

RECORDATION NO. 13709-A FILED 1425

JUL 28 1982 -10 35 AM
INTERSTATE COMMERCE COMMISSION

AVEC EQUIPMENT CORPORATION
P. O. Box 706
Galion, Ohio 44833

RECORDATION NO. 13709 FILED 1425

JUL 28 1982 -10 35 AM

INTERSTATE COMMERCE COMMISSION

July 26, 1982

Miss Mildred Lee
Interstate Commerce Commission
12th and Constitution Avenue, N. W.
Washington, D. C. 20423

Re: Avec Equipment Corporation and
Provident National Bank of
Philadelphia.

Dear Miss Lee:

Enclosed please find Mortgage, Assignment and Security Agreement, dated July 1, 1982, between Avec Equipment Corporation, an Ohio corporation, Debtor, and Provident National Bank of Philadelphia, Creditor, for recording.

Also enclosed please find Operating and Use Agreement, dated June 1, 1981, between Avec Equipment Corporation, Owner, and Augusta Railroad Company, an Arkansas corporation, hereinafter called "User" for recording.

Thank you for your courtesy in this matter.

Sincerely yours,

AVEC EQUIPMENT CORPORATION

By Philip S. Hesby
Philip S. Hesby, President

PSH:djw

Enclosures

*Account paid -
Alayne Jones*

REC'D - INTERSTATE COMMERCE COMMISSION
JUL 28 10 26 AM '82
No. 212092020
Date JUL 28 1982
Fee \$ 100.00
ICC Washington, D. C.

Interstate Commerce Commission
Washington, D.C. 20423

OFFICE OF THE SECRETARY

Philip S. Hesby, President
Avec Equipment Corporation
P. O. Box 706
Galion, Ohio 44833

July 28, 1982

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 7/28/82 at 10:35AM, and assigned re-
recording number(s). 13709, & 13709-A

Sincerely yours,

Agatha L. Mergenovich
Agatha L. Mergenovich
Secretary

Enclosure(s)

RECORDATION NO. 13709
FILED 1425

JUL 28 1982 - 11 35 AM
INTERSTATE COMMERCE COMMISSION

MORTGAGE, ASSIGNMENT AND SECURITY AGREEMENT

Mortgage, Assignment and Security Agreement dated July 1, 1982 ("Agreement") by and between AVEC EQUIPMENT CORPORATION, an Ohio corporation (the "Debtor") and PROVIDENT NATIONAL BANK, a national banking association (the "Secured Party").

Recitals

WHEREAS, Debtor is the owner of record of 182 railroad boxcars identified in Exhibit A hereto (such boxcars together with all parts, modifications and accessories thereto being the "Equipment"); and

WHEREAS, Secured Party has made a certain loan in the principal amount of \$1,543,448.29 to Debtor to refinance the rehabilitation of the Equipment pursuant to a letter agreement between Debtor and Secured Party dated June 25, 1982 ("Letter Agreement") which is incorporated by reference into this Agreement and Debtor has issued its promissory note of even date herewith (the "Note") evidencing such loan; and

WHEREAS, to secure payment of Debtor's Obligations, as hereafter defined, Debtor has agreed to grant to Secured Party a mortgage upon and a security interest in the Equipment, all insurance on the Equipment and the proceeds of that insurance, and revenue of and claims for damage to or destruction of the Equipment (collectively the "Collateral").

NOW, THEREFORE, in consideration of the premises and the mutual covenants herein contained, the parties hereto,

intending to be legally bound, hereby agree as follows:

Section 1. Mortgage of, Assignment of, and
Security Interest in Collateral

1.1 Debtor hereby mortgages, grants a lien upon and a security interest in the Equipment as security for the payment and performance of Debtor's Obligations. As used herein, the term "Obligations" means the Note and all obligations, representations, and warranties of Debtor to Secured Party provided for or referred to herein or in the Letter Agreement.

1.2 Debtor hereby assigns, pursuant to the Letter Agreement, to Secured Party all of its right, title and interest, and grants a security interest in any and all money and claims for money due or to become due to Debtor as owner of the Equipment from any source or sources whatsoever for the use, service, damage or destruction of any or all of the Equipment beginning with the service month of July 1982 and thereafter.

Section 2. Representations and Warranties
of Debtor

Debtor represents and warrants that:

2.1 Debtor is a corporation duly organized, validly existing and in good standing under the laws of its state of incorporation and has full power and authority to make and perform the Letter Agreement, the Note, this Agreement and all other documents delivered in connection herewith.

2.2 The execution, delivery, and performance of the Letter Agreement, the Note, this Agreement and all documents in

connection herewith have been duly authorized by all requisite corporate action and will not violate any provision of law or regulation, or of the charter or bylaws of Debtor, or of any agreement or other instrument by which Debtor is bound.

2.3 The Letter Agreement, the Note, this Agreement and all other documents delivered in connection herewith are valid and binding obligations of Debtor enforceable in accordance with their respective terms.

2.4 Debtor has good title of record to the Collateral free and clear of any liens and encumbrances other than as referred to herein and in the Letter Agreement. Debtor's principal place of business and the address at which its records with respect to the Collateral are kept is 342 Harding Way West, P. O. Box 706, Galion, Crawford County, Ohio 44833.

2.5 Each item of the Equipment is in service or available for service except for Y & S 25836 and Augusta 123034 which are under repair and will be returned to service as soon as possible.

Section 3. Power of Attorney

Debtor hereby appoints Secured Party, pursuant to the Letter Agreement, its attorney-in-fact in the name of Debtor or otherwise to ask, demand, receive and give acquittance for any and all money and claims for money due and to become due or to become due to Debtor as owner of the Equipment for the use, service, damage or destruction of any or all of the Equipment beginning with the service month of July 1982 and thereafter, to endorse any checks or other instruments in connection therewith, to give all or any notices, consents, instructions or other communications

reserved to Debtor therein, and to file any claims or take any action or institute any proceedings, granting unto said attorney full power to do any and all things necessary to be done with respect to such money or claims for money as fully and effectively as Debtor might or could do, and Debtor hereby ratifies all said attorney shall lawfully do or cause to be done hereunder. This power of attorney shall be irrevocable for the term of this Agreement.

Section 4. Events of Default

The following shall constitute Events of Default hereunder and under the Note:

4.1 If there shall be a default in the payment of principal or interest on the Note when and as the same shall become due and payable.

4.2 If there shall be a default under or material breach of any of the terms of the Letter Agreement.

4.3 If any of the representations and warranties of Debtor set forth in Section 2 hereof shall prove to have been materially false or incorrect.

4.4 If there shall be a default under or material breach of any of the terms of this Agreement.

Section 5. Remedies

Upon the occurrence of an Event of Default, Secured Party may, in its sole discretion take any action stated herein

as well as any other action allowed by law, and may exercise all remedies from time to time and as often as Secured Party, in its judgment, may deem desirable:

5.1 Declare the Note to be due and payable and the Note shall thereupon become due and payable, without presentation or further action of any kind.

5.2 Exercise all rights of a Secured Party under any applicable law, including the Uniform Commercial Code, including the right to collect, receipt for, settle, compromise, adjust, sue for, foreclose or otherwise realize upon any of the Collateral, and to dispose of any of the Collateral at public or private sale or other proceeding. Debtor agrees that 30 days' prior written notice of such sale or disposition shall constitute reasonable notice under the Uniform Commercial Code, and further agrees that Secured Party or its nominee may become the purchaser at any such sale.

Section 6. Limitation of Liability of Avec

Notwithstanding any provision herein or in the Note or Letter Agreement, the liability of Debtor hereunder and under the Note and Letter Agreement shall be enforceable only out of the Collateral as defined herein and the proceeds therefrom.

Section 7. Successors and Assigns

All provisions herein shall inure to and become binding upon the successors, representatives, receivers, trustees and

assigns of the parties.

Section 8. Miscellaneous

8.1 The Debtor's address for the delivery of notices, requests, demands and other communications hereunder is as set forth below, until changed by written notice to the Secured Party:

Avec Equipment Corporation
P. O. Box 706
Galion, Ohio 44833

8.2 The Secured Party's address for the delivery of communications hereunder is as set forth below until changed by written notice to Debtor:

Provident National Bank
P. O. Box 7648
Philadelphia, PA 19101

Attention: Mr. R. C. Rhoades

8.3 This Agreement has been executed pursuant to and shall be governed by the laws of the Commonwealth of Pennsylvania.

IN WITNESS WHEREOF, this Agreement has been duly executed on the day and year first above written.

AVEC EQUIPMENT CORPORATION

By Philip S. Hesby, Pres
President

PROVIDENT NATIONAL BANK

By R. C. Rhoades VP
Vice President

STATE OF *Pennsylvania* :
 : ss.
COUNTY OF *Philadelphia* :

On this the *1st* day of *July*, 1982, before me, a Notary Public for the *Commonwealth of Pennsylvania*, the undersigned officer, personally appeared *Philip S. Hesby*, who acknowledged himself to be the President of AVEC EQUIPMENT CORPORATION, an Ohio corporation, and that he as such officer, being authorized to do so, executed the foregoing instrument for the purposes therein contained, by signing the name of the corporation by himself as such officer.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

Ellen Bain

Notary Public
My Commission Expires:

ELLEN BAIN
Notary Public, Phila., Phila. Co.
My Commission Expires Nov. 18, 1985

STATE OF *Pennsylvania* :
 : ss.
COUNTY OF *Philadelphia* :

On this the *1st* day of *July*, 1982, before me, a Notary Public for the *Commonwealth of Pennsylvania*, the undersigned officer, personally appeared *R. C. Rhodes*, who acknowledged himself to be a Vice President of PROVIDENT NATIONAL BANK, a national banking association, and that he as such officer, being authorized to do so, executed the foregoing instrument for the purposes therein contained, by signing the name of the corporation by himself as such officer.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

Ellen Bain

Notary Public
My Commission Expires:

ELLEN BAIN
Notary Public, Phila., Phila. Co.
My Commission Expires Nov. 18, 1985

AUGUSTA RAILROAD COMPANY

AUG	123000	AUG	123043	AUG	123087	AUG	123151
	123001		123044		123088		123152
	123002		123045		123089		123153
	123003		123046		123090		123154
	123004		123047		123091		123155
	123005		123048		123092		123156
	123006		123049		123093		123157
	123007		123050		123094		123158
	123008		123051		123096		123159
	123009		123052		123097		123160
	123010		123053		123098		123161
	123011		123054				123162
	123012		123055		123100		123163
	123013		123056		123101		123164
	123014		123057		123103		123165
	123015		123058		123104		123166
			123060		123105		123167
	123017				123106		123168
	123018		123062		123107		
	123019		123063		123108		123170
	123020		123065		123109		123171
	123021				123110		123172
	123022		123067		123111		123173
	123023		123068		123112		123175
	123025		123069				123176
	123026		123070		123117		123177
	123027				123118		123178
	123028		123072		123119		123179
	123029		123073		123120		123180
			123074		123121		123500
	123031		123075		123122		123501
	123032		123076		123123		123502
	123033		123077		123124		123503
	123034		123078		123125		123504
	123035		123079		123126		123505
	123036		123080		123127		123506
	123037		123081		123128		123507
	123038		123082		123129		123508
	123039		123083		123130		123509
	123040		123084		123131		
	123041		123085		123132		
	123042 ^{4b}		123086 ³⁹		123133 ^{4b}		

123157
 (123157)

YOUNGSTOWN & SOUTHERN RAILWAY COMPANY

Y&S	23128	Y&S	23869	Y&S	24770	Y&S	25698
	23248		23877		24903		25836
	23601		23896		25179		26060
	23621		23939		25221		26115
	23717		23968		25334		
	23721		23976		25446		
	23772		24647		25696		