

THE WESTERN PACIFIC RAILROAD COMPANY

WESTERN PACIFIC BUILDING, 526 MISSION STREET  
SAN FRANCISCO, CALIFORNIA 94105  
TELEPHONE: (415) 982-2100

WALTER G. TREANOR  
VICE PRESIDENT-LAW

RECORDATION NO. 7707-A3 Filed 1425

KATHERINE M. GRIFFIN  
GENERAL ATTORNEY  
MICHAEL P. HEARNEY  
EUGENE J. TOLER  
ATTORNEYS

July 18, 1979

JUL 23 1979 - 12 50 PM

File: 6116-59

DELIVERED TO: INTERSTATE COMMERCE COMMISSION

Honorable H. G. Homme, Jr.  
Secretary  
Interstate Commerce Commission  
Washington, D.C. 20423

5-2041049  
JUL 23 1979  
Date  
Fee \$ 10.00  
Washington, D.C.

Dear Sir:

Enclosed for recording with the Interstate Commerce Commission are the original and two (2) certified true copies of an Assignment and Assumption Agreement dated April 4, 1979 between The Western Pacific Railroad Company, a California corporation, 526 Mission Street, San Francisco, California 94105 as Assignor and The Western Pacific Railroad Company, a Delaware corporation (formerly Newrail Company, Inc.) as Assignee, 526 Mission Street, San Francisco, California 94105 wherein the Assignor assigned and the Assignee assumed that certain Conditional Sale Agreement dated as of October 15, 1974 among ACF Industries, Incorporated, 750 Third Avenue, New York, NY 10017 as Vendor, United States Trust Company of New York, Trustee, 130 John Street, New York, NY 10038 as Vendee and The Western Pacific Railroad Company (Assignor) as Guarantor. The Vendor's interest in such Conditional Sale Agreement was assigned to Mercantile-Safe Deposit and Trust Company, P. O. Box 2258, Baltimore, Maryland 21203. Prior recording data:

<u>Document</u>	<u>Date</u>	<u>Recordation No.</u>
Conditional Sale Agreement	October 15, 1974	7707
Agreement & Assignment	October 15, 1974	7707-A

The document relates to the following railroad equipment:

- 68 100-ton covered hopper cars manufactured by ACF Industries, Incorporated; AAR mechanical designation LD; Road Numbers: WP 11901 - 11965, both inclusive.

FEE OPERATION BR.  
I.O.C.

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Honorable H. G. Homme, Jr.  
July 18, 1979  
Page 2

Identifying marks: The words "Western Pacific" and the words "Ownership subject to a Security Agreement filed under the Interstate Commerce Act, Section 20C" printed on each side of each unit.

Also enclosed is this Company's voucher in the sum of \$10.00 payable to the Interstate Commerce Commission being the prescribed fee for filing and recording the foregoing document.

Please return the original and counterpart with recordation data stamped thereon to the representative of the office of Kunkel Transportation Services, Inc., 425 - 13th Street, N.W., Suite 523, Washington, D.C. 20004, who will be delivering this letter on our behalf.

Yours very truly,



Katherine M. Griffin

KMG:jc

Attachment

July 79

**THE WESTERN PACIFIC RAILROAD COMPANY**

CHECK NO. 42993

INVOICE DATE	INVOICE NO.	AMOUNT	DISCOUNT	NET AMOUNT	DUE DATE
Recordg Fee		10.00		1 0.00	

ASSIGNMENT AND ASSUMPTION AGREEMENT

JUL 23 1979 - 12 50 PM

INTERSTATE COMMERCE COMMISSION

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 Conditional Sale Agreement with ACF Industries, Inc. and United States Trust Company of New York, effective October 15, 1974, recorded with the Interstate Commerce Commission on November 13, 1974, Recordation No. 7707, and supplemented by an Agreement and Assignment by ACF Industries to Mercantile Safe Deposit & Trust Company, effective October 15, 1974, recorded with the Interstate Commerce Commission on November 13, 1974, Recordation No. 7707-A, 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 to 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. Humboldt, Jr.*

Its Sr. Vice President - Finance

Attest *J. D. Brew*

Its SECRETARY

ASSIGNEE:

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

By *P. W. Humboldt, Jr.*

Its Sr. Vice President - Finance

Attest *J. 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.

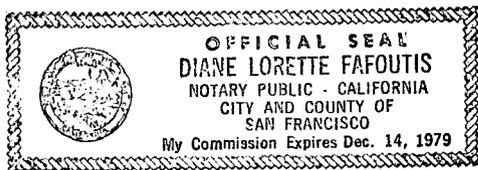


Diane Lorette Fafoutis  
Notary Public in and for said State

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

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