

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

RECEIVED
JUL 28 10 26 AM '82
I.C.C.
FEE OPERATION B.P.

2-2091070

No.
Date JUL 28 1982

Fee \$ 100.00

ICC Washington, D. C.

*Account -
Walter James*

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. 13700-A

JUL 28 1982 - 10 35 AM

INTERSTATE COMMERCE COMMISSION

OPERATING AND USE AGREEMENT

AGREEMENT made and entered into as of the 1st day of June, 1981, between AVEC EQUIPMENT CORPORATION, an Ohio corporation, (hereinafter called "Owner") and AUGUSTA RAILROAD COMPANY, an Arkansas corporation, (hereinafter called "User").

W I T N E S S E T H:

WHEREAS, User desires to obtain from Owner certain railroad cars, hereinafter specifically designated or to be specifically designated for the purposes and upon the terms and conditions as set forth in this agreement.

NOW, THEREFORE, the parties hereto agree as follows:

1. Cars to be Furnished: Owner agrees to make available to User, and User agrees to use during the term of this agreement that number of used railroad cars to be provided by Owner under the terms and conditions and for the rentals hereinafter set forth, which cars are sometimes hereinafter called the "Cars". The Cars will be 50 foot, fifty ton Box Cars. Any additional descriptions of the Cars, including any Association of American Railroads (A.A.R.) mechanical designation, identifying marks, road or serial numbers to be delivered to User upon the execution of this agreement, are set forth in Appendix A hereto, and amendments. Any additional Cars delivered to User shall be provided for and accepted by User as provided in paragraph 6, on

the basis set forth in paragraph 5 hereof. When any such subsequent delivery of Cars is made, an amendment to Appendix A shall be executed by Owner indicating the type and description of the Cars involved, as reflected in Appendix A for Cars delivered upon the execution of this agreement. Upon acceptance by User of any subsequently delivered Cars, the provisions of this agreement shall become fully applicable thereto.

2. Term of Agreement: The term of this agreement for any Cars delivered hereunder shall commence upon their acceptance by User, as provided for in paragraph 6 hereof, and shall terminate on May 31, 1982, irrespective of the date of the acceptance of any Car. Owner shall have the right to renew this agreement on a year to year basis.

3. Delivery and Use of Cars: Owner agrees to deliver at its expense, and User agrees to accept the Cars at such point or points to which the parties may agree, not necessarily on User's property. Owner's obligation as to such deliveries shall be subject to all delays resulting from causes beyond its control. The Cars shall be used only in such interline service as shall be mutually agreed upon between the parties, and none of the Cars, except with prior written consent of Owner, shall be shipped beyond the boundaries of the United States, Canada or Mexico. Owner agrees to apply User's reporting marks to the Cars, notwithstanding that title to them shall at all times remain in Owner. Owner will also cause each Car to be marked with User's

road numbers referred to in Appendix A. Such road numbers shall not be changed, except by agreement of both Owner and User.

4. Rental: Beginning with the third month after acceptance of the Cars, a Rental shall be payable each calendar month thereafter consisting of the net of all amounts paid or received by User during such month under the then applicable Car Hire, Car Service and A.A.R. repair billing rules, less a fee to User (Service Fee) of Seven Dollars (\$7.00) per Car per calendar month.

5. Reports: Beginning in September, 1981, User shall report to Owner by the 20th day following the end of each calendar month the information applicable to such month with respect to all Cars:

- (a) Amount of per diem, if any, and mileage received and/or paid by User;
- (b) Amount of car service charges paid;
- (c) Amount of A.A.R. payable repair billing;
- (d) Amount of Service Fee;
- (e) Amount due Owner.
- (f) User shall use Accounting and/or Computer Service Company as directed by Owner, at Owner's expense.

In addition to the foregoing, User shall report to Owner in substantially the same form as Appendix B hereto in each June and December a listing, by Car and/or groups of Cars as directed by Owner, of all amounts received with respect to such Car pursuant to Car Hire Rules and a listing of all A.A.R. repair billing

actually paid in the prior period with the approval of the Owner.

6. Acceptance of Cars by User at Owner's Expense:

Each of the Cars shall be subject to User's inspection and approval.

7. Maintenance or Repairs: Owner shall at all times during the term of this agreement, and at its own cost and expense, maintain and keep the Cars in good and proper repair and running condition. In the event, however, that any of the Cars are damaged or destroyed while on User's railroad, User shall assume financial responsibility therefor. Owner also agrees that it shall, at its own cost, comply with and maintain the Cars in accordance with all governmental laws, regulations and requirements, and with the Rules of Interchange of the Association of American Railroads (or of any successor thereto), with respect to the use, maintenance and operation of the Cars during the continuance of this agreement.

8. Cars Removed from Service: In the event of the loss or destruction of any Car from any cause whatsoever during the term of this agreement, the Rental with respect to such Cars shall terminate at the time provided for in the Car Hire Rules, provided, however, that the Service Fee shall terminate three months thereafter. The Owner or its insurer shall have the rights of subrogation and indemnification to and for any claim for loss or destruction and may thereunder, at its option, assume the right to collect its claim for the value of such Car from the party responsible and liable for the loss or destruction of the Car. In

furtherance of the foregoing, User hereby authorizes and empowers Owner in Owner's own name, or in the name of and as attorney, hereby irrevocably constituted for User to ask, sue for, collect, receive and enforce any and all rights to which Owner may be entitled by reason of the destruction of the said Car. Owner shall have the right, but shall not be obligated, to substitute for any destroyed Car another Car of the same type and capacity and the same monthly Rental with respect to such substituted Car shall commence upon delivery of such substituted Car to User.

9. Payment of Taxes, Liens and Other Items:

1. The following additional costs and expenses shall be the responsibility of and be paid by Owner:

- (a) All license fees, assessments and sales, use, property and other tax or taxes now or hereafter imposed by any state, federal or local government upon the Cars or upon the use thereof, whether assessed in the name of Owner or User. If User for any reason pays any of the aforesaid, Owner agrees to reimburse User promptly upon receipt of bills, therefor; and
- (b) The cost and expense of removing User's markings from the Cars upon termination of this agreement.
- (c) User shall not pay a license fee, assessment or tax in the first instance without giving Owner at least ten (10) days written notice thereof

so that Owner may have an opportunity to make payment itself or contest the same in which latter event User will cooperate with Owner.

2. User agrees to indemnify Owner, and hold it harmless from any loss, expense, or liability which Owner may suffer or incur, from any charge, claim, proceeding, suit or other event which in any manner or from any cause arises in connection with the use, possession or operation of a Car while subject to this lease, and without regard as to how such charge, claim, proceeding, suit or other event arose, including without limiting the generality of the foregoing, WHETHER it arises from latent or other defects which may or may not have been discoverable by Owner. The term Owner shall mean and include any subsidiary, parent or affiliated corporation, or person for all purposes of this sub-paragraph. Owner shall pay for Insurance Coverage as set forth in Schedule attached to this agreement with Fred S. James and Company of California or other carrier designated by Owner.

10. Assignment: User may transfer or assign its interest under this agreement with respect to the Cars covered hereunder without Owner's prior written consent. No right, title or interest in any of the Cars, or the income therefrom, shall vest in User by reason of this agreement except for the provisions of paragraph 4 of this agreement, or by reason of the delivery to or use by User of the Cars, except the right to use the Cars in accordance with the terms of this agreement. Owner and any

assignees of Owner shall be entitled to sell, assign and transfer its entire title and reversion in and to the Cars and/or its right to Rentals and other payments payable by the User hereunder and to the performance of the other covenants herein made by User, and such assignee or any subsequent assignee thereof shall have and succeed to all of the rights, duties and remedies herein conferred upon and reserved to Owner. User shall be obligated under this agreement to the Owner, assignee or subsequent assignee upon receipt by User of notification from both the Owner and its assignee or by any assignee or subsequent assignee that such assignment or subsequent assignment has taken place.

11. Remedies: If User shall fail to perform any of its obligations hereunder, Owner may give written notice to User, and if User shall fail to cure within thirty (30) days of such notice, Owner at its election may either (a) terminate this agreement immediately, or (b) withdraw the Cars which have to that date been delivered from the service of the User and deliver the same, or any thereof, to others upon such terms as Owner may see fit.

If User shall fail to carry out and perform any of its obligations under this agreement, or if a petition in bankruptcy, or for reorganization, or for a trustee or receiver is filed by or against User (unless such petition shall be dismissed within thirty (30) days from the filing or other effective date thereof, or shall, within such period be nullified, stayed or otherwise rendered ineffective, or unless any such receiver(s) or trustee(s) shall, within thirty (30) days from the date of

his or their appointment, adopt this agreement pursuant to due authority of the Court of his or their appointment), then and in any such event, Owner may, at its option, declare this agreement terminated and upon such declaration all Rentals not theretofore due and payable shall forthwith become due and payable and Owner may enter upon the railroad or premises where the Cars or any of them may be and retake possession thereof, and remove User's road number and name therefrom. If Owner waives its said rights or does not declare this agreement terminated, User's obligations hereunder shall continue. The aforesaid remedies of Owner shall not be deemed exclusive, but shall be cumulative and in addition to all other rights and remedies given or provided by law or in equity. No delay or failure on the part of Owner to exercise any rights hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right preclude any other or further exercise thereof, and no act or omission to act by Owner against User or against any Car, or any delay or indulgence granted or allowed by Owner, shall prejudice any of Owner's rights.

12. Termination and Return of Cars: At the end of the term of this agreement, or upon any termination thereof for cause as defined herein, User shall forthwith surrender possession of the Cars (except Cars previously removed from service) to Owner at such point or points where the Cars may then be located. From the time of such surrender, the Cars shall become and remain the

responsibility of Owner.

13. Recordation: Owner at its option may cause this agreement to be filed and recorded with the Interstate Commerce Commission under the Interstate Commerce Act in order to publish notice of, and to protect the title of Owner to the Cars. User shall execute any and all other and further instruments as shall reasonably be requested by Owner to assure such publication and such protection of such title. Owner shall pay all costs, charges and expenses, including all recording and registration taxes and fees, incident to the filing, registering and/or recording of this agreement and of any instruments of further assurance hereunder.

14. All Parties Bound: Subject only to the limitations of paragraph 9 hereof, this agreement shall be binding upon and inure to the benefit of the Owner and its successors and assigns.

15. Execution in Counterparts: This agreement may be simultaneously executed in two or more counterparts, each of which shall be deemed to be an original, and such counterparts together shall constitute but one and the same agreement which shall be sufficiently evidenced by any such original counterpart.

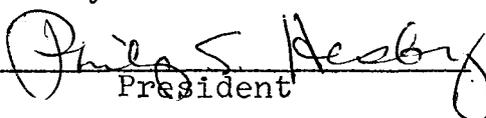
16. Notice in Writing: Any notice, demand or other communication hereunder shall be in writing and shall be deemed to have been duly given when personally delivered or deposited in the mail, first class postage prepaid, or delivered to a telegraph office, charges prepaid, addressed as follows: If to the

Owner: To the attention of Philip Hesby, President, AVEC Equipment Corporation, P.O. Box 706, Galion, Ohio, 44833. If to the User: To the attention of Philip S. Hesby, President, Augusta Railroad Company, P.O. Box 706, Galion, Ohio, 44833, or addressed to either party at such other address as such party shall hereafter furnish to the other in writing.

17. Construction: The remedies in this agreement provided in favor of the Owner shall not be deemed exclusive, but shall be cumulative, and shall be in addition to all other remedies in Owner's favor existing at law or in equity and may be exercised from time to time and as often and in such order as may be deemed expedient by the Owner. The captions herein are inserted for convenience only and shall not affect the construction of this agreement. No delay or omission of the Owner in the exercise of any right or power accruing upon any event of default shall impair any right or power or shall be construed to be a waiver of such event of default or an acquiescence therein. The provisions of this agreement and all rights and obligations hereunder shall be governed by and construed in accordance with the laws of the State of Ohio.

IN WITNESS WHEREOF, Owner and User, respectively have caused these presents to be signed in their respective corporate names as of the day and year above written.

AVEC EQUIPMENT CORPORATION

By  President

AUGUSTA RAILROAD COMPANY

By Philip S. Hesby
President

166 BOXCARS - AUG Marks

123000	123043	123087	123150
123001	123044	123088	123151
123002	123045	123089	123152
123003	123046	123090	123153
123004	123047	123091	123154
123005	123048	123092	123155
123006	123049	123093	123156
123007	123050	123094	123157
123008	123051	123096	123158
123009	123052	123097	123159
123010	123053	123098	123160
123011	123054	123099	123161
123012	123055	123100	123162
123013	123056	123101	123163
123014	123057	123103	123164
123015	123058	123104	123165
123016	123060	123105	123166
123017	123061	123106	123167
123018	123062	123107	123168
123019	123063	123108	123169
123020	123065	123109	123170
123021	123066	123110	123171
123022	123067	123111	123172
123023	123068	123112	123173
123025	123069	123114	123175
123026	123070	123117	123176
123027	123071	123118	123177
123028	123072	123119	123178
123029	123073	123120	123179
123030	123074	123121	123180
123031	123075	123122	123500
123032	123076	123123	123501
123033	123077	123124	123502
123034	123078	123125	123503
123035	123079	123126	123504
123036	123080	123127	123505
123037	123081	123128	123506
123038	123082	123129	123507
123039	123083	123130	123508
123040	123084	123131	123509
123041	123085	123132	
123042	123086	123133	