

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

January 8, 2021

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

Land Board Members:

SUBJECT: After-The-Fact Consent to Sublease under Harbor Lease No H-83-2, Kona Marine Holdings, LLC, Lessee, to Kona Coast Skin Diver Limited, Sublessee, Kealakehe, Kailua-Kona, Hawaii, Tax Map Key (3) 7-4-008:040

APPLICANT:

Kona Marine Holdings, LLC, a Delaware limited liability company, as Sublessor, to Kona Coast Skin Diver, Limited

LEGAL REFERENCE:

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

LOCATION:

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

AREA:

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

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act

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

Item J-5

LEASE CHARACTER OF USE:

Kona Marine Holdings, LLC's Lease No. H-83-2 ("Lease") allows for, on a non-exclusive basis, 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 machine 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, packages 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.

TERM OF LEASE:

Fifty-five (55) years.

ANNUAL RENTAL:

\$28,620.00

SUBLEASE CHARACTER OF USE:

Kona Coast Skin Diver
Limited:

Office and retail space to sell products related to their business and for operating a snorkeling/ocean tour business. Loading and unloading passengers from the fuel dock.

TERM OF SUBLEASE:

Kona Coast Skin Diver
Limited:

5 years, commencing 11/1/2020 and ending 10/31/2025

ANNUAL SUBLEASE RENTAL:

Kona Coast Skin Diver
Limited: \$56,544.48

DCCA VERIFICATION:

SUBLESSOR:

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

SUBLESSEE:

Kona Coast Skin Diver Limited
Place of business registration confirmed: YES X NO __
Registered business name confirmed: YES X NO __
Good standing confirmed: YES X NO __

REMARKS:

Kona Marine is requesting an after-the fact consent to the above-mentioned sublease.

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

At its meeting on December 11, 2020, the Board approved seven other similar subleases proposed by Kona Marine. Those subleases allowed commercial passenger loading and unloading at the fuel dock, as limited by certain special conditions negotiated beforehand by staff (with the assistance of the Deputy AG) and Kona Marine prior to submission of the seven subleases for the Board consent. The special conditions providing that commercial passenger loading would be permitted at the fuel dock as long as the entity possesses a valid sublease issued by Kona Marine and the vessel being used has a valid commercial use permit (CUP) for the Honokohau small boat harbor. Further, the subtenants agreed to yield their loading and unloading services to the fueling operations without interference or obstruction in order to ensure that the fuel dock remains available for fueling. At the December 11, 2020 meeting, the Board also determined that the commercial passenger loading activity authorized by the seven subleases would be subject to the 30-minute time limit already specified in Hawaii Administrative Rule 13-231-44.

The current sublease under consideration, Kona Coast Skin Divers (KCSD), is similar to the previously-approved Kona Marine subleases, because the KCSD sublease allows passenger loading and unloading at the fuel dock. However, Kona Marine has requested to allow KCSD to operate one additional vessel in addition to the one they have that is currently permitted to operate commercially from the Honokohau small boat harbor. The KCSD's proposed sublease relies on

the creation of a category of “Lessor Vessels” which will have special privileges for commercial activity. Staff is aware that DOBOR’s administrative rules do provide a limited exception to the ordinary requirement that commercial loading and unloading of passengers in small boat harbors must have a valid CUP for that harbor, per Hawaii Administrative Rule (“HAR”), §13-231-57(b). This rule provides that the ordinary CUP restrictions on loading and unloading commercial passengers does not apply to “a vessel operated in connection with the lease of premises at a small boat harbor”. However, this exception applies to a lessee (not a sublessee like KCSD), and it also contemplates a single vessel, as opposed to multiple vessels. Otherwise, the number of unpermitted commercial vessels engaged in loading and unloading of passengers would only be limited by the number of subleases the original tenant agreed to.

In the spirit of working towards an amicable resolution to this request, Staff recommends allowing Kona Marine to assign the one vessel that they are allowed to operate commercially according to HAR, §13-231-57(b) to KCSD to be operated as the Lessor Vessel. The vessel being used under this HAR shall be owned by KCSD and be permitted to operate in State near shore waters. Kona Marine may terminate this arrangement at their discretion and the vessel would no longer be permitted to operate from their premises or the Honokohau small boat harbor.

RECOMMENDATION:

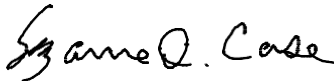
That the Board consent to the sublease under Harbor Lease No. H-83-2 between Kona Marine Holdings, LLC, as Sublessor, and Kona Coast Skin Diver Limited, as Sublessee.

Respectfully Submitted,



Edward R. Underwood
Administrator

APPROVED FOR SUBMITTAL:



Suzanne D. Case
Chairperson

Attachments:

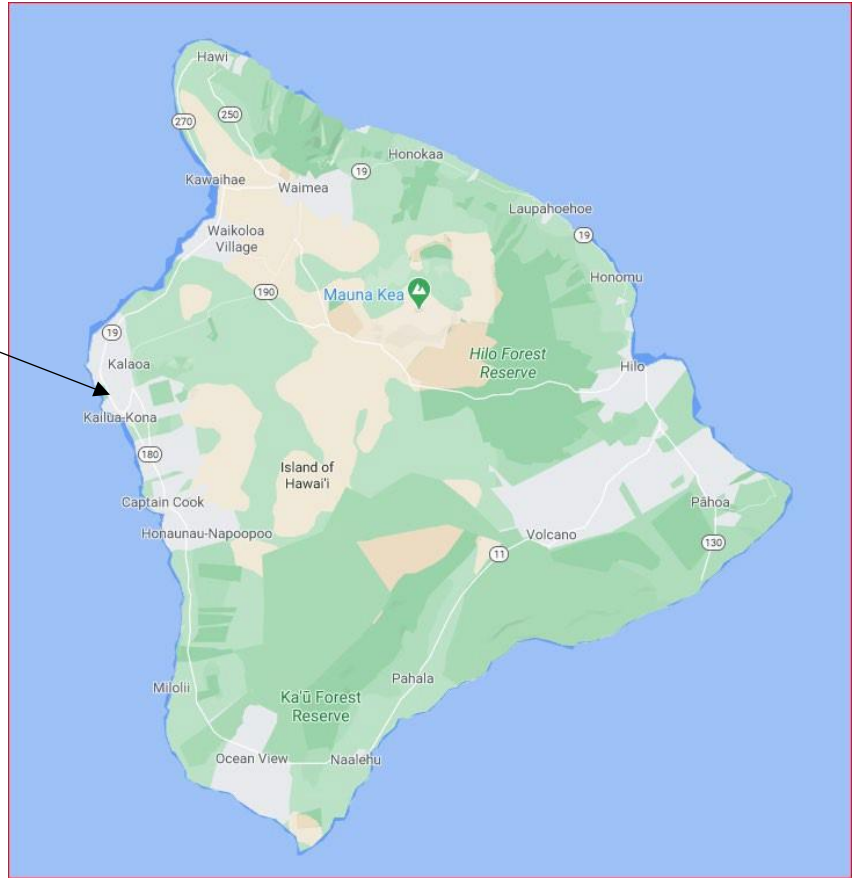
Exhibit A – Honokohau Small Boat Harbor Area Map

Exhibit B - Building Floor Plan

Exhibit C – Kona Coast Skin Diver Limited Sublease

Exhibit A

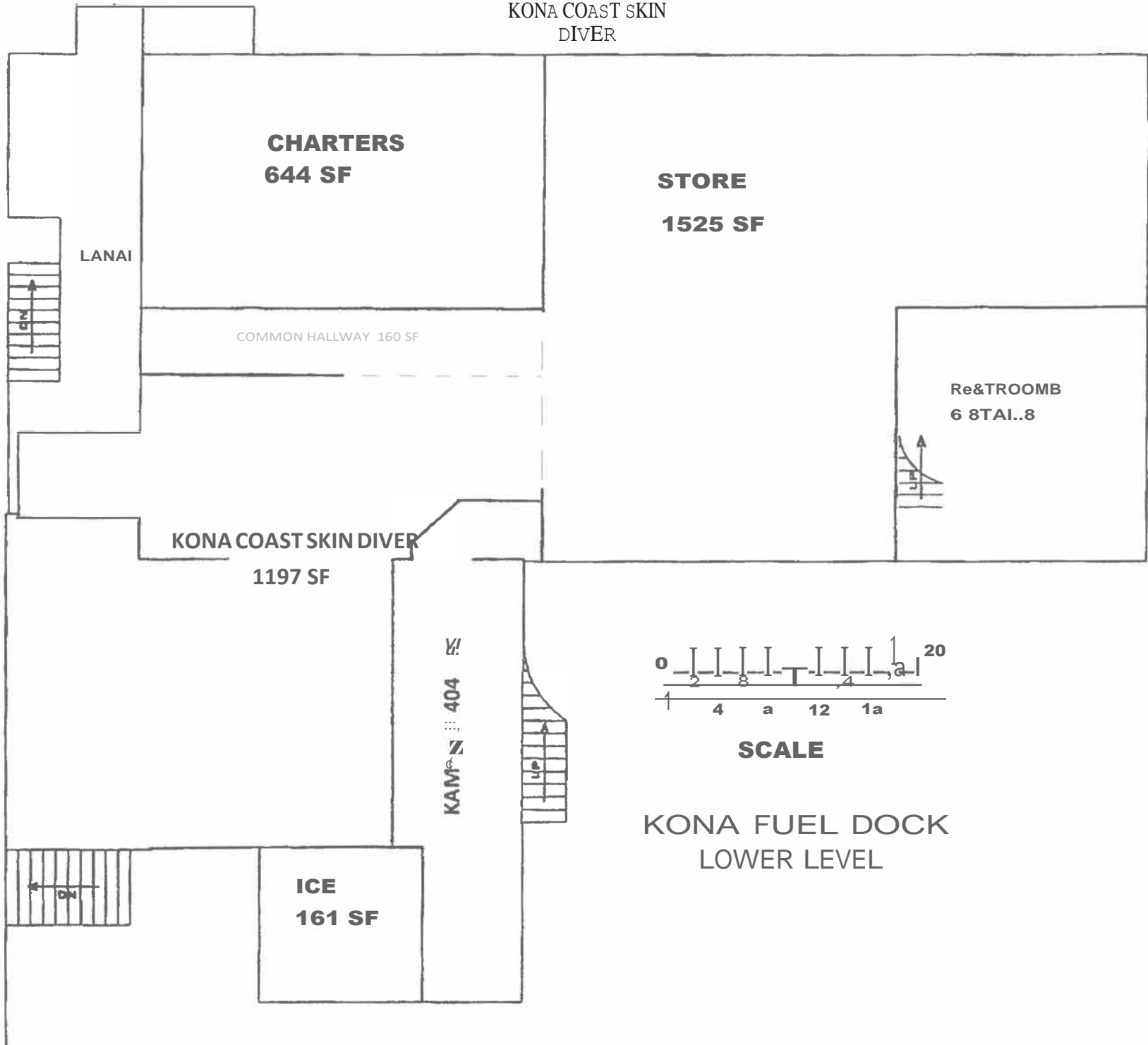
Honokohau Small Boat Harbor



Kona Marine Holdings, LLC
Master Lease H-83-2



EXHIBIT B
KONA COAST SKIN
DIVER



0

Exhibit C

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

THE FUEL DOCK – SUBLEASE SUMMARY

Tenant: Kona Coast Skin Diver Limited Corp. /
Jack’s Diving Locker, G.P.
75-5813 Ali’i Drive
Kailua-Kona, Hawaii 96740
Phone: (808) 329-7585
Email: teri@jacksdivinglocker.com

Premises: “JACKS” and “ICE”

Rental Area: 1,358 Square Feet

LEASE TERMS

Begins: November 1, 2020
Term: Five years ending October 31, 2025
Option to Renew: Yes, for an additional Five Years
Notice: N/A

MONTHLY RENTAL PAYMENTS (FIRST YEAR)

Total Rent (increases annually):	\$4,400.00	(\$3.24 square foot)
Electricity (increases annually):	100.00	
% G.E.T. (rate subject to change):	<u>212.04</u>	(4.712%)
TOTAL MONTHLY RENT:	<u>\$4,712.04</u>	

SECURITY DEPOSIT: N/A

MANAGING AGENT: Robert Curtis

THE FUEL DOCK

Sublease

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SUBLEASE

THIS INDENTURE OF Sublease is effective November 1, 2020 by and between **KONA MARINE HOLDINGS, LLC.**, a Delaware Limited Liability Company, with its principal place of business located at 74-381 Kealakehe Parkway, Kailua-Kona, Hawaii 96740, hereinafter called "Lessor", and **Kona Coast Skin Diver Limited Corporation, a wholly owned subsidiary of Jack's Diving Locker, G.P.**, and its Affiliates, with a mailing address at 75-5813 Ali'i Drive, Kailua-Kona, Hawaii 96740, hereinafter collectively called "Tenant";

W I T N E S S E T H:

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

(2) Tenant desires to lease office, retail, and dive operation space on the first floor of the premises for operating a diving / snorkeling business, for the retailing of diving, snorkeling, and related products, and to administer the other business contained under Section 1 below. Tenant shall enjoy access to the common areas of the Property, including the docks.

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

Section 1. Description of Premises. Lessor does hereby demise and lease to Tenant, and Tenant does hereby hire and lease from the Lessor, a portion of the premises described above commonly known as "The Fuel Dock", which portion is designated on Exhibit A attached hereto as Suites "JACKS" and "ICE" (containing a combined area of approximately 1,358 square feet), on the first floor, hereinafter called the "premises". Together with the full right of access to said premises in common with others over, across and through any alleys, common entrances, stairways, docks, halls and corridors in or around said building, subject to the terms, covenants and conditions contained herein.

The premises shall be used exclusively for the following purposes: (i) administrative office work; (ii) retail sales of apparel and other products associated with scuba, free diving,

snorkeling, swim, accessories, and other related products; (iii) dive, snorkeling, and other operations and services associated with scuba, free diving, manta diving, snorkeling, swimming, education and training classes, commercial mooring maintenance and other commercial work, video productions, weddings, film crew services, and private charter services. The common area docks may be utilized pursuant to Section 28 Paragraph 2, herein.

Section 2. Term of Sublease. The term of this Sublease shall be for **Five (5) years**, commencing **November 1st, 2020**, unless sooner terminated as provided herein, or unless renewed as provided herein under Section 21. Tenant shall surrender the premises to Lessor immediately on termination of the Sublease.

Section 3. Delivery of Possession. N/A

Section 4. Total Rent Due. During the first year of this Sublease, Tenant shall pay to Lessor at the office of Lessor or at such other place as Lessor shall designate, Base Rent in equal monthly installments of **FOUR THOUSAND FOUR HUNDRED DOLLARS (\$4,400.00)** each, in advance on the first day of each and every calendar month, plus Hawaii General Excise Tax (GET) at the prevailing tax rate associated therewith. The Base Rent amount will increase by 2% at each anniversary of this Sublease. In addition to and along with Base Rent, Tenant shall pay to Lessor an electricity reimbursement for the commonly metered space occupied equal to \$100 per month, plus GET on the electricity reimbursement. The electricity reimbursement shall increase by 2% at each anniversary of this Sublease.

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

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

Section 5. Payment of Building Operating Costs. Lessor shall pay when due all real property taxes and State lease rent,

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

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

Section 6. Security Deposit. N/A

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

Section 8. Abandonment of Premises. Tenant shall not vacate nor abandon the premises at any time during the term, but if Tenant does vacate or abandon the premises or is dispossessed by process of law for nonpayment of rent or any other reason, any personal property belonging to Tenant, other than the business files and records of Tenant, left on the premises shall be deemed abandoned. At the option of Lessor, such abandoned property,

including all trade fixtures shall either become the property of Lessor or shall be removed and stored at the Tenant's expense. Tenant shall also be charged with any and all costs incurred by the Lessor in placing the premises in a condition suitable for releasing to another Tenant.

Section 9. Utilities.

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

B. Electric. The Tenant cost associated with commonly metered electricity for its nonindustrial / retail space is provided for under Section 4. In addition, Tenant is responsible for the cost associated with separately metered electrical power for compressor and related dive shop equipment.

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

Section 11. Maintenance.

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

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

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

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

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

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

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

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

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

Section 13. Liability of Lessor. Tenant waives all claims against Lessor for damages to goods or for injuries to persons on or about the premises from any cause arising at any time except

those actions resulting from the negligent acts or omissions of Lessor or its agents and employees. Tenant will indemnify Lessor on account of any damage or injury to any person, or to the goods of any person, arising from the use of the premises by Tenant, or arising from the failure of Tenant to keep the premises in good condition as provided herein. Tenant agrees to pay for all damage to the building, as well as all damage or injury suffered by tenants or occupants thereof caused by misuse or neglect of the premises by Tenant.

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

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

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

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

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

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

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

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

Without affecting Lessor's duty to mitigate damages and after reasonable time allowed Tenant to release the premises,

Lessor may re-let the premises or any part thereof for any term without terminating the Sublease. Lessor may make alterations and repairs to the premises. The duties and liabilities of the parties if the premises are re-let as provided herein shall be as follows:

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

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

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

Section 19. Subordination and Financing. Tenant agrees upon request of Lessor to subordinate this Sublease and its rights hereunder to the lien of any mortgage, deed of trust or other encumbrance, together with any conditions, renewals, extensions or replacements thereof, now or hereafter placed, charged or enforced against the Lessor's interest in this Sublease and the leasehold estate hereby created, the premises or the land, building or improvements included thereon or of which the premises are a part, and to execute and deliver, (but without cost to Tenant) at any time and from time to time upon demand by Lessor such documents as may be required to effectuate such subordination, and, in the event that Tenant shall fail, neglect or refuse to execute and deliver any such document within ten (10) days after Lessor has given written notice to do so, Tenant hereby appoints Lessor, its successors and assigns, the attorney-in-fact of Tenant irrevocably to execute and deliver any and all such documents for and on behalf of Tenant; provided, however, that Tenant shall not be required to effectuate such subordination nor shall Lessor be authorized to effect such subordination on behalf of Tenant, unless the mortgagee or

beneficiary named in such mortgage, deed of trust or other encumbrance shall first agree in writing for the benefit of Tenant that, so long as Tenant is not in default under any of the provisions, covenants or conditions of this Sublease on the part of Tenant to be kept and performed, neither this Sublease nor any of the rights of Tenant hereunder shall be terminated or modified or be subject to termination or modification nor shall Tenant's possession of the premises be disturbed or interfered with by any trustee's sale or by an action or proceeding to foreclose said mortgage, deed of trust or other encumbrance.

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

Section 21. Option to Renew. Tenant shall have the option to renew this Sublease for an one additional five (5) year term under the terms and conditions contained herein so long as Tenant is in good standings under this Sublease and subject to Tenant's payment of an extension fee equal to one month's rent, which shall also be subject to Hawaii General Excise Tax.

Section 22. Subject to State Harbor Lease No. H-83-2 and Consent. Tenant agrees that this Sublease is subject to the terms and conditions of State Harbor Lease No. H-83-2, and Tenant agrees to abide by such terms and conditions. Tenant acknowledges that this Sublease is subject to the consent of the State of Hawaii. Lessor will use his best efforts to obtain such consent; however, if consent is not given by the State of Hawaii, this Sublease shall be terminated.

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

Section 24. Partial Invalidity. If any term, provision or condition of this Sublease shall be held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder

of this Sublease shall continue in full force and effect and shall in no way be affected, impaired or invalidated thereby.

Section 25. Captions, Pronouns, Definitions.

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

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

(3) Definitions. Defined terms shall have the meaning ascribed to each as written in this Sublease. For all purposes under this Sublease, Affiliate(s) shall mean any person or entity now or hereafter in control of, controlled by, or in common control with the company or individual entering into this Sublease by virtue of management authority, contract, or equity interest.

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

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

Section 28. Special Conditions.

1. Parking: Tenant acknowledges and understands this Sublease does "not" include designated parking for Tenant or Tenant's guests. Furthermore, the DNLR controls the parking areas adjacent to the premises and as such, Tenant is subject to the parking regulations imposed by the DNLR. Tenant violations of DNLR parking regulations may be considered a Breach of this Sublease and as such grounds for termination.
2. Dock Usage: Tenant operates an ocean excursion and/or charter related business as well as other activity described under Section 1 and thereby provides the service of loading and unloading passengers to and from its vessels. Tenant shall be permitted to use the Fuel Dock Property for the service purpose of loading and unloading passengers to/from its vessels so long as: (i) Tenant, for each of its vessels, is legally permitted to operate commercially within Honokohau Harbor and that such operations do not result in any violation of rules or statutes governing harbor use at Honokohau Harbor; and (ii) Tenant agrees to at all times yield its loading and unloading services to the fueling operations at the Property without interference or obstruction. Lessor reserves the right to suspend or terminate Tenant's loading and unloading activities if Tenant does not strictly adhere to the provisions contained in this paragraph.

Furthermore, pursuant to this Sublease and for the duration of same, Tenant shall be allowed and authorized by Lessor to designate one (1) of their vessels as a "Lessor Vessel" and shall therefore be permitted and authorized by Lessor to use the Lessor Property to operate such Lessor Vessel as if the designated vessel were owned and operated by Lessor, but without any Lessor exposure to liability whatsoever with respect to the operation of the authorized Lessor Vessel. Operating the Lessor Vessel shall include providing the service of loading and unloading passengers at the Property. Regarding the Lessor Vessel, Tenant continues to agree to (at all times) yield their loading and unloading services to the fueling operations at the Property without interference or obstruction. Lessor reserves the right to suspend or terminate Tenant's loading and unloading activities associated with the Lessor Vessel if Tenant does not strictly adhere to the provisions contained in this paragraph or if Tenant is otherwise in default under the terms and conditions of this Sublease.

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

"Lessor"

KONA MARINE HOLDINGS, LLC.



By _____

Craig Stevenson

Its: Authorized Representative

"Tenant"
LTD.

KONA KONA COAST SKIN DIVER LIMITED CORP.

By: JACKS DIVING LOCKER, G.P.

By **ubs OL**

Name (Print) **7e.e.so...W L**

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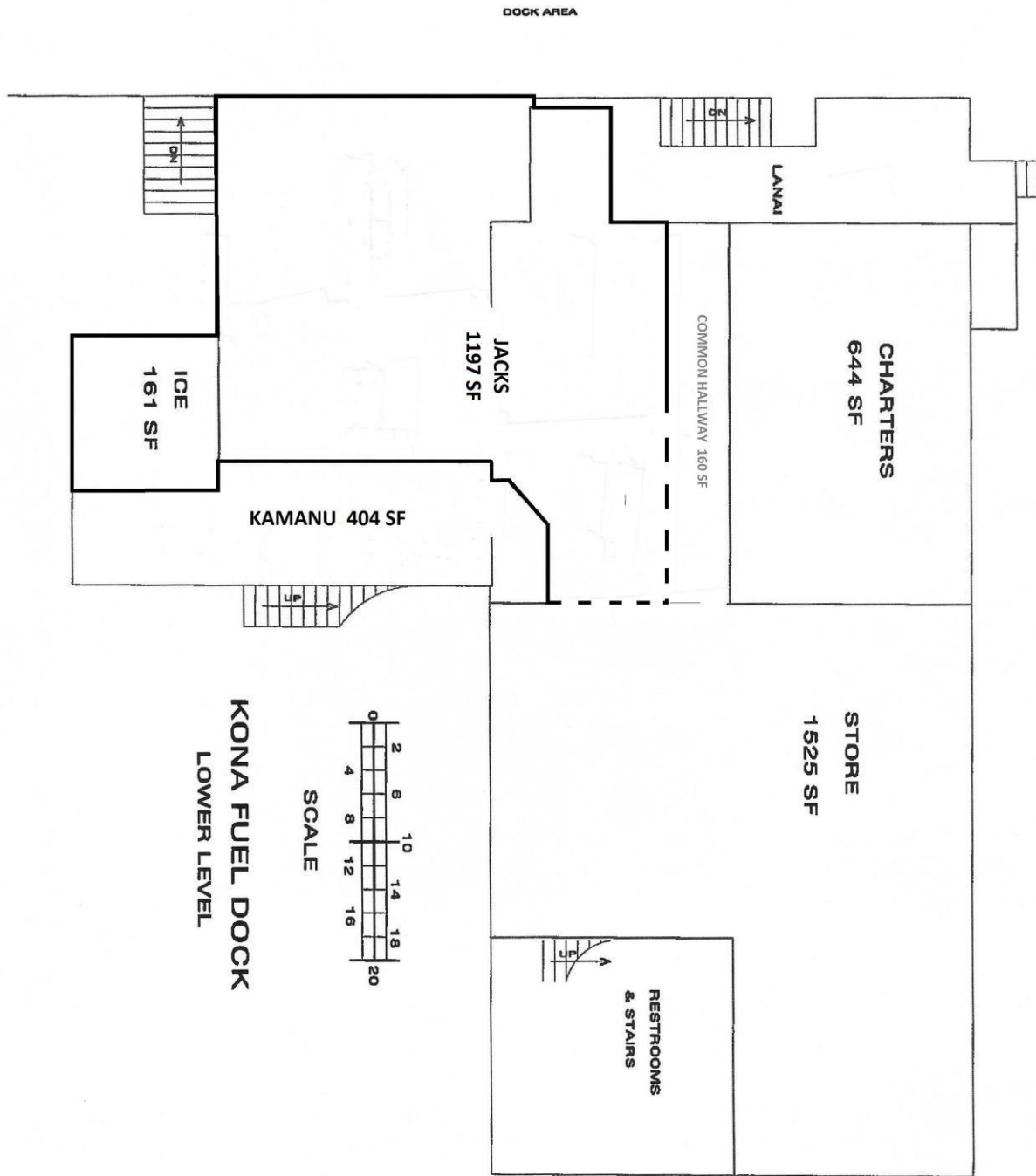


Exhibit A