

File No. 25236.

The Western Pacific Railroad Company,)
 and)
 T. M. Schumacher and Sidney M. Ehrman)
 Assumption Agreement.

WHEREAS, heretofore in a proceeding in the United States District Court for the Northern District of California, Southern Division, for the reorganization of a railroad under Section 77 of the Bankruptcy Act, as amended, entitled "In the Matter of The Western Pacific Railroad Company, Debtor", No. 26591-S, a Plan of Reorganization of The Western Pacific Railroad Company was approved and confirmed, and, pursuant to the provisions of said Plan of Reorganization, an order was entered on September 25, 1944, by said Court approving the use of the said debtor company, The Western Pacific Railroad Company, a corporation organized and existing under the laws of the State of California, as the reorganized company in carrying out said plan;

WHEREAS, the Interstate Commerce Commission, under date of October 24, 1944, in Docket #10913, made a report and order which, among other things, approved and authorized the assumption by said The Western Pacific Railroad Company of obligations and liabilities as provided in said plan;

WHEREAS, pursuant to said Plan of Reorganization and to the order entered in said proceeding on November 27, 1944, T. M. Schumacher and Sidney M. Ehrman, as Trustees of the property of said The Western Pacific Railroad Company, duly appointed in said proceeding (hereinafter called the "Trustees"), have, by deed dated December 9th, 1944 remised, released, transferred, conveyed and quitclaimed to the undersigned, said The Western Pacific Railroad Company, all of the property, real, personal and mixed, of every kind and nature, vested in, held, possessed, used or controlled by said Trustees;

Now, THEREFORE, pursuant to the provisions of said order entered November 27, 1944, and in consideration of the said release, transfer and conveyance by the Trustees, the undersigned The Western Pacific Railroad Company, for itself, its successors and assigns, makes this Agreement with said Trustees, for the benefit of said Trustees and of all other parties in interest in the aboveentitled proceedings, under which agreement the undersigned does hereby:

1. Assume and agree to perform all contracts, leases and agreements made or entered into by the debtor in possession or by said Trustees and remaining in effect on December 31, 1944, and all contracts, leases and agreements of the debtor in effect on August 2, 1935, either assumed or not disaffirmed by said Trustees, which remain in effect on December 31, 1944, and expenses of reorganization allowed by the Court within the maximum fixed by the Interstate Commerce Commission;

2. Assume any and all outstanding current liabilities and obligations incurred by said Trustees and without limitation thereto, any and all liabilities or obligations of the debtor in possession or said Trustees with respect to claims for personal injury or death, for loss or damage to property and generally any and all liabilities and obligations with respect to claims of any character whether heretofore or hereafter asserted arising out of the possession, use or operation of the debtor's properties by said Trustees, or their conduct of the debtor's business, including liabilities and obligations hereafter arising up to midnight December 31, 1944.

3. Without limitation of the generality of the foregoing agreements in paragraphs 1 and 2 hereof, specifically undertake to defend at its own sole cost and expense all suits and proceedings, of whatsoever character, now or hereafter instituted against the Trustees, or either of them, arising out of the possession, use or operation of the debtor's properties by the Trustees or of their conduct of the debtor's business, and to assume the conduct of all suits and proceedings, of whatsoever character, heretofore or hereafter brought by the Trustees in the discharge of their duties and responsibilities as such, and, generally, to indemnify the Trustees and save them harmless against all expense, liability, loss, judgments, claims and

demands arising out of such suits or proceedings. It is the intent of the covenants in this paragraph 3 contained that The Western Pacific Railroad Company shall assume responsibility for all such suits and proceedings to which the Trustees, or either of them, are or shall become parties, to the same effect as if The Western Pacific Railroad Company instead of the Trustees had been party thereto in the first instance.

4. Without limitation of the generality of the foregoing agreements in paragraphs 1 and 2 above, specifically assume and agree to perform the obligations of the Trustees in respect of the following:

(a) \$1,235,000 unpaid balance, principal amount of Three Per Cent. Equipment Trust Certificates, Series of 1937, issued February 1, 1937, under Agreement of same date, between J. T. Harrigan and F. E. Egly, Vendors, with Central Hanover Bank and Trust Company, Trustee, and T. M. Schumacher and Sidney M. Ehrman, Trustees of the Property of The Western Pacific Railroad Company, Debtor.

(b) \$1,855,000 unpaid balance, principal amount of One and Three Quarters Per Cent Equipment Trust Certificates, Series of 1941, issued August 1, 1941, under Agreement of same date, between M. J. Suydam and F. W. Walter, Vendors, with Central Hanover Bank and Trust Company, Trustee, and T. M. Schumacher and Sidney M. Ehrman, Trustees of the Property of The Western Pacific Railroad Company, Debtor.

(c) Conditional Sale Agreement, dated as of May 25, 1943, between Lima Locomotive Works, Incorporated, and T. M. Schumacher and Sidney M. Ehrman, Trustees of the Property of The Western Pacific Railroad Company, Debtor, relating to the purchase on monthly installment plan of six steam freight locomotives.

(d) Conditional Sale Agreement, dated as of June 21, 1943, between Electro-Motive Division, General Motors Corporation and T. M. Schumacher and Sidney M. Ehrman, Trustees of the Property of The Western Pacific Railroad Company, Debtor, relating to the purchase on monthly installment plan of three 5400 H. P. diesel electric freight locomotives.

(e) Conditional Sale Agreement, dated as of June 1, 1944, between The Chase National Bank of the City of New York and T. M. Schumacher and Sidney M. Ehrman, Trustees of the Property of The Western Pacific Railroad Company, Debtor, relating to the purchase on monthly installment plan of six 5400 H. P. diesel freight locomotives.

5. Without limitation of the generality of the foregoing agreements in Paragraphs 1 and 2 above, specifically assume and agree to pay in cash the face amount of any and all outstanding first mortgage bond coupons which matured on or prior to September 1, 1933, and had not theretofore been presented for payment; such coupons being those which the Court by orders of March 11, 1936 and March 20, 1936, authorized The Chase National Bank of the City of New York to pay from funds which had been deposited with it by the debtor:

6. Without limitation of the generality of the foregoing agreements in Paragraphs 1 and 2 above, assume the liability for, and pay in due course, any and all taxes lawfully due to the United States from the debtor or the debtor's Trustees for any taxable period prior to January 1, 1945, whether or not proof thereof was made in the said proceeding and without prejudice by reason of such proof not having been made.

This agreement shall become effective on December 29, 1944, at 12:01 A. M., Pacific War Time.

IN WITNESS WHEREOF, the undersigned has caused this instrument to be executed in its behalf by its President and its corporate seal to be hereunto affixed this 14th day of December, 1944.

(CORPORATE SEAL)

The Western Pacific Railroad Company

Attest: C.L. Drait

Secretary

By Charles Elsey

W.P. President

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

On this 14th day of December, 1944, before me Mary N. Wickersham a notary public in and for the City and County of San Francisco, State of California, residing therein duly commissioned and sworn, personally appeared CHARLES ELSEY, to me known to be the President of The Western Pacific Railroad Company, the corporation that executed the foregoing instrument and known to me to be the person who executed the foregoing instrument on behalf of said corporation, and he acknowledged to me that such corporation executed the same; and being by me duly sworn he did say: that he is an officer of said corporation as above designated; that said instrument was signed in behalf of said corporation by resolution of its Board of Directors; that he is acquainted with the seal of said corporation and that the seal affixed to said instrument is the corporate seal of said corporation; that the signatures to the said instrument on behalf of said corporation were made by officers of said corporation as indicated after said signatures; and that the said corporation executed the said instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal at my office in said City and County of San Francisco, the day and year in this Certificate first above written.

(Notarial Seal)

Mary N. Wickersham
 NOTARY PUBLIC in and for the City and County of
 San Francisco, State of California.
 My Commission Expires NOV, 23, 1948.

Recorded at the request of H.P. Tyler Jan. 22, A.D. 1945 At 30 minutes past 4 P.M.

Peter Merialdo --- Recorder.