

**CITY OF CORDOVA, ALASKA
SUBSTITUTE RESOLUTION 07-12-32**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CORDOVA, AUTHORIZING
THE CITY MANAGER TO ENTER INTO A 2 YEAR LEASE OF PROPERTY LEGALLY
DESCRIBED AS A PORTION OF LOT 3, BLOCK 7A, TIDEWATER DEVELOPMENT PARK
WITH CORDOVA OUTBOARD INC.**

WHEREAS, the current lease term with the Cordova Outboard Inc. will commence on July 5th, 2012, the new lease would carry their tenancy through July 4th, 2014; and

WHEREAS, the current lease with the Cordova Outboard Inc. is generally described as that area of tidelands 15 feet by 20 feet on the easterly side of the first approach to the floats in the Cordova Small Boat Harbor only, a portion of Lot 3, Block 7A, Tidewater Development Park, Plat 93-2, located within Cordova Recording District, Cordova Alaska; and

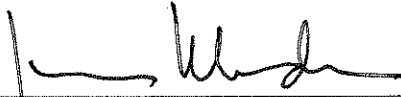
WHEREAS, the annual rental rate will be One Hundred Thirty Three Dollars and Eighty Four cents (\$133.84); and

WHEREAS, the lease between the City of Cordova and the Cordova Outboard Inc. is hereto attached as Attachment A.

NOW, THEREFORE BE IT RESOLVED THAT the City Council of the City of Cordova hereby authorizes and directs the City Manager to lease the property to the Cordova Outboard Inc. in accordance with the terms in the Lease. The form and content of the Lease now before this meeting is in all respects authorized, approved and confirmed by this resolution, and the City Manager hereby is authorized, empowered and directed to execute and deliver the Lease reflecting the terms in the Lease on behalf of the City, in substantially the form and content now before this meeting but with such changes, modifications, additions and deletions therein as he shall deem necessary, desirable or appropriate, the execution thereof to constitute conclusive evidence of approval of any and all changes, modifications, additions or deletions therein from the form and content of said documents now before this meeting, and from and after the execution and delivery of said documents, the City Manager hereby is authorized, empowered and directed to do all acts and things and to execute all documents as may be necessary to carry out and comply with the provisions of the Lease.


PASSED AND APPROVED THIS 2nd DAY OF AUGUST, 2012.





James Kallander, Mayor

Attest:



Susan Bourgeois, City Clerk

CITY OF CORDOVA
Cordova, Alaska

GROUND LEASE

THIS LEASE (“Lease”) by and between the **CITY OF CORDOVA** (“**Landlord**”), a municipal corporation organized and existing under the laws of the State of Alaska (the “City”), and **CORDOVA OUTBOARD INC.** doing business in Cordova, Alaska (“**Tenant**”).

RECITALS

WHEREAS, the City owns that certain parcel of land generally described as that area of tidelands 15 feet by 20 feet on the easterly side of the first approach to the floats in the Cordova Small Boat Harbor, a portion of Lot 3, Block 7A, Tidewater Development Park, Plat 93-2, located within Cordova Recording District, Cordova Alaska, (referred to hereinafter as the “Premises”); and

WHEREAS, Tenant desires to lease the Premises from the City, and Landlord desires to lease the Premises to Tenant, on the terms and conditions set forth herein; and

WHEREAS, the Cordova City Council (“Council”) has approved the lease of the Premises from the City to Tenant in accordance with the Cordova City Charter §5-17 and Chapter 5.22 of the Cordova Municipal Code (hereinafter referred to as the “Code” or “CMC”).

NOW, THEREFORE, in consideration of the premises and the mutual covenants of the parties hereto, it is agreed as follows:

1. LEASE OF PREMISES

Subject to the terms and conditions set forth herein, the City hereby leases to Tenant and Tenant hereby leases from the City, the Premises.

2. LEASE TERM

The term of this Lease shall be two (2) year, commencing on **July 5, 2012**. The “Commencement Date”) and expiring two (2) years later, on **July 4, 2014** unless earlier terminated in accordance with the terms of this Lease.

3. RENT

A. Base Rent. The rent during the term of this Lease shall be **One Hundred Thirty Three Dollars and Eighty Four cents (\$133.84)** (the “Base Rent”), which shall be due and payable in advance on the Commencement Date of this agreement. Base Rent shall be paid to the City in lawful money of the United States without abatement, deduction or set-off for any reason whatsoever, at the address provided for notice to the City set forth in Section 20.E of this Lease, or at any other place that the City may from time to time direct in writing. Base Rent shall be paid promptly when due without notice or demand therefor. The parties intend the Base Rent to be absolutely net to the City. All costs, expenses and obligations of every kind and nature whatsoever in connection with or relating to the Premises shall be the obligation of, and shall be paid by, Tenant. As required by the CMC Section 5.22.040(C), any lease having a term of more than two (2) years shall be subject to a rental adjustment to fair market value at intervals of no more than two (2) years, but no adjustment shall result in a reduction of rent.

B. Additional Charges. In addition to the Base Rent, Tenant acknowledges and agrees that Tenant is obligated to pay and shall pay, before delinquency and without reimbursement, all costs, expenses and obligations of every kind and nature whatsoever in connection with or relating to the Premises or the activities conducted on the Premises, including without limitation those costs, expenses and obligations identified in Section 7 and all other sums, costs, expenses, taxes (including 6% sales tax, which shall be paid by Tenant monthly at the same time Tenant

makes its monthly payments of Base Rent to the City) and other payments that Tenant assumes or agrees to pay under the provisions of this Lease (the "Additional Charges").

Without limiting in any way Tenant's payment obligations, the City shall have the right, but not the obligation, at all times during the Lease term, to pay any charges levied or imposed upon the Premises that remain unpaid after the same have become due and payable, and the amount paid, plus the City's reasonable expenses, shall be additional rent due from Tenant to the City, with interest thereon at the rate of ten percent (10%) per annum from the date of payment thereof by the City until repayment thereof by Tenant.

C. Late Penalty Provision. Rent not paid within ten (10) days of the due date shall be assessed a late charge of ten percent (10%) of the delinquent amount; such charge shall be considered liquidated damages and shall be due and payable as additional rent. In the event the late charge assessment above exceeds the maximum amount allowable by law, the amount assessed will be adjusted to the maximum amount allowable by law.

D. Security Deposit. Upon execution of this Lease, the City may require Tenant to deposit with the City an amount equal to two months' rent (the "Security Deposit"). The Security Deposit shall be held by the City as security for the faithful performance by Tenant of all of Tenant's obligations under this Lease. If Tenant fails to pay the Base Rent, or a portion thereof, or otherwise defaults with respect to any provision of this Lease, after notice and beyond the expiration of any applicable cure period the City may use, apply or retain all or any portion of the Security Deposit for:

(i) the payment of any rent or other sum in default;

(ii) the payment of any other sum to which the City may become obligated by reason of Tenant's default; or

(iii) to compensate the City for any loss or damage which the City may suffer thereby, including, but not limited to, any costs associated with moving and storage of Tenant's personal property (if any) remaining on the Premises beyond termination of the Lease. The City shall be free to commingle the Security Deposit with funds held in the City's own accounts, including accounts in which the City keeps other security deposits. If Tenant performs all of its obligations under this Lease, the Security Deposit, or so much thereof as has not been used, applied or retained by the City in accordance with this Section, shall be returned to Tenant, at the expiration of the term, and subject to Tenant relinquishing possession of the Premises, without payment of interest or other increment for its use, within 30 days of Tenant's vacation of the Premises.

4. USES AND CONDITION OF PREMISES

A. Authorized Uses. Use of the Premises shall be limited to storage, operated by Tenant, and the leased premises shall not, without prior written consent of the Landlord, be used for any other purposes. Landlord expressly reserves the right to terminate this lease in the event Tenant fails to operate said use for a period of eighteen consecutive months.

B. Inspections. The City and its authorized representatives and agents shall have the right, but not the obligation, to enter the Premises at all reasonable times to inspect the use and condition of the Premises; to serve, post or keep posted any notices required or allowed under the provisions of this Lease, including notices of non-responsibility for liens; and to do any act or thing necessary for the safety or preservation of the Premises. The City shall not be liable in any manner for any inconvenience, disturbance, loss of business, nuisance or other damage arising out of the City's entry onto the Premises, except for damage resulting directly from the acts of the City or its authorized representatives or agents.

C. Compliance with Laws. Tenant shall maintain and repair the Premises in compliance with all applicable laws, regulations, ordinances, rules, orders, permits, licenses and other authorizations. Tenant shall not use or permit the use of the Premises for any purpose prohibited by law or which would cause a cancellation of any insurance policy covering the Premises. Tenant shall not leave the Premises unoccupied or vacant without the City's prior written consent. Tenant shall not cause or permit any Hazardous Material (as defined in Section 9.B of this Lease) to be brought upon, kept, or used in, on or about the Premises except for such Hazardous Material as is

necessary to conduct Tenant's authorized uses of the Premises. Any such Hazardous Material brought upon, kept, or used in, on or about the Premises shall be used, kept, stored, and disposed of in a manner that complies with all environmental laws and regulations applicable to Hazardous Material. Tenant shall not cause or allow the release or discharge of any other materials or substances that are known to pose a hazard to the environment or human health.

D. Tenant's Acceptance of Premises. Tenant has inspected the Premises to its complete satisfaction and is familiar with its condition, and the City makes no representations or warranties with respect thereto, including but not limited to the condition of the Premises or its suitability or fitness for any use Tenant may make of the Premises. Tenant accepts the Premises AS IS, WHERE IS, WITH ALL FAULTS. No action or inaction by the Council, the City Manager, or any other officer, agent or employee of the City relating to or in furtherance of the lease of the Premises shall be deemed to constitute an express or implied representation or warranty that the Premises, or any part thereof, is suitable or usable or any specific purpose whatsoever. Any such action or inaction shall be deemed to be and constitute performance of a discretionary policy and planning function only, and shall be immune and give no right of action as provided in Alaska Statute §9.65.070, or any amendment thereto.

E. The City may terminate this Lease for any or no reason upon thirty (30) days' written notice to Tenant.

5. REPRESENTATIONS AND WARRANTIES

Tenant represents and warrants to the City that Tenant is not delinquent in the payment of any obligation to the City, and Tenant has not previously breached or defaulted in the performance of a material contractual or legal obligation to the City, which breach or default has not been remedied or cured.

6. ASSIGNMENTS AND SUBLETTING; SUBORDINATION

Tenant shall not assign or otherwise transfer this Lease or any interest herein or sublet the Premises or any portion thereof, or permit the occupancy of any part of the Premises by any other person or entity, without the prior written consent of the City, which consent the City may withhold in its absolute discretion. The City shall not be required to subordinate this Lease or the City's interest in the Premises to the interest of any other person or entity.

7. OPERATIONS, MAINTENANCE, UTILITIES, TAXES AND ASSESSMENTS

Tenant shall, at Tenant's sole cost and expense, be solely responsible for: (1) the maintenance and repair of the Premises and shall not commit or allow any waste upon the Premises; (2) obtaining any and all permits and approvals necessary for Tenant's use of the Premises; (3) all utilities and services needed for Tenant's use of the Premises; (4) all taxes and assessments levied against the Premises, and Tenant agrees to pay all such taxes and assessments as and when they become due, including but not limited to all utility bills and special assessments levied and unpaid as of the date of this Lease or hereafter levied for public improvements; (5) all licenses, excise fees, and occupation taxes with respect to the business and activities conducted on the Premises; (6) all real property taxes, personal property taxes, and sales taxes related to the Premises or Tenant's use or occupancy thereof; and (7) any taxes on the leasehold interest created under this Lease.

8. LIENS

Tenant will suffer no lien or other encumbrance to attach to the Premises, including without limitation mechanic's or materialman's liens, sales tax liens under CMC §5.40.125, or property tax liens under CMC §5.36.260. If the City posts any notice of non-responsibility on the Premises, Tenant will ensure that the notice is maintained in a conspicuous place.

9. INDEMNIFICATION

A. General Indemnification. Tenant shall defend, indemnify and hold the City and its authorized representatives, agents, officers, and employees harmless from and against any and all actions, suits, claims, demands, penalties, fines, judgments, liabilities, settlements, damages, or other costs or expenses (including, without limitation, attorney's fees, court costs, litigation expenses, and consultant and expert fees) resulting from, arising out of, or related to Tenant's occupation or use of the Premises or the occupation or use of the Premises by Tenant's employees, agents, servants, customers, contractors, subcontractors, sub-lessees or invitees, including but not limited

to all claims and demands arising out of any labor performed, materials furnished, or obligations incurred in connection with any improvements, repairs, or alterations constructed or made on the Premises and the cost of defending against such claims, including reasonable attorney fees. In the event that such a lien is recorded against the Premises, Tenant shall, at Tenant's sole expense within ninety (90) days after being served with written notice thereof, protect the City against said lien by filing a lien release bond or causing the release of such lien.

B. Environmental Indemnification. Tenant has had full opportunity to examine the Premises for the presence of any Hazardous Material (as hereafter defined) and accepts the Premises AS IS, WHERE IS, WITH ALL FAULTS. Tenant releases the City and its authorized representatives, agents, officers, and employees from any and all actions, suits, claims, demands, penalties, fines, judgments, liabilities, settlements, damages, or other costs or expenses (including, without limitation, attorney's fees, court costs, litigation expenses, and consultant and expert fees) arising during or after the term of this Lease, that result from the use, keeping, storage, or disposal of Hazardous Material in, on or about the Premises by Tenant, or that arise out of or result from Tenant's occupancy or use of the Premises or the use or occupancy of the Premises by Tenant's employees, agents, servants, customers, contractors, subcontractors, sub-lessees, invitees or authorized representatives. This release includes, without limitation, any and all costs incurred due to any investigation of the Premises or any cleanup, removal, or restoration mandated by a federal, state, or local agency or political subdivision, or by law or regulation. Tenant agrees that it shall be fully liable for all costs and expenses related to the use, storage, and disposal of Hazardous Material generated, kept or brought on the Premises by Tenant, its employees, agents, servants, customers, contractors, subcontractors, sub-lessees, invitees or authorized representatives.

Tenant shall defend, indemnify, and hold the City and its authorized representatives, agents, officers, and employees harmless from and against any claims, demands, penalties, fines, judgments, liabilities, settlements, damages, costs, or expenses (including, without limitation, attorney's fees, court costs, litigation expenses, and consultant and expert fees) of whatever kind or nature, known or unknown, contingent or otherwise, arising in whole or in part from or in any way related to (i) the presence, disposal, release, or threatened release of any such Hazardous Material which is on or from the Premises, soil, water, ground water, vegetation, buildings, personal property, persons, animals, or otherwise; (ii) any personal injury or property damage arising out of or related to such Hazardous Material; (iii) any lawsuit brought or threatened, settlement reached, or government order relating to such Hazardous Material; and (iv) any violation of any laws applicable to such Hazardous Material; provided, however, that the acts giving rise to the claims, demands, penalties, fines, judgments, liabilities, settlements, damages, costs, or expenses arise in whole or in part from the use of, operations on, or activities on the Premises by Tenant or its employees, agents, servants, customers, contractors, subcontractors, sub-lessees, invitees, or authorized representatives.

As used in this Lease, "Hazardous Material" means any substance which is toxic, ignitable, reactive, or corrosive or which is regulated by any federal, state or local law or regulation, as now in force or as may be amended from time to time, relating to the protection of human health or the environment, as well as any judgments, orders, injunctions, awards, decrees, covenants, conditions, or other restrictions or standards relating to the same. "Hazardous Material" includes any and all material or substances that are defined as "hazardous waste," "extremely hazardous waste," or a "hazardous substance" under any such law or regulation.

10. INSURANCE

Lessee shall procure and maintain, at Lessee's sole cost and expense, the following policies of insurance with a reputable insurance company or companies satisfactory to the City:

(1) Commercial general liability insurance in respect of the Premises and the conduct of Lessee's business and operations, naming the City as an additional insured, with minimum limits of liability of One Million Dollars (\$1,000,000.00) per person and Two Million Dollars (\$2,000,000.00) per accident or occurrence for bodily injury and death, and a minimum limit of liability of One Million Dollars (\$1,000,000.00) for property damage for each occurrence;

(2) Property insurance, insuring against loss or damage by fire and such other risks as are customarily included in the broad form of extended coverage, in an amount of coverage not less than the replacement value of the improvements on the Premises, if any, and on such terms as are satisfactory to the City;

(3) Personal property insurance covering Lessee's trade fixtures, furnishings, equipment, and other items of

personal property of Lessee located on the Premises; and

(4) Workers compensation insurance, and such other insurance as is required by law. All insurance required under this Lease shall contain an endorsement requiring thirty (30) days' advance written notice to the City before cancellation or change in the coverage, scope, or amount of any policy. Prior to commencement of the Lease term, Lessee shall provide the City with proof of the insurance required by this Section 10.

11. REMOVAL OF PROPERTY

Upon expiration or earlier termination of this Lease, at the option of the City, Tenant shall remove from the Premises, at Tenant's sole expense, all property Tenant has placed or caused to be placed on the Premises. Tenant shall repair any damage to the Premises caused by such removal and return the Premises as near as possible to its original condition as existed on the Commencement Date. All property which is not promptly removed by Tenant pursuant to the City's request and in any event within thirty (30) days of the date of expiration or termination of this Lease may be removed, sold, destroyed or otherwise disposed of in any manner deemed appropriate by the City, all at Tenant's sole expense, and Tenant hereby agrees to pay the City for such expenses. Notwithstanding any provision to the contrary in this Lease, all petroleum, fuel, or chemical storage tanks installed in or on the Premises during the term of this Lease shall remain the property of the Tenant and, upon expiration or earlier termination of the Lease and upon request of the City, Tenant shall remove any and all such tanks and any and all contaminated soil and other materials from the Premises, all at Tenant's sole expense.

12. DEFAULT AND REMEDIES

A. Default. The occurrence of any of the following shall constitute a default and a breach of this Lease by the Tenant:

(i) The failure to make payment when due of any installment of rent, Additional Charges or of any other sum herein specified to be paid by the Tenant;

(ii) The failure to pay any taxes or assessments due from the Tenant to the City and in any way related to this Lease, the Premises, any improvements, or the Tenant's activities or business conducted thereon, including but not limited to any real property, personal property or sales taxes;

(iii) An assignment for the benefit of Tenant's creditors or the filing of a voluntary or involuntary petition by or against Tenant under any law for the purpose of adjudicating Tenant a bankrupt, or for extending the time for payment, adjustment, or satisfaction of Tenant's liabilities, or for reorganization, dissolution, or arrangement on account of or to prevent bankruptcy or insolvency, unless the assignment or proceeding, and all consequent orders, adjudications, custodies, and supervision are dismissed, vacated or otherwise permanently stated or terminated within thirty (30) days after the assignment, filing or other initial event;

(iv) The appointment of a receiver or a debtor-in-possession to take possession of the Premises (or any portion thereof) or of Tenant's interest in the leasehold estate (or any portion thereof) or of Tenant's operations on the Premises (or any portion thereof) by reason of Tenant's insolvency;

(v) The abandonment or vacation of the Premises or any portion thereof;

(vi) Execution, levy or attachment on Tenant's interest in this Lease or the Premises, or any portion thereof;

(vii) The breach or violation of any statutes, laws, regulations, rules or ordinances of any kind applicable to Tenant's use or occupancy of the Premises; or

(viii) The failure to observe or perform any covenant, promise, agreement, obligation or condition set forth in this Lease, other than the payment of rent, if such failure shall not be cured within ten (10) days after written notice has been given to Tenant. Notices given under this subsection shall specify the alleged breach and the

applicable Lease provision and demand that the Tenant perform according to the terms of the Lease. No such notice shall be deemed a forfeiture or termination of this Lease unless the City expressly makes such election in the notice.

B. Remedies. If the Tenant breaches any provision of this Lease, in addition to all other rights and remedies the City has at law or in equity, the City may do one or more of the following:

(i) Distrain for rent due any of Tenant's personal property which comes into the City's possession. This remedy shall include the right of the City to dispose of Tenant's personal property in a commercially reasonable manner. Tenant agrees that compliance with the procedures set forth in the Alaska Uniform Commercial Code with respect to the sale of property shall be a commercially reasonable disposal.

(ii) Re-enter the Premises, take possession thereof, and remove all property from the Premises. The property may be removed and stored at Tenant's expense, all without service of notice or resort to legal process, which Tenant waives, and without the City becoming liable for any damage that may result unless the loss or damage is caused by the City's negligence in the removal or storage of the property. No re-entry by the City shall be deemed an acceptance of surrender of this Lease. No provision of this Lease shall be construed as an assumption by the City of a duty to re-enter and re-let the Premises upon Tenant's default. If Tenant does not immediately surrender possession of the Premises after termination by the City and upon demand by the City, the City may forthwith enter into and upon and repossess the Premises and expel Tenant without being deemed guilty in any manner of trespass and without prejudice to any remedies which might otherwise be used for arrears of rent or breach of covenant;

(iii) Declare this Lease terminated;

(iv) Recover, whether this Lease is terminated or not, reasonable attorney's fees and all other expenses incurred by the City by reason of the default or breach by Tenant;

(v) Recover an amount to be due immediately upon breach equal to the sum of all rent, Additional Charges and other payments for which Tenant is obligated under the Lease;

(vi) Recover the costs of performing any duty of Tenant in this Lease;

(vii) Collect any and all rents due or to become due from subtenants or other occupants of the Premises.

13. SUBSIDENCE

The City shall not be responsible for any washout, subsidence, avulsion, settling or reliction to the Premises, nor for any injury caused thereby to the property of the Tenant or any sub-Tenant, or that of any other person. The City is not obligated to replace, refill, or improve any part of the Premises during Tenant's occupancy in the event of such washout, subsidence, avulsion, settling, or reliction.

14. VACATION BY TENANT

Upon the expiration or sooner termination of this Lease, Tenant shall peaceably vacate the Premises and the Premises shall be returned to the City by Tenant together with any alterations, additions or improvements made after the Commencement Date, unless the City requests that they be removed from the Premises. Upon such vacation, Tenant shall remove from the Premises any items of personal property brought on to the Premises. Any such property not removed from the Premises within thirty (30) days of the expiration or termination of this Lease shall become the property of the City at no cost or charge to the City, and may be removed, sold, destroyed or otherwise disposed of in any manner deemed appropriate by the City, all at Tenant's sole expense, and Tenant hereby agrees to pay the City for such expenses.

15. RESERVATION OF RIGHTS

The City reserves the right to designate and grant rights-of-way and utility easements across the Premises without compensation to Tenant or any other party, including the right of ingress and egress to and from the

Premises for the construction, operation and maintenance of utilities and access, provided that Tenant shall be compensated for the taking or destruction of any improvements on the Premises. Tenant shall be responsible for requesting a rental adjustment to reflect any reduction in the value of the Premises.

16. SIGNS

No signs or other advertising symbols, canopies, or awnings shall be attached to or painted on or within the Premises without approval of the City Manager first being obtained; provided, however, that this prohibition shall not apply to standard, directional, informational and identification signs of two square feet or less in size. At the termination of this Lease, or sooner, all such signs, advertising matter, symbols, canopies or awnings, attached or painted by Tenant shall be removed from the Premises by Tenant at its own expense, and Tenant shall repair any damage or injury to the Premises, and correct any unsightly conditions caused by the maintenance or removal of said signs.

17. HOLDING OVER

If Tenant with the City's written consent remains in possession of the Premises after the expiration or termination of the Lease term for any cause, or after the date in any notice given by the City to Tenant terminating this Lease, such holding over shall be deemed a tenancy from month to month at the same rental amount applicable immediately prior to such expiration or termination, subject to adjustment in accordance with CMC § 5.22.040(c) or such successor provision of the code then in effect, and shall be terminable on 30 days' written notice given at any time by either party. All other provisions of this Lease except those pertaining to term and rent shall apply to the month-to-month tenancy. If Tenant holds over without the City's express written consent, Tenant is deemed to be a tenant at sufferance and may be removed through a forcible entry and detainer proceeding without service on Tenant of a notice to quit.

18. EMINENT DOMAIN

If the whole or any part of the Premises shall be taken for any public or quasi-public use, under any statute or by right of eminent domain or private purchase in lieu thereof by a public body vested with the power of eminent domain, then the following provisions shall be operative.

- A. Total Taking.** If the Premises are totally taken by condemnation, this Lease shall terminate.
- B. Partial Taking.** If the Premises are partially taken by condemnation, then this Lease shall continue and the rent as specified in Section 3 above shall be abated in a proportion equal to the ratio that the portion of the Premises taken bears to the total Premises leased hereunder.
- C. Award.** Upon condemnation, the parties shall share in the award to the extent that their interests, respectively, are depreciated, damaged, or destroyed by the condemnation.

19. COSTS

Tenant shall be liable to and shall pay the City for the fees and costs incurred by the City in connection with the preparation, operation and enforcement of this Lease.

20. MISCELLANEOUS

- A. Time Is of the Essence.** Time is of the essence of this Lease and of each provision hereof.
- B. Entire Agreement.** This Lease represents the entire agreement between the parties with respect to the subject matter hereof, and may not be amended except in writing executed by the City and Tenant.
- C. Governing Law and Venue.** This Lease shall be subject to the provisions of the Code now or hereafter in effect. This Lease shall be governed by and construed in accordance with Alaska law and any action arising under this Lease shall be brought in a court of competent jurisdiction in Cordova, Alaska.

D. Relationship of Parties. Nothing in this Lease shall be deemed or construed to create the relationship of principal and agent, or of partnership, or of joint venture, or of any association between Tenant and the City. Neither the method of computation of rent, nor any other provisions contained in this Lease, nor any acts of the parties shall be deemed to create any relationship between the City and Tenant other than the relationship of Tenant and Landlord.

E. Notice. All notices hereunder may be hand-delivered or mailed. If mailed, they shall be sent by certified or registered mail to the following respective addresses:

TO CITY:

**City of Cordova
Attn: City Manager
P.O. Box 1210
Cordova, Alaska 99574**

TO TENANT:

**Cordova Outboard Inc.
Attn: William Fisher
P.O. Box 960
Cordova, Alaska 99574**

or to such other respective addresses as either party hereto may hereafter from time to time designate in advance in writing to the other party. Notices sent by mail shall be deemed to have been given when properly mailed, and the postmark affixed by the U.S. Post Office shall be conclusive evidence of the date of mailing. If hand-delivered, notice shall be deemed to have been made at the time of delivery.

F. Captions. Captions herein are for convenience and reference and shall not be used in construing the provisions of this Lease.

G. No Waiver of Breach. No failure by the City to insist upon the strict performance of any term, covenant or condition of this Lease, or to exercise any right or remedy upon a breach thereof, shall constitute a waiver of any such breach or of such term, covenant or condition. No waiver of any breach shall effect or alter this Lease, but each and every term, covenant and condition of this Lease shall continue in full force and effect with respect to any other existing or subsequent breach.

H. Survival. No expiration or termination of this Lease shall expire or terminate any liability or obligation to perform which arose prior to the termination or expiration.

I. Late Payment. In the event that any rent or other payment due under this Lease is not received by the City when due, a late fee of five percent (5%) per month of the principal amount due shall be due and payable until the full amount of rent or other payment is received by the City.

J. Partial Invalidity. If any provision of this Lease is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions shall remain in full force and effect and shall in no way be affected, impaired, or invalidated.

K. Successors and Assigns. The terms, covenants and conditions in this Lease shall inure to the benefit of and shall be binding upon the successors and permitted assigns of the City and Tenant.

L. Estoppel Certificates. Either party shall at any time and from time to time, upon not less than 10 days' prior written request by the other party, execute, acknowledge, and deliver to such party a statement certifying that this Lease is unamended and in full force and effect (or, if there has been any amendment, that the same is in full force and effect as amended and stating the amendments); that there are no defaults existing (or, if there is any claimed default, stating the nature and extent thereof); and stating the dates to which the rent and other charges have been paid in advance.

M. Recordation of Lease. The parties agree that this Lease shall not be recorded, but upon the request of either party, the other party will join the requesting party in executing a memorandum of lease in a form suitable for recording, and each party agrees that such memorandum shall be prepared and recorded at the requesting party's expense.

N. Authority. Tenant represents that Tenant is a for-profit corporation duly organized, validly existing, and in good standing under the laws of the State of Washington, and is duly authorized by the State of Alaska to do business as a foreign corporation in the State of Alaska, and that Tenant has all necessary power and is duly authorized to enter into this Lease and to carry out the obligations of Tenant hereunder. Prior to executing this Lease, Tenant shall provide the City with a certificate of authority issued by the State of Alaska, and shall provide the City with a resolution of Tenant's Board of Directors authorizing Tenant to enter into this Lease and to carry out its obligations hereunder as set forth above, and authorizing and directing the officer of Tenant whose name and signature appear at the end of this Lease to execute this Lease on Tenant's behalf.

O. Exhibits. Exhibit A to this Lease is hereby specifically incorporated into this Lease.

P. No Third Party Beneficiaries. Nothing in this Lease shall be interpreted or construed to create any rights or benefits to any parties not signatories or successors or permitted assigns of signatories to this Lease.

Q. Interpretation. The language in all parts of this Lease shall in all cases be simply construed according to its fair meaning and not for or against the City or Tenant as both City and Tenant have had the assistance of attorneys in drafting and reviewing this Lease.

R. Counterparts. This Lease may be executed in counterparts, each of which when so executed and delivered shall be deemed to be an original and all of which taken together shall constitute one and the same instrument.

S. Attorney's Fees. In the event that the City shall bring any suit or action to enforce this Lease or any term or provision hereof, and shall prevail in such suit or action, Tenant agrees that Tenant shall pay the City's attorney's fees, costs and expenses incurred in connection with such suit or action.

IN WITNESS WHEREOF, the parties have caused this Lease to be executed on the dates set opposite their respective signatures below.

CITY:

CITY OF CORDOVA

Dated: _____

By: _____
Its: City Manager

Attest: _____
City Clerk

TENANT:

Cordova Outboard Inc.

Dated: _____

By: _____
Its: William Fisher

Attested: _____