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INTERSTATE COMMERCE COMMISSION

FRUIT GROWERS EXPRESS EQUIPMENT TRUST

Series RR

EQUIPMENT TRUST AGREEMENT

by and between

**THE RIGGS NATIONAL BANK OF
WASHINGTON, D. C.,**

Trustee

and

FRUIT GROWERS EXPRESS COMPANY

Dated as of June 12, 1970

EQUIPMENT TRUST AGREEMENT dated as of June 12, 1970, by and between **THE RIGGS NATIONAL BANK OF WASHINGTON, D. C.** (hereinafter called the Trustee), and **FRUIT GROWERS EXPRESS COMPANY**, a Delaware corporation (hereinafter called the Company).

WHEREAS the Company has agreed to cause to be sold, transferred and delivered to the Trustee the railroad equipment described herein; and

WHEREAS title to such railroad equipment is to be vested in and is to be retained by the Trustee, and such railroad equipment is to be leased to the Company hereunder until title is transferred under the provisions of Article Four hereof; and

WHEREAS Fruit Growers Express Equipment Trust Certificates, Series RR (hereinafter called the Trust Certificates), are to be issued and sold in an aggregate principal amount not exceeding \$15,360,000, and the proceeds of such sale (excluding accrued dividends, if any) are to be deposited in trust with the Trustee immediately upon receipt thereof by the Company and are to constitute a fund to be known as **FRUIT GROWERS EXPRESS EQUIPMENT TRUST, SERIES RR**, to be applied by the Trustee from time to time in partial payment of the cost or value of the Trust Equipment, the remainder of the cost thereof to be paid out of advance rentals to be paid by the Company as provided herein; and

WHEREAS the text of the Trust Certificates and the guaranty to be endorsed on all the Trust Certificates by the Company are to be substantially in the following forms, respectively:

[FORM OF TRUST CERTIFICATE]

\$.....

No.

FRUIT GROWERS EXPRESS

EQUIPMENT TRUST CERTIFICATE

SERIES RR

Total Authorized Issue \$15,360,000

THE RIGGS NATIONAL BANK OF WASHINGTON, D. C.

Trustee

THE RIGGS NATIONAL BANK OF WASHINGTON, D. C., Trustee under an Equipment Trust Agreement (hereinafter called the Agreement) dated as of June 12, 1970, by and between The Riggs National Bank of Washington, D. C., Trustee (hereinafter called the Trustee), and Fruit Growers Express Company, a Delaware corporation (hereinafter called the Company), hereby certifies that

or registered assigns is entitled to an interest of

Dollars (\$) in Fruit Growers Express Equipment Trust, Series RR, due and payable in instalments as hereinafter provided, and to dividends on the unpaid principal amount represented by this Certificate, due and payable semiannually on June 15 and December 15 in each year, commencing December 15, 1970, at the rate of 9¾% per annum from the date hereof until such principal amount becomes due and payable, with interest on any overdue instalment of principal and on any overdue dividends, to the extent legally enforceable, at the rate of 10½% per annum. Payments of instalments of principal, dividends and interest shall be made by the Trustee to the registered holder hereof at the corporate trust office of the Trustee in

the District of Columbia, in such coin or currency of the United States of America as, at the time of payment, shall be legal tender for the payment of public and private debts. Each of such payments shall be made only from and out of rentals or other moneys received by the Trustee and applicable to such payment under the provisions of the Agreement. The principal hereof is due and payable in 15 substantially equal annual instalments on June 15 in each of the years 1971 through 1985. Dividends and interest shall be computed hereunder on the basis of a 360-day year of twelve 30-day months.

This Certificate is one of an authorized issue of Trust Certificates, in an aggregate principal amount not exceeding the Total Authorized Issue set forth above, issued or to be issued under the Agreement, under which certain railroad equipment leased to the Company (or cash or obligations defined in the Agreement as "Investments" in lieu thereof, as provided in the Agreement) is held by the Trustee in trust for the equal and ratable benefit of the holders of the Trust Certificates issued thereunder. Reference is made to the Agreement (a copy of which is on file with the Trustee at its said office) for a more complete statement of the terms and provisions thereof, to all of which the registered holder hereof, by accepting this Certificate, assents.

This Certificate is transferable in whole or in part by the registered holder hereof in person or by duly authorized attorney on the books of the Trustee upon surrender to the Trustee at its said office of this Certificate accompanied by a written instrument of transfer, duly executed by the registered holder in person or by such attorney, in form satisfactory to the Trustee, and thereupon a new fully registered Trust Certificate or Certificates of like tenor for the then unpaid principal amount hereof will be issued to the transferee in exchange herefor and, if less than the then entire unpaid principal amount hereof is transferred, a balance piece therefor will be issued to the transferor. The Trustee and the Company may deem and treat the person in whose name this Certificate is registered as the absolute owner

hereof for the purpose of receiving payment of principal and dividends and for all other purposes and shall not be affected by any notice to the contrary.

In case of the happening of an Event of Default (as defined in the Agreement) all instalments of principal (and dividends accrued thereon) represented by this Certificate may become or be declared due and payable in the manner and with the effect provided in the Agreement.

IN WITNESS WHEREOF, the Trustee has caused this Certificate to be signed by one of its Vice Presidents, by his signature or a facsimile thereof, and its corporate seal or a facsimile thereof to be hereunto affixed or hereon imprinted and to be attested by one of its Trust Officers or Assistant Trust Officers by his signature.

Dated as of

THE RIGGS NATIONAL BANK OF
WASHINGTON, D. C.,

Trustee,

by

Vice President.

Attest:

.....
- *Trust Officer.*

[FORM OF GUARANTY]

Fruit Growers Express Company, for a valuable consideration, hereby unconditionally guarantees to the registered holder of the within Certificate the prompt payment when due of the principal of said Certificate and of the dividends thereon specified in said Certificate, with interest on any overdue principal and on any overdue dividends, to the extent legally enforceable, at the rate of 10½% per annum, all in accordance with the terms of said Certificate and the Equipment Trust Agreement referred to therein.

FRUIT GROWERS EXPRESS COMPANY,

by
President.

WHEREAS it is desired to secure to the holders of the Trust Certificates the payment of the principal and dividends thereon as hereinafter provided;

NOW, THEREFORE, in consideration of the mutual covenants and promises herein contained, the parties hereto hereby agree as follows:

ARTICLE ONE

DEFINITIONS

SECTION 1.01. *Definitions.* The following terms (except as otherwise expressly provided or unless the context otherwise requires) for all purposes of this Agreement shall have the respective meanings hereinafter specified:

Affiliate of any corporation shall mean any corporation which, directly or indirectly, controls or is controlled by, or is under common control with, such corporation. For the

purposes of this definition, *control* (including *controlled by and under common control with*), as used with respect to any corporation, shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such corporation, whether through the ownership of voting securities or by contract or otherwise.

Company shall mean Fruit Growers Express Company and any successor or successors to it complying with the provisions of Section 4.09 or 6.05.

Corporate Trust Office shall mean the principal office of the Trustee in the District of Columbia, at which the corporate trust business of the Trustee shall, at the time in question, be administered, which office is, on the date of execution of this Agreement, located at 800 17th Street, N. W., Washington, D. C. 20013.

Cost, when used with respect to Equipment, shall mean the actual cost thereof (including freight charges, if any, from a manufacturer's plant to a point of delivery to the Company and applicable local or state sales taxes, if any), as evidenced by the manufacturer's invoice with respect to such Equipment, less any deduction therefrom due to a quantity discount as provided in the second paragraph of Section 4.04.

Deposited Cash shall mean the aggregate of (a) the proceeds from the sale of the Trust Certificates deposited with the Trustee pursuant to Section 2.01 hereof and, when required or indicated by the context, any Investments purchased by the use of such proceeds pursuant to the provisions of Section 8.04 and (b) any sums restored to Deposited Cash from rentals pursuant to Section 4.04(B) (1) (b) and on deposit with the Trustee.

Equipment shall mean standard-gauge railroad equipment (other than passenger or work equipment) first put into service not earlier than January 30, 1970, but shall not include any special devices, racks or assemblies at any

time attached or affixed to any such equipment, unless the cost or purchase price thereof is included in the Cost of such equipment and the title thereof is in the Company or the Trustee.

Event of Default shall mean any event specified in Section 5.01 to be an Event of Default.

The word *holder*, when used with respect to Trust Certificates, shall include the plural as well as the singular number.

Investments shall mean (i) bonds, notes or other direct obligations of the United States of America or obligations for which the full faith and credit of the United States are pledged to provide for the payment of the interest and principal, in each case maturing within one year after the date of investment therein, and (ii) commercial paper given a rating of "prime" or better (or a comparable rating if such rating system is changed) by the National Credit Office or a successor thereto or a similar rating service substituted therefor.

Officers' Certificate shall mean a certificate signed by the President or any Vice President and by the Secretary or any Assistant Secretary or the Treasurer or any Assistant Treasurer of the Company.

Opinion of Counsel shall mean an opinion in writing signed by legal counsel for the Company who shall be satisfactory to the Trustee and who may be an employee of the Company. The acceptance by the Trustee of, and its action on, an Opinion of Counsel shall be sufficient evidence that such counsel is satisfactory to the Trustee.

Owner shall mean the manufacturer or other person transferring title to any of the Equipment to the Trustee.

Request shall mean a written request for the action therein specified delivered to the Trustee, dated not more than ten days prior to the date of delivery to the Trustee, and signed on behalf of the Company by the President, any

Vice President, the Treasurer or any Assistant Treasurer of the Company.

Trust Certificates shall mean Fruit Growers Express Equipment Trust Certificates issued hereunder.

Trust Equipment shall mean all Equipment at the time subject to the terms of this Agreement.

Trustee shall mean The Riggs National Bank of Washington, D. C., and, subject to the provisions of Article Eight, any successor as trustee hereunder.

The words *herein*, *hercof*, *herby*, *hereto*, *hereunder* and words of similar import refer to this Agreement as a whole and not to any particular Article, Section, paragraph or subdivision hereof.

ARTICLE TWO

TRUST CERTIFICATES AND ISSUANCE THEREOF

SECTION 2.01. *Issuance of Trust Certificates.* An amount equal to the proceeds of the sale of any of the Trust Certificates, but not less than the aggregate principal amount thereof, shall, forthwith upon the issuance thereof, be deposited in cash with the Trustee. The amount of such proceeds shall be specified in an Officers' Certificate delivered to the Trustee concurrently with such deposit.

Thereupon, without waiting for the recording or filing of this Agreement or of any other instrument respecting the Trust Equipment, the Trustee shall issue and deliver, as the Company shall direct by Request, Trust Certificates in the aggregate principal amount so sold.

The aggregate principal amount of Trust Certificates which shall be executed and delivered by the Trustee under this Section shall not exceed the Total Authorized Issue hereinabove set forth in the form of Trust Certificate and the aggregate principal amount represented by all the Trust Certificates shall be payable as hereinafter set forth.

SECTION 2.02. *Interests Represented by Trust Certificates; Dividends; Maturity.* Each of the Trust Certificates shall represent an interest in the amount therein specified in the trust created hereunder. The aggregate principal amount of the Trust Certificates will be payable in aggregate annual instalments of \$1,024,000, payable on June 15 in each of the years 1971 through 1985. Payments of principal of any individual Trust Certificate will be made as specified therein. The Trust Certificates will bear dividends on the unpaid principal amount thereof, payable on June 15 and December 15 of each year, commencing December 15, 1970, at the rate per annum specified therein, with interest payable on overdue principal and on overdue dividends as set forth in the Trust Certificates; *provided, however,* that, upon Request, Trust Certificates registered in the name of the Company will not bear dividends during the period so registered.

The principal of and dividends on the Trust Certificates shall be payable at the Corporate Trust Office in such coin or currency of the United States of America as, at the time of payment, shall be legal tender for the payment of public and private debts, but only from and out of rentals or other moneys received by the Trustee and applicable to such payment under the provisions hereof. Notwithstanding the provisions of the preceding sentence of this paragraph, in the case of payments of principal and dividends to be made on a Trust Certificate not then to be paid in full, upon deposit of an agreement of the holder of such Trust Certificate (the responsibility of such holder to be satisfactory to the Trustee) requesting the same and obligating such holder, prior to any transfer or other disposition thereof, to surrender the same to the Trustee in exchange for a new Trust Certificate or Certificates for the unpaid portion of the principal amount represented thereby, the Trustee will mail its check, or (upon request of the holder) the Trustee will wire by 11:00 a.m., Washington, D. C., time on the date due, funds immediately available on such date to such holder, at its address shown on the registry books maintained by the Trustee or at such other address as may be furnished the Trustee for such pur-

pose without requiring the surrender of such Trust Certificate; *provided, however*, that the deposit of such an agreement with the Trustee shall not be required of any of the original purchasers of the Trust Certificates or to any other purchasers approved by the Company who, at the time payments of principal or dividends are to be made, are holders of Trust Certificates, and the Trustee shall make payments of principal and dividends to such original purchasers of Trust Certificates or to any other purchaser approved by the Company at the address of each supplied to the Trustee by the Company.

SECTION 2.03. *Forms of Trust Certificates and Guaranty.* The Trust Certificates and the guaranty to be endorsed on the Trust Certificates by the Company as provided in Section 6.01 shall be in substantially the forms hereinbefore set forth.

SECTION 2.04. *Execution by Trustee.* The Trust Certificates shall be signed in the name and on behalf of the Trustee by the manual or facsimile signature of its President or one of its Vice Presidents and its corporate seal or a facsimile thereof shall be affixed or imprinted thereon and attested by the manual signature of one of its Trust Officers or Assistant Trust Officers. In case any officer of the Trustee whose signature, whether facsimile or not, shall appear on any of the Trust Certificates shall cease to be such officer of the Trustee before the Trust Certificates shall have been issued and delivered by the Trustee or shall not have been acting in such capacity on the date of the Trust Certificates, such Trust Certificates may be adopted by the Trustee and be issued and delivered as though such person had not ceased to be or had then been such officer of the Trustee.

SECTION 2.05. *Characteristics of Trust Certificates.*

(a) The Trust Certificates shall be registered as to both principal and dividends in the name of the holder; shall be transferable in whole or in part and exchangeable for Trust

plates, safety chains, riser planks, couplers, draft gears, tie downs, bulkheads, winches, channels, collapsible pedestals or other components (herein called "Components") if the Cost thereof is separately stated in the invoice delivered to the Trustee when such Components are first subjected to the trust created hereby. The term "unit", when used with reference to Trust Equipment or Equipment, means, however, a complete unit of railroad rolling stock.

At the time of delivery of any Request pursuant to the first paragraph of this Section, the Company shall, if other Equipment is to be conveyed to the Trustee in substitution for the Trust Equipment to be assigned or transferred by the Trustee, deliver to the Trustee the following papers:

- (1) an Officers' Certificate stating (i) the value, as of the date of said Request, of the Trust Equipment so to be assigned or transferred by the Trustee and the date such Trust Equipment was first put into use (or that such Trust Equipment was first put into use not later than a specified date), (ii) that the requested assignment or transfer by the Trustee will not impair (a) the security under this Agreement in contravention of the provisions hereof and (b) in the case of a Component, the use of the unit of Trust Equipment on which such substitution is to be made in the business of the Company, (iii) the value of such substituted Equipment as of such date and the date such substituted Equipment was first put into use (or that such substituted Equipment was first put into use not earlier than a specified date), such statement to be supported by copies of an invoice or invoices from the manufacturers of such substituted Equipment, (iv) if such substitution consists of one or more Components, that each such Component is to be substituted on a specified unit of the Trust Equipment for another Component used for the same purpose concurrently being removed from such unit and assigned or transferred by the Trustee hereunder, (v) that each unit of Equipment so to be substituted has been marked as provided in

Section 4.07, (vi) that each such unit so to be substituted is Equipment as herein defined and (vii) that no default hereunder has occurred and is continuing;

(2) a certificate and a bill or bills of sale in respect of such substituted Equipment as provided for in subparagraphs (a) and (c) of the first paragraph of Section 3.04; and

(3) an Opinion of Counsel to the effect that (i) such bill or bills of sale are valid and effective, either alone or together with any other instruments referred to in and accompanying such opinion, to vest in the Trustee title to such substituted Equipment free from all claims, liens, security interests and other encumbrances and (ii) that a proper supplement hereto in respect of each substituted unit of Equipment has been duly executed by the Trustee and the Company and has been recorded with the Interstate Commerce Commission pursuant to the requirements of Section 20c of the Interstate Commerce Act.

At the time of delivery of any Request pursuant to the first paragraph of this Section, the Company shall, if cash is to be paid to the Trustee in respect of the Trust Equipment to be assigned or transferred by the Trustee, deliver to the Trustee papers corresponding to those set forth in the second paragraph of this Section.

Cash deposited with the Trustee pursuant to the second paragraph of Section 4.04, this Section or Section 4.08 shall, from time to time, be paid over by the Trustee to the Company upon Request, against conveyance to the Trustee of units of Equipment having a value, as of the date of said Request, not less than the amount of cash so paid and upon delivery to the Trustee of papers corresponding to those set forth in the second paragraph of this Section, with such appropriate modifications as may be approved by the Trustee.

For all purposes of this Section, where value is required to be determined in an Officers' Certificate, value shall be determined as follows (and the manner of such determina-

tion set forth in each Officers' Certificate furnished in respect thereof) :

(1) the value of any Trust Equipment assigned or transferred by the Trustee as provided in this Section shall be deemed to be the greater of (a) the fair value thereof and (b) the Cost thereof as theretofore certified to the Trustee less depreciation at a rate not in excess of 1/180th of such Cost for each period of one month elapsed between (i) the later of June 15, 1970, or the date such unit was first put into use, as certified to the Trustee, and (ii) the date of the Request furnished pursuant to this Section; and

(2) the value of any Equipment conveyed to the Trustee as provided in this Section shall be deemed to be the lesser of (a) the fair value thereof and (b) the Cost of such unit less depreciation at a rate not less than 1/180th of such Cost for each period of one month elapsed between (i) the date such unit was first put into use, as certified to the Trustee, and (ii) the date of the Request furnished pursuant to this Section.

SECTION 4.07. *Marking of Trust Equipment.* The Company agrees that, at the time of delivery to the Trustee pursuant to this Agreement of each unit of Equipment, there shall be plainly, distinctly, permanently and conspicuously marked on each side of such unit, in letters not less than one inch in height:

"THE RIGGS NATIONAL BANK OF WASHINGTON, D. C.,
TRUSTEE, OWNER, LESSOR,
Fruit Growers Express Company
Equipment Trust of 1970,
Series RR".

Such marks shall be such as to be readily visible and as to indicate plainly the Trustee's ownership of each unit of the Trust Equipment. Within one year after the delivery to the

as the retaking of the Trust Equipment by the Trustee as hereinafter provided.

SECTION 4.10. *Indemnity.* The Company covenants and agrees to indemnify the Trustee against any and all claims, costs and expenses arising out of or connected with the ownership or use of any of the Trust Equipment, and particularly against any and all claims arising out of the use of any patented inventions in and about the Trust Equipment, and to comply in all respects with the laws of the United States of America and of all the states and other jurisdictions in which the Trust Equipment, or any unit thereof, may be operated and with all lawful acts, rules, regulations and orders of any commissions, boards, and other legislative, executive, administrative or judicial bodies or officers having power to regulate or supervise any of the Trust Equipment, including without limitation all lawful acts, rules, regulations and orders of any body having competent jurisdiction relating to refrigerated or refrigerator cars or to automatic coupler devices, or attachments, air brakes or other appliances ; *provided, however,* that the Company may in good faith contest the validity of any such law, act, rule, regulation or order, or the application thereof to the Trust Equipment or any part thereof, in any reasonable manner which will not in the judgment of the Trustee materially endanger the rights or interests of the Trustee or of the holders of the Trust Certificates. The Company shall not be relieved from any of its obligations hereunder by reason of the assertion or enforcement of any such claims or the commencement or prosecution of any litigation in respect thereof.

ARTICLE FIVE

EVENTS OF DEFAULT AND REMEDIES

SECTION 5.01. *Events of Default.* The Company covenants and agrees that in case:

- (a) the Company shall default in the payment of any part of the rental payable hereunder needed to pay the

principal of any Trust Certificate as and when such principal may become due, whether at maturity or by declaration or otherwise, or if the Company shall default in the payment of any other part of the rental payable hereunder (including advance rental) for more than ten days after the same shall have become due and payable, or

(b) the Company shall make or suffer any unauthorized assignment or transfer of its rights hereunder or shall make any unauthorized transfer or sublease (including, for the purpose of this clause, contracts for the use thereof) of any of the Trust Equipment or, except as herein authorized, shall part with the possession of any of the Trust Equipment and shall fail or refuse either (i) to cause such assignment or transfer or sublease to be canceled by agreement of all parties having any interest therein and recover possession of such Trust Equipment within 30 days after the Trustee shall have demanded in writing such cancelation and recovery of possession or (ii) within said 30 days to deposit with the Trustee a sum in cash equal to the value, as of the date of such unauthorized action (determined in the manner provided in subparagraph (1) of the last paragraph of Section 4.06), of such Trust Equipment (any sum so deposited to be returned to the Company upon the cancelation of such assignment, transfer or sublease and the recovery of possession by the Company of such Trust Equipment), or

(c) the Company shall, for more than 60 days after the Trustee shall have demanded in writing performance thereof, fail or refuse to comply with any other of the terms and covenants hereof on its part to be kept and performed or to make provision satisfactory to the Trustee for such compliance, or

(d) the lease provided for herein shall be terminated by operation of law or pursuant to the last paragraph of Section 4.09, or

At any time, and from time to time, if at the time no Event of Default shall have occurred and be continuing, the Trustee, on Request, shall invest and reinvest Deposited Cash held by it or cash deposited with it pursuant to Section 4.06 or Section 4.08 (hereinafter in this Section called Replacement Funds) in Investments, at such prices, not in excess of fair market value at the time of investment, including any premium and accrued interest, as are set forth in such Request, such Investments to be held by the Trustee in trust for the benefit of the holders of the Trust Certificates.

The Trustee shall, on Request, or the Trustee may, in the event funds are required for payment against delivery of Trust Equipment or for payment of the principal of or dividends on any Trust Certificate, sell such Investments, or any portion thereof, and restore to Deposited Cash or Replacement Funds, as the case may be, the proceeds of any such sale up to the amount paid for such Investments, including accrued interest, or apply such proceeds to the payment of said principal or dividends if and to the extent such proceeds are needed therefor.

The Trustee shall restore to Deposited Cash or Replacement Funds, as the case may be, out of rental received by it for that purpose under the provisions of Section 4.04(B) (1), an amount equal to expenses incurred in connection with any purchase or sale of Investments and also an amount equal to any loss of principal incident to the sale or redemption of any Investments for a sum less than the amount paid therefor, including accrued interest.

The Company, if not to the knowledge of the Trustee in default under the terms hereof, shall be entitled to receive any interest allowed as provided in the first paragraph of this Section and any interest (in excess of accrued interest paid from Deposited Cash or Replacement Funds at the time of purchase) or other profit which may be realized from any sale or redemption of Investments.

SECTION 8.05. Trustee Not Liable for Delivery Delays or Defects in Equipment or Title; Performance by Agents of

Trustee; Entitlement of Trustee to Expenses; Trustee May Hold Trust Certificates. The Trustee shall not be liable to anyone for any delay in the delivery of any of the Trust Equipment, or for any default on the part of the manufacturers thereof or of the Company, or for any defect in any of the Trust Equipment or in the title thereto, nor shall anything herein be construed as a warranty on the part of the Trustee in respect thereof or as a representation on the part of the Trustee in respect of the value thereof or in respect of the title thereto.

The Trustee may perform its powers and duties hereunder by or through such attorneys, agents and servants as it shall appoint and shall be answerable for only its own acts, negligence and wilful defaults and not for the default or misconduct of any attorney or agent appointed by it with reasonable care. The Trustee shall not be responsible in any way for the recitals herein contained or for the execution or validity of this Agreement or of the Trust Certificates (except for its own execution hereof and thereof) or for the Guaranty by the Company.

The Trustee shall be entitled to receive payment of all of its expenses and disbursements hereunder, including reasonable counsel fees, and to receive reasonable compensation for all services rendered by it in the execution of the trust hereby created, all of which shall be paid by the Company.

The Trustee in its individual capacity may own, hold and dispose of Trust Certificates.

Any moneys at any time held by the Trustee or any paying agent hereunder shall, until paid out or invested by the Trustee or any paying agent as herein provided, be held by it in trust as herein provided for the benefit of the holders of the Trust Certificates.

SECTION 8.06. Resignation and Removal; Appointment of Successor Trustee.

(a) The Trustee may resign and be discharged of the trust created by this Agreement by giving 30 days' written notice to the Company and such resignation shall take effect 30 days after the delivery thereof to the Company or upon

receipt by the Trustee of an instrument of acceptance executed by a successor trustee as hereinafter provided in Section 8.07.

(b) The Trustee may be removed at any time by an instrument in writing signed by the holders of a majority in aggregate unpaid principal amount of the Trust Certificates then outstanding, delivered to the Trustee and to the Company.

(c) If at any time the Trustee shall resign or be removed or otherwise become incapable of acting or, if at any time a vacancy shall occur in the office of the Trustee for any other cause, a successor trustee may be appointed by the holders of a majority of the aggregate unpaid principal amount of the then outstanding Trust Certificates by an instrument in writing delivered to the Company and the Trustee. Until a successor trustee shall be appointed by the holders of Trust Certificates as herein authorized, the Company by an instrument in writing executed by order of its Board of Directors shall appoint a trustee to fill such vacancy. A successor trustee so appointed by the Company shall immediately and without further act be superseded by a successor trustee appointed by the holders of Trust Certificates in the manner provided above if such appointment is made within one year from the completion of the Company's notice as to its appointment of a successor trustee as called for in paragraph (d) of this Section. Every successor trustee appointed pursuant to this Section shall be a national bank or a bank or trust company incorporated under the laws of the United States of America or the State of New York, having its principal office in the Borough of Manhattan in The City of New York, and having capital and surplus of not less than \$50,000,000, if there be such an institution willing, qualified and able to accept the trust upon reasonable or customary terms.

(d) The Company shall give notice of each resignation, removal or incapacity of the then Trustee or of a vacancy occurring in the office of the Trustee for any other cause and

of each appointment by the Company of a successor trustee pursuant to paragraph (c) of this Section by mailing written notice of such event by first-class mail, postage prepaid, to the holders of all outstanding Trust Certificates.

SECTION 8.07. *Acceptance of Appointment by Successor Trustee.* Any successor trustee appointed as provided in Section 8.06 shall execute, acknowledge and deliver to the Company and to its predecessor trustee an instrument accepting such appointment hereunder, and thereupon the resignation or removal of the predecessor trustee shall become effective and such successor trustee, without any further act, deed or conveyance, shall become vested with all the rights, powers, duties and obligations of its predecessor hereunder, with like effect as if originally named as Trustee herein; but, nevertheless, on the written request of the Company or of the successor trustee and upon payment of its charges then unpaid, the trustee ceasing to act shall execute and deliver an instrument transferring to such successor trustee all the rights and powers of the trustee so ceasing to act. Upon request of any such successor trustee, the Company shall execute any and all instruments in writing for more fully and certainly vesting in and confirming to such successor trustee all such rights and powers. Any trustee ceasing to act shall, nevertheless, retain a lien upon all property or funds held or collected by such trustee to secure any amounts then due it pursuant to the provisions of Section 8.05.

SECTION 8.08. *Merger or Consolidation of Trustee.* Any corporation into which the Trustee may be merged or with which it may be consolidated or any corporation resulting from any merger or consolidation to which the Trustee shall be a party shall be the successor of the Trustee hereunder, provided that such corporation shall be qualified under the provisions of Section 8.06, without the execution or filing of any paper or any further act on the part of any of the parties hereto, anything herein to the contrary notwithstanding.

SECTION 8.09. *Return of Certain Moneys to Company.* Notwithstanding any provision of this Agreement, any moneys paid to the Trustee which are applicable to the payment of the principal of or dividends on any Trust Certificates which remain unclaimed for five years after the day when such moneys were due and payable shall then be repaid to the Company upon Request, and the holders of such Trust Certificates shall thereafter be entitled to look only to the Company for payment thereof and all liability of the Trustee with respect to such moneys shall thereupon cease; *provided, however,* that before the repayment of such moneys to the Company as aforesaid, the Trustee may first publish a notice, in such form as may be deemed appropriate by the Trustee in respect of the Trust Certificates so payable and not presented and in respect of the provisions hereof relating to the repayment to the Company of the moneys held for the payment thereof.

ARTICLE NINE

MISCELLANEOUS

SECTION 9.01. *Rights Confined to Parties and Holders.* Nothing expressed or implied herein is intended or shall be construed to confer upon or give to any person, firm or corporation, other than the parties hereto and the holders of the Trust Certificates, any right, remedy or claim under or by reason of this Agreement or of any term, covenant or condition hereof, and all the terms, covenants, conditions, promises and agreements contained herein shall be for the sole and exclusive benefit of the parties hereto and their successors and of the holders of the Trust Certificates.

SECTION 9.02. *No Recourse.* No recourse under any obligation, covenant or agreement of this Agreement or of the guaranty endorsed on any Trust Certificate shall be had against any stockholder, officer or director of the Company, as such, by the enforcement of any assessment or by any legal

plates, safety chains, riser planks, couplers, draft gears, tie downs, bulkheads, winches, channels, collapsible pedestals or other components (herein called "Components") if the Cost thereof is separately stated in the invoice delivered to the Trustee when such Components are first subjected to the trust created hereby. The term "unit", when used with reference to Trust Equipment or Equipment, means, however, a complete unit of railroad rolling stock.

At the time of delivery of any Request pursuant to the first paragraph of this Section, the Company shall, if other Equipment is to be conveyed to the Trustee in substitution for the Trust Equipment to be assigned or transferred by the Trustee, deliver to the Trustee the following papers:

- (1) an Officers' Certificate stating (i) the value, as of the date of said Request, of the Trust Equipment so to be assigned or transferred by the Trustee and the date such Trust Equipment was first put into use (or that such Trust Equipment was first put into use not later than a specified date), (ii) that the requested assignment or transfer by the Trustee will not impair (a) the security under this Agreement in contravention of the provisions hereof and (b) in the case of a Component, the use of the unit of Trust Equipment on which such substitution is to be made in the business of the Company, (iii) the value of such substituted Equipment as of such date and the date such substituted Equipment was first put into use (or that such substituted Equipment was first put into use not earlier than a specified date), such statement to be supported by copies of an invoice or invoices from the manufacturers of such substituted Equipment, (iv) if such substitution consists of one or more Components, that each such Component is to be substituted on a specified unit of the Trust Equipment for another Component used for the same purpose concurrently being removed from such unit and assigned or transferred by the Trustee hereunder, (v) that each unit of Equipment so to be substituted has been marked as provided in

Section 4.07, (vi) that each such unit so to be substituted is Equipment as herein defined and (vii) that no default hereunder has occurred and is continuing;

(2) a certificate and a bill or bills of sale in respect of such substituted Equipment as provided for in subparagraphs (a) and (c) of the first paragraph of Section 3.04; and

(3) an Opinion of Counsel to the effect that (i) such bill or bills of sale are valid and effective, either alone or together with any other instruments referred to in and accompanying such opinion, to vest in the Trustee title to such substituted Equipment free from all claims, liens, security interests and other encumbrances and (ii) that a proper supplement hereto in respect of each substituted unit of Equipment has been duly executed by the Trustee and the Company and has been recorded with the Interstate Commerce Commission pursuant to the requirements of Section 20c of the Interstate Commerce Act.

At the time of delivery of any Request pursuant to the first paragraph of this Section, the Company shall, if cash is to be paid to the Trustee in respect of the Trust Equipment to be assigned or transferred by the Trustee, deliver to the Trustee papers corresponding to those set forth in the second paragraph of this Section.

Cash deposited with the Trustee pursuant to the second paragraph of Section 4.04, this Section or Section 4.08 shall, from time to time, be paid over by the Trustee to the Company upon Request, against conveyance to the Trustee of units of Equipment having a value, as of the date of said Request, not less than the amount of cash so paid and upon delivery to the Trustee of papers corresponding to those set forth in the second paragraph of this Section, with such appropriate modifications as may be approved by the Trustee.

For all purposes of this Section, where value is required to be determined in an Officers' Certificate, value shall be determined as follows (and the manner of such determina-

tion set forth in each Officers' Certificate furnished in respect thereof) :

(1) the value of any Trust Equipment assigned or transferred by the Trustee as provided in this Section shall be deemed to be the greater of (a) the fair value thereof and (b) the Cost thereof as theretofore certified to the Trustee less depreciation at a rate not in excess of 1/180th of such Cost for each period of one month elapsed between (i) the later of June 15, 1970, or the date such unit was first put into use, as certified to the Trustee, and (ii) the date of the Request furnished pursuant to this Section; and

(2) the value of any Equipment conveyed to the Trustee as provided in this Section shall be deemed to be the lesser of (a) the fair value thereof and (b) the Cost of such unit less depreciation at a rate not less than 1/180th of such Cost for each period of one month elapsed between (i) the date such unit was first put into use, as certified to the Trustee, and (ii) the date of the Request furnished pursuant to this Section.

SECTION 4.07. *Marking of Trust Equipment.* The Company agrees that, at the time of delivery to the Trustee pursuant to this Agreement of each unit of Equipment, there shall be plainly, distinctly, permanently and conspicuously marked on each side of such unit, in letters not less than one inch in height:

"THE RIGGS NATIONAL BANK OF WASHINGTON, D. C.,
TRUSTEE, OWNER, LESSOR,
Fruit Growers Express Company
Equipment Trust of 1970,
Series RR".

Such marks shall be such as to be readily visible and as to indicate plainly the Trustee's ownership of each unit of the Trust Equipment. Within one year after the delivery to the

as the retaking of the Trust Equipment by the Trustee as hereinafter provided.

SECTION 4.10. *Indemnity.* The Company covenants and agrees to indemnify the Trustee against any and all claims, costs and expenses arising out of or connected with the ownership or use of any of the Trust Equipment, and particularly against any and all claims arising out of the use of any patented inventions in and about the Trust Equipment, and to comply in all respects with the laws of the United States of America and of all the states and other jurisdictions in which the Trust Equipment, or any unit thereof, may be operated and with all lawful acts, rules, regulations and orders of any commissions, boards, and other legislative, executive, administrative or judicial bodies or officers having power to regulate or supervise any of the Trust Equipment, including without limitation all lawful acts, rules, regulations and orders of any body having competent jurisdiction relating to refrigerated or refrigerator cars or to automatic coupler devices, or attachments, air brakes or other appliances ; *provided, however,* that the Company may in good faith contest the validity of any such law, act, rule, regulation or order, or the application thereof to the Trust Equipment or any part thereof, in any reasonable manner which will not in the judgment of the Trustee materially endanger the rights or interests of the Trustee or of the holders of the Trust Certificates. The Company shall not be relieved from any of its obligations hereunder by reason of the assertion or enforcement of any such claims or the commencement or prosecution of any litigation in respect thereof.

ARTICLE FIVE

EVENTS OF DEFAULT AND REMEDIES

SECTION 5.01. *Events of Default.* The Company covenants and agrees that in case:

- (a) the Company shall default in the payment of any part of the rental payable hereunder needed to pay the

principal of any Trust Certificate as and when such principal may become due, whether at maturity or by declaration or otherwise, or if the Company shall default in the payment of any other part of the rental payable hereunder (including advance rental) for more than ten days after the same shall have become due and payable, or

(b) the Company shall make or suffer any unauthorized assignment or transfer of its rights hereunder or shall make any unauthorized transfer or sublease (including, for the purpose of this clause, contracts for the use thereof) of any of the Trust Equipment or, except as herein authorized, shall part with the possession of any of the Trust Equipment and shall fail or refuse either (i) to cause such assignment or transfer or sublease to be canceled by agreement of all parties having any interest therein and recover possession of such Trust Equipment within 30 days after the Trustee shall have demanded in writing such cancelation and recovery of possession or (ii) within said 30 days to deposit with the Trustee a sum in cash equal to the value, as of the date of such unauthorized action (determined in the manner provided in subparagraph (1) of the last paragraph of Section 4.06), of such Trust Equipment (any sum so deposited to be returned to the Company upon the cancelation of such assignment, transfer or sublease and the recovery of possession by the Company of such Trust Equipment), or

(c) the Company shall, for more than 60 days after the Trustee shall have demanded in writing performance thereof, fail or refuse to comply with any other of the terms and covenants hereof on its part to be kept and performed or to make provision satisfactory to the Trustee for such compliance, or

(d) the lease provided for herein shall be terminated by operation of law or pursuant to the last paragraph of Section 4.09, or

At any time, and from time to time, if at the time no Event of Default shall have occurred and be continuing, the Trustee, on Request, shall invest and reinvest Deposited Cash held by it or cash deposited with it pursuant to Section 4.06 or Section 4.08 (hereinafter in this Section called Replacement Funds) in Investments, at such prices, not in excess of fair market value at the time of investment, including any premium and accrued interest, as are set forth in such Request, such Investments to be held by the Trustee in trust for the benefit of the holders of the Trust Certificates.

The Trustee shall, on Request, or the Trustee may, in the event funds are required for payment against delivery of Trust Equipment or for payment of the principal of or dividends on any Trust Certificate, sell such Investments, or any portion thereof, and restore to Deposited Cash or Replacement Funds, as the case may be, the proceeds of any such sale up to the amount paid for such Investments, including accrued interest, or apply such proceeds to the payment of said principal or dividends if and to the extent such proceeds are needed therefor.

The Trustee shall restore to Deposited Cash or Replacement Funds, as the case may be, out of rental received by it for that purpose under the provisions of Section 4.04(B) (1), an amount equal to expenses incurred in connection with any purchase or sale of Investments and also an amount equal to any loss of principal incident to the sale or redemption of any Investments for a sum less than the amount paid therefor, including accrued interest.

The Company, if not to the knowledge of the Trustee in default under the terms hereof, shall be entitled to receive any interest allowed as provided in the first paragraph of this Section and any interest (in excess of accrued interest paid from Deposited Cash or Replacement Funds at the time of purchase) or other profit which may be realized from any sale or redemption of Investments.

SECTION 8.05. Trustee Not Liable for Delivery Delays or Defects in Equipment or Title; Performance by Agents of

Trustee; Entitlement of Trustee to Expenses; Trustee May Hold Trust Certificates. The Trustee shall not be liable to anyone for any delay in the delivery of any of the Trust Equipment, or for any default on the part of the manufacturers thereof or of the Company, or for any defect in any of the Trust Equipment or in the title thereto, nor shall anything herein be construed as a warranty on the part of the Trustee in respect thereof or as a representation on the part of the Trustee in respect of the value thereof or in respect of the title thereto.

The Trustee may perform its powers and duties hereunder by or through such attorneys, agents and servants as it shall appoint and shall be answerable for only its own acts, negligence and wilful defaults and not for the default or misconduct of any attorney or agent appointed by it with reasonable care. The Trustee shall not be responsible in any way for the recitals herein contained or for the execution or validity of this Agreement or of the Trust Certificates (except for its own execution hereof and thereof) or for the Guaranty by the Company.

The Trustee shall be entitled to receive payment of all of its expenses and disbursements hereunder, including reasonable counsel fees, and to receive reasonable compensation for all services rendered by it in the execution of the trust hereby created, all of which shall be paid by the Company.

The Trustee in its individual capacity may own, hold and dispose of Trust Certificates.

Any moneys at any time held by the Trustee or any paying agent hereunder shall, until paid out or invested by the Trustee or any paying agent as herein provided, be held by it in trust as herein provided for the benefit of the holders of the Trust Certificates.

SECTION 8.06. Resignation and Removal; Appointment of Successor Trustee.

(a) The Trustee may resign and be discharged of the trust created by this Agreement by giving 30 days' written notice to the Company and such resignation shall take effect 30 days after the delivery thereof to the Company or upon

receipt by the Trustee of an instrument of acceptance executed by a successor trustee as hereinafter provided in Section 8.07.

(b) The Trustee may be removed at any time by an instrument in writing signed by the holders of a majority in aggregate unpaid principal amount of the Trust Certificates then outstanding, delivered to the Trustee and to the Company.

(c) If at any time the Trustee shall resign or be removed or otherwise become incapable of acting or, if at any time a vacancy shall occur in the office of the Trustee for any other cause, a successor trustee may be appointed by the holders of a majority of the aggregate unpaid principal amount of the then outstanding Trust Certificates by an instrument in writing delivered to the Company and the Trustee. Until a successor trustee shall be appointed by the holders of Trust Certificates as herein authorized, the Company by an instrument in writing executed by order of its Board of Directors shall appoint a trustee to fill such vacancy. A successor trustee so appointed by the Company shall immediately and without further act be superseded by a successor trustee appointed by the holders of Trust Certificates in the manner provided above if such appointment is made within one year from the completion of the Company's notice as to its appointment of a successor trustee as called for in paragraph (d) of this Section. Every successor trustee appointed pursuant to this Section shall be a national bank or a bank or trust company incorporated under the laws of the United States of America or the State of New York, having its principal office in the Borough of Manhattan in The City of New York, and having capital and surplus of not less than \$50,000,000, if there be such an institution willing, qualified and able to accept the trust upon reasonable or customary terms.

(d) The Company shall give notice of each resignation, removal or incapacity of the then Trustee or of a vacancy occurring in the office of the Trustee for any other cause and

of each appointment by the Company of a successor trustee pursuant to paragraph (c) of this Section by mailing written notice of such event by first-class mail, postage prepaid, to the holders of all outstanding Trust Certificates.

SECTION 8.07. *Acceptance of Appointment by Successor Trustee.* Any successor trustee appointed as provided in Section 8.06 shall execute, acknowledge and deliver to the Company and to its predecessor trustee an instrument accepting such appointment hereunder, and thereupon the resignation or removal of the predecessor trustee shall become effective and such successor trustee, without any further act, deed or conveyance, shall become vested with all the rights, powers, duties and obligations of its predecessor hereunder, with like effect as if originally named as Trustee herein; but, nevertheless, on the written request of the Company or of the successor trustee and upon payment of its charges then unpaid, the trustee ceasing to act shall execute and deliver an instrument transferring to such successor trustee all the rights and powers of the trustee so ceasing to act. Upon request of any such successor trustee, the Company shall execute any and all instruments in writing for more fully and certainly vesting in and confirming to such successor trustee all such rights and powers. Any trustee ceasing to act shall, nevertheless, retain a lien upon all property or funds held or collected by such trustee to secure any amounts then due it pursuant to the provisions of Section 8.05.

SECTION 8.08. *Merger or Consolidation of Trustee.* Any corporation into which the Trustee may be merged or with which it may be consolidated or any corporation resulting from any merger or consolidation to which the Trustee shall be a party shall be the successor of the Trustee hereunder, provided that such corporation shall be qualified under the provisions of Section 8.06, without the execution or filing of any paper or any further act on the part of any of the parties hereto, anything herein to the contrary notwithstanding.

SECTION 8.09. *Return of Certain Moneys to Company.* Notwithstanding any provision of this Agreement, any moneys paid to the Trustee which are applicable to the payment of the principal of or dividends on any Trust Certificates which remain unclaimed for five years after the day when such moneys were due and payable shall then be repaid to the Company upon Request, and the holders of such Trust Certificates shall thereafter be entitled to look only to the Company for payment thereof and all liability of the Trustee with respect to such moneys shall thereupon cease; *provided, however,* that before the repayment of such moneys to the Company as aforesaid, the Trustee may first publish a notice, in such form as may be deemed appropriate by the Trustee in respect of the Trust Certificates so payable and not presented and in respect of the provisions hereof relating to the repayment to the Company of the moneys held for the payment thereof.

ARTICLE NINE

MISCELLANEOUS

SECTION 9.01. *Rights Confined to Parties and Holders.* Nothing expressed or implied herein is intended or shall be construed to confer upon or give to any person, firm or corporation, other than the parties hereto and the holders of the Trust Certificates, any right, remedy or claim under or by reason of this Agreement or of any term, covenant or condition hereof, and all the terms, covenants, conditions, promises and agreements contained herein shall be for the sole and exclusive benefit of the parties hereto and their successors and of the holders of the Trust Certificates.

SECTION 9.02. *No Recourse.* No recourse under any obligation, covenant or agreement of this Agreement or of the guaranty endorsed on any Trust Certificate shall be had against any stockholder, officer or director of the Company, as such, by the enforcement of any assessment or by any legal

or equitable proceeding, by virtue of any statute or otherwise, it being expressly agreed and understood that this Agreement and said guaranty are solely corporate obligations and that no personal liability whatever shall attach to or be incurred by the stockholders, officers or directors of the Company, as such, or any of them, under or by reason of any of the obligations, covenants or agreements contained in this Agreement or in said guaranty, or implied therefrom, and that any and all personal liability either at common law or in equity, or by statute or constitution, of every such stockholder, officer or director is hereby expressly waived as a condition of and consideration for the execution of this Agreement and said guaranty.

SECTION 9.03. *Binding Upon Assigns.* Except as otherwise provided herein, the provisions of this Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.

SECTION 9.04. *Notices.* All demands, notices and communications hereunder shall be in writing and shall be deemed to have been duly given if personally delivered at or mailed by registered mail to (a) in the case of the Company, 1101 Vermont Avenue, N. W., Washington, D. C. 20005, or such other address as may hereafter be furnished to the Trustee in writing by the Company and (b) in the case of the Trustee, 800 17th Street, N. W., Washington, D. C. 20013, or such other address as may hereafter be furnished to the Company in writing by the Trustee. An affidavit as to such mailing by any person representing or acting on behalf of the Company or the Trustee, having the registry receipt attached, shall be conclusive evidence of the giving of such demand, notice or communication.

SECTION 9.05. *Effect of Headings.* The Article and Section headings herein are for convenience only and shall not affect the construction hereof.

SECTION 9.06. *Date Executed.* This Agreement shall be deemed to have been executed on the date of the acknowledgment thereof by the officer of the Trustee who signed it on behalf of the Trustee.

SECTION 9.07. *New York Law Governs.* The provisions of this Agreement and all the rights and obligations of the parties hereunder shall be governed by the laws of the State of New York.

SECTION 9.08. *Amendment or Waiver.* Any provision of this Agreement may be amended or waived with the written consent of the holders of not less than 66 $\frac{2}{3}$ % of the aggregate unpaid principal amount of the Trust Certificates then outstanding; *provided, however,* that no such amendment or waiver shall (1) reduce the amount of principal, change the amount or dates of payment of principal or reduce the rate or extend the time of payment of dividends with respect to the Trust Certificates without the consent of the holders of each Trust Certificate so affected, (2) reduce the amount of or extend the time of payment of any rentals payable under this Agreement or release or provide for the release of any of the Trust Equipment or any other property or cash held by the Trustee in trust, otherwise than as expressly permitted by the present terms of this Agreement, without the consent of the holders of 100% of the aggregate unpaid principal amount of Trust Certificates then outstanding or (3) reduce the percentage of the aggregate principal amount of Trust Certificates then outstanding, the holders of which are required to approve any amendment or to effect any waiver.

IN WITNESS WHEREOF, the Company and the Trustee have caused their names to be signed hereto by their respective officers thereunto duly authorized and their respective corporate seals, duly attested, to be hereunto affixed as of the day and year first written.

THE RIGGS NATIONAL BANK
OF WASHINGTON, D. C.,

by *M. J. Aquilino*
Vice President.

[CORPORATE SEAL]

Attest:

..... *W. H. Hedg*
Trust Officer.

FRUIT GROWERS EXPRESS COMPANY,

by *J. J. Quinn*
President.

Attest:

..... *J. M. Latta*
~~Secretary~~ Secretary.

[CORPORATE SEAL]

DISTRICT OF COLUMBIA ss.:

On this 8th day of June, 1970, before me personally appeared *M T Aguilera*, to me personally known, who, being by me duly sworn, says that he is a Vice President of THE RIGGS NATIONAL BANK OF WASHINGTON, D. C., that one of the seals affixed to the foregoing instrument is the corporate seal of said Bank, that said instrument was signed and sealed on behalf of said Bank 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 Bank.

Paul J. Lytle.....
Notary Public DC

My commission expires

My Commission Expires Nov. 14, 1971

[NOTARIAL SEAL]

DISTRICT OF COLUMBIA ss.:

On this 6th day of June, 1970, before me personally appeared *J. J. QUINN*, to me personally known, who, being by me duly sworn, says that he is the President of FRUIT GROWERS EXPRESS COMPANY, that one of the seals 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.

J. J. Moffitt.....
Notary Public DC

My commission expires

My Commission Expires Oct. 14, 1972

[NOTARIAL SEAL]

SCHEDULE A

Type	Quantity	Company Car Numbers (all inclusive)	Unit Cost	Total Cost
70 ton (50' 6" — 51' 4") insulated bunkerless refrigerator cars, RBL type, all equipped with cushion underframes, load protection devices, roller bearings and foamed-in-place polyurethane insulation	243	- RBNX 96378-96620 or SCL 496378-496620	\$19,316	\$ 4,693,788
	77	- RBNX 96621-96697 or SCL 496621-496697	\$19,316	1,487,332
	115	- RBNX 99698-96812 or SCL 496698-496812	\$19,750	2,271,250
	167	- RBNX 96813-96979 or N&W 296813-296979	\$19,315	3,225,605
	100	- RBNX 96980-96999 or N&W 296980-296999 297050-297129	\$19,316	1,931,000
	190	- RBNX 97130-97319 or N&W 297130-297319	\$19,723	3,747,370
	53	- RBNX 97320-97372- or SCL 497320-497372	\$19,750	1,046,750
	43	- RBNX 97385-97427- or PC 362376-362418	\$19,635	834,305
	988			<u>\$19,248,000</u>

SECTION 6.4. *Further Assurances.* The Company agrees from time to time to do all such acts and execute all such instruments of further assurance as it shall be reasonably requested by the Trustee to do or execute for the purpose of fully carrying out and effectuating this Agreement and the intent hereof.

SECTION 6.05. *Merger or Consolidation.* The Company agrees that in the event it merges or consolidates with another corporation, the survivor of such merger or corporation formed by such consolidation shall be a solvent corporation organized under the laws of the United States of America or a state thereof or the District of Columbia and such survivor or corporation formed (if not the Company) shall assume all the obligations and liabilities of the Company hereunder and as guarantor of the Trust Certificates.

ARTICLE SEVEN

CONCERNING THE HOLDERS OF TRUST CERTIFICATES

SECTION 7.01. *Evidence of Action Taken by Holders of Trust Certificates.* Whenever in this Agreement it is provided that the holders of a specified percentage in aggregate principal amount of the Trust Certificates may take any action, the fact that at the time of taking any such action the holders of such specified percentage have joined therein may be evidenced by any instrument or any number of instruments of similar tenor executed by holders of Trust Certificates in person or by agent or proxy appointed in writing.

SECTION 7.02. *Proof of Execution of Instruments and of Holding of Trust Certificates.* Proof of the execution of any instrument by a holder of Trust Certificates or his agent or proxy and proof of the holding by any person of any of the Trust Certificates shall be sufficient if made in the following manner:

The fact and date of the execution by any such person of any instrument may be proved by the certificate of any notary public or other officer of any jurisdiction within the United States of America authorized to take acknowledgments of deeds to be recorded in such jurisdiction that the person executing such instrument acknowledged to him the execution thereof or by an affidavit of a witness to such execution sworn to before any such notary or other such officer.

The ownership of Certificates may be proved by the register of such Trust Certificates or by a certificate of the registrar thereof.

SECTION 7.03. *Trust Certificates Owned by Company.* In determining whether the holders of the requisite principal amount of the Trust Certificates have concurred in any direction, request or consent under this Agreement, Trust Certificates which are owned by the Company or by an Affiliate of the Company shall be disregarded, except that for the purpose of determining whether the Trustee shall be protected in relying on any such direction, request or consent, only Trust Certificates which the Trustee knows to be so owned shall be disregarded.

SECTION 7.04. *Right of Revocation of Action Taken.* At any time prior to (but not after) the evidencing to the Trustee, as provided in Section 7.01, of the taking of any action by the holders of the percentage in aggregate unpaid principal amount of the Trust Certificates specified in this Agreement, any holder of a Trust Certificate the serial number of which is shown by the evidence to be included in the Trust Certificates the holders of which have consented to such action may, by filing written notice with the Trustee at its Corporate Trust Office and upon proof of holding as provided in Section 7.02, revoke such action in so far as concerns such Trust Certificate. Except as aforesaid any such action taken by the holder of any Trust Certificate shall be conclusive and binding upon such holder and upon all future holders and owners of such Trust Certificate and

of any Trust Certificate issued in exchange or substitution therefor, irrespective of whether or not any notation in regard thereto is made upon such Trust Certificate. Any action taken by the holders of the percentage in aggregate unpaid principal amount of the Trust Certificates specified in this Agreement in connection with such action shall be conclusive and binding upon the Company, the Trustee and the holders of all the Trust Certificates.

ARTICLE EIGHT

THE TRUSTEE

SECTION 8.01. *Acceptance of Trust.* The Trustee hereby accepts the trust imposed upon it by this Agreement and agrees to perform the same as herein expressed.

SECTION 8.02. *Duties and Responsibilities of the Trustee.* In case an Event of Default has occurred (which has not been cured), the Trustee shall exercise such of the rights and powers vested in it by this Agreement, and use the same degree of care and skill in their exercise, as a prudent man would exercise or use under the circumstances in the conduct of his own affairs.

No provision of this Agreement shall be construed to relieve the Trustee from liability for its own negligent action, its own negligent failure to act, or its own wilful misconduct, except that

(a) prior to the occurrence of an Event of Default and after the curing of all Events of Default which may have occurred:

(1) the duties and obligations of the Trustee shall be determined solely by the express provisions of this Agreement, and the Trustee shall not be liable except for the performance of such duties and obligations as are specifically set forth in this Agreement, and no implied covenants or obligations shall be read into this Agreement against the Trustee; and

(2) in the absence of bad faith on the part of the Trustee, the Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon any certificates or opinions furnished to the Trustee and conforming to the requirements of this Agreement; but in the case of any such certificates or opinions which by any provision hereof are specifically required to be furnished to the Trustee, the Trustee shall be under a duty to examine the same to determine whether or not they conform to the requirements of this Agreement;

(b) the Trustee shall not be liable for failure to act as a result of lack of knowledge or for any error of judgment made in good faith, unless it shall be proved that the Trustee was negligent in ascertaining the pertinent facts or that its action or inaction was contrary to the express provisions of this Agreement;

(c) the Trustee shall not be liable with respect to any action taken or omitted to be taken by it in good faith in accordance with the direction of the holders of a majority in aggregate unpaid principal amount of the then outstanding Trust Certificates relating to (i) the time, method and place of conducting any proceeding for any remedy available to the Trustee or (ii) exercising any trust or power conferred upon the Trustee, under this Agreement;

(d) the Trustee may rely and shall be protected in acting or refraining from acting upon any resolution, certificate, statement, instrument, opinion, report, notice, request, consent, order, Trust Certificate, guaranty or other paper or document believed by it to be genuine and to have been signed or presented by the proper party or parties;

(e) the Trustee may consult with counsel, and any Opinion of Counsel shall be full and complete authorization and protection in respect of any action taken or

suffered by it hereunder in good faith and in accordance with such Opinion of Counsel and not contrary to any express provision of the Agreement;

(f) the Trustee shall be under no obligation to exercise any of its rights or powers vested in it by this Agreement at the request, order or direction of any of the holders of the Trust Certificates, pursuant to the provisions of this Agreement, unless such holders shall have offered to the Trustee reasonable security or indemnity against the costs, expenses and liabilities which might be incurred therein or thereby; and

(g) the Trustee shall not be liable for any action taken by it in good faith and believed by it to be authorized or within the discretion or rights or powers conferred upon it by this Agreement.

SECTION 8.03. *Application of Rentals.* The Trustee covenants and agrees to apply the rentals received by it under Section 4.04(B) when and as the same shall be received and, to the extent that such rentals shall be sufficient therefor, for the purposes specified in Section 4.04(B).

The Trustee shall not be required to undertake any act or duty in the way of insuring, taking care of or taking possession of the Trust Equipment or to undertake any other act or duty under this Agreement until fully indemnified by the Company or by one or more of the holders of the Trust Certificates against all liability and expenses; and the Trustee shall not be responsible for the filing or recording or refiling or re-recording of this Agreement or of any supplement hereto or statement of new numbers.

SECTION 8.04. *Funds May be Held by Trustee; Investments.* Any money at any time paid to or held by the Trustee hereunder until paid out by the Trustee as herein provided may be carried by the Trustee on deposit with itself, and the Company shall be entitled to such interest thereon as may be agreed upon between it and the Trustee.

At any time, and from time to time, if at the time no Event of Default shall have occurred and be continuing, the Trustee, on Request, shall invest and reinvest Deposited Cash held by it or cash deposited with it pursuant to Section 4.06 or Section 4.08 (hereinafter in this Section called Replacement Funds) in Investments, at such prices, not in excess of fair market value at the time of investment, including any premium and accrued interest, as are set forth in such Request, such Investments to be held by the Trustee in trust for the benefit of the holders of the Trust Certificates.

The Trustee shall, on Request, or the Trustee may, in the event funds are required for payment against delivery of Trust Equipment or for payment of the principal of or dividends on any Trust Certificate, sell such Investments, or any portion thereof, and restore to Deposited Cash or Replacement Funds, as the case may be, the proceeds of any such sale up to the amount paid for such Investments, including accrued interest, or apply such proceeds to the payment of said principal or dividends if and to the extent such proceeds are needed therefor.

The Trustee shall restore to Deposited Cash or Replacement Funds, as the case may be, out of rental received by it for that purpose under the provisions of Section 4.04(B) (1), an amount equal to expenses incurred in connection with any purchase or sale of Investments and also an amount equal to any loss of principal incident to the sale or redemption of any Investments for a sum less than the amount paid therefor, including accrued interest.

The Company, if not to the knowledge of the Trustee in default under the terms hereof, shall be entitled to receive any interest allowed as provided in the first paragraph of this Section and any interest (in excess of accrued interest paid from Deposited Cash or Replacement Funds at the time of purchase) or other profit which may be realized from any sale or redemption of Investments.

SECTION 8.05. Trustee Not Liable for Delivery Delays or Defects in Equipment or Title; Performance by Agents of

Trustee; Entitlement of Trustee to Expenses; Trustee May Hold Trust Certificates. The Trustee shall not be liable to anyone for any delay in the delivery of any of the Trust Equipment, or for any default on the part of the manufacturers thereof or of the Company, or for any defect in any of the Trust Equipment or in the title thereto, nor shall anything herein be construed as a warranty on the part of the Trustee in respect thereof or as a representation on the part of the Trustee in respect of the value thereof or in respect of the title thereto.

The Trustee may perform its powers and duties hereunder by or through such attorneys, agents and servants as it shall appoint and shall be answerable for only its own acts, negligence and wilful defaults and not for the default or misconduct of any attorney or agent appointed by it with reasonable care. The Trustee shall not be responsible in any way for the recitals herein contained or for the execution or validity of this Agreement or of the Trust Certificates (except for its own execution hereof and thereof) or for the Guaranty by the Company.

The Trustee shall be entitled to receive payment of all of its expenses and disbursements hereunder, including reasonable counsel fees, and to receive reasonable compensation for all services rendered by it in the execution of the trust hereby created, all of which shall be paid by the Company.

The Trustee in its individual capacity may own, hold and dispose of Trust Certificates.

Any moneys at any time held by the Trustee or any paying agent hereunder shall, until paid out or invested by the Trustee or any paying agent as herein provided, be held by it in trust as herein provided for the benefit of the holders of the Trust Certificates.

SECTION 8.06. Resignation and Removal; Appointment of Successor Trustee.

(a) The Trustee may resign and be discharged of the trust created by this Agreement by giving 30 days' written notice to the Company and such resignation shall take effect 30 days after the delivery thereof to the Company or upon

receipt by the Trustee of an instrument of acceptance executed by a successor trustee as hereinafter provided in Section 8.07.

(b) The Trustee may be removed at any time by an instrument in writing signed by the holders of a majority in aggregate unpaid principal amount of the Trust Certificates then outstanding, delivered to the Trustee and to the Company.

(c) If at any time the Trustee shall resign or be removed or otherwise become incapable of acting or, if at any time a vacancy shall occur in the office of the Trustee for any other cause, a successor trustee may be appointed by the holders of a majority of the aggregate unpaid principal amount of the then outstanding Trust Certificates by an instrument in writing delivered to the Company and the Trustee. Until a successor trustee shall be appointed by the holders of Trust Certificates as herein authorized, the Company by an instrument in writing executed by order of its Board of Directors shall appoint a trustee to fill such vacancy. A successor trustee so appointed by the Company shall immediately and without further act be superseded by a successor trustee appointed by the holders of Trust Certificates in the manner provided above if such appointment is made within one year from the completion of the Company's notice as to its appointment of a successor trustee as called for in paragraph (d) of this Section. Every successor trustee appointed pursuant to this Section shall be a national bank or a bank or trust company incorporated under the laws of the United States of America or the State of New York, having its principal office in the Borough of Manhattan in The City of New York, and having capital and surplus of not less than \$50,000,000, if there be such an institution willing, qualified and able to accept the trust upon reasonable or customary terms.

(d) The Company shall give notice of each resignation, removal or incapacity of the then Trustee or of a vacancy occurring in the office of the Trustee for any other cause and

of each appointment by the Company of a successor trustee pursuant to paragraph (c) of this Section by mailing written notice of such event by first-class mail, postage prepaid, to the holders of all outstanding Trust Certificates.

SECTION 8.07. *Acceptance of Appointment by Successor Trustee.* Any successor trustee appointed as provided in Section 8.06 shall execute, acknowledge and deliver to the Company and to its predecessor trustee an instrument accepting such appointment hereunder, and thereupon the resignation or removal of the predecessor trustee shall become effective and such successor trustee, without any further act, deed or conveyance, shall become vested with all the rights, powers, duties and obligations of its predecessor hereunder, with like effect as if originally named as Trustee herein; but, nevertheless, on the written request of the Company or of the successor trustee and upon payment of its charges then unpaid, the trustee ceasing to act shall execute and deliver an instrument transferring to such successor trustee all the rights and powers of the trustee so ceasing to act. Upon request of any such successor trustee, the Company shall execute any and all instruments in writing for more fully and certainly vesting in and confirming to such successor trustee all such rights and powers. Any trustee ceasing to act shall, nevertheless, retain a lien upon all property or funds held or collected by such trustee to secure any amounts then due it pursuant to the provisions of Section 8.05.

SECTION 8.08. *Merger or Consolidation of Trustee.* Any corporation into which the Trustee may be merged or with which it may be consolidated or any corporation resulting from any merger or consolidation to which the Trustee shall be a party shall be the successor of the Trustee hereunder, provided that such corporation shall be qualified under the provisions of Section 8.06, without the execution or filing of any paper or any further act on the part of any of the parties hereto, anything herein to the contrary notwithstanding.

SECTION 8.09. *Return of Certain Moneys to Company.* Notwithstanding any provision of this Agreement, any moneys paid to the Trustee which are applicable to the payment of the principal of or dividends on any Trust Certificates which remain unclaimed for five years after the day when such moneys were due and payable shall then be repaid to the Company upon Request, and the holders of such Trust Certificates shall thereafter be entitled to look only to the Company for payment thereof and all liability of the Trustee with respect to such moneys shall thereupon cease; *provided, however,* that before the repayment of such moneys to the Company as aforesaid, the Trustee may first publish a notice, in such form as may be deemed appropriate by the Trustee in respect of the Trust Certificates so payable and not presented and in respect of the provisions hereof relating to the repayment to the Company of the moneys held for the payment thereof.

ARTICLE NINE

MISCELLANEOUS

SECTION 9.01. *Rights Confined to Parties and Holders.* Nothing expressed or implied herein is intended or shall be construed to confer upon or give to any person, firm or corporation, other than the parties hereto and the holders of the Trust Certificates, any right, remedy or claim under or by reason of this Agreement or of any term, covenant or condition hereof, and all the terms, covenants, conditions, promises and agreements contained herein shall be for the sole and exclusive benefit of the parties hereto and their successors and of the holders of the Trust Certificates.

SECTION 9.02. *No Recourse.* No recourse under any obligation, covenant or agreement of this Agreement or of the guaranty endorsed on any Trust Certificate shall be had against any stockholder, officer or director of the Company, as such, by the enforcement of any assessment or by any legal

or equitable proceeding, by virtue of any statute or otherwise, it being expressly agreed and understood that this Agreement and said guaranty are solely corporate obligations and that no personal liability whatever shall attach to or be incurred by the stockholders, officers or directors of the Company, as such, or any of them, under or by reason of any of the obligations, covenants or agreements contained in this Agreement or in said guaranty, or implied therefrom, and that any and all personal liability either at common law or in equity, or by statute or constitution, of every such stockholder, officer or director is hereby expressly waived as a condition of and consideration for the execution of this Agreement and said guaranty.

SECTION 9.03. *Binding Upon Assigns.* Except as otherwise provided herein, the provisions of this Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.

SECTION 9.04. *Notices.* All demands, notices and communications hereunder shall be in writing and shall be deemed to have been duly given if personally delivered at or mailed by registered mail to (a) in the case of the Company, 1101 Vermont Avenue, N. W., Washington, D. C. 20005, or such other address as may hereafter be furnished to the Trustee in writing by the Company and (b) in the case of the Trustee, 800 17th Street, N. W., Washington, D. C. 20013, or such other address as may hereafter be furnished to the Company in writing by the Trustee. An affidavit as to such mailing by any person representing or acting on behalf of the Company or the Trustee, having the registry receipt attached, shall be conclusive evidence of the giving of such demand, notice or communication.

SECTION 9.05. *Effect of Headings.* The Article and Section headings herein are for convenience only and shall not affect the construction hereof.

SECTION 9.06. *Date Executed.* This Agreement shall be deemed to have been executed on the date of the acknowledgment thereof by the officer of the Trustee who signed it on behalf of the Trustee.

SECTION 9.07. *New York Law Governs.* The provisions of this Agreement and all the rights and obligations of the parties hereunder shall be governed by the laws of the State of New York.

SECTION 9.08. *Amendment or Waiver.* Any provision of this Agreement may be amended or waived with the written consent of the holders of not less than 66 $\frac{2}{3}$ % of the aggregate unpaid principal amount of the Trust Certificates then outstanding; *provided, however,* that no such amendment or waiver shall (1) reduce the amount of principal, change the amount or dates of payment of principal or reduce the rate or extend the time of payment of dividends with respect to the Trust Certificates without the consent of the holders of each Trust Certificate so affected, (2) reduce the amount of or extend the time of payment of any rentals payable under this Agreement or release or provide for the release of any of the Trust Equipment or any other property or cash held by the Trustee in trust, otherwise than as expressly permitted by the present terms of this Agreement, without the consent of the holders of 100% of the aggregate unpaid principal amount of Trust Certificates then outstanding or (3) reduce the percentage of the aggregate principal amount of Trust Certificates then outstanding, the holders of which are required to approve any amendment or to effect any waiver.

IN WITNESS WHEREOF, the Company and the Trustee have caused their names to be signed hereto by their respective officers thereunto duly authorized and their respective corporate seals, duly attested, to be hereunto affixed as of the day and year first written.

THE RIGGS NATIONAL BANK
OF WASHINGTON, D. C.,

by *M. J. Aquilino*
Vice President.

[CORPORATE SEAL]

Attest:

..... *W. H. Hedg*
Trust Officer.

FRUIT GROWERS EXPRESS COMPANY,

by *J. J. Quinn*
President.

Attest:

..... *J. M. Latta*
~~Secretary~~ Secretary.

[CORPORATE SEAL]

DISTRICT OF COLUMBIA ss.:

On this 8th day of June, 1970, before me personally appeared *M I Aguilas*, to me personally known, who, being by me duly sworn, says that he is a Vice President of THE RIGGS NATIONAL BANK OF WASHINGTON, D. C., that one of the seals affixed to the foregoing instrument is the corporate seal of said Bank, that said instrument was signed and sealed on behalf of said Bank 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 Bank.

Paul J. Lytle.....
Notary Public DC

My commission expires

My Commission Expires Nov. 14, 1971

[NOTARIAL SEAL]

DISTRICT OF COLUMBIA ss.:

On this 6th day of June, 1970, before me personally appeared *J. J. QUINN*, to me personally known, who, being by me duly sworn, says that he is the President of FRUIT GROWERS EXPRESS COMPANY, that one of the seals 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.

J. J. Moffitt.....
Notary Public DC

My commission expires

My Commission Expires Oct. 14, 1972

[NOTARIAL SEAL]

SCHEDULE A

Type	Quantity	Company Car Numbers (all inclusive)	Unit Cost	Total Cost
70 ton (50' 6" — 51' 4") insulated bunkerless refrigerator cars, RBL type, all equipped with cushion underframes, load protection devices, roller bearings and foamed-in-place polyurethane insulation	243	- RBNX 96378-96620 or SCL 496378-496620	\$19,316	\$ 4,693,788
	77	- RBNX 96621-96697 or SCL 496621-496697	\$19,316	1,487,332
	115	- RBNX 99698-96812 or SCL 496698-496812	\$19,750	2,271,250
	167	- RBNX 96813-96979 or N&W 296813-296979	\$19,315	3,225,605
	100	- RBNX 96980-96999 or N&W 296980-296999 297050-297129	\$19,316	1,931,000
	190	- RBNX 97130-97319 or N&W 297130-297319	\$19,723	3,747,370
	53	- RBNX 97320-97372- or SCL 497320-497372	\$19,750	1,046,750
	43	- RBNX 97385-97427- or PC 362376-362418	\$19,635	834,305
	988			<u>\$19,248,000</u>