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June 26, 2003

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Secretary of Labor  
Top Hat Plan Exemption  
Employee Benefits Security Administration  
Room N-5644  
U.S. Department of Labor  
200 Constitution Avenue NW  
Washington D.C. 20210

To Whom It May Concern:

Congdon Orchards, Inc. maintains three non-qualified pension plans primarily for the purpose of providing deferred compensation for a select group of management. Each of the three plans covers one employee. Pursuant to the requirements of DOL Regs. § 2520.104-23(b), the following information is being provided:

Employer: Congdon Orchards, Inc.  
P.O. Box 2725  
Yakima, Washington 98907

EIN: 91-0565823

Participants: Gene R. Woodin, Jr.  
Timothy J. Madden  
Paul A. Pieti

Enclosed are copies of each plan agreement.

Sincerely,



Clifford Adams  
for Congdon Orchards, Inc.

Enclosures

**DEFERRED COMPENSATION AGREEMENT**

**DATE:** Effective Date: July 1, 2001

**PARTIES:** Congdon Orchards, Inc. a Washington corporation, hereinafter referred to as "Company", and Paul A. Pieti, an individual, hereinafter referred to as "Employee." This deferred compensation agreement will hereinafter be referred to as the "Plan" or the "Agreement".

**INTRODUCTION:** Employee has been employed by the Company since November 8, 2000, and is a key employee of the Company. The Company recognizes the significant contributions the Employee has made and continues to make to the financial success of the Company. Employee has utilized his knowledge and abilities during his employment for the Company. In consideration of Employee's long-standing efforts, the Company desires to establish a plan to provide additional future compensation to the Employee.



**AGREEMENT:** The parties agree as follows:

1. **CONTRIBUTIONS.** The Contributions to the Plan will be made as follows:

1.1. *Annual Contributions.* The Company shall allocate not less than the amounts provided for in Section 1.3 hereof annually for a period of five years for the benefit of the Employee. The annual contributions may extend beyond five years at the discretion of the Board of Directors.

1.2 Vesting for Contributions. Contributions made each year to the plan will vest equally over a four year period, beginning with the year of the contribution, as follows:

	<u>Vesting for</u> <u>contributions</u>	<u>Cumulative</u> <u>Vesting</u>
December 31, 2002	25%	25%
December 31, 2003	25%	50%
December 31, 2004	25%	75%
December 31, 2005	25%	100%

Employee will become 100% vested in the plan balance if, at any time, substantially all of the assets of Congdon Orchards, Inc. (excluding the assets of Westhome, LLC and Congdon Development Company, LLC) are sold or if Employee's employment is terminated for any reason except for cause (as hereinafter defined). The term "Cause" shall include fraud, misrepresentation, theft, embezzlement of company assets, intentional violations of law or company policies, or gross negligence or malfeasance in the performance of the duties required of Employee in the course of his employment.

1.3 Contribution Amount. The unfunded contribution allocations shall consist of minimum annual base contributions equal to five percent (5%) of Employee's salary (before adjustments for 401(k) withholding and bonuses). In addition, Employee may earn additional incentive based contributions if the Company achieves a cumulative return on equity that is greater than five percent (5%). The return on equity will be measured as the return on the equity of the Company excluding any income, loss or equity from Westhome, LLC and Congdon Development Company, LLC. If the five percent (5%) cumulative return on equity threshold is met, an additional contribution of up to ten percent (10%) of the Employee's base salary will be made for Employee. The computation of cumulative return on equity shall be performed by the Company's certified public accountants,

in accordance with generally accepted accounting principles, for each fiscal year end for the respective plan years.

2. CONTINGENT FUTURE PAYMENTS, INVESTMENTS, AND FORFEITURES.

2.1. The Company may cause an account to be kept in the name of the Employee, but sole ownership of the account will rest with the Company.

2.2. In order for the Company to meet its contingent deferred obligations hereunder, the Company may, each year, set aside or earmark funds in an amount equal to the total amounts allocated and deferred for such year under Section 1 hereof.

2.3. Funds set aside or earmarked to meet the Company's contingent deferred obligation hereunder, may be kept in cash, or invested or reinvested, at the discretion of the Company.

3. DISTRIBUTION. Distributions of vested benefits from the Plan shall be made at the earlier of:

3.1 Death, termination for any reason (except for cause), or retirement (the "Distribution Event") of the Employee, but no later than age 65; and

3.2 Once the Employee is entitled to a distribution under this Plan, the Company has the option of paying the vested amount owed to the Employee at any time period over:

a) One Hundred Twenty (120) months, payable monthly beginning thirty (30) days subsequent to the Distribution Event;

or

b) In full at any time but not exceeding One Hundred Twenty (120) months subsequent to the Distribution Event.

Deferred payments shall bear interest at the "prime rate" ("Prime Rate" as hereinafter defined) minus one percent (1%), determined annually, beginning with the first payment. The "Prime Rate" shall be the *Prime Rate* as reported in the *Wall Street Journal, Money Rates* as of the first payment and annually thereafter.

4. PAYMENTS UPON DEATH OF EMPLOYEE. Upon Employee's death during active employment, or after a Distribution Event and while receiving installment payments as provided above in Section 3, the unpaid vested benefits shall be payable to his heirs.

5. SERVICES AFTER RETIREMENT. The Employee is not required to provide any services after his retirement.

6. RESTRICTIVE COVENANT. Within the first twenty-four (24) months subsequent to termination of employment, the Employee shall not without the express written consent of the Company, directly or indirectly, enter into, or in any manner, take part in any business, profession, or other endeavor as an employee, agent, independent contractor, owner, or otherwise, in Yakima County, Washington, which, in the opinion of the Company's Board of Directors, is in competition with the Company's business. For the purpose of this determination, the opinion of the Board of Directors shall be conclusive.

7. FOREITURE OF PAYMENTS. The Company shall have no further obligation to make payments to the Employee or spouse if the Employee enters into any business described in paragraph 6 above and continues in that business either directly or indirectly, for a period of fifteen (15) days after being notified in writing by the Company at the Employee's home address to the effect that the Company's

Board of Directors has decided that such business is in competition with the Company.

8. ASSIGNMENT. Neither the Employee nor his spouse shall have any right to alter, encumber, or dispose of the right to receive payments under this Agreement. These payments and the right to them are nonassignable and nontransferable. The Company shall be relieved from any further liability if the Employee or spouse attempt to assign or transfer such rights, including by operation of law.

9. REORGANIZATION. The Company shall not merge or consolidate with any other corporation until such corporation expressly assumes the duties of the Company herein set forth.

10. COMPLIANCE WITH CODE. The parties intend that this Agreement comply with the provisions of the Internal Revenue Code of 1986, as amended, and the regulations in effect at the time this agreement is executed. If, at a later date, the laws of the United States or the State of Washington are construed in such a way as to make this Agreement null and void or make this agreement a qualified deferred compensation plan, it shall be given effect in a manner that shall best carry out the parties' intentions and purposes which is in part to have a non-qualified deferred compensation plan.

11. INCOME TAX. Employee and Company recognize that under current law Employee has taxable income and the Company receives a tax deduction when: (a) the Plan amount is distributed to the Employee; (b) there is no longer a substantial risk of forfeiture; or (c) any Plan assets are unconditionally and irrevocably available for the Employee's sole benefit. Therefore, distributions when

made pursuant to the provisions of the Plan will be taxable to the Employee and deductible by the Employer.

12. WORKMAN'S COMPENSATION INSURANCE. The parties acknowledge that under current law, allocations and distributions are not subject to Labor and Industrial Insurance laws as "wages," but are classified as retirement benefits.

13. SOCIAL SECURITY INCOME. The parties acknowledge that under current law, receipt of deferred compensation payments does not reduce the amount of Social Security income that Employee is eligible to receive.

14. UNFUNDED PLAN. This Agreement is an unsecured promise to pay future benefits. Each participant or beneficiary has the status of a general, unsecured creditor of the Company.

15. TRUST. Nothing contained herein shall be deemed to create a trust of any kind or create any fiduciary relationship between the Company and Employee. Funds invested hereunder shall be part of the general funds and assets of the Company, and no entity other than the Company shall, by virtue of the provisions of this Plan, have any interest in such funds. To the extent that any person acquires a right to receive payments from the Company under this Plan, such right shall be no greater than the right of any unsecured general creditor of the Company.

16. ADMINISTRATION. The books and records to be maintained for the purpose of the Plan shall be maintained by the officers and employees of the Company at its expense and subject to the supervision and control of the Company's Board of Directors. All expenses of administering the Plan shall be paid by the

Company either from funds set aside or earmarked under the Plan or from other funds.

17. INDEMNIFICATION. No director, officer or employee of the Company shall be liable to any person for any action taken or omitted in connection with the administration of this Plan, unless attributable to his own fraud or willful misconduct; nor shall the Company be liable to any person for any such action, unless attributable to fraud or willful misconduct on the part of a director, officer or employee of the Company.

18. AMENDMENT OF PLAN. This Plan may be amended in whole or in part from time to time by the Board of Directors of the Company. Notice of every such amendment shall be given in writing to each Employee and beneficiary of a deceased Employee.

19. NOTICE. Any notice required under this Agreement shall be given in writing and delivered personally or by certified mail, return receipt requested, postage prepaid, addressed to the Employee at his last known address. Such notice shall be effective as of the date of mailing, as evidenced by the official United States Post Office date and time stamp on the said return receipt.

20. GOVERNING LAW. This Agreement shall be construed in accordance and governed by the laws of the State of Washington. Venue for any litigation arising out of this Agreement shall lie in the County of Yakima. In the event of any such action arising hereunder, the prevailing party shall be awarded its attorney fees and court costs.

21. BINDING EFFECT. This Agreement shall be binding upon the parties hereto, their heirs, executors, administrators, and successors.

22. ENTIRE AGREEMENT. This Agreement supersedes all agreements previously made between the parties relating to its subject matter. There are no other understandings or agreements.

23. COUNTERPARTS. This Agreement may be executed in two or more counterparts, all of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

24. HEADINGS. Headings in this Agreement are for convenience only and shall not be used to interpret or construe its provisions.

DATED: March 14, 2003, and effective as of July 1, 2001

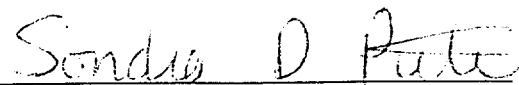
CORPORATION:  
CONGDON ORCHARDS, INC.

By:   
Its: Chairman & CEO

EMPLOYEE:

  
PAUL A. PIETI

Read, agreed and consented to:

  
Spouse of Employee

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**INTRODUCTION:** Employee has been employed by the Company since June 1, 1995, and is a key employee of the Company. The Company recognizes the significant contributions the Employee has made and continues to make to the financial success of the Company. Employee has utilized his knowledge and abilities during his employment for the Company. In consideration of Employee's long-standing efforts, the Company desires to establish a plan to provide additional future compensation to the Employee.

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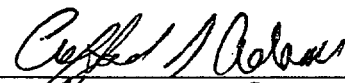
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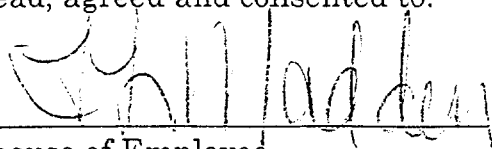
CORPORATION:  
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By:   
Its: Chairman & CEO

EMPLOYEE:

  
TIMOTHY J. MADDEN

Read, agreed and consented to:

  
Spouse of Employee

**DEFERRED COMPENSATION AGREEMENT**

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22. ENTIRE AGREEMENT. This Agreement supersedes all agreements previously made between the parties relating to its subject matter. There are no other understandings or agreements.

23. COUNTERPARTS. This Agreement may be executed in two or more counterparts, all of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

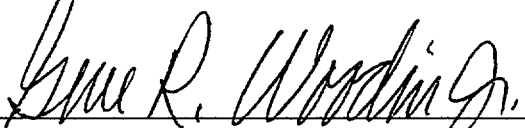
24. HEADINGS. Headings in this Agreement are for convenience only and shall not be used to interpret or construe its provisions.

DATED: March 14, 2003, and effective as of July 1, 2001

CORPORATION:  
CONGDON ORCHARDS, INC.

By:   
Its: Cheryl A. Nelson CEO

EMPLOYEE:

  
GENE R. (DICK) WOODIN, JR.

Read, agreed and consented to:

  
Spouse of Employee

FIRST CLASS

FIRST CLASS

FIRST CLASS

FIRST CLASS

FIRST CLASS

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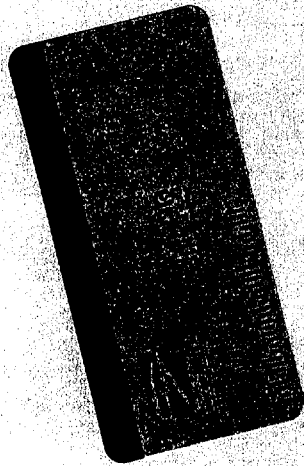
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FIRST CLASS



# First Class Mail

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CERTIFIED PUBLIC ACCOUNTANTS  
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P.O. Box 22650  
Yakima, WA 98907-2650

**Secretary of Labor**  
**Top Hat Plan Exemption**  
**Employee Benefits Security Administration**  
**Room N-5644**  
**U.S. Department of Labor**  
**200 Constitution Avenue NW**  
**Washington D.C. 20210**

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