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RECORDATION NO. .... Filed & Recorded

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OCT 6 1977-12 15 PM October 4, 1977

INTERSTATE COMMERCE COMMISSION

INTERSTATE COMMERCE COMMISSION

I.C.C.  
FEE OPERATION

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OCT 6 1977  
Date .....  
Fee \$ 50

ICC Washington, D. C.

Secretary of the  
Interstate Commerce Commission  
Twelfth Street and Constitution Avenue  
Washington, D.C. 20423

Dear Sir:

Enclosed please find three fully executed copies of each of the following documents:

1. a Conditional Sale Agreement, dated as of July 1, 1977, by and between James J. Callahan and Robert M. Haber, as Vendor, and Consolidated Rail Corporation pertaining to the conditional sale and purchase of miscellaneous items of roadway maintenance equipment; and
2. a related Agreement and Assignment, dated as of July 1, 1977, between James J. Callahan and Robert M. Haber, and The Fidelity Bank, as Agent for various banks.

Please file and record the enclosed documents pursuant to Section 20c of the Interstate Commerce Act.

The bearer of this letter will present an additional two counterparts of each of the two above-identified documents, and I would be grateful if the filing officer would arrange to have the appropriate filing stamp affixed to each of these two and return them to the bearer in order to evidence the filing of these documents.

Sincerely yours,

*James A. Hunter, Jr.*  
James A. Hunter, Jr.

JAH:kh

Enclosure

*Concluded Ingrid Olson*

RECORDATION NO. 9028-A Filed & Recorded

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INTERSTATE COMMERCE COMMISSION

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AGREEMENT AND ASSIGNMENT

Dated as of July 1, 1977

between

JAMES J. CALLAHAN

and

ROBERT M. HABER

as Vendor,

and

THE FIDELITY BANK,

as Agent

AGREEMENT AND ASSIGNMENT, dated as of July 1, 1977, between JAMES J. CALLAHAN and ROBERT M. HABER, individuals residing in Springfield, Pennsylvania and Paoli, Pennsylvania, respectively (hereinafter collectively called the "Equipment Suppliers"), and THE FIDELITY BANK, a Pennsylvania banking corporation, as Agent (the "Agent") under a certain Finance Agreement, of even date herewith (the "Finance Agreement"), among the Agent, Consolidated Rail Corporation, a Pennsylvania corporation (the "Railroad"), and certain banks named therein (hereinafter sometimes called the "Assignee").

WHEREAS, the Equipment Suppliers and the Railroad have entered into a Conditional Sale Agreement, dated as of the date hereof (hereinafter called the "Conditional Sale Agreement"), covering the sale and delivery, on the conditions therein set forth, by the Equipment Suppliers and the purchase by the Railroad of the railroad equipment described in Schedule 1 to the Conditional Sale Agreement (said equipment being hereinafter called the "Equipment"), which Equipment has been or will be manufactured under various purchase orders issued and contracts entered into by the Railroad (collectively, the "Purchase Orders") with various manufacturers and builders thereof (collectively, the "Builders"), which Purchase Orders have been assigned by the Railroad to the Equipment Suppliers, copies of all of which Purchase Orders and of the instruments of assignment whereby the same have been assigned by the Railroad to the Equipment Suppliers (collectively, the "Purchase Order Assignments") have heretofore been or shall hereafter be furnished to the Assignee by the Equipment Suppliers;

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 Equipment Suppliers, the receipt of which is hereby acknowledged, as well as of the mutual covenants herein contained:

SECTION 1. The Equipment Suppliers hereby assign, transfer and set over unto the Assignee, its successors and assigns:

(a) all the right, title and interest of the Equipment Suppliers in and to each unit of Equipment when and as delivered to and accepted by the Railroad, and when and as the amount required to be paid for such unit (other than amounts owing under supplemental invoices) is paid to the Equipment Suppliers or their designees by the Assignee pursuant to Section 4 hereof or by the Railroad or both pursuant to subparagraph (i) of paragraph (c) of Article 4 of the Conditional Sale Agreement;

(b) all of the right, title and interest of the Equipment Suppliers in and to the Conditional Sale Agreement (except the right to receive the payments specified in paragraph (c) of Article 3 thereof and in subparagraph (i) of paragraph (c) of Article 4 thereof and paragraph (f) of Article 15 thereof and reimbursements for taxes paid or incurred by the Equipment Suppliers as provided in Article 5 thereof and remedies pertaining to the foregoing exceptions, which remedies shall not, however, include the security interest of the Equipment Suppliers with respect to units of Equipment subsequent to delivery by the Equipment Suppliers of a bill of sale for such units against payment therefor pursuant to an initial invoice therefor as specified in Section 4 hereof), and in and to any and all amounts which may be or become due or owing by the Railroad to the Equipment Suppliers under the Conditional Sale Agreement in respect to 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 Railroad under the Conditional Sale Agreement, other than those hereinabove excluded;

(c) all the right, title and interest of the Equipment Suppliers in and to the Purchase Orders and the Purchase Order Assignments; and

(d) except as limited by paragraph (b) hereof, all the Equipment Suppliers' rights, powers, privileges and remedies under the Conditional Sale Agreement, the Purchase Orders and the Purchase Order Assignments; without any recourse against the Equipment Suppliers for or on account of the failure of the Railroad to make any of the payments provided for in, or otherwise to comply with, any of the provisions of the Conditional Sale Agreement or otherwise; provided, however, that this Assignment shall not subject the Assignee to, or transfer, or pass, or in any way affect or modify, the liability of the Equipment Suppliers or any Builder of any unit or units of the Equipment or any component incorporated therein to cause the construction and delivery of the Equipment in accordance with the Purchase Orders and the Conditional Sale Agreement or with respect to their obligations contained or referred to in Article 14 of the Conditional Sale Agreement, or relieve the Railroad from its obligations to the Equipment Suppliers contained or referred to in Articles

2, 3, 4, 5, 13, 14 and 15 of the Conditional Sale Agreement, it being understood and agreed that, notwithstanding this Assignment, or any subsequent assignment pursuant to the provisions of Article 15 of the Conditional Sale Agreement, all obligations of the Equipment Suppliers to the Railroad with respect to the Equipment shall be and remain enforceable by the Railroad, its successors and assigns, against and only against the Equipment Suppliers, subject, however, to Section 8 hereof. In furtherance of the foregoing assignment and transfer, the Equipment Suppliers hereby authorize and empower 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 Equipment Suppliers, to ask, demand, sue for, collect receive and enforce any and all sums to which the Assignee is or may become entitled under this Assignment and to ask, demand, sue for and enforce compliance by the Railroad with the terms and agreements on its part to be performed under the Conditional Sale Agreement, but at the expense and liability and for the sole benefit of the Assignee.

SECTION 2. The Equipment Suppliers agree that they shall cause the construction of the Equipment to be completed in full accordance with the Purchase Orders and the Conditional Sale Agreement and will cause the Equipment upon completion of construction thereof to be delivered to the Railroad in accordance with the provisions of the Conditional Sale Agreement; and that, notwithstanding this Assignment, they will perform and fully comply with each and every covenant and condition in the Conditional Sale Agreement set forth to be performed and complied with by the Equipment Suppliers. The Equipment Suppliers further agree that they will warrant to the Assignee and the Railroad that at the time of delivery of each unit of the Equipment under the Conditional Sale Agreement they had legal title to such unit and good and lawful right to sell such unit and that title to such unit was free of all claims, liens, security interests and other encumbrances (other than those created by the Conditional Sale Agreement and other than the rights of the Assignee under this Agreement); and the Equipment Suppliers further agree that they will defend the title to each unit of the Equipment against the demands of all persons whomsoever based on claims originating prior to the delivery of such unit by the Equipment Suppliers under the Conditional Sale Agreement; all subject, however, to the provisions of the Conditional Sale Agreement and the rights of the Railroad thereunder and to the provisions of Section 8 hereof. The Equipment Suppliers will cause all of the Equipment not to be delivered to the Railroad under the Conditional Sale Agreement until the filings and recordations referred to in Article 19 of the Conditional Sale Agreement have been effected (the Equipment Suppliers and their counsel being entitled to rely on advice from counsel for the Assignee that such filings and recordations have been effected).

SECTION 3. 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 Railroad thereunder, to its principals or to any other person. 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 4. The Assignee, on each Closing Date fixed as provided in Article 4 of the Conditional Sale Agreement with respect to a Group (as defined in said Article 4) of the Equipment, shall pay to or to the order of the Equipment Suppliers an amount equal to the portion of the Purchase Price of the Equipment as shown on the invoice or supplemental invoice therefor then being settled-for which, under the terms of said Article 4, is payable in installments, provided that there shall have been delivered to the Assignee as provided in Article 15 of the Conditional Sale Agreement, at least five (5) business days (as defined in said Article 4) prior to such Closing Date, the following documents in form and substance satisfactory to it and to its counsel hereinafter mentioned, in such number of counterparts as may be reasonably requested by said counsel, provided, however, that only the documents specified in subsections (c) and (g)(i) of this Section 4 must be delivered with respect to settlement for a supplemental invoice submitted with respect to Equipment previously settled for:

(a) a bill of sale from the Equipment Suppliers to the Assignee transferring to the Assignee all right, security title and interest of the Equipment Suppliers in the units of the Equipment in such Group, warranting to the Assignee and to the Railroad that at the time of delivery of such units under the Conditional Sale Agreement the Equipment Suppliers had legal title to such units and good and lawful right to sell such units and that such units were free of all claims, liens, security interests and other encumbrances (other than those created by the Conditional Sale Agreement and other than the rights of the Assignee under this Assignment), and covenanting to defend the title to such units against the demands of all persons whomsoever based on claims originating prior to the delivery of such units by such Equipment Suppliers under the Conditional Sale Agreement, provided that such bill of sale shall contain a provision substantially to the effect of Section 8 hereof;

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

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

(d) an opinion of the Vice President-Law or the Senior Tax and Finance Counsel of the Railroad, dated as of such Closing Date, to the effect that (i) the Railroad is a duly organized and existing corporation in good standing under the laws of its jurisdiction of incorporation and has the power and authority to own its properties and carry on its business as now conducted, (ii) the Conditional Sale Agreement and the Finance Agreement have each been duly authorized, executed and delivered by the Railroad and the Conditional Sale Agreement has been duly executed and delivered by the Equipment Suppliers, and the Acknowledgment of Notice and Agreement attached hereto (the "Acknowledgment and Agreement") has been duly authorized, executed and delivered by the Railroad, and each constitutes a legal, valid and binding instrument, enforceable in accordance with its terms, (iii) this Assignment has been duly executed and delivered by the Equipment Suppliers and, assuming due authorization, execution and delivery thereof by the Assignee, is a legal, valid and binding instrument, (iv) the Assignee is vested with all the rights, titles, interests, powers and privileges purported to be assigned to it by this Assignment, (v) the Assignee has a valid and perfected first security interest in the units of Equipment in such Group and such units, at the time of delivery thereof to the Railroad under the Conditional Sale Agreement, were free from all claims, liens, security interests and other encumbrances (other than those created by the Conditional Sale Agreement and other than the rights of the Assignee under this Assignment), (vi) no approval of the Interstate Commerce Commission, the United States Department of Transportation or any other governmental authority is necessary for the valid execution and delivery of the Conditional Sale Agreement, this Assignment or the Acknowledgment and Agreement, or if any such approval is necessary, it has been obtained, (vii) the security title and interest of the Assignee in each unit of Equipment for which the procurement of a certificate of title is required by applicable law have been duly noted on such certificate of title to the extent permitted by applicable law, the Conditional Sale Agreement and this Assignment have been duly filed and recorded with the Interstate Commerce Commission under Section 20c of the Interstate Commerce Act and Uniform Commercial Code financing statements with respect to the Equipment naming the Railroad as debtor, the Equipment Suppliers

as secured party and the Assignee as assignee have been filed in the offices of the Secretary of the Commonwealth of Pennsylvania, the Prothonotary of Philadelphia County, Pennsylvania, and all of the appropriate offices (specifying the office or offices in each case) in each of the states and the District of Columbia specified in Article 11 of the Conditional Sale Agreement, and such filings and recordation will protect and perfect the Assignee's interests in and to the Equipment and under the Conditional Sale Agreement, and no other filing, recording, deposit or publication, including without limitation any filing, notification or other action under the Federal Assignment of Claims Act, is necessary for the protection of the rights or perfection of the interests of the Assignee under the laws of the United States of America or any state of the United States of America or the District of Columbia, (viii) the Equipment Suppliers are adult individuals competent to execute and deliver the Conditional Sale Agreement and this Assignment and to perform all of their obligations thereunder and (x) the bill of sale referred to in subparagraph (a) of this Section 4 has been duly authorized, executed and delivered by the Equipment Suppliers and is valid and effective to transfer to the Assignee all right, title and interest in and to the units of Equipment in such Group, free from all claims, liens, security interests and other encumbrances of any nature whatsoever (other than those created by the Conditional Sale Agreement and other than the rights of the Assignee under this Assignment);

(e) an opinion of Messrs. Morgan, Lewis & Bockius, counsel for the Assignee, dated as of such Closing Date, to the effect that the Conditional Sale Agreement and this Assignment are in substantially acceptable legal form and the documents furnished on such Closing Date are substantially responsive to the requirements of this Section 4 and stating that such counsel have reviewed the opinion of counsel delivered pursuant to subsection (d) of this Section 4 and that, while such counsel have not conducted such independent examination of the facts and law as would enable them to render such opinion, nothing has come to the attention of such counsel in the course of their acting as such which would lead them to believe that such opinion is incorrect and that in the opinion of such counsel the Assignee is justified in relying upon such opinion furnished pursuant to such subsection (d);

(f) bills of sale from the respective Builders to the Equipment Suppliers, or mesne bills of sale from the respective Builders to the Railroad and from the Railroad to the Equipment Suppliers, or both, in all events transferring to the Equipment Suppliers all right, title and interest in the units of Equipment in such Group;

(g) a certificate of an officer of the Railroad, dated as of such Closing Date, to the effect that (i) no event of default, or event which with the giving of notice or demand or the lapse of time, or both, could constitute an event of default, under Article 16 of the Conditional Sale Agreement and no tax liens (including tax liens filed pursuant to Section 6323 of the Internal Revenue Code of 1954, as amended) have been filed and are currently in effect which could adversely affect the security interest of the Assignee in the Equipment;

(h) a receipt from the Equipment Suppliers for any payment (other than the payment being made by the Assignee pursuant to the first paragraph of this Section 4) required to be made on such Closing Date to such Equipment Suppliers with respect to the Equipment; and

(i) a certificate of title (with the security title or interest of the Assignee duly noted thereon if permitted by applicable law) for each item of Equipment preceded by an asterisk in Item 1 of Schedule 1 to the Conditional Sale Agreement for which the procurement of a certificate of title is required by applicable law.

In giving the opinions specified in subparagraph (d) and (e) of the first paragraph of this Section 4, counsel may qualify any opinion to the effect that any agreement or instrument is a legal, valid and binding instrument enforceable in accordance with its terms by a general reference to limitations as to enforceability imposed by bankruptcy, insolvency, reorganization, moratorium or other laws affecting the enforcement of creditors' rights generally and in giving the opinion specified in said paragraph (e), counsel may rely as to any matter governed by the law of any jurisdiction other than Pennsylvania or the United States on the opinion of counsel for the Railroad as to such matter.

The Assignee shall not be obligated to make payment at any time after the commencement of any proceedings specified in clause (c) or (d) of Article 16 of the Conditional Sale Agreement or if an event of default, or any event which with the giving of notice or demand or the lapse of time, or both, would constitute an event of default, shall have occurred and be continuing under the Conditional Sale Agreement. In the event that the Assignee shall not make payment for any Group of the Equipment, the Assignee shall reassign to the Equipment Suppliers, without recourse to the Assignee, all right, title and interest of the Assignee in and to the units of the Equipment with respect to which payment has not been made by the Assignee.

SECTION 5. The Equipment Suppliers jointly and severally:

(a) represent and warrant to the Assignee, its successors and assigns, that the Conditional Sale Agreement was lawfully executed and delivered by them for a valid consideration, that, assuming due authorization, execution and delivery by the Railroad, the Conditional Sale Agreement is, insofar as the Equipment Suppliers are concerned, a valid and subsisting agreement binding upon them and the Railroad in accordance with its terms and that it is now in force without amendment thereto;

(b) agree that they 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 or appropriate in the premises to give effect to the provisions hereinabove set forth and more perfectly to confirm the rights, title and interests hereby assigned and transferred to the Assignee or intended so to be; and

(c) agree that, upon request of the Assignee, its successors and assigns, they will, subsequent to payment by the Assignee to the Equipment Suppliers of the amounts required to be paid under Section 4 hereof, 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 Equipment Suppliers therein or in the Equipment.

SECTION 6. The terms of this Assignment and all rights and obligations hereunder shall be governed by the laws of the Commonwealth of Pennsylvania, provided, however, that the parties shall be entitled to all the rights conferred as provided in Article 23 of the Conditional Sale Agreement.

SECTION 7. The Assignee agrees to deliver an executed counterpart of this Assignment to the Railroad, which delivery shall constitute due notice of the assignment hereby made. Although this Assignment is dated for convenience as of the date first set forth above, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

SECTION 8. It is expressly understood and agreed by and between the parties hereto, anything herein to the contrary notwithstanding, that each and every representation, undertaking and agreement herein made on the part of the Equipment

Suppliers, including without limitation those made in Section 5 hereof, are each and every one of them made and intended not as personal representations, undertakings and agreements by the Equipment Suppliers, or either of them, or for the purpose or with the intention of binding them or either of them personally, but are made and intended for the purpose of binding only the right, title and interest of the Equipment Suppliers, and each of them, in, to and under the Equipment, and each and every unit thereof, the Conditional Sale Agreement, this Assignment, the Purchase Orders and the Purchase Order Assignments and that no personal liability or personal responsibility is assumed by or shall at any time be asserted or enforceable against the Equipment Suppliers, or either of them, for or on account of any representation, undertaking or agreement of them or either of them, whether expressed or implied, all such personal liability and personal responsibility, if any, being expressly waived and released by the Assignee and by all persons claiming by, through or under the Assignee or the Equipment Suppliers, or any of them, provided, however, that the Assignee and any person claiming by through or under the Assignee or the Equipment Suppliers, making claim hereunder, may look to the Equipment, the Conditional Sale Agreement, this Assignment, the Purchase Orders and the Purchase Order Assignments for satisfaction of all such claims. In no event shall recourse be had in respect of any obligation due under this Assignment, or referred to herein, against the personal estates of the Equipment Suppliers, or either of them, or against any incorporator, stockholder, director or officer, past, present or future, of the Railroad, whether by virtue of any enforcement of any assessment or penalty or otherwise, all of which liability, whether at common law, in equity, by any constitutional provision, statute or otherwise, of such Equipment Suppliers and such incorporators, stockholders, directors or officers of the Railroad is hereby forever released as a condition of and as consideration for the execution and delivery of this Assignment. In order to facilitate the consummation of the transactions contemplated by this Assignment, each of the Equipment Suppliers hereby irrevocably appoints the other its true and lawful attorney-in-fact with full power and authority to execute, acknowledge and deliver, in the name and on behalf of the appointing Equipment Supplier or otherwise, any instrument or document necessary or advisable in order to perform the obligations of the Equipment Suppliers under and to consummate the transactions contemplated by this Assignment, and each of the Equipment Suppliers agrees that the foregoing appointments and authorizations, being powers coupled with interests, shall be irrevocable throughout the term of this Assignment and until all rights and liabilities of the respective parties hereunder have been fully discharged.

SECTION 9. This Assignment may be executed in any number of counterparts, all of which together shall constitute a single instrument.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed in their respective names, by duly authorized persons in the case of the Assignee, and their seals to be hereunto affixed, and duly attested in the case of the Assignee, all as of the date first above written.

In the presence of:

*Dominic C. Cottrell*

*H. William Brady*

*James J. Callahan*  
James J. Callahan

*Robert M. Haber*  
Robert M. Haber

Attest:

*J. E. Grooms*  
~~Secretary~~  
Assistant Treasurer  
*Secretary*

THE FIDELITY BANK, as Agent

By *J. J. ...*  
Vice President



## ACKNOWLEDGMENT OF NOTICE AND AGREEMENT

CONSOLIDATED RAIL CORPORATION, a Pennsylvania corporation (the "Railroad"), hereby acknowledges due notice of and consents to the assignment made by the foregoing Agreement and Assignment (the "Assignment") as of July 1, 1977.

To induce The Fidelity Bank, a Pennsylvania banking corporation, as Agent (the "Agent"), to accept the within Agreement and Assignment (the "Assignment") and make the payments referred to in the first paragraph of Section 4 thereof, the Railroad hereby warrants and guarantees to the Agent, for the benefit of such Agent and each of its principals, the prompt, full and complete performance by the Equipment Suppliers of each and every representation, undertaking and agreement of the Equipment Suppliers set forth in the foregoing Assignment or in the Conditional Sale Agreement referred to therein, or in any bill of sale or other document delivered by the Equipment Suppliers or either of them pursuant to the Assignment or the Conditional Sale Agreement, or either of them, including without limitation those set forth in Sections 2 and 5 of said Assignment. As a further inducement to the Agent the Railroad hereby warrants and guarantees to the Agent, for the benefit of such Agent and each of its principals, that the Equipment Suppliers will have good, lawful and exclusive title to each unit of the Equipment referred to in the Assignment, at the time of the delivery of such unit to the Railroad under the Conditional Sale Agreement and of the bill of sale in respect thereof referred to in paragraph (a) of Section 4 of the Assignment, free of all claims, liens, security interests and other encumbrances (other than those created by the Conditional Sale Agreement and other than the rights of the Assignee under the Assignment) and that upon the delivery of such bill of sale the Assignee will be duly vested with the same good, lawful and exclusive title, free of all claims, liens, security interests and other encumbrances (other than as aforesaid), and the Railroad hereby covenants to warrant and defend the title to such units in the Assignee against the claims and demands of all persons whomsoever, subject only to the rights of the Railroad under the Conditional Sale Agreement.

The Railroad undertakes all of the foregoing warranties, guarantees and covenants notwithstanding the limitations on the personal liability of and recourse against the Equipment Suppliers set forth in Section 8 of the Assignment and Article 24 of the Conditional Sale Agreement, the Railroad hereby acknowledging and agreeing that such limitations do not apply to any of the undertakings of the Railroad hereunder.

All of the warranties, guarantees and covenants of the Railroad contained in this Acknowledgment and Agreement shall bind the Railroad and its successors and assigns and inure to the benefit of the Agent, its principals, and their respective successors and assigns and shall continue notwithstanding the death or incapacity of either or both of the Equipment Suppliers. Terms used herein, defined in the Assignment and not otherwise defined herein shall have the respective meanings assigned to them in the Assignment.

CONSOLIDATED RAIL CORPORATION

By



Vice President