

18004-D
NOTICE AND ACKNOWLEDGMENT AND CONSENT 28 1996 10 PM

This Notice and Acknowledgment and Consent (the "Notice") is made this 28th day of June 1996 among Carbide/Graphite Group, Inc. ("Lessee"), Diversified Lease Funding, Inc. ("Lessor"), PNC Leasing Corp. ("PNC") and Bombardier Capital Inc. ("Assignee").

BACKGROUND

- A. Lessor, as successor in interest to Capital Services Group, Inc. ("CSG"), and Lessee have executed a Lease Agreement dated as of August 10, 1992 (the "Master Lease") and Rider No. 1 thereto (the "Rider") pursuant to and incorporating therein the terms and conditions of the Master Lease, as amended by the Consent to Assignment, dated as of November 20, 1992 among PNC, Lessor, as successor to CSG and Lessee (the "Amendment"; the Master Lease, as amended by the Amendment, together with the Rider thereunder constituting a separate lease agreement being hereinafter referred to as the "Lease Agreement");
- B. Lessor has requested that Assignee make a loan to Lessor in the principal amount of \$260,233.11 (the "Loan") to refinance Lessor's existing debt facility with PNC and to provide general working capital.
- C. As collateral security for payment of the Loan and other obligations incurred in connection therewith, Lessor has assigned all of its right, title and interest in, to and under (i) the Lease Agreement, including rental payments (the "Rent") and other sums due or to become due thereunder and (ii) the equipment described therein ("Equipment"; the Equipment together with the Lease Agreement and Moneys collectively referred to as the "Collateral") to Assignee pursuant to the Security Agreement dated as of June 6, 1996 (the "Security Agreement").
- D. The parties desire to clarify certain of their rights and obligations with respect to each other.

NOW, THEREFORE, IT IS AGREED:

- 1. Lessee hereby acknowledges notice of and consents to Lessor's grant of security interest in and to the Collateral and assignment of Rent to Assignee commencing with the Rent payment due on July 1, 1996, insurance proceeds and all other payments from time to time payable by Lessee under the Lease Agreement (said rents and all other payments being hereafter collectively referred to as the "Moneys").
- 2. Lessee certifies, confirms, acknowledges and warranties as follows: (a) the term of the Lease commenced as of Nov. 20, 1992 (b) the Rent amount is payable in monthly installments on or before the first day of each month for which such rental relates, (c) on the date hereof, all payments of Rent have been made as scheduled and there remain 41 payments of \$5,440 each under the Lease Agreement, (d) the representations and warranties of Lessee set forth in the

Lease Agreement are true and correct in all material respects as though made on and as of the date hereof, (e) that Exhibit A hereto is a true and complete copy of the Lease Agreement with all amendments and modifications thereto; (f) neither Lessor nor Lessee is in default of any of their obligations as Lessor and Lessee, respectively, under the Lease Agreement; (g) the Lease Agreement is in full force and effect and represents valid and binding obligations of Lessee; (h) except for the assignment to PNC, Lessee has received no notice of a prior sale, transfer, assignment, hypothecation, or pledge of the Lease Agreement, the Moneys, or the Equipment; (i) all representations and duties of Lessor intended to induce Lessee to enter into the Lease Agreement whether required by the Lease Agreement or otherwise have been fulfilled; (j) Lessee warrants and represents to Assignee that the Lease Agreement and this Notice are the sole agreements between Lessee and Lessor respecting the Equipment and the Moneys; (k) Assignee shall be entitled to the benefits of each and every right accorded Lessor in the Lease Agreement; (l) notwithstanding anything in the Lease Agreement to the contrary, no assignment or sublease by Lessee of any of its rights under the Lease Agreement or in the Equipment shall in any way discharge or diminish any of Lessee's obligations under the Lease Agreement, it being the intention that Lessee shall remain primarily liable to pay and perform all of its obligations under the Lease Agreement; and (m) the grant of security interest and assignment of Rents to Assignee does not materially change Lessee's duties or obligations under the Lease Agreement nor materially increase the burdens or risks imposed on Lessee.

3. Lessee agrees that it will remit all Moneys directly to Assignee as set forth in Section 1 hereof (in sufficient advance time to reach Assignee on their scheduled due dates), via Lessee's check payable to and at the address as follows:

Bombardier Capital Inc.
Attention: General Finance Department
File # 98157
P.O. Box 1067
Charlotte, NC 28201-1067

or such other address as Assignee may designate in writing.

4. Lessee agrees (a) that it shall not enter into any waiver, consent, or other agreement affecting, amending, modifying or terminating the Lease Agreement without the prior written consent of Assignee and any such attempted waiver, consent, or agreement to amend, modify or terminate the Lease Agreement without such consent shall be void; (b) that it will deliver to Assignee a copy of all notices and other communications relating to the Lease Agreement and the Equipment in accordance with the Lease Agreement; (c) Lessee hereby agrees with Assignee that it will promptly designate Assignee as "Additional Insured" and "Loss Payee" as required in the Lease Agreement and will deliver such insurance documentation as Lessor or Assignee shall require coincident with this Notice, and (d) that the rights of Assignee under the Lease Agreement shall not be subject to any defense, set-off or counterclaim that Lessee may have against Lessor or any other person under the Lease Agreement and that Assignee

shall not be responsible for any duties or obligations of Lessor or any other person under the Lease.

5. Lessee and Lessor agree to do any further act and execute any further documents that Assignee reasonably requests in order to protect and secure its interest in the Equipment and the Lease Agreement including, but not limited to, replacing all lienholder notices now affixed to the Equipment, if any, with a notice substituting Bombardier Capital Inc. for PNC Leasing Corp. Assignee shall have all the rights of a secured party under the Uniform Commercial Code, as well as those of Lessor under the Lease Agreement, in enforcing its interest.
6. The validity of this Notice, the construction and enforcement of the terms hereof, and the interpretation of the rights and duties of the parties hereto shall be governed by the laws of the State of Colorado.
7. Any notices required or permitted to be given or delivered hereunder shall be in writing (unless otherwise specifically provided herein or in the Lease Agreement) and shall be sufficiently given if delivered personally or sent by registered mail or sent by first class mail, postage prepaid, to the parties. Any such notice shall be deemed to be given as of the date it is personally delivered or when placed in the mail in the manner specified.
8. This Notice may be executed separately or independently in any number of counterparts. When each party has executed the same or a different counterpart, each and all of which together shall be deemed to have executed by all parties simultaneously and for all purposes to be one Notice.
9. The requirement of prior written notice of a transfer pursuant to Section 18(b) of the Lease is hereby waived.
10. Amendment No. 2 to the Lease Agreement. Each of Lessor and Lessee hereby agree for the benefit of Assignee that so long as Assignee, or any assigns or successors to Assignee, holds an interest in the Lease Agreement or the Equipment, that the terms of the Lease Agreement shall be amended in the following particulars. In the event of any conflict or ambiguity between any provisions of the Lease Agreement and this Notice, the provisions of the Notice shall control.
 - (a) Delivery and Acceptance of Cars. By its execution of this Notice, Lessee acknowledges that it has accepted the Equipment identified in Rider 1 to the Lease Agreement for all purposes under the Lease Agreement and that the term of the Lease Agreement has commenced in respect thereto.
 - (b) Rights of Lessor and Assignee. Whenever the term "Lessor" is used in the Lease Agreement, such term shall mean Diversified Lease Funding, Inc., as assignee of Capital Services Group, Inc., and its successors and assigns. Whenever the term "Assignee" or

"assignee" is used in the Lease Agreement, such terms shall mean Bombardier Capital Inc., and its successors and assigns.

- (c) **Payment.** Payments due shall be made on or before the first day of each month for which such rental relates and is due.
- (d) **Title.** Lessor warrants that on the date of the acceptance of the Equipment by Lessee, Lessor shall have good and marketable title to the Equipment, free and clear of all liens and encumbrances, excepting only the interests of Assignee under the Security Agreement and the interests of Lessee under the Lease Agreement.
- (e) **Substitution of Cars.** In the event that Lessor elects to replace any item of Equipment with Replacement Cars (as defined in the Lease Agreement), Lessor may do so only upon 30 days prior written notice to Assignee, and upon the condition that the Replacement Cars have a value and utility equal to or greater than the Withdrawn Cars or Casualty Cars (as each term is defined in the Lease Agreement); that the Replacement Cars become subject to the terms of the Lease Agreement for all purposes, and that Assignee shall have a perfected first lien security interest in the Replacement Cars on or before the time that the Replacement Cars are delivered to Lessee.
- (f) **Taxes and Insurance.** Lessee shall at all times maintain in effect all risk comprehensive property insurance on the Equipment in amounts equal to the greater of their original invoice price or replacement value, carried through insurance carriers having a Best Rating of not less than A-. All such policies shall insure the interest of Assignee as a lender loss payee, and shall not be canceled by the insurer or the insured, except upon 30 days prior written notice to Assignee. In the event that Lessee fails to maintain insurance as herein specified, Assignee may, at its option, provide such insurance and, in such event, Lessee shall upon demand, reimburse Assignee for the cost thereof.
- (g) **Indemnity.** For purposes of Section 13, Indemnity, the indemnification of Lessor by Lessee shall include Lessor and Assignee.
- (h) **Loss, etc.** Notwithstanding Section 15, Loss, etc., whenever Lessee is required to pay an amount equal to the Stipulated Loss Value due to the loss or destruction of an item of Equipment, Lessee shall make such payment within 45 days following the date of such event, whether or not Lessor has made demand therefore prior to such payment date. In any event, the amount payable by Lessee as the result of such loss, theft or destruction, will be sufficient to pay in full the proportional share of the indebtedness owing to Assignee in respect to the items of Equipment experiencing such loss. All money received by Assignee due to the occurrence of an event of loss shall be ratably applied to the remaining installments of the Loan.

- (i) Financial Information. So long as Assignee holds a security interest in the Lease Agreement, Lessee shall furnish to Assignee the following information at the times specified:

Lessee shall furnish to Assignee (i) as soon as available, but in any event within 90 days after the end of each fiscal year of Lessee, a copy of its consolidated statement of income and retained earnings for such year and consolidated balance sheet and changes in shareholder's equity and cash flows, as at the end of each such year, in each case setting forth in comparative form the corresponding figures for the preceding fiscal year, all in reasonable detail and certified by independent public accountants, (ii) as soon as available and in any event not later than forty-five (45) days after the end of each fiscal quarter of Lessee, a copy of its consolidated statement of income and retained earnings, balance sheet, changes in shareholder's equity and cash flows as at the end of such quarter, (iii) on or before April 1 in each year commencing with the year 1997, an accurate statement, as of the preceding fiscal year (a) showing the amount, description and car numbers of the items of Equipment then leased under the Lease Agreement, the amount, description and car numbers of all items of Equipment that may have suffered a casualty occurrence during the preceding fiscal year (or since the date of the Lease Agreement, in the case of the first such statement); and such other information regarding the condition and state of repair of the items of Equipment as Assignee may reasonably request, and (b) stating that, in the case of all items of Equipment repainted during the period covered by such statement, the markings required by Section 14 of the Lease Agreement shall have been preserved or replaced; (iv) copies of any approvals by or documents filed with the Interstate Commerce Commission or any other government agency or department in connection with the subleasing of the items of Equipment; and (v) such other information relating to the items of Equipment or the financial condition of Lessee as Assignee shall reasonably request.

- (j) Counterparts. The Lease Agreement may be executed by the parties in counterparts; however, a single counterpart will be identified as the "Secured Party Original", which shall be delivered to and retained by Assignee. No transfer of any interest in the Lease Agreement or the rents due or to become due thereunder, shall be effective without delivery to the assignee of the counterpart identified as the "Secured Party Original". Each counterpart of the Lease Agreement shall bear the notation of such restriction.

- (k) Additional Defaults. As further events of default under Section 17 of the Lease Agreement, at the option of Assignee, Assignee may declare Lessee to be in default under the Lease Agreement upon the happening of any of the following:

- (i) Lessee shall fail to pay any installment of basic rent within twenty (20) days after the due date for such payment; or shall fail to pay any other amounts due under the Lease Agreement within twenty (20) days following receipt of an invoice or written demand therefore;

- (ii) Lessee shall fail to perform any covenant, condition or agreement contained in this Notice;
 - (iii) Lessee shall fail to pay or to otherwise discharge any personal property tax, or a lien in respect to such tax, on any item of Equipment following the failure of Lessor to pay or discharge such tax in accordance with the term of the Service Agreement;
 - (iv) Any change, whether singly or in the aggregate, in the holders of a majority of the voting shares of capital stock of Lessee.
- (l) Paragraphs Second and Eleventh of Amendment No. 1 to the Lease set forth in the Consent to Assignment, dated as of November 20, 1992, by and among PNC, Lessor and Lessee are hereby deleted in their entirety.

IN WITNESS WHEREOF, the parties hereto have executed this Notice as of the day, month, and year first above written.

WITNESS JAMES ERICSON SIGNATURE
 ON 6/18/96
 James F. [Signature]
 Comm Exp 5/3/98

SWORN TO BEFORE ME
 ON THIS 18th DAY OF
 June, 1996
 I, Carolyn O'Toole
 Notarial Seal
 I, Carolyn O'Toole, Notary Public
 Pittsburgh, Allegheny County
 My Commission Expires Jan. 22, 1998
 Member, Pennsylvania Association of Notaries

DIVERSIFIED LEASE FUNDING, INC.
 (Lessor)
 By [Signature]
 Name: James A. Ericson
 Title: President

THE CARBIDE/GRAPHITE GROUP, INC.
 (Lessee)
 By [Signature]
 Name:
 Title:

BOMBARDIER CAPITAL INC.
 (Assignee)
 By _____
 Name:
 Title:

By _____
 Name:
 Title:

- (ii) Lessee shall fail to perform any covenant, condition or agreement contained in this Notice;
 - (iii) Lessee shall fail to pay or to otherwise discharge any personal property tax, or a lien in respect to such tax, on any item of Equipment following the failure of Lessor to pay or discharge such tax in accordance with the term of the Service Agreement;
 - (iv) Any change, whether singly or in the aggregate, in the holders of a majority of the voting shares of capital stock of Lessee.
- (l) Paragraphs Second and Eleventh of Amendment No. 1 to the Lease set forth in the Consent to Assignment, dated as of November 20, 1992, by and among PNC, Lessor and Lessee are hereby deleted in their entirety.

IN WITNESS WHEREOF, the parties hereto have executed this Notice as of the day, month, and year first above written.

DIVERSIFIED LEASE FUNDING, INC.
(Lessor)

By _____
Name:
Title:

THE CARBIDE/GRAPHITE GROUP, INC.
(Lessee)

By _____
Name:
Title:

BOMBARDIER CAPITAL INC.
(Assignee)

By _____
Name: *D. Burrowsky*
Title: *Assistant Treasurer*

By *Paul G. McElroy* _____
Name:
Title: *V.P.*

STATE OF VERMONT
COUNTY OF CHITTENDEN

On the 26th day of June, 1996, before me personally appeared Andrew Baranowsky and Paul E. McElroy who acknowledged themselves to be the Assistant Treasurer and Vice President, respectively, of Bombardier Capital Inc., and that they, being authorized by the Board of Directors, voluntarily executed the foregoing instrument and that they duly acknowledged to me that they executed the same of their own free act and deed.



Mary V. Richard, Notary Public
My Commission Expires 2/10/99

The undersigned PNC Leasing Corp hereby acknowledges notice of the refinancing by Bombardier Capital Inc. and hereby confirms that subject to receipt of Federal or other immediately available funds in the amount specified in PNC Leasing Corp letter of June 18, 1996, PNC Leasing Corp will execute and deliver Surface Transportation Board and Uniform Commercial Code Termination statements terminating PNC Leasing Corp's interest in the Railcars and in the Lease Agreement and agrees to execute and deliver all other instruments, certificates and documents reasonably requested by Assignee in order to release the Collateral from the lien of the Security Agreement dated as of November 20, 1992 between PNC Leasing Corp and Lessor, as Debtor.

AGREED AND CONSENTED TO:

PNC LEASING CORP

By 
Stephen M. Baron
Vice President

Sworn to and subscribed in my presence by STEPHEN M. BARON this 24TH day of JUNE, 1996. My Commission Expires JUNE 12, 2000.

Notary Public Shirley A. Thomas

Notarial Seal
Shirley A. Thomas, Notary Public
Pittsburgh, Allegheny County
My Commission Expires June 12, 2000
Member, Pennsylvania Association of Notaries