

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Division of Boating and Ocean Recreation
Honolulu, Hawaii 96819

May 26, 2017

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

Hawaii

Consent to Sublease Harbor Lease No. H-83-2, Kona Marine Holdings, LLC, a Delaware limited liability company, Lessee, to Jacks Diving Locker, a Hawaii Partnership, Honokohau Small Boat Harbor, Kailua-Kona, Hawaii, Tax Map Key: (3) 7-04-008:040 (portion).

APPLICANT:

Kona Marine Holdings, LLC, a Delaware limited liability company, (“Lessee” and “Sublessor”), located at 74-381 Kealakehe Parkway, Kailua-Kona, Hawaii 96740 (the “Building”), requests to issue a sublease (“Sublease”), to Jacks Diving Locker, a Hawaii partnership, (“Sublessee”), C/O 75-5813 Ali’i Drive, Kailua-Kona, HI 96740.

LEGAL REFERENCE:

Section 171-36(a)(6), Hawaii Revised Statutes (“HRS”), as amended.

LOCATION:

Portion of Government lands situated at Honokohau Small Boat Harbor, Kealakehe, North Kona Hawaii, identified by TMK (3) 7-04-008:040, as shown on attached map labeled Exhibit A.

LEASE AREA:

Fast land, containing an area of approximately 10,000 square feet (or 0.230 acre), and submerged land exclusive easement, situated in berthing area 3, adjacent to the western boundary of the fast land area, containing an area of approximately 3,300 square feet (or 0.076 acre).

SUBLEASE AREA:

The Sublessee will operate in the premises formerly known as the Fuel Dock Deli. The area consists of approximately 1,525 rentable square feet of floor area on the first floor (excluding the Ice House), together with the rights and obligations associated with the use of the parking areas, streets, sidewalks, planting, and other areas and facilities provided for the common use of tenants and other occupants of the Building.

ZONING:

State Land Use District: Urban

County of Hawaii: CZO: Open

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act.

DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: NO

LEASE CHARACTER OF USE:

The lease, relative to “use” reads “...[F]or the construction of certain improvements which shall be used principally for a marine fueling facility and service station which may include but not be limited to the following...” and continues on to include that “... the lessee shall be allowed to sell fishing gear, batteries, sparkplugs, packaged ice, packaged soft drinks, packaged beer and wine, and other fishing and boat equipment and supplies normally incidental to the operation of this type of facility.” The lease acknowledges that this list is not exclusive.

SUBLEASE CHARACTER OF USE:

The Sublessee will operate a retail sundry store and act as cashier for the fuel dock operations.

TERM OF LEASE:

The lease was originally for thirty-five (35) years, commencing on April, 1, 1984 and expiring on March 31, 2019. On August 28, 2009, the Board of Land and Natural Resources (“Board”), approved the extension of Harbor Lease No. H-82-2 for an additional twenty (20) years, to terminate on November 26, 2039.

TERM OF SUBLEASE:

The Sublease shall begin on April 1, 2017, and shall conclude on March 31, 2022, subject to the conditions set forth in the Sublease, shown as Exhibit B.

The Sublessee shall have an option to renew the Sublease for an additional five (5) years, subject to the good faith negotiations, execution of rent and other terms contained in the Sublease, all of which shall be at prevailing market values.

ANNUAL LEASE RENTAL:

The lease provides for re-opening every five years. The most recent re-opener covers the period November 27, 2009, to November 26, 2014. Rent for that period was set at \$22,000 per annum base rent, or five percent (5%) of annual gross receipts, whichever is greater. The annual base rent is payable in advance, quarterly. Lessee has most recently been paying approximately \$47,000 or \$48,000 per year. In practice this is largely based on a percentage of the lessee’s receipts from the Petroleum Supply Agreement discussed below.

The lease, as amended and extended, provides as to rental on re-opening: “The rental for any ensuing period shall be the fair market value at the time of reopening.” There is no specific requirement for percentage rent in the re-opener. No determination of fair market rent has been set for the current period.

ANNUAL SUBLEASE RENTAL:

\$12,000 per annum, payable monthly, plus annual inflation adjustments ¹.

Sublessee shall not be required to pay rent to the Sublessor for the first six (6) months. During the remainder of the term of the Sublease, Sublessee shall pay to Sublessor, monthly rent as outlined above.

DCCA VERIFICATION:

SUBLESSOR:

Place of business registration confirmed:	YES <u>X</u>	NO <u>__</u>
Registered business name confirmed:	YES <u>X</u>	NO <u>__</u>
Applicant in good standing confirmed:	YES <u>X</u>	NO <u>__</u>

¹ Annual inflation adjustments based upon the United States Department of Labor, Consumer Price Index.

SUBLESSEE

Place of business registration confirmed: YES X NO ___
Registered business name confirmed: YES X NO ___
Applicant in good standing confirmed: YES X NO ___

REMARKS:

On March 24, 2017, Item J-2, the Board deferred the request by Kona Marine Holdings, LLC to sublease to Jacks Diving Locker for the purposes of operating a retail sundry store and act as cashier for the fuel dock operations. Staff has discussed this matter with lessee, consulted with the Department of Attorney General, and re-submits as follows. The Department of Attorney General is prepared to discuss this with the Board as needed, including executive session if desired.

Item J-2 was deferred due to questions raised regarding the determination of gross receipts as it relates to sublease rents and the Petroleum Supply Agreement. The Board requested staff to consult with a Deputy Attorney General to determine whether the lease rent was being calculated correctly, define what is the gross receipt of sales and how it applies to the calculation of the rent, and what, if any agreements had been made by the Department of Transportation, Harbors Division, regarding the rent calculations.

Staff met with the Deputy Attorney General and reviewed the files as it pertained to the lease. The history of the lease is as follows:

On July 19, 1983, the State of Hawaii, Department of Transportation, Harbors Division (DOT-H), as Lessor, entered into Harbor Lease No. H-83-2, with Kona U-Cart, Inc., as Lessee. The Lease was awarded at public auction.

The Lease established a marine fueling facility at Honokohau Harbor near Kailua-Kona, on the island of Hawaii. The Lease was issued for a term of 35 years and covers 13,300 square feet (.306 acre) of land area, of which 10,000 square feet (.230 acre) is fast land and 3,300 square feet (.076 acre) is submerged land.

On November 10, 1983, the Lease was amended by mutual consent, moving the same area of demised property approximately 30 feet south due to DOT-H plans to widen the main harbor channel.

On September 10, 1984, Kona U-Cart, Inc. changed its name to Kona Fuel & Marine, Inc. (“KFM”).

On October 10, 1986, the DOT-H consented to the retroactive amendment of the name of the Lessee in the Lease, to reflect the change in Lessee's corporate name.

In 1989, the leasehold property was acquired from KFM by James L.K. Dahlberg and Diane Dahlberg (“Dahlbergs”), with funding from a first mortgage from Bank of America (“BOA”), formerly know as Honolulu Federal Savings, with KFM taking a second mortgage through Lenders Document Service, Inc. (“Lenders”).

In 1993, the Dahlbergs fell into arrears with the State. Lenders, jointly with BOA, filed for foreclosure. While Lenders negotiated with BOA to acquire the first mortgage, Lenders entered into an agreement with Island Petroleum, Inc., to loan funds to Lenders to pay off BOA.

On November 15, 1993, KFM was involuntarily dissolved.

On November 15, 1994, Lenders entered into a Petroleum Supply Agreement with Island Petroleum, Inc., for Island Petroleum to supply fuel.

On December 28, 1994, a different corporate entity with the same name as the prior dissolved entity, Kona Fuel & Marine, Inc. (“Kona Fuel”), was assigned the Dahlbergs’ lease interest in lieu of foreclosure.

On August 28, 2009, Item J-2, the Board approved the consent to assignment, mortgage, and amendment to extend the Lease term, for Harbor Lease No. H-83-2, from Kona Fuel & Marine, Inc., Assignor, to Kona Marine Holdings, LLC, Assignee.

On December 11, 2009, Item J-3, the Board approved the consent to assignment, update of subleases and assignment of Petroleum Supply Agreement for Harbor Lease No. H-83-2, from Kona Fuel & Marine, Inc., Assignor, to Kona Marine Holdings, LLC, Assignee.

The lease was originally offered at auction based on a minimum yearly rent amount of \$3,200. The successful bidder bid \$4,000 per year. While there is a requirement to pay rent based on percentage rent should it exceed the base rent, percentage rent was not taken into consideration at the time of the auction. When the lease was issued, the first five-year rental term was \$4,000 per year or 5% of gross receipts, whichever is greater. Section (B)(2), ANNUAL RENTAL, of the lease, states in part, “The rental for the five ensuing five-year periods shall be the rental for the immediately preceding period or the fair market rental at the time of the reopening, whichever is higher. At the time of reopening, the fair market rental shall be determined by an appraiser whose services shall be contracted for by the Lessor;”

While the first five years of the lease required the payment of a percentage rent should gross receipts exceed the base rent, it is unclear whether percentage rent was to continue or whether the rent could be adjusted at the time of reopening by the Appraiser. It appears that some form of a Petroleum Sales Agreement has been in place from the beginning of the lease. Approval of this type of agreement was given initially by the DOT-H then approved by the Board of Land and Natural Resources.

The Lessee attributed the net proceeds it received from the sale of fuel toward their gross receipts and this practice continues until today. The lessee subleases portions of the leased area and it attributes the rental income it receives from the sublessees towards its gross receipts. According to the records, the gross receipts of the sublessees were not attributed towards the Lessee's gross receipts. This arrangement was initially approved by the DOT-H, then approved by the Board of Land and Natural Resources.

The existing practice based on the most recent determination of fair market value is that that rent is measured based on 5% of lessee's receipt from its sublessees and the PSA. DOBOR recommends that the proposed sublease to Jacks Diving Locker be approved pursuant to the current practice, sublease rent to be subject to the 5%. However, DOBOR recognizes that we need to re-open the rent for this current period (2014 to 2019).

DOBOR also notes that the proposed sublease calls for the sublessee to be cashier for the fuel sales. Approval of this sublease will not affect existing practice regarding reporting of receipts under the PSA or calculation of rent.

RECOMMENDATION:

That the Board consent to the proposed Sublease under Harbor Lease No. H-83-2, between Kona Marine Holdings, as Sublessor, and Jacks Diving Locker as Sublessee, subject to the following terms and conditions:

1. Any amendment to the Sublease must be approved in writing by the Chairperson;
2. Sublessee must comply with all Federal, State, and County requirements;
3. The standard terms and conditions of the most current consent to sublease form, as may be amended from time to time;
4. Review and approval by the Department of the Attorney General; and
5. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,



Edward R. Underwood
Administrator

BLNR – Consent to Sublease
Harbor Lease No. H-83-2,
Kona Marine Holdings

May 26, 2017
Item J-5

APPROVED FOR SUBMITTAL:

A handwritten signature in blue ink, appearing to read "Suzanne D. Case".

Suzanne D. Case
Chairperson

Attachments:

Exhibit A, Map of Kona Marine Holdings, LLC.

Exhibit B, Jack's Diving Locker Sublease Agreement



SUBLEASE – FUEL DOCK STORE

THIS SUBLEASE (this “Sublease”), is effective March 1, 2017, (the “Transfer Date”) by and between KONA MARINE HOLDINGS, LLC, a Delaware limited liability company (the “Sublessor”) and JACKS DIVING LOCKER, a Hawaii partnership (the “Sublessee”). Sublessor and Sublessee are sometimes referred to as a “Party” and jointly referred to as, (the “Parties”).

WITNESSETH:

Sublessor hereby demises and leases to Sublessee and Sublessee hereby hires from Sublessor, for purposes of operating a retail sundry store currently known as the Fuel Dock Deli (the “Business”). The Business is located within the building known as the Fuel Dock located at the Honokohau Harbor, North Kona, Hawaii, with a street address of 74-381 Kealakehe Parkway, Kailua-Kona, Hawaii 96740 (the “Building”). The Business will operate in those certain premises within the Building consisting of approximately 1,525 rentable square feet of floor area on the first floor of the Building (excluding the Ice House) (the “Leased Premises” or “Store”), together with the rights to use the parking areas, streets, sidewalks, planting and other areas and facilities provided for the common use of tenants and other occupants of the Building (the “Common Areas”).

This Sublease shall be on the following terms and conditions:

ARTICLE I TERM

Section 1.01 The Sublease shall begin on March 1, 2017 (“Transfer Date” or “Commencement Date”) and shall conclude on February 28, 2022 (“Initial Term”), subject to the conditions set forth in this Agreement.

Section 1.02 Liquor License. The existing Liquor License is currently held by Kona Retail Ventures, LLC and is not economically transferrable. Accordingly, Sublessee shall have applied for a new Liquor License and obtained a temporary Liquor License prior or shortly after the Transfer Date.

Section 1.03 Option to Renew. Upon the expiration of the Initial Term, Sublessee shall have an option to renew the Sublease for an additional five (5) years, subject to the good faith negotiations and execution of Rent and other terms contained herein, all of which shall be at prevailing market values.

ARTICLE II RENT and FINANCIAL REPORTING

Section 2.01 Monthly Rent. Until March 1, 2018, Sublessee shall not be required to pay rent to Sublessor. During the remaining approximate forty eight (48) month of the Initial Term of this Sublease beginning for the month of March, 2018, Sublessee for the use and occupancy of the Leased Premises shall pay to Sublessor as monthly rent (the “Rent”) calculated each month as follows:

- If gross income derived from convenient store and deli stock items (as defined herein as “Gross Income”) for the previous month exceeds \$66,000, then rent for that month shall equal 10% of the amount in excess of \$66,000.

Rent, if any, will be due on the 15th day of each month for the previous month once Gross Income for such month is calculated and published.

“Gross Sales” shall mean typical convenience store and deli stock items including, but not limited to, ice, snacks, soda, beer, wine deli sandwiches, breakfast items, coffee, and similar items sold in similarly situated convenience store / deli operations. Gross Sales shall specifically exclude: (i) excise tax; (ii) fuel and related sales; and (iii) goods typically sold by Jacks Diving Locker as part of its separate sublease, including dive tours, classes, scuba gear, snorkel gear, cameras, apparel, rash guards, and sunscreens.

Section 2.02 Financial Reporting. Sublessee will be required to provide Sublessor a detailed, itemized, Gross Sales report on or before the 15th day of each month following the month being accounted for. Sublessor shall reserve the right to periodically audit reports of Gross Sales and Sublessee agrees to cooperate with such audits.

Section 2.03 Late Fee. Rent shall be due on the 15th day of the month. A late fee equal to 5% of the total Rent due will be assessed if not received by the 20th of the month.

Section 2.04 Payment Information. Rent shall be payable as defined in Section 2.01 in lawful money of the United States. Sublessee shall make all payments due under this Sublease using the following information, or such other information as Sublessor may from time to time designate for this purpose:

Payee’s name:	Kona Marine Holdings, LLC
Payee’s address:	P.O. Box 3602 Kailua-Kona, HI 96745-3602
Contact Person:	Bob Curtis and/or Craig Stevenson
Email	fueldock@hawaii.rr.com or craig@LoganViewCo.com
Phone Number:	(808) 325-5310 or (805) 963-8808

**ARTICLE III
OPERATION OF SUBLESSEE'S BUSINESS**

Section 3.01 Use. Sublessee shall not use the Leased Premises for other than the operation of the Business described on page I hereof without the express written approval of Sublessor. Sublessee shall not commit or allow to be committed any waste upon the Leased Premises, or any public or private nuisance or other act or thing which disturbs the quiet enjoyment of any other tenant or occupant in the Building nor shall Sublessee, without the written consent of Sublessor, use any apparatus, machinery or device in or about the Leased Premises which shall cause any substantial noise or vibration. Sublessee shall observe such reasonable rules and regulations as may be adopted and published by Sublessor for the safety, care and cleanliness of the Leased Premises or the Building and the preservation of good order therein.

Section 3.02 Service and Standard of Care. Sublessee agrees to provide reasonable and professional services to the customers of the Store consistent with similarly situated competitive businesses. Sublessee agrees to keep the Store well supplied of marketable inventory commonly found in convenience stores within the lawful use of the Leased Premises. Sublessee reserves the right to exclude the sale of items that if finds to be detrimental to the health of the environment and public, including the sale of tobacco products. Sublessee acknowledges receipt of the Harbor Lease No. H-83-2 and its related assignments and extensions and agrees to adhere to any operating restrictions and comply with any operating obligations contained therein.

**ARTICLE IV
SECURITY DEPOSIT & INVENTORY**

Section 4.01 Security Deposit. No Security Deposit will be required of Sublessee.

Section 4.02 Store Inventory Held For Sale. Sublessee acknowledges that it will be required to purchase the Store Inventory on hand (at cost) as of the Transfer Date from Kona Retail Ventures, LLC ("KRV"). The Store Inventory is defined to include any item held at the Leased Premises intended to be sold and any paper products such as cups, napkins, and other such items that may accompany goods to be sold. Sublessee shall be obligated to pay KRV for the cost of such Store Inventory on the Transfer Date. Any purchase of Store Inventory will be subject to receipts documenting cost prices, and Sublessee will not be required to purchase cigarettes or fishing tackle items.

Section 4.03 Other Assets and Liabilities of the Store as of the Transfer Date. Other than the Store Inventory purchase noted above, Sublessee shall not receive the economic benefit of any Other Assets or bear the economic costs of any Other Liabilities of the Store in place as of the Transfer Date. In the event Sublessee desires to purchase certain equipment and computer systems at the Store that are owned by KRV, Sublessee shall make arrangements directly with KRV to do so. Sublessor will endeavor to compel KRV to leave all equipment, computersystems, displays, counters, and other equipment in the Store for the benefit of Sublessee without compensation by Sublessee.

**ARTICLE V
COMMON AREAS**

Section 5.01 Common Areas Maintenance. It shall be the duty of Sublessee to keep all Common Areas, including but not limited to hallways, stairways, entryways, exits and restrooms, free and clear of any obstructions created or permitted by Sublessee or resulting from Sublessee's operations and to maintain such space as further described under Article VII.

**ARTICLE VI
TENANT IMPROVEMENTS & ALTERATIONS**

Section 6.01 Sublessor's Consent Required for Alterations. Sublessee agrees the Leased Premises are in a reasonable condition and that Sublessee will take good care of the Leased Premises, and the Leased Premises will not be significantly altered or changed without the prior written consent of Sublessor or subject to the approved TI Budget defined under Section 6.03. Sublessee will not construct any additions to or make any alterations in the Leased Premises or attach any fixtures or equipment therein or thereon other than as approved under Section 6.03 without the prior written consent of Sublessor.

Section 6.02 Care of Leased Premises and Building. Except as provided in Section 6.01 hereof, Sublessee shall not damage or deface the walls, floors or ceilings, drill holes (except for hanging pictures and blinds and installing of light fixtures and telephones), make or suffer any strip or waste or unlawful, improper or offensive use of the Store, obstruct hallways and other common areas, commit any act which may damage the structural parts of the Building or disturb the quiet enjoyment of any other tenant or occupants in the Building.

Section 6.03 Tenant Improvement Allowance. Sublessor shall provide Sublessee a \$25,000 tenant improvement allowance (the "TI Allowance") on the Transfer Date to be used by Sublessee exclusively for improvements to the Leased Premises, including, but not limited to, equipment, fixtures, painting, electrical, HVAC, plumbing and other related costs. Any and all improvements, whether paid for by the TI Allowance or otherwise, shall be for the benefit of Sublessee during the Initial Term and any Renewal Term of the Sublease. In the Event of Default by Sublessee, or at the natural termination of the Sublease, any and all existing and new improvements to the Leased Premises shall be retained by Sublessor.

Section 6.04 Allowance Disbursements, Lien Releases, Permits, Building Codes. Sublessee shall submit to Sublessor a detailed line item Tenant Improvement Budget including a schedule of when the work will commence and estimated time to complete. The TI Allowance will be provided in lump sum to Sublessee at the Transfer Date and the funds shall be deployed at the discretion of Sublessee. Unless agreed to in writing by Sublessor, any and all tenant improvement costs in excess of the \$25,000 TI Allowance shall be paid by Sublessee. Sublessee agrees to obtain and provide Sublessor with contractor lien releases as necessary. Furthermore, Sublessee agrees and is required to obtain all necessary permits and follow all building codes with respect to any improvements to the

Leased Premises.

ARTICLE VII
UTILITIES, MAINTENANCE AND REPAIR BY SUBLESSEE;
OBSERVANCE OF LAWS

Section 7.01 Utilities. The Leased Premises is metered separately for electricity usage. Sublessee shall establish electricity service under Sublessee's name and shall pay Hawaiian Electric Light Company or any successor thereto, directly for Sublessee's electricity usage pertaining to the Leased Premises. Sublessee shall be responsible for directly establishing and paying for telephone/internet service. Sublessor shall furnish basic water, sewer and trash removal.

Section 7.02 Common Area Maintenance. Sublessee shall maintain the common area restrooms and adjoining hallway. Maintenance shall include daily cleaning and replenishing of supplies such as air fresheners, toilet paper, paper towels, soap, etc. in the restrooms and general cleaning of the adjoining hallway. The restrooms shall remain open for all tenants and customers of the Building. Sublessor shall provide Sublessee with a \$500 monthly allowance to offset a portion of the costs associated with maintaining the restrooms with the balance of such costs remaining an operating expense of Sublessee.

Section 7.03 Sublessee's Obligations -- Maintenance of Leased Premises. Sublessee shall at its own expense and from time to time and at all times during the term hereof, keep the interior of the Leased Premises and any glass (interior or exterior), storefronts and any improvements now or hereafter constructed in the Leased Premises in good order, condition and reasonably acceptable repair (damages from unavoidable casualty excepted), keep the Leased Premises in a strictly clean and sanitary condition, and observe and perform all of the laws, ordinances, rules and regulations for the time being applicable to the Leased Premises. A failure to observe the foregoing shall be considered a default under this Sublease. Notwithstanding any provision to the contrary herein, Sublessor shall not be responsible for any costs or expenses incurred as a result of Sublessee's failure to keep the Leased Premises and improvements in good order, condition and repair, or by reason of the nonobservance or nonperformance of the said laws, ordinances, rules and regulations, or of this covenant. Sublessee will indemnify and save harmless Sublessor and the Lessor, hereinafter identified, against all actions, suits, claims and damages by whomsoever brought or made by reason of Sublessee's failure to keep the Leased Premises and improvements in good order, condition and repair, or by reason of the nonobservance or nonperformance of the said laws, ordinances, rules and regulations, or of this covenant.

ARTICLE VIII
INSURANCE

Section 8.01 Comprehensive General Liability Policy. Sublessee shall procure, at Sublessee's own cost, and keep in force a policy of comprehensive general liability and Property damage insurance, issued by an insurance company acceptable to Sublessor, with minimum initial

limits of not less than One Million Dollars (\$1,000,000.00) for bodily injury to or death of one person and not less than Two Million Dollars (\$2,000,000.00) for bodily injury to or death of more than one person, and a policy in the sum of not less than Five Hundred Thousand Dollars (\$500,000.00) insuring against claims for Property damage, said policies to name Sublessor, Lessor (hereinafter defined), and any mortgagee of record as additional insureds and to cover the Leased Premises and the Common Areas. Such policies noted above shall include liquor liability coverage approved by Sublessor in its reasonable discretion. Pursuant to this agreement, Sublessee shall have no liability whatsoever as it relates to the Sublessor's ownership interest in the building and the property as a whole and therefore the operating liability of Sublessee is confined to its own activity as a tenant within the confines of the Leased Premises.

Section 8.02 Workers' Compensation Policy / Health Insurance. Sublessee shall procure and keep in force, workers' compensation coverage as required by State of Hawaii law covering all of Sublessee's employees and shall adhere to all employment laws regarding providing and paying for Health Insurance with respect to its employees.

Section 8.03 Property Insurance. Sublessee shall procure and keep in force Property insurance against all risk or loss for the Sublessee's improvements, fixtures, inventory, equipment and personal Property in or upon the Leased Premises.

Section 8.04 Policy Requirements. All policies of insurance required hereunder shall be issued by insurance companies with general policyholders' rating of not less than an "A" and a financial rating of "AAA" as rated in the most current Best's Insurance Reports, or successor publication, and shall be licensed to do business in the State of Hawaii. Said policies shall be issued in the names of Sublessor, Sublessee, Lessor hereinafter identified, and such other persons or firms as Sublessor may require. Such policies shall be for the mutual and joint benefit and protection of Sublessor, Sublessee, said Lessor and others as may be designated. Executed copies of such policies of insurance or certificates thereof shall be delivered to Sublessor on or before the Commencement Date of this Sublease and, thereafter, within thirty (30) days prior to the expiration of the term of each such policy or modification of any term or provision thereof. All public liability and Property damage policies shall not preclude Sublessor from recovering in the event of a loss occasioned by reason of the negligence of Sublessee. As often as any such policy shall expire or terminate, renewal or additional policies shall be procured and maintained by Sublessee in like manner and to like extent. If acceptable to the company writing Sublessee's policies, Sublessee's policies will give to Sublessor thirty (30) days notice in writing in advance of any cancellation or lapse of the policy or the Transfer Date of any reduction in the amounts of insurance. All public liability, Property damage and other casualty policies shall be written on an "occurrence" basis as primary policies, not contributing with and not in excess of coverage which Sublessor may carry. In the event of Sublessee's negligence or other fault, the Sublessee's ultimate liability to Sublessor shall not be limited to Sublessee's insurance policies' limits of liability. From time to time, Sublessor may re-examine the limits of said policies, and if a prudent business person owning the Building and using the same for a similar use would carry insurance with higher limits, then, on demand, Sublessee shall increase the limits of such policies to such higher limits.

Section 8.05 Limitation of Liability. Sublessor and Sublessor's insurance carrier shall not be liable to Sublessee for any damage to its property attributable to electricity, plumbing, gas, water or sewage or to the bursting, leaking, overflowing or running of any tank, washstand, closet or pipe in or about the Leased Premises unless said damage is caused by Sublessor's negligent failure to properly maintain the Building and its systems.

Section 8.06 Waiver of Subrogation. To the extent that a loss is covered by insurance in force and recovery is made for such loss, Sublessor and Sublessee hereby mutually release each other from liability and waive all rights to any right of recovery against each other for any loss from perils insured against and paid under their respective fire insurance policies (including extended coverage), provided that this waiver shall not be applicable if it has the effect of invalidating any insurance coverage of Sublessor or Sublessee.

ARTICLE IX INDEMNITY AGAINST CLAIMS

Section 9.01 Protection of Sublessor. Sublessee agrees to indemnify and save harmless Sublessor and the Lessor (hereinafter identified) against and from any and all claims or demands by or on behalf of any person or persons, firm or firms, corporation or corporations (including, without limitation, Property damage, personal injury and wrongful death) arising from the negligent conduct or management of or from any work or thing whatsoever done by Sublessee in or about the Leased Premises, and Sublessee will further indemnify and save Sublessor and said Lessor harmless against and from any and all claims arising from any breach or default on the part of Sublessee in the performance of any covenant or agreement on the part of Sublessee to be performed pursuant to the terms of this Sublease, or arising from any act or negligence of Sublessee or any of its agents, contractors, servants, employees or licensees, and from and against all costs, reasonable counsel fees, expenses and liabilities incurred in or in connection with any such claim or demand or action or proceeding brought thereon.

Section 9.2 Liens. Sublessee shall not commit or suffer any act or neglect whereby the Leased Premises, including the improvements therein or thereon, or the interest of Sublessor or Lessor therein, at any time during the term hereof becomes subject to any attachment, judgment, lien, charge or other encumbrance, and Sublessee shall indemnify Sublessor and the Lessor, hereinafter identified, against and hold Sublessor and said Lessor harmless from, all losses, costs and expenses (including, without limitation, reasonable attorneys' fees) incurred by Sublessor and/or said Lessor.

ARTICLE X ENTRY BY SUBLESSOR

Section 10.01 Right of Entry of Sublessor for Maintenance and Repair. Sublessee shall

permit Sublessor and its agents to enter into and upon the Leased Premises at all reasonable times for the purpose of maintaining the Building, or for the purpose of making repairs, alterations or additions to any other portion of said Building, including the erection and maintenance of such scaffolding, canopies, fences and props as may be required, without any rebate of rent and without any liability to Sublessee for any loss of occupation or quiet enjoyment of the Leased Premises thereby occasioned; provided, however, that all such work shall be done as promptly, and in such manner as to cause as little interference as reasonably possible.

Section 10.02 Right of Sublessor to Locate Utility Mains, Etc. Sublessor shall have the right, and Sublessee shall permit Sublessor to locate and to maintain within the Leased Premises, utility mains and other facilities serving other premises, when such location is dictated by necessities of engineering design, good practice and/or code requirements. Such mains and other facilities shall be located so as to cause a minimum of interference with Sublessee and to be unobtrusive in appearance. Such facilities shall include, but are not necessarily limited to, drains, water supply, sewage lines, sewage vents, steam and condensate pipes, electric power circuits, telephone circuits, pump stations, electric panel boards, sanitary vents, fresh air supply ducts and exhaust ducts.

ARTICLE XI DESTRUCTION OF, DAMAGE TO, OR RECONSTRUCTION OF THE BUILDING OR DEMISED PREMISES

Section 11.01 Repairs by Sublessor. If any portion of the Building is damaged or destroyed during the term hereof by fire or other casualty or cause, Sublessor shall, within a reasonable time after the occurrence thereof, give Sublessee notice of Sublessor's intent to either: (a) replace and rebuild the same to the extent necessary and practicable to restore the same to substantially the condition in which it existed immediately prior to such damage or destruction; or (b) terminate this Sublease on a date specified in such notice, which date shall be not less than five days after such notice is given, and on such date this Sublease shall terminate and Sublessor, after refunding any unearned rent paid in advance by Sublessee, shall have no further obligation hereunder. In the event of such termination, Sublessee shall forthwith surrender the Leased Premises and shall be relieved of all liability for further rent. Sublessee hereby waives any and all claims for damage and shall not be entitled to any damages for any loss suffered by Sublessee as a result of any such damage or destruction to the Leased Premises, the Building or said other improvements.

Section 11.02 Reconstruction or Major Renovation of the Building. In the event Sublessor elects to reconstruct or material renovate the Building, notice shall be provided to Sublessee at least 90 days prior to the start date of such project. In such a case, the Leased Premises may be required to be closed or relocated until such project is completed. At this time, Sublessor and Sublessee shall have to option of terminating this Sublease at no cost to the other party but agree to work in good faith toward the negotiation and execution of a new sublease within the reconstructed building.

ARTICLE XII DEFAULT

Section 12.01 Events of Default / Right to Re-enter. An Event of Default with respect to Sublessee's obligations hereunder shall be deemed to have occurred in the event of any failure, action or inaction by Sublessee to:

- (a) pay any rent due hereunder when the same shall be due, regardless of whether it shall have been legally demanded, and such failure shall continue for a period of five (5) days;
- (b) observe and perform any terms, conditions or covenants of this Sublease to be observed or performed by Sublessee under all Articles hereunder, including, but not limited to a failure to adhere strictly to all liquor laws, employments laws, and other governmental requirements and all other requirements required under any Article of this Sublease Agreement; or
- (c) if Sublessee shall falsify any reports required hereunder or in any other manner attempt to defraud Sublessor; or
- (d) if Sublessee shall fail to pay any debts as they come due or shall cause or suffer the appointment of or taking possession of Sublessee's Property by a receiver of other custodian, or begin or have begun against Sublessee as debtor a case under the Federal Bankruptcy law, or if Sublessee shall abandon the Leased Premises or suffer this Sublease to be taken under any writ of execution; or
- (e) if Sublessee shall experience a change in ownership not approved by Sublessor or discontinue being in good standing under its organizational documents under the laws of the State of Hawaii or such other jurisdiction as may be applicable or if the State of Hawaii Department of Land and Natural Resources (for whatever reason) rejects the Sub-Lease;
- (f) Sublessor agrees to Dolphin Divers/Jeff & Teri Leicher acquiring up to the full 100% ownership of Jack's Diving Locker, which is currently a 50/50 partnership between Dolphin Divers and Laros Diving, Inc.
- (g) if Sublessee defaults under the terms of the Fuel Services Agreement or if such agreement terminates.

THEN, any such occurrence or happening shall be considered an Event of Default by Sublessee and Sublessor, in addition to any other rights or remedies it may have, shall have the immediate right of re-entry, with or without termination, and may remove all persons and Property from the Leased Premises (and such Property may be removed and stored in a public warehouse or elsewhere at the cost and risk of, and for the account of Sublessee), all without service of notice or resort to legal process and without Sublessor's being deemed guilty of trespass or becoming liable for any loss or damage which may be occasioned thereby. If Sublessee shall fail to pay the cost of removing and storing any of its personal Property after it has been stored for a period of thirty days or more, Sublessor may sell any or all of such Property at public or private sale and shall apply the proceeds of such sale first, to the cost of such sale; second, to the payment of the charges for removal and storage, if any; and third, to the payment of any other sums of money which may be due from Sublessee to Sublessor under the terms of this Sublease, and the balance, if any to Sublessee. A failure of Sublessor to notice Sublessee of an Event of Default shall not constitute an admission or waiver of such Event of Default by Sublessor.

Section 12.02 Fuel Services Agreement. Sublessee acknowledges and agrees that the Fuel Services Agreement and this Sublease work in concert together and therefore agrees that the

termination of the Fuel Services Agreement shall also result in the automatic termination of this Sublease.

Section 12.03 Termination and Damages. If a Sublessee Event of Default has occurred as provided under Paragraph 12.01 or 12.02 herein, Sublessor may elect to terminate this Sublease. Termination may, but need not necessarily, be made effective by the giving of notice to Sublessee of Sublessor's intention to end the term of this Sublease, specifying a day not earlier than five (5) days thereafter, and, upon the giving of such notice, the term of this Sublease and all right, title and interest of Sublessee hereunder shall expire as fully and completely on the day so specified as if that day were the date herein specifically fixed for the expiration of the term. No re-entry or taking possession of the Leased Premises by Sublessor shall be construed as an election on its part to terminate this Sublease unless a notice of such intention be given to Sublessee or unless the termination thereof be decreed by a court of competent jurisdiction. Should Sublessor at any time terminate this Sublease for Sublessee's Event of Default, in addition to any other remedies Sublessor may have, Sublessor may recover from Sublessee all damages it may incur by reason of such default, including, without limitation, the cost of recovering and repairing the Leased Premises, reasonable attorneys' fees, and rent and charges through the later of the date this Sublease was terminated or the date Sublessee surrendered possession (including the removal of its Property).

Section 12.04 Separate Suits. Sublessor shall have the privilege of splitting its cause of action for rent so as to permit institution of a separate suit or suits or proceedings for the rent hereunder reserved to Sublessor and a separate suit or suits or proceedings for any other payment required hereunder, and neither the institution of such suit or proceedings nor the entry of judgment therein shall bar Sublessor from bringing a subsequent suit or proceedings for the rent or for any other payments required hereunder.

Section 12.05 Non-Waiver. The waiver by Sublessor of any breach of any term, covenant or condition herein contained shall not be deemed to be a waiver of such term, covenant or condition or any subsequent breach of the same or any other term, covenant or condition herein contained. The subsequent acceptance of rent hereunder by Sublessor shall not be deemed to be a waiver of any preceding breach by Sublessee of any term, covenant or condition of this Sublease, other than the failure of Sublessee to pay the particular rent so accepted, regardless of Sublessor's knowledge of such preceding breach at the time of acceptance of such rent.

Section 12.06 No Accord and Satisfaction. No payment by Sublessee or receipt by Sublessor of a lesser amount than the monthly rent herein stipulated shall be deemed to be other than on account of the earliest stipulated rent, and no endorsement or statement on any check or any letter accompanying any check or payment as rent shall be deemed an accord and satisfaction. Sublessor may accept such check or payment without prejudice to Sublessor's right to recover the balance of such rent or pursue any other remedy provided in this Sublease.

ARTICLE XIII ASSIGNMENT AND SUBLETTING

Section 13.01 Assignment and Sublease. Sublessee shall not, without the prior written consent of Sublessor, which consent may be withheld in Sublessor's sole discretion, assign this Sublease or any interest herein, and shall not sublet the Leased Premises or any part thereof or any right or privilege appurtenant thereto, or suffer any other person (other than agents and employees of Sublessee) to occupy or use the Leased Premises, or any portion thereof. A consent to the assignment, subletting occupation or use by any other person shall not be deemed to be a consent to any subsequent assignment, subletting, occupation or use by another person. Any such assignment, subletting, occupation or use without such consent shall be void and shall, at the option of Sublessor, be an Event of Default and terminate this Sublease. As to the interest of Sublessee, neither this Sublease, nor any interest herein, shall be assignable by operation of law, without the written consent of Sublessor, whose consent shall not be unreasonably withheld.

ARTICLE XIV EMINENT DOMAIN

Section 14.01 Automatic Termination of Sublease. If at any time or times during the term hereof, any corporation or government authority having the power of eminent domain shall condemn the whole of the Leased Premises, Sublessee shall peaceably surrender and deliver up to the condemning authority the Leased Premises, and the term of this Sublease shall cease as of the day possession is taken by such condemning authority and all rent shall be paid up to that date. Sublessee shall not be entitled to claim or receive any portion of the compensation or damages payable or to be paid by reason of such condemnation, except as hereinafter specified, and all such compensation and damages, except as hereinafter specified, shall be payable to Lessor, hereinafter identified, and Sublessor, without any apportionment or reduction on account of Sublessee's subleasehold interest. If only a part of the Leased Premises shall be taken by the condemning authority, this Sublease shall terminate as to the portion taken, and, unless this Sublease be terminated as hereinafter provided, it shall continue in full force and effect as to the remainder of the Leased Premises. If any portion of the Common Areas in the Building is taken, and such taking deprives Sublessee and Sublessee's customers, agents or suppliers of reasonable ingress and egress to and from the premises, Sublessee shall have no right to cancel or terminate this Sublease if Sublessor promptly takes steps to restore reasonable means of ingress and egress and completes such restoration within a reasonable time thereafter. In the event of such taking of such Common Areas, there shall be no reduction or abatement of any rent or other charge payable by Sublessee to Sublessor.

ARTICLE XV QUIET POSSESSION

Section 15.01 Covenant of Quiet Enjoyment. Upon payment by Sublessee of the rent as aforesaid and upon the observance and performance of the covenants of Sublessee herein contained, Sublessee shall peaceably and quietly hold and enjoy the Leased Premises for the term of this Sublease without hindrance or interruption by Sublessor or any other person or persons (other than Sublessor's mortgagee) lawfully or equitably claiming by, through or under Sublessor.

**ARTICLE XVI
RELATIONSHIP OF PARTIES**

Section 16.01 No Partnership Intended. It is expressly understood that Sublessor does not, in any way or for any purpose, become a partner of Sublessee in the conduct of Sublessee's business, or otherwise, or a joint venturer or member of a joint enterprise with Sublessee.

**ARTICLE XVII
FORCE MAJEURE CLAUSE**

Section 17.01 Performance Excused. If either party hereto shall be delayed or hindered in or prevented from the performance of any act required hereunder by reason of strikes, lockouts, labor troubles, inability to procure materials, failure of power, restrictive governmental laws or regulations, riots, insurrection, war or other reason of a like nature not the fault of the party delayed in performing work or doing acts required under the terms of this Sublease, then performance of such act shall be excused for the period of the delay, and the period for the performance of such act shall be extended for a period equivalent to the period of such delay. It is understood, however, that this provision shall not operate to excuse Sublessee from the prompt payment of rent or any other payments required by the terms of this Sublease.

**ARTICLE XVIII
NOTICES**

Section 18.01 Notices. All notices by Sublessor to Sublessee, or by Sublessee to Sublessor, shall be in writing. Notices to Sublessee shall be deemed to be sufficiently given if and when either delivered personally to Sublessee, delivered to any person in the employ of Sublessee on the Leased Premises, or mailed by registered or certified mail, with postage prepaid thereon, addressed to Sublessee at the Leased Premises. Notice to Sublessor shall be deemed to be sufficiently given if and when delivered personally to an officer or agent of Sublessor, or mailed by registered or certified mail, with postage prepaid thereon, addressed to Sublessor at the address below. Sublessor's address for notices may be changed from time to time.

<p>Sublessor Kona Marine Holdings, LLC C/O Bob Curtis P.O. Box 3602 Kailua-Kona, HI 96745-3602 (808) 325-5310 fueldock@hawaii.rr.com</p> <p>And</p> <p>C/O Craig Stevenson 1203 De La Vina Street Santa Barbara, CA 93101 (805) 729-2888 craig@loganviewco.com</p>	<p>Sublessee Jacks Diving Locker C/O Teri Leicher 75-5813 Alii Drive Kailua-Kona, HI 96740 (808) 329-7585 teri@jacksdivinglocker.com</p>
--	---

**ARTICLE XIX
SURRENDER OF SUBLEASE**

Section 19.01 Showing. At any time during this Sublease, Sublessor shall be permitted to show the Leased Premises during business hours to prospective tenants. Showing the Leased Premises as aforesaid shall be carried out in such a manner as to entail a minimum of interference with the business of Sublessee.

Section 19.02 Surrender and Cooperation Upon Termination. Upon termination of this Sublease, Sublessee shall quietly leave, surrender and deliver up to Sublessor possession of the Leased Premises, together with all improvements or additions upon or belonging to the same, by whomsoever made, in good order, repair and condition, reasonable wear and tear and casualty beyond the control of Sublessee excepted. Notwithstanding the forgoing, Sublessee shall fully cooperate and assist in ensuring that the liquor license and all other business permits and licenses are transferred in an organized and expeditious fashion to Sublessor or its designee without any interruption of service

at the Leased Premises with respect to operational matters. Sublessee shall surrender all keys for the Leased Premises to Sublessor at the place then fixed for the payment of rent and shall inform Sublessor of all combinations on locks, safes and vaults, if any, in the Leased Premises. Sublessee shall indemnify Sublessor against any loss or liability resulting from delay by Sublessee in so surrendering the Leased Premises, including, without limitation, any claims made by any succeeding sublessee founded on such delay. Sublessee's obligation to observe or perform this covenant shall survive the expiration of the term or other termination of this Sublease. Any failure of Sublessee to affect an organized and expeditious handover of the business shall subject Sublessee to additional liability and damages in law or of equity.

ARTICLE XX ENVIRONMENTAL INDEMNITY

Section 20.01. Environmental Indemnity. Sublessee shall indemnify Sublessor and hold Sublessor harmless from any cost, liability or expense imposed upon Sublessor under any local, state or federal law, ordinance, statute, rule, regulation, or judicial or administrative order because of or arising out of any contamination of the premises or any contamination of groundwater or surrounding lands because of or arising out of contamination of the Leased Premises due to the actions of Sublessee or Sublessee's employees or agents from and after the Commencement Date. The obligations hereunder shall survive termination of this Sublease.

ARTICLE XXI MASTER LEASE

Section 21.01 Master Lease. This Sublease is subject and subordinate in all respects to the Master Lease, hereinafter described, including receipt of the consent of the Lessor to this Sublease.

ARTICLE XXII GENERAL

Section 22.01 Waiver of Jury Trial and Counterclaims / Mediation. The parties hereto shall, and they hereby do, waive trial by a jury in any action, proceeding or counterclaim brought by either of them against the other on any matters whatsoever arising out of or in any way connected with this Sublease, the relationship of Sublessor and Sublessee, Sublessee's use or occupancy of the Leased Premises, and/or any claim of injury or damage. If Sublessor commences any proceedings for nonpayment of Rent, Sublessee will not interpose any counterclaim of whatever nature or description in any such proceedings. This shall not, however, be construed as a waiver of Sublessee's right to assert any such claims in any separate action or actions brought by Sublessee. Sublessor and Sublessee agree to mediate any dispute between them arising out of this Agreement, prior to initiation of litigation. If the parties cannot agree on a mediator, either party may petition the Superior Court of the County where the Property is located, which Court shall be authorized to appoint a mediator. The

parties shall cooperate to promptly schedule the mediation. The mediator may conduct more than one session and both parties shall pay the mediator's fees equally. Matters within the jurisdiction of small claims court are excluded from the foregoing mediation requirement.

Section 22.02 Retention of Passkey. Sublessor and Sublessor's agents, workmen and engineers may retain a passkey to the Leased Premises and may enter the Leased Premises in the event of an emergency or to inspect or show the Leased Premises to prospective tenants as provided in Section 19.01 hereof, or to maintain, clean, make repairs, additions or alterations to the Leased Premises or to adjoining Property or for any lawful purpose.

Section 22.03 Brokers. Sublessor and Sublessee hereby represent and warrant each to the other that no brokers, agents or finders were involved on their behalf in negotiating or consummating this Sublease.

Section 22.04 Lessor. "Lessor" refers to the STATE OF HAWAII, by its Board of Land and Natural Resources, and its successors and assigns.

Section 22.05 Master Lease. "Master Lease" refers to that certain Harbor Lease No. H-83-2 dated July 19, 1983 and entered into by and between the State of Hawaii by its Board of Land and Natural Resources as Lessor, and Kona U-Cart, Inc. as Lessee, recorded in the Bureau of Conveyances of the State of Hawaii (the "Bureau") in Book 18943, Page 357, as amended by unrecorded Amendment of Harbor Lease dated November 10, 1983, and as further amended by Amendment and Extension of Harbor lease No. 83-H-2 recorded in the Bureau as Document No. 2010-003601 (as amended, the "Lease"), which Lease was assigned to KONA FUEL & MARINE, INC., a Hawaii corporation by Assignment dated December 28, 1994, recorded in the Bureau as Document No. 97-080406, consent thereto given by the State of Hawaii, by its Board of Land and Natural Resources by instrument recorded in the Bureau as Document No. 97-080407, said Lease having been assigned to Sublessor by assignment on December 31, 2009, consent thereto given by the State of Hawaii, by its Board of Land and Natural Resources.

Section 22.06 Miscellaneous Matters. The necessary grammatical changes required to make the provisions of this Sublease apply in the plural sense where there is more than one Sublessee and to either corporations, associations, partnerships, or individuals, males or females, shall in all instances be assumed as though in each case fully expressed. If any term, covenant or condition of this Sublease or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Sublease, or the application of such term, covenant or condition to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term, covenant or condition of this Sublease shall be valid and be enforced to the fullest extent permitted by law. This Sublease contains the entire agreement between the parties and supersedes and cancels any and all prior oral or written representations, agreements, promises or negotiations between the parties with reference to the Leased Premises. Any executory agreement hereafter made shall be ineffective to change, modify, discharge or effect an abandonment of this Sublease in whole or in part unless such executory agreement is in writing, and signed by the party against whom enforcement of the change, modification, discharge or abandonment is sought. The laws of the State of Hawaii shall govern the validity, performance and

enforcement of this Sublease. The captions of the articles and sections contained herein are for convenience only and do not define, limit, describe or construe the contents of such articles and sections. The covenants and conditions herein contained shall apply to and bind and inure to the benefit of the respective heirs, successors, legal representatives and permitted assigns of the parties hereto, and, in any case where there shall be more than one Sublessee, each Sublessee shall be jointly and severally liable hereunder. This Sublease may be executed in counterparts, each of which shall be deemed an original, and the counterparts taken together shall constitute one and the same instrument, binding upon the Sublessor and Sublessee, and notwithstanding that the Sublessor and Sublessee are not signatory to the same counterparts. For all purposes, duplicate unexecuted and unacknowledged pages of the counterparts may be discarded and the remaining pages assembled as one document.


[Space Intentionally Left Blank – Signatures to Follow]

IN WITNESS WHEREOF, the parties have executed this Sublease as of the date and year first above written.

SUBLESSOR:

KONA MARINE HOLDINGS, LLC, a Delaware limited liability company

By: **Logan View Capital LLC**, its Manager

By: 
Name: **Craig Stevenson**
Its: **Manager**

SUBLEESSEE:

JACKS DIVING LOCKER, a Hawaii partnership

By: _____
Teri or Jeff Leicher

Its: **Authorized Representative (*)**

(*) Teri and/or Jeff Leicher represent and warrant that they hold the requisite authority to execute this Sublease on behalf of Sublessee.

IN WITNESS WHEREOF, the parties have executed this Sublease as of the date and year first above written.

SUBLESSOR:

KONA MARINE HOLDINGS, LLC, a Delaware limited liability company

By: LoganView Capital LLC, its Manager

By: _____

Name: Craig Stevenson

Its: Manager

SUBLESSEE:

JACKS DIVING LOCKER, a Hawaii partnership

By: Teri or Jeff Leicher

Teri or Jeff Leicher

Its: Authorized Representative (*)

(*) Teri and/or Jeff Leicher represent and warrant that they hold the requisite authority to execute this Sublease on behalf of Sublessee.