

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

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

RECORDATION NO. *92 94/B* Filed 1425

July 30, 1979

AUG 6 1979 -10 40 AM

File: 6116-67

5-218A043

DELIVER TO: INTERSTATE COMMERCE COMMISSION

Honorable Agatha L. Mergenovich  
Secretary  
Interstate Commerce Commission  
Washington, D.C. 20423

AUG 06 1979  
Date  
Fee \$ 10.00  
ICC Washington, D.C.

Dear Secretary Mergenovich:

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 March 15, 1978 between Memorial Drive Trust, 20 Acorn Park, Cambridge, Massachusetts 02140 as Vendor and Assignor as Vendee. Prior recording data:

<u>Document</u>	<u>date</u>	<u>Recordation No.</u>
Conditional Sale Agreement	March 15, 1978	9294
Bill of Sale	March 15, 1978	9294-A

The document relates to the following railroad equipment:

25 50'6" 70-ton single sheath boxcars; AAR mechanical designation XM; Road numbers WP 38001-38025, both inclusive.

Identifying marks: The words "Memorial Drive Trust, Security Owner" printed on each side of each unit.

RECORDED  
INDEXED  
AUG 13 1979  
FBI - WASH DC

Also enclosed is this Company's voucher in the sum of \$10 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

AUG 6 1979 -10 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 Conditional Sale Agreement with Memorial Drive Trust, effective March 15, 1978, recorded with the Interstate Commerce Commission on March 28, 1978, Recordation No. 9294, which was supplemented by a Bill of Sale dated March 15, 1978, recorded March 28, 1978, Recordation No. 9294-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 *R. W. Humboldt, Jr.*  
Its St. Vice President - Finance

Attest *H. D. Brew*  
Its SECRETARY

ASSIGNEE:

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

By *R. W. Humboldt, Jr.*  
Its St. 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.

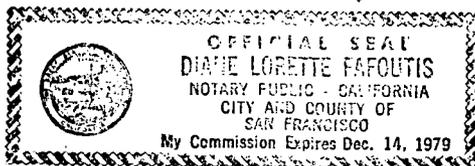


Diane Lorette Fafoutis  
Notary Public in and for said State

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 Fafoutis  
Notary Public in and for said State

I, DIANE LORETTE FAFOUTIS, a Notary Public in and for the City and County of San Francisco, State of California, do hereby certify that I have compared the foregoing document with the original and that it is a true and correct copy in all respects.

*Diane Lorette Fafoutis*  
Notary Public

