

7-187A019

RECORDATION NO. 8872 Filed & Recorded

JUL 6 1977

JUL 6 1977-12 45 PM

Fee \$ 1.00

INTERSTATE COMMERCE COMMISSION  
June 20, 1977

RECEIVED  
JUL 6 12 30 PM '77

CC Washington, D. C

RECORDATION NO. 8872-A Filed & Recorded

I. C. C.  
FEE OPERATION BR.

Secretary, The Interstate  
Commerce Commission  
Washington, D.C. 20423

JUL 6 1977-12 45 PM

INTERSTATE COMMERCE COMMISSION

Sir:

Pursuant to §20c of the Interstate Commerce Act, and §1116 of the Regulations of the Interstate Commerce Commission, please find enclosed documentation necessary to the perfection of security interests in the therein described collateral. Also, please find enclosed a check in the amount of one hundred and twenty dollars (\$120.00) to cover the required recordation fees pursuant to §1116.3(d) of the Regulations, to wit: ten dollars (\$10.00) each for the two assignments; and fifty dollars (each) for the conditional sales agreement and the lease agreement.

Enclosed are 3 copies (original and 2 counterparts) of each document, acknowledged, executed, and in writing as specified by §1116 of the Regulations.

Following is a listing of the parties to each document:

(a) Conditional Sale: Portec, Inc. (Paragon Division), a Delaware corporation having its principal place of business at 300 Windsor Drive, Oak Brook, Illinois, is the vendor; EMRR, Incorporated, a Maryland corporation having its principal place of business at 1970 Chain Bridge Road, McLean, Virginia, is the purchaser.

(b) Lease: William M. Gibbons, Trustee of the Chicago, Rock Island and Pacific Railroad Company, with offices at 745 South LaSalle Street, Chicago, Illinois, is the lessee; EMRR, Incorporated, a Maryland corporation having its principal place of business at 1970 Chain Bridge Road, McLean, Virginia, is the lessor.

(c) Assignment of Conditional Sales Contract: Portec, Inc. (Paragon Division), a Delaware corporation, having its principal place of business at 300 Windsor Drive, Oak Brook, Illinois, is the assignor; Merchants National Bank of Indianapolis, Indiana and American Mutual Life Insurance Company of Des Moines, Iowa are the assignees; and, EMRR, Incorporated, a Maryland corporation having its principal place of business at 1970 Chain Bridge Road, McLean, Virginia is the principal debtor.

RECORDATION NO. 8872-B Filed & Recorded

JUL 6 1977-12 45 PM

INTERSTATE COMMERCE COMMISSION

RECORDATION NO. 8872-C Filed & Recorded

JUL 6 1977-12 45 PM

INTERSTATE COMMERCE COMMISSION

*Murray*  
*Martin*

(d) Collateral Assignment of Lease: EMRR, Incorporated, a Maryland corporation having its principal place of business at 1970 Chain Bridge Road, McLean, Virginia is the assignor; Merchants National Bank of Indianapolis, Indiana and American Mutual Life Insurance Company of Des Moines, Iowa are the assignees; and William M. Gibbons, as Trustee for The Chicago, Rock Island and Pacific Railroad Company, with offices at 745 South LaSalle Street, Chicago, Illinois, is the principal debtor.

The equipment to be covered by the four (4) documents (Conditional Sales Agreement, Lease Agreement, Assignment of Conditional Sales Contract, and Collateral Assignment of Lease) consists of: forty (40) new Portec Inc. enclosed tri-level auto racks bearing the serial numbers designated on Exhibit A (attached). These racks are to be attached to those cars designated in Exhibit A.

The original copies of the four (4) documents are to be returned in the enclosed envelope to:

Mr. Charles P. Carlson, Esq.  
Borge and Pitt, Attorneys  
Suite 1440  
120 South LaSalle Street  
Chicago, Illinois 60603

Sincerely,

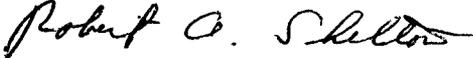
  
Robert A. Shelton,  
Assistant Secretary  
EMRR, Incorporated

Exhibit A to Bill of Sale

Forty new PORTEC, Inc. enclosed tri-level auto racks bearing the serial numbers designated below. The numbers listed in the "Car Number" column are numbers of cars to which the Racks with the serial numbers directly opposite were attached.

<u>Car Number</u>	<u>Serial Number</u>
ETTX 820260	40613-5
ETTX 820261	40613-20
ETTX 820255	40613-18
ETTX 820263	40613-28
ETTX 820259	40613-15
ETTX 820265	40613-12
ETTX 820266	40613-7
ETTX 820267	40613-11
ETTX 820268	40613-13
ETTX 820269	40613-14
ETTX 820270	40613-6
ETTX 820271	40613-4
ETTX 820272	40613-19
ETTX 820273	40613-17
ETTX 820274	40613-3
ETTX 820275	40613-2
ETTX 820276	40613-16
ETTX 820277	40613-9
ETTX 820278	40613-8
ETTX 820279	40613-10
ETTX 820280	40613-29
ETTX 820281	40613-1
ETTX 820282	40613-30
ETTX 820283	40613-31
ETTX 820284	40613-32
ETTX 820285	40613-26
ETTX 820286	40613-33
ETTX 820287	40613-34
ETTX 820288	40613-27
ETTX 820289	40613-38
ETTX 820290	40613-22
ETTX 820291	40613-24
ETTX 820292	40613-35
ETTX 820293	40613-21
ETTX 820294	40613-36
ETTX 820295	40613-23
ETTX 820296	40613-40
ETTX 820297	40613-39
ETTX 820298	40613-37
ETTX 820299	40613-25

A

**Interstate Commerce Commission**  
Washington, D.C. 20423

OFFICE OF THE SECRETARY

July 6, 1977

Charles A. Carlson  
Borge and Pitt  
Suite 1440  
120 South LaSalle Street  
Chicago, IL 60603

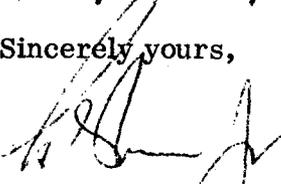
Dear Sir:

The enclosed document(s) was recorded pursuant to the  
provisions of Section 20(c) of the Interstate Commerce Act,

49 U.S.C. 20(c), on **7/6/77** at **12:45PM**,

and assigned recordation number(s) **8872, 8872-A, 8872-B, 8872-C**  
and **8872-C.**

Sincerely yours,

  
H.G. Homme, Jr.  
Acting Secretary

Enclosure(s)

SE-30-T  
(6/77)

BORGE AND PITT, ATTORNEYS

120 SOUTH LA SALLE STREET · CHICAGO, ILLINOIS 60603  
TELEPHONE (312) 726-6080

REGORDATION NO. *8872* Filed & Recorded

JUL 15 1977-12 20 PM

INTERSTATE COMMERCE COMMISSION

July 11, 1977

RECEIVED  
JUL 15 12 27 PM '77  
I.C.C.  
FEE OPERATION BR.

Interstate Commerce Commission  
12th and Constitution Avenues  
Room 1227  
Washington, D.C. 20423

Attention: Mrs. Lee

Dear Mrs. Lee:

Please make the following change in a filing made on July 6, 1977 at 12:45 p.m. Recordation No. 8872 should be changed by the substitution of the enclosed two schedules for: (a) Schedule I to the Conditional Sales Contract which is found at the 11th and 12th pages of No. 8872; (b) Exhibit A to Certificate of Acceptance which is found at the 15th and 16th pages of No. 8872.

Enclosed is the fee of \$10.00 for the change and a stamped, self-addressed envelope for return of certification.

Sincerely,

*Jerry B. Wallack*  
Jerry B. Wallack,  
Clerk w/Charles P. Carlson

JBW/dj  
Enclosure

7-198A045  
JUL 15 1977  
Date \_\_\_\_\_  
Fee \$ *10*  
ICC Washington

Counterpart No. 1

8872

RECORDATION NO. .... Filed & Recorded

JUL 6 1977-12 45 RW

CONDITIONAL SALES CONTRACT

~~INTERSTATE COMMERCE COMMISSION~~

THIS CONTRACT, made, executed and delivered as of this 16th day of May, 1977, by EMRR, Incorporated, a Maryland corporation having its principal place of business at 1970 Chain Bridge Road, McLean, Virginia (hereinafter known and designated as "Buyer") and PORTEC Inc., a Delaware corporation having its principal place of business 300 Windsor Drive, Oak Brook, Illinois. The term "Seller," when used herein, shall refer to Portec Inc., (Paragon Division) prior to any assignment by it of its rights and obligations hereunder, and shall thereafter refer to its Assignee or any subsequent assignee (except as provided in paragraphs 8.8 and 8.11 hereof).

W I T N E S S E T H :

WHEREAS, upon and subject to the terms and conditions hereinafter contained, Buyer desires to purchase from Seller 40 enclosed tri-level automobile carrying racks used for the transportation of automobiles on railroad flat cars, more fully described with Seller's serial numbers in Schedule 1 attached hereto, (hereinafter collectively called the "Racks"); and

WHEREAS, the purchase price for such Racks will be evidenced by a Secured Note or Notes (the "Note or Notes") dated the Closing Date or Dates ("Closing Date or Dates") as hereinafter defined and to be delivered by Buyer to Seller on the Closing Date or Dates; and

WHEREAS, Buyer desires to secure Seller (and any subsequent holder or holders of said Note or Notes) in the full and prompt payment of said Note or Notes and in the full and prompt performance of all of its duties and obligations herein contained.

NOW, THEREFORE, in consideration of the promises and the covenants and undertakings hereinafter contained, it is mutually agreed as follows:

1. PURCHASE AND SALE OF RACKS. Seller hereby sells to Buyer, and Buyer hereby purchases from Seller, the Racks constructed in accordance with the Specifications set forth therefor in Schedule 1 hereto.

2. PURCHASE PRICE AND PAYMENT. Subject to receipt of the opinion referred to in Section 8.10 hereof, Buyer shall pay to Seller the total price of \$1,144,560.00 payable in the amount of \$91,564.80 in cash at closing or closings as hereinafter provided and the balance in accordance with the terms of a Note or Notes in the form hereunto attached as Schedule 2.

In the event less than 40 Racks shall have been accepted within 45 days after the first Rack shall have been delivered for any reason other than failure of Seller to install Racks on flat cars made available to it, the parties hereto shall, upon request of Seller, close for such Racks as have been accepted by Buyer not more than ten (10) business days following presentation by Seller to Buyer of the invoice and the Acceptance Certificate covering such Racks. The term, "business days" as used herein means calendar days excluding Saturdays, Sundays and any other day on which banking institutions in New York, New York are authorized or obligated to remain closed. At such closing Buyer shall pay to Seller pro rata by payment in cash and by Note in the proportion that the number of Racks for which a closing is held bears to the total purchase price as provided in this Paragraph 2 above.

Seller represents that it will use its best efforts to limit the number of closings which it requests. For each closing Seller will upon payment in full therefor execute a Bill of Sale for the Racks then purchased, execute an Assignment of the Note executed in connection with that transaction, and will execute an assignment of this Contract with respect to the Racks then closed on (and any supplements thereto), and will deliver the opinion of counsel referred to in Section 8.10 hereof.

3. DELIVERY, INSTALLATION AND PAYMENT. Seller shall deliver and install on flat cars supplied by Buyer at Seller's Novi, Michigan plant forty (40) Racks by November 30, 1977.

Seller's obligation as to time of delivery is subject, however, to delays resulting from causes beyond the Seller's reasonable control, including but not limited to failure of delivery by Lessee (as hereinafter defined) of flat cars to Seller's Novi, Michigan plant, acts of God, acts of government such as embargoes, priorities and allocations, war or war conditions, riot or civil commotion, sabotage, strikes, differences with workmen, accidents, fire, flood, explosion, damage to plant, equipment or facilities, delays in receiving necessary materials or delays of carriers or subcontractors.

During construction, the Racks shall be subject to inspection and approval by the authorized inspectors of the Buyer, and Seller shall grant to such authorized inspectors reasonable access to its plant. The Seller agrees to inspect all materials used in the construction of the Racks in accordance with the standard quality control practice of the Seller. Upon completion of each Rack or group of Racks, such Rack or Racks shall be presented to an inspector of the Buyer for inspection at the place specified for delivery of such Racks and if such Rack or group of Racks conforms to the specifications, requirements and standards applicable thereto, such inspector shall upon installation of such Rack or group of Racks on the flat car or cars accept such Racks and evidence such acceptance by delivery to the Seller an executed Acceptance Certificate or Certificates in the form attached hereto as Schedule 3 covering such

Rack or group of Racks; provided, however, that the Seller shall not thereby be relieved of its warranty referred to in Section 4.1 hereof.

4.1. SELLER'S WARRANTIES. Seller guarantees the Racks furnished under this Contract will be free from defects of material and workmanship for a period of twelve (12) months from the shipping date of each Rack and will fully repair any and all Racks furnished under this Contract damaged due to defective material or faulty workmanship, occurring within the warranty period at no cost to the Buyer, provided said racks shall within 12 months after delivery to Buyer be returned to Seller's plant in Novi, Michigan, with transportation charges prepaid and Seller's examination shall disclose, to its satisfaction, to have been so defective." Buyer shall, at its own cost, transport any Rack on which work is to be performed pursuant to this Paragraph to Seller's place of business at the address first hereinabove set forth, where such work shall be performed.

4.2. THE FOREGOING WARRANTIES ARE EXCLUSIVE AND ARE IN LIEU OF ALL OTHER WARRANTIES OF MERCHANTABILITY OR OF FITNESS FOR PURPOSE, OR OF ANY OTHER KIND, EXPRESS OR IMPLIED: AND IN NO EVENT SHALL SELLER BE LIABLE FOR CONSEQUENTIAL DAMAGES.

5. TITLE AND SECURITY INTEREST. To secure the full and prompt payment of the Note or Notes and the full and prompt performance of all of Buyer's duties and obligations hereunder (hereinafter collectively called the "Indebtedness"), Seller has retained title to the Racks and a security interest in the Racks and in all additions, attachments, accessions, parts, replacements, substitutions and renewals thereof or therefor, wherever situated and all cash and noncash proceeds and products of all of the foregoing (hereinafter collectively called the "Collateral") to secure full and prompt payment and/or performance of the Indebtedness.

6. WARRANTIES, COVENANTS AND AGREEMENTS. Buyer warrants, covenants and agrees as follows:

6.1. The Collateral has been acquired for use in its business.

6.2. None of the Collateral is subject to any lien and/or security interest other than that in favor of the Seller or as otherwise expressly provided herein.

6.3 Buyer will keep Collateral free at all times from any and all liens, security interest or encumbrances, other than those in favor of (i) Seller, (ii) William M. Gibbons, Trustee, Chicago, Rock Island and Pacific Railroad (the "Lessee") under that certain Lease Agreement dated the date hereof (the "Lease") with Buyer, and (iii) Merchants National Bank, Indianapolis, Indiana, and American Mutual Life Insurance Co., Des Moines, Iowa, (the "Lenders") as assignees (the Lenders and any subsequent assignees collectively, called the "Assignees") of Seller, upon the Lender's acceptance of

assignment of this Agreement. Buyer will not use, or suffer or permit any other person to use, any Collateral in violation of any applicable statute, ordinance, or policy of insurance thereon. Seller or its agents or attorneys may at any and all reasonable times inspect the Collateral and may enter upon any and all premises where the same is kept or might be located.

6.4. Buyer will do all acts and things, and will execute all writings requested by Seller to establish, maintain and continue perfected Seller's title to, and/or first security interest of Seller in, the Collateral, including the payment of all fees and expenses incurred in connection therewith.

6.5. Buyer will pay promptly and within the time that they can be paid without interest or penalty, all taxes, assessments and similar imposts and charges which are now, or hereafter during the effective period of this Contract may become, a lien, charge or encumbrance upon any of the Collateral except to the extent contested in good faith. If Buyer fails to pay any such taxes, assessments or other charges as they become due, Seller shall have the option to do so and Buyer agrees to repay, with interest at the rate of 11% per annum, (or at such lesser rate as shall be the maximum rate permitted by applicable law) all amounts so expended by the Seller.

6.6. Buyer will keep the Collateral in good condition and repair and shall safeguard and protect the same from loss, damage or deterioration from any cause whatsoever reasonable wear and tear excepted, provided however that performance by Lessee under Section 10 of the Lease shall suffice as performance hereunder.

6.7. Buyer will reimburse Seller, in accordance with the provisions of the Uniform Commercial Code in effect in the State of Illinois at the date of this Contract (hereinafter referred to as the "Uniform Commercial Code") for all expenses: including reasonable attorney fees and legal expenses, incurred by Seller in seeking to collect the Indebtedness or any part thereof, or in pursuing any of its rights or remedies hereunder.

6.8. Buyer's chief place of business is at the address first shown above, and Buyer shall immediately notify Seller in writing of any change in Buyer's chief place of business.

6.9. Buyer will not sell, transfer or otherwise dispose of the Collateral or any part thereof or all or any part of its interest in this Contract without the prior written consent of Seller so long as any Indebtedness remains outstanding and unpaid. However, Buyer may lease the Collateral, or any part thereof, to Lessee. Buyer will maintain or cause to be maintained the leased Collateral in good condition and repair.

6.10. (a) In the event any of the Racks are destroyed, stolen or [in the opinion of the Lessee] damaged beyond economical repair prior to the payment by the Buyer of the Indebtedness in full and performance by the Buyer of all its duties and obligations

AND COLLECTED BUT NOT ALREADY DISTRIBUTED TO BUYER

hereunder and the termination amount specified in Section 12 of the Lease shall have been paid, then the Buyer shall give notice to the Seller of the occurrence of such event and payment. On the first day thereafter that a payment is due pursuant to the terms of the Note, Buyer shall prepay and shall apply pro rata on the Note or Notes then outstanding in an amount equal to the "Present Value of Applied Rents," as hereinafter defined, remaining unpaid with respect to each such Rack so destroyed, stolen or damaged, provided however that upon receipt by Seller of the proceeds of the assignment of the Note or Notes in the principal amount thereof and the cash payment as required by Paragraph 2 hereof Buyer's obligation hereunder shall be limited to such funds as shall be receivable by it from the Lessee under the Lease. Said prepayments shall be applied on the Note or Notes so that after giving effect to such application and the release of the Racks from said Lease and the lien hereof:

(i) The aggregate principal amount remaining unpaid on the Note or Notes does not exceed the "Present Value of Applied Rents", as hereinafter defined, in respect of all other Racks which then remain subject to said Lease and the security interest of this agreement; and

(ii) Each of the remaining installments of the Note shall be reduced in the proportion that the principal amount of the prepayment bears to the unpaid principal amount of the Note immediately prior to the prepayment.

(b) Provided no default exists except to the extent Seller has been damaged by default in performance of the obligations of the Buyer to be performed under this Contract, any amounts in excess of the "Present Value of Applied Rents," as hereinafter defined, in respect of any Rack for which settlement is made shall be released to, or as directed by, the Buyer.

(c) The term "Present Value of Applied Rents" for any Rack shall mean as of any date an amount equal to the present value of the remaining rentals to be made pursuant to the Lease for such Rack (such present value to be computed by discounting 97.0886%, of the remaining quarterly rentals, at a rate of 9-1/2% per annum).

(d) So long as no default in the Lease has occurred and is continuing, the Seller (or its Assignees or duly authorized Assignee representative) shall execute a release in response of any Rack designated by the Lessee under the Lease for settlement upon receipt of: (i) written notice from the Lessee designating the Rack in respect of which the Lease will terminate and (ii) settlement by the Lessee for such Rack in compliance with Paragraph 12 of the Lease.

(e) Provision is also made for prepayment of the Note or Notes in the events and under the conditions set forth in section 4 of that certain Financing and Security Agreement dated May 16, 1977 between EMRR Corporation and the Lenders.

(f) It is specifically understood and agreed that upon receipt by Seller of the proceeds of the assignment of the Note or Notes in the principal amount thereof and of the cash payment required by Paragraph 2 hereof and anything contained herein to the contrary notwithstanding, any proceeds received by Buyer from casualty insurance procured by it at its expense shall not be payable to Seller, or its assignees.

6.11. Buyer will do all acts and things, and will execute, acknowledge, deliver, file and record all writings requested by Seller to establish, maintain and continue perfected Seller's title to, and/or a first security interest of Seller in, the Collateral and will promptly on demand pay all costs and expenses of filing and recording, including the costs of any searches deemed necessary by Seller to establish and determine the validity and priority of Seller's title to, and security interest in, the Collateral. Buyer will furnish promptly to Seller certificates or other evidence of all filings, registrations and recordings required hereunder. Buyer will pay, or cause to be paid, all reasonable costs, charges and expenses, including stamp, excise and other taxes, if any, incident to the printing or other duplication, execution, acknowledgment or delivery of this Contract or the Indebtedness, or any assignment thereof, whether now or hereafter payable.

7. DEFAULTS, ENFORCEMENT AND APPLICATION OF PROCEEDS.

7.1. The occurrence of any one of the following events (herein called an "Event of Default") shall constitute an Event of Default hereunder and under the Note:

(i) Default in the payment of any installment of interest and/or principal on the Note or Notes, for a period of seven (7) days after the same shall become due and payable thereunder and not less than five (5) business days shall have elapsed after written notice of nonpayment shall have been given to Buyer; or

(ii) Failure of Buyer to observe or perform any covenants, warranties or undertakings on Buyer's part in this Contract contained, if written notice of such failure, requiring Buyer to remedy the same, shall have been given to Buyer by the Seller, and such failure shall continue unremedied for a period of thirty (30) days after the receipt of such notice; or

7.2. Upon the occurrence of any Event of Default, Seller may at its discretion declare the Indebtedness to be immediately due and payable, and shall have and may exercise any one or more of the rights and remedies for which provision is made in Paragraph 8 hereof, including without limitation the right to take possession and sell, lease or otherwise dispose of any or all of the Collateral and to proceed to protect and enforce this Contract and the Note by suit or suits or proceedings in equity, at law or in bankruptcy, and

whether for the specific performance of any covenant or agreement herein contained or in execution or aid of any power herein granted, or for foreclosure hereunder, or for the appointment of a receiver or receivers for the Collateral or any part thereof, or for the recovery of judgment for the Indebtedness or for the enforcement of any other proper legal or equitable remedy available under applicable law. Buyer agrees, upon request of the Seller, to assemble the Collateral and make it available to Seller at not more than two (2) easily accessible locations on a railroad line of the Chicago, Rock Island and Pacific Railroad Company.

7.3. The Proceeds of any sale or other disposition of the Collateral authorized by this Contract shall be applied by Seller first upon all expenses authorized by the Uniform Commercial Code and all reasonable attorney's fees and legal expenses incurred by Seller; the balance of the proceeds of such sale or other disposition shall be applied in the payment of the Indebtedness, first to interest and then to principal, and the surplus, if any, shall be paid over to Buyer or to such other person or persons as may be entitled thereto under applicable law. Upon receipt by Seller of the proceeds of the assignment of the Note or Notes in the principal amount thereof and of the cash payment required by Paragraph 2 hereof, Buyer shall not be liable for any deficiency other than for such cash payment.

7.4. No waiver of any default shall be effective unless in writing signed by Seller, and no waiver of any default or forbearance on the part of Seller in enforcing any of its rights under this Agreement shall operate as a waiver of any other default or of the same default on a future occasion or of any such rights.

## 8. MISCELLANEOUS.

8.1. This agreement shall in all respects be governed by and constructed in accordance with the laws of the State of Illinois. Insofar as the foregoing may be contrary to existing local law which cannot be waived by agreement of the parties or in the event that applicable law confers any rights or imposes any duties inconsistent with or in addition to any of the provisions of this agreement the affected provisions shall be considered amended to conform thereto, but all other provisions hereof shall remain in full force and effect.

8.2. This agreement shall be terminated only when Buyer pays the Indebtedness in full and performs all of its duties and obligations hereunder and a Termination Statement in accordance with the applicable provisions of the Uniform Commercial Code is filed. Until terminated, the security interest hereby created shall continue in full force and effect. If and when Buyer pays the Indebtedness in full and performs all of its duties and obligations hereunder Seller will execute and deliver to Buyer or its assigns said Termination Statement.

8.3. Until termination of this agreement, Seller shall have and may exercise any and all of the rights and remedies given by this Contract or given to a secured party under the Uniform Commercial Code including without limitation the right of the Seller to exercise all rights, privileges and remedies of the Buyer as lessor under the Lease as may be provided for under the Lease or by applicable law, whether in the name of the Seller or the name of the Buyer for the use and benefit of the Seller or to take possession of the Racks and of anything found therein, and the right for that purpose without legal process to enter any premises where the Racks may be found. Any requirement of said Code for reasonable notification of the time and place of any public sale, or of the time after which any private sale or other intended disposition is to be made, shall be met by giving the Buyer at least five (5) days prior written notice of the time and place of any public sale or the time after which any private sale or any other intended disposition is to be made. Buyer acknowledges that such notice is reasonable. This Contract and all such rights and remedies shall inure to the benefit of Seller and its successors and assigns and to other holders who derive from Seller title to or an interest in the Note or Notes, or any portion thereof, and shall bind Buyer and its successors and assigns.

8.4. Except as otherwise herein provided, the terms used in this Contract shall have the meanings assigned to them in Article 9 (or, absent definition in Article 9, in any other Article) of the Uniform Commercial Code.

8.5. Seller may resort for the payment of the Indebtedness secured hereby to its several securities therefor in such order and manner as it may think fit, and may at any time release all or any part of such several securities without regard to the consideration, or none, as it may require, or any portion of the Collateral without, as to the remainder of the securities, in anywise impairing or affecting the lien and priorities herein provided for Seller compared to any subordinate lienholder.

8.6. Nothing herein contained is intended, nor should it be construed, to preclude Seller from pursuing any other remedy provided by law for the collection of the Indebtedness or any portion thereof, or for the recovery of any other sum to which Seller may be or become entitled for the breach of this Contract by Buyer.

8.7. Until Seller is advised in writing by Buyer to the contrary, all notices, requests and demands, required hereunder or by law, shall be given to or made upon Buyer at its address first shown above. All such notices, requests and demands shall be deemed duly given and received for all purposes if sent by registered or certified mail, postage prepaid, and deposited in any main or branch office of the United States mails.

8.8. All rights of the Seller in, to and under this Contract and the Note or Notes and in and to the Collateral shall pass to and may be exercised by the Assignees. Buyer acknowledges

that Seller intends to assign its rights in this Contract and the Note or Notes and in and to the Collateral and does hereby consent thereto, and agrees except as otherwise provided herein, that the liability of Buyer to the Assignees shall be immediate and absolute and Buyer will not set up any claim against Seller as a defense, counterclaim, or setoff to any action brought by any such Assignee for the unpaid balance of the Indebtedness or for possession of the Collateral.

8.9. Seller will on the Closing Date or Dates deliver to Buyer a Bill or Bills of Sale in the form attached hereto as Schedule 4 for the Racks upon presentation of the Acceptance Certificates covering all of the Racks, subject to Seller's title and retained security interest under the Agreement and conditioned upon payment in full of the Purchase Price set forth in Section 2, hereof.

8.10. Seller shall deliver to Buyer on the Closing Date or Dates an opinion of its Counsel to the effect that:

(a) Seller is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware, and is presently qualified to do business in the State of Michigan;

(b) Seller has full right, power and authority to enter into, execute and deliver this Conditional Sales Contract and the Bill or Bills of Sale, the Note Assignment or Assignments and the Contract Assignment as provided herein, and to perform all of the matters and things provided for in such instruments, except as enforceability thereof may be limited by laws with respect to and affecting remedies, and by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting creditors' rights generally;

(c) The Conditional Sales Contract, the Bill of Sale, the Note Assignment, and the Contract Assignment have been duly authorized, executed and delivered by Seller and constitute the legal, valid and binding obligations, contracts and agreements of Seller, enforceable in accordance with their respective terms; and

8.11. Anything herein to the contrary notwithstanding, the Assignees pursuant to Paragraph 8.8 shall have no liability to Buyer for any obligations of Seller under this Contract relating to manufacture, delivery and installation of the Racks, including any warranty, express or implied, as to quality or condition of the Racks.

9. Upon receipt by Seller of the proceeds of the assignment of the Note or Notes in the principal amount thereof and of \$91,564.80 to the extent required by Paragraph 2 hereof, all obligations of Buyer hereunder are without recourse against Buyer, and except for the \$91,564.80 paid by Buyer pursuant to Section 2 hereof, all such obligations shall be satisfied solely from rental proceeds of the Racks and from such other collateral as shall be specifically pledged or assigned.

IN WITNESS WHEREOF, Buyer has caused this Contract to be executed by its \_\_\_\_\_ President and attested by its Asst Secretary thereunto duly authorized and Seller has caused this Contract to be executed by its Vice President and attested by its \_\_\_\_\_ Secretary all as of the day and year first above written.

ATTEST:

EMRR, INCORPORATED

Robert A. Skilton  
Its Asst Secretary

By Daniel C. Morley  
Its \_\_\_\_\_ President

(SEAL)

ATTEST:

PORTEC INC.,

J. Horton  
Its \_\_\_\_\_ Secretary

By [Signature]  
Its Vice President

(SEAL)

Exhibit A to Bill of Sale

Forty new PORTEC, Inc. enclosed tri-level auto racks bearing the serial numbers designated below. The numbers listed in the "Car Number" column are numbers of cars to which the Racks with the serial numbers directly opposite were attached.

Car Number

ETTX 820260  
ETTX 820261  
ETTX 820255  
ETTX 820263  
ETTX 820259  
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ETTX 820298  
ETTX 820299

Serial Number

40613-5  
40613-20  
40613-18  
40613-28  
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40613-13  
40613-14  
40613-6  
40613-4  
40613-19  
40613-17  
40613-3  
40613-2  
40613-16  
40613-9  
40613-8  
40613-10  
40613-29  
40613-1  
40613-30  
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40613-39  
40613-37  
40613-25

RECORDATION NO. .... Filed & Recorded

JUL 15 1977-12 20 PM

INTERSTATE COMMERCE COMMISSION

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SCHEDULE 2 TO CONDITIONAL SALES CONTRACT

SECURED NOTE

\$1,052,995.20

McLean, Virginia  
\_\_\_\_\_, 1977

FOR VALUE RECEIVED, the undersigned, EMRR, Incorporated, a Maryland corporation organized and existing under the laws of the State of Maryland (the "Company"), promises to pay to the order of Portec Inc., a Delaware corporation, the principal sum of One Million, Fifty-Two Thousand, Nine Hundred and Ninety-Five Dollars and Twenty Cents (\$1,052,995.20) together with interest from the date hereof on the unpaid principal balance at the rate of 9-1/2% per annum (computed on the basis of a twelve-month year - 30-day month) payable in thirty-two consecutive quarterly installments of principal and interest of \$47,350.49 each, commencing on \_\_\_\_\_, 1977 and payable on each \_\_\_\_\_, and \_\_\_\_\_, thereafter. Each quarterly installment shall be applied first to the payment of interest on the principal balance outstanding under the Note, and the remaining amount shall be applied to the payment of principal. The entire unpaid principal and interest shall be due and payable on \_\_\_\_\_, 1985.

All payments of principal and interest shall be made in lawful money of the United States of America at Merchants National Bank, Indianapolis, Indiana, or at such other place as the holder hereof shall designate to the Company in writing. The Company shall pay on demand a late charge on each overdue installment computed at a rate of 12% annum.

This Note is secured by certain property and rights as more fully described in a Conditional Sales Contract between the Company and the named payee dated May 16, 1977 (the "Contract"); and reference is made to the Contract for a description of the holder's rights to accelerate this Note and all rights of holder with respect to the property described therein. Time is of the essence of this Note, and if this Note is collected by law or through an attorney at law, or on advice therefrom, the Company agrees to pay all costs of collection, including reasonable attorney's fees. As to this Note and the Contract and all other instruments securing the obligations due under this Note, the Company and all guarantors and endorsers severally waive valuation and appraisal, presentment, protest and demand, notice of protest, demand and dishonor and nonpayment of this Note, and expressly agree that the maturity of this Note, or any payment hereunder, may be extended from time to time without in any way affecting the liability of the Company and all guarantors and endorsers. The Note shall be governed

by and construed in accordance with the laws of the State of Illinois. As provided in Section 6.10 of the Contract, this Note may be prepaid upon the events and at the times set forth therein without penalty.

Anything in this Note or the Contract to the contrary notwithstanding, it is understood and agreed that the holder of this Note shall have no claim or right to proceed against the undersigned or any stockholder, officer or employee of the undersigned for payment of this Note or for any deficiency or any other sum owing on account of the indebtedness evidenced by this Note.

WITNESS: EMRR, INCORPORATED

(SEAL)

\_\_\_\_\_  
Its \_\_\_\_\_ Secretary

By \_\_\_\_\_  
Its \_\_\_\_\_

Pay to the order of Merchants National Bank, Indianapolis, Indiana without recourse except that the undersigned warrants that it has authority to endorse this Note.

Dated \_\_\_\_\_, 1977

PORTEC INC.

By \_\_\_\_\_  
Its \_\_\_\_\_

This Note is also secured by a Financing and Security Agreement dated May 16, 1977 between EMRR, Incorporated and Merchants National Bank, Indianapolis, Indiana, and reference is made to the Financing and Security Agreement for a description of the holder's rights to accelerate this Note and all rights of holder with respect to the property described therein, and the right of EMRR, Incorporated to prepay the Note subsequent to the endorsement to Merchants National Bank.

Dated \_\_\_\_\_, 1977

WITNESS: EMRR, INCORPORATED

(SEAL)

\_\_\_\_\_  
Its \_\_\_\_\_ Secretary

By \_\_\_\_\_  
Its \_\_\_\_\_

SCHEDULE 3 TO CONDITIONAL SALES CONTRACT

CERTIFICATE OF ACCEPTANCE

Under Conditional Sales Contract dated May 16, 1977 and  
under Lease Agreement dated May 16, 1977

The undersigned, being the duly authorized representative of EMRR, Incorporated (the "Owner"), and of William M. Gibbons, as Trustee of Chicago Rock Island and Pacific Railroad Company ("Rock Island") hereby certifies that the following units of railroad equipment, (the "Racks") referred to in the Conditional Sales Contract dated May 16, 1977 between the Owner and Portec, Inc. and in the Lease Agreement (the "Lease") between the Owner and William M. Gibbons as Trustee, of Rock Island dated May 16, 1977.

Description:

See Exhibit A

have been duly delivered in good order by Portec Inc. and accepted by the undersigned on the \_\_\_\_\_ day of \_\_\_\_\_, 1977 on behalf of the Owner and of William M. Gibbons and in turn have been duly delivered by the Owner to the Rock Island and have been duly inspected and accepted by the undersigned on such date on behalf of the Owner and of the Rock Island as being in satisfactory condition and conforming in all respects to the requirements and provisions of said Conditional Sales Contract and of the Lease, and to the description and to any sample or model previously examined by Rock Island or Owner.

Dated: \_\_\_\_\_, 1977.

\_\_\_\_\_  
Duly authorized representative  
of EMRR, Incorporated and of  
William M. Gibbons, as Trustee  
aforesaid.

Exhibit A to Bill of Sale

Forty new PORTEC, Inc. enclosed tri-level auto racks bearing the serial numbers designated below. The numbers listed in the "Car Number" column are numbers of cars to which the Racks with the serial numbers directly opposite were attached.

Car Number

Serial Number

ETTX 820260  
 ETTX 820261  
 ETTX 820255  
 ETTX 820263  
 ETTX 820259  
 ETTX 820265  
 ETTX 820266  
 ETTX 820267  
 ETTX 820268  
 ETTX 820269  
 ETTX 820270  
 ETTX 820271  
 ETTX 820272  
 ETTX 820273  
 ETTX 820274  
 ETTX 820275  
 ETTX 820276  
 ETTX 820277  
 ETTX 820278  
 ETTX 820279  
 ETTX 820280  
 ETTX 820281  
 ETTX 820282  
 ETTX 820283  
 ETTX 820284  
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 ETTX 820286  
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 ETTX 820295  
 ETTX 820296  
 ETTX 820297  
 ETTX 820298  
 ETTX 820299

RECORDATION NO. .... Filed & Recorded

JUL 15 1977-12 20 PM

INTERSTATE COMMERCE COMMISSION

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 40613-10  
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SCHEDULE 4 TO CONDITIONAL SALES CONTRACT

BILL OF SALE

PORTEC INC., a Delaware, corporation (hereinafter called the "Seller"), in consideration of the sum of One Million, One Hundred Forty-Four Thousand, Five Hundred and Sixty Dollars (\$1,144,560.00) paid by EMRR, Incorporated, a Maryland corporation (hereinafter called "Buyer"), under a Conditional Sales Contract (the "Conditional Sales Contract") dated May 16, 1977 between them, hereby assigns, conveys, grants bargains, sells, transfers and sets over to Buyer the following described units of railroad equipment which shall be delivered by the Seller to Chicago, Rock Island and Pacific Railroad Company ("Rock Island") at the instruction of the Buyer, delivery to be evidenced by written acceptance by Rock Island:

40 Carsets of Tri-level Auto Racks,  
with the serial numbers shown  
on Exhibit A

SUBJECT HOWEVER to Seller's title and retained security interest under, and conditional upon payment in full of sums to be paid under the Conditional Sales Contract;

TO HAVE AND TO HOLD all and singular the railroad equipment above described to the Buyer, its successors and assigns, for its and their use and behalf forever.

And the Seller hereby warrants to the Buyer, its successors and assigns, that at the time of delivery of each of the above described units of railroad equipment to the Buyer's designee, Rock Island, the Seller has or will have legal title thereto and good and lawful right to sell such units and the title to such units is free and clear of all claims, liens and encumbrances of any nature except for the rights of Seller (or its assignee) Seller covenants that it will warrant and defend such title against all other claims and demands whatsoever.

IN WITNESS WHEREOF, the Seller has caused this instrument to be executed in its name by an authorized officer of the Seller this \_\_\_\_\_ day of \_\_\_\_\_, 1977.

ATTEST:

PORTEC INC.

\_\_\_\_\_  
(Corporate Seal)

\_\_\_\_\_

Exhibit A to Bill of Sale

Forty new PORTEC, Inc. enclosed tri-level auto racks bearing the serial numbers designated below. The numbers listed in the "Car Number" column are numbers of cars to which the Racks with the serial numbers directly opposite were attached.

<u>Car Number</u>	<u>Serial Number</u>
ETTX 820260	40613-5
ETTX 820261	40613-20
ETTX <u>820255</u>	40613-18
ETTX <u>820263</u>	40613-28
ETTX <u>820259</u>	40613-15
ETTX <u>820265</u>	40613-12
ETTX 820266	40613-7
ETTX 820267	40613-11
ETTX 820268	40613-13
ETTX 820269	40613-14
ETTX 820270	40613-6
ETTX 820271	40613-4
ETTX 820272	40613-19
ETTX 820273	40613-17
ETTX 820274	40613-3
ETTX 820275	40613-2
ETTX 820276	40613-16
ETTX 820277	40613-9
ETTX 820278	40613-8
ETTX 820279	40613-10
ETTX 820280	40613-29
ETTX 820281	40613-1
ETTX 820282	40613-30
ETTX 820283	40613-31
ETTX 820284	40613-32
ETTX 820285	40613-26
ETTX 820286	40613-33
ETTX 820287	40613-34
ETTX 820288	40613-27
ETTX 820289	40613-38
ETTX 820290	40613-22
ETTX 820291	40613-24
ETTX 820292	40613-35
ETTX 820293	40613-21
ETTX 820294	40613-36
ETTX 820295	40613-23
ETTX 820296	40613-40
ETTX 820297	40613-39
ETTX 820298	40613-37
ETTX 820299	40613-25

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STATE OF ILLINOIS )  
                                  )  
COUNTY OF COOK     )

I, the undersigned, a Notary Public in and for the County and State aforesaid, DO HEREBY CERTIFY that David C. Morley, personally known to me to be President of EMRR, Incorporated and Robert A. Shelton, personally known to me to be Assistant Secretary of EMRR, Incorporated and personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that as President and Assistant Secretary of EMRR, Incorporated, a corporation organized and existing under and by virtue of the laws of Maryland they signed and delivered the said instrument (Conditional Sales Contract) and caused the seal of EMRR, Incorporated, to be thereto affixed as their free and voluntary act, and as the free and voluntary act of EMRR, Incorporated.

GIVEN under my hand and notarial seal this 16th day of June, 1977.

(NOTARIAL SEAL)

  
\_\_\_\_\_  
Notary Public

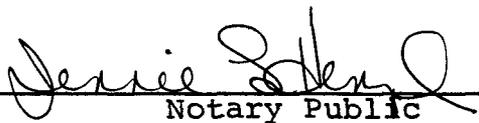
My Commission Expires:  
12-23-80

STATE OF ILLINOIS    )  
                                  )  
COUNTY OF COOK        )

I, the undersigned, a Notary Public in and for the County and State aforesaid, DO HEREBY CERTIFY that L. A. White, Jr., personally known to me to be Vice President of Portec Inc., and Jim Horton, personally known to me to be Secretary of Portec Inc., and personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that as Vice President and Secretary of Portec Inc., a corporation organized and existing under and by virtue of the laws of Maryland they signed and delivered the said instrument (Conditional Sales Contract) and caused the seal of Portec Inc., to be thereto affixed as their free and voluntary act, and as the free and voluntary act of Portec Inc.

GIVEN under my hand and notarial seal this 16th day of June, 1977.

(NOTARIAL SEAL)

  
Notary Public

My Commission Expires:

12-23-80