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1750 K STREET, N.W.
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WASHINGTON, D.C. 20006
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ORIGINAL

December 16, 2009

Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W.
Washington, D.C. 20423

ENTERED
Office of Proceedings

DEC 16 2009

Part of
Public Record

RE: STB Finance Docket No. 35336
YCR Corporation – Application for a Modified Certificate

Dear Ms. Brown:

On behalf of YCR Corporation, applicant, I am submitting an original and eleven (11) copies of this application for a Modified Certificate of Public Convenience and Necessity for the operation of a rail line pursuant to 49 CFR 1150.21. In addition, I am enclosing a check for \$1,700 to cover the filing fee. A disc containing a copy of this application formatted in MS Word will be supplied under separate cover. Please date stamp and return one copy of this letter and application.

Respectfully submitted,
John D. Heffner, PLLC

FILED
DEC 16 2009
SURFACE
TRANSPORTATION BOARD

James H. M. Savage
By: James H. M. Savage
Of Counsel

Enc.

226172

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB FINANCE DOCKET NO. 35336

**ENTERED
Office of Proceedings**

DEC 16 2009

**Part of
Public Record**

YCR CORPORATION

**APPLICATION FOR A
MODIFIED CERTIFICATE**

PURSUANT TO 49 C.F.R. § 1150.21

SUMMARY OF TRANSACTION

Pursuant to 49 CFR 1150.21, YCR Corporation ("YCR"), a newly organized class III short line railroad and non-carrier seeks a modified Certificate of Public Convenience and Necessity ("PC&N") to lease and operate a line of railroad that was authorized for abandonment and was subsequently acquired by the State of Washington and transferred to the County of Yakima ("Yakima"). The subject line of railroad runs between milepost 0.0 near Toppenish and milepost 20.56 near White Swan, in Yakima County, WA.

INFORMATION REQUIRED BY 49 CFR 1150.23

*Applicant's name and address
49 C.F.R. § 1150.23(b)(1)*

FEE RECEIVED

DEC 16 2009

**SURFACE
TRANSPORTATION BOARD**

FILED

DEC 16 2009

**SURFACE
TRANSPORTATION BOARD**

YCR Corporation, 499 Railex Road, Burbank, WA 98901 (“YCR”)

YCR is presently a non-carrier seeking to become a class III common carrier pursuant to this Modified Certificate.

(i) Copies of YCR’s Certificate of Incorporation and Articles of Incorporation are annexed hereto as Exhibit A.

(ii) The names and addresses of YCR’s officers and directors, and a statement indicating their respective interests are as follow:

Paul Didelius
499 Railex Road
Burbank, WA 98901

President, Secretary and Treasurer and Director
Financial interest.....49%
Operational control.....51%

Stan Patterson
S. 10615 Scribner Road
Cheney, WA 99004

Vice President and Director
Financial control.....51%
Operational interest.....49%

(iii) A copy of YCR’s current interim financial statement is annexed hereto as Exhibit B. Prior to initiating operations, the corporation will be fully capitalized.

*Information about the prior abandonment
49 CFR. § 1150.23(b)(2)*

The rail line subject to the Modified Certificate runs between milepost 0.0, near Toppenish, and milepost 20.56, near White Swan, in Yakima County, WA. In a decision served August 24, 1992, the Interstate Commerce Commission, predecessor to the Surface Transportation Board (the "Board"), granted the petition for exemption filed by Washington Central Railroad Company, Inc. to abandon this rail line. *See* Docket No. AB-326X, *Washington Central Railroad Company, Inc. - Abandonment Exemption – In Yakima County, WA*, served August 24, 1992. The State of Washington acquired this rail line pursuant to an offer of financial assistance. *See* AB-326X, *Washington Central Railroad Company, Inc. - Abandonment Exemption-In Yakima County, WA, In the Matter of an Offer of Financial Assistance*, served March 18, 1993. This rail property was subsequently transferred to Yakima County. The Yakima Valley Rail and Steam Museum Association, d/b/a Toppenish, Simcoe & Western Railroad (“YVR”) received a modified rail certificate to operate this property in a decision served April 28, 1994. *See* Finance Docket No. 32487, *Yakima Valley Rail and Steam Museum Association, d/b/a Toppenish, Simcoe & Western Railroad - Modified Rail Certificate*, served April 28, 1994. The County terminated YVR’s lease effective December 31, 2005. Thereafter, the Central Washington Railroad Company (“CWA”) and Columbia Basin Railroad

Company, Inc. ("CBRW") received a modified rail certificate to operate this property in a decision served Jan. 6, 2006. *See* Finance Docket No. 34804, *Central Washington Railroad Company and Columbia Basin Railroad Company, Inc.-Modified Rail Certificate* served Jan. 6, 2006. The County has terminated the lease with CWA/CBRW effective December 20, 2009.

Dates of the period of operation
49 C.F.R. § 1150.23 (b)(3)

YCR, as lessee, and Yakima County, as owner, have executed a lease agreement (the "Agreement") governing the subject rail line. This Agreement (excluding attachments) is attached hereto as Exhibit C. YCR anticipates commencing freight rail operations over the subject line on or after December 21, 2009. The initial term of this Agreement is 10 years, which may be extended, upon the occurrence of certain conditions, for an additional 5 years. *See* Agreement at section 7. The Agreement may be terminated earlier upon the occurrence of certain events described in the Agreement. *See* Agreement at section 27.

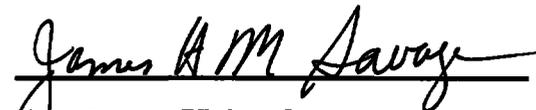
Description of the service to be performed
49 CFR. § 1150.23(b)(4)

YCR seeks this Modified Certificate to provide rail freight service operations over the subject line. The subject rail line's only interline connection is with BNSF Railway Company ("BNSF") at BNSF milepost 73.6, at Toppenish,

Washington. The Agreement provides that the lessee shall obtain (i) property insurance customary in the short line industry, and (ii) public liability insurance, on a claims-made basis, in a minimum amount of \$25,000,000 per occurrence (with customary deductibles and exclusions). The nature and extent of liability insurance coverage is further described in the Agreement. *See* Agreement at section 17. YCR has obtained insurance that covers this rail line from Steadfast Insurance Company, Policy No. SCC5964430-01. There are no preconditions that shippers on the subject rail line must meet in order to receive service from YCR. No entity is subsidizing YCR's rail freight operations on the line.

Respectfully submitted,

John D. Heffner, PLLC
1750 K Street, N.W.
Suite 200
Washington, D.C. 20006


By: James H. M. Savage
Of counsel

Attorneys for:
YCR Corporation

Dated: December 16, 2009

EXHIBIT A

UNITED STATES OF AMERICA

The State of  Washington

Secretary of State

I, **SAM REED**, Secretary of State of the State of Washington and custodian of its seal,
hereby issue this

CERTIFICATE OF INCORPORATION

to

YCR CORPORATION

a/an WA Profit Corporation. Charter documents are effective on the date indicated below.

Date: 12/8/2009

UBI Number: 602-975-083

APPID: 1601125



Given under my hand and the Seal of the State
of Washington at Olympia, the State Capital

Sam Reed, Secretary of State



CORPORATIONS DIVISION
James M. Dolliver Building
801 Capitol Way South • PO Box 40234
Olympia, WA 98504-0234
Tel: 360.725.0377
Fax: 360.664.8781
www.secstate.wa.gov/corps

Congratulations:

You have completed the initial filing to create a new business entity. **The next step in opening your new business is to complete a Master Business Application.** You may have completed this step already. The Master Business Application can be completed online or downloaded at: <http://www.dol.wa.gov/business/file.html>

If you have any questions about the master application, or would like a master application package mailed to you, please call the Department of Licensing at 360-664-1400

IMPORTANT

You have completed the initial filing to create a new entity. To keep your filing status active and avoid administrative dissolution, you must:

1. **File an Annual Report** and pay the annual license fee each year before the anniversary of the filing date for the entity. A notice to file your annual report will be sent to your registered agent. It is the corporation or LLC's responsibility to file the report even if no notice is received

2. **Maintain a Registered Agent** and registered office in this state. You must notify the Corporations Division if there are any changes in your registered agent, agent's address, or registered office address. Failure to notify the Corporations Division of changes will result in misrouted mail, and possibly administrative dissolution.

If you have questions about report and registered agent requirements, please contact the Corporations Division at 360-725-0377 or visit our website at: <http://www.secstate.wa.gov/corps>

DANIEL ROACCI
PO BOX 1776
WALLA WALLA, WA 99362

State of Washington

Secretary of State

CORPORATIONS DIVISION
James M. Dolliver Building
801 Capitol Way South
PO Box 40234
Olympia WA 98504-0234
360 725.0377

FILED
SECRETARY OF STATE
SAM REED
December 8, 2009
STATE OF WASHINGTON

Application for Initial Annual Report

Application Information

This Application ID 1601178

Associated App ID 1601125

Entity Name YCR CORPORATION

UBI Number 602 975 083

Corporation Type Profit Corporation

Tracking ID 1808949

Validation ID 1632471-002

Date Submitted for Filing 12/8/2009

Filing Due Date

State of Incorporation WA

Inc./Qual Date 12/8/2009

Nature of Business Rail transportation

Contact Information

Contact Name Daniel Roach

Contact Address PO Box 1776
Walla Walla
WA
99362

Contact Email dan@danroachlaw.com

Contact Phone 509-522-6800

State of Washington

[IAR]

Secretary of State

CORPORATIONS DIVISION
James M. Dolliver Building
801 Capitol Way South
PO Box 40234
Olympia WA 98504-0234
360 725.0377

FILED
SECRETARY OF STATE
SAM REED
December 8, 2009
STATE OF WASHINGTON

Application for Profit Corporation

Office Information

Application ID 1601125

Tracking ID 1808949

Validation ID 1632471-001

Date Submitted for Filing: 12/8/2009

Contact Information

Contact Name Daniel Roach

Contact Address PO Box 1776
Walla Walla
WA
99362

Contact Email dan@danroachlaw.com

Contact Phone 509-522-6800

Articles of Incorporation

Preferred Name YCR CORPORATION

Purpose Any Lawful Purpose

Duration Perpetual

Incorporation Date Effective Upon Filing by the Secretary of State

Expiration Date 12/31/2010

Number of Shares 10000

Authorized Shares All of One Class

Registered Agent Information

Agent is Individual

Agent Name Paul Didelius

Agent Street Address 499 Railex Road
Burbank
WA
99323

Agent Mailing Address Same as Street Address

Agent Email Address pd@frontierrail.com

Submitter/Agent Relationship Submitter has signed consent of specified agent

Incorporators Information

Incorporator #1

Incorporator Name Paul Didelius

Incorporator Address 499 Railex Road
Burbank
WA
99323

Signature Information

Signed By Daniel J Roach

Registered Agent Information

Agent is Individual

Agent Name Paul Didelius

Registered Agent Consent Submitter has Registered Agent Consent on File

Agent Street Address 499 Railex Road
Burbank
WA
99323

Agent Mailing Address Same as Street Address

Agent Email Address pd@frontierrail.com

Place of Business

Place of Business is in US Yes

Street Address 499 Railex Road
Burbank
WA
99323

Officers

Officer #1 Name Paul Didelius

Title1 President

499 Railex
Road
Burbank, WA

Officer #2

Name Stan
Patterson

Title Vice
President
PO Box 154
Marshall, WA
99020

Officer #3 Name Paul Didelius

Title Secretary
499 Railex
Road
Burbank, WA
99323

Officer #4 Name Paul Didelius

Title Treasurer
499 Railex
Road
Burbank, WA
99323

Signature Information

Signed By Daniel J. Roach

Balance Statement

EXHIBIT B

YCR Corporation
BALANCE STATEMENT
As of December 16, 2009

ASSETS

Current Assets

Cash \$ 20,000.00

Fixed Assets

Rolling Stock & Locomotives leased

Track Equipment none to date

Track Materials none to date

Other Assets

Leases 350,000.00

Fixtures none to date

Office Furniture & Equipment none to date

Office Supplies none to date

Corporate Certificate 30,000.00

TOTAL ASSETS \$ 400,000.00

LIABILITIES AND EQUITY

LIABILITIES

Current liabilities

Track Lease (annual) \$ 72,000.00

Equipment Leases (annual) 1,800.00

Incorporation & Legal expenses 5,200.00

Employee Salaries & benefits (annual) 60,000.00

Accounts payable (annual) 36,000.00

Depreciation expense none to date

Long Term Liabilities

Loans & Mortgages none to date

Balance Statement

TOTAL LIABILITIES	\$	175,000.00
EQUITY		
Par value of outstanding shares	\$	20,000.00
Net value of assets		205,000.00
TOTAL EQUITY	\$	225,000.00
TOTAL LIABILITIES AND EQUITY	\$	400,000.00

EXHIBIT C

Toppenish to White Swan Railroad Line Lease Agreement

WHEREAS, the County (defined below) is the owner of the Railroad Line (defined below); and,

WHEREAS, The Board of Yakima County Commissioners deem it in the best interest of the County that rail service on the railroad corridor between Toppenish and White Swan be preserved for the economic benefits to the citizens of the County; and,

WHEREAS, The Board of Yakima County Commissioners desire to lease the line to a qualified lessee to provide freight rail service on the line during the term of this Toppenish to White Swan Railroad Line Lease Agreement (this "Agreement"); and,

WHEREAS, the Railroad Company (herein after referred to as "Lessee") agrees to lease the Railroad Line from the County for the purpose of providing Freight Rail service on the line.

NOW, THEREFORE, the County and Lessee agree to the following terms:

- 1) Definitions. As used in this Agreement:
 - a) "County" means Yakima County, Washington;
 - b) "Person" means any natural person, firm, partnership, company, corporation, agency, government or other entity of any kind;
 - c) "Railroad Line" means the railroad right-of-way, track, structures and other operational components of the railroad commonly known as the Toppenish to White Swan Railroad between milepost 0.00 near Toppenish and milepost 20.56 near White Swan, and 1.63 mile of industrial spur near White Swan, all located in Yakima County, Washington, over which rail freight services are to be provided by Lessee pursuant to this Agreement. Legal descriptions and maps of the Railroad Line are attached to the original signed copies of this Agreement.
- 2) Ownership: Yakima County is the sole owner of the Railroad property.
- 3) Lessee Qualifications: The Lessee certifies that it is a legally and properly organized Railroad Company and has, and shall maintain during its tenure under this Agreement, adequate qualified professional management and operations staff necessary for operation of a short-line railroad. And in all events, Lessee has, and shall maintain during its tenure under this Agreement, staff properly qualified to conduct interchange operations with any Class I or Class II rail carriers as may be, or become, necessary.

- 4) **Freight Rail Service:** Lessee agrees to provide freight rail service on the Railroad Line up to seven (7) days a week. Service shall be provided at a frequency necessary to adequately serve the number of car loadings being handled. Service on weekends or legal holidays shall be provided to shippers on the Railroad Line only if requested by the shipper, and under terms established by Lessee. Service shall be provided during daylight hours only. Freight rail service shall include moving railcars, switching, line-haul, and other related services as are customarily provided to similar industries using rail services. Lessee shall, during the term of this agreement, interchange with a Class I or Class II rail carrier, and shall comply with all rules, regulations and requirements as set forth in the Interchange Agreement(s). A copy of the Interchange Agreement(s) shall be provided to the County prior to execution of this Agreement, and shall be attached hereto and incorporated herein as Exhibit A.
- 5) **Modified Certificate of Public Convenience and Necessity:** The Railroad Line is qualified for operation under a Modified Certificate of Public Convenience and Necessity, (49 CFR 1150, Subpart C). Lessee agrees that it will only seek to operate on the Railroad Line under a Modified Certificate of Public Convenience and Necessity. Nothing in this Lease shall authorize the Lessee to operate, or to seek to operate, as a general common carrier on the Railroad Line. Lessee shall be responsible for making all STB filings in accordance with 49 CFR 1150.23, and a copy of said filing shall be provided to the County
- 6) **Subsidies:** Lessee shall not require any subsidy as may be authorized by 49 CFR 1150, Subpart C, from the County as a precondition for operation of the Railroad Line. Lessee may not require any financial subsidy from any shipper on the line, except that; Lessee may require a guarantee of a minimum number of car loadings per calendar year as a precondition to provide common carrier service to the shipper.
- 7) **Effective Date, Term:** The effective date of this agreement shall be December 21, 2009, at which time the Lessee shall assume the common carrier obligation on the Railroad Line under a Modified Certificate of Public Convenience and Necessity. The term of this Agreement shall be ten (10) years, beginning on the effective date, provided that this Agreement may be terminated for failure to cure a material default as provided in Section 27 below. No earlier than eight (8) months, or later than six (6) months prior to the termination of the ten year lease term, the lessee may submit to the County a proposal to extend the lease for an additional five (5) years. The Annual Compensation contained in any such proposal shall not be less than the Annual Compensation for the initial lease term. The Board of Yakima County Commissioners shall have the sole authority to accept or reject any lease extension proposal. Failure by any shipper(s) on the Railroad Line to meet any precondition for service by Lessee shall not relieve Lessee of any obligations or compensation payable under the terms of this Agreement.

- 8) **Annual Compensation:** During the term of this Agreement, Lessee shall compensate the County for the lease of the Railroad Line by payment of the amount of Twelve Thousand dollars and no cents (\$12,000.00) per year. The Annual Compensation for the lease shall be paid to the County in four (4) equal quarterly installments. Prior to execution of this Agreement by the County, the lessee shall pay the first quarterly payment in full, along with a pro rata amount equal to 10% of the first quarterly payment. Thereafter, quarterly payments shall be paid, in advance, to the County no later than the tenth (10th) day of April, July, October and January of each year.
- 9) **Yakima Valley Rail & Steam Museum:** Lessee shall, if requested by the Yakima Valley Rail & Steam Museum ("Museum"), allow the Museum to operate passenger and excursion services on the Railroad Line, provided that the Museum shall:
- a) Provide their own liability insurance with the minimum limits contained in this Agreement.
 - b) Include the Lessee and the County as named insured's on the Museum's liability insurance policy.
 - c) Indemnify both the Lessee and the County to the extent provided for by law.
 - d) Provide documentation that all Museum personnel and equipment have all the proper certifications that would normally be required to operate on a railroad line.
 - e) Ensure that the track is inspected and suitable for passenger rail service at no cost to Lessee or the County.
- As a further condition, the Lessee may require the Museum to agree to other criteria that are reasonably necessary to ensure compliance with all applicable regulations and prevent interference with the Lessee's freight rail operations.
- 10) **Management of Other Assets:** Appurtenant to the Railroad Line are additional railroad rights of way and rail sidings that shall be considered separate from the Railroad Line, but shall be part of the lease. Lessee shall have the right to use and/or lease to a third party the Other Assets. Lessee shall be responsible for all maintenance and/or upkeep of the Other Assets as part of Lessee's Maintenance obligations under Section 12 below. Lessee shall be entitled to retain all revenues derived from any sub-lease authorized by this agreement.
- a) From time to time the County may require the use of rail sidings for loading and unloading of maintenance materials. Upon prior notice to Lessee, these sidings shall be made available at no cost to Yakima County, provided that the use by the County does not interfere with other users who have existing leases and provided that the County shall be responsible for all damage, car hire, or demurrage costs incurred as a result of its use hereunder.

- 11) **Crossings:** Lessee shall be responsible for the management of all public and private track crossings that are part of the Railroad Line. This shall be construed to include the establishment of rules and regulations for permitting and maintenance of private crossings and, regular inspection and maintenance of ties, rails, crossing surfaces and signals at public road crossings on the Railroad Line. The Public Agency with responsibility for the road shall perform all required maintenance of road surfaces from one (1) foot outside of each rail on the Railroad Line. Lessee shall maintain crossing surfaces within one (1) foot outside of the rails on the railroad.
- 12) **Railroad Line Inspection and Maintenance:** During the term of this Agreement, Lessee shall perform or cause to be performed all inspections and maintenance necessary and appropriate to permit continued operation of rail freight services on the Railroad Line in compliance with applicable Federal and State laws. Maintenance shall include those routine activities that ensure that all track components, signals, sidings and right-of-way of the Railroad Line remain in a condition that is equal to, or better than their condition at the commencement of this Agreement. In general Maintenance shall include, but not be limited to; a) vegetation control, b) maintenance of the ballast, roadbed, drainage facilities, culverts and bridges, c) repair or replacement of broken or damaged rail sections, d) replacement of damaged or otherwise unserviceable ties, e) replacement of spikes, tie plates, bolts and other hardware, f) replacement of joint bars, g) maintenance of track surface, alignment and gage, h) maintenance of switches, sidings, derails, fences and other appurtenances, i) signal maintenance and other crossing device maintenance including all crossbucks and stops signs installed at public road crossings.
- 13) **Capital Improvements:** Capital Improvements are any improvements that add capacity or efficiency to the Railroad Line. Capital Improvements include improvements to the Railroad Line that will reconstruct the existing facilities to a better than existing condition or add additional road miles of rail line. Capital Improvements shall include, but not be limited to, the reconstruction of the sub-ballast, re-ballasting that improves the existing track conditions, upgrade of the rails, re-alignment and re-grading of the mainline track or sidings, re-construction of bridges and trestles or the construction of additional track or sidings, construction of new crossing signals, and the installation of specialized crossing surfaces. The costs associated with Capital Improvements will generally be the responsibility of the Lessee. Any Capital Improvements made to the Railroad Line by the Lessee shall be approved in advance by the County and shall become the property of the County. The County may from time to time seek State and Federal grants to fund certain Capital Improvements. As a condition of grant funded Capital Improvements, the County will be responsible for the development of construction documents and the acquisition of any right-of-way. The County shall notify the Lessee in advance of application for any grant funded Capital Improvement.

- 14) **Coordination:** The County and the Lessee shall to the greatest extent possible mutually cooperate on the development of Capital Improvements. The County shall notify the Lessee in advance of any Grant applications being submitted to funding agencies, and of any other improvements to the line proposed to be funded by the County. The Lessee shall cooperate with the County and any County contractors performing County sponsored work on the line. This cooperation shall include grant application review, construction document review, provision of flaggers, and modification of train orders necessary to accommodate the work. Costs incurred by the Lessee shall only be reimbursed to the extent that they are included in any mutually agreed upon funding estimate for the work.
- 15) **Business Relations:** Lessee shall use all commercially reasonable and prudent efforts to maintain good and proper business relations with all of the shippers on the Railroad Line.
- 16) **Auditing:** The County, upon twenty (20) days' advance written notice to Lessee, and not more frequently than once per calendar year during the term of this Agreement, may, at any time during regular working hours, enter the premises of Lessee to inspect the records of Lessee pertaining specifically to its operations of the Railroad Line and its performance of this contract. The County shall have access to any and all such records regardless of where they are located, and Lessee shall promptly make copies of such records available to the County, upon the County's request and at the County's expense. The County shall limit disruption of Lessee's normal day-to-day operations in obtaining such records and shall, to the extent permitted by law, maintain the confidentiality of such records and information. The County shall not be entitled to take possession of the originals of any documents. Nothing in this Agreement shall be construed to require Lessee to divulge any information which would be in violation of the Interstate Commerce Act or related federal regulations. In the event the County, or any of its officials, agents or employees, is requested, whether under color of law or otherwise, to provide to any third party any of the information obtained by it under this Section, the County agrees to provide Lessee with notice thereof no less than five (5) business days in advance of any disclosure thereof so to allow Lessee to take legal action to preserve the confidential nature of its business information.

17) Liability and Property Damage Insurance:

- a) Lessee agrees to purchase and maintain with companies authorized to do business in the State of Washington such property insurance covering the Railroad Line and all property included in this Agreement as is customary in the short-line railroad industry.
- b) Lessee agrees to purchase and maintain with companies authorized to do business in the State of Washington claims-made basis public liability insurance coverage naming Yakima County and its officers, employees and agents as additional insured's. Liability coverage shall be in an amount not less than \$25,000,000.00 per occurrence with such commercially reasonable exclusions and deductibles as is customary in the short-line railroad industry. The policy shall be endorsed to delete the policy exclusion for property in the care, custody and control of the insured. A copy of the policy document including the declarations page(s), and contact information for the insurer shall be delivered to the County prior to Lessee's entry onto or use of the Railroad Line and commencement of operations, and prior to any renewal or change of insurer.
- c) The following clause shall be made a part of all insurance policies:
"This policy shall not be canceled or materially changed without thirty (30) days prior written notice to Yakima County, Washington, whose address is Board of Yakima County Commissioners, 128 North Second Street, Yakima, Washington 98901."
- d) Lessee agrees to maintain public liability insurance, at the above-mentioned levels, for a sufficient period of time after termination of the lease to cover any incidents that may have occurred while lessee was operating the Railroad Line.
- e) Lessee shall immediately suspend operation of trains and motive power on the Railroad Line if its liability insurance required by this Agreement should lapse or be canceled for any reason. The County may order Lessee to suspend train and motive power operations on the Railroad Line for lapsed or canceled insurance in the event Lessee does not take such action voluntarily. Operation of trains and motive power by Lessee shall remain suspended until insurance coverage is reinstated.

- 18) **Hold Harmless/Indemnity.** Lessee does release, indemnify, promise to defend and save harmless the County, its officers, employees and agents from and against any and all liability, loss, damages, expense, actions, and claims, including insurance deductibles and costs and reasonable attorney's fees incurred by the County, its officers, employees and agents in defense thereof, asserted or arising directly or indirectly out of Lessee's performance of any service pursuant to this Agreement, including any claims arising from the common carrier obligation, except those arising solely from negligent acts of the County, its officers, employees and agents.
- a) Lessee specifically agrees to indemnify and hold harmless the County, its officers, employees and agents from any and all bodily injury claims brought by employees of Lessee and expressly waives its immunity under the industrial insurance Act and federal Employers Liability Act or other similar acts as to claims which are brought against the County by such persons.
 - b) Lessee shall comply with all applicable state and federal laws and regulations affecting its employees in the operation of the Railroad Line and shall at all times defend, indemnify and save the County harmless from all actions, claims, demands and expenses arising out of said laws and regulations.
 - c) Lessee specifically agrees that they have inspected the Railroad Line and all appurtenances prior to the commencement of this Agreement and agrees to accept the Railroad Line and appurtenances in their current condition, and will indemnify and defend the County from any loss, injury, damage, expense or claim arising from any preexisting condition of the Railroad Line as provided in this section.
 - d) Nothing in the foregoing shall obligate Lessee to indemnify the County from any loss, injury, damage, expense or claim arising from:
 - i) The County's (or its employees', agents', or contractors') exercise of any rights to access the Railroad Line.
 - ii) The County's breach of any provision of this Agreement.
- 19) **Licenses:** Lessee shall be responsible for acquiring all permits, licenses, and authority necessary to operate and maintain the Railroad Line and meet all requirements for such permits, licenses and authority.
- 20) **Compliance with Laws:** Lessee agrees to make no unlawful use of the Railroad Line or any portion thereof. Lessee also agrees to comply with all federal, state and local laws, ordinances and regulations including applicable provisions of the uniform fire, building, plumbing, electrical, and mechanical codes which have been adopted by Yakima County, and all applicable environmental laws and regulations.
- a) Lessee shall promptly notify the Federal Railroad Administration in writing of the Lessee's acceptance of responsibility for the Railroad Line in accordance with 49 CFR§ 213.5 (c). A copy of the above notification and any response thereto shall be promptly provided to the County.

- 21) Fees and Taxes: Lessee assumes full responsibility for the payment of all payroll taxes, use, sales, income, leasehold or other taxes, fees, licenses, excises, or payments required by any city, county, state or federal law or regulation which are now or may during the term of this Agreement be enacted as to all persons employed by Lessee and as to all duties and activities, by Lessee in performance of this Agreement.
- 22) Assignment or Subletting Prohibited. Lessee agrees not to assign this Agreement or any portion thereof, nor sublet or subcontract the operation or the Railroad Line portion thereof nor permit any other person or persons to occupy the same or any portion thereof other than as specifically allowed by this Agreement.
- 23) Operating Rights, Management and Control:
- a) Lessee shall have the exclusive right to provide freight rail service on or over the Railroad Line during the term of this Agreement. Except as otherwise provided herein, Lessee exclusively shall control, manage, administer, and supervise the Railroad Line and all operations thereon. Lessee may effect such additions, changes and betterments to the leased property as Lessee may deem necessary, expedient, or proper, all of which shall be at the sole expense of Lessee, and with the prior approval by the County, except as may be set forth herein or in subsequent agreements.
 - b) Lessee shall have the exclusive right to adopt and promulgate rules and regulations governing operation of the Railroad Line, consistent with federal and state laws and regulations and consistent with regulations adopted by Lessee for other rail freight facilities owned or operated by Lessee.
 - c) As part of its responsibilities, Lessee shall maintain all appropriate interchange agreements, tariffs, charges, and other appropriate governmental, regulatory, or commercial agreements.
 - d) Lessee shall maintain the general appearance of the Railroad Line so that it does not become a nuisance to the community. Lessee specifically agrees to remove all vegetation that may create hazardous conditions at any railroad crossing in compliance with the Washington Utilities and Transportation Commission.
 - e) The County and Lessee shall notify each other of all complaints received or reports issued concerning operation of the Railroad Line. Lessee shall keep accurate records of injuries or accidents associated with the Railroad Line and records of every such incident shall be delivered to the County in a timely manner. In addition to written reports, notice of all accidents shall be given in writing or orally to the County not less than one business day from the time of the accident.

- f) All employees of Lessee shall conduct themselves in a business-like manner when representing the Railroad Line. Any conduct that would reflect poorly or any loss of goodwill towards the County or the Railroad Line by an employee of Lessee, which is not addressed by Lessee after receipt of notice thereof, will be considered a material default of this Agreement as specified in Section 25.
 - g) The County has the exclusive right to grant franchises for the use of the railroad rights-of-way. The County agrees that its franchisees' use thereof will comply with all railroad safety obligations imposed by law or by Lessee which are applicable to the entire Railroad Line. Any fees that are collected as a result of granting said franchises shall be paid to the County, and deposited into a special fund established for the Railroad Line.
- 24) Safety and Other Inspections: Lessee shall be solely responsible for any and all safety and operational inspections required for continuing railroad operations. Lessee shall allow the County access to all documents related to inspection of the Railroad Line, or the rail corridor applicable thereto or rolling stock used thereon upon reasonable advance notice to Lessee. Lessee shall permit and provide for inspection of the Railroad Line by the County upon request.
- 25) Condition of Premises: Lessee agrees that it has examined the Railroad Line and accepts the Railroad Line in its present condition and acknowledges that the County has not made any promises for improvement.
- 26) Liens and encumbrances:
- a) Lessee agrees to keep the Railroad Line free from all liens of any nature caused or incurred by any act or omission of Lessee. Lessee shall not have the right or authority to incur any mechanics', laborers' or other liens against the Railroad Line. Lessee cannot use this Agreement as collateral for any purpose, without prior written consent of the County.
 - b) Lessee is not authorized to grant any easement, right of way, permit, or license of any nature to any person to use any part of the Railroad Line without the prior written consent of the County.
- 27) Default, Waivers and Termination for Default:
- a) Waivers of Default: Sufferance or waiver of any default by either party shall not affect such party's rights regarding other or future defaults and failure to take any action on account of such default shall not prohibit either party from taking action for other or future defaults. An express waiver shall not waive any default other than the default specified in the express waiver and then only for the time and to the extent therein stated. One or more waivers of any covenant, term, or condition of this Agreement shall not be construed as a waiver for a subsequent breach of the same covenant, term, or condition.

- b) **Termination for Material Default:** If either party shall fail to cure a material default within twenty (20) business days of written notice, the other party may elect to terminate this Agreement upon thirty (30) days written notice to the other, which notice shall state the grounds therefore with specificity. Termination or exercise of other rights by either party with respect to any default shall not affect the rights or obligations of any non-defaulting party under this agreement. The parties shall have such other rights and remedies as are provided by law.
- c) **Other Events of Termination:** In addition to the parties' rights to terminate this Agreement under Section 27(b), this Agreement shall be terminated immediately upon the issuance of any final and non-appealable order by the United States Surface Transportation Board or any court or other administrative agency that terminates Lessee's authority or ability to provide rail freight services on the Railroad Line.

28) **Force Majeure Events:**

- a) **Events:** This Section, to the exclusion of any other provision of this Agreement, governs the rights and obligations of the parties under circumstances in which Lessee's performance of freight service on all or any portion of the Railroad Line is prevented by an event beyond its control, and which is without the fault or negligence of Lessee, which shall include without limitation acts of God, explosions, fires, vandalism, flood, or any other severe weather disturbance. The parties agree that, if such an event shall occur which substantially impairs Lessee's ability to provide such service, thereby impairing Lessee's ability to perform its obligations, including payment obligations, under this Agreement, Lessee shall use its best commercially reasonable efforts to continue to perform its obligations hereunder, provided that if Lessee should fail to perform any such obligation due to such event, such failure shall not be deemed to be an event of default under Section 27 hereof so long as Lessee continues to use such efforts. In the event of loss or damage to the Railroad Line which is covered by property insurance, Lessee agrees to make any necessary claims for insurance proceeds and use such proceeds to repair the damaged Railroad Line or to defray the expenses incurred as a result of making the repair.
- b) **Rights and Obligations:** In the event of loss or damage to all or any portion of the Railroad Line described in Section 28(a) not covered by, or in excess of insurance coverage, Lessee shall not be responsible for repairs in excess of such limits, and Lessee may:
 - i) Seek additional funds from Lessor or others, make necessary repairs and continue to perform rail freight service on the Railroad Line.
 - ii) Terminate this Agreement as to such portion (or all) of the Railroad Line and remit all insurance proceeds to Lessor in which event the severed portion (or all) of the Railroad Line that will not be operated by Lessee shall thereupon be excluded from the Railroad Line under this Agreement.

29) Actions Upon Termination; Surrender of Premises: In the event of termination of this Agreement under Sections 7, 27 or 28, Lessee agrees to quit and deliver said Railroad Line to the County in as good order and condition as in existence on the date hereof, excepting reasonable use and wear. Lessee shall be responsible for filing all notifications as required by 49 CFR 1150.24, and shall not be relieved of any Common Carrier obligation until the requisite time period following said notification has elapsed.

30) Notices. Any notices herein provided to be given by United States mail addressed to:

To County:

Board of Yakima County Commissioners
128 North 2nd Street
Yakima, WA 98901

To Lessee:

XXXXXXXXXXXX
XXXXXXXXXXXX
XXXXXXXXXX,XX XXXXX

YCR Corporation
Paul Didelius
499 Railex Rd.
Burbank, WA 99323

Notices herein to be given shall be deemed to be delivered if mailed by certified United States mail, addressed to the Parties at the addresses set forth above.

31) Nondiscrimination: Lessee agrees that it shall not discriminate against any person on the grounds of race, creed, color, religion, sexual orientation, national origin, sex, age, marital status, political affiliation or belief, or the presence of any sensory, mental or physical handicap in violation of the Washington State Law Against Discrimination (RCW Chapter 49.60) or the Americans with Disabilities Act (42 U.S.C. 121 01 et seq.) or any other applicable law or regulation. In the event Lessee violates this provision, the County may terminate this agreement immediately.

32) Assignment:

a) This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. Lessee's rights and obligations hereunder shall not be assignable whether by way of assignment, sublease, license or otherwise, directly or indirectly without County's prior written consent. Changes in Lessee's majority ownership or voting control shall require County's prior written consent.

b) This Agreement is intended and shall be deemed to be the sole property of the County and may at the option of the county be forthwith terminated if this Agreement or the rights of Lessee hereby be transferred or attempt to be transferred by judicial process, or if Lessee shall attempt to transfer the same otherwise than as herein provided, or if Lessee shall become bankrupt or insolvent, or if its property or any part thereof be placed in charge of a receiver by order of any court or for any other reason whatsoever. No third parties are intended to be benefited by, nor shall any third party be entitled to enforce, any provision of this Agreement.

33) Construction, Amendment and Severability:

- a) The invalidity or unenforceability of any provision hereof shall not affect or impair any other provisions.
- b) Terms or provisions of this Agreement may be changed, waived, discharged, or terminated only by an instrument in writing executed by both.
- c) This Agreement and the attachments hereto contain the entire Agreement of the parties and supersede any and all prior agreements or oral understandings among the parties.
- d) The headings of the several paragraphs contained herein are for convenience only and do not define, limit, or construe the contents of such paragraphs.

34) Applicable Law and Venue. This Agreement shall be governed by the laws of the State of Washington. Any action, suit, or judicial proceedings for the enforcement of this Agreement shall be brought in the Superior Court for the State of Washington in Yakima County, Washington.

