

11031

CRAVATH, SWAINE & MOORE

ONE CHASE MANHATTAN PLAZA

NEW YORK, N. Y. 10005

212 HANOVER 2-3000

RECORDATION NO. .... Filed 1425

NOV 8 1979 - 8 55 AM

INTERSTATE COMMERCE COMMISSION

COUNSEL

CARLYLE E. MAW  
ALBERT R. CONNELLY  
FRANK H. DETWEILER  
GEORGE G. TYLER

11031

RECORDATION NO. .... Filed 1425

NOV 8 1979 - 8 55 AM

INTERSTATE COMMERCE COMMISSION

ROSWELL L. GILPATRICK  
R. BRESLIN, JR.  
GEORGE B. TURNER  
JOHN H. MORSE  
HAROLD R. MEDINA, JR.  
CHARLES R. LINTON

PLACE DE LA CONCORDE  
75008 PARIS, FRANCE  
TELEPHONE: 265-81-54  
TELEX: 200530

33 THROUGHTON STREET  
LONDON, EC2N 2ER, ENGLAND  
TELEPHONE: 01-806-1421  
TELEX: 8814901

TELETYPE ADDRESSES  
CRAVATH, N. Y.  
CRAVATH, PARIS  
CRAVATH, LONDON E. C. 2

11031

RECORDATION NO. .... Filed 1425  
NOV 8 1979 - 8 55 AM

INTERSTATE COMMERCE COMMISSION

No. 9-3124020

Date NOV 8 1979

Fee \$ 150.00

11031

RECORDATION NO. .... Filed 1425  
NOV 8 1979 - 8 55 AM

INTERSTATE COMMERCE COMMISSION

ICC Washington, D. C.

INTERSTATE COMMERCE COMMISSION  
November 7, 1979

Winchester and Western Railroad Company  
Lease Financing Dated as of October 1, 1979

Dear Ms. Mergenovich:

Pursuant to 49 U.S.C. § 11303(a), I enclose here-  
with on behalf of Winchester and Western Railroad Company,  
for filing and recordation, counterparts of the following:

(1) (a) Conditional Sale Agreement dated as of  
October 1, 1979, between Merrill Lynch Leasing Inc.  
and Portec, Inc.; and

(b) Assignment of Conditional Sale Indebtedness  
dated as of October 1, 1979, among The Connecticut Bank  
and Trust Company, Merrill Lynch Leasing Inc. and  
Portec, Inc.;

(2) (a) Amended and Restated Lease of Railroad  
Equipment dated as of October 1, 1979, between  
Winchester and Western Railroad Company and Merrill  
Lynch Leasing Inc.; and

(b) Assignment of Lease and Agreement dated as  
of October 1, 1979, between The Connecticut Bank and  
Trust Company and Merrill Lynch Leasing Inc.;

NSC NO.

- A

- C

- D

*C. J. Kessler*  
*David [unclear]*

-B (3) Security Agreement dated as of October 1, 1979, between Merrill Lynch Leasing Inc. and The Connecticut Bank and Trust Company ~~and~~

*wey* ~~(4) Purchase Agreement Assignment dated as of October 1, 1979, between ITEL Corporation and Merrill Lynch Leasing Inc.~~

The addresses of the parties to the aforementioned agreements are:

Agent:

The Connecticut Bank and Trust Company,  
One Constitution Plaza,  
Hartford, Connecticut 06115.

Manufacturer:

Portec, Inc.,  
1800 Century Boulevard (Suite 6800),  
Atlanta, Georgia 30345.

Lessee:

Winchester and Western Railroad Company,  
In care of UNIMIN Corporation,  
50 Locust Avenue,  
New Canaan, Connecticut 06840.

Owner:

Merrill Lynch Leasing Inc.,  
One Liberty Plaza,  
165 Broadway,  
New York, N. Y. 10080

Itel:

Itel Corporation,  
Rail Division,  
Two Embarcadero Center,  
San Francisco, California 94111.

*wrk* The equipment covered by the agreements listed above at subparagraphs 1(a) ~~and~~ 1(b) ~~and~~ consists of 175 100-Ton, 4,000 Cubic Foot Covered Hopper Cars bearing the

road numbers of the Lessee WW3051-WW3225 (both inclusive). The equipment covered by the agreement listed above at subparagraph 3 consists of ~~20~~ 100-Ton, 4,000 Cubic Foot Covered Hopper Cars bearing the road numbers of the Lessee WW3001-WW3050 (both inclusive). The equipment covered by the agreements listed above at subparagraphs 2(a) and 2(b) consists of the units of equipment referred to in the next two preceding sentences. Each unit of such equipment bears the legend "Ownership Subject to a Security Interest Filed with the Interstate Commerce Commission". *WRF*

Please cross-reference the Security Agreement and the Amended and Restated Lease of Railroad Equipment with the Lease of Railroad Equipment dated as of June 25, 1979, between Merrill Lynch Leasing Inc. and Winchester and Western Railroad Company, Recordation No. 10585, filed on July 3, 1979, at 2:00 p.m.

Enclosed is our check for \$<sup>(150)</sup>200 for the required recordation fee. Please accept for recordation one counterpart of each of the enclosed agreements, stamp the remaining counterparts with your recordation number and return them to the delivering messenger along with your fee receipt addressed to the undersigned. *WRF*

Very truly yours,

*William R. Giusti*

William R. Giusti  
As Agent for Winchester and  
Western Railroad Company.

Agatha L. Mergenovich, Secretary,  
Interstate Commerce Commission,  
Washington, D.C. 20423

Encls.

11031 A  
REGISTRATION NO. .... Filed 1425

NOV 8 1979 - 8 55 AM

INTERSTATE COMMERCE COMMISSION

---

---

ASSIGNMENT OF CONDITIONAL SALE INDEBTEDNESS

among

PORTEC, INC.,

Manufacturer,

THE CONNECTICUT BANK AND TRUST COMPANY,  
as Agent

and

MERRILL LYNCH LEASING INC.,  
Owner

Dated as of October 1, 1979

---

---

ASSIGNMENT OF CONDITIONAL SALE INDEBTEDNESS,  
dated as of October 1, 1979, among PORTEC, INC. (the  
"Manufacturer"), THE CONNECTICUT BANK AND TRUST COMPANY  
as Agent (the "Agent"), and MERRILL LYNCH LEASING INC.  
(the "Owner").

R E C I T A L S

A. The Manufacturer and the Owner have entered into a Conditional Sale Agreement dated as of the date hereof (the "Conditional Sale Agreement", capitalized terms used herein without other definition being used as defined therein) covering the construction, sale and delivery, on the conditions therein set forth, by the Manufacturer and the purchase by the Owner of the railroad equipment as defined in the Conditional Sale Agreement (the "Equipment").

B. The Owner and Winchester and Western Railroad Company (the "Lessee"), have entered into an Amended and Restated Lease of Railroad Equipment dated as of the date hereof providing for the lease to the Lessee of the Equipment.

NOW, THEREFORE, in consideration of the payments herein referred to, the receipt of which is hereby acknowledged by the Manufacturer, as well as of the mutual covenants herein contained, the parties hereto agree as follows:

1. The Manufacturer hereby assigns, transfers and sets over unto the Agent, its successors and assigns:

(a) all the right, title and interest of the Manufacturer in and to each unit of the Equipment;

(b) all the right, title and interest of the Manufacturer in, to and under the Conditional Sale Agreement and the Conditional Sale Indebtedness and in and to any and all other amounts which may be or become due or owing to the Manufacturer under the Conditional Sale Agreement (except the right to receive amounts payable for the transportation of the Units pursuant to Section 2 of the Conditional Sale Agreement, the right to receive the Down Payment, the right to reimbursement for taxes paid or incurred by the Manufacturer and the right to receive indemnity payments, as Seller, under Section 15.1 thereof); and

(c) except as limited by subparagraph (b) of this paragraph, all the Manufacturer's rights, titles, powers, privileges and remedies under the Conditional Sale Agreement;

without, in each case any recourse against the Manufacturer for or on account of the failure of the Owner to make any of the payments provided for in, or otherwise to comply with, any of the provisions of the Conditional Sale Agreement, provided that this Assignment shall not subject the Agent to, or transfer, or in any way affect or modify, the obligations of the Manufacturer to deliver the Equipment to be built by it in accordance with the Conditional Sale Agreement or with respect to its warranties and agreements contained or referred to in Section 15.3 of the Conditional Sale Agreement or relieve the Owner from its obligations to the Manufacturer contained in the Conditional Sale Agreement, it being understood and agreed that, notwithstanding this Assignment, or any subsequent assignment pursuant to the provisions of Article 16 of the Conditional Sale Agreement, all obligations of the Manufacturer to the Owner with respect to the Equipment shall be and remain enforceable by the Owner, 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 Agent in the Agent's own name, 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 Agent is or may become entitled under this Assignment and compliance by the Owner with the terms and agreements on its part to be performed under the Conditional Sale Agreement, but at the expense and liability and for the sole benefit of the Agent.

2. The Manufacturer acknowledges receipt from the Agent of the full amount of the Conditional Sale Indebtedness created pursuant to clause (a) of Section 4.1 of the Conditional Sale Agreement in cash, and the satisfaction of all conditions precedent required to be performed or complied with to the satisfaction of the Manufacturer on or prior to the Closing Date.

3. The Manufacturer represents and warrants to the Owner and the Agent as follows:

(a) The Manufacturer had, upon the delivery of the Equipment under the Conditional Sale Agreement, legal title to such units and good and lawful right to sell such units to the Owner and such title was free of all Liens of any nature except the rights created under the Conditional Sale Agreement, the Lease and this Assignment.

(b) The Conditional Sale Agreement has been duly authorized, executed and delivered by the Manufacturer and, assuming due authorization, execution and delivery thereof by the Owner, constitutes a legal, valid and binding obligation of the Manufacturer enforceable against the Manufacturer in accordance with its terms.

(c) The Conditional Sale Agreement is in full force and effect without any amendment, modification or waiver.

(d) Prior to the assignment contained in Section 2 hereof, the Manufacturer had legal title in and to the Conditional Sale Indebtedness, free of all Liens of any nature.

4. The Manufacturer agrees for the benefit of the Agent that it (a) will fully conform and comply except as provided in this Assignment with each of and all of the covenants and conditions of the Conditional Sale Agreement and the Original Agreements set forth to be performed and complied with by the Manufacturer, (b) will warrant and defend title to the units of the Equipment delivered by it to the Owner on the Closing Date against the demands of all persons based on or arising out of any event or condition occurring or existing prior to the delivery of such units under the Conditional Sale Agreement and against any failure or alleged failure of the Manufacturer to transfer full title to such units to the Owner, free and clear of all Liens except the rights of the Manufacturer and the Agent under the Conditional Sale Agreement, the Lease and this Assignment, and (c) will warrant and defend the title of the Agent in and to the Conditional Sale Indebtedness against the demands of all persons based on or arising out of any event or condition occurring or existing prior to the delivery of the units on the Closing Date and the payment by the Agent of the amounts referred to in Section 2 of this Assignment.

5. In the event of any suit, proceeding or action brought by the Agent under the Conditional Sale Agreement for any installment of, or interest on, the Conditional Sale Indebtedness or to enforce any provision of the Conditional Sale Agreement, the Manufacturer will indemnify, protect and hold harmless the Agent from and against all expenses, loss or damage suffered by reason of any defense, setoff, counterclaim or recoupment whatsoever claimed by the Owner or the Lessee 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 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 Owner or the Lessee by the Manufacturer. The Manufacturer's obligation so to indemnify, protect and hold harmless the Agent is conditioned upon (a) the Agent's timely motion or other appropriate action, on the basis of the Owner's consent to this Assignment, to strike any defense, setoff, counterclaim or recoupment asserted by the Owner 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 Agent's prompt notification to the Manufacturer of the asserted defense, setoff, counterclaim or recoupment and the Agent's giving the Manufacturer the right, at the Manufacturer's expense, to compromise, settle or defend against such defense, setoff, counterclaim or recoupment.

Except in cases of articles or materials specified by ITEL and not manufactured by the Manufacturer and in cases of designs, systems, processes, formulae or combinations specified by ITEL and not developed or purported to be developed by the Manufacturer, the Manufacturer agrees to indemnify, protect and hold harmless the Agent from and against any and all liability, claims, demands, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Agent or its assigns because of the use in or about the construction or operation of any of the Equipment of any design, system, process, formula, combination, article or material which infringes or is claimed to infringe on any patent or other right. The Agent will give prompt notice to the Manufacturer of any claim actually known to the Agent 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 amounts payable to it by the Owner, Itel or the Lessee with respect to the Equipment, whether pursuant to the Conditional Sale Agreement or otherwise, not hereby assigned to the Agent, shall not be secured by any Lien, charge or security interest upon the Equipment or any unit thereof.

6. The Agent 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 Owner thereunder. In the event of any such assignment, any such subsequent or successive assignee or assignees shall, to the extent of such assignment, and upon giving the written notice required in Section 15.1 of the Conditional Sale Agreement, enjoy all the rights and privileges and be subject to all the obligations of the Agent hereunder.

7. The Manufacturer will from time to time, at the request of the Agent or its successors or assigns, make, execute and deliver all such further instruments of assignment, transfer and assurance and do all 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, titles and interests hereby assigned and transferred to the Agent or intended so to be, and upon any request of the Agent, its successors and assigns, the Manufacturer will execute any and all instruments which may then 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.

8. The Owner consents to all of the terms and conditions of this Assignment and agrees that (a) it will pay all amounts payable by it under the Conditional Sale Agreement except amounts payable to the Manufacturer for the transportation of the Units pursuant to Section 2 of the Conditional Sale Agreement and under clause (b) of Section 4.1 thereof in immediately available funds by 11:00 a.m. New York time, on the date due to The Connecticut Bank and Trust Company as Agent, at One Constitution Plaza, Hartford, Connecticut 06115 (or at such other address as may be furnished to the Owner by the Agent); (b) the Agent shall be entitled to the benefits of, and to receive and enforce performance of, all of the representations, warranties, indemnities, agreements and covenants of the Owner under the Conditional Sale Agreement as though the Agent were originally named therein as the Manufacturer; (c) the Owner will not assert against the Agent any claim or defense which

the Owner may now or hereafter have against the Manufacturer; (d) the Agent shall not, by virtue of this Assignment, be or become subject to any liability or obligation under the Conditional Sale Agreement (except for the performance of the agreements of the Manufacturer (or its assignee) set forth in sections 7, 9.2(b) and 9.2(c)); (e) the Conditional Sale Agreement shall not, without the prior written consent of the Agent, be amended, terminated or modified, nor shall any action be taken or omitted by the undersigned, the taking or omission of which might result in an alteration or impairment of the Conditional Sale Agreement or this Assignment or of any of the rights created by any thereof; (f) the security interest assigned, transferred and set over hereby shall, in addition to the payments and performance secured in the Conditional Sale Agreement, secure as well the performance by the Owner of all of its obligations and agreements contained in, and the payment of all amounts payable to the Agent or the Lenders pursuant to, the Participation Agreement and each other Basic Agreement to which it is a party; and (g) the Owner shall not assert against the Manufacturer any claim under Section 7, 9.2(b) or 9.2(c) of the Conditional Sale Agreement.

9. The terms of this Assignment and all rights and obligations hereunder shall be governed by the laws of the State of New York, provided that the parties shall be entitled to all the rights conferred by 49 U.S.C. § 11303, 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, or in which any unit of the Equipment shall be located, and any rights arising out of the marking on the units of Equipment.

10. This Assignment may be executed in any number of counterparts, all of which together shall constitute a single instrument.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed in their respective corporate names by duly authorized officials and their

respective corporate seals to be hereunto affixed and duly attested, all as of the date first above written.

[Corporate Seal]

PORTEC, INC.

Attest:

*J. Carter*  
Secretary

By *J.F. Merritt*  
Title: Senior Vice President

[Corporate Seal]

THE CONNECTICUT BANK AND TRUST COMPANY, as Agent

Attest:

*J. Kelly*  
Authorized Officer

By *P. C. Hughes*  
Authorized Officer

[Corporate Seal]

MERRILL LYNCH LEASING INC.

Attest:

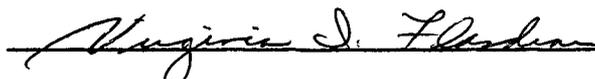
*Michael A. Forastiere*  
11857 Secretary

By *John J. Murphy*  
Title: Vice President

STATE OF NEW YORK )  
 ) ss.:  
COUNTY OF NEW YORK )

On this 7<sup>th</sup> day of November, 1979, before me personally appeared D.F. Morris, to me personally known, who, being by me duly sworn, says that he is Senior 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.

[NOTARIAL SEAL]

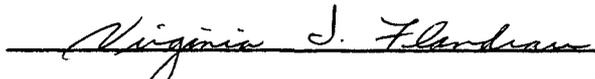


VIRGINIA I. FLANDRAU  
NOTARY PUBLIC, State of New York  
No. 24-4669365  
Qualified in Kings County  
Certificate Filed in New York County  
Commission Expires March 30, 1980

STATE OF NEW YORK )  
 ) ss.:  
COUNTY OF NEW YORK )

On this 7<sup>th</sup> day of November 1979, before me personally appeared P.L. Hargraves, to me personally known, who, being by me duly sworn, says that he is Vice President of THE CONNECTICUT BANK AND TRUST COMPANY, 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.

[NOTARIAL SEAL]



VIRGINIA I. FLANDRAU  
NOTARY PUBLIC, State of New York  
No. 24-4669365  
Qualified in Kings County  
Certificate Filed in New York County  
Commission Expires March 30, 1980

