

Praxair, Inc.  
(As Successor in interest to  
Liquid Carbonic Industries Corporation)  
39 Old Ridgebury Road  
Danbury, CT 06810



### RESTRICTIVE COVENANT

This Declaration of Restrictive Covenant is made pursuant to RCW 70.105D.030(1)(f and g), and WAC 173-340-440 by Liquid Carbonic Industries Corporation, its successors and assigns, and the Washington State Department of Ecology, its successors and assigns.

**Legal Description:** Lots 4, 5, 6 and 7, Block 21, Industrial Addition, Southeast Quarter of Northeast Quarter Section 9, Township 24 North, Range 4 East, situated in City of Seattle, King County, State of Washington.

**Tax Parcel I.D. #:** 3573200920

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## RESTRICTIVE COVENANT

Liquid Carbonic Industries Corporation Property  
5021 Colorado Avenue South, Seattle, Washington

An independent remedial action occurred at the property that is the subject of this Restrictive Covenant. The action undertaken to remediate the property (hereafter referred to as the "Remedial Action") is described in the following reports:

- An October 1993 report by ENSR entitled, Liquid Carbonics, Inc. UST Closure Report, Seattle, Washington (ENSR Document No. 5017-001-100);
- A November 20, 1993 report by West Pac Environmental, Inc. entitled Supplemental Information, MEA UST Closure Report, Liquid Carbonics, Inc.;
- A March, 1994 report by Summit Envirosolutions, Inc. (Summit) entitled Phase I Subsurface Investigation, Liquid Carbonic/Seattle Plant;
- An August 30, 1995 report by Summit, Phase II Subsurface Investigation Report, Liquid Carbonic Facility, Seattle, Washington;
- A January 23, 1996 report by Summit entitled, Soil Excavation and Remediation Work Plan, Liquid Carbonic Facility 5021 Colorado Avenue South, Seattle, Washington, Summit Project No. 961602;
- An August 20, 1996, report by Summit entitled, Independent Remedial Action Report, Liquid Carbonic Facility, 5021 Colorado Avenue South, Seattle, Washington;
- An October 17, 1996 report by Summit entitled, Results of Long-Term Groundwater Monitoring, Liquid Carbonic Facility, Seattle, Washington, Summit Project No. 961602;
- A January 20, 1997 report by Summit, entitled, Results of Long-Term Groundwater Monitoring, Liquid Carbonic Facility, Seattle, Washington, Summit Project 961602;

These documents are on file at the State of Washington Department of Ecology's (Ecology) Northwest Regional Office.

This restrictive covenant is required by WAC 173-340-440 because the independent Remedial Action resulted in residual concentrations of total petroleum hydrocarbons as diesel (TPH-D) and heavy oil (TPH-O) which exceed the Model Toxics Control Act Method A Cleanup level(s) for soil established under WAC 174-360-720. Residual TPH concentrations exceed site-specific cleanup levels of 600 parts per

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## LIQUID CARBONIC DEED RESTRICTION

May 21, 1997

Page 2

million (ppm) TPH-D and 800 ppm TPH-O at the following locations as identified in the Summit (1996) report:

- \* Area 1 in the east portion of the shop area. The sample collected from the east side of the excavation contained 1,200 ppm TPH-O.
- \* Area 2 in the central portion of the shop area. The sample collected from the bottom of the excavation contained 1,100 ppm TPH-D and 7,600 ppm TPH-O.
- \* Area 3 in the southeast portion of the engine room. Except for one sample collected from the east side of the excavation immediately west of the stairway, and one sample collected from the extreme north side, samples from the sides and bottom of the excavation contained TPH-D concentrations ranging from 1,200 to 4,600 ppm, and TPH-O concentrations ranging from 1,900 to 30,000 ppm.
- \* Area 4 in the central portion of the engine room. Samples from the bottom, north, south, and west sides of the excavation contained TPH-D concentrations ranging from 620 to 2,300 ppm, and TPH-O concentrations ranging from 3,200 to 13,000 ppm.
- \* Area 5 excavation in the northeast portion of the engine room. Samples from the bottom, north, east, and west sides of the excavation contained TPH-D concentrations ranging from 650 to 1,500 ppm, and TPH-O concentrations ranging from 1,800 to 10,000 ppm.
- \* Area 6 located in the northwest portion of the engine room. The sample collected from the southeast corner of the excavation contained 2,400 ppm TPH-D and 16,000 ppm TPH-O.

The locations of these samples are illustrated on Figures 7 and 8 in the Summit (1996) report.

Residual concentrations exceed site-specific cleanup levels of 600 ppm and 800 ppm TPH-O at the following locations as identified in the ENSR (1991) report:

- \* The Bunker C underground storage tank excavation located in the northwest portion of the site. Samples NWB-2 collected from the northwest portion of the excavation bottom contained 630 ppm TPH-D. Sample W-1 collected from west side of the excavation contained 19,000 ppm TPH-D. Sample B-C collected near the southeast corner of the excavation contained 30,000 ppm TPH. (The TPH concentration detected in sample B-C was quantified using EPA method 418.1 which provides a combined quantification for TPH-D and TPH-O concentrations detected in the sample.)

The undersigned, Liquid Carbonic Industries Corp. (LCI Corp.), is the fee owner (Owner) of real property (hereinafter referred to as the "Property") in the County of King, State of Washington, that contains residual concentrations of hazardous substances as described above. The Property is legally described as follows:

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# LIQUID CARBONIC DEED RESTRICTION

May 21, 1997

Page 3

Lots 4, 5, 6, and 7, Block 21, Industrial Addition, Southeast Quarter of Northeast Quarter Section 9, Township 24 North, Range 4 East, situated in City of Seattle, King County, State of Washington.

LCI, Corp. makes the following declaration as to limitations, restrictions, and uses to which the Property may be put and specifies that such declarations shall constitute covenants to run with the land, as provided by law and shall be binding on all parties and all persons claiming under them, including all current and future Owners of any portion of or interest in the Property.

Section 1. The site may only be used for industrial purposes as defined in and allowed under the City of Seattle Zoning Regulations codified in the City of Seattle Municipal Code as of the date of this Restrictive Covenant.

Section 2. Any activity on the property that may interfere with the integrity of the Remedial Action and continued protection of human health and the environment is prohibited.

Section 3. Any activity that may result in a release, exposure, or create a new exposure pathway is prohibited without prior written approval from Ecology.

Section 4. The Owner of the property must give thirty (30) day advance written notice to Ecology, or to a Successor agency, of the Owner's intent to convey any interest in the property. No conveyance of title, easement, lease, or other interest in the property shall be consummated by the property Owner without adequate and complete provision for continued groundwater monitoring. Groundwater monitoring will be performed on a quarterly basis by the site owner and shall continue for five years. Groundwater monitoring events performed during this period shall consist of collecting one sample from each of the five existing monitoring wells and submitting the samples to an Ecology-accredited analytical laboratory for the following analyses and reporting those results to Ecology's Toxic Cleanup Program at the Northwest Regional Office.

- \* TPH-D and TPH-O using Ecology method WTPH-D (extended);
- \* RCRA (8) Total Metals: Arsenic, Barium, Cadmium, Chromium, Lead, Mercury, Selenium, and Silver, using United States Environmental Protection Agency (EPA) method 6010 and/or 7000 series methods; and
- \* Polycyclic aromatic hydrocarbons (PAH): Benzo(a)pyrene, Benzo(a)anthracene, Benzo(b)fluoranthene, Benzo(k)fluoranthene, Chrysene, Dibenzo(a,h)anthracene, and Indenopyrene (PAH), using EPA method 8310.

Section 5. The Owner must restrict leases to uses and activities consistent with the Restrictive Covenant and notify all lessees of the restrictions on the use of the property.

9705271350

**LIQUID CARBONIC DEED RESTRICTION**

May 21, 1997

Page 4

Section 6. The Owner must notify and obtain approval from Ecology, or its successor agency, prior to any use of the property that is inconsistent with the terms of this Restrictive Covenant. Ecology or its successor agency may approve any inconsistent use only after public notice and comment.

Section 7. The Owner shall allow authorized representatives of Ecology, or its successor agency, the right to enter the property at reasonable times for the purpose of evaluating the Remedial Action; to take samples, to inspect remedial actions conducted at the property, and to inspect records that are related to the Remedial Action.

Section 8. The site owner may request that Ecology conduct an annual review for trend analysis of the TPH and Metals if one year of quarterly groundwater test results indicate that TPH concentrations do not exceed site-specific cleanup levels of 1.0 ppm gasoline, 10.0 ppm diesel and 15.0 ppm heavy oil nor that PAH and Metals exceed the site cleanup levels stated in Chapter 173-201A WAC (Water Quality Standards for Surface Waters of the State of Washington) and the Federal Register, 40 CFR Part 131, Water Quality Standards. In the event that this review establishes a decreasing trend of these analytes, the owner may request of Ecology a reduced frequency of groundwater monitoring from quarterly to semi-annually, and/or a reduced number of analytes or number of wells sampled. If two consecutive years of groundwater sampling show non-detect for the previous analytes, the owner may petition Ecology to cease groundwater monitoring. Failure to conduct necessary monitoring and maintenance may result in Ecology's withdrawal of this no further action determination.

Section 9. The Owner of the property and the Owner's assigns and successors in interest reserve the right under WAC 173-340-440 to record an instrument that provides that this Restrictive Covenant shall no longer limit use of the property or be of any further force or effect. However, such an instrument may be recorded only with the consent of Ecology, or its successor agency. Ecology or its successor agency may consent to the recording of such an instrument only after public notice and comment.

  
LCI Corp. Representative  
May 8, 1997

PRAXAIR, INC.

As successor in interest to  
Liquid Carbonic Carbon  
Dioxide Corporation and  
Liquid Carbonic Industries  
Corporation

By   
Director, Corporate Real Estate

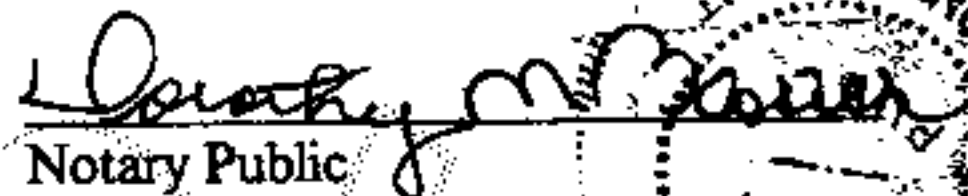
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STATE OF CONNECTICUT )  
 )ss:  
COUNTY OF FAIRFIELD )

I certify that I know or have satisfactory evidence that Edward R. Durkin is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the Director, Corporate Real Estate of Praxair, Inc., to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: May 23, 1997

  
Notary Public

  
My appointment expires: 1/31/99

WASHACKSAM/jjs

DOROTHY M. BAUER  
NOTARY PUBLIC  
COMMISSION EXPIRES JANUARY 31, 1999

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