entities in which Associate is an officer, shareholder, member, partner, etc. Additionally, for purposes of this section, costs and expenses include, without limitation, litigation costs and expenses, attorney fees, judgments, fines, and awards.

**12. INDEMNIFICATION OF BROKER.** Associate shall indemnify Broker for all Broker's costs and expenses pertaining to any and all uninsured and/or denied claims arising from or relating to Associate's conduct, including without limitation, Associate's failure to comply with the terms of this Agreement. In addition, Associate shall pay all fines, awards or monetary sanctions of any kind levied against Associate and/or Broker as a result of Associate's conduct and understands that Broker shall not pay any portion whatsoever. Associate understands that the referenced fines, awards, or monetary sanctions include, without limitation, multiple listing service commission awards and/or disciplinary fines imposed by any Association of Realtors or MLS, fines for failure to comply with federal laws and regulations such as lead-based paint disclosures, telemarketing restrictions, and RESPA, and violation of state licensing statutes.

Associate authorizes Broker to withhold commissions paid to Broker and owed to Associate in amounts sufficient to pay all costs and expenses incurred by Broker. Neither Broker's failure to withhold nor a lack of commissions shall relieve Associate of the obligation to indemnify Broker, and Associate shall, in all circumstances, reimburse Broker for all sums paid by Broker in connections with Associate's conduct.

If Associate retains his or her own attorney to represent Associate, then in addition to Associate's indemnification obligation herein, Associate shall bear sole responsibility for paying that attorney. For purposes of this section 12, costs and expenses include, without limitation, litigation costs and expenses, fines, awards, judgments, and attorney fees.

**13. COMMISSION CLAIMS/INDEPENDENT LEGAL ACTION.**

Broker has no insurance covering the pursuit of commission claims or any other type of claim for damages. Without Broker's express written permission, Associate shall not initiate legal action in pursuit of a commission or other damages.

If Broker elects to pursue a commission or other damages on behalf of Broker and Associate, then Broker shall have the sole right to select attorneys, control any litigation, and to settle, compromise, dismiss, and/or cease pursuit of the claim. Unless Broker and Associate agree otherwise in writing, all costs and expenses (including, without limitation, attorney fees, litigation expenses, collection of judgments or awards, and attorney fees and costs awarded to the adverse party) incurred by Broker in the pursuit of any such claim shall be split by Broker and Associate in the same proportion as the commission split set forth in the Commission Schedule attached hereto. The applicable split shall be the one in effect upon the closing of the transaction giving rise to the claim; provided: that if there is no closing, then the applicable split shall be the one in effect at the time that pursuit of the claim is commenced. Prior to pursuit of litigation of such claims, Broker shall have the right to require a deposit from Associate to cover all or a portion of Associate's estimated share of the costs. Associate shall be liable for his or her share of the costs, regardless of the outcome of the pursuit of such claims.

Initials 



Any amounts received as a result of the pursuit of such claims shall be divided between Broker and Associate in accordance with this paragraph and the commission split set forth in the Commission Schedule.

If Broker declines to pursue a commission or other claim, but gives written permission for Associate to pursue such claims independently, then Associate shall be solely responsible for all costs incurred in pursuing the claims. Any amounts recovered by Associate may be retained by Associate, but only if paid first to Broker.

If Associate breaches the terms of this section 13, or if pursuit of the commission (whether by Broker or by Associate) results in any uninsured or denied claims, or professional or administrative investigations or complaints against Broker and/or Associate, then the terms of Paragraph 12 shall apply. If pursuit of the commission results in insured claims against Broker and/or Associate, then Associate shall pay the entire Broker E&O deductible, unless otherwise agreed in writing.

**14. TERM AND TERMINATION.** The term of this agreement begins when Associate's license is activated with Broker and may be terminated, at any time, with or without cause, by either party giving notice to the other, or by Broker returning Associate's real estate license to the state's licensing authority. Upon termination, Associate shall promptly return all keys and other property belonging to Broker.

**Pending Commissions and Transactions:** Any commissions pending (i.e. buyer and seller have reached mutual acceptance on a purchase and sale agreement, lease, listing or other similar document, but the subject transaction has not yet closed) at the time of termination shall be paid in accordance with this Agreement and shall be subject to settlement of Associate's obligations to Broker. Associate authorizes Broker to hold all commissions in Broker's account pending resolution of any disputes over division of the commission funds, or of any existing or potential legal actions.

Associate agrees to exercise utmost good faith and diligence to complete and close pending transactions. If any of Associate's transactions are not completed prior to termination, then Broker may appoint other licensees affiliated with Broker to complete the transaction. In such case, Broker is authorized to compensate other such licensees in an amount determined by Broker at its sole discretion, and to deduct such amounts from Associate's share of the commission up to and including the full amount owed to Associate.

**Unpaid Obligations to Broker:** Upon termination Associate will immediately pay all amounts due Broker. If Associate moves to another real estate brokerage, Associate hereby irrevocably assigns the proceeds of any pending commissions and, upon Broker's written request to Associate's new Broker, authorizes the new Broker to deduct and forward such shortfalls out of commissions earned at Associate's new brokerage to Broker until owed amounts are paid in full. Collection costs on amounts not paid, including attorney's fees, shall be paid by Associate.

Associate's license to use the Windermere name and trademarks shall be deemed revoked immediately upon termination of this Agreement, and Associate agrees to cease and desist from all use of the marks thereafter. Associate shall surrender to Broker, upon demand, all personal marketing materials in Associate's possession bearing or referring to the name

Initials



Windermere, or any of the Windermere trademarks. Any internet domain names registered by or to Associate which include the name "Windermere" in any fashion whatsoever shall, upon termination of this Agreement, be transferred to Broker or to Windermere Services Company upon demand. Associate agrees that Broker or Windermere Services may seek injunctive relief to enforce the provisions of this paragraph, in addition to seeking recovery of monetary damages. For purposes of protecting its trademark rights ONLY, Windermere Services Company shall be deemed a third party beneficiary of this Agreement, and shall have standing to bring suit for breach of this provision. In any such action arising from Associate's infringement of the Windermere trademarks, the prevailing party shall be entitled to recover attorney fees and costs.

**15. DUTY TO ARBITRATE.** Associate and Broker agree that commission or other disputes which cannot be resolved between them or between other Windermere Brokers or Associates (including disputes arising after termination of this Agreement) shall be submitted to and resolved in accordance with Broker's internal arbitration procedures. Arbitration is mandatory and the decision is binding. The "Windermere Standards of Practice and Arbitration Manual" is available for Associate's review at any time in Broker's office and on the "Windermere Online Resource Center" (WORC) intranet site. The version of the Manual in effect at the time arbitration is commenced will control. Associate hereby grants Broker the right to deduct resulting awards and damages from Associate's outstanding or future commissions, or if there is no closing or commissions, to pay immediately upon Broker's demand.

**16. ASSISTANTS.** In the event Associate hires a licensed or unlicensed assistant, Associate agrees to abide by and comply with Broker's guidelines pertaining to Associate Assistants. Associate shall advise Broker if Associate is hiring, using, or intends to hire or use an Assistant, and agrees to execute the required Addendum/Amendment to this agreement at such time. If Associate is acting as an Assistant, then Associate agrees to execute the required Addendum/Amendment to this Agreement, and to limit his/her activities to those outlined in Broker's guidelines pertaining to Assistant activities.

**17. PARTNERSHIPS/TEAMS.** In the event Associate has a partner or teams with other real estate agents or intends to do so, Associate agrees to notify Broker and execute the required "Real Estate Agent Partnership Agreement" along with his/her partner or team members.

**18. HARASSMENT.** Broker is committed to providing a work environment free of unlawful harassment for all Windermere personnel including real estate licensees. Broker's policy prohibits sexual harassment and any other type of unlawful harassment or discrimination, in accordance with federal, state and local laws and ordinances. In addition, Broker will not tolerate any inappropriate harassing or intimidating behaviors, even those that may not rise to the level of unlawful behavior. If Associate feels that he or she is not being treated in a manner consistent with Broker's policy, then Associate shall so notify Broker. Broker will investigate all reports of violations of Broker's policy, and if Broker determines that a violation has occurred, then Broker will take corrective action, which may include termination of the person who violated Broker's policy.

**19. ENTIRE AGREEMENT.** This Agreement contains the entire understanding between the parties and supersedes any prior understanding and agreements between them.

**20. AMENDMENTS.** This Agreement may be amended only in writing, signed by each of the parties and attached to this agreement.

Initials

Handwritten initials, possibly "RJ", written in black ink.



21. **BINDING EFFECT.** Except as otherwise provided in this Agreement, every covenant, term and provision of this Agreement shall be binding upon and inure to the benefit of the parties and their respective heirs, legal representative, successors and all persons hereafter holding or having an interest in this Agreement.

22. **CONSTRUCTION.** Every covenant, term and provision of the Agreement shall be construed simply according to its fair meaning and not strictly for or against any party.

23. **HEADINGS AND PRONOUNS.** Section and other headings contained in this Agreement are for reference purposes only and are not intended to describe, interpret, define, or limit the scope, extent, or intent of this Agreement or any provision. All pronouns and any variations of them shall be deemed to refer to masculine, feminine, neuter, singular or plural, as required for the identification of the person or persons, firm or firms, corporation or corporations.

24. **SEVERABILITY.** Every provision of this Agreement is intended to be severable. If any item or provision is found to be illegal, invalid or unenforceable for any reason whatsoever, such illegality, invalidity, or unenforceability shall have no effect on the remainder of the Agreement, and it shall be enforced to the full extent permitted by law.

25. **WAIVER.** The consent, approval or waiver of any covenant, term or condition of this Agreement by either party shall not be construed as consent, approval or waiver of a subsequent similar act or breach of the same covenant, term or condition.

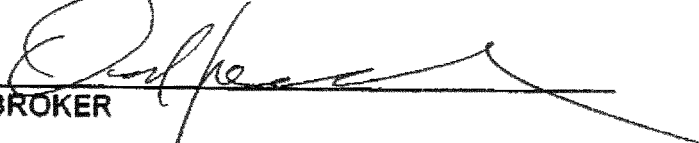
26. **GOVERNING LAW.** The laws of the state shall govern the validity of this Agreement, the construction of its terms, and the interpretation and construction of this Agreement. Any disputes arising from this Agreement shall be resolved through internal arbitration as set forth in "Duty to Arbitrate" section above. Each party shall bear its own attorney fees and costs in all proceedings.

27. **NO THIRD PARTY BENEFICIARY INTENT.** Except as expressly stated in section 14 above, the promises between Broker and Associate in this Agreement are intended for Broker's and Associate's sole benefit and not for the benefit of any third party, including without limitation any buyer or seller of real estate, nor for the benefit of any other brokerage or broker.

**IN WITNESS WHEREOF, the parties have entered into this Broker/Sales Associate Agreement as of the date below.**

  
\_\_\_\_\_  
ASSOCIATE

1-22-09  
Date

  
\_\_\_\_\_  
BROKER

1/23/09  
Date



**SCHEDULE "A"**  
**WINDERMERE COMMISSION SCHEDULE**

**REDACTED**

Initials

Handwritten initials, possibly "CZ", written in black ink.



REDACTED

*Bob Seidenmann*  
ASSOCIATE

1-22-09  
Date

*[Signature]*  
BROKER

1/23/09  
Date

Initials \_\_\_\_\_



ADDENDUM TO SCHEDULE "A", Paragraph 3  
REVOCABLE ADDENDUM TO BROKER/SALES ASSOCIATE AGREEMENT

REDACTED

*Ron Lindemann*  
ASSOCIATE

1-22-09  
Date

*Paul J. [unclear]*  
BROKER

1/23/09  
Date



**SCHEDULE "B"**  
**BROKER SERVICES & EXPENSE SCHEDULE**

**REDACTED**

Initials

Handwritten initials, possibly "GJ", written in black ink and underlined.



**SCHEDULE "B" (continued)**  
**BROKER SERVICES AND EXPENSE SCHEDULE**

**REDACTED**

Initials GAZ



**SCHEDULE "B" (continued)**  
**BROKER SERVICES AND EXPENSE SCHEDULE**

**REDACTED**

Initials

Handwritten initials, possibly "JL", written in black ink.



ADDENDUM TO SCHEDULE "B"

REDACTED

*Scott Lindemann*  
ASSOCIATE

1-22-09  
Date

*[Signature]*  
BROKER

1/23/09  
Date



WINDERMERE STANDARDS OF PRACTICE

REDACTED

Initials 



REDACTED

*Ron Indemana*  
ASSOCIATE

1-22-09  
Date

*[Signature]*  
BROKER

1/23/09  
Date

Initials \_\_\_\_\_



**SCHEDULE "C"  
ERRORS AND OMISSION INSURANCE**

For covered claims, Associate is responsible for the first \_\_\_\_\_ of the deductible, but only in the event that the claims are settled or in the event of a judgment or award against Broker and/or Associate; provided: that Broker and /or Broker's E&O carrier shall have the right to designate defense counsel, settle or compromise claims, and control all aspects of the litigation and/or resolution of the claims. When a claim is uncovered or denied or Associate has failed to comply with the terms of this Agreement and/or Broker's E&O policy, this provision shall not apply, and Associate shall indemnify Broker in accordance with section 12 of this agreement.

**REDACTED**

*Bob Audemans*  
ASSOCIATE

1-22-09  
Date

*[Signature]*  
BROKER

1/23/09  
Date

Initials \_\_\_\_\_



**SCHEDULE "D"**  
**BROKER/ASSOCIATE PRINCIPAL TRANSACTIONS**

**REDACTED**

Initials

Handwritten initials, possibly "DR", written in black ink over a horizontal line.

19 of 28

Broker Sales Associate Agreement 080229



REDACTED

Initials 

Windermere

REDACTED

Initials 

REDACTED

*Paul Sulzmann*  
ASSOCIATE

1-22-09  
Date

*Paul Hall*  
BROKER

1/23/09  
Date



**SCHEDULE "E"**  
**ASSOCIATE ACTING AS RESIDENTIAL LEASING AGENT**

It is agreed between Broker and Associate as follows for Residential Lease Transactions:

- 1. **GUIDELINES, RULES AND REGULATION.** Broker issues guidelines or rules and regulations pertaining to Residential Lease Transactions. Associate agrees to abide by them as adopted and modified from time to time by Broker.
  - A. **RENTAL PAYMENTS.** Initial funds shall be payable to the listing broker. If Windermere is the listing broker, funds must be presented in the form of a cashier's check or money order. Thereafter, all monthly rents shall be payable directly to the landlord.
  - B. **AGENT FEES.**

**REDACTED**

- C. **SIGNAGE.** Windermere arm signs shall be used with "For Lease" rider and Associate's name rider.
  - D. **TRANSACTIONS.** Associate shall provide office personnel with appropriate paperwork/lease agreement along with MLS printout for any property listed for lease in the MLS or otherwise.
- 2. **INDEMNITY.** If Associate fails to comply strictly with all requirements imposed by law, by Broker, or by Broker's errors & omissions insurance carrier, it may result in denial of E & O coverage for Associate and/or Broker. Associate shall indemnify and hold Broker harmless from all losses (including attorney fees, judgments, settlements and litigation costs) arising from Associate's failure to comply with such requirements.

*Paul Lindmann*  
ASSOCIATE

1-22-09  
Date

*Paul J. Lee*  
BROKER

1/23/09  
Date



ASSOCIATE EMPLOYING AN ASSISTANT ADDENDUM

REDACTED

Initials GH

Windermere

REDACTED

Initials CH



REDACTED

Ron Lindemann  
ASSOCIATE

1-22-09  
Date

Paul Jones  
BROKER

1/23/09  
Date



**ADDENDUM TO BROKER/SALES ASSOCIATE AGREEMENT  
Associate Acting as an Assistant**

**REDACTED**

Initials

Handwritten initials in cursive script, possibly "RJ".

27 of 28

Broker Sales Associate Agreement 080229

REDACTED

*Bob Lindmann*  
ASSOCIATE

1-22-09  
Date

*[Signature]*  
BROKER

1/23/09  
Date