

# Taylor, Morell & Gitomer

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February 5, 1993

Suite 230  
310 Golden Shore  
Long Beach, CA 90802  
(310) 436-2519/FAX (310) 436-5393

Honorable Sidney L. Strickland  
Secretary  
Interstate Commerce Commission  
Washington, DC 20423

RECORDATION NO. 9114-D FILED 1425

FEB 5 1993 2-50 PM 3-036A027

INTERSTATE COMMERCE COMMISSION

Dear Secretary Strickland:

I have enclosed duplicate originals 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 as of July 16, 1992. The primary document to which this is connected is recorded under Recordation No. 9114. We request that this document be recorded under Recordation No. 9114-D.

The names and addresses of the parties to the Assignment and Assumption Agreement are as follows:

Assignor:

Bankers Trust Company  
280 Park Avenue  
New York, NY 10017

Assignee:

GATX Third Aircraft Corporation  
Four Embarcadero Center  
Suite 2200  
San Francisco, CA 94111

A description of the equipment covered by the document consists of 167 100-ton open top quadruple hopper cars numbered DRGW 19395-19561, inclusive.

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

Louis E. Gitomer  
Taylor, Morell & Gitomer  
Suite 210  
919 18th Street, N.W.  
Washington, DC 20006

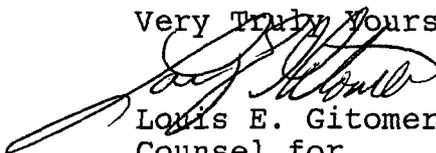
A short summary of the document to appear in the index follows:

FEB 5 2 13 PM '93

Honorable Sidney L. Strickland  
February 5, 1993  
Page 2

An Assignment and Assumption Agreement between Bankers Trust Company, 280 Park Avenue, New York, NY 10017, and GATX Third Aircraft Corporation, Four Embarcadero Center, Suite 2200, San Francisco, CA 94111, covering 167 100-ton open top quadruple hopper cars numbered DRGW 19395-19561, inclusive.

Very Truly Yours,



Louis E. Gitomer  
Counsel for  
GATX Third Aircraft Corporation

Interstate Commerce Commission  
Washington, D.C. 20423

2/5/93

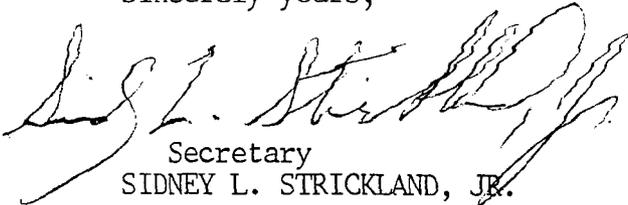
OFFICE OF THE SECRETARY

Louis E. Gitomer  
Taylor, Morell & Gitomer  
919 18th St. N.W. Suite 210  
Washington, D.C. 20006

Dear **Sir:**

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on **2/5/93** at **2:50pm**, and assigned recordation number(s). **8535-H & 9114-D**

Sincerely yours,



Secretary  
SIDNEY L. STRICKLAND, JR.

Enclosure(s)

2/16/93

RECORDATION NO. 9114-2 FILED 1425

FEB 5 1993 2:50 PM

ASSIGNMENT AND ASSUMPTION AGREEMENT INTERSTATE COMMERCE COMMISSION

THIS ASSIGNMENT AND ASSUMPTION AGREEMENT (the "Assignment") is entered into on July 16, 1992, by and between Bankers Trust Company, a New York corporation ("Assignor"), and GATX Third Aircraft Corporation, a Delaware corporation ("Assignee").

RECITALS

Assignor, Assignee and GATX Capital Corporation are parties to a Purchase Agreement, dated as of July 10, 1992 (the "Purchase Agreement").

The Purchase Agreement provides, among other things, for the execution and delivery of an assignment and assumption agreement in substantially the form hereof to effect the assignment by Assignor to Assignee of certain of Assignor's right, title and interest in and to the documents and property referred to below, and the assumption by Assignee of certain of the obligations of Assignor under the documents and property referred to below.

Contemporaneously, with the execution and delivery of this Assignment, Assignor is executing and delivering that certain bill of sale, dated as of the date hereof (the "Bill of Sale"), pursuant to which Assignor is selling, conveying, transferring and setting over to Assignee all of its right, title and interest in and to Assignor's 100% beneficial ownership interest in the Trust Estate (the "Beneficial Interest").

NOW, THEREFORE, in consideration of the premises, the payment of Ten Dollars (\$10.00) 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 or by reference in the Participation Agreement, dated as of October 15, 1977, among (i) The Denver & Rio Grande Western Railroad Company, as Lessee, (ii) Bankers Trust Company, as Owner Participant, (iii) the financial institutions listed in Schedule A thereto, as Investors, (iv) First Security Bank of Utah, National Association, not in its individual capacity (except as otherwise specifically provided therein) but solely as Owner Trustee, and (v) United States Trust Company of New York, not in its individual capacity (except as otherwise specifically provided therein) but solely as Agent (the "Participation Agreement").

2. Assignment. Assignor does hereby sell, convey, assign, transfer and set over, unto Assignee, as of the date hereof (the "Closing Date"), all of its present and future right, title and interest in, under and with respect to the Participation Agreement, the Trust Agreement, the Trust Estate and any other contract, agreement, document or instrument

relating to the Trust Estate to which Assignor is a party or by which it is bound, and any proceeds therefrom, together with all other documents and instruments evidencing any of such right, title and interest; excluding, however, any right, claim or cause of action of any nature or description or other right to payment or indemnity (other than pursuant to Article 3 of the Purchase Agreement) accruing, arising or relating to any period prior to the Closing Date or payable by reason of any act, event or omission occurring or existing prior to the Closing Date, whether known or unknown, contingent or otherwise, as of the Closing Date (such exclusion is referred to herein as the "Prior Claims").

3. Assumption. Assignee hereby accepts the assignment set forth in Section 2 hereof and assumes and undertakes all of the duties and obligations and assumes the liabilities of Assignor whenever accrued pursuant to the Trust Agreement, the Participation Agreement, and any other contract, agreement, document or instrument relating to the Trust Estate to which Assignor is a party or by which it is bound, including, without limitation, any obligations it may have under any such document with regard to the Lessee, the Investors, the Owner Trustee and the Agent; excluding, however, any duty, obligation or liability of any nature or description (other than pursuant to Article 3 of the Purchase Agreement) accruing, arising or relating to any period prior to the Closing Date or payable by reason of any act, event or omission occurring or existing prior to the Closing Date, whether known or unknown, contingent or otherwise, as of the Closing Date (such exclusion is referred to herein as the "Prior Obligations"); and hereby confirms that it shall be deemed a party to the Participation Agreement, the Trust Agreement and each other contract, agreement, document or instrument relating to the Trust Estate to which Assignor is a party, shall be deemed to be the "Owner" or the "Owner Participant", as applicable, for purposes of the Trust Agreement, the Lease, the Participation Agreement and each other such document, and shall be bound by all of the terms of each such document to which Assignor is a party or by which it is bound and each of such other contracts, agreements, documents or other instruments referred to above (including the representations, agreements and obligations of the Assignor set forth therein) as if therein named as the "Owner" or the "Owner Participant", as applicable.

4. Partial Release of Assignor. Upon the effectiveness of this Assignment and except as otherwise set forth in this Section 4, Assignor shall be relieved of all of its duties, obligations and liabilities under the Participation Agreement, the Trust Agreement and all of the other documents relating to the Trust Estate to which it is a party or by which it is bound and all other contracts, agreements, documents and instruments referred to in Section 3 hereof; provided, however, that Assignor shall in no event be released from any such liability arising or relating to any of the Prior Obligations.

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

contemplated hereby. Assignee agrees to execute and deliver such further documents, and to do such further things, as Assignor may reasonably request and at Assignor's expense, in order to more fully effect this Assignment and the transactions contemplated hereby.

6. Assignee Representations. Assignee represents, warrants and confirms as of the Closing Date, as follows:

(a) Assignee, as transferee, is acquiring all of the right, title and interest of Assignor in and to the Trust Estate;

(b) As of the Closing Date, Assignee shall: (i) be deemed a party to each of the documents relating to the Trust Estate to which Assignor was a party, (ii) be bound by all of the terms of such documents and agreements and (iii) undertake all the obligations of the "Owner or the "Owner Participant" (as such terms are defined therein) under such documents and agreements;

(c) Assignee is a corporation duly organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation and has the corporate power and authority and legal right to carry on its business as now conducted, to own or hold under lease its property and to execute, deliver and perform this Assignment and to enter into and perform each of the documents relating to the Trust Estate to which it is or will become a party or by which it is or may be bound, and this Assignment has been duly authorized, executed and delivered by Assignee and this Assignment and such documents constitute Assignee's legal, valid and binding obligations, enforceable in accordance with their terms;

(d) Assignee is acquiring the Beneficial Interest for its own account for investment and not with a view to, or for sale in connection with, any distribution but subject nevertheless to any requirement of law that the disposition of Assignee's property shall at all times be and remain within Assignee's control; and

(e) There are no pending or, to the knowledge of Assignee, threatened actions or proceedings before any court or administrative agency which, if determined adversely to Assignee, would materially adversely affect the ability of Assignee to complete or perform its obligations hereunder or under the documents relating to the Trust Estate to which it is or will become a party.

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

8. Counterparts. This Assignment 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 Assignment to be duly executed as of the day and year first above written.

Assignor:

BANKERS TRUST COMPANY

By:  
Name:  
Title:

  
\_\_\_\_\_  
J. HUGH MCFADDEN  
\_\_\_\_\_  
SENIOR VICE PRESIDENT  
\_\_\_\_\_

Assignee:

GATX THIRD AIRCRAFT CORPORATION

By:  
Name:  
Title:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

8. Counterparts. This Assignment 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 Assignment to be duly executed as of the day and year first above written.

Assignor:

BANKERS TRUST COMPANY

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Assignee:

GATX THIRD AIRCRAFT CORPORATION

By: Linda Hexem  
Name: LINDA HEXEM  
Title: VICE PRESIDENT

STATE OF New York )  
 ) ss.  
COUNTY OF New York )

On July 15, 1992 before me \_\_\_\_\_, the undersigned Notary Public, personally appeared J. Hugh McFadden, 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 \_\_\_\_\_ of \_\_\_\_\_ and acknowledged that he executed it.

Witness my hand and official seal.

NANCIANNE JOHNSTON  
NOTARY PUBLIC, State of New York  
No. 4890751  
Qualified in Nassau County 93  
Commission Expires April 27, 1993

*Nancianne Johnston*  
Notary Public

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

On \_\_\_\_\_, 19\_\_, before me \_\_\_\_\_, the undersigned Notary Public, personally appeared \_\_\_\_\_, 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 \_\_\_\_\_ of GATX Third Aircraft Corporation and acknowledged that \_\_\_\_\_ executed it.

Witness my hand and official seal.

\_\_\_\_\_  
Notary Public

STATE OF \_\_\_\_\_ )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

On \_\_\_\_\_, 19\_\_, before me \_\_\_\_\_, the undersigned Notary Public, personally appeared \_\_\_\_\_, 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 \_\_\_\_\_ of \_\_\_\_\_ and acknowledged that \_\_\_\_\_ executed it.

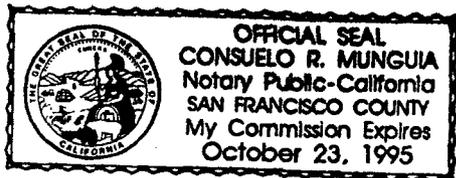
Witness my hand and official seal.

\_\_\_\_\_  
Notary Public

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

On July 14, 1992, before me Consuelo R. Munguia the undersigned Notary Public, personally appeared Linda Hexem, 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 GATX Third Aircraft Corporation and acknowledged that she executed it.

Witness my hand and official seal.



*Consuelo R. Munguia*  
Notary Public