

EXECUTED IN 10 COUNTERPARTS

OF WHICH THIS IS NO. 9

6701 - a

AGREEMENT

RECORDATION NO. \_\_\_\_\_ Filed & Recorded

AUG 23 1972 7:45 P.M.

Dated as of July 1, 1972

COMMERCIAL COMMERCE COMMISSION

Between

THE CHESAPEAKE AND OHIO RAILWAY COMPANY

and

THE BALTIMORE AND OHIO RAILROAD COMPANY

Covering 303 Used Locomotives

AGREEMENT dated as of July 1, 1972, between THE CHESAPEAKE AND OHIO RAILWAY COMPANY, a Virginia corporation (hereinafter called C&O), and THE BALTIMORE AND OHIO RAILROAD COMPANY, a Maryland corporation (hereinafter called B&O).

WHEREAS, C&O is the conditional purchaser from The Equitable Trust Company, a Maryland corporation (hereinafter called the Seller), pursuant to the Purchase Contract and Conditional Sale Agreement dated as of July 1, 1972 (hereinafter called the Conditional Sale Agreement), among the Seller, C&O, B&O and The Equitable Life Assurance Society of the United States, a New York corporation (hereinafter called the Lessor), 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 to the Conditional Sale Agreement and hereto;

WHEREAS, the Leases were terminated as of June 30, 1972, by the Lessor and B&O and the Locomotives immediately thereafter became subject to all the terms and provisions of the Conditional Sale Agreement;

WHEREAS, C&O desires to sell to B&O and B&O desires to purchase from C&O, on the terms and conditions hereinafter set forth, the Locomotives, subject to the Conditional Sale Agreement;

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

(1) C&O agrees to sell to B&O and B&O agrees to purchase from C&O and to pay for, as hereinafter provided, the Locomotives as is, in B&O's current use, possession and operation on its lines; subject, however, to all terms, covenants and provisions of the Conditional Sale Agreement and to the rights and remedies thereunder of the Seller.

(2) The selling price of the Locomotives, which are to be sold by C&O to B&O as a single group of identically priced units, shall be \$3,000,000, payable in five consecutive annual installments of \$600,000 each, commencing July 1, 1973, and thereafter to and including July 1, 1977. The unpaid portion of said selling price shall bear interest from the Closing Date (as defined in subparagraph (b) of the first paragraph of Section (4) of the Conditional Sale Agreement), payable on January 1 and July 1 in each year, commencing January 1, 1973, at a rate per annum to be calculated as follows:

(a) take the rate which is  $1/4$  of 1% above the prime commercial rate of interest per annum of the Seller, adjustable the same day for any change therein;

(b) multiply the figure specified in (a) above by  $5/4$ ;  
and

(c) to the product computed in (b) above, add  $1/4$  of 1%. This sum will be the interest rate per annum to be applied as above stated.

(3) During the term of this Agreement, B&O will be obligated directly to C&O, and vice versa, to the same extent that C&O is obligated to the Seller and vice versa, with respect to the several disclaimers, covenants and provisions set forth in Sections (2), (3), subparagraph (a)

of the first paragraph and the fourth paragraph of Section (4), (5), (6), (7), (8), (9) and (10) of the Conditional Sale Agreement, all of which are made a part hereof by reference.

(4) 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 and C&O in the Locomotives. C&O will, as of the Closing Date (as defined in subparagraph (b) of the first paragraph of Section (4) of the Conditional Sale Agreement), 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 (4) 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.

(5) C&O covenants and agrees to perform all of its obligations, and to make all payments provided for, under the Conditional Sale Agreement and agrees not to do or permit any act to be done that would constitute a default thereunder. In the event that C&O shall fail to perform any of its obligations, or to make any payments under the Conditional Sale Agreement, B&O may do so in respect of the Locomotives and B&O shall have a credit against the selling price of the Locomotives with respect to any payments made by B&O pursuant to this Section (5), and shall be subrogated to all of the rights of the Seller against C&O to the extent

of any amounts so paid, but subject and subordinate in all respects to the rights of the Seller under the Conditional Sale Agreement.

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

Attest:

THE CHESAPEAKE AND OHIO RAILWAY COMPANY

*C. T. Tubor*  
Secretary

By *L. C. Fright*  
Treasurer

Attest:

THE BALTIMORE AND OHIO RAILROAD COMPANY

*C. T. Tubor*  
Secretary

By *L. C. Fright*  
Treasurer

APPROVED AS TO FORM  
*C. C. Kimball*  
GENERAL ATTORNEY  
8/15/72

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

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:

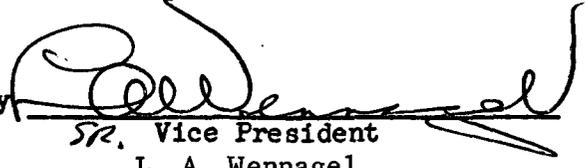
6572-6578,  
6580-6598

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

CONSENT TO AGREEMENT

The undersigned, The Equitable Trust Company, Seller under the aforementioned Purchase Contract and Conditional Sale Agreement dated as of July 1, 1972, hereby consents to the foregoing Agreement dated as of July 1, 1972, on the condition that such Agreement and all provisions thereof are subject and subordinate to the provisions of said Purchase Contract and Conditional Sale Agreement and the title of the undersigned to the Locomotives covered thereby.

THE EQUITABLE TRUST COMPANY

By 

SR. Vice President

L. A. Wennagel