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10  
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Windermere Real Estate Services Company  
12

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

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

19 Plaintiffs,

20 v.

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

23 Defendant.  
24

25  
26 **AND RELATED COUNTERCLAIMS**  
27  
28

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

Hon. Manuel L. Real

**DECLARATION OF JEFFREY A.  
FEASBY IN SUPPORT OF  
COUNTER-CLAIMANTS'  
OPPOSITION TO PLAINTIFFS  
AND COUNTER-DEFENDANTS'  
MOTION FOR PARTIAL  
SUMMARY JUDGMENT**

Date: November 21, 2016

Time: 10:00 a.m.

Courtroom: 8

1 I, Jeffrey A. Feasby, declare:

2 1. I am an attorney at law, duly licensed to practice law in the State of  
3 California, and am one of the attorneys for defendant Windermere Real Estate  
4 Services Company (“WSC”) in the above-captioned matter. I have personal  
5 knowledge of the facts set forth in this declaration, and if called upon to testify  
6 thereto, would do so competently.

7 2. As one of the attorneys for WSC, I am intimately familiar with the  
8 discovery that has taken place in this case, including the production of documents by  
9 all parties and documents received from third parties pursuant to subpoenas. These  
10 documents are maintained in my office.

11 3. Attached as Exhibit A to this declaration is a true and correct copy of  
12 the Windermere Real Estate License Agreement between Plaintiff Bennion &  
13 Deville Fine Homes, Inc. (“Fine Homes”) and WSC dated August 1, 2001  
14 (“Coachella Valley Franchise Agreement”). This document was attached to the  
15 parties’ respective complaints and counterclaims, was exchanged in discovery, and  
16 was attached as an exhibit to a number of depositions of the parties and their  
17 representatives.

18 4. Attached as Exhibit B to this declaration is a true and correct copy of  
19 the Windermere Real Estate Services Company Area Representation Agreement For  
20 The State Of California between Windermere Services Southern California, Inc.  
21 (“WSSC”) and WSC dated May 1, 2004 (“Area Representation Agreement”). This  
22 document was attached to the parties’ respective complaints and counterclaims, was  
23 exchanged in discovery, and was attached as an exhibit to a number of depositions  
24 of the parties and their representatives.

25 5. Attached as Exhibit C to this declaration is a true and correct copy of  
26 the Franchise License Agreement between Bennion & Deville Fine Homes SoCal,  
27 Inc. (“Fine Homes SoCal”) and WSC dated March 29, 2011 (“Southern California  
28 Franchise Agreement”). This document was attached to the parties’ respective

1 complaints and counterclaims, was exchanged in discovery, and was attached as an  
2 exhibit to a number of depositions of the parties and their representatives.

3 6. Attached as Exhibit D to this declaration is a true and correct copy of  
4 excerpts from the transcript of the Deposition of Joseph R. Deville taken on  
5 July 26 and 27, 2016 in this case.

6 7. Attached as Exhibit E to this declaration is a true and correct copy of  
7 excerpts from the transcript of the Deposition of Eric Forsberg taken on  
8 August 22 and 23, 2016 in this case.

9 8. Attached as Exhibit G to this declaration is a true and correct copy of  
10 excerpts from the transcript of the Deposition of Mark Oster taken on August 30,  
11 2016 in this case.

12 10. Attached as Exhibit H to this declaration are true and correct copies of  
13 seven Addenda to the Windermere Real Estate License Agreement: Permission for  
14 Addition of Branch Office, each of which was executed by counter-defendants  
15 Robert L. Bennion and Joseph R. Deville. These documents were attached to the  
16 parties' respective complaints and counterclaims, were exchanged in discovery, and  
17 were attached as exhibits to Mr. Deville's deposition. Included in the deposition  
18 testimony of Mr. Deville, attached to this declaration as Exhibit D, is testimony  
19 from Mr. Deville further authenticating these documents.

20 11. Attached as Exhibit I to this declaration is a true and correct copy of the  
21 Agreement for Forgiveness of Franchise Fees – 2006 between WSC, WSSC, and  
22 Fine Homes dated August 10, 2007. This document was exchanged in discovery  
23 and was attached as an exhibit to Mr. Deville's deposition. Included in the  
24 deposition testimony of Mr. Deville, attached to this declaration as Exhibit D, is  
25 testimony from Mr. Deville further authenticating this document.

26 12. Attached as Exhibit J to this declaration is a true and correct copy of  
27 the Agreement for Deferral of Franchise Fees – 2007 between WSC, WSSC, and  
28 Fine Homes dated August 30, 2007. This document was exchanged in discovery

1 and was attached as an exhibit to Mr. Deville's deposition. Included in the  
2 deposition testimony of Mr. Deville, attached to this declaration as Exhibit D, is  
3 testimony from Mr. Deville further authenticating this document.

4 13. Attached as Exhibit K to this declaration is a true and correct copy of  
5 the Agreement Modifying Windermere Real Estate Franchise License Agreements  
6 between WSC, WSSC, Fine Homes, and Fine Homes SoCal dated December 18,  
7 2012. This document was attached to the parties' respective complaints and  
8 counterclaims, was exchanged in discovery, and was attached as an exhibit to a  
9 number of depositions of the parties and their representatives. Included in the  
10 deposition testimony of Mr. Deville, attached to this declaration as Exhibit D, is  
11 testimony from Mr. Deville further authenticating this document.

12 14. Attached as Exhibit L to this declaration is a true and correct copy of  
13 pages that I printed from the California Bureau of Real Estate's website –  
14 [www.dre.ca.gov](http://www.dre.ca.gov) – regarding Fine Homes.

15 15. Attached as Exhibit M to this declaration is a true and correct copy of  
16 pages that I printed from the California Bureau of Real Estate's website –  
17 [www.dre.ca.gov](http://www.dre.ca.gov) – regarding.

18 16. Attached as Exhibit N to this declaration is a true and correct copy of  
19 pages I printed from the California Secretary of State's website –  
20 <https://businessfilings.sos.ca.gov> – regarding WSSC.

21 I declare under penalty of perjury under the laws of the State California and  
22 the United States of America that the foregoing is true and correct, and that this  
23 declaration was executed on October 31, 2016.

24  
25  
26 /s/ Jeffrey A. Feasby  
Jeffrey A. Feasby  
27  
28



# EXHIBIT A

EXHIBIT A

WINDERMERE REAL ESTATE  
LICENSE AGREEMENT

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

RECITALS:

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

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

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

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

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

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

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

850 N Palm Canyon Dr.

Palm Springs, CA 92262

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

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

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

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

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

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

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

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

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

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

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

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

(b) Licensee is adjudicated bankrupt or insolvent;

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

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

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

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

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

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

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

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

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

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

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



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

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

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

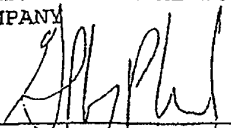
12. **Integration and Amendments.** This Agreement contains the entire agreement between WSC on the one hand, and Licensee on the other, regarding the subject matter thereof, and supersedes all prior or contemporaneous oral or written representations or agreements, which are merged into and superseded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



WSC:

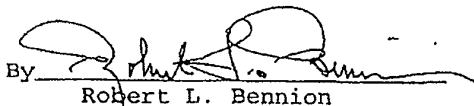
WINDERMERE REAL ESTATE SERVICES  
COMPANY

By

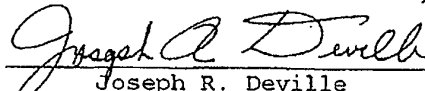
  
Geoffrey P. Wood  
President

LICENSEE:

By

  
Robert L. Bennion

Principal (Shareholder, Partner  
or Member) of Licensee

  
Joseph R. Deville

Principal (Shareholder, Partner  
or Member) of Licensee

Principal (Shareholder, Partner  
or Member) of Licensee

Principal (Shareholder, Partner  
or Member) of Licensee

Principal (Shareholder, Partner  
or Member) of Licensee

**AFFILIATE FEE SCHEDULE**

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

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

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

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

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

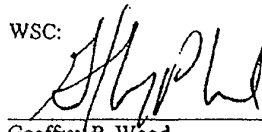
Windermere Services Co.  
5424 Sand Point Way NE  
Seattle, WA 98105  
(206/527-3801)

**LICENSEE:**



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

**WSC:**



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

# EXHIBIT B

original 03 Agreement

**COPY**

WINDERMERE REAL ESTATE SERVICES COMPANY

AREA REPRESENTATION AGREEMENT

FOR THE STATE OF CALIFORNIA

Exhibit

36

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

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 1<sup>st</sup> 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 22<sup>nd</sup> 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](http://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 precondition 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.

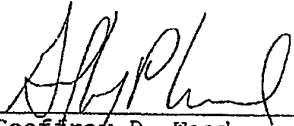
**20. Arbitration.** Except for equitable or injunctive relief involving intellectual property rights, the parties hereto shall submit any other dispute or controversy arising out of or related to this Agreement to binding arbitration before the American Arbitration Association pursuant to the rules 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.

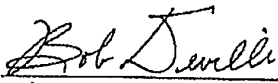
**21. Attorney's Fees and Costs.**

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



## FRANCHISE LICENSE AGREEMENT

1. Date of this Agreement:	March 29, 2011	
2. Licensee's Legal Name:	Bennion & Deville Fine Homes SoCal, Inc.	
3. Business Name as shown on Real Estate License:	Windermere Real Estate SoCal	
4. "Common Name" and Address of Main Office:	La Mesa 8080 La Mesa Blvd. Suite 204 La Mesa, CA 92270	
5. "Common Name" and Address of Branch Office(s):	Laguna Niguel 27611 La Paz Road, Suite D Laguna Niguel, CA 92677  Carmel Valley 12925 El Camino Real, Suite J27 San Diego, CA 92130  Solano Beach -- Lomas Santa Fe 124 Lomas Santa Fe, Suite 206 Solana Beach, CA 92075	
6. Principals of Licensee:	Name	% Owned
	Joseph R. Deville	50%
	Robert Bennion	50%
7. Projected Date that Licensee will commence doing business under the Windermere name:	March 30, 2011	

THIS AGREEMENT is made and entered into as of the date stated above by and among WINDERMERE REAL ESTATE SERVICES COMPANY, a Washington corporation ("WSC"); Windermere Services Southern California, Inc. ("Area Representative"); the Licensee identified above ("Licensee"); and the individual principals of Licensee identified above.



RECITALS:

- A. WSC is the owner of: (i) the trade names "Windermere" and "Windermere Real Estate", and the Windermere logo which appears at the top of the first page of this Agreement (herein collectively referred to as the "Trademark"); (ii) the standards, methods, procedures, techniques, specifications and programs developed by WSC for the establishment, operation and promotion of independently owned real estate brokerage offices, as those standards, methods, procedures, techniques, specifications and programs may be added to, changed, modified, withdrawn or otherwise revised by WSC (herein collectively referred to as the "Windermere System"); (iii) related and associated trademarks, service marks and logotypes other than the Trademark; and (iv) all goodwill connected with the Trademark and the Windermere System. WSC has the exclusive right to use and license others to use the Trademark and the Windermere System.
- B. WSC has granted to the Area Representative the right to offer licenses to use the Trademark in Southern California (the "Region") and to administer the Windermere System in the Region in accordance with this Agreement.
- C. Licensee desires to obtain and benefit from the right to use the Trademark and the Windermere System and the services to be provided by WSC and Area Representative under the terms set forth in this Agreement.

THEREFORE in consideration of the mutual covenants contained herein and for other good and valuable consideration, the parties agree as follows.

1. **Grant of License.** Subject to the terms and conditions specified herein, WSC hereby grants to Licensee the revocable and non-exclusive right during the term of this Agreement to use the Trademark and Windermere System only in the conduct of real estate brokerage services. Licensee agrees that during the entire term of this Agreement, including the period of notice of expiration of the term, Licensee will in good faith actively and with Licensee's best efforts engage in the real estate brokerage business using the Trademark. During the term of this Agreement neither Licensee, nor any of its Principals, will either directly or indirectly, (i) engage in any other competing real estate brokerage activity or (ii) sell all or any part of Licensee's real estate brokerage business or operating assets (including pending sales and listings) to a person or entity engaged in the real estate brokerage business.

2. **Locations; No Exclusive Territory.**

a. The license granted by this Agreement is limited to the location(s) shown on the first page of this Agreement, or otherwise approved in writing in advance by Area Representative and WSC in their sole discretion. If no initial location is specified on the first page of this Agreement at the time it is executed, WSC and Area Representative will approve or reject Licensee's initial proposed location within ten business days after receipt of written notice from Licensee requesting approval. If the parties are unable to agree on the location of Licensee's first office, then after three locations have been proposed and rejected Licensee may, at its request, be released from this Agreement and its initial franchise fee will be refunded in full.

Once Licensee's initial location(s) have been approved, Licensee may not relocate any office or open additional office locations except with the advance approval of WSC and Area Representative, which may be withheld in their sole discretion. Denial of any request to add or move an office shall not release Licensee from this Agreement.

b. Nothing in this Agreement shall be construed to confer or grant any exclusive territory, option, right of first refusal or other similar rights to acquire additional franchises or to any exclusive rights in any particular geographic area. WSC and Area Representative reserve the right to grant additional Windermere franchises within the Region at any time, in any location, including locations that may compete with Licensee's location(s) then in existence.

3. **Windermere System.** WSC shall provide guidance to Licensee with respect to the Windermere System. Such guidance shall, in WSC's discretion, be furnished in the form of written materials distributed physically or electronically, including through the Windermere Online Resource Center (WORC) intranet website, consultations by telephone or in person, or by other means of communication. WSC may, at Licensee's request, provide special assistance for which Licensee may be required to pay fees and/or expenses as WSC then charges. WSC may, in its sole discretion, develop, implement, modify and/or discontinue components of the Windermere System, including the addition of optional programs to enhance Licensee's business. WSC shall have the right, in its sole discretion, to condition Licensee's participation in any one or more of such programs upon Licensee being in compliance with this Agreement and any other agreements with WSC.

4. **Compliance with Laws; REALTOR® Association Membership Required.**

a. Licensee shall at all times fully comply with all applicable federal, state and local laws, regulations and ordinances which apply to the operations of Licensee's real estate brokerage business, including without limitation all applicable real estate licensing requirements for the state(s) in which Licensee's business operates. Failure to comply with any applicable laws or regulations shall constitute a material breach of this Agreement.

b. During the term of this Agreement Licensee and all of its individual brokers, managers and sales associates shall maintain membership in good standing with the National Association of REALTORS®, as well as any applicable state and/or local REALTOR® Associations for the geographic area(s) in which Licensee operates. Failure to maintain REALTOR® Association memberships as required shall constitute a material breach of this Agreement.

5. **Ownership of Trademark.** WSC expressly reserves the sole and exclusive ownership of the Windermere name and the Trademark, as well as the Windermere System and all other trademarks, service marks, logotypes or trade names (whether or not licensed hereunder) associated with the Windermere System. Licensee agrees not to use the Trademark, or any other marks associated with the Windermere System as part of its corporate name or for the purpose of advertising or operating its business, except in accordance with this Agreement, and in accordance with all approved reasonable standards of usage issued from time to time in writing by WSC. Upon request by WSC, Licensee shall cooperate fully and in good faith assist WSC to

the extent necessary in the procurement of any protection of or to protect any of WSC's rights in and to the Trademark and the Windermere System or any rights pertaining thereto.

**6. Protection of Trademark.**

a. The parties recognize the importance of the protection and maintenance of the quality image and reputation associated with the name Windermere Real Estate. In furtherance of that objective, so long as this Agreement remains in full force and effect, WSC and Area Representative may approve reasonable standards of operation and service of the Licensee, including the issuance of guidelines with respect to the form, content, image and style of advertising materials including signs and signage, the standardized use of the Trademark, and the use of Internet domain names which include or incorporate the Trademark. Licensee agrees to conform to such standards, methods, guidelines and procedures, and agrees to instruct and keep its sales force and employees fully informed of all such methods and procedures, as shall from time to time be promulgated by WSC or Area Representative. Licensee agrees to follow all reasonable directions by WSC or Area Representative concerning the operation of Licensee's business and Licensee's advertising and other use of the Trademark.

b. With respect to signs and business cards only, all vendors used by Licensee must be pre-approved by WSC or Area Representative. A list of previously approved vendors is available on request. If Licensee wishes to purchase signs or business cards from a vendor not on the list, Licensee should contact Area Representative to request approval for the new vendor. Approval of sign and business card vendors may be withheld in the sole discretion of WSC or Area Representative.

c. Licensee acknowledges that the Trademark and the business reputation and methods employed by WSC are of considerable value, and that the operation of Licensee's business – including Licensee's use of the Trademark – will affect the reputation of WSC and the Trademark. Accordingly, Licensee agrees that any act by Licensee or any of its principals which results in defaming, disparaging or tarnishing the Trademark or the business reputation of WSC or Area Representative shall constitute a material breach of this Agreement, and shall constitute good cause for termination of this Agreement.

d. If, in the judgment of WSC, it becomes necessary or desirable to modify the Trademark, Licensee will comply with the modification and will bear its own expense in connection with the modification and conversion.

e. Licensee must notify WSC or Area Representative of any challenge to Licensee's use of the Trademark. If Licensee is named as a party in any administrative or judicial proceeding alleging trademark infringement or unfair competition based on Licensee's use of the Trademark, or if Licensee becomes subject to a restraint on its use of the Trademark in connection with its real estate brokerage business, WSC will indemnify Licensee and defend any such proceeding at its own expense. WSC shall have the right to control any such litigation, including the selection of counsel, and shall have the sole right to make all decisions concerning the prosecution, defense or settlement of any litigation. WSC shall have the right to take any action, in its discretion and consistent with good business judgment to prevent infringement of

the Trademark or unfair competition against Windermere licensees. If Licensee is awarded monetary recovery in any legal proceeding arising from Licensee's use of the Trademark, WSC reserves the right to obtain reimbursement of its expenses from Licensee out of any monetary recovery awarded to Licensee as a result of WSC's intervention.

**7. Fees.**

a. **Initial Fee.** As consideration for the granting of the license set forth herein to Licensee for use of the Trademark and the Windermere System, Licensee agrees to pay Area Representative a non-refundable Initial Fee in the amount shown on the Fee Schedule attached hereto as Appendix 1. Unless otherwise indicated on Appendix 1, the Initial Fee is due in full upon the execution of this Agreement.

b. **Ongoing License Fees.** For the continuing use of the Trademark and the Windermere System, Licensee agrees to pay monthly Ongoing License Fees in an amount equal to five percent (5%) of the gross commissions earned and received by Licensee during the term of this Agreement, "capped" at the level stated on the attached fee schedule. The "cap" amount represents the gross commissions earned by each agent per accounting period. For example, a cap amount of \$75,000 means that Licensee will pay Ongoing License Fees on the first \$75,000 of gross commissions earned by each agent during each annual period. The accounting period for purposes of computing the fee cap may be either a calendar year (January 1 to December 31), or it may be an anniversary year (commencing each year on the anniversary of the agent's affiliation with Licensee, or some other anniversary date as specified in a written broker/sales associate contract). Licensee shall inform Area Representative of what accounting period it will be using for purposes of calculating capped fees. The fee "cap" is subject to cancellation or change by WSC at any time by written notice.

c. **Additional Fees.** In addition to the License Fees described above, Licensee also agrees to pay the Additional Fees as set forth on the Fees Schedule attached hereto as Appendix 1. Licensee agrees that the Additional Fees are subject to change at any time with six months written notice from WSC and that new fees may be added at any time with six months written notice.

d. **Fee Reports and Payments - When Due.** License Fees and Additional Fees shall be paid by Licensee on a monthly basis within five (5) days after the close of each calendar month. For example, fees accrued in January are due by February 5. Along with its monthly fee payments, Licensee shall submit a fee calculation report in the form and manner specified by WSC from time to time. Licensee will acquire, at Licensee's sole expense, any computer hardware and software required for submission of required reports to WSC, and shall upgrade such hardware and software as needed from time to time to comply with WSC reporting requirements. WSC publishes written policies and methods for fee reporting and payment – including the method for calculating the number of "agents" in each office for purposes of fees paid on a per agent basis. Licensee's fee reports and payments shall be in compliance with the then current policies and methods, which are subject to change from time to time by written notice from WSC. Licensee may not withhold payment of any License or Additional Fees, or any other amounts due to WSC or Area Representative on the grounds of the alleged non-

performance or breach of any obligations of WSC or Area Representative under this Agreement or any related agreement.

e. **Late Fees, Interest.** Any fees not paid by the tenth day of the month after they accrue will be subject to a late fee equal to ten percent (10%) of the delinquent amount, and the full amount of past due fees plus the late fee shall then bear interest at the lower of either the highest lawful rate or eighteen percent (18%) per annum. For example if Licensee owed \$5,000 for January, that amount would be due by February 5. If not paid by February 10, the amount of \$5,500 (fees due plus 10% late fee) would begin to accrue interest at the applicable rate from February 10 until paid in full. Payments on past due fees will be applied first to accrued and unpaid interest, and then to the principal (consisting of past due fees plus late fees, combined).

f. **Annual Reviews, Periodic Audits.**

1. For purposes of routine annual review, within six months after the close of each tax year Licensee shall submit to WSC a copy of Licensee's federal income tax return for that tax year, along with a balance sheet and income statement for the same tax period.
2. WSC may conduct periodic audits of Licensee at any time to confirm compliance with all terms of this Agreement. In connection with such audits, Licensee shall on demand provide WSC or its designated agents with all such reports regarding its gross commissions, income, transaction data, rosters of employees agents and assistants, and all other documents or information as WSC may reasonably request, including complete federal income tax returns, state tax returns or filings, financial statements (including balance sheets and profit and loss statements), all prepared in accordance with generally accepted accounting principles. In the event any audit should disclose that Licensee has underpaid any amounts owed under this Agreement by two percent (2%) or more, then Licensee shall promptly pay to WSC the fees, costs and expenses incurred in connection with the audit, along with the delinquent amounts owing, plus interest and penalties as provided herein.

g. **Fees due after Termination or Expiration.** In the event of the expiration or termination of the term of this Agreement, the Area Representative shall be entitled to receive Ongoing License Fees with respect to all listings and pending sales as of the date of expiration or termination. All such post-expiration or post-termination fees shall be due and payable at the time the commissions are received or receivable by Licensee. Licensee shall further pay all Additional Fees through the month in which the termination or expiration occurs as if it were a full month (for example, if termination or expiration occurs on June 10, Licensee shall nonetheless pay all fees calculated for the entire month of June on or before July 5, with no offset of pro-rata for the partial month). If after the expiration or termination date of this Agreement Licensee sells any part of its operating assets including, for instance, any part of Licensee's listings and sales agreements pending as of the date of expiration or termination, Licensee shall nevertheless continue to be obligated to make payment of all post expiration or termination fees with respect to listings and pending sales as though Licensee still owned them. After the expiration or termination date Licensee shall continue to submit reports and WSC

and/or Area Representative shall continue to have the right to inspect the books and records of Licensee insofar as they pertain to activities and/or revenues in connection with listings, and pending sales as of the date of expiration or termination.

**8. Term, Expiration and Termination.**

a. The term of this Agreement begins on its date and continues until it expires or is terminated as provided in this Section. The term of this Agreement expires when either Licensee or WSC give written notice to the other party of expiration of the term. Such notice must be given no less than 180 days, and no more than 366 days, prior to the expiration date specified in the notice. No cause shall be required for any party to give notice of expiration of the term, it being understood and agreed that the provisions of this paragraph are to provide for an agreed method of establishing an expiration date of the term of this Agreement; consequently, whether or not there is then a breach of this Agreement or other cause or motive for an expiration notice, is irrelevant.

b. WSC may terminate this Agreement for cause if Licensee fails to cure any default under the terms of this Agreement following written notice of said default. Licensee shall have five (5) days after notice from WSC or Area Representative to pay any overdue franchise fees or other amounts owing; five (5) days after notice from WSC to correct any failure of Licensee to maintain required insurance; and thirty (30) days after notice of default to cure any other default.

c. Notwithstanding the foregoing, if during the term of this Agreement there occurs any of the following events, WSC may immediately give notice of termination, without an opportunity to cure:

1. The franchisee or the business to which the franchise relates is declared bankrupt or judicially determined to be insolvent, or all or a substantial part of the assets thereof are assigned to or for the benefit of any creditor, or the franchisee admits his inability to pay his debts as they come due;
2. The franchisee abandons the franchise by failing to operate the business for five consecutive days during which the franchisee is required to operate the business under the terms of the franchise, or any shorter period after which it is not unreasonable under the facts and circumstances for the franchisor to conclude that the franchisee does not intend to continue to operate the franchise, unless such failure to operate is due to fire, flood, earthquake or other similar causes beyond the franchisee's control;
3. The franchisor and franchisee agree in writing to terminate the franchise;
4. The franchisee makes any material misrepresentations relating to the acquisition of the franchise business or the franchisee engages in conduct which reflects materially



5. The franchisee fails, for a period of 10 days after notification of noncompliance, to comply with any federal, state or local law or regulation applicable to the operation of the franchise;
6. The franchisee commits a material breach of this Agreement, after having previously committed and cured the same material breach two or more times;
7. The franchised business or business premises of the franchise are seized, taken over or foreclosed by a government official in the exercise of his duties, or seized, taken over, or foreclosed by a creditor, lienholder or lessor, provided that a final judgment against the franchisee remains unsatisfied for 30 days (unless a supersedeas or other appeal bond has been filed); or a levy of execution has been made upon the license granted by the franchise agreement or upon any property used in the franchised business, and it is not discharged within five days of such levy;
8. The franchisee, or any of its principals, is convicted of a felony or any other criminal misconduct which is relevant to the operation of the franchise;
9. The franchisee fails to pay any franchise fees or other amounts due to the franchisor or its affiliate within five days after receiving written notice that such fees are overdue;
10. The franchisor makes a reasonable determination that continued operation of the franchise by the franchisee will result in an imminent danger to public health or safety; or
11. Licensee assigns or attempts to assign this Agreement without the written consent of WSC.

9. **Discontinuance Upon Termination.** In the event of the expiration or termination of the term of this Agreement for any reason, Licensee shall immediately discontinue all use of the Trademark, the name "Windermere," all variations of the name, and the Windermere System. Without limiting the generality of the foregoing, if Licensee is a corporation, limited liability company or other entity, Licensee's principals covenant and agree to cause the entity's formation documents to be amended to change the name of the entity if it contains the word "Windermere." Following expiration or termination, Licensee shall also transfer, or cause to be transferred to WSC any Internet domain names registered by, to, or on behalf of Licensee which include the word Windermere, or any variation thereof, or any other Trademark (whether or not registered) of WSC.

10. **Non-Transferability - Right of First Refusal.**

a. This license is not transferable without the written consent of WSC and Area Representative, which consent may be withheld in WSC's sole discretion. Any change in the ownership of Licensee, if Licensee is a corporation, limited liability company, or other entity, shall be considered a transfer or assignment for purposes of this provision. Failure to obtain the written consent of WSC to any transfer shall constitute a material default by Licensee, and shall be grounds for termination of this Agreement by WSC.

b. If Licensee is an individual sole proprietor, or an entity with only one principal owner, this license will terminate unless transferred to an approved transferee within six months of the death or incapacity of the principal owner.

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

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

**12. Indemnification - Insurance.**

a. Licensee agrees to indemnify WSC and Area Representative from and against any and all claims based upon, arising out of, or in any way related to the operation of Licensee's business including, but not limited to, any intentional act, negligent act, error or omission by



Licensee or any of its agents, employees, licensees, or independent contractors, together with all attorney's fees, costs and other expenses reasonably incurred by or on behalf of WSC and Area Representative in the investigation of or defense against any such claim. The provisions of this paragraph shall survive the expiration or termination of this Agreement. In the event that any claim is tendered to Licensee under the provisions of this section for indemnity, WSC and/or Area Representative shall have the right at its election to select its own defense counsel, and to control the litigation, including the right to make any decisions concerning the compromise or settlement of any claims.

b. Licensee agrees to maintain and keep in force during the term of this Agreement, for the mutual benefit of WSC, Area Representative and the Licensee, all forms of necessary business insurance, with limits of coverage and deductibles acceptable to WSC and Area Representative. Required insurance includes, but is not limited to: Worker's Compensation insurance as required by law; comprehensive general liability insurance; and professional liability errors and omissions insurance. The insurance policies shall name WSC and Area Representative as an additional insured, and shall be provided with certificates of required insurance on demand. The coverage limits and deductible requirements shall be established by WSC and Area Representative and communicated to Licensee in the form of a policy memo, which is subject to change from time to time with written notice. Upon being notified of a change in required insurance, Licensee agrees to modify their coverage at their next policy renewal to bring their policies into compliance with the revised requirements.


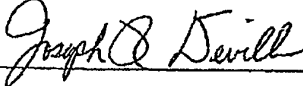
**13. Governing Law, Costs and Attorneys' Fees.** Notwithstanding any principals concerning conflict of laws, this Agreement shall be governed by the laws of the state in which Licensee's primary business location (as shown on the first page of this Agreement, or as subsequently modified by mutual agreement). Unless agreed otherwise venue for any disputes arising from this Agreement shall be in state or federal courts having jurisdiction over that location. In the event that any suit or action is instituted for breach of, to enforce or to obtain a declaration of rights under this Agreement, including but not limited to suit for preliminary injunction, the substantially prevailing party shall be entitled to be reimbursed by the non-prevailing party for all costs, including reasonable attorneys' fees, incurred in connection with such suit or action, including any appeals.

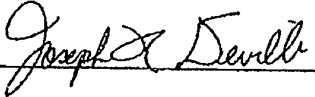
**14. Integration and Amendments.** This Agreement contains the entire agreement between WSC on the one hand, and Licensee on the other, regarding the subject matter thereof, and supersedes all prior or contemporaneous oral or written representations or agreements, which are merged into and superseded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

**15. Disclaimer of Representations and Warranties.** WSC and Area Representative expressly disclaim the making of any representation, warranty or guaranty, express or implied, with respect to the revenues, profits or success of the business venture contemplated by this Agreement. Licensee acknowledges that it has not received or relied upon any such representations, warranty or guaranty, and has not received or relied on any representations concerning the license by WSC or Area Representative or its officers, directors, employees or agents, that are contrary to the

statements made in the Franchise Disclosure Document provided to License, or to the terms of this Agreement.

EXECUTION

WSC	LICENSEE
 (sign)	 (sign)
By Geoffrey P. Wood	By: Joseph R. Deville
Its Chief Executive Officer	Its: President
Date: 4-5-2011	Date: 3-29-2011

AREA REPRESENTATIVE
 (sign)
By Joseph R. Deville
Its President
Date: 3-29-2011

**APPENDIX 2  
PERSONAL GUARANTY**

Date of License Agreement	March 29, 2011
Licensee Name	Bennion & Deville Fine Homes SoCal, Inc.

This "Guaranty" must be signed by all Principals of Licensee identified in the Windermere Real Estate Franchise License Agreement to which this Appendix is attached. Each Principal shall be deemed a "Guarantor" jointly and severally.

**RECITALS**

Each Guarantor has a financial or other interest in Licensee, will benefit from the granting of the Franchise License Agreement by WSC and Area Representative to Licensee, is familiar with and understands the terms and conditions of the License Agreement, and is satisfied with and approves the same in all respects without condition or reservation. As a material inducement to WSC and Area Representative to grant the License, the Guarantors have agreed unconditionally to guarantee the full and punctual payment and performance of the "Guaranteed Obligations" (defined below).

**AGREEMENT:**

**FOR GOOD AND VALUABLE CONSIDERATION**, the receipt and sufficiency of which are acknowledged, and to induce WSC and Area Representative to grant the License to Licensee, each Guarantor covenants and agrees:

1. **GUARANTEED OBLIGATIONS.** As used in this Guaranty, the term "Guaranteed Obligations" is defined in its broadest and most comprehensive sense to mean all primary, secondary, direct, indirect, fixed and contingent, debts, duties, agreements, undertakings, obligations, covenants and conditions now or at any time in the future to be paid or performed by Licensee in connection with or relating to the Windermere Franchise License Agreement, or any financial accommodations which WSC and Area Representative may from time-to-time extend or provide to or for the benefit of Licensee in connection with the License including, without limitation, all of Licensee's obligations to pay all fees, charges, sums, costs, reimbursements and expenses which at any time may be owing under or in connection with the License, any business or financial accommodation made or provided in connection with the License, as any or all of them may from time to time be modified, amended, extended, renewed or restated.

2. **GUARANTY.** Each Guarantor unconditionally, absolutely and irrevocably guarantees to and for the benefit of WSC and Area Representative the full, prompt and complete payment and performance by Licensee of the Guaranteed Obligations. If any of the Guaranteed Obligations are not paid or performed by Licensee as and when such payment or performance is due or required, then on demand from WSC and Area Representative, the Guarantors will pay or perform the same.

3. **INDEPENDENT OBLIGATION.** This Guaranty is an independent obligation of each Guarantor, separate and distinct from the Guaranteed Obligations. A separate action may be brought or prosecuted against Guarantor, whether or not any such action is brought or prosecuted against Licensee or any other Guarantor or other party, or whether Licensee or any other Guarantor or any other party is joined in any such action or actions. This Guaranty is an absolute guarantee of payment and performance, and not a guarantee of collection. The obligations of Guarantor under this Guaranty are direct and primary, regardless of the validity or enforceability of any instrument or agreement giving rise to any of the Guaranteed Obligations. Guarantor shall continue to be liable under this Guaranty even if all or part of the Guaranteed Obligations become uncollectible by operation of law or otherwise.

4. **APPLICATION OF PAYMENTS.** WSC and Area Representative may apply any payments received from any source against any portion of the Guaranteed Obligations in such order and priority as WSC and Area Representative may deem appropriate. No payment received by WSC or Area Representative from any source other than a direct payment made by a Guarantor pursuant to a written demand by WSC and Area Representative shall be credited against that Guarantor's obligations under this Guaranty.

5. **COSTS AND EXPENSES.** Whether or not suit is brought, Guarantor shall pay on demand all costs and expenses, including attorneys' fees and allocated costs of in-house counsel, incurred by or on behalf of WSC and Area Representative in connection with the enforcement or collection from Guarantor of all or any of the Guaranteed Obligations, or in connection with the enforcement, interpretation or defense of this Guaranty. Without limitation, these expenses, costs and fees include those incurred at trial, on appeal, and with respect to any bankruptcy, receivership or arbitration proceedings.

6. **REPRESENTATIONS AND WARRANTIES.** Guarantor represents and warrants to WSC and Area Representative that Guarantor is a principal of Licensee or otherwise financially interested in Licensee, and (a) is adequately informed of the financial condition of Licensee, and Licensee's operations and properties, (b) is familiar with and will stay informed regarding the terms and conditions of the License Agreement and the other Guaranteed Obligations, and of Licensee's resources and plans for payment and performance of the Guaranteed Obligations, (c) has not relied on any financial or other information provided by WSC, if any, about Licensee, Licensee's operations and activities, properties or prospects, and (d) does not expect WSC and Area Representative to provide and waives any duty on the part of WSC and Area Representative to provide any such information in the future including, without limitation, adverse information about the Licensee or its activities. Guarantor acknowledges that WSC and Area Representative is under no obligation to grant the License to Licensee without this Guaranty and would not do so without this Guaranty.

7. **MISCELLANEOUS.**

(a) If there is more than one Guarantor under this Guaranty, then the obligations of all such Guarantors shall be joint and several, and in such case the obligations of each Guarantor shall be independent of those of all other Guarantors and of the obligations of Licensee and any other persons or entities obligated in any manner for the payment or performance of the Guaranteed Obligations.

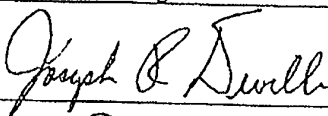
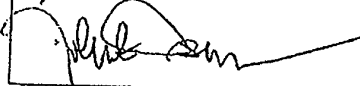
(b) The obligations and liabilities of Guarantor hereunder shall not be limited in any manner by any nonrecourse or other provisions in the instruments and agreements giving rise to the Guaranteed Obligations which may limit the liability or obligations of Licensee with respect to the Guaranteed Obligations.

(c) This agreement constitutes the entire agreement between WSC, Area Representative and Guarantor, and no course of dealings between the parties, no usage of trade, and no parole or extrinsic evidence of any nature shall be used to supplement or modify any terms, nor are there any conditions to the effectiveness of this Guaranty.

(e) If any provision of this Guaranty is invalid, illegal or unenforceable, such provision shall be considered severed from the rest of this Guaranty and the remaining provisions shall continue in full force and effect as if the invalid provision had not been included. This Guaranty may be changed, modified or supplemented only through a writing signed by both Guarantor and Lender.

I clearly understand that WSC and Area Representative do not have to pursue the Licensee or any other Guarantor or obligated party or foreclose or realize upon any security before demanding payment from me. I further understand that I will have to pay the amounts then due even if Licensee or any other Guarantor or obligated party does not make payment or is otherwise relieved of the obligation of making payment.

GUARANTORS:

Sign	Print Name and Home Address	Date
	Joseph R. Deville	3-29-11
	Robert Bennion	3-29-11



**Office Announcement**

Date: 4/17/14

RE: **Encinitas**

Opening Date	8/1/14
Licensed Name	Windermere Real Estate SoCal, Inc.
Office Common (Roster) Name	Encinitas
Company's Legal Name	Bennion & Deville Fine Homes SoCal, Inc.
Physical Address	258C N. El Camino Real, Encinitas, CA 92024
Mailing Address	
Email Address	
Phone Number	858-345-1377 (Carlsbad # for now)
Fax Number	
Number of Agents	25-30
Ownership(s) and % of ownership	Bob Bennion & Bob Deville 100%
Secretary	
Bookkeeper	
Internet Coordinator	
MLS and contact info	
Area Representative	Windermere Services Southern California
County	
Local Newspaper	
Additional Information	



**Office Announcement**

Date: 4/17/14

RE: **Little Italy**

Opening Date	5/15/14
Licensed Name	Windermere Real Estate SoCal, Inc.
Office Common (Roster) Name	Little Italy
Company's Legal Name	Bennion & Deville Fine Homes SoCal, Inc.
Physical Address	1742 ½ India St., San Diego, CA 92101
Mailing Address	
Email Address	
Phone Number	TBD
Fax Number	
Number of Agents	20
Ownership(s) and % of ownership	Bob Bennion & Bob Deville 100%
Secretary	
Bookkeeper	
Internet Coordinator	
MLS and contact info	
Area Representative	Windermere Services Southern California
County	
Local Newspaper	
Additional Information	



**Office Announcement**

Date: 2/20/14

RE: Solana Beach – Lomas Santa Fe branch

Closing Date	2/21/14
Licensed Name	Windermere Real Estate SoCal, Inc.
Office Common (Roster) Name	Solana Beach – Lomas Santa Fe
Company's Legal Name	Bennion & Deville Fine Homes SoCal, Inc.
Physical Address	124 Lomas Santa Fe Drive, Suite 206, Solana Beach, CA 92076
Mailing Address	
Email Address	<a href="mailto:solanabeach@windermeresocal.com">solanabeach@windermeresocal.com</a>
Phone Number	858-345-1377
Fax Number	858-345-1388
Number of Agents	
Ownership(s) and % of ownership	Bob Bennion & Bob Deville 100%
Secretary	
Bookkeeper	
Internet Coordinator	
MLS and contact info	
Area Representative	Windermere Services Southern California
County	
Local Newspaper	
Additional Information	Office closing 2/21/14 and agents moving to Carlsbad office.



**Office Change Announcement Request**

☒ New office  
 ☐ New branch  
 ☐ Address change  
☐ Ownership change  
 ☐ Other

Company's Legal Name	Bennion & Deville Fine Homes SoCal, Inc.
Licensed Name (as shown on real estate license)	Windermere Real Estate SoCal
Office Common (Roster) Name	Carlsbad
Opening/Effective Date	6/27/11
Physical Address	300 Carlsbad Village Drive, Suite 217, Carlsbad, CA 92008
Mailing Address	71-691 Highway 111, Rancho Mirage, CA 92270
Email Address	carlsbad@windermereocal.com
Telephone Number	760-893-8040
Fax Number	760-893-8041
Number of Agents	8
Owner(s) and percentages of ownership	Bob Bennion 50%, Bob Deville 50%
Manager/Broker	Brent Consedine, bconsedine@windermereocal.com
Secretary	
Bookkeeper	
Internet Coordinator	Kirk Gregor
MLS	NSDCAR
Area Representative	Windermere Services Southern California
County	San Diego
Local Newspaper	San Diego Union-Tribune
Additional Information	
Submitted by and contact information	Paige Tyley, ptyley@windermereocal.com, 760-409-4327

Please email or fax to Melinda Lamp at [mwlamp@windermere.com](mailto:mwlamp@windermere.com) or (206) 526-7629.



Office Change Announcement Request

☐ New office ☐ New branch ☒ Address change  
☐ Ownership change ☐ Other

Company's Legal Name	Bennion & Deville Fine Homes SoCal, Inc.
Licensed Name (as shown on real estate license)	Windermere Real Estate SoCal
Office Common (Roster) Name	La Mesa
Opening/Effective Date	5/18/2011
Physical Address	8131 Allison Avenue, La Mesa, CA 91942
Mailing Address	71-691 Highway 111, Rancho Mirage, CA 92270
Email Address	
Telephone Number	619-741-8588 (same as before)
Fax Number	619-741-8599 (same as before)
Number of Agents	
Owner(s) and percentages of ownership	100
Manager/Broker	Jan Farley
Secretary	
Bookkeeper	
Internet Coordinator	
MLS	
Area Representative	
County	
Local Newspaper	
Additional Information	
Submitted by and contact information	

Please email or fax to Melinda Lamp at [mwlamp@windermere.com](mailto:mwlamp@windermere.com) or (206) 526-7629.

# EXHIBIT D

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

BENNION & DEVILLE FINE HOMES, )  
INC., a California )  
corporation, BENNION & DEVILLE)  
FINE HOMES SOCAL, INC., a ) Case No.  
California corporation, ) 5:15-CV-01921 R  
WINDERMERE SERVICES SOUTHERN ) (KKx)  
CALIFORNIA, INC., a California)  
corporation, )  
)  
Plaintiffs, )  
vs. )  
WINDERMERE REAL ESTATE )  
SERVICES COMPANY, a Washington)  
corporation; and DOES 1-10, )  
Defendant. )  
-----)

DEPOSITION OF JOSEPH R. DEVILLE  
Irvine, California  
Tuesday, July 26, 2016  
Volume I

Reported by:  
Shari Stellhorn  
CSR No. 2807  
Job No. 2330922  
PAGES 1 - 258

Page 1

1 A No.

2 Q Was it helpful to you in terms of the  
3 information that was provided in running your  
4 franchise?

5 A No. 10:41:17

6 (Exhibit 8 was marked for identification  
7 by the court reporter.)

8 BY MR. FEASBY:

9 Q On to No. 8. This is another affiliate fee  
10 schedule and this is for La Quinta. This was 10:41:36  
11 another branch that you opened?

12 A Yes.

13 Q In January 2004?

14 A Yes.

15 Q At that time do you -- can you estimate for 10:41:47  
16 me how many agents you had working in all of your  
17 offices at that time?

18 A That's a guess.

19 MR. ADAMS: Don't guess at anything.

20 THE WITNESS: I don't know. I'd have to go 10:42:13  
21 back and look.

22 BY MR. FEASBY:

23 Q That's fine.

24

25 (Exhibit 9 was marked for identification

1 by the court reporter.)

2 BY MR. FEASBY:

3 Q Exhibit 9 is an addenda to the real estate  
4 license agreement. Do you recognize this document?

5 A I need to read it. 10:42:40

6 Q Take your time.

7 MR. FEASBY: Actually, why don't we go off  
8 the record. I'm running out of stickers so now  
9 would be a good time.

10 VIDEO OPERATOR: Going off the record, the 10:42:52  
11 time is 10:42 a.m.

12 (Recess.)

13 VIDEO OPERATOR: Back on the record. The  
14 time is 10:49 a.m.

15 BY MR. FEASBY: 10:49:04

16 Q Mr. Deville, you've had a chance to go  
17 through that Exhibit 9 there?

18 A Yes.

19 Q And you recognize that document?

20 A Yes. 10:49:11

21 Q And what is that document?

22 A It's summing up basically the three offices  
23 that we have open.

24 Q And if you look on the first page and it's  
25 not a numbered paragraph but it's underneath the 10:49:24

Page 71

1 Q For this branch?

2 A Yes.

3 Q And you also agreed to pay the franchise  
4 fees; correct?

5 A Yes. 10:51:38

6 (Exhibit 12 was marked for identification  
7 by the court reporter.)

8 BY MR. FEASBY:

9 Q Exhibit 12 is another addenda. Do you  
10 recognize this document? 10:52:03

11 A Yes.

12 Q And this addenda is also to the initial  
13 Franchise Agreement that we saw earlier?

14 A Yes.

15 Q Which I referred to as the Coachella 10:52:16  
16 agreement.

17 And looks like you're adding a Palm Desert  
18 location to this; is that correct?

19 A Yes.

20 Q And it also looks like the Palm Springs 10:52:26  
21 location, the address may have changed; is that  
22 correct?

23 A Yes.

24 Q So that on Page 2 at the top Palm Springs  
25 downtown that's the same initial branch that you 10:52:38

Page 74

1 opened when you entered into the agreement?

2 A No.

3 Q This is a different branch. Okay.

4 A That was more like a satellite office to

5 have a presence in downtown. 10:52:51

6 Q So you still had the 850 Palm --

7 A 850, yes.

8 Q And this -- this addendum is dated August  
9 19th, 2004. At that time did you have any other  
10 branch offices that aren't listed on this document? 10:53:18

11 A Not that I'm aware of.

12 Q Did you have any other satellite offices  
13 that weren't listed on this document?

14 A I'd have to go back and check. I don't  
15 know what were the dates. 10:53:28

16 Q It's possible?

17 A In 2004, probably not.

18 (Exhibit 13 was marked for identification  
19 by the court reporter.)

20 BY MR. FEASBY: 10:53:43

21 Q This is another addenda that I've marked as  
22 Exhibit 13. And this looks like it's to open  
23 another branch at Indian Wells; is that correct?

24 A Yes.

25 Q And if you turn to the second page, there 10:54:09

Page 75



1 is one that says Indian Wells and then (commercial)?

2 A Yes.

3 Q Can you explain to me what that commercial  
4 refers to?

5 A It was an office next to the original 10:54:20  
6 office that we made or called it a commercial  
7 office.

8 Q For commercial real estate?

9 A Yes.

10 Q So did you treat those as two separate 10:54:34  
11 branches?

12 A We did for publicity purposes. Any time we  
13 could list another location to make us look larger,  
14 we would always list that, even the satellite  
15 offices. 10:54:58

16 Q And what was the distinction between --  
17 what made an office a satellite office versus an  
18 actual branch?

19 A The size.

20 Q Was there a certain number of agents that 10:55:08  
21 was -- made a satellite a branch?

22 A Nothing definite, but it would be much --  
23 many fewer agents. The office itself, the square  
24 footage wouldn't be that large as to the main  
25 office. 10:55:30

Page 76

1 Q And that's regardless of whether it was a  
2 satellite or a branch?

3 A Yes.

4 Q Did they ever refuse to give permission to  
5 open a branch office? 11:07:26

6 A No.

7 Q Did they refuse to give permission to open  
8 a satellite office?

9 A No.

10 Q But in every instance you would talk to 11:07:34  
11 Geoff Wood ahead of time?

12 A Yes. It -- it would either be Jeff or  
13 someone within Services.

14 Q Who else might you talk to?

15 A Lance Teal as there at one point. I don't 11:07:49  
16 know if he's still there. Don Riley possibly.

17 Q Anyone else?

18 A No, that I recall right now, no.

19 (Exhibit 16 was marked for identification  
20 by the court reporter.) 11:08:32

21 BY MR. FEASBY:

22 Q Mark as Exhibit 16, this is another addenda  
23 to the real estate license agreement. If you look  
24 at the -- do you recognize this document?

25 A Yes. 11:08:47

1 Q If you look at the bottom it references  
2 Rancho Mirage at The Springs.

3 A Yes.

4 Q Was that a new branch that was opening at  
5 that time? 11:08:55

6 A We listed it as a branch. What this is,  
7 we're in a number of onsite offices in the country  
8 clubs, and an onsite office is anywhere from  
9 500 square feet to maybe 850 square feet. That's an  
10 office within their management division within the 11:09:14  
11 club that they give us a location usually of two,  
12 three agents in there working out of that location.  
13 That's a satellite.

14 Q So for that -- for those offices you  
15 wouldn't be paying the franchise fee; correct? 11:09:37

16 A Correct.

17 Q But you would be paying the technology fee?

18 A Correct.

19 Q And in signing off on this agreement, you  
20 agreed -- reiterated your agreement to pay those 11:09:49  
21 fees; correct?

22 A I'm sorry.

23 Q You reiterated your agreement to pay those  
24 fees?

25 A I don't understand what you are saying. 11:09:58

Page 87

1 A Yes.

2 Q And what was this for?

3 A That was The Club at Morningside, another  
4 country club that we were in the onsite office with  
5 one agent in there, an agent and an assistant. 11:13:05

6 Q So this was a satellite?

7 A Yes.

8 (Exhibit 19 was marked for identification  
9 by the court reporter.)

10 BY MR. FEASBY: 11:13:48

11 Q Mark as Exhibit 19, this is an addenda to  
12 Franchised License Agreement 2006 fee adjustments.  
13 Do you recognize this document?

14 A I need to read it.

15 Q Okay. 11:14:12

16 A Is this a change in the Franchise Agreement  
17 for all of Southern California; is that what I'm  
18 looking at?

19 Q I -- I don't know. Have you seen this  
20 document before? 11:15:17

21 A I'm sure I have, but back in 2005, I have a  
22 little bit of trouble --

23 Q Take your time and go ahead and go through  
24 it. I can show -- if you look up at the top, "Date  
25 of original License Agreement 8/2001." 11:15:36

Page 90

1 Q Does this refresh your recollection at all  
2 whether or not you were providing area  
3 representative services at that time?

4 A This would assume so, yes.

5 Q And do you recall, keeping that in mind, 11:37:47  
6 that you, as the area rep at that time, whether or  
7 not this alternative fee schedule was offered to  
8 different owners in Southern California at that  
9 time?

10 A I don't recall. 11:38:03

11 Q And for all of the addenda and the fee  
12 schedules that we've talked about, it was your  
13 understanding every time you signed those documents  
14 that you were agreeing to pay the technology fees  
15 outlined in those documents; correct? 11:38:32

16 A Yes.

17 Q And you were also paying -- agreeing to pay  
18 any associated franchise fees?

19 A Yes.

20 (Exhibit 20 was marked for identification 11:38:44  
21 by the court reporter.)

22 BY MR. FEASBY:

23 Q Exhibit No. 20 is another addenda and this  
24 lists Palm Springs Desert East. Is that a new  
25 branch office? 11:39:12

1 A Yes.

2 Q This document is dated December 9th, 2005;  
3 do you see that?

4 A Yes.

5 Q And then it -- excuse me -- then it 11:39:27  
6 mentions Rancho Mirage The Club at Morningside. Is  
7 this the one that we were talking about before?

8 A Yeah, that's the same one we looked at  
9 before, the satellite office.

10 Q Now, if you look at Paragraph 1 of the 11:39:41  
11 agreement it says, "Licensees original license  
12 agreement is hereby amended to allow licensee to  
13 operate branch offices located at" and then it lists  
14 all of these. Is there a reason why this refers to  
15 all of these locations as being branch offices as 11:40:02  
16 opposed to some of them being satellites?

17 A No. They just always did it that way.

18 Q But you were, at least with regard to The  
19 Club at Morningside, and maybe some of these others  
20 that were treated -- you treated as satellites, you 11:40:17  
21 were not paying franchise fees for those locations?

22 A Correct.

23 Q And if you look at the last page, this is  
24 the affiliate fee schedule for the Palm Desert East  
25 location? 11:40:57

Page 100

1     their franchise fees as owed to first your  
2     So. Cal Services and then subsequently to Windermere  
3     Seattle; correct?

4           A     Yes.

5                     (Exhibit 22 was marked for identification     12:08:57  
6                     by the court reporter.)

7     BY MR. FEASBY:

8           Q     Exhibit 22 is another addenda -- oh; right.  
9     Thank you.    So you've got your copy.

10                    So this is agreement for forgiveness of     12:09:14  
11     franchise fees 2006; do you see that?

12           A     Yes.

13           Q     And this agreement is between Windermere  
14     Seattle at the top, Windermere Services So. Cal and  
15     Bennion & Deville Fine Homes; correct?     12:09:28

16           A     Yes.

17           Q     And if you look at Paragraph 1, forgiveness  
18     of fees -- do you recognize this document?

19           A     Yes.

20           Q     And you signed this document on Page 2?     12:09:41

21           A     Yes.

22           Q     And pursuant to this document, Windermere  
23     and Services So. Cal are agreeing to forgive  
24     franchise fees owed by Bennion & Deville Fine Homes  
25     for the months 2006 through December 2006 -- excuse     12:10:03

Page 120

1 me -- for the months June 2006 through

2 December 2006; do you see that?

3 A Yes.

4 Q And the total amount forgiven is \$584,000;

5 do you see that? 12:10:17

6 A Yes.

7 Q So this was an agreement that you reached

8 with your Services entity, Services So. Cal, and

9 Windermere to forgive a substantial amount of

10 franchise fees that had been incurred but not paid; 12:10:30

11 correct?

12 A Yes.

13 Q And this \$500 -- \$840,000 half of that was

14 owed to Windermere in Seattle; correct?

15 A Say that -- ask that again. 12:11:03

16 Q Sure.

17 Half of the \$584,000 was owed to Windermere

18 in Seattle?

19 A No.

20 Q No. How much of that 500 -- \$500,840 was 12:11:11

21 owed to Windermere in Seattle?

22 A I think 500,840 -- I think that's the

23 amount we owed them.

24 Q If you look in paragraph -- if you look in

25 Paragraph 2, this is a provision which 12:11:37

Page 121



1 A Yes.

2 Q And that you had recommended to Seattle  
3 that they make that accommodation; correct?

4 A Yes.

5 Q Did Seattle ever follow your recommendation 12:20:16  
6 in that regard?

7 A Once that I can recall right -- presently.

8 Q Which -- which owner was that?

9 A MRJ to try to keep them from leaving the  
10 system. 12:20:40

11 Q And we talked about that a little bit  
12 before; correct?

13 A Yes.

14 Q Did -- I'm sorry.

15 (Exhibit 24 was marked for identification 12:20:58  
16 by the court reporter.)

17 BY MR. FEASBY:

18 Q Exhibit 24, take a look at that, this is a  
19 document that's entitled "Agreement for Deferral of  
20 Franchise Fees 2007"; do you see that? 12:21:06

21 A Okay.

22 Q Do you recognize this document?

23 A No.

24 Q If you turn to Page 3, is that your  
25 signature there both under Services So. Cal and 12:21:43

Page 128

1 Bennion & Deville Fine Homes?

2 A Yes.

3 Q And if you turn the next page there is a  
4 personal guarantee. Is that your signature there?

5 A Yes. 12:22:00

6 Q Do you recall whether in August of 2007  
7 Bennion & Deville Fine Homes was having any  
8 financial difficulties?

9 A I'm sorry. What?

10 Q Do you recall whether or not, in August of 12:22:25  
11 2007, Bennion & Deville Fine Homes was having any  
12 financial difficulties?

13 A No.

14 Q No, you don't recall?

15 A I don't. I'd have to go back and check. 12:22:35

16 Q I'm sorry?

17 A I'd have to -- I don't recall.

18 Q Do you recall requesting that Windermere in  
19 Seattle defer franchise fees for 2007 for

20 Bennion & Deville Fine Homes? 12:22:52

21 A I'm sorry. What?

22 Q Do you recall requesting that Windermere in  
23 Seattle agreed to defer Bennion & Deville Fine Homes  
24 franchise fees for 2007?

25 A No. 12:23:04

Page 129

1 I, the undersigned, a Certified Shorthand  
Reporter of the State of California, do hereby  
2 Certify:

3 That the foregoing proceedings were taken  
before me at the time and place herein set  
4 forth; that any witnesses in the foregoing  
proceedings, prior to testifying, were  
5 administered an oath; that a record of the  
proceedings was made by me using machine  
6 shorthand which was thereafter transcribed  
7 under my direction; that the foregoing  
8 transcript is a true record of the  
9 testimony given.

10 Further, that if the foregoing pertains to  
the original transcript of a deposition in  
11 a Federal Case, before completion of the  
proceedings, review of the transcript [ ]  
12 was [ ] was not requested. I further  
13 certify I am neither financially  
14 interested in the action nor a relative or  
15 employee of any attorney or any party to  
16 this action.

17  
18 IN WITNESS WHEREOF, I have this date  
19 Subscribed my name.

20 Dated: August 4, 2016

21  
22   
23

24 SHARI STELLHORN

25 CSR No. 2807

1 UNITED STATES DISTRICT COURT  
2 CENTRAL DISTRICT OF CALIFORNIA  
3  
4

5 BENNION & DEVILLE FINE HOMES, )  
6 INC., a California )  
7 corporation, BENNION & DEVILLE)  
8 FINE HOMES SOCAL, INC., a ) Case No.  
9 California corporation, ) 5:15-CV-01921 R  
10 WINDERMERE SERVICES SOUTHERN ) (KKx)  
11 CALIFORNIA, INC., a California)  
12 corporation, )  
13 )  
14 Plaintiffs, )  
15 vs.  
16 WINDERMERE REAL ESTATE  
17 SERVICES COMPANY, a Washington  
18 corporation; and DOES 1-10,  
19 Defendant.  
20  
21 -----

22 DEPOSITION OF JOSEPH R. DEVILLE  
23 Irvine, California  
24 Wednesday, July 27, 2016  
25 Volume II

26 Reported by:  
27 Shari Stellhorn  
28 CSR No. 2807  
29 Job No. 2330918A  
30 PAGES 259 - 426

1 the money to pay themselves back but they loaned us  
2 the money to open new offices, to continue opening  
3 new offices.

4 MR. FEASBY: Move to strike.

5 BY MR. FEASBY: 09:51:19

6 Q And now shifting back to Windermere Watch,  
7 so Windermere Watch was becoming a big problem for  
8 you in Southern California; is that correct?

9 A It's always been a big problem for us in  
10 Southern California. 09:51:29

11 Q And you don't recall specifically when that  
12 started?

13 A No.

14 (Exhibit 51 was marked for identification  
15 by the court reporter.) 09:51:37

16 BY MR. FEASBY:

17 Q Exhibit 51 --

18 MR. ADAMS: Just to clear up things here,  
19 are you done with Exhibit 22 for right now?

20 MR. FEASBY: Oh, yes. 09:51:44

21 THE WITNESS: Is this included with this  
22 one?

23 MR. ADAMS: I don't know.

24 MR. FEASBY: That must have stuck to the  
25 bottom. Thanks. 09:52:03

Page 297

1 BY MR. FEASBY:

2 Q Do you recognize this document?

3 A Yes.

4 Q And what is this document?

5 A Agreement modifying Windermere Real Estate 09:52:17  
6 Franchise License Agreement.

7 Q And what was the purpose of this agreement?

8 A I'll have to read it.

9 It was a meeting that we had in Seattle  
10 discussing our concerns with Windermere Watch, 09:53:54  
11 technology and just business in general.

12 Q And this was an agreement that you reached  
13 with Windermere on certain issues; correct?

14 A Yes.

15 Q And if you turn to Page 2 under 09:54:15  
16 consideration, one of those issues was Windermere  
17 Watch?

18 A Yes.

19 Q And underneath that under Sub (b), waiver  
20 of unpaid franchise and technology fees; do you see 09:54:29  
21 that?

22 A Yes.

23 Q And then if you go on to the next page, C,  
24 ramp up and payment of fees for April 2012 through  
25 present; do you see that? 09:54:41

Page 298

1 I, the undersigned, a Certified Shorthand  
2 Reporter of the State of California, do hereby  
3 Certify:

4 That the foregoing proceedings were taken  
5 before me at the time and place herein set  
6 forth; that any witnesses in the foregoing  
7 proceedings, prior to testifying, were  
8 administered an oath; that a record of the  
9 proceedings was made by me using machine  
10 shorthand which was thereafter transcribed  
11 under my direction; that the foregoing  
12 transcript is a true record of the  
13 testimony given.

14 Further, that if the foregoing pertains to  
15 the original transcript of a deposition in  
16 a Federal Case, before completion of the  
17 proceedings, review of the transcript [ ]  
18 was [ ] was not requested. I further  
19 certify I am neither financially  
20 interested in the action nor a relative or  
21 employee of any attorney or any party to  
22 this action.

23 IN WITNESS WHEREOF, I have this date  
24 Subscribed my name.

25 Dated: August 9, 2016



SHARI STELLHORN

CSR No. 2807

# EXHIBIT E



1  
2 UNITED STATES DISTRICT COURT  
3 CENTRAL DISTRICT OF CALIFORNIA  
4

5 BENNION & DEVILLE FINE HOMES, )  
6 INC., a California )  
7 corporation, BENNION & DEVILLE ) Case No.  
8 FINE HOMES SOCAL, INC., a ) 5:15-CV-01921 R  
9 California corporation, ) (KKx)  
10 WINDERMERE SERVICES SOUTHERN )  
11 CALIFORNIA, INC., a California)  
12 corporation, )  
13 )

14 Plaintiffs, )

15 vs.

16 WINDERMERE REAL ESTATE  
17 SERVICES COMPANY, a Washington  
18 corporation; and DOES 1-10,  
19 Defendant.  
20

21 -----  
22 AND RELATED COUNTERCLAIMS.  
23 -----  
24

25 DEPOSITION OF ERIC FORSBERG  
Irvine, California  
Friday, July 29, 2016

Reported by:  
Shari Stellhorn  
CSR No. 2807  
Job No. 2330921A

PAGES 1 - 111

1 UNITED STATES DISTRICT COURT  
2 CENTRAL DISTRICT OF CALIFORNIA  
3  
4

5 BENNION & DEVILLE FINE HOMES, )  
6 INC., a California )  
7 corporation, BENNION & DEVILLE) Case No.  
8 FINE HOMES SOCAL, INC., a ) 5:15-CV-01921 R  
9 California corporation, ) (KKx)  
10 WINDERMERE SERVICES SOUTHERN )  
11 CALIFORNIA, INC., a California)  
12 corporation, )  
13 )  
14 Plaintiff, )  
15 vs.  
16 WINDERMERE REAL ESTATE  
17 SERVICES COMPANY, a Washington  
18 corporation; and DOES 1-10,  
19 Defendants.  
20  
21  
22  
23  
24  
25

Deposition of ERIC FORSBERG, taken on behalf of  
Defendant and Cross-Complainant, at 4 Park Plaza,  
Suite 1230, Irvine, California, beginning at  
9:15 a.m. and ending at 11:50 a.m. on Friday,  
July 29, 2016, before Shari Stellhorn, Certified  
Shorthand Reporter No. 2807.

1 APPEARANCES:

2 For Plaintiffs:

3 MULCAHY LLP

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5 949.252.9377

kadams@mulcahyllp.com

6 For Defendant and Cross-Complainant:

7 PEREZ WILSON VAUGHN & FEASBY

8 BY: JEFFREY A. FEASBY, ESQ.

CHRISTOPHER ROWLETT, ESQ.

9 750 B Street, 33rd Floor

San Diego, CA 92101

10 619.702.8044

feasby@perezwilson.com

11 rowlett@perezwilson.com

12 Also Present:

13 Patrick Robinson

Joseph R. Deville

1 Q Graduated '99 and worked there until  
2 approximately 2004?

3 A Yes.

4 Q What is your current job title at  
5 Bennion & Deville Fine Homes?

6 A Director of Technology.

7 Q And how long have you had that title?

8 A Five years, approximately.

9 Q And what are your job duties as Director of  
10 Technology?

11 A As it pertains to Bennion & Deville Homes,  
12 my job is the administration of our corporate  
13 network. It includes PCs in all of the offices,  
14 anywhere that there is technology I'm responsible to  
15 make sure that it's up and running. I also  
16 administer our corporate website and all of the  
17 interoffice activities that happen on the back end  
18 of the website.

19 Q Do you also provide work for  
20 Bennion & Deville Fine Homes SoCal?

21 A Yes.

22 Q And what do you do for that entity?

23 A The same job description that I just  
24 narrated.

25 Q And have you ever done any work for

1 Windermere Services Southern California?

2 A Yes.

3 Q And when did you begin doing work for  
4 Windermere Services Southern California?

5 A I would say after two or three months after  
6 my hire date I started doing work. That went for --  
7 I think up until the termination of the contract,  
8 whenever that was.

9 Q So before then that you became Director of  
10 Technology did you have another title?

11 A Yes.

12 Q What was that title?

13 A I believe it was technology manager, but  
14 I'm not certain exactly what it was.

15 Q Is that what you were hired as?

16 A Yes.

17 Q And what were your duties as technology  
18 manager?

19 A The same duties. The change in title  
20 reflected just an increase in sphere of  
21 responsibility; I hired on additional staff member.

22 Q And hopefully an increase in salary?

23 A Yeah, hopefully.

24 Q The work that you did for Windermere  
25 Services Southern California, what did that consist

1 I, the undersigned, a Certified Shorthand  
2 Reporter of the State of California, do hereby  
3 Certify:

4 That the foregoing proceedings were taken  
5 before me at the time and place herein set  
6 forth; that any witnesses in the foregoing  
7 proceedings, prior to testifying, were  
8 administered an oath; that a record of the  
9 proceedings was made by me using machine  
10 shorthand which was thereafter transcribed  
11 under my direction; that the foregoing  
12 transcript is a true record of the  
13 testimony given.

14 Further, that if the foregoing pertains to  
15 the original transcript of a deposition in  
16 a Federal Case, before completion of the  
17 proceedings, review of the transcript [ ]  
18 was [ ] was not requested. I further  
19 certify I am neither financially  
20 interested in the action nor a relative or  
21 employee of any attorney or any party to  
22 this action.

23 IN WITNESS WHEREOF, I have this date

24 Subscribed my name.

25 Dated: August 5, 2016



SHARI STELLHORN

CSR No. 2807

# EXHIBIT F

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# EXHIBIT G

1 UNITED STATES DISTRICT COURT  
2 CENTRAL DISTRICT OF CALIFORNIA

3 BENNION & DEVILLE FINE HOMES, )  
4 INC., a California corporation, )  
BENNION & DEVILLE FINE HOMES )  
5 SOCAL, INC., a California )  
6 corporation, WINDERMERE SERVICES )  
SOUTHERN CALIFORNIA, INC., a )  
7 California corporation, )  
8 Plaintiffs, )  
vs. ) No.  
9 WINDERMERE REAL ESTATE SERVICES ) 5:15-cv-01921-R-KK  
10 COMPANY, a Washington )  
11 corporation; and DOES 1-10, )  
12 Defendants, )  
AND RELATED COUNTERCLAIMS )

13  
14  
15  
16  
17 Videotaped Deposition of MARK OSTER,  
18 taken at 600 University Street, Suite 320,  
19 Seattle, Washington, commencing at 8:58 A.M.  
20 Tuesday, August 30, 2016, before CYNTHIA A.  
21 KENNEDY, RPR, CCR 3005.

22  
23  
24 JOB No. 2372236A  
25 PAGES 1 - 137

1 APPEARANCES

2  
3 FOR THE PLAINTIFF: BY: KEVIN A. ADAMS, ESQ.  
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5 Four Park Plaza, Suite 1230  
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9

10  
11 FOR THE DEFENDANT: BY: JEFFREY A. FEASBY, ESQ.  
12 Perez Wilson Vaughn & Feasby  
13 Symphony Towers  
14 750 B Street, 33rd Floor  
15 San Diego, CA 92101  
16 (619) 702-8044  
17 feasby@perezwilson.com  
18

19 ALSO PRESENT: JOSEPH DEVILLE  
20 VIDEOGRAPHER: LUCAS CHEADLE  
21  
22  
23  
24  
25

1 \$1.3 million, approximately.

2 Then I've got two statements that are  
3 provided. One is a statement for Windermere Real  
4 Estate SoCal, and the other is a statement for  
5 Windermere Real Estate Coachella Valley. And those  
6 are supporting documents of the first itemized that I  
7 provided to you.

8 BY MR. ADAMS:

9 Q. Okay. And, sir, you've handed me a copy of  
10 three separate documents, which you have just  
11 described. And what I would like to do then is mark  
12 these documents as exhibits for this deposition.

13 (Whereupon Exhibit 137 was  
14 marked for the record.)

15 I'm going to go ahead and mark as Exhibit  
16 137 the document B&D Calculation of Total Owed.

17 A. Can I just write that on here or --

18 MR. FEASBY: No. No.

19 BY MR. ADAMS:

20 Q. Here it is with the sticker.

21 A. Okay.

22 Q. Then what I'll do is I'll give you --

23 A. That's works well.

24 Q. I wasn't sure how many copies you brought  
25 with you.

1           A.       I made three of each.

2           Q.       Well, I appreciate that. Thank you.

3                    Okay. So then it will be clear, we'll mark  
4 this first document B&D Calculation of Total Owed as  
5 Exhibit 137.

6                    We'll mark the second item, which is the  
7 Windermere Real Estate SoCal Statement as Exhibit 138.

8                               (Whereupon Exhibit 138 was  
9                               marked for the record.)

10                   And then we'll mark the third item, which is  
11 Windermere Real Estate Coachella Valley, Inc.  
12 Statement as 139.

13                               (Whereupon Exhibit 139 was  
14                               marked for the record.)

15                   Thank you.

16                   Now, Mr. Oster, do you know if these  
17 documents have already been produced in this action?

18           A.       Similar documents have been produced in this  
19 action; however, these are updated for interest as of  
20 8/22/2016.

21           Q.       And do you know what the increase in  
22 interest was from the last time the documents were  
23 produced till the production of these documents?

24           A.       I don't know exactly, but I believe the  
25 number to be about \$100,000 different in totality.

1 Q. And that \$100,000 rough figure --

2 A. Roughly interest, yes.

3 Q. -- represents solely interest.

4 A. Yes. We could go back and look at the  
5 exhibits produced to determine that number as exact.

6 Q. And do you know what period of time that  
7 roughly \$100,000 in interest was accrued?

8 A. It would have been accrued from October 1st,  
9 2015, through August 22nd, 2016.

10 Q. Okay. Let's start with Exhibit 137, which  
11 is the B&D Calculation of Total Owed.

12 Just tell me generally what this document --  
13 what this is supposed to reflect.

14 A. The top portion of the document reflects the  
15 amount of fees that were forgiven in the 2012  
16 agreement. Those fees were \$863,560. They were  
17 forgiven for -- in turn for a five-year term of  
18 Bennion & Deville staying on as part of the franchise  
19 system area representative.

20 Because of early termination then, there's a  
21 balance owing of \$386,056.57.

22 Q. And that is the figure there at the bottom  
23 of that top --

24 A. That is correct.

25 Q. Sorry -- the top item?

1                   And what date did you use for the  
2                   termination to have reached this \$386,000 figure?

3           A.       September 30th, 2015.

4           Q.       And the first date for your calculation is  
5           December 21st, 2012?

6           A.       That's correct.

7           Q.       Okay. Now, are you aware that the  
8           modification agreement used or referenced in  
9           connection with this chart is dated December 18th,  
10          2012?

11          A.       I was not aware of that.

12          Q.       Where did you obtain the December 21st date  
13          from?

14          A.       I believe that I received it from said  
15          document; however, if there's a three-day error, we  
16          will certainly make the correction.

17          Q.       Do you happen to know what that correction  
18          would be as you sit here?

19          A.       I do not, but it's per diem. It would have  
20          had \$471.38 per day, so it would actually add interest  
21          owed to us -- or sorry, per month owed to us.

22          Q.       And the 1,013 figure to right of the days  
23          elapsed, that reflects the time in which Mr. Bennion  
24          and Mr. Deville continued in the Windermere System or  
25          the time remaining after they left Windermere System?

CERTIFICATE

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF KITSAP )

I, the undersigned Washington Certified Court Reporter, hereby certify that the foregoing deposition upon oral examination of MARK OSTER was taken stenographically before me on August 30, 2016, and thereafter transcribed under my direction;

That the witness was duly sworn by me pursuant to RCW 5.28.010 to testify truthfully; that the transcript of the deposition is a full, true, and correct transcript to the best of my ability; that I am neither attorney for nor a relative or employee of any of the parties to the action or any attorney or financially interested in its outcome;

I further certify that in accordance with CR 30(e), the witness was given the opportunity to examine, read, and sign the deposition, within 30 days, upon its completion and submission, unless waiver of signature was indicated in the record.

IN WITNESS WHEREOF, I have hereunto set my hand and 14th day of September 2016.

<%signature%>

Cynthia A. Kennedy, RPR

NCRA Registered Professional Reporter  
Washington Certified Court Reporter No. 3005  
License expires November 16, 2016



# EXHIBIT H

**ORIGINAL**

**ADDENDUM TO  
WINDERMERE REAL ESTATE LICENSE AGREEMENT  
PERMISSION FOR ADDITION OF BRANCH OFFICE**

THIS ADDENDUM is made and entered into as of August 9th, 2004 by and between WINDERMERE REAL ESTATE SERVICES COMPANY, a Washington corporation ("WSC"), and Bennion & Deville Fine Homes, Inc., dba Windermere Real Estate/Coachella Valley ("Licensee"), and the individual principals of Licensee identified below.

**RECITALS**

The parties entered into a Windermere Real Estate License Agreement dated August 1, 2001 (the "Original License"), which granted Licensee permission to operate a real estate office using the Windermere Trademark and the Windermere System at the following location(s):

Palm Springs-Coachella Valley  
850 N Palm Canyon Dr.  
Palm Springs, CA 92262  
760/327-3990

The agreement further provided that Licensee "must receive the approval and permission of WSC to open any additional branch offices or to relocate any office."

Licensee has requested permission to open a new branch office location. In consideration of the mutual promises and covenants set forth herein, WSC hereby grants permission for the opening of the new office on the terms and conditions set forth below.

**AGREEMENT**

1. Licensee's Original License agreement is hereby amended to allow Licensee to operate branch offices located at:

Palm Desert  
44-537 San Pablo Ave., #101  
Palm Desert, CA. 92260

ORIGINAL

ADDENDUM TO LICENSE AGREEMENT

Page 2 of 3

Palm Springs- Downtown  
123 N. Palm Canyon Dr.  
Palm Springs, CA 92262  
760/325-9091

Indian Wells  
74-996 Hwy 111  
Indian Wells, CA 92210  
760/674-3452

La Quinta  
47-250 Washington Street Ste. B  
La Quinta, CA 92253  
760/564-9685

Desert Hot Springs  
66337 Pierson Blvd.  
Desert Hot Springs, CA 92240  
760/329-3130

Rancho Mirage  
36101 Bob Hope Drive, Ste. F-2  
Rancho Mirage, CA 92270  
760/770-6801

2. All terms of the Original License agreement are hereby incorporated by reference, and shall apply to operation of the new branch.

3. As of the date hereof, the individual principals of licensee are as follows:

NAME	PERCENTAGE INTEREST
Robert L. Bennion	50 %
Joseph R. Deville	50 %

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

ORIGINAL

ADDENDUM TO LICENSE AGREEMENT  
Page 3 of 3

EXECUTION

**WSC:**

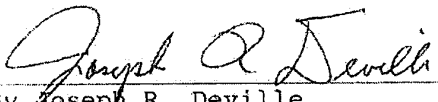
WINDERMERE REAL ESTATE SERVICES  
COMPANY



By Geoffrey P. Wood  
Its Chief Executive Officer

**LICENSEE:**

Bennion & Deville Fine Homes, Inc.



(signature)  
By Joseph R. Deville  
Its President

**PRINCIPALS OF LICENSEE**

The following individuals are Shareholders, Partners or Members of Licensee. By signing below, each individual acknowledges that he or she is a party to this Agreement, is personally bound by its terms, and shall be personally responsible for performance of this Agreement by Licensee.

  
Robert L. Bennion  
Joseph R. Deville

**ORIGINAL**

**ADDENDUM TO  
WINDERMERE REAL ESTATE LICENSE AGREEMENT  
PERMISSION FOR ADDITION OF BRANCH OFFICE**

THIS ADDENDUM is made and entered into as of November 4th, 2004 by and between WINDERMERE REAL ESTATE SERVICES COMPANY, a Washington corporation ("WSC"), and Bennion & Deville Fine Homes, Inc., dba Windermere Real Estate/Coachella Valley ("Licensee"), and the individual principals of Licensee identified below.

**RECITALS**

The parties entered into a Windermere Real Estate License Agreement dated August 1, 2001 (the "Original License"), which granted Licensee permission to operate a real estate office using the Windermere Trademark and the Windermere System at the following location(s):

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Palm Springs, CA 92262  
760/327-3990

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Licensee has requested permission to open a new branch office location. In consideration of the mutual promises and covenants set forth herein, WSC hereby grants permission for the opening of the new office on the terms and conditions set forth below.

**AGREEMENT**

1. Licensee's Original License agreement is hereby amended to allow Licensee to operate branch offices located at:

Indian Wells  
74-850 Highway 111  
Indian Wells, CA 92210

CA 2004

ADDENDUM TO LICENSE AGREEMENT

Page 2 of 3

Palm Desert  
44-530 San Pablo Ave., #101  
Palm Desert, CA. 92260

Palm Springs- Downtown  
123 N. Palm Canyon Dr.  
Palm Springs, CA 92262  
760/325-9091

Indian Wells (Commercial)  
74-996 Hwy 111  
Indian Wells, CA 92210  
760/674-3452

La Quinta  
47-250 Washington Street Ste. B  
La Quinta, CA 92253  
760/564-9685

Desert Hot Springs  
66337 Pierson Blvd.  
Desert Hot Springs, CA 92240  
760/329-3130

Rancho Mirage  
36101 Bob Hope Drive, Ste. F-2  
Rancho Mirage, CA 92270  
760/770-6801

2. All terms of the Original License agreement are hereby incorporated by reference, and shall apply to operation of the new branch.

3. As of the date hereof, the individual principals of licensee are as follows:

NAME	PERCENTAGE INTEREST
Robert L. Bennion	50 %
Joseph R. Deville	50 %

This Addendum is conditioned upon its execution by all individual principals named above, in their personal capacities,

CA 2004

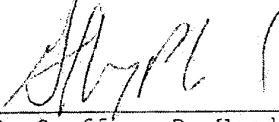
ADDENDUM TO LICENSE AGREEMENT  
Page 3 of 3

confirming their agreement to be personally bound by the terms of the license agreement and personally liable for any breach by Licensee.

EXECUTION


WSC:

WINDERMERE REAL ESTATE SERVICES  
COMPANY

  
By Geoffrey P. Wood  
Its Chief Executive Officer

LICENSEE:

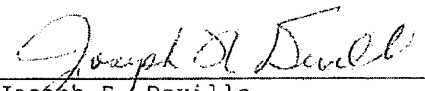
Bennion & Deville Fine Homes, Inc.

 (signature)  
By Joseph R. Deville  
Its President

PRINCIPALS OF LICENSEE

The following individuals are Shareholders, Partners or Members of Licensee. By signing below, each individual acknowledges that he or she is a party to this Agreement, is personally bound by its terms, and shall be personally responsible for performance of this Agreement by Licensee.

  
Robert L. Bennion

  
Joseph R. Deville

**ORIGINAL**

**ADDENDUM TO  
WINDERMERE REAL ESTATE LICENSE AGREEMENT  
PERMISSION FOR ADDITION OF BRANCH OFFICE**

THIS ADDENDUM is made and entered into as of April 1, 2005 by and between WINDERMERE REAL ESTATE SERVICES COMPANY, a Washington corporation ("WSC"), and Bennion & Deville Fine Homes, Inc., dba Windermere Real Estate/Coachella Valley ("Licensee"), and the individual principals of Licensee identified below.

**RECITALS**

The parties entered into a Windermere Real Estate License Agreement dated August 1, 2001 (the "Original License"), which granted Licensee permission to operate a real estate office using the Windermere Trademark and the Windermere System at the following location(s):

Palm Springs-Coachella Valley  
850 N Palm Canyon Dr.  
Palm Springs, CA 92262  
760/327-3990

The agreement further provided that Licensee "must receive the approval and permission of WSC to open any additional branch offices or to relocate any office."

Licensee has requested permission to open a new branch office location. In consideration of the mutual promises and covenants set forth herein, WSC hereby grants permission for the opening of the new office on the terms and conditions set forth below.

**AGREEMENT**

1. Licensee's Original License agreement is hereby amended to allow Licensee to operate branch offices located at:

Rancho Mirage at The Springs  
174 Yale Drive  
Rancho Mirage, CA 92270



ADDENDUM TO LICENSE AGREEMENT

Page 2 of 3

Indian Wells (Main)  
74-850 Highway 111  
Indian Wells, CA 92210

Palm Desert  
44-530 San Pablo Ave., #101  
Palm Desert, CA. 92260

Palm Springs- Downtown  
123 N. Palm Canyon Dr.  
Palm Springs, CA 92262  
760/325-9091

Indian Wells (Commercial)  
74-996 Hwy 111  
Indian Wells, CA 92210  
760/674-3452

La Quinta  
47-250 Washington Street Ste. B  
La Quinta, CA 92253  
760/564-9685

Desert Hot Springs  
66337 Pierson Blvd.  
Desert Hot Springs, CA 92240  
760/329-3130

Rancho Mirage  
36101 Bob Hope Drive, Ste. F-2  
Rancho Mirage, CA 92270  
760/770-6801

2. All terms of the Original License agreement are hereby incorporated by reference, and shall apply to operation of the new branch.

3. As of the date hereof, the individual principals of licensee are as follows:

NAME	PERCENTAGE INTEREST
Robert L. Bennion	50 %
Joseph R. Deville	50 %

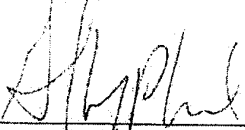
ADDENDUM TO LICENSE AGREEMENT  
Page 3 of 3

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

EXECUTION

WSC:


WINDERMERE REAL ESTATE SERVICES  
COMPANY

  
By Geoffrey P. Wood  
Its Chief Executive Officer

Date 3/25/05

LICENSEE:

Bennion & Deville Fine Homes, Inc.

  
By Joseph R. Deville  
Its President

Date 3-4-11-05

PRINCIPALS OF LICENSEE

The following individuals are Shareholders, Partners or Members of Licensee. By signing below, each individual acknowledges that he or she is a party to this Agreement, is personally bound by its terms, and shall be personally responsible for performance of this Agreement by Licensee.

  
Robert L. Bennion

  
Joseph R. Deville

ORIGINAL

ADDENDUM TO  
WINDERMERE REAL ESTATE LICENSE AGREEMENT  
PERMISSION FOR ADDITION OF BRANCH OFFICE

THIS ADDENDUM is made and entered into as of July 1, 2005 by and between WINDERMERE REAL ESTATE SERVICES COMPANY, a Washington corporation ("WSC"), and Bennion & Deville Fine Homes, Inc., dba Windermere Real Estate/Coachella Valley ("Licensee"), and the individual principals of Licensee identified below.

RECITALS

The parties entered into a Windermere Real Estate License Agreement dated August 1, 2001 (the "Original License"), which granted Licensee permission to operate a real estate office using the Windermere Trademark and the Windermere System at the following location(s):

Palm Springs-Coachella Valley  
850 N Palm Canyon Dr.  
Palm Springs, CA 92262  
760/327-3990

The agreement further provided that Licensee "must receive the approval and permission of WSC to open any additional branch offices or to relocate any office."

Licensee has requested permission to open a new branch office location. In consideration of the mutual promises and covenants set forth herein, WSC hereby grants permission for the opening of the new office on the terms and conditions set forth below.

AGREEMENT

1. Licensee's Original License agreement is hereby amended to allow Licensee to operate branch offices located at:

Rancho Mirage- The Club at Morningside  
1 Johnar Boulevard  
Rancho Mirage, CA 92270

ADDENDUM TO LICENSE AGREEMENT  
Page 2 of 3

Rancho Mirage at The Springs  
174 Yale Drive  
Rancho Mirage, CA 92270

Indian Wells (Main)  
74-850 Highway 111  
Indian Wells, CA 92210

Palm Desert  
44-530 San Pablo Ave., #101  
Palm Desert, CA. 92260

Palm Springs- Downtown  
123 N. Palm Canyon Dr.  
Palm Springs, CA 92262  
760/325-9091

Indian Wells (Commercial)  
74-996 Hwy 111  
Indian Wells, CA 92210  
760/674-3452

La Quinta  
47-250 Washington Street Ste. B  
La Quinta, CA 92253  
760/564-9685

Desert Hot Springs  
66337 Pierson Blvd.  
Desert Hot Springs, CA 92240  
760/329-3130

Rancho Mirage  
36101 Bob Hope Drive, Ste. F-2  
Rancho Mirage, CA 92270  
760/770-6801

2. All terms of the Original License agreement are hereby incorporated by reference, and shall apply to operation of the new branch.
3. As of the date hereof, the individual principals of licensee are as follows:

ADDENDUM TO LICENSE AGREEMENT  
Page 3 of 3

NAME	PERCENTAGE INTEREST
Robert L. Bennion	50 %
Joseph R. Deville	50 %

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

EXECUTION

WSC:

WINDERMERE REAL ESTATE SERVICES  
COMPANY

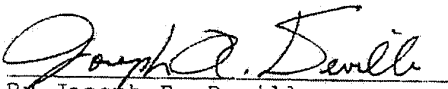


By Geoffrey P. Wood  
Its Chief Executive Officer

Date 8/29/05

LICENSEE:

Bennion & Deville Fine Homes, Inc.

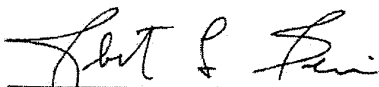


By Joseph R. Deville  
Its President

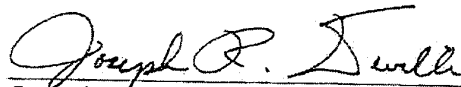
Date 6-29-05

PRINCIPALS OF LICENSEE

The following individuals are Shareholders, Partners or Members of Licensee. By signing below, each individual acknowledges that he or she is a party to this Agreement, is personally bound by its terms, and shall be personally responsible for performance of this Agreement by Licensee.



Robert L. Bennion



Joseph R. Deville



**ADDENDUM TO  
WINDERMERE REAL ESTATE LICENSE AGREEMENT  
PERMISSION FOR ADDITION OF BRANCH OFFICE**

THIS ADDENDUM is made and entered into as of December 9, 2005 by and between WINDERMERE REAL ESTATE SERVICES COMPANY, a Washington corporation ("WSC"), and Bennion & Deville Fine Homes, Inc., dba Windermere Real Estate/Coachella Valley ("Licensee"), and the individual principals of Licensee identified below.

**RECITALS**

The parties entered into a Windermere Real Estate License Agreement dated August 1, 2001 (the "Original License"), which granted Licensee permission to operate a real estate office using the Windermere Trademark and the Windermere System at the following location(s):

Palm Springs- Coachella Valley  
850 N Palm Canyon Dr.  
Palm Springs, CA 92262  
760/327-3990

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**AGREEMENT**

1. Licensee's Original License agreement is hereby amended to allow Licensee to operate branch offices located at:

Palm Desert East  
76-300 Country Club Drive  
Palm Desert, CA 92211

Rancho Mirage- The Club at Morningside  
1 Johnar Boulevard  
Rancho Mirage, CA 92270

Rancho Mirage at The Springs  
174 Yale Drive  
Rancho Mirage, CA 92270

Indian Wells (Main)  
74-850 Highway 111  
Indian Wells, CA 92210

Palm Desert  
44-530 San Pablo Ave., #101  
Palm Desert, CA. 92260

Palm Springs- Downtown  
123 N. Palm Canyon Dr.  
Palm Springs, CA 92262  
760/325-9091

Indian Wells (Commercial)  
74-996 Hwy 111  
Indian Wells, CA 92210  
760/674-3452

La Quinta  
47-250 Washington Street Ste. B  
La Quinta, CA 92253  
760/564-9685

Desert Hot Springs  
66337 Pierson Blvd.  
Desert Hot Springs, CA 92240  
760/329-3130

Rancho Mirage  
36101 Bob Hope Drive, Ste. F-2  
Rancho Mirage, CA 92270  
760/770-6801

2. All terms of the Original License agreement are hereby incorporated by reference, and shall apply to operation of the new branch.

3. As of the date hereof, the individual principals of licensee are as follows:

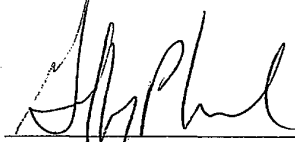
Name	Percent Interest
Robert L. Bennion	50%
Joseph R. Deville	50%

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

EXECUTION

WSC:

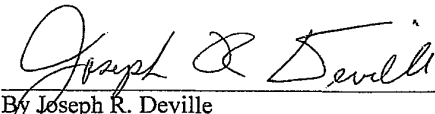
WINDERMERE REAL ESTATE SERVICES COMPANY



By Geoffrey P. Wood  
Its Chief Executive Officer

LICENSEE:



BENNION & DEVILLE FINE HOMES, INC.



By Joseph R. Deville  
Its President

PRINCIPALS OF LICENSEE

The following individuals are Shareholders, Partners or Members of Licensee. By signing below, each individual acknowledges that he or she is a party to this Agreement, is personally bound by its terms, and shall be personally responsible for performance of this Agreement by Licensee.

  
Robert L. Bennion  
Joseph R. Deville





**AFFILIATE FEES SCHEDULE**

<b>License Designation</b>	<b>Windermere Real Estate Coachella Valley</b>
<b>Date of Original License Agreement</b>	<b>August 1, 2001</b>
<b>Branch Name:</b>	<b>Palm Desert East</b>

**LICENSE FEES:** Licensee elects to pay ongoing license fees on the following basis (choose one):

- ☒ Five percent (5%) of the gross commissions earned and received by Licensee during the term of this Agreement; **OR**  
☐ Two hundred five dollars (\$205.00) multiplied by the maximum number of sales agents licensed to Licensee at any time during the month.

Does the Ramp Up discount apply? ☒ YES ☐ NO Area Rep Initials: \_\_\_\_\_

Month	Discount
1-2	90%
3-4	75%
5-6	50%
7-8	25%
9 and thereafter	0% (full fees due)

- **Technology Fee:** \$12.00 per month per licensed agent and agent assistant for basic service effective January 2005; additional fees apply for additional service, as set forth in the Uniform Franchise Offering Circular.
- **Administration Fee:** \$25.00 for each licensed sales associate per month.
- **Windermere Foundation Suggested Donation:** \$10.00 per transaction side for each closed transaction.

The first month for which fees are due is December 2005. Fees are to be reported and paid by the 15<sup>th</sup> of the month following the month in which they accrue, i.e. fees for December are due by January 15<sup>th</sup>. Your payments should be payable to **Windermere Services Southern California, Inc.** and sent with your accounting information to the following address:

Windermere Services Southern California, Inc.  
74-850 Highway 111  
Indian Wells, CA 92210  
(760) 327-3990

	INITIALS	DATE
Bob Bennion Owner Bennion and DeVille Fine Homes, Inc	JB	12-9-05
Bob DeVille, Area Rep Windermere Southern California	BD	12-9-05
Geoffrey P. Wood, CEO WSC	GPW	12-9-05

ADDENDUM TO  
WINDERMERE REAL ESTATE LICENSE AGREEMENT  
PERMISSION FOR ADDITION OF BRANCH OFFICE

THIS ADDENDUM is made and entered into as of January 21, 2004 by and between WINDERMERE REAL ESTATE SERVICES COMPANY, a Washington corporation ("WSC"), and Bennion & Deville Fine Homes, Inc., dba Windermere Real Estate/Coachella Valley ("Licensee"), and the individual principals of Licensee identified below.

RECITALS

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Palm Springs, CA 92262  
760/327-3990

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ADDENDUM TO LICENSE AGREEMENT

Page 2 of 3

AGREEMENT

1. Licensee's Original License agreement is hereby amended to allow Licensee to operate branch offices located at:

Desert Hot Springs  
66337 Pierson Blvd.  
Desert Hot Springs, CA 92240  
760/329-3130

Rancho Mirage  
36101 Bob Hope Dr., F-2  
Rancho Mirage, CA 92270  
760/770-6801

La Quinta  
47-250 Washington St., Ste. B  
La Quinta, CA 92253  
760/564-9685

2. All terms of the Original License agreement are hereby incorporated by reference, and shall apply to operation of the new branch.

3. As of the date hereof, the individual principals of licensee are as follows:

NAME	PERCENTAGE INTEREST
Robert L. Bennion	50%
Joseph R. Deville	50%

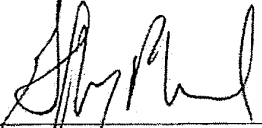
This Addendum is conditioned upon its execution by all individual principals named above, in their personal capacities, confirming their agreement to be personally bound by the terms of the license agreement and personally liable for any breach by Licensee.

ADDENDUM TO LICENSE AGREEMENT  
Page 3 of 3

EXECUTION

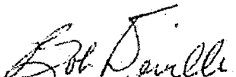
WSC:

WINDERMERE REAL ESTATE SERVICES  
COMPANY

  
By Geoffrey P. Wood  
Its Chief Executive Officer


LICENSEE:

Bennion & Deville Fine Homes, Inc.

 (signature)  
By Bob Deville (print name)  
Its PRES. (print title)

PRINCIPALS OF LICENSEE

The following individuals are Shareholders, Partners or Members of Licensee. By signing below, each individual acknowledges that he or she is a party to this Agreement, is personally bound by its terms, and shall be personally responsible for performance of this Agreement by Licensee.

  
Robert L. Bennion

  
Joseph R. Deville

**ORIGINAL**

**ADDENDUM TO  
WINDERMERE REAL ESTATE LICENSE AGREEMENT  
PERMISSION FOR ADDITION OF BRANCH OFFICE**

THIS ADDENDUM is made and entered into as of January 21, 2004 by and between WINDERMERE REAL ESTATE SERVICES COMPANY, a Washington corporation ("WSC"), and Bennion & Deville Fine Homes, Inc., dba Windermere Real Estate/Coachella Valley ("Licensee"), and the individual principals of Licensee identified below.

**RECITALS**

The parties entered into a Windermere Real Estate License Agreement dated August 1, 2001 (the "Original License"), which granted Licensee permission to operate a real estate office using the Windermere Trademark and the Windermere System at the following location(s):

Palm Springs-Coachella Valley  
850 N Palm Canyon Dr.  
Palm Springs, CA 92262  
760/327-3990

The agreement further provided that Licensee "must receive the approval and permission of WSC to open any additional branch offices or to relocate any office."

Licensee has requested permission to open a new branch office location. In consideration of the mutual promises and covenants set forth herein, WSC hereby grants permission for the opening of the new office on the terms and conditions set forth below.

ADDENDUM TO LICENSE AGREEMENT  
Page 2 of 3

AGREEMENT

1. Licensee's Original License agreement is hereby amended to allow Licensee to operate branch offices located at:

Indian Wells  
74996 Highway 111  
Indian Wells, CA 92210  
760/674-3452

2. All terms of the Original License agreement are hereby incorporated by reference, and shall apply to operation of the new branch.

3. As of the date hereof, the individual principals of licensee are as follows:

NAME	PERCENTAGE INTEREST
Robert L. Bennion	50 %
Joseph R. Deville	50 %

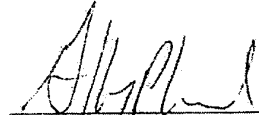
This Addendum is conditioned upon its execution by all individual principals named above, in their personal capacities, confirming their agreement to be personally bound by the terms of the license agreement and personally liable for any breach by Licensee.

ADDENDUM TO LICENSE AGREEMENT  
Page 3 of 3

EXECUTION

**WSC:**

WINDERMERE REAL ESTATE SERVICES  
COMPANY

  
By Geoffrey P. Wood  
Its Chief Executive Officer

**LICENSEE:**

Bennion & Deville Fine Homes, Inc.

 (signature)  
By Joseph R. Deville  
Its President

**PRINCIPALS OF LICENSEE**

The following individuals are Shareholders, Partners or Members of Licensee. By signing below, each individual acknowledges that he or she is a party to this Agreement, is personally bound by its terms, and shall be personally responsible for performance of this Agreement by Licensee.

  
Robert L. Bennion

  
Joseph R. Deville

# EXHIBIT I



W

AGREEMENT FOR FORGIVENESS OF FRANCHISE FEES -2006

THIS AGREEMENT is made and entered into as of August 10, 2007 by and between WINDERMERE REAL ESTATE SERVICES COMPANY, a Washington corporation ("WSC"); WINDERMERE SERVICES SOUTHERN CALIFORNIA, INC. ("Area Representative"); Bennion & Deville Fine Homes, Inc., dba Windermere Real Estate/Coachella Valley ("Licensee"); and the individual principals of Licensee identified below.

RECITALS

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

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

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

AGREEMENT

1. Forgiveness of Franchise License Fees. WSC and Area Representative agree that Licensee's franchise license fees for the months of June 2006 through December 2006, inclusive, in the total amount of \$500,840.00 are hereby forgiven in full effective immediately, subject to the terms of Paragraph 2, below.
2. As material consideration for the forgiveness of fees set forth above, the parties agree that in the event that the Original License expires or terminates within five years after this Addendum has been executed, Licensee shall Pay WSC a proportional amount of \$250,420 (which represents WSC's one half share of the fees forgiven) based on a calculation of the amount of time remaining between the execution of this agreement and the end of the five years. As an example if the Original License expires or terminates with two years remaining in the five year term, the amount Licensee would owe WSC would be  $\$250,420 \times 2/5 = \$100,168$ . Any such amount owing will be paid in full within 30 days after the Original License terminates or expires, and no portion of such payment shall be owed by

FRANCHISE FEE  
FORGIVENESS AGREEMENT

1

Exhibit

22

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

WSC 14

WSC to Area Representative.

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

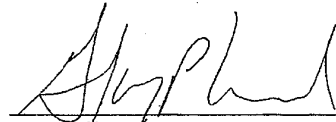
Name	Percent Interest
Robert L. Bennion	50%
Joseph R. Deville	50%

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

#### EXECUTION

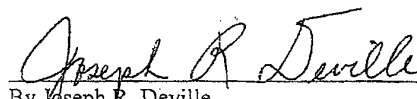
WSC:

WINDERMERE REAL ESTATE SERVICES COMPANY

  
By Geoffrey P. Wood  
Its Chief Executive Officer

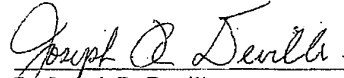
AREA REPRESENTATIVE

WINDERMERE SERVICES SOUTHERN CALIFORNIA, INC.

  
By Joseph R. Deville  
Its President

LICENSEE:


BENNION & DEVILLE FINE HOMES, INC.

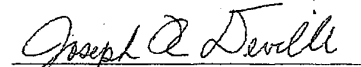
  
By Joseph R. Deville  
Its President

PERSONAL GUARANTY BY  
PRINCIPALS OF LICENSEE

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

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

  
Robert L. Bennion  
Date: 8-27-07

  
Joseph R. Deville  
Date: 8-27-07

# EXHIBIT J



**AGREEMENT FOR DEFERRAL OF FRANCHISE FEES - 2007**

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

**RECITALS**

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

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

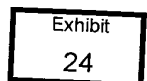
Due to financial hardship, Licensee has requested deferral of License Fees for a period of time. WSC and Area Representative are willing to grant the requested deferral fees on certain terms. Therefore, in consideration of the mutual promises and covenants set forth herein, the parties now agree as follows.

**AGREEMENT**

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

FRANCHISE FEE  
DEFERRAL AGREEMENT

1



WSC 15

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

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

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

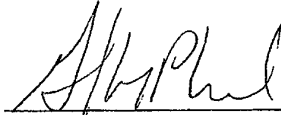
Name	Percent Interest
Robert L. Bennion	50%
Joseph R. Deville	50%

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

EXECUTION

WSC:

WINDERMERE REAL ESTATE SERVICES COMPANY



By Geoffrey P. Wood  
Its Chief Executive Officer

AREA REPRESENTATIVE

WINDERMERE SERVICES SOUTHERN CALIFORNIA, INC.



By Joseph R. Deville  
Its President

LICENSEE:

BENNION & DEVILLE FINE HOMES, INC.




By Joseph R. Deville  
Its President

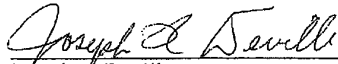
FRANCHISE FEE  
DEFERRAL AGREEMENT

PERSONAL GUARANTY BY  
PRINCIPALS OF LICENSEE

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

By signing below, each individual acknowledges that he or she is a party to this Agreement, is personally bound by its terms, and hereby unconditionally personally guarantees performance of the Original License and of this Agreement by Licensee, including the full repayment of all deferred fees with interest, on the terms set forth herein.

  
Robert L. Bennion  
Date: 9-7-07

  
Joseph R. Deville  
Date: 9-7-07



# EXHIBIT K

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

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

**Recitals**

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

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

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

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

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

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

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

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

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

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

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

**TERMS & CONDITIONS**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Bennion & Deville Fines Homes, Inc., dba Windermere Real Estate Southern

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

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

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

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

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

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

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

Agreement to Modify Windermere Real Estate License Agreements

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

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

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

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

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

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

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

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

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

**If to WSC:**

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

**If to B&D:**

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

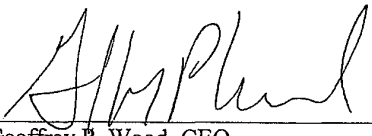
enter into this Agreement or as to its meaning or effect, which are not contained herein. It is the Parties' intent that any ambiguity or conflicting term between this Agreement and any other document or other agreement between the Parties shall be construed such that the terms within this Agreement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

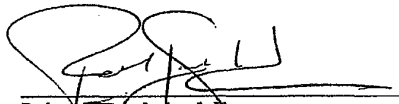
Agreement to Modify Windermere Real Estate License Agreements

**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 L

**STATE OF CALIFORNIA  
BUREAU OF REAL ESTATE**

The license information shown below represents public information taken from the Bureau of Real Estate(CalBRE) database at the time of your inquiry. It will not reflect pending changes which are being reviewed for subsequent database updating. Also, the license information provided includes formal administrative actions that have been taken against licensees pursuant to the Business and Professions Code and/or the Administrative Procedure Act. All of the information displayed is public information. Although the business and mailing addresses of real estate licensees are included, this information is not intended for mass mailing purposes.

License information taken from records of the Bureau of Real Estate on 10/25/2016 2:44:50 PM

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<b>License Type:</b>	CORPORATION
<b>Name:</b>	Bennion & Deville Fine Homes, Inc
<b>Mailing Address:</b>	71691 HIGHWAY 111 RANCHO MIRAGE, CA 92270
<b>License ID:</b>	01325548
<b>Expiration Date:</b>	11/26/17
<b><u>License Status:</u></b>	LICENSED
<b>Corporation License Issued:</b>	11/27/01
<b>Former Name(s):</b>	NO FORMER NAMES
<b>Main Office:</b>	71691 HIGHWAY 111 RANCHO MIRAGE, CA 92270
<b>Licensed Officer(s):</b>	DESIGNATED OFFICER <u>01279961</u> - Expiration Date: 11/26/17 Deville, Joseph R  <u>00873508</u> - Expiration Date: 10/07/07 Anderson, Gary Ashley OFFICER LICENSE EXPIRED AS OF 10/08/07  <u>00624053</u> - Expiration Date: 11/23/07 Beakey, Sandra Ann OFFICER LICENSE EXPIRED AS OF 11/24/07  <u>00996314</u> - Expiration Date: 12/09/17 Cantwell, James David OFFICER CANCELED AS OF 02/23/15  <u>00781593</u> - Expiration Date: 03/23/09 Munger, Leslie Lyn OFFICER LICENSE EXPIRED AS OF 03/24/09

01263783 - Expiration Date: 05/18/09  
Rochlitz, Kevin T  
OFFICER LICENSE EXPIRED AS OF 05/19/09

01110735 - Expiration Date: 03/23/09  
Zazzetti, Susan L  
OFFICER LICENSE EXPIRED AS OF 03/24/09

**DBA**

Bennion Deville Homes  
ACTIVE AS OF 11/24/2015

Windermere Real Estate Coachella  
Valley  
ACTIVE AS OF 11/27/2001

Windermere Real Estate Southern  
California  
ACTIVE AS OF 07/05/2011

**Branches:**

109 E STATE ST STE C  
REDLANDS, CA 92373

1 JOHNAR BLVD  
RANCHO MIRAGE, CA 92270  
01236026 Rossignol, Donald Denis - Branch/Division Manager

118 N GLENDORA AVE  
GLENDORA, CA 91741

850 N PALM CANYON DR  
PALM SPRINGS, CA 92262

828 KUFFEL CANYON RD  
SKYFOREST, CA 92385

81-703 HIGHWAY 111  
INDIO, CA 92201  
01268156 Baca, George J - Branch/Division Manager

1255 E RAMON RD  
PALM SPRINGS, CA 92264

1340 E. ROUTE 66, SUITE 210  
GLENDORA, CA 91740

174 YALE DR  
RANCHO MIRAGE, CA 92270

22A SUNRISE DR  
RANCHO MIRAGE, CA 92270

2465 E PALM CANYON DR STE 605  
PALM SPRINGS, CA 92264

42360 ADAMS ST  
BERMUDA DUNES, CA 92203

44-530 SAN PABLO AVE STE 101  
PALM DESERT, CA 92260

47-250 WASHINGTON ST STE B  
LA QUINTA, CA 92253  
00624053 Beakey, Sandra Ann - Branch/Division Manager

47-350 WASHINGTON ST STE 101  
LA QUINTA, CA 92253

59465 HIGHWAY 74  
MOUNTAIN CENTER, CA 92561  
01499833 White, Charles A - Branch/Division Manager

73-993 HIGHWAY 111  
PALM DESERT, CA 92260  
00880984 Richardson, Sandra Annette - Branch/Division Manager

74-910 HIGHWAY 111  
INDIAN WELLS, CA 92210

74-996 HWY 111  
INDIAN WELLS, CA 92210  
01499833 White, Charles A - Branch/Division Manager

76-375 COUNTRY CLUB DRIVE  
PALM DESERT, CA 92211

**Salespersons:**

There are currently 667 Salespersons affiliated with this  
Broker/Corporation.  
RETRIEVE SALESPERSON LIST

**Comment:**

NO DISCIPLINARY ACTION

01/10/02 - SUPERVISING OFFICER ID 00996314 NAME:  
--CANTWELL, JAMES DAVID

>>>> Public information request complete <<<<



# EXHIBIT M

**STATE OF CALIFORNIA  
BUREAU OF REAL ESTATE**

The license information shown below represents public information taken from the Bureau of Real Estate(CalBRE) database at the time of your inquiry. It will not reflect pending changes which are being reviewed for subsequent database updating. Also, the license information provided includes formal administrative actions that have been taken against licensees pursuant to the Business and Professions Code and/or the Administrative Procedure Act. All of the information displayed is public information. Although the business and mailing addresses of real estate licensees are included, this information is not intended for mass mailing purposes.

License information taken from records of the Bureau of Real Estate on 10/25/2016 2:44:16 PM

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<b>License Type:</b>	CORPORATION
<b>Name:</b>	Bennion & Deville Fine Homes SoCal, Inc.
<b>Mailing Address:</b>	71691 HWY 111 RANCHO MIRAGE, CA 92270
<b>License ID:</b>	01899271
<b>Expiration Date:</b>	05/16/19
<b><u>License Status:</u></b>	LICENSED
<b>Corporation License Issued:</b>	05/17/11
<b>Former Name(s):</b>	NO FORMER NAMES
<b>Main Office:</b>	71691 HWY 111 RANCHO MIRAGE, CA 92270
<b>Licensed Officer(s):</b>	DESIGNATED OFFICER <u>01279961</u> - Expiration Date: 05/16/19 Deville, Joseph R
<b>DBA</b>	Bennion Deville Homes ACTIVE AS OF 04/25/2016  Windermere Real Estate SoCal ACTIVE AS OF 05/17/2011
<b>Branches:</b>	12925 EL CAMINO REAL STE J-27 SAN DIEGO, CA 92130 <u>01711385</u> Gregor, Kirk L - Branch/Division Manager  1742 INDIA ST SAN DIEGO, CA 92101  258-C N CAMINO REAL ENCINITAS, CA 92024

265 W WASHINGTON ST  
SAN DIEGO, CA 92103  
01711385 Gregor, Kirk L - Branch/Division Manager

27941 LA PAZ RD STE A  
LAGUNA NIGUEL, CA 92677

300 CARLSBAD VILLAGE DR #217  
CARLSBAD, CA 92008

8277 LA MESA BLVD  
LA MESA, CA 91942

**Salespersons:**

There are currently 216 Salespersons affiliated with this  
Broker/Corporation.  
RETRIEVE SALESPERSON LIST

**Comment:**

NO DISCIPLINARY ACTION

NO OTHER PUBLIC COMMENTS

>>>> Public information request complete <<<<

# EXHIBIT N



## Results Detail

Last statement filed on: 9/12/2016

Corporation		
WINDERMERE SERVICES SOUTHERN CALIFORNIA, INC.		
Number: C2570087	Incorporation Date:1/1/2004	Status:Active
Jurisdiction: CA	Type: Domestic Stock	
Address		
71691 HWY 111,		
RANCHO MIRAGE, CA 92270		
Agent For Service Of Process		
MARIE WOOTAN		
71691 HWY 111,		
RANCHO MIRAGE, CA 92270		

Please review this information to determine if you have located the correct corporation. The corporation is not yet due to file the required statement; therefore, this filing must be filed either by mail or at our public counter in Sacramento. Refer to [Statement of Information](#) for the forms and instructions.

Search Results

New Search

