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INTERSTATE COMMERCE COMMISSION

AGREEMENT AND ASSIGNMENT

Dated as of March 1, 1970

between

W. O. BREM and T. K. HAND, JR.

and

THE FIRST PENNSYLVANIA BANKING AND TRUST COMPANY

AGREEMENT AND ASSIGNMENT dated as of March 1, 1970, between the persons first named following the testimonium below (hereinafter called the Owners) and THE FIRST PENNSYLVANIA BANKING AND TRUST COMPANY with a post office address at Fifteenth and Chestnut Streets, Philadelphia, Pennsylvania 19101, acting as Agent under a Finance Agreement dated as of March 1, 1970 (hereinafter called the Finance Agreement), said Trust Company so acting, being hereinafter called the Assignee.

WHEREAS the Owners, BROOKE/TRICIA CORPORATION (hereinafter called the Company) and PENN CENTRAL TRANSPORTATION COMPANY (hereinafter called the Guarantor) have entered into a Conditional Sale Agreement dated as of March 1, 1970 (hereinafter called the Conditional Sale Agreement), covering the sale and delivery, on the conditions therein set forth, by the Owners and the purchase by the Company of the railroad equipment described in Annex B to the Conditional Sale Agreement (said equipment being hereinafter called the Equipment);

NOW, THEREFORE, THIS AGREEMENT AND ASSIGNMENT (hereinafter called this Assignment) WITNESSETH: That, in consideration of the sum of One Dollar ($1.00) and other good and valuable consideration paid by the Assignee to the Owners, the receipt of which is hereby acknowledged, as well as of the mutual covenants herein contained:

SECTION 1. The Owners hereby assign, transfer, and set over unto the Assignee:

(a) All the right, title and interest of the Owners in and to each unit of the Equipment;

(b) All the right, title and interest of the Owners in and to the Conditional Sale Agreement (except

the right to deliver the Equipment and the right to receive the payments specified in subparagraph (a) of the third paragraph of Article 3 thereof, in the last paragraph of Article 16 thereof and reimbursement for taxes paid or incurred by the Owners), and except as aforesaid in and to any and all amounts which may be or become due or owing to the Owners under the Conditional Sale Agreement on account of the indebtedness in respect of the Purchase Price (as defined in the Conditional Sale Agreement) of the Equipment and interest thereon, and in and to any other sums becoming due from the Company or the Guarantor under the Conditional Sale Agreement, other than those hereinabove excluded; and

(c) Except as limited by subparagraph (b) of this paragraph, all the Owners' rights, titles, powers, privileges and remedies under the Conditional Sale Agreement;

without any recourse, however, against the Owners for or on account of the failure of the Company or the Guarantor to make any of the payments provided for in, or otherwise to comply with, any of the provisions of the Conditional Sale Agreement; *provided, however,* that this Assignment shall not subject the Assignee to, or transfer, or pass, or in any way affect or modify, the obligations of the Owners to deliver the Equipment in accordance with the Conditional Sale Agreement or relieve the Company or the Guarantor from their respective obligations to the Owners contained or referred to in Articles 1, 2, 3, 6, 10, 14 and 15 of the Conditional Sale Agreement, it being understood and agreed that, notwithstanding this Assignment, or any subsequent assignment pursuant to the provisions of Article 16 of the Conditional Sale Agreement, all obligations of the Owners to the Company or the Guar-

antor with respect to the Equipment shall be and remain enforceable by the Company and the Guarantor, their successors and assigns, against and only against the Owners. In furtherance of the foregoing assignment, the Owners hereby authorize the Assignee in the Assignee's own name, or in the name of the Assignee's nominee, or in the name of and as attorney, hereby irrevocably constituted, for the Owners, to ask, demand, sue for, collect and enforce any and all sums to which the Assignee is or may become entitled under this Assignment and compliance by the Company and the Guarantor with the terms and agreements on their parts to be performed under the Conditional Sale Agreement, but at the expense and liability and for the sole benefit of the Assignee.

SECTION 2. The Owners agree that they will cause the Equipment to be delivered to the Company in accordance with the provisions of the Conditional Sale Agreement; and that, notwithstanding this Assignment, they will perform and fully comply with each and all of the covenants and conditions of the Conditional Sale Agreement to be performed and complied with by the Owners. The Owners hereby warrant to the Assignee and the Company that at the time of delivery of each unit of the Equipment to the Company under the Conditional Sale Agreement they will have legal title to such unit and good and lawful right to sell such unit, free of all claims, liens, security interests and other encumbrances of any nature except only the rights of the Company under the Conditional Sale Agreement and the rights of the Guarantor under the Lease (as defined in the Conditional Sale Agreement), and that the obligation of the Company to pay the Purchase Price of such unit and interest thereon in accordance with the terms of the Conditional Sale Agreement will not be subject to any defense, setoff or counterclaim whatsoever;

and the Owners agree that they will defend the title to such unit against the demands of all persons whomsoever based on claims originating prior to said delivery of such unit by the Owners to the Company; all *subject, however,* to the provisions of the Conditional Sale Agreement and the rights of the Company thereunder. The Owners will not deliver any of the Equipment under the Conditional Sale Agreement until the Conditional Sale Agreement and the Lease have been filed pursuant to Section 20c of the Interstate Commerce Act.

The Owners agree that in any suit or proceeding brought by the Assignee to collect any instalment of the indebtedness in respect of the Purchase Price of the Equipment, or interest thereon or any other payment due under the Conditional Sale Agreement, or to enforce any provision of the Conditional Sale Agreement, the Owners will indemnify and hold harmless the Assignee from and against all expense, loss or damage suffered by reason of any defense, setoff or counterclaim whatsoever of the Company or the Guarantor arising out of the breach by the Owners of any obligation with respect to the Equipment or the construction, delivery or warranty thereof, or by reason of any defense, setoff or counterclaim whatsoever arising by reason of any other liability at any time of the Owners to the Company or the Guarantor.

The Owners agree that any amount payable to them by the Company or the Guarantor, whether pursuant to the Conditional Sale Agreement or otherwise, not hereby assigned to the Assignee, shall not be secured by any claim, lien, security interest or other encumbrance on any units of the Equipment in respect of which the Assignee pays to the Owners the amount to be paid under Section 5 hereof.

SECTION 3. The Owners will cause to be plainly, distinctly, permanently and conspicuously marked on each side of each unit of the Equipment, at the time of delivery

thereof to the Company, in letters not less than one inch in height, the following legend:

"THE FIRST PENNSYLVANIA BANKING AND TRUST COMPANY, SECURITY-OWNER"

SECTION 4. Upon request of the Assignee, the Owners will execute any and all instruments which may be necessary or proper in order to discharge of record the Conditional Sale Agreement or any other instrument evidencing any interest of the Owners therein or in the Equipment.

SECTION 5. The Assignee, on each Closing Date fixed as provided in Article 3 of the Conditional Sale Agreement with respect to a Group (as defined in said Article 3) of Equipment, shall pay to the Owners an amount equal to that portion of the Purchase Price of such Group not required to be paid pursuant to subparagraph (a) of the third paragraph of said Article 3, provided that there shall have been delivered to the Assignee (with a signed counterpart to the Company) the following documents, in such number of counterparts or copies as may reasonably be requested, in form and substance satisfactory to it and to its special counsel hereinafter mentioned:

(a) Bill of Sale from the Owners to the Assignee, confirming the transfer to the Assignee of security title to the units of the Equipment in the Group and warranting to the Assignee and to the Company that at the time of delivery to the Company under the Conditional Sale Agreement the Owners had legal title to such units and good and lawful right to sell such units and title to such units was free of all claims, liens, security interests and other encumbrances of any nature except only the rights of the Company under the Conditional Sale Agreement and the rights of the Guarantor under the Lease;

(b) Certificate or Certificates of Acceptance with respect to the units of Equipment in the Group as contemplated by Article 2 of the Conditional Sale Agreement and the Certificate or Certificates of Delivery pursuant to § 1 of the Lease;

(c) Certificate of an officer of the Guarantor to the effect that prior to delivery and acceptance of units of the Equipment under the Conditional Sale Agreement and the Lease, none of the units of the Equipment was placed in the service of the Guarantor or otherwise was used by the Guarantor;

(d) Invoices for the units of the Equipment in the Group accompanied by or having endorsed thereon a certification by the Company and the Guarantor as to the correctness of the prices of the units and that such prices do not exceed the lesser of the cost of construction or the fair market value thereof;

(e) Opinion dated such Closing Date of Messrs. Cravath, Swaine & Moore, who are acting as special counsel for the Assignee and for the Investors named in Schedules A and B to the Finance Agreement, addressed to the Assignee, stating that (i) the Finance Agreement has been duly authorized, executed and delivered by the Guarantor and is a valid instrument binding on the Guarantor, (ii) the Conditional Sale Agreement has been duly authorized, executed and delivered by the respective parties thereto and is a valid and binding instrument enforceable in accordance with its terms, (iii) this Assignment has been duly authorized, executed and delivered by the respective parties hereto and is a valid and binding instrument, (iv) the Assignee is vested with all the rights, titles, interests, powers, privileges and remedies purported to be assigned to it by this Assignment, (v) security title to the units of the

Equipment in the Group is validly vested in the Assignee and such units, at the time of delivery thereof to the Company under the Conditional Sale Agreement, were free of all claims, liens, security interests and other encumbrances of any nature except only the rights of the Company under the Conditional Sale Agreement and the rights of the Guarantor under the Lease, (vi) no approval of the Interstate Commerce Commission or any other governmental authority is necessary for the execution and delivery of the Finance Agreement, the Conditional Sale Agreement or this Assignment, or if any approval is necessary it has been obtained, (vii) the Conditional Sale Agreement and this Assignment have been duly filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act and no other filing or recordation is necessary for the protection of the rights of the Assignee in any state of the United States of America, and (viii) registration of the Conditional Sale Agreement, this Assignment or the certificates of interest delivered pursuant to the Finance Agreement is not required under the Securities Act of 1933, as amended, and qualification of an indenture with respect thereto is not required under the Trust Indenture Act of 1939, as amended; and such opinion shall cover such other matters as the Assignee or such Investors may reasonably request;

(f) Opinion dated such Closing Date of counsel for the Company, addressed to the Assignee, stating that (i) the Company is a duly organized and existing corporation in good standing under the laws of the jurisdiction of its incorporation, and has the power and authority to own its properties and to carry on its business as now conducted, and (ii) the Conditional Sale Agreement has been duly authorized, executed and de-

livered on behalf of the Company and is a valid and binding instrument enforceable against the Company in accordance with its terms;

(g) Opinion dated such Closing Date of counsel for the Guarantor, addressed to the Assignee and the Company, to the effect set forth in clauses (i) through (vii) of subparagraph (e) above and stating that (i) the Guarantor is a duly organized and existing corporation in good standing under the laws of the jurisdiction of its corporation, and has the power and authority to own its properties and to carry on its business as now conducted, and (ii) there is no condition, restriction or requirement in the documents constituting the corporate charter or By-Laws of the Guarantor relating to or affecting the execution and delivery by the Guarantor of the Conditional Sale Agreement or the enforceability thereof in accordance with its terms or requiring any approval of stockholders in respect thereof, and (iii) neither the execution and delivery of the Finance Agreement, the Conditional Sale Agreement and this Assignment, nor the consummation of the transactions therein and herein contemplated, nor the fulfillment thereof and hereof will conflict with or result in a breach of any of the terms, conditions or provisions of any law, regulation, order, writ, injunction or decree of any court or governmental instrumentality, domestice or foreign, or of any agreement or instument to which the Guarantor is now a party or constitute a default thereunder; and

(h) Unless payment of the amount payable pursuant to subparagraph (a) of the third paragraph of Article 3 of the Conditional Sale Agreement shall be made by the Assignee with funds furnished to it for that purpose by the Company, a receipt from the Owners for such payment.

In giving the opinions specified in this Section 5, counsel may qualify any opinion to the effect that any agreement is a valid and binding instrument enforceable in accordance with its terms by a general reference to limitations as to enforceability imposed by bankruptcy, insolvency, reorganization, moratorium or other laws affecting the enforcement of creditors' rights generally. In giving the opinions specified in subparagraphs (e) and (f) of the first paragraph of this Section 5, Messrs. Cravath, Swaine & Moore and counsel for the Company may in fact rely, as to any matters governed by the law of any jurisdiction other than New York or the United States, on the opinion of counsel for the Guarantor as to such matters.

The obligation of the Assignee hereunder to make payment for any Group of the Equipment is hereby expressly conditioned upon the prior receipt by the Assignee, pursuant to the Finance Agreement, of all the funds to be furnished to the Assignee by the Investors named in Schedules A and B to the Finance Agreement.

The Assignee shall not be obligated to make any of the above-mentioned payments at any time while an event of default, or any event which with the lapse of time and/or demand provided for in the Conditional Sale Agreement will constitute an event of default, shall be subsisting under the Conditional Sale Agreement.

In the event that the Assignee shall not make any payment to be made by it as herein provided, the Assignee shall reassign to the Owners, without recourse to the Assignee, all right, title and interest of the Assignee in and to the units of Equipment with respect to which such payment has not been made by the Assignee.

SECTION 6. The Assignee may assign all or any of its rights under the Conditional Sale Agreement, including the

right to receive any payments due or to become due to it from the Company or the Guarantor thereunder. In the event of any such assignment any such subsequent or successive assignee or assignees shall, to the extent of such assignment, and upon giving the written notice required in Article 16 of the Conditional Sale Agreement, enjoy all the rights and privileges and be subject to all the obligations of the Assignee hereunder.

SECTION 7. The Owners hereby:

(a) represent and warrant to the Assignee that the Conditional Sale Agreement was duly authorized, executed and delivered by it for a valid consideration, that (assuming due authorization, execution and delivery by the Company and the Guarantor) it is a valid and existing agreement binding upon the Owners; and

(b) agree that they will from time to time and at all times, at the request of the Assignee, execute and deliver all such further instruments of assignment and assurance and do such further acts and things as may be necessary or appropriate in the premises to give effect to the provisions hereinabove set forth and more perfectly to confirm the rights, titles and interests hereby assigned to the Assignee or intended so to be.

SECTION 8. The terms of this Assignment and all rights and obligations hereunder shall be governed by the laws of the State of New York; *provided, however,* that the parties shall be entitled to all the rights conferred by Section 20c of the Interstate Commerce Act, such additional rights arising out of the filing, recording or depositing of the Conditional Sale Agreement and this Assignment as shall be conferred by the laws of the several jurisdictions in which the Conditional Sale Agreement or this Assignment shall be filed, recorded or deposited, or in which any unit of the

Equipment shall be located, and any rights arising out of the marking on the units of the Equipment.

SECTION 9. This Assignment may be executed in any number of counterparts, but the counterpart delivered to the Assignee shall be deemed to be the original counterpart. Although this Assignment is dated as of March 1, 1970, for convenience only, 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 Owners have executed this instrument and the Assignee, pursuant to due corporate authority, has caused this instrument to be executed in its corporate name by duly authorized officers, and its corporate seal to be hereunto affixed and duly attested, all as of the date first above written.

WITNESSED:

D. S. Bennett ..... W. O. Brem

W. O. Brem

D. S. Bennett ..... T. K. Hand, Jr.

T. K. Hand, Jr.

THE FIRST PENNSYLVANIA
BANKING AND TRUST COMPANY,
as Agent

[CORPORATE SEAL]

by .....
Vice President.

Attest:

.....
Assistant Secretary.

COMMONWEALTH OF PENNSYLVANIA
COUNTY OF PHILADELPHIA } ss.:

On this 7th day of April, 1970, before me personally appeared W. O. BREM and T. K. HAND, JR., to me personally known to be the persons described in and who executed the foregoing instrument, and each of them acknowledged that the execution of the foregoing instrument was his free act and deed.

Edward A. Conners
Notary Public

[NOTARIAL SEAL]

EDWARD A. CONNERS
Notary Public, Philadelphia, Philadelphia Co.
My Commission Expires April 1, 1972

My commission Expires:

COMMONWEALTH OF PENNSYLVANIA
COUNTY OF PHILADELPHIA } ss.:

On this 7th day of April, 1970, before me personally appeared W. M. KRAYER, to me personally known, who, being by me duly sworn, says that he is a Vice President of THE FIRST PENNSYLVANIA BANKING AND TRUST COMPANY, 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.

Judith Z. Pote
Notary Public

JUDITH Z. POTE
Notary Public, Philadelphia, Philadelphia Co.
My Commission Expires January 28, 1974

[NOTARIAL SEAL]

My commission Expires:

ACKNOWLEDGMENT OF NOTICE OF ASSIGNMENT

Receipt of a copy of, and due notice of the assignment made by, the foregoing Agreement and Assignment is hereby acknowledged as of March 1, 1970.

BROOKE/TRICIA CORPORATION,

by .....
[redacted] *President.*

PENN CENTRAL TRANSPORTATION COMPANY,

by ..J. E. Drummond..
Assistant Vice President.

GATX-ARMCO-BOOTHE, by GATX/BOOTHE CORPORATION, a general partner,

by .....
Vice President.

ANNEX B—BREM AND HAND, JR.

Type and Specifications	Quantity	Lessee's Road Numbers (Inclusive)	Unit Base Price	Total Base Price
60′ 100-Ton Box Cars	90	220880-220889 220893-220946 275386-275398 279031-279043	$25,780	$2,320,200
60′ 100-Ton Box Cars	79	220947-221025	23,000	1,817,000
50′ 100-Ton Box Cars	14	210939-210952	19,543	273,602
86′ 100-Ton Box Cars	47	295713-295759	28,400	1,334,800
60′ 100-Ton Box Cars	32	275412-275443	25,359	811,488
50′ 70-Ton Air Pak Cushion Cars	55	264596-264650	22,848	1,256,640
55′ 100-Ton Coil Steel Cars	65	752735-752799	21,633	1,406,145