

C.I.T. Corporation

135 West 50th Street
New York, New York 10020

4-066A121

14285

RECORDATION NO. Filed 1425

MAR 6 1984 - 3 20 PM

INTERSTATE COMMERCE COMMISSION March 5, 1984

No.

Date MAR 6 1984

Fee \$ 50.00

ICC Washington, D.C.

CIT

Secretary of the
Interstate Commerce Commission
Washington, D.C. 20423

Re: Recording of Conditional Sale Agreement dated
as of January 15, 1984 between C.I.T. Corporation
and Consolidated Rail Corporation

Dear Sir:

We submit for filing and recording, under 49 U.S.C. Section 11303 (a) and the regulations promulgated thereunder, the enclosed original Conditional Sale Agreement and two exact copies dated as of January 15, 1984.

The parties to this transaction are as follows:

C.I.T. Corporation - Seller
135 West 50th Street
New York, New York 10020
Attention: Leo Sheer

Consolidated Rail Corporation - Buyer
Room 1310
Six Penn Center Plaza
Philadelphia, Pennsylvania 19104
Attention: Director, Equipment Financing

This agreement covers the railroad equipment set forth in Schedule A attached hereto.

Enclosed is a check for \$50.00 to cover the required filing fee.

Once the document has been filed, please return to bearer the stamped counterparts of the Conditional Sale Agreement, the fee receipt, the letter from the ICC acknowledging filing and the two extra copies of this letter of transmittal.

Sincerely,



Vice President

Handwritten signatures and notes on the left margin:
Leo Sheer
C. D. ...

RECEIVED
MAR 6 3 12 PM '84
I.C.C.
FEE OPERATION BR.

SCHEDULE A

SCHEDULE OF RAILROAD EQUIPMENT attached to and part of the Conditional Sale Agreement dated as of January 15, 1984 between C.I.T. Corporation and Consolidated Rail Corporation.

28 GP-40 EMD Locomotives

Present
Unit No.

3171

3179

3188

3189

3191

3192

3193

3194

3195

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> 3182 JW QR

JW QR

Interstate Commerce Commission
Washington, D.C. 20423

OFFICE OF THE SECRETARY

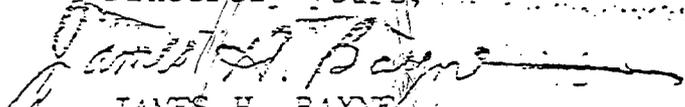
3/6/84

C.I.T. Corporation
135 West 50th Street
New York, N.Y. 10020

Dear **Sir:**

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on **3/6/84** at **3:20pm** and assigned re-
recording number (s). **14285**

Sincerely yours,


JAMES H. BAYNE

Secretary

Enclosure(s)

SE-30
(7/79)

MAR 6 1984 - 3 20 PM

INTERSTATE COMMERCE COMMISSION

CERTIFICATE OF COMPARISON

DISTRICT OF COLUMBIA)
) SS.:
)

I, Allen H. Harrison, Jr., a member of the Bar of the District of Columbia and the Bar of the Commonwealth of Virginia, do hereby certify that I have compared the copy of the attached Conditional Sale Agreement with an executed original thereof, and that it is a true and correct copy in all respects.

Allen H. Harrison Jr.

Subscribed and sworn to before me this 6th day of March, 1984.

Robert W. Carter
Notary Public, D.C.

My commission expires:

May 31, 1984

14285
RECORDATION NO. _____ FILED 1425

CONDITIONAL SALE AGREEMENT

MAR 6 1984 3 20 PM

INTERSTATE COMMERCE COMMISSION

This Conditional Sale Agreement dated as of January 15, 1984, is between C.I.T. Corporation ("Seller") and Consolidated Rail Corporation, a Pennsylvania corporation ("Buyer").

1. The Seller has offered the Buyer a choice of buying the Railroad Equipment described in Schedule A attached hereto for a stated cash purchase price, or of buying such property for a contract time price which permits the Buyer to purchase it now but pay in installments over an extended period of time. The Seller hereby sells and the Buyer hereby purchases the property from the Seller and elects to pay the contract time price set forth in Paragraph 3 unless Buyer exercises its prepayment rights as set forth in Paragraph 3.

2. Buyer is in possession of the Railroad Equipment pursuant to a Lease of Railroad Equipment (the "Lease") dated as of November 1, 1968 between Seller as Lessor and Penn Central Company as Lessee. The Buyer has succeeded to the rights of the Penn Central Company and is the Lessee under the Lease. Seller has offered to sell the Railroad Equipment to Buyer pursuant to this Conditional Sale Agreement. The original Lease was recorded with the Interstate Commerce Commission on November 12, 1968 at 8:45 A.M. and bears Recordation No. 5080.

3. The stated cash purchase price is \$80,000 per unit for a total cash purchase price of \$2,240,000 for 28 units of

the Railroad Equipment. The Seller has agreed to finance this purchase price at the rate of 12.5% per annum for 5 years. Buyer promises to pay Seller 20 consecutive payments of \$5,439.59 per unit per quarter or \$152,308.52 for 28 units per quarter, in arrears, each commencing on April 15, 1984 for a total contract time price of \$3,046,170.40 for 28 units of the Railroad Equipment. The Buyer has the option to prepay its indebtedness for any unit of the Railroad Equipment at any time without premium as provided for in Schedule B attached hereto. Upon paying the prepayment amount set forth in Schedule B Buyer shall have no further obligation to Seller as to such unit of the Railroad Equipment. Seller shall upon receipt of the final payment due under this Conditional Sale Agreement provide Buyer with, and execute, such documents as Buyer may reasonably request to reflect such final payment.

4. Title to the Railroad Equipment (including title for the purposes of any tax credits or depreciation available under Federal and/or state tax laws) shall vest in Buyer upon execution of this Conditional Sale Agreement.

5. In addition to any remedies provided in this Conditional Sale Agreement, Seller shall have all the rights provided to a secured party under Section 1168 of Title 11 of the United States Code and any successor provisions thereto.

6. As security for its obligation to pay the contract time price and its other obligations under this Conditional Sale Agreement, the Buyer hereby grants to the Seller a security interest in the Railroad Equipment described in Schedule A attached hereto which it is now buying, together with all attachments and additions, replacements and substitutions pursuant to this Conditional Sale Agreement, and proceeds, including amounts payable under any insurance policy required by Paragraph 13(b) of this Conditional Sale Agreement, all hereinafter referred to as "collateral."

7. Any installment not paid when due shall, at the option of Seller, bear late charges thereon calculated at the highest rate permitted by relevant laws, but in no event more than 1½% per month.

8. Seller is selling the Railroad Equipment on an "as is, where is" basis; the Seller makes no warranties with respect to the Railroad Equipment except that the Seller declares that it has full power and authority to convey good title to the Railroad Equipment, free and clear of all liens, except such as may have been created by the Buyer as Sublessee or by its predecessors in interest under the Lease and that so long as Buyer is not in default under this Conditional Sale Agreement neither Seller nor any assignee or successor of Seller shall disturb Buyer's use and quiet enjoyment of the Railroad Equipment. Buyer will settle all claims, defenses, setoffs and counterclaims it may have of any nature against the

Railroad Equipment manufacturer, including but not limited to defects in the Railroad Equipment and the like, directly with the Railroad Equipment manufacturer and not set up any such claim, defense, setoff or counterclaim against Seller or its assigns.

9. Buyer acknowledges that: Seller is in no way related to or connected with the Railroad Equipment manufacturer; Seller has no knowledge or information as to the condition or suitability for Buyer's purpose of the collateral; and Seller's decision to sell this Railroad Equipment is made in reliance on Buyer's warranties, agreements and covenants herein, including Buyer's express agreement not to assert against Seller any claims, defenses, setoffs or counterclaims it may now or in the future have against the Railroad Equipment manufacturer.

10. Buyer warrants and represents: (a) that Buyer is justly indebted to Seller for the full amount of the foregoing indebtedness; (b) that except for the security interest granted hereby the collateral is free from and will be kept free from all liens, claims, security interests and encumbrances not permitted by Paragraph 11 of this Conditional Sale Agreement; (c) that all information supplied and statements made by Buyer in any financial, credit or accounting statement, or application for credit prior to, contemporan-

eously with or subsequent to the execution of this agreement with respect to this transaction are and shall be true, correct, valid and genuine; (d) Buyer has full authority to enter into this agreement and in so doing it is not violating any law or regulation or agreement with third parties, and it has taken all such action as may be necessary or appropriate to make this agreement binding upon it.

11. Buyer agrees: (a) to defend at Buyer's own cost any action, proceeding or claim affecting the collateral; (b) to pay reasonable attorneys' fees and other expenses incurred by Seller in enforcing its rights after Buyer's default; (c) to pay promptly all taxes, assessments, license fees and other public or private charges when levied or assessed against the collateral or this Conditional Sale Agreement not contested by Buyer in good faith other than taxes based on the net income of Seller, value added taxes in lieu of such net income taxes or Seller's corporate excise, franchise, property, FICA, FUTA or their equivalent taxes. (Seller will not invoice Buyer for taxes the liability for which Buyer is exempt under the Northeast Rail Service Act of 1981 or any other provision of law. Buyer shall so advise Seller in writing of such exemption.); (d) to do everything necessary or expedient to preserve or perfect the security interest of Seller; (e) that it will not misuse, fail to keep in good repair (ordinary wear and tear excepted), secrete, or without the prior written consent of Seller, and notwithstanding

Seller's claim to proceeds, sell, rent, lend, encumber or transfer any of the collateral, except as provided in Sub-paragraphs (g) and (h) of this Paragraph 11; (f) that Seller may at Seller's risk enter upon Buyer's premises or wherever the collateral may be located at any reasonable time and upon reasonable notice to inspect the collateral at Seller's expense; (g) notwithstanding any provision to the contrary Buyer may, without the consent of Seller, lease or permit the use of the Railroad Equipment or any units thereof (such lease or use to be subject to the rights and remedies of the Seller hereunder) to or by a lessee or user incorporated in the United States of America (or any state thereof or the District of Columbia), upon lines of railroad owned or operated by the Buyer or such lessee or user or by a railroad company or companies incorporated in the United States of America (or any state thereof or the District of Columbia), or over which the Buyer, such lessee, such user, or such railroad company or companies have trackage rights or railroad of connecting and other carriers in the usual interchange of traffic or in through or non-through service, but only upon and subject to all the terms and conditions of this Conditional Sale Agreement; provided, however, that the Seller's consent, not to be unreasonably withheld must be obtained for any lease that is for a term longer than six months or is renewable for a term more than six months; provided, further, however, that the Buyer shall not lease or permit the sublease

or use of any unit of the Railroad Equipment for service involving operation or maintenance outside the United States of America except that occasional service in Canada shall be permitted so long as such service in Canada is de minimis and does not involve regular operation and maintenance outside the United States of America; and (h) notwithstanding any provision to the contrary Buyer may enter into an agreement with any third party or parties by which tax title to the Railroad Equipment or any unit thereof is transferred to said third party or parties through a sale, lease, transfer or other encumbrance of the Railroad Equipment or any unit thereof for tax purposes which meets all requirements of Section 168(f)(8) of the Internal Revenue Code of 1954, as it now exists or may hereafter be amended, and Seller hereby consents to such agreement and agrees to execute such consent forms as may reasonably be required to effectuate such agreement; however, notwithstanding anything contained herein to the contrary any sale for tax purposes must be in a format as not to prejudice Seller's first lien position hereunder.

12. In the event that any unit of the Railroad Equipment during the term of this Conditional Sale Agreement shall become lost; stolen; destroyed; irreparably damaged; permanently rendered unfit for use; or, in the reasonable opinion of the Buyer, worn out or damaged beyond the economic limit of repair, from any cause whatsoever; or taken or

requisitioned by condemnation or otherwise by the United States Government for a period which shall exceed the then remaining term of this Conditional Sale Agreement, or by any other government or governmental entity resulting in the loss of possession by the Buyer for a period of 60 consecutive days (such occurrences being hereinafter called "Casualty Occurrences"), Buyer shall so notify Seller. On the payment date next following the date of such Event of Loss, Buyer shall pay to Seller the Casualty Value of such unit of Railroad Equipment, determined as of such payment date, together with any unpaid amount due on or prior to such date, whereupon Buyer's obligation to pay further amounts for such unit of the Railroad Equipment shall cease, but Buyer's obligation to pay for all other units of the Railroad Equipment shall remain unchanged. The Casualty Value shall be an amount determined on the casualty schedule attached hereto as Schedule B. Notwithstanding any provisions of this Paragraph 12 to the contrary, Buyer may elect at its sole discretion to provide replacement collateral consisting of railroad equipment of the same age, type and condition as the Railroad Equipment or such other railroad equipment as is acceptable to Seller (such acceptance not to be unreasonably withheld) for any unit of the Railroad Equipment which has suffered a Casualty Occurrence (such replacement collateral to be documented as may be reasonably required by Seller) in which case Buyer's obligation to pay further amounts due under Paragraph

3 of this Conditional Sale Agreement as to such unit of the Railroad Equipment shall continue.

13. (a) Subject to the limitations set forth in Paragraph 12 of this Conditional Sale Agreement, all risk of loss of, damage to or destruction of the collateral shall at all times be on Buyer except for loss, damage or destruction resulting from a negligent act or omission of Seller, its officers, employees, agents, representatives, assignees, and/or successors.

(b) It is understood and agreed that Buyer will maintain a program of self insurance or risk assumption, whereby, Buyer, at its sole cost and expense, provides for the loss or theft of or damage to the Railroad Equipment for the Casualty Value thereof as specified in Schedule B attached hereto. Buyer shall ^{insure or self-insure} provide (a) ~~insurance~~ against loss, theft, and destruction or damage of the Equipment, and (b) ~~comprehensive public liability insurance~~ against claims for personal injuries, death and property damage in no event less comprehensive in amounts and against risk customarily insured against by Buyer in respect of similar equipment owned or leased by it and as is usually carried by Class I railroads. Buyer shall pay applicable premiums for insurance. Buyer shall have the right to insure the Railroad Equipment for its own account, for the amount by which its fair market value exceeds the coverage required hereunder.

JW [Signature]

JW [Signature]

(c) All insurance policies required hereunder shall (i) be issued by insurance carriers of recognized responsibility, (ii) cover the interests of Buyer and Seller and protect Buyer and Seller in respect of risks arising out of the condition, maintenance, use, ownership and operation of the Railroad Equipment, (iii) provide that the insurance carrier give at least 30 days' prior notice in the event of cancellation or material alteration in coverage, (iv) provide, as to such physical damage insurance, that the losses, if any, shall be payable to a secured party under a standard mortgage loss payable clause, and (vi) not require co-insurance.

(d) The proceeds of any physical damage insurance received by Seller or any assignee of Seller shall be paid to Buyer: (i) in the case of a Casualty Occurrence with respect to any unit of the Railroad Equipment upon payment by Buyer of the Casualty Value of such unit of the Railroad Equipment, or (ii) upon the loss, damage or destruction of any unit of the Railroad Equipment which does not constitute a Casualty Occurrence, upon the receipt from Buyer of a certificate to the effect that such unit of the Railroad Equipment has been repaired, restored or replaced, as the case may be (which certificate shall be accompanied by satisfactory evidence of such repair, restoration or replacement), provided that so long as any default by Buyer or Event of

Default shall be continuing hereunder, Seller shall be entitled to apply such proceeds against Buyer's liability hereunder. Buyer shall furnish Seller with certificates or other evidence of compliance with this Paragraph 13 as may reasonably be requested.

14. A very important element of this Conditional Sale Agreement is that Buyer make all its payments promptly as agreed upon. Also essential is that the collateral continue to be in good condition (ordinary wear and tear excepted) so as to provide adequate security for the indebtedness. The following are the Events of Default under this agreement which will allow Seller to take such action under this Paragraph and under Paragraph 15 as it deems necessary:

(a) Any of Buyer's obligations to Seller under this Conditional Sale Agreement is not paid within ten business days after such payment date;

(b) Buyer breaches any warranty or provision hereof, or of any other instrument or agreement delivered by Buyer to Seller in connection with this transaction;

(c) Buyer ceases to do business as a going concern;

(d) It is determined that Buyer has given Seller false information of a material nature regarding its financial condition;

(e) Any proceeding shall be commenced by or against Buyer for any relief which includes, or might

result in, any modification of the obligations of Buyer hereunder, under any bankruptcy or insolvency laws, or laws relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, compositions or extensions (other than laws which do not permit any readjustments of the obligations of Buyer hereunder), and, unless such proceeding shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of Buyer under this Conditional Sale Agreement shall not have been and shall not continue to have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed (whether or not subject to ratification) for Buyer or for the property of Buyer in connection with any such proceedings in such manner that such obligations shall have the same status as expenses of administration and obligations incurred by such a trustee or trustees or receiver or receivers, within thirty (30) days after such appointment, if any, or sixty (60) days after such proceedings shall have been commenced, whichever shall be later.

If Buyer shall be in default hereunder, all amounts then owing by Buyer to Seller under this Conditional Sale

Agreement shall, if Seller shall so elect, become immediately due and payable. This acceleration of all indebtedness, if elected by Seller, shall be subject to all applicable laws, including laws as to rebates and refunds of unearned charges.

15. So long as any obligations are owed by Buyer to Seller under this Conditional Sale Agreement, Seller shall have all the rights and remedies provided by this Conditional Sale Agreement and provided a secured party under applicable law. After default by Buyer, Seller's rights and remedies include but are not limited to a number of choices. Buyer acknowledges that if it defaults Seller is justly entitled to do whatever the law allows to avoid loss to itself and also to obtain for itself the benefit of the bargain under this Conditional Sale Agreement. Consequently, Buyer agrees that upon Buyer's default Seller, among its other rights and remedies, may by itself or its agent, upon notice to Buyer, enter the premises or upon the land where the collateral is located and without removing the collateral render any Railroad Equipment which is part of the collateral unusable and/or take possession of the collateral, provided such self-help is done without any breach of the peace. In order to afford itself these and related remedies, Seller must be able to enter the premises or land in or upon which the collateral is located. Buyer, therefore agrees that upon

Buyer's default Seller by itself or its agent, may upon notice to Buyer enter at Seller's risk, into any premises or upon any land (including access roads and rights of way) owned, leased or otherwise under the actual control of Buyer or any agent of Buyer where the collateral may be or where Seller believes the collateral may be, and using reasonable force with respect to the collateral and any property connected to the collateral, disassemble, render unusable, disconnect and separate all collateral from any other property and/or repossess and remove all or any item of the collateral. Buyer will not hinder or delay Seller or its agent in any way. Seller may require Buyer to assemble the collateral and return it to Seller at a place on the railroad lines of Buyer to be designated by Seller which is reasonably convenient to both parties. The security interest, granted hereby shall continue effective irrespective of any retaking and redelivery of the collateral to Buyer until all amounts secured thereby are fully paid in money.

Unless Buyer otherwise agrees in writing after default, Seller will give Buyer reasonable notice of the time and place of any public sale of the collateral or reasonable notice of the time after which any private sale or other intended disposition thereof is to be made. Unless otherwise provided by law, the requirement of reasonable notice shall

be met if such notice is mailed by registered mail, postage prepaid, to the address of Buyer shown herein at least fifteen business days before the time of the sale or disposition. Expenses of retaking, holding, preparing for sale, selling and the like shall include reasonable attorneys' fees and other reasonable legal expenses. Buyer understands that Seller's rights are cumulative and not alternative and that Buyer will remain fully liable for any deficiency remaining after disposition of the collateral.

16. Any waiver by either party in a particular instance or of a particular default shall not be a waiver of other defaults or the same kind of default at another time. No modification or change in this Conditional Sale Agreement shall be binding against either party unless in writing and signed by the party against whom such modification or change is sought to be enforced.

17. The nondiscrimination clauses attached hereto as Appendix A are incorporated herein by reference and form a part hereof.

18. If it becomes necessary for Seller's officers, employees, representatives, agents, assignees and/or successors to enter upon the premises or property of Buyer or any third party in connection with this Conditional Sale Agreement, Seller shall take all necessary and proper precaution against

the occurrence of any accident or injury (including death) to any such person or property during the presence of such individuals on such premises or property and Seller shall be responsible for, and shall indemnify, defend and save harmless Buyer from any and all costs, damages, liabilities, expenses (including attorneys' fees) and/or penalties arising out of, or in connection with, the presence of such individuals on such premises or property, whether caused in whole, or in part by the fault, failure or negligence (other than gross negligence or willful misconduct) of Buyer, its officers, employees, agents, representatives, assignees and/or successors, and inherent defect in the Railroad Equipment or any other cause whatsoever.

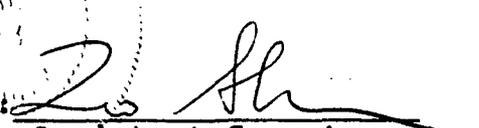
19. Seller represents that none of its directors, managers or purchasing or selling officers is a director, president, manager or purchasing officer or agent of Buyer or has a substantial interest in Buyer.

20. Any provisions hereof contrary to, prohibited by, or invalid under applicable laws or regulations shall be inapplicable and deemed omitted herefrom, but shall not invalidate the remaining provisions hereof. Buyer acknowledges receipt of a true copy and waives acceptance hereof.

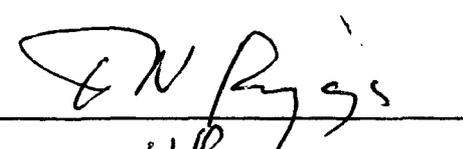
21. The address of the Seller is 135 West 50th Street New York, New York 10022, Attention: N. Zdanow, Executive

Vice President. The address of the Buyer is Room 1310, Six Penn Center Plaza, Philadelphia, Pennsylvania 19104, Attention: Director, Equipment Financing.

22. Buyer and Seller agree that this Conditional Sale Agreement and the rights of the parties hereunder shall be interpreted under the laws of the Commonwealth of Pennsylvania.

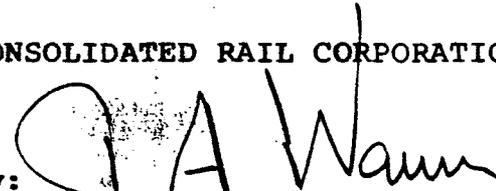
Attest: 
Assistant Secretary

C.I.T. CORPORATION

By: 
Title: VP

Attest: 
Assistant Secretary

CONSOLIDATED RAIL CORPORATION

By: 
Title: ASSISTANT TREASURER-FINANCING

CONSOLIDATED RAIL CORPORATION
SUPPLEMENT TO TERMS & CONDITIONS ON THE REVERSE SIDE OF THIS ORDER
APPENDIX I NONDISCRIMINATION CLAUSES

23. Conrail, as a recipient of federal financial assistance under 49 CFR Part 23, is required to include the following statements in all Agreements between it and any Contractor/Seller:
- (A) Policy. It is the policy of the Department of Transportation that minority business enterprises (MBEs), as defined in 49 CFR Part 23, shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with federal funds under this Agreement. Consequently, the MBE requirements of 49 CFR Part 23 apply to this Agreement.
 - (B) MBE Obligation. The Contractor/Seller agrees to ensure that MBEs, as defined in 49 CFR Part 23, have the maximum opportunity to participate in the performance of contracts and sub-contracts financed in whole or in part with federal funds provided under this Agreement. In this regard, Contractor/Seller shall take all necessary and reasonable steps in accordance with 49 CFR Part 23 to ensure that minority business enterprises have the maximum opportunity to compete for and perform contracts. Contractor/Seller shall not discriminate on the basis of race, color, national origin or sex in the award and in the performance of DOT-assisted contracts.
 - (C) Breach of MBE Provisions. Failure on the part of Contractor/Seller to carry out the requirements set forth in Sections (A) and (B) above shall constitute a breach of this Agreement and, after notification of the Department of Transportation, may result in termination of this Agreement by Conrail or such remedy as Conrail deems appropriate.
24. Conrail is required by federal law to include the following non-discrimination statement in Agreements between it and any Contractor/Seller:
- (A) Nondiscrimination Statement. Pursuant to the authority set forth in 41 CFR 60-1.4(d), 41 CFR 60-741.22 and 41 CFR 60-250.22, the clauses and regulations set forth in 41 CFR 60-1.4 (Equal Opportunity Clause), 41 CFR 60-250.4 (Affirmative Action Clause for Disabled and Vietnam Era Veterans) and 41 CFR 60-741.4 (Affirmative Action Clause for Handicapped Workers) are incorporated herein by reference. These incorporated sections require that the Contractor/Seller during the performance of this Agreement, agrees not to discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin, because he or she is a disabled veteran or veteran of the Vietnam Era, or because of physical or mental handicap. This description is intended as a summation of the regulations only, and the applicable regulations should be referred to for a fuller understanding of the obligations set forth therein.

CONSOLIDATED RAIL CORPORATION

Supplement to terms and conditions on the reverse side of this order.

APPENDIX I NONDISCRIMINATION CLAUSES (Services)

1. DEFINITIONS

As used in this appendix:

- (a) "Act" means the Railroad Revitalization and Regulatory Reform Act of 1976 (Pub. L. No. 94-210).
- (b) "Administrator" means the Federal Railroad Administrator or his delegate.
- (c) "Affirmative action program" means the program described in Sections 265.9, 265.11, 265.12, and 265.15 of 49 CFR part 265.
- (d) "Agency" means the Federal Railroad Administration.
- (e) "Contract" means a contract between Consolidated Rail Corporation ("Conrail") and a Contractor in connection with a project, program or activity of Conrail funded in whole or in part directly or indirectly from financial assistance under the Rail Act.
- (f) "Contractor" means a prime contractor or a subcontractor who will be paid in whole or in part directly or indirectly from financial assistance under the Rail Act.
- (g) "Minority" means women, Black, Hispanic Americans, American Indians, American Eskimos, American Orientals and American Alutians.
- (h) "Rail Act" means the Act and the provisions of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 701 et seq.) and the Rail Passenger Service Act (45 U.S.C. 501 et seq.) amended by The Act.

2. As a condition to the award of the Contract, Contractor hereby agrees to observe and comply with the following:

- (i) No person in the United States shall on the ground of race, color, national origin or sex be excluded from participation in, or denied the benefits of, or be subjected to discrimination under, any Contract.
3. A contractor under any Contract to which these clauses apply shall not, directly or through contractual or other arrangements, on the ground of race, color, national origin or sex:
- (A) Deny a person any service, financial aid, or other benefit provided under such Contract.
 - (B) Provide any service, financial aid, or other benefit which is different, or is provided in a different manner, from that provided to others under such contract.
 - (C) Subject a person to segregation or separate treatment in any matter related to his receipt of any service, financial aid or other benefit under such Contract.
 - (D) Restrict a person in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any service, financial aid or other benefit under such contract, or
 - (E) Deny a person an opportunity to participate in such Contract through the provision of services or otherwise afford him an opportunity to do so which is different from that afforded others under such Contract.
4. A Contractor, in determining the types of services, financial aid, or other benefits, or facilities which will be provided under any such Contract or the class of persons to whom or the situations in which such services, financial aid, other benefits or facilities will be provided under any such Contract, or the class of persons to be afforded an opportunity to participate in any such Contract, shall not directly or through contractual or other arrangements, utilize criteria or methods of administration which have the effect of subjecting persons to discrimination because of their race, color, national origin, or sex, or have the effect of defeating or substantially impairing accomplishment of the objectives of the Contract with respect to individuals of a particular race, color, national origin or sex.
5. In determining the site or location of facilities, a Contractor shall not make selections with the purpose or effect of excluding persons from, denying them the benefits of, or subjecting them to discrimination under any Contract to which these clauses apply on the grounds of race, color, national origin or sex, or with the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of these clauses.
6. The Contractor shall not discriminate against any employee or applicant for employment because of race, color, national origin or sex. Except as otherwise required by the regulations or orders of the Administrator, the Contractor shall take affirmative action to insure that applicants for employment are employed, and the employees are treated during employment, without regard to their race, color, national origin or sex. Such action shall include, but not be limited to the following: employment, promotion, demotion, transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Agency's representative setting forth the provisions of these nondiscrimination clauses. The contractor understands and agrees that it shall not be an excuse for the Contractor's failure to provide affirmative action that the labor organizations with which the Contractor has a collective bargaining agreement failed or refused to admit or qualify minorities for admission to the union, or that the provisions of such agreements otherwise prevent Contractor from implementing its affirmative action program.
7. The Contractor shall not discriminate against any business organization in the award of any subcontract because of race, color, national origin or sex of its employees, managers or owners. Except as otherwise required by the regulations or orders of the Administrator, the Contractor shall take affirmative action to insure that business organizations are permitted to compete and are considered for awards of subcontracts without regard to race, color, national origin or sex.
8. As used in these clauses, the services, financial aid, or other benefits provided under a Contract under the Rail Act include any service, financial aid, or other benefit provided in or through a facility funded through financial assistance provided under the Rail Act.
9. The enumeration of specific forms of prohibited discrimination does not limit the generality of the prohibition in paragraph (2) (i) of this appendix.

- 10. These clauses do not prohibit the consideration of race, color, national origin or sex if the purpose and effect are to remove or overcome the consequences of practices or impediments which have restricted the availability of, or participation in Contractor's operations or activities on the grounds of race, color, national origin or sex. Where prior discriminatory or other practices or usage tends, on the grounds of race, color, national origin or sex to exclude individuals or businesses from participation in, to deny them the benefits of, or to subject them to discrimination under any Contract to which these clauses apply, the Contractor must take affirmative action to remove or overcome the effects of the prior discriminatory practice or usage. Even in the absence of prior discriminatory practice or usage to which 49 CFR part 265 applies, the Contractor is expected to take affirmative action to insure that no person is excluded from participation in or denied the benefits of the Contract on the grounds of race, color, national origin or sex, and that minorities and minority businesses are afforded a reasonable opportunity to participate in employment and procurement opportunities that will result from financial assistance provided under the Rail Act.
- 11. The Contractor agrees to take such actions as are necessary to monitor its activities and those of its subcontractors who will be paid in whole or in part with funds provided by the Rail Act or fees obligations guaranteed by the Administrator pursuant to the Rail Act in order to carry out affirmatively the purposes of paragraph (2) above, and to implement the affirmative action program developed and implemented pursuant to 49 CFR 265.
- 12. The Contractor shall, in all advertisements for employees, or solicitations for services or materials from business organizations placed by or on behalf of the Contractor in connection with any contract funded in whole or in part with financial assistance under the Rail Act, state that all applicants for employment will receive consideration for employment, and all business organizations will receive consideration for an award of a subcontract, without regard to race, color, national origin or sex.
- 13. The Contractor shall send to each labor organization or representative of workers with which it has a collective bargaining agreement or other contract or understanding a notice to be provided by the Agency's representative, advising the labor organization or worker's representative of the Contractor's commitments under section 905 of the Act and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- 14. The Contractor shall comply with all provisions of section 905 of the Act, the Civil Rights Act of 1964, any other Federal civil rights act, and with the rules, regulations and orders issued under such act.
- 15. The Contractor shall furnish all information and reports required by the rules, regulations and orders of the Administrator, and will permit access to its books, records, and accounts by the Administrator for purposes of investigation to ascertain compliance with rules, regulations and orders referred to in paragraph 14 hereof.
- 16. The Contractor shall furnish such relevant procurement information as may be requested by the Minority Business Resource Center of the Agency. Upon the request of the Contractor the Center shall keep such information confidential to the extent necessary to protect commercial or financial information or trade secrets to the extent permitted by law.
- 17. In the event of the Contractor's noncompliance with the nondiscrimination clauses of this agreement, or with the provisions of section 905 of the Act, the Civil Rights Act of 1964 or with any other Federal civil rights act, or with any rules, regulations, or orders issued under such act, this contract will, after notice of such noncompliance, and after affording a reasonable opportunity for compliance, be cancelled, terminated, or suspended in whole or in part.
- 18. The Contractor shall not enter into any subcontract or subcontract modification whether for the furnishing of supplies or services or for the use of real or personal property, including lease arrangements, or for construction, in connection with a Contract, with a subcontractor debarred from or who has not demonstrated eligibility for Federal or federally assisted contracts, and will carry out such sanctions and penalties for violation of this part as may be imposed upon contractors and subcontractors by the Administration or any other authorized Federal official. The Contractor shall insure that the clauses required by 41 CFR Sec. 60.146 implementing Executive Order No. 11246 will be placed in each non-exempt federally assisted construction contract.
- 19. The Contractor agrees to comply with and implement the written affirmative action program established pursuant to section 265.11 of Title 49 CFR.
- 20. The Contractor agrees to notify the Administrator promptly of any law suit or complaint filed against the Contractor alleging discrimination on the basis of race, color, national origin or sex.
- 21. The Contractor shall include the preceding provisions of paragraphs (11) through (20) in every subcontract or purchase order, whether for the furnishing of supplies or services or for the use of real or personal property, including lease arrangements, or for construction relating to this Contract.

The Contractor will take such action with respect to any such subcontract or purchase order as the Administrator may direct as a means of enforcing such provisions including sanctions for noncompliance, provided, however, that in the event the Contractor becomes involved in or is threatened with litigation with a subcontractor or vendor as a result of such directive by the Administrator, the Contractor may request the United States to enter into such litigation.
- 22. The Contractor shall require as a condition to the award of a subcontract of \$50,000 or more in connection with the Contract, that the subcontractor furnish a certificate that a written affirmative action program meeting the requirements of 49 CFR Part 265 has been developed and is being maintained.

SCHEDULE A

SCHEDULE OF RAILROAD EQUIPMENT attached to and part of the Conditional Sale Agreement dated as of January 15, 1984 between C.I.T. Corporation and Consolidated Rail Corporation.

28 GP-40 EMD Locomotives

Present
Unit No.

3171

3179

3188

3189

3191

3192

3193

3194

3195

3196

3197

3198

3199

3200

3201

3202

3203

3204

3205

3206

3207

3208

3209

3210

~~3211~~

3212

3213

3214

> 3182 JW DR

JW DR

SCHEDULE B

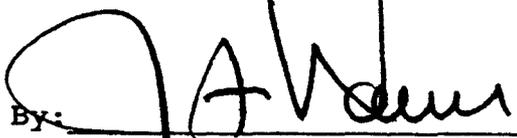
CASUALTY/PREPAYMENT SCHEDULE
attached to and part of the
Conditional Sale Agreement dated
as of January 15, 1984 between
C.I.T. Corporation and Consolidated Rail Corporation

<u>Payment No.</u>	<u>Amount Per Unit Exclusive of Rent</u>
1	\$77,060.41
2	74,028.95
3	70,902.76
4	67,678.88
5	64,354.25
6	60,925.73
7	57,390.07
8	53,743.92
9	49,983.82
10	46,106.22
11	42,107.45
12	37,983.72
13	33,731.12
14	29,345.63
15	24,823.09
16	20,159.22
17	15,349.60
18	10,389.68
19	5,274.77
20	0

C.I.T. CORPORATION

By: 
Title: VP

CONSOLIDATED RAIL CORPORATION

By: 
Title: ASSISTANT TREASURER-FINANCING

This acknowledgment hereby becomes a part of that Conditional Sale Agreement dated as of January 15, 1984 between C.I.T. Corporation, Secured Party, and Consolidated Rail Corporation, Debtor.

Commonwealth of Pennsylvania)
County of Philadelphia) ss

On this 15th day of March, before me personally appeared *J. A. Warner*, to me personally known, who being by me duly sworn, says that he is *Assistant Treasurer - Financing* of Consolidated Rail Corporation, and that said instrument was signed by him 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.

Catherine Aldinger

NOTARY PUBLIC

CATHERINE ALDINGER
Notary Public, Phila., Phila. Co.
My commission expires ~~Aug. 3, 1985~~ *Aug. 3, 1985*

State of New York)

) ss

County of New York)

On this 13th day of February 1984, before me personally appeared D. Riggs, to me personally known, who being by me duly sworn, says that he is a Vice President of C.I.T. Corporation, and that said instrument was signed by him 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.

Charles E. Obert

NOTARY PUBLIC

My commission expires _____

CHARLES E. OBERT
Notary Public, State of New York
No. 41-4785104
Qualified in Queens County
Certificate filed in New York County
Commission Expires March 30, 1985

