

# Taylor, Morell & Gitomer

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January 22, 1992

Reese H. Taylor, Jr.  
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310 Golden Shore  
Long Beach, California 90802  
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Honorable Sidney L. Strickland, Jr.  
Secretary  
Interstate Commerce Commission  
12th and Constitution Avenue, N.W.  
Washington, D.C. 20423

RECORDATION NO

9026-E  
FILED 1992

JAN 22 1992 - 1 22 PM

INTERSTATE COMMERCE COMMISSION

Dear Secretary Strickland:

I have enclosed an original and two certified copies of the document described below, to be recorded pursuant to 49 U.S.C. 11303.

The document is an Assignment and Assumption Agreement, a secondary document, dated December 27, 1991. The primary document to which this is connected is recorded under Recordation No. 9026. We request that this agreement be recorded under Recordation No. 9026-~~E~~.

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The names and addresses of the parties to the agreement are as follows:

**Purchaser:**

LPCA Corporation  
Four Embarcadero Center  
Suite 2200  
San Francisco, California 94111

**Seller:**

Westinghouse Credit Corporation  
1 Oxford Centre  
9th Floor  
Pittsburgh, Pennsylvania 15219

A description of the equipment covered by the agreement consists of: 10 3,000 horsepower SD-40-2 diesel-electric locomotives, with the following numbers: BN 6781-6790, inclusive; and 15 3,000 horsepower C-30-7 diesel-electric locomotives, with the following numbers: BN 5530-5544, inclusive.

No casualties have occurred.

A fee of \$16.00 is enclosed. Please return the original to:

Louis E. Gitomer  
Suite 1200  
1133 15th Street, N.W.  
Washington, D.C. 20005

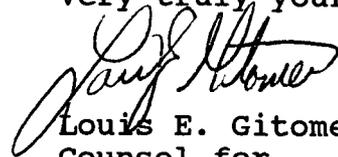


Honorable Sidney L. Strickland, Jr.  
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Page 2

A short summary of the document to appear in the index follows:

An Assignment and Assumption Agreement, a secondary document, dated December 27, 1991, between LPCA Corporation, Four Embarcadero Center, Suite 2200, San Francisco, California 94111, and Westinghouse Credit Corporation, 1 Oxford Centre, 9th Floor, Pittsburgh, Pennsylvania 15219, consisting of 10 3,000 horsepower SD-40-2 diesel-electric locomotives, with the following numbers: BN 6781-6790, inclusive; and 15 3,000 horsepower C-30-7 diesel-electric locomotives, with the following numbers: BN 5530-5544, inclusive.

Very truly yours,



Louis E. Gitomer  
Counsel for  
GATX Capital Corporation

LEG/jsh

Attachments

9026-F  
RECORDATION NO. 9026-F

JAN 22 1992 - 1 25 PM

Burlington Northern #72134, 72380, 72367

INTERSTATE COMMERCE COMMISSION  
**ASSIGNMENT AND ASSUMPTION AGREEMENT**

This Assignment and Assumption Agreement (the "Agreement"), dated December 27, 1991, is by and between WESTINGHOUSE CREDIT CORPORATION, a Delaware corporation ("Seller"), and LPCA CORPORATION, a Delaware corporation ("Purchaser").

**RECITALS**

Seller, Purchaser and GATX Capital Corporation are parties to a Purchase Agreement, dated as of November 27, 1991 (the "Purchase Agreement").

The Purchase Agreement provides, among other things, for the execution and delivery of an assignment and assumption in substantially the form hereof to effect the sale by Seller to Purchaser of all right, title and interest of Seller in and to the Lease Assets referred to below, and the assumption by Purchaser of certain of the obligations of Seller under the lease transaction documents set forth on the attached Schedule 4.1(e) (the "Lease Documents").

Among the Lease Assets Seller is assigning to Purchaser is all of Seller's right, title and interest in and to that certain Trust Agreement, dated as of September 1, 1977, among First Security Bank of Utah, N.A., as Owner Trustee, and BWL, Inc., Toy National Bank and Seller, as Owners (the "Trust Agreement").

Seller acquired all of the interest of BWL, Inc. in the Trust Agreement pursuant to a Bill of Sale, Assignment and Assumption Agreement, dated as of December 29, 1988, and recorded with the ICC, under ICC Recordation No. 9026-D, on December 29, 1988. Seller acquired all of the interest of Toy National Bank pursuant to an Assignment and Consent Agreement, dated as of September 30, 1988, a copy of which is attached hereto as Exhibit A.

NOW, THEREFORE, in consideration of the premises and the mutual covenants and agreements herein contained, the parties hereto do hereby agree as follows:

1. Definitions. Unless otherwise defined herein, capitalized terms used herein shall have the meanings given to them in the Purchase Agreement.
2. Assignment. Seller does hereby GRANT, BARGAIN, ASSIGN, TRANSFER, SELL, DELIVER AND CONVEY UNTO PURCHASER, ITS SUCCESSORS AND ASSIGNS, TO HAVE AND TO HOLD FOREVER, all of Seller's right, title and interest in and to the following Lease Assets: (a) Seller's beneficial ownership interest in and to 100% of the Trust Estate established pursuant to the Trust Agreement, and (b) Seller's interest as an Owner Participant of such trust in the Lease Property described on the attached Schedule 4.1(f) and made a part hereof; excluding, however, in each case, any

claim, cause of action, liability or obligation of any nature or description or other right to payment (other than the rights of Purchaser pursuant to Sections 2.4, 6.1 and 6.3 of the Purchase Agreement) accruing, arising or relating to any period prior to the date hereof or payable by reason of any act, event or omission occurring or existing prior to the date hereof, whether known or unknown, contingent or otherwise, as of the date hereof.

EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES SET FORTH IN ARTICLE 4 OF THE PURCHASE AGREEMENT, IN THIS AGREEMENT AND IN THE BILL OF SALE, THE SALE OF THE LEASE PROPERTY IS MADE "AS IS, WHERE IS," AND SELLER SHALL NOT BE DEEMED TO HAVE MADE ANY FURTHER REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, NOW OR HEREAFTER AS TO THE (i) VALUE, CONDITION, DESIGN, OPERATION, MERCHANTABILITY, QUALITY OF MATERIAL OR WORKMANSHIP, FITNESS FOR USE OR FOR A PARTICULAR PURPOSE, MAINTENANCE OR MARKETABILITY OF ANY LEASE PROPERTY, (ii) CREDITWORTHINESS OF THE LESSEE, (iii) ADEQUACY OF ANY INSURANCE COVERAGE APPLICABLE TO ANY LEASE PROPERTY, (iv) COLLECTIBILITY OF ANY AMOUNT UNDER ANY LEASE DOCUMENT, OR (v) TAX CHARACTERIZATION OF THE LEASE.

Seller, for itself, its successors and assigns, does hereby warrant and agree with Purchaser, its successors and assigns, that it is the lawful owner of a 100% beneficial ownership interest in the Lease Property as an Owner Participant under the Trust Agreement.

3. Assumption. Purchaser hereby confirms that it shall be deemed a party to the Participation Agreement, identified on the attached Schedule 4.1(e), and the Trust Agreement on completion of the Closing, and Purchaser agrees to be bound by all of the terms thereof and undertakes to assume all of the obligations of the Seller contained in the Lease Documents occurring or arising on and after the date hereof. Upon the delivery of this Agreement, Seller shall not be responsible to any person for the discharge or performance of any duty or obligation of an Owner Participant pursuant to or in connection with the Lease Documents occurring or arising on and after the date hereof. Purchaser shall not be responsible to any person for the discharge or performance of any duty or obligation of the Seller, as an Owner Participant, in connection with the Lease Documents occurring or arising prior to the date hereof.

4. Indemnity. The terms and provisions of the Purchase Agreement respecting indemnities of the parties are hereby incorporated herein by reference.

5. Further Assurances. Seller agrees to execute and deliver such further documents, and to do such further things, as Purchaser may reasonably request, and at Purchaser's expense, in order to more fully effect this Agreement and the transactions

contemplated by the Purchase Agreement. Purchaser agrees to execute and deliver such further documents, and to do such further things, as Seller may reasonably request and at Seller's expense, in order to more fully effect this Agreement and the transactions contemplated hereby and by the Purchase Agreement.

6. Purchaser Representations. Purchaser represents, warrants and confirms:

(a) Purchaser, as transferee, is acquiring the entire beneficial ownership interest of Seller, as Trustor, in and to the Trust Estate established pursuant to the Trust Agreement;

(b) Upon the execution and delivery of this Agreement, Purchaser shall be deemed a party to the Trust Agreement and the Participation Agreement, identified on Schedule 4.1(e), be bound by all of the terms thereof, and undertake all the obligations, arising on and after the date hereof, of Seller under the Lease Documents;

(c) It has full right, power and authority to enter into this Agreement and to perform all duties and obligations of Seller under the Lease Documents;

(d) None of the Lease Documents, this Agreement or the performance of the obligations of Purchaser under such agreements, violate the provisions of any charter instrument, bylaw, indenture, mortgage, loan or credit agreement or other instrument to which it is a party or by which it may be bound;

(e) No consent, approval or authorization of, or filing, registration or qualification with, any governmental authority is necessary in connection with its performance of the Trust Agreement or this Agreement or to the extent such approval, consent or other action is necessary, the same has been obtained and is in full force and effect.

(f) It is acquiring Seller's beneficial interest in the Trust Estate established pursuant to the Trust Agreement for its own account for investment and not with a view to public distribution and will not resell or otherwise dispose of any of such beneficial interests except in accordance with applicable federal and state securities laws.

7. Governing Law. This instrument shall be governed by, and construed and interpreted in accordance with, the laws of the State of California.

8. Counterparts. This Agreement may be executed in separate counterparts, each of which when so executed and delivered shall be an original for all purposes, but all such counterparts shall constitute but one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have each caused this Agreement to be duly executed as of the day and year first above written.

SELLER:

WESTINGHOUSE CREDIT CORPORATION

By: Glenn L. Stewart

Name: Glenn L. Stewart

Title: Vice President

PURCHASER:

LPCA CORPORATION

By: Keith E. Quinn

Name: Keith E. Quinn

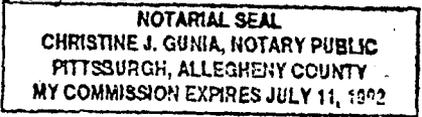
Title: VICE PRESIDENT

*Pennsylvania*  
STATE OF CALIFORNIA )  
*Allegheny* ) ss.  
COUNTY OF SAN FRANCISCO )

On December 27, 1991, before me \_\_\_\_\_, the undersigned Notary Public, personally appeared GENN L. STEWART, personally known to me or proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument as Vice President of Westinghouse Credit Corporation and acknowledged that he executed it.

Witness my hand and official seal.

*Christine J. Gunia*  
Notary Public

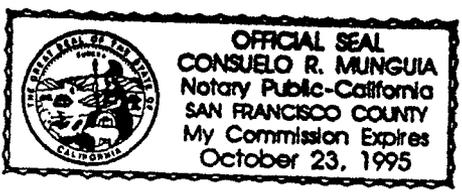


Member, Pennsylvania Association of Notaries

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

On January 3, 1992, before me \_\_\_\_\_, the undersigned Notary Public, personally appeared Keith E. Gunn, personally known to me or proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument as Vice President of LPCA Corporation and acknowledged that he executed it.

Witness my hand and official seal.



*Consuelo R. Munguia*  
Notary Public

(Burlington Northern Railroad  
Company Account #'s 72134  
72367,  
72380)

Schedule 4.1 (e)  
Schedule A  
Lease Documents

1. Agreement and Assignment, dated as of September 1, 1977, between General Motors Corporation and General Electric Company, as Builders, and Mercantile-Safe Deposit and Trust Company, as Agent-Assignee.
2. Assignment of Lease & Agreement dated as of September 1, 1977, between First Security Bank of Utah, N.A., as Owner-Trustee, and Mercantile-Safe Deposit and Trust Company as Agent-Vendor.
3. Conditional Sale Agreement among First Security Bank of Utah, N.A., Trustee, and General Motors Corporation and General Electric Company dated as of September 1, 1977.
4. Lease of Railroad Equipment dated as of September 1, 1977 Burlington Northern Inc., Lessee and First Security Bank of Utah, N.A., Trustee, Lessor.
5. Participation Agreement dated as of September 1, 1977 among Burlington Northern Inc., Lessee, Mercantile-Safe Deposit and Trust Company, Agent, BWL, Inc., Owner, Westinghouse Credit Corporation, Owner, Toy National Bank, Owner, First Security Bank of Utah, N.A., Owner-Trustee, and parties named in Appendix I thereto.
6. Trust Agreement dated as of September 1, 1977 among BWL, Inc., Westinghouse Credit Corporation and Toy National Bank, Owners, and First Security Bank of Utah, N.A. Owner Trustee. Seller has a 100% beneficial interest in the Trust.
7. Indemnity Agreement dated as of September 1, 1971.
8. Bill of Sale #32-77, General Electric Company to Mercantile-Safe Deposit and Trust Company.
9. Bill of Sale #56-77, General Motors Corporation to Mercantile-Safe Deposit and Trust Company.
10. Bill of Sale #33-77, General Electric Company to Mercantile-Safe Deposit and Trust Company.
11. Bill of Sale #65-77, General Motors Corporation to Mercantile-Safe Deposit and Trust Company.
12. Assignment & Consent Agreement dated September 30, 1988 by Toy National Bank and Westinghouse Credit Corporation.

(Burlington Northern Railroad  
Company Account #'s 72134  
72367,  
72380)

Schedule 4.1 (e)  
Schedule A  
Lease Documents  
continued

13. Remarketing Agreement.
14. Bill of Sale, Assignment and Assumption, dated as of December 29, 1988, between BWAC Sub Two, Inc., successor in interest to BWL Inc., as Seller, and Westinghouse Credit Corporation, as Purchaser.

In addition, including those documents (which do not materially adversely alter the economic terms of the lease documents listed above or as disclosed in the offering memorandum delivered to GATX by WCC in November, 1991) described on index pages delivered to GATX by WCC on December 19, 1991.

Schedule 4.1 (f), cont.  
Lease Property

LESSEE Burlington Northern, Inc.  
WCC Account No. 72134, 72367, and 72380

EQUIPMENT  
INFORMATION

Description

- (I) Ten (10) SD40-2 3,000 horsepower locomotives manufactured by the Electro-Motive Division of General Motors in the fourth quarter of 1977; numbers BN 6781-6790 (the "Units").
- (II) Fifteen (15) C30-7 3,000 horsepower locomotives manufactured by General Electric in the fourth quarter of 1977; numbers BN 5530-5544 (the "Units").

Original Cost

- (I) \$584,848.00 average cost per Unit; \$5,848,476.00 total cost of all (I) Units.
- (II) \$606,557.00 average cost per Unit; \$9,098,360.00 total cost of all (II) Units.

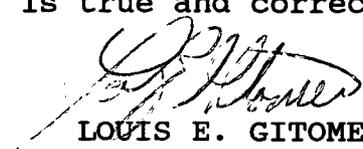
Total cost of all (I) and (II) Units is \$14,946,836.00.

Reported Casualties

None.

CERTIFICATION

I, LOUIS E. GITOMER, have compared this copy with the original Assignment and Assumption Agreement, dated December 27, 1991, and found the copy to be complete and identical in all respects to the original document. I declare under penalty of perjury that the foregoing is true and correct.



LOUIS E. GITOMER  
January 22, 1992