

AMENDMENT

Dated As Of March 31, 1972

To

RAILROAD EQUIPMENT LEASE AGREEMENT  
Dated As of August 1, 1971

6281-B  
RECORDATION NO. \_\_\_\_\_ Filed & Recorded  
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INTERSTATE COMMERCE COMMISSION

AMENDMENT dated as of March 31, 1972 to Lease of Railroad Equipment dated as of August 1, 1971 (hereinafter called the Lease) between THE WESTERN PACIFIC RAILROAD COMPANY, a California corporation (hereinafter called the Lessee), and FIRST SECURITY BANK OF UTAH, NATIONAL ASSOCIATION, a national banking association (hereinafter called the Lessor);

WHEREAS, under the Lease the Lessor has agreed to lease to Lessee and the Lessee has agreed to lease from the Lessor the 18 railroad locomotives covered individually thereby and described in Schedule A thereto (hereinafter individually called a Unit) for the term, at the rentals and on the terms and conditions therein contained; and

WHEREAS, the Lessor and the Lessee agree that the provisions of Section 3 of the Lease, concerning rentals, the provisions of Section 7 of the Lease, concerning payment of Casualty Values (as defined in the Lease) and the provisions of Sections 10 and 17 shall be modified and amended as hereinafter provided;

NOW, THEREFORE, in consideration of the mutual promises, covenants and agreements hereinafter set forth, the parties hereto do hereby agree as follows:

1. The first and last paragraphs of Section 3 of the Lease are hereby deleted in their entirety and there is hereby inserted in lieu of the first paragraph of Section 3 of the Lease the following:

"Section 3. Rentals. The Lessee agrees to pay to the Lessor as rental for each Unit subject to this Lease the following: (i) on October 1, 1971 an amount equal to 5.2469224% of the Purchase Price (as defined in the Security Documents) of each Unit settled for under the Security Documents on or before October 1, 1971 plus an amount equal to .029149569% of the Purchase Price for each day elapsed from and including the date such Unit is settled for under the Security Documents to October 1, 1971, (ii) on each date occurring between October 1, 1971 and November 1, 1971 on which a Unit is settled for under the Security Documents an amount equal to 5.2469224% of the Purchase Price of each such Unit, (iii) on April 1, 1972 an amount equal to

5.2469224% of the Purchase Price of each Unit subject to this Lease on such date less an amount equal to .029149569% of the Purchase Price of each Unit settled for under the Security Documents between October 1, 1971 and November 1, 1971 for each day elapsed from October 1, 1971 to the date such Unit was settled for under the Security Documents, (iv) thereafter 28 consecutive semi-annual payments payable on April 1 and October 1 in each year commencing with October 1, 1972 each in an amount equal to 5.2469224% of the Purchase Price of each Unit subject to this Lease on such date."

2. The second paragraph of Section 7 of the Lease is hereby deleted in its entirety and there is hereby inserted in lieu thereof the following:

"The Casualty Value of each Unit as of any rental payment date shall be that percentage of the Purchase Price of such Unit as is set forth in the following schedule opposite the number of such rental payment date:

<u>Payment No.</u>	<u>Percentage</u>	<u>Payment No.</u>	<u>Percentage</u>
1	101.6663	16	64.4761
2	100.3609	17	61.7781
3	100.4702	18	58.9503
4	99.9936	19	55.9963
5	99.1930	20	52.9110
6	98.1601	21	49.7000
7	92.2385	22	46.3561
8	90.7215	23	42.8868
9	89.0487	24	39.2824
10	87.2492	25	35.5527
11	80.6831	26	31.6854
12	78.6259	27	27.6925
13	76.4395	28	23.5590
14	74.1253	29	19.2992
15	67.0470	30 and thereafter	15.0000 "

3. Subsection (b)(iii) of the first paragraph of Section 10 and the second paragraph of Section 10 of the Lease are hereby deleted and there is hereby inserted in lieu thereof the following:

(iii) an amount which, after deduction of all taxes required to be paid by the Lessor in respect of the receipt thereof under the laws of the United States of America or any political subdivision thereof, shall be equal to any portion of the 7% investment

credit (hereinafter called the Investment Credit) with respect to the Purchase Price of the Units pursuant to Section 38 and related sections of the Internal Revenue Code of 1954, as amended, lost, not claimed, not available for claim, disallowed or recaptured by or from the Lessor as a result of the breach of one or more of the representations, warranties and covenants made by the Lessee in Section 17 or any other provision of the Lease or the sale or other disposition of the Lessor's interest in any Unit after the occurrence of an Event of Default, plus such sum as in the reasonable opinion of the Lessor, will cause the Lessor's net return under this Lease to be equal to the net return that would have been available to the Lessor if it had been entitled to utilization of all or such portion of the maximum depreciation deduction with respect to a Unit authorized under Section 167 of the Internal Revenue Code utilizing the "class life" prescribed in accordance with Section 167(m) of said Code (hereinafter called the ADR Deduction) which was lost, not claimed, not available for claim or disallowed or recaptured in respect of a Unit as a result of the breach of one or more of the representations, warranties and covenants made by the Lessee in Section 17 or any other provision of this Lease, the termination of this Lease, the Lessee's loss of the right to use such Unit, or the sale or other disposition of the Lessor's interest in such Unit after the occurrence of an Event of Default.

Anything in this Section 10 to the contrary notwithstanding, any default in the observance or performance of any covenant, condition or agreement on the part of the Lessee which results solely in the loss by the Lessor of, or the loss by the Lessor of the right to claim, or the disallowance with respect to the Lessor of all or any portion of the Investment Credit or ADR Deduction or both shall be for all purposes of this Lease deemed to be cured if the Lessee shall, on or before the next rental payment date after written notice from the Lessor of the loss, or the loss of the right to claim, or the disallowance of the Investment Credit or ADR Deduction or both in respect of such Unit, agree to pay to the Lessor the revised rental rate in respect of such Unit determined as provided in the fourth paragraph of Section 17 hereof.

4. Section 17 of the Lease is hereby deleted in its entirety and there is hereby inserted in lieu thereof the language set forth in Annex A to this Amendment.

IN WITNESS WHEREOF, the Lessor and the Lessee, each pursuant to due corporate authority, have executed or caused this instrument to be executed as of the date first above written.

FIRST SECURITY BANK OF UTAH,  
NATIONAL ASSOCIATION,

By *James H. Jones*  
Sr. Vice President  
(Title)

(Corporate Seal)

Attest: *J. Eugene King*  
*Asst. Secretary*  
(Title)

THE WESTERN PACIFIC RAILROAD  
COMPANY,

By *[Signature]*  
*Asst. Secretary*  
(Title)

(Corporate Seal)

Attest: *Walter G. Grant*  
**SECRETARY**  
(Title)

STATE OF UTAH )  
 ) ss.:  
COUNTY OF SALT LAKE )

On this 26th day of May, 1972, before me personally appeared Roscoe Grover, to me personally known, who, being by me duly sworn, says that he is a Sr. Vice President of FIRST SECURITY BANK OF UTAH, NATIONAL ASSOCIATION, that one of the seals affixed to the foregoing instrument is the seal of said association, that said instrument was signed and sealed on behalf of said association 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 association.

  
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Notary Public

(Notarial Seal)

My Commission Expires:

STATE OF CALIFORNIA )  
 ) ss.:  
CITY AND COUNTY OF SAN FRANCISCO )

On this 22nd day of May, 1972, before me personally appeared F. A. TEGELER, to me personally known, who, being by me duly sworn, says that he is a Vice President-Finance of THE WESTERN PACIFIC RAILROAD COMPANY, that one of the seals 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.



*Diane L. Fafoutis*  
\_\_\_\_\_  
Notary Public

(Notarial Seal)

My commission expires: December 14, 1975.

ANNEX A TO AMENDMENT

§ 17. *Federal Income Taxes.* The Lessor, as the owner of the Units, shall be entitled to such deductions, credits and other benefits as are provided by the Internal Revenue Code of 1954, as amended to the date hereof (hereinafter called the Code), to an owner of property, including (without limitation) an allowance for the Investment Credit and the ADR Deduction (each as defined in § 10 of this Lease), with respect to the Units.

Lessee agrees that neither it nor any corporation controlled by it, in control of it, or under common control with it, directly or indirectly, will at any time take any action or file any returns or other documents inconsistent with the foregoing and that each of such corporations will file such returns, take such action and execute such documents as may be reasonable and necessary to facilitate accomplishment of the intent thereof. Lessee agrees to keep and make available for inspection and copying by Lessor such records as will enable Lessor to determine whether it is entitled

to the full benefit of the Investment Credit and the ADR Deduction with respect to the Units.

The Lessee represents and warrants that (i) none of the Units constitutes property the construction, reconstruction or erection of which was begun before April 1, 1971; (ii) at the time the Lessor becomes the owner of the Units, the Units will constitute "new section 38 property" within the meaning of Section 48(b) of the Code and at the time the Lessor becomes the owner of the Units, the Units will not have been used by any person so as to preclude "the original use of such property" within the meaning of Section 48(b) and 167(c)(2) of the Code from commencing with the Lessor; and (iii) at all times during the term of this Lease, each Unit will constitute "Section 38 property" within the meaning of Section 48(a) of the Code.

If (other than for the reasons set forth below) the Lessor shall lose, or shall not have or shall lose the right to claim, or there shall be disallowed with respect to the Lessor, all or any portion of the Investment Credit or ADR Deduction with respect to any Unit the rental rate applicable to such Unit set forth in § 3 of this Lease shall, on and after the next succeeding rental payment date after written notice to the Lessee by the Lessor that such Investment Credit or ADR Deduction has not been claimed, or if claimed and then disallowed on and after the next succeeding rental date after payment of the tax attributable thereto, be increased by such amount for such Unit which, in the reasonable opinion of the Lessor, will cause the Lessor's net return over the term of the Lease in respect of such Unit under this Lease to equal the net return that would have been available if the Lessor had been entitled to utilization of all or such portion of the Investment Credit or ADR Deduction which was not claimed or was disallowed and the Lessee shall forthwith pay to the Lessor

the amount of any interest which may be assessed by the United States against the Lessor attributable to the loss of all or any portion of the Investment Credit or ADR Deduction; *provided, however*, that such rental rate shall not be so increased if the Lessor shall have lost, or shall not have, or shall have lost the right to claim, or if there shall have disallowed with respect to the Lessor, all or any portion of such Investment Credit or ADR Deduction with respect to such Unit as a direct result of the occurrence of any of the following events:

(i) a Casualty Occurrence with respect to such Unit, if the Lessee shall have paid to the Lessor the amounts stipulated under § 7 hereof;

(ii) a transfer by the Lessor of legal title to such Unit, the disposition by the Lessor of any interest in such Unit or the reduction by the Lessor of its interest in the rentals from such Unit under the Lease, unless, in each case, an Event of Default shall have occurred and be continuing;

(iii) the amendment of the Security Documents without the prior written consent of the Lessee;

(iv) the failure of the Lessor to claim such Investment Credit or ADR Deduction as applicable, in its income tax return for the appropriate year or the failure of the Lessor to follow proper procedure in claiming such Investment Credit or ADR Deduction as applicable;

(v) the failure of the Lessor to have sufficient liability for tax against which to credit such Investment Credit or sufficient income to benefit from the ADR Deduction as applicable;

(vi) the failure of the Lessor to take timely action in contesting a claim made by the Internal Revenue Service with respect to the disallowance of such Invest-

ment Credit or ADR Deduction, if the failure to take such action in a timely manner shall have precluded the right of the Lessee to contest such claim, or a failure to take action to contest any such claim after a timely request to conduct such contest has been given by the Lessee to the Lessor (provided that the Lessee shall upon demand of the Lessor pay to the Lessor the expenses of any such contest as a condition of prosecuting the same); or the release, waiver, compromise or settlement of any action or proceeding taken in accordance with this clause (vi) by the Lessor without the prior written consent of the Lessee; or

(vii) any other fault of the Lessor 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 clause (vii).

If action is taken by the Lessor with respect to the disallowance of all or a portion of the Investment Credit or ADR Deduction and the final determination shall be adverse to the Lessor, the Lessee shall pay to the Lessor interest on the amount of the tax and interest paid attributable to the Investment Credit or ADR Deduction disallowed, computed at the rate of 8% per annum from the date of payment of such tax and interest to the date the Lessee shall reimburse the Lessor in accordance with the provisions of this § 17. The Lessor shall not be obligated to take any such legal or other appropriate action unless the Lessee shall first have indemnified the Lessor for all liabilities and expenses which may be entailed therein and shall have furnished the Lessor with such reasonable security therefor as may be requested.

If the Lessor's right to claim all or any part of the full Investment Credit or ADR Deduction with respect to a Unit, which was not claimed or was disallowed, shall be established by the final judgment or decree of the court or administrative agency having jurisdiction thereof, or if the Lessor shall release, waive, compromise or settle any claim without the written consent of the Lessee, then, on the next succeeding rental payment date thereafter, or after such judgment or decree shall have become final, as the case may be, the rental rate in respect of such Unit set forth in § 3 of this Lease shall again become applicable to such Unit and the Lessor shall forthwith upon demand of the Lessee reimburse Lessee in an amount equal to the excess, if any, of (i) the sum of (A) the difference between the increased rental paid by the Lessee with respect to such Unit pursuant to the fourth paragraph of this § 17 and the rental rate applicable to such Unit pursuant to § 3 of this Lease and (B) any interest paid by the Lessee to the Lessor pursuant to the next preceding paragraph of this § 17 over (ii) the difference between (A) an amount equal to interest at the rate of 8% per annum on the amount of any federal income tax paid by the Lessor on account of the disallowance or inability to claim the Investment Credit or ADR Deduction on such Unit and (B) the amount of any interest to which the Lessor would be entitled in connection with the refund of any tax paid on account of such disallowance or inability to claim; *provided, however*, that if the amount calculated in accordance with clause (ii) exceeds the amount calculated in accordance with clause (i), the Lessee shall pay such excess to the Lessor promptly on demand.

The Lessee's and the Lessor's agreement to pay any sums which may become payable pursuant to this § 17 shall survive the expiration or other termination of this Lease.