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INTERSTATE COMMERCE COMMISSION

AGREEMENT AND INDENTURE  
(Security Agreement)

between

The Citizens and Southern National Bank of South Carolina,  
Owner Trustee

and

Aetna Business Credit, Inc.,  
Secured Party

Dated as of  
November 1, 1976

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## AGREEMENT AND INDENTURE

AGREEMENT AND INDENTURE (Security Agreement) dated as of November 1, 1976 between The Citizens and Southern National Bank of South Carolina, as trustee under the Trust Agreement (together with any and all successors in the trust created by the Trust Agreement hereinafter called the "Owner Trustee") and Aetna Business Credit, Inc., a corporation having an office at 111 Founders Plaza, East Hartford, Connecticut 06108 (hereinafter called "Aetna").

### RECITALS

A. The Owner Participants and the Owner Trustee have, pursuant to the terms of the Finance Agreement, entered into the Trust Agreement whereby, among other things (i) the Owner Trustee declares a certain trust for the use and benefit of the Owner Participants, subject, however, to the Security Interest created pursuant hereto, for the use and benefit of, and with the priority of payment to, Aetna, (ii) provision is made for the payment by the Owner Trustee to the Owner Participants entitled thereto of amounts distributable to the Owner Participants pursuant to the terms hereof and of the Trust Agreement and (iii) the Owner Trustee is authorized and directed to execute and deliver this Agreement and Indenture.

B. The Owner Trustee is the owner of, or pursuant to the Sale Agreement will upon payment of the Purchase Price thereof, become the owner of the railroad cars listed in Item 1 of Exhibit A hereto and the Owner Trustee has the full power to grant a security interest in all of its right, title and interest in and to such cars, including a security interest in cars to be acquired under the Sale Agreement. Such cars are presently leased by the Owner Trustee to the lessee described in Item 2 of Exhibit A hereto (such lessee and any subsequent lessee, being hereinafter called the "Lessee"), and the obligations of the Lessee under the Lease are guaranteed by the Guarantor pursuant to the Guaranty of Lease described in Item 2 of Exhibit A hereto.

C. To provide funds to be used to finance part of the purchase price of such railroad cars, the Owner Trustee has obtained the commitment of Aetna to make a loan to the Owner Trustee in an aggregate principal amount not to exceed Two Million Three Hundred Ten Thousand Dollars (\$2,310,000) to be evidenced by the Owner Trustee's 14% Equipment Promissory Notes (nonrecourse), (hereinafter called the "Notes").

D. The Owner Trustee has herein and in the Loan Agreement provided for the issue and delivery by the Owner Trustee of the Notes, the granting of a Security Interest to Aetna in the Equipment and the assignment to Aetna of the Lease covering the Cars.

E. All things necessary to make this Agreement and Indenture ("Indenture") a valid and legally binding obligation of the Owner Trustee, for the uses and purposes herein set forth, in accordance with its terms, have been done and performed and have happened.

#### AGREEMENT

NOW, THEREFORE, THIS AGREEMENT AND INDENTURE WITNESSETH, that to secure the payment of the principal of and interest on all the Notes issued and delivered hereunder and outstanding, the payment of all other sums due hereunder and the performance of the covenants therein and herein contained, and in consideration of the premises and of the covenants herein contained and of the purchase of the Notes by Aetna (and any other or subsequent holders thereof) and the sum of \$1.00 paid to the Owner Trustee by Aetna at or before the delivery hereof, the receipt and sufficiency whereof is hereby acknowledged;

#### Granting Clause

A. The Owner Trustee by these presents does grant, bargain, sell, release, convey, assign, transfer, mortgage, hypothecate, pledge, confirm and grant a security interest in, unto Aetna, its successors and assigns, all and singular of the Owner Trustee's right, title and interest in and to the following described property, rights and privileges, to wit:

##### I.

The railroad cars listed in Item 1 of Exhibit A hereto.

##### II.

All substitutions, replacements, accessories, equipment, parts and appurtenances, additions and modifications of or to all or any part of the property described in I above whether the same are now owned by the Owner Trustee or shall hereafter be acquired by the Owner Trustee.

##### III.

All additional railroad cars and accessories, parts and items of equipment and other property which shall be subjected to the lien hereof by supplemental indenture or indentures or by writing of any kind.

IV.

All of the right, title and interest of the Owner Trustee in the Lease and all of the rents, tolls, issues, profits, products, revenues and other income and proceeds of any nature of or from the property subjected or required to be subjected to the lien of this Indenture and all the estate, right, title and interest of every nature whatsoever of the Owner Trustee in and to the same and every part thereof.

V.

All amounts of indemnity payable by the Lessee under the Lease, other than any indemnity which by the terms hereof and of the Lease shall be payable directly to an Owner Participant or the Owner Trustee, for its own account.

The property described in I, II and III is hereinafter sometimes referred to as "Equipment" or "Cars", and a part thereof as a "Car", an "Item of Equipment", an "Item" or certain "Cars", and all of the property described in I through V, inclusive, is together herein referred to as the "Indenture Estate".

B. To have and to hold, all and singular, the aforesaid property unto Aetna, its successors and assigns, as security for the Notes and for the uses and purposes and subject to the terms and provisions set forth in this Indenture, subject, however, to the rights of the Lessee under the Lease.

C. In order to effectuate the foregoing and to secure payment, performance and observance, for the same consideration as set forth above, the Owner Trustee has, pursuant to the Assignment of Lease, sold, assigned, transferred and set over and does hereby sell, assign, transfer and set over unto Aetna, and its successors and assigns, all of the right, title and interest of the Owner Trustee under, in and to (i) the Lease as from time to time supplemented or amended, and (ii) all monies and claims for monies due and to become due to the Owner Trustee, and all claims for damages in respect of any Casualty Occurrence with respect to the Equipment.

D. It is expressly agreed that anything herein contained to the contrary notwithstanding, the Owner Trustee shall remain liable under the Lease to perform any and all of the obligations assumed by it thereunder, all in accordance with and pursuant to the terms and provisions thereof. Aetna shall have no obligation or liability under the Lease by reason of or arising out of the assignment of the Lease, nor shall Aetna be required or obligated in any manner to perform or fulfill any obligations of the Owner Trustee under or pursuant to the Lease except as may be herein expressly provided.

E. The Owner Trustee does hereby constitute Aetna the true and lawful attorney for the Owner Trustee, irrevocably, with full power (in the name of the Owner Trustee or otherwise) to ask, require, demand, receive, compound and give acquittance for any and all monies and claims for monies due and to become due under or arising out of the Lease, to endorse any checks or instruments or orders in connection therewith and to file any claims or take any action or institute any proceedings which Aetna may deem to be necessary or advisable in the premises. The Owner Trustee agrees that promptly upon receipt thereof, it will transfer to Aetna any and all monies from time to time received by it constituting part of the Indenture Estate, except that the Owner Trustee shall accept for distribution pursuant to the Trust Agreement (i) any amounts distributed to it by Aetna under this Indenture and (ii) any indemnification or similar payments required hereunder and under the Lease to be made directly to the Owner Trustee for the benefit of the Owner Trustee or one or more Owner Participants.

F. The Owner Trustee agrees that at any time and from time to time, upon the written request of Aetna, the Owner Trustee will promptly and duly execute and deliver any and all such further instruments and documents as Aetna may deem desirable in obtaining the full benefits of this Indenture, any assignment pursuant hereto and any of the rights and powers herein granted.

G. The Owner Trustee does hereby warrant and represent that it has not assigned or pledged, and hereby covenants that it will not assign or pledge, so long as the Assignment of Lease and this Indenture shall remain in effect, any of its right, title or interest thereby or hereby assigned, to anyone other than Aetna, and that it will not, except as provided in this Indenture, enter into any agreement amending or supplementing the Lease, accept any payment from the Lessee, settle or compromise any claim against the Lessee arising under the Lease, or submit or consent to the submission of any dispute, difference or other matter arising under or in respect of the Lease to arbitration thereunder.

It is hereby covenanted and agreed by and between the parties hereto as follows:

## ARTICLE I

### Definitions

Section 1.1 Certain Definitions. For purposes of this Indenture, the following terms shall have the respective meanings set forth below or provided for in the section of this Indenture following such term (such definitions to be equally applicable to both the singular and plural forms of the terms defined):

- A. "Assignment of Lease" or "Assignment" - The instrument in substantially the form and text attached hereto as Exhibit C executed and delivered by the Owner Trustee to Aetna with respect to all of the Cars.
- B. "Cars" - Paragraph A of the Granting Clause hereof.
- C. "Casualty Occurrence" - Section 4.6.
- D. "Casualty Prepayment Amount" - Section 4.8.
- E. "Casualty Prepayment Date" - Section 4.7.
- F. "Consent to Assignment" - The instrument substantially in the form and text attached to the Finance Agreement as Exhibit G thereto executed and delivered to Aetna by the Lessee and the Guarantor.
- G. "Default" - Any event or condition the occurrence of which would, with the lapse of time or the giving of notice or both, become an Event of Default.
- H. "Due" and "Payable" - When used with reference to the principal of, or interest on, any Note or portion thereof, shall mean due and payable, whether at the date of maturity specified in relevant Note or by acceleration, operation of the prepayment provisions of this Indenture, or otherwise.
- I. "Equipment" - Paragraph A of the Granting Clause hereof.
- J. "Event of Default" - Article 6.
- K. "Finance Agreement" - The finance agreement among Aetna, the Owner Trustee, the Lessee, the Owner Participants and the Guarantor pursuant to which this Indenture has been entered into.
- L. "Guarantor" - The Guarantor pursuant to the Guaranty of Lease.
- M. "Guaranty of Lease" - The Guaranty of Lease more particularly described in Item 2 of Exhibit A hereto guarantying the obligations of the Lessee under the Lease.
- N. "Impositions" - Section 3.2.
- O. "Indenture Estate" - Paragraph A of the Granting Clause hereof.
- P. "Item" or "Item of Equipment" - Paragraph A of the Granting Clause hereof.

Q. "Lease" - The lease more particularly described in Item 2 of Exhibit A hereto guaranteed as therein described and covering the Equipment therein indicated, a photocopy of which has been delivered by the Owner Trustee to Aetna, and any amendments thereto, guaranties thereof, security interests granted to secure obligations thereunder and any new leases executed and delivered as permitted hereby or by any supplemental indenture or indentures hereto. All terms defined in the Lease and not defined herein shall have the meanings ascribed to them in the Lease unless the context hereof otherwise requires.

R. "Lien of this Indenture", "Lien Hereof", and "Security Interest" - Shall mean any lien or security interest created by this Indenture or by the Assignment of Lease or any other instrument executed in favor of Aetna pursuant to any of the provisions hereof.

S. "Loan Agreement" - Shall mean that certain loan agreement between the Owner Trustee and Aetna providing, among other things, for the loan to be evidenced by the Notes.

T. "Note" - Any note issued pursuant to the provisions of Section 2.1.

U. "Noteholder" - Any holder of any Note, whether Aetna or any successor or assign of Aetna.

V. "Opinion of Counsel" - An opinion of independent counsel (which may, from time to time, serve as counsel for the Owner Trustee or the Lessee) acceptable to Aetna which opinion is in scope, form and substance satisfactory to Aetna and Aetna's counsel.

W. "Owner Participants" - The Trustors named or provided for in the Trust Agreement.

X. "Owner Trustee" - The Owner Trustee named at the beginning of this Indenture and its successors, if any, in the trusts created by the Trust Agreement.

Y. "Payment Date" - Any date on which is due a regular installment under any Note.

Z. "Payment Date Number" - With respect to any Payment Date on any Note shall mean the number of regular installments (including the one to be made on such Payment Date) which shall have been due on such Note on or before such Payment Date.

AA. "Person" - An individual, partnership, corporation, trust or unincorporated organization, and a government or agency or political subdivision thereof.

BB. "Purchase Price" - With respect to any Item of Equipment means the price paid for such Item of Equipment by the Owner Trustee as shown on a bill of sale issued pursuant to the Sale Agreement.

CC. "Responsible Officers" - With respect to the Owner Trustee shall mean the Chairman of the Board of Directors, any Vice Chairman of the Board of Directors, the Chairman of the Executive Committee, the President, the Chairman of the Trust Committee, every Vice President in the trust department, every second or other Vice President in the trust department, every Assistant Treasurer in the trust department, the Secretary, every Trust Officer and every officer and assistant officer of such Trustee, other than those specifically above-mentioned, to whom any corporate trust matter is referred because of his knowledge of, or familiarity with, a particular subject or because of his assigned duties.

DD. "Sale Agreement" - The sale agreement entered into by the Owner Trustee pursuant to the Finance Agreement pursuant to which the Cars have been or will be acquired.

EE. "This Indenture", "The Indenture" and "Indenture" - shall mean this instrument as originally executed or as it may from time to time be supplemented or amended and also, wherever the context permits, the Assignment of Lease and any other instrument executed in favor of Aetna pursuant to any of the provisions hereof.

FF. "Trust Agreement" - The Trust Agreement between the Owner Participants and the Owner Trustee, more particularly described in Item 3 of Exhibit A hereto, a photocopy of which has been delivered by the Owner Trustee to Aetna.

## ARTICLE II

### Loan and Notes

#### Section 2.1 Issue of Notes and Payment.

A. The aggregate principal amount of Notes which may be issued and secured by this Indenture is limited to Two Million Three Hundred Ten Thousand Dollars (\$2,310,000).

B. The Owner Trustee will issue and deliver to Aetna a Note (or series of Notes) in the aggregate principal amount provided for in Section 2.1(A) hereof or such lesser amount as may equal the total amount of loans required to be advanced by Aetna under the provisions of the Loan Agreement. All loan advances made by Aetna shall be and constitute required advances.

C. Each Note shall be substantially in the form set forth in Exhibit B hereto, and shall mature 121 months from the 15th day of the calendar month next following the calendar month in which was made the loan evidenced thereby, but in no event shall any Note mature subsequent to February 15, 1987.

Section 2.2 Payments From Indenture Estate Only. All payments to be made by the Owner Trustee on account of the Notes or under this Indenture shall be made only from the Indenture Estate and only to the extent that the Owner Trustee shall have sufficient income or assets from the Indenture Estate to make such payments. Aetna hereby agrees, for itself and its successors and assigns, by its acceptance of any Note, that it will look solely to the Indenture Estate, to the extent available, for distribution to it as herein provided and that neither the Owner Participants nor the Owner Trustee shall be personally liable to Aetna for any amounts payable on or pursuant to any Note or this Indenture or, except as provided herein, for any liability under this Indenture. Anything in this Section 2.2 to the contrary notwithstanding, nothing herein shall relieve the Owner Trustee from any liability incurred as a result of its own misrepresentation, breach of warranty, bad faith or negligence.

Section 2.3 Direct Payment. Except as otherwise provided herein, no Note need be presented in order to receive any payment due or prepayment required thereon, so long as the Note is owned by Aetna. Notwithstanding any provision to the contrary herein or in the Notes with respect to the place of payment, each payment and prepayment due to Aetna shall be made in the form of a federal funds bank wire transfer at the address and in the manner specified in Item 4 of Exhibit A hereto or in accordance with any unrevoked written direction from Aetna to the Owner Trustee. The principal amount of the Note shall be recorded on Aetna's internal data control systems and each payment of principal with respect to the Note or any portion thereof, when received, shall be evidenced by entries made by Aetna in Aetna's internal data control systems, showing the date and amount of the Note and/or each payment of principal with respect thereto. The aggregate unpaid amount of each Note set forth on the most recent data control systems print-out of Aetna shall be rebuttably presumptive evidence of the sum owing and unpaid on such Note. The Owner Trustee shall be fully protected against and shall have no liability under any claim by a holder of any Note of wrongful payment or prepayment or nonpayment if such payments or prepayments have been directed to Aetna as above provided unless and until (i) such Note is transferred and (ii) the Owner Trustee has been notified thereof in writing.

Section 2.4 Covenant to Pay. The Owner Trustee agrees, subject to the provisions of Section 2.2 hereof, to punctually pay or cause to be paid to Aetna any and all principal and interest (and premium, if any) to become due in respect of the Notes in accord with the terms thereof and hereof.

Section 2.5 Option to Prepay. The Owner Trustee shall have the right to prepay the Notes as and to the extent provided for in Section 2.5 of the Loan Agreement.

ARTICLE III

Receipt, Distribution and Application of Income  
From the Indenture Estate

Section 3.1 Application of Rent Payments Received From Lessee. As more particularly provided in the Assignment of Lease, Aetna agrees to accept for the account of the Owner Trustee any payments made by the Lessee pursuant to the Lease which are made to Aetna pursuant to the Indenture and the Assignment of Lease. As more particularly provided in the Assignment of Lease, to the extent received, Aetna will apply such payments to satisfy the obligations of the Owner Trustee then due and payable under the Notes and this Indenture, and, so long and only so long as there is no Default or Event of Default existing and continuing hereunder, any balance (if there be one) shall be paid forthwith to and retained by the Owner Trustee for distribution pursuant to the Trust Agreement.

Section 3.2 Payment of Taxes. All payments to be made by the Owner Trustee hereunder will be free of expense to Aetna for collection or other charges and will be free of expense to Aetna with respect to the amount of any local, state, federal or foreign taxes, license and registration fees, assessments, charges, fines, penalties, sales, use and property taxes, gross receipt taxes arising out of receipts from use or operation of the Equipment and other taxes, fees, and governmental charges similar or dissimilar to the foregoing (other than net income, excess profits and similar taxes), assessments or license fees and any charges, fines or penalties in connection therewith (hereinafter collectively called "Impositions") hereafter levied or imposed upon or in connection with or measured by this Indenture or the Lease or any sale, rental, use, payment, shipment, delivery or transfer of title under the terms hereof or of the Lease or the Sale Agreement, all of which Impositions the Owner Trustee assumes and agrees to pay on demand in addition to the payments to be made by it provided for herein. The Owner Trustee will also pay promptly all Impositions which may be imposed upon any Item of Equipment or for the use or operation thereof or upon the earnings arising therefrom or upon Aetna solely by reason of its Security Interest therein and will keep at all times all and every part of such Item of Equipment free and clear of all Impositions which might in any way affect the Security Interest of Aetna or result in a lien upon any such Item of Equipment; provided, however, that the Owner Trustee shall be under no obligation to pay any Impositions so long as it is contesting in good faith and by appropriate legal proceedings, or causing such contest of, such Impositions and the nonpayment thereof does not, in the advance written opinion of Aetna, adversely affect the Security Interest of Aetna hereunder. If any Impositions shall have been charged or levied against Aetna directly and paid by Aetna, the Owner Trustee shall reimburse Aetna upon presentation of invoice therefor; provided, however, that the Owner Trustee shall not be obligated to reimburse Aetna for any Impositions so paid unless Aetna shall have submitted notice in writing to the Lessee at least ten (10) business days in advance of payment thereof.

In the event any reports with respect to Impositions are required to be made on the basis of individual Items of Equipment, the Owner Trustee will either make such reports in such manner as to show the interests of the Lessee, the Lessor and Aetna in such Items of Equipment or notify Aetna of such requirement and make such reports in such manner as shall be satisfactory to Aetna.

#### ARTICLE IV

##### Provisions Regarding Security

Section 4.1 Assignment. As further security for the performance by the Owner Trustee of its obligations hereunder and under the Notes, the Owner Trustee will contemporaneously with the execution of this Indenture by the Owner Trustee and Aetna (i) deliver to Aetna a photocopy of the Lease, (ii) deliver to Aetna an executed copy of the Assignment of Lease, (iii) will deliver to Aetna an executed copy of the Consent to Assignment and (iv) will promptly cause this Indenture, the Lease and the Assignment to be duly filed, registered, recorded or deposited and refiled, reregistered, rerecorded or redeposited in conformity with the Interstate Commerce Act and in such other places within or without the United States as Aetna may reasonably request for the protection of its Security Interest and will furnish to Aetna proof thereof. The Owner Trustee will, from time to time, do and perform any other act and will execute, acknowledge, deliver, file, register record and deposit (and will refile, reregister, rerecord or redeposit whenever required) any and all further instruments required by law or reasonably requested by Aetna, for the purpose of protecting Aetna's Security Interest in the Equipment to the satisfaction of Aetna and its counsel or for the purpose of carrying out the intention of this Indenture, and in connection with any such action, will deliver to Aetna proof of such filings and an Opinion of Counsel that such action has been properly taken. The Owner Trustee will pay all costs, charges and expenses incident to its compliance with the foregoing provisions of this Section 4.1.

Section 4.2 Compliance With Laws, Regulations, Etc. The Owner Trustee will comply, and cause the Lessee of the Equipment to comply, in all respects (including, without limitation, with respect to the use, maintenance and operation of the Equipment) with all laws, regulations, requirements and rules of the jurisdictions in which operations involving the Equipment may extend, with the Interchange Rules of the Association of American Railroads 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, regulations, requirements and rules affect the title, maintenance, operation or use of the Equipment, and in the event that such laws, regulations, requirements or rules require any alteration, replacement or addition of or to any Item of Equipment or any part thereof or thereon, the Owner Trustee will conform therewith at its own expense and will maintain the same in proper condition for operation under such laws, regulations, requirements and rules, provided, however, that the Owner Trustee may, in good faith, contest the validity or application of any such law, regulation, requirement or rule in any reasonable manner which does not, in the opinion of Aetna, adversely affect the property, the value of the property or rights of Aetna under this Indenture.

Section 4.3 Use and Maintenance of Equipment. The Owner Trustee shall, at its own cost and expense, maintain and keep the Equipment in good order, condition and repair, ordinary wear and tear excepted, suitable for use in interchange. The Owner Trustee shall not modify, or allow modification of, any Item of Equipment without the written authority and approval of Aetna which shall not be unreasonably withheld, provided that no such approval shall be necessary if, and to the extent such modification is required by Section 4.2 hereof. Any parts installed or replacements made by the Owner Trustee or the Lessee upon any Item of Equipment shall be considered accessions to such Item of Equipment and title thereto shall be immediately vested in the Lessor (without cost or expense to the Lessor, in the case of any part installed or replaced by the Lessee), subject to the Security Interest of Aetna.

Section 4.4 Liens on the Equipment. The Owner Trustee shall pay or satisfy and discharge any and all sums claimed by any Person against, through or under; it or the Lessee or its or the Lessee's successors or assigns which, if unpaid, might result in a lien, charge or security interest upon or with respect to the Equipment, or any Item of Equipment, and any liens, encumbrances or charges which may be levied against or imposed upon any Item of Equipment as a result of the failure of the Owner Trustee to perform or observe any of its covenants or agreements under this Indenture; but the Owner Trustee shall not be required to pay or discharge any such claims so long as it shall, in good faith and by appropriate legal proceedings contest, or cause the contest of, the validity thereof in any reasonable manner which will not, in the written opinion of Aetna, affect or endanger the Security Interest of Aetna in the Equipment.

This covenant will not be deemed breached by reason of liens for taxes, assessments or governmental charges or levies, in each case not due and delinquent, or undetermined or

inchoate materialmen's, mechanics', workmen's, repairmen's or other like liens arising in the ordinary course of business and, in each case, not delinquent.

Section 4.5 Insurance. The Owner Trustee will at all times after delivery and acceptance of each Item of Equipment, at its own expense, procure and maintain or cause to be procured and maintained insurance for each such Item written by a sound and reputable insurance company or companies satisfactory to Aetna for all risk, physical loss and damage in an amount equal at all times to the Casualty Value thereof. Such insurance may provide that losses shall be adjusted with the Lessee and shall provide that the proceeds thereof shall be subject to a lender's loss payable endorsement in favor of Aetna and shall be payable to the Owner Trustee, Aetna, and the Lessee as their interests shall appear. All proceeds of insurance received by the Owner Trustee or Aetna with respect to any Item of Equipment not suffering a Casualty Occurrence (as hereinafter defined) shall be paid to the Owner Trustee upon proof satisfactory to Aetna that any damage to any Item with respect to which such proceeds were paid has been fully repaired. Any such proceeds of insurance received by Aetna with respect to a Casualty Occurrence shall be credited toward the payment required by Section 4.7 with respect to such Casualty Occurrence.

Section 4.6 Duty of Owner Trustee to Notify Aetna. In the event that any Item of Equipment shall (a) be or become worn out, lost, stolen, destroyed or irreparably damaged during the term of the Lease, including any renewal term thereunder, or thereafter while the Item of Equipment is in the possession of the Lessee pursuant to Section 13 or 15 of the Lease, or (b) be requisitioned or taken over by any governmental authority under the power of eminent domain or otherwise during the term of the Lease, including any renewal term thereunder (any such occurrence under (a) or (b) above, except for any requisition which by its terms is for an indefinite period or is for a stated period which does not exceed the term of the Lease, being hereinafter called a "Casualty Occurrence"), the Owner Trustee shall promptly and fully (after it has knowledge of such Casualty Occurrence) inform Aetna in regard thereto and shall pay the Casualty Prepayment Amount (computed in accordance with the provisions of Section 4.8) for such Item as a prepayment on the Notes in accordance with the terms hereof.

Section 4.7 Payment for Casualty Occurrence. The Owner Trustee, on the next succeeding Payment Date following a Casualty Occurrence with respect to any Item of Equipment (a "Casualty Prepayment Date"), shall pay to Aetna, in addition to any and all payments on the Notes otherwise due on such Payment Date, a sum equal to the Casualty Prepayment Amount of such Item

of Equipment as of the date of such payment. Concurrently with each payment of Casualty Prepayment Amount the Owner Trustee shall file or cause to be filed with Aetna (i) a certificate executed by the President or a Vice President and the chief accounting officer of the Lessee setting forth the Casualty Value of each Item of Equipment for which Casualty Prepayment is then being paid and (ii) a certificate of the Owner Trustee setting forth the Casualty Prepayment Amount for each such Item of Equipment.

Section 4.8 Casualty Prepayment Amount. The "Casualty Prepayment Amount" with respect to each Item of Equipment shall be an amount (determined as of the date the Casualty Prepayment Amount is paid, as provided in Section 4.7, and not as of the date of the Casualty Occurrence) equal to that percentage of the Purchase Price (as such purchase price is set forth in a bill of sale issued pursuant to the Sale Agreement) of such Item of Equipment set forth, in the Schedule of Casualty Prepayment Amounts attached hereto as Schedule I, opposite the Payment Date Number corresponding to the Payment Date (under the Note to which the Casualty Prepayment Amount will be applied pursuant to Section 4.9) on which falls the Casualty Prepayment Date.

Section 4.9 Application of Casualty Prepayment Amount. Any Casualty Prepayment Amount paid to Aetna pursuant hereto shall be applied to the outstanding principal amount of the Note issued at the closing under the Loan Agreement at which, or contemporaneously with which, the Owner Trustee acquired full title to and paid for the Item which suffered the Casualty Occurrence giving rise to such prepayment.

Section 4.10 Assignment of Insurance. In the event the Lease requires the Lessee to insure the Equipment and name the Owner Trustee as an insured, the Owner Trustee does hereby assign and by separate instrument will assign to Aetna its rights to the proceeds of any such insurance and direct the Lessee and its insurer to deliver to Aetna the proceeds otherwise payable to the Owner Trustee. The proceeds so delivered shall be treated by the Owner Trustee and Aetna as payments made on account of Casualty Prepayment Amounts as herein provided for.

Section 4.11 Release, Substitution and Replacement. So long, but only so long, as no Event of Default has occurred and is continuing hereunder, Aetna shall execute a release in respect of any Car suffering a Casualty Occurrence with respect to which the Casualty Prepayment Amount has been paid pursuant hereto.

Section 4.12 Further Assurances.

A. The Owner Trustee, will, at any time and from time to time, promptly upon the reasonable request of Aetna execute in favor of Aetna and deliver to Aetna a supplemental indenture or mortgage or security agreement on any of the Equipment and an

assignment of lease for any lease of the Equipment in form and substance requested by Aetna and cause the same to be duly filed with the Interstate Commerce Commission. Unless prohibited by law, Aetna is hereby constituted the attorney-in-fact of the Owner Trustee and is hereby authorized to take such action or execute, for and in the name of the Owner-Trustee, any and all documents necessary to give effect to the terms of this Indenture.

B. Whenever, under applicable law, it is necessary or desirable that any chattel mortgage or security agreement be otherwise filed, recorded, refiled, or rerecorded to create or to continue in effect the lien thereof, the Owner Trustee will cause such chattel mortgage or security agreement to be filed, recorded, refiled or rerecorded and will furnish to Aetna evidence of each such filing, recording, refiling or rerecording and an Opinion of Counsel covering such filing, recording, refiling or rerecording.

Section 4.13 Duty to Number and Mark Equipment. The Owner Trustee will cause each Item of Equipment to be kept numbered with the Lessee's road number as set forth in Annex B to the Lease, or in the case of Equipment not there listed, such identifying number as shall be set forth in any amendment or supplement thereto extending the Lease to cover such Equipment, and will cause to be kept and maintained, plainly, distinctly, permanently and conspicuously marked by a plate or stencil printed in contrasting color upon each side of each Item of Equipment in letters not less than one inch in height the words set forth in Item 5 of Exhibit A hereto, with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect (i) the title of the Lessor to such Item of Equipment, (ii) the Lessor's rights under the Lease and (iii) Aetna's rights hereunder. The Owner Trustee will not allow the Lessee to place any such Item of Equipment in operation or to exercise any control or dominion over the same until the required legend shall have been so marked on both sides thereof and will cause any such name or names and word or words which may be removed, defaced or destroyed to be promptly replaced. The Owner Trustee will not change, or consent to the changing of, the road number of any Item of Equipment except with the consent of Aetna and in accordance with a statement of new road numbers to be substituted therefor, which consent and statement previously shall have been filed with Aetna by the Owner Trustee and filed, recorded or deposited in all public offices where this Indenture and the Lease shall have been filed, recorded or deposited.

Section 4.14 Prohibition Against Certain Designations. Except as above provided, the Owner Trustee will not allow the name of any Person to be placed on the Equipment as a designation

that might be interpreted as a claim of ownership or Security Interest; provided, however, that, in accordance with the terms of the Lease, the Lessee may cause the Equipment to be lettered with the names or initials or other insignia customarily used by the Lessee, its affiliates, or sublessees (under subleases permitted by the Lease) on railroad equipment used by it, such affiliate or such sublessee of the same or a similar type for convenience of identification of the right of the Lessee, such affiliate or such sublessee to use the Equipment under the Lease.

## ARTICLE V

### Satisfaction and Discharge

Section 5.1 Payment of Indebtedness - Satisfaction. This Indenture and the rights and interests hereby or in any instrument executed and delivered pursuant hereto created and granted shall cease to be of further effect and become null and void when the Owner Trustee:

(i) has paid the entire indebtedness on all Notes outstanding hereunder; and

(ii) has paid or caused to be paid all other sums payable hereunder by the Owner Trustee.

Section 5.2 Evidence of Satisfaction. Aetna shall, if so requested to do by the Owner Trustee, execute and deliver such documents as may be necessary to acknowledge satisfaction and discharge of this Indenture and to release the lien hereof and that of the Assignment or Assignments of Lease, upon the satisfaction hereof and of the Notes pursuant to Section 5.1 hereof.

## ARTICLE VI

### Defaults - Remedies

Section 6.1 Events of Default. The term "Event of Default" for the purposes hereof shall mean any one or more of the following:

A. The Owner Trustee shall fail to make any payment of interest, principal or premium on any Note on or before the date such payment is due;

B. The Owner Trustee shall fail to make any other payment required hereby on or before the date such payment is due;

C. The Owner Trustee shall fail or refuse to comply with any other covenant, condition, agreement, term or provision of this Indenture on its part to be kept or performed or to make a provision satisfactory to Aetna for such compliance for more

than thirty (30) days after such failure shall first become known to any Responsible Officer of the Owner Trustee;

D. Any representation or warranty made by any of the Owner Participants or by the Owner Trustee in this Indenture, the Finance Agreement, the Loan Agreement or any statement or certificate furnished pursuant to any term of this Indenture, the Finance Agreement, the Loan Agreement or in any document or instrument relating to the making of any loan or loans evidenced by the Notes, shall prove to be untrue in any material respect as of the date made or given;

E. The Owner Trustee shall file or have filed against it a petition under any bankruptcy, reorganization, arrangement, insolvency, readjustment of debt, dissolution or liquidation law of any jurisdiction, whether now or hereafter in effect, or a receiver, liquidator or trustee shall be appointed for the Owner Trustee or any of its property or the Owner Trustee shall make any assignment for the benefit of its creditors or admit in writing its inability to pay its debts generally as they become due;

F. The Owner Trustee shall make or suffer any unauthorized assignment or transfer of the Indenture Estate, or any interest therein; or

G. An Event of Default shall have occurred and be continuing under the Lease or the Guarantor shall default in any of its obligations under the Guaranty of Lease.

Section 6.2 Remedies. When any Event of Default has happened and is continuing, Aetna may exercise any one or more or all, and in any order, of the remedies hereinafter set forth, it being expressly understood that no remedy herein conferred is intended to be exclusive of any other remedy or remedies; but each and every remedy shall be cumulative and shall be in addition to every other remedy given herein or now or hereafter existing at law or in equity or by statute:

A. Aetna may, upon written notice to the Owner Trustee, and upon compliance with any legal requirements then in force and applicable to such action by Aetna, declare the entire indebtedness in respect of the Notes, together with interest thereon then accrued and unpaid, and, to the extent permitted by law, a premium in the amount which would have been payable if the Owner Trustee had then elected to prepay the Notes at the premium provided by Section 2.5, immediately due and payable, without further demand, and thereafter the aggregate of such indebtedness, interest and premium (the aggregate of which is hereinafter sometimes called the "Default Indebtedness") shall bear interest from the date of such declaration at the lower of (a) the rate of

16% per annum or (b) the highest rate allowed by applicable law, and Aetna shall, subject to the provisions and limitations of Section 2.2 hereof, thereupon be entitled to recover judgment for the entire unpaid balance of Default Indebtedness, with interest as aforesaid, and to collect such judgment out of any property of the Owner Trustee.

B. Subject always to the then existing rights, if any, of the Lessee under the Lease, Aetna may (subject to compliance with any applicable mandatory legal requirements) take immediate possession of the Indenture Estate, or any portion thereof, and for that purpose may pursue the same wherever it may be found.

C. Subject always to the then existing rights, if any, of the Lessee under the Lease, Aetna may (if at any time such action may be lawful and always subject to compliance with any mandatory legal requirements) either with or without taking possession and either before or after taking possession, and without instituting any legal proceedings whatsoever, and having first given notice of such sale by registered or certified mail to the Owner Trustee at least 10 days prior to the date of such sale (and any other notice which may be required by law), sell and dispose of the Indenture Estate, or any part thereof, at public auction or private sale to the highest bidder, in one lot as an entirety or in separate lots, and either for cash or on credit and on such terms as Aetna may determine, and at any place (whether or not it be the location of the Indenture Estate or any part thereof) designated in the notice above referred to. Any such sale or sales may be adjourned from time to time by announcement at the time and place appointed for such sale or sales, or for any such adjourned sale or sales, without further published notice; and Aetna may bid and become purchaser at any sale.

D. Aetna may proceed to protect and enforce this Indenture and the Notes by suit or suits or proceedings in equity, at law or in bankruptcy, and whether for the specific performance of any covenant or agreement herein contained or in execution or aid of any power herein granted, or for foreclosure hereunder, or for the appointment of a receiver or receivers for the Indenture Estate or any part thereof, or for the recovery of judgment for the indebtedness hereby secured or for the enforcement of any other proper legal or equitable remedy available under applicable law.

E. Aetna may proceed to exercise, in respect of the Lease and the Equipment covered thereby and the duties, obligations and liabilities of the Lessee thereunder, all rights, privileges and remedies in the Lease, or by applicable law permitted or provided to be exercised by the Owner Trustee, and may exercise all such rights and remedies either in its own name

or in the name of the Owner Trustee for Aetna's use and benefit. Without limiting any of the other terms of this Indenture or of the Assignment of Lease, it is acknowledged and agreed by the Owner Trustee that the Assignment of Lease shall be deemed to give and assign to and vest in Aetna all the rights and powers in this Section VI provided for.

Section 6.3 Application of Funds on Default. The purchase money proceeds and avails of any sale of the Indenture Estate or any part thereof, and the proceeds and avails of any other remedy hereunder, or other realization of the security hereby given, including the proceeds of any sale pursuant to Section 6.2 hereof, shall be applied:

A. First, to the payment of the cost and expenses of the sale, proceeding or other realization, including all costs and expenses and charges for pursuing, searching for, taking, removing, keeping, storing, advertising and selling such Indenture Estate or any part thereof, the reasonable fees and expenses of Aetna, attorneys and agents of Aetna in connection therewith and to the payment of all taxes, assessments or similar liens on all or any part of the Indenture Estate which may at that time be superior to the lien of this Indenture (unless such sale or other realization is subject to any such superior lien);

B. Second, to the payment of all advances made by Aetna hereunder, which were used for the purpose of preserving the Indenture Estate;

C. Third, to the payment of the whole amount remaining unpaid hereunder or on or pursuant to the Notes; and in case such proceeds shall be insufficient to pay in full the whole amount so due, owing or unpaid upon the Notes, then first, to the unpaid principal thereof, second, to unpaid interest thereon, and third, to any other amount due hereunder or on or pursuant to the Notes.

D. Fourth, to the payment of the surplus, if any, to the Owner Trustee or to whomsoever may be lawfully entitled to receive the same, or as a court of competent jurisdiction may direct.

If there be a deficiency, the Owner Trustee shall, subject always to the provisions of Section 2.2 hereof, remain liable therefor and shall forthwith pay the amount of any such deficiency to Aetna.

Section 6.4 Effect of Sale, Etc. Any sale or sales pursuant to the provisions hereof, whether under the power of sale granted hereby or pursuant to any legal proceedings, shall operate to divest the Owner Trustee of all right, title, interest,

claim and demand whatsoever, either at law or in equity, of, in and to the Indenture Estate, or any part thereof, so sold, and any property so sold shall be free and clear of any and all rights of redemption by, through or under the Owner Trustee. The Owner Trustee covenants that it will not at any time insist upon or plead, or in any manner whatever claim or take any benefit or advantage of, any stay or extension law now or at any time hereafter in force, nor claim, take nor insist upon any benefit or advantage of or from any law now or hereafter in force providing for the valuation or appraisal of the Indenture Estate or any part thereof, prior to any sale or sales thereof to be made pursuant to any provision herein contained or to a decree, judgment or order of any court of competent jurisdiction; nor, after such sale or sales, claim or exercise any right under any statute now or hereafter made or enacted by any state or otherwise to redeem the property so sold or any part thereof, and hereby expressly waives for itself and on behalf of each and every person acquiring any interest in or title to the Trust Estate or any part thereof subsequent to the date of this Indenture, all benefit and advantage of any such law or laws, and covenants that it will not invoke or utilize any such law or laws or otherwise hinder, delay or impede the execution of any power herein granted and delegated to Aetna, but will suffer and permit the execution of every such power as though no such right, power, law or laws had been made, given or enacted.

The receipt by Aetna, or by any person authorized under any judicial proceedings to make any such sale, shall be a sufficient discharge to any purchaser of the Indenture Estate, or of any part thereof, sold as aforesaid; and no such purchaser shall be bound to see the application of such purchase money, or be bound to inquire as to the authorization, necessity or propriety of any such sale. In the event at any such sale Aetna is the successful purchaser, it shall be entitled, for the purpose of making settlement or payment, to use and apply its Notes by crediting thereon the amount apportionable and applicable thereto out of the net proceeds of such sale.

Section 6.5 Delay or Omission; Not Waiver. No delay or omission of Aetna to exercise any right or remedy accruing upon any Event of Default shall impair any such right or remedy or constitute a waiver of any such Event of Default or acquiescence therein. Every right and remedy given by this article or by law to Aetna may be exercised from time to time as often as may be deemed expedient by Aetna.

Section 6.6 Restoration of Rights and Remedies. If Aetna shall have instituted any proceeding to enforce any right or remedy under this Indenture and such proceeding shall have

been discontinued or abandoned for any reason, or shall have been determined adversely to Aetna, then and in every such case the Owner Trustee and Aetna shall, subject to any determination in such proceeding, be restored severally and respectively to their former positions hereunder, and thereafter all rights and remedies of Aetna shall continue as though no such proceeding has been instituted.

## ARTICLE VII

### Warranties of Owner Trustee

Section 7.1 Corporate Organization and Authority. The Owner Trustee is a corporation duly organized, validly existing and in good standing under the laws of its jurisdiction of incorporation, has all requisite power and authority and all necessary licenses and permits to conduct its business as a trustee, to own the Indenture Estate and to act as the Trustee under the Trust Agreement.

Section 7.2 Sale of Notes and Ownership and Lease of Equipment; Legal and Authorized. The sale of the Notes pursuant to the Loan Agreement, the execution and delivery of this Indenture and the Notes, the purchase and lease of the Equipment and the execution and delivery of each and every other document or instrument executed and delivered by the Owner Trustee in connection with this Indenture or the sale of the Notes has been duly authorized by all necessary action on the part of the Owner Trustee. Each of this Indenture, the Lease and each and every other document or instrument executed and delivered by the Owner Trustee in connection with the sale of the Notes has been duly executed and delivered by the Owner Trustee and each is, and when each Note is executed and delivered by the Owner Trustee it will be, the valid and binding obligation of the Owner Trustee, legally enforceable in accordance with its terms except as such terms may be limited by bankruptcy, insolvency or similar laws affecting the enforcement of creditors' rights generally.

Section 7.3 Sale of Notes and Ownership and Lease of Equipment; No Conflicts. The sale of the Notes by the Owner Trustee and the compliance by the Owner Trustee with all of the provisions of this Indenture, the Lease, the Assignment of Lease and the Notes are within the powers of the Owner Trustee and are legal and will not conflict with, result in any breach in any of the provisions of, constitute a default under, or result in the creation of any lien upon the Indenture Estate or any part thereof under the provisions of the Charter or by-laws of the Owner Trustee or the Trust Agreement or any other agreement or instruments to which the Owner Trustee is a party or by which it may be bound.

Section 7.4 Governmental Consent. Neither the nature of the Owner Trustee, the Lessee, or any other party to this

transaction, nor any relationship between the Owner Trustee, the Lessee or any other party to this transaction, nor any circumstance in connection with the offer, issue, sale or delivery of the Notes, this Indenture, or any other document or instrument executed and delivered by the Owner Trustee in connection with the sale of the Notes is such as to require a consent, approval or authorization of, or filing, registration or qualification with, any governmental authority on the part of the Owner Trustee as a condition to the execution and delivery of the Notes, the Indenture, or any other document or instrument executed and delivered by the Owner Trustee in connection with the sale of the Notes or as a condition to the offer, issue, sale or delivery of the Notes except for any consents, approvals or authorizations, if any, which have been obtained and are in full force and effect.

Section 7.5 Warranty of Title. The Owner Trustee will, at the date of the subjection of all or any part of the Indenture Estate to the Security Interest hereof, own and be possessed of the Indenture Estate, or such part thereof, subject to no mortgage, pledge, lien, charge or encumbrance other than the Lease, the lien hereof and such liens or encumbrances as are specifically permitted by this Indenture; and will at such date have full power and lawful authority to assign, transfer, deliver and pledge or cause to be assigned, transferred, delivered and pledged, the entire Indenture Estate, or such part thereof, in the manner and form aforesaid. In giving this warranty, the Owner Trustee may rely upon warranties of the Manufacturer and the Lessee and the opinions of their respective counsel and the Owner Trustee shall not be responsible for liens, charges or encumbrances attaching prior to its acquisition of the Equipment if it received a warranty or opinion that such did not exist.

## ARTICLE VIII

### Miscellaneous

Section 8.1 Appointment of Collateral Trustee. If at any time Aetna should deem it advisable or desirable to assign or otherwise convey its interests hereunder to a collateral trustee, in trust for the benefit of the holders, from time to time, of the Notes (whether or not including Aetna), the Owner Trustee agrees to execute any and all documents and instruments as may be necessary to accomplish such purpose including, but not limited to, a collateral trust indenture meeting the requirements of the Trust Indenture Act of 1939, as may from time to time be amended.

Section 8.2 Counterparts. This Indenture may be executed in any number of counterparts, each of which if bearing the signature of all parties shall be deemed an original or any two or more of which containing in the aggregate the signatures of all parties shall together constitute but one and the same instrument which shall be deemed an original.

Section 8.3 Governing Law. The provisions of this Indenture and all rights and obligations of the parties hereunder shall be governed by, construed and enforced in accordance with the laws of the State of South Carolina; provided, however, that the parties shall be entitled to all rights conferred by any applicable federal statute, rule or regulation.

Section 8.4 Titles and Section Headings. The titles of the Articles and the Section Headings herein are for convenience only and shall not affect the construction hereof.

Section 8.5 Benefits of Indenture. This Indenture shall be for the sole and exclusive benefit of the Owner Trustee, Aetna and any other holder of the Notes hereby secured, and all covenants, agreements and rights shall inure to the benefit of or bind, as the case may be, such parties, their respective successors and assigns.

Section 8.6 Severability. In case any one or more of the provisions contained in this Indenture or in the Notes shall be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein and therein shall not in any way be affected or impaired thereby.

Section 8.7 Execution. Although for convenience this Indenture is dated as of the date first above written, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement and Indenture to be duly executed by their respective corporate officers thereunto duly authorized and their respective corporate seals to be hereunto affixed and attested all as of the day, month and year first above written.

THE CITIZENS AND SOUTHERN NATIONAL  
BANK OF SOUTH CAROLINA,  
Owner Trustee

(Seal)

By

*Ned Bryant*  
Title Vice President and Senior Trust Officer

Attest:

*Carroll*  
Secretary ASSISTANT TRUST OFFICER

AETNA BUSINESS CREDIT, INC.

(Seal)

By

*Lawrence D. Hillman*  
Title Loan Officer

Attest:

*Carroll*  
Secretary

State of COON :  
County of HARTFORD : ss.

On this 9 day of NOV, 1976, before me personally appeared Lawrence D. Gillman to me personally known, who being by me duly sworn, says that he is the John D. Gillman of John D. Gillman that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

(Seal)

Lawrence D. Gillman  
Title

My commission expires My Commission Expires Mar. 31, 1980.

State of SOUTH CAROLINA :  
County of GREENVILLE : ss.

On this 11<sup>th</sup> day of NOVEMBER, 1976, before me personally appeared WARK H. BRYANT, to me personally known, who being by me duly sworn, says that he is the VICE PRESIDENT & SENIOR TRUST OFFICER of THE CITIZENS - SOUTHERN NATIONAL BANK OF SOUTH CAROLINA, that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

(Seal)

Carolyn P. Bayette  
Title NOTARY PUBLIC - S.C.

My commission expires 5/19/80.

MISCELLANEOUS DESCRIPTIONS

1. The railroad cars which the Owner Trustee owns, or pursuant to the Sale Agreement, will upon payment of the purchase price thereof, become the owner of, are as follows:  
  
100 new 50 ft. type XM box cars manufactured by U.S. Railway Mfg. Co. and bearing identifying numbers NSL 100,000 through NSL 100,099
2. The Cars are leased by the Owner Trustee to Pickens Railroad Company as Lessee under a Lease dated as of November 1, 1976 executed by the Owner Trustee as Lessor and by the Lessee pursuant to, and substantially in the form of, Exhibit C to the Finance Agreement. The obligations of the Lessee under the Lease as guaranteed by National Railway Utilization Corporation, as Guarantor, under a Guaranty of Lease dated of even date with the Lease and executed by the Guarantor pursuant to, and substantially in the form of Exhibit D to, the Finance Agreement.
3. The Trust Agreement between the Owner Participants and the Owner Trustee is that Trust Agreement, dated as of November 1, 1976 entered into pursuant to, and substantially in the form of Exhibit A to, the Finance Agreement, establishing the trust known as Pickens Railroad No. 76-1.
4. Each payment and prepayment due to Aetna shall be made in the form of a federal funds bank wire transfer to account No. 1442562 at The Connecticut Bank and Trust Company, One Constitution Plaza, Hartford, Connecticut.
5. The words which shall appear on the side of each Item pursuant to Section 4.13 of the Indenture are as follows:  
"Leased From The Citizens and Southern National Bank of South Carolina, as Lessor and Owner Trustee, and subject to a security interest recorded with the ICC under a Security Agreement filed under the Interstate Commerce Act, Section 20c".



- (c) A final installment of all amounts then owing hereon on (the 15th day of the calendar month next following the month in which was made the final payment pursuant to (b) above).

All payments on account of this Note shall be applied first to interest accrued hereon and unpaid to the date of such payment, with the remainder being applied to the reduction of the unpaid principal amount hereof.

This Note and all other notes (together with this Note hereinafter called "Notes") issued or to be issued by the Owner Trustee under an Agreement and Indenture (Security Agreement) dated as of November 1, 1976 (the "Indenture"), duly executed and delivered by The Citizens and Southern National Bank of South Carolina as trustee (the "Owner Trustee") and Aetna, shall not exceed the aggregate principal amount of \$2,310,000. The Notes are, or upon issuance will be, secured by (among other things) the Indenture and an Assignment of Lease and Agreement (the "Assignment") dated as of November 1, 1976, entered into by the Owner Trustee with Aetna pursuant to the Indenture. The Indenture and the Assignment relate to certain Items of railroad equipment, to a lease thereof and to a guaranty of such lease. Reference is hereby made to the Indenture for a description of the property assigned and mortgaged, the nature of the property assigned and mortgaged, the nature and extent of the security and the rights of Aetna, of any other holders of the Notes and of the Owner Trustee in respect of such security, copies of which are available for inspection at the main office of the Owner Trustee.

The Notes may be prepaid in whole or in part, the maturity thereof accelerated, and all amounts owing on or pursuant thereto may be, or be declared, due and payable in (and only in) the manner and with the effect provided in the Indenture, and all of the terms, covenants and conditions thereof are hereby deemed incorporated herein in full. The Company agrees to make required prepayments in accordance with the provisions of the Indenture.

This Note and all transactions hereunder or evidenced herein shall be governed by, construed, and enforced in accordance with the law of South Carolina.

As provided in Section 2.2 of the Indenture, ALL PAYMENTS TO BE MADE BY THE OWNER TRUSTEE ON ACCOUNT OF THIS NOTE SHALL BE MADE ONLY FROM THE INDENTURE ESTATE (as defined in the Indenture) and only to the extent that the Owner Trustee shall have sufficient income or assets from the Indenture Estate to make such payments. Aetna hereby agrees, for itself and its successors and assigns, by its acceptance of this Note, that it will look solely to the Indenture Estate, to the extent available, for distribution to it as provided in the Indenture and that neither the

Owner Trustee, nor any Owner Participant under the Trust Agreement (as such terms are defined in the Indenture) shall be personally liable to Aetna, or any other holder of this Note, for any amounts payable on or pursuant to this Note or the Indenture. Anything hereinabove to the contrary notwithstanding, nothing herein shall relieve the Owner Trustee from any liability incurred as a result of its own bad faith or negligence.

In Witness Whereof, the Owner Trustee has caused this Note to be duly executed under its corporate seal.

THE CITIZENS AND SOUTHERN NATIONAL  
BANK OF SOUTH CAROLINA, Owner Trustee

(Corporate Seal)

By \_\_\_\_\_  
Officer

Attest: \_\_\_\_\_  
Secretary

ASSIGNMENT OF LEASE AND AGREEMENT

ASSIGNMENT OF LEASE AND AGREEMENT, dated as of November 1, 1976 (this "Assignment"), by and between The Citizens and Southern National Bank of South Carolina (together with its successors and assigns the "Owner Trustee"), (not individually but solely in its capacity as Trustee under a Trust Agreement dated as of November 1, 1976 with Funding Systems Leasing Corporation) and Aetna Business Credit, Inc. ("Aetna").

WHEREAS, the Owner Trustee and Pickens Railroad Company (the "Lessee") have entered into a sale agreement dated as of November 1, 1976 (the "Sale Agreement") with U.S. Railway Mfg. Co. providing for the sale to the Owner Trustee of such items (the "Items") of railroad equipment described therein and in annexes thereto as are delivered to and accepted and settled for by the Owner Trustee thereunder; and

WHEREAS, the Owner Trustee and the Lessee have entered into an equipment lease dated as of November 1, 1976 (together with any security interest granted by the Lessee to secure its obligations thereunder, the "Lease") providing for the leasing by the Owner Trustee to the Lessee of the Items; and

WHEREAS, the Lease is guaranteed by National Railway Utilization Corporation (the "Guarantor") under a Guaranty of Lease (the "Guaranty of Lease"); and

WHEREAS, the Owner Trustee and Aetna have entered into a loan agreement (the "Loan Agreement") and an agreement and indenture (the "Indenture"), both dated as of November 1, 1976, whereby the Owner Trustee will borrow from Aetna part of the purchase price of the Items and whereby the borrowings made pursuant thereto shall be secured as provided in the Indenture; and

WHEREAS, in compliance with the provisions of the Indenture, and in order to provide further security for the indebtedness of the Owner Trustee to Aetna pursuant to the Loan Agreement and Indenture, and as an inducement to Aetna to make loans to the Owner Trustee pursuant to the Loan Agreement and Indenture, the Owner Trustee has agreed to assign to Aetna for security purposes its rights in, to and under the Lease and the Guaranty of Lease;

NOW, THEREFORE, to induce and in consideration for Aetna's agreement to make loans to the Owner Trustee, and in consideration of \$1.00 and other good and valuable consideration paid by Aetna to the Owner Trustee, the receipt and sufficiency whereof are hereby acknowledged, the parties hereto agree as follows:

1. Subject to the provisions of Paragraph 10 hereof, the Owner Trustee hereby assigns, transfers and sets over unto Aetna, as collateral security for the payment and performance of the Owner Trustee's obligations pursuant to (a) the Notes issued under the Indenture and (b) the Indenture (collectively, the "Security Document"), all the Owner Trustee's right, title and interest, powers, privileges, and other benefits under the Lease and the Guaranty of Lease, including, without limitation, the immediate right to receive and collect all rentals, profits and other sums payable to or receivable by the Owner Trustee from the Lessee or the Guarantor under or pursuant to the provisions of the Lease or the Guaranty of Lease whether as rentals, payments on account of any Casualty Occurrence, liquidated damages, indemnity or otherwise (collectively, the "Payments"), and the right to make all waivers and agreements, to give all notices, consents and releases, to take all action upon the happening of an Event of Default specified in the Lease or the Guaranty of Lease, and to do any and all other things whatsoever which the Owner Trustee is or may become entitled to do under the Lease or the Guaranty of Lease. In furtherance of the foregoing assignment, the Owner Trustee hereby irrevocably authorizes and empowers Aetna in its own name, or in the name of its nominee, or in the name of the Owner Trustee or as its attorney, to ask, demand, sue for, collect and receive any and all Payments to which the Owner Trustee is or may become entitled under the Lease or the Guaranty of Lease, and to enforce compliance by the Lessee and the Guarantor with all the terms and provisions thereof.

Aetna agrees to accept, for the account of the Owner Trustee, any payments made by the Lessee pursuant to the Lease which are made to Aetna pursuant to the Indenture and this Assignment. To the extent received, Aetna will apply such Payments to satisfy the obligations of the Owner Trustee then due and payable under the Security Document, and, so long and only so long as no Default or Event of Default shall exist and be continuing under the Security Document, any balance (if there be one) shall be paid forthwith to and retained by the Owner Trustee for distribution pursuant to the Trust Agreement.

2. This Assignment is executed only as security for the obligations of the Owner Trustee under the Security Document and, therefore the execution and delivery of this Assignment shall not subject Aetna to, or transfer, or pass, or in any way affect or modify the liability of the Owner Trustee under the Lease, it being understood and agreed that notwithstanding this Assignment or any subsequent assignment, all obligations of the Owner Trustee to the Lessee shall be and remain enforceable by the Lessee, its successors and assigns, against, but only against, the Owner Trustee or persons other than Aetna.

3. To protect the security afforded by this Assignment, the Owner Trustee agrees as follows:

(a) The Owner Trustee will faithfully abide by, perform and discharge each and every obligation, covenant and agreement (if there be any remaining unperformed) which the Lease provides are to be performed by the Owner Trustee;

(b) Without the written consent of Aetna, the Owner Trustee will not (i) anticipate the rents under the Lease, (ii) waive, excuse, condone, forgive or in any manner release or discharge the Lessee or the Guarantor of or from the obligations, covenants, conditions and agreements to be performed by either or both of them (including, without limitation, the obligation to pay the rents in the manner and at the time and place provided for therein) or (iii) enter into any agreement amending, modifying, terminating or in any way changing the Lease or the Guaranty of Lease (and the Owner Trustee agrees that any such amendment, modification, termination or change thereof without such consent shall be void).

(c) At the Owner Trustee's sole cost and expense, the Owner Trustee will appear in and defend every action or proceeding arising under, growing out of or in any manner connected with the obligations, duties or liabilities of the Owner Trustee under the Lease.

(d) Should the Owner Trustee fail to make any payment or to do any act which this Assignment requires the Owner Trustee to make or do, then Aetna may, but shall have no obligation to, and shall not thereby release the Owner Trustee from any obligation hereunder, make or do the same in such manner and to such extent as Aetna may deem necessary or advisable to protect the security provided hereby, including specifically, without limiting its general powers, the right to appear in and defend any action or proceeding purporting to affect the security hereof and the rights or powers of Aetna, and also the right to perform and discharge each and every obligation, covenant and agreement of the Owner Trustee (if any remain to be performed) contained in the Lease; and in exercising any such powers, Aetna may pay necessary costs and expenses, employ counsel and incur and pay reasonable attorneys' fees, and the Owner Trustee will reimburse Aetna for such costs, expenses and fees.

4. Subject to the provisions of Paragraph 10 hereof, the Owner Trustee does hereby constitute Aetna the Owner Trustee's true and lawful attorney, irrevocably, with full power (in the name of the Owner Trustee, or otherwise), to ask, require, demand, receive, compound and give acquittance for each and every Payment due and to become due under or arising out of the Lease or Guaranty of Lease to which the Owner Trustee is or may become entitled, to enforce compliance by the Lessee with each and every term and provision of the Lease, to enforce compliance by the Guarantor with each and every term and provision of the Guaranty of Lease, to endorse each and every check or other instrument or order in connection therewith and to file any claim or claims, take any action or actions or institute any proceeding or proceedings which Aetna may deem to be necessary or advisable in the premises.

5. Upon the full discharge and satisfaction of all of the Owner Trustee's obligations under the Security Document, this Assignment and all rights herein assigned to Aetna shall terminate, and all estate, right, title and interest of Aetna in and to the Lease and the Guaranty of Lease shall revert to the Owner Trustee.

6. The Owner Trustee will, from time to time, do and perform any other act and will execute, acknowledge, deliver and file, register, record and deposit (and will refile, reregister, rerecord or redeposit whenever required) any and all further instruments required by law or requested by Aetna in order to confirm or further assure, the interests of Aetna hereunder.

7. Pursuant to the provisions of the Indenture relating to the assignment by Aetna of its interests thereunder to a collateral trustee, Aetna may assign all or any of the rights assigned to it hereby or arising under the Lease or the Guaranty of Lease, including, without limitation, the right to receive any Payments due or to become due. In the event of any such assignment, any such assignee or subsequent or successive assignee or assignees shall, to the extent of such assignment, enjoy all rights and privileges and be subject to all obligations of Aetna hereunder. Aetna will give written notice to the Owner Trustee and the Lessee of any such assignment.

8. This Assignment shall be governed by, construed, and enforced in accordance with the law of the state governing the Indenture; provided that the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act.

9. The Owner Trustee shall cause copies of all notices received in connection with the Lease and all payments hereunder to be promptly delivered or made to Aetna in the manner and at the place provided for in the Indenture, or at such other address or in such other manner as Aetna shall designate.

10. Aetna hereby agrees with the Owner Trustee that, so long as no Event of Default shall exist under the Security Document or unless the Owner Trustee shall be in default of any of its obligations hereunder, Aetna will not exercise or enforce, or seek to exercise or enforce, or avail itself of, any of the rights, powers, privileges, authorizations or benefits assigned and transferred by the Owner Trustee to Aetna by this Assignment, except the right to receive and apply the Payments as provided in Paragraph 1 hereof, and that, subject to the terms of the Lease and the Security Document, the Owner Trustee, so long as (a) no Event of Default under the Security Document shall exist, and (b) the Owner Trustee shall not be in default of any of its obligations hereunder, may exercise or enforce, or seek to exercise or enforce, such rights, powers, privileges, authorizations or benefits.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed in their respective corporate names by officers thereunto duly authorized, and their respective corporate seals to be affixed and duly attested, all as of the date first above written.

THE CITIZENS AND SOUTHERN NATIONAL  
BANK OF SOUTH CAROLINA, Owner  
Trustee

(Corporate Seal)

By \_\_\_\_\_

Title

Attest:

\_\_\_\_\_  
Secretary

AETNA BUSINESS CREDIT, INC.

(Corporate Seal)

By \_\_\_\_\_

Title

Attest:

\_\_\_\_\_  
Secretary

State of \_\_\_\_\_ :  
: ss.  
County of \_\_\_\_\_ :

On this \_\_\_\_\_ day of \_\_\_\_\_, 1976, before me personally appeared \_\_\_\_\_ (name of signer), to me personally known, who being by me duly sworn, says that he is the \_\_\_\_\_ (title to office) of \_\_\_\_\_ (name of corporation), that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

(Seal)

\_\_\_\_\_  
Title

My commission expires \_\_\_\_\_.

State of \_\_\_\_\_ :  
: ss.  
County of \_\_\_\_\_ :

On this \_\_\_\_\_ day of \_\_\_\_\_, 1976, before me personally appeared \_\_\_\_\_ (name of signer), to me personally known, who being by me duly sworn, says that he is the \_\_\_\_\_ (title to office) of \_\_\_\_\_ (name of corporation), that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

(Seal)

\_\_\_\_\_  
Title

My commission expires \_\_\_\_\_.

Schedule of Casualty Prepayment Amounts

The Casualty Prepayment Amount with respect to each Item of Equipment on any Payment Date shall be the percentage of the purchase price of such Item (as set forth in the bill of sale issued pursuant to the Sale Agreement) set forth below opposite the Payment Date Number corresponding to such Payment Date.

<u>If the Payment Date Number Is</u>	<u>The Applicable Percentage Shall Be</u>
1	73.9136
2	73.6238
3	73.3307
4	73.0341
5	72.7341
6	72.4306
7	72.1236
8	71.8129
9	71.4987
10	71.1808
11	70.8591
12	70.5337
13	70.2046
14	69.8715
15	69.5346
16	69.1938
17	68.8490
18	68.5001
19	68.1472
20	67.7902
21	67.4290
22	67.0636
23	66.6939
24	66.3199
25	65.9416
26	65.5588
27	65.1716
28	64.7799
29	64.3836
30	63.9826
31	63.5770
32	63.1667
33	62.7515
34	62.3316
35	61.9067
36	60.8969
37	60.4661
38	60.0304
39	59.5895
40	59.1435
41	58.6923
42	58.2359
43	57.7741
44	57.3069

If the Payment  
Date Number Is

The Applicable  
Percentage Shall Be

45	56.8343
46	56.3561
47	55.8724
48	54.8556
49	54.3652
50	53.8691
51	53.3673
52	52.8596
53	52.3459
54	51.8263
55	51.3006
56	50.7687
57	50.2307
58	49.6864
59	49.1357
60	48.1115
61	47.5534
62	46.9887
63	46.4174
64	45.8395
65	45.2548
66	44.6633
67	44.0649
68	43.4595
69	42.8471
70	42.2275
71	41.6007
72	40.5688
73	39.9335
74	39.2908
75	38.6406
76	37.9828
77	37.3173
78	36.6441
79	35.9630
80	35.2740
81	34.5769
82	33.8717
83	33.1582
84	32.1185
85	31.3955
86	30.6640
87	29.9240
88	29.1754
89	28.4181
90	27.6519
91	26.8767
92	26.0926
93	25.2992
94	24.4967
95	23.6847

If the Payment  
Date Number Is

The Applicable  
Percentage Shall Be

96	22.6369
97	21.8141
98	20.9818
99	20.1397
100	19.2878
101	18.4259
102	17.5541
103	16.6720
104	15.7796
105	14.8769
106	13.9636
107	13.0396
108	12.1049
109	11.1592
110	10.2026
111	9.2347
112	8.2556
113	7.2650
114	6.2629
115	5.2491
116	4.2235
117	3.1859
118	2.1362
119	1.0743
120	