

ASSET SALES AGREEMENT

Agreement made this 10th day of December, 2018 by and between **Mackinac Island Freight Company, LLC**, a Michigan Limited Liability Company, hereafter referred to as Seller, and **City of Mackinac Island**, a Michigan Municipal Entity, hereafter referred to as Purchaser.

Whereas, Seller owns and/or has rights in certain real and personal property located within the City of Mackinac Island described more specifically herein; and

Whereas, subject to the terms and conditions provided in this agreement, the Seller agrees to sell said assets described herein to Purchaser and Purchaser agrees to acquire the same from Seller.

Witnesseth, in consideration of the mutual covenants and conditions set forth herein, the receipt and sufficiency of which is acknowledged by both parties to be good and valuable consideration, the parties agree as follows:

1. **Sale Assets**. The assets being conveyed pursuant to this agreement include the following:

A. Real Estate consisting of a one foot strip along the entire Easterly (lakefront) boundary of Lot 132, Assessor's Plat No. 3, City of Mackinac Island, Mackinac County, Michigan. It being the parties intent that the conveyance of real estate will convey all of Seller's riparian right, title and interest associated with said Lot 132, including any filled bottomlands lakeward from said one foot strip.

B. All of Seller's right, title and interest, if any, in what is referred to as the Coal Dock and Hardware Store, defined as the physical warf structure, and improvements thereon, including but not limited to fuel, storage and dispensary equipment, and any and all Seller's rights, if any, to the filled bottomlands and right to receive a bottomlands lease. The parties acknowledge that the Seller's right, title and interest in the Coal Dock, Hardware Store, filled bottomlands and right to bottomlands lease is currently subject to litigation in the Mackinac County Circuit Court Case Nos. 2016-07869-CH and 2016-07866-CZ and any appeal thereof.

2. **Purchase Price.** Purchaser agrees to pay the Seller a purchase price for the assets in the sum of \$2,850,000.00.

3. **Payment Terms.** The term of payment shall require the Purchaser to pay the entire purchase price at closing.

4. **Allocation of Purchase Price.** The parties agree that the purchase price shall be allocated between the Real Estate and the Personal Property by mutual agreement prior to closing. The parties further agree that the allocation shall be determined not later than 45 days following the effective date of this agreement.

5. **Earnest Deposit.** Simultaneously with the execution of this purchase agreement, Purchaser shall deposit in escrow with Purchaser's attorney, the amount of \$5,000.00, which shall be an earnest money deposit. Said deposit shall remain in the possession of the title company in a separate non-interest bearing account. At closing, subject to the conditions of this agreement, the deposit shall be applied toward the purchase price. If the closing does not occur as provided in this agreement for any reason other than the Purchaser's breach of this agreement, the earnest deposit shall be returned to the Purchaser. If this sale does not close due to Purchaser's breach, the earnest deposit shall be retained by Seller as liquidated damages.

6. **Condition Precedent to Closing.** The closing of the sale addressed in this Purchase Agreement is conditioned and contingent upon the following matters. To the extent any of the following conditions are not met or otherwise satisfied according to the terms of this agreement, this agreement shall be considered null and void and will thereafter be terminated. Said conditions are as follows:

A. **Title.** Within seven (7) days after the effective date of this agreement, the Purchaser shall order an ALTA owner's policy of title insurance, with standard exceptions. Purchaser shall also order a leaseholder policy of title insurance insuring Purchaser's leasehold interest in the bottomlands abutting the upland property being conveyed hereby.

With ten (10) days of the date said title work is received by Purchaser, Purchaser shall notify Seller of any objection to the status of the title disclosed. Seller will thereafter have thirty (30) days to remedy the title objection or advise the Purchaser that Seller is unwilling or unable to correct the objection in which case this agreement shall be considered null and void and thereafter terminated.

B. **UCC Search.** Purchaser shall conduct a UCC Search within seven (7) days of the effective date of this agreement to determine if there are any liens, encumbrances or other conditions unsatisfactory to Purchaser pertaining to the personal property being transferred pursuant to this Purchase Agreement.

With thirty (30) days of the date said search is conducted by Purchaser, Purchaser shall notify Seller of any objection to the status of the search. Seller will thereafter have thirty (30) days to remedy any unsatisfactory conditions or advise the Purchaser that Seller is unwilling or unable to correct the unsatisfactory condition in which case this agreement shall be considered null and void and thereafter terminated.

C. **Inspection.** Purchaser shall conduct, or cause to be conducted, an inspection of the sale assets and premises, including but not limited to a structural inspection and a Phase I Environmental Study, at Purchaser's expense. Said inspection shall be completed within forty-five (45) days after the effective date of this agreement. This agreement shall be subject to Purchaser's satisfaction with the results of any such inspection. Unless Purchaser advises Seller, in writing, that Purchaser is not satisfied with the inspection, the inspection shall be considered satisfactory and this contingent waived,

D. **Bond Financing.** The closing of this transaction is conditioned upon the Purchaser completing the sale of bonds being used to finance this purchase, on terms that are satisfactory to Purchaser. Purchaser agrees to pursue approval and sale of said bonds in good faith, as soon as possible after the effective date of this agreement, provided however, if the bond approval is not obtained through the legal process, this agreement shall be null and void and thereafter terminated.

E. **DEQ Approval.** The closing of this transaction is contingent upon the Michigan Department of Environmental Quality approval, said approval to include confirmation that the assets conveyed hereby will entitle Purchaser to obtain a deed to the filled bottomlands and a bottomlands lease.

F. **Other Owners.** The closing of this sale is contingent upon Purchaser being able to obtain a satisfactory bottomlands lease from the Michigan DEQ which provides the Purchaser the right to use the entire Coal Dock, including the entire foot print of the hardware store building, all mooring areas adjacent to the Coal Dock, and thereby resolving all such issues with adjacent property owners, being Mackinac Draft Trading Company, a Michigan corporation, Mighty Mac Building, LLC, a Michigan Limited Liability Company, and Trayser Properties, LLC, a Michigan Limited Liability Company. Purchaser shall notify Seller within 45 days of the effective date of this agreement if such agreements have been reached. If they have not been reached, this agreement shall be null and void and thereafter terminated.

7. **Warranties of Seller.** Seller represents and warrants to Purchaser, to the best of Seller's knowledge, that, except as otherwise provided herein, as of the date of this agreement and the date of closing, the following are true and correct:

A. There are no actions, suits or other proceedings pending against the assets being conveyed pursuant to this agreement before any federal, state, municipal or other governmental department that would have any material adverse effect on the assets (excepting the pending Coal Dock lawsuit in which the Purchaser is involved and is fully aware). Seller owns or will own at closing, all of the sale assets free and clear of any encumbrances other than liens of taxes for the current tax year EXCEPT for a lease of a portion of the sale premises between Mackinac Island Ferry Capital, LLC and the Seller, which will remain in effect subsequent to closing with Purchaser assuming all landlord's rights and obligations therein.

B. But for any specific statements or warranties contained in this agreement, the Seller makes no further warranty regarding any condition of the sale assets or their use for any particular purpose. All assets are being conveyed to Purchaser in an "as is" condition.

8. **Closing.** The parties agree to close this transaction at a title company of Purchaser's choosing. The parties agree to close this transaction forthwith following the satisfactory completion of all conditions referenced in Paragraph 6. At closing both parties agree to execute any and all documents reasonably necessary to complete the transaction, including but not limited to a Warranty Deed and a Bill of Sale pertaining to all real estate and personal property being conveyed. Purchaser is aware that Seller is acquiring ownership of the sale assets from a third party subsequent to the effective date of this agreement and the closing may, if Seller so chooses, involve a direct conveyance from the third party to the Purchaser for the sale assets covered by this purchase agreement, provided that the terms of said conveyance are identical, as they affect Purchaser, to the terms and conditions in this agreement.

9. **Tax Proration.** All real and personal property taxes associated with the sale assets shall be prorated as of the date of closing on a calendar year basis with the taxes being deemed paid in advance.

10. **Closing Costs.** At closing Seller shall be responsible for its attorney fees and one-half of the closing agent's fee. Buyer shall be responsible for the title policies, transfer tax, recording fees and one-half of the closing agent's fee.

11. **Broker.** Each party represents to the other that there has been no broker or finder engaged in connection with this sale. Each party agrees that should any claim be made for brokerage commissions or finder's fees by any broker or finder by, through or on account of any acts of such party or its representative, such party will indemnify and hold the other party free and harmless from and against any and all loss, liability, costs, damage or expense in connection therewith. This provision shall survive closing.

12. **Assignment.**

13. **Remedies.** In the event of default by either party, the non-defaulting party shall have all rights and remedies available at law or equity, including but not limited to the right to specific performance.

14. **Notice.** All notices, requests, demands and other communications hereunder shall be by facsimile, e-mail transmission or certified mail, return receipt requested, with postage prepaid to the address set forth below or to such other addresses as either party may designate in writing from time to time. Notices shall be effective as of the date received.

Notices to Purchaser shall be sent to:

Arnold Freight

Attention: Veronica Dobrowolski

Fax:

Email:

Notice to Seller shall be sent to:

City of Mackinac Island

Attention: Danielle Wightman, Clerk

P.O. Box 455

Mackinac Island, MI 49757

Fax: (906)847-6430

Email: clerk@cityofmi.org

15. **Severability.** If any portions of this Agreement should be invalid under applicable existing law, then such portions are to be modified in the letter and spirit of this Agreement to the extent permits by applicable law so as to be rendered valid. Any portions of this Agreement which are invalid under applicable law shall not render this Agreement or any other part hereof invalid, but such invalid portions shall be inapplicable under the parties hereto have made appropriate changes, in according with applicable law, to achieve the spirit of the invalid provisions.

16. **Controlling Law.** This Agreement shall be governed under and construed under the internal laws of the State of Michigan.

17. **Entire Agreement.** This agreement embodies (including the exhibits and the agreements expressly referenced herein) the entire agreement between the parties hereto with respect to the

transactions contemplated herein. There have been and are no agreements, representations or warranties between the parties with respect to this transaction other than those set forth and provided herein. All prior discussions, negotiations, letters or other written and oral communications, if any, are fully merged into this agreement and are of no further force or effect. This agreement may be modified, amended, or waived only by a writing signed by the duly authorized representatives of both parties.

18. **Counterparts**. This Agreement may be executed in counterparts, each of which constitutes one (1) Agreement. Headings are for convenience only and shall have no interpretive effect.

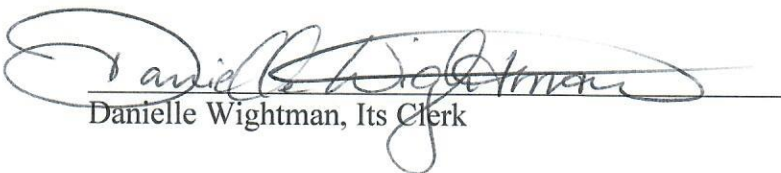
SELLER:

Mackinac Island Freight Company, LLC, By:

PURCHASER:

City of Mackinac Island, By:

Margaret Doud, Its Mayor



Danielle Wightman, Its Clerk