DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
DIVISION OF FINANCE AND CORPORATE SECURITIES
SECURITIES SECTION
BEFORE THE DIRECTOR OF THE DEPARTMENT OF CONSUMER AND BUSINESS SERVICES

In the Matter of:	**No. S-12-0011**
BERJAC OF OREGON, an Oregon general partnership, MICHAEL HOLCOMB, and GARY HOLCOMB,	**FINAL ORDER TO CEASE AND DESIST, DENYING EXEMPTIONS, AND ASSESSING CIVIL PENALTIES ENTERED BY DEFAULT AS TO BERJAC OF OREGON ONLY**
Respondents	

WHEREAS, the Director of the Department of Consumer and Business Services for the State of Oregon (hereafter "the Director"), acting pursuant to the authority contained in ORS 59.005 *et seq*., the Oregon Securities Law, has conducted an investigation into the activities of **BERJAC OF OREGON**, an Oregon general partnership, **MICHAEL HOLCOMB**, and **GARY HOLCOMB**;

WHEREAS, the Director issued an **ORDER TO CEASE AND DESIST, DENYING EXEMPTIONS, AND ASSESSING CIVIL PENALTIES AND NOTICE OF RIGHT TO CONTESTED CASE HEARING** on August 30, 2012;

WHEREAS, BERJAC OF OREGON filed a written request for hearing on October 25, 2012;

WHEREAS, **BERJAC OF OREGON** withdrew its written request for hearing on June 13, 2013;

NOW THEREFORE, the Director hereby issues the following Findings of Fact, Conclusions of Law, and Order:

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FINDINGS OF FACT

The Director **FINDS** that:

Part One: Respondents

1. **BERJAC OF OREGON** is an Oregon general partnership (Oregon Business Registry #314691-58). Its principal place of business is located at 2620 River Road, Suite #200, Eugene, Oregon 97404. Its mailing address is P.O. Box 40266, Eugene, Oregon 97404. **BERJAC OF OREGON** was not, at all relevant times herein, licensed to sell securities in Oregon.

2. **MICHAEL HOLCOMB** is a partner of **BERJAC OF OREGON**. **MICHAEL HOLCOMB** conducts business from 2620 River Road, Suite #200, Eugene, Oregon 97404. His mailing address is P.O. Box 40266, Eugene, Oregon 97404. **MICHAEL HOLCOMB** was not, at all relevant times herein, licensed to sell securities in Oregon.

3. **GARY HOLCOMB** is a partner of **BERJAC OF OREGON**. **GARY HOLCOMB** conducts business from 8800 SE Sunnyside Road, Suite #108N, Clackamas, Oregon 97015. His mailing address is P.O. Box 20769, Clackamas, Oregon 97015. **GARY HOLCOMB** was not, at all relevant times herein, licensed to sell securities in Oregon.

Part Two: Insurance Premium Financing

4. **BERJAC OF OREGON** engaged in two lines of business: insurance premium financing and real estate construction financing.

5. Businesses and individuals may purchase business-related casualty insurance policies through independent insurance agents. These agents may recommend coverage from insurance companies, small or large, some of which offer policies catering to particular industries. Such specialty insurance carriers typically require payment in full before policy effectiveness, and may not offer financing for such policies. **BERJAC OF OREGON** finances insurance policies, allowing a business owner to preserve cash flow and pay the premium over time.

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6. **BERJAC OF OREGON** typically requires a business to tender 25%-33% of the cost of a one-year insurance policy as a down payment, and finances the remainder of the policy. The policyholder is obligated to re-pay **BERJAC OF OREGON** over the life of the policy in equal monthly installment payments, which include both the principal amount financed and an agreed upon rate of interest.

7. **BERJAC OF OREGON** does not review the financial condition or creditworthiness of the insured before financing a policy; the independent insurance agents the partnership works with are authorized to commit the general partnership to finance a valid policy.

8. The financial success of **BERJAC OF OREGON** is, in part, dependent on the health of the small business customers it serves. **BERJAC OF OREGON**'s premium financing volume, and revenues, declined substantially during the economic downturn between 2007 and 2009, as many small businesses folded.

Part Three: Real Estate Construction Financing

9. **BERJAC OF OREGON** financed the construction of real estate projects in the course of its general partnership business.

10. **BERJAC OF OREGON** loaned large sums to one of the small group of real estate developers with whom it regularly worked. In some instances the loans were not secured by realty or any other form of collateral.

11. **BERJAC OF OREGON** did not enforce the terms of its loans in a commercially reasonable fashion. In some instances the general partnership took no action to attempt to collect or foreclose on loans on which borrowers were not making payments.

Part Four: Access To Capital

12. **BERJAC OF OREGON** required ready access to capital to fund its insurance premium financing and real estate development financing lines of business.

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13. **BERJAC OF OREGON**, and its partners in their individual capacities, drew upon lines of credit for funds. These lines of credit were extended by state chartered banking institutions. These institutions charged **BERJAC OF OREGON** interest on the outstanding balance of each line of credit, if any, at a typical (prime plus, with a floor) commercial rate.

14. **BERJAC OF OREGON** raised funds through the sale of promissory notes (a "BERJAC Note" or the "BERJAC Notes") issued by the general partnership.

Part Five: Characteristics Of BERJAC Notes

15. **BERJAC OF OREGON** sold unsecured promissory notes to Oregon residents. Each BERJAC Note was redeemable upon demand by a noteholder.

16. **BERJAC OF OREGON** required a minimum investment of one thousand dollars ($1,000) to purchase a BERJAC Note. Interest rates varied; by way of example, in 2010 **BERJAC OF OREGON** offered investors a 5.25% per annum return. **BERJAC OF OREGON** reserved the right to alter interest rates on a quarterly basis.

17. All but a few **BERJAC OF OREGON** noteholders requested that, in lieu of quarterly interest payments, sums be compounded. **BERJAC OF OREGON** did not maintain a reserve fund into which it placed a sum equivalent to the interest payments it owed. Investors received quarterly "account statements" reflecting the accrual of interest payments.

18. **BERJAC OF OREGON** permitted existing noteholders to add to, or redeem funds from, any noteholder "account" without notice. Investment deposits were memorialized by a receipt issued by **MICHAEL HOLCOMB**. Deposited sums were reflected on the noteholder's next quarterly account statement. **BERJAC OF OREGON** did not issue a new BERJAC Note to reflect the revised principal sum due to the noteholder.

19. **BERJAC OF OREGON** did not require that a noteholder use any particular form of document to redeem funds, which were accessible upon demand during normal **BERJAC OF OREGON** business hours. A noteholder was permitted to redeem the entirety of the note's value, or any portion thereof.

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20. **BERJAC OF OREGON** limited neither the number of deposits nor the number of redemptions in a given time period. Some noteholders made multiple deposits and withdrawals in a given calendar quarter.

Part Six: The Sale of BERJAC Notes

21. **MICHAEL HOLCOMB** sold **BERJAC** Notes to individuals with whom he had made personal contact. For example, on occasion **MICHAEL HOLCOMB** made presentations describing **BERJAC OF OREGON** to executives at public functions, such as the Eugene Executives' Association.

22. **MICHAEL HOLCOMB** also sold **BERJAC** Notes to individuals referred to him by word of mouth. For example, a current **BERJAC OF OREGON** noteholder might mention their investment to a relative or neighbor. That individual could contact **MICHAEL HOLCOMB** to inquire about the purchase of a BERJAC Note.

23. **MICHAEL HOLCOMB** failed to present written documentation describing the financial condition of **BERJAC OF OREGON** and the risks associated with the purchase of a **BERJAC** Note – whether via prospectus, offering circular, brochure, financial statement, or handout - to prospective investors.

24. Respondents failed to disclose the total amount of outstanding liabilities owed by **BERJAC OF OREGON,** including the total dollar value of outstanding BERJAC Notes.

25. Respondents failed to disclose information about the financial condition and results of operations of the general partnership's insurance premium financing arm, including its net profit or loss over the most recent three (3) year period.

26. Respondents failed to disclose information about the financial condition of the general partnership's real estate construction financing arm, including the total outstanding dollar amount of sums lent to developers, the relevant terms of the loans in question, whether developers were making loan payments in a timely fashion, and the location and appraised value of the real property securing said loans, if any.

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27. Respondents failed to disclose information to prospective purchasers about the purpose (such as real estate financing) to which proceeds from the sale of **BERJAC** Notes would be put by the general partnership.

28. Respondents failed to disclose reasonably foreseeable risks relating to its insurance premium financing arm that might affect the likelihood that principal and interest due in connection with a **BERJAC** Note would be repaid. These risks included, but were not limited to, the fact that (A) **BERJAC OF OREGON**'s operations and/or financial condition could be adversely affected if the general partnership was unable to maintain a network of independent insurance agents willing to recommend utilization of its services; (B) **BERJAC OF OREGON**'s operations and/or financial condition could be adversely affected if small businesses, which make up a significant percentage of its customers, lacked the resources to stay in business in the event of a general economic downturn; (C) **BERJAC OF OREGON**'s operations and/or financial condition could be adversely affected by the actions of competitors, many of whom had greater financial resources, and/or by insurance companies, who might decide to offer financing to their insureds, and do so on a more attractive basis than **BERJAC OF OREGON.**

29. Respondents failed to disclose reasonably foreseeable risks relating to its real estate development financing arm that might affect the likelihood that principal and interest due in connection with a **BERJAC** Note would be repaid. These risks included, but were not limited to, the fact that (A) **BERJAC OF OREGON**'s operations and/or financial condition could be adversely affected if the general partnership failed to make decisions about loans to real estate developers using commercially reasonable underwriting standards, such as those applied by a bank; (B) **BERJAC OF OREGON**'s operations and/or financial condition could be adversely affected if the general partnership did not place a limit on the dollar amount it was willing to lend to a single developer, with the result that an adverse condition affecting a given developer might have a disproportionately large effect on the general partnership's operating results than if loans had been more diversified; (C) **BERJAC OF OREGON**'s operations and/or financial condition

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could be adversely affected if the general partnership did not engage in timely enforcement of loan terms and covenants using commercially reasonable tools, such as instituting litigation or commencing foreclosure proceedings.

30. Respondents failed to disclose that **BERJAC OF OREGON** and **MICHAEL HOLCOMB** had previously been the subject of a Cease and Desist Order issued by the Director, who found that the general partnership had omitted to state material facts in connection with the sale of securities.

31. Investors purchased BERJAC Notes by tendering or mailing a check, made payable to **BERJAC OF OREGON**, to **MICHAEL HOLCOMB**. **BERJAC OF OREGON** did not require the completion of a subscription agreement, or other application document.

CONCLUSIONS OF LAW

The Director **CONCLUDES** that:

32. A **BERJAC** Note constitutes a "security", as defined in ORS 59.015 (19) (a).

33. The securities sold by Respondents were not registered with the Director prior to offer or sale, in violation of ORS 59.055.

34. Respondents offered securities for sale in or from the State of Oregon without being licensed to do so, in violation of ORS 59.165.

35. Respondents, in connection with the sale of securities issued by **BERJAC OF OREGON**, omitted to state a material fact necessary in order to make all statements made in connection with the sale, in light of the circumstances under which they were made, not misleading, in violation of ORS 59.135 (2), by failing to disclose the total amount of outstanding liabilities owed by the general partnership, including the total dollar value of outstanding **BERJAC** Notes.

36. Respondents, in connection with the sale of securities issued by **BERJAC OF OREGON**, omitted to state a material fact necessary in order to make all statements made in connection with the sale, in light of the circumstances under which they were made, not

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misleading, in violation of ORS 59.135 (2), by failing to disclose information about the financial condition and results of operations of the general partnership's insurance premium financing arm, including its net profit or loss over the most recent three (3) year period.

37. Respondents, in connection with the sale of securities issued by **BERJAC OF OREGON**, omitted to state a material fact necessary in order to make all statements made in connection with the sale, in light of the circumstances under which they were made, not misleading, in violation of ORS 59.135 (2), by failing to disclose information about the financial condition of the general partnership's real estate construction financing arm, including the total outstanding dollar amount of sums lent to developers, the relevant terms of the loans in question, whether all developers were making loan payments in a timely fashion, and the location and appraised value of the real property securing said loans, if any.

38. Respondents, in connection with the sale of securities issued by **BERJAC OF OREGON**, omitted to state a material fact necessary in order to make all statements made in connection with the sale, in light of the circumstances under which they were made, not misleading, in violation of ORS 59.135 (2), by failing to disclose information to prospective purchasers about the purpose (such as real estate financing) to which proceeds from the sale of **BERJAC** Notes would be put by the general partnership.

39. Respondents, in connection with the sale of securities issued by **BERJAC OF OREGON**, omitted to state a material fact necessary in order to make all statements made in connection with the sale, in light of the circumstances under which they were made, not misleading, in violation of ORS 59.135 (2), by failing to disclose reasonably foreseeable risks relating to its insurance premium financing arm that might affect the likelihood that principal and interest due in connection with a **BERJAC** Note would be repaid. These risks included, but were not limited to, the fact that (A) **BERJAC OF OREGON**'s operations and/or financial condition could be adversely affected if the general partnership was unable to maintain a network of independent insurance agents willing to recommend utilization of its services; (B) **BERJAC OF**

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OREGON's operations and/or financial condition could be adversely affected if small businesses, which make up a significant percentage of its customers, lacked the resources to stay in business in the event of a general economic downturn; (C) **BERJAC OF OREGON**'s operations and/or financial condition could be adversely affected by the actions of competitors, many of whom had greater financial resources, and/or by insurance companies, who might decide to offer financing to their insureds, and do so on a more attractive basis than **BERJAC OF OREGON.**

40. Respondents, in connection with the sale of securities issued by **BERJAC OF OREGON**, omitted to state a material fact necessary in order to make all statements made in connection with the sale, in light of the circumstances under which they were made, not misleading, in violation of ORS 59.135 (2), by failing to disclose reasonably foreseeable risks relating to its real estate development financing arm that might affect the likelihood that principal and interest due in connection with a **BERJAC** Note would be repaid. These risks included, but were not limited to, the fact that (A) **BERJAC OF OREGON**'s operations and/or financial condition could be adversely affected if the general partnership failed to make decisions about loans to real estate developers using commercially reasonable underwriting standards, such as those applied by a bank; (B) **BERJAC OF OREGON**'s operations and/or financial condition could be adversely affected if the general partnership did not place a limit on the dollar amount it was willing to lend to a single developer, with the result that an adverse condition affecting a given developer might have a disproportionately large effect on the general partnership's operating results than if loans had been more diversified; (C) **BERJAC OF OREGON**'s operations and/or financial condition could be adversely affected if the general partnership did not engage in timely enforcement of loan terms and covenants using commercially reasonable tools, such as instituting litigation or commencing foreclosure proceedings.

41. Respondents, in connection with the sale of securities issued by **BERJAC OF OREGON**, omitted to state a material fact necessary in order to make all statements made in

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connection with the sale, in light of the circumstances under which they were made, not misleading, in violation of ORS 59.135 (2), by failing to disclose to prospective purchasers that **BERJAC OF OREGON** had previously been the subject of an **ORDER TO CEASE AND DESIST** issued by the Director, and the Director had found that the general partnership had omitted to state material facts in connection with the sale of securities.

ORDER

Therefore, the Director **ORDERS** that:

42. **BERJAC OF OREGON** shall cease and desist from offering or selling securities in violation of the Oregon Securities Law, ORS 59.005 *et seq*., its accompanying administrative rules, or the terms of this Order.

43. **BERJAC OF OREGON** is hereby denied, pursuant to the authority contained in ORS 59.045, the use of exemptions to registration requirements contained in ORS 59.025 and ORS 59.035, until further order of the Director.

44. **BERJAC OF OREGON** shall, pursuant to the authority granted by ORS 59.995, pay the sum of **SIX HUNDRED THOUSAND DOLLARS** ($600,000) as a civil penalty for all violations of ORS 59.055, ORS 59.135, and ORS 59.165 described herein. Collection of said amounts **SHALL BE SUSPENDED** so long as **BERJAC OF OREGON** complies with the terms of any order and/or judgment issued by the Court in *In Re BERJAC of Oregon,* Bankruptcy Case No. 12-63884-tmr11, or any case arising from the same or similar facts that provides for restitution to investors, or disgorgement of illegal gains or profits by **BERJAC OF OREGON.** If **BERJAC OF OREGON** fails to comply with a court imposed restitution/disgorgement order and/or the terms of this Order, said civil penalty shall become immediately due and owing in its entirety.

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IT IS SO ORDERED.

Dated this 19th day of June 2013 NUNC PRO TUNC August 30, 2012 at Salem, Oregon.

Patrick M. Allen, Director
Department of Consumer and Business Services

/s/ David Tatman

David C. Tatman, Administrator
Division of Finance and Corporate Securities

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