

FEB 13 1981 - 11 50 AM

LAW OFFICES
ALVORD AND ALVORD

INTERSTATE COMMERCE COMMISSION

ELIAS C. ALVORD (1942)
ELLSWORTH C. ALVORD (1964)

ROBERT W. ALVORD
ALBERT H. GREENE
CARL C. DAVIS*
CHARLES T. KAPPLER
JOHN H. DOYLE
MILTON C. GRACE*
GEORGE JOHN KETO**
RICHARD N. BAGENSTOS

200 WORLD CENTER BUILDING
918 SIXTEENTH STREET, N.W.
WASHINGTON, D.C.
20006

OF COUNSEL
JESS LARSON
JOHN L. INGOLDSBY
URBAN A. LESTER

CABLE ADDRESS
"ALVORD"

TELEPHONE
AREA CODE 202
393-2266

TELEX
440348 CDAA UI

* NOT A MEMBER OF D. C. BAR
** ALSO A MEMBER OF OHIO BAR

February 13, 1981

Ms. Agatha L. Mergenovich
Secretary
Interstate Commerce Commission
Washington, D.C.

1-044A144
Date FEB 13 1981
No. 50.00
FEB 13 1981
Washington, D.C.

Dear Madam:

Enclosed for recordation under the provisions of 49 U.S.C. §11303 are the original and one counterpart of a Chattel Mortgage, Assignment and Security Agreement dated February 12, 1981.

A general description of the railroad equipment covered by the enclosed document is as follows:

Thirty-five (35) 50'6", 70-ton XP boxcars, bearing reporting mark and road numbers ATW 4165 through ATW 4199, both inclusive.

The names and addresses of the parties to the enclosed document are:

Debtor: Atlantic and Western Financial Corporation
P.O. Box 1208
Sanford, North Carolina 27330

Secured Party: ITT Industrial Credit Company
P.O. Box 25447
Charlotte, North Carolina 28212

The undersigned is agent for the Secured Party mentioned in the enclosed document and has knowledge of the matters set forth therein.

Please return the original of the Chattel Mortgage, Assignment and Security Agreement to Charles T. Kappler, Esq., Alvord and Alvord, 918 16th Street, N.W., Washington,

Counterpart - C.T. Kappler

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RECEIVED

Ms. Agatha L. Mergenovich
Interstate Commerce Commission
February 13, 1981
Page Two

D.C., 20006 or the bearer thereof.

Also enclosed is a check in the amount of \$50.00
covering the required recordation fee.

Very truly yours,

ALVORD AND ALVORD

By: Charles T. Kappler

Charles T. Kappler

CTK/lac
Enclosures

Interstate Commerce Commission
Washington, D.C. 20423

OFFICE OF THE SECRETARY

Charles T. Kappler
Lvord and Alvord
200 World Center Building
918 Sixteenth St. N. W.
Washington, D. C. 20006

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 2/13/81 at 11:50AM, and assigned re-
recording number(s). 12927

Sincerely yours,

Agatha L. Mergenovich
Agatha L. Mergenovich
Secretary

Enclosure(s)

RECORDATION NO. 12927

CHATTEL MORTGAGE,
ASSIGNMENT AND
SECURITY AGREEMENT

FEB 13 1981 - 11 50 AM

INTERSTATE COMMERCE COMMISSION

ATLANTIC & WESTERN FINANCIAL CORPORATION, a Delaware corporation (hereinafter called "the Company"), in consideration of the granting by ITT Industrial Credit Company ("ITT") of a loan to the Company in the aggregate principal amount of Seven Hundred Fifty Five Thousand, Two Hundred Twenty-Four and 27/100's Dollars (\$ 755,224.27) for which the Company has issued to ITT its note of even date herewith in said principal amount payable with interest as therein provided ("the Note"), and in order to secure the payment of the principal of and interest on the Note and the performance and observance of all the covenants and conditions of this Chattel Mortgage, Assignment and Security Agreement ("the Security Agreement"), does hereby sell, convey, warrant, mortgage, assign, pledge, grant a security interest in and lien upon, and hypothecate to ITT, its successors and assigns, the following described properties, rights, interests and privileges (all of such properties, rights, interests and privileges hereby mortgaged, assigned and pledged or intended so to be are hereinafter collectively referred to as "the Collateral"):

(a) Railroad equipment consisting of thirty-five (35) freight cars (said freight cars and equipment are more specifically described in Exhibit A attached hereto) together with all accessories, equipment, parts and appurtenances attached to any of

the railroad equipment, whether now owned or hereafter acquired, and all substitutions, renewals and replacements of, and additions, improvements to, any and all of said railroad equipment ("the Equipment");

(b) All of the Company's right, title and interest in and to the contract rights, chattel paper, accounts, rentals, fees, charges, income and proceeds arising from or in connection with the use of the Equipment; including without limiting the generality of the foregoing, (i) that certain Lease dated December 28, 1979 between the Company and Atlantic and Western Railway Company, and (ii) that certain Assigned Car Agreement dated June 15, 1979 between the Company and Scott Paper Company insofar only as same applies to the Equipment.

1. The Company represents and warrants that:

(a) The Company has title to the Collateral free and clear of all liens and encumbrances.

(b) No financing statement, chattel mortgage, nor other security agreement covering any of the Collateral is on file in any public office.

(c) The Company is the legal and beneficial owner, free and clear of liens, charges or encumbrances, of all the outstanding shares of capital stock of Atlantic and Western Railway Company, a North Carolina corporation, and that as of the date hereof the Atlantic and Western Railway Company has no active subsidiaries and the Company has no active subsidiaries other than Atlantic and Western Railway Company.

(d) The Company and its Subsidiary are each, and each will continue to be, a corporation duly incorporated and validly existing under the law of the jurisdiction in which it is incorporated, in good standing therein, duly qualified to transact business in all places where, in the opinion of the Company, such qualification is necessary and all of its outstanding stock is fully paid and non-assessable. The Company has corporate power to make this Security Agreement and to incur and perform its obligations hereunder.

(e) The making and performance by the Company of this Security Agreement and the execution and delivery of the Note have been duly authorized by all necessary corporate action and will not violate any provision of law or of the Company's charter or By-Laws or result in the breach of or constitute a default under or require consent under any indenture or other agreement or instrument to which the Company or its Subsidiary is a party or by which the Company or its Subsidiary or their respective property may be bound or affected.

(f) The Consolidated Financial Statements of the Company including the notes thereto for the year ended December 31, 1979 with the opinion thereof of John C. Muse Co., C.P.A., is complete and correct and fairly present the consolidated results of their operations for the period ended on said date. Neither corporation had on said date any contingent liability, liability for taxes, unusual forward or long-term commitment, or unrealized or

anticipated losses from any unfavorable commitment, which is substantial in amount in relation to the consolidated financial condition of the Company and its Subsidiary. Since that date there has been no adverse change in the consolidated financial condition of the Company and its Subsidiary except as shown on subsequent interim financial statements furnished to ITT by the Company prior to execution of this Agreement.

(g) The Company and its Subsidiary have filed all tax returns required to be filed and paid all taxes shown thereon to be due, including interest and penalties, or have provided adequate reserves for payment thereof. No such corporation is a party to any material action or proceeding by any governmental authority for the assessment or collection of taxes, nor has any material claim (which remains pending) for assessment or collection of taxes been asserted against any such corporation.

(h) There are no suits or proceedings pending, or to the knowledge of the Company threatened against or affecting the Company or its Subsidiary which, if adversely determined, would have a material adverse effect on the consolidated financial condition or business of the Company and Subsidiary.

(i) No consent, approval, authorization, permit or license from any federal, state or other regulatory authority is required in connection with the making or performance of this Security Agreement by the Company, nor will such making or

performance violate any law or regulation applicable to the Company or its Subsidiary.

2. The Company covenants and agrees that it: (i) will keep the Equipment or cause the Equipment to be kept in good working order, repair and running condition, and will replace any worn, broken or defective parts; (ii) will keep or cause the Equipment to be insured against loss by damage or destruction in such amounts and against such risks as is usually carried by owners and operators of similar equipment; (iii) will promptly pay all taxes validly levied or assessed against the Equipment and will keep the Equipment free and clear of all liens, attachments and encumbrances except liens in favor of ITT and Leases specifically subordinated thereto as set forth on Exhibit B annexed hereto; (iv) will allow ITT and their representatives free access to the Equipment at all reasonable times for the purpose of inspection; (v) will promptly notify ITT in writing of any loss to the Equipment; (vi) will indemnify ITT against all claims, liabilities, expenses, costs, losses, charges and expenses including any counsel fees, in any manner imposed upon or accruing against ITT or its assigns including claims for royalties arising because of the use in or about the construction or operation of the Equipment, or any unit thereof, of any design, article or material which infringes or is claimed to infringe on any patent or other right, arising out of or connected with the ownership or use of the Equipment; (vii) will reimburse ITT upon demand for all

expenses incurred in connection with perfecting the security interest granted herein or the satisfaction thereof; (viii) will not abandon the Equipment except upon loss, theft or destruction; (ix) will not settle, assign, lease, mortgage or otherwise dispose of any interest in the Equipment; (x) will not assign, pledge or encumber its right, title and interest in and to the contract rights, chattel paper, accounts, rentals, fees, charges, income and proceeds arising from or in connection with the use of the Equipment and will cause the Lease dated December 28, 1979 between the Company and Atlantic and Western Railway Company and the Assigned Car Agreement dated June 15, 1979 between the Company and Scott Paper Company, Inc. to be marked with the following Legend: "The rights of Atlantic & Western Financial Corporation under this Agreement (insofar as such rights relate to 35 boxcars bearing road numbers ATW4165 through ATW4199 inclusive) have been assigned to ITT Industrial Credit Company pursuant to a Chattel Mortgage, Assignment and Security Agreement"; (xi) will not use or permit the Equipment to be used for any unlawful purpose or in violation of any federal, state or municipal law, statute or ordinance; (xii) will faithfully perform its obligations under the Lease and under the Assigned Car Agreement with Scott Paper Company relating to the Equipment and will not modify nor terminate the same without the prior written consent of ITT.

3. The Company hereby assigns to ITT any and all moneys (including, but not limited to, proceeds of insurance for casualty

or business interruption and return or unearned premiums) which may become due under any policy or agreement insuring the Equipment against any loss due to destruction or interruption of use and directs the insurance company issuing such policies or other party to make payment thereof directly to ITT as its interest may appear. ITT may, at its option, apply any insurance or other moneys so received to the cost of repairs to the Equipment and/or to payment of the Note or other expenses of ITT, in any order ITT may determine, whether or not due, and shall remit any surplus to the Company. The Company irrevocably appoints ITT as the Company's attorney-in-fact, with full power of substitution, to receive all such moneys, to execute proof of claim, to endorse drafts, checks and other instruments for the payment of money payable to the Company in payment of such insurance moneys, to adjust and compromise any claim, to execute releases, to cancel any insurance policy covering the Equipment when such policy is not required to protect Company's or ITT's interest and to do all other acts and things that may be necessary or required to carry into effect the power herein granted.

4. The Company agrees that until payment in full of the Note, unless ITT shall otherwise consent in writing, it will furnish ITT: (i) within ninety (90) days after the end of each fiscal year of the Company, a consolidated balance sheet of the Company and its Consolidated Subsidiaries as of the end of such fiscal year and Consolidated Financial Statements of profit and

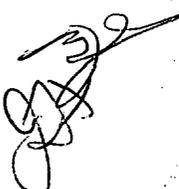
loss and surplus of the Company and its Consolidated Subsidiaries for such year, together with a reconciliation of net worth and working capital, all prepared in accordance with generally accepted principles and practices of accounting consistently applied, such Consolidated Financial Statements to be certified by an independent public accountant selected by the Company and satisfactory to ITT; (ii) within forty-five (45) days after the end of each of the first three quarters of each fiscal year of the Company, a consolidated balance sheet of the Company and its Consolidated Subsidiaries as of the end of such quarter and Consolidated Financial Statements of profit and loss and surplus of the Company and its Consolidated Subsidiaries for such period, all prepared in accordance with generally accepted principles and practices of accounting consistently applied, certified by the chief financial or chief executive officer of the Company; (iii) from time to time, with reasonable promptness, such further information regarding the business affairs and financial condition of the Company and its Consolidated Subsidiaries as ITT may reasonably require; (iv) copies of all reports, if any, filed with the Securities and Exchange Commission or any other federal or state agency; and (v) the statements to be submitted pursuant to (i) and (ii) of this Section shall be accompanied by a certificate signed by the President, chief financial officer, or chief executive officer of the Company stating that the Consolidated Financial Statements accompanying such certificate are correct and

complete and fairly present the financial condition and results of operations of the Company and its Consolidated Subsidiaries at the end of such year or quarter, as the case may be, all in conformity with generally accepted accounting principles consistently applied and accounting practices standard for the Company's business, and that such officer has no knowledge, except as specifically stated, of any default under the terms of this Security Agreement.

5. Simultaneously with the execution and delivery of this Security Agreement, there shall be delivered to ITT:

(a) Certificates of the Company, or an authorized representative of the Company, and of the Lessee to the effect that the Lease and Assigned Car Agreement are in full force and effect and no default exists under the terms thereof, and no event has occurred which, with the passage of time, would constitute a default under the terms thereof;

(b) A favorable opinion of counsel for the Company, the Assigned Car Agreement, the Note stating that: (i) the Lease,^ and this Security Agreement have been duly authorized, executed and delivered and are valid and binding instruments enforceable in accordance with their terms; (ii) ITT is vested with all the right, title and interest of the Company in and to the Lease purported to be assigned to ITT by this Security Agreement; (iii) the Lease and this Security Agreement are in recordable form for filing with the Interstate Commerce Commission in accordance with Section 11303 of Title 49 of the United States Code and when recorded, will validly vest in



ITT a perfected security interest in the Equipment, free of all claims, liens, encumbrances and other security interests, and no other filing or recordation is necessary to protect the rights of ITT in any state of the United States of America or the District of Columbia; and (iv) no approval of the Interstate Commerce Commission or any other governmental authority is necessary for the execution and delivery of this Security Agreement.

6. The Company agrees that until payment in full of the Note, unless ITT shall otherwise agree in writing, it will not nor will it permit any Subsidiary to:

(a) Take any action which would permit, or fail to take any action which would prevent, the termination of the Assigned Car Agreement of June 15, 1979 between the Company and Scott Paper Company relative to the use of the 35 box cars subject to this Security Agreement. The Company agrees to notify ITT promptly of any threatened termination of such Agreement.

(b) Take any action by amendment to the Certificate of Incorporation or By-Laws of the Company or of any Subsidiary, or through any reorganization, consolidation, merger, dissolution, sale of assets or issuance of securities, or by payment of salaries or other compensation to officers or employees in excess of those customary in the industry and trade, or by any other voluntary action, to avoid or seek to avoid the observance and performance of any terms of this Security Agreement, and all other agreements executed in connection therewith or incidental thereto,

and will at all times in good faith assist in the carrying out of all such terms and the taking of all such action as may be necessary or appropriate in order to protect the rights of ITT thereunder against any impairment.

7. The Company agrees that any of the following shall constitute an Event of Default:

(a) Default in the payment when due of any principal or interest due on the Note, and such default shall continue for a period of ten days; or

(b) Any representation or warranty made by the Company shall prove to have been incorrect, or shall be breached, in any material respect, or any statement or certificate furnished by or on behalf of the Company under this Security Agreement shall prove to have been incorrect in any material respect; or

(c) Default by the Company in the performance of any covenant or other agreement herein contained which shall remain unremedied for thirty (30) days after written notice thereof shall have been given to the Company by ITT; or

(d) Any bond, debenture, note or other evidence of debt of the Company shall have become due before stated maturity by the acceleration of the maturity thereof by reasons of default or shall have become due by its terms and shall not be promptly paid or extended; or

(e) Any default or event of default under any other indenture, credit or loan agreement or other agreement or

instrument under which debt of the Company or its Subsidiary is outstanding or by which the same is evidenced shall have occurred and shall have continued for a period of time sufficient to permit the holder or holders of the respective debt to accelerate the maturity thereof; or

(f) The Company or its Subsidiary shall: (i) apply for or consent to the appointment of a receiver, trustee or liquidator of itself or of its property, (ii) be unable, or admit in writing inability, to pay its debts as they mature, (iii) make a general assignment for the benefit of creditors, (iv) be adjudicated a bankrupt or insolvent, or (v) file a voluntary petition in bankruptcy or a petition or answer seeking reorganization or an arrangement with creditors, or take advantage of any insolvency law, or (vi) the institution of any such proceedings against the Company or its Subsidiary followed by its acquiescence therein, consent thereto, or the pendency thereof for 30 days.

As soon as possible after the Company knows or has reason to know that any Event of Default as above specified or any event which with notice or lapse of time or both would become such an Event of Default, has occurred, the Company shall furnish to ITT written notice of such occurrence, together with a statement by a senior officer of the Company describing the action, if any, which the Company proposes to take with respect thereto.

8. The Company agrees that whenever a default shall be existing, ITT shall have the following rights and remedies to the

extent permitted by applicable law: (a) to enter such place or places where any of the Equipment may be located and take and carry away the same by any of its representatives, with or without legal process, to the Company's place of storage; (b) to sell the Equipment at public or private sale, whether or not the Equipment is present at such sale and whether or not the Equipment is in the constructive possession of ITT or the person conducting the sale, in one or more sales, as an entirety or in parcels, for the best price that ITT can obtain and upon such terms as ITT may deem desirable; (c) to be the purchaser at any such sale; (d) to require the Company to pay all expenses of such sale, taking, keeping and storage of the Equipment, including reasonable attorneys' fees; (e) to apply the proceeds of such sale to all expenses in connection with the taking and sale of the Equipment, and any balance of such proceeds towards the payment of the Note in such other application as ITT may from time to time elect; (f) to require the Company to assemble the Equipment upon ITT's demand, at the Company's expense and make it available to ITT at a place designated by ITT which is reasonably convenient to both parties; and (g) to exercise any one or more rights or remedies accorded by the Uniform Commercial Code or the Interstate Commerce Act and the Rules and Regulations thereunder. If the proceeds of any such sale are insufficient to pay the expenses, as aforesaid, and the Note, the Company agrees to pay any deficiency to ITT upon demand, and if such proceeds are more than sufficient to pay

such expenses and the Note, ITT agrees to pay the surplus to the Company.

If at the time of any such repossession, the Equipment contains other personal property not included in the Equipment, ITT may take such personal property into custody and store it at the risk and expense of the Company. The Company agrees to notify ITT within 48 hours after repossession of the Equipment of any such other personal property claimed and that failure to do so will release ITT from any liability for loss or damage thereto.

9. At the request of ITT, the Company will join with ITT in filing this Security Agreement. The Company hereby authorizes ITT to file a financing statement signed only by ITT in all places where necessary to perfect ITT's security interest in the Collateral. Without limiting the foregoing, the Company agrees that whenever a Lease Agreement requires the Company to sign a financing statement for filing purposes, the Company hereby appoints ITT's representatives as the Company's attorney and agent, with full power of substitution, to sign or endorse the Company's name on any such financing statement or other document and authorizes ITT to file such a financing statement in all places where necessary to perfect ITT's security interest in the Collateral; and the Company hereby ratifies all acts of said attorney and said substitute and agrees to hold ITT and said attorney harmless from any acts of commission or omission or any error or judgment or mistake of fact or law pertaining thereto.

10. This Security Agreement is in addition to, and not in limitation of, any other right and remedy ITT may have by virtue of any other instrument or agreement heretofore, contemporaneously herewith or hereafter executed by the Company or by law or otherwise including but not limited to the Note. If any provision of this Security Agreement is contrary to applicable law, such provision shall be deemed ineffective without invalidating the remaining provisions hereof. If and to the extent that applicable law confers any right or imposes any duty inconsistent with or in addition to any of the provisions hereof the affected provision shall be considered amended to conform thereto. ITT shall not by any act, delay, omission or otherwise be deemed to have waived any of its rights or remedies hereunder. A waiver by ITT of any right or remedy hereunder or any one occasion, shall not be construed as a bar to or waiver of any such right or remedy which ITT would have had on any future occasion nor shall ITT be liable for exercising or failing to exercise any such right or remedy. It is expressly understood and agreed that whenever the service of any notice to the Company or ITT is herein or otherwise required, such notice may be sent by ordinary mail addressed to:

ITT Industrial
Credit Company

P. O. Box 25447
Charlotte, N. C. 28212
Attention: James Hafele, Regional Manager

The Company

Atlantic & Western Financial
Corporation
P. O. Box 1208
Sanford, North Carolina 27330
Attention: President

With a copy to:

O. Tracy Parks, III
McDermott & Parks
P. O. Box 637
Sanford, North Carolina 27330

11. The Company shall pay all costs and expenses reasonably incurred by ITT in connection with the preparation, execution, delivery, performance and enforcement of any of the terms and provisions of this Security Agreement, the Note, and other instruments, documents and agreements executed and delivered in connection with this Agreement, and any supplements and amendments thereto, including fees and disbursements of counsel for ITT, and costs, fees and expenses incurred in connection with the filing of mortgages, assignments and financing statements with respect to the railroad freight cars, documentary and other taxes, if any.

12. This Security Agreement shall be construed in accordance with the laws of the State of North Carolina and shall be binding upon and shall inure to the benefit of the Company, ITT and their respective successors and assigns.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed all as of the 12 day of February, 1981.

(Corporate Seal)
Attest:

O. Tracy Parks III
Secretary

ATLANTIC & WESTERN FINANCIAL
CORPORATION

By: W. B. Joyce
President

(Corporate Seal)
Attest:

[Signature]
Title: Asst. Credit Mgr.

ITT INDUSTRIAL CREDIT COMPANY

By: James H. [Signature]
Title:

STATE OF NORTH CAROLINA

COUNTY OF LEE

On the 12th day of February, 1981, before me personally appeared W. B. Joyce, to me personally known, who being by me duly sworn, says that he is President of ATLANTIC & WESTERN FINANCIAL CORPORATION, that the seal affixed to the foregoing instrument is the seal of said Corporation, that said instrument was signed and sealed on behalf of said Corporation by authority of its Board of Directors; and he acknowledged that the execution of the foregoing instrument was the free act and deed of said Corporation.

Pauline M. Collins
Notary Public

My Commission Expires:

Dec 10, 1985

STATE OF North Carolina

COUNTY OF Mecklenburg

On the 12th day of February, 1981, before me personally appeared James Hafele, to me personally known, who being by me duly sworn, says that he is Regional Manager of ITT INDUSTRIAL CREDIT COMPANY, that the seal affixed to the foregoing instrument is the seal of the Company, that said instrument was signed and sealed on behalf of said Company 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 Company.

Carolyn Margrave
Notary Public

My Commission Expires:

My Commission Expires April 10, 1985

EXHIBIT A

Thirty-five (35) 50 ft. 6 in., 70 ton XP boxcars bearing recording numbers and marks as follows: ATW4165 to and including 4199.