

Southern Pacific Transportation Company

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THORMUND A. MILLER RECORDATION NO. 6050 F
VICE PRESIDENT AND GENERAL COUNSEL Filed 1425

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CLAUDE F. KOLM
ATTORNEYS

JUN 13 1984 - 2 15 PM
June 12, 1984

INTERSTATE COMMERCE COMMISSION

4-165A121

Mr. James H. Bayne
Secretary
Interstate Commerce Commission
Twelfth Street & Constitution Avenue, N.W.
Washington, D.C. 20423

RE: Agreement of Conditional Sale dated as of
January 1, 1969, among Southern Pacific
Company, First Pennsylvania Bank, N.A.,
and General Motors Corporation (Electro-
Motive Division) -- Declaration of Full
Payment

Dear Mr. Bayne:

There are enclosed for recording, pursuant to the provisions of Title 49, United States Code, Section 11303, the original and three (3) fully executed counterparts of Declaration of Full Payment dated as of May 15, 1984, between Southern Pacific Transportation Company, as successor by merger to former Southern Pacific Company, and First Pennsylvania Bank, N.A., for the above-entitled Agreement of Conditional Sale and Agreement and Assignment dated as of January 1, 1969, together with voucher in payment of the recording fee.

The following documents have been recorded with the Commission under Section 11303 (former Section 20c) in this matter:

Temporary Agreement of Conditional Sale dated as of January 1, 1969, among Southern Pacific Company, First Pennsylvania Bank, N.A., and General Motors Corporation (Electro-Motive Division), recorded on January 30, 1969, at 11:00 AM, assigned Recordation No. 6050;

Agreement of Conditional Sale dated as of January 1, 1969, recorded on February 5, 1969, at 1:45 PM, assigned Recordation No. 6050-A;

Mr. James H. Bayne
Page Two
June 12, 1984

Agreement and Assignment dated as of November 26, 1969, recorded on December 22, 1969, at 11:05 AM, assigned Recordation No. 6050-B;

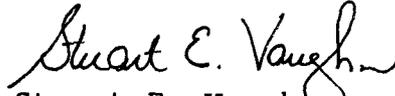
First Supplemental Agreement dated as of February 12, 1982, recorded on March 3, 1982, at 1:25 PM, assigned Recordation No. 6050-C;

Second Supplemental Agreement dated as of November 15, 1983, recorded on December 6, 1983, at 2:40 PM, assigned Recordation No. 6050-D; and

Assignment and Transfer of Certain Road Equipment dated as of November 15, 1983, recorded on January 9, 1984, at 3:00 PM, assigned Recordation No. 6050-E.

When the recording of the Declaration of Full Payment has been completed, will you kindly endorse, with the pertinent recording information, all executed counterparts thereof which are presented to you by our representative herewith, and return three (3) counterparts to her.

Very truly yours,


Stuart E. Vaughn

Enclosures

cc: Mr. D. A. Smith
(Attn: Mr. L. S. Vollmer)
Mr. E. L. Johnson
(Attn: Mr. G. J. Reilly
Mr. S. Jackovich)

RECORDATION NO. **6054-D** Filed & Recorded

notes

FEB 24 1969 -12 29 PM

INTERSTATE COMMERCE COMMISSION

AGREEMENT AND ASSIGNMENT

Dated as of December 1, 1968

between

RYDAL EQUIPMENT CO.

and

**THE PHILADELPHIA NATIONAL BANK,
As Agent**

RECEIVED
FEB 24 12 19 PM '69
I.O.O.
FEE OPERATION BR.

AGREEMENT AND ASSIGNMENT dated as of December 1, 1968, between RYDAL EQUIPMENT Co. (hereinafter called the Manufacturer), and THE PHILADELPHIA NATIONAL BANK, acting as Agent under a Finance Agreement dated as of December 1, 1968 (hereinafter called the Finance Agreement and said Bank, so acting, being hereinafter called the Assignee).

WHEREAS, the Manufacturer, C. I. T. CORPORATION (hereinafter called the Company), and READING COMPANY (hereinafter called the Guarantor), have entered into a Conditional Sale Agreement dated as of December 1, 1968, as amended as of January 15, 1968 (hereinafter, as so amended, called the Conditional Sale Agreement), covering the construction, sale and delivery, on the conditions therein set forth, by the Manufacturer and the purchase by the Company of the railroad equipment described in Annex B to the Conditional Sale Agreement (said equipment being hereinafter called the Equipment);

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NOW, THEREFORE, THIS AGREEMENT AND ASSIGNMENT (hereinafter called this Assignment) WITNESSETH: That, in consideration of the sum of One Dollar (\$1.00) and other good and valuable consideration paid by the Assignee to the Manufacturer, the receipt of which is hereby acknowledged, as well as of the mutual covenants herein contained:

SECTION 1. The Manufacturer hereby assigns, transfers, and sets over unto the Assignee, its successors and assigns:

(a) All the right, title and interest of the Manufacturer in and to each unit of the Equipment;

(b) All the right, title and interest of the Manufacturer in and to the Conditional Sale Agreement (except the right to construct and deliver the Equipment and the right to receive the payments specified in the third paragraph of Article 2 thereof, in the first paragraph and in subparagraph (a) of the third paragraph of Article 3

thereof and in the last paragraph of Article 16 thereof and reimbursement for taxes paid or incurred by the Manufacturer), and in and to any and all amounts which may be or become due or owing to the Manufacturer under the Conditional Sale Agreement on account of the indebtedness in respect of the Purchase Price (as defined in the Conditional Sale Agreement) of the Equipment and interest thereon, and in and to any other sums becoming due from the Company or the Guarantor under the Conditional Sale Agreement, other than those hereinabove excluded; and

(c) Except as limited by subparagraph (b) of this paragraph, all the Manufacturer's rights, powers, privileges and remedies under the Conditional Sale Agreement;

without any recourse, however, against the Manufacturer for or on account of the failure of the Company or the Guarantor to make any of the payments provided for in, or otherwise to comply with, any of the provisions of the Conditional Sale Agreement: *provided, however*, that this Assignment shall not subject the Assignee to, or transfer, or pass, or in any way affect or modify, the obligations of the Manufacturer to deliver the Equipment in accordance with the Conditional Sale Agreement or with respect to its warranties and agreements contained or referred to in Articles 14 and 15 of the Conditional Sale Agreement or Annex A thereof or relieve the Company or the Guarantor from their respective obligations to the Manufacturer contained or referred to in Articles 1, 2, 3, 6, 10, 14 and 15 of and Annex A to the Conditional Sale Agreement, it being understood and agreed that, notwithstanding this Assignment or any subsequent assignment pursuant to the provisions of Article 16 of the Conditional Sale Agreement, all obligations of the Manufacturer to the Company with respect to the Equipment shall be and remain enforceable by the Company, its successors and assigns, against and only against the Manufacturer. In furtherance of the foregoing assignment and

transfer, the Manufacturer 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 Manufacturer, 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 compliance by the Company and the Guarantor with the terms and agreements on their parts to be performed under the Conditional Sale Agreement, but at the expense and liability and for the sole benefit of the Assignee.

SECTION 2. The Manufacturer covenants and agrees that it will construct and deliver the Equipment to the Company in accordance with the provisions of the Conditional Sale Agreement; and that, notwithstanding this Assignment, it will perform and fully comply with each and all the covenants and conditions of the Conditional Sale Agreement set forth to be performed and complied with by the Manufacturer. The Manufacturer further covenants and agrees that it will warrant to the Assignee and the Company that at the time of delivery of each unit of the Equipment to the Company under the Conditional Sale Agreement it had legal title to such unit and good and lawful right to sell such unit and the title to such unit was free of all claims, liens, security interests and other encumbrances of any nature except only the rights of the Company under the Conditional Sale Agreement and the rights of the Guarantor under the Lease (as defined in the Conditional Sale Agreement); and the Manufacturer further covenants and agrees that it will defend the title to such unit against the demands of all persons whomsoever based on claims originating prior to said delivery of such unit by the Manufacturer to the Company; all *subject, however*, to the provisions of the Conditional Sale Agreement and the rights of the Company thereunder. The Manufacturer will not deliver any of the Equipment to the Company under the Conditional Sale Agreement until the Conditional Sale Agreement and the

Lease have been filed pursuant to Section 20c of the Interstate Commerce Act.

The Manufacturer covenants and agrees with the Assignee that in any suit, proceeding or action brought by the Assignee under the Conditional Sale Agreement for any instalment of, or interest on, indebtedness in respect of the Purchase Price (as that term is defined in the Conditional Sale Agreement) of the Equipment or to enforce any provision of the Conditional Sale Agreement, the Manufacturer will indemnify, protect and hold harmless the Assignee from and against all expenses, loss or damage suffered by reason of any defense, setoff, counterclaim or recoupment whatsoever of the Company arising out of a breach by the Manufacturer of any obligation with respect to the Equipment or the manufacture, construction, delivery or warranty thereof, or under Article 15 of the Conditional Sale Agreement, 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 Company or the Guarantor by the Manufacturer. The foregoing indemnification provision is conditioned upon (1) the Assignee promptly moving or taking other prompt action on the basis of Article 16 of the Conditional Sale Agreement to strike any such defense, setoff, counterclaim or recoupment asserted by the Company or the Guarantor and (2) if the court or other body having jurisdiction denies such motion or other action and accepts such defense, setoff, counterclaim or recoupment as a triable issue, the Assignee promptly notifying the Manufacturer of the asserted defense, setoff, counterclaim or recoupment and giving the Manufacturer the right, at the Manufacturer's expense, to compromise, settle or defend against such defense, setoff, counterclaim or recoupment.

Except in cases of designs specified by the Guarantor and not developed or purported to be developed by the Manufacturer, and articles and materials specified by the Guarantor and not manufactured by the Manufacturer, the

Manufacturer agrees to indemnify, protect and hold harmless the Assignee from and against any and all liability, claims, demands, 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 Equipment, or any unit thereof, of any design, article or material infringing or claimed to infringe on any patent or other right.

The Manufacturer agrees that any amount payable to it by the Company or the Guarantor, whether pursuant to the Conditional Sale Agreement or otherwise, not hereby assigned to the Assignee, shall not be secured by any lien, charge or security interest on any units of the Equipment in respect of which the Assignee pays to the Manufacturer the amount to be paid under Section 5 hereof.

SECTION 3. The Manufacturer will cause to be plainly, distinctly, permanently and conspicuously marked on each side of each unit of the Equipment, at the time of delivery thereof to the Company, in letters not less than one inch in height, the following legend:

“THE PHILADELPHIA NATIONAL BANK, PHILADELPHIA, PA.,
AGENT-OWNER.”

SECTION 4. Upon request of the Assignee, its successors and assigns, the Manufacturer will execute any and all instruments which may be necessary or proper in order to discharge of record the Conditional Sale Agreement or any other instrument evidencing any interest of the Manufacturer therein or in the Equipment.

SECTION 5. The Assignee, on each Closing Date fixed as provided in Article 3 of the Conditional Sale Agreement with respect to a Group (as defined in said Article 3) shall pay to the Manufacturer an amount equal to that portion of the Invoiced Purchase Price (as defined in said Article 3) of such Group not required to be paid pursuant to subparagraph

(a) of the third paragraph of said Article 3, provided that there have been delivered to the Assignee and its counsel (with a signed counterpart to the Company) the following documents, in such number of counterparts or copies as may reasonably be requested, in form and substance satisfactory to it and to its special counsel hereinafter mentioned :

(a) Bill of Sale from the Manufacturer to the Assignee, confirming the transfer hereunder to the Assignee of title to the units of Equipment in the Group and warranting to the Assignee and to the Company that at the time of delivery to the Company under the Conditional Sale Agreement the Manufacturer had legal title to the Equipment and good and lawful right to sell the Equipment and title to the Equipment was free of all claims, liens, security interests and other encumbrances of any nature except only the rights of the Company under the Conditional Sale Agreement and the rights of the Guarantor under the Lease;

(b) Certificate or Certificates of Acceptance with respect to the Equipment in the Group as contemplated by Article 2 of the Conditional Sale Agreement and the Certificate or Certificates of Delivery pursuant to § 1 of the Lease;

(c) Certificate of an officer of the Guarantor stating that prior to delivery and acceptance of units of the Equipment under the Conditional Sale Agreement and the Lease, none of the units of the Equipment was placed in the service of the Guarantor or otherwise was used by the Guarantor;

(d) Invoices for the Equipment in the Group accompanied by or having endorsed thereon a certification by the Company and the Guarantor as to the correctness of the prices of such units as set forth in said invoices;

(e) Opinion, dated as of such Closing Date, of Messrs. Cravath, Swaine & Moore, who are acting as special counsel for the Assignee and for the Investors

named in the Finance Agreement, addressed to the Assignee, stating that (i) the Conditional Sale Agreement has been duly authorized, executed and delivered by the respective parties thereto and is a legal and valid instrument binding upon the parties thereto and enforceable in accordance with its terms, (ii) this Assignment has been duly authorized, executed and delivered by the respective parties hereto and is a legal and valid instrument binding upon the parties hereto, (iii) the Assignee is vested with all the rights, titles, interests, powers, privileges and remedies purported to be assigned to it by this Assignment, (iv) title to the units of the Equipment in the Group is validly vested in the Assignee and the Equipment, at the time of delivery thereof to the Company under the Conditional Sale Agreement, was free of all claims, liens, security interests and other encumbrances except only the rights of the Company under the Conditional Sale Agreement and the rights of the Guarantor under the Lease, (v) no approval of the Interstate Commerce Commission or any other governmental authority is necessary for the execution and delivery of the Finance Agreement, the Conditional Sale Agreement or this Assignment, or, if any approval is necessary, it has been obtained, (vi) the Conditional Sale Agreement, this Assignment and the Lease have been duly filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act and no other filing, recording or deposit (or giving of notice) is necessary for the protection of the rights hereunder of the Assignee in any state of the United States of America or the District of Columbia and (vii) registration of the Conditional Sale Agreement, this Assignment or the 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 cover such other matters as the Assignee or any Investor may reasonably request;

(f) Opinion, dated as of such Closing Date, of counsel for the Company addressed to the Assignee to the effect that (i) the Company is a duly organized and existing corporation in good standing under the laws of New York and has the power and authority to own its properties and to carry on its business as now conducted, (ii) the Conditional Sale Agreement has been duly authorized, executed and delivered on behalf of the Company and is a valid and binding instrument enforceable against the Company in accordance with its terms;

(g) Opinion, dated as of such Closing Date, of counsel for the Guarantor addressed to the Assignee to the effect set forth in clauses (i) through (vi) of subparagraph (e) above and stating that the Guarantor is a duly organized and existing corporation in good standing under the laws of Pennsylvania and has the power and authority to own its properties and to carry on its business as now conducted;

(h) Opinion, dated as of such Closing Date, of counsel for the Manufacturer addressed to the Assignee to the effect set forth in clauses (iii) and (iv) of subparagraph (e) above and stating that (i) the Manufacturer is a duly organized and existing corporation in good standing under the laws of the state of its incorporation and has the power and authority to own its properties and to carry on its business as now conducted and (ii) the Conditional Sale Agreement and this Assignment have been duly authorized, executed and delivered by the Manufacturer and are valid instruments binding upon the Manufacturer and enforceable against the Manufacturer in accordance with their terms;

(i) Unless payment of the amount, if any, payable pursuant to subparagraph (a) of the third paragraph of

Article 3 of the Conditional Sale Agreement shall be made by the Assignee with funds furnished to it for that purpose by the Company, the receipt from the Manufacturer for such payment.

In giving the opinions specified in this Section 5, counsel may qualify any opinion to the effect that (i) any agreement is a legal and valid instrument binding upon the parties thereto and enforceable in accordance with its terms by a general reference to limitations as to enforceability imposed by bankruptcy, insolvency, reorganization, moratorium or other laws affecting the enforcement of creditors' rights generally and (ii) such opinion does not pass upon questions involving interest on interest. In giving the opinions specified in subparagraphs (e), (f) and (g) of the first paragraph of this Section 5, counsel may in fact rely as to the title to the units of the Equipment in the Group at the time of delivery to the Company upon the opinion of counsel for the Manufacturer. In giving the opinions specified in subparagraphs (e) and (f) of the first paragraph of this Section 5, Messrs. Cravath, Swaine & Moore and counsel for the Company may in fact rely, as to any matters governed by the law of any jurisdiction, other than New York or the United States, on the opinions of counsel for the Manufacturer or the Guarantor as to such matters.

The obligation of the Assignee hereunder to make payment for any Group of the Equipment is hereby expressly conditioned upon the prior receipt by the Assignee, pursuant to the Finance Agreement, of all the funds to be furnished to the Assignee under the Finance Agreement by the Investors named in Schedule A thereto and upon payment by the Company of the amount required to be paid by it pursuant to subparagraph (a) of the third paragraph of Article 3 of the Conditional Sale Agreement.

The Assignee shall not be obligated to make any of the above-mentioned payments at any time while an event of default, or any event which with the lapse of time and/or demand provided for in the Conditional Sale Agreement

will constitute an event of default, shall be subsisting under the Conditional Sale Agreement.

In the event that the payments required to be made by the Assignee herein shall not be paid, the Assignee shall reassign to the Manufacturer, without recourse to the Assignee, all right, title and interest of the Assignee in and to the units of Equipment in the Group with respect to which such payment has not been made by the Assignee.

SECTION 6. The Assignee may assign all or any of its rights under the Conditional Sale Agreement, including the right to receive any payments due or to become due to it from the Company or the Guarantor 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 7. The Manufacturer hereby:

(a) represents and warrants to the Assignee, its successors and assigns, that the Conditional Sale Agreement was duly authorized and lawfully executed and delivered by it for a valid consideration, that (assuming due authorization, execution and delivery by the Company and the Guarantor) it is a valid and existing agreement binding upon the Manufacturer, the Company and the Guarantor, and that it is now in force without amendment thereto; and

(b) covenants and agrees that it will from time to time and at all times, at the request of the Assignee or its successors or assigns, make, execute and deliver all such further instruments of assignment, transfer and assurance and do such further acts and things as may be necessary and 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.

SECTION 8. The terms of this Assignment and all rights and obligations hereunder shall be governed by the laws of the Commonwealth of Pennsylvania.

SECTION 9. This Assignment may be executed in any number of counterparts, but the counterpart delivered to the Assignee shall be deemed to be the original counterpart. Although this Assignment is dated as of December 1, 1968, for convenience, 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 in their respective corporate names by officers or officials duly authorized, and their respective corporate seals to be affixed and duly attested, all as of the date first above written.

[CORPORATE SEAL]

APPROVED AS TO FORM RYDAL EQUIPMENT Co.,

by *T. H. Ramsey*
Vice President.

Attest:

Arnold
Secretary.

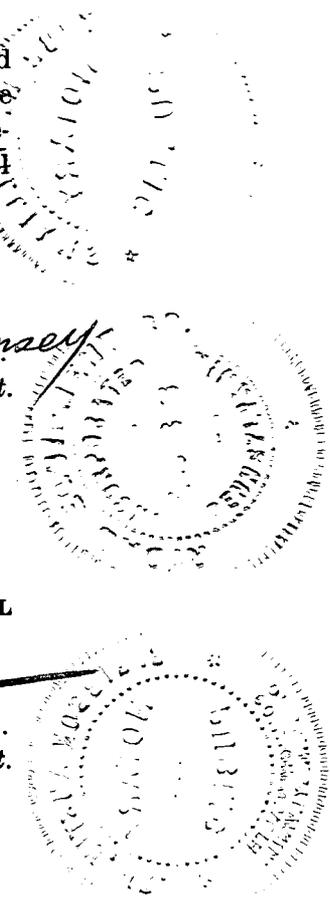
THE PHILADELPHIA NATIONAL BANK, as Agent,

[CORPORATE SEAL]

by *Rent*
Vice President.

Attest:

Jaske
Corporate Trust Officer.



COMMONWEALTH OF PENNSYLVANIA }
COUNTY OF PHILADELPHIA } ss.:

On this 10th day of February, 1969, before me personally appeared T. H. Ramsey, to me personally known, who, being by me duly sworn, says that he is a Vice President of RYDAL EQUIPMENT Co., 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.

[NOTARIAL SEAL]

Arthur Williams
Notary Public

My commission expires **Notary Public, Philadelphia, Philadelphia Co.**
My Commission Expires January 17, 1970

COMMONWEALTH OF PENNSYLVANIA }
COUNTY OF PHILADELPHIA } ss.:

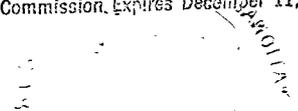
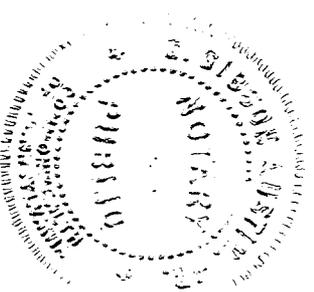
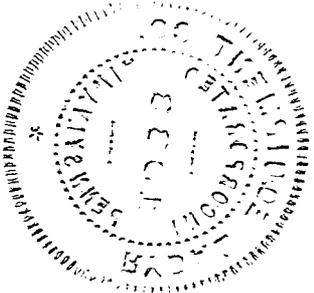
On this 17th day of February, 1969, before me personally appeared R. CUSTER, to me personally known, who, being by me duly sworn, say that he is a Vice President of THE PHILADELPHIA NATIONAL BANK, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that 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.

[NOTARIAL SEAL]

G. Gibson Austin, Jr.
Notary Public

My commission expires

G. GIBSON AUSTIN, JR.
Notary Public, Philadelphia, Philadelphia Co.
My Commission Expires December 11, 1972

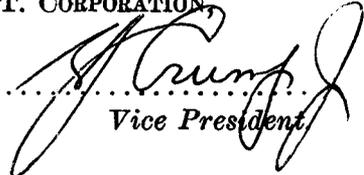


ACKNOWLEDGMENT OF NOTICE OF ASSIGNMENT

Receipt of a copy of, and due notice of, the assignment made by the foregoing Agreement and Assignment is hereby acknowledged as of December 1, 1968.

C. I. T. CORPORATION,

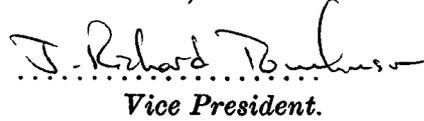
by


Vice President.

APPROVED
AS TO FORM

READING COMPANY,

by


Vice President.