

8304-B

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INTERSTATE COMMERCE COMMISSION

EXHIBIT III
TO RECONSTRUCTION
AND CONDITIONAL
SALE AGREEMENT

ASSIGNMENT OF LEASE AND AGREEMENT

Dated as of March 1, 1976

Between

FIRST SECURITY BANK OF UTAH, N.A.,
as Trustee,

and

FIRST SECURITY BANK OF UTAH, N.A.,
as Agent

ASSIGNMENT OF LEASE AND AGREEMENT dated as of March 1, 1976 (hereinafter called this Assignment), by and between First Security Bank of Utah, N.A. as Trustee (hereinafter called the Lessor) and First Security Bank of Utah, N.A., as Agent under a Finance Agreement dated the date hereof (hereinafter called the Vendor).

WHEREAS, the Lessor is entering into a Reconstruction and Conditional Sale Agreement dated as of the date hereof (hereinafter called the Security Document), with the Vendor, The Western Pacific Railroad Company (the Lessee), and U.S. Railway Mfg. Co., providing for the delivery to the Lessor of such units of railroad equipment (hereinafter called the Units) described in the Schedule A thereto as are delivered to and accepted by the Lessor thereunder; and

WHEREAS, the Lessor and the Lessee have entered into a Lease of Railroad Equipment dated as of the date hereof (hereinafter called the Lease), providing for the leasing by the Lessor to the Lessee of the Units; and

WHEREAS, in order to provide security for the obligations of the Lessor under the Security Document and as an inducement to the Vendor to invest in the Conditional Sale Indebtedness (as that term is defined in the Security Document), the Lessor has agreed to assign for security purposes its rights in, to and under the Lease to the Vendor;

NOW THEREFORE, in consideration of the premises and of the payments to be made and the covenants hereinafter mentioned to be kept and performed, the parties hereto agree as follows:

1. The Lessor hereby assigns, transfers and sets over unto the Vendor, as collateral security for the payment and performance of the Lessor's obligations under the Security Document, all the Lessor's right, title and interest, powers, privileges, and other benefits under the Lease, including, without limitation, the immediate right to receive and collect all rentals, profits and other sums payable to or receivable by the Lessor from the Lessee under or pursuant to the provisions of the Lease whether as rent, casualty payment, indemnity, liquidated damages, or otherwise (such moneys being hereinafter called the Payments), and the right to make all waivers and agreements, to give all notices, consents and releases, to take all action upon the happening of an Event of Default specified in the

Lease, and to do any and all other things whatsoever which the Lessor is or may become entitled to do under the Lease. In furtherance of the foregoing assignment, the Lessor hereby irrevocably authorizes and empowers the Vendor in its own name, or the name of its nominee, or in the name of the Lessor or as its attorney, to ask, demand, sue for, collect and receive any and all sums to which the Lessor is or may become entitled under the Lease, and to enforce compliance by the lessee with all the terms and provisions thereof.

The Vendor agrees to accept any Payments made by the Lessee for the account of the Lessor pursuant to the Lease. To the extent received, the Vendor will apply such Payments to satisfy the obligations of the Lessor under the Security Document, subject to the limitations contained in the last paragraph of Article 4 of the Security Document, and, so long as no event of default or event which, with notice or lapse of time, or both, could constitute an event of default under the Security Document shall have occurred and be continuing, any balance shall be paid within five (5) business days to and retained by the Lessor. If the Vendor shall not receive any rental payment under Section 3 of the Lease when due, the Vendor shall notify the Lessor at the address set forth in the lease; provided, however, that failure of the Vendor so to notify Lessor shall not affect the obligations of the Lessor hereunder or under the Security Document.

2. This Assignment is executed only as security and, therefore, the execution and delivery of this Assignment shall not subject the Vendor to, or transfer, or pass, or in any way affect or modify the liability of the Lessor under the Lease, it being understood and agreed that notwithstanding this Assignment or any subsequent assignment, all obligations of the Lessor to the Lessee shall be and remain enforceable by the Lessee, its successors and assigns, against, and only against, the Lessor or persons other than the Vendor.

3. To protect the security afforded by this Assignment the Lessor agrees as follows:

(a) The Lessor will faithfully abide by, perform and discharge each and every obligation, covenant and agreement which the Lease provides are to be performed by the Lessor; without the

written consent of the Vendor, the Lessor will not anticipate the rents under the Lease or waive, excuse, condone, forgive or in any manner release or discharge the Lessee thereunder of or from the obligations, covenants, conditions and agreements to be performed by the Lessee, including, without limitation, the obligation to pay the rents in the manner and at the time and place specified therein or herein or enter into any agreement amending, modifying or terminating the Lease and the Lessor agrees that any amendment, modification or termination thereof without such consent shall be void.

(b) At the Lessor's sole cost and expense, the Lessor will appear in and defend every action or proceeding arising under, growing out of or in any manner connected with the obligations, duties or liabilities of the Lessor under the Lease.

(c) Should the Lessor fail to make any payment or to do any act which this Assignment requires the Lessor to make or do, after first making written demand upon the Lessor and affording the Lessor a reasonable period of time within which to make such payment or do such act, such reasonable period in no event to exceed fifteen (15) days, but without releasing the Lessor from any obligation hereunder, the Vendor may make or do the same in such manner and to such extent as the Vendor may deem necessary to protect the security hereof, including specifically, without limiting its general powers, the right to appear in and defend any action or proceeding purporting to affect the security hereof and the rights or powers of the Vendor, and also the right to perform and discharge each and every obligation, covenant and agreement of the Lessor contained in the Lease; and in exercising any such powers, the Vendor may pay necessary costs and expenses, employ counsel and incur and pay reasonable attorneys' fees, and the Lessor will reimburse the Vendor for such costs, expenses and fees.

4. The Lessor does hereby constitute the Vendor the Lessor's true and lawful attorney, irrevocably, with full power (in the name of the Lessor, or otherwise), to ask, require, demand, receive, compound and give acquittance for any and all Payments due and to

become due under or arising out of the Lease to which the Lessor is or may become entitled, to enforce compliance by the Lessee with all the terms and provisions of the Lease, to endorse any checks or other instruments or orders in connection therewith and to file any claims or take any action or institute any proceedings which to the Vendor may seem to be necessary or advisable in the premises.

5. Upon the full discharge and satisfaction of all Lessor's obligations under the Security Document, this Assignment and all rights herein assigned to the Vendor shall terminate, and all estate, right, title and interest of the Vendor in and to the Lease shall revert to the Lessor.

6. The Lessor will, on each Closing Date (as defined in the Security Document) furnish the Vendor with a Certificate of Lessor that this Assignment has been duly authorized, executed and delivered by the Lessor and is a legal and valid agreement binding on the Lessor.

7. The Lessor will, from time to time, do and perform any other act and will execute, acknowledge, deliver and file, register, deposit and record (and will refile, reregister, rerecord or redeposit whenever required) any and all further instruments required by law or reasonably required by the Vendor in order to confirm or further assure, the interests of the Vendor hereunder.

8. The Vendor may assign all or any of the rights assigned to it hereby or arising under the Lease, including, without limitation, the right to receive any Payments due or to become due. In the event of any such assignment, any such subsequent or successive assignee or assignees shall, to the extent of such assignment, enjoy all the rights and privileges and be subject to all the obligations of the Vendor hereunder.

9. This Assignment shall be governed by the laws of the State of California, but the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act.

10. The Lessor shall cause copies of all notices received in connection with the Lease and all payments

hereunder to be promptly delivered or made to the Vendor at its address set forth in Article 20 of the Security Document, or at such other address as the Vendor shall designate.

11. The Vendor hereby agrees with the Lessor that the Vendor will not, so long as no Event of Default under the Lease or event of default under the Security Document has occurred and is then continuing, agree to any change, alteration or modification of the Lease without the Lessor's consent.

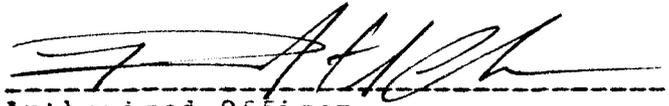
12. It is expressly understood and agreed by and between the parties hereto, anything herein to the contrary notwithstanding, that each and all of the undertakings and agreements herein made on the part of the Lessor, are made and intended not as personal undertakings and agreements by FIRST SECURITY BANK OF UTAH, N.A., or for the purpose or with the intention of binding said Lessor personally but are made and intended for the purpose of binding only the Trust Estate as such term is used in the Trust Agreement under which Lessor is acting in such capacity hereunder, and this Agreement is executed and accepted by said Lessor not in its own right but solely in the exercise of the powers expressly conferred upon it as Trustee under the Trust Agreement; and that no personal liability or personal responsibility is assumed by or shall at any time be asserted or enforceable against said Lessor or the Trustor under the Trust Agreement on account of this Agreement or on account of any representation, undertaking or agreement of said Lessor or the Trustor, either express or implied herein, all such personal liability, if any, being expressly waived and released by the Vendor and by all persons claiming by, through or under the Vendor; provided, however, that the Vendor or any person claiming by, through or under it, making claim hereunder, may look to said Trust Estate for satisfaction of the same.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed in their respective corporate names by officers hereunto duly authorized, and their

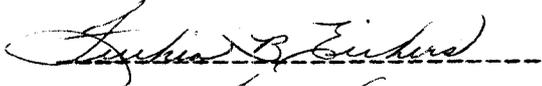
respective corporate seals to be affixed and duly attested,
all as of the date first above written.

FIRST SECURITY BANK OF UTAH, N.A.,
Not in its individual capacity but
solely as Trustee

[SEAL]

By 
Authorized Officer

Attest:

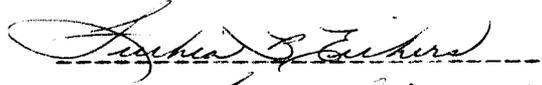

Title Trust Administrator

FIRST SECURITY BANK OF UTAH, N.A.,
As Agent

[SEAL]

By 
Authorized Officer

Attest:


Title Trust Administrator

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

On this 22 day of April, 1976, before me personally appeared Robert S. Clark to me personally known, who, being by me duly sworn, says that he is an Authorized Officer of FIRST SECURITY BANK OF UTAH, N.A., that one of the seals affixed to the foregoing instrument is the corporate 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.

Barbara J. Olsen
Notary Public

[NOTARIAL SEAL]

My commission expires
November 18, 1979

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

On this 22 day of April, 1976, before me personally appeared Robert S. Clark, to me personally known, who, being by me duly sworn, says that he is an Authorized Officer of FIRST SECURITY BANK OF UTAH, N.A., that one of the seals affixed to the foregoing instrument is the corporate 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.

Barbara J. Olsen
Notary Public

[Notarial Seal]

My commission expires
November 18, 1979

LESSEE'S CONSENT AND AGREEMENT

The undersigned, a corporation duly incorporated under the laws of the State of California, the Lessee named in the Lease (hereinafter called the Lease) referred to in the foregoing Assignment of Lease and Agreement (hereinafter called the Assignment), hereby (a) acknowledges receipt of a copy of the Assignment and (b) consents to all the terms and conditions of the Assignment and agrees that:

(1) It will pay all rentals, casualty payments, liquidated damages, indemnities and other moneys provided for in the Lease due and to become due under the Lease, directly to First Security Bank of Utah, N.A., as Agent (hereinafter called the Vendor), the assignee named in the Assignment, at 79 South Main Street, Salt Lake City, Utah 84111, Attention of Trust Department, Corporation Division, or at such other address as may be furnished in writing to the undersigned by the Vendor;

(2) The Vendor shall be entitled to the benefits of, and to receive and enforce performance of, all the covenants to be performed by the undersigned under the Lease as though the Vendor were named therein as the Lessor;

(3) The Vendor shall not, by virtue of the Assignment or this Consent and Agreement, be or become subject to any liability or obligation under the Lease or otherwise; and

(4) The Lease shall not, without the prior written consent of the Vendor, be amended, terminated or modified, nor shall any action be taken or omitted by the undersigned, the taking or omission of which might result in an alteration or impairment of the Lease or this Consent and Agreement or of any of the rights created by any thereof.

This Consent and Agreement may be executed in several counterparts, each of which when so executed shall be deemed an original, and such counterparts together shall constitute one and the same instrument.

This Consent and Agreement, when accepted by the

Vendor by signing the acceptance at the foot hereof, shall be deemed to be a contract under the laws of the State of California and, for all purposes, shall be construed in accordance with the laws of said State.

Dated as of March 1, 1976.

THE WESTERN PACIFIC RAILROAD
COMPANY

By 
Vice President — Finance

(Corporate Seal)

Attest:



Title SECRETARY

The foregoing Consent and Agreement is hereby accepted, as of the 1st day of March, 1976.

FIRST SECURITY BANK OF UTAH,
NATIONAL ASSOCIATION, Not in
Its Individual Capacity But
Solely as Agent,

By _____
Authorized Officer

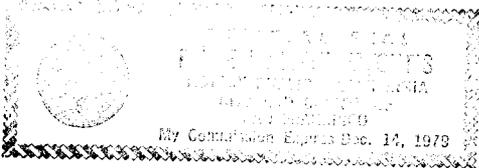
(Corporate Seal)

Attest:

Authorized Officer

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

On this 22nd day of April, 1976, before me personally appeared R. W. STUMBO, JR., to me personally known, who, being by me duly sworn, says that he is the VICE PRESIDENT - FINANCE of THE WESTERN PACIFIC RAILROAD COMPANY, that the seal affixed to the foregoing instrument is the corporate seal of said corporation and 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 a free act and deed of said corporation.



Diane Lorette Lafont
Notary Public

(NOTARY SEAL)

My commission expires 12/14/79

STATE OF UTAH ,)
) SS.:
COUNTY OF SALT LAKE ,)

On this _____ day of _____, 1976,
before me personally appeared _____,
to me personally known, who, being by me duly sworn, says
that he is an Authorized Officer of First Security Bank of
Utah, N.A., that the seal affixed to the foregoing instru-
ment is the corporate seal of said association and that said
instrument was signed and sealed on behalf of said associa-
tion by authority of its Board of Directors, and he
acknowledged that the execution of the foregoing instrument
was a free act and deed of said association.

Notary Public

INOTARIAL SEAL

My commission expires

LESSOR'S CONSENT AND AGREEMENT

The undersigned, a corporation duly incorporated under the laws of the State of California, the Lessee named in the Lease (hereinafter called the Lease) referred to in the foregoing Assignment of Lease and Agreement (hereinafter called the Assignment), hereby (a) acknowledges receipt of a copy of the Assignment and (b) consents to all the terms and conditions of the Assignment and agrees that:

(1) It will pay all rentals, casualty payments, liquidated damages, indemnities and other moneys provided for in the Lease due and to become due under the lease, directly to First Security Bank of Utah, N.A., as Agent (hereinafter called the Vendor), the assignee named in the Assignment, at 79 South Main Street, Salt Lake City, Utah 84111, Attention of Trust Department, Corporation Division, or at such other address as may be furnished in writing to the undersigned by the Vendor;

(2) The Vendor shall be entitled to the benefits of, and to receive and enforce performance of, all the covenants to be performed by the undersigned under the lease as though the Vendor were named therein as the lessor;

(3) The Vendor shall not, by virtue of the Assignment or this Consent and Agreement, be or become subject to any liability or obligation under the Lease or otherwise; and

(4) The Lease shall not, without the prior written consent of the Vendor, be amended, terminated or modified, nor shall any action be taken or omitted by the undersigned, the taking or omission of which might result in an alteration or impairment of the Lease or this Consent and Agreement or of any of the rights created by any thereof.

This Consent and Agreement may be executed in several counterparts, each of which when so executed shall be deemed an original, and such counterparts together shall constitute one and the same instrument.

This Consent and Agreement, when accepted by the

Vendor by signing the acceptance at the foot hereof, shall be deemed to be a contract under the laws of the State of California and, for all purposes, shall be construed in accordance with the laws of said State.

Dated as of March 1, 1976.

THE WESTERN PACIFIC RAILROAD
COMPANY

By _____

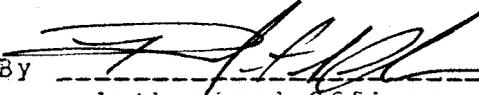
(Corporate Seal)

Attest:

Title _____

The foregoing Consent and Agreement is hereby accepted, as of the 1st day of March, 1976.

FIRST SECURITY BANK OF UTAH,
NATIONAL ASSOCIATION, Not in
Its Individual Capacity But
Solely as Agent,

By  _____
Authorized Officer

(Corporate Seal)

Attest:



Authorized Officer

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

On this ____ day of _____, 1976, before me personally appeared _____, to me personally known, who, being by me 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 and 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 a free act and deed of said corporation.

Notary Public

(NOTARY SEAL)

My commission expires

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

On this 22 day of April, 1976,
before me personally appeared Robert S. Clark,
to me personally known, who, being by me duly sworn, says
that he is an Authorized Officer of First Security Bank of
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ment is the corporate seal of said association and that said
instrument was signed and sealed on behalf of said associa-
tion by authority of its Board of Directors, and he
acknowledged that the execution of the foregoing instrument
was a free act and deed of said association.

Ronda J. Olsen
Notary Public

(NOTARIAL SEAL)

My commission expires
November 18, 1979