

EXAMPLE

HISTORIC PRESERVATION EASEMENT

This Historic Preservation Easement (Easement) is made between the ENTITY, a ENTITY STRUCTURE, whose address STREET, CITY, ZIP (Grantor), and the STATE OF MICHIGAN, MICHIGAN STATE HOUSING DEVELOPMENT AUTHORITY, a principal state department acting through its STATE HISTORIC PRESERVATION OFFICE (SHPO or Grantee), whose address is 702 W. Kalamazoo Street, Lansing, Michigan 48909-8240. The Grantor is a recipient of a Michigan Lighthouse Assistance Program (MLAP) Award, a State of Michigan historic preservation grant program designed to assist with the preservation and protection of Michigan lighthouses and enhance public awareness and appreciation of the United States' and Michigan's maritime heritage. The consideration for this Easement totals TOTAL DOLLARS (\$__,000) received from the Grantee, which is authorized to award discretionary grants and expend proceeds from sales of Michigan Lighthouse license plates (Sec. 811k of the Michigan Vehicle Code, 1949 PA 300, MCL 257.811k) for the Michigan Lighthouse Assistance Program.

The property that is the subject to this Easement is the historic PROPERTY (Property), a historically and architecturally significant building listed or eligible for listing in the National Register of Historic Places. Located on a parcel of land LOCATION, County of NAME, and State Of Michigan, and is more particularly described as:

LEGAL DESCRIPTION

This Easement is executed consistent with Subpart 11 of Part 21 of Article 1, Conservation and Historic Preservation Easements of the Michigan Environmental Protection Act, MCL 324.2140 *et seq.*, and is executed subject to the following terms and conditions:

1. In accordance with Grantee's MLAP policy, the Grantor grants an easement in perpetuity. In the event that the United States retains a reversionary interest in the Property, the State of Michigan's interest in the Property shall become secondary to that of the United States and shall expire in the event that the United States elects to exercise its reversionary interest.
2. The Grantor assumes all costs necessary to preserve the historic integrity of the features, materials, appearance, workmanship and environment of the Property pursuant to the U.S. Secretary of the Interior's *Standards for the Treatment of Historic Properties*, 36 CFR 67-68, and in accordance, as applicable, for properties deeded to the Grantor via the National Historic Lighthouse Preservation Act of 2000, Public Law 106-355, 16 U.S.C. 470w-7, or the Federal Property and Administrative Services Act (FPASA) of 1949, Public Law 63 Stat. 385, 40 U.S.C. 484, administered by the National Park Service (NPS) as the Historic Surplus Property (HSP) program.. Nothing in this Easement prohibits the Grantor from seeking financial assistance from any other source (including Historic Preservation Fund Development grants) for additional preservation efforts.
3. Pursuant to Section 308 (c)(1)(D) of the NHLPA, 16 U.S.C. 470w-7(1)(D), Section 203(k)(3)(B)(i) of the FPASA, 40 U.S.C. 484(k)(3)(B)(1), or Section 102(a)(5) of the National Historic Preservation Act, as applicable, the Grantor assumes the cost of the continued maintenance and repair of the Property so as to keep it in a sound state of repair, prevent deterioration and preserve the architectural, historical, and archaeological integrity of the Property and enhance those qualities that make the Property eligible for listing in the National Register of Historic Places.
4. In order to preserve and enhance the distinctive materials, features and spaces that caused the Property to be listed or eligible for listing on the National Register of Historic Places, the Grantor shall maintain and preserve the Property in accordance with the recommended approaches in the U.S. Secretary of the Interior's *Standards for the Treatment of Historic Properties*, 36 CFR 67-68, and as applicable, in accordance with the NHLPA Master Plan or FPASA Program of Preservation

and Utilization (PPU). The Grantor acknowledges that no visual or structural alterations will be made to the Property without prior written permission from the Grantee, its successors or assigns. The Grantor further acknowledges that, as applicable and in accordance with the NHLPA or FPASA, no changes to the NHLPA Master Plan or FPASA PPU will be made to the Property without prior written approval, respectively, by the Secretary of the Interior, or the NPS, in consultation with the SHPO.

5. If the Grantor intends to undertake future work, outside the scope of this Easement, that may affect the Property, Grantor must give prior written notice to the Grantee, through the SHPO or the SHPO's successors or assigns. The Grantor further agrees that, as applicable and in accordance with the NHLPA or FPASA, no changes to the NHLPA Master Plan or FPASA PPU will be made to the Property without prior written approval, respectively, by the Secretary of the Interior or the NPS, in consultation with the SHPO. The Grantor also agrees to notify in writing the Grantee and, as applicable, the NPS in accordance with the NHLPA or FPASA, of any action or undertaking proposed by another governmental agency upon becoming aware of the proposed action or undertaking.
6. The Grantor agrees that no ground-disturbing activities will be permitted to be undertaken which would affect any historically significant or archaeological resources without receiving prior written permission from the Grantee and affirming that such work will meet the Secretary of the Interior's *Standards for Archaeological and Historic Preservation*, 48 FR 44716. The Grantor also agrees to ensure that any relic and material excavated will be placed in a repository that will care for the relic and material or will care for them in the manner prescribed in the *Standards for Archaeological and Historic Preservation*, 48 FR 44716, or will comply with the requirements of the Native Americans Graves Protection and Repatriation Act and with 36 CFR 79 and 43 CFR 10.
7. The Grantor will permit the Grantee, its agents, officers, employees, subcontractors or designees to enter onto the Property at all reasonable times to inspect and ascertain compliance with the conditions of this Easement or carry out remedial actions as necessary. These rights shall be exercisable in any case in which an inspection, remedial action, response to remedial action, or corrective action is found to be necessary after the date of this Easement. The Grantor will not unreasonably withhold its permission for Grantee access to and inspection of the Property.
8. The Grantor will provide public access to the Property no less than twelve (12) days each calendar year so that the general public can view the grant-assisted work and investment of public funds on the Property. The days the Property is available to the public will be equitably spaced. The Grantor may take into account seasonal and other factors that will most effectively afford public access while implementing the purpose and intent of the Grant Award. The Grantor will also provide access to the Property by appointment.
9. The Grantor and the Grantee acknowledge that as long as the grant-assisted work is clearly visible from a public right-of-way, public access to the Property is not required. Public access is also not required when interior development work such as electrical or plumbing repairs would not be visible if general access to the Property were to be provided.
10. If the Property is not open to the public except for the required twelve (12) days per calendar year and where the improvements assisted by the Grant Award are not visible from the public right-of-way or the Property was acquired with Historic Preservation Fund grant funds, the Grantor agrees to provide public notification in the community or area in which the Property is located, giving the dates and times when the Property will be open to the public. The Grantor will annually publish dates and times when the Property will be open to the public. The Grantor will annually, in December of each year, provide documentation of notice of publication to Grantee during the term of this Easement.

11. The Grantor may charge a reasonable nondiscriminatory admission fee to the public that is comparable to fees charged at similar facilities in the area. The Grantor will not discourage public visitation of the Property.
12. The Grantor agrees to maintain flood insurance on the premises as required by Section 102 (a) of the Flood Disaster Protection Act of 1973, 42 USC 4001 *et seq.*, as amended, if the Property is situated in a location designated by the U.S. Secretary of Housing and Urban Development as a location with special flood hazards.
13. The Grantor shall comply with the Elliott-Larsen Civil Rights Act, MCL 37.2101 *et seq.*, the Persons with Disabilities Civil Rights Act, MCL 37.1101 *et seq.*, and all other state, federal and local fair employment practices and equal opportunity laws and covenants that it shall not discriminate against any employee or applicant for employment, to be employed in the performance of this Easement with respect to his or her hire, tenure, terms, conditions, or privileges of employment, or any other matter directly or indirectly related to employment, because of his or her race, religion, color, national origin, age, sex, height, weight, marital status, or disability that is unrelated to the individual's ability to perform the duties of a particular job or position. The Grantor agrees to include in every subcontract entered into for the performance of its obligations under this Easement this same covenant not to discriminate in employment.
14. The Grantor must comply with the Americans with Disabilities Act and with Section 504 of the Rehabilitation Act when interior public access is required at least twelve (12) days per calendar year and at other times by appointment. The Grantor is not required to make every part of the Property accessible to and useable by disabled persons by means of physical alterations. During public access periods, videos, slide presentations and/or other audio-visual media should be used to depict otherwise inaccessible areas or features. The intent of this paragraph is to communicate that the preservation/accessibility issue must be addressed and that the solution is to take careful steps to determine what can be done to improve access without sacrificing historic fabric.
15. The Grantor covenants that upon receipt of a written request from the Grantee, the Grantor shall promptly furnish the Grantee with written certification that to the best of the Grantor's knowledge, the Grantor is in compliance with the terms and conditions of this Easement.
16. The Easement runs with the land and is binding on the Grantor, its successors and assigns. The Grantor agrees to provide notice of the Easement in any deed or other legal instrument in which it divests itself of either fee simple title or some other lesser estate in the Property.
17. If the Grantor plans to sell the Property or enter into a long-term lease during the term of this Easement, the Grantor covenants to first offer the Property to the Grantee for purchase or lease, at the same price and on the same terms of the intended sale or lease. If the Grantor proposes a conveyance other than a sale or long-term lease, the Grantor, before completing the conveyance, shall first offer the Property to the Grantee at a price based on the fair market value of the land, structures and improvements thereon. The Grantee has thirty (30) days from receipt of the offer to accept or reject it in writing. As applicable, and in accordance with the NHLPA or FPASA, no sale or lease of the Property will be undertaken without prior review and approval, respectively, by the Secretary of the Interior, or by the NPS.
18. If the Grantor leases the Property, the Grantor covenants to incorporate into the lease all of the terms, conditions and covenants of this Easement and, as applicable, the NHLPA and FPASA.
19. The Grantor covenants not to employ any subcontractor, manufacturer or supplier who appears in the register compiled by the State of Michigan, Department of Licensing and Regulatory Affairs, pursuant to 1980 PA 278, MCL 423.321 *et seq.* (State Contracts with Certain Employers Prohibited).

20. The Grantor covenants to consult with the Grantee through the SHPO or the SHPO's successors or assigns, to ensure that any contracts entered into for the performance of the obligations of this Easement comply with the applicable barrier free design laws, including the Architectural Barriers Act of 1968, 42 USC 4151 *et seq.*, and the Utilization of Public Facilities by Physically Limited Act, MCL 125.1351 *et seq.* It is understood that the Grantor may apply for lawful exemptions from the requirements of these laws.
21. The Grantor, its successors and assigns, shall pay all legally required property taxes and special assessments, if any, on the Property as they become due and will not permit any taxes and assessments to become delinquent.
22. In the event that the Property is damaged by flood, snow, ice, rain, windstorm, fire, earth movement or any other natural disaster or casualty, the Grantor agrees to notify the Grantee, through the SHPO or the SHPO's successors or assigns, in writing within fourteen (14) days of the damage or destruction, further indicating what, if any, emergency work has already been undertaken and completed. The Grantor agrees not to undertake repairs or reconstruction of any type, other than emergency work to prevent further damage to the Property or to protect public safety, without the Grantee's prior written approval, which specifies that the proposed work will conform with the U.S. Secretary of the Interior's *Standards for the Treatment of Historic Properties*, 36 CFR 67-68, and with the NHLPA Master Plan or FPASA PPU, as applicable. The Grantee agrees to give its approval or denial of work requested by the Grantor under this paragraph within sixty (60) days of receiving the Grantor's request.
23. The Grantor acknowledges that the Grantee, after providing written notice to the Grantor, may institute action(s) to enjoin violations of this Easement, to require specific performance, and to require restoration of the Property in conformity with the U.S. Secretary of the Interior's *Standards for the Treatment of Historic Properties*, 36 CFR 67-68, and with the NHLPA Master Plan or FPASA PPU, as applicable. The Grantee has available to it all legal and equitable remedies to enforce Grantor's obligations under this Easement. If the Grantor is found by a court of competent jurisdiction to have violated any of its obligations, the Grantor shall reimburse the Grantee for all costs and expenses incurred in connection with the Grantee's enforcement of the terms of this Easement, including but not limited to all court costs, attorney's fees, architectural fees, engineering and expert witness fees.
24. This Easement constitutes the entire easement between the parties and may only be amended in writing by the Grantor with the written Easement of the Grantee, and with the prior written approval by the NPS, as applicable with the NHLPA or PFASA, provided the amendment is consistent with the preservation purpose of the Grant Award and does not reduce the Easement term. No amendment will be effective unless it is executed in the same manner as this Easement was originally executed, expressly refers to the Easement and is recorded in the Register of Deeds' Office in the county in which the Property is located.
25. This Easement will be interpreted in accordance with the laws of the State of Michigan.
26. If any provision of this Easement or any amendment thereto is found to be illegal or otherwise unenforceable by a court of competent jurisdiction, such provision will be severed from the remainder of the Easement and such action will not affect the enforceability of the remaining provisions of the Easement.
27. Upon execution, the Grantor covenants to promptly record this Easement, in the Register of Deeds Office in county in which the Property is located.

Drafted By:

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Legal Description Reviewed By:

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**THIS INSTRUMENT IS EXEMPT FROM REAL ESTATE
TRANSFER TAXES PURSUANT TO SECTION 5(h) OF 1966 PA
134, MCL 207.505(h)(i), AND SECTION 6(h) OF 1993 PA 330, MCL
207.526(h)(i)**

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