

Prune Bargaining Association
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MEMBERSHIP AGREEMENT
Amended 2/2008

THIS AGREEMENT, entered into this ____ day of _____, 20__ between the PRUNE BARGAINING ASSOCIATION, a nonprofit agricultural bargaining cooperative formed under the Food and Agricultural Code of the State of California, hereinafter called "Association," and _____, a producer of prunes and a grower-member of said Association, hereinafter called "Grower."

DEFINITIONS

"Prunes" shall mean green and/or dried fruit intended for sale or use as dried prunes or products thereof.

"Handler(s)" shall mean any processor(s) or agency(ies), including any cooperative processor(s) of Prunes, that purchase or handle Prunes from Grower or from other grower-members of Association.

"Price Agreement" shall mean any schedule of prices, method of grading, handler service fees, grower assessments, and other terms of sale that Association establishes with Handler on Grower's behalf to determine the price and terms of sale for Grower's prunes.

"Crop Year" shall mean the period beginning July 1 of each year and ending June 30 of the following year. "Calendar Year" shall refer to the natural calendar period of January 1 to December 31.

PURPOSE

The purpose of this Agreement is to establish Grower as a member of the Association so that Association, in addition to its other powers and duties under the Articles of Incorporation and Bylaws, may negotiate with Handler on behalf of Grower to establish with Handler the Price Agreement for Grower's Prunes.

RECITALS

The Association and Grower acknowledge the following:

1. Grower is one of numerous producers situated throughout the State of California engaged in the production of Prunes, and Grower can more effectively influence the marketing and pricing of dried prunes by joining together with other growers in a cooperative association.
2. The Association's mission is to improve the economy of the California dried prune industry and to encourage production of a quality product. The Association carries out this mission by endeavoring to establish fair and uniform grower pricing in relation to supply and market conditions before such time as Prunes are dried and ready for delivery to Handlers.
3. The Association's goal is to enhance the long-term profitability of prune production and to ensure that growers receive the highest sustainable return.
4. The yearly establishment of the Price Agreement is a valuable service to the Grower and to Handlers. In recognition of this service and the other services that the Association provides and to provide for the operation of the Association, grower-members pay annual membership assessments.

The Association and Grower therefore agree as follows:

1. **CONSIDERATION**

This Agreement is made by Grower in consideration of the execution of membership agreements by other producers of Prunes situated throughout the State of California and in consideration of the services to be performed by the Association as herein set forth.

2. **DURATION OF MEMBERSHIP AGREEMENT**

a) This Agreement shall be in effect for the period of one (a) year beginning from July 1 of the Crop Year written in "Appendix A" hereof and ending June 30 of that Crop Year. This Agreement shall automatically renew each July 1 for additional periods of (1) crop year unless written notice of withdrawal is received by the Association during the month of January. Such withdrawal shall become effective June 30 of the crop year in which notice was given.

b) The Association reserves the right to terminate this Agreement with Grower should the Board of Directors of the Association so direct. Written notice of termination shall be made in the month of January and shall become effective June 30 of the crop year in which notice was given.

c) Upon withdrawal or termination, Grower shall remain entitled to distributions of revolving funds attributable to membership assessments or other funds paid to the Association prior to withdrawal or termination subject to limitations set forth in the Association's bylaws regarding distribution of revolving funds or member equity, but Grower relinquishes all other rights and interest in the Association. On written request, the Association shall provide to Grower following withdrawal or termination a full accounting of Grower's revolving account up to and including the effective date of withdrawal or termination.

3. **POWERS GRANTED TO ASSOCIATION**

a) Grower appoints the Association as his, her or its exclusive bargaining agent with respect to all Prunes produced by Grower. Grower represents that the lands listed in "Appendix A" constitute all lands under Grower's control that produce Prunes. Grower promises and agrees that, in the event he shall purchase, lease, or gain control, either directly or indirectly, of additional lands upon which Prunes are produced, during the term hereof, Prunes produced thereon shall be subject to the terms of this Agreement, providing however, that if Grower seeks to have any Prunes grown on portions of lands owned or controlled by Grower exempt from this paragraph, Grower may apply to the Board of Directors for such exemption and the Board of Directors may exempt any portion so directed by the Grower.

b) The Association shall have the exclusive authority, right and power during the term of this Agreement, without taking title to Grower's Prunes, to negotiate with Grower's Handler to establish and fix each Crop Year the Price Agreement on behalf of the Grower for all Prunes produced by, or for, the account of the Grower and delivered to Handlers. The price schedule, method of grading, handler service fees, grower assessments, and other terms of sale as may be determined from time to time shall be so fixed and established and approved by Association in such form and manner and at such price level as Association deems for the best advantage of all Growers who have signed similar membership agreements. Association shall during the term of this Agreement perform its services for Growers to the best of its ability under economic and marketing conditions from time to time existing.

c) Grower agrees not to sell or deliver Prunes subject to this Agreement to any Handler under terms of sale less favorable than those set forth in the Price Agreement established between the Association and Grower's Handler or between the Association and a majority of Handlers for the crop year in which the Prunes are sold or delivered. "Terms of Sale" includes price, grading, or payment schedules, Handler Service Fees, Member Assessments, and any other provision affecting the value of the monetary return received by Grower for prunes delivered.

d) In the event that the Association does not reach a Price Agreement with the Grower's Handler before such time as Grower has Prunes ready for delivery and sale to Handler, Grower may deliver Prunes to Handler but only under a contract that stipulates that payment for Prunes so delivered will be made according to the Price Agreement established between the Association and Grower's Handler or between the Association and a majority of Handlers.

e) Grower agrees that in the event Handler fails to make any payment required by the Terms of Sale of Grower's contract or according to the Price Agreement established between the Association and Grower's Handler or between the

Association and a majority of Handlers, Grower will notify the Association and, upon request by the Association, assign to the Association the right to bring on behalf of Grower any and all claims arising out of or related to Handler's failure to make payment. The Association is under no obligation to request the assignment, and its decision whether or not to undertake the claim will be left to the sole discretion of its Board of Directors. If the Association elects not to pursue a claim that Grower believes should be pursued against Handler or any other person, Grower shall retain the right to bring such claim in Grower's own name and at Grower's sole expense.

f) Title to Prunes remains with Grower. Grower confirms the powers granted to the Association as stated in Paragraph 3 of this Agreement.

4. **LIQUIDATED DAMAGES**

Grower and the Association understand that it would be impracticable or extremely difficult to fix the actual damages to the Association that would result in the event Grower delivers Prunes to a Handler or other buyer (a) under terms of sale less favorable than those set forth in the Price Agreement established between the Association and Grower's Handler or between the Association and a majority of Handlers for the crop year in which the Prunes are sold or delivered; or (b) pursuant to a contract that otherwise does not comply with the terms of this Agreement. Therefore, Grower and the Association expressly agree that in the event of such breach, Grower shall pay to the Association as liquidated damages a sum equal to **\$100 per dry ton** on all Prunes so delivered or marketed. If Grower fails to pay the liquidated damages due the Association, the Association may offset against such sum owing from Grower any credit standing in Grower's name, including Grower's interest in any fund of the Association, in addition to all other remedies available to the Association to collect the sum due.

5. **CROP PAYMENTS MADE DIRECTLY TO GROWER AND MEMBER ASSESSMENTS**

a) During the term of this Agreement, the Handler of Grower's Prunes shall make crop payments directly to Grower less the amount of Member Assessments to be fixed each Crop Year by the Board of Directors of the Association, but not to exceed one percent of the average purchase price of all Prunes sold to commercial handlers by members of the Association. Pursuant to Section 58451 of the California Food & Agricultural Code, Grower hereby authorizes and directs Handler to deduct Member Assessments from the purchase price based on the dry weight less the weight of trash and undersized fruit delivered to Handler (or one-third of the green weight if Grower sells Prunes on a green basis) and to pay such amount so deducted directly to the Association.

b) The Board of Directors, in its discretion, may adopt Member Assessments for Prunes marketed on a cooperative basis that are lower than Member Assessments for Prunes marketed on a commercial basis. Although the Association does not currently negotiate directly with any cooperative processors, Grower acknowledges that establishment of a Price Agreement with commercial prune handlers establishes a price level that is likely to be reflected in Grower's returns from cooperative processors. For such benefit, Grower agrees to cooperate fully with the Association and support the Association in its efforts to establish an annual Price Agreement with other Handlers.

c) Member Assessments shall be due by December 31 of each Crop Year, and Handler may deduct Member Assessments from Grower advances if full payment to Grower is not to be made by December 31.

d) Grower hereby agrees that Handler may rely upon the above authorizations and directions as evidenced by a copy of this Membership Agreement to make such deduction and pay the same over to the Association without executing any further instrument.

e) In the event that Handler or other buyer of Grower's Prunes fails to deduct Member Assessments from crop proceeds, Grower agrees to pay Member Assessments directly to the Association. Grower shall notify Association of such situations and shall provide record of tonnage produced so that Association can invoice Grower directly for Member Assessments. Grower shall have no obligation to pay Member Assessments directly to the Association unless Handler or other buyer of Grower's Prunes fails to deduct them from crop proceeds. If Grower fails to pay any Member Assessment due the Association, the Association may offset against such sum owing from Grower any credit standing in Grower's name, including Grower's interest in any fund of the Association, in addition to all other remedies available to the Association to collect the sum due.

6. **GROWER BOUND BY ARTICLES OF ASSOCIATION AND BYLAWS**

Grower has received and reviewed Association's Articles of Incorporation and Bylaws. Grower understands that this Agreement is subject to the provisions of Association's Articles of Incorporation and Bylaws, and agrees to comply with and abide by them, including any amendments thereto as may be duly adopted from time to time in the future.

7. **CROP REPORTS**

On or before the fifteenth of July of each year, Grower shall mail to the Association on such forms as the Association may prescribe, his best estimate of his total tonnage of Prunes subject to this Agreement for that Crop Year. At this time, Grower shall also indicate which Handler(s) will receive said Prunes. Grower shall notify Association if Prunes are delivered to Handler(s) other than those reported.

8. **BREACH OR CANCELLATION OF OTHER AGREEMENTS**

The breach or cancellation of any other membership agreement entered into by Association with one or more other growers shall not impair or affect Grower's obligations under this Agreement.

9. **PRE-EXISTING CONTRACTUAL COMMITMENTS**

Any Grower who is obligated by a pre-existing contract to deliver Prunes to a Handler agrees as follows:

a) Grower confirms that he hereby appoints the Association to act as his exclusive bargaining agent during the remaining term of the pre-existing contract to perform such services and conduct such activities (including those described in paragraph 3 of this Agreement) as the Association deems necessary or advisable to assure that Grower will receive a price and other terms of sale equal to those received by other members of the Association.

b) Grower agrees to pay the Membership Assessment charged by the Association for all Products delivered under the remaining term of the pre-existing contract during the term of this Agreement. In this regard, Grower assigns such sum to the Association, and directs Handler to deduct and pay such sum directly to the Association as authorized by paragraph 5 of this Agreement.

c) Grower will notify the Association of any pre-existing contracts and furnish copies of them to the Association upon request; and

d) Grower agrees not to renew or extend any pre-existing or evergreen contract beyond its current expiration date or opt-out period unless it complies in all respects with this Agreement; provided, however, that upon application by Grower, the Board, in its sole discretion, may grant Grower relief from this provision.

10. **NOTICES**

All notices herein provided for shall be deemed to have been given to the Association when mailed to its office location and to Grower when mailed to his address as noted in "Appendix A" attached hereto, or to such other address as may from time to time be furnished in writing by either party to the other and Grower agrees to notify the Association if he is no longer producing Prunes.

11. **PARTNERSHIP MEMBER**

If this Agreement is signed by an individual on behalf of a partnership, such individual represents and warrants that he is authorized to sign on behalf of the partnership and agrees that this Agreement shall apply to the partnership and to each of the partners individually.

12. **BONA FIDE TRANSFERS**

In the event that Grower sells, leases or conveys all or part of the land upon which Prunes subject to this Agreement are produced during the term of this Agreement, or any portion of the crop subject to this Agreement, all prunes produced upon the lands so transferred and any portion of the crop so transferred shall remain subject to this Agreement

during, but not beyond, the Calendar Year in which such transfer shall have been made. Grower agrees to notify the Association of such transfer and to provide the transferee a copy of this Agreement during, but not beyond, the Calendar Year in which such transfer shall have been made. Grower agrees to notify the Association of such transfer and to provide the transferee a copy of this Agreement prior to the transfer. If the transferee fails to abide by this Agreement, Grower shall remain obligated to the Association.

13. **GROWER TO GIVE NOTICE IF PRUNES DELIVERED UNDER DIFFERENT NAME**

All deliveries of Prunes subject to this Agreement shall be made in Grower's name unless notice to the contrary is given to the Association. Grower shall notify Association in writing within seven days if Prunes under Grower's control and subject to this Agreement are to be delivered to Handler under name(s) different from that listed in "Appendix A".

14. **EXCLUSIVE AGREEMENT**

Grower and the Association agree that there are no oral or other promises, conditions, covenants, representations or inducements in addition to, or in variance with, any of the terms hereof and that this Agreement represents the voluntary and full understanding of both parties.

15. **SUCCESSORS AND ASSIGNS**

This Agreement shall bind the heirs, administrators, successors and assigns of the respective parties hereto.

16. **COUNTERPART EXECUTION**

This Agreement and all similar agreements executed by other members shall be deemed counterparts of one and the same contract, but each Grower shall be severally liable for the full performance of the contract signed by him. This Agreement shall not be effective for any purpose unless and until executed by the Association and authorized by the Board of Directors of the Association.

17. **COSTS OF LEGAL ACTION**

If either party brings any action arising under this Agreement or to enforce any of its provisions or to secure specific performance hereof, or to collect damages of any kind for any breach, then the prevailing party in such action shall recover all costs, premiums for bonds, expenses and fees, including reasonable attorney's fees expended and incurred by it in any such proceedings, and such costs, expenses and fees shall be included in the judgment.

18. **GOVERNING LAW**

The laws of the State of California shall apply to this Agreement.

EXECUTION

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, together with "Appendix A", attached hereto, in duplicate, the day and year first above written.

GROWER-MEMBER

By _____

PRUNE BARGAINING ASSOCIATION

By _____

BOARD OF DIRECTORS AUTHORIZATION

ACCEPTED AT _____ California, this ____ day of _____, 20__ in accordance with a resolution duly adopted by the Board of Directors of the Prune Bargaining Association.

PRUNE BARGAINING ASSOCIATION MEMBERSHIP AGREEMENT

"APPENDIX A"

The following information is to be provided in accordance with the requirements set forth in this Agreement and the Association's Articles and Bylaws. The information provided herein will be used solely for the accounting purposes of the Association.

Membership to begin with the year _____ prune crop. Prune tonnage produced in previous crop year: _____ tons

Handler(s) to whom prunes were delivered: _____

County(ies) in which prunes are produced: _____

I declare my voting district to be: (indicate county): _____

Name(s) under which prunes are delivered: _____

TAX ID#: _____ **LEGAL NAME:** _____

Mailing address: _____

Phone number(s): Home _____ Work _____ Cell _____

eMail : _____

Prunes are delivered to Handler(s) under the following terms: (Check all that apply)

- (1) Under no contract obligation.
- (2) Under contract of delivery to _____ (handler) through the _____ year prune crop. **Attach copy of handler contract.**
 Does the contract with handler provide for payment based on PBA Price Agreement?
 Yes No
- (3) Under a cooperative marketing agreement with Sunsweet Growers, Inc.
 Do you serve on any board of Sunsweet Growers, Inc.?
 Yes No

List all prune orchards owned, rented or leased:

LOCATION: _____

Bearing Acres: _____ Non-bearing Acres: _____ Total: _____

Variety: _____

NOTES: _____

LOCATION: _____

Bearing Acres: _____ Non-bearing Acres: _____ Total: _____

Variety: _____

NOTES: _____

LOCATION: _____

Bearing Acres: _____ Non-bearing Acres: _____ Total: _____

Variety: _____

NOTES: _____