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PURCHASE CONTRACT AND  
CONDITIONAL SALE AGREEMENT

Dated as of July 1, 1972

6701

RECORDATION NO. \_\_\_\_\_ Filed & Record-

AUG 23 1972 7:45 P.M.

Among

STATE OF MARYLAND  
DEPARTMENT OF COMMERCE COMMISSIONER

THE EQUITABLE TRUST COMPANY,

THE CHESAPEAKE AND OHIO RAILWAY COMPANY,

THE BALTIMORE AND OHIO RAILROAD COMPANY

and

THE EQUITABLE LIFE ASSURANCE SOCIETY  
OF THE UNITED STATES

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Covering 303 Used Locomotives

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PURCHASE CONTRACT AND CONDITIONAL SALE AGREEMENT dated as of July 1, 1972, among THE EQUITABLE TRUST COMPANY, a Maryland corporation (hereinafter called the Seller), THE CHESAPEAKE AND OHIO RAILWAY COMPANY, a Virginia corporation (hereinafter called C&O), THE BALTIMORE AND OHIO RAILROAD COMPANY, a Maryland corporation (hereinafter called B&O), and THE EQUITABLE LIFE ASSURANCE SOCIETY OF THE UNITED STATES, a New York corporation (hereinafter called the Lessor).

WHEREAS, the Lessor is the owner of 303 used locomotives (hereinafter called the Locomotives), previously delivered and leased by the Lessor to B&O, bearing B&O markings and road numbers, pursuant to nine Leases of Railroad Equipment as respectively supplemented and extended (hereinafter called the Leases), of record with the Interstate Commerce Commission, all as set forth in Schedule A hereto; and

WHEREAS, the Lessor desires to sell to the Seller and the Seller desires to purchase from the Lessor and the Seller desires immediately after such purchase to sell to C&O and C&O desires to purchase from the Seller, on the terms and conditions hereinafter set forth, and C&O desires concurrently to sell to B&O, the Locomotives, and C&O is executing an Agreement with B&O to such effect as of the date hereof and subject to this Agreement;

NOW, THEREFORE, in consideration of the mutual promises, covenants and agreements hereinafter set forth, the parties hereto do hereby agree as follows:

(1) The Lessor and B&O agree that the Leases were terminated as of June 30, 1972, and the Locomotives are deemed subject to the

provisions hereof for sale thereof by the Lessor to the Seller, and the Locomotives thereafter became subject to all the terms and provisions of this Agreement.

(2) The Lessor agrees to sell to the Seller and the Seller agrees to purchase from the Lessor and to pay for, as hereinafter provided, the Locomotives. The Seller further agrees to sell to C&O and C&O agrees to purchase from the Seller and to pay for, as hereinafter provided, the Locomotives.

(3) The Lessor and the Seller make no warranties or representations, either express or implied, as to the fitness, design or condition of, or as to the quality, equipment or workmanship in, the Locomotives, which are to be sold to the Seller and then to C&O as is, in B&O's current use, possession and operation on its lines. Further, neither the Lessor nor the Seller shall be liable for any royalties, liabilities, damages, claims, suits, judgments, costs or expenses whatsoever, arising from the use of any patented article, design, or element of construction incorporated into the Locomotives.

(4) The selling price of the Locomotives, which are to be sold by the Lessor to the Seller and by the Seller to C&O as a single group of identically priced units shall consist of:

(a) \$3,000,000 (hereinafter called either the Sales Price or the Conditional Sale Indebtedness), payable by the Seller to the Lessor in a single sum on the Closing Date (hereinafter defined) and payable by C&O to the Seller in five consecutive annual installments of \$600,000 each, commencing July 1, 1973, and thereafter to and including July 1, 1977;  
and

(b) interest on \$3,000,000 which B&O agrees to pay to the Lessor on said Closing Date, at the rate of 5-1/4% per annum from July 1, 1972 to such date as shall be fixed by C&O by written notice delivered to the Lessor and the Seller at least five business days prior to the closing date designated therein, but not later than September 30, 1972 (hereinafter called the Closing Date).

The unpaid portion of the Conditional Sale Indebtedness shall bear interest from the Closing Date, payable on January 1 and July 1 in each year, commencing January 1, 1973, at a rate per annum of 1/4 of 1% above the prime commercial rate of the Seller, adjustable the same day for any change therein. All interest under this Agreement shall be determined on the basis of a 360-day year of twelve 30-day months.

The obligation of the Seller to pay to the Lessor the Sales Price shall be conditioned upon the Seller receiving on or before the Closing Date the following documents:

(a) a Bill of Sale from the Lessor to the Seller transferring to the Seller title to the Locomotives, where is, as is, and without warranties of any sort other than that the Lessor has not done or suffered anything (other than the execution and delivery of this Agreement) whereby the Locomotives are then encumbered in any way whatever;

(b) an Invoice of the Lessor to the Seller for the Locomotives in the amount of the Sales Price;

(c) an opinion of counsel for the Lessor to the effect that this Agreement has been duly and validly authorized

and executed by the Lessor and is a valid and binding agreement of the Lessor as between the Lessor and the Seller in accordance with its terms, that the Lessor has conveyed to the Seller all the rights, titles and interests in and to the Locomotives purported to be conveyed to the Seller by the Lessor pursuant to this Agreement, and that title to the Locomotives has been validly transferred by the Lessor to the Seller;

(d) an opinion of counsel for C&O and B&O as to the matters set forth in Section (11) of this Agreement; and

(e) a B&O draft payable to the Lessor in the amount of the interest payment specified in subparagraph (b) of the first paragraph of Section (4) of this Agreement, which amount the Seller will pay over to the Lessor along with the Sales Price.

In addition to the Conditional Sale Indebtedness set forth above, C&O agrees to assume and pay all applicable taxes (other than taxes imposed on the income of the Lessor or the Seller with respect to the selling price of the Locomotives) levied or imposed upon and arising out of the sale of the Locomotives by the Lessor to the Seller and by the Seller to C&O pursuant to this Agreement or deriving from the use, possession and operation of the Locomotives by B&O, C&O or the Seller. C&O may contest any such taxes it deems contestable but shall be liable to pay any fines, penalties, interest, fees or other expenses which may accrue from its contesting such taxes.

(5) C&O shall have the right to withdraw from this Agreement any Locomotive at any time, and at once acquire title thereto, upon payment to the Seller of a cash sum for each such Locomotive consisting of:

(a) the product of the unpaid Conditional Sale Indebtedness immediately prior to such payment multiplied by a fraction of which the numerator is the number of Locomotives then to be withdrawn and the denominator is the total number of Locomotives subject to this Agreement immediately prior to such withdrawal; plus

(b) accrued interest to such date of payment at the rate specified in the second paragraph of Section (4) of this Agreement on the amount produced in subparagraph (a) above.

The amount produced in subparagraph (a) above shall thereupon be applied by the Seller against the remaining installments of the unpaid Conditional Sale Indebtedness in the inverse order of maturity.

(6) C&O agrees to cause the removal, at no expense to the Lessor or the Seller, of the Lessor's identification plates currently on the Locomotives, but will retain all B&O markings and the B&O road numbers as set forth in Schedule A hereto.

(7) During the term of this Agreement, C&O will keep the Locomotives in good order and repair at its own expense, will comply with all laws and regulations of any governmental authority with reference to the Locomotives or the manner of using or operating the same; and will keep the Locomotives free from any encumbrance or lien which might affect the Seller's title.

(8) The Seller shall and hereby does retain full legal title to the Locomotives until C&O shall have made all the payments and shall have kept and performed all the agreements in this Agreement provided to be made, kept or performed by C&O, notwithstanding B&O's use, possession and operation of the Locomotives. Any and all replacement of parts of the Locomotives, and additions thereto, shall constitute accessions to the Locomotives and be subject to all the terms and conditions of this Agreement and be included in the term "Locomotives" as used herein. When and only when C&O has paid the full selling price of each Locomotive and has made all other payments with respect thereto as herein provided, title to such Locomotive shall pass to and vest in C&O without further transfer or action on the part of the Seller, except that the Seller shall, if requested by C&O so to do, execute and deliver to C&O, or upon its order, a bill of sale of such Locomotive, transferring all the Seller's right, title and interest in and to such Locomotive, free and clear of all liens and encumbrances in favor of the Seller or anyone claiming under the Seller.

(9) C&O will not sell, assign, transfer or otherwise dispose of its rights, interests and obligations under this Agreement or cause the transfer of B&O's possession of the Locomotives without first obtaining the written consent of the Seller. The Seller may assign at any time all or any of its rights under this Agreement, including the right to receive any payments due or to become due to it from C&O hereunder.

(10) In case

(a) C&O shall fail to pay any part of any amount payable by it as herein provided and such failure shall

continue for more than 10 days after the mailing to C&O by the Seller of notice of such failure, or

(b) C&O shall, for more than 30 days after the Seller shall have demanded in writing performance thereof, fail or refuse to comply with any other of the terms and agreements herein on C&O's part to be kept and performed, or to make provision satisfactory to the Seller for such compliance,

then, and at any time after the occurrence of such an event of default, the Seller may, upon written notice to C&O, terminate this Agreement whereupon all right, title and interest of C&O in the Locomotives shall cease. C&O shall thereupon return the Locomotives to the Seller or the Seller may by its agents repossess the Locomotives and thereafter hold, possess and enjoy the same free of any right of C&O hereunder. But the Seller shall nevertheless have the right to recover from C&O any and all amounts which under the terms of this Agreement may be due and unpaid. The remedies in this Agreement provided in favor of the Seller shall not be deemed exclusive but shall be cumulative and shall be in addition to all other remedies in the Seller's favor existing in law or in equity.

(11) C&O shall cause this Agreement to be duly filed and recorded with the Interstate Commerce Commission for the full protection of the right, title and interest of the Seller in the Locomotives. C&O will, as of the Closing Date, deliver to the Seller, the Lessor and B&O an opinion of counsel to the effect that this Agreement has been duly filed and recorded in compliance with the provisions of this Section (11) and that this Agreement has been duly and validly authorized and executed by

C&O and is a valid and binding agreement of C&O in accordance with its terms, and B&O will likewise deliver to the Seller, the Lessor and C&O an opinion of counsel to the effect that this Agreement has been duly and validly authorized and executed by B&O and is a valid and binding agreement of B&O in accordance with its terms.

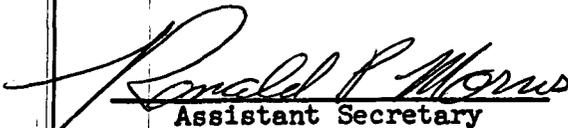
(12) The provisions of Sections (5), (7), (8), (9), (10) and (11) hereof shall only apply between the Seller and C&O.

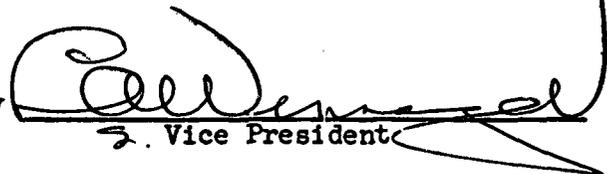
(13) Upon receipt by the Seller on or before the Closing Date of the documents described in subparagraphs (a) - (e), inclusive, of the third paragraph of Section (4) hereof, and payment to the Lessor on the Closing Date of the Sales Price and the interest payment specified in subparagraph (b) of the first paragraph of said Section (4), the Lessor shall cease to be a party to this Agreement and the Lessor's liability hereunder will terminate on the Closing Date.

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

Attest:

THE EQUITABLE TRUST COMPANY

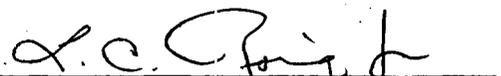
  
Assistant Secretary

By   
J. Vice President

Attest:

THE CHESAPEAKE AND OHIO RAILWAY COMPANY

  
Secretary

By   
Treasurer

APPROVED AS TO FORM  
  
GENERAL ATTORNEY  
8/15/72

Attest:

THE BALTIMORE AND OHIO RAILROAD COMPANY

*[Signature]*  
Secretary

By *[Signature]*  
Treasurer

Attest:

THE EQUITABLE LIFE ASSURANCE SOCIETY  
OF THE UNITED STATES

*[Signature]*  
Assistant Secretary

By *[Signature]*  
Vice President

*[Handwritten initials]*  
*[Handwritten initials]*

STATE OF MARYLAND )  
                          ) SS:  
CITY OF BALTIMORE )

On this <sup>22<sup>nd</sup></sup> day of August, 1972, before me personally appeared W. A. Wennagel, Jr., to me personally known, who being by me duly sworn, says that he is a Vice President of THE EQUITABLE 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.

Priscilla D. Garner  
My Commission Expires July 1, 1974

STATE OF OHIO )  
                          ) SS:  
COUNTY OF CUYAHOGA )

On this <sup>15<sup>th</sup></sup> day of August, 1972, before me personally appeared L. C. ROIG, JR., to me personally known, who being by me duly sworn, says that he is the Treasurer of THE CHESAPEAKE AND OHIO RAILWAY 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.

Clara Masuga  
CLARA MASUGA  
Notary Public for Cuyahoga County  
My Commission expires April 21, 1974.

STATE OF OHIO )  
 ) SS:  
COUNTY OF CUYAHOGA)

On this *15<sup>TH</sup>* day of August, 1972, before me personally appeared L. C. ROIG, JR., to me personally known, who being by me duly sworn, says that he is the Treasurer of THE BALTIMORE AND OHIO RAILROAD 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 President and Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

*Clara Masuca*

CLARA MASUCA

Notary Public for Cuyahoga County  
My Commission expires April 21, 1974.

STATE OF NEW YORK )  
 ) SS:  
COUNTY OF NEW YORK)

On this *21<sup>ST</sup>* day of August, 1972, before me personally appeared *WILLIAM A. McCARDY*, to me personally known, who being by me duly sworn, says that he is a Vice President of THE EQUITABLE LIFE ASSURANCE SOCIETY OF THE UNITED STATES, 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.

*Anthony G. Miller*

ANTHONY G. MILLER  
Notary Public, State of New York  
No. 30-2698670  
Qualified in Nassau Co.  
Cert. Filed in New York Co.  
Comm. Expires March 30, 1977

SCHEDULE A

303 Used Locomotives

(1) Lease dated as of August 1, 1950

- 65 1500 H.P. Freight Locomotives built by General Motors Corporation (Electro-Motive Division), bearing B&O road numbers, inclusive:

4524,	4561-4567,	5473,
4526-4529,	4569-4571,	5475-5479,
4532-4535,	5456-5461,	5481,
4537-4542,	5463-5464,	5483-5486,
4544-4550,	5467-5468,	5488-5490,
4552-4553,	5470,	5493
4555-4559,		

Interstate Commerce Commission Recordation  
Nos. 109 - 109-C, inclusive.

(2) Lease dated as of February 1, 1952

- 28 1500 H.P. Freight Locomotives built by General Motors Corporation (Electro-Motive Division), bearing B&O road numbers, inclusive:

4606-4610,	4591-4599,	5503-5505,
4612-4616,	4601,	5508-5509
4618,	4603-4604,	

Interstate Commerce Commission Recordation  
Nos. 106 - 106-C, inclusive.

(3) Lease dated as of July 1, 1953

- 23 1500 H.P. Road Switching Locomotives built by General Motors Corporation (Electro-Motive Division), bearing B&O road numbers, inclusive:

1827-1830, 6413-6424, 6693-6699

Interstate Commerce Commission Recordation  
Nos. 331 - 331-C, inclusive.

(4) Lease dated as of July 1, 1953

- 8 1000 H.P. Yard Switching Locomotives built by American Locomotive Company, bearing B&O road numbers 9000-9007, inclusive.

Interstate Commerce Commission Recordation  
Nos. 369 - 369-B, inclusive.

(5) Lease dated as of November 1, 1954

- 8 1750 H.P. Road Switching Locomotives built by General Motors Corporation (Electro-Motive Division), bearing B&O road numbers 1831-1838, inclusive.

Interstate Commerce Commission Recordation  
Nos. 554 - 554-C, inclusive.

(6) Lease dated as of February 1, 1955

- 2 1750 H.P. Road Switching Locomotives built by General Motors Corporation (Electro-Motive Division), bearing B&O road numbers 1839-1840, inclusive.

- 6 1750 H.P. Road Passenger Switching Locomotives built by General Motors Corporation (Electro-Motive Division), bearing B&O road numbers 6600-6605, inclusive.

- 20 1750 H.P. Road Freight Switching Locomotives built by General Motors Corporation (Electro-Motive Division), bearing B&O road numbers, inclusive:

6425-6437, 6439-6440, 6442-6446

- 29 900 H.P. Yard Switching Locomotives built by General Motors Corporation (Electro-Motive Division), bearing B&O road numbers 9400-9428, inclusive.

Interstate Commerce Commission Recordation  
Nos. 610 - 610-E, inclusive, and 5077.

(7) Lease dated as of February 1, 1955

- 11 1000 H.P. Yard Switching Locomotives built by American Locomotive Company, bearing B&O road numbers 9008-9018, inclusive.

Interstate Commerce Commission Recordation  
Nos. 609 - 609-B, inclusive.

(8) Lease dated as of July 1, 1956

- 64 1750 H.P. Freight Road Switching Locomotives built by General Motors Corporation (Electro-Motive Division), bearing B&O road numbers 6447-6510, inclusive.

13 1750 H.P. Passenger Road Switching Locomotives  
built by General Motors Corporation (Electro-  
Motive Division), bearing B&O road numbers  
6606-6618, inclusive.

Interstate Commerce Commission Recordation  
Nos. 988 - 988-C, inclusive.

(9) Lease dated as of January 1, 1958

26 1750 H.P. Road Switching Locomotives built by  
General Motors Corporation (Electro-Motive  
Division), bearing B&O road numbers, inclusive:

6572-6578,  
6580-6598

Interstate Commerce Commission Recordation  
Nos. 1377 - 1377-A, inclusive.