

RECORDATION NO. 9943 Filed 1425

DEC 27 1978 12 02 AM

INTERSTATE COMMERCE COMMISSION

No. 8-361A051

Date DEC 27 1978

Fee \$ 50.00

Interstate Commerce Commission  
Washington, D. C.

ICC Washington, D. C.

Gentlemen:

Enclosed for recordation under the provisions of 49 U.S.C. §11303 are the original and 15 counterparts each of a Conditional Sale Agreement dated as of November 1, 1978 and an Agreement and Assignment dated as of November 1, 1978 relating thereto.

The general description of the railroad rolling stock covered by the enclosed documents is set forth in Schedule A attached to this letter and made a part hereof.

The names and addresses of the parties are:

Owner-Vendors under Conditional Sale Agreement and Assignors under Agreement and Assignment: Pullman Incorporated (Pullman Standard Division) 200 South Michigan Avenue Chicago, Illinois 60604

Portec, Inc  
300 Windsor Drive  
Oak Brook, Illinois

Vendee under Conditional Sale Agreement:

First Security State Bank  
c/o First Security Bank of Utah, N.A.  
79 South Main Street  
Salt Lake City, Utah 84111  
Attention: Corporate Trust Department

Assignee under Agreement and Assignment:

First Security Bank of Utah, N.A.  
79 South Main Street  
Salt Lake City, Utah 84111  
Attention: Corporate Trust Department

The undersigned is one of the Owner-Vendors under the Conditional Sale Agreement and one of the Assignors under the Agreement and Assignment and has knowledge of the matters set forth therein.

Please return the original and 13 copies of the Conditional Sale Agreement and the Agreement and Assignment to Ronald E. Roden, Chapman and Cutler, 111 West Monroe Street, Chicago, Illinois 60603.

Enclosed is a check in the amount of \$50.00 covering the required recording fee.

Very truly yours,

PULLMAN INCORPORATED  
(Pullman Standard Division)

By [Signature]  
Its Vice President

OWNER-VENDOR AS AFORESAID

Counterpart - E. J. Kopylen

RECEIVED

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I.C.C.

FEE OPERATION BR.

INTERSTATE COMMERCE COMMISSION

DEC 27 1978 12 02 AM

RECORDATION NO. 9943-1 Filed 1425

RECORDATION NO. 9843-A Filed 1425

DEC 27 1978 - 12 00 AM  
INTERSTATE COMMERCE COMMISSION

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AGREEMENT AND ASSIGNMENT

Dated as of November 1, 1978

Between

PULLMAN INCORPORATED  
(PULLMAN STANDARD DIVISION)  
And  
PORTEC, INC.  
Manufacturers

And

FIRST SECURITY BANK OF UTAH, N.A.  
Agent and Assignee

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(WWR Trust No. 78-1)  
(25 Box Cars and 75 Covered Hopper Cars)

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## AGREEMENT AND ASSIGNMENT

AGREEMENT AND ASSIGNMENT dated as of November 1, 1978 (this "Assignment") among PULLMAN INCORPORATED (PULLMAN STANDARD DIVISION) and PORTEC, INC. (collectively the "Manufacturers" and individually a "Manufacturer") and FIRST SECURITY BANK OF UTAH, N.A., acting as Agent and Assignee under a Participation Agreement dated as of November 1, 1978 (the "Participation Agreement"), said Bank as so acting being hereinafter called the "Assignee";

### W I T N E S S E T H:

WHEREAS, the Manufacturers and First Security State Bank, not individually but solely as Trustee (the "Vendee") under a Trust Agreement dated as of November 1, 1978 (the "Trust Agreement") with Dial Leasing Corporation, an Iowa corporation (the "Trustor"), have entered into a Conditional Sale Agreement dated as of November 1, 1978 (the "Conditional Sale Agreement"), covering the construction, sale and delivery on the conditions therein set forth by the Manufacturer and the purchase by the Vendee of the railroad equipment described in Schedule A to the Conditional Sale Agreement (collectively the "Equipment" and individually an "Item" or "Item of Equipment"); and

WHEREAS, the Vendee and Winchester and Western Railroad Company (the "Lessee") have entered into an Equipment Lease dated as of November 1, 1978 (the "Lease"), providing for the lease of the Equipment to the Lessee;

NOW, THEREFORE, in consideration of the sum of One Dollar (\$1.00) and other good and valuable consideration paid by the Assignee to the Manufacturers, the receipt of which is hereby acknowledged, as well as of the mutual covenants herein contained, the parties hereto agree as follows:

Section 1. Assignment by Manufacturers. Effective as of and upon the payment by the Assignee of the amount payable pursuant to Section 5 hereof in respect of an Item of Equipment, as to such Item, each Manufacturer hereby assigns, transfers and sets over unto the Assignee, its successors and assigns:

(a) All the right, security title and interest of such Manufacturer in and to such Item of Equipment built by it;

(b) In respect of such Item of Equipment built by it all the right, title and interest of such

Manufacturer in and to the Conditional Sale Agreement (except the right and obligation to construct and deliver such Item and the right to receive the payments specified in paragraph (a) of Section 3.3 thereof and reimbursement for taxes paid or incurred by such Manufacturer) and in and to any and all amounts which may be or become due or owing to such Manufacturer under the Conditional Sale Agreement on account of the Conditional Sale Indebtedness (as defined in the Conditional Sale Agreement) and interest thereon, and in and to any other sums becoming due and owing from the Vendee under the Conditional Sale Agreement, other than those hereinabove excluded; and

(c) Except as limited above in subparagraph (b) hereof, all of such Manufacturer's rights, powers, privileges and remedies under the Conditional Sale Agreement in respect of such Item built by it;

without any recourse, however, against such Manufacturer for or on account of the failure of the Vendee to make any of the payments provided for in, or otherwise to comply with, any of the provisions of the Conditional Sale Agreement; provided, however that this Assignment shall not subject the Assignee to, or transfer, or pass, or in any way affect or modify the obligations of such Manufacturer to deliver the various Items of Equipment to be built by it in accordance with the Conditional Sale Agreement or with respect to its warranties and agreements contained in Sections 10.3, 11 and 12.5 (with respect to marking) of the Conditional Sale Agreement or relieve the Vendee from its obligations to the Manufacturer under Sections 2, 3.3(a), 10 and 12 of the Conditional Sale Agreement, it being understood and agreed that, notwithstanding this Assignment, or any subsequent assignment pursuant to the provisions of Section 12 of the Conditional Sale Agreement, all obligations of such Manufacturer to the Vendee shall be and remain enforceable by the Vendee, its successors and assigns, against and only against such Manufacturer. In furtherance of the foregoing assignment and transfer, each Manufacturer hereby authorizes and empowers the Assignee in the Assignee's own name, or in the name of the Assignee's nominee, or in the name of and as attorney, hereby irrevocably constituted, for such Manufacturer to ask, demand, sue for, collect, receive and enforce any and all sums to which the Assignee is or may become entitled under this Assignment and compliance by the Vendee with the terms and agreements on their parts to be performed under the Conditional Sale Agreement, but at the expense and liability and for the sole benefit of the Assignee (it being understood that such agreement with respect to the expense and liability of enforcement shall in no event be construed as a waiver of the Assignee's rights with respect thereto under Section 16 of the Conditional Sale Agreement).

Section 2. Covenants and Agreements of Manufacturers.

Each Manufacturer covenants and agrees that it will construct and deliver the various Items of Equipment to be built by it to the Vendee, in accordance with the provisions of the Conditional Sale Agreement, and that, notwithstanding this Assignment, it will perform and fully comply with each and all of the covenants and conditions of the Conditional Sale Agreement set forth to be performed and complied with by such Manufacturer. Each Manufacturer further covenants and agrees that it will warrant to the Assignee and the Vendee that at the time of delivery of each Item of Equipment to be built by it to the Vendee under the Conditional Sale Agreement it will have legal title to such Item and good and lawful right to sell such Item and the title to such Item will be free of all claims, liens and encumbrances of any nature except only the rights of the Vendee under the Conditional Sale Agreement and the rights of the Lessee under the Lease; and each Manufacturer further covenants and agrees that it will defend the title to such Item against the demands of all persons whomsoever based on claims originating prior to said delivery of such Item by such Manufacturer to the Vendee; all subject, however, to the provisions of the Conditional Sale Agreement and the rights of the Vendee thereunder and the Lessee under the Lease.

Each Manufacturer covenants and agrees with the Assignee that in any suit, proceeding or action brought by the Assignee under the Conditional Sale Agreement for any installment of, or interest on, indebtedness in respect of the Purchase Price of the Equipment or to enforce any provision of the Conditional Sale Agreement, such Manufacturer will indemnify, protect and hold harmless the Assignee from and against all expense, loss or damage suffered by reason of any defense, setoff, counterclaim or recoupment whatsoever of the Vendee arising out of a breach by such Manufacturer of any obligation with respect to the Equipment or the manufacture, construction, delivery or warranty thereof, or under Sections 10 and 11 of the Conditional Sale Agreement, or by reason of any defense, setoff, counterclaim or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to the Vendee or the Lessee by such Manufacturer. Such Manufacturer's obligation so to indemnify, protect and hold harmless the Assignee is conditional upon (a) the Assignee's timely motion or other appropriate action, on the basis of Section 12.4 of the Conditional Sale Agreement, to strike any defense, setoff, counterclaim or recoupment asserted by the Vendee or the Lessee in any such suit, proceeding or action, and (b) if the court or other body having jurisdiction in such suit, proceeding or action denies such motion or other action and accepts such defense, setoff, counterclaim or recoupment as a triable issue in such suit, proceeding or action, the Assignee's prompt notification to such Manufacturer of the asserted defense, setoff, counterclaim or recoupment and the Assignee's giving such Manufacturer the right, at such Manufacturer's expense, to compromise, settle or defend against such defense, setoff, counterclaim or recoupment. Any and all such obligations shall be and remain enforceable by the Vendee or the Lessee

against and only against such Manufacturer and shall not be enforceable against the Assignee or any party or parties in whom security title to the Equipment or any unit thereof or any of the rights of such Manufacturer under the Conditional Sale Agreement shall vest by reason of this Assignment or of successive assignments. The Assignee will give notice to such Manufacturer of any suit, proceeding or action by the Assignee herein described.

Except in cases of designs, systems, processes, formulas or combinations specified by the Vendee or the Lessee and not developed or purported to be developed by such Manufacturer, and articles and materials specified by the Vendee and the Lessee and not manufactured by such Manufacturer and provided that such Manufacturer is promptly notified in writing of, and is given full and complete authority, information and assistance for the defense of, any claims, suits, proceedings and demands, each Manufacturer agrees to indemnify, protect and hold harmless the Assignee from and against any and all liability, claims, demands, reasonable costs, charges and expenses, including reasonable royalty payments and reasonable counsel fees, in any manner imposed upon or accruing against the Assignee or its assigns because of the use in or about the construction of the Equipment, or any Item thereof, of any design, system, process, formula, combination, article or material which infringes or is claimed to infringe on any patent or other right. The Assignee will give notice to such Manufacturer of any claim actually known to the Assignee which is based upon any such alleged infringement and will give such Manufacturer the right, at such Manufacturer's expense, to compromise, settle or defend against such claim.

Each Manufacturer agrees that any amount payable to it by the Vendee or the Lessee, whether pursuant to the Conditional Sale Agreement or otherwise, not hereby assigned to the Assignee, shall not be secured by any lien or charge on any Items of Equipment.

Section 3. Equipment Markings. Each Manufacturer will cause to be plainly, distinctly, permanently and conspicuously marked by a plate or stencil in contrasting color on each side of each Item of Equipment, at the time of delivery thereof to the Vendee, in letters not less than one inch in height, the following legend:

"Leased from a Bank or Trust Company, as Owner-Trustee, and Subject to a Security Interest Recorded with the Interstate Commerce Commission".

Section 4. Recordation. Upon request of the Assignee, its successors and assigns, each Manufacturer will execute and deliver all instruments which may be necessary or proper in order to discharge of record the Conditional Sale Agreement or any other instrument evidencing any interest of such Manufacturer therein or in the Equipment.

Section 5. Conditions Precedent to Payments by Assignee. Subject to the conditions set forth in the Participation Agreement, the Assignee, on or before 11:00 A.M. on each Closing Date fixed as provided in Section 3.4 of the Conditional Sale Agreement with respect to a Group (as defined in Section 3.2 of said Agreement) of Equipment, shall pay to the Manufacturer at the office of the Assignee at 79 South Main Street, Salt Lake City, Utah 84111, Attention: Corporate Trust Department, an amount equal to 69.85% of the aggregate Purchase Price for all Type A Items of Equipment (as defined in the Participation Agreement) or, as the case may be, 69.8716% of the aggregate Purchase Price for all Type B Items of Equipment (as defined in the Participation Agreement) in such Group for which settlement is then being made, provided that the obligation of the Assignee hereunder to make payment for any Group of Equipment is hereby expressly conditioned upon the prior timely receipt by the Assignee, pursuant to the Participation Agreement, of all the funds to be furnished to the Assignee by the various parties to the Participation Agreement with respect thereto and evidence reasonably satisfactory to it and its counsel that each of the conditions precedent set forth in the Participation Agreement have been met. In the event that the Assignee shall not make any such payment, the Assignee shall reassign to such Manufacturer, without recourse to the Assignee, all right, security title and interest including any claims of the Assignee in and to the Items of Equipment with respect to which payment has not been made by the Assignee.

It is understood and agreed that the Assignee shall not be required to make any payment with respect to any Items of Equipment excluded from the Conditional Sale Agreement pursuant to Section 2.3 thereof.

Section 6. Further Assignments. Subject to the terms and provisions of the Participation Agreement, the Assignee may assign all or any of its rights, under the Conditional Sale Agreement, including the right to receive any payments due or to become due to it from the Vendee thereunder; provided that, until such time as the Assignee shall have paid to the Manufacturers the amount provided in Section 5 hereof in respect of any Group, the Assignee agrees that it will make no such further assignment of any such rights in respect of such Group without the prior written consent of the Manufacturers. In the event of any such assignment, any such subsequent or successive assignee or assignees shall, to the extent of such assignment, enjoy all the rights and privileges and be subject to all the obligations of the Assignee hereunder.

Section 7. Representations of Manufacturers; Further Assurances. Each Manufacturer hereby:

(a) represents and warrants to the Assignee, its successors and assigns and the Investors (as defined in the Participation Agreement) that the Conditional Sale Agreement was duly authorized and lawfully executed and delivered by it for a valid

consideration, that (assuming due authorization, execution and delivery by the other parties thereto) it is a valid and existing agreement binding upon such Manufacturer (except as limited by bankruptcy, insolvency or similar laws affecting the enforcement of creditors' rights generally) and that it is now in force without amendment thereto; and

(b) covenants and agrees that it will from time to time and at all times, at the request of the Assignee or its successors or permitted assigns, make, execute and deliver all such further instruments of assignment, transfer and assurance and do such further acts and things as may be necessary and appropriate in the premises to give effect to the provisions hereinabove set forth and more perfectly to confirm the rights, security titles and interests hereby assigned and transferred to the Assignee or intended so to be.

Section 8. Governing Law. The terms of this Assignment and all rights and obligations hereunder shall be governed by the laws of the State of Illinois; provided, however, that the parties shall be entitled to all the rights conferred by any applicable Federal statute, rule or regulation.

Section 9. Execution in Counterparts. This Assignment may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute but one and the same instrument, which shall be sufficiently evidenced by any such original counterpart. The Assignee agrees to deliver one of such counterparts, or a certified copy thereof, to the Vendee and the Lessee. Although this Assignment is dated for convenience as of the date first above written, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

IN WITNESS WHEREOF, the Manufacturers and the Assignee have caused these presents to be executed in their respective corporate names by officers or representatives duly authorized, and their respective corporate seals to be affixed and duly attested, all as of the day, month and year first above written.

PULLMAN INCORPORATED  
(PULLMAN STANDARD DIVISION)

[CORPORATE SEAL]

By

Its

E. T. Alving  
VICE PRESIDENT

ATTEST:

William O'Connell  
ASSISTANT Secretary

PORTEC, INC.

By *J F Morris*  
Its *vice president*

[CORPORATE SEAL]

ATTEST:

*J. Horton*  
Secretary

FIRST SECURITY BANK OF UTAH, N.A.,  
as Agent and Assignee

By *J. Tracy Walker*  
Authorized Officer

[SEAL]

ATTEST:

*Leah B. Leibens*  
Authorized Officer

STATE OF ILLINOIS     )  
                              )     SS  
COUNTY OF COOK        )

On this 20th day of December, 1978, before me personally appeared E. T. August, to me personally known, who, being by me duly sworn says that he is the Vice President of PULLMAN INCORPORATED (PULLMAN STANDARD DIVISION), that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Sharon L. Olson  
Notary Public

[NOTARIAL SEAL]

My Commission Expires: August 3, 1980

STATE OF ILLINOIS     )  
                              )     SS  
COUNTY OF DUPAGE     )

On this 20th day of December, 1978, before me personally appeared D. F. Morris, to me personally known, who, being by me duly sworn says that he is the Vice President of PORTEC, INC., that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Shirley H. Bielanski  
Notary Public

[NOTARIAL SEAL]

My Commission Expires: March 6, 1982

STATE OF UTAH                    )  
  )    SS  
COUNTY OF SALT LAKE        )

On this 22 day of December, 1978, before me personally appeared J. TRACY WALSH, to me personally known, who, being by me duly sworn, says that he is an Authorized Officer of FIRST SECURITY BANK OF UTAH, N.A., that one of the seals affixed to the foregoing instrument is the seal of said association, that said instrument was signed and sealed on behalf of said association by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said association.

*Tenna J. De Cora*  
Notary Public

[NOTARIAL SEAL]

My Commission Expires November 15, 1981

My Commission Expires: