

## ASSIGNMENT AGREEMENT

This Assignment Agreement ("Agreement") is made and entered into on Mar 22, 2019, by and between UNION PACIFIC RAILROAD COMPANY ("UP"), Palouse River & Coulee City Railroad, L.L.C. ("PCC"), and CWW, LLC ("CWW"). UP, PCC, and CWW being sometimes referred to individually as "Party" and collectively called "Parties."

### RECITALS:

**WHEREAS**, UP and Blue Mountain Railroad, Inc. are parties to a Lease Agreement dated November 20, 1992 under which UP leased to Blue Mountain Railroad, Inc. certain lines of railroad in Washington and Oregon. Blue Mountain Railroad, Inc. was later merged into PCC and PCC assumed Blue Mountain Railroad, Inc.'s obligations under the Lease Agreement; and

**WHEREAS**, in 1997, the Port of Columbia acquired a portion of the leased rail lines from milepost 48.0 near Walla Walla, Washington to milepost 71.3 near Bolles, Washington. This portion of the rail lines was removed from the Lease Agreement; and

**WHEREAS**, PCC no longer desires to operate under the Lease Agreement and is agreeable to assigning its obligations under the Lease Agreement to CWW pursuant to this Agreement; and

**WHEREAS**, CWW desires to assume PCC's rights and obligations under the Lease Agreement pursuant to this Agreement; and

**WHEREAS**, UP consents to the assignment of the Lease Agreement pursuant to this Agreement.

**NOW THEREFORE**, in consideration of the mutual covenants and conditions contained herein, the Parties agree as follows:

### **1. Assignment and Assumption of Agreements**

As of the Effective Date:

- (a) PCC assigns, transfers, and otherwise conveys the Assigned Agreements as defined below to CWW;
- (b) CWW accepts the assignment of the Assigned Agreements from PCC;
- (c) CWW expressly assumes the Assigned Agreements;
- (d) CWW agrees to keep, perform and fulfill all of the terms, covenants, obligations, and conditions of the Assigned Agreements; provided, however, for purposes of clarity, CWW shall not be required to perform or fulfill any such terms, covenants, obligations or conditions that were PCC's responsibility prior to the Effective Date, but which may remain unperformed or unfulfilled after the Effective Date;
- (e) Except as provided in (d) and in this section, PCC is released from all obligations, claims, and liabilities that may arise under the Assigned

Agreement after the Effective Date. PCC shall remain responsible for any obligations, claims, and liabilities relating to the Assigned Agreements: (a) arising prior to the Effective Date, or (b) arising from an occurrence prior to the Effective Date, but brought after the Effective Date.

## **2. Assigned Agreements**

The Assigned Agreements are:

- (a) Lease Agreement between Union Pacific Railroad Company and Blue Mountain Railroad, Inc. dated November 20, 1992, identified in UP's records as Audit Number 168269, including all Exhibits to the Lease Agreement. For the avoidance of doubt, this includes the following agreements the Assignment Agreement, Exhibit B to the Lease Agreement and the Interchange Agreement, Exhibit C to the Lease Agreement.

Except as specifically provided in this Agreement, all terms and conditions of the Assigned Agreements, as those agreements may have been amended or supplemented prior to the Effective Date, remain in full force and effect. Amendments to the Assigned Agreements in this Agreement shall take effect as of the Effective Date.

## **3. Amendment to Lease Agreement**

3.1 The first "WHEREAS" clause in the RECITALS section of the Lease Agreement is deleted in its entirety and replaced with the following:

WHEREAS, Lessees intends to lease from Lessor, that certain line of railroad in the States of Washington and Oregon, extending from Milepost 3.76 at Zanger Jct., Washington, to Milepost 30.77 at Walla Walla, Washington (the "Wallula Branch"); and from Milepost 46.18 at Walla Walla, Washington to Milepost 20.48 at Weston, Oregon (the "Milton Freewater Branch"); and from MP 46.18 in Walla Walla, Washington to MP 48.0 near Walla Walla, Washington (the "Dayton Branch"); (hereinafter referred to as the "Leased Premises"), as indicated on Exhibit A, hereto attached.

3.2 Exhibit A to the Lease Agreement is deleted in its entirety and replaced with Exhibit A attached to this Agreement. All references to Exhibit A in the Lease Agreement will be deemed references to Exhibit A attached to this Agreement.

3.3 Section 2.01 of the Lease Agreement is deleted in its entirety and replaced with the following:

SECTION 2.01 – Unless this Agreement is terminated earlier in accordance with Section XV, Lessee shall have and hold the Leased Premises unto itself, its successors and assigns, for a term of five (5) years beginning on the Effective Date of the Assignment Agreement dated Mar 22, 2019. Lessee shall have the right to extend the term of this Lease two (2) times for an extended term of ten (10) years for each extension, subject to Lessor's prior written agreement to each such extension. The defined term "Term" shall include any such extensions. Lessee shall notify Lessor of any election to extend the term hereof by giving Lessor not more than 12 months, but not less than 6 months written notice prior to the expiration of the then current lease term, and Lessor shall advise Lessee in writing of whether it consents to such proposed extension within

thirty (30) days of Lessor's receipt of Lessee's notice of election. Lessor may refuse any extension in its sole discretion, for any reason.

3.4 A new Section 2.01(a) is added to the Lease Agreement as follows:

SECTION 2.01(a) -- Lessor retains the right to sell all or any portion of the Leased Premises. Any portion of the Lease Premises sold by Lessor will automatically be removed from the definition of Leased Premises upon consummation of the sale.

3.5 Section 2.02 of the Lease Agreement is deleted in its entirety and replaced with the following:

SECTION 2.02 – [RESERVED]

3.6 Section 5.04(a) of the Lease Agreement is deleted in its entirety and replaced with the following:

SECTION 5.04 – If necessary to carry out operations under this Lease, Lessee agrees to grant Lessor rights to operate over track operated or controlled by Lessee near Wallula for the purpose of interchanging traffic between Lessor and Lessee. Lessor will assign to Lessee its rights under the Joint Facility Agreement between Lessor and BNSF Railway Company dated December 4, 1951, Audit No. 76701, to allow Lessee to interchange traffic from the Walair Branch to the BNSF at Wallula, WA.

3.7 Section 9.02(a) of the Lease Agreement is deleted in its entirety and replaced with the following:

(a) It is a Limited Liability Corporation duly organized, validly existing, and in good standing under the laws of the State of Washington and is qualified to do business in the States of Washington and Oregon

3.8 Section XII of the Lease Agreement is deleted in its entirety and replaced with the following:

SECTION 12.01 -- Lessee shall, at its own sole cost and expense, procure the insurance listed on **Exhibit B** to the Assignment Agreement dated Mar 22, 2019, Contract Insurance Requirements which is attached and hereby made a part hereof and promptly pay when due all premiums for that insurance. Such minimum insurance coverage shall be kept in force by Lessee and Lessee's successors for the entire Term of this Lease or for that length of time that Lessee or its successors operate and/or maintain the Leased Premises, whichever is longer. In the event of conflict in terms between this Lease and the terms of Exhibit B, the terms of Exhibit B shall control.

SECTION 12.02 -- The fact that insurance is obtained by Lessee shall not be deemed to release or diminish the liability of Lessee, including, without limitation, liability under the indemnity provisions of this Agreement. Damages recoverable by Lessor shall not be limited by the amount of the required insurance coverage.

SECTION 12.03 -- The limits of insurance coverage required under this Section shall be increased every five (5) years during the term hereof and any extended term based on any increases or decreases in the Producer Price Index, or any successor index or changes in Lessee's operations or risk profile as determined by Lessor.

SECTION 12.04 – Lessee agrees that it will not transport any hazardous materials, as defined in 49 C.F.R., Part 172, Subpart B (or any successor regulation), on the Leased Premises without first notifying Lessor. Upon this notification, Lessor, in its sole discretion, may change or increase the Contract Insurance Requirements. Lessee agrees that it will not transport any hazardous materials on the Leased Premises until it obtains the required Contract Insurance Requirements, as changed or increased by Lessor.

3.9 Section XIV of the Lease Agreement is deleted in its entirety and replaced with the following:

SECTION 14.01 -- Nothing in this Lease shall prevent Lessor from leasing or selling any portion or portions of the Leased Premises which is or are located beyond 25 feet of the centerline of any branch or main line track, including areas of any station ground provided such areas are not being used in connection with Lessee's rail freight operations. Lessor retains the right to enter into leases, licenses, and easements ("Lessor Agreements") without the consent of the Lessee. All proceeds from such real estate leases or sales shall accrue solely to Lessor and Lessee shall either execute an amendment to this Lease which deletes any such sale property from the description and terms hereof, or shall execute any other document reasonably necessary to remove the encumbrance of this Lease from such property.

SECTION 14.02 -- The revenues collected by Lessor described in Section 14.01 shall not be prorated as of the Commencement Date. Lessor shall be entitled to receive and retain all payments due and payable prior to the Commencement Date whether payable in advance or in arrears. If Lessee is not in default under this Lease, Lessee will receive revenues due and payable prior to termination hereof. Lessor shall retain all revenues from the Lessor Agreements.

SECTION 14.03 -- From and after the Commencement Date, Lessor will manage all Lessor Agreements, including all easements, leases and licenses. From and after the Commencement Date, Lessee will manage all agreements, other than Lessor Agreements, applicable to the Leased Premises (hereinafter referred as "Lessee Agreements" and generally including track agreements, grade crossing agreements and other operating agreements). Lessee shall document all of such Lessee Agreements using standardized forms prepared and approved by Lessor in accordance with Lessor's policies concerning hazardous materials storage and handling, and engineering standards. Lessee shall not execute or deliver any Lessee Agreement, including any renewal, termination or cancellation thereof, which deviates from Lessor's standard forms, engineering standards or operating instructions without first receiving the written concurrence of Lessor. Lessor's concurrence or non-concurrence (as the case may be) shall be delivered to Lessee within thirty (30) days of Lessee's written request therefore.

All preparation fees and expenses billed by Lessee applicable to the Lessee Agreements shall be retained by Lessee.

SECTION 14.04 -- Lessee shall not execute any Lessee Agreements affecting the Leased Premises having a term extending beyond the then current term of this Lease without securing Lessor's prior written consent.

Cancellation of any Lessee Agreement for any reason during the Term of this Lease must be approved, in advance and in writing, by Lessor. This approval or non-approval (as the case may be) shall be forwarded to Lessee within thirty (30) days of Lessee's request therefore.

SECTION 14.05 -- Lessee shall carefully supervise the use and/or presence upon of the Leased Premises by any third party to ensure that the value of the Leased Premises is not diminished by reason of such use or presence. Lessee shall ensure that (i) all uses of the Leased Premises are pursuant to appropriate documentation and that all unauthorized use of or presence upon the Leased Premises of or presence upon the Leased Premises is either covered by agreement or promptly removed from the Leased Premises; (ii) no use is permitted which could jeopardize the value of the Leased Premises and that Lessee Agreements for storage or handling of hazardous materials are strictly in conformity with Lessor's policies; and (iii) upon the termination of any Lessee Agreement for any reason whatsoever, the Leased Premises are cleared and restored as required by the terms of the Lessee Agreements. In addition, if the unauthorized use is of a type which would be covered by a Lessor Agreement, Lessee shall promptly bring the unauthorized use to Lessor's attention.

SECTION 14.06 -- Lessor reserves the exclusive right to grant easements or other occupations by pipelines, or fiber optic or other communication systems or signboards. Any requests for such permits or easements shall be referred to Lessor for appropriate action. Lessor will give at least thirty (30) days notice to Lessee prior to initiation of any easements or other occupations pursuant to this Section. Revenues from the granting by Lessor of those agreements shall accrue solely to Lessor.

SECTION 14.07 -- As soon as reasonably practicable after the Commencement Date, Lessor shall assign to Lessee all Lessee Agreements affecting the Leased Premises and Lessee shall assume Lessor's duties and obligations thereunder. The form of the Assignment and Assumption Agreement to be executed by Lessor and Lessee is attached hereto as Exhibit B and hereby made a part hereof.

3.10 A new Section 15.01(e) is added to the Lease Agreement as follows:

(e) By Lessor upon sixty (60) days' notice to Lessee in the event Lessor seeks to sell or dispose of the entire Leased Premises.

3.11 Sections 22.01 and 22.02 of the Lease Agreement are deleted in their entirety and replaced with the following:

SECTION 22.01 – [RESERVED]

SECTION 22.02 – [RESERVED]

3.12 Exhibit D and Exhibit E to the Lease Agreement are deleted in their entirety.

#### **4. Effective Date**

The Effective Date for this Agreement will be the date on which CWW acquires authority or exemption from the Surface Transportation Board to conduct freight common carrier operations over the Leased Premises.

#### **5. Notices**

Any notice, demand, request, submission or other communication required or permitted to be given pursuant to this Agreement or any of the Assumed Agreement shall be given by either Party to the other in writing and shall be deemed properly served when (i) delivered by hand to the Party to whose

attention it is directed, (ii) when sent by facsimile transmission and a confirmation is received by the sender, or (iii) three (3) business days following the date on which it is mailed by registered or certified mail, return receipt requested, with postage prepaid and addressed as follows:

If intended for UP:

Manager Short Line Development  
Union Pacific Railroad  
1400 Douglas St., STOP 1350  
Omaha, NE 68179


If intended for CWW:

Paul Didelius  
Columbia Rail Group  
1104 Dell Ave.  
Walla Walla, WA 99362


or to such other address or facsimile number as a Party may, from time to time designate pursuant to the foregoing notice provisions.

**IN WITNESS WHEREOF**, the Parties hereto have caused this Agreement to be duly executed in duplicate as of the date first above written.


**Union Pacific Railroad Company**

By:   
By: Michael D. Fernen (Mar 22, 2019)  
Printed Name: Michael D. Fernen  
Title: Sr. Director - Short Line & Interline  
Date: Mar 22, 2019

**Palouse River & Coulee City Railroad, L.L.C.**

By:   
By: Stefan Loeb (Mar 21, 2019)  
Printed Name: Stefan Loeb  
Title: Chief Commercial Officer  
Date: Mar 21, 2019

**CWW, LLC**

By:   
By: P. Didelius (Mar 22, 2019)  
Printed Name: P. Didelius  
Title: Managing Member  
Date: Mar 22, 2019