

No.

Date JUL 10 1980

Fee \$ 50.00

Washington, D. C.

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

June 14, 1980

11977

RECORDATION NO.....Filed 1425

JUL 10 1980 - 3 20 PM

INTERSTATE COMMERCE COMMISSION

Mrs. Agatha L. Mergenavich
Secretary
Interstate Commerce Commission
12th & Constitution Ave., N.W.
Washington, D.C. 20423

Dear Madam:

Enclosed for filing with the Commission pursuant to Section 11303-a of the Interstate Commerce Act, as amended, are the original and three additional counterparts of Security Agreement dated as of June 14, 1980 covering 116 used railroad freight cars. The names and addresses of the parties to the transaction are as follows:

Secured Party: Solar Equity Corp.
P.O. Box 706
Galion, Ohio 44833

Debtor: Avec Equipment Corp.
P.O. Box 706
Galion, Ohio 44833

The following is a general description of the railroad equipment covered by said document:

<u>No. of Units</u>	<u>Description</u>	<u>A.A.R. Mechanical Designation</u>	<u>Identifying Road Nos.</u>
116	50' - 55 ton rebuilt boxcars 10-doors	XP	See attached sheet (LKVY 123,000 to 123,509)

Also enclosed is Avec's check in the amount of \$50 to cover the recording fee. Please acknowledge receipt at your earliest convenience by stamping and returning to me three counterparts of the document.

Very truly yours,

AVEC EQUIPMENT CORPORATION

By Philip S. Hesby
Philip S. Hesby
President

FEE OPERATION BR.
I.C.C.

JUL 10 3 17 PM '80

RECEIVED

Philip S. Hesby

Interstate Commerce Commission
Washington, D.C. 20423

7/10/80

OFFICE OF THE SECRETARY

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

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 **7/10/80** at **3:20pm**, and assigned re-
recording number(s). **11977**

Sincerely yours,

Agatha L. Mergenovich
Agatha L. Mergenovich
Secretary

Enclosure(s)

SE-30
(7/79)

RECORDATION NO. 11977 Filed 1425

JUL 10 1980 - 3 20 PM
INTERSTATE COMMERCE COMMISSION

MORTGAGE, ASSIGNMENT AND SECURITY AGREEMENT

Mortgage, Assignment and Security Agreement dated June 14, 1980 by and among AVEC EQUIPMENT CORPORATION, an Ohio corporation (the "Debtor"). PHILIP S. HESBY (the "Trustee") and SOLAR EQUITY CORPORATION, an Ohio corporation (the "Secured Party").

Recitals

WHEREAS, Debtor is the owner of 116 railroad boxcars identified in Exhibit A hereto and Trustee is the trustee and Debtor the trustor under a Trust Agreement dated as of August 11, 1967, as amended, and other trusts of which the 116 railroad boxcars identified in Exhibit A hereto are the subject (such 116 boxcars together with any replacements therefor and all parts, modifications and accessions thereto being the "Equipment"); and

WHEREAS, Secured Party has made certain loans to Debtor to finance the purchase and rehabilitation of the Equipment, and Debtor has issued its promissory note of even date herewith (the "Note") evidencing such loans; and

WHEREAS, Debtor has entered into an agreement dated June 28, 1979 with Scott Paper Company ("Scott") in which Trustee has joined, a copy of which is attached hereto as Exhibit B, under which Scott is entitled to the exclusive use of the Equipment and guarantees minimum revenues to be derived from the Equipment as

set forth therein (the "Scott Agreement"); and

WHEREAS, Debtor and Trustee are parties to an agreement dated March 12, 1980 with Lykens Valley Railroad Company ("LKVY"), a copy of which is attached hereto as Exhibit C (recorded with the Interstate Commerce Commission at Recordation No.

on 1980), providing that the Equipment listed in Exhibit A will carry the LKVY reporting marks and numbers and providing for the rental to be paid by LKVY and other users for use of the Equipment listed in Exhibit A (the "LKVY Agreement"); 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 and to assign to Secured Party and grant a security interest in the Scott Agreement, the LKVY Agreement, all insurance on the Equipment and the proceeds of that insurance, and all cash and non-cash proceeds of any of the foregoing (collectively the "Collateral"); and

WHEREAS, Trustee has agreed to join in this instrument as holder of title to the Equipment listed in Exhibit A as his interest may appear and as a party to the Scott Agreement and the LKVY Agreement and all references hereinafter to Debtor shall be deemed to include Trustee to effectuate this purpose.

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.

1.2 Debtor hereby assigns to Secured Party all of its right, title and interest, and grants a security interest in the Scott Agreement, and the LKVY Agreement and any modifications or amendments thereto to the extent that such agreements relate to the Equipment. This assignment includes without limitation the absolute and unconditional right to receive all amounts payable under the Scott Agreement, and the LKVY Agreement for the Equipment and the benefit of all performance under the Scott Agreement, and the LKVY Agreement and such assignment shall be valid and binding upon Debtor regardless of any invalidity, defect in, or unenforceability of the Note or any other provision hereof. Upon payment in full of all amounts secured hereby, this assignment shall terminate and be of no further force or effect.

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 this Agreement, the Note and all other documents delivered in connection herewith.

2.2 The execution, delivery, and performance of this Agreement and of the Note 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 This Agreement and the Note 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 to the Collateral free and clear of any liens and encumbrances other than as referred to herein. 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.

Section 3. Agreements of Debtor

3.1 As to the Scott Agreement, and the LKVY Agreement, Debtor will:

(a) Fulfill or perform every provision thereof to be fulfilled or performed by it;

(b) Give to Secured Party prompt notice (i) of the receipt of any notice received by Debtor of a default by Debtor thereunder, together with a copy of such notice, and (ii) of the default by any other party thereunder;

(c) Enforce, short of termination, the performance or observance of every provision to be performed or observed by any other party thereto;

(d) Not modify or amend the terms of such agreements as to the Equipment without the written consent of Secured Party;

(e) Neither waive nor release the other parties to such agreements from any obligations or conditions thereof.

3.2 Debtor will preserve the Collateral free and clear of any liens or encumbrances other than as referred to herein and will cause the Collateral to be insured by insurers satisfactory to Secured Party and in form and amount satisfactory to Secured Party, against fire and other casualty loss, with extended coverage in the broadest form, liability and such other hazards as are customary with such Collateral, and will cause Secured Party's interest to be endorsed on all such policies of insurance in such manner that all payments for losses will be paid to Secured Party, and will furnish Secured Party with evidence of such insurance. Debtor will pay all premiums on any insurance referred to herein as and when they become due, do all things necessary to

maintain the insurance in effect, and require that all policies of such insurance require the insurer to give 30 days' written notice to Secured Party prior to any modification or termination thereof.

3.3 Debtor will not (a) permit any of the Collateral to be levied upon under legal process, (b) permit the Collateral to become subject to any lease or rental agreement that has not been assigned to Secured Party pursuant to the provisions hereof, or (c) sell, exchange, or otherwise dispose of any of the Collateral or any of Debtor's rights therein.

3.4 Debtor shall pay promptly when due all license fees, assessments, sales, use, property or other taxes imposed upon the Equipment or upon the use thereof.

3.5 Debtor will keep complete and accurate books and records and make all necessary entries therein to reflect the transactions and acts giving rise to the Collateral and all payments, credits and adjustments applicable thereto. The Debtor will keep the Secured Party fully informed as to the location of all such books and records and shall permit the Secured Party or its agents to have access to such books and records and, if deemed necessary by the Secured Party, to remove them from the Debtor's place of business or any other place where they may be found for the purposes of examining, auditing, and copying the same. Any of the Debtor's books and records so removed shall be

returned as soon as such inspection, audit, or copying is completed.

3.6 Debtor will furnish to Secured Party such financial or other information concerning its affairs and the Collateral as Secured Party may reasonably request.

3.7 Debtor will execute from time to time upon request of Secured Party such financing statements, continuation statements, assignments, notifications and other documents as are necessary or desirable at Secured Party's sole discretion to perfect and continue the liens and security interests granted herein. Debtor hereby appoints Secured Party as its attorney-in-fact to do at Secured Party's option and at Debtor's expense, all acts and things which Secured Party may deem necessary or desirable to perfect and continue the liens and security interests created herein and to protect the Collateral.

3.8 Debtor hereby appoints Secured Party 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 under or arising out of the Scott Agreement, and the LKVY Agreement, 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 the Scott Agreement,

and the LKVY Agreement 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. Nothing herein shall obligate Secured Party to perform or discharge any obligation of Debtor under the Scott Agreement, or the LKVY agreement.

3.9 Debtor will pay all of Secured Party's expenses, including fees and disbursements of its counsel, in connection with the transactions contemplated hereby, the enforcement hereof and of the Note and the exercise by Secured Party of its rights hereunder or under the Note. Debtor agrees that Secured Party may, at its sole discretion and without notice to Debtor, obtain insurance covering any of the Collateral if Debtor fails to do so, discharge taxes or liens or encumbrances levied or placed upon and of the Collateral, and pay for maintenance and preservation of the Collateral. Debtor agrees to reimburse Secured Party, on demand, with interest at the rate provided for in the Note, for any such payment made or expense incurred and agrees that the Collateral shall secure reimbursement of such payments and expenses.

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 Debtor or Scott or the LKVY becomes insolvent or makes an assignment for the benefit of creditors, or if any petition is filed by or against Debtor, Scott, or LKVY under any provision of any state or federal law alleging that Debtor, Scott, or LKVY is insolvent or unable to pay debts as they mature.

4.3 If the Scott Agreement is terminated; or if there is any breach of the Scott Agreement by either of the parties thereto; or if there is any amendment or modification of the Scott Agreement without the written consent of Secured Party.

4.4 If the LKVY Agreement terminates, whether or not pursuant to its terms, unless prior to such termination, a substitute agreement has been approved by Secured Party; or if there is any breach of the LKVY Agreement by either of the parties thereto; or if there is any amendment or modification of the LKVY Agreement without the written consent of Secured Party.

4.5 If any attachment, levy or garnishment issues against any of the Collateral.

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

4.7 If Debtor shall fail to perform any of its agreements set forth in Section 3 hereof.

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, demand, 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 10 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

Notwithstanding any provision herein or in the Note, the liability of Debtor hereunder and under the Note shall be enforceable only out of the Collateral and the proceeds therefrom, except in the case of an Event of Default arising under Subsection 4.6 of Section 4 hereof.

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 notice to Debtor:

Solar Equity Corporation
P. O. Box 706
Galion, Ohio 44833

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

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
Philip S. Hesby, President

TRUSTEE

By: Philip S. Hesby, Trustee
Philip S. Hesby, Trustee

SOLAR EQUITY CORPORATION

By: Jean B. Hesby, Vice President
Jean B. Hesby, Vice President

STATE OF OHIO :
: SS
COUNTY OF CRAWFORD :

On this the 14th day of June, 1980, before me, a Notary Public for the County of Crawford, Ohio, 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.

Patricia Bohach
Notary Public

My Commission Expires:

STATE OF OHIO :
: SS
COUNTY OF CRAWFORD :

PATRICIA BOHACH
NOTARY PUBLIC, STATE OF OHIO
My Commission Expires Aug. 26, 1982.

On this the 14th day of June, 1980, before me, a Notary Public for the County of Crawford, Ohio, personally appeared PHILIP S. HESBY, known to me to be such, who executed the within document and acknowledged the same as his voluntary act and deed.

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

Patricia Bohach
Notary Public

My Commission Expires:

STATE OF OHIO :
: SS
COUNTY OF CRAWFORD :

PATRICIA BOHACH
NOTARY PUBLIC, STATE OF OHIO
My Commission Expires Aug. 26, 1982.

On this the 14th day of June, 1980, before me, a Notary Public for the County of Crawford, Ohio, the undersigned officer, personally appeared Jean B. Hesby who acknowledged herself to be Vice President of SOLAR EQUITY CORPORATION, an Ohio corporation, and that she 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 herself as such officer

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

Patricia Bohach
Notary Public

My Commission Expires:

PATRICIA BOHACH
NOTARY PUBLIC, STATE OF OHIO
My Commission Expires Aug. 26, 1982

EXHIBIT A

LKVY BOXCARS - 116

123000	123052	123118	123164
123001	123060	123119	123165
123002	123068	123120	123166
123003	123070	123121	123167
123004	123071	123122	123168
123009	123072	123123	123169
123010	123084	123124	123170
123011	123085	123125	123171
123012	123086	123126	123172
123013	123087	123127	123173
123014	123089	123128	123175
123015	123094	123129	123176
123016	123096	123130	123177
123017	123097	123131	123178
123018	123098	123132	123179
123019	123099	123133	123180
123020	123100	123150	123500
123021	123101	123151	123501
123022	123103	123152	123502
123023	123104	123153	123503
123025	123105	123154	123504
123026	123106	123155	123505
123027	123107	123156	123506
123028	123108	123157	123507
123031	123109	123158	123508
123036	123110	123159	123509
123037	123111	123160	
123038	123112	123161	
123039	123114	123162	
123041	123117	123163	

Exhibit B

ASSIGNMENT CAR AGREEMENT

This Agreement is made and entered into this 28th day of June, 1979 by and between AVEC EQUIPMENT CORPORATION, an Ohio corporation (hereinafter referred to as "Avec") having a mailing address at P. O. Box 706, Galion, Ohio 44833, and SCOTT PAPER COMPANY, a Pennsylvania corporation (hereinafter referred to as "Scott"), having a mailing address at Scott Plaza, Philadelphia, Pennsylvania 19113. In consideration of the mutual covenants contained herein the parties agree as follows:

1. Avec warrants and represents that it has free and clear title to four hundred (400) railroad boxcars ("Boxcars") similar to Y&S 23968 and further described in Exhibit A attached to this Agreement and made a part hereof.

2. Avec agrees to deliver not less than 200 of the Boxcars to railroad sidings at Scott facilities on or before December 31, 1979 and to deliver not less than 200 Boxcars on or before December 31, 1980. Avec warrants that upon delivery the Boxcars will (1) bear the reporting marks of a railroad as that term is used in the Interstate Commerce Act; (2) be suitable for use in the shipment of sanitary paper products; and (3) be assigned to Scott as controllable "XP" boxcars; and (4) be delivered in groups of 50 boxcars each as specified in numbered schedules now or subsequently attached hereto and made a part hereof.

3. Scott guarantees that Avec shall accrue an average of at least Two Hundred Dollars (\$200.00) in per diem and mileage payments for each month for each Boxcar for a period of sixty (60) months from the date such Boxcar is received and accepted for use by Scott, PROVIDED:

(a) in determining whether the minimum Two Hundred Dollars (\$200.00) per month per Boxcar per diem and mileage has accrued in a given month, the Boxcars shall be assigned to groups of no more than fifty (50) cars as they are delivered, and the average per diem and mileage for all the Boxcars in service for that month in any such group shall be used as the per diem and mileage for each Boxcar in that group.

(b) with respect to any month in which a Boxcar is out of service for repairs or due to delivery part way through the month, the amount guaranteed by Scott for such month for such Boxcar shall be reduced by a sum equal to the number of days such Boxcar is out of service times Two Hundred Dollars (\$200.00) divided by the number of days in such month;

(c) if any Boxcar is destroyed or out of service for longer than forty-five (45) days for repairs, this guarantee shall immediately terminate with respect to such Boxcar, and Scott shall not guarantee any further per diem or mileage payments for such Boxcar; provided that Scott may re-accept such Boxcar for service and renew this Agreement with respect to such Boxcar if Avec subsequently returns the Boxcar to service.

(d) by this guarantee Scott only guarantees that Two Hundred Dollars (\$200.00) per month of per diem and mileage will be accrued; Scott does not guarantee that the railroads or any other third parties obligated to pay such per diem and mileage with respect to any Boxcar will make any payments to Avec, and Scott shall not be liable for the failure of any such railroads or other third parties to make such payments.

Subject to the above-conditions, Scott shall perform this guarantee by paying to Avec the difference between Two Hundred Dollars (\$200.00) and the average per diem and mileage properly accrued for any month for each Boxcar within thirty (30) days after receipt of written notice and appropriate supporting documentation showing that average per diem and mileage for the Boxcars was less than Two Hundred Dollars (\$200.00) per Boxcar for such month.

4. The initial term of this Agreement with respect to each Boxcar shall be six (6) years, commencing on the date of delivery of such Boxcar. Provided that this Agreement has not been earlier terminated and that no event of default has occurred and is continuing hereunder, Avec agrees that it shall not enter into any agreement for the assignment or use of the Boxcars with any other party upon expiration of this Agreement without first offering to enter into a new agreement with Scott for the assignment or use of the Boxcars upon terms equal to or better than those offered to any other party. Avec shall make such offer to Scott in writing, and Scott shall have the right to accept such offer by sending written notice of its acceptance to Avec at any time within thirty (30) days after Scott's receipt of the written offer from Avec.

5. Avec shall be entitled to all revenues from the Boxcars. Avec is responsible for maintaining and repairing the boxcars, or causing the boxcars to be maintained and repaired, in accordance with the Code of Rules of the Association of American Railroads, the regulations of the Interstate Commerce Commission and the rules and regulations of other federal and state authorities having jurisdiction. Scott shall have the

right to require that any car which requires repair (as opposed to running maintenance) or which becomes unfit for transportation of sanitary paper products be withdrawn from service immediately until such condition is corrected, provided that Avec shall have right to retire any Boxcar if it determines that the cost of repair is unreasonable. Avec will give Scott prompt written notice of any determination to withdraw a Boxcar from service. Avec shall be responsible for payment of all property taxes levied upon the Boxcars and for filing all necessary returns and reports for such taxes.

6. Scott agrees to make its best effort to assure 100% utilization of the Boxcars for the shipment of its sanitary paper products and, consistent with sound business judgment and good transportation practices, to utilize the Boxcars in a way that will generate maximum mileage payments.

7. From time to time, the parties may amend this Agreement to cover up to 200 additional Boxcars by amending Exhibit A or attaching new exhibits, signed by both parties, hereto.

8. Avec shall have the right to assign this Agreement to any other party or parties, in whole or in part, provided that any such assignment shall not extinguish or diminish the duties and obligations of Avec or the rights of Scott hereunder.

9. Arrangement of financing suitable to Avec is a condition precedent to all of Avec's obligations under this Agreement.

10. Scott shall have the right to immediately terminate this Agreement, without further obligation by either party, as to: (a) all or any of the first 200 Boxcars if Avec fails to obtain financing for the first 200

Boxcars by September 1, 1979, (b) as to all or any of the second 200 Boxcars if Avec fails to obtain financing for the second 200 Boxcars by January 1, 1980; and (c) as to all or any of the Boxcars delivered under this Agreement if Avec materially breaches any other term or condition of this Agreement.

11. This Agreement and all rights and obligations of the parties hereunder shall be governed by and construed in accordance with the laws of the Commonwealth of Pennsylvania.

12. All notices provided for herein shall be considered properly given if in writing and (a) sent by telex and confirmed by first class mail, postage pre-paid or (b) given by certified or registered mail, postage pre-paid. The respective addresses for notices shall be the addresses of the parties of the outset hereof. Such addresses may be changed by either party giving written notice thereof to the other. Any notice given pursuant to the foregoing provisions shall be deemed given when actually received.

13. This Agreement, including all Exhibits hereto, constitutes the entire agreement of the parties and may not be modified except by written agreement signed by the parties hereto.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first set forth above.

AVEC EQUIPMENT CORPORATION

SCOTT PAPER COMPANY

By: Philip S. Hesby
Title: President

By: D. C. Frisch JBB
Title: Vice President

EXHIBIT A

The four hundred (400) Boxcars referred to in Paragraph 1 of the attached Agreement shall meet the following specifications:

1. All Boxcars shall substantially conform to the quality and specifications of Y&S 23968;
2. All Boxcars shall have been fully refurbished by North American Car Corporation or a company of similar skill and experience or be Boxcars of equivalent quality;
3. All Boxcars shall be suitable for sanitary paper product loading and shipment;
4. All Boxcars shall be classified "XP"; and
5. All Boxcars shall be (a) fifty (50) feet six (6) inches long; (b) fifty (50) ton or greater gross weight capacity; (c) ideally nine (9) feet four (4) inches wide, but no less than nine (9) feet two (2) inches wide; and (d) equipped with ten (10) foot sliding doors.

Provided that Scott shall in good faith accept Boxcars varying from the above specifications if Scott determines that any such cars are suitable for transportation of its products.

Dated: June 28, 1979

AVEC EQUIPMENT CORP.

By Philip S. Healy

Title President

SCOTT PAPER COMPANY

By D. R. Frisch JBB

Title Vice President

Spencer C

OPERATING AND USE AGREEMENT

AGREEMENT made and entered into as of the 12th day of March, 1980, between AVEC EQUIPMENT CORPORATION, an Ohio corporation, (hereinafter called "Owner") and LYKENS VALLEY RAILROAD COMPANY, a Pennsylvania 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' fifty-five 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 March 31, 1981, 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 upon giving User 90 days' written notice.

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 inter-line 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. Whenever the net of all amounts received by the User in a calendar month exceeds the amount of all payables and the Service Fee for such month, User shall promptly pay to Owner such net amount. In any event, User shall be entitled to receive the Service Fee for each Car for each calendar month this agreement is in effect with respect to such Cars then in service.

5. Reports: Beginning in July, 1980, 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) Net amount of per diem, incentive per diem, if any, and mileage received and/or paid by User;
- (b) Gross amount of car service charges paid;
- (c) Net amount of A.A.R. payable repair billing;
- (d) Gross amount of Service Fee;
- (e) Net 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 User 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, WHITHER 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 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 written 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 shall 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 D.R. Moyer, President, Lykens Valley Railroad Company, 37 North Market Street, P.O. Box 517, Elizabethville, Pa. 17023, 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 first above written.

AVEC EQUIPMENT CORPORATION

By Greg S. Hesley
President

LYKENS VALLEY RAILROAD COMPANY

By William R. Meyer
President