

From: Irons, Tim
To: [DLNR.BLNR.Testimony](#)
Cc: [craig](#)
Subject: [EXTERNAL] September 11, 2020 Land Board Meeting: Agenda Item J-1: 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 [DEN-US_Acti...
Date: Thursday, September 10, 2020 2:14:06 PM
Attachments: [image001.png](#)
[Dan Morris July 10, 2020 Email.pdf](#)
[2020-08-06 Ltr from TIIR to D. Morris re Response to 7-10-2020 E-Mail.PDF](#)
[Dan Morris August 14, 2020 Letter.pdf](#)
[2020-08-27 Ltr from TIIR to D. Morris re 8-14-2020 Correspondence.PDF](#)

Dear Madame Chair and Board Members:

I represent Kona Marine Holdings, LLC ("KMH") concerning the above-referenced Agenda Item, J-1. I was made aware of the agenda item this morning and would like to remotely attend the meeting tomorrow and present testimony and/or be available for questions. My understanding is that DOBOR staff agreed to send a link to KMH to participate online but the link has not been received.

The issues with regard to loading and unloading at KMH's leased dock have been the subject of negotiations between myself and the Deputy Attorney General, Dan Morris, Esq., over the summer. Those discussions are absent from staff's report on the agenda item. I request that this email and the attached correspondence be included in the record as they set forth KMH's position on the interpretation of its Harbor Lease No. H-83-2 ("Lease") and the Small Boat Harbor Rules. Our interpretation of the Lease is that it necessarily permits unloading and unloading of passengers at the dock and our interpretation of the Rules is that no commercial harbor permit is needed to access the Lease premises, which includes the dock. Accordingly, we request a continuance of Item J-1 so that we can complete our negotiations with the Attorney General's Office. To the extent the Board considers J-1 and denies the after-the-fact consents to the subleases or conditions them on KMH's tenants obtaining a commercial permit for Honokohau harbor, KMH requests a contested case hearing.

I would also like to comment on Item J-2 --specifically to seek clarification that, under the recommended approval, GKM and its subtenants are not permitted to sell fuel to the general public or conduct tanker truck fueling [from tanker truck to boat]. The wording on p. 4, "Recommendation" Section 1(a) seems to suggest that subtenants can sell fuel to the public. If so, that appears at odds with the staff's narrative and recommendation.

Sincerely,
Timothy Irons

 **Tim Irons**

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Irons, Tim

From: Morris, Daniel A <Daniel.A.Morris@hawaii.gov>
Sent: Friday, July 10, 2020 4:19 PM
To: Irons, Tim
Cc: Wynhoff, Bill J; Underwood, Ed R
Subject: Kona Marine Lease Rent Reopening and Lease issues regarding Harbor Lease 83-2.

[External Sender]

Dear Mr. Irons:

I have spoken with my client and reviewed your letter dated March 17, 2020 proposing a resolution of the ground rent reopening for Harbor Lease 83-2. My understanding of your letter is that you will agree to accept Mr. Conboy's determination of minimum rent for the ensuing 5 year period at \$28,620. This amount of minimum rent was calculated by Mr. Conboy based on the formula of land value (exclusive of improvements) times a market rate of return (here, 8%). Of course, the actual rent payable under the Lease during the ensuing five-year period would be the greater of this minimum rent or the percentage rent. Thus, in the event that 5% of Kona Marine's gross receipts exceeds this minimum rent of \$28,620 during the ensuing period (in any given year), that greater percentage rent amount would be the annual rent payable. Please confirm this understanding and hopefully we can move past this initial issue!

We also discussed a few other matters, including DOBOR's concerns about unauthorized loading and unloading of commercial passengers by Kona Marine's subtenants. This practice is problematic for several reasons: first, it appears to go beyond the uses allowable for the leased premises (i.e. marine fueling and servicing of vessels), and second, it may be contributing to levels of commercial activity in Honokohau Harbor greater than what is allowed under current administrative rules. For example, all of the commercial permits available for Honokohau Harbor have been issued. If commercial vessels with VME (Vessel Moored Elsewhere) permits intended for use at Kona pier are actually loading and unloading commercial passengers at the Honokohau Harbor fuel dock, then the limits on the number of commercial vessels permitted to operate out of Honokohau may end up being circumvented.

In addition to the foregoing, we also discussed the calculation of gross receipts and the effect of HRS 171-36(a)(6), which provides that for State leases that are percentage leases, "the receipts of the lessee shall be included as part of the lessee's gross receipts." If Kona Marine has not been including all of the receipts of its subtenants in its calculation of gross receipts, that practice may be in violation of law.

Finally, there are other issues pertaining to subletting that were addressed in a letter dated June 22, 2020 from DOBOR to Kona Marine, and in Kona Marine's response dated July 8, 2020. Apparently there is some document review being conducted by Kona Marine as they look for various submissions to DOBOR seeking consent to subleases, so I think we need to wait for those materials to engage in a meaningful discussion on that front.

This email obviously covers myriad issues, and we should formulate a plan to discuss each of them methodically and professionally. I would greatly appreciate your legal perspective on the above matters, and perhaps we can arrange a meeting to go into greater detail thereafter.

Aloha

Dan Morris

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August 6, 2020

VIA First Class Mail and E-mail

Daniel A. Morris, Esq.
Department of Attorney General
State of Hawaii
425 Queen Street
Honolulu, HI 96813
Email: Daniel.A.Morris@hawaii.gov

Re: Kona Marine Holdings Lease Rent Reopening and Lease issues regarding Harbor Lease H-83-2

Dear Mr. Morris:

This letter responds to your July 10, 2020 email regarding various issues that the Division of Boating and Ocean Recreation ("DOBOR") has raised with my client Kona Marine Holdings, LLC ("KMH") regarding Harbor Lease H-83-2 ("Lease") at the Honokohau Small Boat Harbor. Your email raises the following four main topics for discussion: (1) the rent-reopening on KMH's Lease (2) the calculation of gross receipts under the Lease (3) the scope of uses permitted under the Lease particularly with regard to loading and unloading from the dock and (4) various issues concerning KMH's subleases.

1. Rent-reopening

KMH agrees to the minimum rent being set at \$28,620 and annual lease rent of the greater of minimum rent or 5% of KMH gross receipts, as they have been historically calculated by DOBOR. It is our current understanding that DOBOR has now agreed with this issue.

2. Gross Receipts Calculation

Gross receipts do not include tenant sales. This issue was resolved several times in the past and, more recently, when the General Store Sublease to Jacks Diving Locker ("JDL") was approved in 2017. With respect to the latter, the Board of Land and Natural Resources ("BLNR") approved the JDL sublease understanding that gross receipts only include the rent KMH receives under the sublease (not tenant sales). See BLNR consent to JDL Store sublease, p. 6, attached as **Ex. 1**. At the time the sublease was under review, "[t]he Board requested staff to consult with the 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 rent..." *Id.*, p. 4. Staff met with the Deputy Attorney General and reviewed the files pertaining to the Lease. *Id.* Staff noted that "[w]hile the first five years of the lease required the payment of 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." (Emphasis added.) *Id.*, p. 5. Further, "[a]ccording 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." *Id.*, p. 6. As a result, Ed

Underwood recommended that “the proposed sublease...be approved pursuant to the current practice, sublease rent to be subject to the 5%.” *Id.*

As noted in the 2017 consent to JDL Store sublease, “there is no specific requirement for percentage rent in the reopener.” *Id.*, p. 3. Therefore, KMH agreed to percentage rent so long as it did not include the gross receipts of its tenants. BLNR agreed by consenting to the sublease, as it is authorized to do pursuant to HRS §171-36(a)(6). If DOBOR intends to re-litigate this issue, then KMH will take the position that no percentage rent is due. Indeed, it is probable that the aggregate of tenant revenues in normal times is in excess of \$5 million annually, which would be rent of \$250,000 annually for a piece of land worth \$300,000—an absurd amount that no lessee would agree to pay for the demised premises.

3. Permitted Uses Under The Lease

The Lease provides for use of the premises for marine and marine-related activities and uses. Under the Lease, the lessee shall have the right to use the leased premises to sell, advertise for sale, or otherwise contract for sale of all types of fuel, oil and lubricants normally used by small boats and to offer for sale or hire any and all goods and services reasonably necessary and incidental to such marine fueling facility. Lease, p. 2, attached as **Ex. 2**. In addition, the lessee is permitted 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. *Id.* And, these uses are not intended to be exclusive. *Id.*

The “premises” is 13,300 square feet consisting of both fast land and submerged land under and beyond the fuel dock. *Id.*, p. 1; and see exhibit B-1 to Lease. Servicing vessels and providing services “for hire” necessarily requires and contemplates loading and unloading of passengers on the dock. Indeed, DOBOR’s appraiser added 10% to the value of the land based on access to and from the fuel dock. See Appraisal attached as **Ex. 3**, p. 19 [“The adjustment for Harbor Frontage recognizes that the subject, in addition to street access, has direct harbor exposure and orientation. For an industrial property, the harbor frontage orientation allows for additional maritime access and expanded uses.”] Any other interpretation of the Lease would be absurd and no lender would have loaned money for the store and office building or to purchase the leasehold interest if customers of the building were not allowed to load and unload from vessels. This has been understood and consented to by the State DOT and DLNR for decades.

When KMH acquired its interest in the Lease, BLNR consented to diving and charter fishing operations on the premises. See BLNR’s December 11, 2009 Consent to Assignment and Update of Subleases, attached as **Ex. 4**. The character of use for the sublease to Kona Coast Skin Diver, Ltd., Inc. (JDL’s predecessor in interest) and Charter Desk, LLC are described as follows:

c. Kona Coast Skin Diver, Ltd., Inc. ‘Tenant desires to lease space on the ground floor of the premises for its scuba diving, excursion and skin diving business. The premises shall be used of the purposes of scuba diving, instruction, excursions, tank fills and skin diving business and for no other purpose.’

d. Charter Desk, LLC,: ‘Tenant desires to lease space on the first floor of the premises for its fishing charter business. ...The premises shall be used for the purposes of the charter desk and for no other purpose.’ *Id.* p. 4.

The Charter Desk sublease provided that the Charter Desk would own and maintain the fish weighing scales located on the main dock of the property and would make such scales available to the fishing population. The practice of weighing fish, running fishing tournaments, operating fishing charters, and other fishing activity has been prevalent, accepted, and approved at the property for decades, and all of this activity necessarily involves services associated with the loading and unloading of passengers.¹ The dive and charter fishing operations are clearly marine or marine-related services contemplated under the Lease. Dive excursions and charter fishing excursions necessarily involve utilizing the dock for the service of loading and unloading passengers, food and equipment.

The JDL Store provides a variety of products enjoyed by the boating public, including ice, beer, sandwiches, snacks, oil, and other products. Obviously the utilization of the JDL Store by the boating public entails the services of loading and unloading customers. Just as the JDL Store is permitted to have its customers load and unload from the dock, the JDL dive operation, fishing operations, and other marine-oriented tenant operations are also permitted to load and unload their customers.

In recent communications, DOBOR has suggested that Paragraph E on page 3 of the Lease precludes loading and unloading from the dock. Paragraph E provides: “[t]he use of the easement shall be for fueling and servicing of vessels only.” First, “servicing of vessels” (as distinct from fueling) includes loading and unloading food, equipment and passengers. There is no other reasonable interpretation of the language in the context of the Lease as a whole. This is why the State has permitted fishing tournaments from the dock and dive operators to load and unload passengers for decades. Second, Paragraph F sets forth the specific uses that are precluded on the premises. Ex. 2, p. 3. If loading and unloading of passengers from the dock were a precluded activity or dive operations and fishing excursions were precluded, these prohibitions would have been listed in Paragraph F—they are not. And, third, the reference to “easement” is ambiguous. The Lease identifies the premises as consisting of the fast lands and the submerged lands (which are described as an “exclusive easement”). The allowable uses are permitted on the premises; not any subset of the premises. Ex. 2, p. 2. Nowhere else in the Lease is the “easement” referenced or defined. Accordingly, DOBOR’s recent erroneous interpretation of this ambiguous provision cannot override the years of approved uses of the dock for marine-related activities.

As a final point on this issue, the Lease requires that the lessee shall use best efforts to maintain, develop, and increase the fueling business and shall not divert any business from Honokohau Boat Harbor. Ex. 2, p. 7. Under the Lease, KMH is obligated to find ways to increase fuel sales and business at the harbor. JDL, Wahine Charters and other marine-related sublessees increase fuel sales and

¹ We received notice on Thursday, July 30, 2020 that DOBOR is denying a sublease submittal for Wahine Charters, LLC because the sublease contains a provision allowing for the loading and unloading of passengers for their charter business. A sublease for Kiholo, Inc. (dba Miss Mojo Sportfishing) is currently under review. Kiholo, Inc., as successor to the Charter Desk, also operates a fishing charter business and operates the docks fishing scales. If DOBOR maintains its position that loading and unloading from the dock is prohibited, Kiholo, Inc. (who also purchased the fish weighing scales on the fuel dock) will be forced to vacate the premises and abandon their investment in both the charter fishing operation and the fish weigh scales operations and the general fishing population will have nowhere else to weigh fish.

business at the harbor, consistent with the terms of the Lease. Denying these businesses access to the premises would be contrary to the mandate not to divert any business from the harbor. If DOBOR now believes that limits should be placed on commercial activities in Honokohau harbor (contrary to the terms of the Lease) then DOBOR should refrain from issuing VME permits to new operators rather than targeting operations long permitted by the State under the Lease.

4. DOBOR's June 22, 2020 Letter To KMH Regarding Subleases

KMH filed a response to DOBOR's June 22, 2020 letter on July 8, 2020, attached as **Ex. 5**. KMH is desirous in addressing any outstanding issues with the subleases. When KMH first took over the Lease in 2009, rents were in arrears and the dock was in severe disrepair. KMH promised to make good on the balance owed and to help repair the facilities. BLNR consented to the assignment of the subleases upon the curing of the defaults and KMH followed through on its commitments and promises. KMH will continue to perform under the Lease and do what is legally required to bring its subleases into compliance.

KMH, its predecessors and its tenants have been operating from the premises for decades with the consent of the State and in full compliance with the Lease. The historic operations² have allowed the harbor to thrive and generate significant revenue to the State, consistent with the Lease. It is only in the last year or so that DOBOR has taken positions dramatically at odds with historical practices and past BLNR decisions. It would be helpful to understand what has transpired to so dramatically alter DOBOR's position. With that said, KMH is willing to work through DOBOR's concerns in an effort to reach a compromise that works for all involved.

We look forward to your response and would be happy to meet to discuss these issues in further.

Sincerely,



Timothy H. Irons
Counsel

² For 35 years the following has been active at the premises:

- 1) fisherman docking, unloading, weighing and photographing fish, and reloading;
- 2) public boaters pulling in, unloading, purchasing items at the General Store, and reloading;
- 3) JDL and other tenants servicing their customers by loading and unloading for ocean excursions; and
- 4) boats pulling in for fueling.

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).

Item J-5

EXHIBIT "1"

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 <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>

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:



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.

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 And C/O Craig Stevenson 1203 De La Vina Street Santa Barbara, CA 93101 (805) 729-2888 craig@loganviewco.com	Sublessee Jacks Diving Locker C/O Teri Leicher 75-5813 Alii Drive Kailua-Kona, HI 96740 (808) 329-7585 teri@jacksdivinglocker.com
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**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

SUBLESSEE:

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.

STATE OF HAWAII
DEPARTMENT OF TRANSPORTATION

HARBOR LEASE NO. H-83-2

THIS INDENTURE OF LEASE, made this 19th day of
July, 1983, by and between the STATE OF HAWAII,
by its Director of Transportation, hereinafter called the
"LESSOR," and KONA U-CART, INC.

whose business and post office address is _____
74-5612 Pawai Place, Kailua, Kona, Hawaii 96740,
hereinafter called the "LESSEE,"

WITNESSETH:

THAT the LESSOR, for and in consideration of the rent to be paid and of the terms, covenants and conditions herein contained, all on the part of the LESSEE to be kept, observed and performed, does hereby demise and lease unto the LESSEE, and the LESSEE does hereby lease and hire from the LESSOR, the premises located at Honokohau Boat Harbor, Kona, Hawaii; together with an exclusive easement, both of which are more particularly described in Exhibit "A" and as shown and delineated on Exhibit "B," attached hereto and made parts hereof, hereinafter called the "premises."

TO HAVE AND TO HOLD the demised premises for a term of thirty-five (35) years, unless sooner terminated as hereinafter provided, 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:

A. The LESSEE shall have the right to use the leased premises to sell, advertise for sale, or otherwise contract for sale all types of fuel, oil and lubricants normally used by small boats and to offer for sale or hire any and all goods and services reasonably necessary and incidental to the conduct by the LESSEE of such marine fueling facility.

B. The LESSEE shall be allowed to install vending machines for the purpose of selling soft drinks, cigarettes, candies, sandwiches and other similar items. In addition, 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.

C. The categories of items allowed in the preceding paragraphs are not intended to be exclusive. However, any item not falling within the above categories shall be offered for hire or sale only with the prior approval of the LESSOR.

D. The LESSEE shall have the exclusive right to occupy and use the demised premises for proper fueling purposes during such period of the lease term as the LESSEE is not in default hereunder. The LESSOR shall revoke all tank truck fueling permits for Honokohau Boat Harbor immediately after receiving notice in writing from the LESSEE that it is ready and able to commence its fueling operations. No tank truck fueling permit shall be issued during the lease term. However, the LESSEE's right to operate a marine fueling facility at the Honokohau Boat Harbor under the terms of this Lease is non-exclusive, the LESSOR reserving the right to continue existing facilities or to provide such additional or similar facilities as the interests of the public may require.

E. The use of the easement shall be for fueling and servicing of vessels only.

F. The LESSEE shall not use the premises, nor any portion thereof, nor permit any of the same to be used by any of its employees, officers, agents, invitees or guests, for any of the following purposes:

1. A restaurant or lunch counter operation.
2. Boat brokerage, or ship construction, repair or overhaul facilities.
3. Ship chandlery except to the extent permitted under paragraph B above.
4. To do any act which results or may result in the creation or commission or maintenance of a nuisance on said premises. The LESSEE shall also not cause or produce or permit to be caused or produced upon the premises, or to emanate therefrom, any unusually offensive sounds, or any noxious or objectionable smokes, gases, vapors, or odors.
5. For any illegal purpose.
6. For permanent lodging or sleeping purposes. However, a rest area for employees for their comfort and convenience during working hours is allowed.
7. The sale or service of any intoxicating beverage except to the extent permitted under paragraph B above.

THE LESSEE COVENANTS AND AGREES WITH THE LESSOR AS FOLLOWS:

A. LEASE TERM. The term of this lease shall be for a period of thirty-five (35) years commencing sixty (60) days from the date of the issuance of the building grant unless sooner terminated as hereinafter provided.

B. ANNUAL RENTAL. For the first five (5) years, the annual rental shall be the sum of FOUR THOUSAND AND NO/100 DOLLARS (\$ 4,000.00) per annum or five per cent (5%) of the annual gross receipts, whichever is greater. The lease rent shall be waived for the first year.

In the event five per cent (5%) of the annual gross receipts exceeds the basic rental charge, the LESSEE shall pay to the LESSOR that amount in excess of the basic rental within sixty (60) days after the close of the LESSEE'S tax year.

As used herein and elsewhere, the term "gross receipts" shall be in accordance with Chapter 237, Hawaii Revised Statutes, and shall mean and include:

1. Any and all monies paid or payable to the LESSEE for goods and services sold or rented as part of the operation of the facility. However, the following shall be excluded from the computation of any such gross receipts:

- (a) Any and all retail sales taxes, excise taxes, or related direct taxes upon the consumer and collected by the LESSEE on such sales. This paragraph (a) is intended to include amounts collected by the LESSEE or operator as fuel taxes on "liquid fuel" imposed by the provisions of Chapter 243, Hawaii Revised Statutes, as amended, and the amounts collected as a fuel tax imposed by any act of the Congress of the United States.
- (b) Any sum received as insurance proceeds or otherwise for damage to facility equipment or other

property of the LESSEE, or for loss, conversion, or abandonment of such equipment; or any amounts paid by patrons of the LESSEE separately billed as additional charges for waiver by the LESSEE of its rights to recover damages to any rented equipment.

- (c) Receipts from the sale or trade-in value of any furniture, fixtures, or equipment used upon the premises and owned by the LESSEE.
- (d) The value of any merchandise, supplies, or equipment exchanged or transferred from or to other locations of business of the LESSEE where such exchanges or transfers are not made for the purpose of avoiding a sale by the LESSEE which otherwise would be made at or from the premises.
- (e) Receipts in the form of refunds from or the value of merchandise, supplies, or equipment returned to shippers, suppliers, or manufacturers.
- (f) Receipts with respect to any sale where the subject of such sale, or some part thereof, is thereafter returned by the purchaser to and accepted by the LESSEE, to the extent of any refund actually granted or adjustment actually made, either in the form of cash or credit.
- (g) The amount of any cash or quantity discounts received from sellers, suppliers, or manufacturers.
- (h) The amounts of any gratuities paid or given by patrons or customers to employees of the LESSEE.
- (i) Receipts from the sales at cost of uniforms or clothing to LESSEE's employees where such uniforms or clothing are required to be worn by such employees.

(j) That portion of proceeds from vending machines payable by the LESSEE to the owner or operator of such vending machines located on the premises.

2. The LESSEE shall not be credited with nor allowed to have any reduction in the amount of the gross receipts, as hereinabove defined, which results from any arrangements for a rebate (including but without limitation, rebate or reimbursement allowed to customers for gasoline or oil purchased by said customers) or hidden credit given or allowed to any customer; provided, however, that the LESSEE may allow customary discounts on sales of commodities and services to its own employees.

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; provided, that should the LESSEE fail to agree upon the fair market rental as determined by the LESSOR's appraiser, the LESSEE may appoint its own appraiser who shall prepare an appraisal report and the two appraisers shall then exchange their reports for review. The two appraisers shall make every effort to resolve whatever differences they may have. However, should differences still exist fourteen days after the exchange, the appraisers shall then appoint a third appraiser who shall also prepare an appraisal report and furnish copies thereof to the first two appraisers. After review, all three shall meet to determine the fair market rental in issue. The fair market rental as determined by a majority of the appraisers shall be final and binding upon both LESSOR and LESSEE. The LESSEE shall pay for its own appraiser and the cost of the services of the third appraiser shall be borne

equally by the LESSOR and the LESSEE. All appraisal reports shall become part of the public record of the LESSOR.

In determining the fair market rental, the appraiser shall consider the permitted uses of the leased premises as set forth herein. The value of LESSEE's improvements shall not be considered in determining the said rental rate.

If the rental for any ensuing period has not been determined prior to the expiration of the preceding rental period, the LESSEE shall continue to pay the rent at the rate effective for the previous rental period, but the LESSEE shall, within thirty (30) days after the new rental has been so determined, make up the deficiency, if any.

C. LESSEE'S DUTIES AND RESPONSIBILITIES: In connection with the said rental obligations of the LESSEE, the LESSEE shall:

1. Use its best efforts in every proper manner to maintain, develop, and increase the fueling business conducted by it hereunder. The concession shall be maintained and operated at least eight (8) hours a day, seven (7) days per week with a service attendant present or on call during those hours unless a different schedule for any part of the concession operation shall be first approved in writing by the LESSOR. A schedule of business hours shall be posted in a conspicuous place near the fueling dock, together with the telephone number of the attendant on call.

2. Not divert or cause to be diverted any business from the Honokohau Boat Harbor.

3. Maintain and keep in accordance with accepted accounting practices true and accurate accounts, books, data, and records of its operations, which shall, among other things, show all sales made and services performed for cash, credit, or otherwise (without regard to whether paid or not), and, also,

the gross receipts of said facility operations, and the aggregate amount of all sales and services and orders, and of all the LESSEE'S business done upon and within the demised premises.

4. Permit at all reasonable times during the term of the lease contract the examination and audit by the officers, employees, agents and representatives of the LESSOR of such records, books of accounts, cash register tapes, sales slips and the like, and, if such examinations or audits reveal discrepancies, pay the LESSOR for any underpayments made to it as a result of errors in quarterly or annual statements (and the LESSOR shall reimburse or credit the LESSEE for any overpayments received by it as a result of any such errors).

5. Furnish the LESSOR within sixty (60) days after the close of the LESSEE's tax year, a statement of all gross receipts of the facility, which statement shall be certified to by a qualified representative of the LESSEE or operator of the facility, and which certification shall include a statement that that person has examined the books, records, and other evidence of the gross receipts of the concession for the period reported and that to his knowledge the statement thereof is true and correct. Such statement shall also contain such reasonable detail and breakdowns and be in or upon such form as the LESSOR may require.

D. TIME AND METHOD OF PAYMENT. Beginning with the second year of this lease, the LESSEE shall pay to the LESSOR at the Harbors Division, Hawaii District Office, Port of Hilo, Hilo, Hawaii 96720, a net annual rental as provided hereinabove, payable in advance in quarterly installments; the first payment being due on the first day of the first quarter of the second year and on the first day of January, April, July and October of each and every year during said term. The rental for the

first and last quarters shall be prorated in relation to the days within the quarter.

E. SERVICE CHARGE. Without prejudice to any other remedy available to the LESSOR, a service charge of one (1) percent per month shall be assessed against the LESSEE for any rentals not paid when due and any percentage of gross receipts not paid including those unreported and discovered through audit by the LESSOR, and such sum shall continue to be assessed against the LESSEE until the principal sum and the service charges are paid in full.

F. MINERALS AND WATERS. The LESSOR reserves the right to (1) all minerals as hereinafter defined, in, on or under the demised premises and the right, on its own behalf or through persons authorized by it, to prospect for, mine and remove such minerals and to occupy and use so much of the surface of the ground as may be required for all purposes reasonably extending to the mining and removal of such minerals by any means whatsoever, including strip mining. "Minerals," as used herein shall mean any or all oil, gas, coal, phosphate, sodium, sulfur, iron, titanium, gold, silver, bauxite, bauxitic clay, diaspore, boehmite, laterite, gibbsite, alumina, all ores of aluminum and, without limitation thereon, all other mineral substances and ore deposits, whether solid, gaseous or liquid, in, on or under the land; provided, that "minerals" shall not include sand, gravel, rock or other material suitable for use and when used in road construction in furtherance of the LESSEE's permitted activities on the demised premises and not for sale to others; and (2) all surface and ground waters appurtenant to the demised land and the right on its own behalf or through persons authorized by it, to capture, divert or impound the same and to occupy and use so much of the demised

premises as may be required in the exercise of this right reserved; provided that, as a condition precedent to the exercise by the LESSOR of the rights reserved in this paragraph just compensation shall be paid to the LESSEE for any of LESSEE's improvements taken.

G. PREHISTORIC AND HISTORIC REMAINS. All prehistoric and historic remains found on the premises demised herein shall be and remain the property of the LESSOR and shall not be disturbed or removed by the LESSEE, its employees, agents or contractors, without the express approval of the Director of Transportation.

H. EASEMENTS. The LESSOR reserves the right to establish, or to sell or grant to others, easements required for maritime or utility purposes, provided that such easements shall not, in any way, interfere with the LESSEE's use of the premises.

I. CONSTRUCTION OF IMPROVEMENTS; ENVIRONMENTAL IMPACT ASSESSMENT. Construction of improvements is to commence within sixty (60) days of the issuance of the building grant. The LESSEE shall, prior to constructing any improvements on the premises, and within thirty (30) days after the effective date hereof, submit an Environmental Impact Assessment to the Director of the Department of Transportation. Within thirty (30) days after the approval of the Environmental Impact Statement or Negative Declaration, whichever is necessary to comply with Chapter 343, Hawaii Revised Statutes, and the Regulations of State of Hawaii's Environmental Quality Commission, the LESSEE will submit the completed building plans to the Director.

Prior to construction, the LESSEE must obtain Department of Health approval for disposal of sewage, Hawaii County approval for a shoreline management permit and for shoreline setback

requirements and a building permit from the Hawaii County, which is to include clearances from the Hawaii County Fire Department. The State of Hawaii does not warrant or guarantee that the County of Hawaii will permit the construction of the improvements required hereunder. All costs associated with meeting the requirements of obtaining the building permit will be borne by the LESSEE. All site improvement costs and any additional expense necessary to bring utilities to the site shall be borne by the LESSEE. The responsibility of bringing utilities to the site, including the obtaining of easements therefor, shall be borne by the LESSEE. The LESSEE must also file and receive approval of a Conservation District Use Application, if necessary, with the Department of Land and Natural Resources.

The LESSEE shall submit a monthly progress report reflecting the status of the delivery of the building plans, Environmental Impact Statement, etc., as stated herein.

In the event of disapproval of any of the necessary permits or in the event conditions are imposed such that they cause the undertaking of the purpose of the lease uneconomical in the reasonable opinion of the LESSEE, then the LESSEE may request renegotiation of the lease or may be released from the lease and all deposits. However, such uneconomical conditions must have the concurrence from the LESSOR.

Within sixty (60) days after the approval of the Environmental Impact Statement or Negative Declaration or commencement of the lease, whichever is later, the LESSEE shall commence with the construction of facilities related to the purpose of this lease, in whichever order as may be convenient to the LESSEE, at a cost of not less than ONE HUNDRED FIFTY THOUSAND AND NO/100 DOLLARS (\$150,000.00) and will have said improvements completed within one (1) year from the date of

commencement of construction, free from all liens and claims; provided, however, that within one hundred twenty (120) working days of issuance of approval or required permits, the LESSEE shall be operating a temporary fueling facility, until all improvements are completed, at which time a permanent facility is to be in operation.

During the term of this lease, no improvements, alterations or additions will be constructed on or under the demised premises unless the LESSEE first submits its plans and specifications to the LESSOR for its approval and approval is granted by the LESSOR in writing. The plans and specifications must be in full compliance with all statutes, ordinances, and rules and regulations applicable thereto. Except as otherwise provided herein, the LESSEE shall retain title to any and all leasehold improvements, trade fixtures, furnishings, equipment and other personal property constructed, placed or installed by the LESSEE, at its own cost and expense, during the term of this lease.

J. IMPROVEMENT BOND. The LESSEE will, within thirty (30) days after issuance of the building permit procure and deposit with the LESSOR a surety bond in the amount of FIFTY THOUSAND AND NO/100 DOLLARS (\$50,000.00), which bond shall (1) name the State as obligee, (2) be conditioned upon the faithful observance and performance of the building requirement contained in paragraph I and (3) save and hold the LESSOR harmless from all liens, suits, actions or damages arising out of, caused by or attributable to such work performed pursuant to building requirement.

K. CONTRACTOR'S INSURANCE. Before commencing the construction or installation of any leasehold improvements, equipment or fixtures on the premises, the LESSEE shall require

that all contractors and subcontractors employed on the premises by the LESSEE or the LESSEE's contractor procure and maintain in full force and effect during the course of construction and installation the following insurance:

1. Workmen's Compensation as required by law.
2. Contractor's Comprehensive General Liability and Property Damage with a combined minimum single limit of \$1,000,000.00 for bodily injury and property damage per occurrence.
3. Contractor's Automobile General Liability and Protective Property with a combined minimum single limit of \$500,000.00 for bodily injury and property damage per occurrence.

L. SIGNS. All exterior signs, installed or painted, advertising the business or activity conducted on the demised premises, shall be restricted to the appurtenant equipment or the improvements constructed by the LESSEE. All signs installed or painted shall be done in good aesthetic taste and shall strictly conform to the sign ordinance of Hawaii County.

M. UTILITIES. Water, electricity and telephone services are available at the harbor. As aforementioned, the LESSEE shall be responsible for providing utility services at the site. Sewer services are unavailable.

THE LESSOR COVENANTS AND AGREES WITH THE LESSEE that upon the payment of the said rent at the times and in the manner aforesaid and the observance and performance of the covenants, terms and conditions hereof on the part of the LESSEE to be observed and performed, the LESSEE shall and may have, hold and enjoy the demised premises for the term hereby demised, without hindrance of interruption by the LESSOR or any other person or persons lawfully claiming by, through or under it.

THE LESSEE FURTHER COVENANTS AND AGREES WITH THE LESSOR AS FOLLOWS:

1. Payment of Rent. That the LESSEE shall pay said rent to the LESSOR at the time, in the manner and form aforesaid and at the place specified above, or at such other place as the LESSOR may from time to time designate, in legal tender of the United States of America.

In the event of financial difficulties experienced by the LESSEE, the LESSEE may be permitted by the LESSOR to assign the LESSEE's equity in the lease to meet the LESSEE's financial obligations.

2. Taxes, Assessments, etc. That the LESSEE shall pay or cause to be paid, when due, the amount of all taxes, rates, assessments and other outgoings of every description as to which said demised premises or any part thereof, or any improvements thereon, or the LESSOR or LESSEE in respect thereof, are now or may hereafter be assessed or become liable by authority of law during the term of this lease; provided, however, that with respect to any assessment made under any betterment or improvement law which may be payable in installments, LESSEE shall be required to pay only such installments, together with interest; as shall become due and payable during said term.

3. Utility Services. That the LESSEE shall pay when due all charges, duties and rates of every description, including water, sewer, gas, refuse collection or any other charges, as to which said demised premises, or any part thereof, or any improvements thereon or the LESSOR or LESSEE in respect thereof may during said term become liable, whether assessed to or payable by the LESSOR or LESSEE.

4. Covenant Against Discrimination. That the use and enjoyment of the demised premises shall not be in support

of any policy which discriminates against anyone based upon race, sex, color, religion or ancestry.

5. Sanitation, etc. That the LESSEE shall keep the demised premises and improvements in a strictly clean, sanitary and orderly condition.

6. Waste and Unlawful, Improper or Offensive Use of Premises. That the LESSEE shall not commit, suffer or permit to be committed any waste, nuisance, strip or unlawful, improper or offensive use of the demised premises, or any part thereof.

7. Compliance with Laws. That the LESSEE shall comply with all of the requirements of all municipal, state and federal authorities and observe all municipal ordinances and state and federal statutes pertaining to the said demised premises, now in force or which may hereinafter be in force.

8. Inspection of Demised Premises. That the LESSEE will permit the LESSOR and its agents, at all reasonable times during the said term, to enter the demised premises and examine the state of repair and condition thereof.

9. Improvements. That the LESSEE shall not at any time during said term construct, place, maintain and install on the demised premises any building, structure or improvement of any kind and description whatsoever except with the prior approval of the Director and upon such condition as the Director may impose, including any adjustment of rent, unless otherwise provided herein.

10. Repairs to Improvements. That the LESSEE shall, at its own expense, keep, repair and maintain all buildings and improvements now existing or hereafter constructed or installed on the demised premises in good order, condition and repair, reasonable wear and tear excepted. The LESSEE shall be responsible for any oil spillage and pollution of the water resulting through its operations, including any pollution caused by its storage and pipeline facilities.

11. Liens. That the LESSEE will not commit or suffer any act or neglect whereby the demised premises or any improvement thereon or the estate of the LESSEE in the same shall become subject to any attachment, lien, charge or encumbrance whatsoever, except as hereinafter provided, and shall indemnify and hold harmless the LESSOR from and against all attachments, liens, charges and encumbrances and all expenses resulting therefrom.

12. Assignments, etc. That the LESSEE shall not transfer or assign this lease or any interest herein, except as may be permitted by and subject to the conditions contained in Section 171-36(5), Hawaii Revised Statutes.

The LESSOR shall expedite the approval of the LESSEE's assignment of this lease from the Director of Transportation and the Department of Land and Natural Resources.

13. Subletting. That the LESSEE shall not rent or sublet the whole or any portion of the demised premises, without the prior written approval of the Director. The Director shall have the right to deny uses contrary to the primary purpose of the lease, to review and approve the rent to be charged to the proposed sublessee and revise the rent and rent structure charged to the LESSEE by the LESSOR in light of the rental rate charged to the proposed sublessee by the LESSEE; and to include such other terms and conditions prior to any approval by the Director; provided, further, that the rent may not be revised downward.

The LESSOR shall expedite the obtaining of the approval of all marine related subleases from the Director of Transportation and the Department of Land and Natural Resources.

14. Mortgage. That the LESSEE shall not mortgage, hypothecate or pledge the demised premises or any portion thereof of this lease or any interest herein except in accord-

ance with and subject to the provisions of paragraph 22 hereof and any such mortgage, hypothecation or pledge without the prior written approval of the Director shall be null and void.

15. Indemnity. That the LESSEE will indemnify, defend and hold the LESSOR harmless (1) from and against any claim or demand by third persons for loss, liability or damage, including claims for property damage, personal injury or wrongful death, arising out of any accident on the demised premises and sidewalks and roadways adjacent thereto or occasioned by any act or nuisance made or suffered on the demised premises, or by any fire thereon or growing out of or caused by any failure on the part of the LESSEE to maintain the demised premises in a safe condition; and will reimburse the LESSOR for all costs and expenses in connection with the defense of such claims; (2) from and against all actions, suits, damages and claims by whomsoever brought or made by reason of the non-observance or non-performance of any of the terms, covenants and conditions herein or the rules, regulations, ordinances and laws of the federal, state, municipal or county governments.

16. Costs of Litigation. That in case the LESSOR shall, without any fault on its part, be made a party to any litigation commenced by or against the LESSEE (other than condemnation proceedings), the LESSEE shall and will pay all costs and expenses incurred by or imposed on the LESSOR, furthermore, the LESSEE shall and will pay all costs and expenses which may be incurred or paid by the LESSOR in enforcing the covenants and agreements of this lease, in recovering possession of the demised premises or in the collection of delinquent rental, taxes and any and all other charges.

17. Liability Insurance. That the LESSEE shall procure, at its own cost and expense, and keep in force during the entire term of this lease, with an insurance company or

companies acceptable to the LESSOR, a policy or policies of comprehensive general liability insurance in a combined single limit amount of not less than \$1,000,000.00 for bodily injury and property damage per occurrence; that said policy or policies shall cover the demised premises, including all buildings, improvements and grounds and all roadways and sidewalks on or adjacent to the demised premises in the control of the LESSEE. The LESSEE shall furnish the LESSOR with a certificate showing such policy to be initially in force and shall furnish a like certificate upon each renewal of such policy, each such certificate to contain or be accompanied by an assurance of the insurer that the LESSOR shall be notified at least thirty (30) days prior to any termination or cancellation of, or material change in said policy. The procuring of this policy shall not release or relieve the LESSEE of its responsibility under this lease. The policy or policies required under this provision shall name the LESSOR as an additional insured.

The minimum limits of insurance recited herein may be increased by such amounts as the Director, in the exercise of sound and prudent judgment, may require.

18. Performance Bond. That the LESSEE shall, at its own cost and expense, within thirty (30) days after the effective date of this lease, procure and deposit with the LESSOR and thereafter keep in full force and effect during the term of this lease a good and sufficient surety bond, conditioned upon the full and faithful observance and performance by said LESSEE of all of the terms, conditions and covenants of this lease, in an amount equal to one-fourth (1/4) of the annual rental payable. Said bond shall provide that in case of a breach or default of any of the terms, covenants, conditions and agreements contained herein, the full amount of the bond shall be paid to the LESSOR as liquidated and ascertained damages and not as a penalty.

19. Lessor's Lien. That the LESSOR shall have a lien on all the buildings and improvements placed on the demised premises by the LESSEE, on all property kept or used on the demised premises, whether the same is exempt from execution or not and on the rents of all improvements and buildings situated on the demised premises for all such costs, attorney's fees, rent reserved, for all taxes and assessments paid by the LESSOR on behalf of the LESSEE and for the payment of all monies as provided in this lease to be paid by the LESSEE, and such lien shall continue until the amounts due are paid.

20. Insurance. That the LESSEE will, at its own expense, at all times during the term of this lease, keep insured all buildings and improvements erected on the land hereby demised in the joint names of LESSOR, LESSEE and Mortgagee, if any, as their interest may appear, against loss or damage by fire including perils specified in the extended coverage endorsement and in an amount equal to the maximum insurable value thereof, in a company or companies approved by the LESSOR, and will pay the premiums thereon at the time and place the same are payable; that the policy or policies of insurance shall be made payable in case of loss to the LESSOR, LESSEE and Mortgagee, if any, as their interests may appear, and shall be deposited with the Mortgagee, if any, otherwise with the LESSOR; and that any proceeds derived therefrom in the event of total or partial loss shall be immediately available to, and as soon as reasonably possible, be used by the LESSEE for rebuilding, repairing, or otherwise reinstating the buildings in a good and substantial manner according to the plans and specifications approved in writing by the Director; provided, however, that with the approval of the LESSOR, the LESSEE may surrender this lease and pay the balance owing on any mortgage and the LESSEE shall then

receive that portion of said proceeds which the unexpired term of this lease at the time of said loss or damage bears to the whole of said term, the LESSOR to retain the balance of said proceeds.

The LESSEE shall furnish to the LESSOR and Mortgagee, if any, a certificate showing such policy or policies to be initially in force and shall furnish a like certificate upon each renewal of such policy or policies, each such certificate to contain or be accompanied by an assurance of the insurer to notify the LESSOR and Mortgagee with a thirty (30) day written notice, if any, of any intention to cancel any such policy or policies, prior to actual cancellation.

21. Surrender. That the LESSEE shall and will at the expiration or sooner termination of this lease, peaceably and quietly surrender and deliver possession of the demised premises to the LESSOR, together with all improvements constructed thereon of whatever name or nature, in good order and condition, reasonable wear and tear excepted; provided, that trade fixtures, equipment and personal property may be removed by the LESSEE; and provided further, that within thirty (30) days after the termination or expiration of this lease, the LESSOR may, at its option and upon written notice to the LESSEE, require the LESSEE to remove all or any portion of any improvement constructed on the demised premises of whatever name or nature, and its equipment, fixtures, trade or otherwise, and/or personal property all at LESSEE's sole expense and cost.

The LESSEE shall, in the removal of any of its improvements, equipment, trade fixtures and/or personal property from the demised premises, conduct such removal in such a manner as to cause no damage to the demised premises, and in the event of such damage, LESSEE shall, at its own cost and expense, repair or replace the same.

If the LESSEE fails or neglects, when so required by the LESSOR, to remove all or any portion of any improvement constructed on the demised premises of whatever name or nature, equipment, fixtures, trade or otherwise, and/or personal property within thirty (30) days after receipt of written notice to so remove, the LESSOR may remove and dispose of the same and charge the cost of such removal and disposal to the LESSEE, which costs the LESSEE hereby agrees to pay.

22. Mortgage. That upon due application by the LESSEE and with the written consent of the LESSOR, the LESSEE may mortgage this lease or any interest herein or create a security interest in the land hereby demised. If the mortgage or security interest is to a recognized lending institution, authorized to do business as a lending institution, in either the State of Hawaii or elsewhere in the United States, such consent may extend to foreclosure and sale of LESSEE's interest at such foreclosure to any purchaser, including the mortgagee, without regard to whether or not the purchaser is qualified under Chapter 171, Hawaii Revised Statutes, to lease, own or otherwise acquire and hold the land or any interest therein. The interest of the mortgagee or holder shall be freely assignable. The term "holder" shall include an insurer or guarantor of the obligation or condition of such mortgage, including the Department of Housing and Urban Development through the Federal Housing Administration, the Federal National Mortgage Association, the Veterans Administration, the Small Business Administration, Farmers Home Administration, or any other Federal agency and their respective successors and assigns or any lending institution authorized to do business in the State of Hawaii or elsewhere in the United States; provided, that the consent to mortgage to a non-governmental holder shall not confer any

greater rights or powers in the holder than those which would be required by any of the aforementioned Federal agencies.

23. Breach. That time is of the essence of this lease and if the LESSEE shall fail to yield or pay such rent or any part thereof at the times and in the manner aforesaid, or shall become bankrupt, or shall abandon the demised premises, or if this lease and the demised premises shall be attached or otherwise be taken by operation of law, or if any assignment be made of the LESSEE's property for the benefit of creditors, or if the LESSEE shall fail to observe and perform any of the covenants, terms and conditions herein contained and on its part to be observed and performed, and such failure shall continue for a period of more than sixty (60) days after delivery by the LESSOR of a written notice of such breach or default by personal service, registered mail or certified mail to the LESSEE at its last known address and to each mortgagee or holder of record having a security interest in the demised premises, the LESSOR may, subject to the provisions of Section 171-21, Hawaii Revised Statutes, at once re-enter such premises or any part thereof, and upon or without such entry, at its option, terminate this lease without prejudice to any other remedy or right of action for arrears of rent or for any preceding or other breach of contract; and in the event of such termination, all buildings and improvements thereon shall become the property of the LESSOR.

In the case of non-payment of rent within the term of the lease, the LESSOR may re-enter such premises and terminate the lease. In such event the LESSEE shall be liable for subsequently accruing rent during the term of the lease when the premises are not re-let and for any deficiency resulting from a re-letting of such premises plus expenses for the re-letting.

In the event LESSEE discontinues using the demised premises for the uses enumerated herein and activities related thereto, without the consent of LESSOR from the date hereof, the LESSOR reserves the right to terminate the lease. The failure of the LESSEE to operate the facilities for the above-mentioned uses for a period of at least fifteen (15) consecutive days shall constitute discontinuance of use of the premises.

24. Right of Holder of Record of a Security Interest.

That in the event the LESSOR seeks the forfeiture of the interest of the LESSEE created by this lease, each recorded holder of a security interest may, at its option, cure or remedy the default or breach within sixty (60) days from the date of receipt of the notice hereinabove set forth, or within such additional period as the LESSOR may allow for good cause, and add the cost thereof to the mortgage debt and the lien of the mortgage. Upon failure of the holder to exercise its option, the LESSOR may: (a) pay to the holder from any monies at its disposal, the amount of the mortgage debt, together with interest and penalties, and secure an assignment of said debt and mortgage from said holder or if ownership of such interest or estate shall have vested in such holder by way of foreclosure, or action in lieu thereof, the LESSOR shall be entitled to the conveyance of said interest or estate upon payment to said holder of the amount of the mortgage debt, including interest and penalties, and all reasonable expenses incurred by the holder in connection with such foreclosure and preservation of its security interest, less appropriate credits, including income received from said interest or estate subsequent to such foreclosure; or (b) terminate the outstanding interest or estate subject to the lien of such mortgage, without prejudice to any other right or remedy for arrears of rent or for any

preceding or other breach or default and thereupon use its best efforts to redispense of the land affected thereby to a qualified and responsible person who will assume the obligation of the mortgage and the debt thereby secured; provided, that a reasonable delay by the LESSOR in instituting or prosecuting any right or remedy it may have hereunder shall not operate as a waiver of such right or to deprive it of such remedy when it may still hope otherwise to resolve the problems created by the breach or default. The proceeds of any redispense effected hereunder shall be applied, first, to reimburse the LESSOR for costs and expenses in connection with such redispense, second, to discharge in full any unpaid purchase price or other indebtedness owing the LESSOR in connection with such interest or estate terminated as aforesaid, and the balance, if any, shall be paid to the owner of such interest or estate.

25. Condemnation. That in the event that at any time during said term the premises or any part thereof shall be required, taken or condemned for any public use, by any condemning authority, including the LESSOR, then and in every such case the estate and interest of the LESSEE in the property taken shall at once terminate, and all compensation payable or to be paid by reason of the taking of any land shall be payable to and be the sole property of the LESSOR, and the LESSEE shall not by reason of the taking be entitled to any claim against the LESSOR for compensation or indemnity for its leasehold interest; that such compensation as shall represent the value of any buildings or improvements erected or owned by the LESSEE upon the land shall be divided between the LESSOR and LESSEE in the ratios that the expired and unexpired portions of the term of this demise, respectively, shall bear to the whole term hereby created, and that in case only a part of the buildings

or improvements constructed or owned by the LESSEE are taken, the LESSEE may claim and receive from the condemning authority but not from the LESSOR, any expense incurred by the LESSEE in repairing any damage thereto; provided that, in case a part of said premises shall be required, taken or condemned, the rent thereafter payable for the remainder of the term shall be reduced in the proportion that the area of land so taken shall bear to the area hereby demised; provided, further, that in case such condemnation and taking shall by mutual agreement of the parties hereto be held to render the remainder of the premises unfit for the purposes of the LESSEE, the LESSEE shall have the option to surrender this lease.

26. Right to Enter. The LESSOR and the agents and representatives of the county in which said demised premises are situated may enter and cross any portion of said demised land for the purpose of performing any public or official duties; provided, however, in the exercise of such duties, the rights of the LESSEE to the use and enjoyment of the demised premises shall not be unreasonably interfered with.

27. Inspection by Prospective Bidders. The LESSOR shall have the right to authorize any person or persons to enter upon and inspect the demised premises at all reasonable times following a published notice for the proposed disposition of the same for purposes of informing and apprising such person or persons of the condition of said lands preparatory to such proposed disposition; provided, however, that any such entry and inspection shall be conducted during reasonable hours after notice to enter is first given to the LESSEE, and shall, if the LESSEE so requires, be made in the company of the LESSEE or designated agents of the LESSEE; provided, further, that no such authorization shall be given more than one year before the expiration of the term of this lease.

28. Acceptance of Rent Not a Waiver. That the acceptance of rent by the LESSOR shall not be deemed a waiver of any breach by the LESSEE of any term, covenant or condition of this lease, nor of the LESSOR's right of re-entry for breach of covenant, nor of the LESSOR's right to declare and enforce a forfeiture for any such breach, and the failure of the LESSOR to insist upon strict performance of any such term, covenant or condition, or to exercise any option herein conferred, in any one or more instances, shall not be construed as a waiver or relinquishment of any such right for any subsequent breach of any term, covenant or condition.

29. Extension of Time. That notwithstanding any provision contained herein to the contrary, wherever applicable, the LESSOR may for good cause shown, allow additional time beyond the time or times specified herein to the LESSEE, in which to comply with, observe or perform any of the terms, conditions and covenants contained herein.

30. Justification of Sureties. That such bonds as may be required herein shall be supported by the obligation of a corporate surety organized for the purpose of being a surety and qualified to do business as such in the State of Hawaii, or by not less than two personal sureties, corporate or individual, for which justifications shall be filed as provided in Section 78-20, Hawaii Revised Statutes; provided, however, the LESSEE may furnish a bond in like amount, conditioned as aforesaid, executed by it alone as obligor, if, in lieu of any surety or sureties, it shall also furnish and at all times thereafter keep and maintain on deposit with the LESSOR, security in certified checks, certificates of deposit (payable on demand or after such period as the LESSOR may stipulate), bonds, stocks or other negotiable securities properly endorsed, or execute

and deliver to said LESSOR a deed or deeds of trust of real property, all of such character as shall be satisfactory to said LESSOR and valued in the aggregate at not less than the principal amount of said bond. It is agreed that the value at which any securities may be accepted and at any time thereafter held by the LESSOR under the foregoing proviso shall be determined by the LESSOR, and that the LESSEE may, with the approval of the LESSOR, exchange other securities or money for any of the deposited securities if in the judgment of the LESSOR the substitute securities or money shall be at least equal in value to those withdrawn. It is further agreed that substitution of sureties or the substitution of a deposit of security for the obligation of a surety or sureties may be made by the LESSEE, but only upon the written consent of the LESSOR and that until such consent be granted, which shall be discretionary with the LESSOR, no surety shall be released or relieved from any obligation hereunder.

31. Operation of Facility. The LESSOR, in entering into this lease has foremost in mind the interests of the boating public by providing it with the service of the subject facility of high quality, commensurate with the trade that is accustomed to using modern facilities of this kind.

The operator shall furnish all goods and services authorized hereunder to its customers and patrons without discrimination, and the retail prices charged for fuel and lubricating oil at this marine service station shall be comparable to the average retail prices charged for like fuel and lubricating oil at other non-marine stations throughout the Island of Hawaii, subject to such adjustments as may be required to compensate for the increased capital investment and operating costs incident to the operation of a marine station.

32. Waiver, Modification, Reimposition of Bond Provision. Upon substantial compliance by the LESSEE of the terms, covenants, and conditions herein contained on its part to be observed and performed, the LESSOR at its discretion may waive or suspend the performance bond and/or improvement bond requirements or modify the same by reducing the amount thereof; provided, however, that the LESSOR reserves the right to reactivate or reimpose said bond and/or bonds in and to their original tenor and form at any time throughout the term of this lease.

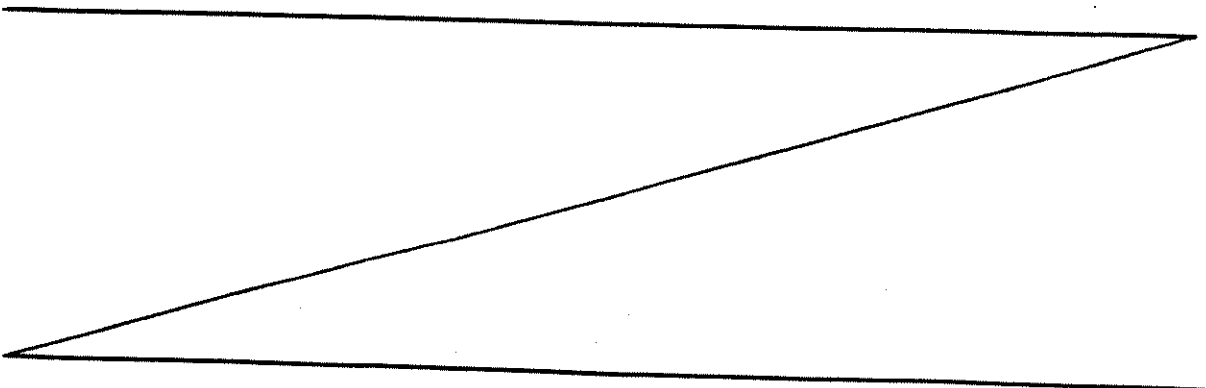
As used herein, unless specifically indicated otherwise or clearly repugnant to the context:

(a) "Director" shall mean the Director of Transportation of the State of Hawaii or his successor;

(b) "Lessee" shall mean and include the LESSEE herein, its heirs, executors, administrators, successors or permitted assigns, according to the context hereof;

(c) "Holder of record of a security interest" is a person who is the owner or possessor of a security interest in the demised premises and who has filed with the Department of Transportation and with the Bureau of Conveyances of the State of Hawaii a copy of such interest;

(d) "Demised premises" shall be deemed to include the land hereby demised and all buildings and improvements now or hereinafter constructed and installed thereon;

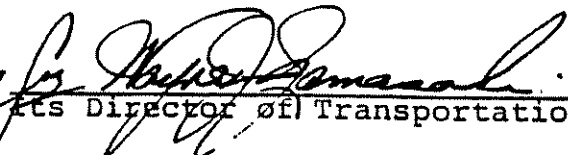


(e) The use of any gender shall include all genders, and if there be more than one LESSEE, then all words used in the singular shall extend to and include the plural;

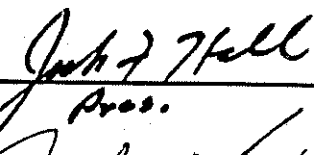
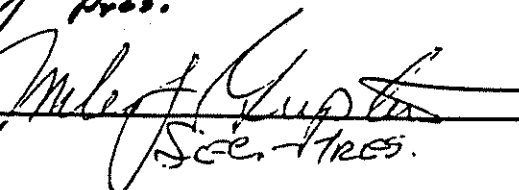
(f) The marginal headings throughout this lease are for the convenience of the LESSOR and the LESSEE and are not intended to construe the intent or meaning of any of the provisions thereof.

IN WITNESS WHEREOF, THE STATE OF HAWAII, the LESSOR, and LESSEE herein have caused these presents to be executed this 19th day of July, 1983, both effective on the day and year hereinabove set forth.

STATE OF HAWAII

By 
its Director of Transportation

KONA U-CART, INC.



By 
its Pres.
By 
its Sec. Treas.


APPROVED AS TO FORM:


Deputy Attorney General

APPROVED:

BOARD OF LAND AND NATURAL RESOURCES

By 
Chairman and Member
By 
Member

Approved by the Board
at its meeting held on
10/22/82, 1-6 

STATE OF HAWAII

)
) SS.
)

On this _____ day of _____, 1983,
before me personally appeared _____

_____, to me known to be the
person(s) described in the who executed the foregoing instrument
and acknowledged that _____ executed the same as _____
free act and deed.

Notary Public, _____ Judicial
Circuit, State of Hawaii

My Commission expires: _____

STATE OF HAWAII

Notary of Hawaii

)
) SS.
)

On this 14th day of July, 1983,
before me appeared Jack F. Hall and

Miles J. Guxton, to me personally known,
who, being by me duly sworn, did say that they are the

President and Secy. Treasurer,
respectively, of Mona K. Cart. Inc., and

that the seal affixed to the foregoing instrument is the corporate
seal of said corporation, and that said instrument was signed
and sealed on behalf of said corporation by authority of its
Board of Directors, and the said Jack F. Hall and
Miles J. Guxton acknowledged that ~~he~~ ^{they} executed
said instrument as ~~the~~ ^{their} free act and deed of said corporation.

Kenji Akazawa
Notary Public, 2nd Judicial
Circuit, State of Hawaii

My Commission expires: 2/12/87

LE CHANNEL

W
A
T
E
R

EXISTING DREDGE

FUTURE DREDGING LIMITS

TRUE NORTH

171°03'00" → 100.00
 351°09'00" → 100.00
 171°09'00" → 100.00
 351°09'00" → 100.00

WATER AREA
 AREA = 3,300 SQ. FT.
 OR 0.076 AC.
 351°09'00" → 100.00

FUEL DOCK FACILITY
 AREA = 10,000 SQ. FT.
 OR 0.230 AC.

304,706.76 N
 316,271.42 E

PLAN

GRAPHIC SCALE IN FEET
 0 10 20 30 40

NOTE:
 COORDINATES REFERRED TO "HAWAII
 PLANE COORDINATE GRID SYSTEM, ZONE 1"

EXHIBIT "B-1"

STATE OF HAWAII
 DEPARTMENT OF TRANSPORTATION
 HARBORS DIVISION

FUEL DOCK FACILITY
 HONOKOHAI BOAT HARBOR
 KONA, HAWAII
 REVISED: SEPT. 12, 1963

Nov. 11, 1964

PERMIT NO.

Appraisal Report
Annual Ground Rent
HARBOR LEASE NO. H-83-2, Kona Marine Holdings, LLC
THIRD DIVISION, TMK 7-4-08, Parcel 40
Located at
Honokohau Small Boat Harbor, Kona, Hawaii
Effective November 27, 2019

EXHIBIT "3"

**HASTINGS, CONBOY
& ASSOCIATES, LTD.**

Real Estate Appraisers, Counselors and Economists

April 29, 2019

Ms. Suzanne D. Case
Chairperson
State of Hawaii
Department of Land and Natural Resources
Division of Boating and Ocean Recreation
4 Sand Island Access Road
Honolulu, Hawaii 96819

Dear Ms. Case:

We have completed a market value appraisal of the prospective annual fair market ground rent for Harbor Lease Number H-83-2 as associated with its five-year rental re-opening period commencing November 27, 2019. The property encumbered by Harbor Lease Number H-83-2 has a street address of 74-381 Kealakehe Parkway and is identified on Hawaii Tax Maps as Third Division, Tax Map Key 7-4-08, Parcel 40. The property contains a fast land area of 10,000 square feet and 3,000 square feet of submerged lands. The property is located in the Honokohau Small Boat Harbor, Kailua-Kona, Island of Hawaii, State of Hawaii.

The Lessee is identified as Kona Marine Holdings, LLC. The intended use of the appraisal is to enable the Department of Land and Natural Resources, Division of Boating and Ocean Recreation, to present to the Lessee the amount of annual ground rent applicable to the subject property for the five-year, rental re-opening period commencing November 27, 2019, and ending November 26, 2024.

The analysis and the data disclosed by the appraiser's research and investigation are set forth in the accompanying appraisal report. It is the appraiser's opinion, subject to the limiting conditions and assumptions as stated in the report that the prospective annual minimum ground rent for Harbor Lease Number H-83-2, as of November 27, 2019, is:

THIRTY-FIVE THOUSAND DOLLARS
(\$35,000.00)

We appreciate the opportunity to have undertaken this appraisal assignment.

Sincerely,

**HASTINGS, CONBOY
& ASSOCIATES, LTD.**



Alan J. Conboy, MAI, SRA
Executive Vice President

/8393

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ADDENDA

- EXHIBIT I - Maps and Photographs of the Subject Property
EXHIBIT II - Market Data Land Transactions

Professional Qualifications

I. ASSIGNMENT AND SUMMARY**A. Assignment and Problem to be Solved**

This assignment has been to determine the annual fair market minimum ground rent applicable to Harbor Lease Number H-83-2 for the five-year rental re-opening period commencing November 27, 2019. The subject property associated with Harbor Lease Number H-83-2 is located at 74-381 Kealakehe Parkway at the Honokohau Small Boat Harbor, Kailua-Kona, Island of Hawaii. The property is identified on Hawaii Tax Maps as Third Division, Tax Map Key 7-4-08, Parcel 40. The property contains an area of 10,000 square feet of fast lands and 3,300 square feet of submerged lands.

The effective date of the appraisal is November 27, 2019. The date of property inspection was March 20, 2019. The date of the report is April 29, 2019.

B. Intended Use and User of the Appraisal Report

The intended use of the report is for lease rent determination purposes. The intended user is the Department of Land and Natural Resources, Division of Boating and Ocean Recreation.

C. Scope of Work

In the course of this assignment, the appraiser has undertaken a series of independent investigations and analyses in addition to relying upon selected information and data from existing office files that are updated on a recurring basis.

Research and investigation focused initially upon familiarizing the appraiser with the subject property and its immediate Honokohau Small Boat Harbor environs. This was followed by research and investigation focusing upon the gathering of appropriate market data necessary to conduct a comparative valuation analysis of the subject property.

The appraiser's familiarity with the subject property is based on a recent physical inspection of the property and additional information regarding the property as provided by the Department of Land and Natural Resources, Division of Boating and Ocean Recreation. The appraiser's familiarity with the subject parcel's surrounding Honokohau Small Boat Harbor environs is based also on his experience with previous appraisal assignments in the general area.

Research and analysis of market sales data relied upon the following informational sources: (1) public records and documents on file at the County of Hawaii Real Property Tax Office and the State of Hawaii Bureau of Conveyances; (2) information provided by a number of local real estate professionals and others who

are familiar with real estate market conditions on the Big Island (3) Hawaii Information Service, (4) Hawaii Multiple Listing Service and (5) CoStar. Verification of land transactions was conducted through grantors, grantees or real estate agents directly involved with the sales. Details of selected verified data are included in the Addenda.

The description of the subject property was based on an inspection of the property conducted on March 20, 2019, as augmented by a review of available plat maps, information pertaining to the subject property available from the tax office as well as a review of information on the subject property available from the Department of Land and Natural Resources, Division of Boating and Ocean Resources.

Data utilized in the analysis included land transactions disclosed by the appraiser's research; market insight as provided through field interviews with local land managers and real estate professionals; and additional market data from the appraiser's internal office files. After analyzing the available market data, a current opinion of the market value of the fee simple interest in the subject parcel was determined.

With respect to the reporting process, this document represents an Appraisal Report, which is intended to provide discussions of the data, reasoning and analyses utilized to develop the appraiser's opinions. Some supporting documentation has been retained in the appraiser's files.

For the subject property, the appraiser estimated the value of the fee simple interest in land by way of the sales comparison approach. The income and cost approaches were not utilized to determine value.

To the best of the appraiser's knowledge and ability, this appraisal has been prepared in conformance with the Uniform Standards of Professional Appraisal Practice (USPAP) of the Appraisal Standards Board, and the Code of Professional Ethics and Standards of Professional Practice of the Appraisal Institute.

D. Property Value Conclusion

Effective Date of the Appraisal:	November 27, 2019
Date of the Appraisal Report:	April 29, 2019
Concluded Minimum Rent:	\$35,000.00 per Year

E. Definition of Terms

Certain terminology is utilized in this report. This terminology is defined in the following paragraphs to assist the intended user in understanding special appraisal terminology.

1. Market Value

The current definition of market value, as stated by the Office of the Comptroller of the Currency under 12 CFR, Part 34, Subpart C-Appraisals, 34.42 Definitions (f), is:

The most probable price which a property should bring in a competitive and open market under all condition's requisite to a fair sale, the buyer and seller each acting prudently and knowledgeably and assuming the price is not affected by undue stimulus. Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby:

1. Buyer and seller are typically motivated;
2. Both parties are well informed or well advised, and acting in what they consider their best interests;
3. A reasonable time is allowed for exposure in the open market;
4. Payment is made in terms of cash in United States dollars or in terms of financial arrangements comparable thereto; and
5. The price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale.

2. Market Rent

Market rent is the most probable rent that a property should bring in a competitive and open market reflecting all conditions and restrictions of the lease agreement, including permitted uses, use restrictions, expense obligations, term, concessions, renewal and purchase options, and tenant improvements (TIs). (Source: The Dictionary of Real Estate Appraisal, Fifth Edition.)

3. Fee Simple, Leased Fee and Leasehold Estates

A fee simple estate is absolute ownership unencumbered by any other interest or estate; subject only to the limitations of eminent domain, escheat, police power and taxation.

A leased fee interest may be represented by a property held in fee with the right of use and occupancy conveyed by lease to others or as a lessor's right to receive ground or space rentals over a stipulated lease period with the right of ultimate repossession at the termination of said lease. The ownership

interest of the underlying fee owner or landlord in this type of real property situation is defined as the leased fee estate.

A leasehold property is any property held under tenure of a lease, whereby the lessee possesses the right of use and occupancy of specific real property by virtue of a lease agreement. The real property rights of the lessee is the right to use and enjoy real estate for a stated term and upon certain conditions, such as the payment of rent. The lessee's interest represents a non-freehold estate and is defined as a leasehold estate.

4. Highest and Best Use

The reasonably probable and legal use of vacant land or an improved property, which is physically possible, appropriately supported, financially feasible, and that results in the highest value. The four criteria the highest and best use must meet are legal permissibility, physical possibility, financial feasibility, and maximum profitability. Source: The Dictionary of Real Estate Appraisal, Fifth Edition, published by The Appraisal Institute.

5. Hypothetical Condition

Hypothetical Condition is that which is contrary to what exists but is supposed for the purpose of analysis. Hypothetical conditions assume conditions contrary to known facts about physical, legal, or economic characteristics of the subject property; or about conditions external to the property, such as market conditions or trends; or about the integrity of data used in an analysis. This appraisal is not subject to any hypothetical condition.

6. Extraordinary Assumption

An extraordinary assumption is an assumption, directly related to a specific assignment, as of the effective date of the assignment results, which, if found to be false, could alter the appraiser's opinions or conclusions. Extraordinary assumptions presume as fact otherwise uncertain information about physical, legal, or economic characteristics of the subject property; or about conditions external to the property, such as market conditions or trends; or about the integrity of data used in an analysis. This appraisal is not subject to an extraordinary assumption.

F. Limiting Conditions and Assumptions

The conduct of any appraisal is necessarily guided by, and its results influenced by, the terms of the assignment and the assumptions, which form the basis of the study. The following conditions and assumptions embodied in this report constitute the framework of the appraiser's analysis and conclusions.

Special Limiting Conditions and Assumptions

1. The results of this appraisal of the subject property are communicated in the form of an Appraisal Report. This Appraisal Report is intended to comply with the reporting requirements set forth under Standards Rule 2-2(a) of the Uniform Standards of Professional Appraisal Practice (USPAP). The depth of discussion contained in this report is specific to the needs of the client and for the intended use of the report as stated herein. The appraiser is not responsible for unauthorized use of this report.

General Limiting Conditions and Assumptions

1. This appraisal is based upon the condition of the national economy and the purchasing power of the dollar as of the effective date of the appraisal report.
2. This report expresses the opinion of the signer as of the date of the report; in no way has it been contingent upon the reporting of specified values or findings.
3. The appraiser has extensive experience in the valuation of improved income-generating properties, unimproved development sites and vacant land parcels and, therefore, is considered competent to estimate the value of the specified real property interest in the identified subject property.
4. It is assumed that the subject property is free and clear of any and all encumbrances other than those referred to herein, and no responsibility is assumed for matters of a legal nature. This report is not to be construed as rendering any opinion of title, which is assumed to be good and marketable. Responsible ownership and competent management of the subject property is also assumed, unless otherwise stated within the report.
5. It is assumed that any existing or proposed uses of the subject property's land and improvements will occur within the legal boundaries or property lines of the subject property and that no encroachment or trespass exists, now or in the future, unless otherwise stated within the report.
6. It is assumed that any and all required licenses, certificates of occupancy and/or other legislative or administrative authorizations relating to any existing or proposed uses of the subject property upon which the value conclusion is based will be obtained readily from the appropriate local, state, or federal government agencies, private institutions, or other organizational entities that exercise jurisdiction over these types of licensing and administrative matters.
7. Any maps or plot plans reproduced and included in this report are intended

only for the purpose of showing spatial relationships. These maps do not necessarily represent measured surveys or measured maps, and the appraiser is not responsible for the possible existence of any topographic or surveying errors within such maps. No engineering tests were furnished, and, therefore, no liability is assumed for the soil conditions, bearing capacity of the subsoil or building engineering matters relating to the subject property.

8. Information provided by informed local sources such as governmental agencies, financial institutions, realtors, buyers, sellers and others, was interpreted in the manner in which it was supplied and, whenever possible or practical, was checked and verified by secondary means. However, no responsibility is assumed for any possible misinformation contained in these sources of information.
9. Available flood maps examined during the course of this assignment were provided by the Federal Emergency Management Agency. Based on these available maps and to the best of his ability as an appraiser, a determination has been made as to whether or not, in the appraiser's opinion, the subject property is located within an identified Special Flood Hazard Area. However, since the appraiser is not a professional surveyor there is no guarantee, expressed or implied, as to the accuracy of this determination.
10. The presence of hazardous wastes or toxic materials such as underground storage tanks, asbestos, urea-formaldehyde foam insulation or other potentially harmful substances may have an adverse effect on the value of a given property. The value conclusion as reported herein is predicated on the assumption that there is no such hazardous material on or in the subject property that would result in this type of loss in value. No responsibility is assumed for any potentially adverse environmental conditions or for the lack of any expertise or engineering knowledge required to discover such conditions.
11. The appraiser is not required to give testimony or appear in court because of having made this appraisal unless arrangements for the appearance and the fee for such appearance have been agreed upon by the person or corporation requiring such testimony.
12. The appraiser's prior written consent and approval must be obtained in the event that the appraisal report should be conveyed by anyone to the public through advertising, public relations, news, sales, or other media.
13. The appraiser will not disclose the contents of the appraisal report except as provided for in the Uniform Standards of Professional Appraisal Practice.

II. ENVIRONS

The subject property is located off Kealahou Parkway in the Honokohau Small Boat Harbor in Kailua-Kona, in the North Kona District of the Island of Hawaii, State of Hawaii. The accompanying Environs Map provides a general indication of the subject property's location relative to the areas between the Keahole airport and Kailua Village.



The North and South Kona Districts and the North and South Kohala Districts constitute the general region commonly referred to as West Hawaii. West Hawaii features a diverse topographic environment, ranging from barren lava flows to heavily forested uplands. Elevation ranges from sea level to the 13,000-foot elevation of Mauna Loa.

West Hawaii has gradually evolved over recent years from its former rural, agricultural profile to more of an increasingly urban environment featuring one of the higher population growth rates within the State of Hawaii. The majority of its residential communities and urban activities are concentrated within the lower elevation, coastal area. Much of the residential growth as well as most of the centralized commercial and industrial activities are located within the subject's North Kona District, either in or around Kailua Village, which is also frequently referred to as Kailua-Kona.

Tourism has had a very significant role in North Kona's economic development and is now the dominant economic base of the region. The Kailua to Keauhou coastal area is a popular, established resort destination

Kona International Airport at Keahole is located just eight miles north of Kailua-Kona and represents one of the State's newest, and still expanding, air terminals. Kona International Airport is the gateway to West Hawaii and currently accommodates a large amount of inter-island air traffic and a growing number of direct overseas flights from the United States mainland.

Again, the subject property is located in the Honokohau Small Boat Harbor, which is near the intersection of Queen Kaahumanu Highway and Kealahou Parkway. The Honokohau Small Boat Harbor was built in the later part of the 60's and has expanded over the years to its current capacity of 260 boats. It has two launch ramps which accommodate private vessels, charter boats and other small commercial operations.

Industrial developments located with the Kailua-to-Keahole urban area include the Kohanaiki Business Park, Koloko Commercial Center, Koloko Light Industrial Subdivision, Honokohau Industrial Park and the Kona Industrial Subdivision.

A number of large, established urban developments including Kona Commons, the Lanikai Shopping Center, Ilima Court (fka North Kona Shopping Center), Kona Coast Shopping Center, and Crossroads Shopping Center are located south of the subject property in the direction of Kailua Village.

III. PROPERTY DATA

Tax Map Key (TMK)	Third Division, TMK 7-4-08, Parcel 40	
Location	Honokohau Small Boat Harbor, Kailua-Kona, Island of Hawaii, State of Hawaii	
Land Area	Fast Land	10,000 square feet
	Submerged Land	<u>3,300</u> square feet
	Total Land Area	13,300 square feet
State Land Use District	Urban District	
County Zoning	Open District	
Easements and Restrictions	The appraiser is not aware of any easements affecting the property, however, the lease restricts the subject property to marine and marine related activities. (Note that LESSOR has granted multiple subleases including non-marine related subleases)	
Utilities	All necessary public utilities, including sewer, water, electricity and telephone services are available to the subject property.	
Flood Hazard Zone	Zones VE, areas of coastal flood with velocity hazard (wave action) and base flood elevations (BFE) determined and Zone X, areas determined to be outside the 500-year floodplain, as indicated on FIRM Community-Panel Number 1551660717F dated September 29, 2017. A map is included in the Addenda in Exhibit I.	
Special Management Area	Yes	
Real Property Tax Assessment (Year 2019)	Land	\$297,800
	Building	<u>380,500</u>
	Total	\$678,300
Annual Real Property Tax (Fiscal Year 2017-2018)	\$7,433	
Leased Fee Owner	State of Hawaii. There has been no recorded change in the fee simple ownership of the subject property within the past three years.	

Ground Lease Summary

Lease Number	Harbor Lease Number H-83-2
Lessor	State of Hawaii
Lessee	Kona Marine Holdings LLC
Demised Area	10,000 square feet of fast lands and 3,300 square feet of submerged lands.
Character of Use	Marine fueling and servicing facility purposes as well as other related or commercial uses.
Lease Date	July 19, 1983 and amended and extended December 31, 2009.
Original Lease Term	Original lease was for 35 years but was extended an additional 20 years from November 27, 2019 up to and including November 26, 2039. Rent based on a minimum fixed rent or 5.0% of annual gross receipts whichever is greater, each and every year during the term.
Annual Lease Rent	Annual rent (payable quarterly in advance) as follows:

<u>Term</u>	<u>Minimum Rent</u>
11/27/84 – 11/26/89	\$4,000 (1)
11/27/89 – 11/26/94	\$6,524 (1)
11/27/94 – 11/26/99	\$13,016 (1)
11/27/99 – 11/26/04	Renegotiated
11/27/04 – 11/26/09	\$12,750 (1)
11/27/09 – 11/26/14	\$22,000 (1)
11/27/14 – 11/26/19	\$22,000 (1)
11/27/19 – 11/26/24	Reopen
11/27/24 – 11/26/29	Reopen
11/27/29 – 11/26/34	Reopen
11/27/34 – 11/26/39	Reopen

(1) Percentage rent of 5.0% of annual gross receipts in excess of the above minimum rent each and every year of the term.

Comments

The rental for the ensuing five-year periods shall be the rental for the immediately preceding period or the fair market rental at the time of reopening, whichever is higher. The fair market rental shall be determined by an appraiser.

IV. PROPERTY DESCRIPTION

The subject property is an irregular-shaped parcel of land bordered along its north and northeast sides by an extension of Kealakehe Parkway, a two lane, asphalt paved roadway which extends from Queen Kaahumanu Highway. The topography of the subject is level at street grade. The subject has a total land area of 13,300 square feet with approximately 3,300 square feet located along the western boundary of the subject property consisting of submerged land. Various maps and photographs are included in the Addenda in Exhibit I.

The property is currently improved with a two-story masonry retail and office and built circa 1984. Tax office records indicate a total gross building area of 8,240 square feet and information provided by the client indicates a net leasable area of 7,616 square feet. Other on-site improvements include a dock facility for boat fueling and a land fueling facility. There are also five underground fuel tanks and three boat fueling dispensers. A concrete dock runs along the western boundary of the subject property adjacent to the submerged land.

V. VALUATION

A. Rights Appraised

This report represents a prospective market value appraisal of the annual minimum ground rent associated with Harbor Lease Number H-83-2. The effective date of the appraisal is November 27, 2019.

B. Highest and Best Use

Highest and best use is defined in The Appraisal of Real Estate, 14th Edition, as "The reasonably probable and legal use of vacant land or an improved property, that is physically possible, legally permissible, appropriately supported, financially feasible, and that results in the highest value."

In highest and best use analysis, land as though vacant and the property as improved are considered and must meet four criteria. The highest and best use must be physically possible, legally permissible, financially feasible, and maximally productive. The highest and best use of land as vacant is based on the premise that the land is vacant or existing improvements can be demolished to create a vacant parcel of land. When a property is improved, highest and best use must consider the use that can be made of an improved property based on its existing improvements.

(1) Land As If Vacant and Available For Development

The purpose of analyzing land, as if vacant and available for development to its highest and best use is to determine a use for the land and to consider the type of improvements, if any, which should be constructed on the land.

Information was compiled, including data on local and regional market and economic factors, the condition and capacity of infrastructure systems, the surrounding areas, and environmental issues.

Physically Possible --The physical characteristics of a site represents the first of the four criteria which must be met in determining the highest and best use of a land parcel. The subject land site is occupied by Kona Marine Holdings with the fast land portion of the subject property represented by a square shaped parcel of land and the submerged portion of the subject property represented by a rectangular shaped piece of land. The topography is level at street grade. The appraiser assumes that the land is not subject to unusual drainage or soil conditions. All utilities are assumed available to the property and access to the site is considered good by way of the harbor and an interior road structure accessed directly from Kealakehe Parkway.

The subject property is located within a commercial-use and industrial-use

environment primarily dedicated to maritime uses. Adequate infrastructure is readily available to the subject. Based on these conditions, the subject property is considered well suited for industrial and commercial purposes.

Legally Permissible -- The current county zoning of the subject property is O, Open District. This district applies to areas that contribute to the general welfare, the full enjoyment, or the economic well-being of open land type use which has been established, or is proposed. A variety of uses (as stipulated in the existing ground lease), including uses not normally allowed by the zoning code, are permitted for the subject especially since the State of Hawaii owns the fee simple interest in the subject land. Based on these existing land use parameters an industrial and/or commercial use of the subject property is considered its most appropriate use from the standpoint of legal permissibility.

Financially Feasible -- An analysis of the subject property's most appropriate use from the standpoint of financial feasibility deals with economic considerations of market supply and demand factors and the competitive nature of the marketplace. This type of analysis is critical to the appraisal process since the establishment of real estate market values is a direct result of the demonstrated actions of buyers and sellers in the marketplace.

The subject property is located within the Honokohau Small Boat Harbor in the Kailua-Kona area of the Big Island. The surrounding areas are a mixture of industrial and commercial land uses associated with maritime uses. Considering the future demand for developable sites and the location of the subject property, some form of industrial and/or commercial use would probably be financially feasible.

Maximally Productive -- In estimating the use that would be maximally productive to the land, the appraiser considered the physically possible, legally permissible and financially feasible uses.

In summary, the use that appears most relevant for the subject property is an industrial use development. Considering the physical and legal aspects of the subject site and the appraiser's research of prevailing real estate market conditions, it is the appraiser's opinion that an industrial use would maximize the return on the land and represents the highest and best use.

Based on these factors, commercial and/or industrial use of the subject site is considered a physically possible, legally permissible, financially feasible, and maximally productive use of the subject property as though vacant.

(2) Land As Currently Improved

The highest and best use of the property as improved is determined by analyzing the use that should be made of the property as it exists.

Consideration is given to whether the improvements should be renovated, expanded, demolished or replaced with a use that is different in type and intensity. The use that maximizes the investment property's net annual income on a long-term basis is its highest and best use. The primary function of this report was to determine the subject property's fee simple land value. As such the highest and best use of improvements was not tested.

C. Methodology

The appraiser estimated the unencumbered fee simple market land value for the subject property utilizing the sales comparison approach to value and applied a prevailing rate of return to the land value estimate to determine a fair market rent indication for the subject property. The selection of an appropriate market rate of return is based on the results of a survey of prevailing market conditions relating to other leasehold properties located throughout the State of Hawaii.

The subject property consists of the exclusive right to occupy and use a fast land area of 10,000 square feet, together with 3,300 square feet of adjacent submerged lands.

For this analysis, comparable off-harbor industrial land sales were selected from various industrial parks within the Keahole to Kailua Town area.

The precedence for the selection of off-harbor comparable land transactions for the fee simple analysis of the subject property is based on current methodology utilized in estimating industrial land values and rents within State of Hawaii harbors and airport facilities. In developing market data, appraisers representing the State and the private sector have historically concentrated their investigations into current land values of off-harbor and off-airport industrial lands within close proximity to the harbors and airports.

For the subject, the ground lease stipulates that the lessor demises and leases the property under a lease for the construction of improvements which shall be used principally for marine or marine-related activities.

D. Fee Simple Land Value Analysis

The appraiser has estimated an unencumbered fee simple market land value indication for the subject property utilizing the sales comparison approach to value. The sales comparison approach is the most common technique for valuing land and is the preferred method when comparable land sales are available. It is generally considered to be the most reliable approach and was considered the primary method to value the land underlying the subject property. Based on the principle of substitution, sales comparison determines the value of a property according to the prices generally paid for other comparable properties located within the surrounding market area. The fee simple land value analysis of the subject property, based on the

sales comparison approach to value, is presented in Table 1.

The appraiser's market research focused on fee simple industrial zoned sites similar to the subject and located in the Kailua-Kona area. From the market data disclosed by the research, four (4) smaller size industrial transactions were selected for detailed analysis in comparison to the subject site.

These transactions are analyzed in summary form in Table 1, identified on the following map, detailed in the Addenda as Exhibit II and are briefly summarized as follows:



Transaction Number 1 represents the fee simple purchase of a 75,359 square foot (1.730 acre) ML-1a, Limited Industrial District zoned rectangular shaped site located along Kamanu Street in the Honokohau Industrial Park. The parcel is identified as TMK 7-4-24-10. This sale occurred in July 2017 for a recorded sales price of \$1,500,000 or \$19.90 per square foot. The level at-grade site was vacant at the time of sale.

Transaction Number 2 represents the fee simple purchase of a 52,490 square foot (1.205 acre) MCX-1a, Industrial-Commercial Mixed Use zoned rectangular shaped site located along Kauhola Street in the Koloko Commercial, Phase III subdivision. The parcel is identified as TMK 7-3-51-112. This sale occurred in February 2018 for a recorded sales price of \$839,837 or \$16.00 per square foot. The level at-grade site was vacant at the time of sale. The perimeter of the site on two sides is sloping which will require retaining walls to have a 100% use of the total area of the site.

Transaction Number 3 represents the fee simple purchase of a 43,952 square foot (1.009 acre) ML-1a, Light Industrial District zoned rectangular shaped site located along Hulikoa Drive in the Kohanaiki Business Park. The parcel is identified as TMK 7-3-58-25. This sale occurred in September 2018 for a recorded sales price of \$1,000,000 or \$22.75 per square foot. The level at-grade site was vacant at the time of sale. The perimeter of the site on three sides is sloping which will require retaining walls to have a 100% use of the total area of the site.

Transaction Number 4 represents the fee simple purchase of a 74,488 square foot (1.710 acre) MG-5a, General Industrial District zoned rectangular shaped site located at the end of Honokohau Street in the Honokohau Industrial Park. The parcel is identified as TMK 7-4-24-06-Apt 1. A 52-foot portion along the rear property line is considered unusable due to the steep upward incline. The unusable portion of the site is estimated to be 7,717 square feet. Deducting the 7,717 square feet from the gross are of 74,488 square feet, results in a usable are of 66,771 square feet. This sale occurred in December 2018 for a recorded sales price of \$1,350,000 or \$20.22 per square foot based on a usable area of 66,771 square feet. The level at-grade site was vacant at the time of sale.

Adjustments to Sales Comparison Grid

As shown in the comparison grid (Table 1), the indicated unit land value indications associated with each of the selected comparable transactions was adjusted relative to the subject property to compensate for any significant differences relating to terms of sale, market conditions (price appreciation or depreciation over time), location, zoning, frontage/access, flood zone, use restrictions and physical site characteristics. A final adjustment for size differential was considered. All transactions were verified to be market arm's length cash equivalent transactions of fee simple industrial zoned properties.

In the adjustment process, positive adjustments are applied to the comparable if it was inferior to the subject and negative adjustments if it was considered superior.

Terms of Sale -- Each sale was first analyzed as to economic and financing conditions or terms of sale to reflect the impact of non-institutional methods of financing or the advent of low financing costs due to favorable exchange rates and foreign financing. Down payment, interest rates and loan terms were considered in the cash equivalency analysis. All transactions were considered to be cash equivalent transactions thus no adjustments were required for terms of sale.

Market Conditions -- This factor is used to adjust historical property transactions to the effective date of appraisal of November 27, 2019. From around the beginning of 2008, prevailing market conditions would characterize the overall Hawaii real estate market in general terms as being in a down cycle. The frequency of industrial land transactions began to decline at the end of 2009 in the Kailua-Kona area and prices started to stabilize towards the end of 2011. The

market has remained stable since the end of 2011 with no indications of a significant decline in pricing. The sales of the four selected comparable properties occurred in 2017 and 2018. Therefore, all four transactions required no adjustments for market conditions.

Table 1

COMPARABLE FEE SIMPLE LAND TRANSACTIONS ADJUSTMENT SCHEDULE**Harbor Lease H-83-2, Kona Marine Holdings, LLC**Honokohau, North Kona, Island of Hawaii

Transaction Number	Subject	1	2	3	4
Third Division, Tax Map Key	7-4-08-40	7-4-24-10	7-3-51-112	7-3-58-25	7-4-24-06-1
Street Frontage	Queen Kaahumanu	Kamanu St.	Kauhola St.	Hulikoa Dr.	Honokohau St.
Location	Honokohau Harbor	Honokohau	Kaloko	Kohanaiki	Honokohau
Lot Orientation	Interior	Interior	Interior	Interior	Interior
Land Area - Acres	0.230	1.730	1.205	1.009	1.710
Square Feet Gross	10,000	75,359	52,490	43,952	74,488
Square Feet Usable	10,000	75,359	52,490	43,952	66,771
Zoning	Open	ML-1a	MCX-1a	ML-1a	MG-5a
Transaction Date		18-Jul-17	01-Feb-18	25-Sep-18	03-Dec-18
Instrument/Financing		Deed	Deed	Deed	Deed
Indicated Price		\$1,500,000	\$839,837	\$1,000,000	\$1,350,000
Indicated Price Per Sq.Ft.		\$19.90	\$16.00	\$22.75	\$20.22
Terms of Sale Adjustment		<u>1.00</u>	<u>1.00</u>	<u>1.00</u>	<u>1.00</u>
Adjusted Price		\$19.90	\$16.00	\$22.75	\$20.22
Market Conditions Adjustment		<u>1.00</u>	<u>1.00</u>	<u>1.00</u>	<u>1.00</u>
Market Conditions Adjusted Unit Value		\$19.90	\$16.00	\$22.75	\$20.22
Adjustments (%)					
Location		0%	0%	0%	0%
Street Frontage/Access		0%	0%	0%	0%
Harbor Frontage/Access		10%	10%	10%	10%
Flood Zone		-5%	-5%	-5%	-5%
Physical Characteristics		0%	5%	5%	0%
Use Restrictions		<u>-5%</u>	<u>-5%</u>	<u>-5%</u>	<u>-5%</u>
Net Adjustments (%)		0%	5%	5%	0%
Adjusted Unit Value		\$19.90	\$16.80	\$23.89	\$20.22
Size Adjustment		<u>1.61</u>	<u>1.48</u>	<u>1.41</u>	<u>1.60</u>
Size Adjusted Unit Value		\$32.04	\$24.86	\$33.68	\$32.35

Range of Values	\$24.86	to \$33.68 per sq.ft.
Mean Unit Value	\$30.73	per square foot
Concluded Unit Value	\$30.70	per square foot
Indicated Site Value	\$30.70	per sqft x 10,000 sqft = \$307,000

Source: Hastings, Conboy & Associates, Ltd., April 2019.

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Site Location -- The location adjustment category takes into consideration aspects relating to each property's proximity to surrounding complementary urban areas and major transportation routes and the resulting degree to which the associated relationship between potential land users and their markets are either enhanced or diminished. Transaction Numbers 1 through 4 represent industrial land sales located in the Kaloko Industrial Park, Honokohau Industrial Park or the Kohanaiki Business Park industrial subdivisions. All four of these transactions were considered to be similar to the subject in terms of locational characteristics and therefore required no adjustments for location.

Street Frontage/Access -- This adjustment category considers the quantity and quality of available street frontage, which adds to the property through better use and flexibility for ingress and egress. The subject site is an interior rectangular shaped lot with frontage and access on one street. Transaction Numbers 1 through 4 are interior lots with frontage/access on one street similar to the subject. Therefore, no adjustment is warranted for Transaction Numbers 1 through 4.

Harbor Frontage/Access -- The adjustment for Harbor Frontage recognizes that the subject, in addition to street access, has direct harbor exposure and orientation. For an industrial property, the harbor frontage orientation allows an additional maritime access and expanded uses. All transactions were rated inferior to the subject's harbor front orientation and adjusted upward by ten percent.

Flood Zone -- The subject property is located within an area designated Zone VE, areas of coastal flood with velocity hazard (wave action) Transaction Numbers 1 through 4 are located in Zone X areas to be outside the 0.2% annual chance floodplain. Transaction Numbers 1 through 4 are considered superior to the subject and warranted a downward adjustment of five percent.

Physical Characteristics -- This adjustment considers any differences in physical property factors such as lot shape, general topography or terrain and utility factors of the comparable transactions in terms of general use potential as compared to the subject. All transactions are analyzed on the basis of usable land areas as well as the subject. The usable areas of the comparable transactions are relatively similar to the subject's usable area in general topography and utility. No adjustment was warranted for Transactions Number 1 and 4. Transactions Number 2 and 3 were considered inferior to the subject based on their sloping boundaries which will require reinforced walls to attain full use of the site. An upward adjustment of five percent was applied to Transactions Number 2 and 3.

Use Restrictions -- The original ground lease demises to the lessee the premises under lease for the construction of improvements which will be used principally for marine or marine-related activities. The adjustment for restrictions considers that the subject property is restricted to marine and marine related activities and uses.

The comparable transactions are allowed a wide variety of commercial and

industrial uses under their existing zoning designations. Therefore, all four comparable transactions were considered to be superior to the subject property in terms of the lease restrictions imposed on the subject property thus requiring a downward adjustment of five percent.

Parcel Size Adjustments -- A size adjustment was considered next to compensate for the fact that larger parcels usually tend to reflect lower unit prices while smaller parcels usually reflect higher unit prices. The size adjustment correlates the unit land value indications in relation to size differences of the selected comparable land transactions as they relate to the size of the subject property into a “best fit” curve. The size adjustment factors are based on a curvilinear, multiple regression analysis of the selected comparable sales data. The appraiser tested the statistical sensitivity to see if unit price is significantly influenced by parcel size. The appropriate exponential curve is selected by calculating the degree of dispersion before and after adjustment for size. The results of the test indicate that price is influenced by parcel size.

The following chart demonstrates that the relationship between size and dollars per square foot is best explained by the 85.0% curve as indicated by the smallest covariance of the curves analyzed.

Transaction	Subject	1	2	4	6	Mean	Standard Deviation	Covariance
Land Area	10,000	75,359	52,490	43,952	74,488			
Unadjusted Value		\$19.90	\$16.80	\$23.89	\$20.22	20.20	2.51	12.4%
Exponent	Curve							
0.963474123	97.50%	1.08	1.06	1.06	1.08	21.62	2.66	12.3%
		21.49	17.81	25.32	21.84			
0.925999418	95.00%	1.16	1.13	1.12	1.16	23.07	2.76	12.0%
		23.08	18.98	26.75	23.46			
0.887525171	92.50%	1.26	1.21	1.18	1.25	24.72	2.82	11.4%
		25.07	20.33	28.19	25.28			
0.847996906	90.00%	1.36	1.29	1.25	1.36	26.52	3.00	11.3%
		27.06	21.67	29.86	27.50			
0.807354921	87.50%	1.48	1.38	1.33	1.47	28.53	3.22	11.3%
		29.45	23.18	31.77	29.72			
0.765534746	85.00%	1.61	1.48	1.41	1.60	30.73	3.45	11.2%
		32.04	24.86	33.68	32.35			
0.722466024	82.50%	1.75	1.58	1.51	1.75	33.21	3.87	11.7%
		34.83	26.54	36.07	35.39			
0.678071905	80.00%	1.92	1.71	1.61	1.91	36.01	4.20	11.7%
		38.21	28.73	38.46	38.62			

Fee Simple Land Value Conclusion ---- As seen in Table 1, after adjustments, the fee simple unit land value indications for the subject site range from \$24.86 to \$33.68 per square foot. The mean unit land value indication was \$30.73 per square foot. Based on these indications, the appraiser concludes a fee simple unit land value of \$30.70 per square foot per square foot for the 10,000 square feet of fast land. Therefore, it is the appraiser’s opinion that the market value of the fee simple interest in land associated with the subject property fast land as of November 27,

2019 is \$307,000 (\$30.70 per square foot x 10,000 square feet fast land, as rounded).

The 3,300 square feet of submerged land was valued at 50% of the fast land unit rate of \$30.70 per square foot resulting in a unit value of \$15.35 per square foot which results in a market value of the fee simple interest in land associated with the subject property submerged land of, rounded, \$50,700 (\$15.35 per square foot x 3,300 square feet submerged land as of November 27, 2019).

Combining the concluded land values for both the fast land and the submerged land results in a market value of the fee simple interest of \$357,700 as of November 27, 2019.

Annual Rate of Return on Land

A survey undertaken of major land owners in Hawaii as well as property managers of major trusts disclosed that renegotiated ground lease rents have typically been based on fee simple land values consistent with the underlying zoning and highest and best use of the site multiplied by the prevailing market rate of return or contract rate.

Rates for industrial and commercial properties generally range between 6.0 to 8.0 percent per annum. The rates at the lower end of the range typically reflect contract rates contained in older leases. The majority of newer lease rents for industrial and commercial properties are based on a rate of return of 8.0 percent per annum.

The appraiser has selected an 8.0 percent rate of return to apply to the subject property.

Annual Minimum Market Rent Estimate

The subject property's fee simple land value as of November 27, 2019 is estimated to be \$357,700. The annual market rate of return on land is determined to be 8.0 percent. Application of the 8.0 land rate to the concluded fee simple land value of \$357,700 results in an annual minimum market rent, before percentage rent, of \$28,620 as of November 27, 2019 ($\$357,700 \times 0.08 = \$28,620$, as rounded).

Percentage Rent Estimate

The original lease dated July 19, 1983 states that for the first five years, the annual rental shall be the sum of \$4,000 per annum or five percent (5%) of the annual gross receipts, whichever is greater. In the event five percent (5%) of the annual gross receipts exceeds the basic rental charge, the Lessee shall pay to the Lessor that amount in excess of the basic rental within sixty (60) days after the close of the Lessee's tax year. 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.**

The lease was extended for an additional 20 years from November 27, 2019 up to and including November 26, 2039. The terms, conditions and covenants contained in the original Harbor Lease No. H-83-2 continue to remain in full force and effect until the termination date of the extension of Harbor Lease No. H-83-2.

The following summarizes the current tenant sublessees as of February 21, 2019.

<u>Space</u>	<u>Sublease Status (02/21/2019)</u>	<u>Lease Expiration</u>	<u>Monthly Rent</u>	<u>Occupied Area (sf)</u>	
A	Sunlight on Water	07/31/17	1,464.01	661	
B	Kona Captain Jason LLC	04/30/17	650.00	290	
C	Jacks Diving Locker	10/31/22	1,563.54	506	
D	KaTani Nakoa	07/31/18	774.00	258	
E	Splashers Ocean Adventures	07/31/17	515.00	252	
F,G	Shelley Shane	08/31/17	907.20	504	
H	Torpedo Tours	07/31/17	680.55	349	
I	Sea Wife Charters	03/31/17	360.00	194	
J,K	Precision Marine Power	03/31/19	1,400.00	671	
Charters	Charter Desk	12/31/19	2,015.71	644	
Store	Jacks Diving Locker	02/28/22	1,000.00	1525	
Jacks, Ice	Jacks Diving Locker	07/31/22	4,103.28	1358	
Kamanu	Kamanu	07/31/18	1,108.66	404	Never executed

Notes: All rent amounts are monthly, include CAM, but not G.E.T.

Expired leases are all extended on a month-to-month basis.

Additional: 6 storage locker rentals @ \$100/mo each, and \$600/mo electricity reimbursement.

The following summarizes the annual revenues generated by the property for the years 2014 through 2018.

Kona Marine Holdings	2014	2015	2016	2017	2018
Fuel Revenues	\$732,108.85	\$888,156.98	\$767,885.32	\$556,063.01	\$484,849.68
Rental Income	<u>\$152,455.32</u>	<u>\$164,471.07</u>	<u>\$151,858.02</u>	<u>\$157,653.32</u>	<u>\$207,894.67</u>
Gross Revenue	\$849,178.65	\$1,052,628.05	\$919,743.34	\$713,716.33	\$692,744.35
Less: GET	<u>\$35,385.52</u>	<u>\$42,105.04</u>	<u>\$36,789.73</u>	<u>\$28,548.67</u>	<u>\$27,709.77</u>
Adjusted Gross Receipts	\$849,178.65	\$1,010,523.01	\$882,953.61	\$685,167.66	\$665,034.58
5% Rent	\$42,458.93	\$50,526.15	\$44,147.68	\$34,258.38	\$33,251.73
Minimum Rent	\$15,062.50	\$22,000.00	\$22,000.00	\$22,000.00	\$22,000.00
Additional Rent	\$27,396.43	\$28,526.15	\$22,147.68	\$12,258.38	\$11,251.73
Total Annual Rent	\$42,458.93	\$50,526.15	\$44,147.68	\$34,258.38	\$33,251.73

Based on the existing rent roll and historical fuel sales, the appraiser estimates an adjusted gross revenue estimate of \$700,000 for the period ending November 26, 2019. Applying a 5% percentage rate to the gross sales estimate, results in

percentage rents of \$35,000.

Minimum rent for the period November 27, 2014 to November 26, 2019 is \$22,000. Based on the projected percentage rents of \$35,000, indicates an overage rent of \$13,000 for the period ending November 26, 2019. This compares favorably to the overage rent of \$11,251.11 for 2018.

Final Rent Conclusion

Based on the previous analysis, and considering the terms of the lease which states that 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, the appraiser estimates the minimum ground rent, before percentage rent, for the subject property for the five-year period beginning November 27, 2019 is \$35,000 per annum.

VI. CERTIFICATION

- The undersigned hereby certifies that, to the best of his knowledge and belief:
- The statements of fact contained in this report are true and correct.
- The reported analyses, opinions, and conclusions are subject to stated assumptions and limiting conditions, and are the appraisers personal, impartial, unbiased professional analyses, opinions, and conclusions.
- The appraiser has not performed services, as an appraiser or in any other capacity, regarding the property that is the subject of this report within the three-year period immediately preceding acceptance of this assignment.
- The appraiser has no present or prospective interest in the property that is the subject of this report, and has no personal interest with respect to the parties involved.
- The appraiser has no bias with respect to the property that is the subject of this report or to the parties involved with this assignment.
- The contractual engagement was not contingent upon developing or reporting predetermined results.
- Compensation for completing this assignment is not contingent upon the development or reporting of a predetermined value or direction in value that favors the cause of the client, the amount of the value opinion, the attainment of a stipulated result, or the occurrence of a subsequent event directly related to the intended use of this appraisal.
- The reported analyses, opinions, and conclusions were developed, and this report has been prepared, in conformity with the requirements of the Code of Professional Ethics and Standards of Professional Appraisal Practice of the Appraisal Institute, which include the Uniform Standards of Professional Appraisal Practice.
- Alan J. Conboy, MAI, SRA has conducted a personal inspection of the property that is the subject of this report.
- Nobody provided significant real property appraisal assistance to the person signing this certification.
- As of the date of this report Alan J. Conboy, MAI, SRA has completed the requirements of the continuing education program for designated members of the Appraisal Institute.
- The use of this report is subject to the requirements of the Appraisal Institute relating to review by its duly authorized representatives.

April 29, 2019

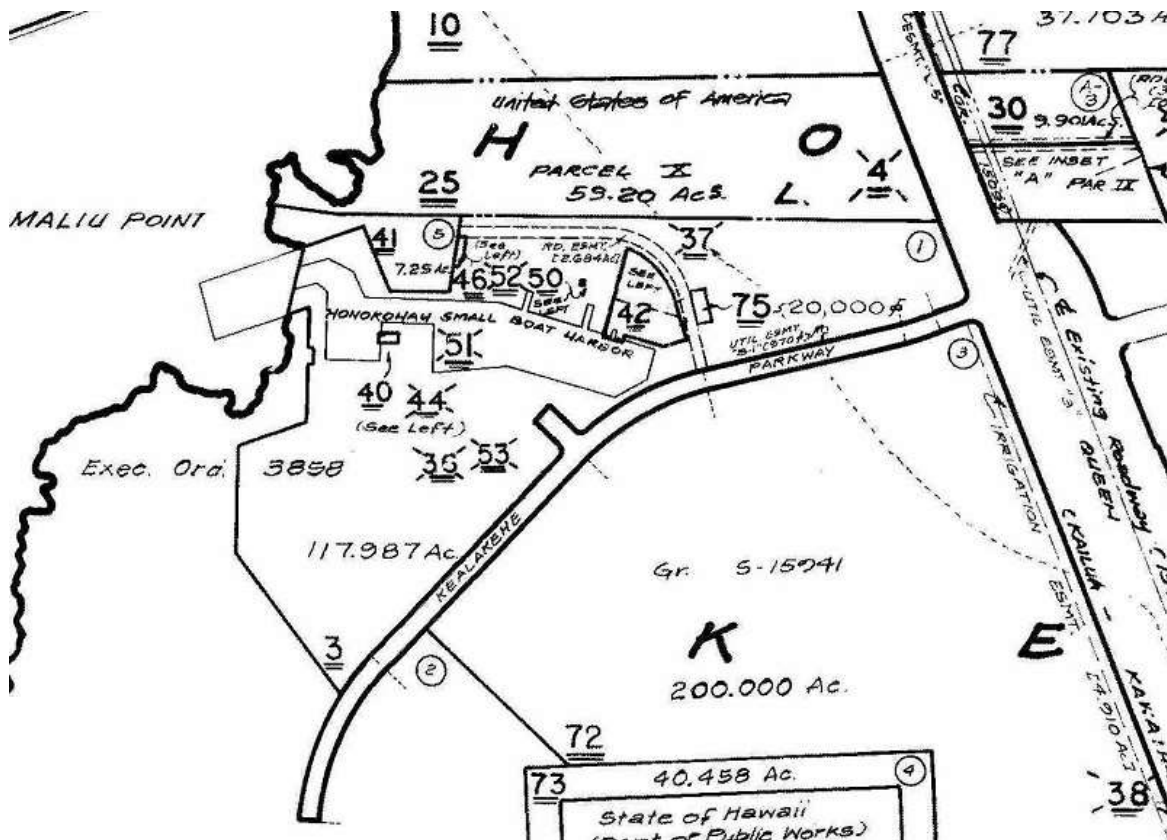
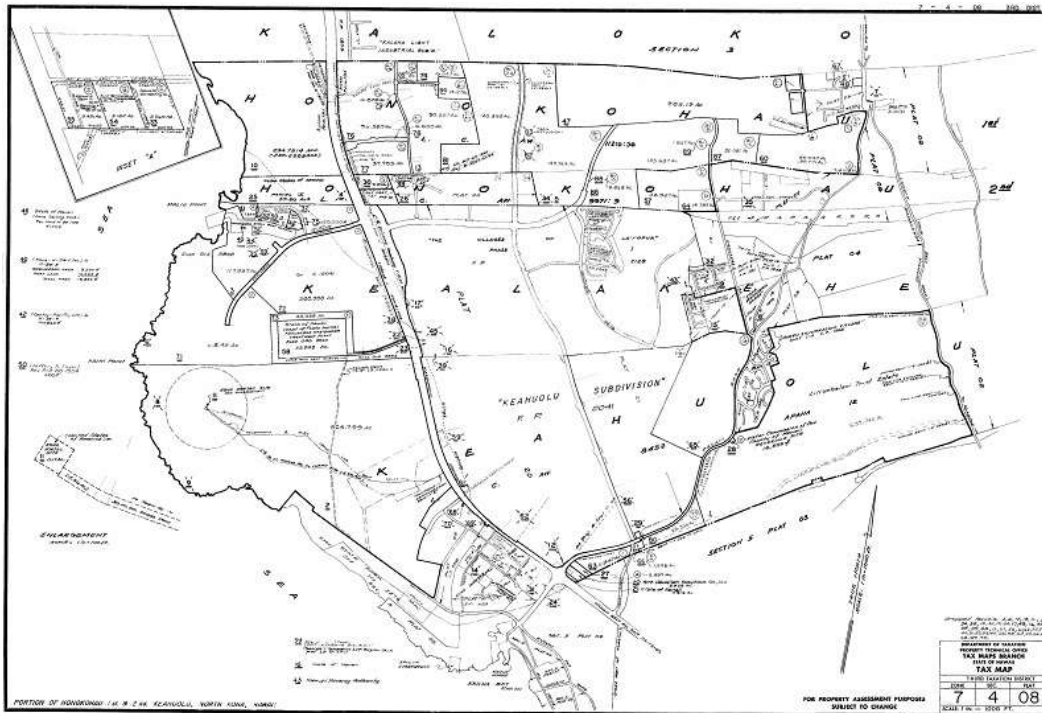


Alan J. Conboy, MAI, SRA
State Certified General Appraiser CGA-185
Certificate Expires: December 31, 2019

EXHIBIT I

**MAPS AND PHOTOGRAPHS
OF THE
SUBJECT PROPERTY**

Property Location Maps





Flood Hazard Assessment Report

www.hawaiiilp.org

Property Information

COUNTY: HAWAII
 TMK NO: (3) 7-4-008:040
 WATERSHED: HONOKOHAU
 PARCEL ADDRESS: 74-381 KEALAKEHE PARKWAY
 KAILUA KONA, HI 96740

Notes:

Flood Hazard Information

FIRM INDEX DATE: SEPTEMBER 29, 2017
 LETTER OF MAP CHANGE(S): NONE
 FEMA FIRM PANEL: 1351660717F
 PANEL EFFECTIVE DATE: SEPTEMBER 29, 2017

THIS PROPERTY IS WITHIN A TSUNAMI EVACUATION ZONE: YES
 FOR MORE INFO, VISIT: <http://www.scd.hawaii.gov/>

THIS PROPERTY IS WITHIN A DAM EVACUATION ZONE: NO
 FOR MORE INFO, VISIT: <http://dlnr.hawaii.gov/dam/>



Disclaimer: The Hawaii Department of Land and Natural Resources (DLNR) assumes no responsibility arising from the use, accuracy, completeness, and timeliness of any information contained in this report. Viewers/Users are responsible for verifying the accuracy of the information and agree to indemnify the DLNR, its officers, and employees from any liability which may arise from its use of its data or information.

If this map has been identified as "PRELIMINARY", please note that it is being provided for informational purposes and is not to be used for flood insurance rating. Contact your county floodplain manager for flood zone determinations to be used for compliance with local floodplain management regulations.

FLOOD HAZARD ASSESSMENT TOOL LAYER LEGEND (Note: legend does not correspond with NFHL)

SPECIAL FLOOD HAZARD AREAS (SFHAs) SUBJECT TO INUNDATION BY THE 1% ANNUAL CHANCE FLOOD - The 1% annual chance flood (100-year), also known as the base flood, is the flood that has a 1% chance of being equaled or exceeded in any given year. SFHAs include Zone A, AE, AH, AO, V, and VE. The Base Flood Elevation (BFE) is the water surface elevation of the 1% annual chance flood. Mandatory flood insurance purchase applies in these zones:

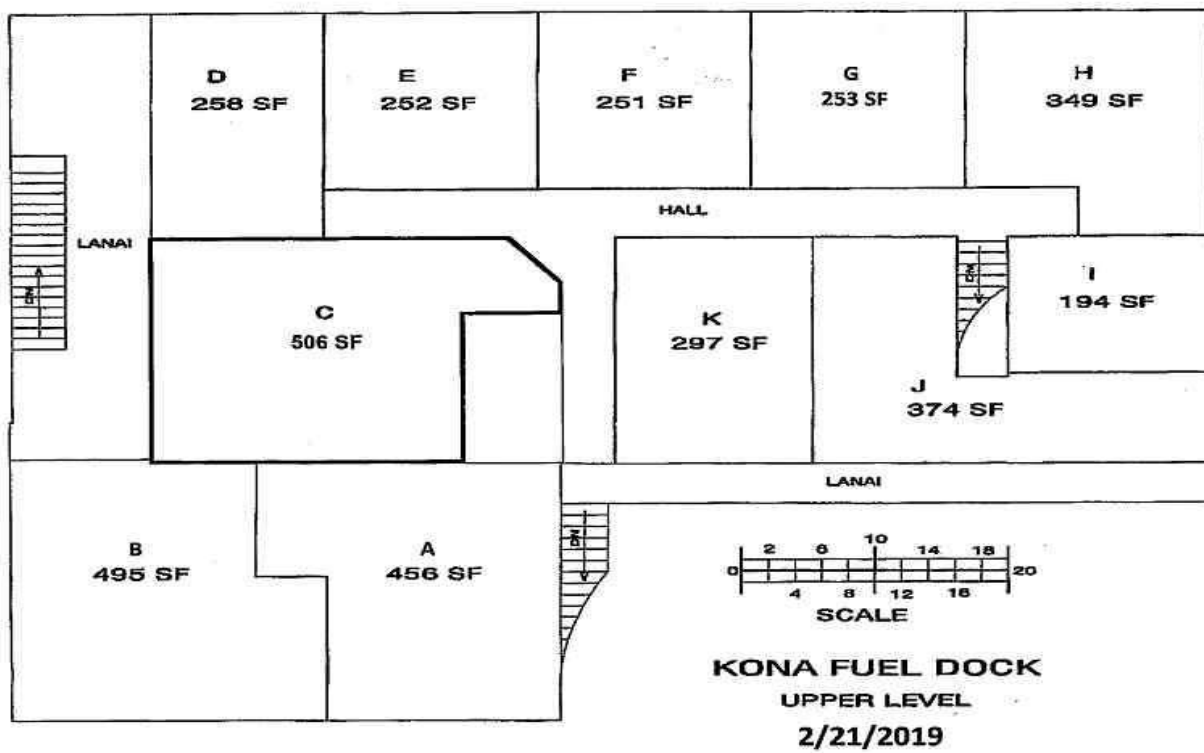
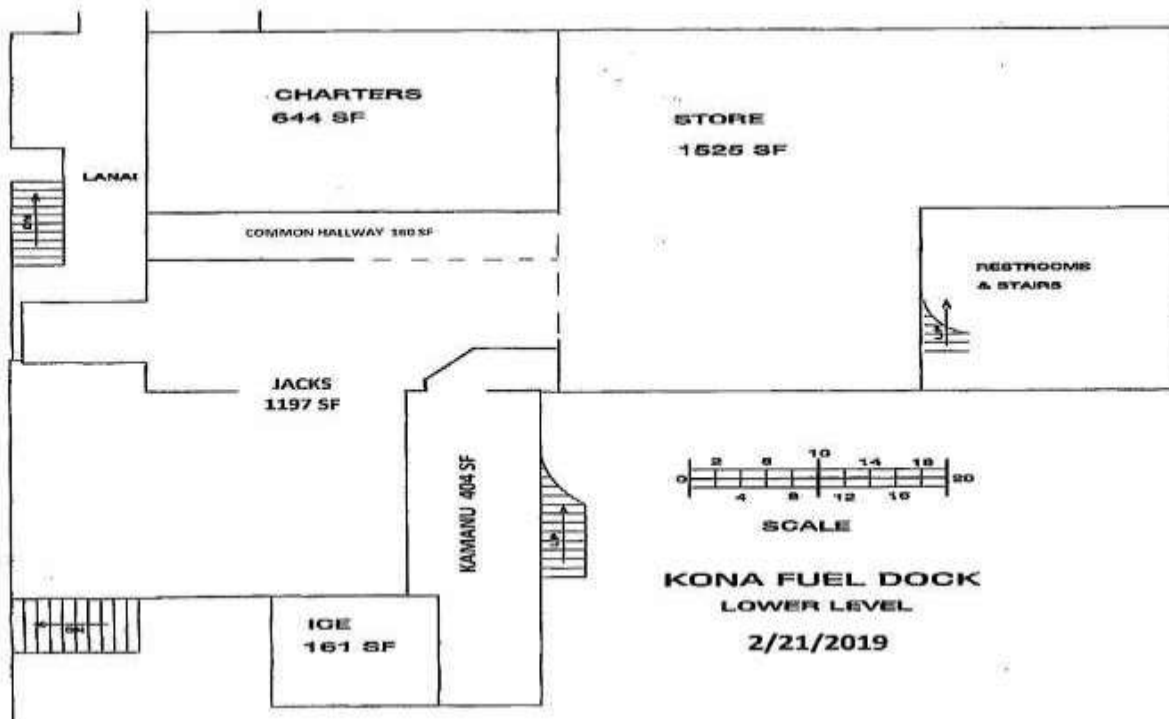
	Zone A: No BFE determined.
	Zone AE: BFE determined.
	Zone AH: Flood depths of 1 to 3 feet (usually areas of ponding); BFE determined.
	Zone AO: Flood depths of 1 to 3 feet (usually sheet flow on sloping terrain); average depths determined.
	Zone V: Coastal flood zone with velocity hazard (wave action); no BFE determined.
	Zone VE: Coastal flood zone with velocity hazard (wave action); BFE determined.
	Zone AEF: Floodway areas in Zone AE. The floodway is the channel of stream plus any adjacent floodplain areas that must be kept free of encroachment so that the 1% annual chance flood can be carried without increasing the BFE.

NON-SPECIAL FLOOD HAZARD AREA - An area in a low-to-moderate risk flood zone. No mandatory flood insurance purchase requirements apply, but coverage is available in participating communities.

	Zone XS (X shaded): Areas of 0.2% annual chance flood; areas of 1% annual chance flood with average depths of less than 1 foot or with drainage areas less than 1 square mile; and areas protected by levees from 1% annual chance flood.
	Zone X: Areas determined to be outside the 0.2% annual chance floodplain.

OTHER FLOOD AREAS

	Zone D: Unstudied areas where flood hazards are undetermined, but flooding is possible. No mandatory flood insurance purchase apply, but coverage is available in participating communities.
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View of access to subject site.



View of building on subject site.



Westerly view along northerly portion of subject site.



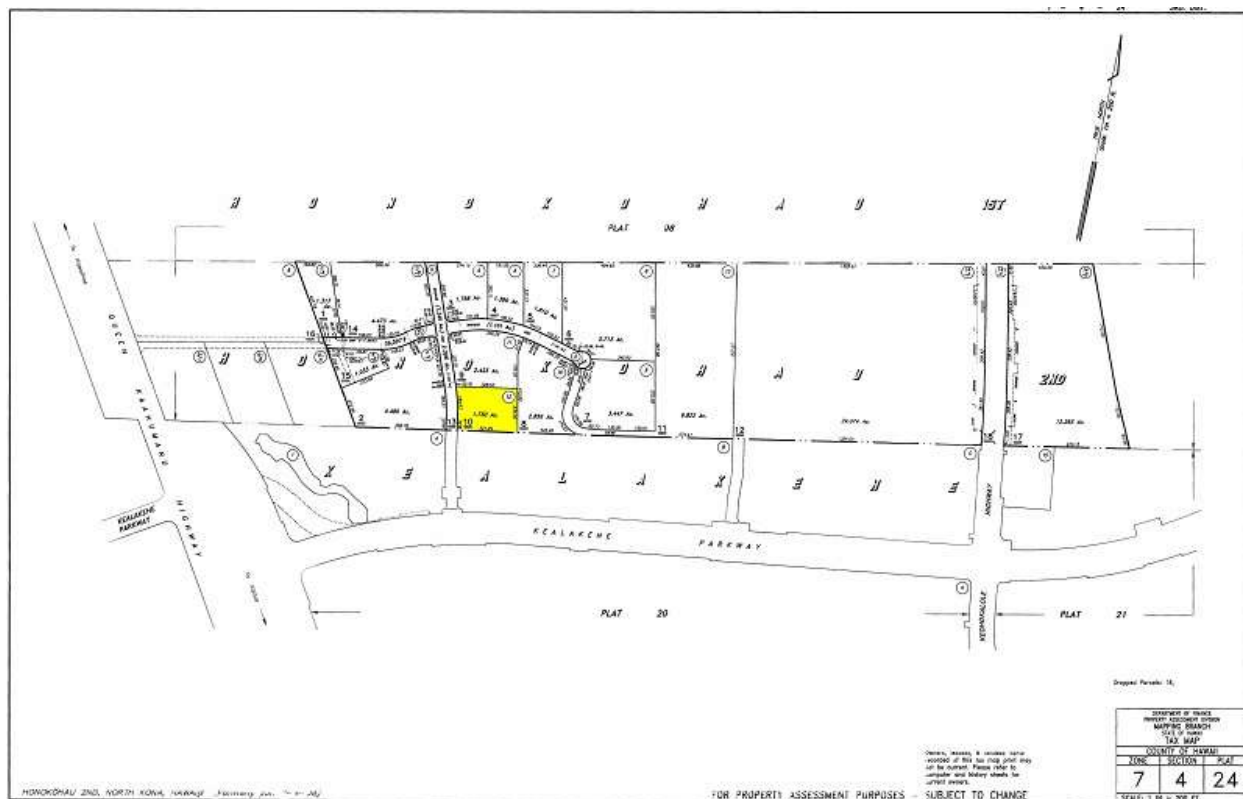
View of submerged land area along westerly side of subject site.

EXHIBIT II

MARKET DATA LAND TRANSACTIONS

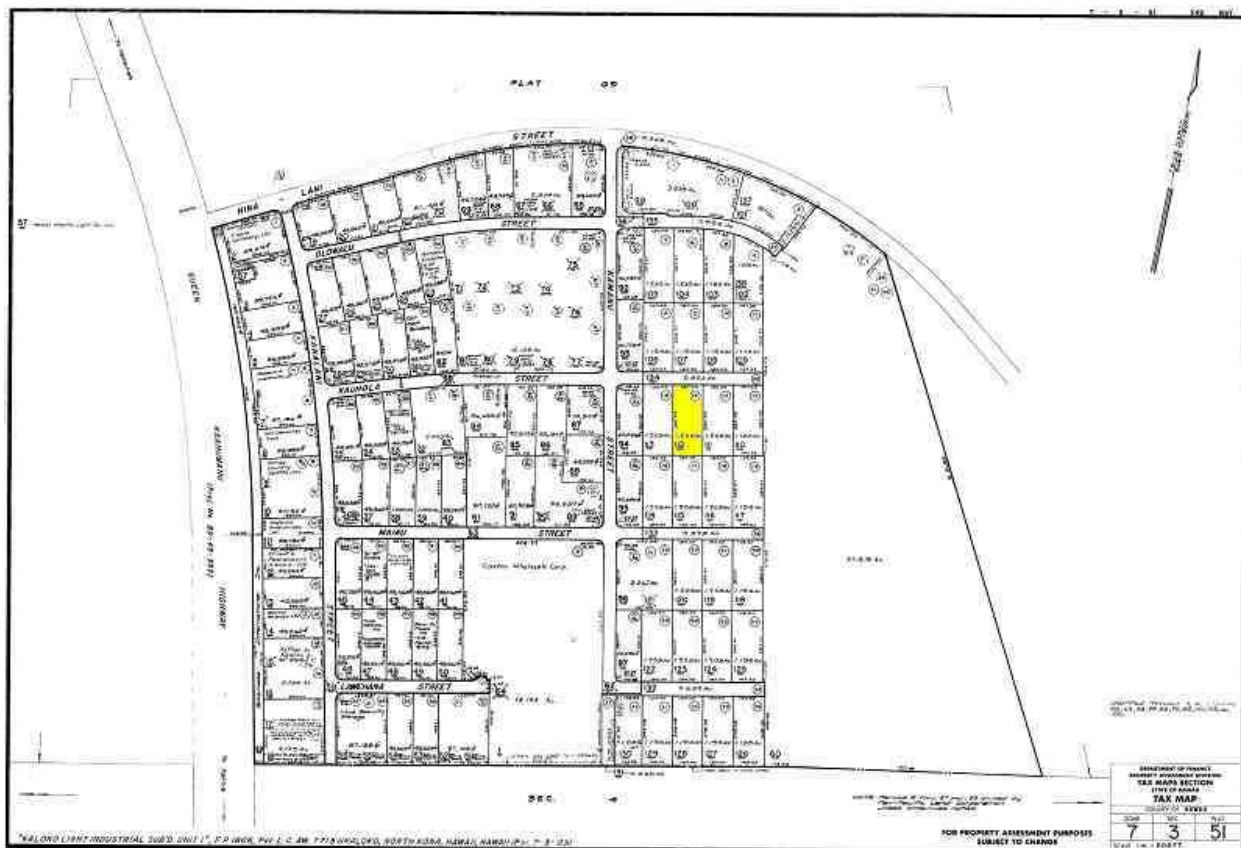
Transaction Number 1

Third Division, TMK	7-4-24, Parcel 10
Location	Kamanu Street, Honokohau Industrial Park Kailua-Kona, Hawaii
Land Area	75,359 Square Feet (1.730 acres)
Zoning	ML-1a, Limited Industrial District
Grantor	McClellan Honokohau Properties
Grantee	Cantor Brothers Transport Services Inc.
Instrument Date	Deed dated July 18, 2017 and recorded July 31, 2017 in Document Number A64210031
Sale Price	\$1,500,000
Unit Price	\$19.90 per square foot
Comments	Terms of the sale represented cash to the seller. The site is an interior lot with both access and frontage available from Kamanu Street. The site was vacant at the time of sale.
Source	Hawaii Information Services, CoStar & Bill Froelich of Colliers

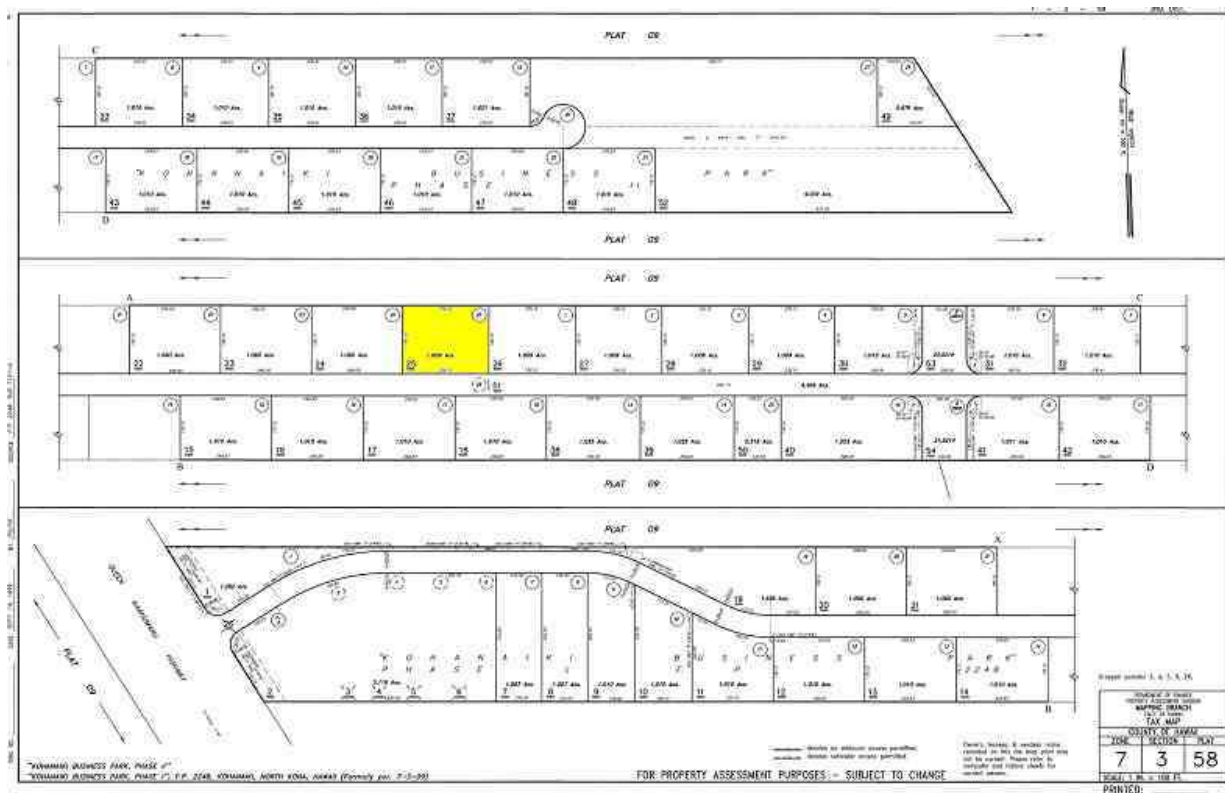


Transaction Number 2

Third Division, TMK	7-3-51, Parcel 112
Location	Kauhola Street, Phase III, Koloko Commercial Center Kailua-Kona, Hawaii
Land Area	52,490 Square Feet (1.205 acres)
Zoning	MCX-1a, Industrial-Commercial Mixed-Use District
Grantor	Kaloko Commercial Center LLC
Grantee	TKO, LLC
Instrument Date	Deed dated February 1, 2018 and recorded February 7, 2018 in Document Number A66120038
Sale Price	\$839,837
Unit Price	\$16.00 per square foot
Comments	Terms of the sale represented cash to the seller. The site is an interior lot with both access and frontage available from Kauhola Street. The site was vacant at the time of sale and consisted of a pad with sloping sides.
Source	Hawaii Information Services, CoStar & Gregory Ogin of SVN Go Commercial

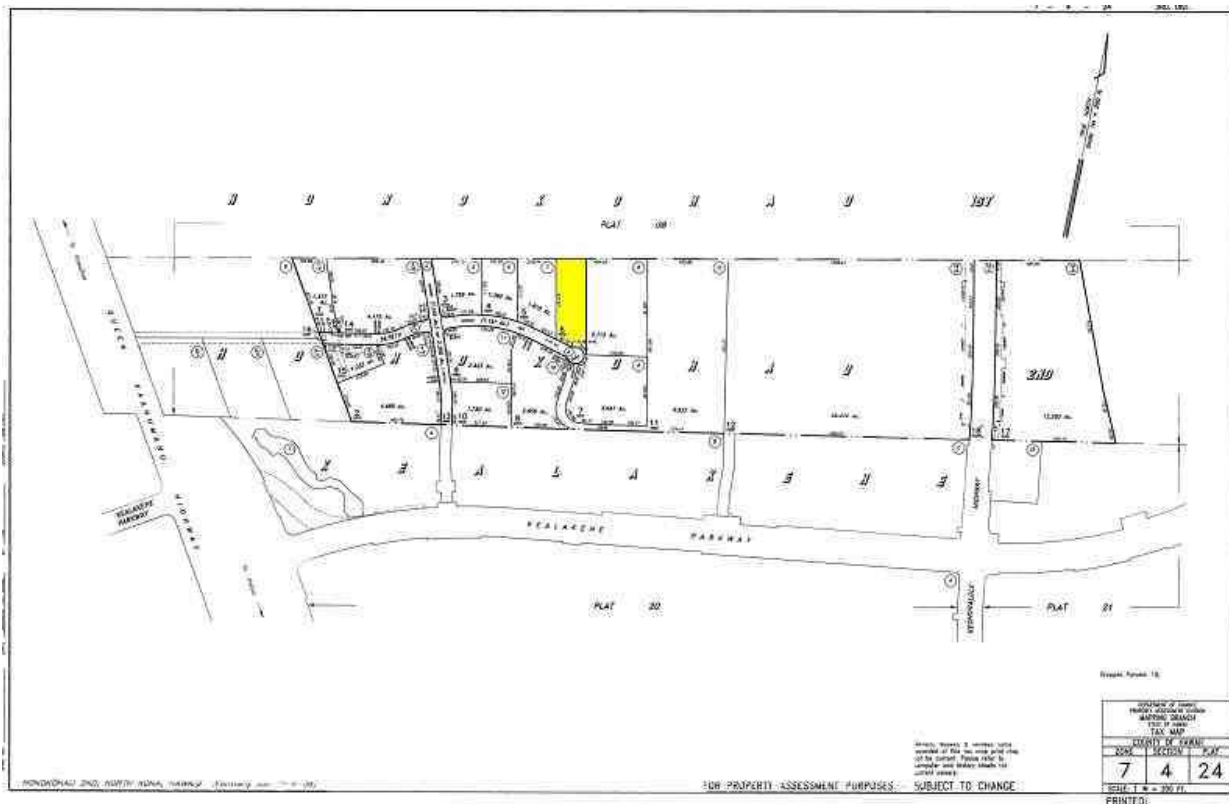


Third Division, TMK	7-3-58, Parcel 25
Location	Hulikoa Drive, Kohanaiki Business Park Kailua-Kona, Hawaii
Land Area	43,952 Square Feet (1.009 acres)
Zoning	ML-1a, Limited Industrial District
Grantor	Kohanaiki Center LLC
Grantee	Christian Coetzee
Instrument Date	Deed dated September 25, 2018 and recorded September 28, 2018 in Document Number A68450090
Sale Price	\$1,000,000
Unit Price	\$22.75 per square foot
Comments	Terms of the sale represented cash to the seller. The site is an interior lot with both access and frontage available from Hulikoa Drive. The site was vacant at the time of sale.
Source	Hawaii Information Services, CoStar & Bill Froelich of Colliers



Transaction Number 4

Third Division, TMK	7-4-24, Parcel 06-Unit 1
Location	Honokohau Street, Honokohau Industrial Park Kailua-Kona, Hawaii
Land Area (Gross)	74,488 Square Feet (1.710 acres)
Land Area (Usable)	66,771 Square Feet (1.533 acres)
Zoning	MG-5a, General Industrial District
Grantor	McClellan Honokohau Properties
Grantee	Amerigas Propane LP
Instrument Date	Deed dated December 3, 2018 and recorded December 7, 2018 in Document Number A69150118
Sale Price	\$1,350,000
Unit Price (Gross)	\$18.12 per square foot
Unit Price (Usable)	\$20.22 per square foot
Comments	Terms of the sale represented cash to the seller. Property is a two-lot condominium. The site is an interior lot with both access and frontage available from Honokohau Street. The site was vacant at the time of sale.
Source	Hawaii Information Services, CoStar & Bill Froelich of Colliers



PROFESSIONAL QUALIFICATIONS

HASTINGS, CONBOY & ASSOCIATES, LTD.
Real Estate Appraisers, Counselors and Economists
354 Uluniu Street, Suite 307, Kailua, Hawaii 96734, Telephone (808) 524-1700

General

Hastings, Conboy & Associates, Ltd. (HCA) is headquartered in the State of Hawaii and has a staff of professional real estate counselors, appraisers, economists, market analysts and investment analysts. Its staff has extensive experience analyzing and appraising South and West Pacific real estate. Associated companies offer development management, real estate brokerage and investment services.

HCA assists clients with solutions to real estate problems. Its purpose is to provide sound and objective analysis directed toward reducing the financial risks inherent in the real estate decision-making process. This is accomplished by the applications of intensive research and analysis to interpreting the dynamics influencing real estate markets and real estate investments, and the subsequent identification of opportunities and courses of action which can be profitably employed.

In executing its assignments, HCA utilizes the broad experience of its highly qualified staff to identify specific problem areas associated with client programs and to structure and implement effective solutions.

Hastings, Conboy & Associates, Ltd. maintains an extensive technical library of books, monographs, journals and special statistical compilations in the fields of land use, recreation, investment analysis, urban planning and development. Surveys of market conditions for a variety of land use are maintained and updated constantly. In conjunction with being headquartered in Hawaii, these resources allow HCA to closely monitor local real estate developments and activity.

Clients include builders and developers, financial institutions and advisors, corporations, private individuals, estates, and government agencies at all levels.

PROFESSIONAL QUALIFICATIONS

Problem solving is a major function of HCA. Although specific services and approaches to problems differ from case to case, they may be generally described by the following basic types of studies. Study results can be evaluated utilizing computerized models to determine financial feasibility and to calculate measurements of project performance.

Real Estate Investment Counseling -- Determination and evaluation of effective real estate investment strategies including project selection, analysis of highest and best use, and determination of optimum development strategy based upon an iterative process of conceptualizing and evaluating alternative development schemes.

Market Value Appraisal -- Valuations for mortgage loans, investment counseling, lease negotiations, condemnation, assessment appeal and policy decisions. Appraisals extend to a variety of properties, including income properties, existing and proposed resort and residential developments, industrial properties, high-rise office buildings and condominiums, hotels and apartments and large vacant acreage ownerships.

Negotiation/Arbitration -- Counseling on space and ground lease rents for original negotiation or reporting and availability as arbiters when agreement between principals cannot be reached.

Special Valuation Assignments -- Estimates of value diminution or enhancement caused by public policy decisions, analysis and quantification of cost-benefit effects, future value projections, portfolio reviews, corporate planning and disposition strategy studies, and analysis and valuation of air rights, easements and water rights.

Resort and Recreation Projects -- Application of travel, recreation and leisure trends to determination of demand for

transient and recreation accommodations and services, including determination of sources of patronage and consumer preferences, in addition to marketing strategies for sale of recreation properties.

Housing Marketing Studies -- Analysis of housing marketing conditions, determinations of consumer housing preferences, and identification of housing market opportunity areas; including analysis of single family and multiple family projects regarding pricing, sizing and marketing strategies.

Retail Analysis -- Determination of market area sales potential and penetration estimates for specific sites based upon locational attributes and relationship to competitive facilities, including on-site analysis to coordinate functional uses to facilitate merchandising space and maximizing overall return.

Office Space Analysis -- Measurement of office space supply including tenancy, vacancy, rental patterns; evaluation of demand factors leading to forecasts of office space demand for whole communities, specific subareas, and individual sites; and translation of supply and demand factors into prospects for particular projects.

Industrial Studies -- Analysis of local labor markets and economic conditions to determine industrial space requirements, including site analysis to evaluate competitive positions within the market structure.

HASTINGS, CONBOY & ASSOCIATES, LTD.

Major Clientele

Commercial Banks and Thrift Institutions

Bancorp Finance
Bank of America
Bank of Hawaii
Bank of Honolulu
Bank of Maui
Central Pacific Bank
City Bank of Honolulu
Crocker National Bank
First Hawaiian Bank
First Hawaiian Credit Corp.
First National Bank - Seattle
GECC Financial Corp.
Honfed Bank
Pioneer Savings Bank
Westpac Banking

Savings Institutions

American Savings and Loan Association
Citizens Federal Savings & Loan
Coast Savings & Loan
Continental Savings and Loan
First Federal Savings & Loan Association
Pacific Coast Mortgage
Provident Federal Savings
State Savings & Loan Association
Territorial Savings & Loan Association

Insurance Companies and Pension Funds

American National Life Insurance Company
Bankers Life of Nebraska
Equitable Life Assurance Company
John Hancock
Mutual of Omaha
Prudential Life Insurance Company
Teachers Insurance Company

Mortgage Bankers/Brokers

Brooks Harvey & Company
Dwyer Curlett
Fidelity Pacific
Nagy & Thoele, Ltd.
Sherwood & Roberts
Sonnenblick-Goldman

Investors and Investment Groups

American Land Company
A.E. LePage Limited
Duty Free Shoppers
Hawaiian Airlines
North American Acceptance Corp.
Pocklington Enterprises
Shidler & Company
Title Insurance & Trust Company

Investment Bankers

E.F. Hutton & Company
First Boston Corporation
Kidder Peabody
Morgan Stanley Company, Inc.
Saloman Brothers

Accounting Firms

Ernst & Whinney
Grant Thornton
Peat Marwick Main

Touche Ross & Company

Trusts and Estates

American Trust Company
Bernice Pauahi Bishop Estate
Bishop Trust Company
Harold K.L. Castle Estate
Hawaiian Trust Company
James B. Campbell Estate
Liliuokalani Trust
Magoon Estate
McCandless Properties
Moody Estate

Builders, Developers and Industrial Firms

Alcoa
Alexander & Baldwin
Amelco Corp.
Amfac, Inc.
Asahi Development
Aston Hotels & Resorts
Blackfield Hawaii Corp.
Bedford Properties
Boise Cascade
Campbell Industrial Park
Castle & Cooke, Inc.
Charles Pankow Builders
Chevron U.S.A.
Cooke Land Company, Inc.
C. Brewer & Company, Ltd.
Dillingham Land Corporation
Dow Chemical
Frito-Lay of Hawaii
Gentry Pacific, Ltd.
GO Financial Group
Grosvenor International (Hawaii), Inc.
Hawaiian Land Company
Hemmeter Investment Company
Herbert K. Horita
Honvest Corp.
HTH Corporation
James Schuler & Associates
Jardine Matheson
JGL Enterprises
Kalua Kai Corporation
Kamehameha Development Corp.
Lewers & Cooke
Lone Star Hawaii, Inc.
Lusk Hawaii
Makena Resort
Mauna Kea Properties
McCormack Land Company, Ltd.
McDonald's of Hawaii
Oceanic Properties
Opperman-Simpson Company
Pacific Construction Company
Pacific Resources, Inc.
Princeville Corporation
Seatrains Lines
Signal Properties
The Petty Corporation
Theo H. Davies & Company, Ltd.
Wailea Land Corp.
Resort Group

Government Agencies

City and County of Honolulu -
Department of Transportation
County of Hawaii
County of Kauai

General Services Administration (GSA)

Hawaii Housing Authority
Marianas Public Land Corporation,
Commonwealth of the Marianas
Maui Redevelopment Agency
National Park Service
State of Hawaii
Department of Planning and Economic
Development
DLNR
Department of Hawaiian Home Lands
U.S. Department of Commerce -
Economic Development Administration
U.S. Department of Interior
U.S. Department of Transportation
U.S. Fish and Wildlife Service
U.S. Navy

Others

Belt, Collins & Associates
Brewer Chemical Company
Hawaiian Electric Company
Hawaiian Telephone Company
Holiday Inns, Inc.
Honolulu International Airport
MCI Telecommunications
Northwest Airlines
Pacific International
Public Storage, Inc.
Rosewood Properties, Inc.
Safeway Stores, Inc.
Texaco, Inc.
The Nature Conservancy
United Airlines
Westin Hotels

Foreign Corporations and Banks

Asahi
Azabu
Bank of Tokyo
Chitose
Chiyoda Hawaii
Hachidai U.S.A., Inc.
Hasegawa Komuten (USA), Inc.
Industrial Bank of Japan, Ltd.
Itoman Total Housing
JAL Development
Japan Travel Bureau, Inc.
Kumagai Gumi
Kyo Ya Company
Misawa Resorts
Mitsubishi Trust & Bank Corp.
Mitsui Trust and Bank
Mizuno Kobgyo
Nakano Company, Ltd.
Nippon Meat Packers
Nippon Shinpan
Nissho Iwai Corp.
Nissin Construction
Nomura Securities
Obayashi Gumi
ORIX Corporation
Otaka, Inc.
Seibu Hawaii, Inc.
Sports Shinko
Sukamoto Holdings
Taisei Corporation
Taisei Kogyo Company
Takenaka Komuten Company
Tayasu Shoji Company

PROFESSIONAL QUALIFICATIONS OF ALAN J. CONBOY, MAI, SRA

BUSINESS BACKGROUND

Executive Vice President and Treasurer, Hastings, Conboy & Associates, Ltd., Honolulu, Hawaii (1976 to Present)
Executive Vice President, Pacific Area Realty, Honolulu, Hawaii (1976 to 2012)
Former Staff Appraiser and Secretary, Hambleton and Associates, Honolulu, Hawaii (1973 - 1976)
Former Independent Fee Appraiser (1972)
Qualified Expert Witness, U.S. Federal Bankruptcy Court, Federal District Court, U.S. Circuit Court of Hawaii and Commonwealth Trial Court, Commonwealth of the Northern Marianas
Member, State of Hawaii Real Estate Appraiser Advisory Committee (2005 - 2013)
Chair, State of Hawaii Real Estate Appraiser Advisory Committee (2009 -2013)

EDUCATION

B.S. (Marine Engineering) U.S. Naval Academy 1961

Various valuation, evaluation and real estate courses sponsored by the former American Institute of Real Estate Appraisers, former Society of Real Estate Appraisers, Appraisal Institute, and other real estate oriented organizations.

PROFESSIONAL MEMBERSHIPS

Appraisal Institute; MAI (General) and SRA (Residential) Designations

LICENSING AND CERTIFICATION

State of Hawaii - Certified General Appraiser (CGA-185) - Expiration date December 31, 2019.

COMMUNITY ACTIVITIES

Kailua Chamber of Commerce (Director 1974-1975)
Kailua Jaycees (President 1974-1975)
Jaycees International (Senator)

ASSOCIATION MEMBERSHIPS

Chair, Appraisal Institute Leadership Development and Training Committee (2009)
Member, Appraisal Institute Leadership Development and Training Committee (2005 to 2010)
President, Hawaii Chapter Appraisal Institute 2004
Regional Chair, Appraisal Institute 1997
National Director of Appraisal Institute 1991-1997
Past Governor of former Society of Real Estate Appraisers (1985 - 1990)
Member of Building Owners and Managers Association, Honolulu, Hawaii (Director 1984-1986, Past Chairman Hawaii Experience Exchange Committee; Member International; Market Conditions Section, Management Information's System Section, and Experience Exchange Report Section)

TERRITORY COVERED

Hawaii, California, Tahiti, Guam, Commonwealth of the Northern Marianas

TYPICAL CLIENTS

Financial institutions, including numerous state and national banks and savings and loans; government agencies, district and federal courts; national and local industrial firms, mortgage bankers; builders and developers; investors and investment groups; and other professional organizations such as CPA firms, attorneys, insurance companies, realtors and syndicates.

SELECTED CLIENTS

Alfred Shabean; C. Brewer, Ltd.; Prudential Life Insurance; Safeway Stores; Bowery Savings Bank; Kaiser Aetna; Cabot, Cabot and Forbes; Citi-Bank, N.A.; First Hawaiian Development; Crown Properties Corp.; First Hawaiian Bank; Honolulu Federal Savings and Loan; Victoria Ward Estates; Equitable Life Assurance; RockResorts, Inc.; Amfac Financial; Holiday Inn; Boise Cascade; National Mortgage and Finance Company; R.H. Grant; Bank of California; Grosvenor International; Hemmeter Investment Company; Dillingham Land; Bank of Hawaii; Lewers and Cooke; Pacific Holiday, Inc.; Westin; Brooks Harvey; Chase Manhattan Bank; Mellon National Bank; Security Pacific Mortgage; Union Oil; Bishop Estate; Bishop Trust; James Campbell Estate; InterIsland and Resorts; Castle and Cooke; U.S. Fish and Wildlife; Counties of Kauai and Honolulu.

Office Buildings

Airport Center; Davies Pacific Center; Kawaihau Plaza; Wremco; Sperry Univac; Ward Square; Marine Finance; American Security Bank; 1164 Bishop Center; 1500 Kapiolani; One Kapiolani; Honolulu Medical; Ala Moana Building; HMC; Amfac Center; James Campbell; Bishop Trust; Kotake; Pioneer Plaza; City Bank; Hawaiian Insurance; Pan Pacific Plaza; Gold Bond; Ward Center.

Industrial Properties

Waiau Warehouse; Mapunapuna Warehouse; Campbell Industrial Village; Shafter Flats Warehouse; Kona Industrial Warehouse; Certified Grocers Warehouse; Sand Island Warehouse; 214 Sand Island; PMF Warehouse; 231 Sand Island; 2829 Kilihaui Street; Central Industrial Park; Frito Lay; 324 Kamani Street; Kapalama Industrial; Aloha Business Center Industrial; Bougainville Industrial Park; 220 Puuhale Road; 94-076 Lookane Street Industrial; Kalihi Industrial; Ameleo Properties (Hawaii, Guam; San Francisco and Los Angeles); Rainbow Foods Warehouse.

Shopping Centers

Ala Moana Shopping Center; Koko Marina; International Market Place, Waikiki; Whalers Village, Maui; Maui Farmers Market, Maui; The Market Place, Waipouli, Kauai; Ward Warehouse; Manoa Market Place; Tropicana Square Shopping Center; Menehune Shopping Center, Lihue, Kauai; Waipahu Town Center; Coconut Plantation, Kauai; Mililani Shopping Center; Waimea Center; Guam Shopping Center.

Commercial/Retail

Waikiki Commercial Building; M's Coffee Shop; Young Street Commercial; Kona Market Place; Marina Business Center, Lahaina Shores Village; 1549 King Street; C&F Machinery; New Alakea Grill; State Savings (18 branch offices); Lahaina Commercial Condominium; Tropicana Square Shopping Center; Kanehameha Professional Center; Kaimuki Business Center; Hawaiian Monarch Commercial; Aus CPA Building (Lahaina).

Resort/Recreation

Waipouli Resort Hotel; Holiday Inn - Waikiki Beach; Regent Tower Hotel; Sheraton Waikoloa Hotel; Royal Lahaina Hotel; Holiday Inn - Makai; Wailea Resort Development; Kaanapali Beach Hotel; Mauna Kea Beach Hotel; Mauna Kea Golf Course; Hawaiian Monarch Hotel; Pacific Beach Hotel; Kona Village Resort; Hanalei Beach and Racquet Club; Waikiki Resort Hotel; Kuilima Golf Course; Kuilima Hyatt Resort Hotel; Hyatt Regency Maui; Hyatt Regency Waikiki; Cinerama Reef Hotel; Reef Tower Hotel; Kahala Hilton Hotel; Imperial Hawaii Hotel; Travellers Inn Hotel; Kona Lagoon Hotel; Maui Lu Resort; Pioneer Inn Hotel; Heavenly Valley Hotel (Lake Tahoe, California); Olomana Golf Links; JAL West Beach; Ilikai Hotel; Whalers Inn (Pismo Beach, California); West Beach Resort Development; Hawaiian Regent Hotel; Maui Surf Hotel; Kona Surf Hotel; Kauai Resort Hotel; Poipu Beach Hotel; Waiohai Hotel; Kona Village Hotel; Waikiki Gateway Hotel; Coral Reef Hotel; Waikiki Hobron Hotel.

Residential Subdivision

Waialae Iki Estates; Hawaii Loa Subdivision; Kalama Valley II Subdivision; Mariner's Ridge Subdivision; Kamiloiki Valley Subdivision; Makakilo Subdivision; Waipahu Estates; Heritage Estates; Ainawaiwai Subdivision, Hilo.

Apartments/Condominium

Coty Towers Apartments; Alii Kai Apartments (Hilo); Crown Waipahu Apartments; Kailua Arms (Honolulu); Quinn Lane Apartments; Cliffview Terrace Condominium; Ilima Apartments Condominium; Ward Kinau Apartments; Pakalana Condominium; Wahiawa Condominium Feasibility; Lime Tree Apartments; Crown Thurston Condominium; Molokai Shores Condominium; Canterbury Place Condominium; Circle Jade Apartments; Peppertree Apartments; Island Colony Condominium; Pacific Monarch Condominium; Nani Wai Apartments; Wai Nani Apartments; Pacific Monarch Condominium; Kaanapali Shores (Maui); Hanamaulu Beach Villas; Maui Villas; Kihei Banyan; Kamaole Sands; Hilo Apartments; Kona By The Sea Condominium; Waimalu Apartments; Mandarin Tower; Hale Kaanapali; Maui Shores at Kaanapali; Waikiki Windsor; Hobron in Waikiki; Islander on the Beach; Kamaole Beach Terrace; Harbor Square; Kona Terrace; Waikiki Beach Tower Condominium; Hale Pono Condominium; The Cambridge; Belvedere Condominium; 1423 Emerson Conversion; 929 Ahana Street Apartments; Liliuokalani Gardens Condominium; The Whaler, Waikiki Banyan; Seashore Condominium; Tropicana West Apartments; Dowsett Point Condominium; Kinau Street Apartments.

Timeshare Projects

Ilikai Resort, Waikiki; Cliffs Club at Princeville and Club Ponokai, Kauai; Holiday Country Club, Oahu; Heavenly Valley, Lake Tahoe, California; Kia Ora Moorea, Tahiti, French Polynesia; Waikiki Banyan; Kawaihau Sports Villa, Kauai; Polo Beach, Maui; Laule'a, Maui; Kona Coast Resort.

Land Use

American Security Bank Land; Kawaihau Land; Hilo Land Exchange; Prudential Insurance Resort Lands; Airport Industrial Lands; Lagoon Industrial Park Land; Waikoloa (30,000 acres); Wailea Resort Development; Campbell Estate West Beach; Maui Shores Land; Kaanapali Land; Bentley Estate; U.S.P.S. Mililani Street; Ameron Properties; Marianas Public Land (Tinian); McCully Land; Baldwin Estate (Maui); Greenhaven Memorial Park; Pauahi Block Redevelopment; Campbell Estate Portfolio; Castle & Cooke Portfolio.

Market Studies/Consultations

Hasegawa Komuten (Islands of Oahu, Maui, Kauai); Maui Hill Consultation; Dillingham Market Study; HTH Properties; Model Progress Consultation; Pankow Development Corporation (Maui Land); Mills/Carneghi Consultations; U.S.P.S. Lease Rents; Hawaiian Sea Village; Pauahi Block; Westbeach Resort; HTH Exchange Consultation; Hawaiian Dredging Downtown Office Study; Maui Market Study; Tecon Consultation.

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Division of Boating and Ocean Recreation
Honolulu, Hawaii 96813

December 11, 2009

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

Hawaii

Consent to Assignment and 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, Honokohau Small Boat Harbor, Kealahou, North Kona, Island of Hawaii, Tax Map Key (3) 7-4-08-040.

APPLICANT:

Kona Fuel & Marine, Inc., a Hawaii Corporation, Lessee to Harbor Lease No. H-83-2 by way of assignment of lease from Kona U-Cart, Inc., Honokohau Boat Harbor, Kealahou, Kailua-Kona, Hawaii, 96740, has a pending assignment of Harbor Lease No. H-83-2 to Kona Marine Holdings, LLC, as Assignee, a Delaware limited liability company authorized to do business in Hawaii, whose business and mailing address is 111 East De La Guerra Street, Presidio Building, Santa Barbara, CA 93101, that was approved at the Land Board meeting of August 28, 2009, as Item J-2. Both seek Consent to Assignment and update of the current subleases held by Kona Fuel & Marine, Inc. The sublessees and agreement are as follows:

	<u>Name of Sublessee</u>	<u>Effective Date</u>	<u>Term Ends</u>
a.	Luana Limousine Service, Inc. a domestic profit corporation	June 1, 2009	November 30, 2010
b.	Kona Realty, Inc. a domestic profit corporation	August 1, 2004	Month-Month
c.	Hale Kipa, Inc. a domestic nonprofit corporation	July 1, 2006	Month-Month
d.	Kamanu Charters, Inc. a domestic profit corporation	August 1, 2004	Month-Month
e.	Kona Coast Skin Diver Limited,	October 8, 2002	October 7, 2012

J-3

a foreign profit corporation - sublease issued under Kona Coast Skin Diver, Ltd.
(Stock since purchased by Jack's Diving Locker)

- f. The Charter Desk, LLC September 1, 2006 August 31, 2011
a domestic limited liability company
(Formerly Vixen Corporation)

Petroleum Supply Agreement:

Island Petroleum, Inc. November 15, 1994 November 26, 2039
a domestic profit corporation

LEGAL REFERENCE:

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

LOCATION AND AREA:

Portion of Government lands situate at Honokohau Boat Harbor, Kealahou, North Kona,
Hawaii, identified by Tax map Key: (3) 7-04-008.40. Shown in Exhibit A,

Fast land, containing an area of 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 3,300 square feet or 0.076 acre.
Shown in Exhibit B.

SUBLEASE LOCATION AND AREA:

- a. Luana Limousine Service, Inc.:
Location: Office "D"
Area: Containing approximately 260 square feet
- b. Kona Realty, Inc.:
Location: Office "F"
Area: Containing approximately 256 square feet
- c. Hale Kipa, Inc.:
Location: Offices "I, J, & K"
Area: Containing approximately 864 square feet.
- d. Kamanu Charters, Inc.:
Location: Office "E"
Area: Containing approximately 346 square feet
- e. Kona Coast Skin Diver, Ltd.:
Location: Portion of first floor

Area: Containing approximately 955 square feet

- f. The Charter Desk, LLC:
Location: Portion of first floor
Area: Containing approximately 640 square feet.

TRUST LAND STATUS:

Section 5(B) lands of the Hawaii Admission Act
OHA 20% entitlement:
YES X 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..."
Prior references to the "marine related" character of subleases were previously addressed Exhibit "C" (October 22, 2004 Land Board submittal as Item J-2).

TERM OF MASTER LEASE:

Original term of 35 years, commencing on November 27, 1984 and expiring on November 26, 2019. On August 28, 2009, as Item J-2, the Board approved an extension of 20 years, commencing on November 27, 2019 and expiring on November 26, 2039. The next rental reopening is scheduled for November 27, 2009 and pending at this time.

SUBLEASE CHARACTER OF USE:

- a. Luana Limousine Service Inc.: "Tenant desires to lease space on the second floor of the premises for its Limousine & Taxi Service Business. ... The premises shall be used for the purpose of business offices and for no other purpose."
- b. Kona Realty, Inc.: "Tenant desires to lease space on the second floor of the premises for its Real Estate business. ... The premises shall be used for the purposes of business offices for its Marina Development and Salvage Business and for no other purpose."
- c. Hale Kipa, Inc.: "Tenant desires to lease space on the second floor of the premises for its general offices for its youth mentoring programs. ... The premises shall be used for the purposes as described above and for no other purpose."
- d. Kamanu Charters, Inc.: "Tenant desires to lease space on the second floor of the premises for its Charter boat business. ... The premises shall be used for the purposes of business offices, Charter bookings, and for no other purpose."

- e. Kona Coast Skin Diver, Ltd., Inc. "Tenant desires to lease space on the ground floor of the premises for its scuba diving, excursion and skin diving business. ... The premises shall be used for the purposes of scuba diving, instruction, excursions, tank fills and a skin diving business and for no other purpose."
- f. The Charter Desk, LLC: "Tenant desires to lease space on the first floor of the premises for its fishing charter business. ... The premises shall be used for the purposes of a charter desk and for no other purpose."

TERM OF SUBLEASE:

- a. Luana Limousine Service Inc.: "The term of Sublease shall be for the period June 1, 2009, through and including November 30, 2010, unless sooner terminated as provided herein, or unless renewed as provided herein."
- b. Kona Realty, Inc.: "The term of this Sublease shall be month to month commencing August 1, 2004, unless sooner terminated as provided herein, or unless renewed as provided herein."
- c. Hale Kipa, Inc.: "The term of this Sublease shall be for (3) years, Commencing July 1, 2006, unless sooner terminated as provided herein, or unless renewed as provided herein." (Currently month-month)
- d. Kamanu Charters, Inc.: "The term of this Lease shall be for the period August 1, 2004, through and including December 31, 2004, unless sooner terminated as provided herein, or unless renewed herein." (Currently month-month)
- e. Kona Coast Skin Diver, Ltd., Inc.: "The term of this Sublease shall be for a period of 60 months, commencing (per attached addendum) and terminating on the last day of the 60th month after commencement, unless renewed as provided herein." Gordon Crabtree of Kona Fuel & Marine stated that the commencement date was October 8, 2002, per the attached addendum, which states "This commencement date of the lease term will be the date Lessor delivers the premises to the Tenant." "Tenant shall have three options to extend the term of this Lease..." (Two five-year options and one 21-month option)
- f. The Charter Desk, LLC, : " The term of this Sublease shall be for the period September 1, 2006, through and including August 31, 2011, unless sooner terminated as provided herein, or unless renewed as provided herein."

ANNUAL RENTAL:

Currently \$12,750.00 per annum or 5% of the annual gross receipts, whichever is greater.
At present the Kona Fuel & Marine, Inc. is in default, and as part the August 28, 2009

Land Board approval for the assignment, Kona Marine Holdings LLC, shall cure all unpaid rent prior to the delivery of the executed consent documents. Kona Marine Holdings LLC is prepared and ready to make payment.

ANNUAL SUBLEASE RENTAL:

The following rents are base rents exclusive of "payment of costs (common area maintenance)" and general excise tax.

- a. Luana Limousine Service, Inc.: "Base Rent...annual rent of SIX THOUSAND ONE HUNDRED FORTY SIX AND 40/100 (\$6,146.40) ..."
- b. Kona Realty, Inc.: "Base rent...in equal monthly installments of THREE HUNDRED SIXTY SIX AND 88/100 (\$366.88) ..." Equates to \$4,402.56 in annual rent.
- c. Hale Kipa, Inc.: "Base rent...in equal monthly installments of ONE THOUSAND FIVE HUNDRED TWELVE AND 20/100 DOLLARS (\$1,512.20) ..." Equates to \$18,146.40 annual rent.
- d. Kamanu Charters, Inc.: "Base rent...in equal monthly installments of SIX HUNDRED FIVE AND 50/100 (\$605.50)..." Equates to \$7,266.00 annual rent.
- e. Kona Coast Skin Diver, Ltd., Inc.: "tenant shall pay to lessor the sum of ONE THOUSAND SEVEN HUNDRED AND FIFTY-TWO AND 77/100 DOLLARS (\$1,752.77)...for the third, fourth and fifth lease years" "the base rental for the first 5 year option shall be 115.93% of the base rent paid for the premises...for the last month of the last year of the primary term..." Equates to \$24,383.88 annual rent.
- f. The Charter Desk, LLC, : "[C]ommencing on September 1, 2009, the Monthly Base rent shall be One Thousand Two Hundred Ninety-Two Dollars and Eighty Cents (\$1,292.80)..." Equates to \$15,513.60 annual rent.

DCCA VERIFICATION:

Kona Fuel and Marine, Inc. SUBLESSOR:

Place of business registration confirmed:	YES <u>X</u>	NO <u> </u>
Registered business name confirmed:	YES <u>X</u>	NO <u> </u>
Good standing confirmed:	YES <u>X</u>	NO <u> </u>

Kona Marine Holdings, LLC SUBLESSOR:

Place of business registration confirmed:	YES <u>X</u>	NO <u> </u>
Registered business name confirmed:	YES <u>X</u>	NO <u> </u>
Good standing confirmed:	YES <u>X</u>	NO <u> </u>

DCCA VERIFICATION OF SUBLESSEE:

The place of business registration, registered business name, and good standing were confirmed with the DCCA for all indicated sublessees: Luana Limousine Service, Inc.; Kona Realty, Inc.; Hale Kipa, Inc.; Kamanu Charters, Inc.; Kona Coast Skin Diver, Limited (indicated as Kona Coast Skin Diver Ltd., Inc.); The Charter Desk LLC.

PETROLEUM SUPPLY AGREEMENT: ISLAND PETROLEUM, INC.

AGREEMENT CHARACTER OF USE:

"Island shall supply all of the fuel to be sold at [the] Honokohau Harbor Facility..."

TERMS OF AGREEMENT:

"The initial term of this Agreement shall be for ten (10) years from the date hereof. ISLAND is hereby granted the right to extend the Agreement for three additional periods....The third additional period shall be from the end of the second additional period until the end of the term of the Harbor Lease No. H-83-2 or until the end of any extension or renewal of the Lease....It being the intention of the parties that this Petroleum Supply Agreement continue throughout the entire term of the Lease and any extensions..."

SALES PRICES AND COMMISSIONS:

Island Petroleum, Inc.: "So long as the average margin from the sales of all fuel products remains at or above forty four (44) cents per gallon the commission payable to [Landlord] shall be twenty five (25) cents per gallon."

"If during any month the average margin exceeds forty six (46) cents, proceeds derived from the amount exceeding forty six (46) cents shall be divided equally between the [Landlord] and ISLAND."

DCCA VERIFICATION:

Island Petroleum, Inc.:

Place of business registration confirmed:	YES <u>X</u>	NO <u> </u>
Registered business name confirmed:	YES <u>X</u>	NO <u> </u>
Good standing confirmed:	YES <u>X</u>	NO <u> </u>

REMARKS:

On August 28, 2009, under 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.

To date with the assistance of Kona Marine Holdings, LLC, Kona Fuel & Marine Inc. (KFM) is in the process of repairing and upgrading the floating fuel dock, and is prepared to pay all back rent. Renovations shall start immediately upon receipt of executed consents, lease amendment of extension, and estoppel. It was explained within the August 28, 2009 submittal that over the course of time a fuel purchase agreement, and various sublease were entered into by KFM and were submitted in accordance with the terms of the lease.

The subletting provision provides:

"Subletting. That the LESSEE shall not rent or sublet the whole or any portion of the premises, without written approval of the Director. The Director shall have the right to deny uses contrary to the primary purpose of the lease, to review and approve the rent to be charged to the proposed sublessee and revise the rent and rent structure charged to the LESSEE by the LESSOR in light of the rental rate charged to the sublessee by the LESSEE; and to include such other terms and conditions prior to any approval by the Director; provided, further, that the rent may not be revised downward."

"The LESSOR shall expedite the obtaining of the approval of all marine related subleases from the Director of Transportation and the Department of Land and Natural Resources."

The Department of the Attorney General advised in April 2004 that KFM's lease may be read to allow "marine related" subleases. Prior references to the "marine related" character of subleases were previously addressed in the October 22, 2004 Land Board submittal under Item J-2, under the remarks section. Please reference EXHIBIT C. The subleases continue to operate under the same use, and all have received previous written consents at one point in the past under KFM. Kona Marine Holdings, LLC has expressed a desire to amend and update these subleases once its management is in place, and shall seek approval as to any amendments and updates of consents at that time as required.

To complete the necessary financing component, the applicant Kona Marine Holdings, LLC has requested the Chair approve and sign an estoppel certificate regarding Harbor Lease No. H-83-2, and include the subleases, assignment, and petroleum supply agreement. The proposed draft is attached as EXHIBIT D.

The Lease is currently in default in that the lease rents are in arrears in the sum of \$42,071.31. We are awaiting the 2009 percentage rent statement payment due December 31, 2009. This will confirm the full amount due. The Assignor, Assignee and the lender have agreed to cure all defaults under the Lease prior to or at closing of the transaction which involves an Assignment, Mortgage, and Extension of the Lease term.

The Division recommends the approval Consent to Assignment and 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 subject to review and approval of the Department of the Attorney General.

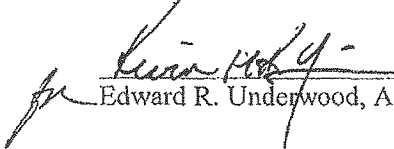
RECOMMENDATION:

Only after all defaults under the Lease are cured, then the Board Consents to:

1. the Assignment of the updated Subleases and Petroleum Supply Agreement regarding Harbor Lease No. H-83-2, from Kona Fuel & Marine, Inc., Assignor, to Kona Marine Holdings, LLC, Assignee;
 - a. Luana Limousine Service, Inc.
 - b. Kona Realty, Inc.
 - c. Hale Kipa, Inc.
 - d. Kamanu Charters, Inc.
 - e. Kona Coast Skin Diver Limited (as Kona Coast Skin Diver, Ltd.)
 - f. The Charter Desk, LLC
 - g. Island Petroleum, Inc. (for Petroleum Supply Agreement)
2. Authorize the Chairperson to execute Consent to the Assignments of Subleases and Petroleum Supply Agreement as updated, and to Kona Marine Holdings, LLC.
3. The standard terms and conditions of the most current consent to sublease form, as may be amended from time to time;
4. Subject to performance of all requirements of the August 28, 2009 Board approval;


5. Review and approval by the Department of the Attorney General; and
6. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,

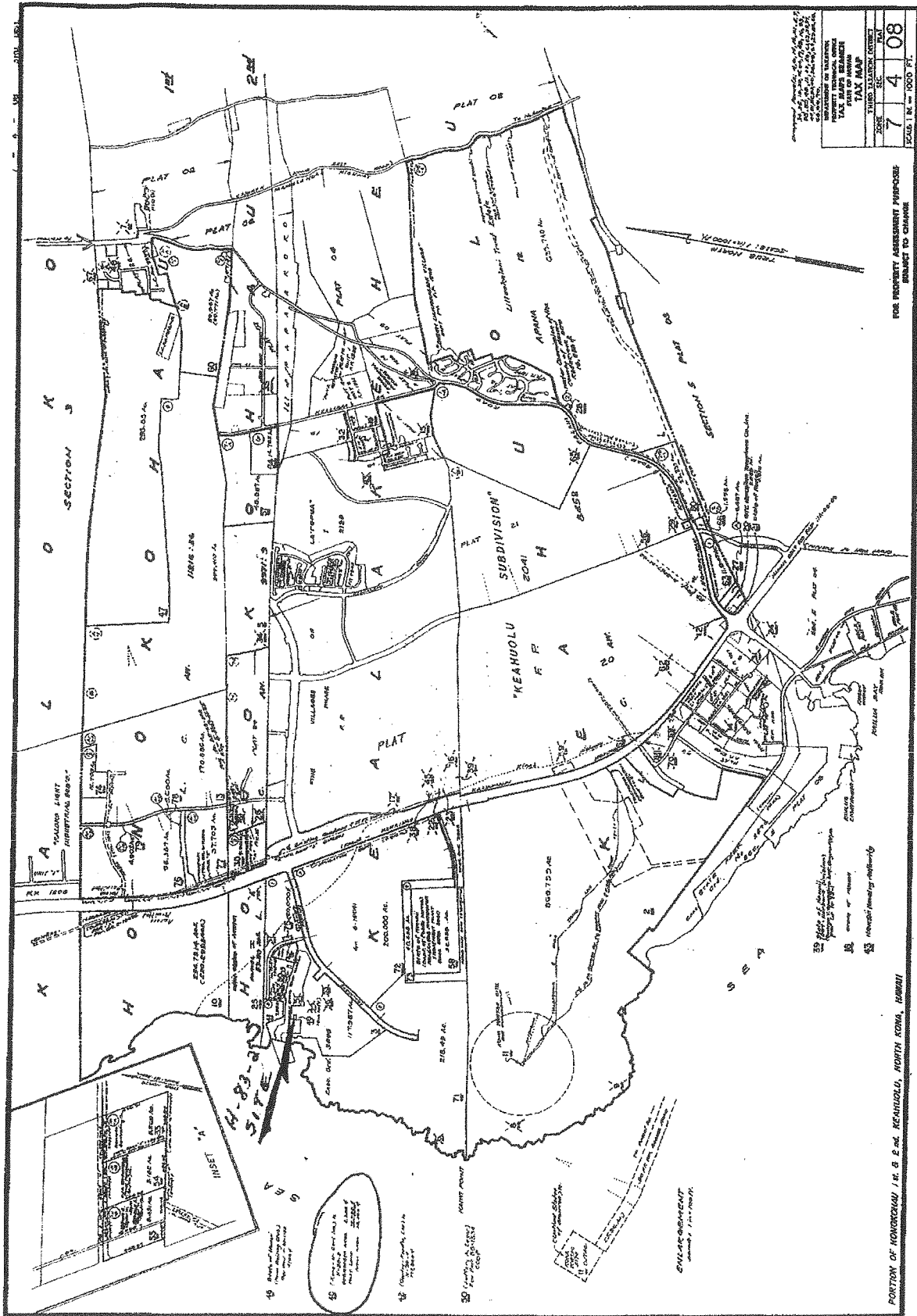


Edward R. Underwood, Administrator

APPROVED FOR SUBMITTAL:



Laura H. Thielen, Chairperson



Kona Marine Holdings, LLC

Via Email

July 8, 2020

Mr. Richard Howard
Supervising Property Manager
State of Hawaii – Department of Land & Natural Resources
Division of Boating & Recreation
4 Sand Island Access Road
Honolulu, Hawaii 96819

Re: Fuel Dock Harbor Lease H-83-2

Dear Mr. Howard:

Yesterday I received your letter dated June 22, 2020 as my time in the office has been limited during the Covid-19 shutdown. While your letter indicates that it was delivered by "Regular and Certified Mail," it only arrived to my office via Regular Mail. In any event, under an ordinary business environment I may have been able to meet your requested July 6th response date, but during a time of shutdown and a period of severe economic strain, such a timeframe was not reasonably possible.

We are in the process of researching your requests in an effort to make a comprehensive response. In the meantime, please consider the following:

Sub-Lease Matters

It has been our practice to submit Sub-Leases for BLNR approval on a timely basis. Over the past 10 years of our ownership period, we have frequently submitted Sub-Leases to BLNR and simply never received a word back. In other cases BLNR has rejected the delivery of certain Sub-Leases indicating that such documents can't be executed prior to submission for approval and then has also rejected delivery of certain Sub-Leases indicating that such documents must be fully executed prior to BLNR consideration. For the most part, the BLNR process over the past ten years has been dysfunctional (at best). In any event, please consider the following preliminary notes about each of our Sub-Leases:

- 1) Unit E – Splashers Ocean Adventures: We believe this Sub-Lease request was submitted for approval and are researching our files.
- 2) Unit F/G – Shelly Shane: We believe this Sub-Lease request was submitted for approval several years ago and we are researching our files.
- 3) Unit I – Sea Wife Charters: Sea Wife Charters previously occupied spaces J, K, and I. We believe a Sub-Lease request was submitted for approval for all 3 spaces only to be ignored by BLNR. That said, when Sea Wife reduced their need to only Unit I, we may not have reissued a new Sub-Lease or submitted it for approval at that time. We are researching this file and will respond accordingly.
- 4) Unit J/K – Precision Marine Power: Pending research.

-
- 5) General Store: Your chart indicates “Yes, but not fully executed.” I am delivering along with this letter the fully executed Sub-Lease for the General Store. If there is another document that requires signature, please inform me of this and we will get it executed.
 - 6) Jakes Dive Shop/Ice: Your chart indicates “No Approval;” however, I am delivering with this letter a separate file containing the appropriate documentation demonstrating approval and consent.
 - 7) Kamanu: On December 11, 2009, the Kamanu Sub-Lease was approved as part of the assignment of the Harbor Lease to Kona Marine Holdings, LLC (documentation attached). While the Kamanu space location in the building has changed, this Sub-Lease continues on a month-to-month basis. Please let me know if you would like to see and approve an updated Sub-Lease.

For the open items above, we should complete our review of the files and respond over the next few weeks.

Improvements

No one on my team knows anything about an addition to the building. Please provide us with the specific area of concern so that we may adequately address this question.

The “pavilion structure” noted is a non-permanent / portable cabana set in place that is used by the patrons of the Building for shade. We previously used umbrella’s in that location but higher winds and theft regularly consumed these units. It is my understanding that my property managers obtained local DLNR approval to drop the pavilion in place. This is a drop-in unit purchased at Costco. There was no construction and no permits were necessary.

Fuel Dock Buoys

Other than: (i) the 6 fueling / tie-up Buoys that have been in place since the building was constructed; and (ii) the 2 DOBOR Buoys used for transient vessels, nobody on my team is aware of any other Buoys.

Fuel Dock Use

Jacks Dive Locker (“JDL”) runs a “Dive Operation” out of the Property as they have since they purchased the dive operation from Kona Coast Divers some 16 years ago. The physical space they Sub-Lease has always been configured for running a Dive Operation and so there has never been any confusion on the part of the various building owners (including us), or Jacks Dive Locker, or (until recently) BLNR as to what operationally the Sub-Lease intended. Furthermore, the Sub-Lease specifically says..... “Tenant desires to lease space on the 1st floor of the premises for operating a diving business.” If you require further documentation as to what everyone has known and understood (and approved) about JDL’s dive shop operations at the Property, please refer to the attached document entitled State of Hawaii - Consent to Sub-Lease. In this document under the tenant description of Kona Coast Skin Diver, LTD., Inc. (which JDL purchased), you will note the following approved language: “*Tenant desires to lease space on the ground floor of the premises for its scuba diving, excursion and skin diving business. The premises shall be used for the purposes of scuba diving, instruction, excursions, tank fills and a skin diving business and for no other purpose.*”

As with Jacks Dive Locker, other “marine oriented users” in the Building present no operational confusion as to what business they intended and intend to conduct under each Sub-Lease (whether charters for fishing, snorkeling, diving, or similar marine oriented activity). Our Harbor Lease mandates that only “marine oriented users” sub-lease space in the building and further specifies uses at the building that are strictly prohibited. Nowhere in the prohibitions does it limit the activities comprised of servicing dive operations, servicing charter fishing operations, or servicing similar marine oriented activity.

The fuel dock itself is part of the common area of our commercial building lease footprint and this area, together with the wetland exclusive easement zone has and will continue to be used exclusively for the “fueling and servicing of vessels” in support of both the marine oriented tenants in the Building as well as the boating public at large. The word “servicing” in our Harbor Lease could not have been intended to mean spark-plug changes, oil changes, or engine overhauls given the entire context of the document and the nature of the Building itself. The word “servicing” in our Harbor Lease represents “customer servicing” or customer “services” carried out by marine oriented users. Some customers may be boarding a private charter (authorized by a private property owner like Kona Marine Holdings) and some customers are simply pulling in to buy some ice or beer at the Fuel Dock Store before embarking on a fun ocean excursion. All of this is why the building even exists... why it was built in the first place. If the Property existed exclusively for fueling operations, there would be no need for the Building as a small cashiering kiosk would suffice.

The above is mostly common sense but is also backed by 35 years of operational precedent known by all stakeholders involved, including the BLNR. It is also in the economic best interest of the State of Hawaii in that if I’m allowed to have marine oriented tenants in the Building using the Property for marine oriented activity, then I collect more rent and the State therefore collects more % rent. This just seems like a better idea than an empty building sitting on the ocean.

We will continue to endorse and allow our marine oriented tenants to conduct the businesses obviously intended under each of their Sub-Lease Agreements.

Conclusion

We owe you some additional Sub-Lease information and hope to provide that shortly. Rest assured that if there are Sub-Leases that require additional action on my part for 100% approval / compliance, I am motivated to comply in all administrative respects and in accordance with the Harbor Lease to button things up.

Please feel free to call me on my cellular phone at (805) 729-2888 or email me with any questions or comments that you may have.

Sincerely,



Craig Stevenson
Manager

DAVID Y. IGE
GOVERNOR



CLARE E. CONNORS
ATTORNEY GENERAL

DANA O. VIOLA
FIRST DEPUTY ATTORNEY GENERAL

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August 14, 2020

Timothy H. Irons, Esq.
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Re: Kona Marine Holdings Lease Rent Reopening and Lease Issues re
Harbor Lease H-83-2

Dear Mr. Irons:

This responds to your letter dated August 6, 2020.

With respect to rent-reopening, I am encouraged that we have an agreement. Please have your client confirm the agreement that was sent to them by executing the rent letter dated July 22, 2020.

Calculation of gross receipts under this Lease is complicated, given the mandatory language of HRS 171-36(a)(6) and the apparent ambiguity in the Lease regarding when and if percentage rent applies. Another factor bearing on the calculation of gross receipts for this Lease is the prior understanding and agreement of the Board to calculate gross receipts based on the rental paid to Kona Marine Holdings ("KMH"), rather than basing the calculation on the gross receipts of the subtenant, Jack's Diving Locker ("JDL"). As you point out in your letter, this understanding regarding the interpretation of the KMH Lease arose in connection with the Board's approval of the sublease from KMH to JDL, and that process resulted in a mutual understanding as to how gross receipts would be determined for this Lease. The State agrees that the unique circumstances surrounding this Lease warrant an interpretation allowing KMH to continue paying percentage rent based upon the rental amounts paid by the subtenants, rather than based on the gross receipts of the subtenants. This conclusion is limited to an interpretation of the KMH Lease and does not apply to the calculation of gross receipts in any other leases issued by the State.

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The use of the leased premises for loading and unloading of commercial passengers remains problematic. Given the breadth of marine-related uses approved for prior subtenants, the State is willing to allow commercial loading and unload of passengers to occur on the leased premises, with the following caveat: Vessels loading and unloading commercial passengers from the leased premises at Honokohau must have a commercial permit to operate out of Honokohau harbor. In addition, the Board obviously retains its discretion to review and approve any proposed subleases, and may reasonably withhold consent if the uses permitted under the proposed subleases conflict with the State's effort to control and manage commercial activity at Honokohau. The rationale for this position is discussed below.

The State has an obligation to address the fact that Honokohau can only handle a certain amount of commercial activity. Accordingly, statutes and rules set limits on the number of commercial permits, including those issued for vessels moored at Honokohau harbor (I believe that limit is about 120), and for commercial vessels that use the loading ramp there (I believe that limit is about 12). If all of these commercial permits are issued so that the max limits are reached, there should not be other vessels operating commercially out of Honokohau. Thus, a vessel moored elsewhere that has a "VME" permit to operate from the Kona Pier is not be allowed to load and unload commercial passengers from the fuel dock at Honokohau instead of the Kona Pier. Yet this is precisely what is happening on the premises leased to KMH. In some respects, this is a matter for the State to take up with the commercial permittees directly. However, KMH should not be allowing such activity on the leased premises and should take steps to make sure KMH, JDL, and any other entities are using the leased premises in a legal manner.

Finally, with respect to subleases, your client indicated that it was looking for pending consents to subleases that were submitted to DOBOR and which have still not been acted upon. Please let me know as soon as possible if your client has located any such documents or pending requests. Note that I have instructed my client to submit any pending sublease requests to the Board for their consideration at the earliest opportunity.

Very truly yours,

/s/ Daniel A. Morris

Daniel A. Morris
Deputy Attorney General

August 27, 2020

VIA First Class Mail and E-mail

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Email: Daniel.A.Morris@hawaii.gov

Re: Kona Marine Holdings Lease Rent Reopening and Lease issues regarding Harbor Lease H-83-2

Dear Mr. Morris:

Based on your August 14, 2020 correspondence, we are ready to put the rent-reopening issue behind us. The letter that was sent by the Division of Boating and Ocean Recreation ("DOBOR") on July 22, 2020 to Kona Marine Holdings ("KMH") for signature, however, has qualifying language that does not resolve the gross receipts issue with regard to percentage rent under KMH's lease, H-83-2 ("Lease"). Our understanding is that the State/DOBOR agrees that—for purposes of the Lease—percentage rent is to be calculated based on the rent that KMH receives from its tenants, not the tenants' gross receipts. If DOBOR could resend a letter that clarifies this understanding on the calculation of percentage rent under the Lease, then KMH will go ahead and sign-off on the new minimum rent.

With regard to loading and unloading from the Fuel Dock, we would like clarification on whether the State agrees that customers of Jack's Diving Locker Store ("JDLS") are permitted to load and unload from the dock in the ordinary course of business. For example, many Fuel Dock customers unload and purchase goods while the boats are being fueled. In particular, please confirm the State's position on whether or not the JDLS needs a harbor operating permit. Similarly, please confirm that the fish Weigh Scales at the Fuel Dock can be used by the charter fishing public and the sublessee that maintains the scales.

Concerning the limits on the number of boats operating out of the Honokohau harbor, could you identify the statute(s) and rule(s) that you are referring to? Our reading of the administrative rules for commercial vessels in small boat harbors is that the use restrictions and limits do not apply to commercial operations under a lease. See Hawai'i Administrative Rules §13-231-57 (b) (relating to berthing or using commercial vessels in state small boat harbors "...[t]he restrictions of this section shall not apply to any commercial vessel operated in connection with the lease of premises at a small boat harbor.") Under this provision, KMH's tenants are not required to obtain commercial permits to use the premises and, therefore, the commercial permit limit for Honokohau harbor should not apply to any Lease operations.¹ In other words,

¹ JDL dive operations include three boats moored in Honokohau harbor. Two of the boats have commercial VME permits for Kailua Pier but have been accessing the Fuel Dock for years under the Lease since the Kailua Pier fell into disrepair. Under the Rules, the use of the Fuel Dock does not trigger the need for a Honokohau use permit.

the Lease is already part of baseline operations and KMH's tenants who use the Fuel Dock should not be counted towards the 120 permit limit for Honokohau harbor.

As noted in our prior correspondence, the Lease directs KMH to increase business within the harbor and KMH and its predecessors have done so over many years through the Fuel Dock, store and tenants' operating boats from the premises. If the harbor has gotten busier over the years resulting in a policy change, that should affect only those boating operations that are required to obtain permits in the harbor, not KMH's tenants. Resolving this issue is critical because at least one of KMH's subleases has been rejected because the tenant intends to use the dock for loading and unloading and one tenant has vacated the building due to DOBOR's position. Use of the Fuel Dock is essential to operating a marine-related facility.

We are open to exploring a compromise to address the State's concerns about overcrowding at the harbor but would need assurance that the premises can continue to be used as they were intended under the Lease and that KMH is not denied its reasonable investment-backed expectations in purchasing the Lease and improvements.

In sum, we would like to reach agreement on the following:

- 1) JDLS customers can freely load and unload at the Fuel Dock to purchase goods and services from the Store;
- 2) Tenants under the Lease who operate ocean excursion businesses who have commercial slips in the Harbor or access the Harbor by trailer can load and unload customers at the Fuel Dock;
- 3) Tenants who hold a VME Permit(s) for Kailua Pier can load and unload customers either at the Fuel Dock or the Kailua Pier; and
- 4) The Fish Weigh Scales at the Fuel Dock can be accessed by Wahine Charters (or any successor tenant under the Lease who may own and operate those scales) as well as the charter fishing public.

Finally, attached is the Fuel Dock Sublease Status Report. KMH is working on updating the subleases noted for submission and/or resubmission to DOBOR. We request that any agreement reached concerning the use of the Fuel Dock be incorporated into the subleases.

Sincerely,



Timothy H. Irons
Counsel

Attachment

Kona Marine Holdings, LLC
Fuel Dock Sublease Status Report
August 27, 2020

Unit	Subtenant	Use	Status
A	Vacant	N/A	N/A
B	Wahine Charters, LLC	Excursion Office	Sublease documents have been delivered to DOBOR and rejected due to language authorizing use of the fuel dock.
C	Jacks Diving Locker	Meeting Room / Office	Fully Approved
D	Reel Action, LLC	Office	Sublease documents have been delivered to DOBOR with approval pending.
E	Splashers Ocean Adventures Inc.	Charter Office	Due to a building management changeover, it is possible that this sublease <u>may not</u> have been submitted for approval. KMH is updating the sublease and will submit to DOBOR promptly. (See Note *)
F/G	Shelly Shane Free Diver / Therapy	Office	Due to a building management changeover, it is possible that this sublease <u>may not</u> have been submitted for approval. KMH is updating the sublease and will submit to DOBOR promptly. (See Note *)
H	Vacant	N/A	N/A
I	Sea Wife Charters	Storage/Office	Due to a building management changeover, it is possible that this sublease <u>may not</u> have been submitted for approval. KMH is updating the sublease and will submit to DOBOR promptly. (See Note *)
J/K	Precision Marine Power	Office	This sublease was submitted on 3/15/18 with no response. KMH is updating the sublease and will submit to DOBOR promptly.
Charters	Kiholo Inc.	Charter Office and Retail	Sublease documents have been delivered to DOBOR with

		Store	approval pending.
Store	Jacks Diving Locker	Retail Store	Fully Approved; however DOBOR notes that they are missing a fully executed document.
Dive Operation Space	Jacks Diving Locker	Dive Shop	Fully Approved per our 7/8/20 letter with attachments.
Kamanu	Kamanu	Charter Office and Retail Store	Fully Approved per the 12/11/09 Harbor Lease assignment; however, we are updating this sublease and will submit it for approval promptly.

Note *: There have been multiple occurrences over the past 10 years where Kona Marine Holdings submitted Subleases to DLNR / DOBOR for approval and then never heard back regarding process or approvals. Kona Marine Holdings had a management change-over in 2018 and, as a result, certain of our tenant records have not been located. Accordingly, while the above (*) noted subleases may have been submitted for approval, we are re-processing those noted subleases and DOBOR should receive them promptly.