

**OSTER**  
**Researching Services**

12897 Colonial Dr. • Mt. Airy, Md. 21771  
301-253-6040

19658  
1995

*Counterparts Mary A Oster*

October 6, 1995

Mr. Vernon Williams  
Secretary  
Interstate Commerce Commission  
12th & Constitution Avenue, N.W.  
Washington, D.C. 20423

Dear Mr. Williams:

Enclosed for recording with the Interstate Commerce Commission is a Loan and Security Agreement dated 9/27/95 involving the following parties:

Secured Party: FBS Business Corporation  
601 Second Avenue South  
Minneapolis, MN 55402

Debtor: NorRail, Inc.  
308 12th Avenue South  
Buffalo, MN 55313

The equipment involved in this transaction includes:

Equipment: 36, XM Boxcars  
ALAB 13000-13051, NI  
(formerly SAN 13000-13051, NI)

Please record this agreement as a primary document. The filing fee of \$21 is enclosed.

Thank you for your assistance.

Sincerely,

*Mary A Oster*

Mary Ann Oster  
Research Consultant

Enclosure



Interstate Commerce Commission  
Washington, D.C. 20423-0001

10/6/95

Office Of The Secretary

Mary Ann Oster  
Research Consultant  
Oster Researching Services  
12897 Colonial Dr.  
Mt. Airy, MD., 21771

Dear Madam:

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 10/6/95 at 10:35AM, and assigned recordation number(s) 19658 and 19659.

Sincerely yours,

Vernon A. Williams  
Secretary

Enclosure(s)

(0100807020)

\$ 42.00 The amount indicated at the left has been received in payment of a fee in connection with a document filed on the date shown. This receipt is issued for the amount paid and in no way indicates acknowledgment that the fee paid is correct. This is accepted subject to review of the document which has been assigned the transaction number corresponding to the one typed on this receipt. In the event of an error or any questions concerning this fee, you will receive a notification after the Commission has had an opportunity to examine your document.

Signature

14658  
1995

LOAN AND SECURITY AGREEMENT

THIS LOAN AND SECURITY AGREEMENT as of the date set forth below, by and between **NorRail, Inc.**, a Minnesota corporation ("Borrower"), at 308 12th Avenue South, Buffalo, Minnesota 55313 and **FBS Business Finance Corporation**, Leasing Division, a Delaware corporation ("Secured Party"), First Bank Place, 601 Second Avenue South, Minneapolis, Minnesota 55402.

In consideration of the mutual covenants hereinafter set forth in this Loan and Security Agreement (the "Agreement"), and intending to be legally bound, the Borrower and Secured Party hereto agree as follows:

1. The Loan

(a) Subject to the terms and conditions hereof, Secured Party agrees to make a term loan to Borrower in the principal amount of **\$1,071,000.00** the ("Loan"). Secured Party shall advance funds to Borrower as Borrower may request on or after the date hereof and up to and including **December 31, 1995**.

The Loan shall be evidenced by a promissory note of Borrower, in substantially the form of Exhibit A attached hereto, with appropriate insertions, dated the date of the Loan (the "Note"). Interest under the Note shall be calculated from the date of the Note through the maturity thereof at the rate shown on the Note.

(b) The Note shall be payable in equal consecutive monthly installments of principal and interest in such amounts and on such dates as shown in the Note. Each monthly installment shall be applied first to accrued interest, then to principal and thereafter to any late charge or other costs then due.

(c) If any installment is received by Secured Party more than ten (10) days after its due date, Borrower agrees to pay a late charge of five percent (5%) of such payment but not in excess of the maximum late charge permitted by law.

(d) Interest and fees shall be calculated on the basis of a 30 day month and a 360 day year. If any payment hereunder or on the Note becomes due and payable on a day other than a Business Day, the maturity thereof shall be extended to the next succeeding Business Day. The term "Business Day" means any day other than a Saturday, Sunday or other day on which commercial banks in Minneapolis, Minnesota are authorized or required by law to close. All payments by Borrower on the Note and all fees, expenses and other obligation under this Agreement payable to Secured Party shall be made without setoff or counterclaim in lawful money of the United States of America, received no later than 3:00 p.m. (Minneapolis time) on the dates called for under this Agreement, at the Secured Party's main office.

(e) Borrower further promises to pay interest at a rate equal to the lesser of 18% per annum or the highest rate permitted by law from and after the maturity of the Note on the then outstanding amount of principal, whether such maturity is caused by default, acceleration or otherwise, and, to the extent permitted by law, to pay interest on overdue interest at a rate equal to the lesser of 18% per annum or the highest rate permitted by law, until such amounts are paid.

(f) Upon the terms and subject to the conditions set forth in this Subsection (d), the Borrower, at its option, and upon three (3) Business Days' prior written notice to Secured Party, may prepay the Note in whole or in part;

(i) If such prepayment occurs during the first half of the term of the Note, a prepayment premium equal to 2% of the principal amount prepaid shall accompany

owner or purchaser of any interest therein. Borrower's chief executive office is located at the address shown on the first page hereof. Borrower will provide Secured Party at least (30) days prior written notice of any change in location of Borrower's chief executive office.

**3. Representations and Warranties. Borrower represents and warrants that:**

(a) Borrower has or will acquire title to the Collateral, free and clear of all liens, security interests and encumbrances, except for the security interest granted herein. There is no encumbrance or security interest with respect to all or any part of the Collateral which is superior to Secured Party's security interest. All costs of keeping the Collateral free of all encumbrances and security interest prohibited by this Agreement and of removing same if they should arise shall be borne and paid by Borrower; and

(b) By consummation of this transaction, Borrower is not in violation of any local, state or federal statute or any rule or regulation issued by any local, state or federal regulatory agency, all as may apply to Borrower, nor will consummation of this transaction cause any breach, default or violation of any judgment, decree, loan, mortgage, agreement, indenture or any other instrument applicable to Borrower or of Borrower's articles of incorporation or bylaws; and

(c) Borrower has delivered to Secured Party the balance sheets of Borrower and the related statements of income and retained earnings of Borrower for its most recent fiscal year end and for the most recent fiscal quarter. Such balance sheets and statements fairly present the financial condition of Borrower as of such dates and the results of the operations of Borrower for the period ended on such dates, all in accordance with generally accepted accounting principles consistently applied. Since the end of the latest fiscal quarter, there has been no material adverse change in such condition or operations; and

(d) Upon appropriate filings with the ICC, the security interest contemplated hereby will at all times constitute a valid, perfected and enforceable first priority security interest in favor of Secured Party, subject to no other security interest, mortgage, lien or encumbrance and Borrower shall provide Secured Party with an opinion of counsel confirming same; and

(e) Borrower has filed all applicable tax returns required to be filed by it, and has paid or made provisions for the payment of all taxes which have become due pursuant to said returns or pursuant to any assessment received by Borrower except such taxes, if any, as are being contested in good faith and as to which adequate reserves have been provided in accordance with generally accepted accounting principles, and warrants that such returns properly reflect the United States income and tax liability of Borrower for the period covered thereby; and

(f) Borrower is duly organized, validly existing and in good standing under the laws of the State of Minnesota and has the corporate power and authority to own and operate its property, to conduct the business in which it is currently engaged, and to make, deliver and perform this Agreement and the Note and to borrow hereunder, and has taken all necessary corporate action and obtained any necessary governmental consent or authorization to authorize borrowings on the terms and conditions of this Agreement and the Note and to authorize the execution, delivery and performance of this Agreement and the Note, which have been or will be duly executed and delivered, and which accordingly constitute or will constitute legal, valid and binding obligations of Borrower enforceable against Borrower in accordance with their respective terms; and

(g) No litigation, investigation or proceeding of or before any arbitrator or governmental authority is pending or, to the knowledge of Borrower, threatened by or against Borrower or against its properties or revenues with respect to this Agreement or the Note or any of the transactions contemplated thereby, or which could have a material adverse effect on the business, operations, property or financial or other condition of Borrower; and

forth in Section 4.(n) below) and available, together with the records relative thereto, for inspection by Secured Party; and

(h) not change: (i) its fiscal year end from 12/31 without the prior written consent of Secured Party; (ii) its name or principal place of business from those set forth in the preamble to this Agreement without at least thirty (30) days' prior written notice to Secured Party, or (iii) its state of incorporation without the prior written consent of the Secured Party; and

(i) indemnify and save harmless Secured Party, its successors and assigns, employees, officers, directors and agents from and against any and all claims or suits for any loss, damage or injury sustained by any person whatsoever by reason of the sale, financing, use or disposition of the Collateral, and in this connection, Borrower shall pay the costs of all reasonable legal fees and all other reasonable expenses incurred by Secured Party; and

(j) furnish Secured Party, as soon as available, but in no event more than ninety (90) days after the end of each fiscal year of Borrower, a copy of the balance sheet of Borrower as at the end of such year and the related statements of operations, and such other financial information as Secured Party may from time to time request. Borrower warrants and represents that all such financial statements shall be complete and correct in all material respects and be prepared in reasonable detail and in accordance with generally accepted accounting principles applied consistently throughout the periods reflected therein; and

(k) at its own expense, upon written direction from Secured Party, do all further acts and execute, acknowledge and deliver all instruments and assurances reasonably necessary or proper to comply with or accomplish the covenants and agreements contained in this Agreement, and in the event that Borrower does not so perform, Borrower hereby authorizes Secured Party to do such acts as Secured Party, in its sole discretion, shall deem necessary to protect the interests created hereby and agrees to pay to Secured Party on demand all reasonable costs and expenses associated with Secured Party's actions in connection herewith; and

(l) obtain execution, acknowledgment and delivery to Secured Party of such instruments, mortgages, deeds of trust, security agreements, guaranty agreements, statements, assignments, financing statements and lien documents in a form acceptable to Secured Party as may be reasonably necessary to enforce, to grant to Secured Party and to perfect the security interests, liens and mortgages on the Collateral granted hereunder by Borrower to Secured Party; and

(m) continue to engage in business of the same general type as now conducted by it, and preserve, renew and keep in full force and effect its corporate existence and take all reasonable action to maintain all rights, privileges and franchises necessary or desirable in the normal conduct of its business and comply with all agreements, instruments, undertakings, laws, rules, regulations and determinations of any court binding upon Borrower except to the extent that the failure to comply therewith could not, in the aggregate, have a material adverse effect on the business, operations, property or financial or other condition of Borrower; and

(n) agrees to comply with all laws of the jurisdictions in which its operations involving the Equipment may extend, with the interchange rules of the Association of American Railroads (and qualify for interchange service in accordance with such interchange rules) and with all lawful rules of the United States Department of Transportation, the Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Equipment, to the extent that such laws and rules affect the title, operation, maintenance or use of the Equipment, and in the event that such laws or rules require any alteration, replacement or addition of or to any Equipment, Borrower will conform therewith at its own expense; and

(o) shall not use the Equipment, or permit it to be used, for the transportation or storage of any substance which is categorized as, or required to be labeled as, "poison" or "poisonous",

Secured Party or its representative(s); (iii) require Borrower to assemble the Collateral and make it available to Secured Party at a place designated by Secured Party which is reasonably convenient to both parties; (iv) sell the Collateral at public or private sale, without advertisement or notice except that required by law, for the best price that Secured Party can obtain and upon such terms as Secured Party may deem advisable and be the purchaser at any such sale; (v) require Borrower to pay all expenses of such retaking, selling or the like, including Secured Party's reasonable attorneys' fees and legal expenses, incurred in the collection of any of the Secured Obligations and the enforcement of any of Secured Party's rights (including, but not limited to, efforts to seek relief from the automatic stay imposed by 11 U.S.C. sec. 362 or other litigation in bankruptcy proceedings); (vi) exercise any other right or remedy which may be available to it under the Uniform Commercial Code or any other applicable law, equity or agreement or proceed by appropriate court action to enforce the terms of this Agreement or to recover damages for the breach of this Agreement; (vii) offset any indebtedness Secured Party, its participants, successors or assigns then owes to Borrower, whether or not then due, against any Secured Obligation, whether or not then due; or (viii) declare Secured Party's obligation to make the Loan under this Agreement to be terminated, whereupon said obligation shall immediately be terminated. Upon the occurrence of a default described in Section 5(a)(v), (vi) or (ix), all Secured Obligations shall be immediately due and payable without demand or notice thereof and Secured Party's obligation to make the Loan under this Agreement shall be terminated without demand or notice thereof. Borrower agrees that Secured Party's exercise of any remedy shall obligate Borrower, and Borrower agrees that it will take such action and pay such amounts as are required by Secured Party. Borrower shall be liable for any deficiency remaining after sale of the Collateral and application of the net proceeds to the Secured Obligations. If such proceeds exceed the amount due and owing Secured Party for such Secured Obligations, Secured Party agrees to pay over the surplus to Borrower. If any notification of intended disposition of any of the Collateral is required by law, such notification shall be deemed reasonably and properly given if mailed at least ten (10) days before such disposition, postage prepaid, addressed to Borrower at the address set forth below. Secured Party's duty of care with respect to Collateral in its possession (as imposed by law) shall be deemed fulfilled if Secured Party exercises reasonable care in physically safekeeping such Collateral or, in the case of Collateral in the custody or possession of a bailee or other third person, exercises reasonable care in selection of the bailee or other third person, and Secured Collateral or, in the case of Collateral in the custody or possession selection of the bailee or other third person, and Secured Party need not otherwise preserve, protect, insure or care for any Collateral. Secured Party shall not be obligated to preserve any rights Borrower may have against prior parties, to realize on the Collateral at all or in any particular manner or order, or to apply any cash proceeds of Collateral in any particular order of application.

(c) Borrower agrees to pay reasonable attorneys' fees whenever an attorney is used to collect on or enforce this Agreement or to enforce, defend, declare or adjudicate any of Secured Party's rights or interests hereunder or with respect to any Collateral, whether by suit, negotiation or otherwise and regardless of the forum excluding inquiries not involving Borrower's default or nonperformance, including, but not limited to, credit checks, auditors' letters, and inquiries from brokers, stock exchanges, and regulatory agencies.

(d) All rights and remedies of Secured Party pursuant to the provisions of this Agreement are cumulative, and may, to the extent permitted by law, be exercised concurrently or separately, and the exercise or partial exercise of any right or remedy shall not be deemed to be an election of such right or remedy or to preclude any other or further or future exercise of any other right or remedy. No failure on the part of Secured Party to exercise, and no delay in exercising, any right or remedy hereunder shall operate as a waiver thereof or of any similar or other right or remedy in the future.

#### 6. Miscellaneous.

(a) This Agreement and all of the provisions hereof shall inure to the benefit of the parties hereto and their respective legal representatives, successors and assigns; provided, however, that

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the  
27TH day of SEPT., 1995.

BORROWER:

NORRAIL, INC.

By: [Signature]  
Its: VICE PRESIDENT SALES

By: [Signature]  
Its: [Signature]

SECURED PARTY:

FBS BUSINESS FINANCE CORPORATION

By: [Signature]  
Its: Assistant Vice President

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

admin\custom\m\inc0002

EXHIBIT A

PROMISSORY NOTE

\$ \_\_\_\_\_, 19 \_\_\_\_\_

FOR VALUE RECEIVED, the undersigned NorRail, Inc. a Minnesota corporation (the "Borrower") hereby promises to pay to the order of FBS Business Finance Corporation, Leasing Division, a Delaware corporation, (the "Secured Party"), at its main office at First Bank Place, 601 Second Avenue S., Minneapolis, Minnesota 55402 in lawful money of the United States of America, the principal sum of

\_\_\_\_\_ DOLLARS

(\$ \_\_\_\_\_), together with interest on the unpaid principal balance from time to time outstanding (computed on the basis of a 30 day month and a year of 360 days), at the rate of \_\_\_\_\_% per annum.

The principal hereof and interest accrued hereon shall be paid together in \_\_\_\_\_, (\_\_\_\_) equal consecutive monthly installments, each in the amount of \_\_\_\_\_ DOLLARS (\$ \_\_\_\_\_), with the first such installment payable \_\_\_\_\_, 19 \_\_\_\_, and thereafter on the same day of each succeeding month until \_\_\_\_\_, 19 \_\_\_\_, and a final installment of \_\_\_\_\_ DOLLARS (\$ \_\_\_\_\_), on \_\_\_\_\_, 19 \_\_\_\_, when the entire remaining balance hereof and all accrued and unpaid interest shall be paid in full. If any installment is more than ten (10) days late, Borrower agrees to pay a late charge of five percent (5%) of such payment but not in excess of the maximum late charge permitted by law. Each monthly installment shall be applied first to the accrued interest, then to principal and thereafter to any late charges or other costs then due.

This note is the Note referred to in the Loan and Security Agreement dated as of \_\_\_\_\_, 19 \_\_ by and between the Borrower and the Secured Party. The Borrower, the Secured Party and the holders hereof are entitled to all of the benefits provided for or referred to in the Loan and Security Agreement. The maturity of this Note is subject to acceleration upon the terms provided in said Loan and Security Agreement.

The undersigned hereby waives presentment, demand, protest, notice of dishonor and diligence in collecting, and agrees to pay all costs of collection, including reasonable attorneys' fees, in the event payment of this Promissory Note is not made in accordance with its terms.

THIS NOTE REPRESENTS A LOAN NEGOTIATED, EXECUTED AND TO BE PERFORMED IN THE STATE OF MINNESOTA AND SHALL BE CONSTRUED, INTERPRETED AND GOVERNED BY THE SUBSTANTIVE LAWS (BUT NOT THE LAW OF CONFLICTS) OF SAID STATE. THE BORROWER HEREBY CONSENTS TO THE PERSONAL JURISDICTION OF THE STATE AND FEDERAL COURTS LOCATED IN THE STATE OF MINNESOTA IN CONNECTION WITH ANY CONTROVERSY RELATED TO THIS NOTE, WAIVES ANY ARGUMENT THAT VENUE IN SUCH FORUMS IS NOT CONVENIENT AND AGREES THAT ANY LITIGATION INSTIGATED BY THE BORROWER AGAINST SECURED PARTY IN CONNECTION WITH THIS NOTE SHALL BE VENUED IN EITHER THE DISTRICT COURTS OF HENNEPIN COUNTY, MINNESOTA, OR THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MINNESOTA, FOURTH DIVISION.

EQUIPMENT DESCRIPTION

ALAB 013000	ALAB 013024
ALAB 013001	ALAB 013025
ALAB 013003	ALAB 013027
ALAB 013004	ALAB 013029
ALAB 013007	ALAB 013030
ALAB 013008	ALAB 013031
ALAB 013011	ALAB 013032
ALAB 013012	ALAB 013033
ALAB 013013	ALAB 013036
ALAB 013014	ALAB 013038
ALAB 013016	ALAB 013039
ALAB 013017	ALAB 013040
ALAB 013018	ALAB 013044
ALAB 013019	ALAB 013046
ALAB 013020	ALAB 013047
ALAB 013021	ALAB 013048
ALAB 013022	ALAB 013049
ALAB 013023	ALAB 013051



Exhibit B-2

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

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

Mr. B. Allen Brown  
Director of Marketing  
Pioneer Railroad Equipment Co., LTD  
1318 South Johnson Road  
Peoria, IL 61607

June 28, 1995

Contract #1628

Dear Allen,

This refers to our phone conversation concerning the availability of up to 72 boxcars.

As we discussed, NorRail is willing to enter into a Per Diem Agreement between NorRail and Pioneer Railroad Equipment Co, LTD (PREX). The following are the mutually agreed upon items:

1. PREX is entitled to 5% of the hourly collected earnings when the monthly utilization is 85% to 89.9%.
  2. PREX is entitled to 10% of the hourly collected earnings when the monthly utilization is 90% to 100%.
  3. PREX shall use its best efforts to load the cars for off-line destinations in a non-discriminating manner.
  4. PREX will be responsible for the car hire accounting and collection of all earnings and promptly pay NorRail its portion of the collected earnings. PREX will provide all documentation with regards to amounts payable to NorRail.
  5. PREX will restrict the on line loading of the assigned NorRail cars to clean commodities only and will not be liable should car(s) be loaded by a nonaffiliated railroad with other than a clean commodity.
  6. PREX will be responsible for switch <sup>AS</sup>charges associated with NorRail assigned cars to PREX on the railroads owned or leased by Pioneer Railcorp.
  7. NorRail will restencil the cars to PREX designated marks.
  8. NorRail is responsible for taxes, insurance and maintenance for the NorRail assigned boxcars.
- B.5. PREX will settle monthly with NorRail, Inc. using the worksheet attached as "Sample".**

Pioneer Railcorp Co. Railroad Equipment Co., Ltd.

pg. 2

- 9. NorRail is entitled to the hourly Per Diem earnings on the first 85% of utilization and the balance of hourly earnings over 85% utilization now owed to PREX.
- 10. NorRail is entitled to all mileage earnings.
- 11. If the off-line utilization falls below an average of 70% for three consecutive months, NorRail has the right to pull and re-assign the cars.

Upon acceptance by NorRail and Pioneer Railcorp this agreement will be in place for 60 months. Please indicate your acceptance of this Agreement by signing and returning by fax.

ACKNOWLEDGED AND ACCEPTED

NorRail, Inc.

Pioneer Railcorp Co. Railroad Equipment Co., Ltd.

Name: L. Stumbo  
 Title: V.P. MARKETING  
 Date: JUNE 28, 1995

Name: R. Sullivan  
 Title: Director of Marketing  
 Date: JUNE 29, 1995

gb.354

JUN-30-95 FRI 11:32 AM PIONEER RAILCORP

FAX NO. 3096971677

P. 4

# PIONEER RAILROAD EQUIPMENT CO., LTD RAILCAR MANAGEMENT WORKSHEET - ALAB 13000 SERIES BOXCARS (NORRAIL)

**MONTH:** August, 1995

**CARS IN SERVICE:** 72

SAMPLE

**COLLECTED REVENUES:**

Hourly Earnings: \$40,000.00  
Milage Earnings: \$5,000.00  
\$45,000.00

**REVENUE SHARING RESERVE (5%):** \$2,000.00

**CAR MANAGEMENT FEES REIMBURSEMENT:** \$198.00

**PREX EARNINGS:** \$2,198.00

## **CASH DISBURSEMENT SUMMARY**

**CASH COLLECTED:** \$45,000.00

**LESS PREX EARNINGS:** \$2,198.00

**LESS REIMBURSEMENT FOR REPAIRS (SEE DETAIL SCHEDULE):**

**MADE BY OTHERS:** \$2,000.00

**MADE BY PREX:** \$1,000.00  
\$3,000.00

**NET PAYMENT TO NORRAIL:** \$39,802.00

**FOOTNOTE:**

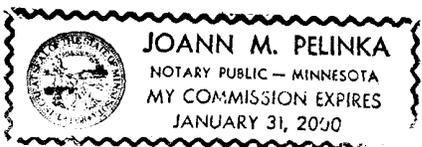
(1.) UTILIZATION RESERVE RECALCULATION PERFORMED AND ADJUSTED QUARTERLY

STATE OF Minnesota

COUNTY OF WRIGHT

On this 27<sup>th</sup> day of September, 19 95, before me personally came Russell S. Adams, to me known, who, being by me duly sworn, did depose and say that he/she is the V.P. Sales of Nor Rail, INC, a Minnesota corporation, and he/she acknowledged to me that he/she executed the foregoing document on behalf of said corporation by order of its Board of Directors and that such document was the free act and deed of said corporation.

Witness my hand and official seal.



Joann M. Pelinka  
Notary Public in and for said State

My commission expires:

January 31, 2000

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

On this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, before me personally came \_\_\_\_\_, to me known, who, being by me duly sworn, did depose and say that he/she is the \_\_\_\_\_ of \_\_\_\_\_, a \_\_\_\_\_ corporation, and he/she acknowledged to me that he/she executed the foregoing document on behalf of said corporation by order of its Board of Directors and that such document was the free act and deed of said corporation.

Witness my hand and official seal.

\_\_\_\_\_  
Notary Public in and for said State

My commission expires:

\_\_\_\_\_

STATE OF Minnesota

COUNTY OF Wright

On this 27th day of September, 1995, before me personally came Robert D. Johnson to me known, who, being by me duly sworn, did depose and say that he is the President of NorRail, Inc., a Minnesota corporation, and he acknowledged to me that he executed the foregoing document on behalf of said corporation by order of its Board of Directors and that such document was the free act and deed of said corporation.

Witness my hand and official seal.



Joann M. Pelinka  
Notary Public in and for said State

My commission expires:

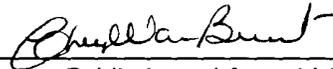
1/31/2000

STATE OF Minnesota

COUNTY OF Hennepin

On this 4th day of October, 1995, before me personally came Deborah J. Eckert to me known, who, being by me duly sworn, did depose and say that he/she is the Vice-President of FBS Business Finance Corporation, a Delaware corporation, and he/she acknowledged to me that he/she executed the foregoing document on behalf of said corporation by order of its Board of Directors and that such document was the free act and deed of said corporation.

Witness my hand and official seal.



\_\_\_\_\_  
Notary Public in and for said State

My commission expires:

January 31, 2000



14658  
1995

LOAN AND SECURITY AGREEMENT

THIS LOAN AND SECURITY AGREEMENT as of the date set forth below, by and between **NorRail, Inc.**, a Minnesota corporation ("Borrower"), at 308 12th Avenue South, Buffalo, Minnesota 55313 and **FBS Business Finance Corporation**, Leasing Division, a Delaware corporation ("Secured Party"), First Bank Place, 601 Second Avenue South, Minneapolis, Minnesota 55402.

In consideration of the mutual covenants hereinafter set forth in this Loan and Security Agreement (the "Agreement"), and intending to be legally bound, the Borrower and Secured Party hereto agree as follows:

1. The Loan

(a) Subject to the terms and conditions hereof, Secured Party agrees to make a term loan to Borrower in the principal amount of \$1,071,000.00 the ("Loan"). Secured Party shall advance funds to Borrower as Borrower may request on or after the date hereof and up to and including December 31, 1995.

The Loan shall be evidenced by a promissory note of Borrower, in substantially the form of Exhibit A attached hereto, with appropriate insertions, dated the date of the Loan (the "Note"). Interest under the Note shall be calculated from the date of the Note through the maturity thereof at the rate shown on the Note.

(b) The Note shall be payable in equal consecutive monthly installments of principal and interest in such amounts and on such dates as shown in the Note. Each monthly installment shall be applied first to accrued interest, then to principal and thereafter to any late charge or other costs then due.

(c) If any installment is received by Secured Party more than ten (10) days after its due date, Borrower agrees to pay a late charge of five percent (5%) of such payment but not in excess of the maximum late charge permitted by law.

(d) Interest and fees shall be calculated on the basis of a 30 day month and a 360 day year. If any payment hereunder or on the Note becomes due and payable on a day other than a Business Day, the maturity thereof shall be extended to the next succeeding Business Day. The term "Business Day" means any day other than a Saturday, Sunday or other day on which commercial banks in Minneapolis, Minnesota are authorized or required by law to close. All payments by Borrower on the Note and all fees, expenses and other obligation under this Agreement payable to Secured Party shall be made without setoff or counterclaim in lawful money of the United States of America, received no later than 3:00 p.m. (Minneapolis time) on the dates called for under this Agreement, at the Secured Party's main office.

(e) Borrower further promises to pay interest at a rate equal to the lesser of 18% per annum or the highest rate permitted by law from and after the maturity of the Note on the then outstanding amount of principal, whether such maturity is caused by default, acceleration or otherwise, and, to the extent permitted by law, to pay interest on overdue interest at a rate equal to the lesser of 18% per annum or the highest rate permitted by law, until such amounts are paid.

(f) Upon the terms and subject to the conditions set forth in this Subsection (d), the Borrower, at its option, and upon three (3) Business Days' prior written notice to Secured Party, may prepay the Note in whole or in part;

(i) If such prepayment occurs during the first half of the term of the Note, a prepayment premium equal to 2% of the principal amount prepaid shall accompany

owner or purchaser of any interest therein. Borrower's chief executive office is located at the address shown on the first page hereof. Borrower will provide Secured Party at least (30) days prior written notice of any change in location of Borrower's chief executive office.

**3. Representations and Warranties. Borrower represents and warrants that:**

(a) Borrower has or will acquire title to the Collateral, free and clear of all liens, security interests and encumbrances, except for the security interest granted herein. There is no encumbrance or security interest with respect to all or any part of the Collateral which is superior to Secured Party's security interest. All costs of keeping the Collateral free of all encumbrances and security interest prohibited by this Agreement and of removing same if they should arise shall be borne and paid by Borrower; and

(b) By consummation of this transaction, Borrower is not in violation of any local, state or federal statute or any rule or regulation issued by any local, state or federal regulatory agency, all as may apply to Borrower, nor will consummation of this transaction cause any breach, default or violation of any judgment, decree, loan, mortgage, agreement, indenture or any other instrument applicable to Borrower or of Borrower's articles of incorporation or bylaws; and

(c) Borrower has delivered to Secured Party the balance sheets of Borrower and the related statements of income and retained earnings of Borrower for its most recent fiscal year end and for the most recent fiscal quarter. Such balance sheets and statements fairly present the financial condition of Borrower as of such dates and the results of the operations of Borrower for the period ended on such dates, all in accordance with generally accepted accounting principles consistently applied. Since the end of the latest fiscal quarter, there has been no material adverse change in such condition or operations; and

(d) Upon appropriate filings with the ICC, the security interest contemplated hereby will at all times constitute a valid, perfected and enforceable first priority security interest in favor of Secured Party, subject to no other security interest, mortgage, lien or encumbrance and Borrower shall provide Secured Party with an opinion of counsel confirming same; and

(e) Borrower has filed all applicable tax returns required to be filed by it, and has paid or made provisions for the payment of all taxes which have become due pursuant to said returns or pursuant to any assessment received by Borrower except such taxes, if any, as are being contested in good faith and as to which adequate reserves have been provided in accordance with generally accepted accounting principles, and warrants that such returns properly reflect the United States income and tax liability of Borrower for the period covered thereby; and

(f) Borrower is duly organized, validly existing and in good standing under the laws of the State of Minnesota and has the corporate power and authority to own and operate its property, to conduct the business in which it is currently engaged, and to make, deliver and perform this Agreement and the Note and to borrow hereunder, and has taken all necessary corporate action and obtained any necessary governmental consent or authorization to authorize borrowings on the terms and conditions of this Agreement and the Note and to authorize the execution, delivery and performance of this Agreement and the Note, which have been or will be duly executed and delivered, and which accordingly constitute or will constitute legal, valid and binding obligations of Borrower enforceable against Borrower in accordance with their respective terms; and

(g) No litigation, investigation or proceeding of or before any arbitrator or governmental authority is pending or, to the knowledge of Borrower, threatened by or against Borrower or against its properties or revenues with respect to this Agreement or the Note or any of the transactions contemplated thereby, or which could have a material adverse effect on the business, operations, property or financial or other condition of Borrower; and

forth in Section 4.(n) below) and available, together with the records relative thereto, for inspection by Secured Party; and

(h) not change: (i) its fiscal year end from 12/31 without the prior written consent of Secured Party; (ii) its name or principal place of business from those set forth in the preamble to this Agreement without at least thirty (30) days' prior written notice to Secured Party, or (iii) its state of incorporation without the prior written consent of the Secured Party; and

(i) indemnify and save harmless Secured Party, its successors and assigns, employees, officers, directors and agents from and against any and all claims or suits for any loss, damage or injury sustained by any person whatsoever by reason of the sale, financing, use or disposition of the Collateral, and in this connection, Borrower shall pay the costs of all reasonable legal fees and all other reasonable expenses incurred by Secured Party; and

(j) furnish Secured Party, as soon as available, but in no event more than ninety (90) days after the end of each fiscal year of Borrower, a copy of the balance sheet of Borrower as at the end of such year and the related statements of operations, and such other financial information as Secured Party may from time to time request. Borrower warrants and represents that all such financial statements shall be complete and correct in all material respects and be prepared in reasonable detail and in accordance with generally accepted accounting principles applied consistently throughout the periods reflected therein; and

(k) at its own expense, upon written direction from Secured Party, do all further acts and execute, acknowledge and deliver all instruments and assurances reasonably necessary or proper to comply with or accomplish the covenants and agreements contained in this Agreement, and in the event that Borrower does not so perform, Borrower hereby authorizes Secured Party to do such acts as Secured Party, in its sole discretion, shall deem necessary to protect the interests created hereby and agrees to pay to Secured Party on demand all reasonable costs and expenses associated with Secured Party's actions in connection herewith; and

(l) obtain execution, acknowledgment and delivery to Secured Party of such instruments, mortgages, deeds of trust, security agreements, guaranty agreements, statements, assignments, financing statements and lien documents in a form acceptable to Secured Party as may be reasonably necessary to enforce, to grant to Secured Party and to perfect the security interests, liens and mortgages on the Collateral granted hereunder by Borrower to Secured Party; and

(m) continue to engage in business of the same general type as now conducted by it, and preserve, renew and keep in full force and effect its corporate existence and take all reasonable action to maintain all rights, privileges and franchises necessary or desirable in the normal conduct of its business and comply with all agreements, instruments, undertakings, laws, rules, regulations and determinations of any court binding upon Borrower except to the extent that the failure to comply therewith could not, in the aggregate, have a material adverse effect on the business, operations, property or financial or other condition of Borrower; and

(n) agrees to comply with all laws of the jurisdictions in which its operations involving the Equipment may extend, with the interchange rules of the Association of American Railroads (and qualify for interchange service in accordance with such interchange rules) and with all lawful rules of the United States Department of Transportation, the Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Equipment, to the extent that such laws and rules affect the title, operation, maintenance or use of the Equipment, and in the event that such laws or rules require any alteration, replacement or addition of or to any Equipment, Borrower will conform therewith at its own expense; and

(o) shall not use the Equipment, or permit it to be used, for the transportation or storage of any substance which is categorized as, or required to be labeled as, "poison" or "poisonous",

Secured Party or its representative(s); (iii) require Borrower to assemble the Collateral and make it available to Secured Party at a place designated by Secured Party which is reasonably convenient to both parties; (iv) sell the Collateral at public or private sale, without advertisement or notice except that required by law, for the best price that Secured Party can obtain and upon such terms as Secured Party may deem advisable and be the purchaser at any such sale; (v) require Borrower to pay all expenses of such retaking, selling or the like, including Secured Party's reasonable attorneys' fees and legal expenses, incurred in the collection of any of the Secured Obligations and the enforcement of any of Secured Party's rights (including, but not limited to, efforts to seek relief from the automatic stay imposed by 11 U.S.C. sec. 362 or other litigation in bankruptcy proceedings); (vi) exercise any other right or remedy which may be available to it under the Uniform Commercial Code or any other applicable law, equity or agreement or proceed by appropriate court action to enforce the terms of this Agreement or to recover damages for the breach of this Agreement; (vii) offset any indebtedness Secured Party, its participants, successors or assigns then owes to Borrower, whether or not then due, against any Secured Obligation, whether or not then due; or (viii) declare Secured Party's obligation to make the Loan under this Agreement to be terminated, whereupon said obligation shall immediately be terminated. Upon the occurrence of a default described in Section 5(a)(v), (vi) or (ix), all Secured Obligations shall be immediately due and payable without demand or notice thereof and Secured Party's obligation to make the Loan under this Agreement shall be terminated without demand or notice thereof. Borrower agrees that Secured Party's exercise of any remedy shall obligate Borrower, and Borrower agrees that it will take such action and pay such amounts as are required by Secured Party. Borrower shall be liable for any deficiency remaining after sale of the Collateral and application of the net proceeds to the Secured Obligations. If such proceeds exceed the amount due and owing Secured Party for such Secured Obligations, Secured Party agrees to pay over the surplus to Borrower. If any notification of intended disposition of any of the Collateral is required by law, such notification shall be deemed reasonably and properly given if mailed at least ten (10) days before such disposition, postage prepaid, addressed to Borrower at the address set forth below. Secured Party's duty of care with respect to Collateral in its possession (as imposed by law) shall be deemed fulfilled if Secured Party exercises reasonable care in physically safekeeping such Collateral or, in the case of Collateral in the custody or possession of a bailee or other third person, exercises reasonable care in selection of the bailee or other third person, and Secured Collateral or, in the case of Collateral in the custody or possession selection of the bailee or other third person, and Secured Party need not otherwise preserve, protect, insure or care for any Collateral. Secured Party shall not be obligated to preserve any rights Borrower may have against prior parties, to realize on the Collateral at all or in any particular manner or order, or to apply any cash proceeds of Collateral in any particular order of application.

(c) Borrower agrees to pay reasonable attorneys' fees whenever an attorney is used to collect on or enforce this Agreement or to enforce, defend, declare or adjudicate any of Secured Party's rights or interests hereunder or with respect to any Collateral, whether by suit, negotiation or otherwise and regardless of the forum excluding inquiries not involving Borrower's default or nonperformance, including, but not limited to, credit checks, auditors' letters, and inquiries from brokers, stock exchanges, and regulatory agencies.

(d) All rights and remedies of Secured Party pursuant to the provisions of this Agreement are cumulative, and may, to the extent permitted by law, be exercised concurrently or separately, and the exercise or partial exercise of any right or remedy shall not be deemed to be an election of such right or remedy or to preclude any other or further or future exercise of any other right or remedy. No failure on the part of Secured Party to exercise, and no delay in exercising, any right or remedy hereunder shall operate as a waiver thereof or of any similar or other right or remedy in the future.

#### 6. Miscellaneous.

(a) This Agreement and all of the provisions hereof shall inure to the benefit of the parties hereto and their respective legal representatives, successors and assigns; provided, however, that

EXHIBIT A

PROMISSORY NOTE

\$ \_\_\_\_\_, 19 \_\_\_\_\_

FOR VALUE RECEIVED, the undersigned NorRail, Inc. a Minnesota corporation (the "Borrower") hereby promises to pay to the order of FBS Business Finance Corporation, Leasing Division, a Delaware corporation, (the "Secured Party"), at its main office at First Bank Place, 601 Second Avenue S., Minneapolis, Minnesota 55402 in lawful money of the United States of America, the principal sum of

\_\_\_\_\_ DOLLARS

(\$ \_\_\_\_\_), together with interest on the unpaid principal balance from time to time outstanding (computed on the basis of a 30 day month and a year of 360 days), at the rate of \_\_\_\_\_% per annum.

The principal hereof and interest accrued hereon shall be paid together in \_\_\_\_\_, (\_\_\_\_) equal consecutive monthly installments, each in the amount of \_\_\_\_\_ DOLLARS (\$ \_\_\_\_\_), with the first such installment payable \_\_\_\_\_, 19 \_\_\_\_, and thereafter on the same day of each succeeding month until \_\_\_\_\_, 19 \_\_\_\_, and a final installment of \_\_\_\_\_ DOLLARS (\$ \_\_\_\_\_), on \_\_\_\_\_, 19 \_\_\_\_, when the entire remaining balance hereof and all accrued and unpaid interest shall be paid in full. If any installment is more than ten (10) days late, Borrower agrees to pay a late charge of five percent (5%) of such payment but not in excess of the maximum late charge permitted by law. Each monthly installment shall be applied first to the accrued interest, then to principal and thereafter to any late charges or other costs then due.

This note is the Note referred to in the Loan and Security Agreement dated as of \_\_\_\_\_, 19 \_\_ by and between the Borrower and the Secured Party. The Borrower, the Secured Party and the holders hereof are entitled to all of the benefits provided for or referred to in the Loan and Security Agreement. The maturity of this Note is subject to acceleration upon the terms provided in said Loan and Security Agreement.

The undersigned hereby waives presentment, demand, protest, notice of dishonor and diligence in collecting, and agrees to pay all costs of collection, including reasonable attorneys' fees, in the event payment of this Promissory Note is not made in accordance with its terms.

THIS NOTE REPRESENTS A LOAN NEGOTIATED, EXECUTED AND TO BE PERFORMED IN THE STATE OF MINNESOTA AND SHALL BE CONSTRUED, INTERPRETED AND GOVERNED BY THE SUBSTANTIVE LAWS (BUT NOT THE LAW OF CONFLICTS) OF SAID STATE. THE BORROWER HEREBY CONSENTS TO THE PERSONAL JURISDICTION OF THE STATE AND FEDERAL COURTS LOCATED IN THE STATE OF MINNESOTA IN CONNECTION WITH ANY CONTROVERSY RELATED TO THIS NOTE, WAIVES ANY ARGUMENT THAT VENUE IN SUCH FORUMS IS NOT CONVENIENT AND AGREES THAT ANY LITIGATION INSTIGATED BY THE BORROWER AGAINST SECURED PARTY IN CONNECTION WITH THIS NOTE SHALL BE VENUED IN EITHER THE DISTRICT COURTS OF HENNEPIN COUNTY, MINNESOTA, OR THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MINNESOTA, FOURTH DIVISION.