



Tab settings

To the Honorable Commissioner of Patents and Trademarks: Please record the attached original documents or copy thereof.

MBD 10-19-98

1. Name of conveying party(ies):

Portec Rail Products, Inc.

- Individual(s)
- General Partnership
- Corporation-State **West Virginia**
- Other
- Association
- Limited Partnership

Additional names(s) of conveying party(ies) attached? Yes No

2. Name and address of receiving party(ies):

Name: National City Bank

Internal Address:

Street Address: 155 East Broad Street

City: Columbus State: OH ZIP: 43251

- Individual(s) citizenship
- Association
- General Partnership
- Limited Partnership
- Corporation-State
- Other National Banking Association

If assignee is not domiciled in the United States, a domestic representative designation is attached: Yes No
(Designations must be a separate document from Assignment)
Additional name(s) & address(es) attached? Yes No

3. Nature of conveyance:

- Assignment
- Security Agreement
- Other
- Merger
- Change of Name

Execution Date:

4. Application number(s) or registration numbers(s):

A. Trademark Application No.(s)

B. Trademark Registration No.(s)

(177,413)

Additional numbers attached? Yes No

5. Name and address of party to whom correspondence concerning document should be mailed:

Name: Cory M. Amron

Internal Address: Vorys, Sater, Seymour and Pease LLP

Street Address: 1828 L Street, N.W. 11th Floor

City: Washington State: DC ZIP: 20036

6. Total number of applications and registrations involved:

2

7. Total fee (37 CFR 3.41):.....\$ \$40.00

- Enclosed
- Authorized to be charged to deposit account

8. Deposit account number:

22-0585

DO NOT USE THIS SPACE

10/27/1998 TTON11 00000093 177413

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40.00

9. Statement and signature.

To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true copy of the original document.

Cory Amron

Name of Person Signing

Cory Amron

Signature

10.16.98

Date

Total number of pages including cover sheet, attachments, and documents:

13

SCHEDULE I TO TRADEMARK SECURITY AGREEMENT

Registered Trademarks

<u>Country</u>	<u>Trademark</u>	<u>Appl. Registration No.</u>	<u>Appl. Regis. Date</u>
U.S.	FAIR	177,413	12/18/23
Canada	SIDEWINDER	TMA293,813	8/10/84

TRADEMARK SECURITY AGREEMENT

THIS TRADEMARK SECURITY AGREEMENT (this "Agreement") is made and entered into to be effective as of June 15, 1998, by and between PORTEC RAIL PRODUCTS, INC., a West Virginia corporation having an address at 900 Old Freeport Road, Pittsburgh, Pennsylvania 15238 ("Borrower"), and NATIONAL CITY BANK, formerly known as National City Bank of Columbus, a national banking association, having an address at 155 East Broad Street, Columbus, Ohio 43251 ("Secured Party").

SECTION 1. Preliminary Statements.

(a) Borrower and Portec Limited, now known as Portec, Rail Products Ltd., a corporation amalgamated under the Canada Business Corporations Act ("Portec Canada"), and Secured Party are parties to a Loan and Security Agreement dated as of December 31, 1997 (such agreement, as it may hereafter be amended or otherwise modified is hereinafter referred to as the "Loan Agreement").

(b) All capitalized terms used herein and not otherwise defined herein shall have the meaning attributed to them in the Loan Agreement.

(c) Borrower executed and delivered to Secured Party a Trademark Security Agreement dated as of December 31, 1997 (the "1997 Trademark Security Agreement") in order to induce (i) Secured Party to accept the Loan and Security Agreement, and (ii) Secured Party to make advances to Borrower and Portec Canada pursuant to the terms of the Loan Documents (as defined in the Loan Agreement).

(d) Pursuant to a Second Assignment of Intellectual Property Assets dated as of May 12, 1998, Borrower has acquired trademarks and other intellectual property in addition to the trademarks described in the 1997 Trademark Security Agreement.

(e) Secured Party requires that Borrower enter into this Agreement to grant Secured Party a security interest in the additional trademarks.

SECTION 2. Grant of Security. As security for the full and prompt performance of all of the Obligations (as defined in the Loan Agreement), which includes, without limitation, and by way of example only, the obligations under (i) the Revolving Loan Promissory Note made payable by Borrower to the order of Bank in the original principal amount of \$9,500,000, (ii) the Revolving Loan Promissory Note made payable by Borrower and Portec Canada to the order of Bank in the principal amount of \$2,000,000, (iii) the Term Loan Promissory Note made payable by Borrower to the order of Bank in the original principal amount of \$9,000,000 and (iv) the

Mortgage Loan Promissory Note made payable by Borrower to the order of Bank in the original principal amount of \$2,000,000, all such notes being dated as of December 31, 1997 and all as they may be modified, amended, renewed, consolidated, replaced or extended, Borrower hereby assigns, pledges and grants to Secured Party a lien on and security interest in Borrower's entire right, title and interest in and to the Trademark Collateral. As used herein, "Trademark Collateral" means: all of Borrower's right, title and interest in and to all of its now owned or existing and hereafter acquired or arising: trademarks, service marks, trademark or service mark registrations, trade names, and trademark or service mark applications, whether the foregoing are domestic or foreign, including, without limitation, each mark, registration, and application listed on Schedule I, attached hereto and made a part thereof, and (i) renewals thereof, (ii) all income, royalties, damages and payments now and hereafter due and/or payable with respect thereto, including, without limitation, damages and payment for past or future infringements thereof, (iii) the right to sue for past, present and future infringements thereof, (iv) all rights corresponding thereto throughout the world, (v) the Trademark License Rights, as hereinafter defined, (vi) trade dress, (vii) all customer and other lists related to any of the foregoing, and (viii) together in each case with the goodwill of Borrower's business connected with the use of, and symbolized by any of the foregoing.

SECTION 3. Trademark License Rights.

For purposes of this Agreement, "Trademark License Rights" shall mean Borrower's entire right, title and interest in, to and under all license agreements with any Person, whether Borrower is licensor or licensee under any such license agreement, including, without limitation, the licenses listed on Schedule I, with respect to any trademarks, service marks, trade names and trade dress and all rights thereto and thereunder.

SECTION 4. Representations and Warranties. Borrower represents and warrants as follows:

(a) Borrower is the sole and exclusive owner of the entire and unencumbered right, title and interest in and to each of the Trademark Collateral, free and clear of any liens, charges and encumbrances, including, without limitation, all pledges, assignments, releases and covenants by Borrower not to sue any other Person in respect of Trademark Collateral except as otherwise disclosed in Schedule I.

(b) Set forth in Schedule I is a complete and accurate list of all Trademark License Rights, trademarks, trade names, trade dress, service marks, trademark and service mark registrations, and applications for trademark or service mark registrations owned by Borrower other than as described in the 1997 Trademark Security Agreement.

(c) Each trademark, service mark, trade name, trade dress, trademark and service mark registration, and application for trademark or service mark registration identified in Schedule I is subsisting and has not been adjudged invalid, unregistrable or unenforceable, in whole or in part, and each registered trademark and service mark and each application for trademark and service mark registration is, to the best of Borrower's knowledge, valid, registered

or registerable and enforceable. Borrower has notified Secured Party in writing of all prior uses of any material item of Trademark Collateral of which Borrower is aware which could lead to such item becoming invalid or unenforceable, including prior unauthorized uses by third parties.

(d) Borrower has not granted any license, release, covenant not to sue, or non-assertion assurance to any Person with respect to any part of the Trademark Collateral except as otherwise disclosed in **Schedule I**.

(e) Borrower has used reasonable and proper statutory notice in connection with its use of each registered trademark and service mark.

(f) The Trademark License Rights are in full force and effect, and Borrower is not in default of any of the Trademark License Rights and no event has occurred which with notice or the passage of time, or both, might constitute a default by Borrower under the Trademark License Rights.

(g) Except for the recording of this Agreement with the United States Patent and Trademark Office and the filing of Uniform Commercial Code financing statements naming Borrower as "debtor" and Secured Party as "secured party" in the appropriate filing offices, no authorization, consent, approval or other action by, and no notice to or filing or recording with, any governmental, administrative or judicial authority or regulatory body is currently or is reasonably expected to be required either (i) for the grant by Borrower of the liens and security interests granted hereby or for the execution, delivery or performance of this Agreement by Borrower, or (ii) for the perfection of or the exercise by Secured Party of its rights and remedies hereunder.

SECTION 5. Further Assurances.

(a) Borrower agrees that from time to time, at its expense, it will promptly execute and deliver all further instruments and documents, and take all further action, that may be necessary or desirable, or that Secured Party may reasonably request, in order (i) to continue, perfect and protect the assignment and the security interest granted or purported to be granted hereby or (ii) to enable Secured Party to exercise and enforce its rights and remedies hereunder with respect to any part of the Trademark Collateral. Without limiting the generality of the foregoing, Borrower will execute and file such financing or continuation statements, or amendments hereto, and such other instruments or notices, as may be necessary or desirable, or as Secured Party may reasonably request, in order to perfect and preserve the security interests granted or purported to be granted hereby.

(b) Borrower hereby authorizes Secured Party to file one or more financing or continuation statements, and amendments thereto, relative to all or any part of the Trademark Collateral without the signature of Borrower where permitted by law. A carbon, photographic or other reproduction of this Agreement or any financing statement covering the Trademark Collateral or any part thereof shall be sufficient as a financing statement where permitted by law.

(c) Borrower will furnish to Secured Party from time to time statements and schedules and further identifying and describing the Trademark Collateral and such other reports in connection with the Trademark Collateral as Secured Party may reasonably request, all in reasonable detail.

(d) Borrower agrees that, should it obtain an ownership interest in any Trademark License Rights, trademark, service mark, trade name, trademark or service mark registration, or application for trademark or service mark registration which is not now identified in **Schedule I**, (i) Borrower shall give prompt written notice thereof to Secured Party, (ii) the provisions of Section 2 shall automatically apply to any such Trademark License Rights, trademark, service mark, trademark or service mark registration, or application for trademark or service mark registration, and (iii) any such Trademark License Rights, mark, registration, or application, together with the goodwill of the business connected with the use of the mark and symbolized by it, shall automatically become part of the Trademark Collateral. Borrower authorizes Secured Party to modify this Agreement by amending **Schedule I** to include any Trademark License Rights, trademark, service mark, trademark or service mark registration, or application for trademark or service mark registration which becomes part of the Trademark Collateral under this Section.

(e) With respect to any trademark necessary to the conduct of Borrower's business, Borrower agrees to take all necessary steps in any proceeding before the United States Patent and Trademark Office or any similar office or agency in any other country or any political subdivision thereof or in any court to maintain each registered trademark, service mark, and trademark or service mark registration, and to pursue each application for trademark or service mark registration now or hereafter included in the Trademark Collateral, including the filing of applications for renewal, the payment of maintenance fees, and the participation in opposition, interference and infringement proceedings. To the extent necessary or desirable to the conduct of its business, Borrower agrees to take corresponding steps with respect to each new or other registered trademark, service mark trademark or service mark registration, and application for trademark or service mark registration to which Borrower is now or later becomes entitled. Any expenses incurred in connection with such activities shall be borne by Borrower. Borrower shall not abandon any right to file an application for trademark or service mark registration, or abandon any pending application, registration, trademark or service mark, unless (i) the goodwill of the business connected with and symbolized by such application, registration, trademark or service mark is not necessary or desirable in the conduct of Borrower's business and (ii) Borrower has given Secured Party prior written notice of such intention to abandon.

(f) Borrower agrees to notify Secured Party immediately and in writing if Borrower learns (i) that any material item of the Trademark Collateral may become abandoned or dedicated; (ii) of any adverse determination or any development (including, without limitation, the institution of any proceeding in the United States Patent and Trademark Office or any court) regarding any material item of the Trademark Collateral; or (iii) that it is or potentially could be in default of any of the Trademark License Rights.

(g) If Borrower becomes aware that any material item of the Trademark Collateral is infringed or misappropriated by a third party, Borrower shall promptly notify Secured Party and shall promptly sue for infringement or misappropriation and for recovery of all damages caused by such infringement or misappropriation, and shall take such other actions as Borrower shall deem appropriate under the circumstances to protect such Trademark Collateral. Any expenses incurred in connection with such activities shall be borne by Borrower.

(h) Borrower shall continue to use reasonable and proper statutory notice in connection with its use of each registered trademark or service mark.

SECTION 6. Transfers and Other Liens. Borrower shall not:

(a) sell, assign (by operation of law or otherwise) or otherwise dispose of any of the Trademark Collateral, except that Borrower may license any Trademark Collateral in the ordinary course of Borrower's business, provided that Borrower has determined in good faith that such license is necessary or desirable in the conduct of Borrower's business and Borrower has given Secured Party prior written notice of such determination;

(b) create or suffer to exist any lien, security interest or other charge or encumbrance upon or with respect to any of the Trademark Collateral except as otherwise disclosed in **Schedule I**; or

(c) take any other action in connection with any of the Trademark Collateral that would impair the value of the interests or rights thereunder of Borrower.

SECTION 7. Secured Party Appointed Attorney-in-Fact. Borrower hereby irrevocably appoints Secured Party as Borrower's attorney-in-fact, with full authority in Borrower's place, stead and on behalf of Borrower and in Borrower's name or otherwise, from time to time in Secured Party's sole and absolute discretion, to take any action and to execute any instrument that Secured Party may deem necessary or advisable to accomplish the purposes of this Agreement, including, without limitation:

(a) to ask, demand, collect, sue for, recover, compromise, receive and give acquittance and receipts for moneys due and to become due under or in respect of any of the Trademark Collateral;

(b) to receive, endorse, and collect any drafts or other instruments, documents and chattel paper, in connection with clause (a) above;

(c) to file any claims or take any action or institute any proceedings that Secured Party may deem necessary or desirable for the collection of any of the Trademark Collateral or otherwise to enforce the rights of Secured Party with respect to any of the Trademark Collateral; and

(d) if any Event of Default shall have occurred and be continuing and Borrower fails or refuses to execute and deliver forthwith any and all documents necessary or advisable to transfer title to the Trademark Collateral after Secured Party's request, to execute any or all documents on Borrower's behalf to record title to any or all of the Trademark Collateral in the name of the purchaser after any sale thereof.

SECTION 8. Secured Party May Perform.

(a) If Borrower fails to perform any of its obligations contained herein, Secured Party may itself perform, or cause performance of, such obligations, and the expenses of Secured Party incurred in connection therewith shall be payable by Borrower under Section 11(b) hereof.

(b) Secured Party, or its designated representatives, shall have the right, at all times, to inspect Borrower's premises and to examine Borrower's books, records and operations relating to the Trademark Collateral.

SECTION 9. Secured Party's Duties. The powers conferred on Secured Party hereunder are solely to protect its interest in the Trademark Collateral and shall not impose any duty upon Secured Party to exercise any such powers.

SECTION 10. Remedies. If any Event of Default shall have occurred and be continuing:

(a) Secured Party may exercise in respect of the Trademark Collateral, in addition to other rights and remedies provided for herein (including without limitation the rights set forth in Section 7 hereof) or otherwise available to Secured Party, all the rights and remedies of a secured party on default under the UCC (whether or not the UCC applies to the affected Trademark Collateral), and also may (i) exercise any and all rights and remedies of Borrower under or otherwise in respect of the Trademark Collateral; (ii) assign or license the Trademark Collateral or any part thereof, to any Person, and (iii) without notice except as specified below, sell the Trademark Collateral or any part thereof in one or more parcels at public or private sale, at any of Secured Party's offices or elsewhere, for cash, on credit or for future delivery, and upon such other terms as Secured Party may deem commercially reasonable. In the event of any sale, assignment, or other disposition of any of the Trademark Collateral, the goodwill of the business connected with and symbolized by any Trademark Collateral subject to such disposition shall be included, and Borrower shall supply to Secured Party or its designee Borrower's know-how and expertise relating to the manufacture and sale of products or the provision of services relating to any Trademark Collateral subject to such disposition, and Borrower's customer lists and other records relating to such Trademark Collateral and to the distribution of such products and services. Borrower agrees that, to the extent notice of sale shall be required by law, at least 10 days' notice to Borrower of the time and place of any public sale or the time after which any private sale is to be made shall constitute reasonable notification. Secured Party shall not be obligated to make any sale of any Trademark Collateral regardless of notice of sale having been given. Secured Party may adjourn any public or private sale from time to time by announcement at the time and place fixed therefor, and such sale may, without further notice, be made at the time and place to which it was so adjourned.

(b) All payments received by Borrower under or in connection with any of the Trademark Collateral shall be received in trust for the benefit of Secured Party, shall be segregated from other funds of Borrower and shall be forthwith paid over to Secured Party in the same form as so received (with any necessary endorsement).

(c) All payments made hereunder or in connection with or otherwise in respect of the Trademark Collateral and all cash proceeds received by Secured Party in respect of any sale of, collection from, or other realization upon all or any part of the Trademark Collateral may, in the discretion of Secured Party, be held by Secured Party as collateral for, and/or then or at any time thereafter applied (after payment of any amounts payable to Secured Party pursuant to Section 11) in whole or in part by Secured Party against, all or any part of the Obligations, in such order as Secured Party shall elect. Any surplus of such cash or cash proceeds held by Secured Party and remaining after payment in full of all the Obligations shall be paid over to Borrower or to whomsoever may be lawfully entitled to receive such surplus.

SECTION 11. Indemnity and Expenses.

(a) Borrower agrees to and does hereby indemnify and hold Secured Party harmless from and against any and all claims, losses and liabilities arising out of or resulting from this Agreement or the transactions contemplated hereby (including, without limitation, enforcement of this Agreement), except claims, losses or liabilities resulting from Secured Party's bad faith or willful misconduct as determined by a final judgment of a court of competent jurisdiction.

(b) Borrower will upon demand pay to Secured Party the amount of any and all reasonable expenses, including, without limitation, the reasonable fees and disbursements of its counsel and of any experts and agents, which Secured Party may incur in connection with any and all of the following (i) the administration of this Agreement, (ii) the custody, preservation, use or operation of, or the sale of, collection from, or other realization upon, any of the Trademark Collateral, (iii) the exercise or enforcement of any of Secured Party's rights hereunder, or (iv) the failure by Borrower to perform or observe any of the provisions hereof.

SECTION 12. Amendments, Waivers, Consents. No amendment or waiver of any provision of this Agreement nor consent to any departure by Borrower herefrom shall in any event be effective unless such amendment or waiver shall be in writing and signed by Secured Party, and then such amendment or waiver shall be effective only in the specific instance and for the specific purpose for which it was given.

SECTION 13. Notices. Any notice or notification required, permitted or contemplated hereunder shall be in writing, shall be addressed and given to the party to be notified at the address set forth in, and in the manner required by the Loan Agreement.

SECTION 14. General.

(a) This Agreement shall create a continuing security interest in the Trademark Collateral and shall (i) remain in full force and effect until payment in full of the Obligations, (ii) be binding upon Borrower, its successors and assigns, and (iii) inure, together with the rights and remedies of Secured Party hereunder, to the benefit of Secured Party, its successors, transferees and assigns.

(b) Upon the final payment in full and satisfaction of the Obligations, the liens and security interests granted hereby shall terminate and all rights to the Trademark Collateral shall revert to Borrower. Upon any such termination, Secured Party will, at Borrower's expense, execute and deliver to Borrower such documents as Borrower shall reasonably request to evidence such termination.

(c) If any term or provision of this Agreement is or shall become illegal, invalid or unenforceable in any jurisdiction, all other terms and provisions of this Agreement shall remain legal, valid and enforceable in such jurisdiction and such illegal, invalid or unenforceable provision shall be legal, valid and enforceable in any other jurisdiction.

(d) This Agreement shall be governed by, and construed in accordance with, the local laws of the State of Ohio, except to the extent that the validity or perfection of the security interests hereunder, or remedies hereunder, in respect of any particular Trademark Collateral are governed by the law of the United States or any other jurisdiction other than the State of Ohio.

(e) AS A SPECIFICALLY BARGAINED INDUCEMENT FOR SECURED PARTY TO ENTER INTO THIS AGREEMENT AND TO EXTEND CREDIT TO BORROWER, BORROWER AGREES THAT ANY ACTION, SUIT OR PROCEEDING IN RESPECT OF OR ARISING OUT OF THIS AGREEMENT, ITS VALIDITY OR PERFORMANCE, AT THE SOLE OPTION OF SECURED PARTY, ITS SUCCESSORS AND ASSIGNS, SHALL BE INITIATED AND PROSECUTED AS TO ALL PARTIES AND THEIR SUCCESSORS AND ASSIGNS AT COLUMBUS, OHIO. SECURED PARTY AND BORROWER EACH CONSENTS TO AND SUBMITS TO THE EXERCISE OF JURISDICTION OVER ITS PERSON BY ANY COURT SITUATED AT COLUMBUS, OHIO HAVING JURISDICTION OVER THE SUBJECT MATTER, WAIVES PERSONAL SERVICE OF ANY AND ALL PROCESS UPON IT AND CONSENTS THAT ALL SUCH SERVICE OF PROCESS BE MADE BY REGISTERED MAIL DIRECTED TO BORROWER AND SECURED PARTY AT THEIR RESPECTIVE ADDRESSES AS SET FORTH IN THE NOTICE SECTION OF THE LOAN AGREEMENT AND SERVICE SO MADE SHALL BE DEEMED TO BE COMPLETED FIVE (5) BUSINESS DAYS AFTER SUCH PROCESS SHALL HAVE BEEN DEPOSITED IN THE U.S. MAIL, POSTAGE PREPAID. BORROWER WAIVES ANY OBJECTION BASED ON FORUM NON CONVENIENS, AND ANY OBJECTION TO VENUE OF ANY ACTION INSTITUTED HEREUNDER, AND CONSENTS TO THE GRANTING OF SUCH LEGAL OR EQUITABLE RELIEF AS IS DEEMED APPROPRIATE BY THE COURT.

(f) AS A SPECIFICALLY BARGAINED INDUCEMENT FOR SECURED PARTY TO ENTER INTO THIS AGREEMENT AND EXTEND CREDIT TO BORROWER,

BORROWER AND SECURED PARTY EACH WAIVES TRIAL BY JURY WITH RESPECT TO ANY ACTION, CLAIM, SUIT OR PROCEEDING IN RESPECT OF OR ARISING OUT OF THIS AGREEMENT.

(g) The captions in this Agreement are for reference purposes only and shall not relate to or affect in any way the construction or interpretation hereof.

(h) The representations, warranties, covenants and agreements contained herein or in any Schedule attached hereto shall survive the execution hereof.

IN WITNESS WHEREOF, Borrower and Secured Party have, by their respective duly authorized officers, signed this Agreement as of the date and year first above written.

BORROWER:

PORTEC RAIL PRODUCTS, INC.

By: John S. Cooper
Name: JOHN S. COOPER
Its: PRES & CEO

SECURED PARTY:

NATIONAL CITY BANK, formerly known as
National City Bank of Columbus

By: Richard R. Murrey II
Name: RICHARD R. MURREY II
Its: VICE PRESIDENT

STATE OF PA)
) SS:
COUNTY OF Allegheny)

The foregoing Trademark Security Agreement was executed and acknowledged before me this 15 day of June, by John S. Cooper personally known to me to be the President & C.E.O. of Portec Rail Products, Inc., a West Virginia corporation, on behalf of such corporation.

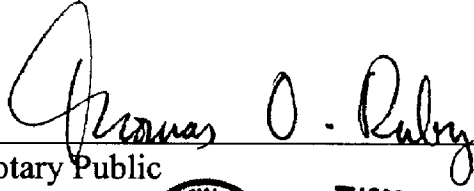
Linda R. Boe
Notary Public

My Commission Expires: May 10, 1999

Notarial Seal
Linda R. Boe, Notary Public
Wilkins Twp., Allegheny County
My Commission Expires May 10, 1999
Member, Pennsylvania Association of Notaries

STATE OF OHIO)
) SS:
COUNTY OF FRANKLIN)

The foregoing Trademark Security Agreement was executed and acknowledged before me this 26th day of June, 1998 by Richard R. Murphey III, personally known to me to be a Vice President of National City Bank, a national banking association, on behalf of such national banking association.



Notary Public

My Commission Expires:



THOMAS O. RUBY,
ATTORNEY AT LAW
NOTARY PUBLIC, STATE OF OHIO
My commission has no expiration date.
Section 147.03 R.C.