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GE Transportation Systems

Daniel A. Rowley  
Counsel

General Electric Company  
2901 East Lake Road, Erie, PA 16531  
814 875-5640  
fx. 814 875-2724

19019

OCT 14 1994 11 22 AM

October 14, 1994

VIA FEDERAL EXPRESS

Mr. Vernon A. Williams, Acting Secretary  
Interstate Commerce Commission  
12th and Constitution Avenue, N.W.  
Washington, D.C. 20423

LICENSED MAIL  
OCT 14 11 22 AM '94

**Subject: Recordation of Locomotive Lease**

Dear Mr. Williams:

Enclosed for recordation, under the provisions of 49 U.S.C. §11303 and the regulations thereunder, is an original and three copies/counterparts of an Interim User Agreement, dated as of October 14, 1994, between General Electric Company ("Lessor") and Locomotive Management Services ("Lessee"), a primary document.

The names and addresses of the parties to the enclosed Locomotive Lease Agreement are as follows:

LESSOR: General Electric Company  
2901 East Lake Road  
Erie, Pennsylvania 16531

LESSEE: Locomotive Management Services  
c/o Consolidated Rail Corporation  
2001 Market Street  
Philadelphia, PA 19101

A general description of the locomotive(s) covered by the enclosed documents is attached hereto as Schedule I. Also enclosed is a remittance in the amount of \$21.00 for the required recording fee.

*Counterparts - Betty & Dan*

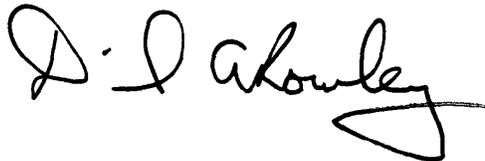
The undersigned is General Counsel, GE Transportation Systems and an Attesting Secretary of General Electric Company. Please return the original and any extra copies not needed by the Commission for recordation to Daniel A. Rowley, Counsel, GE Transportation Systems, General Electric Company, 2901 East Lake Road, Building 14-5, Erie, Pennsylvania 16531.

A short summary of the document to appear in the index follows:

PRIMARY DOCUMENT

Interim User Agreement, dated as of October 14, 1994 between General Electric Company ("Lessor") and Locomotive Management Services ("Lessee"), relating to twenty (20) General Electric Diesel Electric Locomotives, bearing Road Nos. 0740--759.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "D. A. Rowley". The signature is written in a cursive style with a large, sweeping flourish at the end.

Enclosures

**SCHEDULE I**

**Description of Locomotive(s)**

<u>Type of Equipment</u>	<u>Number of Units</u>	<u>Road Number(s)</u>
Dash 8-40CW General Electric Diesel Electric Locomotives	20	0740-0759

INTERIM USER AGREEMENT

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**THIS INTERIM USER AGREEMENT**, made and entered into as of the 14th day of October, 1994, by and between General Electric Company, a New York corporation, hereinafter called "Owner," and Locomotive Management Services, a Delaware general partnership, hereinafter called "User."

**OWNER AND USER HEREBY AGREE AS FOLLOWS:**

1. **Lease:** User agrees to lease from Owner on a daily basis for the period not to extend beyond the term specified in Section 2 below the locomotives described in Exhibit A, together with all additions and accessories incorporated therein and/or affixed thereto (the "Locomotives"). At the end of the term of this Agreement for each Locomotive, time being of the essence, User shall pay for such Locomotive or cause the Locomotive to be paid for under the contemplated financing arrangements described at Section 23.4 hereof, as required by the Purchase Agreement between User and Owner dated as of August 1, 1994, as amended by Amendment Number 1 dated as of September 30, 1994, and as the same may be further amended through the date hereof (as thereby amended, hereinafter, the "Purchase Agreement"). Delivery of all Locomotives shall be made at Owner's facility in Erie, Pennsylvania.

User will cause the Locomotives to be kept numbered with the identification numbers thereon at the time of their delivery hereunder and will keep and maintain, plainly, distinctly, permanently and conspicuously marked on each side of the Locomotives, in letters not less than one inch in height, the words

"Ownership subject to documents filed with  
the Interstate Commerce Commission."

User will not place any Locomotive in operation or exercise any control or dominion over the same unless such words are so marked and will replace promptly any such markings which may be removed, obliterated, defaced or destroyed. User will not change the identification number of any Locomotive unless and until a statement of the new number to be substituted therefor shall have been filed with Owner and duly filed and deposited by User in all public offices where this Agreement shall have been filed and deposited.

User will not allow the addition of any name of any person, association or corporation to be placed on any Locomotive as a designation that might be interpreted as a claim of ownership during the term of this Agreement.

2. **Term of Lease; Rent:** The term of this Agreement shall commence with respect to each Locomotive immediately upon execution of a Lease Acceptance Certificate in the form attached hereto as Exhibit B. The term of this Agreement shall end with respect to each Locomotive on the earlier of the following two dates: (a) the date the financing is in place for such Locomotive, or (b) December 31, 1994.

The daily rental per Locomotive shall be an amount calculated as follows: the prime or reference rate of Citibank, N.A. in effect on the date hereof, multiplied by the purchase price of such Locomotive under the Purchase Agreement, divided by 365. All rent payable for a Locomotive shall be due at the time of termination of the lease period for such Locomotive, as set forth in this Section 2.

User shall not be entitled to any reduction of rent, abatement, setoff, counterclaim, recoupment or defense against rent or any other amount payable hereunder for any reason whatsoever, including, but not limited to, reductions, setoffs, counterclaims, recoupments or defenses due or alleged to be due by reason of any past, present or future claims of User against Owner or any other person for any reason whatsoever, except as otherwise provided herein; nor shall this Agreement terminate, or the obligations of User be otherwise affected, by reason of any defect in the condition, design, operation or fitness for use of any Locomotives or damage to or loss of possession or use or destruction of such Locomotives from whatever cause and of whatever duration, except as otherwise provided herein. User acknowledges that: Owner has no knowledge or information as to the condition or suitability for User's purpose of the Locomotives and Owner's decision to enter into this Agreement is made in reliance on User's undertakings herein, including User's express agreement not to assert against Owner any claims, defenses, setoffs or counterclaims it may now or hereafter have against Owner.

3. **Warranties and Representations:** Owner warrants and incorporates by reference herein the obligations and warranties (including any limitations thereon) as described in Section 12 of the Purchase Agreement. There are no warranties, expressed or implied, made by Owner except the foregoing.
4. **Place of Payment or Rent:** User shall direct payment of the rent to Owner as follows:

General Electric Company  
Treasurers Account No. 211-46-019  
Morgan Guaranty Trust Company  
ABA No. 021000238  
60 Wall Street  
New York, New York 10260

5. **Recordkeeping; Inspection:** User agrees to keep and maintain and make available to Owner such record of User's use, operation, inspection, repairs and maintenance of the Locomotives while in its possession as shall be reasonably requested by Owner.

If requested, within five (5) days of the end of the term of this Agreement, User will furnish to Owner a certificate signed by the Chief Mechanical Officer of User setting forth the maintenance and repairs performed on the Locomotives during the term hereof, and such other information regarding the condition and state of repair of the Locomotives as Owner may reasonably request. Owner at its sole expense, shall have the right by its agents to enter upon the property of User to inspect the Locomotives and User's records with respect thereto at such reasonable times as Owner may request during the term of this Agreement.

User shall promptly notify Owner of any occurrence of an event of default as defined in Section 18 hereof or default, specifying such event of default or default and the nature and status thereof.

6. **Loss or Destruction:** In the event that a Locomotive during the term hereof shall become lost, stolen, destroyed, irreparably damaged, permanently rendered unfit for use, or, in the reasonable opinion of User, 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 hereof, or by any other government or governmental entity resulting in the loss of possession by User for a period of 30 consecutive days (such occurrences being hereinafter called "Casualty Occurrences"), User shall notify Owner of such Casualty Occurrence. User shall provide all assistance reasonably requested by Owner in the investigation, defense, or prosecution of any Casualty Occurrence or any claim arising therefrom. In the event of a Casualty Occurrence, on the Agreement termination date User shall pay to Owner all daily rent due through the date of such Casualty Occurrence, plus the casualty value of each Locomotive which is the subject of a Casualty Occurrence. For purposes of this Agreement, the casualty value of each Locomotive shall equal the purchase price thereof as set forth in the Purchase Agreement.
7. **Indemnity:** User agrees to indemnify, protect and hold harmless Owner from and against all losses, damages, injuries, liabilities, claims (including, without limitations, claims for strict liability in tort) and demands whatsoever, regardless of the cause thereof, and expenses in connection therewith, including, but not limited to, counsel fees and expenses, patent, trademark and copyright liabilities, penalties, and interest, arising from or caused directly by: (a) User's failure to promptly perform any of its obligations under the provisions of Sections 1, 2, 6, 7, and 17 of this Agreement, or (b) injury to person or property resulting from or based upon

the actual or alleged use, operation, delivery or transportation of any Locomotive or its location or condition, or (c) inadequacy of any Locomotive, or any part thereof, for any purpose or any deficiency or defect therein or the use or maintenance thereof or any repairs, servicing or adjustments thereto or any delay in providing or failure to provide any thereof or any interruption or loss of service or use thereof or any loss of business; and shall, at its own cost and expense, defend any and all suits which may be brought against Owner, either alone or in conjunction with others upon any such liability or claim or claims and shall satisfy, pay and discharge any and all judgments and fines that may be recovered against Owner in any such action or actions; provided, however, that (i) Owner shall give User written notice of any such claim or demand, and (ii) User shall not be required to indemnify, protect, hold harmless and defend Owner for any loss, damage, injury, liability, claim, demand or expense to the extent it results from the gross negligence or willful misconduct of Owner or to the extent such arises from Owner's failure to meet any of its problem correction, performance guarantee, or warranty obligations under Section 3 hereunder. The indemnities arising under this Section shall continue in full force and effect notwithstanding the full payment of all obligations under this Agreement or the expiration or termination of this Agreement.

Except as otherwise expressly provided in this Agreement and subject to the same types of limitations set forth in Clause (ii) of the first paragraph of this Section 7, User shall bear the responsibility and risk for, and shall not be released from its obligations hereunder in the event of, any damages to or the destruction or loss of the Locomotives.

8. **Compliance with Law; Repair and Maintenance:** User shall comply with the requirements of the FRA, and all other applicable laws, regulations and requirements with respect to use, maintenance and operation of the Locomotives during the term of this Agreement. User shall use the Locomotives only in the manner for which they were designed so as to subject them only to ordinary wear and tear.

User shall at its own cost and expense, maintain and service the Locomotives in accordance with prudent industry practice, including testing and repair of the Locomotives so that the Locomotives will remain (a) in as good operating condition as when delivered (ordinary wear and tear excepted) and (b) in compliance with any and all applicable laws and regulations. In no event shall the Locomotives be maintained or scheduled for maintenance on a basis less frequent than the maintenance or maintenance scheduling basis employed as of the date hereof by User for similar equipment. Any parts installed or replacements made by User upon the Locomotives shall be considered accessions to the Locomotives, and title thereto shall be immediately vested in Owner, without cost or expense to Owner; provided, however, User may remove from the Locomotives any (a) communications equipment, (b) train control, (c) end of train telemetry,

and (d) recording devices, which User paid for and installed, but only if such removal may be accomplished without damage to the Locomotives.

Except for alterations or changes required by law or regulations, User shall not effect any alteration or change in or to the design, construction, specifications or appearance of the Locomotives, or the body or electrical equipment or components thereof, without the prior written consent of Owner.

9. **Assignment by User:** User shall not assign or sublet its interest, or any part thereof, under this Agreement, or permit the use or operation of the Locomotives subject to this Agreement by any other person, firm or corporation without the prior written consent of Owner. Owner expressly consents to the leasing of the Locomotives to Consolidated Rail Corporation ("Conrail") pursuant to an interim Lease of even date herewith between User and Conrail, and to incidental operation and use on railroads other than Conrail's.
10. **Notices:** Unless otherwise specifically provided, any notices to be given under this Agreement or any other communications between the parties shall be given by certified mail, postage prepaid in the following manner:

- (a) Notices from Owner to User shall be sent to:

c/o J. A. McKelvey  
Vice President, Materials & Purchasing  
Consolidated Rail Corporation  
2001 Market Street, Room 7-A  
Philadelphia, PA 19101

and also to:

T. J. McGraw  
Director-Financing  
Consolidated Rail Corporation  
2001 Market Street, Room 25-A  
Philadelphia, PA 19101

or to such other address as User may from time to time indicate by written notice to Owner.

- (b) Notices from User to Owner shall be sent to:

General Electric Company  
Transportation Systems Business Operation, 14-5  
2901 East Lake Road  
Erie, PA 16531  
Attn: D. B. Tucker

and also to

General Electric Company  
Transportation Systems Business Operation, 14-5  
2901 East Lake Road  
Erie, PA 16531  
Attn: General Counsel

or to such other address as Owner may from time to time indicate by written notice to User.

11. **Quiet Enjoyment:** So long as User makes its aforesaid rental payment and otherwise complies with the terms and provisions hereof, User shall be entitled to the use and possession of the Locomotives according to the terms hereof without interference by Owner or by any party lawfully claiming by or through Owner.
12. **Authority:** The undersigned signatories herewith represent and warrant that they are fully authorized to execute this Agreement and bind the respective parties to the terms and provisions hereof.
13. **Protection of Owner's Title:** User shall cause this Agreement to be duly filed, registered or recorded in conformity with Section 11303 of the Interstate Commerce Act. User will, from time to time, do and perform any other act and will execute, acknowledge, deliver, file, register and record any and all further instruments or reasonably requested by Owner, for the purpose of protecting Owner's title to the Locomotives. User shall not cause to be created or suffer the creation of any lien, charge or encumbrance, including any lien for taxes, on the Locomotives. Should any such lien, charge or encumbrance be created as to or impressed on the Locomotives, User shall cause such to be promptly discharged and terminated.

User shall not cause to be created or suffer the creation of any lien, charge or encumbrance, including any lien for taxes, on the Locomotives. Should any such lien, charge or encumbrance be created as to or impressed on the Locomotives, User shall cause such to be promptly discharged and terminated.

14. **Taxes:** User, or Owner at User's expense, shall report, pay and discharge when due all license and registration fees, assessments, use and property taxes, and gross receipts taxes arising out of receipts from use or operation of the Locomotives, including without limitation amounts payable under Sections 2, 6 and 7, hereof, and other taxes (excluding any tax measured by Owner's net income), together with any penalties or interest thereon,

imposed by any state, federal or local government upon the Locomotives and whether or not the same shall be assessed against or in the name of Owner or User.

15. **Performance Obligations of User by Owner:** In the event that User shall fail duly and promptly to perform any of its obligations under the provisions of this Agreement, Owner may, at its option, perform the same for the account of User without thereby waiving such default, and any amount paid or expense (including reasonable attorneys' fees), penalty or other liability incurred by Owner in such performance, together with interest at the lesser of 1-1/2 percent per month or the highest amount allowed by law thereon, until paid by User to Owner, shall be payable by User upon demand as additional rent hereunder.
16. **Further Assurance:** User shall execute and deliver to Owner, upon Owner's request, such instruments and assurances as Owner deems necessary or advisable for the confirmation or perfection of this Agreement and Owner's rights hereunder.
17. **User's Covenants:** User will: (a) defend at User's own cost any action, proceeding or claim affecting the Locomotives except as stated in Section 7; (b) do everything necessary or expedient to preserve or perfect Owner's interest in the Locomotives; (c) not misuse, fail to keep in good repair (ordinary wear and tear excepted), secrete, or, without the prior written consent of Owner and notwithstanding Owner's claim to proceeds, sell, rent, lend, encumber or transfer the Locomotives, except as provided in Subsection (e) of this Section; (d) agree that Owner may enter upon User's premises or wherever the Locomotives may be located at any reasonable time and upon reasonable prior notice to inspect the Locomotives; and (e) except as provided in Section 9 of this Agreement, not permit the use of the Locomotives by any other party, without Owner's consent to be granted in its sole discretion.
18. **Default:** An event of default shall occur if User: (a) fails to pay when due any installment of rent and such failure continues for a period of 15 days; (b) fails to perform or observe any covenant, condition or agreement to be performed or observed by it hereunder and any such failure continues uncured for 15 days after written notice thereof to User by Owner; (c) ceases doing business as a going concern, makes an assignment for the benefit of creditors, admits in writing its inability to pay its debts as they become due, files a voluntary petition in bankruptcy, is adjudicated a bankrupt or an insolvent, takes any action seeking for itself any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar arrangement under any present or future statute, law or regulation or files an answer admitting the material allegations of a petition filed against it in any such proceedings, consents to or acquiesces in the appointment of a trustee, receiver, or liquidator of it or of all or any

substantial part of its assets or properties; (d) fails to have dismissed within 60 days after the commencement thereof, any proceedings seeking the reorganization, arrangement, readjustment, liquidation or dissolution of User or any similar relief under any present or future statute, law or regulations; (e) fails to vacate the appointment of any trustee, receiver or liquidator of it or of all or any substantial part of its assets and properties within 60 days; or (f) attempts to remove sell, transfer, encumber, part with possession or sublet any of the Locomotives in a manner prohibited hereunder without the consent of Owner.

Upon the occurrence of an event of default, Owner, at its option, may: (a) declare all sums due and to become due hereunder immediately due and payable; (b) proceed by appropriate court action or action or other proceedings either at law or equity to enforce performance by User of any and all covenants of User under this Agreement and to recover damages for the breach thereof; and (c) demand that User deliver all or any of the Locomotives forthwith to Owner at User's expense at such place as Owner may designate on User's Line. If any statute governing any proceedings hereunder specifies the amount of Owner's deficiency or other damages for breach of this Agreement by the User, Owner shall be entitled to recover as and for damages for the breach an amount equal to that allowed under such statute in lieu of any other damages for breach of this Lease. The provisions of this paragraph shall be without prejudice to any rights given to Owner by such statute to recover any amounts allowed thereby. Should any proceedings be instituted by or against Owner for moneys due to Owner hereunder and/or for possession of any Locomotive and/or for any other relief, User shall pay Owner a reasonable sum as attorneys' fees.

The remedies in this Agreement provided in favor of Owner shall not be deemed exclusive, but shall be cumulative and may be exercised concurrently or consecutively, and shall be in addition to all other remedies in its favor existing at law or in equity. User hereby waives any mandatory requirements of law, now or hereafter in effect, which might limit or modify the remedies herein provided, to the extent that such waiver is not, at the time in question, prohibited by law. User hereby waives any and all existing or future claims to any offset against the rental payments due hereunder, and agrees to make such payments regardless of any offset or claim which may be asserted by User or on its behalf. Owner and User agree that Owner shall be entitled to all rights (such rights being fundamental to the willingness of Owner to enter into this Agreement) provided for in the United States Bankruptcy Code or any other bankruptcy act, so that Owner shall have the right to take possession of any or all of the Locomotives upon any event of default under this Agreement, regardless of whether User is in reorganization.

No failure by Owner to exercise, and no delay by Owner in exercising, any right, power or privilege hereunder shall operate as a waiver thereof, nor

shall any single or partial exercise of any right, power or privilege by Owner preclude any other or further exercise thereof, or the exercise of any other right, power or privilege.

19. **Choice of Law:** This Agreement shall be governed in all respect by the law of the Commonwealth of Pennsylvania.
20. **Miscellaneous:** All transportation charges incurred after acceptance by User shall be borne by User. If any part hereof is contrary to, prohibited by or deemed invalid under applicable laws of regulations of any jurisdiction, such provisions shall be inapplicable and deemed omitted but shall not invalidate the remaining provision hereof. This Agreement is irrevocable for the full term hereof and for the aggregate rental herein reserved. User admits the receipt of a true copy of this Agreement.
22. **Liability of Owner:** Except as provided in Section 3 hereof, Owner shall have no liability to User arising out of the furnishing of any Locomotives under this Agreement, or their use, whether the liability is based on contract, warranty, tort (including negligence) or otherwise., whether liability arises under breach of contract, warranty, tort (including negligence) or otherwise, will Owner's liability include any special, incidental, indirect or consequential damages including, but not limited to, loss of revenue or profits, damage to freight, loss of use of any equipment, cost of capital, downtime costs, or claims of User's customers for such damages.
23. **Purchase Agreement:**
  - 23.1 Except as provided in this Agreement, nothing herein shall be deemed to alter, amend or affect the respective rights and obligations of the parties under the Purchase Agreement.
  - 23.2 The lease of the Locomotives shall not disqualify such Locomotives from being "new" under the Purchase Agreement.
  - 23.3 User's inspection and acceptance of the Locomotives hereunder shall constitute inspection of the Locomotives as required under the Purchase Agreement.
  - 23.4 It is the intent of the parties that upon termination of this Agreement (whether by expiration or early termination), the Locomotives will be purchased from Owner by (and Owner will pass title to the Locomotives to) User or a third party which will then lease them to User pursuant to a lease or other financing mechanism. In the event that such third party shall not have purchased and paid for the Locomotives on terms satisfactory to Owner on or prior to the dates specified in Section 2 hereof, User may not return the Locomotives

to Owner, but rather shall, not later than the dates specified in Section 2 hereof, time being of the essence, pay for the Locomotives as required by the Purchase Agreement.

23.5 Contemporaneously with the occurrence of either of the events described in Sections 6 or 23.4, Rent shall cease to accrue with respect to the affected Locomotives.

**GENERAL ELECTRIC  
COMPANY**

ATTEST: D. J. [Signature]

BY: D. B. [Signature]

David B. Tucker,  
General Manager - Americas Locomotive  
Marketing/Sales/Service Operation

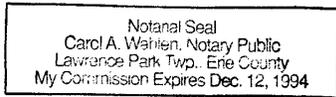
**LOCOMOTIVEMANAGEMENT  
SERVICES**

ATTEST: \_\_\_\_\_

BY:  
Name:

Commonwealth of Pennsylvania  
County of Erie

On this 13th day of October, 1994, before me personally appeared David B. Tucker, to me personally known, who, being by me duly sworn, did say that he is a General Manager of Americas Locomotive Marketing/Sales/Service Operation of General Electric Company, that the instrument was signed on behalf of such 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 such corporation



*Carol A. Wainen*

Notary Public

My commission expires:

to Owner, but rather shall, not later than the dates specified in Section 2 hereof, time being of the essence, pay for the Locomotives as required by the Purchase Agreement.

23.5 Contemporaneously with the occurrence of either of the events described in Sections 6 or 23.4, Rent shall cease to accrue with respect to the affected Locomotives.

**GENERAL ELECTRIC  
COMPANY**

ATTEST: \_\_\_\_\_ BY:

**LOCOMOTIVEMANAGEMENT  
SERVICES**

By: *J. A. McKelvey*  
ATTEST: *[Signature]*

BY: *[Signature]*  
Name: John A. McKelvey  
An authorized Signatory of LMS

Commonwealth of Pennsylvania  
County of Philadelphia

On this 12-day of October, 1994, before me personally appeared John A. McKelvey to me personally known, who, being by me duly sworn, did say that he is the duly authorized representative of Locomotive Management Services, that the instrument was signed on behalf of such Partnership by authority of its Partnership Agreement, and he acknowledged that the execution of the foregoing instrument was the free act and deed of such partnership.



Notary Public

My commission expires:

NOTARIAL SEAL  
SUZANNE J. ROSSOMANDO, Notary Public  
City of Philadelphia, Phila. County  
My Commission Expires May 29, 1995

**EXHIBIT A**

**Type:** DASH8-40CW Diesel Electric Locomotives

**Delivery Point:** Erie, PA

**Quantity:** 20

**Conrail's Identification Nos.:** 0740-0759 (inclusive)

EXHIBIT B

I, the duly authorized representative for Locomotive Management Services ("User") under the Interim User Agreement, dated as of October 14, 1994 (the "Lease"), do certify that I inspected and accepted delivery thereunder of the following Units of Equipment:

Type of Locomotive: DASH8-40CW Diesel Electric  
Place Accepted: Erie, Pennsylvania  
Date Accepted:  
Number of Units:  
Marked:  
Road Number(s):

I do further certify that the foregoing Units are in good order and condition, and conform to the specifications, requirements and standards applicable therefore as provided in the Lease.

I do further certify that each of the foregoing Units has been marked upon each side of each such Unit in letters not less than one inch in height as follows:

"Ownership subject to documents filed with  
the Interstate Commerce Commission."

\_\_\_\_\_  
Authorized Representative of User