

JUL 11 1977 -3 15 PM

Interstate Commerce Commission
Washington, D. C.

INTERSTATE COMMERCE COMMISSION

RECEIVED

RECORDATION NO. 8879-A

Filed & Recorded

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I. C. C. INTERSTATE COMMERCE COMMISSION
FEE OPERATIONS

Gentlemen:

Enclosed for recordation under the provisions of Section 20(c) of the Interstate Commerce Act, as amended, are the original and 10 counterparts each of a Conditional Sale Agreement dated as of June 1, 1977 and an Agreement and Assignment dated as of June 1, 1977 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-Vendor under Conditional Sale Agreement and Assignor under Agreement and Assignment:	Portec, Inc. (Paragon Division) 300 Windsor Drive Oak Brook, Illinois 60521
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Vendee under Conditional Sale Agreement:	Trust Company for USL, Inc. 1211 West 22nd Street Oak Brook, Illinois 60521
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Assignee under Agreement and Assignment:	Continental Illinois National Bank and Trust Company of Chicago 231 South LaSalle Street Chicago, Illinois 60693
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The undersigned is the Vendee named above and has knowledge of the matters set forth in the enclosed documents.

Please return the original and 8 copies of the Conditional Sale Agreement and the Agreement and Assignment to John L. Tuohy, Esq., 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,

TRUST COMPANY FOR USL, INC.,
not in its individual capacity
but solely as Trustee under
Illinois Terminal Trust No. 77-11

By Richard A. [Signature]
Its Authorized Officer

VENDEE AS AFORESAID

7-192-152
 JUL 11 1977
 Date
 Fee \$ 100.00
 CC Washington, D. C.

Enclosures

Handwritten notes and signatures on the left margin:
C. L. [Signature]
J. L. [Signature]

A

8879-4

RECORDATION NO. Filed & Recorded

JUL 11 1977 -3 15 PM

INTERSTATE COMMERCE COMMISSION

AGREEMENT AND ASSIGNMENT

Dated as of June 1, 1977

Between

PORTEC, INC.
(PARAGON DIVISION)

Manufacturer

and

CONTINENTAL ILLINOIS NATIONAL BANK
AND TRUST COMPANY OF CHICAGO,

not in its individual capacity, but
solely as Agent and Assignee

(Burlington Northern Trust No. 77-11)
(150 Screened Bi-Level and Enclosed Tri-Level Auto Racks)

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AGREEMENT AND ASSIGNMENT

AGREEMENT AND ASSIGNMENT dated as of June 1, 1977 between PORTEC, INC. (Paragon Division), a Delaware corporation (the "Manufacturer") and CONTINENTAL ILLINOIS NATIONAL BANK AND TRUST COMPANY OF CHICAGO, not in its individual capacity but solely as Agent and Assignee under a Finance Agreement dated as of June 1, 1977 (the "Finance Agreement"), said Bank as so acting being hereinafter called the "Assignee".

WHEREAS, the Manufacturer and TRUST COMPANY FOR USL, INC., as Trustee (the "Vendee") under a Trust Agreement (the "Trust Agreement") dated as of June 1, 1977 among the Vendee, United States Leasing International, Inc., as agent for the Vendee, and City National Bank (the "Trustor") relating to Burlington Northern Trust No. 77-11, have entered into a Conditional Sale Agreement dated as of June 1, 1977 (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 "Items of Equipment" or "Equipment" and individually an "Item" or "Item of Equipment").

WHEREAS, the Vendee and BURLINGTON NORTHERN INC., a Delaware corporation (the "Railroad") have entered into an Equipment Lease dated as of June 1, 1977 (the "Lease") providing for the lease of the Equipment to the Railroad.

NOW, THEREFORE, THIS AGREEMENT AND ASSIGNMENT (the "Assignment"),

W I T N E S S E T H:

That, in consideration of the sum of One Dollar (\$1.00) and other good and valuable consideration paid by the Assignee to the Manufacturer, the receipt of which is hereby acknowledged, as well as of the mutual covenants herein contained:

SECTION 1. Assignment by Manufacturer. The Manufacturer hereby assigns, transfers and sets over unto the Assignee, its successors and assigns:

(a) All the right, security title and interest of the Manufacturer in and to each Item of Equipment to be built by it when and as delivered and accepted and upon payment by the Assignee to the Manufacturer of the amount required to be paid under Section 5 hereof and payment by the Vendee of the amount required to be paid under Section 3.3(a) of the Conditional Sale Agreement with respect to such Item;

(b) All the right, title and interest of the Manufacturer in and to the Conditional Sale Agreement (except the right to construct and deliver the various Items of Equipment to be built by it and the right to receive the payments specified in subparagraph (a) of Section 3.3 thereof and reimbursement for taxes paid or incurred by the Manufacturer) and in and to any and all amounts which may be or become due or owing to the Manufacturer under the Conditional Sale Agreement on account of the indebtedness in respect of the Purchase Price (as defined in the Conditional Sale Agreement) of the Equipment and interest thereon, and in and to any other sums becoming due 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 the Manufacturer's rights, powers privileges and remedies under the Conditional Sale Agreement;

without any recourse, however, against the 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 the 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 Section 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 2.4, 3.3(a), 10.1 and 12.1, 12.3, 12.4, 12.5 and 12.6 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 the Manufacturer to the Vendee shall be and remain enforceable by the Vendee, its successors and assigns, against and only against the Manufacturer. In furtherance of the foregoing assignment and transfer, the 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 the 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 and the Railroad 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 15 of the Conditional Sale Agreement and Section 14.2 of the Lease (as defined in the Trust Agreement)).

SECTION 2. Covenants and Agreements of Manufacturer.

The Manufacturer covenants and agrees that it will construct and deliver the various Items of Equipment 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 the Manufacturer. The 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 the Vendee under the Conditional Sale Agreement it had legal title to such Item and good and lawful right to sell such Item and the title to such Item was 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 Railroad under the Lease (as defined in the Conditional Sale Agreement); and the 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 the Manufacturer to the Vendee; all subject, however, to the provisions of the Conditional Sale Agreement and the rights of the Vendee thereunder and the Railroad under the Lease.

The 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, the Manufacturer will indemnify, protect and hold harmless the Assignee from and against all expense (including attorneys' fees), loss or damage suffered by reason of any defense, set-off, counterclaim or recoupment whatsoever of the Vendee arising out of a breach by the 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, set-off, counterclaim or recoupment, whatsoever arising by reason of any other indebtedness or liability at any time owing to the Vendee or the Railroad by the Manufacturer. The 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, set-off, counterclaim or recoupment asserted by the Vendee or the Railroad 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, set-off, counterclaim or recoupment as a triable issue in such suit, proceeding or action, the Assignee's prompt notification to the Manufacturer of the asserted defense, set-off, counterclaim or recoupment and the Assignee's giving the Manufacturer the right, at the Manufacturer's expense, to compromise, settle or defend against such defense, set-off, counterclaim or recoupment. Any and all such obligations shall be and remain enforceable by the Vendee or the Railroad against and only against the 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 the Manufacturer under the Conditional Sale Agreement shall vest by reason of this Assignment or of successive assignments. The Assignee will give notice to the 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 Railroad and not developed or purported to be developed by the Manufacturer, and articles and materials specified by the Vendee and the Railroad and not manufactured by the Manufacturer, the Manufacturer agrees to indemnify, protect and hold harmless the Assignee from and against any and all liability, claims, demands, costs, charges and expenses, including reasonable royalty payments and counsel fees, in any manner imposed upon or accruing against the Assignee or its assigns because of the use in or about the construction or operation 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 the Manufacturer of any claim actually known to the Assignee which is based upon any such alleged infringement and will give the Manufacturer the right, at the Manufacturer's expense, to compromise, settle or defend against such claim.

The Manufacturer agrees that any amount payable to it by the Vendee or the Railroad, 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. The 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 Trust Company for USL, Inc., as Lessor and Trustee-Vendee, and subject to a Security Interest in favor of Continental Illinois National Bank and Trust Company of Chicago, as Secured Party".

SECTION 4. Recordation. Upon request of the Assignee, its successors and assigns, the 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 the Manufacturer therein or in the Equipment.

SECTION 5. Conditions Precedent to Payment by Assignee. The Assignee, on or before noon on each Closing Date fixed as provided in Section 3.5 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 231 South LaSalle Street, Chicago, Illinois 60693, Attention: Corporate Trust Department, an amount equal to 68.3% of the aggregate Purchase Price for all Items of Equipment in such Group for which settlement is then being made, provided that:

(a) Prior to or concurrently with the First Equipment Delivery (as defined in the Conditional Sale Agreement) all of the conditions precedent set forth in paragraphs (a) through (g), both inclusive, of Section 3.4 of the Conditional Sale Agreement shall have been satisfied or complied with;

(b) Concurrently with the delivery to and acceptance by the Railroad under the Lease of each Item of Equipment in such Group, the Vendee shall have received from the Railroad a Certificate of Acceptance covering such Item of Equipment executed by a duly authorized representative of the Railroad pursuant to Section 1 of the Lease;

(c) Unless payment of the amount payable pursuant to subparagraph (a) of Section 3.3 of the Conditional Sale Agreement shall be made by the Assignee with funds furnished to it for that purpose by the Vendee, a receipt from the Manufacturer for such payment; and

(d) The Assignee shall have received the amounts with respect to such Group provided for in Section 3B of the Finance Agreement from the Vendee.

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 Finance Agreement, of all the funds to be furnished to the Assignee by the various parties to the Finance Agreement with respect thereto. In the event that the Assignee shall not make any such payment, the Assignee shall reassign to the Manufacturer, without recourse to the Assignee, all right, security title and interest 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 Finance 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. 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. Representation of Manufacturer; Further Assurances. The Manufacturer hereby

(a) represents and warrants to the Assignee, its successors and assigns and the Investors, 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 the Manufacturer, 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 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 Section 20c of the Interstate Commerce Act and such additional rights arising out of the filing, recording or depositing of the Conditional Sale Agreement and this Assignment as shall be conferred by the laws of the several jurisdictions in which the Conditional Sale Agreement or this Assignment shall be filed, recorded or deposited.

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 Railroad. 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 Manufacturer 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.

PORTEC, INC. (Paragon Division)

(Corporate)
(Seal)

By 
Its: _____ Vice President

Attest:


Its: _____ Secretary

CONTINENTAL ILLINOIS NATIONAL BANK
AND TRUST COMPANY OF CHICAGO

(Seal)

By *Donald W. Aeg*
Its: _____ Vice President

Attest:

Annuel
Its: Trust Officer

STATE OF ILLINOIS)
) SS:
COUNTY OF DUPAGE)

On this 27th day of June, 1977, personally appeared L. L. White, Jr., to me personally known, who being by me duly sworn, says that he is a Vice President of PORTEC, INC. (Paragon 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.

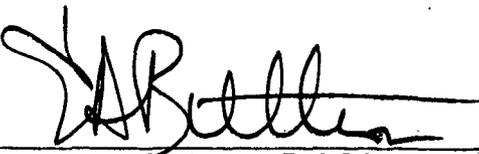
Shirley A. Belanski
Notary Public

(SEAL)

My Commission Expires: March 6, 1978

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

On this 28th day of JUNE, 1977, before me personally appeared DONALD W. ALVIN, to me personally known, who being by me duly sworn, says that he is a Vice President of Continental Illinois National Bank and Trust Company of Chicago, 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.



Notary Public

(SEAL)

My Commission Expires: NOVEMBER 16, 1977