

11388

RECORDATION NO. Filed 1425

CRAVATH, SWAINE & MOORE

JAN 18 1980 - 10 02 AM

ONE CHASE MANHATTAN PLAZA

INTERSTATE COMMERCE COMMISSION

NEW YORK, N. Y. 10005

11388

212 HANOVER 2-3000

0-018A040

MAURICE T. MOORE
BRUCE BROMLEY
WILLIAM B. MARSHALL
RALPH L. MCAFEE
ROYALL VICTOR
HENRY W. DEKOSMIAN
ALLEN F. MAULSBY
STEWART R. BROSS, JR.
HENRY P. RIORDAN
JOHN R. HUPPER
SAMUEL C. BUTLER
WILLIAM J. SCHRENK, JR.
BENJAMIN F. CRANE
FRANCIS F. RANDOLPH, JR.
JOHN F. HUNT
GEORGE J. GILLESPIE, III
RICHARD S. SIMMONS
WAYNE E. CHAPMAN
THOMAS D. BARR
MELVIN L. BEDRICK
GEORGE T. LOWY
ROBERT ROSENMAN
JAMES H. DUFFY
ALAN J. HRUSKA
JOHN E. YOUNG

JAMES M. EDWARDS
DAVID G. ORMSBY
DAVID L. SCHWARTZ
RICHARD J. HIEGEL
FREDERICK A. O. SCHWARZ, JR.
CHRISTINE BESHAR
ROBERT S. RIFKIND
DAVID ROSES
DAVID O. BROWNWOOD
PAUL M. DODYK
RICHARD W. ALLEN
THOMAS R. BROME
ROBERT D. JOFFE
ROBERT F. MULLEN
ALLEN W. NELSON
RONALD S. ROLFE
JOSEPH R. SAHID
PAUL C. SAUNDERS
MARTIN L. SENZEL
DOUGLAS D. BROADWATER
ALAN C. STEPHENSON
RICHARD L. HOFFMAN
JOSEPH A. MULLINS
MAX R. SHULMAN

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TELEX
RCA 233663
WUD 125547
WUI 620976

No. JAN 18 1980

Date

Fee \$ 100.00

ICC Washington, D. C.

JAN 18 1980 - 10 02 AM

INTERSTATE COMMERCE COMMISSION

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JAN 18 1980 - 10 02 AM

INTERSTATE COMMERCE COMMISSION

January 17, 1980

COUNSEL
CHARLES E. MAW
ALBERT R. CONNELLY
FRANK H. DETWEILER
GEORGE G. TYLER

ROSWELL L. GILPATRICK
L. R. BRESLIN, JR.
GEORGE B. TURNER
JOHN H. MORSE
HAROLD R. MEDINA, JR.
CHARLES R. LINTON
ALLEN H. MERRILL

4, PLACE DE LA CONCORDE
75008 PARIS, FRANCE
TELEPHONE: 265-81-54
TELEX: 290530

33 THROMMORTON STREET
LONDON, EC2N 2BR, ENGLAND
TELEPHONE 01-606-1421
TELEX: 8814901

CABLE ADDRESSES
CRAVATH, N. Y.
CRAVATH, PARIS
CRAVATH, LONDON E. C. 2

RECORDATION NO. Filed 1425

JAN 18 1980 - 10 02 AM

INTERSTATE COMMERCE COMMISSION

Merrill Lynch White Weld Capital Markets Group
The Chesapeake and Ohio Railway Company
11.90% Conditional Sale Indebtedness
Due July 1, 1990
[CS&M Ref: 4255-409]

Dear Ms. Mergenovich:

Pursuant to 49 U.S.C. § 11303(a) I enclose here-
with on behalf of The Chesapeake and Ohio Railway Company for
filing and recordation, counterparts of the following:

New Number

(1) (a) Conditional Sale Agreement dated as of
December 15, 1979, between Liberty Leasing Corporation
and Whitehead & Kales Company;

- A

(1) (b) Agreement and Assignment dated as of
December 15, 1979, between Whitehead & Kales Company
and Mercantile-Safe Deposit and Trust Company;

- B

(2) (a) Lease of Railroad Equipment dated as of
December 15, 1979, between The Chesapeake and Ohio
Railway Company and Liberty Leasing Corporation; and

- C

(2) (b) Assignment of Lease and Agreement dated as
of December 15, 1979, between Liberty Leasing Corporation
and Mercantile-Safe Deposit and Trust Company.

Counterpart Clyde M. White

The addresses of the parties to the aforementioned agreements are:

Lessor-Vendee:

Liberty Leasing Corporation,
416 West Jefferson Street,
Louisville, Kentucky 40202.

Builder:

Whitehead & Kales Company,
58 Haltiner Street,
River Rouge, Michigan 48218.

Lessee:

The Chesapeake and Ohio Railway Company,
100 North Charles Street (Room 2012),
Baltimore, Maryland 20201.

Vendor-Assignee:

Mercantile-Safe Deposit and Trust Company,
Two Hopkins Plaza,
Baltimore, Maryland 21203.

The equipment covered by the aforementioned agreements consist of 145 partially enclosed, tri-level auto racks bearing the road numbers of the Lessee RP1450 through RP1594, inclusive.

Enclosed is our check for \$100 for the required recordation fee. Please accept for recordation one counterpart of each of the enclosed agreements not marked with the words "Original Counterpart", stamp the remaining counterparts with your recordation number and return them to the delivering messenger along with your fee receipt, addressed to the undersigned.

Very truly yours,



Anna E. Panayotou
As Agent for The Chesapeake and
Ohio Railway Company

Ms. Agatha L. Mergenovich, Secretary,
Interstate Commerce Commission,
Washington, D. C. 20423

Encls.
EE

11388, c

RECORDATION NO. Filed 1425

JAN 18 1980 - 10 05 AM

INTERSTATE COMMERCE COMMISSION

ASSIGNMENT OF LEASE AND AGREEMENT dated as of December 15, 1979 (this "Assignment"), by and between LIBERTY LEASING CORPORATION (the "Lessor" or the "Vendee") and MERCANTILE-SAFE DEPOSIT AND TRUST COMPANY, as agent (the "Vendor"), under a Participation Agreement dated as of the date hereof (the "Participation Agreement") with the Lessor, the Lessee as hereinafter defined, LIBERTY NATIONAL BANK AND TRUST COMPANY OF LOUISVILLE and AETNA LIFE INSURANCE COMPANY (the "Original Investor" and, together with its successors and assigns, the "Investors").

WHEREAS the Vendee is entering into a Conditional Sale Agreement dated as of the date hereof (the "CSA"), with Whitehead & Kales Company (the "Builder") providing for the sale to the Vendee of such units of railroad equipment (the "Units") described in Annex B thereto as are delivered to and accepted by the Vendee thereunder;

WHEREAS 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; and

WHEREAS, in order to provide security for the obligations of the Lessor under the CSA and as an inducement to the Vendor to invest in the CSA indebtedness (as defined in the CSA), the Lessor agrees to assign for security purposes 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 as Vendee under the CSA, all the Lessor's right, title and interest, powers, privileges and other benefits under 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, 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. 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. Notwithstanding the foregoing, the term "Payments" shall not be deemed to include indemnity payments by the Lessee payable to the Lessor pursuant to §§ 6 and 9 of the Lease (except indemnification payments payable to the Vendor pursuant to Articles 6 and 13 of the CSA) or pursuant to Paragraph 15 of the Participation Agreement (the "Excluded Payments").

The Vendor agrees to accept any Payments made by the Lessee for the account of the Lessor pursuant to the Lease, subject to the provisions of the Lessee's Consent and Agreement attached hereto (the "Consent") permitting certain payments to be made directly to the Vendee. To the extent received, the Vendor will promptly apply such Payments to satisfy the obligations of the Lessor under the CSA then due and payable, and, so long as 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 thereunder, shall have occurred and be continuing, any balance shall be paid to the Lessor on the same date such Payment is applied to satisfy such obligations of the Lessor (or to such other party as may be specified by the Lessor), by bank wire to the Lessor at such address as may be specified to the Vendor in writing, and such balance shall be retained by the Lessor. If the Vendor shall not receive any rental payment under the first paragraph of § 3 of the Lease payable to it as provided in the Consent when due, the Vendor shall notify the Lessor at the address 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 CSA; except that the Vendor may not make a Declaration of

Default (as defined in the CSA) with respect to, or terminate the Lease pursuant to Article 15 of the CSA by reason of, an event of default under subparagraph (a) or (f) of Article 15 of the CSA arising solely by reason of the failure of the Lessee to make any such rental payment, which failure, pursuant to subparagraph (f) of Article 15 of the CSA, would not constitute an event of default thereunder if the Lessor complies with the provisions thereof, unless such event of default is not remedied within five days after receipt of notification given to the Lessor as aforesaid.

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 understood and 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. The Lessor will faithfully abide by, perform and discharge each and every obligation, covenant and agreement which the Lease provides are to be performed by the Lessor; 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.

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, receive, compound and give acquittance for 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 CSA, 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. However, the Vendor, if so requested by the Lessor at that time and at the sole expense of the Lessor, will (a) execute an instrument releasing its entire estate, right, title and interest in the Lease and transferring such estate, right, title and interest to the Lessor and (b) execute, acknowledge and deliver any and all further instruments required by law or reasonably requested by the Lessor in order to confirm or further assure the interest in the Lease which shall have reverted or been so transferred to the Lessor.

6. The Lessor will, from time to time, execute, acknowledge and deliver any and all further instruments required by law or reasonably requested by the Vendor in order to confirm or further assure the interest of the Vendor hereunder.

7. Subject to the provisions of Article 14 of the CSA, 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, but the Lessee and the Vendee shall be under no obligation to any subsequent or successive assignee except upon written notice of such assignment from the Vendor. 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.

8. This Assignment shall be governed by the laws of the Commonwealth of Kentucky.

9. The Lessor shall cause copies of all notices received 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 CSA or at such other address as the Vendor shall designate.

10. The Vendor hereby agrees with the Lessor that the Vendor will not, unless an Event of Default under the

CSA (as defined therein) 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 apply the Payments as provided in Paragraph 1 hereof.

11. 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), 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 CSA, so long as the Vendor is not seeking to receive and collect such Payments and so long as there is no event of default under the CSA; provided, however that, without the prior written consent of the Vendor (which shall not be given without the approval of the Investors as provided in Paragraph 10 of the Participation Agreement), the Lessor may not take any action pursuant to subparagraph (b) of § 10 thereof, the right to do so being reserved by the Vendor.

12. This Assignment may be executed in any number of counterparts, such counterparts together constituting but one and the same contract. It shall not be necessary that any counterpart be signed by both parties so long as each party shall sign at least one counterpart. Although for convenience this Assignment is dated as of the date first above written, 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.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed, as of the date first above written.

LIBERTY LEASING CORPORATION,

by J. E. Vittitor V. P.

[Corporate Seal]

Attest:

Robert Henderson, Asst Secretary



THE UNIVERSITY OF CHICAGO
LIBRARY
1111 EAST 58TH STREET
CHICAGO, ILL. 60637
TEL: 773-936-3000
WWW.CHICAGO.EDU

MERCANTILE-SAFE DEPOSIT AND TRUST
COMPANY, as agent under the
Participation Agreement,

by

Assistant Vice President

[Corporate Seal]

Attest:

Corporate Trust Officer

COMMONWEALTH OF KENTUCKY,)
) ss.:
COUNTY OF JEFFERSON,)

On this 16th day of January 1980, before me personally appeared J. E. Vittitow, to me personally known, who, being by me duly sworn, says that he is Vice President of LIBERTY LEASING CORPORATION, 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.

Constance Gibson Conner
Notary Public

[Notarial Seal]

My Commission expires 10/8/88

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

On this _____ day of January 1980, before me personally appeared _____, 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.

Notary Public

[Notarial Seal]

My Commission expires

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 "Lease Assignment"), hereby (a) acknowledges receipt of a copy of the Lease Assignment and (b) consents to all the terms and conditions of the Assignment and agrees that:

(1) it will pay all rentals, casualty payments, liquidated damages and other moneys (other than Excluded Payments as defined in the Lease Assignment) provided for in the Lease (which moneys are hereinafter called the "Payments") due and to become due under the Lease or otherwise in respect of the Units leased thereunder, directly to Mercantile-Safe Deposit and Trust Company, not in its individual capacity but solely as Agent (the "Vendor"), the assignee named in the Lease Assignment, to be applied as provided in the CSA, by wire transfer (or such other method of transfer as shall be acceptable to the Vendor and the Lessee) of Federal or other immediately available funds to The Annapolis Banking and Trust Company, Main Street and Church Circle, Annapolis, Maryland, for credit to the Vendor'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 payment is "Re: C&O 12/15/79" (or at such other address as may be furnished in writing to the undersigned 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 Lease 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 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 when accepted by the Vendor by signing the acceptance at the foot hereof, shall be deemed to be a contract under the laws of the State of Maryland and, for all purposes, shall be construed in accordance with the laws of said State.

Dated as of December 15, 1979

THE CHESAPEAKE AND OHIO RAILWAY COMPANY,

by

[Corporate Seal]

Assistant Vice President and Treasurer

Attest:

Assistant Secretary

The foregoing Consent and Agreement is hereby accepted, as of the 15th day of December 1979.

MERCANTILE-SAFE DEPOSIT AND TRUST COMPANY, as Agent,

by

Assistant Vice President

ASSIGNMENT OF LEASE AND AGREEMENT dated as of December 15, 1979 (this "Assignment"), by and between LIBERTY LEASING CORPORATION (the "Lessor" or the "Vendee") and MERCANTILE-SAFE DEPOSIT AND TRUST COMPANY, as agent (the "Vendor"), under a Participation Agreement dated as of the date hereof (the "Participation Agreement") with the Lessor, the Lessee as hereinafter defined, LIBERTY NATIONAL BANK AND TRUST COMPANY OF LOUISVILLE and AETNA LIFE INSURANCE COMPANY (the "Original Investor" and, together with its successors and assigns, the "Investors").

WHEREAS the Vendee is entering into a Conditional Sale Agreement dated as of the date hereof (the "CSA"), with Whitehead & Kales Company (the "Builder") providing for the sale to the Vendee of such units of railroad equipment (the "Units") described in Annex B thereto as are delivered to and accepted by the Vendee thereunder;

WHEREAS 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; and

WHEREAS, in order to provide security for the obligations of the Lessor under the CSA and as an inducement to the Vendor to invest in the CSA Indebtedness (as defined in the CSA), the Lessor agrees to assign for security purposes 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 as Vendee under the CSA, all the Lessor's right, title and interest, powers, privileges and other benefits under 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, 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. 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. Notwithstanding the foregoing, the term "Payments" shall not be deemed to include indemnity payments by the Lessee payable to the Lessor pursuant to §§ 6 and 9 of the Lease (except indemnification payments payable to the Vendor pursuant to Articles 6 and 13 of the CSA) or pursuant to Paragraph 15 of the Participation Agreement (the "Excluded Payments").

The Vendor agrees to accept any Payments made by the Lessee for the account of the Lessor pursuant to the Lease, subject to the provisions of the Lessee's Consent and Agreement attached hereto (the "Consent") permitting certain payments to be made directly to the Vendee. To the extent received, the Vendor will promptly apply such Payments to satisfy the obligations of the Lessor under the CSA then due and payable, and, so long as 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 thereunder, shall have occurred and be continuing, any balance shall be paid to the Lessor on the same date such Payment is applied to satisfy such obligations of the Lessor (or to such other party as may be specified by the Lessor), by bank wire to the Lessor at such address as may be specified to the Vendor in writing, and such balance shall be retained by the Lessor. If the Vendor shall not receive any rental payment under the first paragraph of § 3 of the Lease payable to it as provided in the Consent when due, the Vendor shall notify the Lessor at the address 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 CSA; except that the Vendor may not make a Declaration of

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 "Lease Assignment"), hereby (a) acknowledges receipt of a copy of the Lease Assignment and (b) consents to all the terms and conditions of the Assignment and agrees that:

(1) it will pay all rentals, casualty payments, liquidated damages and other moneys (other than Excluded Payments as defined in the Lease Assignment) provided for in the Lease (which moneys are hereinafter called the "Payments") due and to become due under the Lease or otherwise in respect of the Units leased thereunder, directly to Mercantile-Safe Deposit and Trust Company, not in its individual capacity but solely as Agent (the "Vendor"), the assignee named in the Lease Assignment, to be applied as provided in the CSA, by wire transfer (or such other method of transfer as shall be acceptable to the Vendor and the Lessee) of Federal or other immediately available funds to The Annapolis Banking and Trust Company, Main Street and Church Circle, Annapolis, Maryland, for credit to the Vendor'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 payment is "Re: C&O 12/15/79" (or at such other address as may be furnished in writing to the undersigned 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 Lease 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 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 when accepted by the Vendor by signing the acceptance at the foot hereof, shall be deemed to be a contract under the laws of the State of Maryland and, for all purposes, shall be construed in accordance with the laws of said State.

Dated as of December 15, 1979

THE CHESAPEAKE AND OHIO RAILWAY COMPANY,

by

[Corporate Seal]

Assistant Vice President and Treasurer

Attest:

Assistant Secretary

The foregoing Consent and Agreement is hereby accepted, as of the 15th day of December 1979.

MERCANTILE-SAFE DEPOSIT AND TRUST COMPANY, as Agent,

by

Assistant Vice President

ASSIGNMENT OF LEASE AND AGREEMENT dated as of December 15, 1979 (this "Assignment"), by and between LIBERTY LEASING CORPORATION (the "Lessor" or the "Vendee") and MERCANTILE-SAFE DEPOSIT AND TRUST COMPANY, as agent (the "Vendor"), under a Participation Agreement dated as of the date hereof (the "Participation Agreement") with the Lessor, the Lessee as hereinafter defined, LIBERTY NATIONAL BANK AND TRUST COMPANY OF LOUISVILLE and AETNA LIFE INSURANCE COMPANY (the "Original Investor" and, together with its successors and assigns, the "Investors").

WHEREAS the Vendee is entering into a Conditional Sale Agreement dated as of the date hereof (the "CSA"), with Whitehead & Kales Company (the "Builder") providing for the sale to the Vendee of such units of railroad equipment (the "Units") described in Annex B thereto as are delivered to and accepted by the Vendee thereunder;

WHEREAS 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; and

WHEREAS, in order to provide security for the obligations of the Lessor under the CSA and as an inducement to the Vendor to invest in the CSA Indebtedness (as defined in the CSA), the Lessor agrees to assign for security purposes 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 as Vendee under the CSA, all the Lessor's right, title and interest, powers, privileges and other benefits under the Lease, including, without limitation, the immediate right to

Default (as defined in the CSA) with respect to, or terminate the Lease pursuant to Article 15 of the CSA by reason of, an event of default under subparagraph (a) or (f) of Article 15 of the CSA arising solely by reason of the failure of the Lessee to make any such rental payment, which failure, pursuant to subparagraph (f) of Article 15 of the CSA, would not constitute an event of default thereunder if the Lessor complies with the provisions thereof, unless such event of default is not remedied within five days after receipt of notification given to the Lessor as aforesaid.

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 understood and 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. The Lessor will faithfully abide by, perform and discharge each and every obligation, covenant and agreement which the Lease provides are to be performed by the Lessor; 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.

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, receive, compound and give acquittance for 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 CSA, 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. However, the Vendor, if so requested by the Lessor at that time and at the sole expense of the Lessor, will (a) execute an instrument releasing its entire estate, right, title and interest in the Lease and transferring such estate, right, title and interest to the Lessor and (b) execute, acknowledge and deliver any and all further instruments required by law or reasonably requested by the Lessor in order to confirm or further assure the interest in the Lease which shall have reverted or been so transferred to the Lessor.

6. The Lessor will, from time to time, execute, acknowledge and deliver any and all further instruments required by law or reasonably requested by the Vendor in order to confirm or further assure the interest of the Vendor hereunder.

7. Subject to the provisions of Article 14 of the CSA, 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, but the Lessee and the Vendee shall be under no obligation to any subsequent or successive assignee except upon written notice of such assignment from the Vendor. 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.

8. This Assignment shall be governed by the laws of the Commonwealth of Kentucky.

9. The Lessor shall cause copies of all notices received 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 CSA or at such other address as the Vendor shall designate.

10. The Vendor hereby agrees with the Lessor that the Vendor will not, unless an Event of Default under the

COMMONWEALTH OF KENTUCKY,)
) ss.:
COUNTY OF JEFFERSON,)

On this day of January 1980, before me personally appeared , to me personally known, who, being by me duly sworn, says that he is of LIBERTY LEASING CORPORATION, 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.

Notary Public

[Notarial Seal]

My Commission expires

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

On this day of January 1980, before me personally appeared , 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.

Notary Public

[Notarial Seal]

My Commission expires