

OLIVE GROWERS COUNCIL OF CALIFORNIA

MEMBERSHIP AGREEMENT
AND
CERTIFICATE OF MEMBERSHIP

Name \_\_\_\_\_ County \_\_\_\_\_

Address \_\_\_\_\_

City/Zip \_\_\_\_\_ SSN \_\_\_\_\_

THIS AGREEMENT, made this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ between the Olive Growers Council of California, a non-profit cooperative association organized under the Agricultural Code of the State of California ("the Council"), and \_\_\_\_\_, ("the Member"), applied to olives for processing produced on the following groves:

(see Exhibit A for acres, variety and year of plant.)

Member \_\_\_\_\_

Witness \_\_\_\_\_

Council by: \_\_\_\_\_

WITNESSETH

1. Consideration. The Member acknowledges that other growers throughout the State have or hereafter may execute similar Membership Agreements with the Council and this Agreement is executed in consideration of becoming a member in the Council and of all other growers who are or will become members in the Council, with the purpose of achieving the mutual satisfaction and benefit of all members of the Council through cooperative endeavor and enterprise.

2. Term of Agreement. Subject to Member's right to withdraw as provided below, Council's right of termination as provided below in Council's articles of incorporation and bylaws, and the provision for early termination set forth in section 8 of this Agreement, this Agreement shall begin immediately upon execution and ratification by Council's board of directors, and shall be for a period of two (2) years from the date of this Agreement or until cancelled as provided below. This Agreement shall be extended unilaterally by council from time to time thereafter for additional periods of one (1) year each unless written notice of withdrawal is given by Member or Council during the month of March next preceding the expiration of the then current Agreement term. Either Member or Council may file with the other a written notice of withdrawal the period set forth above, and thereupon this Agreement shall be cancelled as of December 31 of that year.

3. Basic Services of Council. The basic (function of and) services to be rendered by the Council for its Members shall be (a) to establish fair and reasonable industry wide prices and terms of sale of olives for processing; (b) further to collect and provide or make available to its members data with respect to economic factors which affect the marketing of olives for processing; (c) to conduct in behalf of its members such negotiations with processors as shall be appropriate to achieve these objectives; (d) otherwise to employ the authority and powers set forth in the Council's Articles of Incorporation and Bylaws to accomplish the purposes set forth therein and in this Agreement.

Without limiting the generality of the foregoing, the Council shall perform the following specific services with respect to its Members and shall have the necessary power and authority to accomplish the same:

(i) Members with Open Tonnage. For a Member who at the time of execution of this Membership Agreement is not obligated by contract to deliver the olives described herein to a commercial processor and who is not a member of a processing cooperative, the Council shall be, and is hereby designated, as sole and exclusive sales agent for such member with respect to his olives for processing. As such exclusive sales agent Council shall have the exclusive authority and power during the term of this Agreement, without taking titles to the olives, to establish and fix (including the authority to change and amend) and to approve the minimum terms and conditions of sale or of the contract of sale of all olives produced by or for Member and other members who have executed agreements generally similar to this agreement, and the minimum terms and conditions of sale or of the contract of sale shall be fixed and established and approved by Council in such form and manner and at such minimum price as Council deems for the best advantage of all members who have signed such similar agreements. Council shall during the term of agreement perform its services for Member to the best of its ability under economic and marketing conditions from time to time existing.

In performing the marketing service herein specified, Council shall solicit for and on behalf of its members, contracts which it will approve with the greatest possible numbers of processors of said olives and diligently attempt to procure the largest possible market for all members' olives including that of Member.

Each year during the term of this agreement, Council shall for the purpose of establishing or fixing the minimum terms and conditions of sale or contract of sale of said olives of Member to any person, firm or corporation, prescribe or approve the form and substance of the "Purchase and Sale Agreement" to be entered into and executed by and between Member and buyer of Member's olives and such contact shall be designated as "Approved Contract".

During the term of this Agreement, Member shall sell and deliver said olives to be produced by or for him or in which has any interest whatsoever whether it is as landlord or tenant or otherwise, only upon such minimum terms and conditions as Council shall fix and establish and approve, and Member shall not sell or deliver or permit to be delivered any olives produced by or for him other than in accordance with the terms and conditions of this Agreement.

Each year after Council has been established and fixed the minimum terms and conditions of sale and has prescribed and/or approved the form and substance of the Purchase and Sales Agreement to be entered into between Member and the buyer of Member's olives, Council will that the request of Member approve a Purchase and Sales Agreement for Member's olives for that year as conforming with the terms and conditions of the Council's approved contact.

(ii) Agency Members. Any member who, at the time of execution of this Membership Agreement, is obligated by contract to deliver the olives described herein to commercial processor shall deliver his olives directly to such commercial processor and shall be exempt from the provisions of paragraphs 3(i) hereof until the expiration of the current term of said contract which Member agrees not to cause to be renewed or extended unless such contract contains prices and other terms and conditions of sale as approved by the Council; thereafter the Member become subject to the provisions of said paragraph 3(i) and this paragraph shall no longer apply.

The Member hereby appoints the Council to act as his agent during the current term of his contact with such commercial processor to perform such services and to conduct such activities including negotiating for prices and other terms of sale as the Council deems necessary or advisable to assure (so far as it is practicable to do so) that the Member will receive a price for his olives which is equal to the minimum prices received by other members of the Council. The Member agrees that he shall not consent to the establishment of prices for his olives or terms of sale which have not been approved by the Council.

(iii) Cooperative Members. Any Member who is also a member of a processing cooperative and is obligated to market his olives to or through such processing cooperative shall deliver his olives directly to said cooperative and is exempt from the provisions of paragraph 3(i) hereof until such time as Member is no longer obligated to market his olives to or through said cooperative.

The Council shall by its operations assist the Member and the processing cooperative in ascertaining an established raw fruit value for the Member's olives and non-price terms of sale which may exist in the California olive industry in a given crop year.

4. Council Financing. Without limiting the powers and authority of the Council as set forth in the Articles of Incorporation and Bylaws the Association shall obtain financing for its operations from the following specified sources:

(a) Membership Fee. Each Member shall pay an initial membership fee of \$2.00 per bearing acre of olives farmed; bearing acres are defined as tress which are five (5) years of age or older. This membership fee is due immediately upon execution and ratification of this Agreement by Council's Board of Directors and is nonrefundable.

(b) Annual Service Charge. The Council will endeavor to collect from both commercial and cooperative processors to whom olives of Members are delivered a service charge for each crop year. This charge has been established by the Board of Directors to cover the cost of the Council's operations.

This service charge shall be a maximum of 1% of the gross fruit receipts as received by member, commencing with the 1979 crop year. This service charge shall apply to revolving funds as received, also commencing with the crop year 1979 and continuing thereafter as provided herein.

Such charge is not to be construed as part of the purchase price or raw fruit price for the olives.

In the event that the processor to whom the Member delivers his olives fails to pay such service charge, then Member agrees to pay the same individually on the basis and formula as set forth herein above.

5. *Assignment by Member.* Member agrees that he will give notice to the processor to which his olives are delivered pursuant to Section 58451 of the Agricultural Code of the State of California that he does hereby assign such sums as are due to the Council by him pursuant to the divisions of paragraph 4 hereof and directs that such sums be deducted from the price to be paid for the olives sold by him to a commercial processor or delivered by him to a cooperative processor and to pay the same directly to the Council. Member further agrees that he shall execute such writing and other undertakings as deemed necessary by the Council to effectuate the obligations of Member under this Agreement.
6. *Default.*
  - (a) The breach or cancellation of a similar marketing agreement or agreements entered into by Council with one or more other members shall in no manner impair or affect the obligations under this Agreement, or the mutuality of interests hereunder created.
  - (b) It is understood and agreed that this agreement is one of many marketing agreements generally similar in substance and form entered into and executed by and between other members and Council who together with Member are mutually and individually obligated to each other through the Council; and Council shall be deemed to be acting in its own name for and on behalf of all such members in carrying out and enforcing such agreements in any action or legal proceedings arising therefrom.
  - (c) The true value of this contract and all similar marketing agreements entered into by Council, depends upon the adherence of each and all of the contracting members to each and all of said agreements, and Council and all its members would be materially damaged by the breach of this Agreement. In case of the breach of this Agreement, it would be extremely difficult and impracticable to calculate with mathematical accuracy the exact amount of damages, and, therefore, it is specifically agreed that Member will pay to the Council amount equal to twenty-five (25%) per cent of the market value for all; said olives that are sold, marketed, delivered or otherwise disposed of by or for Member contrary to the provisions of this agreement, which amount is agreed to be reasonable and liquidated damages.
  - (d) If the Council brings any action or suit in equity to enforce any of the provisions of this agreement or to secure specific performance hereof, or to collect damages of any kind for any breach hereof, the prevailing party shall be entitled to all costs, premium for bond, expenses and fees, including any reasonable attorney's fees expended or incurred, including an appeal to the Supreme Court of any state, and in proceedings, and all such costs, expenses and fees shall be included in the judgment.
7. *Governing Law.* The terms of this Agreement shall be construed in accordance with laws of the State of California.
8. *Early Termination of Agreement.* This Agreement shall terminate if by March 1, 1980, the Council shall have failed to execute similar agreements with growers who in combination are farming not less than 40% of California olive bearing acreage; however, notwithstanding the foregoing, the Council may determine, by vote of its Board of Directors and a majority of its members; that this Agreement shall continue in effect for the term set forth in paragraph 2 hereof.
9. *Records.* The Member agrees to furnish or to make available to the Council any records concerning the production, delivery and sale of the olives subject to this Membership Agreement.
10. *Notices.* All notices herein provided to be given, shall be deemed to have been given to the Council when mailed, postage prepaid, to its office in Visalia, Tulare County, California, and to the Member when mailed, postage prepaid, to his address as noted hereon, or to such other address as may from time to time be furnished in writing by either party to the other.
11. *Partnership or Corporate Member.* If this Agreement is signed by an individual in behalf of a partnership or corporation, that individual warrants that he is authorized to sign in behalf of the partnership or corporation and agrees that this Agreement is binding upon said partnership or corporation and all its individual partners, or shareholders.
12. *Bona Fide Transfer.* If a Member transfers any portion of the land described herein during the term of this Agreement, the olives produced thereon shall be subject to this contract during the crop year in which such transfer is made, but not thereafter. The Member agrees to notify the Council in the event of such a transfer to provide the transferee with a copy of this Agreement prior to the transfer. If the transferee fails to deliver said olives to the Council in the event of such a transfer and to provide the transferee with a copy of this Agreement prior to the transfer. If the transferee fails to deliver said olives to the Council in accordance with this Agreement, the Member shall remain obligated to the Council for liquidated damages as provided in paragraph 6(d) hereof, and the Council shall have additional remedies as are provided by law.
13. *Force Majeure.* In the event that the performance of this Agreement by the Member of this Council is prevented by strikes, disasters or any other causes beyond the parties' control, to injunctions or the orders of any officer or regulatory body of the state, federal or any local government, the parties shall be excused from such performances to the extent thus prevented, and neither party shall have any right against the other by reason of nonperformance.
14. *Agreement Expressed Herein.* The parties 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 full understanding of both parties.
15. *Succession.* This Agreement shall bind the heirs, administrators, successors, and/or assigns of the respective parties hereto.
16. *Counter-Part Execution.* This Agreement and all similar agreements executed by other members shall be deemed counter-parts of one and the same contract, but each Member shall be severally liable for the full performance of the Agreement signed by him. This Agreement shall not be effective until it has been executed by the Council and authorized or ratified by the Board of Directors of the Council.
17. *By-Law Acceptance and Approval.* The Member hereby acknowledges receipt of a true and correct copy of the By-Laws and hereby gives his full assent to and approval thereof, with like force and effect as it the Member's signature has been affixed to the original By-Laws.

EXHIBIT A  
TO  
MEMBERSHIP AGREEMENT AND CERTIFICATE  
OF MEMBERSHIP OF  
OLIVE GROWERS COUNCIL OF CALIFORNIA

Name \_\_\_\_\_ Number \_\_\_\_\_

Address \_\_\_\_\_

City \_\_\_\_\_ Zip \_\_\_\_\_

Following is a description of the lands and products forming the subject matter of this agreement.

Number of Trees	Acres	Variety of Olives	Year Planted

Witness \_\_\_\_\_ Member \_\_\_\_\_

The above olives were marketed to \_\_\_\_\_ for the past \_\_\_\_\_ seasons under \_\_\_\_\_ contract which expires \_\_\_\_\_, 20\_\_\_\_\_.

(term/seasonal)