

Prepared by:

Michael J. Hertz, Esq. (VSB #71079)

Woods Rogers PLC

10 S. Jefferson Street, Suite 1400

Roanoke, VA 24011 After recording return to:

Office of the City Attorney

22 Lincoln Street

Hampton, Va. 23669

(BNB)

LRSN: 6001003

PROFFER AGREEMENT

THIS PROFFER AGREEMENT (“Agreement”) made this 11th day of December, 2013, by and between SDC 24 NORFOLK, VA, L.L.C., an Alabama limited liability company (the “Grantor”), PRAXAIR, INC., a Delaware corporation, formerly known as Union Carbide Industrial Gases, Inc., Grantor for recording purposes; and THE CITY OF HAMPTON, a municipal corporation of the Commonwealth of Virginia (the “Grantee”), with an address of 22 Lincoln Street, Hampton City Hall, Hampton, Va. 23669.

RECITALS

- A. Grantor is or will become the owner of a certain parcel of property located in the City of Hampton, herein known as 3201 Commander Shepard Blvd (LRSN 6001003) and more fully described on “Exhibit A” (the “Property”).
- B. Grantor has initiated a conditional amendment to the zoning map of the City of Hampton, Virginia, by petition addressed to the Grantee so as to amend the proffered conditions attached to Rezoning Application No. 652, which was approved by the City Council for the City of Hampton in 1980.
- C. Grantor has requested approval of this Agreement.

- D. Grantee's policy is to provide for the orderly development of land for various purposes, including commercial purposes, through zoning and other land development legislation.
- E. Grantor desires to offer the City of Hampton certain conditions for the enhancement of the community and to provide for the highest quality and orderly development of the Property.
- F. The conditions outlined in this Agreement have been proffered by Grantor and allowed and accepted by Grantee as a part of the amendment of the City Zoning Ordinance and the Zoning Map. These conditions shall continue in full force and effect until a subsequent amendment changes the zoning of the Property provided, however, that such conditions shall continue if the subsequent amendment is part of the comprehensive implementation of a new or substantially revised zoning ordinance of Grantee.

NOW, THEREFORE, for and in consideration of the approval and acceptance by the Grantee of this Agreement, Grantor agrees that it will meet and comply with all of the following conditions in developing the Property. In the event the requested change of zoning classification is not granted by the City, these Proffers shall thereupon become null and void. Grantor, its heirs, successors, assigns, grantees and other successors in title or interest to the Property, voluntarily and without any requirement by or exaction from Grantee or its governing body and without any element or compulsion or quid pro quo for zoning, rezoning, site plan, building permit or subdivision approval, makes the foregoing declaration of conditions and restrictions governing the use and physical development and operation of the Property, and covenants and agrees that this declaration and the further terms of this Agreement shall constitute covenants

running with the Property, which shall be binding upon the Property, and upon all persons and entities claiming under or through the Grantor, its heirs successors and assigns, grantees and other successors in interest or title to the Property; namely:

CONDITIONS

- A) Use shall be restricted to air separation facilities and any use permitted in a M-1 district.
- B) It is understood that all use and development of the property shall comply with all ordinances of the City of Hampton.
- C) Further lawful conditions or restrictions against the Property may be required by Grantee during the detailed Site Plan review and administration of applicable codes and regulations of Grantee by all appropriate agencies and departments of Grantee, which shall be observed or performed by Grantor. Grantor acknowledges that additional further lawful conditions or restrictions may be imposed by Grantee as a condition of approvals, including but not limited to final site plan approval.
- D) All references hereinabove to zoning districts and to regulations applicable thereto, refer to the City Zoning Ordinance of the City of Hampton, in force as of the date the conditional rezoning amendment is approved by the Grantee.
- E) The Grantor covenants and agrees that (1) the Zoning Administrator of the City of Hampton, Virginia, shall be vested with all necessary authority on behalf of the governing body of the City of Hampton, Virginia, to administer and enforce the

foregoing conditions and restrictions specified in this Agreement, including (i) the ordering in writing of the remedying of any noncompliance with such conditions, and (ii) the bringing of legal action or suit to ensure compliance with such conditions, including mandatory or prohibitory injunction, abatement, damages or other appropriate action, suit or proceedings; (2) the failure to meet all conditions shall constitute cause to deny the issuance of any of the required building or occupancy permits as may be appropriate; and (3) the Zoning Map shall show by an appropriate symbol on the Map the existence of conditions attaching to the zoning of the subject Property on the Map and that the ordinance and conditions may be made readily available and accessible for public inspection in the office of the Zoning Administrator and in the Department of Community Development and that this Agreement shall be recorded in the Clerk's Office of the Circuit Court of the City of Hampton, Virginia and indexed in the name of the Grantor and Grantee.

WITNESS the following signatures:

Grantor:

SDC 24 NORFOLK, VA, L.L.C.

By: 

STATE OF ALABAMA
COUNTY OF MOBILE:

I, DANNA BOOTH, the undersigned, a Notary Public in and for the County and State aforesaid, do hereby certify that Gregory B. Saad whose name is signed to the foregoing instrument as (title) Manager of SDC Norfolk, VA, L.L.C., an Alabama limited liability company, has sworn to, subscribed, and acknowledged the same before me in the County and State aforesaid, this 19 day of NOVEMBER, 2013 on behalf of said SDC 24 NORFOLK, VA, LLC. He/she is personally known to me or has produced _____ as identification.



Notary Public

My commission expires: 6.18.2017
Registration No. N/A in ALABAMA

Grantor:

Praxair, Inc., formerly known as Union Carbide Industrial Gases, Inc.

By: 

Edward R. Durkin
Director, Corporate Real Estate

STATE OF CONNECTICUT
CITY OF DANBURY:

I, Renee M. Bouteiller, the undersigned, a Notary Public in and for the City and State aforesaid, do hereby certify that Edward R. Durkin whose name is signed to the foregoing instrument as (title) of Praxair, Inc., a Delaware corporation, formerly known as Union Carbide Industrial Gases, Inc., has sworn to, subscribed, and acknowledged the same before me in the City and State aforesaid, this 19th day of November, 2013 on behalf of said Praxair, Inc.. He/she is personally known to me or has produced _____ as identification.



Notary Public

My commission expires: May 31, 2017
Registration No. 148427

RENEE M. BOUTEILLER
NOTARY PUBLIC
MY COMMISSION EXPIRES MAY 31, 2017