

**HISTORIC PRESERVATION DEED RESTRICTION (COVENANT) PROVISIONS
FOR RELOCATION AND PRESERVATION OF THE
FLYING YANKEE TO [BUYER] FORMERLY LOCATED AT
94-98 RAILROAD STREET, LINCOLN, NH**

As a condition of this instrument, the Grantor, the Department of Transportation, hereby conveys the above-described property, subject to the terms of the following preservation restrictions that are hereby created in said premises, by means of the State of New Hampshire hereby reserving the following preservation restrictions, under New Hampshire Revised Statutes Annotated RSA 477:45-47, and by the State of New Hampshire and the Grantee, [BUYER], said Grantee hereby covenanting to abide by and enforce the following preservation restrictions.

The Grantee covenants and agrees for itself, its heirs, administrators, successors, and assigns, by accepting this deed, that the said herein conveyed Property are and shall be subject to said following preservation restrictions, and to do or refrain from doing thereon or with respect thereto all acts required or prohibited by the said following preservation restrictions.

1. **APPLICABILITY:** The following preservation restrictions, to which the herein conveyed Property are subject, are as follows:
 - A. Grantor herein shall mean the Department of Transportation, its successors or assigns.
 - B. Grantee herein shall mean the Grantee of this deed.
 - C. Property herein shall mean the Flying Yankee train cars (3) located in Lincoln, NH; and the trucks and components, located in Twin Mountain, as of the date of execution of this covenant.
 - D. All preservation restrictions contained herein, whether covenants, restrictions, easements, or conditions, shall be binding upon both the Grantor and Grantee.
 - E. The restrictions specified herein shall apply to the herein conveyed Property unless the Grantor provides the Grantee with a specific written waiver for any specific act in contravention thereof.
 - F. The burden of these restrictions shall run with the conveyed Property, and not the parcels from which they are moved, and shall be binding upon all owners of any interest therein. The right of enforcement of these preservation restrictions by the Grantor and the New Hampshire Division of Historical Resources (DHR) shall be as provided in New Hampshire Revised Statutes Annotated RSA 477:45-47 (Chapter 391, Laws of 1973, and Chapter 301, Laws of 1979), as they may be amended from time to time.
2. **GENERAL INTENT:** In the event the Grantor and/or Grantee and/or DHR have a difference of opinion about the meaning of a specific term or condition recited below, they shall be guided in interpretation by the following statements of General Intent:
 - A. The purpose of the preservation restrictions is to preserve the significance, integrity, and engineering and historical values associated with the Property. The covenant protects all character defining features as outlined in the NH Individual Inventory Form, LIN0009, including but not limited to interior, exterior, separated components, and appropriate setting.
 - B. All changes to the Property subject to these preservation restrictions will be in the spirit of contributing to the public purpose of protecting and preserving it in conformance with the Standards for Review, or as required by local, state, and federal legislation for the public benefit.
 - C. The preservation restrictions shall apply to all elements of the Property. Insofar as feasible, repair, replacement, alterations and removals, and additions should be made in-kind, with forms and materials that match or complement and are compatible with the historic forms and materials.
 - D. The preservation restrictions shall apply for a term of fifteen (15) years.
3. **INTERPRETATION:** In the event of a disagreement between Grantor and/or Grantee and/or DHR as to the interpretation or application of the provisions of these preservation restrictions, any party may petition to the Merrimack County Superior Court for relief.
4. **STANDARDS FOR REVIEW:** The Grantor and the DHR shall apply the following Standards for Review in exercising any authority created by these preservation restrictions to inspect the Property subject to these preservation restrictions, and to review and approve any proposed construction, alteration, rehabilitation, relocation, demolition, change in use, sale, subdivision, or other transfer of property rights. The Grantee agrees to abide by the Standards for Review in performing any construction, alteration, rehabilitation, relocation, demolition, change in use, sale, subdivision, or other transfer of property rights affecting the Property subject to these preservation restrictions. The Standards for Review are as follows:
 - A. *The Secretary of the Interior's Standards for the Treatment of Historic Properties* (36 CFR Part 68, 1995) as they may be amended from time to time. A copy of the Standards can be found on the National Park Service website.
 - B. The New Hampshire Individual Inventory form for LIN0009, Flying Yankee (Boston and Maine Railroad No. 6000), prepared by Hunter Research, Inc., dated August 2023, will be used as baseline documentation for the Flying Yankee.
5. **INSPECTION AND COMPLIANCE:** The Grantee agrees that the State of New Hampshire, by and through the Grantor, shall have the right to inspect the Property subject to these preservation restrictions at reasonable times, to

ascertain whether the terms of these preservation restrictions have been complied with. The Grantee agrees to submit to the Grantor, for the duration of these preservation restrictions, an annual stewardship report detailing the current condition of the Property, all physical work, if any, undertaken on the Property over the course of the previous year, as well as any proposed stewardship activities anticipated for the upcoming year.

6. **MAINTENANCE AND ADMINISTRATION:** The Grantee agrees to assume the total costs of continued maintenance, repair, and administration of the Property, in a manner that complies with the Standards for Review, in order to preserve the historical integrity of its features, materials, appearance, workmanship and environment, and in order to protect and enhance those significant characteristics which make the Property eligible for listing in the National Register of Historic Places. The Grantee shall maintain the Property at all times and shall keep it in a state of good repair, and shall not allow the appearance of the Property to deteriorate in any material way. Nothing herein shall prohibit the Grantee from seeking financial assistance from any sources available to the Grantee.
7. **TREATMENT OF PROPERTY/ALTERATIONS:** The Grantor and the Grantee and the DHR agree that the Property will be appropriately moved and mothballed awaiting final relocation and that no alterations shall be made to the Property subject to these preservation restrictions, without the prior written consent of the State of New Hampshire, by and through the DHR and the Grantor, its successors or assigns, except for:
 - A. Ordinary repair and maintenance to conserve historical values, significance, and integrity; or
 - B. Actions required to mitigate a casualty or other emergency promptly reported to the Grantor, its successors or assigns.
8. **SUBDIVISION AND CHANGE IN USE:** The Grantee agrees that the use of the Property subject to these preservation restrictions shall not be changed, nor shall covenants or other property be granted, sold, or transferred, without the prior written consent of the State of New Hampshire, by and through the DHR, the Grantor, its successors or assigns.
9. **EXCLUSION:** The Grantee agrees that the State of New Hampshire, by and through any of its agencies, in no way assumes any obligation whatsoever for maintaining, repairing, or administering the Property covered by these these preservation restrictions.
10. **LIABILITY:** The Grantee agrees to protect, indemnify, hold harmless, and defend at its own cost and expense, the Grantor, its agents, trustees, directors, officers, and employees, or independent contractors, from and against any and all claims, liabilities, expenses, costs, damages, losses, and expenditures, including reasonable attorneys' fees and disbursements hereafter incurred, arising out of or in connection with injury to or death of any person in or on the Property, physical damage to the Property, or the presence or release in, on, or about the Property at any time of any substance now or hereafter defined, listed, or otherwise classified pursuant to any law, ordinance, or regulation as a hazardous, toxic, polluting, or contaminating substance, or against any other injury or other damage occurring on or about the Property and arising from the Grantee's negligent acts. In the event the Grantee is required to indemnify the Grantor in accordance with this section, the amount of such indemnity, until discharged, shall constitute a lien on the Property and shall have the same priority as a mechanic's lien. Nothing contained in this section shall jeopardize the priority of any lien on the Property given by the Grantee to secure a Promissory Note or Promissory Notes. Notwithstanding the foregoing, nothing herein contained shall be construed to be a waiver of the sovereign immunity of the State of New Hampshire, nor shall it be construed to be a waiver of the statutory limitation on liability available to the [Buyer].
11. **EXERCISE OF RIGHTS AND REMEDIES:** Failure of the Grantor and/or the DHR to exercise any right or remedy granted under these preservation restrictions shall not have the effect of waiving or limiting the exercise by the Grantor and/or the DHR of any other right or remedy or the invocation of such right or remedy at any other time.
12. **CONTINUATION:** In the event that the Property is damaged or destroyed through the willful action or negligence of the Grantee, the State of New Hampshire may initiate such administrative or judicial actions as may be legally available and appropriate.
13. **SEPARABILITY:** Any portion of items of these preservation restrictions found to be contrary to law shall not invalidate any other portions or items or the whole of these preservation restrictions.
14. **EXTINGUISHMENT:** The Grantor, the DHR, and Grantee hereby recognize that circumstances may arise that may make impossible the continued ownership or use of the Property in a manner consistent with the purpose of this Covenant and necessitate extinguishment of the Covenant. Such circumstances may include, but are not necessarily limited to, partial or total destruction of the Property resulting from casualty, natural disaster, or other events beyond the control of the Grantee, or by eminent domain. No such extinguishment or termination of this Covenant shall be effective until an instrument to that effect is recorded in the [COUNTY] Registry of Deeds.
15. **AMENDMENT:** If circumstances arise under which an amendment to or modification of this Covenant would be appropriate, Grantor, with the DHR, and Grantee may by mutual written agreement jointly amend this Covenant, provided that no amendment shall be made that will adversely affect the qualification of this Covenant or the status of Grantor and the DHR under any applicable laws, including Sections 170(h) and 501(c)(3) of the Code and the laws of the State of New Hampshire. Any such amendment shall be consistent with the protection of preservation values of

the Property and the purpose of this Covenant; shall not affect its duration; shall not permit any private inurement to any person or entity; and shall not adversely impact the overall historical values protected by this Covenant. Any such amendment shall be recorded in the [COUNTY] County Registry of Deeds. Nothing in this paragraph shall require Grantor or Grantee to agree to any amendment or to consult or negotiate regarding any amendment.

16. **OTHER CONDITIONS:** The Grantor and the DHR agree that the Property will temporarily be stored in its current location for 45 days after execution of a Bill of Sale (date to be determined), or until the Grantee is prepared to relocate it to its final location, whichever comes first. **If the Grantee is unable to relocate the Property by this date, the Grantor may, at its sole discretion, elect to continue storing the Property or terminate this agreement.**

TO HAVE AND TO HOLD the said Property, with all the privileges and appurtenances thereunto belonging to the said Grantee and its assigns forever.

THE NEW HAMPSHIRE DEPARTMENT OF TRANSPORTATION

By: _____ Witness: _____
William J. Cass, Commissioner

Executed this _____ day of _____, 2023.

[BUYER]

By: _____ Witness: _____
[NAME, TITLE]

Executed this _____ day of _____, 2023.

DRAFT