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U.S. DEPARTMENT OF COMMERCE
U.S. Patent and Trademark Office

To the Honorable Commissioner of Patents and Trademarks: Please record the attached original documents or copy thereof.

1. Name of conveying party(ies):
Union Industrial Gas & Supply, Inc.

Individual(s) Association
 General Partnership Limited Partnership
 Corporation-State
 Other Nevada

Additional name(s) of conveying party(ies) attached? Yes No

2. Name and address of receiving party(ies)
Name: Valley Gases, LLC
Internal
Address: 1601 Elm Street, Suite 300
Street Address: 1601 Elm Street, Suite 300
City: Dallas State: TX Zip: 75201

Individual(s) citizenship
 Association
 General Partnership
 Limited Partnership
 Corporation-State
 Other Limited Liability Company

If assignee is not domiciled in the United States, a domestic representative designation is attached: Yes No
(Designations must be a separate document from assignment)
Additional name(s) & address(es) attached? Yes No

3. Nature of conveyance:
 Assignment Merger
 Security Agreement Change of Name
 Other

Execution Date: 4/15/2004

4. Application number(s) or registration number(s):
A. Trademark Application No.(s) 76-306,122
B. Trademark Registration No.(s) 2,815,430

Additional number(s) attached Yes No

6. Total number of applications and registrations involved: 1

5. Name and address of party to whom correspondence concerning document should be mailed:
Name: Steven E. Smathers, Attorney
Internal Address: 1601 Elm Street, Suite 300
Thanksgiving Tower
Street Address: 1601 Elm Street, Suite 300
City: Dallas State: TX Zip: 75201

7. Total fee (37 CFR 3.41).....\$ 40.00
 Enclosed
 Authorized to be charged to deposit account

8. Deposit account number:

DO NOT USE THIS SPACE

9. Signature.
Steven E. Smathers 5/12/2004
Name of Person Signing Signature Date

Total number of pages including cover sheet, attachments, and document: 23

05/17/2004 MGETACHE 00000086 76306122
01 FC:8521 40.00 DP

Mail documents to be recorded with required cover sheet information to:
Commissioner of Patent & Trademarks, Box Assignments
Washington, D.C. 20231

TRADEMARK
REEL: 002968 FRAME: 0001

ASSET PURCHASE AGREEMENT

by and between

VALLEY GASES, LLC

and

UNION INDUSTRIAL GAS & SUPPLY, INC.

April 15, 2004

ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT (this "Agreement"), made as of the 15th day of April, 2004 between **VALLEY GASES, LLC**, a Texas limited liability company ("Buyer"), and **UNION INDUSTRIAL GAS & SUPPLY, INC.**, a Nevada corporation, ("Seller").

WHEREAS, Seller is engaged through its division known as Valley Gas and Specialty Equipment in the repackaging of industrial medical and specialty gases as well as the distribution of related welding equipment, supplies and rental equipment in New Mexico and West Texas (the "Business");

AND WHEREAS, Seller desires to sell and transfer all the assets used or useful in the Business whether owned by the Seller or by a third party and subject to a lease and Buyer desires to acquire such assets upon the terms and conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth, the parties hereto agree as follows:

1. Definitions.

(a) "Acquired Assets" means all of the right, title and interest that Seller possesses in and to all of its assets used in the Business, including all of its (i) Leased Real Property, (ii) current and advance rents paid on the Leased Real Property and all security deposits held by landlords with respect to the Leased Real Property, (iii) tangible personal property (such as machinery, equipment, inventories of raw materials and supplies, manufactured and purchased parts, goods in process and finished goods, furniture, automobiles, trucks, tractors, trailers, tools, jigs, and dies), (iv) intellectual property, goodwill associated therewith, licenses and sublicenses granted and obtained with respect thereto, and rights thereunder, remedies against infringements thereof, and rights to protection of interests therein under the laws of all jurisdictions, (v) leases, subleases and rights thereunder, (vi) agreements, contracts, indentures, mortgages, instruments, Liens, guaranties, other similar arrangements, and rights thereunder, (vii) accounts, notes, and other receivables, (viii) claims, deposits, prepayments, refunds, causes of action, choses in action, rights of recovery, rights of set-off, and rights of recoupment (including any such item relating to the payment of taxes), (ix) franchises, approvals, permits, licenses, orders, registrations, certificates, variances, and similar rights obtained from governments and governmental agencies, and (x) books, records, ledgers, files, documents, correspondence, lists, creative materials, advertising and promotional materials, studies, reports, and other printed or written materials.

(b) "Assumed Liabilities" means (i) the accounts payable as listed on Schedule 1(b) attached hereto plus all accounts payable related to the Acquired Assets incurred on or after March 1, 2004, (ii) all terms, obligations and conditions to be observed, performed and fulfilled under all lawful executory contracts, agreements, leases, licenses, commitments and

undertakings assigned to and/or assumed by Buyer at the Closing, and (iii) all obligations which arise out of Buyer's performance from and after the transfer of the Acquired Assets to Buyer.

(c) "Claim" has the meaning set forth in Section 7(c).

(d) "Closing" has the meaning set forth in Section 2(e).

(e) "Financial Statements" have the meaning set forth in Section 3(f).

(f) "Leased Real Property" means all leasehold or subleasehold estates and other rights to use or occupy any land, buildings, structures, improvements, fixtures or other interest in real property that is used in the Business, as more fully described on Schedule 1(f) attached hereto.

(g) "Liabilities" means, other than the Assumed Liabilities, any and all claims, liabilities, obligations, losses, costs, expenses including, without limitation, reasonable legal, accounting and other expenses, litigation, proceedings, fines, taxes, levies, imposts, duties, deficiencies, assessments, charges, penalties, allegations, demands, damages, including, without limitation, actual, punitive or consequential, foreseen or unforeseen, known or unknown damages, settlements or judgments of any kind or nature whatsoever, including without limitation, the Senior Debt and the Subordinated Debt.

(h) "Liens" means any mortgage, pledge, lien, encumbrance, charge or other security interest.

(i) "Loss" has the meaning set forth in Section 7(c).

(j) "Notice of Claim" as the meaning set forth in Section 7(d).

(k) "Securities Act" has the meaning set forth in Section 3(c).

(l) "Senior Debt" means all liabilities and obligations of Seller under the Credit Agreement dated as of December 22, 1999, by and among Seller, Texas Capital Bank, N.A., The Frost National Bank and certain lenders named therein relating to Seller's \$35,000,000 revolving credit facility.

(m) "Subordinated Debt" means all liabilities and obligations of Seller under (i) the Amended and Restated Note Purchase Agreement dated as of December 22, 1999 by and among Seller, Rocky Mountain Mezzanine Fund II, L.P. and KBK Financial, Inc. and the notes issued thereunder, (ii) the Promissory Note dated July 30, 1999 made by Seller in favor of Matheson Tri-Gas, Inc. and the Security Agreement dated July 30, 1999 between Seller and Matheson Tri-Gas, Inc., and (iii) the Promissory Note dated as of December 20, 2003 made by Seller in favor of PlainsCapital Bank in an original principal amount of \$3,825,000.

2. Purchase and Sale of Acquired Assets.

(a) **Purchase and Sale of Acquired Assets.** On and subject to the terms and conditions of this Agreement, at the Closing, Buyer agrees to purchase from Seller, and Seller agrees to sell, transfer, convey and deliver to Buyer, all of the Acquired Assets for the consideration specified in Section 2(c).

(b) **Assumption of Liabilities.** On and subject to the terms and conditions of this Agreement, at the Closing, Buyer agrees to assume and become responsible for all of the Assumed Liabilities. Except for the Assumed Liabilities, upon, from and after the Closing, Seller shall, remain solely liable and responsible for all Liabilities now existing or hereafter incurred arising out of, related to or associated with Seller and the conduct of the Business and the ownership, leasing or use of the Acquired Assets, which arise out of, relate to or are associated with events occurring or circumstances existing before the Closing, regardless of whether they are asserted, incurred or sustained before or after the Closing.

(c) **Purchase Price.** In addition to Buyer's assumption of the Assumed Liabilities, Buyer agrees to pay to Seller at the Closing \$6,75000,000 cash payable by wire transfer or delivery of other immediately available funds.

(e) **The Closing.** The Closing of the transaction contemplated by this Agreement (the "Closing") shall take place on April 15, 2004 by mail.

(f) **Conveyances; Further Assurances.** Subject to the terms and conditions hereof, at the Closing, Seller hereby agrees that it will execute and deliver to Buyer and Buyer hereby agrees that it will execute and deliver to Seller a Bill of Sale, Assignment and Assumption Agreement, in the form attached as Exhibit A. Seller hereby agrees that, from time to time, at Buyer's request and without further consideration, it will execute and deliver to Buyer such other and further instruments of conveyance, assignment and transfer and take such other action as Buyer may reasonably require to more effectively convey, transfer, and assign to Buyer, and to put Buyer in possession of, the Acquired Assets. Buyer hereby agrees that, from time to time, at Seller's request and without further consideration, it will execute and deliver to Seller such other and further instruments of assumption, assignment and transfer and take such other action as Seller may reasonably require to more effectively transfer and assign the Acquired Assets to Buyer, and to cause Buyer to assume the Assumed Liabilities.

(g) **Allocation of Purchase Price.** The Purchase Price shall be allocated as set forth in the Schedule prepared by Seller after Closing. Each of the parties hereto agrees to report this transaction for federal, state and local tax purposes and for any other federal, state or local government reports as set forth in Schedule 2(g).

3. Representations and Warranties of the Seller. The Seller represents and warrants that:

(a) **Organization and Good Standing.** Seller is a corporation duly organized, validly existing, and in good standing under the laws of Nevada and has all necessary corporate

powers to own the Acquired Assets and to operate the Business as now owned and operated by Seller.

(b) **Title to and Condition of Acquired Assets.** The Seller has good and marketable title to the Acquired Assets, free and clear of any restrictions or conditions on transfer or assignment, and, free and clear of all Liens except as listed on Schedule 3(b) hereto.

(c) **Authority for Agreement.** The Seller has the legal power and capacity and authority to enter into and perform its obligations under this Agreement. The form, execution and delivery of this Agreement and the performance by the Seller of its obligations hereunder have been duly approved by the Seller's board of directors and by the Seller's shareholders. Except as listed in Schedule 3(c) hereto, no other approvals, permits, authorizations or consents are required under the Seller's articles of incorporation or by-laws or any judgment, order, writ, injunction, decree, ordinance, law, rule, regulation, resolution or instrument of any federal, state or local governmental authority or any indenture, instrument or agreement to which the Seller or any of its shareholders are a party or are bound, nor will the consummation of the transactions hereunder cause a default thereunder. This Agreement is a valid and binding agreement of the Seller, and is enforceable in accordance with its terms and conditions. Except as listed in Schedule 3(c) hereto, Seller is not a party to, subject to, or bound by any judgment, order, writ, injunction, decree, resolution, ordinance, rule or regulation, law, or instrument of any federal, state or local court or governmental authority or any provision of its articles of incorporation, or its by-laws, or any agreement, instrument or indenture which would prevent or impair the carrying out of this Agreement, or the use of any of the Acquired Assets to be conveyed hereunder.

(d) **Compliance with Law.** To the knowledge of Seller, Seller has complied with, and is not in material violation of, applicable federal, state, and local statutes, laws, safety codes and regulations which affect the Business, the Acquired Assets, or the use or operation thereof and there is no outstanding notice of any violation or alleged violation of any such law, ordinance, safety codes or governmental regulation. The Seller possesses all permits, franchises and licenses necessary to conduct the Business.

(e) **Payment of Taxes.** The Seller has filed all federal, state, local and other tax returns within the times and in the manner prescribed by law, and has paid all taxes, assessments, and penalties due and payable. The Seller is not currently subject to any outstanding federal, state or local tax audit or dispute, and the Seller has no information concerning or reason to anticipate any such audit or dispute within the foreseeable future. No deficiencies for taxes have been claimed, proposed or assessed. There are no waivers or extensions of statutory periods of limitation in effect with respect to any taxes of the Seller.

(f) **Financial Statements; Absence of Undisclosed Liabilities.** Seller has delivered to Buyer statements of profit and loss and of retained earnings for the Business for December 31, 2003, its most recently completed calendar year and a balance sheet of the Business as of December 31, 2003 (the "Financial Statements"). The Financial Statements have been prepared in accordance with generally accepted accounting principles throughout the periods covered thereby and present fairly the financial condition of Seller and the Business as of such dates and

for such periods. As of Closing, the Business has (or will have) no material Liabilities (whether known or unknown, asserted or unasserted, absolute or contingent, accrued or unaccrued, liquidated or unliquidated, due or to become due, including any liabilities for taxes) except for Liabilities reflected in the Financial Statements, Liabilities that have arisen after December 31, 2003 in the ordinary course of business consistent with past custom and practice (including with respect to quantity and frequency), and tax Liabilities relating to the sale of the Acquired Assets.

(g) Actions and Proceedings. The Seller is not a party to or subject to the provisions of any decree or judgment of any court or governmental agency. There are no judgments, actions, lawsuits, arbitrations, government proceedings or investigations pending, or, to the knowledge of Seller, threatened against or affecting the Seller (as plaintiff, defendant or otherwise) or which relate to any of the Acquired Assets or the Business, except as set forth in Schedule 3(g). Except as set forth in Schedule 3(g), Seller has no reasonable grounds to anticipate the commencement of any other action, lawsuit, arbitration or proceeding against or investigation of the Seller or involving the Acquired Assets or the Business.

(h) Conditions of Employment. The Seller is in compliance with all federal, state and local laws, ordinances, regulations and orders relating to conditions of employment for all employees of the Business. The Seller is not a party to any collective bargaining agreement with respect to the employees of the Business. The Seller has not incurred any liability for any arrearages of wages or other payments of employment for employees of the Business. The Seller has no profit sharing, bonus, pension, stock option, stock purchase or any other type of deferred compensation plan for the benefit of the employees of the Business.

(i) Disclosure. Seller has fully provided Buyer with all the information that Buyer has requested in connection with the transactions contemplated by this Agreement, which information is true and accurate in all material respects as of the date hereof.

(j) Inventories. All inventories held by Seller in the Business are: (i) useable in the ordinary course of the Business; (ii) have been recorded on the Seller's books and records at the actual cost paid by Seller for such items; (iii) consist solely of inventories of the kind and quality regularly purchased or produced, used and sold in the Business; and (iv) are good and merchantable and readily saleable in the ordinary course of the Business except for inventory that has been written off.

(k) Permits and Licenses. Schedule 3(k) attached hereto contains a list of all franchises, permits, licenses, approvals and other authorizations from federal, state and local governmental authorities held by Seller which are necessary for the operation of the Business as presently conducted, and, there are no additional material franchises, permits, licenses, approvals or authorizations necessary for the conduct of the Business as presently conducted.

(l) Absence of Certain Changes. Since December 31, 2003, there has not been: (i) any damage, destruction, or loss, whether or not covered by insurance, materially and adversely affecting the Acquired Assets; (ii) any increase in the compensation payable or to become payable by Seller to any of its officers, employees, or agents, or any bonus payment or arrangement or new benefit arrangement made to or with any of them; (iii) any labor trouble;

(iv) any making or authorization of any capital expenditures in excess of \$5,000 from Seller's funds other than in the ordinary course of business and consistent with past practices; (v) any disposition of any property of Seller, other than in the ordinary course of business and consistent with past practices; (vi) any adverse change or threat thereof in Seller's relations with its suppliers or customers; (vii) any write-offs or write-downs of any accounts receivable or inventory of Seller other than in the ordinary course of business and consistent with past practices; (viii) any change in Seller's accounting practices; (ix) any dividends or other distributions to any shareholders of Seller or in respect of the stock of Seller; or (x) any change in the financial or other condition of Seller or the occurrence of any event or condition of any character which adversely affects the Business or the prospects of Buyer with respect to the operation of the Business.

(m) **Survival of Representations and Warranties of Seller.** The representations and warranties set forth in Section 3 hereof shall survive the execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby for a period of three years following the Closing Date.

(n) **Extent of Representations and Warranties of Seller.** Seller makes no representation or warranty to Buyer except as specifically set forth in this Section 3, and this Agreement contains all the representations and warranties of Seller relating to the Business, the Acquired Assets and the transactions contemplated hereby.

(o) **Accounts Receivables.** All accounts receivable of the Business, as reflected in the Financial Statements, represent valid obligations arising from sales actually made and/or services performed in the ordinary course of the Business. To the knowledge of the Seller, such accounts receivable are collectible net of reserves shown in the Financial Statements.

(p) **Condition of Assets.** The Acquired Assets are in good operating condition subject to normal wear and tear and routine maintenance and repair.

4. **Representations and Warranties of Buyer.** The Buyer represents and warrants that:

(a) **Organization and Good Standing.** Buyer is a limited liability company duly formed, validly existing and in good standing under the laws of the State of Texas and has all necessary corporate powers to own its assets and operate its business as now owned and operated by it.

(b) **Authority for Agreement.** Buyer has the right, power, legal capacity and authority to enter into and perform its obligations under this Agreement. The form, execution and delivery of this Agreement and the performance by Buyer hereunder have been duly approved by the Buyer's board of directors. No other approvals, permits, authorizations or consents are required under the Buyer's certificate of formation, regulations or any judgment, order, writ, injunction, decree, ordinance, law, rule, regulation, resolution or instrument of any federal, state or local governmental authority or any indenture, instrument or agreement to which the Buyer or any of its shareholders are a party or are bound, nor will the consummation of the transactions hereunder cause a default thereunder. This Agreement is a valid and binding

agreement of Buyer, and is enforceable in accordance with its terms and conditions. Buyer is not a party to, subject to, or bound by any judgment, order, writ, injunction, decree, resolution, ordinance, rule or regulation, law, or instrument of any federal, state or local court or governmental authority or any provision of its certificate of formation or its regulations or any agreement, instrument or indenture which would prevent or impair the carrying out of this Agreement, or the use of any of the Acquired Assets to be conveyed hereunder.

(b) **Due Diligence.** Buyer acknowledges that: (i) it has had access to the properties and operations of Seller and the Business and has had the opportunity to meet with and ask questions of Seller's management to discuss the business, assets, liabilities, financial condition, cash flow and operations of the Business, and (ii) all materials and information requested by Buyer have been provided to it to its reasonable satisfaction. Buyer acknowledges that it has made its own independent examination, investigation, analysis and evaluation of Seller and the Business, including Buyer's own estimate of the value of the Acquired Assets and the Business. Buyer acknowledges that it has undertaken such due diligence (including, without limitation, a review of the assets, liabilities, books, records and contracts of Seller) as it deems adequate.

(c) **Disclosure.** Buyer has fully provided Seller with all the information that Seller has requested in connection with the transactions contemplated by this Agreement, which information is true and accurate in all material respects as of the date hereof.

5. **Conditions Precedent to Buyer's Obligation to Close.** The obligations of Buyer to close under this Agreement are subject to and conditioned upon fulfillment prior to or simultaneously with the Closing of each of the following conditions:

(a) **Representations and Warranties.** The representations and warranties of the Seller set forth in Section 3 of this Agreement shall be true and correct in all material respects at and as of the Closing, except to the extent that such representations and warranties are qualified by the term "material," in which case such representations and warranties shall be true and correct in all respects at and as of the Closing.

(b) **Absence of Legal Proceedings.** There shall not be any injunction, judgment, order, decree, ruling, or charge in effect preventing consummation of any of the transactions contemplated by this Agreement.

(c) **Performance.** All actions to be taken by Seller in connection with the consummation of the transactions contemplated hereby and all certificates, opinions, instruments, and other documents required to effect the transactions contemplated hereby will be reasonably satisfactory in form and substance to Buyer.

(d) **Government Approvals.** All licenses, permits, certificates of occupancy and other governmental or non-governmental approvals or consents necessary for the use and occupancy of the Acquired Assets and the operation of the Business will have been obtained and remain in full force and effect upon the transfer of the Acquired Assets to Buyer pursuant to this Agreement.

6. **Conditions Precedent to Seller's Obligation to Close.** The obligations of Seller to close under this Agreement are subject to and conditioned upon fulfillment prior to or simultaneously with the Closing of each of the following conditions:

(a) **Representations and Warranties.** The representations and warranties of Buyer set forth in Section 4 of this Agreement shall be true and correct in all material respects at and as of the Closing, except to the extent that such representations and warranties are qualified by the term "material," in which case such representations and warranties shall be true and correct in all respects at and as of the Closing.

(b) **Absence of Legal Proceedings.** There shall not be any injunction, judgment, order, decree, ruling, or charge in effect preventing consummation of any of the transactions contemplated by this Agreement.

(c) **Performance.** All actions to be taken by Buyer in connection with the consummation of the transactions contemplated hereby, including payment and delivery of the consideration set forth in Section 2(c), and all certificates, opinions, instruments, and other documents required to effect the transactions contemplated hereby will be reasonably satisfactory in form and substance to Seller.

7. **Further Obligations of the Parties.**

(a) **Waivers, Consents and Approvals.** To the extent that any of the waivers, consents or approvals set forth on Schedule 3(c) have not been obtained by Seller as of the Closing, or to the extent that the sale, assignment, transfer or conveyance of any Acquired Asset would constitute a breach of any agreement to which Seller is subject or the Acquired Asset is bound or a violation of applicable law, Seller shall use all commercially reasonable efforts, to (i) obtain such consent, approval or waiver; (ii) take all reasonable and lawful actions necessary to provide the benefits of such Acquired Asset to Buyer so long as Buyer fully cooperates with Seller in such actions and promptly reimburses Seller for all post-closing payments made by Seller in connection therewith; and (iii) enforce, at the request of Buyer and at the expense and for the account of Buyer, any rights of Seller arising from such Acquired Assets against the other party or parties thereto.

(b) **Orders to be Filled After Closing Date.** Buyer shall fill any orders placed by customers of the Business for industrial, medical and specialty gases and for welding tools or supplies which shall not have been delivered prior to the Closing Date.

(c) **Receipt of Payments.** In the event that, at any time after the Closing, the Seller receives from any third party any remittances on account of services or goods supplied by Buyer, or by Seller prior to Closing with respect to the Acquired Assets and the Business, the Seller shall promptly pay such remittances to the Buyer.

(d) **Indemnification by the Seller.** The Seller shall indemnify, defend and hold harmless Buyer against and in respect of any and all lawsuits, proceedings, claims, demands, losses, costs, expenses, obligations, liabilities, damages, recoveries, and deficiencies, including

interest, penalties, and reasonable attorney's fees, (collectively, "Loss") that it shall incur or suffer, which arise, result from or relate to: (i) any claim with respect to the Acquired Assets or the operation of Business which arise out of, relate to or are associated with events occurring or circumstances existing before the Closing, (ii) this Agreement or the transactions contemplated hereby; or (iii) any breach of, or failure by the Seller to perform, any of its representations, warranties, covenants, or agreements in this Agreement or in any schedule, certificate, exhibit, or other instrument furnished or to be furnished by the Seller under this Agreement (the foregoing shall be collectively referred to as a "Claim"). Seller shall have no obligation with respect to Claims hereunder unless Seller receives notice of the claim within two (2) years of the date hereof other than for Claims related to the title to assets, environmental or tax issues which Claims shall be responsible for regardless of when Seller receives notice.

(e) Indemnification Procedure.

(i) Upon obtaining knowledge thereof, Buyer shall promptly give Seller written notice of any Loss which the Buyer has determined has given or could give rise to a Claim for indemnification hereunder (a "Notice of Claim"). A Notice of Claim shall specify in reasonable detail the nature and all known particulars related to a Loss. Within 30 days after receipt of a Notice of Claim, Seller shall either acknowledge in writing to Buyer that it has an indemnification obligation hereunder in respect of such Loss or that Seller has made a good faith determination that it has no indemnification obligation hereunder in respect of such Loss.

(iii) The Seller shall have the sole and exclusive right and obligation, in good faith and at its own cost and expense, to cure, remediate, mitigate, remedy or otherwise handle any event or circumstance which gives rise to a Loss in respect of which a Notice of Claim has been given. The Seller shall keep Buyer reasonably informed of all material developments related to any such event or circumstance. Notwithstanding anything contained herein to the contrary, the Buyer shall have the right, but not the obligation, to participate, at its own cost and expense, in the defense, contest or other opposition of any such third party claim, demand, suit, action or proceeding through legal counsel selected by it and shall have the right, but not the obligation, to assert any and all cross-claims or counterclaims which it may have. Buyer shall not compromise or settle any such claim, demand, suit, action or proceeding without the prior written consent of the Seller. If the Seller fails to perform its obligations under this Subsection 7(d)(iii), then the Buyer shall have the right, but not the obligation, to take the actions which the Seller would have had the right to take in connection with the performance of such obligations and, if the Buyer is entitled to indemnification hereunder in respect of the event or circumstance as to which the Buyer takes such actions, then the Seller shall, in addition to indemnifying Buyer for the Loss, indemnify the Buyer for all of the legal, accounting and other costs, fees and expenses reasonably and actually incurred in connection therewith. Seller shall not settle or compromise any such third party action, demand, claim, suit or proceeding without providing written notice to Buyer a reasonable time prior to effecting such settlement or compromise. Notwithstanding anything contained herein to the contrary, the Buyer shall have the right to assume, at any time by giving written notice to that effect to the Seller, the cure, mitigation, remediation, remedy or other handling of such event or circumstance and the defense, contest or other opposition of any such third party action, demand, claim, suit or proceeding for its own

account whereupon the Seller shall be released from any and all liability with respect to such event or circumstance and such third party action, demand, claim, suit or proceeding.

(iv) Notwithstanding anything contained herein to the contrary, Buyer and Seller shall use all reasonable efforts to mitigate any and all damages, losses, liabilities, costs and expenses in respect of which it may be entitled to indemnification hereunder.

(f) **Employees.** Buyer shall hire only those employees of the Business who in Buyer's sole discretion, feels are necessary for its operations. All employees who are not hired by Buyer shall be the responsibility of the Seller who may in its discretion either continue to keep them in their employ or terminate their employment. Buyer shall not be responsible for any unemployment benefits, payments or lay off allowances which may be due such terminated employees. In no event will Buyer assume or be responsible for any collective bargaining agreements the Seller may have with any of its employees.

(g) **Discontinuance of Business.** After Closing, Seller shall no longer engage in any way in the Business except to the extent to transition the operation of the Business to Buyer and to engage in such operations necessary for the winding down of the Business.

(h) **Business Records.**

(i) Seller shall deliver or cause to be delivered to Buyer, within ten days after the Closing, all books, records and files which pertain to the Business, or any of the Acquired Assets and which are possessed by Seller or its or their respective directors, officers, employees, agents, representatives or nominees.

(ii) At any time and from time to time after the Closing, upon reasonable request by Seller, Buyer shall provide full access, during normal business hours, by Seller and the officers, employees, other representatives and counsel of Seller to the facilities, books, records, files, papers, data and information relating to the Business as conducted by Seller prior to Closing for the purposes of complying with any Seller obligation hereunder.

(iii) After the Closing, Buyer shall: (A) preserve all books, records, files, papers, data and information which is possessed by it or them and which relates to the Business as conducted by Seller or the Acquired Assets for a period of three (3) years after the Closing; and (B) for such longer period as may be required (x) by any agreement, law, ordinance, rule, regulation or any order, writ, judgment, stipulation, edict, award or decree or (y) in connection with any pending or threatened claim, suit, action, proceeding or investigation including, without limitation, tax examinations and audits

8. **Commissions, Expenses and Brokers Fees.** Seller represents and warrants that it has dealt with no broker or finder in connection with any of the transactions contemplated by this Agreement, and no broker or other person is entitled to any commission or finder's fee in connection with any of these transactions. Except as otherwise provided in this Agreement and regardless of whether the transactions contemplated by this Agreement are consummated, Seller and Buyer agree to pay all expenses, fees and costs including, without limitation, legal,

accounting and consulting expenses incurred by each of them in connection with the transactions contemplated hereby.

9. **Entire Agreement; Modification; Waiver.** This Agreement and the Schedules hereto constitute the entire agreement between the parties pertaining to the subject matter contained herein and supersedes all prior and contemporaneous agreements, representations, and understandings of the parties. No supplement, modification, or amendment of this Agreement shall be binding unless executed in writing by all the parties. No waiver of any of the provisions of this Agreement shall be deemed, or shall constitute, a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver. No waiver shall be binding unless executed in writing by the party making the waiver.

10. **Successors and Assigns.** This Agreement shall inure to the benefit of and be binding on each of the parties hereto and their respective successors, assigns, legal representatives and heirs. Buyer may assign any or all of its rights and obligations hereunder, otherwise, this Agreement shall not be assignable by any party hereto without the prior written consent of the others.

11. **Notices.** All notices, requests, demands, and other communications hereunder shall be in writing and, unless otherwise provided herein, shall be deemed to have been duly given upon delivery in person, by facsimile, by overnight courier or by certified or registered mail, return receipt requested, as follows:

If to Seller:

Union Industrial Gas & Supply, Inc.
4545 Fuller Drive, Suite 336
Irving, Texas 75038
Fax: (972) 893-5690
Attn: President

If to Buyer:

Valley Gases, LLC
2801 Princeton Drive
Albuquerque, New Mexico 87107
Fax: _____
Attn: _____

or at such other address as shall have been furnished to the other in writing in accordance herewith, except that such notice of such change shall be effective only upon receipt.

12. **Governing Law.** This Agreement and the rights and obligations of the parties hereto shall be construed under and governed by the laws of the State of Texas, without giving effect to principles of conflict of laws.

13. **Headings: Counterparts.** The section and other headings contained in this Agreement are for convenience of reference only and shall not in any way affect the meaning or interpretation of this Agreement. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which shall constitute one and the same instrument.

14. **Severability.** If any provision of this Agreement shall hereafter be held to be invalid, unenforceable or illegal, in whole or in part, in any jurisdiction under any circumstances for any reason, (a) such provision shall be reformed to the minimum extent necessary to cause such provision to be valid, enforceable and legal while preserving the intent of the parties as expressed in, and the benefits to the parties provided by, this Agreement or (b) if such provision cannot be so reformed, such provision shall be severed from this Agreement and an equitable adjustment shall be made to this Agreement including, without limitation, addition of necessary further provisions to this Agreement so as to give effect to the intent as so expressed and the benefits so provided. Such holding shall not affect or impair the validity, enforceability or legality of such provision in any other jurisdiction or under any other circumstances. Neither such holding nor such reformation or severance shall affect or impair the legality, validity or enforceability of any other provision of this Agreement.

IN WITNESS WHEREOF, the parties to this Agreement have duly executed it on the day and year first above written.

VALLEY GASES, LLC

By: Gas Holdings, Inc., its Manager

By:  _____

Title: President

UNION INDUSTRIAL GAS & SUPPLY,
INC.

By:  _____

Title: President

SCHEDULE 1(b)

Accounts Payable

SCHEDULE 1(f)

Leased Real Property

319 S. White Sands Boulevard, Alamogordo, New Mexico, pursuant to that certain Lease dated October 23, 2000 between Evelyn L. Stanage, Trustee of the Stanage Revocable Trust and Seller.

2801 Princeton NE, Albuquerque, New Mexico, pursuant to that certain Lease dated October 23, 2000 among Evelyn L. Stanage, Trustee of the Stanage Trust A, Evelyn L. Stanage, Trustee of the Stanage Trust B and Seller.

1014 East Animas Street, Farmington, New Mexico, pursuant to that certain Lease dated October 23, 2000 among Evelyn L. Stanage, Trustee of the Stanage Trust A, Evelyn L. Stanage, Trustee of the Stanage Trust B and Seller.

1700 South Valley Drive, Las Cruces, New Mexico, pursuant to that certain Lease dated October 23, 2000 between Evelyn L. Stanage, Trustee of the Stanage Revocable Trust A and Seller.

4717 South Broadway, SE, Albuquerque, New Mexico, pursuant to that certain Lease dated December 29, 2000 between Valley Welders Supply Co. and Seller.

SCHEDULE 3(b)

Liens

SCHEDULE 3(c)

Consents

SCHEDULE 3(g)

Actions and Proceedings

SCHEDULE 3(k)
Permits and Licenses