

RECORDATION NO. 6225 Filed 1425  
AUG 13 1979 - 11 40 AM  
INTERSTATE COMMERCE COMMISSION

ASSIGNMENT AND ASSUMPTION AGREEMENT

1. PARTIES

This Assignment and Assumption Agreement is made this fourth day of April, 1979, between THE WESTERN PACIFIC RAILROAD COMPANY, a California corporation (Assignor), and THE WESTERN PACIFIC RAILROAD COMPANY, a Delaware corporation, formerly named Newrail Company, Inc. (Assignee).

2. FACTS

2.1 Assignor is party to a Lease Agreement with First Western Bank, lessor, dated June 15, 1971, recorded with the Interstate Commerce Commission on July 8, 1971, Recordation No. 6225, which was supplemented by a Lease Supplement dated June 15, 1971, recorded on October 8, 1971, Recordation No. 6225-A, which was further supplemented by an Amendment to Railroad Equipment Lease dated March 1, 1972, recorded May 9, 1972, Recordation No. 5959-F, hereinafter collectively referred to as the "Agreement."

2.2 By a Purchase and Sale Agreement dated February 16, 1978, Assignor has agreed to sell substantially all of its assets, properties and rights of every kind and description, and business as a going concern to Assignee, and Assignee

has agreed to assume, with certain exceptions, all of the duties, liabilities and obligations of Assignor.

2.3 Pursuant to the Agreement described in Paragraph 2.2, Assignor desires to assign its interest in the Agreement, and Assignee desires to assume the obligations of Assignor thereunder.

### 3. ASSIGNMENT AND ASSUMPTION

3.1 Assignment. Assignor hereby sells, assigns and transfers to Assignee, its successors and assigns, all of its right, title and interest under the Agreement.

3.2 Assumption. Assignee hereby assumes and agrees to perform, fulfill and discharge in accordance with the terms of the Agreement, at the sole cost of Assignee, each and all of the obligations, covenants, terms and conditions to be kept or performed by Assignor under the Agreement, including, but not limited to (if applicable), Basic Rent, all Supplemental Rent and Casualty Value. Assignee will, at its sole cost and expense, appear in and defend every action or proceeding arising under, growing out of, or in any way resulting from, the Agreement, or the duties, obligations or covenants of Assignor thereunder, and pay any and all amounts for which Assignor or Assignee may be held liable in respect thereof, including the payment

of all reasonable attorneys' fees incurred by Assignor in any such action or proceeding.

4. APPOINTMENT OF ATTORNEY IN FACT

Assignor hereby irrevocably appoints Assignee as its true and lawful attorney, irrevocably, with full power to ask for, and receive, any property, or refund monies to which Assignor is entitled under the Agreement, or to enforce any and all other rights or privileges of Assignor under the Agreement.

5. MISCELLANEOUS

5.1 Assignee shall notify all other parties to the Agreement of this Assignment and Assumption Agreement, and shall cause this Assignment and Assumption Agreement to be recorded with the Interstate Commerce Commission promptly after the execution and delivery hereof.

5.2 Any provision of this Assignment and Assumption Agreement which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability, without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision

in any other jurisdiction. To the extent permitted by applicable law, Assignor hereby waives any provision of law which renders any provision hereof prohibited or unenforceable in any respect.

ASSIGNOR:

THE WESTERN PACIFIC RAILROAD COMPANY, a California corporation

By *P. W. Shumbo, Jr.*  
Its Sr. Vice President - Finance

Attest *H. D. Brew*  
Its SECRETARY

ASSIGNEE:

THE WESTERN PACIFIC RAILROAD COMPANY, a Delaware corporation (formerly named Newrail Company, Inc.)

By *P. W. Shumbo, Jr.*  
Its Sr. Vice President - Finance

Attest *H. D. Brew*  
Its SECRETARY

STATE OF CALIFORNIA )  
 )  
 ) SS  
CITY AND COUNTY OF SAN FRANCISCO )

ON April 2, 1979, before me, the undersigned, a Notary Public in and for the said State, personally appeared R. W. STUMBO, JR. and W. D. BREW, known to me to be the persons who executed the within Instrument, on behalf of the corporation therein named, and acknowledged to me that such corporation executed the within Instrument pursuant to its bylaws or a resolution of its Board of Directors.

WITNESS my hand and official seal.



Diane Lorette Fajoules  
Notary Public in and for said State

STATE OF CALIFORNIA )  
 )  
 ) SS  
CITY AND COUNTY OF SAN FRANCISCO )

ON April 2, 1979, before me, the undersigned, a Notary Public in and for the said State, personally appeared R. W. STUMBO JR and W. D. BREW, known to me to be the persons who executed the within Instrument, on behalf of the corporation therein named, and acknowledged to me that such corporation executed the within Instrument pursuant to its bylaws or a resolution of its Board of Directors.

WITNESS my hand and official seal.



Diane Lorette Fajoules  
Notary Public in and for said State

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RECORDATION NO. \_\_\_\_\_ Filed in Records

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INTERSTATE COMMERCE COMMISSION

**RAILROAD EQUIPMENT LEASE AGREEMENT**

## RAILROAD EQUIPMENT LEASE AGREEMENT

THIS IS A LEASE AGREEMENT, dated as of June 15, 1971, between FIRST WESTERN BANK AND TRUST COMPANY, of San Francisco, California, as Trustee under the Trust Agreement hereinafter referred to (the Lessor), and THE WESTERN PACIFIC RAILROAD COMPANY, a California corporation (the Lessee).

Section 1. Definitions. The following terms shall have the following meanings for all purposes of this Lease Agreement:

(a) Appraisal shall mean a procedure whereby two recognized independent railroad equipment appraisers, one chosen by Lessee and one by Lessor, shall mutually agree upon the amount in question, or (if they should fail to agree) shall mutually appoint a third independent appraiser who shall determine the amount. If either Lessor or Lessee shall fail to appoint an appraiser within 30 days after notice from the other party or appointment of its appraiser, or if such two appraisers shall be unable to agree on the amount of such appraisal and shall fail to appoint such third appraiser, then either party may apply to the presiding judge of the Superior Court of the City and County of San Francisco, State of California, to make such appointment.

(b) Basic Rent shall mean the aggregate rent payable throughout the term of this Lease pursuant to Section 6 hereof.

(c) Casualty or Casualty Occurrence, when used in respect of units of Equipment, shall mean that such unit of Equipment shall be or become any of the following: lost; stolen; destroyed; in the opinion of the Lessee, irreparably damaged; requisitioned (except for any requisition expressly limited to a period ending prior to the termination of this Lease) or taken over by any governmental authority under the power of eminent domain or otherwise during the term of this Lease; or unsuitable for use in unrestricted interchange as

the result of the effectiveness of any standard or requirement for such Equipment hereafter adopted by or imposed upon the railroad industry generally, if the cost of modifying such unit of Equipment to conform to such new standards or requirements would exceed ten percent (10%) of the Casualty Value (determined as of the effective date of such standard or requirement) of such unit of Equipment.

(d) Casualty Value of each unit of Equipment shall be an amount determined as of the date the Casualty Value is payable as provided in this Lease (and not the date of the Casualty Occurrence) equal to that percentage of the Lessor's Cost of such unit of Equipment as set forth in the Schedule of Casualty Value attached hereto as Exhibit B.

(e) Certificates shall mean the Certificates, as that term is defined in, and which shall be from time to time outstanding under, the Trust Agreement.

(f) Certificate Holder shall mean the holder of a Certificate under and pursuant to the Trust Agreement.

(g) Daily Interim Rent Payment Date shall mean January 31, 1972.

(h) Equipment shall mean the 200 railroad box cars described in Exhibit A hereto, or such lesser number thereof as shall constitute the entire quantity of box cars purchased by Lessor under the Purchase Agreement, reconditioned by Re-builder under the Reconstruction Agreement, and delivered to Lessee by Lessor hereunder.

(i) Equipment Trust Certificate Purchase Agreement means the Agreement so designated, dated as of the date hereof, among the Trustee and the parties designated therein as Certificate Purchasers.

(j) Event of Default shall mean any event specified in Section 16 hereof.

(k) Lease Supplement shall mean a document in the form of Exhibit C hereto, and all references herein to "this Lease" or "this Agreement" shall, unless the context implies otherwise, include each such Lease Supplement.

(l) Lessor's Cost, when applied to one or more units of Equipment, shall mean the aggregate amount payable by Lessor in respect of such unit or units of Equipment (i) to Rebuilder under the Reconstruction Agreement, and (ii) to Lessee under the Purchase Agreement.

(m) Purchase Agreement shall mean the agreement designated as the Railroad Equipment Purchase Agreement, dated as of the date hereof, between Lessor and Lessee.

(n) Reconstruction Agreement shall mean the agreement designated as the Railroad Equipment Reconstruction Agreement, dated as of the date hereof, between Lessor, Lessee, and Rebuilder.

(o) Rent shall mean Basic Rent plus Supplemental Rent.

(p) Rebuilder shall mean Pacific Car and Foundry Company, a Washington corporation.

(q) Supplemental Rent shall mean all amounts, liabilities and obligations which Lessee agrees to pay to Lessor or others hereunder, except Basic Rent.

(r) Trust Agreement means the agreement designated as the Equipment Trust Agreement, dated as of the date hereof, between Crocker-Citizens National Bank, as Trustor, and Lessor, as Trustee (as originally executed and as the same may from time to time be supplemented or amended).

(s) Trustor means the Crocker-Citizens National Bank or any successor thereto as Trustor under the Trust Agreement.

(t) Unit (or units) of Equipment shall mean one (or more) of the boxcars constituting the Equipment.

Section 2. Lease. Lessor hereby agrees to lease the Equipment to Lessee, and Lessee agrees to lease the Equipment from Lessor and pay to Lessor the Rent, all on the terms and conditions herein contained.

Section 3. Acceptance and Delivery. Delivery of Equipment to Lessee by Lessor hereunder shall be made simultaneously with delivery of Equipment to Lessor by Rebuilder

under the Reconstruction Agreement. Acceptance of each unit of Equipment on behalf of Lessor under the Reconstruction Agreement and on behalf of Lessee hereunder shall be made by their authorized representative, who shall be an employee or officer of Lessee selected by Lessee, and who shall, upon finding such unit of Equipment to have been delivered by Rebuilder in good order, execute and deliver to Lessor, Lessee and Rebuilder a Certificate of Acceptance applicable thereto in the form of Exhibit D hereto; whereupon such unit of Equipment shall be deemed to have been delivered to and accepted by Lessee and shall be subject thereafter to all terms and conditions of this Lease. Upon the delivery of the two-hundredth (or final, as the case may be) unit of Equipment, Lessor and Lessee shall each promptly execute and deliver to the other a Lease Supplement in the form of Exhibit C annexed hereto, describing the units so delivered hereunder.

Section 4. Term of Lease. This Lease shall commence upon delivery of the first unit of Equipment to Lessee, and shall terminate twelve (12) years after the Daily Interim Rent Payment Date.

Section 5. Representations and Warranties of Lessee. Lessee represents and warrants that:

(a) Lessee is a corporation duly organized and existing in good standing under the laws of the State of California and has the corporate power and authority to carry on its business as presently conducted and to perform its obligations under this Lease, and is duly qualified to do business wherever necessary to carry on its present business and operations and to own or hold under lease the properties so owned or held;

(b) This Lease, each Lease Supplement, the Purchase Agreement, and the Reconstruction Agreement have been duly authorized by all necessary corporation action on the part of Lessee, do not require any approval of stockholders of Lessee, and neither the execution and delivery thereof nor consummation of the transactions contemplated thereby nor compliance by Lessee with any of the terms and provisions thereof will contravene any law binding on Lessee or result in any breach of, or constitute any default under, or result in the creation of any lien, charge or encumbrance upon any property of Lessee under, any indenture, mortgage, chattel mortgage, deed of trust, conditional sales contract, bank loan or credit agreement,

corporate charter, by-law or other agreement or instrument to which Lessee is a party or by which Lessee or its properties may be bound or affected;

(c) Neither the execution and delivery by Lessee of this Lease or any Lease Supplement, nor any of the transactions by Lessee contemplated hereby or thereby, require the consent or approval of, or the giving of notice to any federal, state or foreign governmental authority, except such, if any, as shall have been duly given prior to the initial delivery of Equipment hereunder;

(d) This Lease, the Purchase Agreement, and the Reconstruction Agreement have been duly entered into and delivered and constitute, and each Lease Supplement, when entered into and delivered, will constitute, legal, valid and binding obligations of Lessee enforceable against Lessee in accordance with the respective terms thereof; except as the same may be limited by laws relating to bankruptcy, insolvency or similar laws affecting generally the rights of creditors.

(e) The Equipment is not and will not become subject to any lien or security interest in favor of any creditor of Lessee pursuant to the terms of any indenture or other instrument affecting Lessee or its property, other than liens or security interests on Lessee's leasehold interests hereunder.

(f) Lessee has as of the date hereof filed or caused to be filed all federal and state tax returns which are required to be filed and, to the extent no extension on filing has been granted, has prior to delinquency paid or caused to be paid all taxes shown to be due or payable on said returns or on any assessment received by Lessee, to the extent that such taxes have become due and payable, or such taxes are being contested by appropriate proceedings.

(g) The financial statements of Lessee heretofore delivered to Lessor are true and correct and fairly depict the financial condition of Lessee as of the date thereof; since such date and until the date of this Lease, there has been no material adverse change in the financial condition of Lessee.

(h) Neither Lessee nor anyone acting on behalf of Lessee has directly or indirectly offered any Certificates or

any similar securities relating to the Equipment or any beneficial interest under the Trust Agreement or any similar instrument, for sale to, or solicited any offers to acquire any of the same from, anyone other than the parties to the Trust Agreement and the Equipment Trust Certificate Purchase Agreement and not more than fifteen other financial institutions or sophisticated individuals.

Section 6. Basic Rent. Lessee agrees to pay Basic Rent hereunder, as follows:

(a) Daily Interim Rent. For each unit of equipment delivered to Lessee hereunder, Lessee shall pay to Lessor, in a lump sum on the Daily Interim Rent Payment Date, daily rental equal to .0330183% of the Lessor's Cost thereof, computed for the period beginning on the date(s) of payment by Lessor of the Lessor's Cost of such unit of Equipment and ending on the Daily Interim Rent Payment Date; provided, however, that the amount of Daily Interim Rent required hereunder shall in no event (and regardless of the number of units of Equipment theretofore delivered to Lessee hereunder, the dates of such delivery, or the payment of Casualty Value for any unit or units pursuant to Section 15(c) hereof) be less than a sum equal to (i) the accrued interest on all Certificates then due (after taking into account any payments applicable to such interest which are payable by the Trustee pursuant to Section 3.02 of the Equipment Trust Certificate Purchase Agreement), plus (ii) 8-3/4% per annum computed on the amount paid by the Lessor to the Lessee under the Purchase Agreement for the period from the date of such payment until the Daily Interim Rent Payment Date.

(b) Periodic Rent. For each unit of Equipment delivered to Lessee hereunder, twenty-four semiannual installments of Periodic Rent, each in the amount of 5.9433% of the Lessor's Cost of such unit of Equipment, payable in advance, beginning with the first such installment on January 31, 1972, and on the last day of each July and January and thereafter until July 31, 1983.

(c) Manner and Place of Payment. Lessee agrees to pay all Basic Rent to Lessor in immediately available funds at Lessor's principal corporate trust office in San Francisco, California, or such other place as shall be agreed upon by Lessor and Lessee.

(d) In the event Federal legislation is enacted prior to December 31, 1972, granting an investment tax credit which is applicable to the units and the Trustor obtains and retains in a permanently nonrefundable manner a benefit from such investment tax credit attributable to the units which it would not otherwise have enjoyed and retained had it not consummated this Lease, each subsequent installment of Periodic Rent shall be reduced by an amount equal to the excess of such installment over sums then due (or to become due on the succeeding day) in respect of the Certificates, until the aggregate of such reductions shall equal such investment tax credit benefit, provided that Lessee shall not be in default on any such Periodic Rent payment date.

Section 7. Return of Equipment. Except as otherwise provided herein, upon the expiration of the term of this Lease with respect to any unit of Equipment the Lessee will, at its own cost and expense, at the request of the Lessor, deliver possession of such unit of Equipment to the Lessor, in the condition required for it to be maintained by Lessee hereunder, upon such storage tracks of the Lessee as the Lessor may designate, or in the absence of such designation, as the Lessee may select, and permit the Lessor to store such unit of Equipment on such tracks for a period not exceeding 45 days and transport the same at any time within such 45 day period to any reasonable place on the railroad lines operated by the Lessee or to any connecting carrier for shipment, all as directed by the Lessor upon not less than 30 days' written notice to Lessee. All movement and storage of each such unit until possession thereof is delivered to Lessor is to be at the risk and expense of the Lessee. During any such storage period the Lessee will permit the Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser of any such unit of Equipment, to inspect the same, provided that Lessee shall not be liable, except in the case of negligence of Lessee, for any injury to or death of any person exercising, either on behalf of Lessor or any prospective purchaser, the rights of inspection hereunder.

Section 8. Net Lease. This lease is a net lease and the Lessee shall not be entitled to any abatement of rent or reduction thereof, including, but not limited to, abatements or reductions due to any present or future claims of the Lessee against the Lessor under this Lease or otherwise or against Re-builder under the Reconstruction Agreement, nor except as otherwise expressly provided herein, shall this Lease terminate, or the re-

spective obligations of the Lessor or the Lessee be otherwise affected, by reason of any defect in or failure of title of the Lessor to the Equipment or any defect in or damage to or loss or destruction of all or any of the Equipment from whatsoever cause, the taking or requisitioning of the Equipment by condemnation or otherwise, the lawful prohibition of the Lessee's use of the Equipment, the interference with such use by any private person or corporation, the invalidity or unenforceability or lack of due authorization or other infirmity of this Lease, or for any other cause whether similar or dissimilar to the foregoing, any present or future law to the contrary notwithstanding, it being the intention of the parties hereto that the rents and other amounts payable by the Lessee hereunder shall continue to be payable in all events unless the obligation to pay the same shall be terminated pursuant to Section 15 hereof, or until, pursuant to Section 7 hereof, the Equipment is placed and ready for delivery to Lessor on the Lessee's lines, or is stored for the Lessor on the Lessee's lines, or leaves the Lessee's lines for off-line delivery to the Lessor.

Section 9. Warranty Disclaimer. AS BETWEEN LESSOR AND LESSEE, LESSOR LEASES THE EQUIPMENT, AS-IS WITHOUT WARRANTY OR REPRESENTATION EITHER EXPRESS OR IMPLIED, AS TO (A) THE FITNESS OR MERCHANTABILITY OF ANY UNIT OF EQUIPMENT, (B) THE LESSOR'S TITLE THERETO, (C) THE LESSEE'S RIGHT TO THE QUIET ENJOYMENT THEREOF, OR (D) ANY OTHER MATTER WHATSOEVER, IT BEING AGREED THAT ALL SUCH RISKS, AS BETWEEN THE LESSOR AND THE LESSEE, ARE TO BE BORNE BY THE LESSEE. Provided the Lessee is not in default hereunder, the Lessor hereby appoints and constitutes the Lessee its agent and attorney-in-fact during the term of this Lease to assert and enforce, from time to time, in the name and for the account of the Lessor and the Lessee, as their interests may appear, but in all cases at the sole cost and expense of the Lessee, whatever claims and rights the Lessor may have as owner of the Equipment against any manufacturers or contractors in respect thereof, including claims and rights against Rebuilder under the Reconstruction Agreement.

Section 10. Ownership.

(a) Retention of Title. The Lessor, as between the Lessor and the Lessee, shall and hereby does retain

full legal title to the Equipment notwithstanding the delivery thereof to and the possession and use thereof by the Lessee.

(b) Duty to Number and Mark Equipment. The Lessee will cause each unit of Equipment to be kept numbered with its road number as set forth in Exhibit A and will keep and maintain, plainly, distinctly, permanently and conspicuously marked by a plate or stencil printed upon each side of each unit of Equipment in letters not less than one inch in height as follows:

"Leased from FIRST WESTERN BANK AND TRUST COMPANY, Trustee, Owner and Lessor, and Subject to a Security Interest Recorded with the I.C.C."

with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the title of the Lessor to such unit of Equipment, its rights under this Lease and the rights of any assignee hereof, or of the Trustor or any Certificate Holders under the Trust Agreement. The Lessee will not place any such unit of equipment in operation or exercise any control or dominion over the same until the required legend shall have been so marked on both sides thereof and will replace promptly any such names and word or words which may be removed, defaced or destroyed. The Lessee will not change the road number of any unit of Equipment except in accordance with a statement of new road numbers to be substituted therefor, which statement previously shall have been filed with the Lessor by the Lessee and filed, recorded or deposited in all public offices where this Lease shall have been filed, recorded or deposited.

(c) Prohibition Against Certain Designations. Except as above provided, the Lessee will not allow the name of any person, association or corporation to be placed on the Equipment as a designation that might be interpreted as a claim of ownership or security interest, provided, however, that the Lessee may cause the Equipment to be lettered with the names or initials or other insignia customarily used by the Lessee or its affiliates on railroad equipment used by it of the same or a similar type.

Section 11. Possession, Use and Maintenance;  
Liens.

(a) Possession. So long as no Event of Default shall have occurred and be continuing, Lessee shall be en-

titled as against Lessor to the possession and use of the Equipment in accordance with and during the term of this Lease. The Lessee shall not, without the prior written consent of Lessor, part with possession or control of, or suffer or allow to pass out of its possession or control, any of the Equipment; provided, however, that Lessee shall, in the absence of any Event of Default, be entitled to the possession of the Equipment and to the use thereof upon the railroad lines owned or operated by it (either alone or jointly) or by any corporation a majority of whose voting stock (i.e., having ordinary voting power for the election of a majority of its Board of Directors) is owned directly or indirectly by the Lessee, or upon railroad lines over which the Lessee or such corporation has trackage or other operating rights or over which equipment of the Lessee is regularly operated pursuant to contract and also to permit the use of the Equipment upon connection and other railroads or other carriers in the usual interchange of traffic and equipment, if customary at the time and upon connecting and other railroads or other carriers over which through service may from time to time be afforded, and the Lessee may receive compensation for such use, but only upon and subject to all the terms and conditions of this Lease. No assignment, sublease or interchange agreement entered into by the Lessee hereunder shall relieve the Lessee of any liability or obligations hereunder which shall be and remain those of a principal and not a surety.

(b) Use and Maintenance. The Lessee shall use the Equipment only in the manner for which it was designed and intended and so as to subject it only to ordinary wear and tear. The Lessee shall, at its own cost and expense, maintain and keep the Equipment (except any Equipment as to which a Casualty Occurrence shall have occurred) in good order, condition and repair, ordinary wear and tear excepted, suitable for use in interchange. The Lessee shall not modify any unit of Equipment without the written authority and approval of the Lessor which shall not be unreasonably withheld. Any parts installed or replacements made by the Lessee upon any unit of Equipment shall be considered accessions to such unit of Equipment and title thereto shall be immediately vested in the Lessor, without cost or expense to the Lessor, except that this shall not apply to special equipment installed in any unit by Lessee with the consent of Lessor provided that such equipment is removed by Lessee before the units are returned to Lessor and all damage resulting from such installation and removal is repaired by Lessee and further provided that removal of such equipment does

not affect the units' serviceability or use in unrestricted interchange.

(c) Governmental Laws, Rules and Regulations. The Lessee agrees to comply with all governmental laws, regulations, requirements and rules (including the rules of the United States Department of Transportation and the current Interchange Rules and supplements thereto of the Mechanical Division Association of American Railroads) with respect to the use, maintenance and operation of each unit of Equipment subject to this Lease. In case any equipment or appliance is required to be installed on any such unit of Equipment in order to comply with such laws, regulations, requirements and rules, the Lessee agrees to make such changes, additions and replacements, at Lessee's expense.

(d) Liens. The Lessee shall pay or satisfy and discharge any and all claims against, through, or under the Lessee and its successors which, if unpaid, might constitute or become a lien or a charge upon the Equipment, and any liens or charges which may be levied against or imposed upon any unit of Equipment as a result of the failure of the Lessee to perform or observe any of its covenants or agreements under this Lease, but the Lessee shall not be required to pay or discharge any such claims so long as it shall, in good faith and by appropriate legal proceedings contest the validity thereof in any reasonable manner which will not affect or endanger the title and interest of the Lessor to the Equipment. The Lessee's obligations under this Section 11(d) shall survive termination of the Lease.

(e) Insurance. The Lessee will, at all times while this Lease is in effect, at its own expense, caused to be carried and maintained insurance in respect of the units at the time subject hereto, in amounts and against risks customarily insured against by railroad companies on similar equipment, and in any event in amounts and against risks comparable to those insured against by the Lessee on equipment owned by it. All proceeds of such insurance shall be paid to Lessor and applied or distributed by it as follows: (i) in the case of loss or destruction of such unit constituting a Casualty thereto, the Lessor shall apply such proceeds toward the payment of the Casualty Value thereof (or, in the event such Casualty Value shall have theretofore been paid by Lessee, the same shall be remitted to Lessee); and (ii) in the case of any damage not constituting a Casualty, such proceeds shall be remitted to Lessee; provided, however, that notwithstanding the foregoing the

Lessor may retain and apply such proceeds toward the payment of any sums due or to become due from Lessor hereunder in the event that, at the time of Lessor's receipt of such proceeds, an Event of Default hereunder shall have occurred and is then continuing.

Section 12. Taxes. Lessee agrees to pay, and to indemnify and hold Lessor, and the Trustor harmless from, all license and registration fees and all taxes, including without limitation, income, franchise, sales, use, personal property, stamp, interest equalization or other taxes, levies, imposts, duties, charges or withholdings of any nature (together with any penalties, fines, or interest thereon) imposed against any such party or the Equipment by any federal, state or local government or taxing authority in the United States or by any foreign government or any subdivision thereof (adjusted, as the same may be obtained by any such person, for corresponding tax credits received by the same person from any other jurisdiction) upon or with respect to the Equipment, or upon the purchase, ownership, delivery, leasing, possession, use, operation, return or other disposition thereof, or upon the rentals, receipts or earnings arising therefrom, or upon the income or other proceeds received with respect to the Equipment until possession of the Equipment has been delivered to Lessor in accordance with Section 7 hereof, or upon or with respect to this Lease, the Trust Agreement or the issuance of the Certificates under the Trust Agreement excluding, however, (except as otherwise provided in Section 14(b) hereof) federal taxes on, or measured by, the net income of any party and taxes, fees or other charges of any other jurisdiction which are based on, or measured by, the net income of any such party and (i) imposed by the jurisdiction in which the principal office of such party is located or in which such party resides, or (ii) imposed by any other jurisdiction in which such party is subject to taxes, fees or other charges as the result, whether solely or in part, of business or transactions unrelated to this Lease and excluding any taxes on or measured by any fees or compensation received by Lessor for services rendered in connection with the transactions contemplated hereby and further excluding any taxes based on gross income of any such party (other than gross receipts taxes in the nature of sale or use tax) which may hereafter be imposed in any such jurisdiction as a substitute for and not in addition to taxes based on net income) unless, and to the extent only, that any such tax, levy, impost, duty, charge or withholding is being contested by Lessee in good faith and by appropriate proceedings so long as such proceedings do not

involve any danger of the sale, forfeiture, or loss of the Equipment or interest therein. In case any report or return is required to be made with respect to any obligation of Lessee under this Section or arising out of this Section, Lessee will either make such report or return in such manner as will show the ownership of the Equipment in Lessor and send a copy of such report or return to Lessor or will notify Lessor of such requirement and make such report or return in such manner as shall be satisfactory to Lessor. All amounts payable by Lessee pursuant to this Section 12 shall be payable, to the extent not theretofore paid, on written demand by the Lessor or Trustor. All the indemnities contained in this Section 12 shall continue in full force and effect notwithstanding the expiration or other termination of this Lease and shall be enforceable by Lessor or the Trustor, provided that the foregoing indemnities shall not apply to any of the aforesaid taxes, fees and charges which arise during and incurred with respect to the period following the end of the term of this Lease.

Section 13. Filing. Prior to delivery and acceptance of the first unit of Equipment hereunder, the Lessee will at its sole expense cause this Lease to be duly filed in accordance with Section 20c of the Interstate Commerce Act. Lessee will, as promptly as practicable after execution and delivery to it of any Lease Supplement (but in any event not later than one day before the date on which Lessor shall be obligated to make payments under the Reconstruction Agreement in respect of the units of Equipment covered by such Lease Supplement) cause such Lease Supplement also to be duly filed in accordance with said statute, and will, from time to time, do and perform any other act and will execute, acknowledge, deliver, file, register and record (and will re-file, re-register, or re-record whenever required) any and all further instruments required by law or reasonably requested by the Lessor, for the purpose of protecting the Lessor's title to, or any Certificate Holder's security interest in, the Equipment and the sums due under this Lease to the satisfaction of the Lessor's or such Certificate Holder's counsel or for the purpose of carrying out the intention of this Lease, and in connection with any such action, will deliver to the Lessor proof of such filings and an opinion of the Lessee's counsel that such action has been properly taken. The Lessee will pay all costs, charges, and expenses incident to any filing or recording of the Trust Agreement (and supplements or amendments thereto), with the Interstate Commerce Commission or otherwise, and any other aforementioned filing, re-filing, registering, re-registering, recording and re-recording of any such instruments or incident to the taking of such action.

Section 14. Indemnities.

(a) General Indemnity.

Lessee hereby agrees, from and after the date hereof, and whether or not any of the transaction contemplated hereby shall be consummated, to assume liability for, and does hereby agree to indemnify, protect, save and keep harmless Lessor, the Trustor and each Certificate Holder, and their respective successors, assigns, agents and servants, from and against any and all liabilities, obligations, losses, damages, penalties, claims, actions, suits, costs, expenses and disbursements, including legal fees and expenses, of whatsoever kind and nature, imposed on, incurred by or asserted against Lessor, the Trustor or any Certificate Holder or any of their respective successors, assigns, agents and servants, in any way relating to or arising out of the Purchase Agreement, Reconstruction Agreement, the manufacture,

purchase, acceptance or rejection under the Reconstruction Agreement, ownership, delivery, lease, possession, use, operation, condition, sale, return or other disposition of the equipment (including, without limitation, latent and other defects, whether or not discoverable by any of such parties, and any claim for patent, trademark or copyright infringement), except only that Lessee shall not be required to indemnify Lessor, the Trustor or any Certificate Holders or their respective successors, assigns, agents, and servants, for loss or liability in respect of any unit of Equipment arising from acts or events which occur after possession of such unit of Equipment has been delivered to Lessor in accordance with Section 7 hereof, or loss or liability resulting from the willful misconduct or gross negligence of the party otherwise to be indemnified hereunder. If Lessor shall have knowledge of any claim or liability hereby indemnified against, it shall give prompt written notice thereof to the Lessee, and Lessee shall have the right and obligation to conduct and pay the expenses of the defense of any such claim. Lessee's obligations hereunder shall be that of primary obligor irrespective of whether the individual or corporation indemnified shall also be indemnified with respect to the same matter under any other agreement by any or all such parties, or any other person. Upon payment in full of any indemnities contained herein by Lessee, it shall be subrogated to any rights of the individual or corporation indemnified in respect of the matter against which indemnity has been given. The indemnities in favor of the Lessor hereunder shall inure to the benefit of the Lessor in its capacity as such, as Trustee under the Trust Agreement, as purchaser under the Purchase Agreement, and as a party to the Reconstruction Agreement.

(b) Indemnities for Failure to Obtain Depreciation, Amortization or Interest Deductions. 1. If the Trustor shall (except as herein below provided) fail to obtain or have the right to claim or shall be disallowed, a depreciation or amortization deduction with respect to Lessor's Cost of any unit of Equipment, in computing its taxable income for the period this Lease is in effect (computed (i) as to that portion of Lessor's Cost which represents payments made under the Purchase Agreement, under one of the accelerated methods of depreciation provided in Section 167 of the Internal Revenue Code of 1954, as amended to the date hereof, and (ii) as to that portion of Lessor's Cost representing amounts paid under the Reconstruction Agreement, in accordance with the provisions of Section 184

of the Internal Revenue Code of 1954, as amended as of the date hereof), or shall for any reason (except as herein below provided) fail to obtain, or to have the right to claim, or shall be disallowed, a deduction with respect to amounts paid or accrued as interest on the Certificates in computing its taxable income for the period the Certificates are outstanding, as provided in Section 163(a) of the Internal Revenue Code of 1954, except for any inability to obtain or to have the right to claim such deductions because of the occurrence of any of the following events:

(i) Casualty shall occur with respect to such unit of Equipment, whereby Lessee is required by the terms hereof to pay, and shall pay in full, the Casualty Value; provided, however, that the indemnities set forth in this Section 14(b)1 shall continue in effect as provided in Section 14(c) hereof, notwithstanding such payment of Casualty Value, with respect to the period beginning on the delivery date of such unit of Equipment and ending on the date of payment of said Casualty Value;

(ii) at any time while such unit of Equipment is leased hereunder, and while no Event of Default has occurred and is continuing unremedied, without the written consent of Lessee, Lessor shall (other than solely in connection with a substitution of the Trustee pursuant to the Trust Agreement) voluntarily or (except in a case constituting a Casualty) involuntarily transfer legal title to such unit of Equipment to anyone or the Trustor shall dispose of any interest in the Equipment or shall reduce its interest in the profits from the Equipment, and such transfer by Lessor or such disposal or reduction by the Trustor shall be the direct cause of the Trustor's inability to obtain or to have the right to claim or of the disallowance of such depreciation or amortization deduction or interest deduction;

(iii) the parties to the Trust Agreement shall amend such document without the prior written consent of Lessee and such amendment shall be the direct cause of Trustor's inability to obtain or to have the right to claim or of the disallowance of such depreciation or amortization deduction or interest deduction;

(iv) the Trustor shall fail to claim such depreciation or amortization deduction or interest deduction in its income tax returns for the appropriate year or shall fail to follow the proper procedure in claiming such depreciation deduction or interest deduction, and such failure to claim or to follow such procedure, as the case may be, shall preclude the Trustor from claiming such depreciation or amortization deduction or interest deduction; provided, however that if the Trustor shall, in preparing and/or approving its own income tax returns and the income tax returns for the trust created by the Trust Agreement, obtain and rely upon the advice of counsel to the effect that such returns properly claim the aforesaid deductions, then the Trustor shall in such cases not be deemed to have failed to claim a deduction or follow proper procedure as hereinabove provided;

(v) the Trustor shall fail to have sufficient income to benefit from the deduction of such depreciation, amortization or interest;

(vi) the Trustor or Lessor shall fail to take timely action in contesting a claim made by the Internal Revenue Service with respect to the disallowance of such depreciation or amortization deduction or interest deduction, and the failure to take such action in a timely manner shall preclude the right of such party to contest such claim, or shall fail to take action to contest any such claim after a timely request to conduct such contest has been given by Lessee to Lessor or Trustor (provided that the Lessee shall upon demand of the Trustor pay to the Trustor the expenses of any such contest as a condition of prosecuting the same); or the Lessor or Trustor shall, without the prior written consent of Lessee, release, waive, compromise or settle any action or proceeding taken in accordance with this subsection; or

(vii) any other fault of the Trustor which directly causes the loss of any of the aforesaid tax benefits; provided, however, that the execution and delivery of this Lease and the other documents herein referred to and the carrying out of the transactions contemplated herein and therein in accordance with the terms of this Lease and such other documents shall not be deemed to have caused the loss of such tax benefit under this paragraph (vii);

then Lessee shall pay Lessor as Supplemental Rent an amount which, after deduction of all taxes required to be paid by Lessor and/or the Trustor in respect of the receipt thereof under the laws of the United States or any state, city or other political subdivision thereof (after giving credit for any savings in respect of any such taxes by reason of deductions, credits or allowances in respect of the payment of any other such taxes), in the reasonable opinion of the Trustor, will cause net-after tax return on the Trustor's investment in the Equipment to be equal to the net-after tax return on such investment which the Trustor would have realized had the Trustor had the full tax benefit of all amortization, accelerated depreciation, and interest deductions described in the opening paragraph of this subsection 14(b)1 (after taking into account the amount of any interest or penalties which may be assessed against the Lessor or the Trustor in connection with the failure to obtain or have the right to claim, or the disallowance of, such depreciation, amortization or interest deductions).

2. Indemnities pursuant to this paragraph (b) shall be payable on written demand made at any time after such interest deduction or such depreciation or amortization deduction could have been claimed if allowable or, if claimed and then disallowed, on written notice given by the Trustor at any time that the Trustor has first made a payment on account of a tax attributable to the loss of depreciation, amortization or interest deductions.

(c) Continuing Indemnity. All the indemnities contained in paragraphs (a) and (b) of this Section 14 shall continue in full force and effect in accordance with their terms notwithstanding the expiration or other termination of this Lease and are expressly made for the benefit of, and shall be enforceable by, Lessor, Trustor and the Certificate Holders, as the case may be.

Section 15. Casualty Loss. In the event of a Casualty as to any unit of Equipment:

(a) Report. Such fact shall promptly be reported by Lessee to Lessor.

(b) Amount Payable to Lessor. Except as provided in Section 15(c)

Rent payment due on such date) the Casualty Value of such unit of Equipment, determined as of the date of such payment.

(c) Casualty Occurring Prior to Date of Payment of Interim Daily Rent. In the event the Lessee shall have notified the Lessor that a unit or units of Equipment have suffered a Casualty Occurrence 15 days or more prior to the Daily Interim Rent Payment Date, the Casualty Value for such unit or units shall be an amount equal to Lessor's Cost thereof plus the Daily Interim Rent therefor computed for the period from the date of delivery of such unit hereunder to the date of payment of such Casualty Value, which payment shall be made not more than 15 days after the date of notice to the Lessor of such Casualty Occurrence. If the Lessee shall have notified the Lessor that a unit or units of Equipment have suffered a Casualty Occurrence less than 15 days prior to the Daily Interim Rent Payment Date, the date of such Casualty Occurrence for such unit or units shall be deemed to be one day after the Daily Interim Rent Payment Date.

(d) Rent Termination. Upon (and not until) payment of the Casualty Value in respect of any unit or units of Equipment, and any Basic Rent installment due on the Casualty Value payment date, the obligation to pay rent for such unit or units of Equipment shall terminate, but the Lessee shall continue to pay Rent for all other units of Equipment.

(e) Disposition of Equipment. The Lessee shall, as agent for the Lessor, dispose of such unit or units of Equipment as soon as it is able to do so for the best price obtainable. Any such disposition shall be on an "as is", "where is" basis without representation or warranty, express or implied. As to each separate unit of Equipment so disposed of the Lessee may, after paying Lessor the amounts specified in subparagraphs (b) or (c) of this Section 15, retain all amounts of such price plus any damages received by the Lessee by reason of such Casualty Occurrence, up to the sum of (i) the Casualty Value attributable thereto, and (ii) the amounts paid under subparagraph (b) or (c) of this section 15, and shall remit the excess, if any, to the Lessor. In disposing of such unit or units of Equipment, the Lessee shall take such action as the Lessor shall reasonably request to terminate any contingent liability which the Lessor might have arising after disposition from or connected with such unit or units of Equipment.

(f) Risk of Loss. The Lessee shall bear the risk of and, except as hereinabove in this Section 15 provided, shall not be released from its obligations hereunder in the event of any Casualty Occurrence to any unit of Equipment.

(g) Eminent Domain. In the event that during the term of this Lease the use of any unit of Equipment is requisitioned or taken by any governmental authority under the power of eminent domain or otherwise for a period which does not exceed the remaining term of this Lease, the Lessee's duty hereunder to pay Rent in respect of any such unit of Equipment shall continue for the duration of said requisitioning or taking. The Lessee shall be entitled to receive and retain for its own account all sums payable for any such period by such governmental authority as compensation for requisition or taking of possession to an amount equal to the Basic Rent paid or payable hereunder in respect of such unit of Equipment for such period, and the balance, if any, shall be payable to and retained by the Lessor as its sole property.

Section 16. Events of Default. The following events shall constitute Events of Default (whether any such event shall be voluntary or involuntary or come about or be effected by operation of law or pursuant to or in compliance with any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body):

(a) Lessee shall fail to make any payment of Basic Rent when due and such failure shall continue unremedied for a period of 5 business days; or

(b) Lessee shall fail to perform or observe any other covenant, condition or agreement to be performed or observed by it hereunder or under the Purchase Agreement or the Reconstruction Agreement and such failure shall continue unremedied for a period of 30 business days after written notice thereof from Lessor specifying such default; or

(c) any representation or warranty made by Lessee herein or in any document or certificate furnished Lessor in connection herewith or pursuant hereto (i) shall prove to have been incorrect in any material respect when made, or (ii) which is on-going and unremedied after 30 days' notice and breach of which hereafter shall materially impair or hinder Lessee's performance, or ability to perform hereunder; or

(d) Lessee shall consent to the appointment of a receiver, trustee or liquidator of itself or of all or substantially all of its property, or Lessee shall admit in writing its inability to pay its debts generally as they come due, or shall make a general assignment for the benefit of creditors, or Lessee shall file a voluntary petition in bankruptcy or a voluntary petition or an answer seeking reorganization in a proceeding under any bankruptcy laws (as now or hereafter in effect) or an answer admitting the material allegations of a petition filed against Lessee in any such proceeding, or Lessee shall by voluntary petition, answer or consent seek relief under the provisions of any other similar law providing for the reorganization or winding-up of corporations, or providing for an agreement, composition, extension or adjustment with its creditors; or

(e) an order, judgment or decree shall be entered by any court of competent jurisdiction appointing, without the consent of Lessee, a receiver, trustee or liquidator of Lessee or of all or substantially all of its property, or substantially all of the property of Lessee shall be sequestered, and any such order, judgment or decree of appointment or sequestration shall remain in force undismissed, unstayed or unvacated for a period of 90 days after the date of entry thereof; or

(f) a petition against Lessee in a proceeding under the federal bankruptcy laws or other insolvency laws (as now or hereafter in effect) shall be filed and shall not be withdrawn or dismissed within 90 days thereafter, or if, under the provisions of any law providing for reorganization or winding-up of corporations which may apply to Lessee, any court of competent jurisdiction shall assume jurisdiction, custody or control of Lessee or of all or substantially all of its property, and such jurisdiction, custody or control shall remain in force unrelinquished, unstayed or unterminated for a period of 90 days.

Notwithstanding the provisions of paragraphs (d), (e) and (f) of this Section 16, if, within 60 days after the commencement of any proceedings referred to in said paragraphs (d), (e) and (f) or within 30 days after the appointment of a trustee or trustees or receiver or receivers in such proceedings, whichever shall be earlier, all of the obligations of Lessee under this Lease shall have been duly assumed in writing, pursuant to a court order or decree, by a trustee or receiver or receivers appointed for Lessee or for the property of Lessee in connection with any such proceedings, in such manner that such obligations shall have substantially the same status as

obligations incurred by such trustee or trustees or receiver or receivers, then and for so long as such trustee or trustees or receiver or receivers shall remain so obligated, no Event of Default shall be deemed to exist under the provisions of paragraph (d), (e) or (f) of this Section 16.

Section 17. Remedies. Upon the occurrence of any Event of Default and at any time thereafter so long as the same shall be continuing, Lessor may, at its option, declare this Lease to be in default and at any time thereafter, so long as Lessee shall not have remedied all outstanding Events of Default, Lessor may do one or more of the following with respect to the Equipment as Lessor in its sole discretion shall elect, to the extent permitted by, and subject to compliance with any mandatory requirements of, applicable law then in effect;

(a) demand that Lessee, and Lessee shall upon the written demand of Lessor and at Lessee's expense, return promptly the Equipment to Lessor in the manner and condition required by, and otherwise in accordance with all of the provisions of, Section 7 hereof as if the Equipment were being returned at the end of the term of this Lease; or Lessor, at its option, may enter upon the premises where all or any part of the Equipment is located and take immediate possession of and remove the same by summary proceedings or otherwise, all without liability to Lessor for or by reason of such entry of taking possession, whether for the restoration of damage to property caused by such taking or otherwise;

(b) sell the Equipment at public or private sale, as Lessor may determine, or otherwise dispose of, hold, use, operate, lease to others or keep idle the Equipment as Lessor in its sole discretion may determine, all free and clear of any rights of Lessee and without any duty to account to Lessee with respect to such action or inaction or for any proceeds with respect thereto, and Lessee hereby irrevocably authorizes Lessor to execute, in the name and on behalf of Lessee, any documents necessary or desirable to effectuate the aforesaid rights of Lessor;

(c) except as stated in this paragraph (c), whether or not Lessor shall have exercise, or shall thereafter at any time exercise, any of its rights under paragraph (a) or paragraph (b) above with respect to the Equipment, Lessor, by written notice to Lessee specifying a payment date which shall

be a Basic Rent payment date specified in Section 6 not earlier than 10 business days from the date of such notice, may demand that Lessee pay to Lessor and Lessee shall pay to Lessor, on the payment date specified in such notice, as liquidated damages for loss of a bargain and not as a penalty (in lieu of the Basic Rent for the Equipment due after the payment date specified for payment in such notice), any unpaid Basic Rent for the Equipment due for periods up to and including the payment date specified in such notice plus whichever of the following amounts Lessor, in its sole discretion, shall specify in such notice (together with interest on such amount at the rate of 10% per annum from the payment date specified in such notice to the date of actual payment); (i) an amount equal to the excess, if any, of the Casualty Value for the Equipment, computed as of the rental payment date specified for payment in such notice, over the aggregate fair market rental value of the Equipment for the remainder of the term of this Lease (discounted to present value at 6% per annum); or (ii) an amount equal to the excess, if any, of the Casualty Value for the Equipment as of the date specified in such notice over the fair market sales value of the Equipment, provided, however, that if by the payment date specified in such notice Lessor, pursuant to paragraph (b) above, shall have sold the Equipment and the amounts in respect of the Equipment which Lessor might demand if it exercised its rights under paragraph (d) below is less than the amount specified in or payable under any notice given under this paragraph (c), Lessee shall pay to Lessor the amounts computed under paragraph (d) below, and not the amounts specified in or payable under the notice given under this paragraph (c);

(d) in the event Lessor, pursuant to paragraph (b) above, shall have sold the Equipment, Lessor, in lieu of exercising its rights under paragraph (c) above with respect to the Equipment, may, if it shall so elect, demand that Lessee pay Lessor and Lessee shall pay to Lessor, as liquidated damages for a loss of a bargain and not as a penalty (in lieu of the Basic Rent for the Equipment due beginning on or after the rental payment date next following the date on which such sale occurs), any unpaid Basic Rent for the Equipment due for periods up to and including the Basic Rent payment date next following the date on which such sale occurs plus the amount of any deficiency between the net proceeds of such sale and the Casualty Value of the Equipment, computed as of the Basic Rent payment date next following the date on which such sale occurs, together with interest at the rate of 10% per annum on the amount of such deficiency from the Basic Rent payment date as of which such Casualty Value is computed until the date of actual payment; and/or

(e) Lessor may exercise any other right or remedy which may be available to it under applicable law or proceed by appropriate court action to enforce the terms hereof or to terminate this Lease as to the Equipment.

In addition, Lessee shall be liable, except as otherwise provided above, for any and all unpaid Rent due hereunder before or during the exercise of any of the foregoing remedies and for all legal fees and other costs and expenses incurred by reason of Lessor's remedies with respect thereof, including all costs and expenses incurred in connection with the return of the Equipment in accordance with the terms of Section 7 hereof or in placing such Equipment in the condition required by said Section. No express or implied waiver by Lessor of any Event of Default shall in any way be, or be construed to be, a waiver of any future or subsequent Event of Default. To the extent permitted by applicable law, Lessee hereby waives any rights now or hereafter conferred by statute or otherwise which may require Lessor to sell, lease or otherwise use the Equipment in mitigation of Lessor's damages as set forth in this Section or which may otherwise limit or modify any of Lessor's rights or remedies under this Section. For purposes hereof, the "fair market rental value" or the "fair market sales value" of the Equipment shall mean such value as determined by mutual written agreement of Lessor and Lessee or, upon request by Lessor at any time prior to the making of such mutual agreement, by Appraisal.

Section 18. Annual Reports.

(a) Duty of Lessee to Furnish. On or before August 1 in each year, commencing with the year 1972, the Lessee will furnish to the Lessor or its assigns an accurate statement, as of the preceding June 30 (a) showing the amount, description and numbers of the units of Equipment then leased hereunder, the amount, description and numbers of all units of Equipment that may have suffered a Casualty Occurrence during the preceding 12 months (or since the date of this Lease, in the case of the first such statement), and such other information regarding the condition or repair of the Equipment as Lessor may reasonably request, and (b) stating that, in the case of all Equipment repainted during the period covered by such statement, the markings required by Section 10(b) hereof shall have been preserved or replaced.

(b) Lessor's Inspection Rights. The Lessor or its assigns shall have the right, at its sole cost and expense, by its authorized representative, to inspect the Equipment and the Lessee's records with respect thereto, at such times as shall be reasonably necessary to confirm to the Lessor or its assigns the existence and proper maintenance thereof during the continuance of this Lease.

Section 19. Option to Purchase. Provided that the Lessee is not in default, Lessee shall have the following option to purchase:

(a) Option. The Lessee shall have the right to purchase all but not less than all of the Equipment then leased hereunder at the expiration of the term of this Lease at a price equal to the then fair market sales value. The Lessee shall give the Lessor written notice 180 days prior to the end of the term of its election to exercise the purchase option provided for in this Section. Lessor and Lessee shall consult to determine such fair market sales value; if the parties fail to agree upon such value prior to 120 days prior to the end of the term, Lessee may request that such value be determined by Appraisal. Payment of the option price shall be made at the place of payment specified in Section 6(c) hereof in funds there current against delivery of a bill of sale transferring and assigning to the Lessee all right, title and interest of the Lessor in and to the Equipment and containing a warranty against liens or claims of persons claiming by, through or under the Lessor except liens and claims which the Lessee assumed or is obligated to discharge under the terms of the Lease. The Lessor shall not be required to make any representation or warranty as to the condition of the Equipment or any other matters.

(b) Notice. Unless the Lessee has given the Lessor 180 days notice as required in connection with exercise of the foregoing option, all the Equipment then leased hereunder shall be returned to the Lessor in accordance with Section 7 hereof.

(c) Election to Purchase. Notwithstanding any election of the Lessee to purchase, the provisions of Section 15 hereof shall continue in full force and effect until the date of purchase and the passage of ownership of the Equipment purchased by the Lessee upon the date of purchase, unless the purchase price has been determined pursuant to this Section

and is lower than the Casualty Value required pursuant to Section 15 hereof, in which event such purchase price shall govern.

Section 20. Merger; Assignment by Lessee.

(a) Lessee may not sell or convey its property and assets as an entirety or substantially as an entirety to, or consolidate or merge with or into, any other corporation, unless (i) the successor corporation shall be a corporation incorporated under the laws of the United States of America or of any state or states thereof, (ii) upon any such sale, conveyance, consolidation or merger, the successor or purchasing corporation shall expressly assume the due and punctual payment of Basic Rent, all Supplemental Rent, and Casualty Value in accordance with the terms of this Lease, as well as the due and punctual performance and observance of all other terms, covenants and conditions of this Lease to be kept and performed by Lessee, (iii) after giving effect to any such sale, conveyance, consolidation or merger no Event of Default and no event which with notice or lapse of time or both would constitute an Event of Default shall have occurred and be continuing and (iv) Lessor shall be promptly notified of such sale, conveyance, merger or consolidation. Any such purchasing or successor corporation shall be substituted for Lessee as Lessee hereunder.

(b) Except to the extent otherwise expressly provided in this Lease, Lessee will not, without the prior written consent of Lessor, assign any of its rights or delegate any of its duties hereunder. The rights and obligations of Lessor and Lessee hereunder shall inure to the benefit of, and be binding upon, the permitted successors and assigns of Lessor and Lessee, respectively.

Section 21. Assignments by Lessor. This Lease shall be assignable by Lessor without the consent of Lessee, but Lessee shall be under no obligation to any assignee of the Lessor except upon written notice of such assignment from the Lessor. In the event that separate assignments are executed by the Lessor in respect of this Lease and the rental and other sums due and to be come due hereunder, insofar as the same related to units of Equipment, the Lessor and the Lessee agree that so long as such separate assignments remain in force and effect this Lease shall be deemed to be and shall be construed as a divisible and severable contract between the Lessor and

the Lessee for the leasing of Equipment covered by each such separate assignment, all to the same extent and with the same force and effect as though a separate lease had been entered into by the Lessor and the Lessee in respect of such Equipment. Upon notice to the Lessee of any such assignment the rent and other sums payable by the Lessee which are the subject matter of the assignment shall be paid to the assignee. Without limiting the foregoing, the Lessee further acknowledges and agrees that (i) the rights of any such assignee in and to the sums payable by the Lessee under any provisions of this Lease shall not be subject to any abatement whatsoever, and shall not be subject to any defense, set-off, counterclaim or recoupment whatsoever whether by reason of or defect in Lessor's title, or any interruption from whatsoever cause (other than from a wrongful act of the assignee) in the use, operation or possession of the Equipment or any part thereof, or any damage to or loss or destruction of the Equipment or any part thereof, or by reason of any other indebtedness or liability, howsoever and whenever arising, of the Lessor to the Lessee or to any other person, firm or corporation or to any governmental authority or for any cause whatsoever, it being the intent hereof that, except in the event of a wrongful act on the part of the assignee, the Lessee shall be unconditionally and absolutely obligated to pay the assignee all of the rents and other sums which are the subject matter of the assignment and which shall become payable after Lessee receives notice of such assignment, and (ii) the assignee shall have the sole right to exercise all rights, privileges and remedies (either in its own name or in the name of the Lessor for the use and benefit of the assignee) which by the terms of this Lease are permitted or provided to be exercised by the Lessor. Lessee and Lessor acknowledge that the Trust Agreement creates, for the pro rata benefit of the Certificate Holders, a security interest in the Equipment, this Lease, and all Rent (other than certain items of Rent specified therein) payable hereunder.

Section 22. Lessor's Right to Perform for Lessee.

If Lessee fails to make any payment of Supplemental Rent required to be made by it hereunder or fails to perform or comply with any of its agreements contained herein, Lessor may itself make such payment or perform or comply with such agreement, and the amount of such payment and the amount of the reasonable expenses of Lessor incurred in connection with such payment or the performance of or compliance with such agreement, as the case may be, together with interest thereon at the rate of 10% per annum shall be deemed Supplemental Rent, payable by Lessee upon demand.

Section 23. No Set-Off for Lessee. Lessee's obligation to pay all Rent payable hereunder shall be absolute and unconditional and shall not be affected by any circumstance, including, without limitation, (i) any set-off, counterclaim, recoupment, defense or other right which Lessee may have against Rebuilder, Lessor, the Trustor, or any assignee of any of them or anyone else for any reason whatsoever, (ii) any defect in the title, condition, design, operating, or fitness for use of, or any damage to or loss or destruction of, the Equipment, or any interruption or cessation in the use or possession thereof by Lessee for any reason whatsoever. Lessee hereby waives, to the extent permitted by applicable law, any and all rights which it may now have or which at any time hereafter may be conferred upon it, by statute or otherwise, to terminate, cancel, quit or surrender this Lease except in accordance with the express terms hereof. Each Rent payment made by Lessee shall be final and Lessee will not seek to recover all or any part of such payment from Lessor for any reason whatsoever.

Section 24. Notices. All notices required or permitted to be delivered to any party shall be in writing, and shall be deemed to be given when delivered, or when deposited in the United States mails, certified and postage prepaid as follows:

(a) If to Lessor:

First Western Bank & Trust Company  
Trustee of the Western Pacific  
Railroad Equipment Trust No. 1  
235 Montgomery Street  
San Francisco, California 94104  
Attention: Edgar H. Canfield, Vice President  
and Trust Officer

(b) If to Lessee:

The Western Pacific Railroad Company  
Western Pacific Building  
526 Mission Street  
San Francisco, California 94105  
Attention: F. A. Tegeler, Vice President-  
Finance

Section 25. Counterparts. This Lease, and any Lease Supplement hereto, may be executed in several counterparts, each of which so executed shall be deemed to be an original and in each case such counterparts shall constitute but one and the same instrument.

Section 26. Opinion of Lessee's Counsel. Concurrently with the delivery and acceptance of the first unit of Equipment hereunder, the Lessee will deliver to the Lessor eight counterparts of the written opinion of counsel for the Lessee addressed to the Lessor, the Trustor, all Certificate Holders under the Trust Agreement, and to any assignee of Lessor of which the Lessee has notice, in scope and substance satisfactory to the Lessor, to the effect that:

(a) The Lessee is a corporation legally incorporated and validly existing, in good standing, under the laws of the State of California;

(b) The Lessee has the corporate or other power and authority to own its property and carry on its business as now being conducted and is duly qualified to do business as a foreign corporation in all states in which such qualification is necessary to carry out the terms of the Lease;

(c) This Lease, the Reconstruction Agreement and the Purchase Agreement have been duly authorized, executed and delivered by the Lessee and constitute legal, valid and binding agreements of the Lessee which are enforceable in accordance with their respective terms, subject, however, to bankruptcy, insolvency and similar laws affecting generally the rights of creditors;

(d) This Lease has been filed and recorded with the Interstate Commerce Commission pursuant to Section 20c of the Interstate Commerce Act and no other filing, recording or depositing is necessary to protect the Lessor's title to the Equipment and Trustor's residual interest therein;

(e) No approval, consent or withholding of objection is required from any public regulatory body with respect to the entering into or performance of the Purchase Agreement, this Lease, or the Reconstruction Agreement;

(f) The execution and delivery by Lessee of the Purchase Agreement, the Reconstruction Agreement, and this

Lease do not violate any provision of any law, any order of any court or governmental agency, the certificate of incorporation or by-laws of the Lessee, or any indenture, agreement, or other instrument to which Lessee is a party or by which it, or any of its property is bound, and of which such counsel has knowledge, and will not be in conflict with, result in breach of, or constitute (with due notice and/or lapse of time) a default under any such indenture, agreement, or other instrument, or result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon any of the property or assets of Lessee, except as contemplated and permitted hereby; and

(g) As to any other matters which Lessor shall reasonably request.

Section 27. Other Documents.

Lessee agrees to furnish to Lessor:

(a) within 120 days after the end of each fiscal year, copies, in comparative form with the preceding fiscal year of the audited balance sheet of the Lessee as of the end of such fiscal year and of the audited statements of income and retained earnings of the Lessee for such fiscal year. Such audited balance sheet and statement shall be prepared in reasonable detail and in accordance with generally accepted accounting principles (except as the same may differ because of accounting regulations for railroads prescribed by the Interstate Commerce Commission or other regulatory agency having jurisdiction.), and

(b) such other evidence (including opinions of Lessee's counsel) relating to the Lessee's execution and delivery of this Lease and other legal matters relating to Lessee's performance hereunder as Lessor or Lessor's counsel may from time to time reasonably request.

Section 28. Miscellaneous. Any provision of this Lease which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability in any jurisdiction. To the extent permitted by applicable law Lessee hereby waives any provision of law which renders any provision hereof prohibited or unenforceable in any respect. No term or provision of this Lease may be changed, waived, discharged or terminated

orally, but only by an instrument in writing signed by the party against which the enforcement of the change, waiver, discharge or termination is sought. This Lease shall constitute an agreement of lease, and nothing herein shall be construed as conveying to Lessee any right, title or interest in the Equipment except as a Lessee only. The captions in this Lease are for the convenience or reference only and shall not define or limit any of the terms or provisions hereof. This Lease shall in all respects be governed by, and construed in accordance with, the laws of California including all matters of construction, validity and performance.

IN WITNESS WHEREOF, Lessor and Lessee have caused this agreement to be duly executed as of the day and year first above written.

FIRST WESTERN BANK AND TRUST COMPANY,  
as Trustee under the Western Pacific  
Railroad Equipment Trust No. 1, (Lessor)

[Corporate Seal]

By

Edgar H. Canfield

Its Vice President & Trust Officer

Attest

Gregg D. Thompson  
Asst. Sec.

THE WESTERN PACIFIC RAILROAD COMPANY

[Corporate Seal]

By

L. A. Reguler

Vice President - Finance ~~President~~

Attest

J. J. Jones  
SECRETARY

STATE OF California

) SS.

COUNTY OF San Francisco

On the 2 day of July, 1971, before me personally appeared Edgar H. Canfield, to me personally known, who being duly sworn, says that he is the Vice President & Trust Officer of the First Western Bank and Trust Company; that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument



EXHIBIT A TO LEASE

Description of Equipment:

Two Hundred (200) railroad box cars,  
reconstructed by Rebuilder under the  
Reconstruction Agreement and marked  
with identifying numbers 37001  
through 37200 inclusive.

EXHIBIT B TO LEASE

Schedule of Casualty Value

<u>Casualty Value Payment Due on Periodic Rent Payment Date</u>	<u>Casualty Value (expressed as a Percentage of Lessor's Cost)</u>
1	99.61526
2	98.13717
3	96.31328
4	94.14091
5	91.61298
6	88.79973
7	85.74316
8	82.44137
9	78.89048
10	75.08823
11	71.06944
12	66.94969
13	62.72721
14	58.40079
15	53.96862
16	49.42942
17	44.78130
18	40.02290
19	35.15227
20	30.16797
21	25.06797
22	19.85075
23	15.00000
24 and thereafter	15.00000

EXHIBIT C

LEASE SUPPLEMENT

LEASE SUPPLEMENT, dated as of June 15, 1971, between First Western Bank and Trust Company, as Trustee of the Western Pacific Railroad Equipment Trust No. (hereinafter referred to as Lessor) and The Western Pacific Railroad Company (hereinafter referred to as Lessee).

Representations, Covenants, and Warranties

1. This Lease Supplement is issued pursuant to (and hereby incorporates all of the definitions, terms and conditions of, as if the same were fully set forth herein) that certain Railroad Equipment Lease Agreement dated as of June 15, 1971 (the Lease) between Lessor and Lessee.
2. Lessor hereby delivers and leases to Lessee under the Lease, and Lessee hereby accepts and leases from Lessor under the Lease, the following described units of Equipment:

TOTAL NO  
OF UNITS

LESSEE'S IDENTIFYING  
NUMBERS

3. Lessee hereby confirms to Lessor that each of the aforementioned units of Equipment has been and is marked in accordance with the provisions of Section 10 of the Lease.

IN WITNESS WHEREOF, Lessor and Lessee have caused this Lease Supplement to be duly executed on the dates appearing in their respective acknowledgments hereto but as of the date first above written.

FIRST WESTERN BANK AND TRUST COMPANY,  
As Trustee, Lessor

By \_\_\_\_\_

Title: \_\_\_\_\_

(Corporate Seal)

Attest: \_\_\_\_\_

Title: \_\_\_\_\_

THE WESTERN PACIFIC RAILROAD COMPANY  
Lessee

By \_\_\_\_\_

Title: \_\_\_\_\_

(Corporate Seal)

Attest: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF )  
 ) SS  
COUNTY OF )

On the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, before me personally appeared \_\_\_\_\_, to me personally known, who being duly sworn, says that he is the \_\_\_\_\_ of the First Western Bank and Trust Company; that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

[Notarial Seal]

\_\_\_\_\_  
Notary Public, County of \_\_\_\_\_  
\_\_\_\_\_, State of \_\_\_\_\_

My commission: \_\_\_\_\_

STATE OF )  
 ) SS.  
COUNTY OF )

On the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, before me personally appeared \_\_\_\_\_, to me personally known, who being duly sworn, says that he is the \_\_\_\_\_ of The Western Pacific Railroad Company; that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

[Notarial Seal]

\_\_\_\_\_  
Notary Public, County of \_\_\_\_\_  
\_\_\_\_\_, State of \_\_\_\_\_

My commission: \_\_\_\_\_

EXHIBIT D

THE WESTERN PACIFIC RAILROAD EQUIPMENT TRUST NO.

CERTIFICATE OF ACCEPTANCE

Under Railroad Equipment Lease Agreement dated as of June 15 , 1971 and Railroad Equipment Reconstruction Agreement dated as of June 15 , 1971.

The undersigned, being the duly authorized representative of First Western Bank and Trust Company, Trustee under the Equipment Trust Agreement dated as of June 15 , 1971 and designated as The Western Pacific Railroad Equipment Trust No. (the Trustee), and of The Western Pacific Railroad Company (the Lessee), and acting on their behalf as contemplated by the Railroad Equipment Reconstruction Agreement (the Reconstruction Agreement) dated as of June 15 , 1971, among Lessee, Trustee, and Pacific Car and Foundry Company (Rebuilder) and the Railroad Equipment Lease Agreement (the Lease) dated as of June 15, 1971, between Lessee and Trustee, hereby certifies that the following units of Equipment:

Description:

TOTAL NO.  
OF UNITS

LESSEE'S IDENTIFYING  
NUMBERS

DATE

have been duly delivered in good order by Rebuilder and duly inspected and accepted by the undersigned on the respective dates shown above on behalf of the Trustee and in turn have been duly delivered by the Trustee to the Lessee and have been duly inspected and accepted by the undersigned on said dates on behalf of the Lessee as conforming in all respects to the requirements and provisions of the Reconstruction Agreement and the Lease.

The undersigned further certifies that at the time of its delivery to the Trustee and the Lessee each unit of Equipment covered by this Certificate was properly marked on each side thereof with the legend provided in Section 1 of the Reconstruction Agreement and Section 10 of the Lease.

Dated: , 19\_\_\_\_.

Duly authorized representative  
of First Western Bank and Trust  
Company,

Trustee under Equipment Trust  
Agreement dated as of June 15,  
1971, and of The Western Pacific  
Railroad Company

6225

RECORDATION NO. \_\_\_\_\_ Filed & Recorded

JUL 8 - 1971 - 3 20 PM

INTERSTATE COMMERCE COMMISSION

CERTIFICATE

I, Harley B. Ferrell, do hereby certify that the attached copy of a document entitled "Railroad Equipment Lease Agreement", dated as of June 15, 1971, has been compared by me with the original thereof, and that the attached copy is a true and exact copy of said original.

DATE: July 8, 1971

Harley B. Ferrell

Title Harley B. Ferrell  
Notary Public, Wash., D. C.

My Commission Expires: May 14, 1972

Notarial Seal: