

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

September 11, 2020

Chairperson and Members  
Board of Land and Natural Resources  
State of Hawai'i  
Honolulu, Hawai'i

Land Board Members:

SUBJECT: After-The-Fact Consent to Sublease under Harbor Lease No H-83-2, Kona Marine Holdings, LLC, Lessee, to: Reel Action LLC., Kiholo Inc., and Wahine Charters, LLC, Sublessees, Kealakehe, Kailua-Kona, Hawaii, Tax Map Key (3) 7-4-008:040

APPLICANT:

**Kona Marine Holdings, LLC, ("Kona Marine")** a Delaware limited liability company, as Sublessor, to:

Reel Action, LLC, Domestic Limited Liability Company (LLC)  
Kiholo, Inc, Domestic Profit Corporation  
Wahine Charters LLC, Domestic Limited Liability Company (LLC)

LEGAL REFERENCE:

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

LOCATION:

Portion of Government lands of Honokohau Small Boat Harbor situated at Kealakehe, Kailua-Kona, Hawaii, identified by Tax Map Key: (3) 7-4-008:040. See Exhibit A

AREA:

10,000 sq ft or 0.230 acre of fast land, and 3,300 sq ft or 0.076 acre submerged land easement.

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:

Kona Marine Holdings, LLC., Lease No. H-83-2 allows for, on a non-exclusive basis, the following:

“For 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: 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 use of the easement shall be for fueling and servicing of vessels only.

TERM OF LEASE:

Fifty-five (55) years.

Original term of thirty-five (35) years commencing November 27, 1984 and ending November 26, 2019.

TERM OF SUBLEASE:

<b>Reel Action, LLC:</b>	1 year, commencing 12/1/2019 and ending 11/30/2020
<b>Kiholo, Inc:</b>	3 year, commencing 11/1/2019 and ending 10/30/2022
<b>Wahine Charters, LLC:</b>	1 year, commencing 5/1/2020 and ending 4/31/2021

ANNUAL RENTAL:

\$28,620.00

ANNUAL SUBLEASE RENTAL:

<b>Reel Action, LLC:</b>	\$ 10,524.96
<b>Kiholo Inc:</b>	\$28,405.20
<b>Wahine Charters, LLC:</b>	<u>\$ 9,047.16</u>
	\$47,977.32

SUBLEASE CHARACTER OF USE:

**Reel Action, LLC:** Office space, for operating a diving/snorkeling business, no other purpose.  
**Kiholo, Inc:** Office space, and retailing of packaged seafood, no other purpose.  
**Wahine Charters, LLC:** office space, for operating a snorkeling/ocean tour business, no other purpose; and dock usage for the purpose of loading and unloading passengers to/from its boats.

DCCA VERIFICATION:

SUBLESSOR:

Place of business registration confirmed: YES X NO \_\_\_  
Registered business name confirmed: YES X NO \_\_\_  
Good standing confirmed: YES X NO \_\_\_

SUBLESSEES:

**Reel Action, LLC:**

Place of business registration confirmed: YES X NO  
Registered business name confirmed: YES X NO  
Good standing confirmed: YES X NO

**Kiholo, Inc:**

Place of business registration confirmed: YES X NO  
Registered business name confirmed: YES X NO  
Good standing confirmed: YES X NO

**Wahine Charters, LLC:**

Place of business registration confirmed: YES X NO  
Registered business name confirmed: YES X NO  
Good standing confirmed: YES X NO

BACKGROUND:

Department of Transportation sold Lease No. H-83-2 ("Lease") at public auction to Kona U-Cart, Inc., on June 24, 1983. The lease was executed on July 19, 1983, with a thirty-five (35) year term beginning November 27, 1984 and ending November 26, 2019.

At its meeting on October 10, 1986, under agenda item J-6, the Board consented to change the lessee's name from Kona U-Cart, Inc to Kona Fuel and Marine, Inc.

At its meeting on August 28, 2009, under agenda item J-2, the Board consented to the Assignment, Mortgage and Amendment Extending the Lease Term of Harbor Lease No H-83-2, which assigned the lease from Kona Fuel & Marine, Inc. to Kona Marine Holdings, LLC. ("Kona Marine") and extended the lease for an additional twenty (20) years, beginning November 27, 2019 and expiring November 26, 2039, so as to allow Kona Marine to qualify for a \$2,000,000 mortgage to be used for leasehold improvements.

REMARKS:

Kona Marine is requesting after-the fact consents to the three above-mentioned subleases.

The Attached Exhibit B is the floor plan showing the location of each sublease within the improvements of Kona Marine's premises.

The proposed subleases raise the issue of the allowable uses under the Lease. There is some ambiguity in the Lease regarding whether the allowable uses of the fuel dock including loading and unloading of passengers for commercial purposes, such as fishing and diving charter tours. This ambiguity arises because certain language in the Lease limits the allowable uses of the submerged land easement area to "fueling and services of vessels", which may exclude loading and unloading of commercial passengers. However, other language in the Lease contemplates that subleases may allow "marine-related" uses, which may include loading and unloading of passengers. Currently, commercial operators are using the fuel dock area for passenger loading. This is problematic because some of these commercial operators using the fuel dock area do not have commercial permits to operate out of Honokohau, but instead have permits that specify use of the nearby Kona pier. Finally, this Board has approved prior subleases based on the broader interpretation of the Lease.

After consultation with counsel, staff is recommending that the Board consent to the sublease to Kiholo, Inc., as that sublease does not involve any use of the fuel dock area for commercial loading and unloading of passengers, and the character of use for that sublease (retail sale of packaged seafood and office space) is clearly within the permissible scope of use. However, approval of the two other subleases to Reel Action, LLC and Wahine Charters, LLC should either be withheld or conditioned upon the Board's determination that use of the fuel dock area for commercial passenger loading and unloading is only allowable for commercial operators with a permit to operate out of the Honokohau harbor. This interpretation of the Lease has already been communicated to Kona Marine with respect to its sublease.



RECOMMENDATION:

That the Board withhold its consent to Reel Action, LLC and Wahine Charters, LLC sublease unless it can be demonstrated that each has been issued a commercial use permit to operate at the Honokohau Small Boat Harbor, and consent to the sublease under Harbor Lease No. H-83-2 between Kona Marine Holdings, LLC., as Sublessor, Kiholo Inc., as Sublessee, subject to any applicable conditions cited above which are by this reference incorporated herein and further

subject to the following terms and conditions:

1. The standard terms and conditions of the most current consent to sublease form, as may be amended from time to time;
2. Review and approval by the Department of the Attorney General; and
3. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

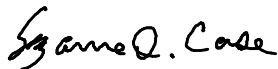
Respectfully Submitted,



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Edward R. Underwood  
Administrator

APPROVED FOR SUBMITTAL:



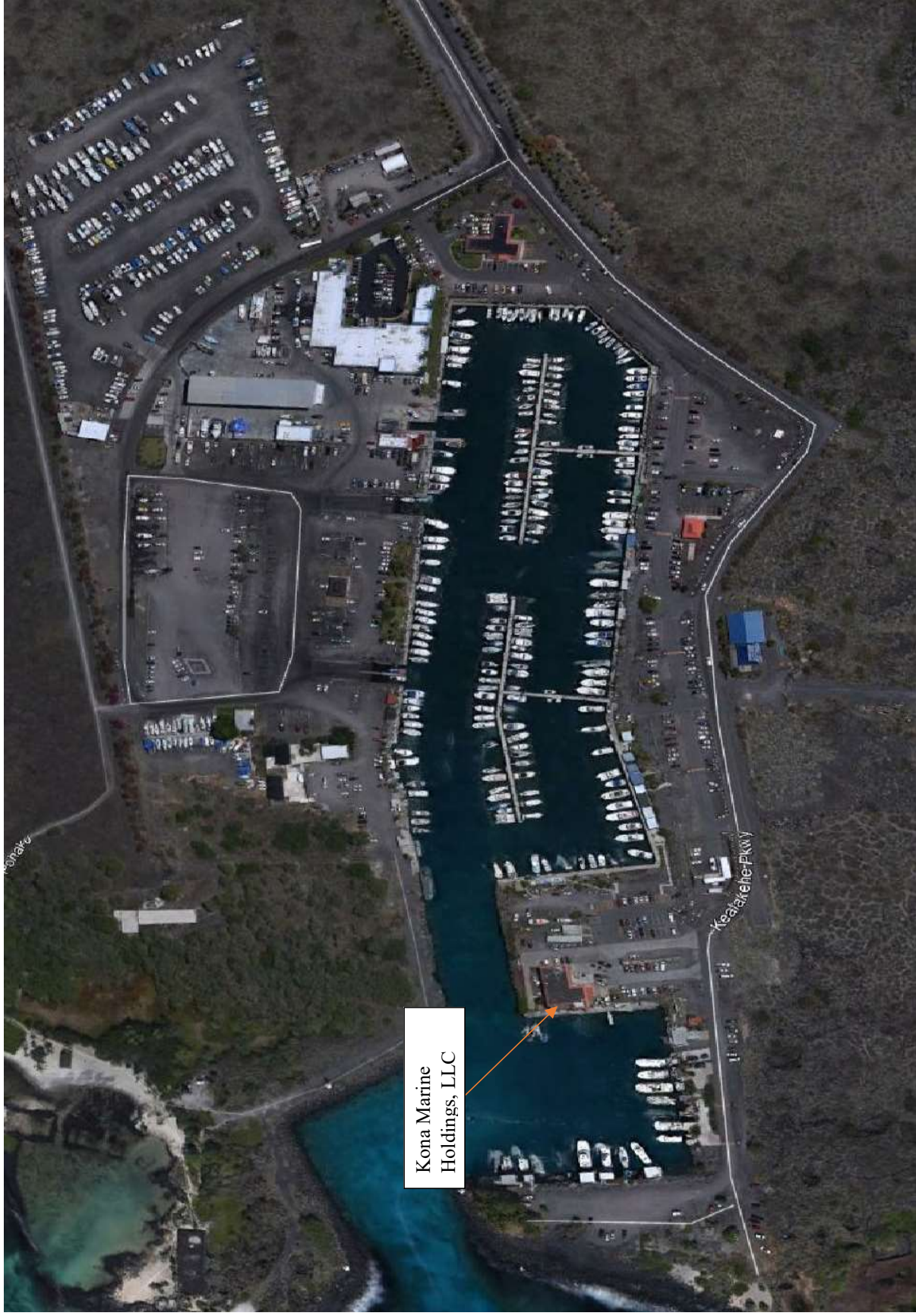
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Suzanne D. Case  
Chairperson

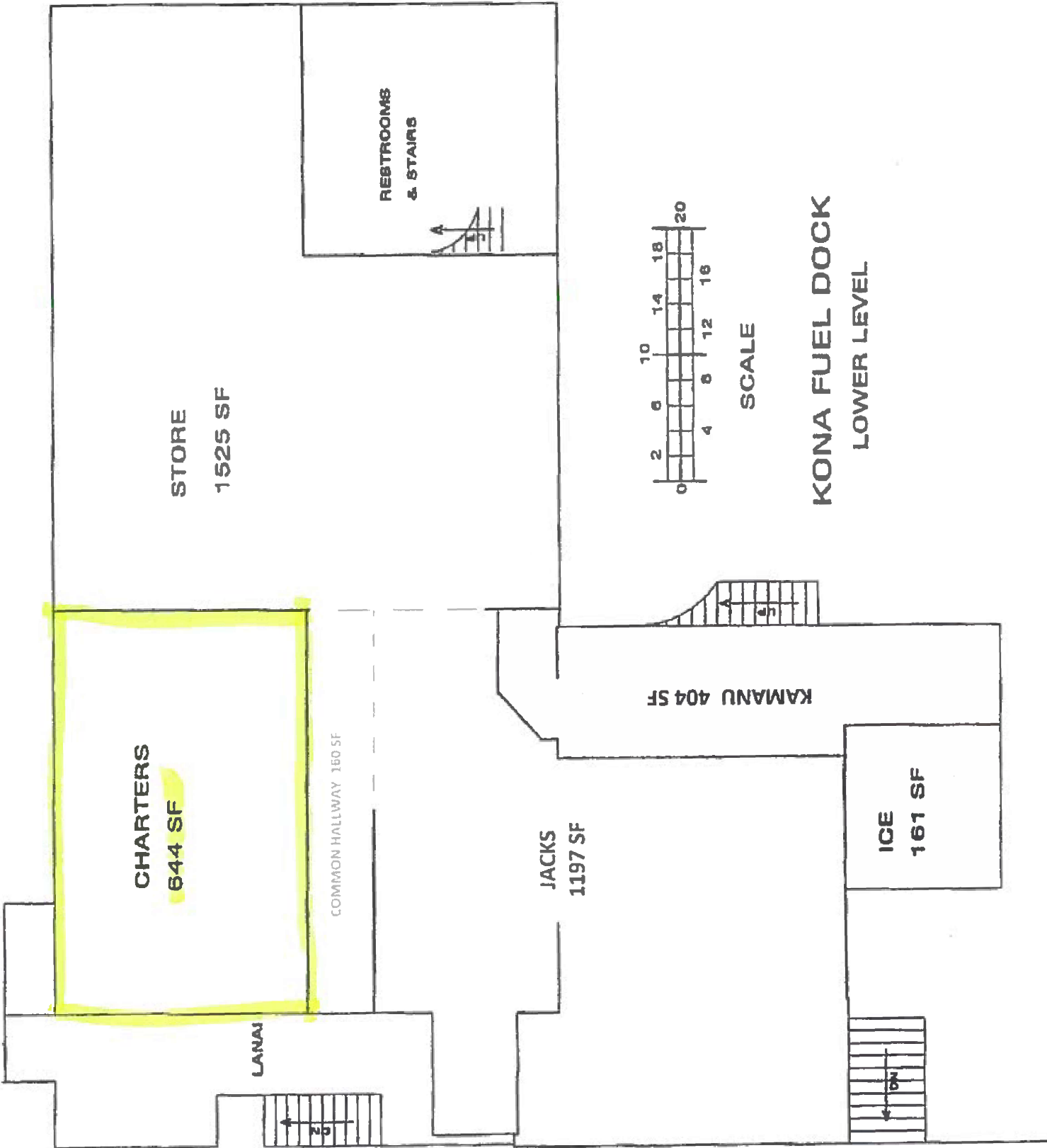
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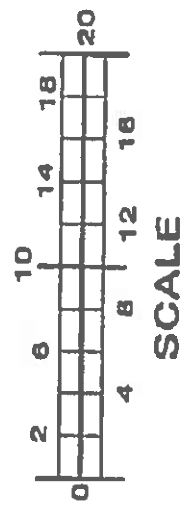
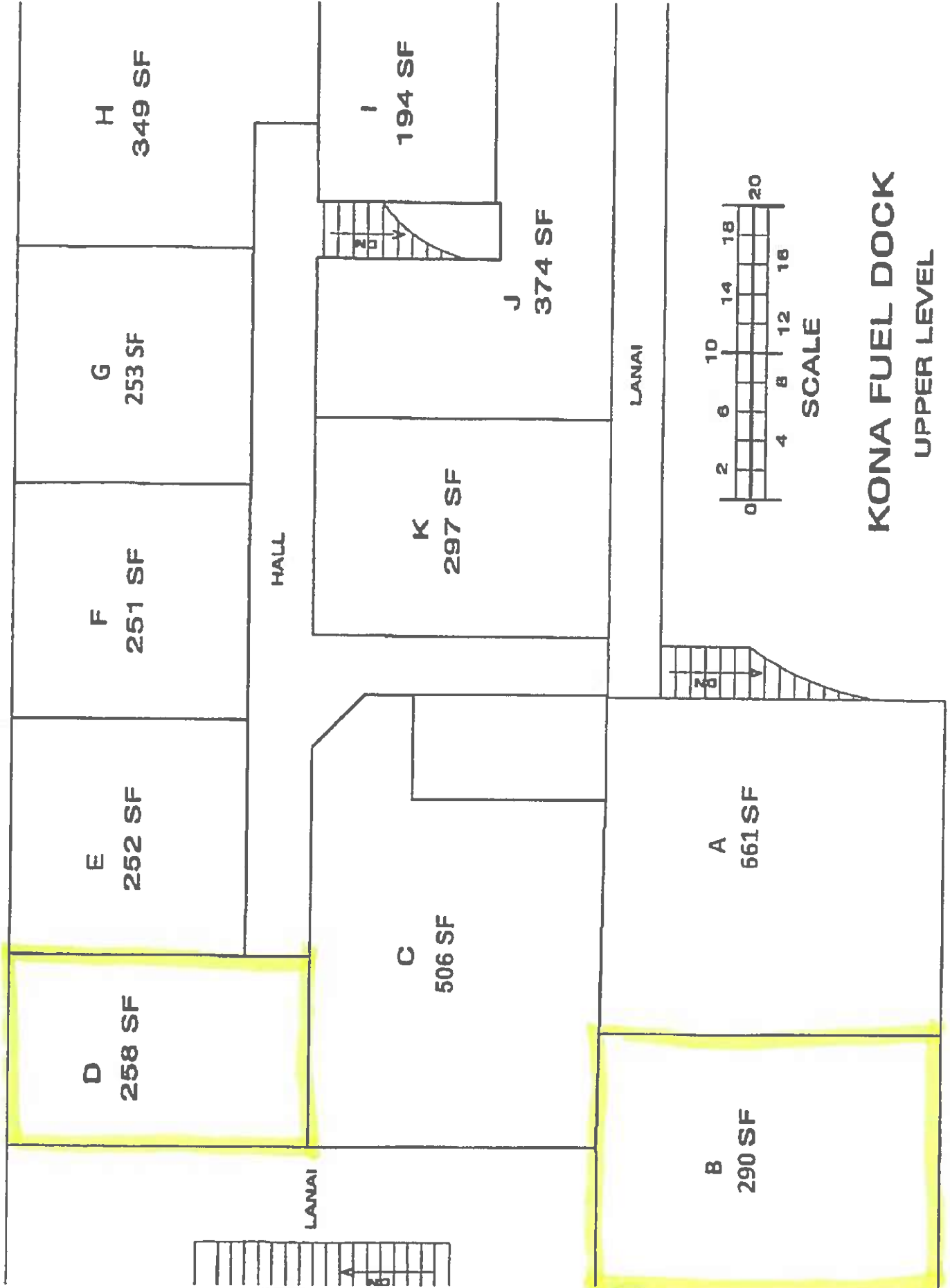
Exhibit A – Honolohau Small Boat Harbor Area Map  
Exhibit B - Building Site Plan First & Second Floors  
Exhibit C – Wahine Charters, LLC Sublease  
Exhibit D - Reel Action, LLC Sublease  
Exhibit E - Kiholo, Inc Sublease

EXHIBIT A  
Honokohau Small Boat Harbor  
Area Map



Kona Marine  
Holdings, LLC





**KONA FUEL DOCK**  
**UPPER LEVEL**

EXHIBIT C

**KONA MARINE HOLDINGS, LLC**  
**74-381 Kealakehe Parkway**  
**Kailua-Kona, HI 96740**  
**PHONE: (808) 325-5310**

**THE FUEL DOCK – SUBLEASE SUMMARY**

**Tenant:** Wahine Charters LLC  
Clement Kanuha  
73-4387 Kalaoa Street  
Kailua Kona, HI 96740  
Phone: 808 640 3641  
Email: wahinecharterscj@gmail.com

**Premises:** Suite "B"

**Rental Area:** 290 Square Feet

**LEASE TERMS**

**Begins:** May 1, 2020  
**Term:** One (1) Year  
**Option to Renew:** N/A  
**Notice:** Thirty (30) Days

**MONTHLY RENTAL PAYMENTS**

<b>Total Rent:</b>	<b>\$670.00</b>	<b>(\$2.31 square foot)</b>
<b>Electricity:</b>	<b>50.00</b>	<b>Set amount per month</b>
<b>% G.E.T.:</b>	<b><u>33.93</u></b>	<b>(4.712%)</b>
<b>TOTAL MONTHLY RENT:</b>	<b>\$753.93</b>	

**SECURITY DEPOSIT:** \$670.00

**MANAGING AGENT:** Robert Curtis

**THE FUEL DOCK**

**Sublease**

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SUBLEASE

THIS INDENTURE OF Sublease, executed this \_\_\_\_ day of April, 2020, effective, however, May 1, 2020 by and between **KONA MARINE HOLDINGS, LLC.**, a Delaware Limited Liability Corporation, with its principal place of business located at 1203 De La Vina Street, Santa Barbara, California 93101, hereinafter called "Lessor", and **Wahine Charters LLC** with a mailing address at 73-4387 Kalaoa Street, Kailua-Kona, Hawaii 96740 hereinafter collectively called "Tenant";

W I T N E S S E T H:

(1) Lessor is the owner of those certain leasehold premises, together with all improvements therein, demised by State Harbor Lease No. H-83-2, at Honokohau Harbor, North Kona, Hawaii, commonly known as "The Fuel Dock", with a street address of 74-381 Kealakehe Parkway, Kailua-Kona, Hawaii 96740, having space therein to sublet.

(2) Tenant desires to lease space on the second floor of the premises as an office for operating a snorkeling/ocean tour business.

(3) The parties desire to enter into a lease agreement defining their respective rights, duties and liabilities relating to the premises. In consideration of the mutual covenants contained herein, the parties agree as follows:

Section 1. Description of Premises. Lessor does hereby demise and lease to Tenant, and Tenant does hereby hire and lease from the Lessor, a portion of the premises described above commonly known as "The Fuel Dock", which portion is designated on Exhibit A attached hereto as office Suite "B" (containing an area of approximately 290 square feet), on the second floor, hereinafter called the "premises". Together with the full right of access to said premises in common with others over, across and through any alleys, common entrances, stairways, halls and corridors in or around said building, subject to the terms, covenants and conditions contained herein.

The premises shall be used for the purposes of office space, and for no other purpose.

Section 2. Term of Sublease. The term of this Sublease shall be for **One (1) year**, commencing **May 1<sup>st</sup>, 2020**, unless sooner terminated as provided herein, or unless renewed as provided herein. Tenant shall surrender the premises to Lessor immediately on termination of the Sublease.

Section 3. Delivery of Possession. Premises are available for immediate occupancy.

Section 4. Total Rent Due. Tenant shall pay to Lessor at the office of Lessor or at such other place as Lessor shall designate, in equal monthly installments of **SEVEN HUNDRED FIFTY THREE AND 93/100 DOLLARS (\$753.93)** each, in advance on the first day of each and every calendar month. Initial rent amount comprises \$670.00 base rent, \$50.00 electricity charge plus \$33.93 Hawaii General Excise Tax. At each anniversary of this agreement, rent amounts will increase by 3%.

Any and all sums due hereunder which are unpaid when due shall draw interest at the rate of one percent (1%) per month until fully paid. In addition, a 5% late fee shall be charged on a one-time basis for each late monthly payment of base rent.

In the event that the rent under State Harbor Lease No. H-83-2 shall increase during the term of this Sublease; Tenant shall pay to Lessor, as additional base rent, an amount equal to the percentage of such increase. For example, if the rent under the State Harbor Lease increases by an amount equal to 5%, then the base rent under this Sublease shall likewise increase by 5%. Additionally, should the applicable General Excise Tax rate increase, that increase will apply to the tax amount as stated in this section.

Section 5. Payment of Building Operating Costs. Lessor shall pay when due all real property taxes and State lease rent, and shall provide and pay for common area lights, all insurance including but not limited to fire, and public liability insurance on the building and common areas as required by any government agencies and as required under Harbor Lease No. H-83-2, water, air conditioning, trash pickup, yard work, repairs, maintenance, management services and all other operating costs of the building ("annual operating costs"), except those specifically agreed to be provided by Tenant.

- (1.) Tenant shall be responsible for his own janitorial services, and Lessor shall not provide any such services.

Section 6. Security Deposit. Before taking occupancy, Tenant shall place with Lessor a security deposit in the amount of **SIX HUNDRED SEVENTY DOLLARS (\$670.00)**, which may be used by Lessor to remedy any deficiencies in leased premises, or in rent



received, upon termination of lease. Amounts not expended will be returned to Tenant at termination of lease or completion of remediation, if required.

Section 7. Restrictions on Use. Tenant shall not use nor permit the premises, or any part thereof, to be used for any purposes other than those set forth herein. Tenant shall neither permit on the premises any act, sale or storage that may be prohibited under standard forms of fire insurance policies, nor use the premises for any such purpose. In addition, no use shall be made nor permitted to be made that shall result in (1) waste on the premises, (2) a public or private nuisance that may disturb the quiet enjoyment of other tenants in the building, (3) improper, unlawful or objectionable use, including sale, storage, or preparation of food, alcoholic beverages, or materials generating an odor on the premises, or (4) noises or vibrations that may disturb other tenants. Tenant shall comply with all governmental regulations and statutes affecting the premises either now or in the future. Tenant shall also comply with such rules and regulations as may be adopted by Lessor from time to time and made available in written form to Tenant; said rules and regulations may affect not only occupancy of leased premises, but also use of common and public areas, but in any event shall be uniform as to all tenants and tenants of the building. No animals or birds of any kind shall be permitted in or around the building without the prior written permission of Lessor.

Section 8. Abandonment of Premises. Tenant shall not vacate nor abandon the premises at any time during the term, but if Tenant does vacate or abandon the premises or is dispossessed by process of law for nonpayment of rent or any other reason, any personal property belonging to Tenant, other than the business files and records of Tenant, left on the premises shall be deemed abandoned. At the option of Lessor, such abandoned property, including all trade fixtures shall either become the property of Lessor or shall be removed and stored at the Tenant's expense. Tenant shall also be charged with any and all costs incurred by the Lessor in placing the premises in a condition suitable for releasing to another Tenant.

Section 9. Utilities.

A. Telephone and Internet. Tenant shall, in its own name, contract for and obtain communications services for the demised premises at its own liability and expense and shall indemnify Lessor from any liability thereunder.

B. Electric. Tenant shall pay Lessor a set amount of \$50 per month for their electricity usage.

Section 10. Condition of Premises. The taking of possession by Tenant shall be conclusive evidence as against the Tenant that the premises were in good order and satisfactory condition when Tenant took possession.

Section 11. Maintenance.

A. Tenant's Duties. Tenant will, at its own expense, keep the interior of the premises in good repair and tenantable condition during the term of this Sublease, and Tenant shall promptly and adequately repair all damage to the interior of the premises and replace or repair all damaged broken glass, fixtures, and appurtenances under the supervision and with the approval of Lessor and within any reasonable period of time specified by Lessor. If Tenant does not do so, Lessor may, but need not, make such repairs and replacements, and Tenant shall pay Lessor the cost thereof forthwith upon billing for same. Lessor may, but shall not be required to do so, enter the premises at all reasonable times to make such repairs, alterations, improvements and additions. Tenant shall, at the termination of this Sublease, surrender the premises to Lessor in as good condition and repair, as reasonable and proper use thereof will permit.

B. Lessor's Duties. Lessor shall keep the exterior and common areas of the building in which the premises are located in good condition and repair, reasonable wear and tear excepted.

Section 12. Certain Rights Reserved by Lessor. Lessor shall have the following rights, exercisable without notice except as provided herein and without liability to Tenant for damage or injury to property, persons or business and without effecting an eviction, constructive or actual, or disturbance of Tenant's use or possession or giving rise to any claim for set-off or abatement of rent:

(a) To install, affix and maintain any and all signs on the exterior and interior of the building.

(b) To designate and approve, prior to installation, all types of window shades, blinds, drapes, awnings, window ventilators and other similar equipment, and to control all internal lighting that may be visible from the exterior of the building.

(c) To inspect the premises at reasonable hours and, during the last sixty (60) days of the term, to show them to prospective tenants at reasonable hours and, if they are vacated, to prepare them for re-occupancy.

(d) To retain at all times, and to use in appropriate instances, keys to all doors within and into the premises; no locks shall be changed or added without the prior written consent of Lessor which consent shall not be unreasonably withheld. It is hereby understood by Lessor that Tenant has a duty of confidentiality to its clients and, therefore, Lessor may never enter the premises without Tenant's presence except in cases of imminent danger to life or property.

(e) To prohibit the placing of vending or dispensing machines of any kind in or about the premises without the prior written permission of Lessor.

(f) So long as Tenant's use of the premises and rights created under this Sublease are not substantially affected, Lessor may from time to time adopt such rules and regulations as in its discretion are required and as may affect not only the occupancy of the leased premises, but also the use of common and public areas; said rules and regulations shall be uniform and written notice thereof given. Lessor may enter upon the premises and may exercise any or all of the foregoing rights hereby reserved without being deemed guilty of an eviction or disturbance of Tenant's use or possession and without being liable in any manner to Tenant.

Section 13. Liability of Lessor. Tenant waives all claims against Lessor for damages to goods or for injuries to persons on or about the premises from any cause arising at any time except those actions resulting from the negligent acts or omissions of Lessor or its agents and employees. Tenant will indemnify Lessor on account of any damage or injury to any person, or to the goods of any person, arising from the use of the premises by Tenant, or arising from the failure of Tenant to keep the premises in good condition as provided herein. Tenant agrees to pay for all damage to the building, as well as all damage or injury suffered by tenants or occupants thereof caused by misuse or neglect of the premises by Tenant.

Section 14. Destruction of Premises. In the event of a partial destruction of the premises during the term from any insured cause, Lessor shall forthwith repair the same provided the repairs can be made within sixty (60) days under the laws and regulations of applicable governmental authorities. Any such partial destruction from any insured cause shall neither annul

nor void this Sublease, except that Tenant shall be entitled to a proportionate reduction of rent while the repairs are being made, any proportionate reduction being based on the extent to which the making of repairs shall interfere with the business carried on by Tenant in the premises. If the repairs cannot be made in the specified time, Lessor may, at its option, make repairs within a reasonable time, this Sublease continuing in full force and effect and the rent to be proportionately rebated as previously set forth in this paragraph. In the event that Lessor does not elect to make repairs that cannot be made in the specified time, this Sublease may be terminated at the option of either party. In the event of any partial destruction of the premises during the term from any uninsured cause, then Lessor may, at Lessor's option, terminate this Sublease upon written notice to Tenant. A total destruction of the building in which the premises are situated shall terminate this Sublease.

In the event Lessor elects to reconstruct or materially renovate the Building, notice shall be provided to Tenant at least ninety (90) days prior to the start of such project. In such case, the leased premises may be required to be closed (or relocated) until such project is completed. At this time, and subject to the ninety (90) day notice requirement, Lessor and Tenant shall each have the option of terminating this Sublease at no cost or further obligation but agree to work in good faith toward the negotiation and execution of a new sublease within the reconstructed or materially renovated Building.

Section 15. Condemnation. A condemnation of the entire building or a condemnation of the portion of the premises occupied by Tenant shall result in a termination of this Sublease with no further obligations by the parties.

Section 16. Assignment and Subletting. Tenant shall not assign any rights or duties under this Sublease nor sublet any part of the premises without the prior written consent of Lessor, which consent shall not be unreasonably withheld. A consent to one assignment or sublease shall not waive Lessor's rights hereunder. This Sublease shall not be assignable by operation of law without the written consent of Lessor, which consent shall not be unreasonably withheld.

Section 17. Breach or Default. Tenant shall have breached this Sublease and shall be considered in default hereunder if (1) Tenant files a petition in bankruptcy or insolvency or for reorganization under any bankruptcy act or makes an assignment for the benefit of creditors, (2) involuntary bankruptcy proceedings are instituted against Tenant under any bankruptcy

act and such proceedings adjudge Tenant a bankrupt, (3) Tenant fails to pay any monthly rent or operation costs when due and Lessor has given Tenant fifteen (15) days written notice to pay the rent or operation costs, or (4) Tenant fails to perform or comply with any of the covenants or conditions of this Sublease and such failure continues for a period of thirty (30) days after written notice thereof is given to Tenant.

Section 18. Effect of Breach. In the event of a breach of this Sublease as set forth in Section 17 Breach or Default, the rights of Lessor shall be as follows:

(1) Lessor shall have the right to cancel and terminate this Sublease, as well as all of the right, title and interest of Tenant hereunder, by giving to Tenant not less than ten (10) days' written notice of the cancellation and termination. On expiration of the time fixed in the notice, this Sublease and the right, title and interest of Tenant hereunder shall terminate in the same manner and with the same force and effect, except as to Tenant's liability, as if the date fixed in the notice of cancellation and termination were the end of the term herein originally determined.

(2) Without affecting Lessor's duty to mitigate damages, on termination Lessor may recover from Tenant all damages proximately resulting from the breach, including the cost of recovering the premises and the worth of the balance of this Sublease over the reasonable rental value of the premises for the remainder of the Sublease term, which sum shall be immediately due Lessor from Tenant.

Without affecting Lessor's duty to mitigate damages and after reasonable time allowed Tenant to release the premises, Lessor may re-let the premises or any part thereof for any term without terminating the Sublease. Lessor may make alterations and repairs to the premises. The duties and liabilities of the parties if the premises are re-let as provided herein shall be as follows:

(a) In addition to Tenant's liability to Lessor for breach of the Sublease, Tenant shall be liable for all expenses of the re-letting, for the alterations and repairs made, and for the difference between the rent received by Lessor under the new lease agreement and the rent installments that are due for the same period under this Sublease.

(b) The rent received from re-letting the premises shall be applied: (1) to reduce Tenant's indebtedness to Lessor under this Sublease, (2) to expenses of the re-letting and alterations and repairs made, (3) to rent due under this

Sublease, or (4) to payment of future rent under this Sublease as it becomes due.

If the new tenant does not pay a rent installment promptly to Lessor and the rent installment has been credited in advance of payment to the indebtedness of Tenant other than rent or if rentals from the new tenant have been otherwise applied by Lessor as provided for herein and, during any rent installment period, are less than the rent payable for the corresponding installment period under this Sublease, Tenant shall pay Lessor the deficiency separately for each rent installment deficiency period and before the end of that period.

Section 19. Subordination and Financing. Tenant agrees upon request of Lessor to subordinate this Sublease and its rights hereunder to the lien of any mortgage, deed of trust or other encumbrance, together with any conditions, renewals, extensions or replacements thereof, now or hereafter placed, charged or enforced against the Lessor's interest in this Sublease and the leasehold estate hereby created, the premises or the land, building or improvements included thereon or of which the premises are a part, and to execute and deliver, (but without cost to Tenant) at any time and from time to time upon demand by Lessor such documents as may be required to effectuate such subordination, and, in the event that Tenant shall fail, neglect or refuse to execute and deliver any such document within ten (10) days after Lessor has given written notice to do so, Tenant hereby appoints Lessor, its successors and assigns, the attorney-in-fact of Tenant irrevocably to execute and deliver any and all such documents for and on behalf of Tenant; provided, however, that Tenant shall not be required to effectuate such subordination nor shall Lessor be authorized to effect such subordination on behalf of Tenant, unless the mortgagee or beneficiary named in such mortgage, deed of trust or other encumbrance shall first agree in writing for the benefit of Tenant that, so long as Tenant is not in default under any of the provisions, covenants or conditions of this Sublease on the part of Tenant to be kept and performed, neither this Sublease nor any of the rights of Tenant hereunder shall be terminated or modified or be subject to termination or modification nor shall Tenant's possession of the premises be disturbed or interfered with by any trustee's sale or by an action or proceeding to foreclose said mortgage, deed of trust or other encumbrance.

Section 20. Liability Insurance. Tenant shall, during the term hereof, procure and keep in full force and effect a policy of liability insurance in an amount of not less than One Million Dollars (\$1,000,000.00). Such policy shall contain a clause that the insurer will not cancel or change the insurance without first

giving Lessor thirty (30) day's prior written notice. The policy shall name Lessor and the STATE OF HAWAII as additional insureds.

Section 21. Option to Renew. Upon the expiration of the original Sublease Term, Sublease shall automatically renew on a month to month basis, under the existing terms and conditions, unless terminated by either party with 30 days written notice.

Section 22. Subject to State Harbor Lease No. H-83-2 and Consent. Tenant agrees that this Sublease is subject to the terms and conditions of State Harbor Lease No. H-83-2, and Tenant agrees to abide by such terms and conditions. Tenant acknowledges that this Sublease is subject to the consent of the State of Hawaii. Lessor will use his best efforts to obtain such consent; however, if consent is not given by the State of Hawaii, this Sublease shall be terminated; Tenant shall abandon the leased premises as soon as practicable, with no liability accruing to Lessor as a result of said refusal.

Section 23. Attorney's Fees. In case suit shall be brought for an unlawful detainer of the premises, for the recovery of any rent due under the provisions of this Sublease or for breach of any condition contained herein by either party, the prevailing party in such action shall recover in addition to damages and costs a reasonable attorney's fee which shall be fixed by the court.

Section 24. Partial Invalidity. If any term, provision or condition of this Sublease shall be held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of this Sublease shall continue in full force and effect and shall in no way be affected, impaired or invalidated thereby.

Section 25. Captions and Pronouns.

(1) Captions. The captions appearing at the beginning of the articles, sections and paragraphs hereof are descriptive only and intended for convenience in reference to this Sublease and should there be any conflict or inconsistency between any such caption and the text of any such article, section or paragraph at the head of which it appears, the text of the article, section or paragraph, as the case may be, and not such caption shall control and govern in the construction of the terms of this Sublease.

(2) Pronouns. Masculine or feminine pronouns shall be substituted for the neuter form and vice versa, and the plural

shall be substituted for the singular and vice versa in any place herein in which the context requires such substitution(s).

Section 26. Successors and Assigns. The terms, provisions, covenants and conditions contained in this Sublease shall apply to, bind and inure to the benefit of the heirs, personal representatives, administrators, legal representatives, successors and assigns (where assignment is permitted) of Lessor and Tenant, respectively.

Section 27. Entire Agreement. This Sublease constitutes the entire agreement of Lessor and Tenant and supersedes all oral and written agreements and understandings made and entered into by the parties hereto prior to the date hereof, except any agreements entered into by Lessor and Tenant relating to the construction of improvements by Lessor for the benefit of Tenant concerning the premises. Except as herein and otherwise provided, no subsequent alteration, amendment, change or addition to this Sublease shall be binding upon Lessor and Tenant unless reduced to writing and signed by each of them.

Section 28. Special Conditions.

(1) Parking. Tenant acknowledges and understands this Sublease does NOT include designated parking for Tenant or Tenant's guests. Furthermore, the DNLR controls the parking areas adjacent to the premises and as such, Tenant is subject to the parking regulations imposed by the DNLR. Tenant violations of DNLR parking regulations may be considered a Breach of this Sublease and as such grounds for termination.

(2) Dock Usage. Tenant shall be permitted to use the dock at the facility for the purpose of loading and unloading passengers to/from its boat(s), provided that this activity does not interfere with or obstruct fueling activities at the dock. In the event that State of Hawaii should prohibit such activities, Tenant's only recourse shall be to terminate immediately this lease, without penalty.



IN WITNESS WHEREOF, the parties hereto have executed this Sublease in duplicate, the day and year first above written.

"Lessor"

KONA MARINE HOLDINGS, LLC.

By   
Craig Stevenson its Managing Member

"Tenant"

Wahine Charters LLC

By 

Title co-owner / ceo

For purposes of this form, electronically transmitted signatures shall be considered as original.

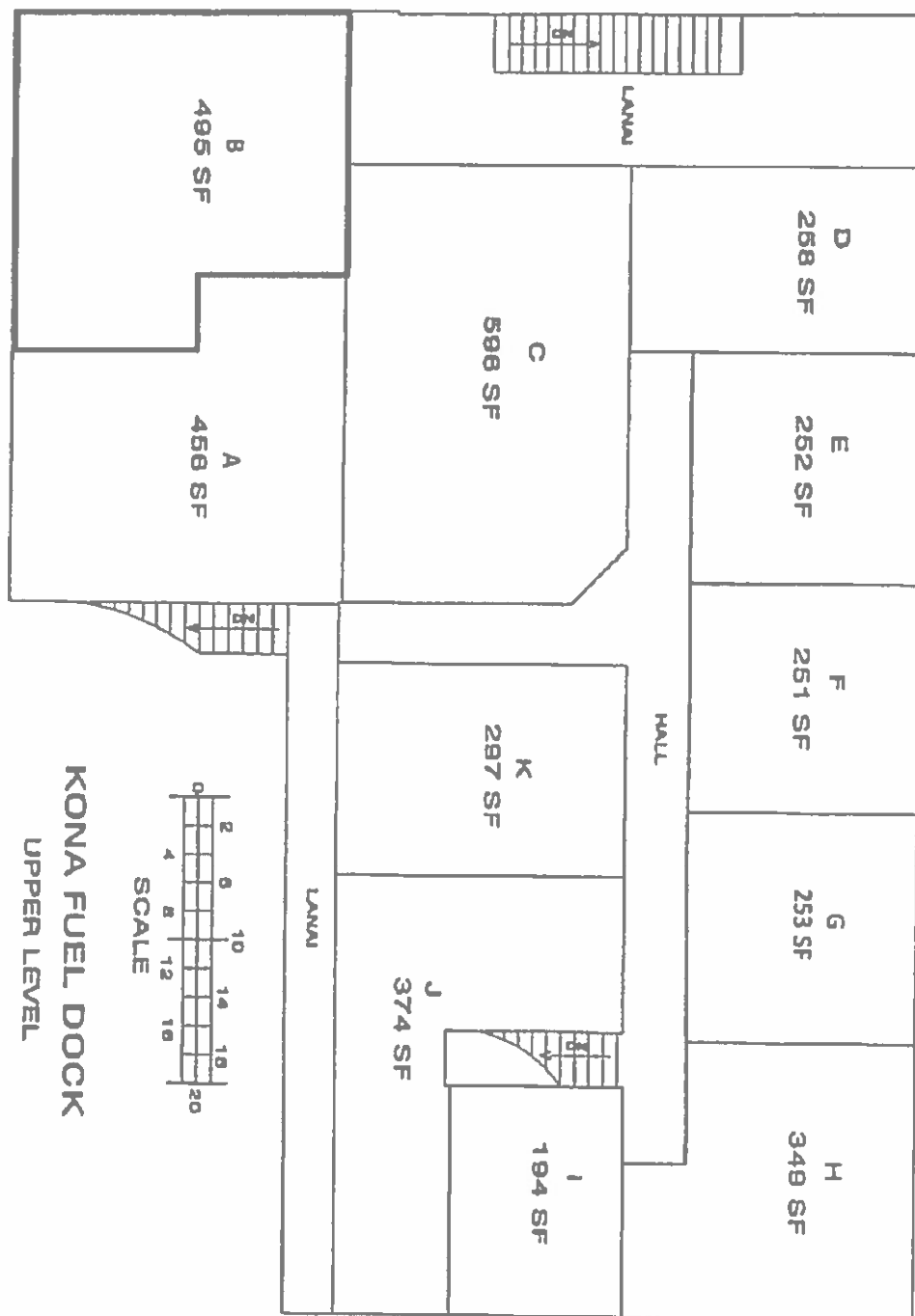


Exhibit A

## EXHIBIT D

**KONA MARINE HOLDINGS, LLC**  
**74-381 Kealakehe Parkway**  
**Kailua-Kona, HI 96740**  
**PHONE: (808) 325-5310**

### **THE FUEL DOCK – SUBLEASE SUMMARY**

**Tenant:** Reel Action LLC  
Aquatic Life Divers  
74-425 Kealakehe Pkwy #24C  
Kailua Kona, HI 96740  
Phone: 808 345 4111  
Email: dane@aquaticlifedivers.com

**Premises:** Suite "D"

**Rental Area:** 258 Square Feet

#### **LEASE TERMS**

**Begins:** December 1, 2019  
**Term:** One (1) Year  
**Option to Renew:** N/A  
**Notice:** Thirty (30) Days

#### **MONTHLY RENTAL PAYMENTS (first year)**

<b>Total Rent:</b>	<b>\$799.80</b>	<b>(\$3.10 square foot)</b>
<b>Electricity:</b>	<b>40.00</b>	<b>Set amount per month</b>
<b>% G.E.T.:</b>	<b><u>37.28</u></b>	<b>(4.4386%)</b>
<b>TOTAL MONTHLY RENT:</b>	<b>\$877.08</b>	

**Rental amounts increase 3% at each anniversary of this lease.**

**SECURITY DEPOSIT:** 877.08

**MANAGING AGENT:** Robert Curtis

**THE FUEL DOCK**

**Sublease**

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28	Special Conditions	10

### SUBLEASE

THIS INDENTURE OF Sublease, executed this \_\_\_\_ day of December, 2019, effective, however, December 1, 2019 by and between **KONA MARINE HOLDINGS, LLC.**, a Delaware Limited Liability Corporation, with its principal place of business located at 1203 De La Vina Street, Santa Barbara, California 93101, hereinafter called "Lessor", and **Reel Action LLC** with a mailing address at Aquatic Life Divers, 74-425 Kealakehe Parkway #24C, Kailua-Kona, Hawaii 96740 hereinafter collectively called "Tenant";

### W I T N E S S E T H:

(1) Lessor is the owner of those certain leasehold premises, together with all improvements therein, demised by State Harbor Lease No. H-83-2, at Honokohau Harbor, North Kona, Hawaii, commonly known as "The Fuel Dock", with a street address of 74-381 Kealakehe Parkway, Kailua-Kona, Hawaii 96740, having space therein to sublet.

(2) Tenant desires to lease space on the second floor of the premises as an office for operating a diving/snorkeling business.

(3) The parties desire to enter into a lease agreement defining their respective rights, duties and liabilities relating to the premises. In consideration of the mutual covenants contained herein, the parties agree as follows:

Section 1. Description of Premises. Lessor does hereby demise and lease to Tenant, and Tenant does hereby hire and lease from the Lessor, a portion of the premises described above commonly known as "The Fuel Dock", which portion is designated on Exhibit A attached hereto as office Suite "D" (containing an area of approximately 258 square feet), on the second floor, hereinafter called the "premises". Together with the full right of access to said premises in common with others over, across and through any alleys, common entrances, stairways, halls and corridors in or around said building, subject to the terms, covenants and conditions contained herein.

The premises shall be used for the purposes of office space, and for no other purpose.

Section 2. Term of Sublease. The term of this Sublease shall be for **One (1) year**, commencing **December 1<sup>st</sup>, 2019**, unless sooner terminated as provided herein, or unless renewed as provided herein. Tenant shall surrender the premises to Lessor immediately on termination of the Sublease.

Section 3. Delivery of Possession. N/A

Section 4. Total Rent Due. Tenant shall pay to Lessor at the office of Lessor or at such other place as Lessor shall designate, in equal monthly installments of **EIGHT HUNDRED SEVENTY SEVEN AND 8/100 DOLLARS (\$877.08)** each, in advance on the first day of each and every calendar month. Initial rent amount comprises \$799.80 base rent, \$40.00 electricity charge plus \$37.28 Hawaii General Excise Tax. At each annual renewal, rent amounts will increase by 3%.

Any and all sums due hereunder which are unpaid when due shall draw interest at the rate of one percent (1%) per month until fully paid. In addition, a 5% late fee shall be charged on a one-time basis for each late monthly payment of base rent.

In the event that the rent under State Harbor Lease No. H-83-2 shall increase during the term of this Sublease; Tenant shall pay to Lessor, as additional base rent, an amount equal to the percentage of such increase. For example, if the rent under the State Harbor Lease increases by an amount equal to 5%, then the base rent under this Sublease shall likewise increase by 5%. Additionally, should the applicable General Excise Tax rate increase, that increase will apply to the tax amount as stated in this section.

Section 5. Payment of Building Operating Costs. Lessor shall pay when due all real property taxes and State lease rent, and shall provide and pay for common area lights, all insurance including but not limited to fire, and public liability insurance on the building and common areas as required by any government agencies and as required under Harbor Lease No. H-83-2, water, air conditioning, trash pickup, yard work, repairs, maintenance, management services and all other operating costs of the building ("annual operating costs"), except those specifically agreed to be provided by Tenant.

- (1.) Tenant shall be responsible for his own janitorial services, and Lessor shall not provide any such services.

Section 6. Security Deposit. Before taking occupancy, Tenant shall place with Lessor a security deposit in the amount of **EIGHT HUNDRED SEVENTY SEVEN AND 8/100 (\$877.08)**, which may be used by Lessor to remedy any deficiencies in leased premises, or in rent received, upon termination of lease. Amounts not

expended will be returned to Tenant at termination of lease or completion of remediation, if required.

Section 7. Restrictions on Use. Tenant shall not use nor permit the premises, or any part thereof, to be used for any purposes other than those set forth herein. Tenant shall neither permit on the premises any act, sale or storage that may be prohibited under standard forms of fire insurance policies, nor use the premises for any such purpose. In addition, no use shall be made nor permitted to be made that shall result in (1) waste on the premises, (2) a public or private nuisance that may disturb the quiet enjoyment of other tenants in the building, (3) improper, unlawful or objectionable use, including sale, storage, or preparation of food, alcoholic beverages, or materials generating an odor on the premises, or (4) noises or vibrations that may disturb other tenants. Tenant shall comply with all governmental regulations and statutes affecting the premises either now or in the future. Tenant shall also comply with such rules and regulations as may be adopted by Lessor from time to time and made available in written form to Tenant; said rules and regulations may affect not only occupancy of leased premises, but also use of common and public areas, but in any event shall be uniform as to all tenants and tenants of the building. No animals or birds of any kind shall be permitted in or around the building without the prior written permission of Lessor.

Section 8. Abandonment of Premises. Tenant shall not vacate nor abandon the premises at any time during the term, but if Tenant does vacate or abandon the premises or is dispossessed by process of law for nonpayment of rent or any other reason, any personal property belonging to Tenant, other than the business files and records of Tenant, left on the premises shall be deemed abandoned. At the option of Lessor, such abandoned property, including all trade fixtures shall either become the property of Lessor or shall be removed and stored at the Tenant's expense. Tenant shall also be charged with any and all costs incurred by the Lessor in placing the premises in a condition suitable for releasing to another Tenant.

Section 9. Utilities.

A. Telephone and Internet. Tenant shall, in its own name, contract for and obtain communications services for the demised premises at its own liability and expense and shall indemnify Lessor from any liability thereunder.

B. Electric. Tenant shall pay Lessor a set amount of \$40 per month for their electricity usage.

Section 10. Condition of Premises. The taking of possession by Tenant shall be conclusive evidence as against the Tenant that the premises were in good order and satisfactory condition when Tenant took possession.

Section 11. Maintenance.

A. Tenant's Duties. Tenant will, at its own expense, keep the interior of the premises in good repair and tenantable condition during the term of this Sublease, and Tenant shall promptly and adequately repair all damage to the interior of the premises and replace or repair all damaged broken glass, fixtures, and appurtenances under the supervision and with the approval of Lessor and within any reasonable period of time specified by Lessor. If Tenant does not do so, Lessor may, but need not, make such repairs and replacements, and Tenant shall pay Lessor the cost thereof forthwith upon billing for same. Lessor may, but shall not be required to do so, enter the premises at all reasonable times to make such repairs, alterations, improvements and additions. Tenant shall, at the termination of this Sublease, surrender the premises to Lessor in as good condition and repair, as reasonable and proper use thereof will permit.

B. Lessor's Duties. Lessor shall keep the exterior and common areas of the building in which the premises are located in good condition and repair, reasonable wear and tear excepted.

Section 12. Certain Rights Reserved by Lessor. Lessor shall have the following rights, exercisable without notice except as provided herein and without liability to Tenant for damage or injury to property, persons or business and without effecting an eviction, constructive or actual, or disturbance of Tenant's use or possession or giving rise to any claim for set-off or abatement of rent:

(a) To install, affix and maintain any and all signs on the exterior and interior of the building.

(b) To designate and approve, prior to installation, all types of window shades, blinds, drapes, awnings, window ventilators and other similar equipment, and to control all internal lighting that may be visible from the exterior of the building.



(c) To inspect the premises at reasonable hours and, during the last sixty (60) days of the term, to show them to prospective tenants at reasonable hours and, if they are vacated, to prepare them for re-occupancy.

(d) To retain at all times, and to use in appropriate instances, keys to all doors within and into the premises; no locks shall be changed or added without the prior written consent of Lessor which consent shall not be unreasonably withheld. It is hereby understood by Lessor that Tenant has a duty of confidentiality to its clients and, therefore, Lessor may never enter the premises without Tenant's presence except in cases of imminent danger to life or property.

(e) To prohibit the placing of vending or dispensing machines of any kind in or about the premises without the prior written permission of Lessor.

(f) So long as Tenant's use of the premises and rights created under this Sublease are not substantially affected, Lessor may from time to time adopt such rules and regulations as in its discretion are required and as may affect not only the occupancy of the leased premises, but also the use of common and public areas; said rules and regulations shall be uniform and written notice thereof given. Lessor may enter upon the premises and may exercise any or all of the foregoing rights hereby reserved without being deemed guilty of an eviction or disturbance of Tenant's use or possession and without being liable in any manner to Tenant.

Section 13. Liability of Lessor. Tenant waives all claims against Lessor for damages to goods or for injuries to persons on or about the premises from any cause arising at any time except those actions resulting from the negligent acts or omissions of Lessor or its agents and employees. Tenant will indemnify Lessor on account of any damage or injury to any person, or to the goods of any person, arising from the use of the premises by Tenant, or arising from the failure of Tenant to keep the premises in good condition as provided herein. Tenant agrees to pay for all damage to the building, as well as all damage or injury suffered by tenants or occupants thereof caused by misuse or neglect of the premises by Tenant.

Section 14. Destruction of Premises. In the event of a partial destruction of the premises during the term from any insured cause, Lessor shall forthwith repair the same provided the repairs can be made within sixty (60) days under the laws and regulations of applicable governmental authorities. Any such partial destruction from any insured cause shall neither annul

nor void this Sublease, except that Tenant shall be entitled to a proportionate reduction of rent while the repairs are being made, any proportionate reduction being based on the extent to which the making of repairs shall interfere with the business carried on by Tenant in the premises. If the repairs cannot be made in the specified time, Lessor may, at its option, make repairs within a reasonable time, this Sublease continuing in full force and effect and the rent to be proportionately rebated as previously set forth in this paragraph. In the event that Lessor does not elect to make repairs that cannot be made in the specified time, this Sublease may be terminated at the option of either party. In the event of any partial destruction of the premises during the term from any uninsured cause, then Lessor may, at Lessor's option, terminate this Sublease upon written notice to Tenant. A total destruction of the building in which the premises are situated shall terminate this Sublease.

In the event Lessor elects to reconstruct or materially renovate the Building, notice shall be provided to Tenant at least ninety (90) days prior to the start of such project. In such case, the leased premises may be required to be closed (or relocated) until such project is completed. At this time, and subject to the ninety (90) day notice requirement, Lessor and Tenant shall each have the option of terminating this Sublease at no cost or further obligation but agree to work in good faith toward the negotiation and execution of a new sublease within the reconstructed or materially renovated Building.

Section 15. Condemnation. A condemnation of the entire building or a condemnation of the portion of the premises occupied by Tenant shall result in a termination of this Sublease with no further obligations by the parties.

Section 16. Assignment and Subletting. Tenant shall not assign any rights or duties under this Sublease nor sublet any part of the premises without the prior written consent of Lessor, which consent shall not be unreasonably withheld. A consent to one assignment or sublease shall not waive Lessor's rights hereunder. This Sublease shall not be assignable by operation of law without the written consent of Lessor, which consent shall not be unreasonably withheld.

Section 17. Breach or Default. Tenant shall have breached this Sublease and shall be considered in default hereunder if (1) Tenant files a petition in bankruptcy or insolvency or for reorganization under any bankruptcy act or makes an assignment for the benefit of creditors, (2) involuntary bankruptcy proceedings are instituted against Tenant under any bankruptcy

act and such proceedings adjudge Tenant a bankrupt, (3) Tenant fails to pay any monthly rent or operation costs when due and Lessor has given Tenant fifteen (15) days written notice to pay the rent or operation costs, or (4) Tenant fails to perform or comply with any of the covenants or conditions of this Sublease and such failure continues for a period of thirty (30) days after written notice thereof is given to Tenant.

Section 18. Effect of Breach. In the event of a breach of this Sublease as set forth in Section 17 Breach or Default, the rights of Lessor shall be as follows:

(1) Lessor shall have the right to cancel and terminate this Sublease, as well as all of the right, title and interest of Tenant hereunder, by giving to Tenant not less than ten (10) days' written notice of the cancellation and termination. On expiration of the time fixed in the notice, this Sublease and the right, title and interest of Tenant hereunder shall terminate in the same manner and with the same force and effect, except as to Tenant's liability, as if the date fixed in the notice of cancellation and termination were the end of the term herein originally determined.

(2) Without affecting Lessor's duty to mitigate damages, on termination Lessor may recover from Tenant all damages proximately resulting from the breach, including the cost of recovering the premises and the worth of the balance of this Sublease over the reasonable rental value of the premises for the remainder of the Sublease term, which sum shall be immediately due Lessor from Tenant.

Without affecting Lessor's duty to mitigate damages and after reasonable time allowed Tenant to release the premises, Lessor may re-let the premises or any part thereof for any term without terminating the Sublease. Lessor may make alterations and repairs to the premises. The duties and liabilities of the parties if the premises are re-let as provided herein shall be as follows:

(a) In addition to Tenant's liability to Lessor for breach of the Sublease, Tenant shall be liable for all expenses of the re-letting, for the alterations and repairs made, and for the difference between the rent received by Lessor under the new lease agreement and the rent installments that are due for the same period under this Sublease.

(b) The rent received from re-letting the premises shall be applied: (1) to reduce Tenant's indebtedness to Lessor under this Sublease, (2) to expenses of the re-letting and alterations and repairs made, (3) to rent due under this

Sublease, or (4) to payment of future rent under this Sublease as it becomes due.

If the new tenant does not pay a rent installment promptly to Lessor and the rent installment has been credited in advance of payment to the indebtedness of Tenant other than rent or if rentals from the new tenant have been otherwise applied by Lessor as provided for herein and, during any rent installment period, are less than the rent payable for the corresponding installment period under this Sublease, Tenant shall pay Lessor the deficiency separately for each rent installment deficiency period and before the end of that period.

Section 19. Subordination and Financing. Tenant agrees upon request of Lessor to subordinate this Sublease and its rights hereunder to the lien of any mortgage, deed of trust or other encumbrance, together with any conditions, renewals, extensions or replacements thereof, now or hereafter placed, charged or enforced against the Lessor's interest in this Sublease and the leasehold estate hereby created, the premises or the land, building or improvements included thereon or of which the premises are a part, and to execute and deliver, (but without cost to Tenant) at any time and from time to time upon demand by Lessor such documents as may be required to effectuate such subordination, and, in the event that Tenant shall fail, neglect or refuse to execute and deliver any such document within ten (10) days after Lessor has given written notice to do so, Tenant hereby appoints Lessor, its successors and assigns, the attorney-in-fact of Tenant irrevocably to execute and deliver any and all such documents for and on behalf of Tenant; provided, however, that Tenant shall not be required to effectuate such subordination nor shall Lessor be authorized to effect such subordination on behalf of Tenant, unless the mortgagee or beneficiary named in such mortgage, deed of trust or other encumbrance shall first agree in writing for the benefit of Tenant that, so long as Tenant is not in default under any of the provisions, covenants or conditions of this Sublease on the part of Tenant to be kept and performed, neither this Sublease nor any of the rights of Tenant hereunder shall be terminated or modified or be subject to termination or modification nor shall Tenant's possession of the premises be disturbed or interfered with by any trustee's sale or by an action or proceeding to foreclose said mortgage, deed of trust or other encumbrance.

Section 20. Liability Insurance. Tenant shall, during the term hereof, procure and keep in full force and effect a policy of liability insurance in an amount of not less than One Million Dollars (\$1,000,000.00). Such policy shall contain a clause that the insurer will not cancel or change the insurance without first

giving Lessor thirty (30) day's prior written notice. The policy shall name Lessor and the STATE OF HAWAII as additional insureds.

Section 21. Option to Renew. Upon the expiration of the original Sublease Term, Sublease shall automatically renew on a month to month basis, under the existing terms and conditions, unless terminated by either party with 30 days written notice.

Section 22. Subject to State Harbor Lease No. H-83-2 and Consent. Tenant agrees that this Sublease is subject to the terms and conditions of State Harbor Lease No. H-83-2, and Tenant agrees to abide by such terms and conditions. Tenant acknowledges that this Sublease is subject to the consent of the State of Hawaii. Lessor will use his best efforts to obtain such consent; however, if consent is not given by the State of Hawaii, this Sublease shall be terminated; Tenant shall abandon the leased premises as soon as practicable, with no liability accruing to Lessor as a result of said refusal.

Section 23. Attorney's Fees. In case suit shall be brought for an unlawful detainer of the premises, for the recovery of any rent due under the provisions of this Sublease or for breach of any condition contained herein by either party, the prevailing party in such action shall recover in addition to damages and costs a reasonable attorney's fee which shall be fixed by the court.

Section 24. Partial Invalidity. If any term, provision or condition of this Sublease shall be held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of this Sublease shall continue in full force and effect and shall in no way be affected, impaired or invalidated thereby.

Section 25. Captions and Pronouns.

(1) Captions. The captions appearing at the beginning of the articles, sections and paragraphs hereof are descriptive only and intended for convenience in reference to this Sublease and should there be any conflict or inconsistency between any such caption and the text of any such article, section or paragraph at the head of which it appears, the text of the article, section or paragraph, as the case may be, and not such caption shall control and govern in the construction of the terms of this Sublease.

(2) Pronouns. Masculine or feminine pronouns shall be substituted for the neuter form and vice versa, and the plural

shall be substituted for the singular and vice versa in any place herein in which the context requires such substitution(s).

Section 26. Successors and Assigns. The terms, provisions, covenants and conditions contained in this Sublease shall apply to, bind and inure to the benefit of the heirs, personal representatives, administrators, legal representatives, successors and assigns (where assignment is permitted) of Lessor and Tenant, respectively.

Section 27. Entire Agreement. This Sublease constitutes the entire agreement of Lessor and Tenant and supersedes all oral and written agreements and understandings made and entered into by the parties hereto prior to the date hereof, except any agreements entered into by Lessor and Tenant relating to the construction of improvements by Lessor for the benefit of Tenant concerning the premises. Except as herein and otherwise provided, no subsequent alteration, amendment, change or addition to this Sublease shall be binding upon Lessor and Tenant unless reduced to writing and signed by each of them.

Section 28. Special Conditions (Parking). Tenant acknowledges and understands this Sublease does "not" include designated parking for Tenant or Tenant's guests. Furthermore, the DNLR controls the parking areas adjacent to the premises and as such, Tenant is subject to the parking regulations imposed by the DNLR. Tenant violations of DNLR parking regulations may be considered a Breach of this Sublease and as such grounds for termination.

IN WITNESS WHEREOF, the parties hereto have executed this Sublease in duplicate, the day and year first above written.


"Lessor"

KONA MARINE HOLDINGS, LLC.

By   
Craig Stevenson its Managing Member

"Tenant"

REEL ACTION, LLC

By  11/26/2019  
Don Kreek  
Title General Manager

For purposes of this form, electronically transmitted signatures shall be considered as original.

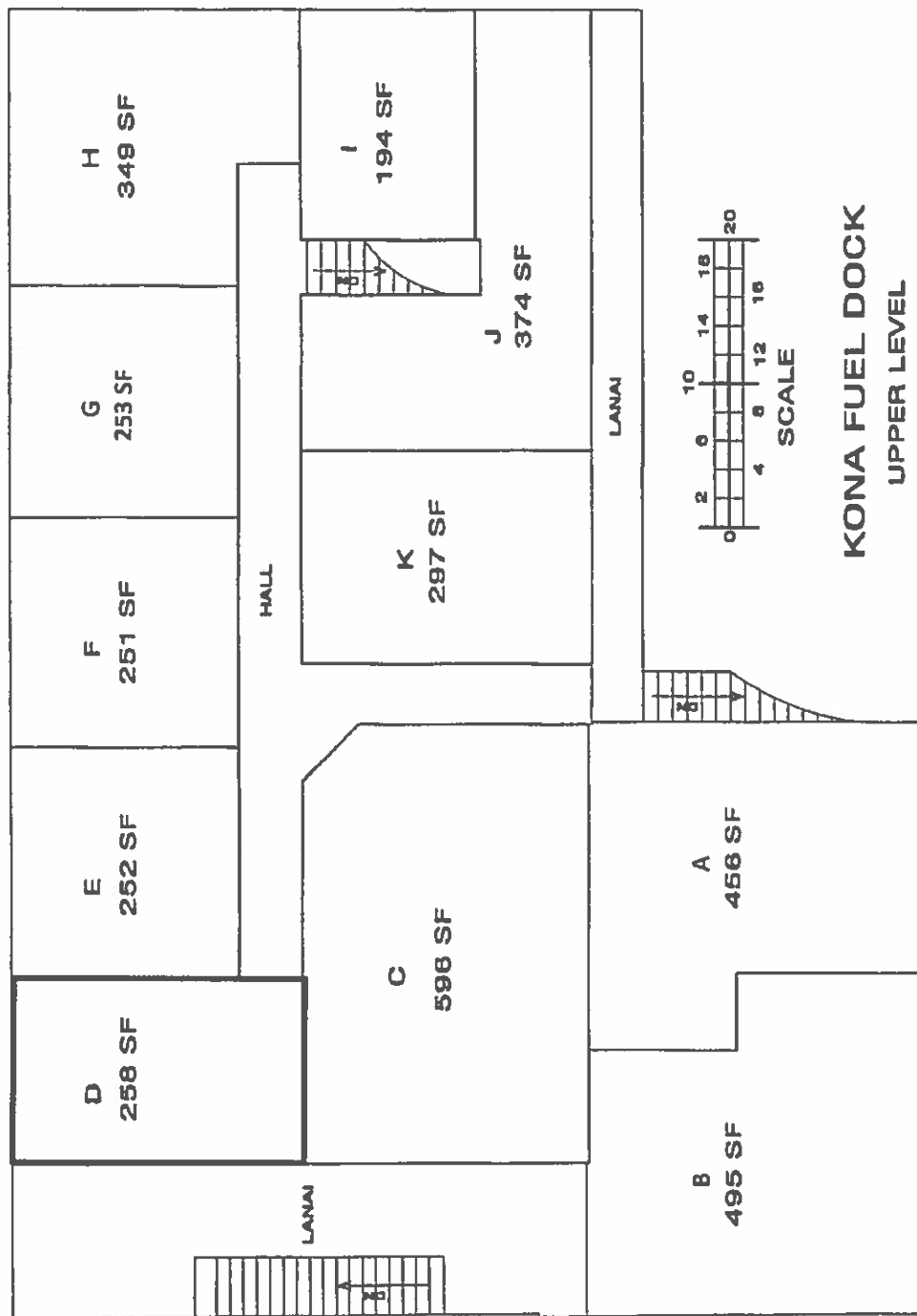


Exhibit A



Exhibit E

**KONA MARINE HOLDINGS, LLC**  
**74-381 Kealakehe Parkway**  
**Kailua-Kona, HI 96740**  
**PHONE: (808) 325-5310**

**THE FUEL DOCK – SUBLEASE SUMMARY**

**Tenant:** Kiholo Inc.  
Reynaldo Rubalcava  
Miss Mojo Sportfishing  
74-872 Paihi Street  
Kailua-Kona, Hawaii 96740  
Phone: 360 661 6556  
Email: rey.rubalcava@gmail.com

**Premises:** "Charters"

**Rental Area:** 644 Square Feet

**LEASE TERMS**

**Begins:** November 1, 2019  
**Term:** Three (3) Year  
**Option to Renew:** Yes, Annual  
**Notice:** Thirty (30) Days

**MONTHLY RENTAL PAYMENTS**

<b>Total Rent (first year):</b>	<b>\$2,116.50</b>	<b>(\$3.29 square foot)</b>
<b>Electricity:</b>	<b>150.00</b>	<b>Set amount per month</b>
<b>% G.E.T.:</b>	<b><u>100.60</u></b>	<b>(4.4386%)</b>
<b>TOTAL MONTHLY RENT:</b>	<b>\$2,367.10</b>	
<b>"Base Rent" to increase by 3% each year of lease</b>		

**SECURITY DEPOSIT:** **\$4,734.20**

**MANAGING AGENT:** **Robert Curtis**

**THE FUEL DOCK**

**Sublease**

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27	Entire Agreement	10
28	Special Conditions	10

SUBLEASE

THIS INDENTURE OF Sublease, executed this \_\_\_\_ day of October, 2019, effective, however, November 1, 2019 by and between **KONA MARINE HOLDINGS, LLC.**, a Delaware Limited Liability Corporation, with its principal place of business located at 1203 De La Vina Street, Santa Barbara, California 93101, hereinafter called "Lessor", and **Kiholo Inc.** with a mailing address at Reynaldo Rubalcava, 74-872 Paihi Street, Kailua-Kona, Hawaii 96740 hereinafter collectively called "Tenant";

W I T N E S S E T H:

(1) Lessor is the owner of those certain leasehold premises, together with all improvements therein, demised by State Harbor Lease No. H-83-2, at Honokohau Harbor, North Kona, Hawaii, commonly known as "The Fuel Dock", with a street address of 74-381 Kealakehe Parkway, Kailua-Kona, Hawaii 96740, having space therein to sublet.

(2) Tenant desires to lease space on the first floor of the premises as an office for operating a fishing charter business and related activities.

(3) The parties desire to enter into a lease agreement defining their respective rights, duties and liabilities relating to the premises. In consideration of the mutual covenants contained herein, the parties agree as follows:

Section 1. Description of Premises. Lessor does hereby demise and lease to Tenant, and Tenant does hereby hire and lease from the Lessor, a portion of the premises described above commonly known as "The Fuel Dock", which portion is designated on Exhibit A attached hereto as office Suite "CHARTERS" (containing an area of approximately 644 square feet), on the first floor, hereinafter called the "premises". Together with the full right of access to said premises in common with others over, across and through any alleys, common entrances, stairways, halls and corridors in or around said building, subject to the terms, covenants and conditions contained herein.

The premises shall be used for the purposes of office space, and retailing of packaged seafood, and for no other purpose. The latter use must comply with all requirements of the Department of Health.

Section 2. Term of Sublease. The term of this Sublease shall be for **Three (3) years**, commencing **November 1<sup>st</sup>, 2019**, unless sooner terminated as provided herein, or unless renewed as

provided herein. Tenant shall surrender the premises to Lessor immediately on termination of the Sublease.

Section 3. Delivery of Possession. Space shall be available for occupancy on or before November 1, 2019.

Section 4. Total Rent Due. Tenant shall pay to Lessor at the office of Lessor or at such other place as Lessor shall designate, in equal monthly installments of **TWO THOUSAND THREE HUNDRED SIXTY SEVEN AND 10/100 DOLLARS (\$2,367.10)** each, in advance on the first day of each and every calendar month. Initial rent amount comprises \$2,116.50 base rent, \$150.00 electricity charge plus \$100.60 Hawaii General Excise Tax. At each annual renewal, rent amounts will increase by 3%.

Any and all sums due hereunder which are unpaid when due shall draw interest at the rate of one percent (1%) per month until fully paid. In addition, a 5% late fee shall be charged on a one-time basis for each late monthly payment of base rent.

In the event that the rent under State Harbor Lease No. H-83-2 shall increase during the term of this Sublease; Tenant shall pay to Lessor, as additional base rent, an amount equal to the percentage of such increase. For example, if the rent under the State Harbor Lease increases by an amount equal to 5%, then the base rent under this Sublease shall likewise increase by 5%. Additionally, should the applicable General Excise Tax rate increase, that increase will apply to the tax amount as stated in this section.

Section 5. Payment of Building Operating Costs. Lessor shall pay when due all real property taxes and State lease rent, and shall provide and pay for common area lights, all insurance including but not limited to fire, and public liability insurance on the building and common areas as required by any government agencies and as required under Harbor Lease No. H-83-2, water, air conditioning, trash pickup, yard work, repairs, maintenance, management services and all other operating costs of the building ("annual operating costs"), except those specifically agreed to be provided by Tenant.

- (1.) Tenant shall be responsible for his own janitorial services, and Lessor shall not provide any such services.

Section 6. Security Deposit. Before taking occupancy, Tenant shall place with Lessor a security deposit in the amount of **FOUR THOUSAND SEVEN HUNDRED THIRTY FOUR and 20/100 DOLLARS (\$4,734.20)**, which may be used by Lessor to remedy any deficiencies in leased premises, or in rent received, upon termination of lease. Amounts not expended will be returned to Tenant at termination of lease or completion of remediation, if required.

Section 7. Restrictions on Use. Tenant shall not use nor permit the premises, or any part thereof, to be used for any purposes other than those set forth herein. Tenant shall neither permit on the premises any act, sale or storage that may be prohibited under standard forms of fire insurance policies, nor use the premises for any such purpose. In addition, no use shall be made nor permitted to be made that shall result in (1) waste on the premises, (2) a public or private nuisance that may disturb the quiet enjoyment of other tenants in the building, (3) improper, unlawful or objectionable use, including sale, storage, or preparation of alcoholic beverages or materials generating an odor on the premises, or (4) noises or vibrations that may disturb other tenants. Tenant shall comply with all governmental regulations and statutes affecting the premises either now or in the future. Tenant shall also comply with such rules and regulations as may be adopted by Lessor from time to time and made available in written form to Tenant; said rules and regulations may affect not only occupancy of leased premises, but also use of common and public areas, but in any event shall be uniform as to all tenants and tenants of the building. No animals or birds of any kind shall be permitted in or around the building without the prior written permission of Lessor.

Section 8. Abandonment of Premises. Tenant shall not vacate nor abandon the premises at any time during the term, but if Tenant does vacate or abandon the premises or is dispossessed by process of law for nonpayment of rent or any other reason, any personal property belonging to Tenant, other than the business files and records of Tenant, left on the premises shall be deemed abandoned. At the option of Lessor, such abandoned property, including all trade fixtures shall either become the property of Lessor or shall be removed and stored at the Tenant's expense. Tenant shall also be charged with any and all costs incurred by the Lessor in placing the premises in a condition suitable for releasing to another Tenant.

Section 9. Utilities.

A. Telephone and Internet. Tenant shall, in its own name, contract for and obtain communications services for the demised premises at its own liability and expense and shall indemnify Lessor from any liability thereunder.

B. Electric. Tenant shall pay Lessor a set amount of **\$150.00 per month** for their electricity usage.

Section 10. Condition of Premises. The taking of possession by Tenant shall be conclusive evidence as against the Tenant that the premises were in good order and satisfactory condition when Tenant took possession.

Section 11. Maintenance.

A. Tenant's Duties. Tenant will, at its own expense, keep the interior of the premises in good repair and tenantable condition during the term of this Sublease, and Tenant shall promptly and adequately repair all damage to the interior of the premises and replace or repair all damaged broken glass, fixtures, and appurtenances under the supervision and with the approval of Lessor and within any reasonable period of time specified by Lessor. If Tenant does not do so, Lessor may, but need not, make such repairs and replacements, and Tenant shall pay Lessor the cost thereof forthwith upon billing for same. Lessor may, but shall not be required to do so, enter the premises at all reasonable times to make such repairs, alterations, improvements and additions. Tenant shall, at the termination of this Sublease, surrender the premises to Lessor in as good condition and repair, as reasonable and proper use thereof will permit.

B. Lessor's Duties. Lessor shall keep the exterior and common areas of the building in which the premises are located in good condition and repair, reasonable wear and tear excepted.

Section 12. Certain Rights Reserved by Lessor. Lessor shall have the following rights, exercisable without notice except as provided herein and without liability to Tenant for damage or injury to property, persons or business and without effecting an eviction, constructive or actual, or disturbance of Tenant's use or possession or giving rise to any claim for set-off or abatement of rent:

(a) To install, affix and maintain any and all signs on the exterior and interior of the building.

(b) To designate and approve, prior to installation, all types of window shades, blinds, drapes, awnings, window ventilators and other similar equipment, and to control all internal lighting that may be visible from the exterior of the building.

(c) To inspect the premises at reasonable hours and, during the last sixty (60) days of the term, to show them to prospective tenants at reasonable hours and, if they are vacated, to prepare them for re-occupancy.

(d) To retain at all times, and to use in appropriate instances, keys to all doors within and into the premises; no locks shall be changed or added without the prior written consent of Lessor which consent shall not be unreasonably withheld. It is hereby understood by Lessor that Tenant has a duty of confidentiality to its clients and, therefore, Lessor may never enter the premises without Tenant's presence except in cases of imminent danger to life or property.

(e) To prohibit the placing of vending or dispensing machines of any kind in or about the premises without the prior written permission of Lessor.

(f) So long as Tenant's use of the premises and rights created under this Sublease are not substantially affected, Lessor may from time to time adopt such rules and regulations as in its discretion are required and as may affect not only the occupancy of the leased premises, but also the use of common and public areas; said rules and regulations shall be uniform and written notice thereof given. Lessor may enter upon the premises and may exercise any or all of the foregoing rights hereby reserved without being deemed guilty of an eviction or disturbance of Tenant's use or possession and without being liable in any manner to Tenant.

Section 13. Liability of Lessor. Tenant waives all claims against Lessor for damages to goods or for injuries to persons on or about the premises from any cause arising at any time except those actions resulting from the negligent acts or omissions of Lessor or its agents and employees. Tenant will indemnify Lessor on account of any damage or injury to any person, or to the goods of any person, arising from the use of the premises by Tenant, or arising from the failure of Tenant to keep the premises in good condition as provided herein. Tenant agrees to pay for all damage to the building, as well as all damage or injury suffered by tenants or occupants thereof caused by misuse or neglect of the premises by Tenant.

Section 14. Destruction of Premises. In the event of a partial destruction of the premises during the term from any insured cause, Lessor shall forthwith repair the same provided the repairs can be made within sixty (60) days under the laws and regulations of applicable governmental authorities. Any such partial destruction from any insured cause shall neither annul nor void this Sublease, except that Tenant shall be entitled to a proportionate reduction of rent while the repairs are being made, any proportionate reduction being based on the extent to which the making of repairs shall interfere with the business carried on by Tenant in the premises. If the repairs cannot be made in the specified time, Lessor may, at its option, make repairs within a reasonable time, this Sublease continuing in full force and effect and the rent to be proportionately rebated as previously set forth in this paragraph. In the event that Lessor does not elect to make repairs that cannot be made in the specified time, this Sublease may be terminated at the option of either party. In the event of any partial destruction of the premises during the term from any uninsured cause, then Lessor may, at Lessor's option, terminate this Sublease upon written notice to Tenant. A total destruction of the building in which the premises are situated shall terminate this Sublease.

In the event Lessor elects to reconstruct or materially renovate the Building, notice shall be provided to Tenant at least ninety (90) days prior to the start of such project. In such case, the leased premises may be required to be closed (or relocated) until such project is completed. At this time, and subject to the ninety (90) day notice requirement, Lessor and Tenant shall each have the option of terminating this Sublease at no cost or further obligation but agree to work in good faith toward the negotiation and execution of a new sublease within the reconstructed or materially renovated Building.

Section 15. Condemnation. A condemnation of the entire building or a condemnation of the portion of the premises occupied by Tenant shall result in a termination of this Sublease with no further obligations by the parties.

Section 16. Assignment and Subletting. Tenant shall not assign any rights or duties under this Sublease nor sublet any part of the premises without the prior written consent of Lessor, which consent shall not be unreasonably withheld. A consent to one assignment or sublease shall not waive Lessor's rights hereunder. This Sublease shall not be assignable by operation of law without the written consent of Lessor, which consent shall not be unreasonably withheld.



Section 17. Breach or Default. Tenant shall have breached this Sublease and shall be considered in default hereunder if (1) Tenant files a petition in bankruptcy or insolvency or for reorganization under any bankruptcy act or makes an assignment for the benefit of creditors, (2) involuntary bankruptcy proceedings are instituted against Tenant under any bankruptcy act and such proceedings adjudge Tenant a bankrupt, (3) Tenant fails to pay any monthly rent or operation costs when due and Lessor has given Tenant fifteen (15) days written notice to pay the rent or operation costs, or (4) Tenant fails to perform or comply with any of the covenants or conditions of this Sublease and such failure continues for a period of thirty (30) days after written notice thereof is given to Tenant.

Section 18. Effect of Breach. In the event of a breach of this Sublease as set forth in Section 17 Breach or Default, the rights of Lessor shall be as follows:

(1) Lessor shall have the right to cancel and terminate this Sublease, as well as all of the right, title and interest of Tenant hereunder, by giving to Tenant not less than ten (10) days' written notice of the cancellation and termination. On expiration of the time fixed in the notice, this Sublease and the right, title and interest of Tenant hereunder shall terminate in the same manner and with the same force and effect, except as to Tenant's liability, as if the date fixed in the notice of cancellation and termination were the end of the term herein originally determined.

(2) Without affecting Lessor's duty to mitigate damages, on termination Lessor may recover from Tenant all damages proximately resulting from the breach, including the cost of recovering the premises and the worth of the balance of this Sublease over the reasonable rental value of the premises for the remainder of the Sublease term, which sum shall be immediately due Lessor from Tenant.

Without affecting Lessor's duty to mitigate damages and after reasonable time allowed Tenant to release the premises, Lessor may re-let the premises or any part thereof for any term without terminating the Sublease. Lessor may make alterations and repairs to the premises. The duties and liabilities of the parties if the premises are re-let as provided herein shall be as follows:

(a) In addition to Tenant's liability to Lessor for breach of the Sublease, Tenant shall be liable for all expenses of the re-letting, for the alterations and repairs made, and for the difference between the rent received by Lessor under the new

lease agreement and the rent installments that are due for the same period under this Sublease.

(b) The rent received from re-letting the premises shall be applied: (1) to reduce Tenant's indebtedness to Lessor under this Sublease, (2) to expenses of the re-letting and alterations and repairs made, (3) to rent due under this Sublease, or (4) to payment of future rent under this Sublease as it becomes due.

If the new tenant does not pay a rent installment promptly to Lessor and the rent installment has been credited in advance of payment to the indebtedness of Tenant other than rent or if rentals from the new tenant have been otherwise applied by Lessor as provided for herein and, during any rent installment period, are less than the rent payable for the corresponding installment period under this Sublease, Tenant shall pay Lessor the deficiency separately for each rent installment deficiency period and before the end of that period.

Section 19. Subordination and Financing. Tenant agrees upon request of Lessor to subordinate this Sublease and its rights hereunder to the lien of any mortgage, deed of trust or other encumbrance, together with any conditions, renewals, extensions or replacements thereof, now or hereafter placed, charged or enforced against the Lessor's interest in this Sublease and the leasehold estate hereby created, the premises or the land, building or improvements included thereon or of which the premises are a part, and to execute and deliver, (but without cost to Tenant) at any time and from time to time upon demand by Lessor such documents as may be required to effectuate such subordination, and, in the event that Tenant shall fail, neglect or refuse to execute and deliver any such document within ten (10) days after Lessor has given written notice to do so, Tenant hereby appoints Lessor, its successors and assigns, the attorney-in-fact of Tenant irrevocably to execute and deliver any and all such documents for and on behalf of Tenant; provided, however, that Tenant shall not be required to effectuate such subordination nor shall Lessor be authorized to effect such subordination on behalf of Tenant, unless the mortgagee or beneficiary named in such mortgage, deed of trust or other encumbrance shall first agree in writing for the benefit of Tenant that, so long as Tenant is not in default under any of the provisions, covenants or conditions of this Sublease on the part of Tenant to be kept and performed, neither this Sublease nor any of the rights of Tenant hereunder shall be terminated or modified or be subject to termination or modification nor shall Tenant's possession of the premises be disturbed or interfered with by any trustee's sale or by an action or proceeding to foreclose said mortgage, deed of trust or other encumbrance.

Section 20. Liability Insurance. Tenant shall, during the term hereof, procure and keep in full force and effect a policy of liability insurance in an amount of not less than One Million Dollars (\$1,000,000.00). Such policy shall contain a clause that the insurer will not cancel or change the insurance without first giving Lessor thirty (30) day's prior written notice. The policy shall name Lessor and the STATE OF HAWAII as additional insureds.

Section 21. Option to Renew. Upon the expiration of the original Sublease Term, Sublease shall automatically renew on an annual basis, under the existing terms and conditions, unless terminated by either party with 30 days written notice.

Section 22. Subject to State Harbor Lease No. H-83-2 and Consent. Tenant agrees that this Sublease is subject to the terms and conditions of State Harbor Lease No. H-83-2, and Tenant agrees to abide by such terms and conditions. Tenant acknowledges that this Sublease is subject to the consent of the State of Hawaii. Lessor will use his best efforts to obtain such consent; however, if consent is not given by the State of Hawaii, this Sublease shall be terminated; Tenant shall abandon the leased premises as soon as practicable, with no liability accruing to Lessor as a result of said refusal.

Section 23. Attorney's Fees. In case suit shall be brought for an unlawful detainer of the premises, for the recovery of any rent due under the provisions of this Sublease or for breach of any condition contained herein by either party, the prevailing party in such action shall recover in addition to damages and costs a reasonable attorney's fee which shall be fixed by the court.

Section 24. Partial Invalidity. If any term, provision or condition of this Sublease shall be held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of this Sublease shall continue in full force and effect and shall in no way be affected, impaired or invalidated thereby.

Section 25. Captions and Pronouns.

(1) Captions. The captions appearing at the beginning of the articles, sections and paragraphs hereof are descriptive only and intended for convenience in reference to this Sublease and should there be any conflict or inconsistency between any such

caption and the text of any such article, section or paragraph at the head of which it appears, the text of the article, section or paragraph, as the case may be, and not such caption shall control and govern in the construction of the terms of this Sublease.

(2) Pronouns. Masculine or feminine pronouns shall be substituted for the neuter form and vice versa, and the plural shall be substituted for the singular and vice versa in any place herein in which the context requires such substitution(s).

Section 26. Successors and Assigns. The terms, provisions, covenants and conditions contained in this Sublease shall apply to, bind and inure to the benefit of the heirs, personal representatives, administrators, legal representatives, successors and assigns (where assignment is permitted) of Lessor and Tenant, respectively.

Section 27. Entire Agreement. This Sublease constitutes the entire agreement of Lessor and Tenant and supersedes all oral and written agreements and understandings made and entered into by the parties hereto prior to the date hereof, except any agreements entered into by Lessor and Tenant relating to the construction of improvements by Lessor for the benefit of Tenant concerning the premises. Except as herein and otherwise provided, no subsequent alteration, amendment, change or addition to this Sublease shall be binding upon Lessor and Tenant unless reduced to writing and signed by each of them.

Section 28. Special Conditions.

A. (Parking) Tenant acknowledges and understands this Sublease does "not" include designated parking for Tenant or Tenant's guests. Furthermore, the DNLR controls the parking areas adjacent to the premises and as such, Tenant is subject to the parking regulations imposed by the DNLR. Tenant violations of DNLR parking regulations may be considered a Breach of this Sublease and as such grounds for termination.

B. (Scale) Tenant shall be required to purchase, maintain and operate the hoist and certified scale currently located at the Fuel Dock. The purchase price shall be \$100. Tenant, at its expense, shall maintain the equipment in good working order and agrees to operate, or cause to be operated, the hoist and scale pursuant to customer demand in the marketplace. Tenant's liability insurance coverage shall include the operation of the hoist and scale. In the event of Sublease termination, Tenant agrees to continue to operate, or cause to be operated, the hoist

and scale up to the termination. At termination, Tenant shall sell the hoist and scale to Lessor for \$50.

IN WITNESS WHEREOF, the parties hereto have executed this Sublease in duplicate, the day and year first above written.

"Lessor"

KONA MARINE HOLDINGS, LLC.

By   
Craig Stevenson its Managing Member

"Tenant"

Kiholo Inc.

By   
\_\_\_\_\_

Title President/Owner

For purposes of this form, electronically transmitted signatures shall be considered as original.

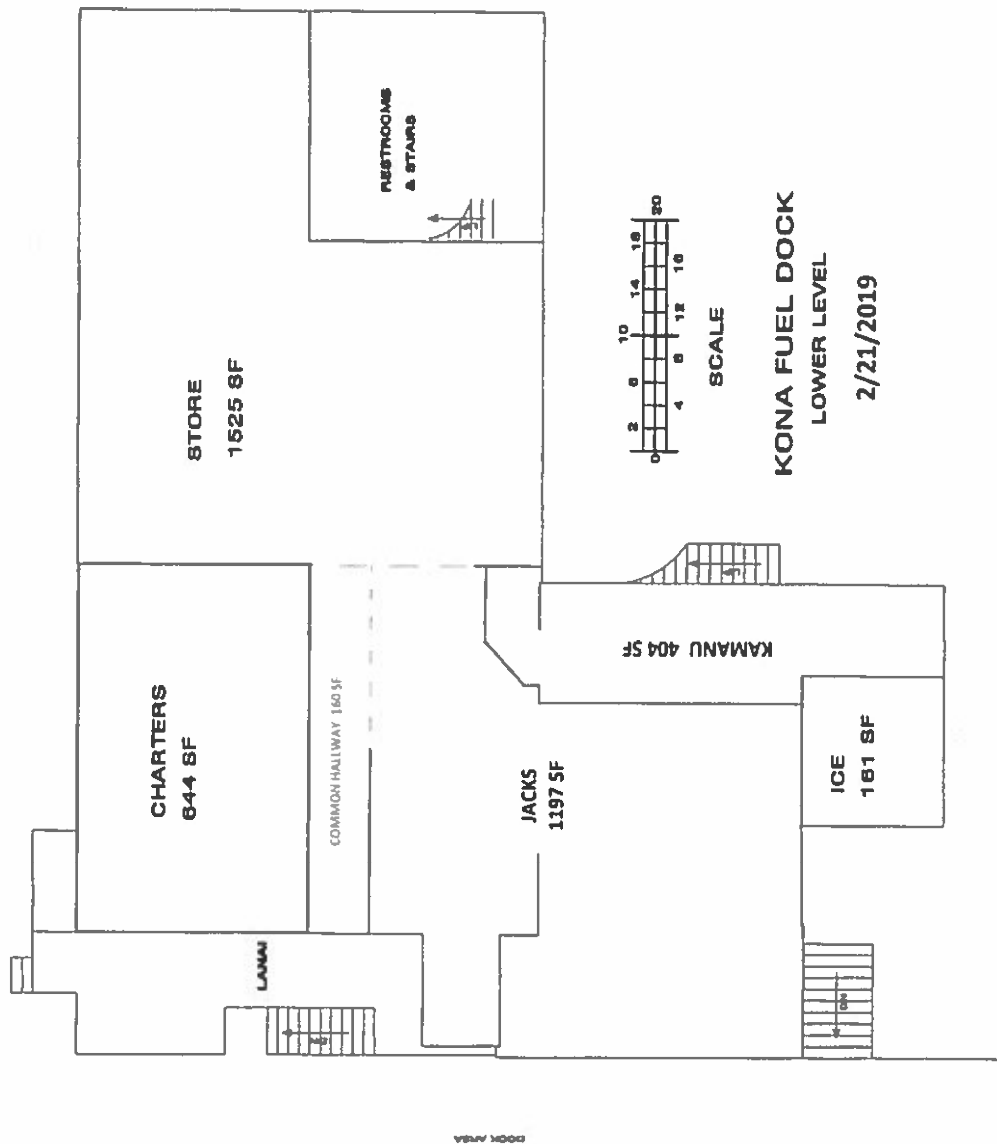


Exhibit A