

**NORTH CAROLINA GROWERS ASSOCIATION, INC.**

**AND**

**ITS MEMBER GROWERS**

**AND**

**FARM LABOR ORGANIZING COMMITTEE**

Effective February 1, 2008  
Through December 31, 2008

## TABLE OF CONTENTS

Preamble.....	1
Article 1- Recognition.....	1
Article 2- Management Rights and Waiver.....	1
Article 3- Check Off.....	2
Article 4- Wages and Expenses.....	4
Article 5-.....	4
Article 6- Employee Rights.....	7
Article 7- Health and Safety.....	8
Article 8- Miscellaneous.....	9
Article 9- No Strikes or Lockouts.....	10
Article 10- Workers' Compensation.....	11
Article 11- Absence.....	11
Article 12- Discharge, Suspension, or Other Disciplinary Action.....	12
Article 13- Early Discharge for Lack of Work.....	14
Article 14- Grievance Procedure (Claims Against NCGA).....	15
Article 14A- Grievance Procedure (Legal Claims).....	9
Article 14B- Grievance Procedure (Claims Against FLOC).....	5
Article 15- Dunlop Agricultural Commission.....	9
Article 16- Duration of Contract-Renewal-Notices to Parties.....	31
Appendix A- Statutory Rights-Step 2 Hearings.....	34
Appendix B- Camp and Work Rules.....	36
Appendix C- Step 3 Procedure for Articles 14, 14A, 14B.....	39

## **PREAMBLE**

This Agreement is made this the 1st day of February, 2008, by and between The North Carolina Growers' Association, Inc. ("NCGA"), a North Carolina corporation with its principal office in Vass, North Carolina, and its member growers ("Members") (hereinafter collectively called "Company"), with the Farm Labor Organizing Committee ("FLOC" or "the Union").

WITNESSETH that the parties hereto, in order to promote and maintain harmonious relationships between the Company and its employees through the Union selected as their bargaining agent, and in order to set out their Agreement as to wages, hours and working conditions, do hereby contract and agree with each other as follows:

## **ARTICLE 1 - RECOGNITION**

**Section 1.1:** The Company recognizes the Union as the exclusive bargaining representative for all hourly agricultural workers employed by Members through the services of NCGA.

**Section 1.2:** The Union and the Company both agree to neutrality and to work together in efforts to bring other employers of agricultural labor into this agreement and/or the H2-A program as that program presently exists or may be amended.

## **ARTICLE 2 - MANAGEMENT RIGHTS AND WAIVER**

**Section 2.1:** Except as expressly modified or restricted by a specific provision of this Agreement, all statutory and inherent managerial rights, prerogatives, and functions are retained and vested exclusively in the Company, including, but not limited to, the rights in accordance with its sole and exclusive judgment and discretion: to manage the Company and other operations; to reprimand, suspend, discharge, or otherwise discipline employees; to determine the number of employees to be employed; to hire employees and determine their qualifications; to assign and direct the work of employees; to promote, demote, lay off, and recall employees; to determine the products to be produced and the services to be rendered; to determine the amount and forms of compensation for employees; to maintain the efficiency of operations; to determine the personnel, methods, means,

techniques and facilities by which operations are conducted; to set the starting and quitting time and the number of hours and shifts to be worked; to use independent contractors to perform work or services, to subcontract, contract out, close down, or relocate the Company's operations or any part thereof provided that the employees can follow the work in seniority order; to expand, reduce, alter, assign, or cease any job, department, operation, or service; to control and regulate the use of facilities, equipment, and all other property of the Company; to introduce new or improved research, production, service, distribution, and maintenance methods, means, techniques, materials, machinery, and equipment; to change existing methods, means, techniques, machinery, equipment and facilities; to determine the number, location, and operation of departments, divisions, and all other units of the Company; to issue, amend and revise reasonable policies, rules (including but not limited to general work and safety rules), regulations, and practices; to establish and maintain policies and procedures to control substance abuse and the possession, sale or use of illegal substances; to determine the type of equipment to be used and the method of operation to be followed; to control the Company property and equipment; and to take whatever action is either necessary or desirable to determine, manage and fulfill the mission of the Company and to direct employees.

**Section 2.2:** The Company's failure to exercise any right, prerogative, or function hereby reserved to it, or the Company's exercise of any such right, prerogative, or function in a particular way, shall not be considered a waiver of the Company's right to exercise such right, prerogative, or function or preclude it from exercising the same in some other way not in conflict with the express provisions of this Agreement.

**Section 2.3:** The Union's action or failure to act in regard to any matter in Section 2.1 above will not be considered a waiver or preclude the Union from acting in some other way not in conflict with the express provisions of this Agreement.

### **ARTICLE 3 - CHECK-OFF**

**Section 3.1:** The Members agree to deduct from the pay of all Union employees covered by this Agreement the dues, initiation fees and/or uniform assessments of the Union having

jurisdiction over such employees and agrees to remit to said Union all such deductions prior to the end of the month for which the deduction is made. Where laws require written authorization by the employees, the same is to be furnished in the form required.

**Section 3.2:** Beginning thirty days before NCGA plans to hire it's first agricultural employees of the season, the association shall provide the union with a list that includes all agricultural workers that are currently employed, or who are scheduled to be employed by one of their members within the next thirty days. The list shall include each worker's name, identification number, and current grower. The list will be updated every two weeks, or more frequently if the association and the union deem it necessary.

**Section 3.3:** Upon receipt of the list described in section 3.2 above, the union will send to the association a copy of the union card signed by any union member that appears on the list. Provided that this card authorizes a deduction of dues, the association will inform the grower who employs each union member of his obligation to deduct dues from the worker's pay, and to send a payment for the deducted amount to the union on a monthly basis.

**Section 3.4:** In the event that the union does not receive the appropriate payment for dues deductions, the union will submit a list to the association of the union members for which dues were not received. The association will then ensure that it's members provide the union with the proper dues payments within 15 working days from the time that the association received the union list of dues discrepancies.

**Section 3.5:** If the association fails to fulfill it's obligations under Article 3, sections 3.2-3.4 of this agreement, it will be subject to resolution by the grievance procedure outlined in Article 14 of this agreement.

**Section 3.6:** Where an employee who is on check-off is not on the payroll during the week in which the deduction is to be made or had no earnings or insufficient earnings due in that week or is on leave of absence, the employee must make arrangements with the Union to pay such dues in advance.

**Section 3.7:** The Member will recognize authorization for deductions from wages, if in compliance with state law, to be transmitted to the Union or to such other organizations as the Union may request if mutually agreed upon. No such authorization shall be recognized if in violation of state or federal law. No deduction shall be made which is prohibited by applicable law.

**Section 3.8:** The parties agree to continue to investigate an alternative per capita dues procedure, with the assistance of the Dunlop Agricultural Commission. This alternative method of providing for collection of union dues will be considered by the parties pending resolution of legal uncertainties related to that proposal.

#### **ARTICLE 4 – WAGES AND EXPENSES**

**Section 4.1:** Because the employment of H-2A workers is governed by law, the Members will never pay less than the applicable wage mandated by the H-2A statute or regulations. The terms of employment with respect to wages, housing, and other benefits are spelled out in the Applications for Alien Labor Certification and associated Agricultural and Food Processing Clearance Orders (collectively, “the H-2A application”). The Members are not required but are free to offer wages that are higher or benefits that are greater than those required by law.

**Section 4.2:** The payment of visa, border-crossing and travel expenses is governed by law and will be paid or reimbursed by the Member, or borne by the employee, in accordance with applicable law.

#### **ARTICLE 5 – HIRING**

**Section 5.1:** The term “hiring” will encompass both the initial hiring decision and rehiring decisions in subsequent seasons. The hiring procedure will be as follows:

At the end of each season, the Members will provide to NCGA a list of the employees employed by the Members for that season. The list will indicate whether the employees are “Preferred” (meaning

that they performed satisfactorily, and worked for the entire season or for a shorter period with an acceptable excuse) or “No Return” (meaning that they violated one or more Work Rules, left voluntarily before the end of the season for an unacceptable reason, or otherwise failed to perform to the satisfaction of the Member). The following will be considered acceptable reasons for leaving early that will not make the employee ineligible for employment in subsequent years:

a) A legitimate and reasonable family emergency, supported by appropriate documentation. “Family” is defined in section 6.6 of this agreement;

b) An injury or disease that would prevent the employee from performing the job for the remainder of the contract period, supported by appropriate documentation;

c) Lack of available work through no fault of the employee; and

d) Any other reason deemed appropriate by the Member or by NCGA and supported by appropriate documentation.

**Section 5.2:** Employees designated “No Return” will not be eligible to return in subsequent seasons under any circumstances.

**Section 5.3:** Employees designated “Preferred” will be eligible to return in the subsequent season and will be eligible to return (if they wish) to the same Member who previously employed them. In the subsequent season, each Member’s H2-A job vacancies will be filled according to the following priority:

a) “Preferred” workers that are specifically requested by an NCGA grower.

b) Preferred Workers who have the highest number of seasons in which they were designated “Preferred” by any Member. In the event of a tie, the employee will be selected by drawing lots. The employee who is not chosen will be eligible for employment with another Member if there is a vacancy.

c) An employee's union status will not affect his hiring rights in any manner.

d) It is understood that NCGA's first priority is to ensure that Members receive workers on the dates that they are requested. NCGA's obligation to follow the order specified above is contingent upon the workers ability to obtain an H2-A visa in a timely manner. A worker who is not ready to obtain an H2-A visa at the time he is needed by NCGA will be skipped in the recruiting order. That worker will be recruited when he is able to obtain his visa.

**Section 5.4:** To facilitate the hiring process, all workers with a satisfactory work record shall be allowed to submit a "bid" for employment. The worker shall submit his bid through the union announcing his availability and after having his documents in order and ready to travel. The union will submit such information to the NCGA who will notify it's recruiting service according to the worker's seniority and/or the earliest convenient time that includes the facilitation of filling interview appointments.

**Section 5.5:** An H-2A worker who fails to show up for his scheduled interview with the U.S. Consulate in Monterrey, Mexico, will not be eligible for hire in that year. However, he may be eligible to be hired in subsequent years if he was designated "Preferred" in his last assignment.

**Section 5.6:** New H-2A hires will be considered only after all Preferred Workers have been placed according to this Article and only if vacancies still exist that cannot be filled with domestic workers. Among new H-2A hires, first priority will be given to relatives and friends of Preferred Workers who have substantial employment experience in the performance of hand harvest agricultural labor and are able to perform the essential functions of the job with or without reasonable accommodation.

**Section 5.7:** NCGA and the Members agree that they will not discriminate in hiring or work assignments based on race, sex, national origin, religion, age, disability, or union status. The use of the masculine in this policy will be deemed to encompass both sexes. "Discrimination" for purposes

of this policy will be defined in a manner consistent with the federal and state anti-discrimination laws applicable to NCGA and the Members.

**Section 5.8:** H-2A workers recruited under this policy are recruited to work on the farm of any Member, and may be assigned and transferred as needed in the sole discretion of NCGA and the Members. If the employee believes that an assignment or transfer was discriminatory or retaliatory, he may pursue a Grievance as set forth in Article 14.

## **ARTICLE 6 – EMPLOYEE RIGHTS**

**Section 6.1:** Except during working hours and subject to the consent of the employee, neither NCGA nor any Member will interfere with the access of health care workers, representatives of non-profit providers of legal services, or representatives of non-profit providers of other services, to employees.

**Section 6.2:** If a representative of the Union, a health care entity, or a non-profit provider of legal or non-legal services provides 24 hours' notice to NCGA and the Member, NCGA and the Member will make reasonable efforts to allow access to employees during working hours.

**Section 6.3:** NCGA and Members will comply with all relevant federal and state statutes and regulations governing agricultural employees or otherwise applicable to employees covered by this Agreement except as otherwise provided or supplemented in this Agreement. Alleged violations of law will be resolved under the Grievance Procedure in Article 14 unless the applicable law prohibits such.

**Section 6.4:** Neither NCGA nor any Member will directly contact an employee who it knows is represented by counsel, regarding the subject matter for which counsel was retained.

**Section 6.5:** NCGA and its Members will not require any employee to work more than seven (7) continuous days without a half (1/2) day off for the purposes of worship in or other activities related to the denomination or religion of the employee's choice. NCGA and the Member will provide to employees information regarding the nearest places of worship and contact information. NCGA and the Member will make reasonable efforts to allow the employee his half day off at a time that his preferred religious activities are occurring.

**Section 6.6:** To make funeral arrangements and to attend the funeral of a member of the immediate family (father, mother, child, brother, sister, husband, wife, grandparent, mother-in-law, father-in-law) the employee will be paid what he would have earned had he been working, not to exceed three days. The leave of absence may be extended, for a reasonable period of time, without pay, upon request. The employee must provide proof of death.

## **ARTICLE 7 - HEALTH AND SAFETY**

**Section 7.1:** Members will use only those pesticides, herbicides, and fungicides bearing a current EPA label for use and will abide by all label guidelines for safe and proper usage.

**Section 7.2:** The Members recognize and will abide by the standards promulgated by the North Carolina Department of Agriculture governing the safety of field workers who work with chemically treated products.

**Section 7.3:** Members will comply with the most current worker protection standards promulgated by the federal Environmental Protection Agency.

**Section 7.4:** The Member will place in each field signs indicating that chemicals will be applied, and the date and time when employees may legally re-enter the field, if such restriction applies. Such signs will be placed at any reasonable entrances.

**Section 7.5:** In the event that it is necessary for an employee to return to work in a treated field, the Member will provide protective clothing as required by current worker protection standards.

Employees shall be required to wear such protective clothing. Any employee refusing to wear such protective clothing shall be guilty of insubordination and subject to immediate discharge.

**Section 7.6:** The Member will comply with all field sanitation requirements of applicable federal, state, or local statutes or regulations, regardless of the number of employees on the farm. As has been the case, all such field sanitation facilities shall be provided on all farms under contract regardless of number of employees, and shall be provided without cost to the employees.

## **ARTICLE 8 - MISCELLANEOUS**

**Section 8.1:** Inspection privileges – With reasonable notice, authorized officers and representatives of the union shall have access to the Members’ working areas during working hours for the purpose of adjusting disputes, investigating working conditions, collection of dues and ascertaining that the agreement is being adhered to. Reasonable notice as used above shall be at least twenty-four (24) hours except in emergency situations.

**Section 8.2:** Separability and Savings Clause - If any article or section of this Agreement or of any supplements or riders thereto should be held invalid by operation of law or by any tribunal of competent jurisdiction, or if compliance with or enforcement of any article or section should be restrained by such tribunal pending a final determination as to its validity the remainder of this Agreement and of any supplements or riders thereto, or the application of such article or section to persons or circumstances other than those as to which it has been held invalid or as to which compliance with or enforcement of has been restrained, shall not be affected thereby. In the event that any article or section is held invalid or enforcement of or compliance with which has been restrained, as above set forth, the parties affected thereby shall promptly enter into collective bargaining negotiations after receipt of written notice of the desired amendments by either Employer or Union for the purpose of arriving at a mutually satisfactory replacement for such article or section during the period of infactory replacement for such article or section during the period of invalidity or restraint. There shall be no limitation of time for such written notice.

## ARTICLE 9 - NO STRIKES OR LOCKOUTS

**Section 9.1:** In consideration of the Company's commitment as set forth in Section 9.3 of this Article, the Union, its officers, agents, representatives, stewards, committee persons and members and all other employees shall not, in any way, whether direct or indirect, instigate, lead, engage in, authorize, cause, assist, encourage, participate in, ratify or condone any strike, sympathy strike, slowdown, work stoppage, picketing or any other form of interference with or interruption of work, whether or not such a strike, sympathy strike, slowdown, work stoppage, or other interference with or interruption of work (a) involves a matter subject to resolution pursuant to the grievance procedures set forth in this Agreement; or (b) involves a matter specifically referred to or covered in this Agreement; or (c) involves a matter which has been discussed between the Company and the Union; or (d) involves a matter which was within the knowledge or the contemplation of the Company and the Union at the time this Agreement was negotiated or executed.

**Section 9.2:** The failure or refusal on the part of any employee to comply with the provisions of Section 9.1 of this Article shall be cause for immediate discipline, including discharge. The individual union officials shall have no authority to take strike action, or any other action interrupting the Company's business. The Company shall have the authority to impose proper discipline, including discharge, in the event the steward or alternate has taken unauthorized strike action or any other action interrupting the Company's business in violation of this Agreement.

**Section 9.3:** In consideration of the Union's commitment as set forth in this Article, the Company will not lock out any of the employees covered by this Agreement.

**Section 9.4:** In the case of any interruption of work, as described above, the Union will take every legal and affirmative step necessary to terminate the interruption of work and control their officers, agents, representatives, stewards, committee persons and members during such interruption.

## **ARTICLE 10 – WORKERS’ COMPENSATION**

**Section 10.1:** The Company agrees to cooperate toward the prompt disposition of employee on-the-job claims.

**Section 10.2:** An employee who is injured on the job, and is sent home or to a hospital, or who must obtain medical attention, shall receive pay at his regular rate for the balance of the workday; provided, however, the total pay for the day will not exceed eight (8) hours. As a condition to receiving such pay, the employee must request medical treatment on the day of the injury, and the treating physician selected by the Member or NCGA must provide a note to the Member confirming that the employee suffered a work-related injury rendering the employee unable to work for the day.

**Section 10.3:** The Member agrees to provide any injured employee transportation at the time of injury from the job to the medical facility and return to the job, or home if required.

## **ARTICLE 11 - ABSENCE**

**Section 11.1:** Medical Leave - An employee who is unable to work because of injury or illness and who furnishes satisfactory evidence thereof, shall be granted a medical leave, without pay, for the time period in which they are unable to work.

**Section 11.2:** Personal Leaves - The Company will consider requests for personal leaves of absence under unusual circumstances. Considerations include the reason for the leave, the difficulty in replacing the employee and the employee's work record. The employee may not engage in gainful employment during such leave. Personal leaves shall be granted in the sole discretion of the Company and if granted, will be without pay or benefits.

**Section 11.3:** Any employee desiring a leave of absence from his employment as provided in this Article shall secure written permission from the Member. The Union shall be given a copy of any leaves granted.

**Section 11.4:** Any employee who tests positive during a random drug test or post-accident test drug or alcohol test, will be immediately terminated.

## **ARTICLE 12 - DISCHARGE, SUSPENSION, OR OTHER DISCIPLINARY ACTION**

**Section 12.1:** The Company will not discharge or suspend any employee without just cause unless it is for lack of work as set forth in Article 13. Discipline or discharge may be appealed through the Grievance Procedure set forth in Article 14.

**Section 12.2:** Discharge or disciplinary layoff shall be documented with a copy provided to the employee affected, and to the Union. The association will also contact a designated FLOC staff member by telephone when a discharge or disciplinary layoff occurs. In the event that an employee voluntarily resigns or is issued a written disciplinary warning, the association will notify the union by e-mail. While an employee must be given the opportunity to dispute a discharge or disciplinary warning in order for it to be valid, any failure of the association to provide the aforementioned notice to the union does not in and of itself invalidate a discharge or written disciplinary warning.

**Section 12.3:** The right to discipline or discharge employees shall remain in the discretion of the Company, except that such discipline or discharge will only be imposed for just cause. Just cause for the purpose of discipline or for the purpose of discharge, or either, shall include but not be limited to: insubordination; violation of work rules; fighting or other violent behavior, or threats of violence; failure to cooperate when requested to work over; failure to follow reasonable directions as to manner and method of performing jobs; failure to obey reasonable instructions of supervision; failure of an employee to properly perform his/her job in accordance with Company standards of quality; absenteeism; excessive tardiness; dishonesty; failure to comply with safety rules or failure

to use safety or special protective devices furnished by the Company; negligence; misrepresentation of any material fact in connection with any claim or concerning his employment or his pay; drinking or being under the influence of alcoholic beverages while working; sale, possession or use of any illegal drug or unauthorized use of any controlled substance; recklessness resulting in an accident while on duty; willful damage or destruction of Company property or equipment.

**Section 12.4:** The Work Rules attached as Appendix B apply to all employees subject to this policy. NCGA and the Members have the right to amend the Work Rules from time to time, as they consider appropriate in their sole discretion. Members may establish additional rules applicable to their own farms (“Members’ Rules”). Members’ Rules apply only to the particular farm of the particular Member issuing the rules. Copies of the Work Rules and any applicable Members’ Rules will be posted in areas where they may easily be seen by the affected employees. If an employee believes that any particular Work Rule or Members’ Rule is unfair, he may file a grievance using the Grievance Procedure set forth in this policy.

**Section 12.5:** Employees will be subject to discipline or discharge if their overall production (per employee) during any two-day period is less than \$5.85 per hour. Exceptions will be made if the poor production is due to poor conditions of the field or crop, or bad weather. Poor production will be excused if the employee’s overall production during that two-day period was at least 75 percent of the average dollars per hour earned by the top 90 percent of the other employees employed on the same farm during the same two-day period.

**Section 12.6:** If an employee is discharged based on credible allegations of violence, threat of violence, reasonable likelihood of violence based on illegal or reckless behavior, or willful destruction of property, NCGA or the Member may in their sole discretion require the employee to immediately vacate his housing and move to any reasonably available temporary housing location. If it is definitively determined within 24 hours of such vacating that the employee did not engage in the alleged acts, the employee will be allowed to return to his housing. Otherwise, the employee will not be allowed to return, and neither NCGA nor the Member will have any responsibility for finding him alternative housing.

**Section 12.7:** If an employee is discharged for any other legitimate reason, neither NCGA nor the Member may require him to vacate his housing unless reasonable suitable alternative housing is available and unless NCGA or the Member provides transportation for the employee to the new housing. This alternative housing must be available to the employee through the conclusion of the period for filing a grievance under Step 1 of the Grievance Procedure. If the employee does not file a grievance, or if the grievance is dismissed, then he will be required to vacate the alternative housing and will not be allowed to return to his regular housing. If the grievance is resolved in favor of the employee, the employee will be allowed to return to his regular housing unless all parties agree otherwise.

**Section 12.8:** In all other cases involving violation of the Work Rules, NCGA and the Member may, at their sole discretion, leave the employee in his current housing or transfer him to a different Member.

### **ARTICLE 13 - EARLY DISCHARGE FOR LACK OF WORK**

**Section 13:1:** It is possible that, because of weather or poor crop conditions, a Member will have to release an employee early for lack of work. If that occurs, the Member will promptly notify NCGA and the Union, and NCGA will make all reasonable efforts to reassign the employee to another farm for the remainder of the season. If reassignment is not possible, the employee will be treated in accordance with the H-2A statute and regulations. An employee who performed satisfactorily but who is released early due to lack of work will be eligible for hire as a Preferred Worker in subsequent seasons.

## **ARTICLE 14 – GRIEVANCE PROCEDURE (Claims against NCGA under this Agreement)**

**Section 14.1:** Recognizing the overriding importance of timely resolution of employee grievances in a seasonal agricultural setting, the parties to this contract have reached agreement on a grievance handling procedure that imposes explicit deadlines. The parties acknowledge the need to adhere to these deadlines, except in rare situations where such strict adherence is rendered impossible by circumstances beyond the control of one or both of the parties. A provision for waiver of time limits in extenuating circumstances is included later in this Article, along with a provision for sanctions for failure of either party to meet specified deadlines imposed in the grievance procedure.

A grievance within the meaning of this Article 14, Article 14A, and Article 14B is (a) an allegation by the employee that the Member or NCGA has violated a specific provision of this Agreement (Article 14), (b) a “Legal Claim” (Article 14A), or (c) an allegation by NCGA or any NCGA grower member that a member of the FLOC staff has violated a specific provision of this Agreement (Article 14B).

Except as provided in Section 14A.1, (Legal Claims), and 14.B.1 below, it is further understood and agreed by the parties that the grievance procedure set forth in Article 14 of this Agreement is the exclusive process for an employee to resolve any dispute over discipline, terms and conditions of employment, wages, benefits, termination, or working conditions that may arise between any employee covered by any provision of this Agreement and the Member. With respect to Legal Claims, see Section 14A below.

**Section 14.2:** The procedure for resolving any dispute under this Agreement that falls under grievance category (a), described above will be as follows:

### **STEP 1**

- A. All grievances arising under this Agreement will be presented by the grievant and/or the designated Union representative (either the Union Representative or FLOC staff member) to the employer or representative on the farm where the grievant is working

within seven (7) working days of its occurrence or within seven (7) working days from the time the aggrieved worker became aware of (or should have become aware of), his cause for complaint.

The grievance shall be reduced to writing and provided to the Member and NCGA.

Failure of the Union to comply with the time limit above shall be considered a dismissal of the grievance.

- B. The Member or representative shall meet with the grievant or designated Union representative within three (3) working days after the grievance is presented by the Union at this Step (Step 1) of the grievance procedure in a good faith effort to resolve the grievance.

Failure of the Member or representative to comply with the time limit above shall be considered as both an agreement to comply with the request contained in the grievance and as an agreement to provide the remedy sought in that grievance.

- C. If the grievance is resolved at Step 1 above, the designated Union representative (Camp Representative or FLOC staff member) or the Member representative shall record the terms of the settlement on the grievance form. This form will be signed by the grievant, the designated Union Representative, the Member or representative, and NCGA.

## **STEP 2**

- A. If the grievance is not resolved at Step 1, the designated Union representative (Camp Representative or FLOC staff member) shall provide written notice to the designated member or the Association Committee within three (3) working days after the impasse has been reached at Step 1.

Failure of the Union to comply with the time limit above shall result in dismissal of the grievance.

- B. Within three (3) working days after receipt of notice from the Union that an impasse has been reached at Step 1 with respect to particular grievance, the Association Committee representative will meet with the FLOC staff member designated to handle Step 2 grievances in an effort to resolve the grievance.

The grievant, the Union Representative and the Member or representative may participate in the Step 2 grievance meeting and may present evidence.

Failure of the Association Committee and the Member to comply with the time limit above shall be considered as both an agreement to comply with the request contained in the grievance and as an agreement to provide the remedy sought in that grievance.

### **STEP 3**

- A. If the parties are unable to resolve the grievance at Step 2 above, it will be submitted in writing, within 15 working days, to the Dunlop Agricultural Commission, 1 or more member(s) of the Dunlop Agricultural Commission that have been designated by that Commission to hear and resolve grievances at Step 3 provided that such panel shall have a balance between commissioners appointed by each party, or, if some alternative Commission has been stipulated to by the parties as a part of this Agreement, an alternative Commission or two or more member(s) of that alternative Commission that have been designated by that Commission and approved by NCGA and FLOC to hear and resolve grievances at Step 3, the final step of the grievance procedure. In the event that the Dunlop Agricultural Commission elects to have 1 of it's members be the sole arbitrator of a grievance at step 3 of the grievance procedure, either the company or the union is entitled to request that the decision of that one member be reviewed by the entire Commission before a final decision is made. The member(s) designated or the presiding Commission shall have the power to provide any relief that would be available in a court

of law or equity, including but not limited to assessment of costs and/or attorney fees. The member(s) designated or the presiding Commission shall have no authority to modify the terms of this Agreement.

**Section 14.3:** Related Provisions with respect to grievances under Article 14.

- A. Any resolution of a grievance at Steps 1 and 2 will be binding only as to the farm where the grievance arose and only in relation to the specific issue.
- B. Time limits may be waived by agreement of the parties. Any waiver granted must be in writing. Disputes concerning time limits are handled in the same manner as all other issues in the grievance procedure (i.e. the contention of either party that the other party failed to adhere to the time limits imposed by the grievance procedure may be appealed to the next Step).

If a grievance is dismissed because of failure to comply with time limits, such dismissal does not preclude the grievant or any subsequent grievant from filing and pursuing a similar grievance that may subsequently arise.

- C. The Executive Director of NCGA, or that person's Designee, will be the primary contact for the Union for the purpose of appealing the grievance to Step 2. The Executive Director of the Association, or that person's Designee, shall have the authority to select and the obligation to identify to the Union the member(s) of the Association Committee referred to in Step 2 of the grievance procedure.

The Union will, by 1 February of each year, notify the NCGA of the names of FLOC staff members who are assigned to various farms covered under this Agreement, and shall supplement that notification as more workers arrive.

- D. The parties have agreed that they will use the Dunlop Agricultural Commission to handle all grievances that reach Step 3 of the grievance procedure (including those involving failure to meet time limits).
- E. Any resolution of a grievance at Step 3 will be binding as to the Association, all past, current, and future members of NCGA, the Union, and any worker represented by the Union, past, present or future.
- F. For purposes of any time limitation specified in Steps 1 through 3 above in Section 14.3, above, a “working day” shall not include any Saturday or Sunday, nor shall it include any day that is a court holiday under North Carolina state law. The company and the union agree that if evidence that is relevant to the disposition of any grievance becomes available after any time limitation in steps 1 through 3 has passed, the time limits will be waived. The grievant will have the right to re-file the grievance including the relevant evidence. The company will not have the obligation to waive the time limits in an instance where the new evidence is a medical excuse from a country other than the United States.
- G. The company and the union agree to collaborate with the Dunlop Agricultural Commission to develop an equitable set of incentives to encourage resolution of grievances before step 3 of the grievance procedure. This incentive structure shall be developed so that there is a monetary penalty to either the company or the union if a grievance reaches step 3 for frivolous reasons.

#### **ARTICLE 14A – GRIEVANCE PROCEDURE (Legal Claims)**

**Section 14A.1:** For grievances related to claims purporting to arise from an employee’s statutory or common law rights under the then-existing laws of the United States or the State of North Carolina which would otherwise give rise to the right of the employee to institute a civil action, the following procedure will apply:

## STEP 1

- A. All grievances arising under this Article will be presented by the grievant(s) and/or the designated Union representative (either the Union Representative or FLOC staff member) to the employer or representative on the farm where the grievant(s) is working or worked within one hundred and eighty (180) days of its occurrence or within one hundred and eighty (180) days from the time the aggrieved worker(s) became aware of (or should have become aware of), that worker's cause for complaint.

The grievance shall be reduced to writing and provided to the Member and NCGA.

Failure of the Union to comply with the time limit above shall be considered a dismissal of the grievance.

- B. The Member or representative shall meet with the grievant(s) or designated Union representative within fifteen (15) working days after the grievance is presented by the Union at this Step (Step 1) of the grievance procedure in a good faith effort to resolve the grievance.

Failure of the Member to comply with the time limit above shall be considered both an agreement to comply with the request and an agreement to provide the remedy contained and sought in the grievance.

- C. If the grievance is resolved at Step 1 above, the designated Union representative (Camp Representative or FLOC staff member) or the Member representative shall record the terms of the settlement on the grievance form. This form will be signed by the grievant, the designated Union Representative and the Member or representative and NCGA.

## **STEP 2**

- A. If the grievance is not resolved at Step 1, the designated Union representative (Camp Representative or FLOC staff member) shall provide written notice to the designated member or the Association Committee within fifteen (15) working days after the impasse has been reached at Step 1.

Failure of the Union to comply with the time limit above shall result in dismissal of the grievance.

- B. Within fifteen (15) working days after receiving a written grievance, the Association Committee representative shall meet with the FLOC staff member designated to handle Step 2 grievances in an effort to resolve the grievance.

The grievant(s), the Union Representative and the Member or representative may participate in the Step 2 grievance meeting/hearing and may present evidence with or without the assistance of counsel.

Failure of the Association Committee or the Member to comply with the time limit above shall be considered as both an agreement to comply with the request and as an agreement to provide the remedy sought in the grievance.

All hearings shall be conducted informally and in such manner as to preserve the substantial statutory and common law rights of the grievant(s), the Union, and the Company. The specific rules that will apply are set forth in Appendix A.

## **STEP 3**

- A. If the parties are unable to resolve the grievance at Step 2 above, it will be submitted in writing, within 15 working days, to the Dunlop Agricultural Commission, 1 or more member(s) of the Dunlop Agricultural Commission that have been designated by that

Commission to hear and resolve grievances at Step 3 provided that such panel shall have a balance between commissioners appointed by each party, or, if some alternative Commission has been stipulated to by the parties as a part of this Agreement, an alternative Commission or two or more member(s) of that alternative Commission that have been designated by that Commission and approved by NCGA and FLOC to hear and resolve grievances at Step 3, the final step of the grievance procedure. In the event that the Dunlop Agricultural Commission elects to have 1 of it's members be the sole arbitrator of a grievance at step 3 of the grievance procedure, either the company or the union is entitled to request that the decision of that one member be reviewed by the entire Commission before a final decision is made. The member(s) designated or the presiding Commission shall have the power to provide any relief that would be available in a court of law or equity, including but not limited to assessment of costs and/or attorney fees. The member(s) designated or the presiding Commission shall have no authority to modify the terms of this Agreement.

At the Step 3 hearing, to be held within one hundred twenty (120) working days after the grievance is submitted to the Dunlop Commission and the conduct of such hearing will be subject to the procedures and provisions set forth in Appendix C attached.

**Section 14A.2:** Related Provisions with respect to a grievance under Article 14A.

- A. Any resolution of a grievance at Steps 1 or 2 will be binding only as to the farm where the grievance arose and only in relation to the specific issue.
- B. Time limits may be waived by agreement of the parties. Any waiver granted must be in writing. Disputes concerning time limits are handled in the same manner as all other issues in the grievance procedure (i.e. the contention of either party that the other party failed to adhere to the time limits imposed by the grievance procedure may be appealed to the next Step).

- C. If a grievance is dismissed because of failure to comply with time limits, such dismissal does not preclude the grievant or any subsequent grievant from filing and pursuing a similar grievance that may subsequently arise.
  
- D. The Executive Director of NCGA or his Designee will be the primary contact for the Union for the purpose of appealing the grievance to Step 2. The Executive Director of NCGA or his Designee, shall have the authority to select and the obligation to identify to the Union the member(s) of the Association Committee referred to in Step 2 of the grievance procedure.

The Union will, by February 1 of each year, notify NCGA of the names of FLOC staff members who are assigned to various farms covered under this Agreement.

- E. The parties have agreed that they will use the Dunlop Commission, one or more member(s) of the Dunlop Commission that have been designated by that Commission to hear and resolve grievances at Step 3, or, if some alternative Commission has been stipulated to by the parties as a part of this Agreement, an alternative Commission, or one or more member(s) of that alternative Commission that have been designated by that Commission to handle all grievances that reach Step 3 of the grievance procedure (including those involving failure to meet time limits).
  
- H. Any resolution of a grievance at Step 3 will be binding as to NCGA, all past, current, and future members of NCGA, the Union, and any worker represented by the Union, past, present or future.
  
- G. For purposes of any time limitation specified in Steps 1 through 3 above in Article 14A, above, a “working day” shall not include any Saturday or Sunday, nor shall it include any day that is a court holiday under North Carolina state law. . The company and the union agree that if evidence that is relevant to the disposition of any grievance becomes available after any time limitation in steps 1 through 3 has passed, the time limits will be waived. The grievant will have the right to re-file the grievance including the relevant

evidence. The company will not have the obligation to waive the time limits in an instance where the new evidence is a medical excuse from a country other than the United States.

- I. In a grievance under Step 3 in which the grievance involves a claim for damages in excess of \$10,000.00 (exclusive of any attorney fees or costs), NCGA shall have the right to elect that the arbitrator be selected from a panel of five (5) arbitrators from the American Arbitration Association (“AAA”). In making this election, NCGA must notify the Union within three (3) working days from the time that the NCGA becomes aware that the grievance has reached Step 3 . Any failure by NCGA to comply with this time deadline shall result in the forfeiture of NCGA’s right of election for the AAA as described above. NCGA will simultaneously request a panel of arbitrators from AAA. Within five (5) working days of the receipt of the panel from AAA, NCGA and the Union will meet in person or by phone for the purpose of striking arbitrators. In the first arbitration the Union will have the first strike and the first strike will alternate thereafter. Any such arbitration under this procedure will be conducted in accordance with the rules of the AAA for arbitration of employment disputes with the exception that the arbitrator(s) so selected shall have the authority to require the prevailing party in any arbitration under Step 3 of Article 14A above to pay the costs associated with the preparation of any transcript that may have been prepared by a court reporter or stenographer of the arbitration hearing at the direction of the arbitrator(s) and/or by agreement of Union and the Association. The Association will be responsible for the payment of the fees and expenses of the AAA and the arbitrator(s) selected. The arbitrator(s) so selected shall have the power to provide any relief that would be available in a court of law or equity, including but not limited to assessment of costs and/or attorney fees. The arbitrator(s) so selected shall have no authority to modify the terms of this Agreement.

## **ARTICLE 14B – GRIEVANCE PROCEDURE (Claims against FLOC under this Agreement)**

**Section 14B.1:** In order to address the problems that arise from the distinct management of H2A labor, the union recognizes the right of NCGA management to raise violations of this agreement. It is of paramount importance that the parties understand the dual objectives of sound agricultural production and efficient management of an international labor supply. It is therefore imperative that management have the same confidence as the union over issues that arise and will be addressed in a timely manner. The procedure for resolving any dispute under this Agreement that falls under grievance category (c), described in 14.1 above will be as follows:

### **STEP 1**

- A. All grievances arising under this Agreement will be presented by the grievant and/or the designated Company representative to the Union within seven (7) working days of its occurrence or within seven (7) working days from the time the aggrieved party became aware of (or should have become aware of), his cause for complaint.

The grievance shall be reduced to writing and provided to the Union.

Failure of the Company to comply with the time limit above shall be considered a dismissal of the grievance.

- B. The Union representative shall meet with the grievant or designated Company representative within three (3) working days after the grievance is presented by the Company at this Step (Step 1) of the grievance procedure in a good faith effort to resolve the grievance.

Failure of the Union or representative to comply with the time limit above shall be considered as both an agreement to comply with the request contained in the grievance and as an agreement to provide the remedy sought in that grievance.

- C. If the grievance is resolved at Step 1 above, the designated Company representative or the Union representative shall record the terms of the settlement on the grievance form. This form will be signed by the grievant, the designated Union Representative and the Member or representative, and NCGA.

## **STEP 2**

- A. If the grievance is not resolved at Step 1, the designated Company representative shall provide written notice to the designated Union representative within three (3) working days after the impasse has been reached at Step 1.

Failure of the Company to comply with the time limit above shall result in dismissal of the grievance.

- B. Within three (3) working days after receipt of notice from the Company that an impasse has been reached at Step 1 with respect to particular grievance, the Union representative will meet with the Company staff member designated to handle Step 2 grievances in an effort to resolve the grievance.

The grievant, the Union Representative and the Company representative may participate in the Step 2 grievance meeting and may present evidence.

Failure of the Union to comply with the time limit above shall be considered as both an agreement to comply with the request contained in the grievance and as an agreement to provide the remedy sought in that grievance.

### **STEP 3**

- A. If the parties are unable to resolve the grievance at Step 2 above, it will be submitted in writing, within 15 working days, to the Dunlop Agricultural Commission, 1 or more member(s) of the Dunlop Agricultural Commission that have been designated by that Commission to hear and resolve grievances at Step 3 provided that such panel shall have a balance between commissioners appointed by each party, or, if some alternative Commission has been stipulated to by the parties as a part of this Agreement, an alternative Commission or two or more member(s) of that alternative Commission that have been designated by that Commission and approved by NCGA and FLOC to hear and resolve grievances at Step 3, the final step of the grievance procedure. In the event that the Dunlop Agricultural Commission elects to have 1 of it's members be the sole arbitrator of a grievance at step 3 of the grievance procedure, either the company or the union is entitled to request that the decision of that one member be reviewed by the entire Commission before a final decision is made. The member(s) designated or the presiding Commission shall have the power to provide any relief that would be available in a court of law or equity, including but not limited to assessment of costs and/or attorney fees. The member(s) designated or the presiding Commission shall have no authority to modify the terms of this Agreement.

#### **Section 14B.2:** Related Provisions with respect to grievances under Article 14B.

- A. Any resolution of a grievance at Steps 1 and 2 will be binding only as to the farm where the grievance arose and only in relation to the specific issue.
- B. Time limits may be waived by agreement of the parties. Any waiver granted must be in writing. Disputes concerning time limits are handled in the same manner as all other issues in the grievance procedure (i.e. the contention of either party that the other party

failed to adhere to the time limits imposed by the grievance procedure may be appealed to the next Step).

If a grievance is dismissed because of failure to comply with time limits, such dismissal does not preclude the grievant or any subsequent grievant from filing and pursuing a similar grievance that may subsequently arise.

- C. The Executive Director of NCGA, or that person's Designee, will be the primary contact for the Union for the purpose of appealing the grievance to Step 2. The Executive Director of the Association, or that person's Designee, shall have the authority to select and the obligation to identify to the Union the member(s) of the Association Committee referred to in Step 2 of the grievance procedure.
- D. The parties have agreed that they will use the Dunlop Commission to handle all grievances that reach Step 3 of the grievance procedure (including those involving failure to meet time limits).
- E. Any resolution of a grievance at Step 3 will be binding as to the Union, all past, current, and future members of Union, the Association, and any worker represented by the Association, past, present or future.
- F. For purposes of any time limitation specified in Steps 1 through 3 above in Section 14.3, above, a "working day" shall not include any Saturday or Sunday, nor shall it include any day that is a court holiday under North Carolina state law. The company and the union agree that if evidence that is relevant to the disposition of any grievance becomes available after any time limitation in steps 1 through 3 has passed, the time limits will be waived. The grievant will have the right to re-file the grievance including the relevant evidence. The company will not have the obligation to waive the time limits in an instance where the new evidence is a medical excuse from a country other than the United States.

- G. The company and the union agree to collaborate with the Dunlop Agricultural Commission to develop an equitable set of incentives to encourage resolution of grievances before step 3 of the grievance procedure. This incentive structure shall be developed so that there is a monetary penalty to either the company or the union if a grievance reaches step 3 for frivolous reasons.

## **ARTICLE 15 – DUNLOP AGRICULTURAL COMMISSION**

The Dunlop Agricultural Commission has served as a labor relations board by private agreement. It had been chaired by the late and former Secretary of Labor John T. Dunlop and established in 1985 to facilitate and resolve long-standing disputes in agriculture in Ohio and Michigan. The current members of the 5 person Commission are David Weil (co-director of the Transparency Project, Taubam Center, John F. Kennedy School of Government, Harvard University), Tom Donahue (former Secretary/Treasurer, AFL-CIO), Jim Holt (economist & H2a expert for National Council of Agricultural Employers), Tom Harris (General Counsel NC State Employees Association) and Erica Peterson (Executive Vice President/CEO of North Carolina Agribusiness Council). The Commission has served as mediator, in the case of the grievance procedure, served as arbitrator, and liason with Federal Government agencies to facilitate resolving conflicts with government regulations.

**Section 15.1:** The parties agree to recognize, and submit to the authority of, the Dunlop Agricultural Commission to continue to serve as a private labor relations board to perform the functions provided for in this Agreement.

**Section 15.2:** The commission shall continue to be referred to as the “Dunlop Agricultural Commission” in honor of the late former Secretary of Labor John T. Dunlop.

**Section 15.3:** The President of the Farm Labor Organizing Committee or his successor and The Executive Director of the North Carolina Growers Association or his successor shall work cooperatively with the current Dunlop Agricultural Commission to facilitate future appointments or transitions that allows for balanced views of its' responsibilities as outlined by this agreement.

**Section 15.4:** The parties agree that two Commissioners will be named by the Farm Labor Organizing Committee and two Commissioners will be named by the North Carolina Growers Association. Each organization will have sole responsibility for naming their Commissioners and securing their agreement to serve. The Commissioners shall serve at the pleasure of the organizations that appointed them, and may be replaced at any time. Vacancies among these four Commissioners occurring by reason of resignation, death, incapacity, removal or for any other reason, shall be filled by the organization that named the Commissioner to be replaced.

**Section 15.5:** Each Commissioner named pursuant to paragraph (3) of this Article, and the person selected as Chair of the Commission named pursuant to the provisions of this Article, shall publicly express a good faith commitment to the objectives of this Agreement, to the principal of collective bargaining between agricultural workers and agricultural employers as embodied in this Agreement, and to an orderly, fair and impartial administration of the duties of the Commission under this agreement.

**Section 15.6:** The Commission shall have the duties and responsibilities designated in this Agreement. In addition, the Commission shall take such actions as it feels appropriate to further the continuation and successful attainment of the objectives of this Agreement, namely to resolve labor disputes between agricultural workers and agricultural employers in North Carolina and to provide a forum and mechanism for collective bargaining between agricultural employers and agricultural workers. To that end, the parties agree to continue to recognize the Commission and cooperate with its efforts to attain the objectives and continuation of this

Agreement in the event this Agreement lapses because of the inability of the parties to agree on the terms of a renewal, extension or replacement of this Agreement.

## **ARTICLE 16 - DURATION OF CONTRACT - RENEWAL - NOTICES TO PARTIES**

**Section 16.1:** (a) This Agreement contains the entire understanding, undertaking an agreement of the Company and the Union. Changes in this Agreement, whether by addition, waiver, deletion, amendment, or modification, must be reduced to writing executed by both the Company and the Union.

(b) This Agreement shall take effect February 1, 2008 and shall remain in effect through December 31, 2008. It shall remain and continue in effect from year to year thereafter from January 1st of each succeeding year, unless changed or terminated in the way later provided herein.

**Section 16.2:** Either party desiring to change or terminate this Agreement must notify the other in writing at least sixty (30) days prior to January 1st, 2008, or of any subsequent year, hereinafter referred to as the "anniversary date." However, changes may be made at any time by mutual consent.

**Section 16.3:** Whenever notice is given by either party of proposed changes, the exact nature of the changes must be stated in the notice and the parties will promptly enter into negotiations thereof.

**Section 16.4:** In the event that either party has given notice of proposed changes and negotiations thereon have not resulted in an agreement by the anniversary date to renew, modify or extend this Agreement, either party may then serve upon the other a ten (10) business days written notice terminating this Agreement; the terms and provisions of this Agreement shall continue in full force and effect until the expiration of said period.

**Section 16.5:** In any event, any changes in or supplemental understandings to this Agreement shall be reduced to writing, signed by both parties hereto and approved by the Union, the same as this Agreement.

**SIGNATURE PAGE**

The Parties hereto sign and have their signatures witnessed attesting to the acceptance of this agreement.

For the North Carolina Growers Association, Inc.  
(NCGA) And Its Employer Members:

For the Farm Labor Organizing Committee  
(FLOC, AFL-CIO):

\_\_\_\_\_  
Craig Stan Eury Jr.  
Executive Director

\_\_\_\_\_  
Baldemar Velasquez  
President

\_\_\_\_\_  
Member of the NCGA

\_\_\_\_\_  
Member, FLOC

\_\_\_\_\_  
Member of the NCGA

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Member, FLOC

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Member of the NCGA

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Member, FLOC

**WITNESSES**

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# APPENDIX A

## Statutory Rights-Step 2 Hearings

The following provisions apply to informal hearings pursuant to Step 2 of the Grievance Procedure for redress of claims for compensation, claims under the federal Fair Labor Standards Act or (if applicable) the Migrant and Seasonal Agricultural Workers Protection Act, or the North Carolina Wage and Hour Act.

- 1) The employee proceeding to Step 2 must present authenticated evidence in support of his claims.
- 2) All parties may be represented by counsel if they wish.
- 3) The parties may, by mutual agreement, file an agreed stipulation of facts.
- 4) Unless limited by stipulation of facts, each party may call and examine witnesses. Each party may cross-examine witnesses called by any other party.
- 5) The statutory or common-law rules of evidence and procedure as applied in the general courts of justice of the State of North Carolina will not govern the admissibility of evidence.
- 6) A party offering documents as evidence must give all parties a reasonable opportunity to examine the documents at least 2 days before the hearing. At the hearing, the party must provide an authenticated copy of each document used, and a copy for each opposing party. If a party wishes to offer multiple documents in evidence, a list of the documents in the order of their presentation must be prepared and offered as an additional exhibit.
- 7) Subject to a valid objection from the opposing party, any party may introduce compact discs, videotapes, audiotapes, or other electronic evidence.
- 8) Subject to a valid objection from the opposing party, any party may introduce testimony by affidavit or electronic recording without presenting the witness live for cross-examination.
- 9) All oral testimony will be recorded.
- 10) In cases involving drug tests or other laboratory results, the authorized representative of the laboratory may testify via affidavit (without appearing in person) regarding test results, chain of custody, or the laboratory's compliance with any applicable laws regarding testing or retesting. Such affidavit must be provided to the opposing parties at least two (2) days before the hearing begins. If this is not possible, the hearing will be postponed so that the opposing parties may have at least two (2) days to review the affidavit. An authenticated copy of the affidavit must be presented at the

hearing. If the opposing parties object to admission of the affidavit, the hearing may be postponed if necessary so that the opposing parties may obtain the testimony of the affiant by telephone.

## **APPENDIX B**

### **CAMP AND WORK RULES**

The following work rules are in effect on all farms covered under the Agreement between Employers affiliated with North Carolina Growers Association and the Farm Labor Organizing Committee (FLOC) during the terms of this Agreement.

These rules were developed in an effort to ensure that all employees covered under this Agreement understand in advance the conduct that is expected of them.

Because of the serious nature of the following offenses, any employee violating any of them may be subject to immediate discharge and loss of housing pursuant to the procedure described in the Agreement.

Employer Operations, reasonable work rules may be added or changed during the term of this Agreement, subject to timely notification to the Union of any proposed changes and/or additions.

Under Article 12, Section 4 of the Agreement, the Union has the right to object, through the Grievance Procedure, to any unreasonable change or addition that may be made in rules and/or penalties during the term of this Agreement.

#### **A. Theft**

Theft of money or other property from the employer, the Association, and/or other co-worker(s) hired or working under the same contract with the Association.

#### **B. Drugs and/or Alcohol**

Possession or consumption of drugs and/or alcohol during working hours, or reporting for work under the influence of drugs and/or alcohol.

#### **C. Insubordination**

Willful refusal to carry out lawful orders of the employer or crew leader where that order(s) is reasonably consistent with the work requirement(s), a work rule described in Appendix B attached to this Agreement, and/or any other right or duty created or provided for in this Agreement.

#### **D. Fighting**

Engaged in a fight with any other person on farm property, either during or outside of working hours unless it can be proven that participation was in self-defense.

#### **E. Willful Destruction of Property**

Willful destruction, damage or waste of farm property or property of others, including, but not limited to, equipment, machinery, crops, housing units, furniture, appliances and common facilities.

#### **F. Assault**

Any unlawful physical assault on or threat to assault the employer or any of his representatives, or anyone lawfully in the camp.

#### **G. Gross Safety Violations**

Gross safety violations.

#### **H. Criminal Convictions**

An employee's conviction of any criminal violation(s) under Articles 2A, 2B, 2C, 3-4, 4A, 5, 5A, 6-7, 7A, 8-11, 13-15, and/or 17-18 of Chapter 14 of the North Carolina General Statutes, any criminal conviction for the use, transportation, sale, or delivery of any controlled substance, and/or any other criminal conviction that materially affects the ability of that worker to perform the essential duties of that worker's job for the Member who employs the employee.

#### **I. Camp Sanitation**

Repeated and serious violations of OSHA regulations relating to labor camp sanitation, including, but not limited to, the following: (a) All inhabitants of the camp are to use the garbage containers that are provided for them, (b) No garbage is to be thrown on the ground, and (c) each family will be responsible for keeping the area around their house free of litter.

#### **J. Field Sanitation**

Repeated and serious violations of the field sanitation requirements of the Member, including, but not limited to, the requirement that: (a) all employees should stay in their own work area unless permission is given by the Member, (b) each employee is responsible for removing all trash from his work area, (c) no glass is to be placed in hampers or tote bins, and (d) each Member has the option to require a deposit for housing and cleaning of work area.

#### **K. Child Labor**

Repeated and serious violations of the limits of federal child labor laws.

#### **L. With the exception of children of a Member, No Children Under the Age of 14 are to be in the fields.**

**M. Burden of Proof** – If any employee covered by this Agreement files a grievance with respect to: (a) any disciplinary action(s) that the Company may desire to take or has taken against that worker(s) under Articles 12 and/or 13 of this Agreement, or (b) any refusal or intended refusal to rehire or re-recruit a worker(s) under the terms of Article 5 of this Agreement, the Company shall have the burden of proof by a preponderance of the evidence.

## APPENDIX C

### STEP 3 PROCEDURE FOR ARTICLES 14, 14A, 14B, (Statutory Rights), GRIEVANCE

**In the application of any procedure(s) or provision contained in this Appendix, the term “arbitrator(s)” shall mean the Dunlop Commission, two or more member(s) of the Dunlop Commission that have been designated by that Commission and approved by NCGA and FLOC to hear and resolve grievances at Step 3, or, if some alternative Commission has been stipulated to by the parties as a part of this Agreement, an alternative Commission, or two or more member(s) of that alternative Commission that have been designated by that Commission and approved by NCGA and FLOC to hear and resolve grievances at Step 3.**

#### **1. Discovery**

The arbitrator(s) shall have the authority to order such discovery, by way of deposition, interrogatory, document production, or otherwise, as the arbitrator(s) considers necessary to a full and fair exploration of the issues in dispute, consistent with the expedited nature of arbitration.

#### **2. Arbitration Management Conference**

As soon as possible after the arbitrator(s) at Step 3 has been identified but not later than 60 days thereafter, the arbitrator(s) shall conduct an Arbitration Management Conference with the parties and/or their representatives, in person or by telephone, to explore and resolve matters that will expedite the arbitration proceedings. The specific matters to be addressed include:

- (i) the issues to be arbitrated;
- (ii) the date, time, place and estimated duration of the hearing;
- (iii) the resolution of outstanding discovery issues and establishment of discovery parameters;
- (iv) the law, standards, rules of evidence and burdens of proof that are to apply to the proceeding;
- (v) the exchange of stipulations and declarations regarding facts, exhibits, witnesses and other issues;
- (vi) the names of witnesses (including expert witnesses), the scope of witness testimony, and witness exclusion;
- (vii) the value of bifurcating the arbitration into a liability phase and damages phase;
- (viii) the need for a stenographic record;

- (ix) whether the parties will summarize their arguments orally or in writing;
- (x) the form of the award;
- (xi) any other issues relating to the subject or conduct of the arbitration;
- (xii) the allocation of attorney's fees and costs.

The arbitrator(s) shall issue oral or written orders reflecting his or her decisions on the above matters and may conduct additional conferences when the need arises.

### **3. Location of the Arbitration**

The parties may designate the location of the arbitration by mutual agreement. In the absence of such agreement before the appointment of the arbitrator(s), any party may request a specific hearing location by notifying the arbitrator(s) at Step 3 in writing and simultaneously mailing a copy of the request to the other party(s). If the arbitrator(s) at Step 3 receives no objection within 10 days of the date of the request, the hearing shall be held at the requested location. If a timely objection is filed with the arbitrator(s) at Step 3, the arbitrator(s) at Step 3 shall have the power to determine the location and its decision shall be final and binding. After the identification of the arbitrator(s), the arbitrator(s) shall resolve all disputes regarding the location of the hearing.

### **4. Date and Time of Hearing**

The arbitrator(s) shall have the authority to set the date and time of the hearing in consultation with the parties.

### **5. Representation**

Any party may be represented by counsel or other authorized representative. A party who intends to be represented shall notify the other party and the arbitrator(s) of the name and address of the representative at least 10 days prior to the date set for the hearing or conference at which that person is first to appear. If a representative files a Demand or an Answer, the obligation to give notice of representative status is deemed satisfied.

### **6. Stenographic Record**

Any party desiring a stenographic record shall make arrangements directly with a stenographer and shall notify the other parties of these arrangements at least three days in advance of the hearing. The requesting party or parties shall pay the cost of the record. If the transcript is agreed by the parties, or determined by the arbitrator(s) to be the official record of the proceeding, it must be provided to the arbitrator(s) and made available to the other parties for inspection, at a date, time, and place determined by the arbitrator(s).

## **7. Interpreters**

Any party wishing an interpreter shall make all arrangements directly with the interpreter and shall assume the costs of the service. All evidence shall be completely translated in to English before it is submitted.

## **8. Attendance at Hearings**

The arbitrator(s) shall have the authority to exclude witnesses, other than a party, from the hearing during the testimony of any other witness. The arbitrator(s) also shall have the authority to decide whether any person who is not a witness may attend the hearing.

## **9. Postponements**

The arbitrator(s): (1) may postpone any hearing upon the request of a party for good cause shown; (2) must postpone any hearing upon the mutual agreement of the parties; and (3) may postpone any hearing on his or her own initiative.

## **10. Oaths**

Before proceeding with the first hearing, each arbitrator(s) may take an oath of office and, if required by law, shall do so. The arbitrator(s) may require witnesses to testify under oath administered by any duly qualified person and, if it is required by law or requested by any party, shall do so.

## **11. Majority Decision**

In those grievances in which more than one arbitrator(s) has been identified to handle the grievance, all decisions and awards of the arbitrator(s)s must be by a majority.

## **12. Order of Proceedings and Communication with Arbitrator(s)**

A hearing shall be opened by: (1) filing the oath of the arbitrator(s), where required; (2) recording the date, time, and place of the hearing; (3) recording the presence of the arbitrator(s), the parties, and their representatives, if any; and (4) receiving into the record the grievance and the Answer, if any. The arbitrator(s) may, at the beginning of the hearing, ask for statements clarifying the issues involved.

The parties shall bear the same burdens of proof and burdens of producing evidence as would apply if their claims and counterclaims had been brought in court.

Witnesses for each party shall submit to direct and cross examination as approved by the arbitrator(s).

With the exception of the rules regarding the allocation of the burdens of proof and going forward with the evidence, the arbitrator(s) has the authority to set the rules for the conduct of the

proceedings and shall exercise that authority to afford a full and equal opportunity to all parties to present any evidence that the arbitrator(s) deems material and relevant to the resolution of the dispute.

Documentary and other forms of physical evidence, when offered by either party, may be received in evidence by the arbitrator(s).

The names and addresses of all witnesses and a description of the exhibits in the order received shall be made a part of the record.

There shall be no ex parte communication with the arbitrator(s), unless the parties and the arbitrator(s) agree to the contrary in advance of the communication.

### **13. Arbitration in the Absence of a Party or Representative**

Unless the law provides to the contrary, the arbitration may proceed in the absence of any party or representative who, after due notice, fails to be present or fails to obtain a postponement. An award shall not be based solely on the default of a party. The arbitrator(s) shall require the party who is in attendance to present such evidence as the arbitrator(s) may require for the making of the award.

### **14. Evidence**

The parties may offer such evidence as is relevant and material to the dispute and shall produce such evidence as the arbitrator(s) deems necessary to an understanding and determination of the dispute. An arbitrator(s) or other person authorized by law to subpoena witnesses or documents may do so upon the request of any party or independently.

The arbitrator(s) shall be the judge of the relevance and materiality of the evidence offered, and conformity to legal rules of evidence shall not be necessary. The arbitrator(s) may in his or her discretion direct the order of proof, bifurcate proceedings, exclude cumulative or irrelevant testimony or other evidence, and direct the parties to focus their presentations on issues the decision of which could dispose of all or part of the case. All evidence shall be taken in the presence of all of the arbitrator(s)s and all of the parties, except where any party is absent, in default, or has waived the right to be present.

### **15. Evidence by Affidavit or Declaration and Post-Hearing Filing of Documents or Other Evidence**

The arbitrator(s) may receive and consider the evidence of witnesses by affidavit, but shall give it only such weight as the arbitrator(s) deems it entitled to after consideration of any objection made to its admission.

If the parties agree or the arbitrator(s) directs that documents or other evidence may be submitted to the arbitrator(s) after the hearing, the documents or other evidence shall be filed with the arbitrator(s), unless the parties agree to a different method of distribution. All parties shall be

afforded an opportunity to examine such documents or other evidence and to lodge appropriate objections, if any.

## **16. Inspection or Investigation**

An arbitrator(s) finding it necessary to make an inspection or investigation in connection with the arbitration shall so advise the parties. The arbitrator(s) shall set the date and time, and shall notify the parties. Any party who so desires may be present during the inspection or investigation. In the event that one or all parties are not present during the inspection or investigation, the arbitrator(s) shall make an oral or written report to the parties and afford them an opportunity to comment.