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INTERSTATE COMMERCE COMMISSION

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[CS&M Ref. No. 2043-917]

ASSIGNMENT OF LEASE AND AGREEMENT

Dated as of May 1, 1979 .

between

THE CONNECTICUT BANK AND TRUST COMPANY,  
not in its individual capacity but  
solely as Trustee

and

MERCANTILE-SAFE DEPOSIT AND TRUST COMPANY,  
not in its individual capacity but solely  
as Agent

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ASSIGNMENT OF LEASE AND AGREEMENT

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TABLE OF CONTENTS\*

	<u>Page</u>
PARAGRAPH 1. Assignment by Lessor to Vendor; Application of Payments .....	AL-1
PARAGRAPH 2. Lessor's liabilities under the Lease not assigned to or assumed by Vendor ..	AL-3
PARAGRAPH 3. No modification of the Lease without the Written Consent of Vendor .....	AL-3
PARAGRAPH 4. Vendor To Act for Lessor under the Lease .....	AL-3
PARAGRAPH 5. Termination .....	AL-4
PARAGRAPH 6. Action by Vendor after an event of default .....	AL-4
PARAGRAPH 7. Recording .....	AL-4
PARAGRAPH 8. Assignments by Vendor .....	AL-4
PARAGRAPH 9. Prohibition against liens .....	AL-4
PARAGRAPH 10. Law governing .....	AL-5
PARAGRAPH 11. Notices .....	AL-5
PARAGRAPH 12. Certain rights of Vendor and Lessor .....	AL-5
PARAGRAPH 13. Certain obligations and rights of Lessor; Lessor acting only as Trustee .....	AL-5
PARAGRAPH 14. Execution; Counterparts .....	AL-6
LESSEE'S CONSENT AND AGREEMENT	

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\* This Table of Contents has been included in this document for convenience only and does not form a part of, or affect any construction or interpretation of, this document.

ASSIGNMENT OF LEASE AND AGREEMENT dated as of May 1, 1979, by and between THE CONNECTICUT BANK AND TRUST COMPANY, not in its individual capacity but solely as trustee (the "Lessor") under a Trust Agreement dated as of the date hereof (the "Trust Agreement"), with SEVENTEENTH HFC LEASING CORPORATION (the "Owner"), and MERCANTILE-SAFE DEPOSIT AND TRUST COMPANY, not in its individual capacity but solely as Agent (the "Vendor"), under a Participation Agreement dated as of the date hereof (the "Participation Agreement").

The Lessor and the Vendor have entered into a Reconstruction and Conditional Sale Agreement dated as of the date hereof (the "RCSA"), with The Chesapeake and Ohio Railway Company, in its capacity as builder, providing for the sale to the Lessor of the interest of the Vendor in such units of railroad equipment (the "Units") described in Schedule A thereto as are delivered to and accepted by the Vendee thereunder.

The Lessor and The Chesapeake and Ohio Railway Company (the "Lessee") have entered into a Lease of Railroad Equipment dated as of the date hereof (the "Lease"), providing for the leasing by the Lessor to the Lessee of the Units.

In order to provide security for the obligations of the Lessor under the RCSA and as an inducement to the Vendor to invest on behalf of the Investors as defined in the Participation Agreement in the CSA Indebtedness (as defined in the RCSA), the Lessor has agreed to assign for security purposes certain of its rights in, to and under the Lease to the Vendor.

NOW, THEREFORE, in consideration of the premises and of the payments to be made and the covenants hereinafter mentioned to be kept and performed, the parties hereto agree as follows:

1. The Lessor hereby assigns, transfers and sets over unto the Vendor, as collateral security for the payment and performance of the obligations of the Lessor under the RCSA, all the Lessor's right, title and interest, powers,

privileges, and other benefits under the Lease (and those inuring to the benefit of the Owner by reason of Section 19 of the Lease), including, without limitation, the immediate right to receive and collect all rentals, profits and other sums payable to or receivable by the Lessor from the Lessee under or pursuant to the provisions of the Lease whether as rent, casualty payment, indemnity (except such amounts of indemnity payable to or receivable by the Owner pursuant to Section 15 of the Lease), liquidated damages, or otherwise (such moneys being hereinafter called the "Payments"), and the right to make all waivers and agreements, to give all notices, consents and releases, to take all action upon the happening of an Event of Default specified in the Lease, and to do any and all other things whatsoever which the Lessor is or may become entitled to do under the Lease. Notwithstanding the foregoing, Payments shall not be deemed to include (i) payments made by the Lessee to the Lessor pursuant to Sections 5 and 8 of the Lease (except indemnification payments intended to satisfy the obligations of the Lessor to indemnify the Vendor pursuant to Article 5 of the RCSA or the obligation of the Lessee to indemnify Mercantile-Safe Deposit and Trust Company in its capacity as assignee of the Lease and except to the extent that the Lessor is obligated to pay and discharge claims, liens, charges or security interests under Paragraph 9 of this Assignment), and (ii) payments made by the Lessee to the Lessor in its individual capacity pursuant to Sections 5 and 8 of the Lease. In furtherance of the foregoing assignment, the Lessor hereby irrevocably authorizes and empowers the Vendor in its own name, or in the name of its nominee, or in the name of the Lessor or as its attorney, to ask, demand, sue for, collect and receive any and all sums to which the Lessor is or may become entitled under the Lease, and to enforce compliance by the Lessee with all the terms and provisions thereof.

The Vendor agrees to accept any Payments made by the Lessee for the account of the Lessor pursuant to the Lease. To the extent received, the Vendor will apply such Payments to satisfy the obligations of the Lessor under the RCSA due and payable at the time such Payments are due and payable under the Lease, and so long as no event of default (or event which, with notice or lapse of time, or both, could constitute an event of default) under the RCSA shall have occurred and be continuing, any balance shall be paid to the Lessor, or to such other party as the Lessor may direct in writing, in Federal or other immediately available funds, not later than the first business day following receipt of

such balance. If the Vendor shall not receive any rental payment under Section 2 of the Lease when due, the Vendor shall promptly notify the Lessor and the Owner at the addresses set forth in the Lease; provided, however, that the failure of the Vendor to so notify the Lessor shall not affect the obligations of the Lessor hereunder or under the RCSA.

2. This Assignment is executed only as security and, therefore, the execution and delivery of this Assignment shall not subject the Vendor to, or transfer, or pass, or in any way affect or modify the liability of the Lessor under the Lease, it being agreed that notwithstanding this Assignment or any subsequent assignment, all obligations of the Lessor to the Lessee shall be and remain enforceable by the Lessee, its successors and assigns, against, and only against, the Lessor or persons other than the Vendor.

3. To protect the security afforded by this Assignment the Lessor agrees that, without the written consent of the Vendor, the Lessor will not anticipate the rents under the Lease or waive, excuse, condone, forgive or in any manner release or discharge the Lessee thereunder of or from the obligations, covenants, conditions and agreements to be performed by the Lessee, including, without limitation, the obligation to pay the rents in the manner and at the time and place specified therein or enter into any agreement amending, modifying or terminating the Lease and the Lessor agrees that any amendment, modification or termination thereof without such consent shall be void; provided, however, that the Lessor may amend or supplement the Lease to provide for an increase or decrease of amounts due as rentals under Section 2 thereof and/or Casualty Values under Section 6 thereof provided that no such decrease shall reduce said amounts below that which are necessary to satisfy the obligations of the Lessor under the RCSA.

4. The Lessor does hereby constitute the Vendor the Lessor's true and lawful attorney, irrevocably, with full power (in the name of the Lessor, or otherwise), to ask, require, demand, and receive, any and all Payments due and to become due under or arising out of the Lease to which the Lessor is or may become entitled, to enforce compliance by the Lessee with all the terms and provisions of the Lease, to endorse any checks or other instruments or orders in connection therewith and to file any claims or take any

action or institute any proceedings which the Vendor may deem to be necessary or advisable in the premises.

5. Upon the full discharge and satisfaction of all the Lessor's obligations under the RCSA and the Participation Agreement (without giving effect to any limitations of liability contained therein), this Assignment and all rights herein assigned to the Vendor shall terminate, and all estate, right, title and interest of the Vendor in and to the Lease shall revert to the Lessor.

6. If an event of default under the RCSA shall occur and be continuing, the Vendor may declare all sums secured hereby immediately due and payable and may apply all such sums against the amounts due and payable under the RCSA.

7. The Lessor will, from time to time, do and perform any other act and will execute, acknowledge, deliver and file, register, deposit and record (and will refile, re-register, re-record or re-deposit) any and all further instruments required by law and reasonably requested by the Vendor in order to confirm or further assure the interests of the Vendor hereunder.

8. The Vendor may assign all or any of the rights assigned to it hereby or arising under the Lease, including, without limitation, the right to receive any Payments due or to become due. In the event of any such assignment, any such subsequent or successive assignee or assignees shall, to the extent of such assignment, enjoy all the rights and privileges and be subject to all the obligations of the Vendor hereunder; provided, however, the Lessor and the Lessee shall not be bound to honor such assignment until they have received written notice thereof. Payment to the assignee of any Payments shall constitute full compliance with the terms of this Agreement and the Lease. The Lessor and the Lessee may rely on instruments and documents of assignment which they believe in good faith to be true and authentic.

9. The Lessor will pay and discharge any and all taxes, claims, liens, charges or security interests (other than those created by the RCSA) on the Lease or the rentals or other payments due or to become due thereunder claimed by any party from, through or under the Lessor or its successors and assigns (other than the Vendor), not arising out of the transactions contemplated by the RCSA or the Lease (but including tax liens arising out of the receipt by or for the

account of the Lessor of the rentals and other payments under the Lease and any other proceeds from the Units) which, if unpaid, might become a claim, lien, charge or security interest on or with respect to the Lease or such rentals or other payments, unless the Lessor shall be contesting the same in good faith by appropriate proceedings in any reasonable manner and the nonpayment thereof does not, in the opinion of the Vendor, adversely affect such interests of the Vendor.

10. This Assignment shall be governed by the laws of the State of Connecticut, but the parties shall be entitled to all rights conferred by 49 U.S.C. § 11303.

11. The Lessor shall cause copies of all notices received by it in connection with the Lease and all Payments hereunder to be promptly delivered or made to the Vendor at its address set forth in Article 20 of the RCSA, or at such other address as the Vendor shall designate.

12. The Vendor hereby agrees with the Lessor that the Vendor will not, so long as no Event of Default under the Lease or event of default under the RCSA has occurred and is continuing, exercise or enforce, or seek to exercise or enforce, or avail itself of, any of the rights, powers, privileges, authorizations or benefits which are assigned and transferred by the Lessor to the Vendor by this Assignment, except the right to receive and apply the Payments as provided in Paragraph 1 hereof, and that, subject to the terms of the Lease and the RCSA, the Lessor may, so long as no event of default under the RCSA or Event of Default under the Lease has occurred and is continuing, exercise or enforce, or seek to exercise or enforce or avail itself of, such rights, powers, privileges, authorizations or benefits; provided, however, that the Lessor shall not, and shall not have any authority to, take any action which would terminate the Lease without the prior written consent of the Vendor.

13. Notwithstanding any other provision of this Assignment (including, but not limited to, any provision of the first paragraph of Paragraph 1 and Paragraph 3 hereof), (a) the terms of this Assignment shall not impose any obligations on the Lessor in addition to the obligations of the Lessor under the Lease or under the RCSA or in any way limit the effect of the last paragraph of Article 3 of the RCSA or Article 21 of the RCSA, (b) so long as there is no event of default under the RCSA, and to the extent that the Vendor does not seek to receive and collect any Payments under the

Lease in excess of the amounts required to discharge the obligations of the Lessor under the RCSA, the terms of this Assignment shall not limit or in any way affect the Lessor's right to receive and collect any Payments under the Lease in excess of the obligations of the Lessor under the RCSA, or empower the Vendor in any way to waive or release the Lessee's obligation to pay such excess amounts, and the Lessor shall continue to be empowered to ask, demand, sue for, collect and receive any and all of such excess amounts, but shall not, and shall not have any power to, take any action under subparagraph (b) of Section 9 of the Lease without the prior written consent of the Vendor and (c) each and all of the warranties, representations, undertakings and agreements herein made on the part of the Lessor are each and every one of them made and intended not as personal representations, warranties, undertakings and agreements by The Connecticut Bank and Trust Company, or for the purpose or with the intention of binding said bank personally but are made and intended for the purpose of binding only the Trust Estate as such term is used in the Trust Agreement, and this Assignment is executed and delivered by said bank solely in the exercise of the powers expressly conferred upon said bank as trustee under the Trust Agreement, and that no personal liability or personal responsibility is assumed by or shall at any time be asserted or enforceable against said bank, except for wilful misconduct or gross negligence on the part of said Bank, or against the Owner hereunder (except pursuant to Section 1.03 and the last paragraph of Section 5.01 of the Trust Agreement) or on account of any representation, warranty, undertaking or agreement of said bank or the Owner, either expressed or implied, all such personal liability (except as aforesaid), if any, being expressly waived and released by the Vendor and by all persons claiming by, through or under the Vendor; provided, however, that the Vendor or any person claiming by, through or under it, making claim hereunder, may look to said Trust Estate for satisfaction of the same.

14. This Assignment may be executed in any number of counterparts, all of which together shall constitute a single instrument, but the counterpart delivered to the Vendor shall be deemed to be the original counterpart.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed in their respective corporate names by officers thereunto duly authorized, and their

respective corporate seals to be affixed and duly attested, all as of the date first above written.

MERCANTILE-SAFE DEPOSIT AND TRUST COMPANY, not in its individual capacity but solely as Agent,

[Corporate Seal]

by

*[Signature]*  
Assistant Vice President

Attest:

*F. H. [Signature]*  
Corporate Trust Officer

THE CONNECTICUT BANK AND TRUST COMPANY, not in its individual capacity but solely as Trustee as aforesaid,

[Corporate Seal]

by

\_\_\_\_\_  
Authorized Officer

Attest:

\_\_\_\_\_

The undersigned hereby consents to the foregoing Assignment of Lease and Agreement as of the 1st day of May 1979.

SEVENTEENTH HFC LEASING CORPORATION,

[Corporate Seal]

by

\_\_\_\_\_

Attest:

\_\_\_\_\_

STATE OF MARYLAND, )  
 ) ss.:  
CITY OF BALTIMORE, )

On this 29<sup>th</sup> day of June 1979, before me personally appeared R. E. Schreiber, to me personally known, who, being by me duly sworn, says that he is an Assistant Vice President of MERCANTILE-SAFE DEPOSIT AND TRUST COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Florence H. Gilber  
Notary Public

[Notarial Seal]

My Commission expires July 1, 1982

STATE OF CONNECTICUT, )  
 ) ss.:  
COUNTY OF HARTFORD, )

On this \_\_\_\_\_ day of \_\_\_\_\_ 1979, before me personally appeared \_\_\_\_\_, to me personally known, who, being by me duly sworn, says that he is an Authorized Officer of THE CONNECTICUT BANK AND TRUST COMPANY, that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

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

[Notarial Seal]

My Commission expires

## LESSEE'S CONSENT AND AGREEMENT

The undersigned, THE CHESAPEAKE AND OHIO RAILWAY COMPANY, a corporation duly incorporated under the laws of the Commonwealth of Virginia, the Lessee (the "Lessee") named in the Lease (the "Lease") referred to in the foregoing Assignment of Lease and Agreement (the "Assignment"), hereby (a) acknowledges receipt of a copy of the Assignment and (b) consents to all the terms and conditions of the Assignment and agrees that:

(1) the Lessee will pay all rentals, casualty payments, liquidated damages, indemnities and other moneys provided for in the Lease, other than amounts not assigned to the Vendor (as hereafter defined) pursuant to the Assignment, due and to become due under the Lease or otherwise in respect of the Units (as defined in the Lease) leased thereunder, directly to Mercantile-Safe Deposit and Trust Company, as Agent (the "Vendor"), the assignee named in the Lease Assignment, by 10:00 a.m. Baltimore time, on the date such payment is due, by bank wire transfer of immediately available funds to The Annapolis Banking and Trust Company, Main Street and Church Circle, Annapolis, Maryland, for credit to the Agent's Account No. 52076-1, with a request that The Annapolis Banking and Trust Company advise Mrs. K. M. Tollberg, Assistant Vice President, Mercantile-Safe Deposit and Trust Company, Baltimore, Maryland, that the funds are "RE: C&O 5/1/79" (or at such other address as may be furnished in writing to the Lessee by the Vendor);

(2) the Vendor shall be entitled to the benefits of, and to receive and enforce performance of, all the covenants to be performed by the undersigned under the Lease as though the Vendor were named therein as the Lessor;

(3) the Vendor shall not, by virtue of the Assignment or this Consent and Agreement, be or become subject to any liability or obligation under the Lease or otherwise; and

(4) the Lease shall not, without the prior written consent of the Vendor, be amended, terminated or

modified, nor shall any action be taken or omitted by the undersigned, the taking or omission of which might result in an alteration or impairment of the Lease or this Consent and Agreement or of any of the rights created by any thereof.

This Consent and Agreement shall be construed in accordance with the laws of the State of Ohio.

Dated as of May 1, 1979

THE CHESAPEAKE AND OHIO RAILWAY COMPANY,

by

\_\_\_\_\_

[Corporate Seal]

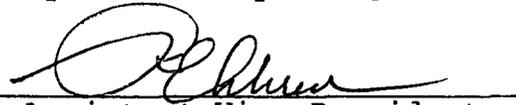
Attest:

\_\_\_\_\_

The foregoing Consent and Agreement is hereby accepted, as of the 1st day of May 1979.

MERCANTILE-SAFE DEPOSIT AND TRUST COMPANY, not in its individual capacity but solely as Agent,

by



Assistant Vice President

[Corporate Seal]

Attest:



\_\_\_\_\_

Corporate Trust Officer

modified, nor shall any action be taken or omitted by the undersigned, the taking or omission of which might result in an alteration or impairment of the Lease or this Consent and Agreement or of any of the rights created by any thereof.

This Consent and Agreement shall be construed in accordance with the laws of the State of Ohio.

Dated as of May 1, 1979

THE CHESAPEAKE AND OHIO RAILWAY COMPANY,

by

L.C. Foyt  
ASSISTANT VICE-PRESIDENT AND TREASURER

[Corporate Seal]

Attest:

E. W. [Signature]  
ASSISTANT SECRETARY

The foregoing Consent and Agreement is hereby accepted, as of the 1st day of May 1979.

MERCANTILE-SAFE DEPOSIT AND TRUST COMPANY, not in its individual capacity but solely as Agent,

by

Assistant Vice President

[Corporate Seal]

Attest:

Corporate Trust Officer