

RECORDATION NO. 5010

St. St. Boston Leasing/
Liquid Carbonic
ICC Filing Letter

SEP 15 1988 10 25 AM

INTERSTATE COMMERCE COMMISSION

LIQUID CARBONIC CARBON DIOXIDE CORPORATION
135 South LaSalle Street
Chicago, IL 60603

RECORDATION NO. 1 5818

SEP 15 1988 10 25 AM

INTERSTATE COMMERCE COMMISSION

8-259A040

September 9, 1988

Date ... SEP. 15. 1988

Fee \$... 39.00

ICC Washington, D. C.

Ms. Noreta R. McGee, Secretary
Interstate Commerce Commission
Twelfth Street and Constitution Avenue, N.W.
Washington, D.C. 20423

RECORDATION NO. 5818

SEP 15 1988 10 25 AM

Dear Secretary:

INTERSTATE COMMERCE COMMISSION

I have enclosed an original and one counterpart of the documents described below to be recorded pursuant to Section 11303 of Title 49 of the U.S. Code.

The documents (the "Documents") are:

- (a) Master Equipment Lease Agreement No. 1, dated as of September 9, 1988, a Primary document;
- (b) Rental Schedule No. A-1, dated as of September 9, 1988, a Secondary document; and
- (c) Guaranty Agreement, dated as of September 9, 1988, a Secondary document.

The Primary document to which this filing is related is the Master Equipment Lease Agreement No. 1 referred to above, for which no recordation number has yet been issued.

The names and addresses of the parties to the Documents are as follows:

Lessee:

Liquid Carbonic Carbon Dioxide Corporation
135 South LaSalle Street
Chicago, IL 60603
Attention: Treasurer

SEP 15 10 28 AM '88
MOTOR OPERATOR

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Lessor:

State Street Boston Leasing Company, Inc.
225 Franklin Street
Boston, MA 02101
Attention: Patricia W. Jenkins,
Vice President
Leasing Division

Guarantor:

Liquid Carbonic Industries Corporation
135 South LaSalle Street
Chicago, IL 60603
Attention: Treasurer

A description of the equipment covered by the Documents follows:

25 Union Tank 105A500W 100-ton Rail Cars manufactured by Union Tank Car Company (the "Manufacturer") and identified by vehicle identification numbers (and AAR designations) LCIX2541 through LCIX2565, inclusive.

A fee of \$30.00 is enclosed. Please return the original and any extra copies not needed by the Commission for recordation to Goodwin, Procter & Hoar, Exchange Place, Boston, MA 02109, Attention: F. Beirne Lovely, Jr., Esq.

A short summary of the Documents to appear in the index follows:

- (a) Primary Document. Master Equipment Lease Agreement No. 1 between State Street Boston Leasing Company, Inc., 225 Franklin Street, Boston, MA 02101, as owner-lessor, and Liquid Carbonic Carbon Dioxide Corporation, 135 South LaSalle Street, Chicago, IL 60603, as lessee, dated as of September 9, 1988, covering up to 25 Union Tank 105A500W 100-ton Rail Cars manufactured by Union Tank Car Company; and

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(b) Secondary Documents. (i) Rental Schedule No. A-1, between State Street Boston Leasing Company, Inc., 225 Franklin Street, Boston, MA 02101, as owner-
lessor, and Liquid Carbonic Carbon Dioxide Corporation, 135 South LaSalle Street, Chicago, IL 60603, as lessee, dated as of September 9, 1988, covering 25 Union Tank 105A500W 100-ton Rail Cars constituting the equipment covered by the Documents described above.

(ii) Guaranty Agreement dated as of September 9, 1988 by Liquid Carbonic Industries Corporation, 135 South LaSalle Street, Chicago, IL 60603, guarantying the obligations of Liquid Carbonic Carbon Dioxide Corporation, 135 South LaSalle Street, Chicago, IL 60603, as Lessee under the above-described Lease.

This filing is being made for precautionary purposes only and to make the transaction a matter of public record. This filing should not be construed as evidence of the intent of any of the parties to enter into any transaction other than that of a true lease.

A short summary of the transaction of which the Documents are a part follows:

The Documents have been entered into in connection with the lease financing of certain tank cars as contemplated by the Master Equipment Lease Agreement No. 1, dated as of September 9, 1988, between State Street Boston Leasing Company, Inc., 225 Franklin Street, Boston, MA 02101, as owner-lessor (the "Lessor"), and Liquid Carbonic Carbon Dioxide Corporation, 135 South LaSalle Street, Chicago, IL 60603, as lessee (the "Lessee"). Under such transaction, the Lessor will lease up to 25 Union Tank 105A500W 100-ton Rail Cars to the Lessee pursuant to the Lease. The obligations of the Lessee under the Lease are guaranteed by Liquid Carbonic Industries Corporation, 135 South LaSalle Street, Chicago, IL 60603 (the "Guarantor") under the Guaranty Agreement of the Guarantor dated as of September 9, 1988.

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Please acknowledge receipt of this letter of transmittal and its enclosures by appropriately stamping the enclosed copy of this letter and by returning it to Mr. Lovely in the addressed envelope enclosed for your convenience.

Very truly yours,

LIQUID CARBONIC CARBON
DIOXIDE CORPORATION

By Steven L. Biagini
Steven L. Biagini
Treasurer

Enclosures: Lease (with Exhibits and Schedule) - Original and
Notarized Copy
Rental Schedule No. A-1 (with Exhibits - Original
and Notarized Copy)
Guaranty Agreement (Original and notarized copy)
Transmittal Letter (Copy)
Check (\$30.00)
Return Envelope (Postage Prepaid)

DP-3020/d
8/31/88

ST. ST. BOSTON/LIQUID CARBONIC
GUARANTY AGREEMENT

1 5818/b
REGISTRATION NO. _____ FILED 1988
SEP 15 1988 - 10 23 AM
INTERSTATE COMMERCE COMMISSION

GUARANTY AGREEMENT

Dated as of September 9, 1988

OF

LIQUID CARBONIC INDUSTRIES CORPORATION

RE:

Obligations of

LIQUID CARBONIC CARBON DIOXIDE CORPORATION

Pursuant to a Master Equipment Lease Agreement No. 1
dated as of September 9, 1988
with STATE STREET BOSTON LEASING COMPANY, INC.

ST.ST. BOSTON/LIQUID CARBONIC
GUARANTY AGREEMENT

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GUARANTY AGREEMENT

FOR VALUE RECEIVED, and as an inducement to and as part of the consideration for the execution and delivery by State Street Boston Leasing Company, Inc., a Massachusetts corporation (the "Lessor"), of the Master Equipment Lease Agreement No. 1 dated as of September 9, 1988 between the Lessor and Liquid Carbonic Carbon Dioxide Corporation, a Delaware corporation (the "Lessee"), an affiliate of the undersigned, Liquid Carbonic Industries Corporation, a Delaware corporation (the "Guarantor"), providing for the lease of certain Equipment more fully described in the Rental Schedules from time to time executed by Lessor and Lessee and attached thereto (such Master Equipment Lease Agreement No. 1 together with all exhibits, schedules and attachments from time to time annexed thereto and all Rental Schedules from time to time executed in respect thereof being herein called the "Lease"), this Guaranty Agreement is delivered by the Guarantor for the purpose of guaranteeing as herein provided the obligations of the Lessee under the Lease and under the other agreements relating to the Lease to which the Lessee is a party (said other agreements to which the Lessee is a party being hereinafter collectively called the "Other Lessee Agreements").

The Guarantor does hereby represent, warrant, covenant and agree with the Lessor and its successors and assigns as follows:

SECTION 1. GUARANTY OF RENTAL AND LEASE OBLIGATIONS.

The Guarantor does hereby guarantee:

(a) the full and prompt payment (not collection) when due of each and every installment or other payment of Basic Rent (as defined in the Lease) pursuant to Section 6 of the Lease (including, without limitation, any increases thereof required by any provisions of the Lease) and any other rentals and all other obligations to pay money (including, without limitation, any payments in respect of Casualty Occurrences due pursuant to Section 14 of the Lease and all damages provided to be paid by the Lessee under any of the provisions of the Lease) provided to be paid by the Lessee under the terms of the Lease, all at the time and place and to the Person entitled to receive payment under the terms of the Lease;

(b) in addition to the obligations to pay the amounts guaranteed in paragraph (a) above, the full and prompt performance and observance by the Lessee of each and all of the other covenants and agreements required to be performed or observed by the Lessee under the terms of the Lease; and

(c) payment, upon demand by any Person entitled thereto pursuant to the Lease, of all costs and expenses, legal or

otherwise (including, without limitation, attorneys' fees and disbursements), as shall have been expended or incurred in the seizure, rental or sale of the Equipment or any item thereof as a result of an Event of Default under the Lease or in the protection or enforcement of any rights, privileges or liabilities under the Lease or this Guaranty Agreement or action in connection therewith.

SECTION 2. GUARANTY OF OTHER OBLIGATIONS.

The Guarantor does hereby unconditionally further guarantee:

(a) the full and prompt payment when due by the Lessee of each and every payment of fees, expenses, disbursements and other amounts pursuant to the Other Lessee Agreements, all at the time and place and to the person entitled thereto under the terms of the Other Lessee Agreements;

(b) in addition to the obligations to pay the amounts guaranteed in paragraph (a) above, the full and prompt performance and observance by the Lessee of each and all of the other covenants, warranties and agreements required to be performed, observed or defended by the Lessee under the terms of the Other Lessee Agreements; and

(c) payment, upon demand by any Person entitled thereto pursuant to any of the Other Lessee Agreements, of all costs and expenses, legal or otherwise (including, without limitation, attorneys' fees and disbursements), as shall have been expended or incurred in the protection or enforcement of any right or privilege of any such Person under the Other Lessee Agreements which the Lessee is obligated to protect or enforce or in the protection or enforcement of any rights, privileges or liabilities under this Section 2 of this Guaranty Agreement or action in connection therewith.

SECTION 3. GENERAL PROVISIONS RELATING TO THE GUARANTY.

(a) Each and every Event of Default as defined in Section 20 of the Lease and each and every default in payment or performance of any obligation of the Lessee under any Other Lessee Agreement shall give rise to a separate claim and cause of action hereunder, and separate claims or suits may be made and brought, as the case may be, hereunder as each such default occurs.

(b) The guaranty hereunder shall be a continuing, absolute, unconditional and irrevocable guaranty of payment and performance as described in Sections 1 and 2 above and shall remain in full force and effect until the obligations of the Lessee shall have been fully and satisfactorily discharged in

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accordance with the terms and provisions of the Lease and the Other Lessee Agreements and, to the extent that Guarantor has been called upon to discharge any of its obligations expressly provided for herein, until the Guarantor shall have fully and satisfactorily discharged all of its obligations under this Guaranty Agreement.

(c) The guaranty and the liability of the Guarantor hereunder shall be primary, direct and immediate and shall remain in full force and effect irrespective of any assignment, subleasing or termination (other than a termination after which all obligations of Lessee, including without limitation any general or tax indemnity obligations which would survive such termination, have been fully and satisfactorily discharged in accordance with the terms and provisions of the Lease and the Other Lessee Agreements) of the Lease or any Other Lessee Agreement and shall in no way be affected or impaired by (and no notice to the Guarantor shall be required in respect of) any compromise, waiver, settlement, release, renewal, extension, indulgence, change in or modification or amendment of any of the obligations and liabilities of the Lessee under the Lease or any Other Lessee Agreement, or by any redelivery, repossession, surrender or destruction of the Equipment or any item thereof, in whole or in part, or the transfer, assignment, subletting or mortgaging or the purported transfer, assignment, subletting or mortgaging of all or any part of the interest of the Lessor or the Lessee in the Equipment or of the Lease or any failure of title with respect to the Lessor's or the Lessee's interest in the Equipment or the Lease, or any failure, neglect or omission on the part of the Lessor or any other Person to give the Guarantor notice of the occurrence of any default or Event of Default by the Lessee under the Lease or any Other Lessee Agreement or to realize upon any obligations or liabilities of the Lessee, nor shall the obligation and liability of the Guarantor hereunder be impaired, diminished, abated, modified, changed, released, limited or otherwise affected by any setoff, defense or counterclaim which the Lessee, the Lessor or the Guarantor may have or claim to have at any time or from time to time, or by the commencement by or against the Lessor, the Lessee or the Guarantor of any proceedings under any bankruptcy or insolvency law or laws relating to the relief of debtors, readjustment of indebtedness, reorganizations, arrangements, compositions or extensions or other similar laws or by any merger or consolidation of the Lessee or the Guarantor into or with any other Person or any sale, lease or transfer of any of the assets of the Lessee or the Guarantor to any other Person, or any change in the ownership of any shares of capital stock of the Lessee or the Guarantor; it being the intent and purpose hereof that the Guarantor shall not be entitled to and does hereby waive any and all defenses available to guarantors, sureties and other secondary parties at law or in equity, whether or not referred

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to above so long as a failure to pay or perform under the Lease or any Other Lessee Agreement has occurred. In order to hold the Guarantor liable hereunder, there shall be no obligation on the part of any Person at any time to demand or resort for payment or performance to the Lessee or to any other Person, their properties or assets or to any security, property or other rights or remedies whatsoever, and each Person entitled to receive payments or the benefit of performance guaranteed hereunder shall have the right to enforce this guaranty irrespective of whether or not proceedings or steps are pending seeking resort to or realization upon or from any of the foregoing. Without limiting the foregoing, it is understood that repeated and successive demands may be made and recoveries may be had hereunder as and when, from time to time, the Lessee shall default under the terms of the Lease or any Other Lessee Agreement, and that notwithstanding recovery hereunder for or in respect of any given default or defaults by the Lessee under the Lease or any Other Lessee Agreement, this guaranty shall remain in full force and effect and shall apply to each and every subsequent default. So long as an Event of Default under the Lease or a default by the Guarantor hereunder shall have occurred and be continuing, any claim against the Lessee by way of subrogation or otherwise which the Guarantor shall have by reason of any payment to the Lessor or any other Person pursuant to this Guaranty Agreement shall not be asserted, enforced or collected as against (or to the detriment of) the Lessee (including without limitation, any liquidator, trustee in bankruptcy, assignee for the benefit of creditors or receiver of property or assets of the Lessee), the Lessor or such other Person in any action, suit or proceeding.

(d) No act or omission of any kind or at any time on the part of the Lessor or any other Person in respect of any matter whatsoever shall in any way affect or impair this guaranty except only to the extent that such act or omission was wilfull and to the extent that such act or omission adversely affects the rights and obligations of Lessee under the Lease or Other Lessee Agreement.

(e) Except as provided in the next following sentence, the payment by the Guarantor to any Person of any amount pursuant to this Guaranty Agreement shall not in any way entitle the Guarantor to any right, title or interest of such Person under the Lease or any Other Lessee Agreement. Upon any payment by the Guarantor in accordance with this Guaranty Agreement, the Guarantor shall be subrogated to the rights of the payee to receive any such payment from the Lessee and shall be entitled to receive such payment from the Lessee and to recover any amount paid by it pursuant to this Guaranty Agreement from the Lessee; provided, further that the foregoing right of subrogation shall be subordinate to the rights of such payee and any other Person entitled to payment or performance hereunder and

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under the Lease or any Other Lessee Agreement; and provided, further, that the Guarantor shall not be entitled to receive any such payment or to recover any such amount, whether pursuant to the foregoing right of subrogation or otherwise, so long as an Event of Default under the Lease or a default by the Guarantor hereunder shall have occurred and be continuing.

(f) The obligations of the Guarantor set forth herein constitute the full recourse obligations of the Guarantor.

(g) The Guarantor unconditionally waives, to the extent permitted by applicable law, notice of any of the matters specified in paragraph (c) hereof, all notices which may be required by statute, rule of law or otherwise, now or hereafter in effect, to preserve intact any rights against the Guarantor, including, without limitation, any demand, presentment and protest, proof of notice of non-payment under the Lease or any Other Lessee Agreement, and notice of default or any failure on the part of the Lessee to perform and comply with any covenant, agreement, term or condition of the Lease or any Other Lessee Agreement, any right to the enforcement, assertion or exercise against the Lessee of any right, power, privilege or remedy conferred in the Lease or any Other Lessee Agreement or otherwise, any requirement to exhaust any remedies or to mitigate the damages resulting from any Event of Default under the Lease, any notice of any sale, transfer or other disposition of any right, title to or interest in any Other Lessee Agreement, the Lease or any item of Equipment, and any other circumstance whatsoever which might otherwise constitute a legal or equitable discharge, release, or defense of a guarantor or surety or other secondary party, or which might otherwise limit recourse against the Guarantor.

(h) At the option of the Lessor, the Guarantor may be joined in any action or proceeding commenced by any such party against the Lessee in connection with or based on the Lease or any Other Lessee Agreement or any provision of any thereof, and recovery for which the Guarantor is liable hereunder may be had against the Guarantor in any such action or proceeding or in any independent action or proceeding against the Guarantor, without any requirement that any such party first assert, prosecute or exhaust any remedy or claim against the Lessee.

(i) The guaranty hereunder shall continue to be effective or be reinstated, as the case may be, if at any time any payment of any obligation guaranteed hereunder is rescinded or must otherwise be returned by the Person to whom payment thereof was made upon the insolvency, bankruptcy or reorganization of the Lessee or otherwise, all as though such payment had not been made.

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SECTION 4. MISCELLANEOUS.

This guaranty and every part hereof shall be binding upon the Guarantor and its successors and assigns, and shall inure to the benefit of and shall be directly enforceable by the Lessor and its successors and assigns.

For purposes of this Guaranty Agreement, the term "Person" shall mean any corporation, association, partnership, estate, trust, organization, business, individual, government (or any governmental or political subdivision thereof) or governmental agency.

The obligations of the Guarantor set forth in this Guaranty Agreement do not constitute a guarantee of a residual value in the Equipment.

This guaranty shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts (without giving effect to conflicts of law provisions). The Guarantor hereby irrevocably consents to the non-exclusive jurisdiction of the United States District Court for the District of Massachusetts and any court of The Commonwealth of Massachusetts which sits in the City of Boston over any action, suit or proceeding arising hereunder. The Guarantor further waives any personal service of any and all process upon it and consents that all such service of process may be made by certified mail, return receipt requested, addressed to the Guarantor at the address referred to below and service so made shall be complete when received by Guarantor at such address.

Unless otherwise defined herein or unless the context otherwise requires, the capitalized terms used in this Guaranty Agreement shall have the meanings specified in the Lease.

IN WITNESS WHEREOF, the Guarantor has caused this Guaranty Agreement to be executed as a sealed instrument as of the date first above written.

LIQUID CARBONIC INDUSTRIES
CORPORATION

By Steven L. Biagini
Steven L. Biagini
Treasurer
An authorized officer

Accepted:

STATE STREET BOSTON LEASING
COMPANY, INC.

Notice Address: 135 South LaSalle Street
Chicago, Illinois 60603-4282

By Patricia W. Jenkins
Patricia W. Jenkins
Vice President

