



NorRail, Inc.  
Buying, Selling, Leasing  
Railcars / Locomotives

308 12th Avenue South, Buffalo, Minnesota 55313 • Phone: (612) 557-0215 • Fax: (612) 682-2452

May 16, 1995

Secretary  
Interstate Commerce Commission  
Washington, DC 20423

19428  
MAY 16 1995

Re: NorRail, Inc.  
Railcar Lease Agreement Between NorRail, Inc. and Benson Quinn Company dated  
May 5, 1995

Dear Secretary:

I enclose one originally executed counterpart and one copy of the document described below, to be recorded pursuant to Section 11303 of Title 49 of the U.S. Code.

This document is a Railcar Lease Agreement dated May 5, 1995 between NorRail, Inc., 308 12th Avenue South, Buffalo, MN 55313, as Lessor, and Benson Quinn Company, 301 South Fourth Avenue, Suite 1075, P.O. Box 15226, Minneapolis, MN 55415-0216, as Lessee.

Please cross-index the Railcar Lease Agreement. The fee of \$21.00 is enclosed for the recordation of the Railcar Lease Agreement. Please return the original Railcar Lease Agreement, stamped to evidence recording, to me at the following address:

Russell S. Adams  
NorRail, Inc.  
308 12th Avenue South  
Buffalo, MN 55313

A return envelope is enclosed for your convenience.

I have compared the enclosed copy of the Railcar Lease Agreement with the original Railcar Lease Agreement and found the copy to be complete and identical in all respects to the original document. I declare under penalty of perjury that the foregoing is true and correct.

Very truly yours,

Russell S. Adams  
Vice President Sales

Enclosures  
df.200

1102-0000-00011  
MAY 16 1995

**NorRail, Inc.**

308 12th Avenue South  
Buffalo, MN 55313

19428

**RAILCAR LEASE AGREEMENT**

For and in consideration of the mutual covenants and promises hereinafter set forth, NorRail, Inc. ("Lessor") and the individual, company or other legal person identified on the signature page of this Lease as the lessee ("Lessee") hereby agrees as follows:

**1. LEASE.**

Lessor hereby leases to Lessee, and Lessee hereby leases from Lessor, all items of railroad rolling stock and other property described in any schedule or schedules executed by the parties, concurrently herewith or hereafter, which schedules state they are subject to this Lease (collectively, the "Schedules"). All items of railroad rolling stock and other property described in any Schedule and all replacement parts, additions, repairs and accessories incorporated in, or attached or affixed to, any such property, is collectively referred to in this Lease as the "Equipment".

**2. TERM OF LEASE.**

This Lease shall commence on the date it is executed and, unless sooner terminated by Lessor as provided in Section 19, shall continue until the "Total Number of Rent Payments" shown on each Schedule shall have been made.

**3. RENT.**

As rent for the Equipment described on each Schedule, Lessee agrees to pay to Lessor the sum of (x) the rent payments shown under "Rent Payment" on that Schedule, multiplied by the "Total Number of Rent Payments" shown on that Schedule, plus (y) any additional rent specified on that Schedule, plus (z) "Stub Rent" amounts payable with respect to the period between the date of the availability of the Equipment and the first Rent Payment Due Date shown on that Schedule. Payments are to be made on each and every Rent Payment Due Date shown on the Schedule until the Total Number of Rent Payments have been made. The first rent payment with respect to each Schedule is due upon Lessee's acceptance (as described in Section 9) of any Equipment described in that Schedule. Rent shall be paid on the dates specified in the Schedule at the office of Lessor or to such other person or at such other place as Lessor may from time to time designate in writing. In addition to the rent payments described above, Lessee shall pay the amount of any personal property taxes or other taxes and all maintenance, insurance and other costs and expenses with respect to the Equipment (including amounts, if any, required to be paid under Sections 14 and 16 of this Lease). The payments described in the previous sentence shall be paid when due to the person entitled to those payments. If Lessee fails to make any such payment or pay any other expense required to be paid by Lessee pursuant to this Lease, Lessor, at its option, may pay such expense, which shall constitute additional rent and be due and payable from Lessee to Lessor upon demand therefor.

**4. LATE CHARGE.**

If Lessor does not receive any rent or any other sum required to be paid to Lessor within ten (10) days after its due date, Lessee shall pay to Lessor a late charge of five percent (5%) of such late payment.

**5. ESTIMATED COST.**

The rent payments specified in each Schedule have been computed on the basis of the total cost of the Equipment to Lessor, as estimated at the time that Schedule is executed. Total cost includes the cost to Lessor of reconditioning, repairing, and delivering the Equipment to Lessee, transportation, and all other charges with respect to the Equipment. Lessee hereby authorizes Lessor to correct the rent payments to reflect any difference between the actual cost of the Equipment and the estimated cost.

**6. SECURITY DEPOSIT.**

Lessee has deposited or will deposit with Lessor the sum shown as "Security Deposit", if any, on each Schedule as a security deposit and not as advance rent unless otherwise defined in the Equipment Schedule. Lessor may, at its option, apply any security deposit to cure any default under this lease by Lessee, in which event Lessee shall promptly pay a sufficient amount to Lessor to restore the security deposit to the full amount specified in the Schedule. Upon termination of this Lease, Lessor shall return any remaining balance of the security deposit(s), if any, to Lessee if and only if Lessee has fulfilled all of its obligations under the Lease.

**7. SELECTION OF EQUIPMENT AND SUPPLIER.**

Lessee has selected the Equipment and any delay in the delivery of the Equipment will not affect the validity of this Lease.

encumbrance upon or with respect to the Equipment (including any accession thereto), or the interest of Lessor, or Lessee therein, and will promptly discharge any such lien, claim, security interest or other encumbrance which arises. Lessee shall not use the Equipment, or permit it to be used, for the transportation or storage of any corrosive substance, or of any substance which is categorized as, or required to be labeled as, "poison" or "poisonous", "explosive" or "radioactive" (or any categories or labels substituted for such categories or labels as in effect on the day hereof) under 49 CFR 171 or other applicable Federal rules in effect from time to time regulating the transportation of hazardous materials. So long as no Event of Default shall have occurred or be continuing hereunder, Lessee shall be entitled to the possession and use of the Equipment upon lines of railroad owned or operated by it or upon lines of railroad over which the Lessee has trackage or other operating rights or over which railroad Equipment of the Lessee is regularly operated pursuant to contract and shall be entitled to permit the use of the Equipment upon connecting and other carriers in the usual interchange of traffic and to assign its rights to the Equipment or to sublease the Equipment, but only upon and subject to all the terms and conditions of this Lease; provided, that without the Lessor's prior written consent (which shall not be unreasonably withheld), no such assignment or sublease (other than to a subsidiary of Lessee) shall be for a period in excess of one year, and provided Lessee's obligations hereunder shall continue in full force and effect as the obligations of a principal and not of a surety; and provided, further, that Lessee shall not without Lessor's prior written consent assign or sublease the Equipment to, or permit the assignment or sublease of the Equipment to, any person who shall then be engaged in any proceedings for relief under any bankruptcy or insolvency law or laws relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, compositions or extensions of indebtedness. Lessee may receive and retain compensation for the use of any of the Equipment from railroads or other entities so using such Equipment. Each sublease or assignment permitted by this paragraph shall (a) be expressly subject and subordinate to all of the provisions of this Lease, (b) shall expressly require the Equipment subject thereto to be returned as directed by the Lessor upon notice to such assignee or sublessee that an Event of Default shall have occurred and be continuing and <sup>©</sup> shall expressly prohibit any further sublease or assignment of the Equipment. Lessee shall, within fifteen (15) days after the execution of any such sublease, deliver a conformed copy thereof to the Lessor.

#### **12. INDEMNITY.**

Lessee shall hold Lessor harmless from, and pay to Lessor the amount of, any fine, penalties or other amounts for which Lessor is held liable as a result of, and any legal expenses Lessor has arising out of, the use, condition, ownership or operation of any item of Equipment, including any claims made under the strict liability doctrine, and as a result of any lien, encumbrance or claim made on the Equipment by anyone, including Lessee's employees and agents. Lessee shall indemnify Lessor against, and hold Lessor harmless from, any and all claims, actions, damages (including reasonable attorneys' fees), obligations, liabilities and liens (including any of the foregoing arising or imposed without Lessee's fault or negligence, or in connection with latent or other defects, or any claim for patent, trademark or copyright infringement or under the doctrine of "strict liability"), imposed or incurred by or asserted against Lessor or its successors or assigns, arising out of the manufacture, purchase, lease, possession, operation, condition, return or use of the Equipment, by operation of law or by Lessee's failure to comply with the terms of this Lease. Upon written notice by Lessor of the assertion of any claim hereby indemnified against, Lessee shall assume full responsibility for the defense thereof. This section shall survive termination of this Lease.

#### **13. MAINTENANCE.**

Lessee agrees that, at its own cost and expense, it will maintain and service the Equipment (including any parts installed on or replacements made to the Equipment and considered an accession thereto as herein below provided) which is subject to this Lease consistent with Lessee's standards for similar owned or leased Equipment, so that the Equipment and each component thereof, will remain, at all times during the Lease Term (A) in the same operating order, repair and condition as when originally delivered to Lessee, reasonable wear and tear excepted, (B) in compliance with any and all applicable laws, regulations, requirements and rules, including, without limitation, those set forth in Section 10 hereof, and <sup>©</sup> in compliance with the Manufacturer's recommendations, maintenance standards, service bulletins, manuals and preventive maintenance schedules relating to the Equipment, all as in effect from time to time during the Lease Term. Lessee shall maintain all records, logs and other materials required by the Association of American Railroads or the Department of Transportation, or any other governmental authority having jurisdiction over the Equipment or Lessee, to be maintained in respect of the Equipment. Subject in all events to Section 10 and this Section 13, Lessee, at its own cost and expense, may from time to time make such other additions, modifications and improvements to the Equipment during the term of this Lease as are readily removable without causing material damage to the Equipment (and do not adversely and materially affect the value, utility and remaining useful life of the Equipment). The additions, modifications and improvements made by Lessee under the preceding sentence shall be owned by Lessee, except to the extent such additions, modifications or improvements are made in order to comply with the following sentence. Any and all parts installed on and additions and replacements made to the Equipment (A) which are not readily removable without causing material damage to the Equipment, (B) in the course of ordinary maintenance of the Equipment, or <sup>©</sup> which are required by the interchange rules of the Association of American Railroads or by the

## **16. INSURANCE.**

Lessee, at its sole cost and expense, shall procure, maintain and pay for (a) insurance against the loss or theft of or damage to the Equipment, for the "Stipulated Loss Value" determined in accordance with the relevant Schedule(s), naming Lessor and its assigns as a loss payee, (b) comprehensive general liability insurance providing coverage for bodily injury and property damage with combined single limits of at least \$5 million (or such greater amount as may be required by the Association of American Railroads, the Interstate Commerce Commission, the Department of Transportation, or other Federal, State, Administrative, Legislative or other governmental body having jurisdiction in the matter) not subject to an annual aggregate, naming Lessor and its assigns as an additional insured, and endorsed to act as primary insurance with respect to Lessor, <sup>9</sup> any other insurance required by Lessor or any governmental authority. All such insurance shall be in form and amount, and provided by an insurer, satisfactory to Lessor. Lessee shall deliver the policies of insurance or duplicates thereof or certificates of insurance to Lessor at the time the Lease is signed or prior to the delivery of the Equipment and thereafter 30 days prior to each policy renewal. Each insurer shall agree by endorsement upon the policy or policies issued by it or by independent instrument furnished to Lessor that the insurer will provide thirty (30) days prior written notice to Lessor of any cancellations or non-renewal of the policy or any material change in policy conditions. Lessee shall comply with all restrictions (including any geographical limitations) contained in any insurance policies. All insurance policies shall provide that the insurance shall not be invalidated as to Lessor by any act, omission or neglect of Lessee. Lessee shall notify Lessor immediately in writing of any accident involving the Equipment regardless of the amount of damage, and shall cooperate fully with Lessor and all insurance companies in the investigation, prosecution and defense of claims. The proceeds of any insurance, at the option of Lessor, shall be applied (aa) toward the replacement, restoration or repair of the Equipment, or (bb) toward payment of the obligations of Lessee under this Lease. Lessee hereby appoints Lessor as Lessee's attorney-in-fact to make claim for, receive payment of, and execute and endorse all documents, checks or drafts for loss or damage under any such insurance policy. In the event Lessee fails to procure, maintain or pay for the insurance required by this Lease, or to pay any fees, assessments, charges or taxes as required in this Lease, Lessor shall have the right, but not be obligated, to obtain such insurance or pay said fees, assessments, charges and taxes, as the case may be. In that event, Lessee shall reimburse Lessor for the cost thereof upon demand, and failure to repay the same shall constitute an Event of Default under this Lease.

## **17. LOSS AND DAMAGE.**

Lessee hereby assumes and shall bear the entire risk of loss, theft, damage or destruction of all or any item of the Equipment from any cause whatsoever; and no loss, theft, damage or destruction of all or any item of the Equipment shall relieve Lessee of its obligation to pay rent or of any other obligation under this Lease, which shall continue in full force and effect, notwithstanding such loss, theft, damage or destruction. The risk of loss shall pass to Lessee on the earlier of (i) delivery of the Equipment to a carrier for shipment to Lessee; (ii) tender of the Equipment to Lessee; or (iii) acknowledgment by a bailee who holds the Equipment of Lessee's right to possession of the Equipment. In the event of damage to any item of Equipment, Lessee shall immediately place the same in good repair (ordinary wear and tear expected). If Lessor determines that any item of Equipment is lost, stolen, destroyed, worn out or damaged beyond repair as a result of ordinary use, neglect, abuse or any other cause whatsoever, Lessee, at the option of Lessor, will; (a) replace the same with similar Equipment in good repair, or (b) pay Lessor in cash all of the following: (aa) all amounts then owed by Lessee to Lessor under this Lease, and (bb) the Stipulated Loss Value of said item of Equipment, determined as of that date in accordance with the Schedules, less any proceeds of insurance thereon received by Lessor. Upon Lessor's receipt of such payment, Lessee shall be entitled to whatever interest Lessor may have in said item of Equipment, in its then condition and location, without warranties, express or implied, and this Lease shall be terminated with respect to such item.

## **18. DEFAULTS.**

The occurrence of any one or more of the following events shall constitute an Event of Default under this Lease:

- (a) Lessee shall fail to make any rent or other payment when due; or
- (b) Lessee shall fail to perform or observe any other covenant, condition or agreement to be performed or observed by it under this Lease and such failure shall continue for a period of ten (10) days; or
- <sup>9</sup> any representation or warranty made by Lessee in this Lease or in any document or certificate furnished to Lessor in connection with or pursuant to this Lease (including but not limited to financial statements) shall have been false in any material respect when made or furnished; or
- (d) Lessee shall become insolvent or bankrupt or make an assignment for the benefit of creditors or consent to the appointment of a trustee or receiver, or a trustee or receiver shall be appointed for Lessee or for a substantial part of its property without its consent and shall not be dismissed for a period of thirty (30) days, or bankruptcy, reorganization or insolvency proceedings shall be instituted by or against Lessee and, if instituted against Lessee, shall not be dismissed for a period of thirty (30) days, or Lessee dies, is dissolved, terminates its existence or its business is discontinued; or

hereafter conferred by statute or otherwise which may require Lessor to sell, lease or otherwise use any Equipment in mitigation of Lessor's damages as set forth in this Section 19 or may otherwise limit or modify any of Lessor's rights or remedies under this Section 19. LESSEE AGREES THAT ANY ACTION BY LESSEE OR LESSOR CONCERNING THE LEASE SHALL BE VENUED IN THE COURTS OF THE STATE OF MINNESOTA, AND LESSEE HEREBY SUBMITS TO THE PERSONAL JURISDICTION OF THE COURTS OF MINNESOTA, BOTH FEDERAL AND STATE, IN ANY ACTION WITH RESPECT TO THIS LEASE AND AGREES THAT ANY STATE COURT ACTION SHALL BE VENUED IN THE DISTRICT COURT OF HENNEPIN COUNTY, MINNESOTA. LESSOR AND LESSEE EACH IRREVOCABLY WAIVES THE RIGHT TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS LEASE OR THE TRANSACTIONS CONTEMPLATED HEREBY.

#### **20. ASSIGNMENT.**

LESSEE SHALL NOT ASSIGN, PLEDGE OR HYPOTHECATE THIS LEASE IN WHOLE OR IN PART, NOR ANY INTEREST IN THIS LEASE, NOR SHALL LESSEE SUBLET OR LEND ANY ITEM OF THE EQUIPMENT, NOR PLEDGE, MORTGAGE OR OTHERWISE ENCUMBER THE EQUIPMENT OR (EXCEPT AS PROVIDED IN SECTION 11) PERMIT IT TO BECOME ENCUMBERED, WITHOUT THE PRIOR WRITTEN CONSENT OF LESSOR. LESSEE'S INTEREST HEREIN MAY NOT BE ASSIGNED OR TRANSFERRED BY OPERATION OF THE LAW. Consent to any of the foregoing acts shall not be deemed to be consent to any subsequent similar act. Lessor may assign this Lease or mortgage the Equipment or both in whole or in part, without notice to Lessee. Lessee agrees to execute or provide documents of further assignment as Lessor may request. If Lessee is given notice of such assignment, it shall acknowledge receipt of that notice in writing. Each assignee or mortgagee from Lessor shall have all of the rights, but none of the obligations, of Lessor under this Lease. Lessee shall not assert against any assignee and/or mortgagee any defense, counterclaim or offset that Lessee may have against Lessor. Upon receipt from Lessor of written notice of assignment, Lessee will pay to the assignee any portion of the rent assigned to the assignee. Lessee's obligation to pay rent to the assignee shall be absolute and unconditional and shall not be subject to any defense or offset, and said obligations shall continue until Lessee receives a written notice from the assignee that all indebtedness secured by such assignment has been paid in full. Notwithstanding any assignment, Lessor warrants that Lessee shall quietly enjoy use of the Equipment, subject to the terms and conditions of this Lease. Subject to this Section 20, this Lease inures to the benefit of and is binding upon the heirs, legatees, personal representatives, successors and assigns of Lessor and Lessee.

#### **21. OWNERSHIP, IDENTIFICATION, RECORDING**

The Equipment is and shall at all times remain the sole and exclusive property of Lessor and Lessee shall have no right, title or interest therein or thereto except as expressly set forth in this Lease. This Lease is a lease and not a security agreement and Lessee has no right, title or interest in the property except as Lessee. The Equipment shall remain personal property regardless of whether it becomes affixed or attached to real property, or permanently rests upon any real property or an improvement thereon. Lessee shall not attach the Equipment to any personal or real property so as to cause the property to become an accession or fixture thereto or take any action which would confer upon any person having an interest in such real or personal property an interest in the Equipment. The Lessee will cause the Equipment to be kept numbered with the identification numbers as shall be set forth in any amendment or supplement hereto. Lessee will keep and maintain, plainly, distinctly, permanently and conspicuously marked on each side of each unit of Equipment, in letters not less than one inch in height, the words "OWNED BY NorRail, Inc." or other appropriate words designated by the Lessor, with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect Lessor's title in the Equipment and the rights of Lessor under this Lease. Lessee will replace promptly any such words which may be removed, defaced, obliterated or destroyed. Lessee will not change the identification number of any unit of Equipment unless and until (i) a statement of new number or numbers to be substituted therefor shall have been filed with Lessor and filed, recorded and deposited by Lessee in all public offices where this Lease shall have been filed, recorded and deposited and (ii) Lessee shall have furnished Lessor an opinion of counsel in form and substance reasonably satisfactory to Lessor to the effect that such statement has been so filed, recorded and deposited, such filing, recordation and deposit will protect Lessor's interests in such Equipment and that no other filing, recording, deposit or giving of notice with or to any other Federal, State or local government or agency thereof is necessary to protect the interests of Lessor in such Equipment. The Equipment may be lettered with the names or initials or other insignia customarily used by the Lessee or its permitted sublessees but Lessee will not allow the name of any other person, to be placed on the Equipment as designation that might be interpreted as a claim of ownership. Lessee, at its own expense, will cause this Lease and all supplements to the Lease to be filed with the Interstate Commerce Commission pursuant to 49 U.S.C. Section 11303 and will provide Lessor with an opinion of counsel, satisfactory to Lessor, that Lessor's title in the Equipment is free and clear of any security interests or other encumbrances except for the interest of the Lessee under the Lease. Lessee, at its own expense, will further cause this Lease to be filed and recorded and, from time to time when required, refiled and rerecorded, in accordance with the applicable provisions of the applicable Uniform Commercial Code, in the same manner as if the Lessor's interest in this Lease represented a security interest and in any other state of the United States of America or the District of Columbia where filing is necessary or reasonably requested by the Lessor for the purpose of proper protection, to the

Lessor may from time to time request, without limitation, any reports filed with federal or state regulatory agencies. Lessee hereby warrants and represents that all financial statements previously delivered or to be delivered to Lessor by or on behalf of Lessee, and any statements and data submitted in writing to Lessor in connection with this Lease, are or will be true and correct and did or will fairly present the financial condition of Lessee for the periods involved.

**26. MASTER LEASE.**

In this event Lessor shall hereafter lease to Lessee additional Equipment, the Equipment shall be described on a Schedule executed by the parties which shall refer to this Lease. Each Schedule shall, in addition to describing the Equipment to be leased thereunder, set forth the term of the Lease with respect to that Equipment, the amount of rent, the manner of payment of the rent, the number of rent payments, the commencement of the rent payments, the amount of any security deposits and the stipulated loss value with respect to that Equipment, whether Lessee has the option, or shall be required, to purchase the Equipment and at what price, and may include other provisions. Each such Schedule when executed by the parties shall be deemed to be a part of this Lease, and all of the provisions of this Lease, except such provisions as may be explicitly amended by a Schedule, shall govern such Schedule or Schedules, it being understood and agreed that this Lease shall be the Master Lease.

**27. CROSS DEFAULT.**

Lessee hereby agrees that any default by Lessee in the payment of rent or performance of any other term or condition of any Lease between Lessee and Lessor, or under any Schedule, whether previously or hereafter entered into, shall at the option of Lessor constitute an Event of Default in all Leases or Schedules, including this Lease, between Lessor and Lessee, and that thereupon the provisions of Section 19 above shall be applicable.

**28. NOTICES.**

All notices required or permitted under this Lease shall be sufficient if delivered personally or mailed to the party receiving the notice at the address set forth below that party's signature, or at such other address as either party may designate in writing delivered to the other party from time to time. Any such notice shall be effective upon delivery or forty-eight (48) hours after it has been deposited in the United States mail, duly addressed and posted prepaid.

**29. ENVIRONMENTAL COMPLIANCE.**

Lessee has obtained all permits, licenses and other authorizations pertaining to the Equipment and its property which are required under federal, state and local laws relating to pollution or protection of the environment, including laws relating to emissions, discharges, releases or threatened releases of pollutants, contaminants, hazardous or toxic materials or wastes into ambient air, surface water, ground water or land, or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of pollutants, contaminants or hazardous or toxic materials or wastes ("Environmental Laws"). Lessee is in full compliance with all terms and conditions of such required permits, licenses and authorizations and is also in full compliance with all other limitations, restrictions, conditions, standards, prohibitions, requirements, obligations, schedules and timetables contained in the Environmental Laws or contained in any plan, order, decree, judgement or notice. Lessee is further not aware of, nor has Lessee received notice of, any events, conditions, circumstances, activities, practices, incidents, actions or plans which may interfere with or prevent continued compliance or which may give rise to any liability under any Environmental Laws or the common law.

**30. FEES AND EXPENSE.**

Lessee shall pay all reasonable expenses of the Lessor incident to the transactions contemplated by this Lease or in connection with any modification, amendment, waiver, alteration or enforcement of this Lease, including, but not limited to, all filing fees and the fees and expenses of Lessor's legal counsel. The obligations of Lessee under this Section 30 shall survive expiration of the term of this Lease.

**31. MISCELLANEOUS.**

LESSEE ACKNOWLEDGES AND AGREES THAT THIS LEASE IS INTENDED AS A "FINANCE LEASE" AS DEFINED IN MINN. STAT. SECTION 336.2A-103(1)(G), AND THAT LESSOR IS ENTITLED TO ALL BENEFITS, PRIVILEGES AND PROTECTIONS OF A LESSOR UNDER A FINANCE LEASE. If more than one party executes this Lease as Lessee, all obligations to be performed by Lessee shall be the joint and several liability of all such parties. Wherever the context permits, Lessee's representations, warranties and covenants under this Lease shall survive the delivery and return of the Equipment. Any provision of this Lease which may be determined by competent authority to be prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective, to the extent of such prohibition or unenforceability, without invalidating the remaining provisions of this Lease and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. To the extent permitted by applicable law, Lessee hereby waives any provision of law which renders any provision of this Lease prohibited or unenforceable in any respect. No term or provision of this Lease may be changed, waived, discharged, or terminated orally, but only by an instrument in writing signed by the party against which the enforcement of the change, waiver, discharge or termination is sought. This Lease contains the entire agreement between the parties and embodies any oral representations, negotiations or agreements made in connection herewith. The captions in this Lease are for convenience of reference only and shall not define or limit any of the terms of provisions hereof. As used in

this Lease the term "Lease" shall include all exhibits and Schedules related to this Lease. THIS LEASE SHALL IN ALL RESPECTS BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE INTERNAL LAWS (BUT NOT THE LAW OF CONFLICTS) OF THE STATE OF MINNESOTA, INCLUDING ALL MATTERS OF CONSTRUCTION, VALIDITY AND PERFORMANCE. Time is of the essence hereof. This Lease shall not become effective or binding until executed by Lessor at its place of business in Buffalo, Minnesota. Lessor may rely upon a telefacsimile copy of this Lease or any other document which purports to have been signed by Lessee the same as an originally signed counterpart. But if Lessee provides a telefacsimile as signed, Lessee shall immediately send to Lessor a signed original as well. This Lease and any Schedule may be executed in two or more counterparts, each of which shall be deemed an original. It shall not be necessary in making proof hereof to produce or account for more than one such counterpart. Lessee warrants and agrees that the Equipment is leased and will be used for business purposes only and that the Equipment will not be used for personal, family or household purposes.

IN WITNESS WHEREOF, Lessor and Lessee have executed this Lease this

\_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_.

**LESSOR:**

**NorRail, Inc.**

(LESSOR)

By



(Signature)

Title

U.P. MARTING

Address:

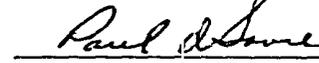
308 12th Avenue So.  
Buffalo, MN 55313

**LESSEE:**

**Benson Quinn Company**

(NAME OF LESSEE)

By



(Signature)

Title

Exec. V.P. + CFO

(If Required)

And By

(Signature)

Title

Address: 301 South Fourth Avenue  
Suite 1075  
P.O. Box 15226  
Minneapolis, MN 55415-0216

NorRail's Acknowledgement

STATE OF MINNESOTA  
COUNTY OF WRIGHT ) ss.

On this 5<sup>th</sup> day of MAY, 1995 before me, personally appeared L. Lee STRUBLE (name of signor), to me personally known, who being by me duly sworn, says that (s)he is the V.P. MARKETING (title of office) of NorRail, Inc., a Minnesota corporation, that the seal affixed to the foregoing Railcar Lease Agreement is the corporate seal of said corporation (or if no seal is affixed, that the corporation has no seal), that said Railcar Lease Agreement was signed and sealed on behalf of said corporation by authority of its Board of Directors, and that (s)he acknowledged that the execution of the foregoing Railcar Lease Agreement was the free act and deed of said corporation.



[Notary Public's seal]

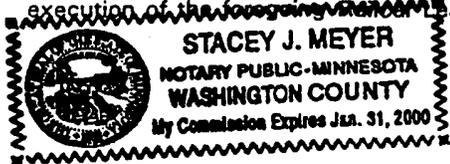
Joann M. Pelinka  
Notary Public

My Commission Expires: 1/31/2000

Lessee's Acknowledgement

STATE OF Minnesota  
COUNTY OF Hennepin ) ss. Bonsu-Quinn Company

On this 5<sup>th</sup> day of May, 1995 before me, personally appeared Paul D. Savre (name of signor), to me personally known, who being by me duly sworn, says that (s)he is the Executive V.P. CFO (title of office) of Escanaba & Lake Superior Railroad Co. a Minnesota corporation, that the seal affixed to the foregoing Railcar Lease Agreement is the corporate seal of said corporation (or if no seal is affixed, that the corporation has no seal), that said Railcar Lease Agreement was signed and sealed on behalf of said corporation by authority of its Board of Directors, and that (s)he acknowledged that the execution of the foregoing Railcar Lease Agreement was the free act and deed of said corporation.



[Notary Public's seal]

Stacey J. Meyer  
Notary Public

My Commission Expires: 1/31/2000

# NorRail, Inc.

308 12th Avenue South  
Buffalo, MN 55313

## SCHEDULE TO LEASE AGREEMENT (EQUIPMENT)

NorRail, Inc. - Lessor  
308 12th Avenue South  
Buffalo, Minnesota 55313

LESSEE: Benson Quinn Company

LEASE NO: 1607

SCHEDULE NO. 1

### EQUIPMENT

See Schedule "A" attached hereto and made a part hereof.

Lessor and Lessee agree that, with respect to all Equipment leased by Lessee pursuant to this Schedule No. 1, they will set forth their agreements relating to the amount and payment of rent and Stipulated Loss Values in a separate rent agreement dated as of May 5, 1995 (the "Rent Agreement") entered into contemporaneously with this Schedule. Accordingly, Lessor and Lessee hereby agree that the following terms shall be as defined in the Rent Agreement and shall be deemed incorporated by reference in this Schedule with the same force and effect as if set forth in full herein: Total Cost of Equipment, Initial Term of Lease, Rental Payment Due Date, Total Number of Rent Payments and Stipulated Loss Values. In addition, Lessor and Lessee agree that all other terms and conditions set forth in the Rent Agreement shall be deemed to be incorporated herein by reference with the same force and effect as if set forth in full herein.

Equipment will be delivered to Lessee at B.N. Railroad Houston, Texas

Freight and associated charges Lessor responsibility

Reporting marks NRLX

Security Deposit; \$ N/A to be applied; \_\_\_\_\_

Purchase Option N/A

Rent Payments shall commence upon Lessee's acceptance of the Equipment and shall be made on each Rent Payment Due Date thereafter until the Total Number of Rent Payments has been made.

Lessor hereby leases to Lessee and Lessee hereby leases from Lessor the Equipment described above on the terms and conditions set forth above and pursuant to and subject to all terms and conditions of the Lease Agreement between Lessor and Lessee dated May 5, 1995.

ACCEPTED

DATED AS OF: May 5, 1995

**NorRail, Inc.**

(LESSOR)

By

  
(Signature)

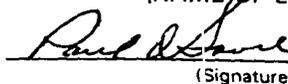
Title

V.P. Marketing

**Benson Quinn Company**

(NAME OF LESSEE)

By

  
(Signature)

Title

Exec. V.P. + CFO

(If Required)

And By \_\_\_\_\_

(Signature)

Title \_\_\_\_\_

**SCHEDULE A  
to Lease No. 1607**

**Schedule 1  
between Benson Quinn Company and NorRail, Inc.**

<u>Quantity</u>	<u>Equipment Description</u>
NRLX 100001	4750 Cubic Capacity
NRLX 100002	Covered Hopper - 100 Ton

If Lessor designates any markings to be placed on the Equipment indicating ownership by Lessor, the cost of such markings will be the responsibility of the Lessor.

Lessor will pay for any costs associated with the filing and recordation of the Equipment with the I.C.C.