

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION**

<p>Shepler's Inc. d/b/a Shepler's Mackinac Island Ferry Service, and Mackinac Island Ferry Company d/b/a Arnold Transit Company,</p> <p style="text-align: center;">Plaintiffs,</p> <p style="text-align: center;">v.</p> <p>City of Mackinac Island,</p> <p style="text-align: center;">Defendant.</p>	<p>Case No. 2:25-cv-36</p> <p>In Admiralty</p>
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COMPLAINT

Plaintiffs Shepler's Inc. d/b/a Shepler's Mackinac Island Ferry Service and Mackinac Island Ferry Company d/b/a Arnold Transit Company, as and for their Complaint against Defendant City of Mackinac Island, state and allege as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction in admiralty pursuant to 28 U.S.C. § 1333(1) because this case involves a dispute over a maritime contract. Plaintiffs further hereby designate this case as being within the Court's admiralty jurisdiction pursuant to Fed. R. Civ. P. 9(h).

2. Venue is proper in this district pursuant to 28 U.S.C. § 1391 because Defendant is a resident in this district as defined in the statute.

3. This Court is authorized to grant declaratory relief as requested by Plaintiffs herein pursuant to 28 U.S.C. § 2201.

PARTIES

4. Plaintiff Shepler's Inc. d/b/a Shepler's Mackinac Island Ferry Service is a Michigan Domestic Profit Corporation with its principal place of business located at 556 E Central Ave, Mackinaw City, MI 49701.

5. Plaintiff Mackinac Island Ferry Company d/b/a Arnold Transit Company is a Michigan Domestic Profit Corporation with its principal place of business located at 587 N. State St., St. Ignace, MI 49781.

6. Defendant City of Mackinac Island is a Michigan municipality located in Mackinac County, Michigan.

STATEMENT OF FACTS

7. The City of Mackinac Island (the "City") is located on Mackinac Island, an island located wholly within Lake Huron, a navigable waterway of the United States. The City encompasses the entire island.

8. Mackinac Island is a historically significant tourist destination with approximately 1.5 million people visiting the island each year from around the world. The 2020 census listed that 583 residents live in the City.

9. The City's nearest land-based cities are St. Ignace, located in Mackinac County, Michigan, in Michigan's Upper Peninsula, and Mackinaw City, located in both Cheboygan and Emet Counties, Michigan, in Michigan's Lower Peninsula.

10. The Michigan Legislature founded the City of Mackinac Island in 1899. Under Chapter XVI, the City's founding charter provided that:

The council of said city may regulate and license ferries from such city or any place of landing therein to the opposite shore, or from one part of the city to another; and may require the payment of such reasonable sum for such license as to the council shall deem proper and may impose such reasonable terms and restrictions in relation to the keeping and management of such ferries, and the time, manner, and rates of carriage and transportation of persons and property as may be proper, and provide for the revocation of any such licenses and for the punishment, by proper fines and penalties, of the violation of any ordinance prohibiting unlicensed ferries. and regulating those established and licensed.

11. The City operates its decision-making through a mayor and a city council (the "City Council"). The mayor presides over the City Council meetings, which consist of regular meetings and certain special meetings.

12. On June 20, 2012, the City Council approved Ordinance Number 465, which became effective July 10, 2012 (the "Ordinance"). The Ordinance regulates ferry boat operations to and from the City, and thus the entirety of Mackinac Island. In pertinent part, it states that "no person shall operate a ferry boat service nor shall any person provide a ferry boat service in the City without such person having first obtained a franchise from the city."

13. Under Section 9, related to ferry boat rates, the Ordinance provides that:

No ferry boat company shall make any unjust or unreasonable discrimination in rates, charges, classifications, promotions, practices, regulations, facilities or services for or in connection with ferry boat services, nor subject any person to any prejudice or disadvantage in any respect whatsoever; however, this shall not be deemed to prohibit the establishment of a graded scale of charges and classification of rates to which any customer or passenger coming within such classification shall be entitled.

14. Under Section 14, related to fees charged by the City to franchisees, the Ordinance provides that:

During the term of any franchise granted pursuant to this division for the operation of ferry boat service, the person granted such franchise shall pay to the City in consideration of the granting of such franchise[.]

15. Plaintiff Shepler's Inc. d/b/a Shepler's Mackinac Island Ferry Service ("Shepler's") is a family-based company that has been operating ferry services to and from Mackinac Island for approximately eighty years. In doing so, Shepler's has worked closely with the City Council to ensure that it meets the transportation needs for Mackinac Island, including the specific needs for residents, commuting workers, and tourists. Shepler's operates ferry services between Mackinac Island and St. Ignace, and between Mackinac Island and Mackinaw City.

16. Shepler's also owns property in both St. Ignace and Mackinaw City. With this property, Shepler's has developed parking lots, which it uses to operate a business for parking services.

17. On or about June 27, 2012, Shepler's entered into a contract with the City for the purpose of establishing a "nonexclusive ferryboat franchise authorizing [Shepler's] to operate a public ferryboat service to and from the City of Mackinac Island[.]" ("Shepler's Contract"). (Attached hereto as **Exhibit 1** is the Contract between the City and Shepler's.)

18. The Shepler's Contract has a twenty-five-year term, from July 1, 2012 to June 30, 2027.

19. In consideration of Shepler's right to operate its ferry boat services, Shepler's pays the City a seasonal monthly franchise fee.

20. The Shepler's Contract provides that Shepler's shall "file its schedule of services and rates for the next season," and, through a prescribed "MEMORANDUM OF UNDERSTANDING," the contract provides that: "All lines determine their own schedules and rates. However, the boat lines will file their schedules and rates with the City."

21. Under Section 9, the Shepler's Contract provides that:

In the event that no competition is found to exist in ferry boat service to and from the City, the City has the right to assert its jurisdiction over schedules and fares to the extent permitted by present law.

22. The Shepler's Contract constitutes a federal maritime contract because the principal objective of that contract is maritime commerce, specifically to transport persons and property, from all over the world, over a navigable waterway of the United States.

23. In 2022, Hoffmann Family of Companies (the "Hoffmann Family") purchased Shepler's, creating a partnership between the Shepler family and the Hoffmann family. The Shepler family remains critically involved in the operations of the company.

24. Plaintiff Mackinac Island Ferry Company d/b/a Arnold Transit Company ("MIFC") is the culmination of several companies with approximately 140 years of experience with ferry services to and from Mackinac Island. MIFC also operates ferry services between Mackinac Island and St. Ignace, and between Mackinac Island and Mackinaw City.

25. MIFC also owns property in both St. Ignace and Mackinaw City. With this property, MIFC operates a business for parking services.

26. On or about October 18, 2023, MIFC entered into a contract with the City for the purpose of establishing a "nonexclusive ferryboat franchise authorizing [Arnold Transit] to operate a public ferryboat service to and from the City of Mackinac Island[.]" ("MIFC Contract"). (Attached hereto as **Exhibit 2** is the Contract between the City and MIFC.)

27. Although entered into years later, the terms of MIFC Contract are otherwise identical to the Shepler's Contract, including the same expiration date of June 30, 2027.

28. Because of their similarities, both the Shepler's Contract and the MIFC Contract are commonly referred to as the "Franchise Agreement," identifying the contract between the City and the respective franchisee.

29. In consideration of MIFC's right to operate its ferry boat services, MIFC pays the City a seasonal monthly franchise fee.

30. The MIFC Contract provides that MIFC shall "file its schedule of services and rates for the next season," and, through a prescribed "MEMORANDUM OF UNDERSTANDING," the contract provides that: "All lines determine their own schedules and rates. However, the boat lines will file their schedules and rates with the City."

31. Under Section 9, the MIFC Contract provides that:

In the event that no competition is found to exist in ferry boat service to and from the City, the City has the right to assert its jurisdiction over schedules and fares to the extent permitted by present law.

32. The MIFC Contract constitutes a federal maritime contract because the principal objective of that contract is maritime commerce, specifically to transport persons and property, from all over the world, over a navigable waterway of the United States.

33. The first several months of MIFC's performance under the MIFC Contract were tumultuous. Passengers lodged numerous complaints with the City Council related to MIFC's services, and the need to address MIFC's lackluster operations became a continuous problem for the City. During this same period, Shepler's operated a first-class ferry service without any of these same problems.

34. In 2024, to remedy the ongoing concerns, the City initiated communications with representatives from the Hoffmann Family about a potential purchase of MIFC. The City encouraged the Hoffmann Family to invest in MIFC, thus providing Mackinac Island with two ferry companies that are capable of first-class ferry service.

35. During the Hoffmann Family's due diligence for a potential purchase of MIFC, it was discovered that MIFC would require a substantial capital investment because of its aging fleet and outdated operations.

36. Despite these concerns, on or about June 28, 2024, the Hoffmann Family purchased MIFC, recognizing that MIFC provided a long-term business opportunity.

37. Shortly after its purchase, the Hoffmann Family discovered that MIFC's assets were in a worse condition than was originally known. The Hoffmann Family found that MIFC's ferry fleet required significant repairs, many of which raised critical safety concerns. During the first several months

of ownership, the Hoffmann Family invested approximately \$6 million in MIFC, the majority of which went to repair and modernize the fleet.

38. The necessary repairs disrupted MIFC's ferry services in 2024. To help remedy the problem, the Hoffmann Family worked closely with the City Council, including utilizing Shepler's fleet to help ensure that the island had adequate ferry services during MIFC's rehabilitation.

39. In the fall of 2024, as required under the Franchise Agreement, both Shepler's and MIFC submitted their proposed rates for ferry services to the City Council for the 2025 season.

40. Both Shepler's and MIFC proposed a slight increase in their ticket rates for the 2025 season. To explain the increase, representatives for Shepler's and MIFC notified the City that, in addition to the substantial capital investments that need to be recouped over time, both Shepler's and MIFC were experiencing a significant increase in expenses, including a \$500,000 increase in fuel prices, an increase in local taxes of \$50,000, a \$1,900,000 increase in payroll, and the approximately \$420,000 in lost ticket value that Shepler's and MIFC, in conjunction with the City, gives away for purposes of promotion.

41. In addition to a slight increase in ferry rates, Shepler's and MIFC's submission also included certain ancillary costs, allowing customers to choose between different services based on the customer's specific needs. For example, Shepler's instituted significant technology improvements for its ferry services

that incentives mobile technology over traditional paper tickets. In turn, while customers can use traditional tickets, doing so comes with a slight cost.

42. In their continued discussions with the City, Shepler's and MIFC emphasized that their priority is to draw as many passengers as possible to Mackinac Island through safe and efficient ferry services. They explained that they generate revenue through a high volume of tourists to the island, which is a shared interest with other business on Mackinac Island. Shepler's and MIFC explained their shared interest in the viability of Mackinac Island's tourist industry.

43. On or about September 11, 2024, the City Council passed a resolution that rejected Shepler's and MIFC's proposed rate increase for ferry boat services and their proposal for additional ancillary costs. The resolution states that the "recent purchase of all the ferry boat companies by one company presents the City with a monopoly situation, a situation the City has never faced before." The resolution states that the City is "freezing the rates that were in place for the 2024 season," with certain listed exceptions

44. Plaintiffs dispute that the Franchise Agreement provides the City with unilateral authority to declare a "monopoly," or specifically the existence of "no competition," for purposes of regulating the rates for ferry services under that Franchise Agreement.

45. Plaintiffs also dispute that the Franchise Agreement provides the City with authority to reject their proposed ancillary costs.

46. On or about September 11, 2024, the City also formally resolved that “parking rates must be brought to the City Council by January 8, 2025.” These parking rates reference the rates that Shepler’s and MIFC charge for parking on their respective lots in either St. Ignace or Mackinaw City.

47. During the winter of 2024-2025, representatives from the Hoffmann Family, on behalf of Shepler’s and MIFC, sought to work with the City Council, including an explanation regarding why a ferry rate increase for 2025, with some additional ancillary costs, is important because of increased expenses. On January 8, 2025, the City stated that, while “the Council appreciate the hard work that Hoffmann has put in to providing ferry services to Mackinac Island,” the City “does not have an understanding [of the] full costs as that is not shared with the City.” The City’s mayor unilaterally declared that “the City is dealing with a monopoly[.]”

48. On or about February 4, 2025, in the interest of continued cooperation with the City Council, counsel for Plaintiffs shared their proposed parking rates for 2025 for the parking lots located on Mackinaw Island and St. Ignace. In doing so, however, Plaintiffs’ counsel also stated that “the City has no right under the Francise Agreements [to approve] the schedule and parking rates[.]”

49. On February 19, 2025, the City Council unanimously passed a motion that (a) “rejected” both Shepler’s and MIFC’s proposed parking rates; (b) demanded that they both “remove all reference to the unapproved parking rates from their websites, other distributions, and advertisements; and (c) demanded that they provide the City with information regarding their parking rates from 2023 and 2024, including information on lot locations and capacities.

50. The following week, on February 26, 2025, the City unanimously passed another motion related to parking, which restated its prior motion, and gave Shepler’s and MIFC’s until March 3, 2025 to comply. During this meeting, counsel for the City stated that City’s legal position is, at least in part, the “Franchise Agreement” provides the City with its authority to make these demands.

51. Plaintiffs dispute that the Franchise Agreement provides the City with any authority, whether direct or implied, to regulate Plaintiffs’ parking businesses in either Mackinaw City or St. Ignace.

COUNT I
(Declaratory Judgment Under 28 U.S.C § 2201)

52. The preceding paragraphs are hereby realleged and incorporated by reference as if fully set forth herein.

53. Pursuant to 28 U.S.C. § 2201, an “actual controversy” exists between Plaintiffs and Defendant regarding the “rights and other legal relations” related to the Franchise Agreement.

54. Under Section 9, the Franchise Agreement provides that:

In the event that no competition is found to exist in ferry boat service to and from the City, the City has the right to assert its jurisdiction over schedules and fares to the extent permitted by present law.

55. Citing the Franchise Agreement, Defendant has unilaterally declared that a monopoly exists for ferry services to and from Mackinac Island and thus Defendant can establish its own fares for these services.

56. Plaintiffs dispute that the Franchise Agreement empowers Defendant to unilaterally “find” the existence of a “no competition” for purposes of establishing fares.

57. Citing the Franchise Agreement, Defendant has taken the position that it can regulate Plaintiff’s proposed ancillary costs related to its ferry services.

58. Plaintiffs dispute that the Franchise Agreement empowers Defendant to regulate ancillary costs related to their ferry services that are not fares for the same.

59. Citing the Franchise Agreement, Defendant has also unilaterally declared that it can regulate the Plaintiffs’ parking businesses in Mackinaw

City and St. Ignace, including requesting that Plaintiffs cease advertising and compelling the production of financial documents.

60. Plaintiffs dispute that the Franchise Agreement empowers Defendant to regulate Plaintiffs' parking businesses in Mackinaw City and St. Ignace, including any power to demand that they cease advertising or compel their production of financial documents.

WHEREFORE, Plaintiffs pray for judgment as follows:

1. For the Honorable Court to enter a declaratory judgment declaring that the "no competition is found to exist" clause under Section 9 of the subject contracts does not permit Defendant to unilaterally declare the existence of a monopoly for purposes of regulating schedules and fares for ferry services.

2. For the Honorable Court to enter a declaratory judgment declaring that the "schedules and fares" clause under Section 9 of the subject contracts does not include ancillary costs that Plaintiffs may choose to charge customers that are not traditional schedules or fares related to ferry services.

3. For the Honorable Court to enter a declaratory judgment declaring that the "schedules and fares" clause under Section 9 of the subject contracts is specifically limited to schedules and fares for the operation of Plaintiff's ferry business and not for Plaintiffs other businesses.

4. For pre- and post-judgment interest;

5. For all expenses, and costs and disbursements, as allowed by law;
6. Such other and further relief the Honorable Court deems just and equitable.

ECKLAND & BLANDO LLP

Dated: March 3, 2025

S/ ROBERT T. DUBE, JR.
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Counsel for Plaintiffs

FRANCHISE

CURRENT

THE CITY OF MACKINAC ISLAND ORDAINS:

Section 1. A nonexclusive ferryboat franchise authorizing the Franchisee to operate a public ferryboat service to and from the City of Mackinac Island is hereby granted to Shepler's Mackinac Island Ferry Service (hereinafter referred to as "Franchisee") by the City of Mackinac Island ("City") upon acceptance by the Franchisee of the terms and conditions stated herein.

Section 2. The term of this Franchise shall be from July 1, 2012 to June 30, 2027, provided however, that for a thirty (30) day period commencing on June 1, 2017, the Franchisee shall have the option to terminate this Franchise and to enter into a new Franchise, the terms and condition of which shall be the same as this Franchise except the expiration date of the new Franchise shall be June 30, 2032. Said option shall be exercised by the Franchisee providing written notice of the exercise of the option sent to the City Clerk by certified U.S. mail, return receipt requested.

Section 3. Not later than November 15 of each year, the Franchisee shall file its schedule of services and rates for the next season with the City Clerk. The Franchisee shall operate in accordance with its schedule of services on file with the City Council ("Council"), although it may deviate from that schedule for up to four (4) days at a time without notice to the Council to meet short term operational necessities. The Franchisee shall file a schedule of services with the Council annually and whenever a change is made which will last for more than four (4) days. However, nothing herein shall be interpreted as limiting the Franchisee from offering ferryboat services in addition to the services contained in its filed schedule of services, except as provided in Section 4 below.

Section 4. Franchisee shall provide ferry boat service to and from the City during the regular ferry boat season which is the period of time between April 21 of any calendar year and October 31 of the same calendar year during the term, and during any extended term, of this Franchise. Franchisee agrees that only the ferry boat company franchisee selected to provide service during the winter ferry boat season, which is the period of time between November 1 of any calendar year and April 20 of the following calendar year, shall provide ferry boat service during that winter ferry boat season.

Section 5. For ferry boat service during the winter ferry boat seasons between November 1, 2013 and April 20, 2018, and for each subsequent five year period after that period for so long as this Franchise is in effect, the City will seek proposals from all of the ferry boat company franchisees for providing ferry boat service during the winter ferry boat season in exchange for a \$100,000 per year credit from the City against the franchise fees owed by the company selected to provide the service during the winter ferry boat season. If no proposal is received by the City for adequate service during any winter ferry boat season, the City reserves the right to act in ways necessary or appropriate to ensure that service is provided, including but not limited to the right to modify all ferry boat service franchises. On the first day of July of every year, commencing on July 1, 2013, the \$100,000 per year credit shall be increased by the same percentage CPI increase provided in Section 8 of this Franchise for franchise fees.

Section 6.

- a. During the original term and any extended term of this Franchise, the charge for City residents for off season ferry boat service shall be Five Dollars (\$5.00) per person one way, with any resident or seasonal pass previously purchased.

- b. During the period of July 1, 2012 through October 31, 2012, the Franchisee shall not increase its rates, fares and charges on file with the Council as of June 1, 2012.

Section 7. The Clerk is directed to issue a certificate evidencing the existence of this franchise, which certificate must be publicly displayed on all of the Franchisee's ferryboats providing ferryboat service.

Section 8.

- a. During the term of this franchise, the Franchisee agrees to pay to the City of Mackinac Island in consideration of the granting of this franchise, a franchise fee determined as follows:

- (1) For calendar year 2012 or any part of 2012 a franchisee shall pay a sum equal to \$600,000 divided by the number of ferry boat franchises in effect. Provided, however, that any amount paid by a franchisee in 2012 as franchisee fees pursuant to City of Mackinac Ordinance No.454 shall be credited against that franchisee's obligation to pay franchisee fees under Ordinance No. 465 for 2012.

- (2) During all calendar years beginning on or after January 1, 2013, a franchisee shall pay a monthly fee equal to the base sum of \$50,000 divided by the number of ferry boat franchises in effect for the month the franchise fee is owed; provided, however, on July 1 of each calendar year after 2012, the \$50,000 base sum shall be adjusted by an increase equal to any percentage increase in the cost-of-living for the preceding one year period as reflected in the Consumer Price Index, All Urban Consumers (CPI-U), U.S. City Average published by the Bureau of Labor Statistics of the U.S. Department of Labor. If that Consumer Price Index is subsequently discontinued, the Council shall select comparable statistics on the cost of living as they are computed and published by the federal government.

- b. The monthly franchise fee shall be due and payable on the last day of each month, Provided, however, at the election of the franchisee, the total franchise fee owed by that franchisee for a calendar year, may be paid, without penalty, in six equal

installments on the 15th day of June, July, August, September, October and November of that year. Such franchise fee shall be paid at the treasurer's office of the City during regular business hours. If the City treasurer's office is closed on the due date, then payment may be made during regular business hours on the next following day on which the office is open for business.

- c. No acceptance of any payment shall be construed as a release or as an accord and satisfaction of any claim the City may have for further or additional sums payable as a franchise fee under this section or for the performance of any other obligation under this division.

Section 9. In the event that no competition is found to exist in ferry boat service to and from the City, the City has the right to assert its jurisdiction over schedules and fares to the extent permitted by present law.

Section 10. This franchise may not be sold, transferred or assigned unless such transaction is first approved by the Council after receipt of a written application therefor, containing the same information as to the transferee as would be required of an original applicant.

Section 11. This franchise is subject to all applicable provisions of the Charter of the City of Mackinac Island and ordinances thereof, particularly Ordinance No. 465, being the Ferry Boat Code, as well as the laws and Constitution of the State of Michigan, and shall, whenever possible, be construed as consistent with them.

Section 12. The franchisee shall comply with the agreements made by it in its Application for this franchise.

Section 13. This franchise shall not be given any value by any court or other authority, public or private, in any proceeding of any nature or character whatsoever, wherein or whereby the City of Mackinac Island shall be a party or affected therein or thereby.

Section 14. Should any section, clause or provision of this franchise be declared to be invalid by a court of record, the same shall not affect the validity of the franchise as a whole or any part thereof, other than the part so declared invalid.

Section 15. This franchise shall be of no effect unless and until the Franchisee accepts the franchise and agrees to abide by all terms and conditions thereof.

Section 16. Franchisee and the City agree to abide by the terms of the June 2, 2012 Memorandum of Understanding, the terms of which are set forth below, to the extent that those terms do not conflict with the terms of this Franchise. In the case of conflict, the terms of this Franchise shall govern.

Section 17. This franchise shall become a binding and enforceable contract, upon the signing of both parties. The Mayor of the City of Mackinac Island is hereby authorized and directed to sign this franchise on behalf of the City.

MEMORANDUM OF UNDERSTANDING

- 1) 15 year franchise with the understanding that after five years, there is a right to enter into a new 15 year franchise.
- 2) All lines determine their own schedules and rates. However, the boat lines will file their schedules and rates with the City. There is a commitment by not less than two of the lines to maintain not more than their present maximum rate for the summer season of 2012.
- 3) \$600,000 annual franchise fee with an annual CPI Adjustment to be split equally among all operating boat lines.
- 4) \$100,000 subsidy to boat line operating ice to ice in exchange for their providing exclusive passenger service in the off-season. Off-season service will be placed up for bid annually with the guarantee of the \$100,000 subsidy. In the event there are no bidders for

winter service, the City reserves its right to act in ways necessary or appropriate to ensure that off-season services are offered. The charge for local residents for off-season service will be \$5.00 per person one way, with any resident or seasonal pass previously purchased.

- 5) Year round freight services may be offered by any franchisee.
- 6) On July 1, the 7% franchise fee ends along with the current franchises. New franchises will be issued immediately containing the provisions contained in this memorandum. The \$600,000 will be pro-rated this season and paid in full beginning in the summer season of 2013.
- 7) Plante Moran study will not go forward.
- 8) Action on any proposed legislation will be suspended until at least June 12, 2012. If the City Council adopts the content of this memorandum, the legislation will be permanently postponed or tabled.
- 9) The Mayor will ask the City Council to act on the proposed new agreement during the week of June 4, 2012.
- 10) All signatories agree that they will fully support the contents of this memorandum and urge the Public and the Council to do likewise.
- 11) In the event that no competition is found to exist, the City has the right to assert its jurisdiction over schedules and fares to the extent permitted by present law.

Approved and adopted as Ordinance No. 467, at the regular City Council meeting held June 27, 2012.
Posted in Community Hall, Post Office, First National Bank and Central Savings Bank - All Mackinac Island

Karen S. Lennard

City Clerk

This franchise agreement entered into by the aforesaid parties this 27th day of June, 20 12.

By: Margaret A. Dorel
Title: Mayor, City of Mackinac Island

Witnesses:
Meredith Bagley
Wendy J. Wambinski

THE FRANCHISEE HEREBY ACCEPTS THIS FRANCHISE AND EXPRESSLY AGREES TO ABIDE BY ALL THE TERMS AND CONDITIONS CONTAINED HEREIN.

Christopher B. Szepter
By: Christopher B. Szepter
Title: Vice President

Witnesses: Geoff Hoekesem?
X [Signature]
[Signature]
Steve Mott

 **COPY**
*original in
Ordinance file*

CERTIFICATION OF ORDINANCE PUBLICATION/POSTING

RE: Ordinance Number: No. 617

Date Approved: October 18, 2023

Date Effective: October 18, 2023

**Ordinance Title: Amendment and Restatement of Franchise - Mackinac Island Ferry
Company**

~~I certify that I have caused a copy of the foregoing ordinance (which I have compared to this original) to be published in the _____, (if applicable), a newspaper of general circulation within the City limits, on _____.~~

OR

I certify that I have caused the foregoing ordinance to be posted in the following five (5) public places within the City limits:

- 1. First National Bank of St. Ignace**
- 2. Mackinac Island Post Office**
- 3. Outside of City Hall**
- 4. Community Hall**
- 5. Central Savings Bank**

Dated: October 18, 2023


Danielle Leach, City Clerk

EXHIBIT
2



AMENDMENT AND RESTATEMENT OF FRANCHISE

THE CITY OF MACKINAC ISLAND ORDAINS:

Section 1. A nonexclusive ferryboat franchise authorizing the Franchisee to operate a public ferryboat service to and from the City of Mackinac Island is hereby granted to Mackinac Island Ferry Company, hereafter MIFC, (hereinafter referred to as “Franchisee”) by the City of Mackinac Island (“City”) upon acceptance by the Franchisee of the terms and conditions stated herein.

Section 2. The term of this Franchise shall be from July 1, 2012 to June 30, 2027, provided however, that for a thirty (30) day period commencing on June 1, 2017, the Franchisee shall have the option to terminate this Franchise and to enter into a new Franchise, the terms and condition of which shall be the same as this Franchise except the expiration date of the new Franchise shall be June 30, 2032. Said option shall be exercised by the Franchisee providing written notice of the exercise of the option sent to the City Clerk by certified U.S. mail, return receipt requested. For the Franchise of the Franchisee who has the winter service contract for the winter ferry boat season between November 1, 2027 and April 20, 2028, that Franchisee’s Franchise term shall continue through April 20, 2028.

Section 3. Not later than November 15 of each year, the Franchisee shall file its schedule of services and rates for the next season with the City Clerk. The Franchisee shall operate in accordance with its schedule of services on file with the City Council (“Council”), although it may deviate from that schedule for up to four (4) days at a time without notice to the Council to meet short term operational necessities. The Franchisee shall file a schedule of services with the Council annually and whenever a change is made which will last for more than four (4) days. However, nothing herein shall be interpreted as limiting the Franchisee from

offering ferryboat services in addition to the services contained in its filed schedule of services, except as provided in Section 4 below.

Section 4. Franchisee shall provide ferry boat service to and from the City during the regular ferry boat season which is the period of time between April 21 of any calendar year and October 31 of the same calendar year during the term, and during any extended term, of this Franchise. Franchisee agrees that only the ferry boat company franchisee selected to provide service during the winter ferry boat season, which is the period of time between November 1 of any calendar year and April 20 of the following calendar year, shall provide ferry boat service during that winter ferry boat season.

Section 5. For ferry boat service during the winter ferry boat seasons between November 1, 2013 and April 20, 2018, and for each subsequent five year period after that period for so long as this Franchise is in effect, the City will seek proposals from all of the ferry boat company franchisees for providing ferry boat service during the winter ferry boat season in exchange for a \$100,000 per year credit from the City against the franchise fees owed by the company selected to provide the service during the winter ferry boat season. If no proposal is received by the City for adequate service during any winter ferry boat season, the City reserves the right to act in ways necessary or appropriate to ensure that service is provided, including but not limited to the right to modify all ferry boat service franchises. On the first day of July of every year, commencing on July 1, 2013, the \$100,000 per year credit shall be increased by the same percentage CPI increase provided in Section 8 of this Franchise for franchise fees. Provided however, the City and all currently existing Franchisees agree that for ferry boat service during the winter ferry boat seasons between November 1, 2023 and April 20, 2028, the terms of the Winter Service Agreement, attached hereto as Exhibit A and incorporated by

reference, have been negotiated and agreed to and any provision in that Winter Service Agreement that is contrary to this Franchise Agreement shall be deemed to amend this Franchise Agreement.

Section 6.

- a. During the original term and any extended term of this Franchise, the charge for City residents for off season ferry boat service shall be Five Dollars (\$5.00) per person one way, with any resident or seasonal pass previously purchased.
- b. During the period of July 1, 2012 through October 31, 2012, the Franchisee shall not increase its rates, fares and charges on file with the Council as of June 1, 2012.

Section 7. The Clerk is directed to issue a certificate evidencing the existence of this franchise, which certificate must be publicly displayed on all of the Franchisee's ferryboats providing ferryboat service.

Section 8.

- a. During the term of this franchise, the Franchisee agrees to pay to the City of Mackinac Island in consideration of the granting of this franchise, a franchise fee determined as follows:
 - (1) For calendar year 2012 or any part of 2012 a franchisee shall pay a sum equal to \$600,000 divided by the number of ferry boat franchises in effect. Provided, however, that any amount paid by a franchisee in 2012 as franchisee fees pursuant to City of Mackinac Ordinance No.454 shall be credited against that franchisee's obligation to pay franchisee fees under Ordinance No. 465 for 2012.
 - (2) During all calendar years beginning on or after January 1, 2013, a franchisee shall pay a monthly fee equal to the base sum of \$50,000 divided by the number of ferry boat franchises in effect for the month the franchise fee is owed; provided, however, on July 1 of each calendar year after 2012, the \$50,000 base sum shall be adjusted by an increase equal to

any percentage increase in the cost-of-living for the preceding one year period as reflected in the Consumer Price Index, All Urban Consumers (CPI-U), U.S. City Average published by the Bureau of Labor Statistics of the U.S. Department of Labor. If that Consumer Price Index is subsequently discontinued, the Council shall select comparable statistics on the cost of living as they are computed and published by the federal government.

(3) As of the date of the Winter Service Agreement (Exhibit A), MDOT, through the MTF under Act 51 is providing 50% (\$100,000) of the current consideration (\$200,000.00) being paid to the Franchise company selected to provide the service during the winter ferry boat season between November 1, 2023 and April 20, 2024, which is reimbursed to the City. If, in any year of the remaining years of the Winter Service Agreement attached hereto, the City or MITA does not receive the full 50% reimbursement of the then-current consideration, paid to the Franchise company selected to provide the service during the winter ferry boat season under that Winter Service Agreement, from MDOT, through MTF funding, the difference of what is not received through that funding (up to 50% of the then-current consideration) will be made up by an increase to the Franchise Fee, paid by the Franchise holders equally, in an amount equal to the funding not reimbursed through MDOT and MTF funding.

- b. The monthly franchise fee shall be due and payable on the last day of each month. Provided, however, at the election of the franchisee, the total franchise fee owed by that franchisee for a calendar year, may be paid, without penalty, in six equal installments on the 15th day of June, July, August, September, October and November of that year. Such franchise fee shall be paid at the treasurer's office of the City during regular business hours. If the City treasurer's office is closed on the due date, then payment may be made during regular business hours on the next following day on which the office is open for business.
- c. No acceptance of any payment shall be construed as a release or as an accord and satisfaction of any claim the City may have for further or additional sums payable as a franchise fee under this section or for the performance of any other obligation under this division.

Section 9. In the event that no competition is found to exist in ferry boat service to and from the City, the City has the right to assert its jurisdiction over schedules and fares to the extent permitted by present law.

Section 10. This franchise may not be sold, transferred or assigned unless such transaction is first approved by the Council after receipt of a written application therefor, containing the same information as to the transferee as would be required of an original applicant.

Section 11. This franchise is subject to all applicable provisions of the Charter of the City of Mackinac Island and ordinances thereof, particularly Ordinance No. 465, being the Ferry Boat Code, as well as the laws and Constitution of the State of Michigan, and shall, whenever possible, be construed as consistent with them.

Section 12. The franchisee shall comply with the agreements made by it in its Application for this franchise.

Section 13. This franchise shall not be given any value by any court or other authority, public or private, in any proceeding of any nature or character whatsoever, wherein or whereby the City of Mackinac Island shall be a party or affected therein or thereby.

Section 14. Should any section, clause or provision of this franchise be declared to be invalid by a court of record, the same shall not affect the validity of the franchise as a whole or any part thereof, other than the part so declared invalid.

Section 15. This franchise shall be of no effect unless and until the Franchisee accepts the franchise and agrees to abide by all terms and conditions thereof.

Section 16. Franchisee and the City agree to abide by the terms of the June 2, 2012 Memorandum of Understanding, the terms of which are set forth below, to the extent that those

terms do not conflict with the terms of this Franchise. In the case of conflict, the terms of this Franchise shall govern.

Section 17. This franchise shall become a binding and enforceable contract, upon the signing of both parties. The Mayor of the City of Mackinac Island is hereby authorized and directed to sign this franchise on behalf of the City.

MEMORANDUM OF UNDERSTANDING

- 1) 15 year franchise with the understanding that after five years, there is a right to enter into a new 15 year franchise.
- 2) All lines determine their own schedules and rates. However, the boat lines will file their schedules and rates with the City. There is a commitment by not less than two of the lines to maintain not more than their present maximum rate for the summer season of 2012.
- 3) \$600,000 annual franchise fee with an annual CPI Adjustment to be split equally among all operating boat lines.
- 4) \$100,000 subsidy to boat line operating ice to ice in exchange for their providing exclusive passenger service in the off-season. Off-season service will be placed up for bid annually with the guarantee of the \$100,000 subsidy. In the event there are no bidders for winter service, the City reserves its right to act in ways necessary or appropriate to ensure that off-season services are offered. The charge for local residents for off-season service will be \$5.00 per person one way, with any resident or seasonal pass previously purchased.
- 5) Year round freight services may be offered by any franchisee.
- 6) On July 1, the 7% franchise fee ends along with the current franchises. New franchises will be issued immediately containing the provisions contained in this memorandum. The \$600,000 will be pro-rated this season and paid in full beginning in the summer season of 2013.
- 7) Plante Moran study will not go forward.
- 8) Action on any proposed legislation will be suspended until at least June 12, 2012. If the City Council adopts the content of this memorandum, the legislation will be permanently postponed or tabled.
- 9) The Mayor will ask the City Council to act on the proposed new agreement during the week of June 4, 2012.

- 10) All signatories agree that they will fully support the contents of this memorandum and urge the Public and the Council to do likewise.
- 11) In the event that no competition is found to exist, the City has the right to assert its jurisdiction over schedules and fares to the extent permitted by present law.

Approved and adopted as Ordinance No. 617, at the regular City Council meeting held 10.18.23.
 Posted in ~~File~~ See attached cover sheet

Danielle Leach
 City Clerk

This franchise agreement entered into by the aforesaid parties this 18 day of October, 2023.

Margaret Doud
 By: Margaret Doud

Title: Mayor, City of Mackinac Island

Witnesses:

Danielle Leach
Danielle Leach

THE FRANCHISEE HEREBY ACCEPTS THIS FRANCHISE AND EXPRESSLY AGREES TO ABIDE BY ALL THE TERMS AND CONDITIONS CONTAINED HEREIN.

Jerry Fetty

By: Jerry Fetty

Title: CEO, Mackinac Island Ferry Company

Witnesses:

James Murray
James Murray

SUMMONS IN A CIVIL ACTION

UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF MICHIGAN

Shepler's Inc. d/b/a Shepler's Mackinac Island Ferry
Service, and Mackinac Island Ferry Company d/b/a
Arnold Transit Company

Case No. 2:25-cv-36
Hon.

v.
City of Mackinac Island

TO: City of Mackinac Island
ADDRESS: c/o Danielle Leach
7358 Market Street
P.O. Box 455
Mackinac Island, MI 49757

A lawsuit has been filed against you.

YOU ARE HEREBY SUMMONED and required to serve upon plaintiff, an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure within 21 days after service of this summons on you (not counting the day you received it). If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You must also file your answer or motion with the Court.

The Court has offices in the following locations:

- 399 Federal Building, 110 Michigan St., NW, Grand Rapids, MI 49503
- P.O. Box 698, 330 Federal Building, Marquette, MI 49855
- 107 Federal Building, 410 W. Michigan Ave., Kalamazoo, MI 49007
- 113 Federal Building, 315 W. Allegan, Lansing, MI 48933

PLAINTIFF OR PLAINTIFF'S ATTORNEY NAME AND ADDRESS
Robert T. Dube, Jr., Esq. (#MN401597)
Eckland & Blando LLP
800 Lumber Exchange Building
10 South Fifth Street
Minneapolis, MN 55402
CLERK OF COURT

March 03, 2025

By: Deputy Clerk Date

PROOF OF SERVICE

This summons for City of Mackinac Island was received by me on _____
(name of individual and title, if any) (date)

I personally served the summons on the individual at _____
on _____
(date) (place where served)

I left the summons at the individual's residence or usual place of abode with _____, a person
(name)
of suitable age and discretion who resides there, on _____, and mailed a copy to the individual's last known address.
(date)

I served the summons on _____, who is designated by law to accept service
(name of individual)
of process on behalf of _____ on _____
(name of organization) (date)

I returned the summons unexecuted because _____

Other (specify) _____

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____

I declare under the penalty of perjury that this information is true.

Date: _____

Server's signature

Additional information regarding attempted service, etc.:

Server's printed name and title

Server's address