

1st rdg 7/16/12
2nd rdg 8/6/12
Adopted 8-16-12
Effec. 2-26-12

TOWNSHIP OF LOWER, COUNTY OF CAPE MAY, STATE OF NEW JERSEY

ORDINANCE 2012-18

AN ORDINANCE AUTHORIZING ACCEPTANCE OF TITLE TO THE BRANDYWINE SHOAL LIGHT STATION AND APPROVING THE LEASING THEREOF TO THE CAPE MAY MARITIME MUSEUM AND EDUCATION CENTER, INC.

Section 1. PREAMBLE

WHEREAS, the Township of Lower in the County of Cape May and State of New Jersey, after presentation at a public meeting by the Cape May Maritime Museum and Education Center, Inc., ("Maritime Museum") has expressed its interest in acquiring title to the Brandywine Shoal Light Station, as well as a lease of said property to the Maritime Museum for the purposes hereinafter set forth; and

WHEREAS, in accordance with the provisions of the National Historic Lighthouse Preservation Act of 2000 (NHLPA), certain historic lighthouse properties are available for title transfer under a no-cost upfront commitment. The Act allows no-cost transference of a lighthouse to another government agency (federal, state, or local level) or to a non-profit organization for the purposes of historic preservation, education, cultural, resource, or park use, with reasonable public access. In accordance with the NHLPA process, the Maritime Museum submitted a letter of interest (LOI) for the Brandywine Shoal Light Station lighthouse property. In response, the National Park Service (NPS) forwarded a formal NHLPA application package to the Maritime Museum. On September 27, 2011, the Maritime Museum and Duffield Associates Engineering inspected the Brandywine Shoal Light Station to pursue an application for stewardship of the historic structure through the NHLPA process; and

WHEREAS, the Township recognizes the rich Maritime History of the Township of Lower; coupled with the positive experience of the Cape May Lighthouse located within the Township and the close proximity of the Historic Brandywine Light to the Township; the parties agreed that although the Maritime Museum would develop the NHLPA application, it would identify the Township of Lower as its partner in the application, indicating that the title/deed to the lighthouse shall be given to the Township in case of a winning application; and

WHEREAS, the Township acknowledges the lighthouse knowledge and expertise of the Maritime Museum and its Partners that include the Hereford Lighthouse and the Delaware Bay Lighthouse Keepers Association, the parties also agreed that the Township of Lower would enter into a long-term lease agreement with the Maritime Museum for all aspects of the planning, preservation, restoration, and operations of the lighthouse in compliance and accordance with the Application; and

WHEREAS, the intention of this ordinance is to create a public-private partnership between Township of Lower and the Maritime Museum, bringing together the strengths and capabilities of each for the benefit of the preservation, restoration, and public use of the historic lighthouse property.

NOW, THEREFORE, BE IT ORDAINED by the Township Council of the Township of Lower, as follows:

Section 2. The preamble of this ordinance is hereby incorporated by reference as if set forth here at length as the findings and determinations of the Township of Lower;

Section 3. LEGAL AUTHORITY

The Township of Lower is authorized to accept title under the provisions of N.J.S.A. 40:60-25. The Township is authorized to lease the property without public bidding to the a non-profit entity for the purposes of historic programs or activities and to promote the general welfare of the community though such efforts. The Township of Lower finds and determines that the acquisition of title to the Brandywine Shoal Light Station and the leasing of the property to the non-profit entity , the Cape May Maritime Museum and Education Center, Inc., serves these purposes and is expressly of historic interest and promotes the general welfare of the community at large.

Accordingly, this Ordinance shall serve as the approved lease agreement with the Maritime Museum for the purposes aforesaid. Good and sufficient consideration for the mutual terms hereof are acknowledged by the Township and the Maritime Museum based upon the several rights and duties conferred upon and owing from each of the parties hereto. This entire ordinance and the lease elements approved hereby shall be considered the lease agreement by and between the Township and the Maritime Museum and the parties thereto shall execute a signature page evincing their acceptance and acknowledgment of such terms.

Section 4. APPROVED LEASE ELEMENTS

1. If the Township of Lower is given title to the Brandywine Shoal Light Station property by the federal government, the Township gives the Maritime Museum all and exclusive rights to plan, preserve, restore, maintain, and operate Brandywine Shoal Light Station in accordance with the NHLPA application submitted to the federal government, hereafter referred to as the "Application". Since the Application becomes the legally binding document between the federal government and the entity to which it transfers title, i.e., the Township of Lower, it similarly codifies the scope of all of the activities to be performed by the Maritime Museum, as the operations agent of the owner.
2. All management, insurance, and financial arrangements are also codified in the Application. This is a no-cost lease from the Township to the Maritime Museum i.e., there is no lease payment from the Maritime Museum to the Township.
3. The Maritime Museum, as the lessee and lighthouse operations agent, will normally receive all income associated with Brandywine Shoal Light Station (e.g., fund-raising from donors, operating income from tours). Similarly, the Maritime Museum will normally pay for all expenses associated with the lighthouse from this income. Actual and projected income & expenses will be identified in an annual Financial Report.
4. The Township and the Maritime Museum agree that any and all funds that are raised for the preservation, restoration, maintenance and operation of the lighthouse will be used only for those purposes, i.e., funds could not be withdrawn from one of the partners for other general purposes not having to do with the preservation, restoration, maintenance, and operation of the Brandywine Shoal Light Station. If and when the revenues from all sources far exceeds all projected expenditures on a regular basis and an appropriate management reserve has been built up, the Township and the Maritime Museum may choose to pursue potential exceptions to this stipulation (i.e., use excess income for purposes other than the lighthouse) via the Changes clause of this lease, as long as the proposed uses are not in non-compliance with the NHLPA.
5. Township will not impose any further requirements on the Maritime Museum beyond what is documented in the Application. Maritime Museum will not conduct any activities that are not identified in the Application.
6. Similarly, neither the Township or the Maritime Museum can enter into any agreements regarding Brandywine Shoal Light Station with other parties that are not identified in the Application or enter into any agreements that are inconsistent with the intent of the Application; any proposed agreements with additional parties not identified in the Application will require mutual prior approval from both the Township and the Maritime Museum.
7. In accordance with N.J.S.A. 40A:12-15, the term of this lease from the Township to the Maritime Museum is thirty (30) years plus two options of twenty-five (25) years each. At the end of each twenty-five (25) year lease period, the Township and the Maritime Museum will review the lease and make any mutually agreeable changes. Thereafter, the new lease shall be approved by Ordinance of the Township Council as required by law. The Township may reject any option extending the lease if it can be demonstrated that the Maritime Museum has not complied with the NHLPA and/or the Application, in accordance with the Termination clause of this lease.
8. The Township shall have no initial financial obligation. In the event that financing of any aspect of the Maritime Museum's stewardship of the lighthouse is requested, such financing shall be subject to the

financial policies of the Township, the law of the State of New Jersey and subsequent approval by the governing body of the Township of Lower.

9. The lease shall be governed by the laws of the State of New Jersey and any applicable federal law, to include state and federal regulatory provisions, and any dispute brought to a court hereunder shall be venued in the Superior Court of the State of New Jersey in the County of Cape May.
10. Changes: Changes to this lease may be made by mutual written agreement of the Township and the Maritime Museum, as long as the proposed changes are compliant with the NHLPA and the Application and are approved by the governing body of the Township of Lower.
11. Termination:
 - a. The Township can terminate this lease with the Maritime Museum only if Maritime Museum does not abide by its commitments in the Application, therefore jeopardizing the Township's ownership of Brandywine Shoal Light Station. The Township will give the Maritime Museum three months to rectify any deviations from the Application and if not corrected, it will give the Maritime Museum (30) days written notice of termination of lease.
 - b. The Maritime Museum can terminate the lease if it finds that it can no longer abide by the Application. It will give the Township three months written notice so that Township can take appropriate action with the federal government, if needed.

12. This shall be the entire agreement between the parties which may not be modified by any other document(s) or oral communication(s).

Section 5. SEVERABILITY.

The sections of this Ordinance are individually and severally adopted hereby and shall be severable. In the event that any portion of this Ordinance shall be deemed ineffective or unenforceable as a matter of law by a court of competent jurisdiction, the surviving portions shall remain in full force and effect.

Section 6. EXECUTION OF LEASE AGREEMENT AUTHORIZED

Upon final adoption of this Ordinance in accordance with law, the Mayor and Clerk shall be and are authorized and directed to execute the aforementioned signature page on behalf of the Township of Lower, binding the Township for the purposes aforesaid.

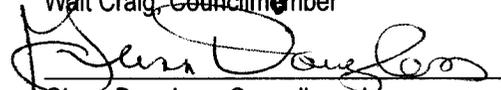
Section 7. This ordinance shall be published by the Clerk in accordance with law and shall take effect after final passage and the expiration of 20 days from the date thereof.



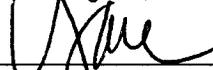
Thomas Conrad, Councilmember



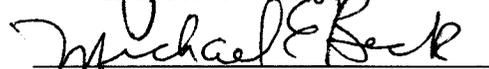
Walt Craig, Councilmember



Glenn Douglass, Councilmember



Kevin Lare, Council At Large



Michael E. Beck, Mayor

Adopted: Aug. 6, 2012

Attest: 
Claudia R. Kammer, Township Clerk