

PROVIDENT NATIONAL BANK

18

BROAD AND CHESTNUT STREETS, PHILADELPHIA, PA/REPLY TO: P.O. BOX 7648, PHILADELPHIA, PA 19101

0-023A035
Date **JAN 23 1980** RECORDATION NO. **10962-B** Filed 1425
Fee \$ **50.00** JAN 23 1980 - 1:55 PM
ICC Washington, D. C. INTERSTATE COMMERCE COMMISSION

Secretary
Interstate Commerce Commission
Washington, D.C. 20423

RE: Avec Equipment Corporation

Gentlemen:

We enclose herewith for recording pursuant to Section 20(c) of the Interstate Commerce Act the original and two counterparts of a Mortgage, Assignment and Security Agreement, dated 12/17/79 which grants a mortgage upon and security interest in 50 railroad boxcars, and constitutes an assignment of income derived from such boxcars. This document assigns, among other things, rights of Avec Equipment Corporation under an Operating and Use Agreement with Youngstown & Southern Railway Company which has been previously recorded with the Commission under recordation No. 10962 on October 30, 1979 at 11:30 a.m.

The parties to the transaction are as follows:

Mortgagor-Assignor:	Avec Equipment Corporation P.O. Box 706 Galion, Ohio 44833
Mortgagee-Assignee:	Provident National Bank Broad and Chestnut Streets Philadelphia, PA 19101

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

<u>No. of Units</u>	<u>Description</u>	<u>A.A.R. Mechanical Designation</u>	<u>Identifying Road Nos.</u>
50	50' - 55 ton rebuilt boxcars with 10' doors	XP	See Exhibit A to Mortgage, Assignment and Security Agreement

Also enclosed is a check in the amount of \$50.00 payable to the Treasurer of the United States to cover recording of the mortgage and assignment. Would you please acknowledge receipt of the enclosure on the enclosed copy of this letter and stamp and return to our representative the original of the document.

Very truly yours,
Barbara J.S. Bear
Barbara J.S. Bear
Banking Officer

Michael Baker
Christina

Interstate Commerce Commission
Washington, D.C. 20423

1/23/80

OFFICE OF THE SECRETARY

Barbara J.S. Bear
Provident Natl. Bank
Broad and Chestnut Streets
Phila. PA. 19101

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 1/23/80 at 1:35pm, and assigned re-
recording number(s). 10962-B & 10962-C

Sincerely yours,

Agatha L. Mergenovich
Agatha L. Mergenovich
Secretary

Enclosure(s)

SE-30
(7/79)

7-1547

RECORDATION NO. *10962-B* Filed 1425

086003

JAN 23 1980 - 1 35 PM

INTERSTATE COMMERCE COMMISSION
MORTGAGE, ASSIGNMENT AND SECURITY AGREEMENT

Mortgage, Assignment and Security Agreement dated *December 17*, 1979 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 50 railroad boxcars identified in Exhibit A hereto (such boxcars together with any replacements therefor and all parts, modifications and accessions thereto being the "Equipment"); and

WHEREAS, Secured Party has or will make certain loans to Debtor to finance the 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"), 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 is a party by assignment to an agreement dated November 28, 1978 with Youngstown & Southern Railway Company ("Railroad"), a copy of which is attached hereto as Exhibit C,

providing that the Equipment will carry the Railroad's reporting marks and numbers and providing for the rental to be paid by Railroad and other users for use of the Equipment (the "Railroad 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 and the Railroad 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").

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 Railroad 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 Railroad Agreement for the Equipment and the benefit of all performance under the Scott Agreement and the Railroad 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 Railroad 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 Railroad 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 Railroad 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 Railroad 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 Railroad becomes insolvent or makes an assignment for the benefit of creditors, or if any petition is filed by or against Debtor, Scott or Railroad under any provision of any state or federal law alleging that Debtor, Scott or Railroad 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 Railroad 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 Railroad Agreement by either of the

parties thereto; or if there is any amendment or modification of the Railroad 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:

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: James S. Healy, Pres
President

PROVIDENT NATIONAL BANK

By: Barbara S. Bear
Vice President
Banking Officer

EXHIBIT A

This Exhibit A is made part of the Mortgage, Assignment and Security Agreement number 046003 dated December 17, 1979 between AVEC EQUIPMENT CORPORATION (Debtor) and PROVIDENT NATIONAL BANK (Secured Party). The following group of 50 boxcars are identified by and bear the reporting marks of the Youngstown & Southern Railway Company:

YS23004	YS23884	YS25569
YS23054	YS23921	YS25614
YS23083	YS23936	YS25647
YS23102	YS23988	YS25653
YS23168	YS24088	YS25680
YS23200	YS24298	YS25695
YS23210	YS24486	YS25701
YS23287	YS24748	YS25722
YS23453	YS24786	YS25735
YS23524	YS24800	YS25744
YS23559	YS24884	YS25752
YS23587	YS24913	YS25761
YS23673	YS25112	YS25764
YS23714	YS25366	YS25780
YS23719	YS25536	YS25873
YS23745	YS25563	YS26072
YS26101	YS26122	

Date: December 17, 1979

AVEC EQUIPMENT CORPORATION

By: July S. Hesby, Pres.
President

STATE OF :
COUNTY OF : SS

On this the 17 day of December, 1979, before me, a Notary Public for the _____, the undersigned officer, personally appeared _____ who acknowledged himself to be the President of AVEC EQUIPMENT CORPORATION, a _____ 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 CALIFORNIA
NOTARY PUBLIC, EXPIRES _____
COMMISSION NO. _____

STATE OF :
COUNTY OF : SS

On this the _____ day of _____, 1979, before me, a Notary Public for the _____, the undersigned officer, personally appeared _____ who acknowledged himself to be the President of AVEC EQUIPMENT CORPORATION, a _____ 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.

Notary Public
My Commission Expires:

STATE OF *Pennsylvania* :
COUNTY OF *Philadelphia* : SS

On this the *10th* day of *January*, 1979, before me, a Notary Public for the *Comm. of Penna.*, the undersigned officer, personally appeared *Barbara J. S. Bear* who acknowledged himself to be a *Banking Officer* 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.

William D. Griffin

Notary Public
My Commission Expires:

WILLIAM D. GRIFFIN
Notary Public, Phila., Phila. Co.
My Commission Expires Oct. 13, 1983