

KOHALA DITCH CO-OP, INCORPORATED MEMBERSHIP AGREEMENT

THIS AGREEMENT, including the Exhibit(s) attached hereto and incorporated herein by this reference, executed as of this _____ day of _____, 20____, by and between KOHALA DITCH CO-OP, INCORPORATED, a Hawaii consumer cooperative association ("Cooperative"), whose mailing address is PO BOX 190759 HAWI, HAWAII 96719, and _____, a legal entity duly registered and in good standing with the State of Hawaii Department of Commerce and Consumer Affairs ("Member Entity") whose mailing address is _____, is made in consideration of mutual promises and other good and valuable consideration and is as follows:

1. This Agreement is one of several similar membership agreements made by the Cooperative, in its capacity as a non-potable agricultural water service cooperative, with several members organized in the area surrounding the Kohala Ditch, which members ("Members") are mutually and individually obligated under the terms hereof and of such membership agreements. The Cooperative shall be deemed to be acting in its own name for and on behalf of all such Members in carrying out the provisions of such membership agreements or in any action or legal proceeding resulting therefrom.

2. Member Entity hereby acknowledges that its membership is made up exclusively of non-potable agricultural water users.

3. Member Entity hereby agrees to acquire one (1) share of common voting stock of the Cooperative at a price of Ten & 00/100 dollars (\$10.00).

4. Cooperative will exercise reasonable diligence to provide to Member Entity non-potable agricultural water service **for irrigation and other non-potable water purposes only, and not for human consumption ("Non-Potable Water Service")**. It is general knowledge in Hawaii that surface stream water may contain contaminates and people should not drink such non-potable water. There could be contaminates in the non-potable water that, if consumed, may cause illness or death. Cooperative will not be liable for any illness, death, or other damages caused by consumption or other misuse of the non-potable water (including, but not limited to, any uses in violation of the State of Hawaii, Department of Health's rules and regulations, as may be amended from time to time, regarding the use of non-potable water).

5. The Non-Potable Water Service to be furnished by Cooperative to Member Entity shall be delivered and received at a mutually agreed upon point along Kohala Ditch as depicted in Exhibit A. Cooperative's meter, or other volumetric measuring device, shall constitute the point of delivery to Member Entity. Member Entity shall own, operate, and maintain all pipes, equipment, and other facilities beyond the point of delivery. The water delivered through the Non-Potable Water Service by the Cooperative to Member Entity shall not be sold to any person or entity that is not a member of Member Entity.

6. Rate for Service:

a. The rate charged for the Non-Potable Water Service shall be as set forth in the Cooperative's current rate schedule applicable to the service being supplied. Member Entity expressly agrees and understands that the rate schedule and all rates, charges, and adjustments thereto are subject to change by Cooperative's Board of Directors ("Board").

b. Member Entity shall pay Cooperative for the Non-Potable Water Service at the rate provided in the applicable rate schedule and in accordance with the terms and conditions contained in Cooperative's rules and regulations.

7. Right of Access:

a. Duly authorized representatives of Cooperative shall be permitted to enter Member Entity's premises at all times in order to carry out the provisions of this Agreement and for the purpose of installing, reading, inspecting or repairing any meters, devices, pipes, facilities, or other equipment, or for any purpose incidental to the Non-Potable Water Service supplied by Cooperative.

b. Member Entity agrees, upon request of Cooperative, to grant Cooperative, or Cooperative's designee, one or more easements for extending and furnishing service to Member Entity or any other Cooperative member or for any other need of Cooperative in expanding, constructing, operating, and maintaining non-potable agricultural water transmission and/or distribution service along Kohala Ditch or within the Cooperative's service area.

8. Cooperative shall use reasonable diligence to supply Non-Potable Water Service, but does not guarantee the supply of such service against irregularities or interruptions, including long-term or permanent interruptions. In no event shall Cooperative be liable for any damages from irregularities or interruptions of service caused by, but not limited to, an act of God, governmental authority, action of elements, drought, public enemy, accident, labor disturbances, strikes or their equivalent, sabotage, vandalism, required maintenance work, legal process, inability to secure rights of way or other permits needed, or for other cause or causes beyond the control of Cooperative.

9. Member Entity shall, and shall require each member of Member Entity to, utilize the non-potable agricultural water delivered by Cooperative in compliance with State of Hawaii, Department of Health's rules and regulations, as may be amended from time, regarding the use of non-potable water.

10. The Cooperative's rights to terminate, disconnect, discontinue, or refuse to provide Non-Potable Water Service include, but are not limited to, the following:

a. Cooperative has the right to discontinue Member Entity's Non-Potable Water Service as set forth in the Cooperative's rules and regulations, water allocation policies, or other rules, regulations, or policies that may be adopted by the Board from time to time. Within the time period prescribed in its rules and regulations, Cooperative will discontinue providing Non-Potable Water Service to Member Entity for non-payment of any bill or assessment or for selling agricultural water or agricultural water service to any person or entity

that is not a member of Member Entity.

b. Cooperative may refuse to grant Non-Potable Water Service, or may discontinue existing Non-Potable Water Service to, any premises to protect itself against fraud, abuse, or unauthorized use of non-potable water.

c. Cooperative may, at its discretion, assess a daily penalty against Member Entity in lieu of discontinuance of service for offenses other than those specifically described in Section 10.a. above; such penalty shall be equal to ten percent (10%) of the Member Entity's average monthly bill from the prior six (6) month period or, if the Member Entity does not yet have six (6) months of billing history, then in the amount of \$30 per day.

11. The membership agreements (such as this Agreement), together with the Cooperative's Articles of Incorporation, Bylaws, applicable rate schedule, water allocation policies, and rules and regulations, constitute the entire agreement between the Cooperative and its Members. Member Entity also agrees to abide by any additional or amended rules, regulations, or policies that may be adopted by the Board from time to time, to the extent not in conflict with the Articles of Incorporation or the Bylaws.

12. This Agreement is binding on Member Entity and may not be assigned or otherwise transferred without the prior written consent of the Cooperative. This Agreement may not be amended or modified except by a writing signed by the parties hereto.

13. This Agreement shall become effective on the date it is executed and shall remain in effect until terminated by either party with: (a) at least seven (7) calendar days written notice given by Member Entity to Cooperative, or (b) disconnection of Member Entity's service by Cooperative.

[Remainder of this page intentionally left blank; signatures follow on next page.]

IN WITNESS WHEREOF, this Agreement has been executed as of the day and year first above written.

**KOHALA DITCH CO-OP,
INCORPORATED, as "Cooperative"**

By _____
Name: _____
Its: _____

_____,
as "Member Entity"

By _____
Name: _____
Its: _____

Billing Address: _____

Emergency Contact: _____

Telephone: (_____) _____ Cell: (_____) _____

E-Mail: _____