

850  
NEW NO

ELIAS C. ALVORD (1942)  
ELLSWORTH C. ALVORD (1964)

ROBERT W. ALVORD  
ALBERT H. GREENE  
CARL C. DAVIS\*  
CHARLES T. KAPPLER  
JOHN H. DOYLE  
MILTON C. GRACE\*  
GEORGE JOHN KETO\*\*  
RICHARD N. BAGENSTOS

\* NOT A MEMBER OF D.C. BAR  
\*\* ALSO A MEMBER OF OHIO BAR

LAW OFFICES  
ALVORD AND ALVORD

200 WORLD CENTER BUILDING  
918 SIXTEENTH STREET, N.W.  
WASHINGTON, D. C.  
20006

13042

RECORDATION NO. \_\_\_\_\_ Filed 1425

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April 6, 1981

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INTERSTATE COMMERCE COMMISSION

1-096A163

No.  
Date APR 6 1981  
Fee \$ 50.00  
ICC Washington, D. C.

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I.C.C. OPERATION BR.

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

Dear Madam:

Enclosed for recordation under the provisions of 49 U.S.C. §11303 are the original and one copy of a Lease Agreement dated as of September 15, 1980.

A general description of the railroad equipment covered by the enclosed document is:

Twenty-nine (29) flat cars bearing identification numbers RF&P 500 through RF&P 528, both inclusive.

The names and addresses of the parties to the enclosed document are:

- Lessor: Transamerica Rail Services Corp.  
522 Fifth Avenue  
New York, New York 10036
- Lessee: Richmond, Fredericksburg and Potomac Railroad Company  
2134 West Laburnum Avenue  
Richmond, Virginia 23227

The undersigned is agent of the Lessor which is a party to the enclosed document and has knowledge of the matters set forth therein.

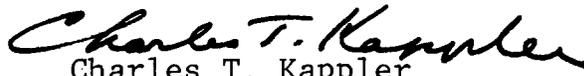
*C. T. Kappler*  
*C. Owen*

Ms. Agatha L. Mergenovich  
April 6, 1981  
Page Two

Please return the stamped copy of the Lease Agreement to Charles T. Kappler, Esq., Alvord and Alvord, 918 16th Street, N.W., Washington, D.C. 20006.

Also enclosed is a check in the amount of \$50.00, payable to the order of the Interstate Commerce Commission in covering the required recordation fee.

Very truly yours,

  
Charles T. Kappler

Enclosure

TRANSAMERICA RAIL SERVICES CORP.

LEASE AGREEMENT

RECORDATION NO. 13042  
FIRM 1125

APR 6 1981 -3 25 PM

INTERSTATE COMMERCE COMMISSION

THIS LEASE AGREEMENT, made as of this 15th day of September, 1980, between TRANSAMERICA RAIL SERVICES CORP. a Delaware corporation, 522 Fifth Avenue, New York, New York 10036 ("TRSC"), as Lessor and RICHMOND, FREDERICKSBURG AND POTOMAC RAILROAD COMPANY a Virginia corporation, 2134 West Laburnum Avenue, Richmond, Virginia 23227 ("Lessee"), as Lessee.

1. Scope of Agreement

A. TRSC agrees to lease to Lessee, and Lessee agrees to lease from TRSC, flatcars of the types and descriptions as set forth in any lease schedules ("Schedule") executed by the parties concurrently herewith or hereafter and made a part of this Agreement. The scheduled items of equipment are hereinafter called collectively the "Cars".

B. This is an agreement of lease only, and nothing herein shall be construed to pass title to the Cars to Lessee, or create any right or interest in Lessee except the right to possess and use the Cars, or any of them, so long, and only so long, as Lessee abides by and is not in default with respect to the terms and provisions of this lease agreement.

2. Term

A. This agreement shall remain in full force until it shall have been terminated as to all of the Cars as provided herein. The term of lease with respect to each of the Cars shall commence upon acceptance of the Car by the Lessee as set forth in Section 3 hereof and shall continue until either party gives not less than

30 days written notice of its desire to terminate this Agreement as to any individual Car leased hereunder, provided however, that such termination shall only take effect as of the first day of any calendar month.

### 3. Supply Provision

TRSC shall deliver the Cars to Lessee at Lessee's railroad line or to another railroad at such other location as shall be mutually agreed upon between the parties. Cars shall be in good working order and condition. Lessee shall have the right of inspection and rejection for any reason. To insure optimal use of the Cars after the first loading of freight for each Car on the railroad line of Lessee (the "initial loading") TRSC agrees to assist Lessee in monitoring Car movements and, when deemed necessary by Lessee and TRSC, to issue movement orders with respect to such Cars to other railroad lines in accordance with ICC and AAR interchange agreements and rules.

### 4. Railroad Markings and Record Keeping

A. TRSC and Lessee agree that on or before delivery of any Cars to Lessee, said Cars will be lettered with the railroad markings of Lessee and may also be marked with the name and/or other insignia used by Lessee. Such name and/or insignia shall comply with all applicable regulations.

B. At no cost to Lessee, TRSC shall during the term of this Agreement prepare for Lessee's signature and filing all documents relating to the registration of the Cars. Such documents shall include but are not limited to the following: (i) registration in the Official Railway Equipment Register and the Universal

Machine Language Equipment Register; and (ii) such reports as may be required from time to time by the ICC and/or other regulatory agencies.

C. Lessee shall, on behalf of TRSC, perform all record keeping functions related to the use of the Cars by Lessee and other railroads in accordance with AAR railroad interchange agreements and rules, such as car hire reconciliation. Correspondence from railroads using such Cars shall be addressed to Lessee at such address as Lessee shall select. All record keeping performed by Lessee hereunder and all records of payments, charges and correspondence related to the Cars shall be separately recorded and maintained by Lessee in a form suitable for reasonable inspection by TRSC from time to time during regular Lessee business hours. Lessee shall supply TRSC with such reports, including telephone reports of the number of Cars on Lessee's tracks, regarding the use of the Cars by Lessee on its railroad lines as TRSC may reasonably request. Lessee shall notify TRSC forthwith of any Car which is idle on the line of Lessee for more than seven (7) days. The parties acknowledge that optimum off-line usage of the Cars is the intention of the parties and TRSC shall be interested in notification of usage as soon as transmittal of such information is practical.

#### 5. Maintenance, Taxes and Insurance

A. Except as otherwise provided herein, TRSC will pay all costs, expenses, fees and charges incurred in connection with the use and operation of each of the Cars during its lease term and any extension thereof, including but not limited to repairs,

maintenance and servicing unless the same was occasioned by the fault of Lessee while such Car is in the physical possession of Lessee. All claims or actions on any warranty shall be made and prosecuted by TRSC at its sole expense and Lessee shall have no obligation to make any claim on such warranty. Any recovery under such warranty shall be payable solely to TRSC.

B. Except as provided above, TRSC shall make or cause to be made such inspections of, and maintenance and repairs to, the Cars as may be required. Upon the request and at the expense of TRSC, Lessee shall perform any necessary maintenance and repairs to Cars on Lessee's railroad tracks as may be reasonably requested by TRSC. TRSC shall also make, at its expense, all alterations, modifications or replacement of parts, as shall be necessary to maintain the Cars in good operating condition throughout the term of the lease of such Cars. Lessee may make running repairs to facilitate continued immediate use of a Car, but shall not otherwise make any repairs, alterations, improvements or additions to the Cars without TRSC's prior written consent. If Lessee makes any alterations, improvements or addition to any Car without TRSC's prior written consent, Lessee shall be liable to TRSC for any revenues lost due to such alteration. Title to any such alteration, improvement or addition shall be and remain with TRSC.

C. Lessee will at all times while this Agreement is in effect be responsible for the Cars while on Lessee's railroad tracks in the same manner that Lessee is responsible under Rule 7 of the AAR Car Service and Car Hire Agreement Code of Car Service Rules-Freight for cars not owned by Lessee on Lessee's railroad tracks. Lessee shall protect against the consequences of an event of loss involving

the Cars while on Lessee's railroad tracks by either obtaining insurance or maintaining a self insurance program which conforms to sound actuarial principles. If Lessee elects to carry insurance, it shall furnish TRSC concurrently with the execution hereof and thereafter at intervals of not more than 12 calendar months with a certificate of insurance with respect to the insurance carried on the Cars signed by an independent insurance broker. All insurance shall be taken out in the name of Lessee and TRSC (or its assignee) as their interests may appear.

D. TRSC agrees to reimburse Lessee for all taxes, assessments and other governmental charges of whatsoever kind or character paid by Lessee relating to each Car and on the Lease, delivery or operation thereof which may remain unpaid as of the date of delivery of such Car to Lessee or which may be accrued, levied, assessed or imposed during the lease term, except taxes on income imposed on Lessee and sales or use taxes imposed on the mileage charges and/or car hire revenues. Lessee will comply with all state and local laws requiring the filing of ad valorem tax returns on the Cars. TRSC shall review all applicable tax returns prior to filing.

## 6. Lease Rental

A. The parties agree that rental for the Cars shall be calculated as follows:

(i) For any day during which a Car is in use or idle on the line of Lessee, such Car shall be free of the obligation of any rental payment to TRSC.

(ii) For any day during which a Car is on the line of

another railroad, Lessee agrees to collect all monies, including the current mileage charges, per diem charges, demurrage charges and other fees from said railroad and remit to TRSC such amounts, minus 10% which shall be retained by Lessee.

(iii) In the event damage or destruction of a Car has been reported in accordance with Rule 7 of the AAR Car Service and Car Hire Agreement Code of Car Hire Rules - Freight and the appropriate amount due as a result thereof is received by TRSC, said damaged or destroyed Car will be removed from the coverage of this Agreement as of the date that payment of car hire payments ceased.

B. Lessee agrees to use its best efforts to collect all applicable monies relating to the Cars from off-line railroads and to cooperate fully with TRSC in any action or proceeding relating to the collection of such monies. Lessee will remit payments due to TRSC by the twentieth day of the month following the month in which Lessee receives Car rental for the Cars from off-line railroads.

#### 7. Possession and Use

A. So long as Lessee shall not be in default under this Agreement, Lessee shall be entitled to the possession, use and quiet enjoyment of the Cars in accordance with the terms of this Agreement and in the manner and to the extent Cars are customarily used in the railroad freight business. However, Lessee's rights shall be subject to the rights of any owner or secured party under any financing agreement entered into by TRSC in connection with the acquisition of Cars, i.e., upon notice to Lessee from any such secured party or owner that an event of default has occurred and is continuing under such financing agreement, such party may require that all rent shall be made directly to such party and/or that the Cars be returned to such

party. Lessee agrees that to the extent it has physical possession and can control use of the Cars, the Cars will at all times be used and operated under and in compliance with the laws of the jurisdiction in which the same may be located and in compliance with all lawful acts, rules and regulations and orders of any governmental bodies or offices having power to regulate or supervise the use of such property, except that either TRSC or Lessee may in good faith and by appropriate proceedings contest the application of any such rule, regulation or order in any reasonable manner at the expense of the contesting party.

B. Lessee will not directly or indirectly create, incur, assume, or suffer to exist any mortgage, pledge, lien, charge, encumbrance, or other security interest or claim on or with respect to the Cars or any interest therein or in this Agreement or Schedule thereto. Lessee will promptly, at its expense, take such action as may be necessary to duly discharge any such mortgage, pledge, lien, charge, encumbrance, security interest, or claim if the same shall arise at any time.

#### 8. Default

A. The occurrence of any of the following events shall be an event of default:

(i) The nonpayment by Lessee of any sum required herein to be paid by Lessee within ten days after the date any such payment is due.

(ii) The breach by Lessee of any other term, covenant, or condition of this Agreement, which is not cured within ten days thereafter.

(iii) Any act of insolvency by Lessee, or the filing by Lessee of any petition or action under any bankruptcy, reorganization, insolvency or moratorium law, or any other law or laws for the relief of, or relating to, debtors.

(iv) The filing of any involuntary petition under any bankruptcy, reorganization, insolvency or moratorium law against Lessee that is not dismissed within sixty (60) days thereafter, or the appointment <sup>of</sup> or any receiver or trustee to take possession of the properties of Lessee, unless such petition or appointment is set aside or withdrawn or ceases to be in effect within sixty (60) days from the date of said filing or appointment.

(v) Any action by Lessee to discontinue main line rail service on its tracks or abandon any material portion of its rail properties pursuant to applicable provisions of the Interstate Commerce Act or the law of any state.

B. Upon the occurrence of any event of default, TRSC may, at its option, in addition to all other remedies permitted by law, terminate this Agreement and may

(i) Proceed by any lawful means to enforce performance by Lessee of this Agreement thereof ( and Lessee agrees to bear TRSC's costs and expenses including reasonable attorneys fees, in securing such enforcement), or

(ii) By notice in writing to Lessee, terminate Lessee's right of possession and use of the Cars, whereupon all right and interest of Lessee in the Cars shall terminate, and thereupon TRSC may enter upon any premises where the Cars may be located and take possession of them and henceforth hold, possess and enjoy the same free from any right of Lessee, TRSC shall never-

theless have the right to recover from Lessee any and all rental amounts which under the terms of this Agreement may then be due or which may have accrued to that date.

#### 9. Termination

At the expiration or termination of this Agreement as to any Cars, Lessee will surrender possession of such Cars to TRSC by delivering the same to TRSC at a point on Lessee's railroad. A Car shall be no longer subject to this Agreement upon the removal of Lessee's railroad markings from the Car. TRSC shall designate markings to replace Lessee's either at the option of and the expense of TRSC (1) by Lessee upon return of such Cars the Lessee's railroad line or (2) by another railroad line which has physical possession of the Car at the time of or subsequent to termination of the lease term as to such Car. If such Cars are not on the railroad line of Lessee upon termination, any cost of assembling, delivering, storing, and transporting such cars to Lessee's railroad line or the railroad line of a subsequent lessee shall be borne by TRSC. After the removal and replacement of markings, if any, Lessee shall use its best efforts to load such Cars with freight and deliver them to a connecting carrier for shipment. Lessee shall provide up to thirty (30) days free storage on its railroad tracks for TRSC or the subsequent lessee of any terminated Car.

#### 10. Representations, Warranties and Covenants

Lessee represents, warrants and covenants that:

(i) Lessee is a corporation duly organized, validly existing and in good standing under the laws of the state where it is incorporated and has the corporate power, authority and is duly qualified and authorized to do business wherever necessary, to

carry out its present business and operations and to own or hold under lease its properties and to perform its obligations under this Agreement.

(ii) The entering into and performance of this Agreement will not violate any judgment, order, law or regulation applicable to Lessee, or result in any breach of, or constitutes a default under, or result in the creation of any lien, charge, security interest or other encumbrance upon any assets of Lessee or on the Cars pursuant to any instrument to which Lessee is a party or by which it or its assets may be bound.

(iii) There is no action or proceeding pending or threatened against Lessee before any court or administrative agency or other governmental body which might result in any material adverse effect on the business, properties and assets, or conditions, financial or otherwise, of Lessee so as to affect the ability of the Lessee to perform its obligations under this Agreement.

(iv) There is no fact which Lessee has not disclosed to TRSC in writing, nor is Lessee a party to any agreement or instrument or subject to any charter or other corporate restriction which, so far as the Lessee can now reasonably foresee, will individually or in the aggregate materially adversely affect the business, condition or any material portion of the properties of the Lessee so as to affect the ability of the Lessee to perform its obligations under this Agreement.

#### 11. Inspection

TRSC shall at any time during normal business hours have the right to enter the premises where the Cars may be located for the purpose of inspection and examining the Cars to insure Lessee's compliance with its obligations hereunder. Lessee shall immediately

notify TRSC of any accident connected with the malfunctioning or operation of the Cars, including in such report the time, place and nature of the accident and the damage caused, the names and addresses of any persons injured and of witnesses, and other information pertinent to Lessee's investigation of the accident. Lessee shall also notify TRSC in writing within five (5) days after any attachment, tax lien or other judicial process shall attach to any Car. Lessee shall furnish to TRSC promptly upon its becoming available, a copy of its annual report submitted to the ICC and, when requested, copies of any other income or balance sheet statements required to be submitted to the ICC.

12. Miscellaneous

A. This Agreement and the Schedules contemplated hereby shall be binding upon and shall insure to the benefit of the parties hereto and their respective successors and assigns, except that Lessee may not without the prior written consent of TRSC assign this Agreement or any of its rights hereunder or sublease the Cars to any party, and any purported assignment or sublease in violation hereof shall be void.

B. Both parties agree to execute the documents contemplated by this transaction and such other documents as may reasonably be required in furtherance of this Agreement.

C. It is expressly understood and agreed by the parties hereto that this Agreement constitutes a lease of the Cars only and no joint venture or partnership is being created. Notwithstanding the calculation of rental payments, nothing herein shall be construed as conveying to Lessee any right, title or interest in the Cars except as a lessee only.

D. No failure or delay by TRSC shall constitute a waiver

or otherwise affect or impair any right, power or remedy available to TRSC nor shall any waiver or indulgency by TRSC or any partial or single exercise of any right, power or remedy preclude any other or further exercise thereof the exercise of any other right, power or remedy.

E. This Agreement shall be governed and construed according to the laws of the State of New York.

F. All notices hereunder shall be in writing and shall be deemed given when delivered personally or when deposited in the United States mail, postage prepaid, certified or registered, addressed to the president of the other party at the address set forth above.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

TRANSAMERICA RAIL SERVICES CORP.

RICHMOND, FREDERICKSBURG AND POTOMAC RAILROAD COMPANY

BY: *McDonnell*

BY: *J. Newbarr*

TITLE: *Pres*

TITLE: *Vice Pres. - Admin.*

DATE: *11-4-80*

DATE: *October 17, 1980*

*Robert J. Reilly*

ROBERT J. REILLY  
Notary Public, State of New York  
No. 31-4679702  
Qualified in New York County  
Commission Expires March 30, 1982

My Commission Expires December 7, 1984

*E. a. Wallace*

LEASE SCHEDULE  
to the  
LEASE AGREEMENT  
between  
Transamerica Rail Services Corp.  
and  
Richmond, Fredericksburg and Potomac Railroad Company  
dated as of Dec. 9, 1980

FLATCAR NO.

RF&P 500 through 528

IN SERVICE DATE

December 9, 1980

Transamerica Rail Services Corp.

By: *[Signature]*

Title: PRES

Richmond, Fredericksburg and  
Potomac Railroad Company

By: *[Signature]*

Title: Vice President - Administration