Law Department

4-195A932

JUL 13 1984

10.00

Chessie System Railroads

Terminal Tower
P. O. Box 6419
Cleveland, Ohio 44101
216 622 2200

2462

14368

RECORDATION NO. ..... Filed 1425

JUL 13 1984 -9 25 AM

INTERSTATE COMMERCE COMMISSION

July 13, 1984

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I.C.C. FEE OPERATION BR

14368

RECORDATION NO. ..... Filed 1425

JUL 13 1984 -9 25 AM

INTERSTATE COMMERCE COMMISSION

HAND DELIVERED

Mr. James H. Bayne, Secretary
Interstate Commerce Commission
12th Street & Constitution Avenue, N.W.
Washington, DC 20423

Attention: Recordation Unit

Dear Mr. Bayne:

Enclosed are four executed counterparts of an Agreement dated as of July 15, 1984, between the Pension Investment Committee of Continental Financial Services Company, as fiduciary for The Continental Group, Inc. Master Pension Trust, and The Chesapeake and Ohio Railway Company. This Agreement is a primary document and constitutes a conditional sale agreement. The names and addresses of the parties are as follows:

Vendor: Pension Investment Commitee
of Continental Financial Services Company,
as Fiduciary for The Continental Group,
Inc. Master Pension Trust
c/o Continental Financial Services Company
6600 West Broad Street
Richmond, Virginia 23230

Purchaser: The Chesapeake and Ohio Railway Company
P.O. Box 6419
Cleveland, Ohio 44101

The equipment covered by the above documents consists of 19 100-ton open-top hopper cars, to bear the Purchaser's Road Nos. 190301-190319, inclusive, AAR Mechanical Designation: HT. The equipment will be marked "The Chesapeake and Ohio Railway Company" or "C&O" or "Chessie System" or in some other appropriate manner and also will be marked "OWNERSHIP SUBJECT TO A SECURITY AGREEMENT FILED WITH THE INTERSTATE COMMERCE COMMISSION." Until re-marked to bear the Purchaser's road numbers in the consecutive order set forth above, the equipment will bear the following corresponding road numbers:

Gregory C Rhodes

Tradewater Railway
Company

7382, 7404

Upper Merion & Plymouth
Railroad Company

7375-7377, 7385,
7388-7390, 7393,
7405, 7407, 7410,
7413, 7417, 7418,
7421-7423

Also enclosed, as part of this same transaction, are four executed counterparts of an Agreement and Assignment dated as of July 15, 1984, between the Vendor and Mercantile-Safe Deposit and Trust Company. This Agreement is a secondary document. The names and addresses of the parties are as follows:

Assignor: Same as Vendor above

Assignee: Mercantile-Safe Deposit and Trust Company
P.O. Box 2258
Two Hopkins Plaza
Baltimore, Maryland 21203

The equipment covered by this Assignment is the same as the equipment covered by the above-described Conditional Sale Agreement.

Also enclosed is a draft of The Chesapeake and Ohio Railway Company in the amount of $10 representing the required recording fee.

Pursuant to the Commission's rules and regulations for the recordation of certain documents under 49 USC §11303, as currently administered, you are hereby requested duly to file one of the enclosed counterparts of each document for record in your office and to return the remaining three copies of each to me at my above address.

Sincerely,

Louis Recher

Louis Recher
Assistant General Solicitor

LR:kmh

Enclosures

EXECUTED IN 4 COUNTERPARTS

OF WHICH THIS IS NO. 1

RECORDATION NO. 14368 Filed 1425

JUL 13 1984 -9 25 AM

INTERSTATE COMMERCE COMMISSION

AGREEMENT AND ASSIGNMENT

Dated as of July 15, 1984

Between

PENSION INVESTMENT COMMITTEE
OF CONTINENTAL FINANCIAL SERVICES COMPANY,
AS FIDUCIARY FOR THE CONTINENTAL GROUP, INC.
MASTER PENSION TRUST

and

MERCANTILE-SAFE DEPOSIT AND TRUST COMPANY

AGREEMENT AND ASSIGNMENT

TABLE OF CONTENTS

	Page
PARTIES	AA-1
PREAMBLES	AA-1
SECTION 1. Assignment by Vendor to Assignee; No Recourse	AA-1
SECTION 2. Vendor Agrees to Deliver Equipment and Warrant Title thereto; No Delivery Until Filing	AA-2
SECTION 3. Indemnification of Assignee; Patent Indemnification	AA-2
SECTION 4. Conditions to Obligation of Assignee to Pay Vendor	AA-3
SECTION 5. Further Assignments by Assignee	AA-7
SECTION 6. Representations and Warranties and Agreements of Vendor	AA-7
SECTION 7. Law Governing	AA-8
SECTION 8. Notice of Assignment to Railroad	AA-8
SECTION 9. Counterparts	AA-8
TESTIMONIUM	AA-8
SIGNATURES	AA-8
ACKNOWLEDGMENTS	AA-10
ACKNOWLEDGMENT OF NOTICE OF ASSIGNMENT	AA-11

AGREEMENT AND ASSIGNMENT, dated as of July 15, 1984, between PENSION INVESTMENT COMMITTEE OF CONTINENTAL FINANCIAL SERVICES COMPANY, AS FIDUCIARY FOR THE CONTINENTAL GROUP, INC. MASTER PENSION TRUST (the "Vendor") and MERCANTILE-SAFE DEPOSIT AND TRUST COMPANY, acting as Agent under a Finance Agreement dated as of the date hereof (the "Finance Agreement") (said Agent, so acting, together with its successors and assigns, being hereinafter called the "Assignee").

The Vendor and The Chesapeake and Ohio Railway Company (the "Railroad") have entered into Conditional Sale Agreement dated as of the date hereof (the "CSA"), covering the sale and delivery, on the conditions therein set forth, by the Vendor and the purchase by the Railroad of the railroad equipment described in Schedule B to the CSA (said equipment being hereinafter called the "Equipment");

In consideration of the mutual covenants herein contained:

SECTION 1. The Vendor hereby assigns, transfers and sets over unto the Assignee:

(a) all the right, title and interest of the Vendor in and to each unit of Equipment when and as severally delivered to and accepted by the Railroad, subject to payment by the Assignee to the Vendor of the amount required to be paid under Section 4 hereof;

(b) all the right, title and interest of the Vendor in and to the CSA (except the right to deliver the Equipment and the right to receive the payments specified in the third paragraph of Article 3 thereof, in subparagraph (a) of the third paragraph of Article 4 thereof, and in the last paragraph of Article 15 thereof and reimbursements for taxes paid or incurred by the Vendor as provided in Article 5 thereof), and in and to any and all amounts which may be or become due or owing by the Railroad to the Vendor under the CSA in respect of the Purchase Price (as defined in the CSA) of the Equipment and interest thereon, and in and to any other sums becoming due from the Railroad under the CSA, other than those hereinabove excluded; and

(c) except as limited by subparagraph (b) hereof, all of the Vendor's rights, powers, privileges and remedies under the CSA;

without any recourse against the Vendor for or on account of the failure of the Railroad to make any of the payments provided for in, or otherwise to comply with, any of the provisions of the CSA; provided, however, that this Assignment shall not subject the Assignee to, or transfer, or pass, or in any

way affect or modify, the liability of the Vendor to deliver the Equipment in accordance with the CSA or with respect to its obligations contained or referred to in Article 14 of the CSA, or relieve the Railroad from its obligations to the Vendor contained or referred to in Articles 2, 3, 4, 5, 13, 14 and 15 of the CSA, it being agreed that, notwithstanding this Assignment, or any subsequent assignment pursuant to the provisions of Article 15 of the CSA, all obligations of the Vendor to the Railroad with respect to the Equipment shall be and remain enforceable by the Railroad, its successors and assigns, against and only against the Vendor. In furtherance of the foregoing assignment and transfer, the Vendor hereby authorizes and empowers the Assignee, in the Assignee's own name or in the name of the Assignee's nominee, or in the name of and as attorney hereby irrevocably constituted for the Vendor, to ask, demand, sue for, collect, receive and enforce any and all sums to which the Assignee is or may become entitled under this Assignment and to ask, demand, sue for and enforce compliance by the Railroad with the terms and agreements on its part to be performed under the CSA, but at the expense and liability and for the sole benefit of the Assignee.

SECTION 2. The Vendor agrees that it shall deliver the Equipment to the Railroad in full accordance with the provisions of the CSA; and that, notwithstanding this Assignment, it will perform and fully comply with each of and all the covenants and conditions of the CSA set forth to be performed and complied with by the Vendor. The Vendor further agrees that it will warrant to the Assignee and the Railroad that at the time of delivery of each unit of the Equipment under the CSA it had legal title to such unit and good and lawful right to sell such unit and that title to such unit was free of all claims, liens, security interests and other encumbrances (other than those created by the CSA); and the Vendor further agrees that it will defend the title to each unit of its Equipment against the demands of all persons whomsoever based on claims originating prior to the delivery of such unit by the Vendor under the CSA; all subject, however, to the provisions of the CSA and the rights of the Railroad thereunder. The Vendor will not deliver any of its Equipment to the Railroad under the CSA until the filings referred to in Article 19 of the CSA have been effected (the Vendor and its counsel being entitled to rely on advice from special counsel for the Assignee, or on advice from counsel to the Railroad, that such filings have been effected).

SECTION 3. The Vendor agrees with the Assignee that in any suit, proceeding or action brought by the Assignee under the CSA for any installment of, or interest on, indebtedness in respect of the Purchase Price of the Equipment or to enforce any provision of the CSA, the Vendor will indemnify, protect and hold harmless the Assignee from and against all expense, loss or damage suffered by reason of any defense, setoff, counterclaim or recoupment whatsoever of the Railroad arising out of a breach by the Vendor of any obligation with respect to the Equipment or the delivery or warranty thereof, or by reason of any defense, setoff, counterclaim or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to the Railroad by the Vendor. The Vendor's

obligation so to indemnify, protect and hold harmless is conditional upon (a) the Assignee's timely motion or other appropriate action, on the basis of Article 15 of the CSA, to strike any defense, setoff, counterclaim or recoupment asserted by the Railroad in any such suit, proceeding or action and (b) if the court or other body having jurisdiction in such suit, proceeding or action denies such motion or other action and accepts such defense, setoff, counterclaim or recoupment as a triable issue in such suit, proceeding or action, the Assignee's prompt notification to the Vendor of the asserted defense, setoff, counterclaim or recoupment and the Assignee's giving the Vendor the right, at the Vendor's expense, to compromise, settle or defend against such defense, setoff, counterclaim or recoupment.

Except in cases of articles or materials specified by the Railroad and not manufactured by the Vendor and in cases of designs, systems, processes, formulae or combinations specified by the Railroad and not developed or purported to be developed by the Vendor, the Vendor agrees, except as otherwise specifically provided in the CSA, to indemnify, protect and hold harmless the Assignee from and against any and all liability, claims, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Assignee or its assigns because of the use in or about the construction, renovation, repair or operation of any of the Equipment of any design, system, process, formula, combination, article or material which infringes or is claimed to infringe on any patent or other right. The Assignee will give prompt notice to the Vendor of any such liability or claim actually known to the Assignee and will give the Vendor the right, at the Vendor's expense, to compromise, settle or defend against such claim. The Vendor agrees that any amounts payable to it by the Railroad with respect to the Equipment, with the exception of amounts payable pursuant to subparagraph (a) of the third paragraph of Article 4 of the CSA (other than amounts owing under supplemental invoices as therein provided), whether pursuant to the CSA or otherwise, not hereby assigned to the Assignee, shall not be secured by any lien, charge or security interest upon the Equipment or any unit thereof.

SECTION 4. The Assignee, on each Closing Date fixed as provided in Article 4 of the CSA with respect to a Group (as defined in said Article 4) of the Equipment, shall pay to the Vendor an amount equal to the portion of the Purchase Price of the Equipment as shown on the invoice therefor then being settled for which, under the terms of said Article 4, is payable in installments, provided that there shall have been delivered to the Assignee, at least five business days (as defined in said Article 4) prior to such Closing Date, the following documents, in form and substance satisfactory to it and to its special counsel hereinafter mentioned, in such number of counterparts as may be reasonably requested by said special counsel:

(a) a bill of sale from the Vendor to the Assignee transferring to the Assignee a security interest in the units of the Equipment in such Group, warranting to the Assignee and to the Railroad that at the time of

delivery of such units under the CSA the Vendor had legal title to such units and good and lawful right to sell such units and that such units and that title to such units were free of all claims, liens, security interests and other encumbrances (other than those created by the CSA), and covenanting to defend the title to such units against the demands of all persons whomsoever based on claims originating prior to the delivery of such units by the Vendor under the CSA;

(b) a Certificate or Certificates of Acceptance with respect to the units of the Equipment in such Group as contemplated by Article 3 of the CSA;

(c) an invoice of the Vendor for the units of the Equipment in such Group and any supplemental invoice for which settlement is then being made, in each case accompanied by or having endorsed thereon a certification by the Railroad as to the correctness of the prices stated therein;

(d) an opinion of counsel for the Assignee and the Investor named in the Finance Agreement, dated as of such Closing Date, stating that (i) the Finance Agreement, assuming due authorization, execution and delivery by such Investor and Assignee, has been duly authorized, executed and delivered and is a legal, valid and binding instrument, (ii) the CSA has been duly authorized, executed and delivered by the Railroad and the Vendor and is a legal, valid and binding instrument, enforceable against the Railroad and the Vendor in accordance with its terms, (iii) this Assignment has been duly authorized, executed and delivered by the Vendor and, assuming due authorization, execution and delivery thereof by the Assignee, is a legal, valid and binding instrument enforceable against the Vendor in accordance with its terms, (iv) the Assignee is vested with all the rights, titles, interests, powers and privileges purported to be assigned to it by this Assignment, (v) the Assignee has a valid and perfected security interest in the units of the Equipment in such Group, such units, at the time of delivery thereof to the Railroad under the CSA, were free from all claims, liens, security interests and other encum-

brances (other than those created by the CSA) and the Assignee is entitled to the benefits of 11 U.S.C. §1168 in the event of a filing of a petition for the reorganization of the Railroad under Title 11 of the United States Code, (vi) no approval of the Interstate Commerce Commission or any other governmental authority is necessary for the valid execution and delivery of the Finance Agreement, the CSA or this Assignment, (vii) the CSA and this Assignment have been filed with the Interstate Commerce Commission pursuant to 49 U.S.C. 11303, and no other filing or recordation is necessary for the protection of the rights of the Assignee in any state of the United States of America or in the District of Columbia and (viii) registration of the CSA, this Assignment or any certificates of interest delivered pursuant to the Finance Agreement is not required under the Securities Act of 1933, as amended, and qualification of an indenture with respect thereto is not required under the Trust Indenture Act of 1939, as amended; and such opinion shall also cover such other matters as may reasonably be requested by the Assignee or any such Investor;

(e) an opinion of counsel for the Railroad, dated as of such Closing Date, to the effect set forth in clauses (i), (ii), (v), (vi) and (vii) of subparagraph (d) above (said counsel, in rendering such opinion, being permitted to assume due authorization, execution and delivery of the Finance Agreement and the CSA by parties thereto other than the Railroad), and stating that the Railroad is a duly organized and existing corporation in good standing under the laws of its jurisdiction of incorporation and has the power and authority to own its properties and to carry on its business as now conducted;

(f) an opinion of counsel for the Vendor dated as of such Closing Date, to the effect set forth in clauses (iii), (iv) and (v) of subparagraph (d) above in respect of the Equipment and stating that (i) the Vendor is a duly organized and existing corporation in good standing under the laws of its jurisdiction of incorporation and has the power and authority to own its properties and to carry on its business as now conducted; and (ii) the CSA has been duly authorized, executed and delivered by the Vendor and is a legal, valid instrument binding upon the Vendor and enforceable against the Vendor in accordance with its terms;

(g) a certificate of an officer of the Railroad,

dated as of such Closing Date, to the effect that (i) no event of default, or event which with the lapse of time and/or demand provided for in the CSA could constitute an event of default, shall have occurred and is then continuing, (ii) no federal tax liens (including tax liens filed pursuant to Section 6323 of the Internal Revenue Code of 1954, as amended) and, to the best of his knowledge and belief, no other tax liens have been filed and are currently in effect which would adversely affect the security interest of the Assignee in the Equipment and (iii) no taxes, assessments or governmental charges or levies are delinquent which would adversely affect the security interest of the Assignee in the Equipment;

(h) a release or releases from the Vendor in recordable form discharging and terminating all claims, liens, security interests and other encumbrances, if any, in the units of the Equipment in such Group and in any of the materials used in the construction thereof; and

(i) a receipt from the Vendor for any payment (other than the payment being made by the Assignee pursuant to the first paragraph of this Section 4) required to be made on such Closing Date to the Vendor with respect to the Equipment, unless such payment is made by the Assignee with funds furnished to it for that purpose by the Railroad;

provided, however, that with respect to Equipment for which a final Supplemental Invoice (as defined in the CSA) is submitted by the Vendor as permitted by Article 4 of the CSA, the only documents which must be delivered to the Assignee are those required by subparagraphs (c) and (i) of this Section 4.

In giving the opinions specified in subparagraphs (d), (e) and (f) of the first paragraph of this Section 4, counsel may qualify any opinion to the effect that any agreement is a legal, valid and binding instrument enforceable in accordance with its terms by a general reference to limitations as to enforceability imposed by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the enforcement of creditors' rights generally. In giving the opinion specified in said subparagraphs (d) and (e), counsel may rely on the opinion of counsel for the Vendor as to authorization, execution and delivery by the Vendor of the documents executed by the Vendor and as to title to the Equipment at the time of delivery thereof under the CSA; in giving the opinion specified in said subparagraph (d), counsel may rely on the opinion of counsel for the Railroad as to the matters referred to in clause (vii) of subparagraph (d) above and as to any matter governed by the

law of any jurisdiction other than Ohio or the United States of America, on the opinion of counsel for the Vendor or the opinion of counsel for the Railroad; and in giving the opinion specified in said subparagraph (e), counsel may rely on the bill of sale and opinion of counsel for the Vendor as to claims, liens, security interests and other encumbrances arising from, through or under the Vendor, except as to claims, liens, security interests and other encumbrances held by or running to the Railroad.

The obligation of the Assignee hereunder to make any payment provided for in this Section 4 is hereby expressly conditioned upon the Assignee's having on deposit, pursuant to the terms of the Finance Agreement, sufficient funds available thereunder to make such payment. The Assignee shall not be obligated to make payment at any time after the commencement of any proceedings specified in clause (c) or (d) of Article 16 of the CSA or if an event of default, or any event which with the lapse of time and/or demand provided for in the CSA could constitute an event of default, shall have occurred and be continuing under the CSA. In the event that the Assignee shall not make payment for any Group of the Equipment, the Assignee shall reassign to the Vendor, without recourse to the Assignee, all right, title and interest of the Assignee in and to the units of the Equipment with respect to which payment has not been made by the Assignee.

SECTION 5. The Assignee may assign all or any of its rights under the CSA, including the right to receive any payments due or to become due to it from the Railroad thereunder. 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 Assignee hereunder.

SECTION 6. The Vendor hereby:

(a) represents and warrants to the Assignee that the CSA was duly authorized by it and lawfully executed and delivered by it for a valid consideration, that, assuming due authorization, execution and delivery by the Railroad, the CSA is, insofar as the Vendor is concerned, a valid and existing agreement binding upon it and the Railroad in accordance with its terms and that it is now in force without amendment thereto;

(b) agrees that it will from time to time and at all times, at the request of the Assignee, make, execute and deliver all such further instruments of assignment, transfer and assurance and do such further acts and things as may be necessary or appropriate in the premises to give effect to the provisions hereinabove set forth and more perfectly to confirm the rights, titles and interests hereby assigned and transferred to the Assignee or intended so to be; and

(c) agrees that, upon request of the Assignee, it will execute any and all instruments which may be necessary or proper in order to discharge of record the CSA or any other instrument evidencing any interest of the Vendor therein or in the Equipment; and

(d) represents and warrants that at the time of delivery of each unit of Equipment by the Vendor to the Railroad under the CSA, each unit of Equipment was free and clear from all claims, liens, security interests and other encumbrances of any nature (other than those created by the CSA and other than the rights of the Assignee under this Assignment) arising from, through or under the Vendor.

SECTION 7. The terms of this Assignment and all rights and obligations hereunder shall be governed by the laws of the State of Ohio; provided, however, that the parties shall be entitled to all the rights conferred as provided in Article 23 of the CSA.

SECTION 8. The Assignee agrees to deliver an executed counterpart of this Assignment to the Railroad, which delivery shall constitute due notice of the assignment hereby made. Although this Assignment is dated for convenience as of the date first set forth above, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

SECTION 9. This Assignment may be executed in any number of counterparts, such counterparts together constituting but one and the same contract, but the counterpart delivered to the Assignee shall be deemed to be the original and all other counterparts shall be deemed to be duplicates thereof.

IN WITNESS WHEREOF, the parties hereto, each pursuant to due corporate authority, have caused this instrument to be executed in their respective corporate names by duly authorized officers, and their respective corporate seals to be hereunto affixed and duly attested, all as of the date first above written.

(Corporate Seal)

Attest:

PENSION INVESTMENT COMMITTEE OF
CONTINENTAL FINANCIAL SERVICES
COMPANY, AS FIDUCIARY FOR
THE CONTINENTAL GROUP, INC.
MASTER PENSION TRUST

_____
(Title)

by: Robert O. Martin Jr.
Member (Title)

(Corporate Seal)

Attest:

MERCANTILE-SAFE DEPOSIT AND TRUST COMPANY, as Agent,

Corporate Trust Officer

by: _____
Vice President

STATE OF VIRGINIA)
) ss.:
COUNTY OF HENRICO)

On this 6th day of July, 1984, before me personally appeared Robert P. Martin, Jr., to me personally known who, being by me duly sworn, says that he is a member of the PENSION INVESTMENT COMMITTEE OF CONTINENTAL FINANCIAL SERVICES COMPANY, AS FIDUCIARY FOR THE CONTINENTAL GROUP, INC. MASTER PENSION TRUST.

Brenda G. Crumington
Notary Public
My Commission Expires: November 20, 1987

(NOTARIAL SEAL)

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

On this 11th day of July, 1984, before me personally appeared R. E. Schreiber, to me personally known who, being by me duly sworn, says that he is 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.

Patricia A. Conn
Notary Public
My Commission Expires: 7-1-86

(NOTARIAL SEAL)

ACKNOWLEDGMENT OF NOTICE OF ASSIGNMENT

THE CHESAPEAKE AND OHIO RAILWAY COMPANY hereby acknowledges due notice of and consents to the assignment made by the foregoing Agreement and Assignment as of July 15, 1984.

THE CHESAPEAKE AND OHIO RAILWAY COMPANY

By _____
Senior Vice President

Asst. Sec