



HOP GROWERS OF AMERICA INC.

P.O. Box 9218 • Yakima, Washington, U.S.A. 98909 • TEL. 509/248-7043 • FAX 509/248-7044

Dear Washington Hop Grower-

We have an unhealthy industry and we must conquer our own challenges as American hop growers. Enclosed is the Hop Producer's Agreement as described at our Annual Convention last week in Oregon. If you agree to the terms, please fill it out and send it to Doug Hasslen at the USDA National Agricultural Statistical Service (NASS) in Olympia, Washington using the addressed stamped envelope provided. You may also fax your response toll free to Doug Hasslen at 1-800-265-6275. Time is short! Please reply on or before **MARCH 1, 2002**.

The HGA Production Management Team has devoted countless hours to formulating a plan based on industry input and grower comments. Developing these terms required commitment and some degree of compromise by everybody on the committee. All of the terms presented, and some not listed here, were analyzed and discussed at length by the committee over the past two months. Much more work lies ahead if these initiatives pass and your input will be essential to their success. Below you will find a list of growers who participated in the development of this plan along with their phone numbers. Please do not hesitate to contact any team member with any questions or comments.

The USDA has agreed to compile the acreage totals so that individual set-aside acreages will be kept confidential until contingencies have been met at which time the information will be reported to HGA for verification. This survey does not fall under the same confidentiality agreements applied to normal USDA NASS surveys, which prohibit the distribution of any proprietary information. A grower list provided by HGA has been used for this mailing. The Washington Agricultural Statistics Service will compile the responses and will provide the HGA with a list of respondents without any associated acreage data. Some non-respondents may be contacted by HGA or by the production management subcommittee members. **Only** once the 6,500 acre goal has been reached and the contracts become binding will the USDA provide the HGA with a copy of the actual contracts.

Sincerely,

Douglas MacKinnon
Executive Director
Hop Growers of America

Steve Carpenter	509-854-1750	Eric Desmarais	509-452-3263
Dan Newhouse	509-837-2907	Gary Morford	509-848-2200
Leslie Roy	509-452-3494	Duane Desserault	509-882-2522
Keith Houser	509-457-8376	Darren Gamache	509-865-6422
Tom Gasseling	509-877-3698	Gene Gamache	509-452-3404

EX 64

**HOP PRODUCER AGREEMENT
FOR IMPROVING HOP MARKET CONDITIONS**

The Undersigned Producer does hereby enter into this Agreement with the other Participating Producers who are entering into this same Agreement.

Purposes: The Participating Producers, including the Undersigned Producer (called "Producer") who grow hops in the state of Washington, are entering into this Agreement for purposes of improving hop marketing conditions by agreeing:

1. To the terms of a Washington State Set Aside Program to be promulgated under the Washington State Agricultural Enabling Act (RCW Chap. 15.65) and, in particular, as an amendment to the regulations of the Hop Commission as provided for under WAC Chap. 16.532.
2. To vote in favor of the Washington State Set Aside Program or otherwise show assent or approval to the Program in a referendum or other proceeding by the Washington State Director of Agriculture as a part of the process of promulgating and enacting the program into law.
3. Not to grow and string more alpha hop acreage in 2002 than grown in 2001, except for Permitted Exceptions.
4. To honor the Producer's commitment as described below to not grow and string "set aside acres" in 2002.
5. To vote in favor of, or otherwise affirmatively support, the commencement of procedures by the Secretary of Agriculture to adopt a Federal Hop Marketing Order under the provisions of 7 USCA § 608(c), which includes the features outlined below in this Agreement.
6. To be contractually bound with respect to all of the obligations described above, and to be subject to remedies for breach of contract as described herein and as allowed by the laws of the state of Washington, including, without limitation, provisions for liquidated damages and /or injunctive relief.

AGREEMENT: PRODUCER DOES HEREBY AGREE AS FOLLOWS:

1. **Contingency for Effectiveness of Agreement.** Even though Producer has signed this Agreement, it is understood that this Agreement will not become legally effective unless the following described Contingencies occur on or before 5:00 PM (PST) May 1, 2002 ("Contingency Date"). The Contingencies are as follows:
 - a. 65% of the hop producers in the state of Washington who grew at least 51% of the volume of hops produced in the state of Washington for crop year 2001; or 51% of the Washington hop producers who produce at least 65% by volume of hops produced in the state of Washington during 2001 execute this Agreement;
 - b. 66-2/3% of the hop producers (in either number of producers or in production volume) in the states of Washington, Idaho or Oregon either signing this Agreement or another written agreement committing to vote in favor or otherwise assenting to the adoption of a Federal Hop Marketing Order as provided for in paragraph 4 of this Agreement; and
 - c. For 2002, hop producers in Washington, Oregon and Idaho commit, in total, to grow and string at least 6,500 less acres of alpha hops than 2001 alpha hop acres grown. Commitments shall include producer commitments under paragraph 2 of this Agreement, as well as other contractual commitments from producers in Washington,

608(c), as long as the proposed Federal Hop Marketing Order includes substantially the following features.

- a. The initial allotment base will be based on Producer's highest annual hop production in pounds of alpha hops during any crop year beginning in 1997 and ending in 2001. The initial allotment base shall be allocated separately for Aroma Hops and Alpha Hops. Production in 2002 shall not be considered for the initial allotment base.
- b. In order to obtain initial hop allotment base the Producer must have produced hops in commercial quantities in 2001
- c. Voting for the Hop Marketing Order shall be based upon 2001-hop production.
- d. Nothing in the Marketing Order shall (i) result in a shortage to breweries of Aroma Hops; (ii) prohibit Aroma Hop growers from growing Alpha Hops if the Aroma market is reduced; or (iii) affect the quantities of hops to be grown and used by brewery owned hop production facilities.

5. **General Terms and Conditions.** The obligations of Producer are subject to the General Terms and Conditions that are attached to this Agreement. Producer understands and agrees that in order for the programs envisioned by this Agreement to be effective for purposes of bettering hop marketing conditions, it is necessary that the commitments by participating Producers be binding contractual commitments. This Agreement may be enforced by the persons referred to in the General Terms and Conditions, provided that any Participating Producer may require enforcement.

6. **Warranties, Certification and Selection of Set Aside Acres.** Producer hereby warrants and certifies to and for the benefit of the other Participating Producers the following:

- a. The person signing this Agreement for Producer has authority to contractually bind Producer.
- b. I acknowledge by signing below that if the contingencies of this contract are met this contract will be forwarded to Hop Growers of America for enforcement.
- c. In 2001 Producer grew _____ acres (by hill count) of hops in the state of Washington.
- d. Producer agrees to not grow and string _____ acres (by hill count) of hop acreage grown in 2001.
- e. Producer is a sole proprietorship corporation partnership (either general or limited) limited liability company other _____.
- f. Producer's Federal Employer Identification Number (FEIN) is: _____.
- g. Producer Grower No. _____.

Executed this ____ day of _____, 2002.

GROWER:

By: _____
Title _____

GENERAL TERMS AND CONDITIONS OF HOP PRODUCER AGREEMENT

1. **Authority to Sign.** Producer represents and warrants for the benefit of all Participating Producers that it has the power and authority to execute this Agreement and bind the hop producing acreages owned or controlled by the Producer to the terms and conditions of this Agreement.
2. **Binding Effect.** The terms and conditions of this Agreement shall inure for the benefit of all Participating Producers.
3. **Compliance / General.** Each participating Producer agrees to use all commercially reasonable, good faith efforts to comply with the terms and conditions of this Agreement. Producer shall not attempt to circumvent directly or indirectly the production limitations and requirements of this Agreement, e.g., by creating new entities or transferring properties to third persons, etc.
4. **Default / Remedies.**
 - 4.1 **General.** As agent for all Participating Producers, Hop Growers of America, acting through its Board of Directors, shall appoint an Enforcement Committee for the purpose of policing and otherwise assuring Producer compliance with the terms of this Agreement. Any Participating Producer who is not in default with his or its obligations under this Agreement may require the Enforcement Committee to pursue the remedies authorized in this Agreement or allowed by law when the Producer has credible evidence that a violation of the terms of the Agreement have occurred. The Enforcement Committee shall have the right to proceed at law or in equity to compel compliance with any condition, covenant, term or condition contained in this Agreement, or to prevent the violation or breach of any of them, or to recover damages for the violation or breach.
 - 4.2 **Injunctive Relief.** Producer acknowledges that violations of the Agreement's terms will cause irreparable harm to the other Participating Producers. Accordingly, Producer agrees that the provisions of this Agreement may be enforced by injunctive relief (including specific performance) requiring Producer to comply with the terms and conditions of the Agreement. The Participating Producers specifically consent to the entry of a temporary restraining order and permanent injunction, subject to a bond in an amount not to exceed *Five Hundred Dollars (\$500)*, to be set by the court, requiring compliance with the terms and conditions of this Agreement.
 - 4.3 **Liquidated Damages.** Producer acknowledges that any damages sustained by reason of a violation of the terms and conditions of this Agreement are difficult to determine, and it is the intent of the parties to quantify such damages in the event of a violation of this Agreement with respect to Producer's obligations relating to Production Limitations. Producer agrees that a reasonable estimate of the damages to the other non-defaulting Participating Producers in the event of a Production Limitation breach by any Producer shall be *Four Thousand Dollars (\$4,000)* per acre grown and strung in 2002 in violation of the Production Limitations, which shall be paid as liquidated damages in the event of a said breach of this Agreement.
 - 4.4 **Remedies Cumulative.** Except as otherwise set forth in this Agreement, any right or remedy the Participating Producers or Enforcement Committee may have under this Agreement arising out of a breach of its terms shall be in addition to any other right or remedy for such breach or violation provided by law.
5. **Compliance Audit.** To assure compliance with Producer's obligations under this Agreement, Producer hereby authorizes the Enforcement Committee access to Producer's properties and records relating to Producer's Production Limitation obligations. Additionally, Producer, to the extent not prohibited by law, hereby authorizes the Enforcement Committee to establish and enforce reasonable procedures to assure that Producer votes in favor of and otherwise assents to the Washington State Set Aside Program and the Federal Hop Marketing Order in the manner as contemplated by this Agreement.
6. **Dispute Resolution.** Other than matters involving the Enforcement Committee seeking equitable relief in the form of injunctive relief and/or Specific Enforcement of the terms of this Agreement, the determination of whether or not a Producer breached his or its obligations provided in this Agreement shall be determined by arbitration conducted in accordance with the laws of the state of Washington. The arbitrator shall be an impartial qualified person, selected by the Board of Directors of Hop Growers of America.
7. **General Provisions.**
 - 7.1 **Severability.** In the event any provision of this Agreement shall be determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of the Agreement shall remain in full and effect.
 - 7.2 **Governing Law.** This Agreement shall be construed in accordance with, and governed by, the laws of the state of Washington applicable to agreements made and to be performed wholly within this jurisdiction.
 - 7.3 **Notices.** Notices under this Agreement shall be in writing and may be delivered (1) personally; (2) by U.S. mail, certified or registered; (3) by a nationally recognized overnight courier service; or (4) by facsimile transmission, if a facsimile number has been provided by the party receiving notice, with a copy to be sent by U.S. first class mail. Mailed notices shall be deemed effective on the third day after deposited as registered or certified mail, postage prepaid, directed to the other party at the address shown above. Couriers notices shall be deemed delivered when the courier's records indicate that delivery has occurred. Facsimile notices shall be effective when actually transmitted to the facsimile number provided. A Producer may change its address for notices by written notice to the Enforcement Committee.
 - 7.4 **Attorney's Fees.** In the event of any dispute arising out of or relating to this Agreement, whether suit or other proceeding is commenced or not, and whether in mediation, arbitration, at trial, on appeal, in administrative proceedings or in bankruptcy (including, without limitation, any adversary proceeding or contested matter in any bankruptcy case), the prevailing party shall be entitled to its costs and expenses incurred, including reasonable attorney's fees.
 - 7.5 **Waiver.** The failure of any party entitled to enforce this Agreement at any time to require performance of any provision of this Agreement shall not limit the party's right to enforce the provision. Waiver of any breach or violation of any provision shall not be a waiver of any succeeding breach or violation of the provision or a waiver of the provision itself or any other provision of the Agreement.
 - 7.6 **Confidential Information.** The Enforcement Committee or any committee of Participating Producers shall respect and observe the confidential nature of all production records, reports and information supplied by the Producer, and if the Agreement does not become effective (for failure to meet its contractual or statutory minimums for participation), such person or persons shall return all such written reports, including copies of this Agreement to the Participating Producer.

PRODUCER(S):

Print Name: _____
Dated: _____

Print Name: _____
Dated: _____