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SUPREME COURT NO. 90891-5
(COURT OF APPEALS, DIVISION III, NO. 314910)

SUPREME COURT OF THE STATE OF WASHINGTON

NORTHWEST WHOLESALE, INC., a Washington corporation,

Plaintiff,

vs.

PAC-O FRUIT, LLC a Washington limited liability company; GREG
HOLZMAN, INC., a foreign corporation authorized to do business in the
State of Washington; and HAROLD OSTENSON and SHIRLEY
OSTENSON,

Defendants.

HAROLD OSTENSON and SHIRLEY OSTENSON, as members of
PAC-O FRUIT, LLC a Washington limited liability company,

Petitioner,

vs.

GREG HOLZMAN, an individual, TOTAL ORGANIC LLC, a
Washington limited liability company, and GREG HOLZMAN, INC., a
foreign corporation doing business in the State of Washington,

Respondents.

REPLY TO ANSWER TO PETITION FOR REVIEW

Received
Washington State Supreme Court

NOV 19 2014

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Clerk

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I. ARGUMENT.

A. Introduction.

Petitioners Harold Ostenson and Shirley Ostenson hereby submit their Reply to the Answer to Petition for Review filed by Respondents Greg Holzman, Greg Holzman, Inc. and Total Organic LLC (collectively, “GHI”).

The instant Reply addresses the issue of whether the exception provision of 11 U.S.C. § 365(e)(2) applies to the Operating Agreement (“Operating Agreement”) of Pac Organic Fruit, LLC (“Pac-O”) so as to render the insolvency provisions of 11 U.S.C. § 365(e)(1) invalidating *ipso facto* provisions of state law inapplicable in the instant matter.

The Decision of the Court of Appeals, did not specifically address this issue, deferring as to whether the Operating Agreement was an executory contract to which 11 U.S.C. § 365(e) is applicable while GHI, in its Answer, maintains that the Ostensons should be treated as assignees to whom GHI has not granted consent.

B. The Provisions of 11 U.S.C. § 365 are Inapplicable.

The Ostensons submit that pursuant to 11 U.S.C. § 541, the bankruptcy estate of Mr. and Mrs. Ostenson consisted of “all legal or equitable interests of the debtor in property as of the commencement of the case.” 11 U.S.C. § 541(a)(1). This estate, including economic and

non-economic rights held by Mr. and Mrs. Ostenson prior to filing for bankruptcy, included their membership rights in Pac Organic Fruit, LLC. In re Warner, 480 B.R. 641, 653 (Bankr. N.D. W.Va. 2012).

GHI misapprehends the applicability of 11 U.S.C. § 365(e)(2) to the facts in the instant matter. It is noted that 11 U.S.C. § 365 is an enabling statute defining the authority of a bankruptcy trustee or debtors to accept or reject executory contracts or unexpired leases of the debtor. 11 U.S.C. § 365(a).

While GHI correctly states the law as set forth in 11 U.S.C. § 365, GHI fails to cite any authority or fact to support the proposition that this provision is applicable in the first instance to the circumstances of this case. Rather, GHI has merely *assumed* the statute's applicability and has characterized the Operating Agreement as being non-assignable thereunder. Therein lies the fatal fallacy in its reasoning.

Section 541(c) provides that an insolvency provision in an agreement or non-bankruptcy law cannot be used to dispossess a debtor of a property interest. 11 U.S.C. § 541(c).

Section 365(e) provides that an insolvency provision in an executory contract or unexpired lease cannot be used against a trustee in an assumption of such executory contract or unexpired lease unless a third

party who would be required to accept performance in such assumption refuses to accept such performance. 11 U.S.C. § 365(e).

First, there is no executory contract which was assumed or rejected. Mr. and Mrs. Ostenson, as debtors in possession in their Chapter 11 filing continued as members of Pac-O because the Operating Agreement's *ipso facto* dispossession terms are invalidated by reason of 11 U.S.C. § 541(c). The only other executory contract or unexpired lease is Article III, paragraph 3.4(b) of the Operating Agreement wherein the Ostensons leased to Pac-O the packing house used for its business operations. Appendix 51. The obligation under the lease provisions of the Operating Agreement again continued between Pa-O and the Ostensons after the bankruptcy Chapter 11 filing. . Ex P-27; Appendix 67-78.

While 11 U.S.C. § 365(e)(2) provides an exception to the prohibition set forth in 11 U.S.C. § 365(e)(1), 11 U.S.C. § 365(e) is inapplicable to the Operating Agreement and unexpired Lease in this case for several reasons.

First, the unexpired Lease was between Mr. and Mrs. Ostenson and Pac-O. Neither Mr. Holzman, Greg Holzman, Inc. nor Total Organic LLC was a party to the Lease.

Second, there has been no assignment of the Operating Agreement or the unexpired Lease to or by a trustee or third party assignee. Mr. and

Mrs. Ostenson, as debtors in possession in their bankruptcy, remain the Lessors under the Lease. No assignment of interests under the Lease was made by either party. The parties to the Lease, Mr. Ostenson and Mrs. Ostenson were and are the Lessors while Pac-O was and is the Lessee. The parties have never changed.

Third, there is no applicable law which would otherwise excuse Pac-O from performing its obligations under the unexpired Lease; i.e., making lease payments pursuant to the Lease.

Fourth, no consent is required for Mr. and Mrs. Ostenson to assign their interests under the unexpired Lease. The assignment provisions of the unexpired Lease provide, in pertinent part, that:

Lessee [Pac-O] may assign its interest in this lease to Evergreen Community Development and Key Bank as security for loans. The lenders may freely assign the lease without the Lessor's consent. Except as noted above, the Lessee shall not assign or encumber the lease without the prior written consent of the Lessor [Mr. and Mrs. Ostenson].

Ex P-27; Appendix 69-70.

Accordingly, under the circumstances in this case, Mr. and Mrs. Ostenson retained their right to enforce the Lease and the Operating Agreement.

Finkelstein v. Securities Properties, Inc., 76 Wn.App. 733, 888 P.2d 161 (1995) does not support application of 11 U.S.C. § 365(e)(2) to

this case. In *Finkelstein* the Court of Appeals held that where the appellant, a minority partner in a general partnership, filed a Chapter 7 bankruptcy, the partnership dissolved. Id. at 738. Because the partnership dissolved, the invalidation of *ipso facto* provisions of 11 U.S.C. § 365(e) did not apply and the appellant could not bring a lawsuit to effectively enforce the partnership agreement. Id. at 737-738. This is simply not supported by the facts and circumstances of this case.

In re Sunset Developers, 69 B.R. 710 (Bankr. D. Idaho 1987), relied upon by Finkelstein, is similarly inapposite to the instant case. In that case, a partner in Sunset Developers declared bankruptcy and subsequently filed an involuntary bankruptcy petition for the partnership. Id. at 711. The Bankruptcy Court held that, under Idaho partnership law, the partner's bankruptcy had the effect of dissolving the partnership and the non-bankrupt partner had the right to wind up the partnership affairs. Id. at 712.

Similarly, Phillips v. Phillips, 996 F.2d 926 (5th Cir. 1992) involved a partner who had declared bankruptcy and subsequently filed a voluntary petition for bankruptcy of the partnership. Id., at 928. Under Texas law, the bankruptcy of a partner resulted in dissolution of the partnership and removed the bankrupt partner's authority to act on behalf of the partnership. Id., at 929. The Fifth Circuit Court of Appeals held

that this provision of Texas law was not preempted by 11 U.S.C. § 365(e)(1) where the trial court had determined the bankrupt partner had breached the partnership agreement, ordered damages, and directed dissolution of the partnership. Id. at 935.

It is important to note that, in Sunset Developers and Phillips, as in Finkelstein, the partnership entities retained their rights after bankruptcy of the partner and the rights of the debtor were similarly protected. This is not the situation in our case.

Here, Mr. and Mrs. Ostenson filed their Petition for Bankruptcy. During that bankruptcy, a Stipulation was entered into between Mr. Ostenson, Mrs. Ostenson, Pac-O, Mr. Holzman, Greg Holzman, Inc., and Total Organic LLC. Ex D-5; Appendix, 93-95.¹ This Stipulation, by its terms, preserved claims of Pac-O against GHI. Ex D-5; Appendix, 84-86. As the trial court noted:

THE COURT: Under [paragraph] 7.b [of the Stipulation], ... that makes it look like claims could be asserted by Pac-O, against Mr. Holzman, POP, and Total Organic for certain things.

MR. DUNCAN: Right.

THE COURT: **Who would be bringing those claims, if not the Ostensons?**

¹ Excerpt from Exhibit D-5.

MR. DUNCAN: Well, the answer to that question is -- and I will tell you what the -- what the expectation was, when this document was entered into.

First, you'll hear, from Mr. Holzman, that he agreed to this, as part of this resolution, in the bankruptcy court, **only because he didn't think there were any**. He wouldn't have done this.

RP 38:21-39:8 (emphasis added).

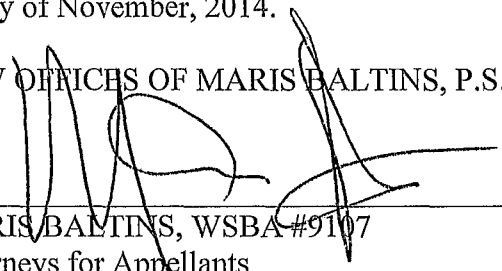
To adopt the position advanced by GHI would be to leave and Mr. and Mrs. Ostenson, and especially Pac-O, without any remedy under the Stipulation which was negotiated between the parties and approved by the Bankruptcy Court. This would not be a reasonable or just result. "When a [contractual] provision is subject to two possible constructions, one of which would make the contract unreasonable and imprudent and the other of which would make it reasonable and just, ... the latter interpretation [should be adopted]." Fisher Properties, Inc. v. Arden-Mayfair, Inc., 106 Wn.2d 826, 837, 726 P.2d 8 (1986) *citng* Dickson v. United States Fid. & Guar. Co., 77 Wn.2d 785, 790, 466 P.2d 515 (1970).

II. CONCLUSION.

Wherefore, it is respectfully requested that, based upon the foregoing arguments, in addition to those contained in the Petition for Review, the Supreme Court grant the Ostensons' Petition for Review.

DATED this 18th day of November, 2014.

LAW OFFICES OF MARIS BALTINS, P.S.



MARIS BALTINS, WSBA #9107
Attorneys for Appellants

CERTIFICATE OF SERVICE

Seth Thompson hereby declares under penalties of perjury of the laws of the State of Washington that:

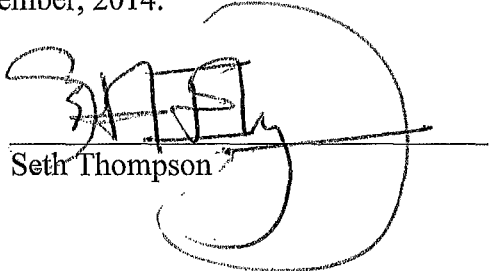
1. I am and at all times hereinafter mentioned was a citizen of the United States and a resident of the State of Washington, over the age of 18 years and not a party to this action.

2. On the 18th day of November, 2014, I delivered a true and correct copy of the foregoing document and attached appendix to A2Z Legal Support Services who will make personal service upon the following party:

Daniel J. Appel
Law Offices of Dale M. Foreman, P.S.
124 N. Wenatchee Avenue, Ste. A
Wenatchee, WA 98801

3. On the 18th say of November, 2014 I also served a copy of the foregoing document and attached appendix on said party by electronic mail, addressed to: daniel@daleforeman.com.

DATED this 18th day of November, 2014.


Seth Thompson

Appendix

(Appendix 45-86)

**LIMITED LIABILITY COMPANY AGREEMENT
OF
PAC ORGANIC FRUIT, LLC
a Washington Limited Liability Company**

Effective: June 1, 1998

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**LIMITED LIABILITY COMPANY AGREEMENT
OF
PAC ORGANIC FRUIT, LLC
a Washington Limited Liability Company**

THIS LIMITED LIABILITY COMPANY AGREEMENT, effective June 1, 1998, is made among the persons whose signatures appear on the signature page hereof.

ARTICLE 1 -- FORMATION

1.1 Certificate of Formation.

A Certificate of Formation was filed on June 1, 1998 stated to be effective June 1, 1998 the date on which the term of the Company shall begin.

1.2 Name.

The name of the limited liability company is PAC ORGANIC FRUIT, LLC.

1.3 Purpose.

The principal purpose and business of the Company is to own and operate an organic fruit packing company and to conduct any other lawful business and to exercise all other powers necessary or reasonably connected or incidental to such purpose and business that may be legally exercised by the Company.

1.4 Term.

The term of the Company shall continue perpetually, unless the Company is earlier dissolved in accordance with either Article 8 or the Act.

1.5 Principal Place of Business.

The principal place of business of the Company shall be 17202 W. Frenchman Hill Road, Quincy, Washington 98848. The Manager(s) may relocate the principal place of business or establish additional offices from time to time. Its mail delivery address shall be PO Box 5517, George, Washington 98824.

1.6 Registered Office and Registered Agent.

The Company's initial registered agent and the address of its initial registered office are as follows:

<u>Name</u>	<u>Address</u>
DWTR&J Corp.	1501 Fourth Avenue, Suite 2600 Seattle, WA 98101-1688

The registered office and registered agent may be changed by the Manager(s) from time to time by filing an amendment to the Certificate of Formation.

ARTICLE 2 -- DEFINITIONS

The following terms used in this Agreement shall have the following meanings unless otherwise expressly provided herein:

"Act" means the Washington Limited Liability Company Act (RCW Ch. 25.15).

"Agreement" means this limited liability company agreement, as originally executed and as amended from time to time.

"Capital Account" has the meaning defined in Section 3.5.

"Code" means the Internal Revenue Code of 1986, as amended, or corresponding provisions of subsequent superseding federal revenue laws.

"Company" means PAC ORGANIC FRUIT, LLC.

"Deficit Capital Account" means, with respect to any Member, the deficit balance, if any, in such Member's Capital Account as of the end of the taxable year, after giving effect to the following adjustments:

(a) credit to such Capital Account any amount that such Member is obligated to restore to the Company under Regulation Section 1.704-1(b)(2)(ii)(c), as well as any addition thereto pursuant to the next to last sentences of Regulation Sections 1.704-2(g)(1) and (i)(5); and

(b) debit to such Capital Account the items described in Regulation Section 1.704-1(b)(2)(ii)(d)(4), (5) and (6).

This definition is intended to comply with the provisions of Regulation Sections 1.704-1(b)(2)(ii)(d) and 1.704-2, and shall be interpreted consistently with those provisions.

"Majority Interest" means the vote, approval, consent or other action of Members holding more than fifty percent (50%) of the Profits Interests and the Capital Interests of the Company held by such Members. For these purposes, a Member's Profit Interest is determined by reference to the Member's interest in the Company's net profits under Section 7.1.1(c), and a Member's Capital Interest is based on the Member's Capital Account balance determined as of the date on which the event triggering such vote, approval, consent, or other action of the Members occurs.

"Majority Percentage Interest" means the vote, approval, consent or other action of Members entitled to act holding more than fifty percent (50%) of the Percentage Interests held by such Members as of the date on which the event triggering the vote or other action of Members occurs.

"Member" means each person who executes a counterpart of this Agreement as a Member and each person who may hereafter be admitted to the Company as an additional or substituted Member, and who executes a counterpart of this Agreement.

"Percentage Interest" means each Member's percentage interest in the Company as set forth on attached Schedule 1, as amended from time to time, and as adjusted from time to time pursuant to Section 3.4.

"Regulation" includes proposed, temporary and final Treasury regulations promulgated under the Code and the corresponding sections of any regulations subsequently issued that amend or supersede such regulations.

ARTICLE 3 -- MEMBERS, CONTRIBUTIONS AND INTERESTS

3.1 Members Names, Addresses and Percentages.

The names and addresses of the Members, and their initial Percentage Interests are set forth on attached Schedule 1, as amended from time to time.

3.2 Additional Members.

Additional Members shall be admitted only upon the consent of all Members.

3.3 Contributions.

Each Member shall contribute as his, her or its initial capital contribution to the Company the cash and/or property described on attached Schedule 1, as amended from time to time. No interest shall be paid on capital contributions and no Member shall have the right to withdraw his, her or its capital contribution.

3.4 Additional Contributions.

(a) Additional capital contributions shall be required only if the Manager(s) unanimously approve the amount of each additional capital contribution. If the Manager(s) approve additional capital contributions, the Members shall make such additional capital contributions on a pro rata basis in accordance with their Percentage Interests within ten (10) days following the date on which such additional capital contribution was approved by the Manager(s).

In the event that any Member fails to make a required additional capital contribution within the time required, the non-defaulting Members may:

(i) contribute to the Company an amount equal to the defaulting Member's required additional capital contribution and elect to readjust the Percentage Interests of the Members so that the Percentage Interest of each Member is the ratio of a fraction, the numerator of which is the aggregate contributions of each Member pursuant to Sections 3.3

and 3.4 and the denominator of which is the aggregate contributions of all Members pursuant to Sections 3.3 and 3.4; or

(ii) advance an amount equal to such required additional capital contribution on behalf of the defaulting Member (a "Default Loan"). Default Loans shall bear interest at the lesser of the maximum rate permitted by law or Seattle-First National Bank's publicly announced prime rate of interest in effect as of the first day of each calendar month, plus 3% per annum, and such interest rate shall be adjusted as of the first day of each calendar month. Default Loans shall be repayable within thirty (30) days after written demand and if not sooner repaid or demand made, shall be repaid from any cash distributions otherwise distributable by the Company to the defaulting Member (and charged against the Defaulting Member's Capital Account) or offset against any amount to be paid to the defaulting Member by the Company.

(b) The Company will lease its business premises from Harold T. Ostenson. Harold T. Ostenson will obtain a loan, secured by the business premises to build the necessary improvements. Pacific Organic Produce, Inc. will guaranty the loan. The lease between Harold T. Ostenson and the Company will require that Harold T. Ostenson satisfy its obligations under the loan. The Company will have the right to cure a default by Harold T. Ostenson under the loan. If capital is necessary for the Company to cure a default by Harold T. Ostenson, Pacific Organic Produce, Inc. shall loan the necessary capital to the Company pursuant to a promissory note with interest at the maximum legal rate, which note will be secured by a second trust deed against the business premises.

3.5 Capital Accounts.

A capital account ("Capital Account") shall be determined and maintained for each Member in accordance with the principles of Regulation Section 1.704-1(b) at all times throughout the full term of the Company. In the event of a permitted sale or assignment of all or any part of a Member's interest in the Company, the Capital Account of the transferor shall become the Capital Account of the transferee to the extent it relates to the transferred Company interest.

3.6 No Transfer of Member's Interest.

Without the consent of a Majority in Interest of Members, no Member shall withdraw, assign, encumber, sell or otherwise transfer all or any portion of the Member's interest in the Company, or enter into any agreement as a result of which any person shall become interested with the Member in the Company.

ARTICLE 4 -- MEETINGS OF MEMBERS

4.1 Meetings.

Meetings of Members are not required, but may be called by the Manager(s) or by Members holding at least ten percent (10%) of the Percentage Interests held by Members. No business shall be transacted at any meeting of Members except as is specified in the notice calling such meeting.

4.2 Place of Meetings.

The Manager(s) shall designate any place, either within or outside the State of Washington, as the place of meeting for any meeting of the Members. If no designation is made, the place of meeting shall be the principal office of the Company specified in Section 1.5.

4.3 Notice of Meetings.

Written notice stating the place, day and time of the meeting and the purpose for which the meeting is called shall be delivered not less than ten (10) nor more than fifty (50) days before the date of the meeting, either personally or by mail, by or at the direction of the Members calling the meeting, to each Member entitled to vote at such meeting. If mailed, such notice shall be deemed to be delivered three (3) calendar days after being deposited in the United States Mail, addressed to the Member at his, her or its address as it appears on the records of the Company, postage prepaid.

4.4 Record Date.

For the purpose of determining Members entitled to notice of or to vote at any meeting of Members or any adjournment thereof, or Members entitled to any distribution, the date on which notice of the meeting is first delivered or mailed, or the date on which a resolution declaring such distribution is adopted, as the case may be, shall be the record date for such determination of Members. When a determination of Members entitled to vote at any meeting of Members has been made as provided in this Section 4.4, such determination shall apply to any adjournment thereof.

4.5 Quorum.

Members holding a Majority Percentage Interest, represented in person or by proxy, shall constitute a quorum at any meeting of Members. In the absence of a quorum at any such meeting, a majority of the Percentage Interests so represented may adjourn the meeting from time to time for a period not to exceed sixty (60) days without further notice. However, if the adjournment is for more than sixty (60) days, or if after the adjournment a new record date is fixed for the adjourned meeting, notice of the adjourned meeting shall be given to each Member. At such adjourned meeting at which a quorum shall be present or represented, any business may be transacted which might have been transacted at the meeting as originally noticed. The Members present at a duly organized meeting may continue to transact business until adjournment, notwithstanding the withdrawal during such meeting of Members holding a number of Percentage Interests whose absence would cause less than a quorum.

4.6 Manner of Acting.

If a quorum is present, the affirmative vote of Members present at the meeting in person or by proxy holding a Majority Percentage Interest of all Members shall be the act of the Members, except as otherwise provided in this Agreement. For any Membership Interest held jointly, one of the joint owners shall be designated to vote on behalf of the Member. Harold T. Ostenson is designated to vote on behalf of himself and Shirley M. Ostenson.

4.7 Proxies.

At all meetings of Members, a Member may vote in person or by proxy executed in writing by the Member or by the Member's attorney-in-fact or agent appointed in writing. Such proxy or appointment shall be filed with the Company before or at the time of the meeting. No proxy or appointment shall be valid after eleven (11) months from the date of its execution, unless otherwise provided in the proxy or appointment.

4.8 Waiver of Notice.

When any notice is required to be given to any Member, a waiver thereof in writing signed by the Member entitled to such notice, whether before, at, or after the time stated therein, shall be equivalent to the giving of such notice. Attendance at a meeting shall constitute waiver of notice of the meeting unless the Member at the beginning of the meeting objects to holding the meeting or transacting business at the meeting.

4.9 Action Without Meeting.

Any action required or permitted to be taken by the Members at a meeting may be taken without a meeting if a consent in writing, describing the action taken, is signed by Members holding a Majority Percentage Interest, unless the vote of a greater Percentage Interest is required by the Act or by this Agreement. Such action shall be included in the minutes of the Company's meetings.

4.10 Meetings by Telephone.

Meetings of the Members may be held by conference telephone or by any other means of communication by which all participants can hear each other simultaneously during the meeting, and such participation shall constitute presence in person at the meeting.

ARTICLE 5 -- MANAGEMENT

5.1 Number and Qualifications of Manager(s).

As provided in the Certificate of Formation, the Company shall be managed by Manager(s). The number of Manager(s) shall be the number elected by the Members and acting as such from time to time, but shall not be less than one nor more than two. Manager(s) may be individuals or entities, and need not be Members of the Company.

(a) Manager(s) shall be elected at the annual meeting of Members or at a special meeting called for the purpose of electing Manager(s); if a special meeting, the meeting notice must state that the purpose, or one of the purposes, of the meeting is election of Manager(s). A Manager shall serve for a term ending when the Members next hold a meeting at which Manager(s) are elected, or until the Manager's earlier death, resignation, or removal. There shall initially be one Manager. The initial Manager shall be Greg Holzman, Inc. and it shall serve until its successor is elected and qualified.

(b) Subject to restrictions that may be imposed from time to time by the Manager(s) or Members, each Manager shall be an agent of the Company with authority to bind the Company in the ordinary course of its business. The Manager(s) shall have no authority to bind the Company as to the following matters without first obtaining approval by vote of the Members:

- (1) Sale, lease, exchange, mortgage, pledge, or other transfer or disposition of all or substantially all the assets of the Company other than in the ordinary course of business;
- (2) Merger of the Company with another entity;
- (3) Amendment to the Certificate of Formation;
- (4) Incurring of indebtedness by the Company other than in the ordinary course of business;
- (5) A transaction involving an actual or potential conflict of interest between a Member or Manager and the Company; or
- (6) A change in the nature of the business of the Company.

5.2 Other Activities.

Manager(s) may have other business interests and may engage in other activities in addition to those relating to the Company. This Section 5.2 does not change each Manager's duty to act in a manner that the Manager reasonably believes to be in the best interests of the Company.

5.3 Manager Meetings

(a) Meetings of the Manager(s) may be called by any Manager. Meetings shall be held at the place fixed by the Manager(s) or, if no such place has been fixed, at the principal office of the Company. Oral or written notice of the date, time, and place of any meeting shall be given at least 24 hours in advance. Written notice may be delivered personally, given by facsimile or other form of wire communication, or by mail or private carrier, to each Manager(s)' business or home address. Written notice shall be effective at the earliest of the following: (a) when received, (b) when sent by facsimile or other form of wire communication, or (c) two business days after being mailed. A majority of the Manager(s) shall constitute a quorum. Each Manager shall be entitled to one vote. A matter submitted to a vote of the Manager(s) shall be deemed approved if the votes in favor exceed those against the matter.

(b) Notwithstanding any other provision of this Section 5, if all of the Manager(s) shall hold a meeting at any time and place, such meeting shall be valid without call or notice, and any lawful action taken at such meeting shall be the action of the Manager(s).

(c) Any action required or permitted to be taken by the Manager(s) at a meeting may be taken without a meeting if a consent in writing, describing the action taken, is signed by all of the Manager(s) and is included in the minutes of the Company's records of meetings.

(d) Meetings of the Manager(s) may be held by conference telephone or by any other means of communication by which all participants can hear each other simultaneously during the meeting, and such participation shall constitute presence in person at the meeting.

5.4 Resignation.

A Manager may resign at any time by delivering written notice to the other Manager(s) or to the Members. The resignation is effective when the notice is effective under the Act, unless the notice specifies a later effective date. Once delivered, a notice of resignation is irrevocable unless revocation is permitted by the remaining Manager(s) or an affirmative vote of the Members. The resignation of a Manager who is also a Member shall not affect the Manager's rights as a Member and shall not constitute a withdrawal of the Member.

5.5 Removal of Manager by Members.

The Members may remove one or more Manager(s) with or without cause by the affirmative vote of all Members. A Manager may be removed by the Members only at a meeting called for the purpose of removing the Manager and the meeting notice must state that the purpose, or one of the purposes, of the meeting is removal of the Manager.

5.6 Salaries.

The salaries and other compensation of the Manager(s) shall be fixed from time to time by vote of the Members. A Manager shall not be precluded from receiving a salary because the Manager is also a Member.

5.7 Other Agents.

The Manager(s) may, by vote, authorize any agent to enter into any lawful contract or to otherwise act on behalf of the Company. Such authority may be general or be confined to specific instances.

ARTICLE 6 -- ACCOUNTING AND RECORDS

6.1 Books of Account.

At the expense of the Company, the Manager(s) shall maintain records and accounts of all operations and expenditures of the Company. At a minimum the Company shall keep at its principal place of business the following records:

- (a) A current list and past list, setting forth the full name and last known mailing address of each Member;
- (b) A copy of the Certificate of Formation and all amendments thereto;
- (c) Copies of this Agreement and all amendments hereto, and a copy of any prior limited liability company agreements no longer in effect;
- (d) Copies of the Company's federal, state, and local tax returns and reports, if any, for the three (3) most recent years;
- (e) Minutes of every meeting of the Members and any written consents obtained from Members for actions taken by Members without a meeting; and
- (f) Copies of the Company's financial statements for the three (3) most recent years.

6.2 Fiscal Year.

The fiscal year of the Company shall be the calendar year.

6.3 Accounting Reports.

Within ninety (90) days after the close of each fiscal year, the Manager(s) shall furnish each Member with an unaudited financial report of the activities of the Company for the preceding fiscal year, including the balance sheet of the Company as of the end of such year and a statement of income or loss for such year.

6.4 Tax Returns.

The Manager(s) shall prepare and timely file all required federal and state income tax returns. Within ninety (90) days after the end of each fiscal year, each Member shall be furnished a statement suitable for use in the preparation of the Member's income tax return.

6.5 Tax Matters Member.

The initial Manager shall be the "Tax Matters Member" for the Company in compliance with I.R.C. § 6231(a)(7) (unified audit procedures).

ARTICLE 7 -- ALLOCATIONS AND DISTRIBUTIONS

7.1 Allocation of Net Profit and Loss - In General.

7.1.1 Allocation of Net Profit. After giving effect to the special allocations set forth in Sections 7.2 and 7.3, net profit for any fiscal year of the Company shall be allocated among the Members in accordance with their Percentage Interests

7.1.2 Allocation of Net Loss. After giving effect to the special allocations set forth in Sections 7.2 and 7.3, the net loss of the Company for any fiscal year shall be allocated among the Members in accordance with Percentage Interests.

7.2 Special Allocations.

The following special allocations shall be made for any fiscal year of the Company in the following order:

7.2.1 Minimum Gain Chargeback. If there is a decrease in the Company's "partnership minimum gain," as defined in and determined under Regulation Sections 1.704-2(b)(2) and 1.704-2(d), the minimum gain chargeback provisions of Regulation Section 1.704-2(f), which are hereby incorporated into this Agreement by this reference, shall be applied.

7.2.2 Member Minimum Gain Chargeback. If there is a decrease in any Member's share of "partner nonrecourse debt minimum gain," as defined in and determined under Regulation Section 1.704-2(i), the partner nonrecourse debt minimum gain chargeback provisions of Regulation Section 1.704-2(i)(4), which are hereby incorporated into this Agreement by this reference, shall be applied.

7.2.3 Qualified Income Offset. In the event that any Member unexpectedly receives any adjustments, allocations, or distributions described in Regulation Sections 1.704-1(b)(2)(ii)(d)(4), (5) or (6), items of Company income and gain shall be specially allocated to such Member in accordance with Regulation Section 1.704-(1)(b)(2)(ii)(d).

7.2.4 Nonrecourse Deductions. "Nonrecourse deductions," as defined in and determined under Regulation Sections 1.704-2(b)(1) and (c), shall be allocated among the Members in accordance with their respective Percentage Interests.

7.2.5 Member Nonrecourse Deductions. "Partner nonrecourse deductions," as defined in and determined under Regulation Sections 1.704-2(i)(1) and (2), shall be specially allocated among the Members in accordance with Regulation Section 1.704-2(i).

7.3 Corrective Allocations.

The allocations set forth in Section 7.2 are intended to comply with certain regulatory requirements under Code Section 704(b). The Members intend that, to the extent possible, all allocations made pursuant to such Sections will, over the term of the Company, be offset either with other allocations pursuant to Section 7.2 or with special allocations of other items of Company income, gain, loss, or deduction pursuant to this Section 7.3. Accordingly, the Manager(s) are hereby authorized and directed to make offsetting allocations of Company income, gain, loss or deduction under this Section 7.3 in whatever manner the Manager(s) determine is appropriate so that, after such offsetting special allocations are made (and taking into account the reasonably anticipated future allocations of income and gain pursuant to Sections 7.2.1 and 7.2.2), the Capital Accounts of the Members are, to the extent possible, equal to the Capital Accounts each would have if the provisions of Section 7.2 were not contained in

this Agreement and all income, gain, loss and deduction of the Company were instead allocated pursuant to Section 7.1.

7.4 Other Allocation Rules.

7.4.1 General. Except as otherwise provided in this Agreement, all items of Company income, gain, loss, deduction, credit, and any other allocations not otherwise provided for shall be divided among the Members in accordance with their Percentage Interests, or as otherwise may be required under the Code and the Regulations thereunder.

7.4.2 Allocation of Recapture Items. In making any allocation among the Members of income or gain from the sale or other disposition of a Company asset, the ordinary income portion, if any, of such income and gain resulting from the recapture of cost recovery or other deductions shall be allocated among those Members who were previously allocated (or whose predecessors-in-interest were previously allocated) the cost recovery deductions or other deductions resulting in the recapture items, in proportion to the amount of such cost recovery deductions or other deductions previously allocated to them.

7.4.3 Allocation of Excess Nonrecourse Liabilities. Solely for purposes of determining a Member's proportionate share of the "excess nonrecourse liabilities" of the Company within the meaning of Regulation Section 1.752-3(a)(3), the Members' interests in the Company's profits shall be in accordance with the Members' Percentage Interests.

7.4.4 Allocations in Connection with Varying Interests. If, during a Company fiscal year, there is (i) a permitted transfer of all or a part of a Member's interest, or (ii) the admission or withdrawal of a Member, net profit, net loss, each item thereof, and all other tax items of the Company for such fiscal year shall be divided and allocated among the Members by taking into account their varying interests during such fiscal year in accordance with Code Section 706(d) and using any conventions permitted by law and selected by the Tax Matters Partner.

7.5 Determination of Net Profit or Loss.

7.5.1 Computation of Net Profit or Loss. The net profit or net loss of the Company, for each fiscal year or other period, shall be an amount equal to the Company's taxable income or loss for such period, determined in accordance with Code Section 703(a) (and, for this purpose, all items of income, gain, loss or deduction required to be stated separately pursuant to Code Section 703(a)(1), including income and gain exempt from federal income tax, shall be included in taxable income or loss).

7.5.2 Adjustments to Net Profit or Loss. For purposes of computing taxable income or loss on the disposition of an item of Company property or for purposes of determining the cost recovery, depreciation, or amortization deduction with respect to any property, the Company shall use such property's book value determined in accordance with Regulation Section 1.704-1(b).

7.5.3 Items Specially Allocated. Notwithstanding any other provision of this Section 7.5, any items that are specially allocated pursuant to Section 7.2 or Section 7.3 shall not be taken into account in computing the Company's net profit or net loss.

7.6 Mandatory Tax Allocations Under Code Section 704(c).

In accordance with Code Section 704(c) and Regulation Section 1.704-3, income, gain, loss and deduction with respect to any property contributed to the capital of the Company shall, solely for tax purposes, be allocated among the Members so as to take account of any variation between the adjusted basis of such property to the Company for federal income tax purposes and its initial book value computed in accordance with Section 7.5.2. Prior to the contribution of any property to the Company that has a fair market value that differs from its adjusted tax basis in the hands of the contributing Member on the date of contribution, the contributing Member and the Manager(s) shall agree upon the allocation method to be applied with respect to that property under Regulation Section 1.704-3, which allocation method shall be set forth on attached Schedule 2, as amended from time to time.

Allocations pursuant to this Section 7.6 are solely for purposes of federal, state, and local taxes and shall not affect, or in any way be taken into account in computing, any Member's Capital Account or share of net profit, net loss, or other items as computed for book purposes, or distributions pursuant to any provision of this Agreement.

7.7 Distributions.

The Company may make distributions to the Members from time to time, to the extent permitted by the Act, of any monies or property in excess of that needed to properly carry on the business of the Company. Each distribution shall be made to all Members, and divided among the Members in proportion to their Percentage Interests.

7.8 Distribution to Pay Tax Liabilities.

Within 90 days after the end of each fiscal year, the Company shall make a distribution in an amount equal to at least (a) the Company's net taxable income during the fiscal year multiplied by (b) the lesser of (i) forty-five percent (45%) or (ii) the maximum federal individual income tax rate of any Member in effect for the fiscal year, less (c) the amount of any distributions made by the Company during the fiscal year (other than distributions made during the fiscal year that are required to be made under the provisions of this Section 7.8 with respect to a prior fiscal year). For purposes of this Section 7.8, the Company's net taxable income shall be the net excess of items of recognized income and gain over the items of recognized loss and deduction reported on the Company's federal income tax return for the taxable year with respect to which the distribution is being made. The Company's obligation to make such distribution is subject to the restrictions governing distributions under the Act.

ARTICLE 8 -- DISSOLUTION AND LIQUIDATION

8.1 Events of Dissolution.

Except as otherwise provided in this Agreement, the Company shall dissolve upon the earlier of:

- (a) the written agreement of all of the Members;
- (b) the occurrence of any event of Member dissociation as provided in the Act other than the assignment of all Member's interest in a transfer permitted by Section 3.6, unless the business of the Company is continued with the consent of all of the remaining Members within ninety (90) days following such event.

8.2 Liquidation Upon Dissolution and Winding Up.

Upon the dissolution of the Company, the Manager(s) shall wind up the affairs of the Company. A full account of the assets and liabilities of the Company shall be taken. The assets shall be promptly liquidated and the proceeds thereof applied as required by the Act. Upon discharging all debts, liabilities and preference distributions, all remaining assets shall be distributed to the Members or their representatives by the end of the taxable year in which the liquidation occurs (or, if later, within ninety (90) days after the date of such liquidation) in proportion to the positive balances of their respective Capital Accounts, as determined after taking into account all Capital Account adjustments for the taxable year during which the liquidation occurs (other than those made pursuant to this Section 8.2). With the approval of the Manager(s), the Company may, in the process of winding up the Company, distribute property in kind, in which case the Members' Capital Account balances shall be adjusted in accordance with Regulation Section 1.704-1(b)(2)(iv)(e).

8.3 No Obligation to Restore Negative Capital Account Balance on Liquidation.

Notwithstanding anything to the contrary in this Agreement, upon a liquidation within the meaning of Regulation Section 1.704-1(b)(2)(ii)(g), no Member shall have any obligation to make any capital contribution to the Company to eliminate the negative balance, if any, of such Member's Capital Account and such negative balance shall not be considered a debt owed by such Member to the Company or to any other person for any purpose whatsoever.

ARTICLE 9 -- DISSOCIATION OF A MEMBER.

9.1 Events.

Upon the withdrawal of a Member in violation of Section 3.6 or the occurrence of an event of Member dissociation specified in Section 8.1(b), the other Members shall each have the option, exercisable by written notice given within thirty (3) days following such withdrawal or dissociation to the person who succeeds to the interest of such Member, to purchase the Member's entire interest in the Company. If more than one Member exercises the option to purchase the withdrawn or dissociated Member's interest, their exercise of the purchase option

shall be deemed an election to purchase a portion of the interest based on the ratio of the purchasing Member's Percentage Interest to the Percentage Interests of all purchasing Members.

9.2 Purchase Price.

If the Members elect to purchase the interest of a Member pursuant to Section 9.1 above, the value of the affected Member's interest shall be determined by multiplying the Member's Percentage Interest by the net fair market value of all Company assets. The net fair market value of the Company assets shall be determined by agreement between the remaining Members and the affected Member or the affected Member's legal representative. If agreement as to such value cannot be obtained, the value of the affected Member's interest shall be determined by the firm of accountants then servicing the Company, utilizing the following criteria:

- (a) All accounts of the Company shall be valued at their stated book value as shown on the Company's books of account, and as adjusted at the end of the fiscal year immediately preceding the event giving rise to the purchase;
- (b) The excess of the current market value of all assets over their stated book value, including those assets not having a cost basis for Federal income tax purposes, or the deficiency of the current market value of all assets under their stated book value, shall be added or subtracted, as the case may be, to the book value to determine the adjusted book value;
- (c) All debts of the Company shall be deducted from the adjusted book value to reach the net adjusted book value;
- (d) The Member's Percentage Interest shall be multiplied by the final value of the Company as determined above to reach the value of the Member's Percentage Interest to be adjusted further as provided below;
- (e) An appropriate discount to the value of the Member's Percentage Interest shall be deducted to take into account the lack of marketability of the interest;
- (f) The value of the Member's Percentage Interest shall further be reduced by an amount equal to 15% of the value of the Member's Percentage Interest, if the Member's Percentage Interest is equal to or less than fifty percent (50%) of the total outstanding Interests in the Company as a minority interest discount to determine the net value of the Member's Percentage Interest for purposes of this Section 9.2; and
- (g) The valuation of the affected Member's Percentage Interest, when made, shall be final and binding upon all parties affected thereby. The accountants shall be entitled to obtain, at the Company's expense, such appraisals and other professional advice in determining net adjusted book value or to complete the Company's books of account as they deem necessary or advisable.

9.3 Failure to Exercise Purchase Option.

If the Members do not exercise the purchase option under Section 9.1 and the business of the Company is continued as provided in Section 8.1(b), then each of the persons who succeed to the dissociated Member's interest shall be an assignee of such dissociated Member, but shall not be a Member unless admitted as a Member in accordance with Section 3.2.

ARTICLE 10 -- LIMITATION OF LIABILITY; INDEMNIFICATION

10.1 Limitation of Liability.

No Manager shall have liability to the Company or its Members for monetary damages for conduct as a Manager, except for acts or omissions that involve a breach of this Agreement, intentional misconduct, a knowing violation of law, conduct violating RCW 25.15.235, or for any transaction from which the Manager has personally received a benefit in money, property or services to which the Manager was not legally entitled. If the Act is hereafter amended to authorize Company action further limiting the personal liability of Manager(s), then the liability of each Manager shall be eliminated or limited to the full extent permitted by the Act, as so amended. No repeal or modification of the Act or this Section 10.1 shall adversely affect any right or protection of a Manager existing at the time of such repeal or modification for or with respect to an act or omission of such Manager occurring prior to such repeal or modification.

10.2 Manager Indemnification.

The Company shall indemnify each Manager from and against any judgments, settlements, penalties, fines or expenses incurred in a proceeding to which a Manager is a party because he, she or it is, or was, a Manager; provided, that a Manager shall not be indemnified from or on account of acts or omissions of the Manager finally adjudicated to be a breach of this Agreement, intentional misconduct or a knowing violation of law by the Manager, conduct of a Manager adjudged to be in violation of RCW 25.15.235, or any transaction with respect to which it was finally adjudged that such Manager received a benefit in money, property or services to which such Manager was not legally entitled. The right to indemnification conferred in this Section 10.2 shall be a contract right and shall include the right to be paid by the Company the expenses incurred in defending any such proceeding in advance of its final disposition; provided, that the payment of such expenses in advance of the final disposition of a proceeding shall be made only upon delivery to the Company of an undertaking, by or on behalf of such Manager, to repay all amounts so advanced if it shall ultimately be determined that such Manager is not entitled to be indemnified under this Section 10.2 or otherwise.

The right to indemnification and payment of expenses incurred in defending a proceeding in advance of its final disposition conferred in this Section 10.2 shall not be exclusive of any other right any Manager may have or hereafter acquire under any statute, this Agreement, vote of Managers or otherwise.

No repeal or modification of the Act or this Section 10.2 shall adversely affect any right of a Manager to indemnification existing at the time of such repeal or modification for or with respect to indemnification related to an act or omission of such Manager occurring prior to such repeal or modification.

10.3 Member Indemnification.

The Company shall indemnify each Member from and against any judgments, settlements, penalties, fines or expenses incurred in a proceeding to which a Member is a party because he, she or it is, or was, a Member; provided, that a Member shall not be indemnified from or on account of acts or omissions of the Member finally adjudicated to be a breach of this Agreement, intentional misconduct or a knowing violation of law by the Member, conduct of a Member adjudged to be in violation of RCW 25.15.235, or any transaction with respect to which it was finally adjudged that such Member received a benefit in money, property or services to which such Member was not legally entitled. The right to indemnification conferred in this Section 10.3 shall be a contract right and shall include the right to be paid by the Company the expenses incurred in defending any such proceeding in advance of its final disposition; provided, that the payment of such expenses in advance of the final disposition of a proceeding shall be made only upon delivery to the Company of an undertaking, by or on behalf of such Member, to repay all amounts so advanced if it shall ultimately be determined that such Member is not entitled to be indemnified under this Section 10.3 or otherwise.

The right to indemnification and payment of expenses incurred in defending a proceeding in advance of its final disposition conferred in this Section 10.3 shall not be exclusive of any other right any Member may have or hereafter acquire under any statute, this Agreement, vote of Members or otherwise.

No repeal or modification of the Act or this Section 10.3 shall adversely affect any right of a Member to indemnification existing at the time of such repeal or modification for or with respect to indemnification related to an act or omission of such Member occurring prior to such repeal or modification.

ARTICLE 11 -- MISCELLANEOUS

11.1 Notices.

Any notice or other communication required or permitted under this Agreement shall be deemed to have been duly given if delivered personally to the party to whom directed or, if mailed, by registered or certified mail, postage and charges prepaid, addressed (a) if to a Member, to the Member's address specified on attached Schedule 1, and (b) if to the Company, to the Company's address specified in Section 1.5. Any such notice shall be deemed to be given when personally delivered or, if mailed, two (2) business days after the date of mailing. A Member or the Company may change its address for purposes of notices hereunder by giving notice specifying such changed address in the manner specified in this Section 11.1.

11.2 Governing Law.

This Agreement shall be construed and enforced in accordance with the internal laws of the State of Washington.

11.3 Amendment By Members.

The Members may amend or repeal the provisions of this Agreement by unanimous agreement set forth in writing or by action taken at a meeting of Members called for that purpose. This Agreement may not be amended or repealed by oral agreement of the Members.

11.4 Amendment By Manager(s).

The Manager(s) may not amend or repeal the provisions of this Agreement.

11.5 Construction.

Whenever the singular number is used in this Agreement and when required by the context, the same shall include the plural and vice versa, and the masculine gender shall include the feminine and neuter genders and vice versa.

11.6 Headings.

The headings in this Agreement are inserted for convenience only and shall not affect the interpretation of this Agreement.

11.7 Waivers.

The failure of any person to seek redress for violation of or to insist upon the strict performance of any covenant or condition of this Agreement shall not prevent a subsequent act, which would have originally constituted a violation, from having the effect of an original violation.

11.8 Remedies.

The rights and remedies of the parties hereunder shall not be mutually exclusive, and the exercise of any one right or remedy shall not preclude or waive the right to exercise any other remedies. Said rights and remedies are in addition to any other rights the parties may have by law or otherwise.

11.9 Severability.

If any provision of this Agreement or the application thereof to any person or circumstance shall be invalid, illegal or unenforceable to any extent, the remainder of this Agreement and the application thereof shall not be affected and shall be enforceable to the fullest extent permitted by law.

11.10 Heirs, Successors and Assigns.

Each and all of the covenants, terms, provisions and agreements herein contained shall be binding upon and inure to the benefit of the parties hereto and, to the extent permitted by this Agreement, their respective heirs, legal representatives, successors and assigns.

11.11 Creditors.


None of the provisions of this Agreement shall be for the benefit of or enforceable by any creditors of the Company.

11.12 Counterparts.

This Agreement may be executed in counterparts, each of which shall be deemed an original but all of which shall constitute one and the same instrument.

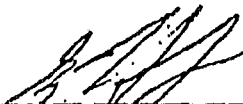
Executed as of the date first above written by the undersigned.

PAC ORGANIC FRUIT, LLC

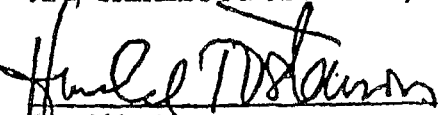
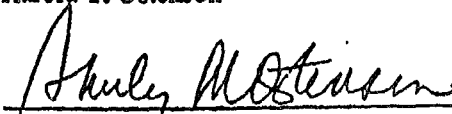
By: 
Greg Holzman, Inc., Manager

Its: Members

GREG HOLZMAN, INC.

By: 
Its: Pres.

HAROLD T. OSTENSON
AND SHIRLEY M. OSTENSON, JTWRs


Harold T. Ostenson

Shirley M. Ostenson

Schedule 1
to
Limited Liability Company Agreement
of
PAC ORGANIC FRUIT, LLC

<u>Names and Addresses of Members</u>	<u>Value of Initial Capital</u>	<u>Contribution</u>	<u>Percentages</u>
Greg Holzman, Inc., dba Pacific Organic Produce (Pacific Organic Produce, Inc.)	\$15,300	51%	
Harold T. Ostenson and Shirley M. Ostenson, JTWROS	\$14,700	49%	
Totals	\$30,000	100%	

After recording, return to:
Bendich, Stobaugh & Strong, P.C.
900 Fourth Avenue, Suite 3800
Seattle, WA 98164

LEASE

Reference Number: _____

Lessors: Ostenson, Harold T.
Ostenson, Shirley M.

Lessee: PAC Organic Fruit, LLC

Legal description: Ptn. of F.U. 100/79
Additional legal is on page 8

Tax Parcel ID#: 20-1842-001

LEASE made this 28th day of December, 1999, by and between Harold T. and Shirley M. Ostenson (hereafter "Lessor") and Pacific Organic Fruit, LLC, a Washington corporation (hereafter "Lessee").

1. PREMISES: Lessor does hereby lease to Lessee, the property described on page 8, including all furniture, machinery and equipment.
2. TERM: The term of this Lease shall commence on January 1, 2000 and shall terminate 20 years years from the date that the Evergreen Community Development Association's debenture is sold pursuant to a United States Small Business Administration (hereafter SBA) authorization and debenture guaranty number CDC-234,856 40 10-WA (hereafter "Authorization") or when the loan from Evergreen Community Development Association is paid in full, whichever occurs first.
3. RENT: Lessee shall pay to Lessor as rent for the premises equal monthly installments of \$ 8,200. in advance of the first day of each month of the term of the lease. This amount of rent is based on estimates of the Lessor's expenses for debt service, insurance and real estate taxes. During the term of this Lease the rent shall not exceed the amount permitted



by the U.S. Small Business Administration's authorization for the guaranty of a debenture to be issued by the Evergreen Community Development Association, the proceeds of which are to be loaned to Lessor. If the Lessor's expenses for debt service, insurance and/or real estate taxes are different from those anticipated, and when these expenses change during the term of the Lease, the Lessor shall change the Lessee's monthly payment to the amount necessary to reimburse the Lessor's expenses for these costs. The amount of rent may be modified by giving the Lessee 30 days written notice of the change in rent payments.

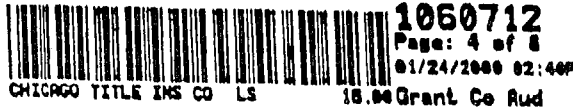
4. **UTILITIES AND FEES:** Lessee agrees to pay all charges for light, heat, water sewer, garbage, drainage, metro and all other utilities and services to the premises during the full term of the Lease. All other items including all license fees and other governmental charges levied on the operation of Lessee's business on the premises will be paid directly by Lessee. In the event the lease premises are a part of a building or larger premises to which such charges are charged as a whole, with the consent of the Lessor, then Lessee agrees to pay, upon demand, a proper and fair share of said charges.

5. **TAXES:** The Lessee shall pay any taxes that are levied on the premises or on the rent payments.

6. **REPAIRS AND MAINTENANCE:** Premises have been inspected and are accepted by Lessee in their present condition. Lessee shall, at its own expense and at all times, keep the premises neat, clean and in a sanitary condition, and keep and use the premises in accordance with applicable laws, ordinances, rules, regulations and requirements of governmental authorities. Lessee shall permit no waste, damage or injury to the premises; keep all drain pipes free and open; protect water, heating, gas and other pipes to prevent freezing or clogging; repair all leaks and damage caused by leaks; replace all glass in windows and doors of the premises which may become cracked or broken; and remove ice and snow from sidewalks adjoining the premises. Except for the roof, exterior walls and foundations, which are the responsibility of the Lessor, Lessee shall make such repairs as necessary to maintain the premises in as good condition as they now are, reasonable use and wear and damage by fire and other casualty excepted.

7. **SIGNS:** All signs or symbols placed by Lessee in the windows and doors of the premises, or upon any exterior part of the building, shall be subject to Lessor's prior written approval. Lessor may demand the removal of signs which are not so approved, and Lessee's failure to comply with said request within forty-eight (48) hours will constitute a breach of this paragraph and will entitle Lessor to terminate this Lease or, in lieu thereof, to cause the sign to be removed and the building repaired at the sole expense of the Lessee. At the termination of this Lease, Lessee will remove all signs placed by it upon the premises, and will repair any damage caused by such removal. All signs must comply with sign ordinances and be placed in accordance with required permits.

8. **ALTERATIONS:** After prior written consent of Lessor, Lessee may make alterations, additions and improvements in said premises, at Lessee's sole cost and expense. In the performance of such work, Lessee agrees to comply with all laws, ordinances, rules and regulations of any proper public authority, and to save Lessor harmless from damage, loss or expense. Upon termination of this Lease and upon Lessor's request, or Lessor's approval, Lessee shall remove such improvements and restore the premises to its original condition not later than the termination date, at Lessee's sole cost and expense. Any improvement not so removed shall be removed at Lessee's expense provided that Lessee shall pay for any damage caused by such removal.
9. **CONDEMNATION:** In the event a substantial part of the premises is taken or damaged by the right of eminent domain, or purchased by the condemnor, in lieu thereof, so as to render the remaining premises economically untenable, then this Lease shall be cancelled as of the time of taking at the option of either party. In the event of a partial taking which does not render the premises economically untenable, the rent shall be reduced in direct proportion to the leased property taken. Lessee shall have no claim to any portion of the compensation for the taking or damaging of the land or building. Nothing herein contained shall prevent the Lessee from its entitlement to negotiate for its own moving costs and its leasehold improvements.
10. **PARKING:** Lessee understands that parking is apportioned in conformity with controlling zoning ordinances and the Lessor shall have the right to make such regulations as Lessor deems desirable for the control of parking automobiles on the real property described in paragraph 1 or property under Lessor's control, including the right to designate certain areas for parking of the Lessee, employees of Lessee, its customers and other Lessees of said buildings.
11. **LIENS AND INSOLVENCY:** Lessee shall keep the premises free from any liens arising out of any work performed for materials furnished to, or obligations incurred by Lessee and shall hold Lessor harmless against the same. In the event Lessee becomes insolvent, bankrupt, or if a receiver, assignee or other liquidating officer is appointed for the business of Lessee, Lessor may cancel this Lease at its option.
12. **SUBORDINATION OF LEASE TO EVERGREEN COMMUNITY DEVELOPMENT ASSOCIATION'S DEED OF TRUST AND SECURITY AGREEMENTS:** This lease is subordinate to the \$351,000 deed of trust and any security agreements that the Lessor and Lessee have granted or will grant to the Evergreen Community Development Association as security for a loan and to the \$568,738 deed of trust that Lessor has granted or will grant to Key Bank.
13. **ASSIGNMENT:** Lessee may assign its interest in this lease to Evergreen Community Development Association and Key Bank as security for loans. These lenders may freely assign



the lease without the Lessor's consent. Except as noted above, the Lessee shall not assign or encumber the lease without the prior written consent of the Lessor.

14. ACCESS: Lessor shall have the right to enter the premises at all reasonable times for the purpose of inspection or of making repairs, additions or alterations, and to show the premises to prospective tenants for sixty (60) days prior to the expiration of the lease term.

15. POSSESSION: If for any reason Lessor is unable to deliver possession of the premises at the commencement of the term of the Lease, Lessee may give Lessor written notice of its intention to cancel this Lease if possession is not delivered within thirty (30) days after receipt of such notice by Lessor. Lessee shall not be liable for any rent until such times as Lessor delivers possession. A delay of possession shall not extend the term or the termination date. If Lessor offers possession of the premises prior to the commencement date of the term of this Lease, and if Lessee accepts such early possession, then both parties shall be bound by all of the covenants and terms contained herein, including the payment of rent during such period of early possession.

16. DAMAGE OR DESTRUCTION: In the event the premises are rendered untenable in whole or in part by fire, the elements, or other casualty, Lessor may elect, at its option, not to restore or rebuild the premises and shall so notify Lessee, in which event Lessee shall vacate the premises and this Lease shall be terminated; or, in the alternative, Lessor shall notify Lessee, within thirty (30) days after the notice of such casualty, that Lessor will undertake to rebuild or restore the premises, and that such work can be completed within one hundred eighty (180) days from date of such notice of intent, and Lessee may elect, at its option, to terminate this Lease. If Lessor is unable to restore or rebuild the premises within the said one hundred eighty (180) days, and Lessee did not earlier elect to terminate, then the Lease may be terminated at Lessee's option by written ten (10) day notice to Lessor. During the period of untenability, rent shall abate in the same ratio as the portion of the premises rendered untenable bears to the whole of the premises.

17. ACCIDENTS AND LIABILITY: Lessor or Lessor's agent shall not be liable for, and Lessee agrees to defend and hold Lessor and Lessor's agents harmless from any claim, action and/or judgment for damages to property or injury to persons suffered or alleged to be suffered on the premises by any person, firm or corporation, unless caused by Lessor's negligence. Lessee agrees to maintain general public liability insurance on the premises in the minimum limit of \$300,000, and hazard insurance (fire and extended coverage) in an amount covering the replacement cost of the building and building improvements, and covering machinery, equipment, furniture and fixtures located at the building. Lessee shall furnish Lessor a certificate indicating that the insurance policy is in full force and effect, the Lessor has been named as an additional insured, and that the policy may not be cancelled unless ten (10) days' written notice of the proposed cancellation has been given to Lessor.

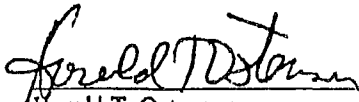
18. **SUBROGATION WAIVER:** Lessor and Lessee each herewith and hereby releases and relieves the other and waives its entire right of recovery against the other for loss or damage arising out of or incident to the perils described in standard fire insurance policies and all perils described in the "Extended Coverage" insurance endorsement approved for use in the state where the premises are located, which occurs in, on or about the Premises, unless due to the negligence of either party, their agents, employees or otherwise.
19. **DEFAULT AND RE-ENTRY:** If Lessee shall fail to keep and perform any of the covenants and agreements herein contained, other than the payment of rent, and such failure continues for thirty (30) days after written notice from Lessor, unless appropriate action has been taken by Lessee in good faith to cure such failure, Lessor may terminate this Lease and re-enter the premises, or Lessor may, without terminating this Lease, re-enter said premises, and sublet the whole or any part thereof for the account of the Lessee upon as favorable terms and conditions as the market will allow, for the balance of the term of this Lease and Lessee covenants and agrees to pay to Lessor any deficiency arising from a re-letting of the premises at a lesser amount than herein agreed to. Lessee shall pay such deficiency each month as the amount hereof is ascertained by Lessor. However, the ability of Lessor to re-enter and sublet shall not impose upon Lessor the obligation to do so.
20. **REMOVAL OF PROPERTY:** In the event Lessor lawfully re-enters the premises as provided herein, Lessor shall have the right, but not the obligation, to remove all the personal property located therein and to place such property in storage at the expense and risk of Lessee.
21. **COSTS AND ATTORNEY'S FEES:** If, by reason of any default or breach on the part of either party in the performance of any of the provisions of this Lease, a legal action is instituted, the losing party agrees to pay all reasonable costs and attorney's fees in connection therewith. It is agreed that the venue of any legal action brought under the terms of this Lease may be in the county in which the premises are situated.
22. **NO WAIVER OF COVENANTS:** Any waiver by either party of any breach hereof by the other shall not be considered a waiver of any future similar breach. This Lease contains all the agreements between the parties; and there shall be no modification of the agreements contained herein except by written instrument.
23. **SURRENDER OF PREMISES:** Lessee agrees, upon termination of this Lease, to peacefully quit and surrender the premises without notice, leave the premises neat and clean and to deliver all keys to the premises to Lessor.
24. **HOLDING OVER:** If Lessee, with the implied or express consent of Lessor, shall hold over after the expiration of the term of this Lease, Lessee shall remain bound by all covenants and agreements herein, except that the tenancy shall be from month to month.

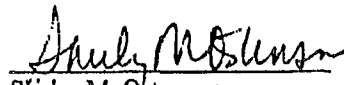
25. BINDING ON HEIRS, SUCCESSORS AND ASSIGNS: The covenants and agreements of this Lease shall be binding upon the heirs, executors, administrators, successors and assigns of both parties hereto, except as hereinabove provided.

26. USE: Lessee shall use the premises for the purposes of operation of an organic fruit packing and storing facility, and for no other purposes, without written consent of Lessor. In the event Lessee's use of the premises increases the fire and extended coverage or liability insurance rates on the building of which the premises are a part, Lessee agrees to pay for such increase.


27. NOTICE: Any notice required to be given by either party to the other shall be deposited in the United States mail, postage prepaid, addressed to the Lessor or Lessee at P.O. Box 5517, George, WA 98824, or at such other address as either party may designate to the other in writing from time to time.

LESSOR: Harold T. and Shirley Ostenson

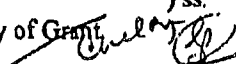

Harold T. Ostenson


Shirley M. Ostenson

LESSEE: PAC Organic Fruit, LLC


By 
Harold T. Ostenson, Manager

State of Washington)

) ss.
County of Grant 

I certify that I know or have satisfactory evidence that Harold T. Ostenson is the person who appeared before me, and said person acknowledged that he signed this instrument and acknowledged it to be his free and voluntary act for the uses and purposes mentioned in the instrument.



Dated: 12/28/99


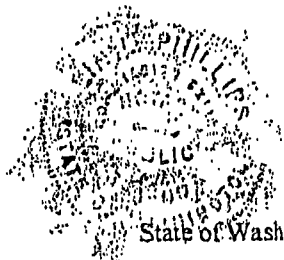
NOTARY PUBLIC in and for the State of
Washington, residing at E Wen WA
My commission expires 3/6/00

State of Washington)
County of Grant *Wells* ^{SS} *CP*

I certify that I know or have satisfactory evidence that Shirley M. Ostenson is the person who appeared before me, and said person acknowledged that she signed this instrument and acknowledged it to be her free and voluntary act for the uses and purposes mentioned in the instrument.

Dated: 12/28/99

(Seal or stamp)



Lin L. Phillips

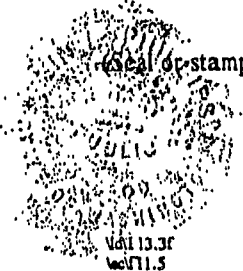
NOTARY PUBLIC in and for the State of
Washington, residing at E Wen WA
My commission expires 3/6/00

State of Washington)
County of Grant *Wells* ^{SS} *CP*

I certify that I know or have satisfactory evidence that Harold T. Ostenson is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as a Manager of PAC Organic Fruit, LLC, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: 12/28/99

(Seal or stamp)



Lin L. Phillips

NOTARY PUBLIC in and for the State of
Washington, residing at E Wen WA
My commission expires: 3/6/00



1060712

Page: 8 of 8

01/24/2000 02:40P

CHICAGO TITLE INS CO LS

15.00 Grant Co Aud

PAC Organic Fruit, LLC
Loan #: 234,856-40-10 WA
17202 Frenchman Hill Road, George, WA 98824

LEGAL DESCRIPTION

THAT PORTION OF FARM UNIT 100, IRRIGATION BLOCK 79, THIRD REVISION, COLUMBIA BASIN PROJECT, GRANT COUNTY, WASHINGTON, ACCORDING TO THE PLAT THEREOF FILED AUGUST 15, 1960, DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF SECTION 31, TOWNSHIP 18 NORTH, RANGE 24 E.W.M.; THENCE NORTH 89°48' WEST ALONG THE SOUTH LINE OF SAID SECTION, 80 FEET TO THE TRUE POINT OF BEGINNING; THENCE WESTERLY, 1315 FEET ALONG THE SOUTH LINE OF SAID SECTION; THENCE NORTH 0°31' EAST, 367.4 FEET TO THE CENTER LINE OF W53.10 LATERAL DITCH AND FARM UNIT LINE; THENCE ON THE CENTER LINE OF THE W53.10 LATERAL, SOUTH 67°25' EAST, 346.6 FEET; THENCE ALONG AN ARC CURVE TO THE LEFT, WITH A RADIUS OF 286.5 FEET, A DISTANCE OF 100.5 FEET; THENCE SOUTH 87°31' EAST, 255.4 FEET; THENCE ALONG AN ARC CURVE TO THE RIGHT, WITH A RADIUS OF 286.50 FEET, A DISTANCE OF 83.0 FEET; THENCE SOUTH 70°56' EAST, 119.2 FEET; THENCE ALONG AN ARC CURVE TO THE LEFT WITH A RADIUS OF 286.5 FEET, A DISTANCE OF 94.3 FEET; THENCE SOUTH 89°48' EAST, 124.1 FEET; THENCE ALONG A CURVE TO THE RIGHT WITH A RADIUS OF 39.5 FEET, A DISTANCE OF 62.1 FEET; THENCE SOUTH 0°12' WEST, 30.5 FEET TO THE TRUE POINT OF BEGINNING.



RECORDED AT THE REQUEST OF:
BENDICH, STOBAUGH & STRONG, P.C.
900 Fourth Avenue, Suite 3800
Seattle, WA 98164

ASSIGNMENT OF INTEREST IN LEASE AND RENTS AS SECURITY

Reference Number 1060712
Assignors: PAC Organic Fruit, LLC
Harold T. and Shirley M. Ostenson
Assignee: Evergreen Community Development Association
Legal description: Ptn. of F.U. 100/79
Additional Legal description is on Page 4.
Tax Parcel ID#: 20-1842-001

To induce the Evergreen Community Development Association (hereafter "Evergreen") to make a loan and to induce the United States Small Business Administration (hereafter "SBA") to guarantee a debenture issued by Evergreen in the amount of \$351,000, the proceeds of which are to be loaned to Harold T. and Shirley M. Ostenson pursuant to SBA's Authorization and Debenture Guaranty #CDC-234,856 40 10-WA, including any amendments to it approved by the SBA (hereafter, the "SBA Loan"), the following Assignment is made:

For value received, Harold T. and Shirley M. Ostenson ("Lessor"), and PAC Organic Fruit, LLC ("Lessee"), hereby convey and assign as security, with right of reassignment, to Evergreen and to its assigns and successors, all of their right, title and interest to the following:

1. The lease between Lessor and Lessee dated December 28, 1999

(including any addendums, renewals or modifications thereof) to that real property which is legally described on Page 4.

2. Lessor and Lessee's interest in any rents due or to become due under the Lease described above in Paragraph 1, or any other Lease that may be entered into for the property described on Page 4.

This assignment is given to secure the payment of an indebtedness by Lessor or a guarantee by Lessee, both in the amount of \$351,000.

If the holder of the note is someone other than Evergreen or the SBA, then Evergreen or the SBA may notify the Assignor of the holder's name and address.

DATED this 28 day of Dec., 1999.

Lessor: Harold T. and Shirley M. Ostenson

Harold T. Ostenson
Harold T. Ostenson

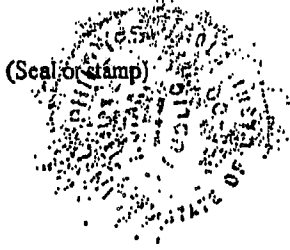
Shirley M. Ostenson
Shirley M. Ostenson

Lessee: PAC Organic Fruit, LLC

By Harold T. Ostenson
Harold T. Ostenson, Manager

State of Washington)
) ss.
County of Grant Chelan

I certify that I know or have satisfactory evidence that Harold T. Ostenson is the person who appeared before me, and said person acknowledged that he signed this instrument and acknowledged it to be his free and voluntary act for the uses and purposes mentioned in the instrument.



Dated: 12/28/99
Lin L. Puccio

NOTARY PUBLIC in and for the State of
Washington, residing at E. Ullrich WA
My commission expires 3/6/00

State of Washington)
County of Grant) ss. Chelan

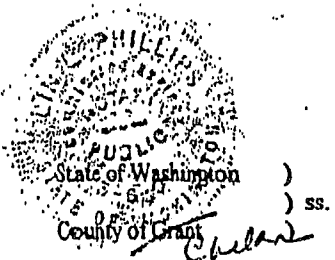


I certify that I know or have satisfactory evidence that Shirley M. Ostenson is the person who appeared before me, and said person acknowledged that she signed this instrument and acknowledged it to be her free and voluntary act for the uses and purposes mentioned in the instrument.

Dated: 12/28/99

(Seal or stamp)

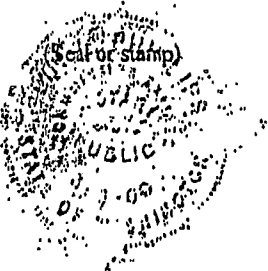
Lin L. Phillips



NOTARY PUBLIC in and for the State of
Washington, residing at E. Ullrich WA
My commission expires 3/6/00

I certify that I know or have satisfactory evidence that Harold T. Ostenson is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as a Manager of PAC Organic Fruit, LLC, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: 12/28/99



Lin L. Phillips

NOTARY PUBLIC in and for the State of
Washington, residing at E. Ullrich WA
My commission expires: 3/6/00

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Vd113.4f



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 Page: 4 of 4
 01/24/2008 02:40P
 11.00 Grant Co Aud

CHICAGO TITLE INS CO ASLS

PAC Organic Fruit, LLC
 Loan #: 234,856-40-10 WA
 17202 Frenchman Hill Road, George, WA 98824

LEGAL DESCRIPTION

THAT PORTION OF FARM UNIT 100, IRRIGATION BLOCK 79, THIRD REVISION, COLUMBIA BASIN PROJECT, GRANT COUNTY, WASHINGTON, ACCORDING TO THE PLAT THEREOF FILED AUGUST 15, 1960, DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF SECTION 11, TOWNSHIP 18 NORTH, RANGE 24 E.W.M.; THENCE NORTH 89°48' WEST ALONG THE SOUTH LINE OF SAID SECTION, 80 FEET TO THE TRUE POINT OF BEGINNING; THENCE WESTERLY, 1315 FEET ALONG THE SOUTH LINE OF SAID SECTION; THENCE NORTH 0°31' EAST, 367.4 FEET TO THE CENTER LINE OF W53.10 LATERAL DITCH AND FARM UNIT LINE; THENCE ON THE CENTER LINE OF THE W53.10 LATERAL, SOUTH 67°25' EAST, 346.6 FEET; THENCE ALONG AN ARC CURVE TO THE LEFT, WITH A RADIUS OF 286.5 FEET, A DISTANCE OF 100.3 FEET; THENCE SOUTH 87°31' EAST, 255.4 FEET; THENCE ALONG AN ARC CURVE TO THE RIGHT, WITH A RADIUS OF 286.50 FEET, A DISTANCE OF 83.0 FEET; THENCE SOUTH 70°56' EAST, 119.2 FEET; THENCE ALONG AN ARC CURVE TO THE LEFT WITH A RADIUS OF 286.5 FEET, A DISTANCE OF 94.3 FEET; THENCE SOUTH 89°48' EAST, 124.1 FEET; THENCE ALONG A CURVE TO THE RIGHT WITH A RADIUS OF 39.5 FEET, A DISTANCE OF 62.1 FEET; THENCE SOUTH 0°12' WEST, 30.5 FEET TO THE TRUE POINT OF BEGINNING.

AFTER RECORDING RETURN TO:
Bendich, Stobaugh & Strong, P.C.
900 Fourth Avenue, Suite 3800
Seattle, WA 98164

**ASSIGNMENT TO UNITED STATES
SMALL BUSINESS ADMINISTRATION**

Reference Number: 1060711 and 1060712

Grantor/Assignor: Evergreen Community Development Association

Grantee/Assignee: United States Small Business Administration

Legal description: Ptn. of F.U. 100/79
Complete legal description is on Page 4.

Tax Parcel ID#: 20-1842-001

The Evergreen Community Development Association ("Evergreen"), a Washington nonprofit corporation, is loaning money to Harold and Shirley Ostenson, husband and wife, a small business concern, through issuance and sale of a debenture, pursuant to a United States Small Business Administration ("SBA") Authorization No. CDC-234,856 40 10-WA. In consideration of the SBA's guarantee of this debenture, Evergreen does hereby assign to the SBA as security for its guarantee all of the instruments, security interests and agreements, property, collateral and contract rights described in the paragraphs below.


- (a) All right, title, and interest of Evergreen in and to a Note executed by Harold and Shirley Ostenson in the amount of \$351,000.
- (b) All right, title and interest of Evergreen in a Deed of Trust by and between Harold T. and Shirley M. Ostenson, husband and wife, Grantors, Bendich, Stobaugh & Strong, P.C., as Trustee, and Evergreen as Beneficiary. The Deed of Trust secures payment of the above-mentioned Note for \$351,000.

The Deed of Trust was recorded in Grant County, is dated December 28, 1999 and concerns that real property which is legally described on page 4.

- (c) All right, title and interest in the Assignment of Lease and Rents as Security executed by Pacific Organic Fruit, LLC on December 28, 1999 concerning the real property described on page 4.
- (d) All right, title and interest in Security Agreement executed by Harold and Shirley Ostenson, on December 28, 1999, in the amount of \$351,000.
- (e) All right, title and interest in a Guarantee in the amount of \$351,000 signed by Greg Holzman and Camilla Raymond.
- (f) All right, title and interest in a Guarantee in the amount of \$351,000 signed by Greg Holzman, Inc..
- (g) All right, title and interest in a Guarantee in the amount of \$351,000 signed by PAC Organic Fruit, LLC.

It is agreed that the SBA shall have full power, right and authority to reassign the collateral, contract rights, security interests, agreements, property and instruments which are the subject of this assignment.

Done at Seattle, Washington on Jan. 10, 2000, on behalf of the Evergreen Community Development Association.



Philip Eng, President

State of Washington)
) ss.
County of King)

I certify that I know or have satisfactory evidence that Philip Eng signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the President of Evergreen Community Development Association to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated Jan. 10, 2000

(Seal or stamp)

Margaret J. McShea
MARGARET F. MCSHEA
NOTARY PUBLIC in and for the State of Washington,
residing at Seattle
My appointment expires 11-19-01

Vd\113.2f
Vcl\2.0 (6/99)



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 Page: 4 of 4
 01/24/2000 02:40P
 11.00 Grant Co Aud

CHICAGO TITLE INS CO ASH

PAC Organic Fruit, LLC
 Loan #: 234,856-40-10 WA
 17202 Frenchman Hill Road, George, WA 98824

LEGAL DESCRIPTION

THAT PORTION OF FARM UNIT 100, IRRIGATION BLOCK 79, THIRD REVISION, COLUMBIA BASIN PROJECT, GRANT COUNTY, WASHINGTON, ACCORDING TO THE PLAT THEREOF FILED AUGUST 15, 1960, DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF SECTION 31, TOWNSHIP 18 NORTH, RANGE 24 E.W.M.; THENCE NORTH 89°48' WEST ALONG THE SOUTH LINE OF SAID SECTION, 80 FEET TO THE TRUE POINT OF BEGINNING; THENCE WESTERLY, 1315 FEET ALONG THE SOUTH LINE OF SAID SECTION; THENCE NORTH 0°31' EAST, 367.4 FEET TO THE CENTER LINE OF W53.10 LATERAL DITCH AND FARM UNIT LINE; THENCE ON THE CENTER LINE OF THE W53.10 LATERAL, SOUTH 67°25' EAST, 346.6 FEET; THENCE ALONG AN ARC CURVE TO THE LEFT, WITH A RADIUS OF 286.5 FEET, A DISTANCE OF 100.5 FEET; THENCE SOUTH 87°31' EAST, 255.4 FEET; THENCE ALONG AN ARC CURVE TO THE RIGHT, WITH A RADIUS OF 286.50 FEET, A DISTANCE OF 83.0 FEET; THENCE SOUTH 70°56' EAST, 319.2 FEET; THENCE ALONG AN ARC CURVE TO THE LEFT WITH A RADIUS OF 286.5 FEET, A DISTANCE OF 94.3 FEET; THENCE SOUTH 89°48' EAST, 124.1 FEET; THENCE ALONG A CURVE TO THE RIGHT WITH A RADIUS OF 39.5 FEET, A DISTANCE OF 62.1 FEET; THENCE SOUTH 0°12' WEST, 30.5 FEET TO THE TRUE POINT OF BEGINNING.

SBA LOAN NO.

(For Corporate Applicants)

U.S. Small Business Administration

RESOLUTION OF BOARD OF DIRECTORS OF

PAC Organic Fruit LLC
(Name of Applicant)

(1) RESOLVED, that the officers of this corporation named below, or any one of them, or their, or any one of their, duly elected or appointed successors in office, be and they are hereby authorized and empowered in the name and on behalf of this corporation and under its corporate seal to execute and deliver to the Evergreen Community Development Association (hereinafter called "Lender") or the Small Business Administration (hereinafter called "SBA"), as the case may be, in the form required by Lender or SBA, the following documents: (a) application for a loan or loans, the total thereof not to exceed in principal amount \$ _____, maturing upon such date or dates and bearing interest at such rate or rates as may be prescribed by Lender or SBA; (b) applications for any renewals or extensions of all or any part of such loan or loans and of any other loans, heretofore or hereafter made by Lender or SBA to this corporation; (c) the promissory note or notes of this corporation evidencing such loan or loans or any renewals or extensions thereof; and (d) any other instruments or agreements of this corporation which may be required by Lender or SBA in connection with such loans, renewals, and/or extensions; and that said officers in their discretion may accept any such loan or loans in installments and give one or more notes of this corporation therefor, and may receive and endorse in the name of this corporation any checks or drafts representing such loan or loans or any such installments;

(2) FURTHER RESOLVED, that the aforesaid officers or any one of them, or their duly elected or appointed successors in office, be and they are hereby authorized and empowered to do any acts, including but not limited to the mortgage, pledge, or hypothecation from time to time with Lender or SBA of any or all assets of this corporation to secure such loan or loans, renewals and extensions, and to execute in the name and on behalf of this corporation and under its corporate seal or otherwise, any instruments or agreements deemed necessary or proper by Lender or SBA, in respect of the collateral securing any indebtedness of this corporation;

(3) FURTHER RESOLVED, that any indebtedness heretofore contracted and any contracts or agreements heretofore made with Lender or SBA on behalf of this corporation, and all acts of officers or agents of this corporation in connection with said indebtedness or said contracts or agreements, are hereby ratified and confirmed;

(4) FURTHER RESOLVED, that the officers referred to in the foregoing resolutions are as follows:

<u>Harold T. Osterson</u> (Type/print name)	<u>General Mgr.</u> (Title)	<u>Harold T. Osterson</u> (Signature)
<u>Greg Holzman</u> (Type/print name)	<u>Manager</u> (Title)	<u>[Signature]</u> (Signature)
_____ (Type/print name)	_____ (Title)	_____ (Signature)
_____ (Type/print name)	_____ (Title)	_____ (Signature)
_____ (Type/print name)	_____ (Title)	_____ (Signature)

(5) FURTHER RESOLVED, that Lender or SBA is authorized to rely upon the aforesaid resolutions until receipt of written notice of any change.

CERTIFICATION

I HEREBY CERTIFY that the foregoing is a true and correct copy of a resolution regularly presented to and adopted by the Board of Directors of PAC Organic Fruit LLC at a meeting duly called and held at Wenatchee, WA on the 25th day of August, 1998, at which a quorum was present and voted, and that such resolution is duly recorded in the minute book of this corporation; that the officers named in said resolution have been duly elected or appointed to, and are the present incumbents of, the respective offices set after their respective names; and that the signatures set opposite their respective names are their true and genuine signatures.

(Seal)

Shelly M. Osterson
Secretary

STIPULATION

This Stipulation sets forth the terms upon which Harold and Shirley Ostenson (the "Ostensons"), Greg Holzman ("Holzman"), Greg Holzman, Inc. ("GHI"), Pac Organic Fruit, LLC ("Pac-O"), Pacific Organic Produce, Inc. ("POP") and Total Organic, LLC ("Total Organic") would resolve their various claims against each other. Subject to Bankruptcy Court approval, the parties stipulate and agree as follows:

1. **Packing Facility.** The parties hereto agree that immediately upon Bankruptcy Court approval of this Stipulation, the automatic stay of Section 362 of the Bankruptcy Code shall be lifted to permit Total Organic, if it so elects, to immediately proceed with any and all actions, including foreclosure proceedings, pertaining to the real estate and improvements thereon located in George, Washington (including all packing lines) (the "Real Property"), and related personalty located in George, Washington (collectively, the "Packing Shed"), and the Ostensons hereby consent to Total Organic having such relief and waive any and all defenses thereto; provided, however, that in lieu of foreclosure relief, Total Organic may at any time demand, and the Ostensons immediately shall deliver to Total Organic or its designee a quit claim deed transferring any interest they have in the Real Property in lieu of foreclosure, pursuant to an agreement, to be executed and delivered by not later than the date upon which the Bankruptcy Court approves this Stipulation, that will (i) contain provisions customary to such agreements, (ii) implement the terms hereof, and (iii) include a promise by Total Organic not to sue the Ostensons on account of the debt secured by the lien upon Packing Shed, and to relinquish any right to recovery on account of its claim in the Ostenson's bankruptcy proceeding or any claims against the Ostensons.

Upon delivery of a deed, the claim of Total Organic filed as Claim #15 in Ostenson's Chapter 11 case shall be deemed satisfied and shall be withdrawn. Total Organic shall hold no further claims against Ostenson, Pac-O, or any entity owned or controlled by the Ostensons.

2. **Pac-O Claim in Bankruptcy Proceeding.** Pac-O's claim in the Ostenson's bankruptcy proceeding (Claims Docket No. 17) shall be released.

3. **Holzman Note Claim.** GHI filed Claim #16 herein and asserts \$100,000.00 plus interest is due ("Claim"). Ostensons deny any amount is due. Ostensons assert that pursuant to an agreement effective 2/1/02 and entitled Memorandum of Action of the Members and Managers of the Pac Organic Fruits, LLC, Claim was resolved and satisfied. The parties hereto agree as follows:

a. Immediately upon execution of this Stipulation, GHI and the Ostensons shall make arrangements for the private, binding arbitration of the following question (the "Arbitration Questions"):

"Is Claim #16 due and owing or was the promissory note which forms its basis satisfied or resolved by the agreement of the parties pursuant to

MEMORANDUM OF ACTION OF THE MEMBERS AND MANAGERS

OF

PAC ORGANIC FRUITS, LLC

Effective February 1, 2002" ("2/1/02 Memo")

EXHIBIT 1

If the Arbitrator determines that Claim #16 is due and owing, said claim shall be an Allowed Claim pursuant to the Plan. If the Arbitrator determines that the Claim was resolved by the agreement, either of the parties may proceed pursuant to 2/1/02 Memo.

4. **Cherry Proceeds.** Immediately upon execution of this Stipulation, the parties hereto shall submit to binding arbitration, along with the question set forth in #3 above, the following question (the "Arbitration Question"):

"In connection with what the parties have referred to as the "cherry proceeds," being the nibbles generated by the sale of certain cherries and other fruit owned by Double O Organics ("DOO"), less packing charges, the amount of which is hereby fixed at \$140,000.00, did GHI and/or one of its affiliates, including without limitation, POP, make payment of the full amount of the cherry proceeds to any of the Ostensons, DOO, or Pac-O?" If the Arbitrator resolves the question in the negative, judgment shall be entered against GHI, Pac-O, and POP, jointly and severally, in the amount of One Hundred Forty Thousand Dollars (\$140,000.00) plus interest at twelve percent (12%) per annum from date payment was due until paid in full. Should the Arbitrator answer the question in the negative and answers the question in paragraph #3 above that claim #16 is due and owing, the full amount of the Holzman Note Claim shall be available for set-off purposes, and shall be reduced by the judgment granted by this paragraph #4 in satisfaction of said judgment. Should the Arbitrator answer the question in this paragraph 4 in the affirmative, then neither DOO or the Ostensons shall have any claim for the \$140,000.00 against GHI, and, if the Arbitrator answers the question in paragraph 3 in the affirmative, then GHI shall have an allowed claim pursuant to the Plan.

The parties shall undertake best efforts to complete the Arbitration by not later than 90 days from Court approval of this Stipulation. The costs of Arbitration shall be split by the parties.

5. **Mutual Releases.** The parties shall incorporate into the Ostenson's plan of reorganization a general and mutual release of all claims not expressly addressed or treated herein.

6. **Plan of Reorganization.** The Ostenson's pending plan of reorganization will be amended to incorporate this Stipulation. Upon execution of this Stipulation, the pending objections to confirmation by the parties hereto shall be withdrawn and ballots accepting the Plan, as amended to conform to the terms hereof, shall be filed.

7. This Stipulation does not affect nor release the following claims:

a. Any purported claims of the Ostensons against Pac-O, including, but not limited to, claims for unpaid lease installments, wages, expense reimbursement, dividends, fruit proceeds, and/or failure to pay Keybank's line of credit, provided that the Ostensons shall not be entitled to assert those purported claims, whether derivatively or directly (including by way of a veil-piercing or similar theory) against Holzman, GHI or POP, such purported claims to be released; and


b. Any purported claims of Pac-O (and Pac-O only) against Holzman, GHI, POP and/or Total Organic for their alleged failure to pay packing fees, expenses, and revenues earned solely by Pac-O or fruit proceeds or rent due Pac-O or for conversion of assets of Pac-O.

c. To avoid multiple suits, any claims described in "b" above shall be asserted and pled in that litigation presently pending in the Superior Court of the State of

[Type here]


Washington, Chelan County, case number 07-2-00514-0, captioned Northwest Wholesale, Inc., a Washington corporation, Plaintiff v. Pac Organic Fruit, LLC, a Washington limited liability company; Greg Holzman, Inc., a foreign corporation authorized to do business in the State of Washington; and Harold Ostenson and Shirley Ostenson, Defendants provided the Superior Court allows the same.

DATED this 20 day of April, 2008.

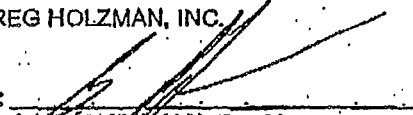

HAROLD OSTENSON



SHIRLEY OSTENSON

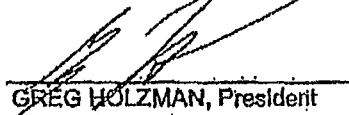
DATED this 12th day of June, 2008.

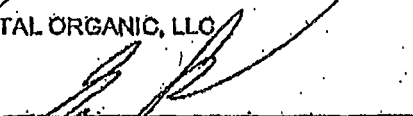

GREG HOLZMAN

GREG HOLZMAN, INC.

By: 
GREG HOLZMAN, President
PAC ORGANIC FRUIT, LLC

By: 
GREG HOLZMAN, Member
PACIFIC ORGANIC PRODUCE, Inc.

By: 
GREG HOLZMAN, President
TOTAL ORGANIC, LLC

By: 
GREG HOLZMAN, Member