

UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

**FORM 10-K**

ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE  
SECURITIES EXCHANGE ACT OF 1934 For the fiscal year ended  
30 September 2010

OR

TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE  
SECURITIES EXCHANGE ACT OF 1934 For the transition period from  
\_\_\_\_\_ to \_\_\_\_\_

Commission file number 1-4534

**AIR PRODUCTS AND CHEMICALS, INC.**

7201 Hamilton Boulevard  
Allentown, Pennsylvania, 18195-1501  
Tel. (610) 481-4911

State of incorporation: Delaware  
I.R.S. identification number: 23-1274455

**Securities registered pursuant to Section 12(b) of the Act:**

Title of Each Class:  
Common Stock, par value \$1.00 per share  
Preferred Stock Purchase Rights

Registered on:  
New York  
New York

**Securities registered pursuant to Section 12(g) of the Act: None**

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act.

YES  NO

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act.

YES  NO

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days.

YES  NO

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files).

YES  NO

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K (§ 229.405) is not contained herein, and will not be contained, to the best of registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K.

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See the definitions of "large accelerated filer," "accelerated filer," and "smaller reporting company" in Rule 12b-2 of the Exchange Act.

Large accelerated filer  Accelerated filer  Non-accelerated filer  Smaller reporting company

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Act).

YES  NO

The aggregate market value of the voting stock held by non-affiliates of the registrant on 31 March 2010 was approximately \$15.7 billion. For purposes of the foregoing calculations all directors and/or executive officers have been deemed to be affiliates, but the registrant disclaims that any such director and/or executive officer is an affiliate.

The number of shares of common stock outstanding as of 15 November 2010 was 214,275,258.

**DOCUMENTS INCORPORATED BY REFERENCE**

Portions of the registrant's definitive Proxy Statement for the 2011 Annual Meeting of Shareholders are incorporated by reference into Part III.

**AIR PRODUCTS AND CHEMICALS, INC.**  
**ANNUAL REPORT ON FORM 10-K**  
**For the fiscal year ended 30 September 2010**

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PART I

ITEM 1. BUSINESS

**General Description of Business and Fiscal Year 2010 Developments**

Air Products and Chemicals, Inc. (the Company or Air Products), a Delaware corporation originally founded in 1940, serves technology, energy, industrial, and healthcare customers globally with a unique portfolio of products, services, and solutions that include atmospheric gases, process and specialty gases, performance materials, equipment, and services. The Company is the world's largest supplier of hydrogen and helium and has built leading positions in growth markets such as semiconductor materials, refinery hydrogen, natural gas liquefaction, and advanced coatings and adhesives. As used in this report, unless the context indicates otherwise, the term "Company" includes subsidiaries and predecessors of the registrant and its subsidiaries.

On 11 February 2010, Air Products Distribution, Inc. (Purchaser), a wholly owned subsidiary of Air Products, commenced a cash tender offer for all the outstanding shares of common stock of Airgas, Inc. (Airgas) not already owned by Air Products. Airgas is the largest U.S. distributor of packaged industrial, medical, and specialty gases, and associated hard goods such as welding equipment. The offer is scheduled to expire at midnight, New York City time, on Friday, 3 December 2010, unless further extended.

The Company manages its operations, assesses performance, and reports earnings under four business segments: Merchant Gases, Tonnage Gases, Electronics and Performance Materials, and Equipment and Energy.

**Financial Information about Segments**

Financial information concerning the Company's four business segments appears in Note 25, Business Segment and Geographic Information, to the consolidated financial statements, included under Item 8 herein.

**Narrative Description of Business by Segments**

**Merchant Gases**

Merchant Gases sells atmospheric gases such as oxygen, nitrogen, and argon (primarily recovered by the cryogenic distillation of air); process gases such as hydrogen and helium (purchased or refined from crude helium); and medical and specialty gases, along with certain services and equipment, throughout the world to customers in many industries, including those in metals, glass, chemical processing, food processing, healthcare, steel, general manufacturing, and petroleum and natural gas industries.

Merchant Gases includes the following types of products:

**Liquid bulk**—Product is delivered in bulk (in liquid or gaseous form) by tanker or tube trailer and stored, usually in its liquid state, in equipment designed and installed by the Company at the customer's site for vaporizing into a gaseous state as needed. Liquid bulk sales are typically governed by three- to five-year contracts.

**Packaged gases**—Small quantities of product are delivered in either cylinders or dewars. The Company operates packaged gas businesses in Europe, Asia, and Brazil. In the United States, the Company's current packaged gas business sells products only for the electronics and magnetic resonance imaging (principally helium) industries.

**Small on-site plants**—Customers receive product through small on-sites (cryogenic or noncryogenic generators), either by a sale of gas contract or the sale of the equipment to the customer.

**Healthcare products**—Customers receive respiratory therapies, home medical equipment, and infusion services. These products and services are provided to patients in their homes, primarily in Europe. The Company has leading market positions in Spain, Portugal, and the United Kingdom, and in Mexico through its equity affiliate.

Electric power is the largest cost component in the production of atmospheric gases—oxygen, nitrogen, and argon. Natural gas is also an energy source at a number of the Company's Merchant Gases facilities. The Company mitigates energy and natural gas price increases through pricing formulas and surcharges. A shortage or interruption of electricity or natural gas supply, or a price increase that cannot be passed through to customers, possibly for competitive reasons, may adversely affect the operations or results of Merchant Gases. During fiscal year 2010, no significant difficulties were encountered in obtaining adequate supplies of energy or raw materials.

Merchant Gases competes worldwide against three global industrial gas companies: L'Air Liquide S.A.; Linde AG; Praxair, Inc.; and several regional sellers (including Airgas, primarily with respect to liquid bulk sales). Competition in industrial gases is based primarily on price, reliability of supply, and the development of industrial gas applications.

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Competition in the healthcare business involves price, quality, service, and reliability of supply. In Europe, primary healthcare competitors include the same three global industrial gas companies mentioned previously, as well as smaller regional service providers. In some countries such as Spain and the United Kingdom, the Company tenders for significant parts of the healthcare business with government agencies and is expecting to participate in tenders in some countries over the coming fiscal year.

Merchant Gases sales constituted 41% of the Company's consolidated sales in fiscal year 2010, 44% in fiscal year 2009, and 40% in fiscal year 2008. Sales of atmospheric gases (oxygen, nitrogen, and argon) constituted approximately 20% of the Company's consolidated sales in fiscal year 2010, 21% in fiscal year 2009, and 18% in fiscal year 2008.

### **Tonnage Gases**

Tonnage Gases provides hydrogen, carbon monoxide, nitrogen, oxygen, and syngas principally to the energy production and refining, chemical, and metallurgical industries worldwide. Gases are produced at large facilities located adjacent to customers' facilities or by pipeline systems from centrally located production facilities and are generally governed by contracts with 15- to 20-year terms. The Company is the world's largest provider of hydrogen, which is used by oil refiners to facilitate the conversion of heavy crude feedstock and lower the sulfur content of gasoline and diesel fuels to reduce smog and ozone depletion. The energy production industry uses nitrogen injection for enhanced recovery of oil and natural gas and oxygen for gasification. The metallurgical industry uses nitrogen for inerting and oxygen for the manufacture of steel and certain nonferrous metals. The chemical industry uses hydrogen, oxygen, nitrogen, carbon monoxide, and synthesis gas (a hydrogen-carbon monoxide mixture) as feedstocks in the production of many basic chemicals. The Company delivers product through pipelines from centrally located facilities in or near the Texas Gulf Coast; Louisiana; Los Angeles, California; Alberta, Canada; Rotterdam, the Netherlands; Southern England, U.K.; Northern England, U.K.; Western Belgium; Ulsan, Korea; Nanjing, China; Tangshan, China; Kuan Yin, Taiwan; Singapore; and Camaçari, Brazil. The Company also owns less than controlling interests in pipelines located in Thailand and South Africa.

Tonnage Gases also includes a Polyurethane Intermediates (PUI) business. At its Pasadena, Texas facility, the Company produces dinitrotoluene (DNT), which is converted to toluene diamine (TDA) and sold for use as an intermediate in the manufacture of a major precursor of flexible polyurethane foam used in furniture cushioning, carpet underlay, bedding, and seating in automobiles. Most of the Company's TDA is sold under long-term contracts with raw material cost and currency pass-through to a small number of customers. The Company employs proprietary technology and scale of production to differentiate its polyurethane intermediates from those of its competitors.

Natural gas is the principal raw material for hydrogen, carbon monoxide, and synthesis gas production. Electric power is the largest cost component in the production of atmospheric gases. The Company mitigates energy and natural gas price increases through long-term cost pass-through contracts. Toluene, ammonia, and hydrogen are the principal raw materials for the PUI business and are purchased from various suppliers under multiyear contracts. During fiscal year 2010, no significant difficulties were encountered in obtaining adequate supplies of energy or raw materials.

Tonnage Gases competes in the United States and Canada against three global industrial gas companies: L'Air Liquide S.A.; Linde AG; Praxair, Inc.; and several regional competitors. Competition is based primarily on price, reliability of supply, the development of applications that use industrial gases, and, in some cases, provision of other services or products such as power and steam generation. The Company also derives a competitive advantage from its pipeline networks, which enable it to provide a reliable and economic supply of products to customers. Similar competitive situations exist in the European and Asian industrial gas markets where the Company competes against the three global companies as well as regional competitors. Global competitors for the PUI business are primarily BASF Corporation and Bayer AG.

Tonnage Gases sales constituted approximately 32% of the Company's consolidated sales in fiscal year 2010, 31% in fiscal year 2009, and 34% in fiscal year 2008. Tonnage Gases hydrogen sales constituted approximately 15% of the Company's consolidated sales in both fiscal year 2010 and 2009, and 17% in fiscal year 2008.

### **Electronics and Performance Materials**

Electronics and Performance Materials employs applications technology to provide solutions to a broad range of global industries through chemical synthesis, analytical technology, process engineering, and surface science. This segment provides the electronics industry with specialty gases (such as nitrogen trifluoride, silane, arsine, phosphine, white ammonia, silicon tetrafluoride, carbon tetrafluoride, hexafluoromethane, critical etch gases, and tungsten hexafluoride) as well as tonnage gases (primarily nitrogen), specialty chemicals, services, and equipment for the

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manufacture of silicon and compound semiconductors, thin film transistor liquid crystal displays, and photovoltaic devices. These products are delivered through various supply chain methods, including bulk delivery systems or distribution by pipelines such as those located in California's Silicon Valley; Phoenix, Arizona; Tainan, Taiwan; Gumi and Giheung, Korea; and Tianjin and Shanghai, China.

Electronics and Performance Materials also provides performance materials for a wide range of products, including coatings, inks, adhesives, civil engineering, personal care, institutional and industrial cleaning, mining, oil refining, and polyurethanes, and focuses on the development of new materials aimed at providing unique functionality to emerging markets. Principal performance materials include polyurethane catalysts and other additives for polyurethane foam, epoxy amine curing agents, and auxiliary products for epoxy systems, specialty surfactants for formulated systems, and functional additives for industrial cleaning and mining industries.

The Electronics and Performance Materials segment uses a wide variety of raw materials, including silane, amines, alcohols, epoxides, organic acids, and ketones. During fiscal year 2010, no significant difficulties were encountered in obtaining adequate supplies of energy or raw materials.

The Electronics and Performance Materials segment faces competition on a product-by-product basis against competitors ranging from niche suppliers with a single product to larger and more vertically integrated companies. Competition is principally conducted on the basis of price, quality, product performance, reliability of product supply, technical innovation, service, and global infrastructure.

Total sales from Electronics and Performance Materials constituted approximately 21% of the Company's consolidated sales in fiscal year 2010, 19% in fiscal year 2009, and 21% in fiscal year 2008.

### **Equipment and Energy**

Equipment and Energy designs and manufactures cryogenic equipment for air separation, hydrocarbon recovery and purification, natural gas liquefaction (LNG), and helium distribution (cryogenic transportation containers), and serves energy markets in a variety of ways.

Equipment is sold globally to customers in the chemical and petrochemical manufacturing, oil and gas recovery and processing, and steel and primary metals processing industries. The segment also provides a broad range of plant design, engineering, procurement, and construction management services to its customers.

Energy markets are served through the Company's operation and partial ownership of cogeneration and flue gas desulfurization facilities, its development of hydrogen as an energy carrier, and oxygen-based technologies to serve energy markets in the future. The Company owns and operates a cogeneration facility in Calvert City, Kentucky and a 49-megawatt fluidized-bed coal and biomass-fired power generation facility in Stockton, California; and operates and owns a 47.9% interest in a 112-megawatt gas-fueled power generation facility in Thailand. The Company also operates and owns a 50% interest in a flue gas desulfurization facility in Indiana.

Steel, aluminum, and capital equipment subcomponents (compressors, etc.) are the principal raw materials in the equipment portion of this segment. Adequate raw materials for individual projects are acquired under firm purchase agreements. Coal, petroleum coke, and natural gas are the largest cost components in the production of energy. The Company mitigates these cost components, in part, through long-term cost pass-through contracts. During fiscal year 2010, no significant difficulties were encountered in obtaining adequate supplies of raw materials.

Equipment and Energy competes with a great number of firms for all of its offerings except LNG heat exchangers, for which there are fewer competitors due to the limited market size and proprietary technologies. Competition is based primarily on technological performance, service, technical know-how, price, and performance guarantees.

The backlog of equipment orders (including letters of intent believed to be firm) from third-party customers (including equity affiliates) was approximately \$274 million on 30 September 2010, approximately 30% of which is for cryogenic equipment and 50% of which is for LNG heat exchangers, as compared with a total backlog of approximately \$239 million on 30 September 2009. The Company expects that approximately \$250 million of the backlog on 30 September 2010 will be completed during fiscal year 2011.

### **Narrative Description of the Company's Business Generally**

The Company, through subsidiaries, affiliates, and minority-owned ventures, conducts business in over 40 countries outside the United States. Its international businesses are subject to risks customarily encountered in foreign operations, including fluctuations in foreign currency exchange rates and controls; import and export controls; and other economic, political, and regulatory policies of local governments.

The Company has majority or wholly owned foreign subsidiaries that operate in Canada, 17 European countries (including the United Kingdom and Spain), nine Asian countries (including China, Korea, Singapore, and Taiwan), and four Latin American countries (including Mexico and Brazil). The Company also owns less-than-controlling interests in entities operating in Europe, Asia, Africa, the Middle East, and Latin America (including Italy, Germany, China, India, Singapore, Thailand, South Africa, and Mexico).

Financial information about the Company's foreign operations and investments is included in Notes 8, Summarized Financial Information of Equity Affiliates; 22, Income Taxes; and 25, Business Segment and Geographic Information, to the consolidated financial statements included under Item 8 herein. Information about foreign currency translation is included under "Foreign Currency" in Note 1, Major Accounting Policies, and information on the Company's exposure to currency fluctuations is included in Note 13, Financial Instruments, to the consolidated financial statements, included under Item 8 below, and in "Foreign Currency Exchange Rate Risk," included under Item 7A below. Export sales from operations in the United States to unconsolidated customers amounted to \$570.5 million, \$510.2 million, and \$629.1 million in fiscal years 2010, 2009, and 2008, respectively. Total export sales in fiscal year 2010 included \$387.8 million in export sales to affiliated customers. The sales to affiliated customers were primarily equipment sales within the Equipment and Energy segment and the Electronic and Performance Materials segment.

### **Technology Development**

The Company pursues a market-oriented approach to technology development through research and development, engineering, and commercial development processes. It conducts research and development principally in its laboratories located in the United States (Trexlerstown, Pennsylvania; Carlsbad, California; Milton, Wisconsin; and Phoenix, Arizona); the United Kingdom (Basingstoke, London, and Carrington); Germany (Hamburg); the Netherlands (Utrecht); Spain (Barcelona); and Asia (Tokyo, Japan; Shanghai, China; Gyeonggi, Korea; and Chubei, Taiwan). The Company also funds and cooperates in research and development programs conducted by a number of major universities and undertakes research work funded by others—principally the United States government.

The Company's corporate research groups, which include science and process technology centers, support the research efforts of various businesses throughout the Company. Technology development efforts for use within Merchant Gases, Tonnage Gases, and Equipment and Energy focus primarily on new and improved processes and equipment for the production and delivery of industrial gases and new or improved applications for all such products. Research and technology development for Electronics and Performance Materials supports development of new products and applications to strengthen and extend the Company's present positions. Work is also performed in Electronics and Performance Materials to lower processing costs and develop new processes for the new products.

Research and development expenditures were \$114.7 million during fiscal year 2010, \$116.3 million in fiscal year 2009, and \$130.7 million in fiscal year 2008. The Company expended \$23.9 million on customer-sponsored research activities during fiscal year 2010, \$29.7 million in fiscal year 2009, and \$24.8 million in fiscal year 2008.

As of 1 November 2010, the Company owns 932 United States patents, 2,808 foreign patents, and is a licensee under certain patents owned by others. While the patents and licenses are considered important, the Company does not consider its business as a whole to be materially dependent upon any particular patent, patent license, or group of patents or licenses.

### **Environmental Controls**

The Company is subject to various environmental laws and regulations in the countries in which it has operations. Compliance with these laws and regulations results in higher capital expenditures and costs. From time to time, the Company is involved in proceedings under the Comprehensive Environmental Response, Compensation, and Liability Act (the federal Superfund law), similar state laws, and the Resource Conservation and Recovery Act (RCRA) relating to the designation of certain sites for investigation and possible cleanup. Additional information with respect to these proceedings is included under Item 3, Legal Proceedings, below. The Company's accounting policy for environmental expenditures is discussed in Note 1, Major Accounting Policies, and environmental loss contingencies are discussed in Note 17, Commitments and Contingencies, to the consolidated financial statements, included under Item 8, below.

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The amounts charged to income from continuing operations related to environmental matters totaled \$31.6 million in fiscal 2010, \$52.5 million in 2009, and \$49.9 million in 2008. These amounts represent an estimate of expenses for compliance with environmental laws, remedial activities, and activities undertaken to meet internal Company standards. Future costs are not expected to be materially different from these amounts. The 2009 amount included a charge of \$16.0 for the Paulsboro site. Refer to Note 17, Commitments and Contingencies, to the consolidated financial statements for additional information on this charge. The 2008 amount included revised cost estimates for several existing sites.

Although precise amounts are difficult to determine, the Company estimates that in both fiscal year 2010 and 2009, it spent approximately \$6 million on capital projects to control pollution. Capital expenditures to control pollution in future years are estimated at approximately \$6 million in both fiscal year 2011 and 2012. The cost of any environmental compliance generally is contractually passed through to the customer.

The Company accrues environmental investigatory and remediation costs for identified sites when it is probable that a liability has been incurred and the amount of loss can be reasonably estimated. The potential exposure for such costs is estimated to range from \$87 million to a reasonably possible upper exposure of \$101 million. The accrual on the consolidated balance sheet for 30 September 2010 was \$87.0 million and for 30 September 2009 was \$95.0 million. Actual costs to be incurred in future periods may vary from the estimates, given inherent uncertainties in evaluating environmental exposures. Subject to the imprecision in estimating future environmental costs, the Company does not expect that any sum it may have to pay in connection with environmental matters in excess of the amounts recorded or disclosed above would have a materially adverse effect on its financial condition or results of operations in any one year.

### **Employees**

On 30 September 2010, the Company (including majority-owned subsidiaries) had approximately 18,300 employees, of whom approximately 17,900 were full-time employees and of whom approximately 11,000 were located outside the United States. The Company has collective bargaining agreements with unions at various locations that expire on various dates over the next four years. The Company considers relations with its employees to be satisfactory and does not believe that the impact of any expiring or expired collective bargaining agreements will result in a material adverse impact on the Company.

### **Available Information**

All periodic and current reports, registration statements, and other filings that the Company is required to file with the Securities and Exchange Commission (SEC), including the Company's annual report on Form 10-K, quarterly reports on Form 10-Q, current reports on Form 8-K, and amendments to those reports filed or furnished pursuant to Section 13(a) of the Securities Exchange Act of 1934 (the 1934 Act Reports), are available free of charge through the Company's Internet website at [www.airproducts.com](http://www.airproducts.com). Such documents are available as soon as reasonably practicable after electronic filing of the material with the SEC. All 1934 Act Reports filed during the period covered by this report were available on the Company's website on the same day as filing.

The public may also read and copy any materials filed by the Company with the SEC at the SEC's Public Reference Room at 100 F Street, N.E., Washington, DC 20549. The public may obtain information on the operation of the Public Reference Room by calling the SEC at 1-800-SEC-0330. The SEC maintains an Internet site that contains reports, proxy, and information statements, and other information regarding issuers that file electronically with the SEC. The address of that site is [www.sec.gov](http://www.sec.gov).

### **Seasonality**

Although none of the four business segments are subject to seasonal fluctuations to any material extent, the Electronics and Performance Materials segment is susceptible to the cyclical nature of the electronics industry and to seasonal fluctuations in underlying end-use performance materials markets.

### **Working Capital**

The Company maintains inventory where required to facilitate the supply of products to customers on a reasonable delivery schedule. Merchant Gases inventory consists primarily of industrial, medical, specialty gas, and crude helium inventories supplied to customers through liquid bulk and packaged gases supply modes. Merchant Gases inventory also includes home medical equipment to serve healthcare patients. Electronics inventories consist primarily of bulk and packaged specialty gases and chemicals and also include inventories to support sales of equipment and services. Performance Materials inventories consist primarily of bulk and packaged performance chemical solutions. The Tonnage Gases inventory is primarily Polyurethane Intermediates raw materials and finished goods; the remaining on-site plants and pipeline complexes have limited inventory. Equipment and Energy has limited inventory.



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### **Customers**

The Company does not have a homogeneous customer base or end market, and no single customer accounts for more than 10% of the Company's consolidated revenues. The Company and the Tonnage Gases and Electronics and Performance Materials segments do have concentrations of customers in specific industries, primarily refining, chemicals, and electronics. Within each of these industries, the Company has several large-volume customers with long-term contracts. A negative trend affecting one of these industries, or the loss of one of these major customers, although not material to the Company's consolidated revenues, could have an adverse impact on the affected segment.

### **Governmental Contracts**

No segment's business is subject to a government entity's renegotiation of profits or termination of contracts that would be material to the Company's business as a whole.

### **Executive Officers of the Company**

The Company's executive officers and their respective positions and ages on 15 November 2010 follow. Information with respect to offices held is stated in fiscal years.

<b>Name</b>	<b>Age</b>	<b>Office</b>
M. Scott Crocco	46	Vice President and Corporate Controller (became Vice President in 2008; Corporate Controller in 2007; and Director of Corporate Decision Support in 2003)
Robert D. Dixon (A)	51	Senior Vice President and General Manager – Merchant Gases (became Senior Vice President in 2008; Vice President and General Manager – Merchant Gases in 2007; President – Air Products Asia in 2003; and Vice President – Air Products Asia in 2003)
Paul E. Huck (A)	60	Senior Vice President and Chief Financial Officer (became Senior Vice President in 2008; Vice President and Chief Financial Officer in 2004)
Stephen J. Jones (A)	49	Senior Vice President and General Manager, Tonnage Gases, Equipment and Energy (became Senior Vice President and General Manager, Tonnage Gases, Equipment and Energy in 2009; Senior Vice President, General Counsel and Secretary in 2008; Vice President and Associate General Counsel in 2007; and Vice President and General Manager – Industrial Chemicals Division in 2003)
John W. Marsland (A)	44	Senior Vice President, Supply Chain (became Senior Vice President, Supply Chain in 2010; Vice President and General Manager, Global Liquid Bulk, Generated Gases and Helium in 2009; Vice President – Business Services in 2009; Vice President and General Manager – Healthcare in 2007; Vice President and General Manager, Global Healthcare in 2005)
John E. McGlade (A)(B)(C)	56	Chairman, President, and Chief Executive Officer (became Chairman and Chief Executive Officer in 2008; President and Chief Operating Officer in 2006; Group Vice President – Chemicals in 2003)
Lynn C. Minella (A)	52	Senior Vice President – Human Resources and Communications (became Senior Vice President – Human Resources and Communications in 2008; Vice President – Human Resources in 2004)



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Name	Age	Office
John D. Stanley (A)	52	Senior Vice President and General Counsel (became Senior Vice President and General Counsel in 2009; Assistant General Counsel, Americas and Europe in 2007; Assistant General Counsel, Corporate and Commercial in 2004)

(A) Member, Corporate Executive Committee  
(B) Member, Board of Directors  
(C) Member, Executive Committee of the Board of Directors

### ITEM 1A. RISK FACTORS

You should read the following risk factors carefully in conjunction with evaluating our business and the forward-looking information contained in this Annual Report on Form 10-K. Any of the following risks could have a materially adverse effect on our business, operating results, financial condition, and the actual outcome of matters as to which forward-looking statements are made in this Annual Report on Form 10-K. While we believe we have identified and discussed below the key risk factors affecting our business, there may be additional risks and uncertainties that are not presently known or that are not currently believed to be significant that may adversely affect our business, performance, or financial condition in the future.

#### **Overall Economic Conditions—Sluggish general economic conditions in certain markets in which the Company does business may decrease the demand for its goods and services and adversely impact its revenues, operating results, and cash flow.**

Demand for the Company's products and services depends in part on the general economic conditions affecting the countries and industries in which the Company does business. Recently, sluggish economic conditions in the U.S. and Europe and in certain industries served by the Company have impacted and may in the future impact demand for the Company's products and services, in turn negatively impacting the Company's revenues and earnings. While markets have stabilized relative to the extreme economic contraction in 2008—2009, industry utilization rates and therefore pricing pressure continue to be risks. Excess capacity in the Company's or its competitors' manufacturing facilities could decrease the Company's ability to maintain pricing and generate profits. Unanticipated contract terminations or project delays by current customers can also negatively impact financial results.

#### **Asset Impairments—The Company may be required to record impairment on its long-lived assets.**

Weak demand may cause underutilization of the Company's manufacturing capacity or elimination of product lines; contract terminations or customer shutdowns may force sale or abandonment of facilities and equipment; contractual provisions may allow customer buyout of facilities or equipment; or other events associated with weak economic conditions or specific end market, product, or customer events may require the Company to record an impairment on tangible assets, such as facilities and equipment, as well as intangible assets, such as intellectual property or goodwill, which would have a negative impact on its financial results.

#### **Competition—Inability to compete effectively in a segment could adversely impact sales and financial performance.**

The Company faces strong competition from several large global competitors and many smaller regional ones in all of its business segments. Introduction by competitors of new technologies, competing products, or additional capacity could weaken demand for or impact pricing of the Company's products, negatively impacting financial results. In addition, competitors' pricing policies could materially affect the Company's profitability or its market share.

#### **Raw Material and Energy Cost and Availability—Interruption in ordinary sources of supply or an inability to recover increases in energy and raw material costs from customers could result in lost sales or reduced profitability.**

Energy, including electricity, natural gas, and diesel fuel for delivery trucks, is the largest cost component of the Company's business. Because the Company's industrial gas facilities use substantial amounts of electricity, energy price fluctuations could materially impact the Company's revenues and earnings. Hydrocarbons, including natural gas, are the primary feedstock for the production of hydrogen, carbon monoxide, and synthesis gas. The Electronics and Performance Materials segment uses a wide variety of raw materials, including alcohols, ethyleneamines,

cyclohexylamine, acrylonitriles, and glycols. Shortages or price escalation in these materials could negatively impact financial results. A disruption in the supply of energy and raw materials, whether due to market conditions, legislative or regulatory actions, natural events, or other disruption, could prevent the Company from meeting its contractual commitments, harming its business and financial results.

The Company typically contracts to pass through cost increases in energy and raw materials to its customers, but cost variability can still have a negative impact on its results. The Company may not be able to raise prices as quickly as costs rise, or competitive pressures may prevent full recovery. Increases in energy or raw material costs that cannot be passed on to customers for competitive or other reasons would negatively impact the Company's revenues and earnings. Even where costs are passed through, price increases can cause lower sales volume.

**Regulatory Compliance—The Company is subject to extensive government regulation in jurisdictions around the globe in which it does business. Changes in regulations addressing, among other things, environmental compliance, import/export restrictions, and taxes, can negatively impact the Company's operations and financial results.**

The Company is subject to government regulation in the United States and foreign jurisdictions in which it conducts its business. The application of laws and regulations to the Company's business is sometimes unclear. Compliance with laws and regulations may involve significant costs or require changes in business practice that could result in reduced profitability. Determination of noncompliance can result in penalties or sanctions that could also impact financial results. Compliance with changes in laws or regulations can require additional capital expenditures or increase operating costs. Export controls or other regulatory restrictions could prevent the Company from shipping its products to and from some markets or increase the cost of doing so. This area continues to attract external focus by multiple customs and export enforcement authorities. Changes in tax laws and regulations and international tax treaties could affect the financial results of the Company's businesses.

**Greenhouse Gases—Legislative and regulatory responses to global climate change create financial risk.**

Some of the Company's operations are within jurisdictions that have, or are developing, regulatory regimes governing emissions of greenhouse gases (GHG). These include existing and expanding coverage under the European Union Emissions Trading Scheme; mandatory reporting and reductions at manufacturing facilities in Alberta, Canada; and mandatory reporting and anticipated constraints on GHG emissions in California and Ontario. In addition, the U.S. Environmental Protection Agency has taken preliminary actions towards regulating greenhouse gas emissions. Increased public awareness and concern may result in more international, U.S. federal, and/or regional requirements to reduce or mitigate the effects of GHG. Although uncertain, these developments could increase the Company's costs related to consumption of electric power, hydrogen production, and fluorinated gases production. The Company believes it will be able to mitigate some of the potential increased cost through its contractual terms, but the lack of definitive legislation or regulatory requirements prevents accurate estimate of the long-term impact on the Company. Any legislation that limits or taxes GHG emissions could impact the Company's growth, increase its operating costs, or reduce demand for certain of its products.

**Environmental Compliance—Costs and expenses resulting from compliance with environmental regulations may negatively impact the Company's operations and financial results.**

The Company is subject to extensive federal, state, local, and foreign environmental and safety laws and regulations concerning, among other things, emissions in the air, discharges to land and water, and the generation, handling, treatment, and disposal of hazardous waste and other materials. The Company takes its environmental responsibilities very seriously, but there is a risk of environmental impact inherent in its manufacturing operations and transportation of chemicals. Future developments and more stringent environmental regulations may require the Company to make additional unforeseen environmental expenditures. In addition, laws and regulations may require significant expenditures for environmental protection equipment, compliance, and remediation. These additional costs may adversely affect financial results. For a more detailed description of these matters, see "Narrative Description of the Company's Business Generally—Environmental Controls," above.

**Foreign Operations, Political, and Legal Risks—The Company's foreign operations can be adversely impacted by nationalization or expropriation of property, undeveloped property rights, and legal systems or political instability.**

The Company's operations in certain foreign jurisdictions are subject to nationalization and expropriation risk, and some of its contractual relationships within these jurisdictions are subject to cancellation without full compensation for loss. Economic and political conditions within foreign jurisdictions, social unrest, or strained relations between

countries can cause fluctuations in demand, price volatility, supply disruptions, or loss of property. The occurrence of any of these risks could have a material, adverse impact on the Company's operations and financial results.

**Interest Rate Increases—The Company's earnings, cash flow, and financial position can be impacted by interest rate increases.**

At 30 September 2010, the Company had total consolidated debt of \$4,128.3 million, of which \$468.5 million will mature in the next twelve months. The Company expects to continue to incur indebtedness to fund new projects and replace maturing debt. Although the Company actively manages its interest rate risk through the use of derivatives and diversified debt obligations, not all borrowings at variable rates are hedged, and new debt will be priced at market rates. If interest rates increase, the Company's interest expense could increase significantly, affecting earnings and reducing cash flow available for working capital, capital expenditures, acquisitions, and other purposes. In addition, changes by any rating agency to the Company's outlook or credit ratings could increase the Company's cost of borrowing.

**Currency Fluctuations—Changes in foreign currencies may adversely affect the Company's financial results.**

A substantial amount of the Company's sales are derived from outside the United States and denominated in foreign currencies. The Company also has significant production facilities which are located outside of the United States. Financial results therefore will be affected by changes in foreign currency rates. The Company uses certain financial instruments to mitigate these effects, but it is not cost-effective to hedge foreign currency exposure in a manner that would entirely eliminate the effects of changes in foreign exchange rates on earnings, cash flows, and fair values of assets and liabilities. Accordingly, reported sales, net earnings, cash flows, and fair values have been and in the future will be affected by changes in foreign exchange rates. For a more detailed discussion of currency exposure, see Item 7A, below.

**Pension Liabilities—The Company's results of operations and financial condition could be negatively impacted by its U.S. and non-U.S. pension plans.**

Adverse equity market conditions and volatility in the credit markets have had and may continue to have an unfavorable impact on the value of the Company's pension trust assets and its future estimated pension liabilities, significantly affecting the net periodic benefit costs of its pension plans and ongoing funding requirements for these plans. As a result, the Company's financial results and cash flow in any period could be negatively impacted. For information about potential impacts from pension funding and the use of certain assumptions regarding pension matters, see the discussion in Note 16, Retirement Benefits, to the consolidated financial statements, included in Item 8, below.

**Catastrophic Events—Catastrophic events could disrupt the Company's operations or the operations of its suppliers or customers, having a negative impact on the Company's business, financial results, and cash flow.**

The Company's operations could be impacted by catastrophic events outside the Company's control, including severe weather conditions such as hurricanes, floods, earthquakes, and storms, or acts of war and terrorism. Any such event could cause a serious business disruption that could affect the Company's ability to produce and distribute its products and possibly expose it to third-party liability claims. Additionally, such events could impact the Company's suppliers, in which event energy and raw materials may be unavailable to the Company, or its customers may be unable to purchase or accept the Company's products and services. Any such occurrence could have a negative impact on the Company's operations and financial results.

**Operational Risks—Operational and execution risks may adversely affect the Company's operations or financial results.**

The Company's operation of its facilities, pipelines, and delivery systems inherently entails hazards that require continuous oversight and control, such as pipeline leaks and ruptures, fire, explosions, toxic releases, mechanical failures, or vehicle accidents. If operational risks materialize, they could result in loss of life, damage to the environment, or loss of production, all of which could negatively impact the Company's ongoing operations, financial results, and cash flow. In addition, the Company's operating results are dependent on the continued operation of its production facilities and its ability to meet customer requirements. The Company's operating facilities for the production of certain product lines, primarily in certain electronic materials products, are highly concentrated. Insufficient capacity may expose the Company to liabilities related to contract commitments. Operating results are also dependent on the Company's ability to complete new construction projects on time, on budget, and in accordance with performance requirements. Failure to do so may expose the Company to loss of revenue, potential litigation, and loss of business reputation.

**Information Security—The security of the Company's Information Technology systems could be compromised, which could adversely affect its ability to operate.**

The Company utilizes a global enterprise resource planning (ERP) system and other technologies for the distribution of information both within the Company and to customers and suppliers. The ERP system and other technologies are potentially vulnerable to interruption from viruses, hackers, or system breakdown. To mitigate these risks, the Company has implemented a variety of security measures, including virus protection, redundancy procedures, and recovery processes. A significant system interruption, however, could materially affect the Company's operations, business reputation, and financial results.

**Litigation and Regulatory Proceedings—The Company's financial results may be affected by various legal and regulatory proceedings, including those involving antitrust, environmental, or other matters.**

The Company is subject to litigation and regulatory proceedings in the normal course of business and could become subject to additional claims in the future, some of which could be material. The outcome of existing legal proceedings may differ from the Company's expectations because the outcomes of litigation, including regulatory matters, are often difficult to predict reliably. Various factors or developments can lead the Company to change current estimates of liabilities and related insurance receivables, where applicable, or make such estimates for matters previously not susceptible to reasonable estimates, such as a significant judicial ruling or judgment, a significant settlement, significant regulatory developments, or changes in applicable law. A future adverse ruling, settlement, or unfavorable development could result in charges that could have a materially adverse effect on the Company's results of operations in any particular period. For a more detailed discussion of the legal proceedings involving the Company, see Item 3, below.

**Recruiting and Retaining Employees—Inability to attract, retain, or develop skilled employees could adversely impact the Company's business.**

Sustaining and growing the Company's business depends on the recruitment, development, and retention of qualified employees. Demographic trends and changes in the geographic concentration of global businesses have created more competition for talent. The inability to attract, develop, or retain quality employees could negatively impact the Company's ability to take on new projects and sustain its operations, which might adversely affect the Company's operations or its ability to grow.

**Portfolio Management—The success of portfolio management activities is not predictable.**

The Company continuously reviews and manages its portfolio of assets in order to maximize value for its shareholders. Portfolio management involves many variables, including future acquisitions and divestitures, restructurings and resegmentations, and cost-cutting and productivity initiatives. The timing, impact, and ability to complete such undertakings; the costs and financial charges associated with such activities; and the ultimate financial impact of such undertakings are uncertain and can have a negative short- or long-term impact on the Company's operations and financial results.

**RISK FACTORS RELATED TO THE TENDER OFFER FOR AIRGAS**

**If the Company is successful in acquiring Airgas, it will incur substantial transaction and merger-related costs.**

If the Company is successful in its tender offer for Airgas (see Note 3, Airgas Transaction, to the consolidated financial statements for more information on this transaction), or otherwise succeeds in acquiring Airgas, it will incur substantial nonrecurring transaction and merger-related costs associated with the acquisition of Airgas, combining the operations of the two companies, and achieving desired synergies. Although the Company expects that the elimination of duplicative costs and the realization of other efficiencies related to the integration of the two businesses will offset the incremental transaction and merger-related costs, this net benefit may not be achieved when expected, or at all.

**The Company will carry significantly more long-term debt obligations if the acquisition is completed.**

At the current tender offer of \$65.50 per share, the total value of the Airgas transaction would be approximately \$7.4 billion, including \$5.7 billion of equity and \$1.7 billion of assumed debt. In connection with the tender offer, the Company has secured a \$6.7 billion term loan credit facility (the "bridge loan"), and the Company expects to retain approximately \$1 billion of existing Airgas debt. If the tender offer is successful, the Company intends to finance the acquisition primarily by issuing public debt securities. If the Company is unable to successfully market this debt issuance, the bridge loan will be drawn. The bridge loan carries a higher cost than is anticipated for the public debt.

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The issuance and assumption of this new debt will require a greater proportion of the Company's cash flow from operations to service this debt than the Company has historically had to allocate to debt.

### **Changes in our credit ratings may have a negative impact on our financing costs in future periods.**

The Company anticipates that the debt issuance to finance the acquisition of Airgas will result in a temporary downgrade of its credit ratings. The Company's credit rating is a significant factor in determining pricing and availability of its debt. Changes in our credit ratings could increase our borrowing costs. In addition, our current short-term credit rating allows us to participate in a commercial paper market that has a large number of potential investors and a high degree of liquidity. A downgrade in our credit ratings, particularly our short-term credit rating, could likely reduce the amount of commercial paper we could issue, increase our commercial paper borrowing costs, or both. The Company expects that its credit rating would be restored to current levels within a few years following the potential acquisition; however, inability to achieve the anticipated benefits of the transaction or obtain projected prices for assets required to be divested, or other unexpected developments may delay this restoration.

### **If the acquisition is completed, we will be subject to integration and other risks.**

If the Company is successful in acquiring Airgas, the success of the merger will depend, in part, on its ability to realize the anticipated benefits from combining the businesses. To realize these anticipated benefits, the Company must successfully integrate the operations and personnel of Airgas into our business. It is possible that the integration process could take longer than anticipated and could result in the loss of valuable employees or the disruption of each company's ongoing businesses. Failure to achieve the anticipated benefits could result in increased costs or decreases in the amount of expected revenues and could adversely affect our future business, financial condition, and operating results. Additionally, if the acquisition is successful, the Company will be required to divest certain assets to comply with the Consent Decree approved by the U.S. Federal Trade Commission on 8 October 2010. Failure to find suitable buyers or obtain a reasonable price for the assets could adversely affect the financial condition of the Company.

## **ITEM 1B. UNRESOLVED STAFF COMMENTS**

The Company has not received any written comments from the Commission staff that remain unresolved.

## **ITEM 2. PROPERTIES**

The Company owns its principal executive offices, which are located at its headquarters in Trexlertown, Pennsylvania, and also owns additional administrative offices in Hersham, England and in Hattingen, Germany. Its regional Asian administrative offices, which are leased, are located in Hong Kong; Shanghai, China; Taipei, Taiwan; Petaling Jaya, Malaysia; and Singapore. Additional administrative offices are leased in Ontario, Canada; Kawasaki, Japan; Seoul, Korea; Brussels, Belgium; Paris, France; Barcelona, Spain; Rotterdam, the Netherlands; São Paulo, Brazil; and Kempton Park, South Africa. Management believes the Company's manufacturing facilities, described in more detail below, are adequate to support its businesses.

Following is a description of the properties used by the Company's four business segments:

### **Merchant Gases**

Merchant Gases currently operates over 150 facilities in North and South America (approximately 40 of which sites are owned); over 130 sites in Europe, including healthcare (approximately half of which sites are owned); and over 75 facilities in seven countries within Asia. Helium is recovered at sites in Kansas and Texas and distributed from several transfill sites in the U.S., Canada, Europe, and Asia. Sales support offices are located at its Trexlertown headquarters and in leased properties in three states, at all administrative sites in Europe, and at 15 sites in Asia. Research and development (R&D) activities for this segment are conducted in Trexlertown, Pennsylvania.

### **Tonnage Gases**

Tonnage Gases operates over 50 plants in the United States and Canada that produce over 300 standard tons per day of product. Thirty-five of these facilities produce or recover hydrogen, many of which support the four major pipeline systems located along the Gulf Coast of Texas; on the Mississippi River corridor in Louisiana; in Los Angeles, California; and Alberta, Canada. The Tonnage Gases segment includes a facility in Pasadena, Texas that produces Polyurethane Intermediate products. The segment also operates over 20 tonnage plants in Europe and over 20 tonnage plants within Asia, the majority of which are on leasehold type long-term structured agreements. Sales support offices are located at the Company's headquarters in Trexlertown, Pennsylvania and leased offices in Texas, Louisiana, California, and Calgary, Alberta in North America, as well as in Hersham, England; Rotterdam, the Netherlands; Shanghai, China; Singapore; and Doha, Qatar in the Middle East.

### **Electronics and Performance Materials**

The electronics business within the Electronics and Performance Materials segment produces, packages, and stores nitrogen, specialty gases, and electronic chemicals at over 44 sites in the United States (the majority of which are leased), nine facilities in Europe, and over 45 facilities in Asia (approximately half of which are located on customer sites).

The performance materials portion of this segment operates facilities in Los Angeles, California; Calvert City, Kentucky; Wichita, Kansas; Milton, Wisconsin; Reserve, Louisiana; Clayton, England; Marl, Germany; Singapore; Isehara, Japan; Changzhou, China and Nanjing, China. Substantially all of the Performance Materials properties are owned.

This segment has five field sales offices in the United States as well as sales offices in Europe, Taiwan, Korea, Singapore, and China, the majority of which are leased. The segment conducts R&D related activities at eight locations worldwide, including Trexlertown, Pennsylvania; Carlsbad, California; Utrecht, the Netherlands; Hamburg, Germany; Chubei, Taiwan; Giheung, South Korea; Shanghai, China; and Kawasaki, Japan.

### **Equipment and Energy**

Equipment and Energy operates eight manufacturing plants and two sales offices in the U.S. The Company manufactures a significant portion of the world's supply of LNG equipment at its Wilkes-Barre, Pennsylvania site. Air separation columns and cold boxes for Company-owned facilities and third-party sales are produced by operations in Istres, France; Caojing, China; as well as in the Wilkes-Barre facility when capacity is available. Cryogenic transportation containers for liquid helium are manufactured and reconstructed at facilities in eastern Pennsylvania and Liberal, Kansas. Offices in Hersham, England and Shanghai, China house Equipment commercial team members.

Electric power is produced at various facilities, including Stockton, California and Calvert City, Kentucky. Flue gas desulfurization operations are conducted at the Pure Air facility in Chesterton, Indiana. Additionally, the Company owns a 47.9% interest in a gas-fueled power generation facility in Thailand. The Company or its affiliates own approximately 50% of the real estate in this segment and lease the remaining 50%.

## **ITEM 3. LEGAL PROCEEDINGS**

In the normal course of business, the Company and its subsidiaries are involved in various legal proceedings, including contract, product liability, intellectual property, and insurance matters. Although litigation with respect to these matters is routine and incidental to the conduct of the Company's business, such litigation could result in large monetary awards, especially if a civil jury is allowed to determine compensatory and/or punitive damages. However, the Company believes that litigation currently pending to which it is a party will be resolved without any materially adverse effect on its financial position, earnings, or cash flows.

The Company is also from time to time involved in certain competition, environmental, health, and safety proceedings involving governmental authorities. The Company is a party to proceedings under the Comprehensive Environmental Response, Compensation, and Liability Act (the federal Superfund law); the Resource Conservation and Recovery Act (RCRA); and similar state environmental laws relating to the designation of certain sites for investigation or remediation. Presently there are approximately 30 sites on which a final settlement has not been reached where the Company, along with others, has been designated a Potentially Responsible Party by the Environmental Protection Agency or is otherwise engaged in investigation or remediation, including cleanup activity at certain of its current or former manufacturing sites. The Company does not expect that any sums it may have to pay in connection with these matters would have a materially adverse effect on its consolidated financial position. Additional information on the Company's environmental exposure is included under "Narrative Description of the Company's Business Generally—Environmental Controls."

In 2008, the U.S. Environmental Protection Agency made a referral to the U.S. Department of Justice concerning alleged violations of the Resource Conservation and Recovery Act (RCRA) related to sulfuric acid exchange at the Company's Pasadena, Texas facility. The Company disputes the allegations, but has agreed to settle the matter for a \$1.485 million civil penalty (\$1.35 million to the United States and \$135,000 to the State of Texas) and payment of \$15,000 to the State of Texas for attorneys' fees. The settlement was memorialized in a Consent Decree which was lodged with the U.S. District Court for the Southern District of Texas, Houston Division, on 25 August 2010 and entered on 29 October 2010.



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On 16 February 2010, an unplanned shutdown at the Company's nitric acid plant in Pasadena, Texas resulted in the release of nitrogen dioxide and nitric acid into the atmosphere. In connection with the incident, the Company has been contacted by federal, state, and local environmental regulatory authorities, and the U.S. Occupational Safety and Health Administration. A complaint alleging various regulatory and air permit violations and seeking unspecified civil penalties, attorneys' fees, and court costs has been filed by Harris County, Texas. At this time, the Company does not know whether any fines or penalties will be assessed; however, the Company expects that any resulting fines or penalties will be immaterial to its consolidated financial results.

In September 2010, the Brazilian Administrative Council for Economic Defense (CADE) issued a decision against the Company's Brazilian subsidiary, Air Products Brasil Ltda., and several other Brazilian industrial gas companies for alleged anticompetitive activities. CADE imposed a civil fine of R\$179.2 million on Air Products Brasil Ltda. This fine was based on a recommendation by a unit of the Brazilian Ministry of Justice whose investigation began in 2003, alleging violation of competition laws with respect to the sale of industrial and medical gases. The fines are based on a percentage of the Company's total revenue in Brazil in 2003.

The Company has denied the allegations made by the authorities and filed an appeal in October 2010 to the Brazilian courts. Certain of the Company's defenses, if successful, could result in the matter being dismissed with no fine against the Company. The Company, with advice of its outside legal counsel, has assessed the status of this matter and has concluded that although an adverse final judgment after exhausting all appeals is reasonably possible, such a judgment is not probable. As a result, no provision has been made in the consolidated financial statements.

While the Company does not expect that any sums it may have to pay in connection with these or any other legal proceeding would have a materially adverse effect on its consolidated financial position or net cash flows, a future charge for regulatory fines or damage awards could have a significant impact on the Company's net income in the period in which it is recorded.

### **ITEM 4. RESERVED**

## **PART II**

### **ITEM 5. MARKET FOR REGISTRANT'S COMMON EQUITY, RELATED STOCKHOLDER MATTERS, AND ISSUER PURCHASES OF EQUITY SECURITIES**

The Company's common stock (ticker symbol APD) is listed on the New York Stock Exchange. Quarterly stock prices, as reported on the New York Stock Exchange composite tape of transactions, and dividend information for the last two fiscal years appear below. Cash dividends on the Company's common stock are paid quarterly. The Company's objective is to pay dividends consistent with the reinvestment of earnings necessary for long-term growth. It is the Company's expectation that comparable cash dividends will continue to be paid in the future.

#### **Quarterly Stock Information**

2010	High	Low	Close	Dividend
First	\$85.44	\$73.76	\$81.06	\$.45
Second	83.80	65.05	73.95	.49
Third	80.24	64.47	64.81	.49
Fourth	84.43	64.13	82.82	.49
				\$1.92

2009	High	Low	Close	Dividend
First	\$68.51	\$41.46	\$50.27	\$.44
Second	60.20	43.44	56.25	.45
Third	69.93	54.73	64.59	.45
Fourth	80.60	60.52	77.58	.45
				\$1.79

The Company has authority to issue 25,000,000 shares of preferred stock in series. The Board of Directors is authorized to designate the series and to fix the relative voting, dividend, conversion, liquidation, redemption, and



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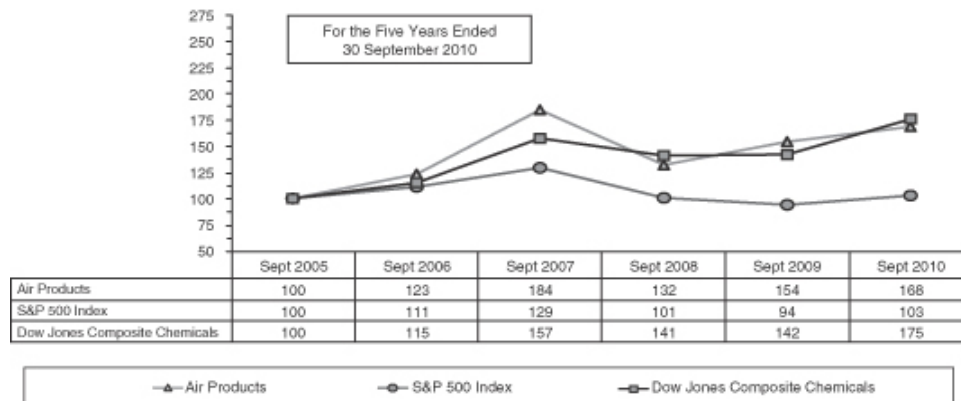
other rights, preferences, and limitations. When preferred stock is issued, holders of Common Stock are subject to the dividend and liquidation preferences and other prior rights of the preferred stock. There currently is no preferred stock outstanding. The Company's Transfer Agent and Registrar is American Stock Transfer & Trust Company, 59 Maiden Lane, Plaza Level, New York, New York 10038, telephone (800) 937-5449 (U.S. and Canada) or (718) 921-8124 (all other locations); Internet website [www.amstock.com](http://www.amstock.com); and e-mail address [info@amstock.com](mailto:info@amstock.com). As of 15 November 2010, there were 8,256 record holders of the Company's common stock.

**Purchases of Equity Securities by the Issuer**

On 20 September 2007, the Company's Board of Directors authorized the repurchase of \$1.0 billion of common stock. The program does not have a stated expiration date. As of 30 September 2010, the Company had purchased four million of its outstanding shares under this authorization at a cost of \$350.8 million. There were no purchases of stock during fiscal year 2010. Additional purchases will be completed at the Company's discretion while maintaining sufficient funds for investing in its businesses and growth opportunities.

**Performance Graph**

The performance graph below compares the five-year cumulative returns of the Company's common stock with those of the Standard & Poor's 500 and Dow Jones Chemicals Composite Indices. The figures assume an initial investment of \$100 and the reinvestment of all dividends.



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**ITEM 6. SELECTED FINANCIAL DATA**

(Millions of dollars, except per share)	2010	2009	2008	2007	2006
<b>Operating Results</b>					
Sales	\$9,026	\$8,256	\$10,415	\$9,148	\$7,885
Cost of sales	6,503	6,042	7,693	6,699	5,817
Selling and administrative	957	943	1,090	1,000	892
Research and development	115	116	131	129	140
Global cost reduction plan	—	298	—	14	71
Acquisition-related costs	96	—	—	—	—
Operating income	1,389	846	1,496	1,376	1,042
Equity affiliates' income	127	112	145	114	92
Interest expense	122	122	162	162	118
Income tax provision	340	185	365	287	262
Income from continuing operations attributable to Air Products	1,029	640	1,091	1,020	734
Net income attributable to Air Products	1,029	631	910	1,036	723
Basic earnings per common share attributable to Air Products:					
Income from continuing operations	4.85	3.05	5.14	4.72	3.31
Net income	4.85	3.01	4.29	4.79	3.26
Diluted earnings per common share attributable to Air Products:					
Income from continuing operations	4.74	3.00	4.97	4.57	3.23
Net income	4.74	2.96	4.15	4.64	3.18
<b>Year-End Financial Position</b>					
Plant and equipment, at cost	\$16,310	\$15,751	\$14,989	\$14,439	\$12,910
Total assets	13,506	13,029	12,571	12,660	11,181
Working capital	790	494	636	436	289
Total debt <sup>(A)</sup>	4,128	4,502	3,967	3,668	2,846
Air Products shareholders' equity	5,547	4,792	5,031	5,496	4,924
Total equity	5,698	4,930	5,167	5,673	5,102
<b>Financial Ratios</b>					
Return on average Air Products shareholders' equity <sup>(B)</sup>	19.9%	13.3%	20.1%	19.5%	15.1%
Operating margin	15.4%	10.3%	14.4%	15.0%	13.2%
Selling and administrative as a percentage of sales	10.6%	11.4%	10.5%	10.9%	11.3%
Total debt to sum of total debt and total equity <sup>(A)</sup>	42.0%	47.7%	43.4%	39.8%	36.3%
<b>Other Data</b>					
Depreciation and amortization	\$863	\$840	\$869	\$790	\$705
Capital expenditures on a GAAP basis <sup>(C)</sup>	1,134	1,236	1,159	1,553	1,358
Capital expenditures on a non-GAAP basis <sup>(C)</sup>	1,298	1,475	1,355	1,635	1,487
Cash provided by operating activities	1,522	1,329	1,659	1,500	1,348
Cash used for investing activities	1,057	1,040	920	1,483	947
Cash provided by (used for) financing activities	(580)	95	(678)	(15)	(423)
Dividends declared per common share	1.92	1.79	1.70	1.48	1.34
Market price range per common share	85–64	81–41	106–65	99–66	70–53
Weighted average common shares outstanding (in millions)	212	210	212	216	222
Weighted average common shares outstanding assuming dilution (in millions)	217	214	219	223	228
Book value per common share at year-end	\$25.94	\$22.68	\$24.03	\$25.52	\$22.67
Shareholders at year-end	8,300	8,600	8,900	9,300	9,900
Employees at year-end <sup>(D)</sup>	18,300	18,900	21,100	22,100	20,700

<sup>(A)</sup> Total debt includes long-term debt, current portion of long-term debt, and short-term borrowings as of the end of the year. Calculation based on continuing operations.

- (B) Calculated using income and five-quarter average Air Products shareholders' equity from continuing operations.
- (C) Capital expenditures on a GAAP basis include additions to plant and equipment, investment in and advances to unconsolidated affiliates, and acquisitions (including long-term debt assumed in acquisitions). The Company utilizes a non-GAAP measure in the computation of capital expenditures and includes spending associated with facilities accounted for as capital leases and purchases of noncontrolling interests. Certain contracts associated with facilities that are built to provide product to a specific customer are required to be accounted for as leases, and such spending is reflected as a use of cash within cash provided by operating activities. Additionally, the purchase of noncontrolling interests in a subsidiary is accounted for as an equity transaction and will be reflected as a financing activity in the consolidated statement of cash flows. Refer to page 31 for a reconciliation of the GAAP to non-GAAP measure for 2010, 2009, and 2008. For 2007 and 2006, the GAAP measure was adjusted by \$83 and \$129, respectively, for spending associated with facilities accounted for as capital leases.
- (D) Includes full- and part-time employees from continuing and discontinued operations.

**ITEM 7. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS**

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The following discussion should be read in conjunction with the consolidated financial statements and the accompanying notes contained in this report. All comparisons in the discussion are to the corresponding prior year unless otherwise stated. All amounts presented are in accordance with U.S. generally accepted accounting principles (GAAP), except as noted. All amounts are presented in millions of dollars, except for share data, unless otherwise indicated.

Captions such as income from continuing operations attributable to Air Products and net income attributable to Air Products are simply referred to as "income from continuing operations" and "net income" throughout this Management's Discussion and Analysis, unless otherwise stated.

The discussion of results that follows includes non-GAAP financial measures. These non-GAAP measures exclude acquisition-related costs in 2010. For 2009, the non-GAAP measures exclude the global cost reduction plan charge, costs related to customer bankruptcy and asset actions and third quarter 2009 pension settlement costs. For 2008, the non-GAAP measures exclude pension settlement costs. The presentation of non-GAAP measures is intended to enhance the usefulness of financial information by providing measures that the Company's management uses internally to evaluate the Company's baseline performance on a comparable basis. The reconciliation of reported GAAP results to non-GAAP measures is presented on pages 28—29.

**BUSINESS OVERVIEW**

Air Products and Chemicals, Inc. and its subsidiaries (the Company or Air Products) serves technology, energy, industrial, and healthcare customers globally with a unique portfolio of products, services, and solutions that include atmospheric gases, process and specialty gases, performance materials, equipment, and services. Geographically diverse, with operations in over 40 countries, the Company has sales of \$9.0 billion, assets of \$13.5 billion, and a worldwide workforce of approximately 18,300 employees.

The Company organizes its operations into four reportable business segments: Merchant Gases, Tonnage Gases, Electronics and Performance Materials, and Equipment and Energy.

**2010 IN SUMMARY**

In 2010, the Company emerged from the recession and delivered strong growth and productivity. Sales increased 9% and underlying sales increased 8%, due to strong volume growth as the economic environment improved. These results were driven by a significant recovery in the Electronics and Performance Materials segment and new investments and contracts in the Tonnage Gases segment. Operating income increased due to improved performance across all business segments.

The Company delivered significant improvements in 2010 as a result of actions taken to lower costs and position the Company for success coming out of the global recession. These actions included the completion of the Company's global cost reduction plans and Electronics business restructuring. Additionally, the Company repositioned its manufacturing centers, continued to leverage the SAP system, and further utilized its shared service centers. These actions contributed to increased productivity and improved operating results.

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In February 2010, the Company commenced a tender offer to acquire all of the outstanding shares of Airgas, Inc. (Airgas). Airgas is the largest packaged industrial gases distributor in the U.S. Its fiscal year 2010 annual revenues were \$3.9 and its total assets as of 31 March 2010 were \$4.5. The current offer price is \$65.50 per share. At this price, the total value of the transaction would be approximately \$7.4 billion, including \$5.7 billion of equity and \$1.7 billion of assumed debt. The offer and withdrawal rights are scheduled to expire on 3 December 2010, unless further extended.

### Highlights for 2010

- Sales of \$9,026.0 increased 9%, or \$769.8. Underlying business increased 8%, primarily due to higher volumes in the Electronics and Performance Materials and Tonnage Gases segments.
- Operating income of \$1,389.0 increased 64%, or \$542.7. On a non-GAAP basis, operating income of \$1,485.0 increased 25%, or \$300.4, primarily due to higher volumes, lower costs, and favorable currency and foreign exchange, partially offset by reduced pricing.
- Income from continuing operations of \$1,029.1 increased 61%, or \$389.2, and diluted earnings per share from continuing operations of \$4.74 increased 58%, or \$1.74. On a non-GAAP basis, income from continuing operations of \$1,089.2 increased 26%, or \$223.0, and diluted earnings per share from continuing operations of \$5.02 increased 24%, or \$.96. A summary table of changes in diluted earnings per share is presented below.
- The Company increased the quarterly dividend from \$.45 to \$.49 per share. This represents the 28th consecutive year that the Company has increased its dividend payment.

For a discussion of the challenges, risks, and opportunities on which management is focused, refer to the Company's 2011 Outlook discussions provided throughout the Management's Discussion and Analysis that follows.

### Changes in Diluted Earnings per Share Attributable to Air Products

	2010	2009	Increase (Decrease)
<b>Diluted Earnings per Share</b>			
Net income	\$4.74	\$2.96	\$1.78
Discontinued operations	—	(.04)	.04
<b>Continuing Operations—GAAP Basis</b>	<b>\$4.74</b>	<b>\$3.00</b>	<b>\$1.74</b>
Acquisition-related costs	.28	—	.28
Global cost reduction plan	—	.94	(.94)
Customer bankruptcy and asset actions	—	.10	(.10)
Pension settlement	—	.02	(.02)
<b>Continuing Operations—Non-GAAP Basis</b>	<b>\$5.02</b>	<b>\$4.06</b>	<b>\$.96</b>
<b>Operating Income (after-tax)</b>			
Underlying business			
Volume			\$1.04
Price/raw materials			(.30)
Costs			.22
Currency			.09
<b>Operating Income</b>			<b>1.05</b>
<b>Other (after-tax)</b>			
Equity affiliates' income			.05
Interest expense			—
Income tax rate			(.01)
Noncontrolling interests			(.05)
Average shares outstanding			(.08)
<b>Other</b>			<b>(.09)</b>
<b>Total Change in Diluted Earnings per Share from Continuing Operations—Non-GAAP Basis</b>			<b>\$.96</b>

## 2011 OUTLOOK

The Company projects that the gradual economic recovery will continue and that manufacturing will be the leading sector in the recovery. The Company anticipates global manufacturing growth of 3%–4% in 2011, with stronger growth in Asia and more gradual recoveries in the U.S. and Europe. The Company expects the U.S. will have positive growth of 3%–4% in manufacturing. Europe should increase about 1%–2% and Asia, led by China, is expected to continue as the strongest region, growing at 6%–7%.

Looking forward, the Company expects volume growth to be the key factor in driving earnings improvement in 2011. Earnings should benefit from new plant onstreams in 2010 and 2011, along with the loading of existing assets. These volume gains will be partially offset by higher pension expense next year, as a result of a decline in the discount rates from September 2009 to September 2010 and lower expected asset returns. Based upon current rates, the Company does not expect currency to have a significant impact on 2011 earnings. The Company will continue to focus on cost control and will achieve benefits from the cost reduction efforts completed.

If the proposed acquisition of Airgas is consummated in 2011, material impacts affecting most items in the Company's consolidated financial statements are expected. In addition, projections, estimates and plans described in this Management's Discussion and Analysis would be materially impacted. Except where noted, the Outlook discussions provided throughout the Management's Discussion and Analysis do not include any impacts of the proposed transaction.

### Outlook by Segment

- Merchant Gases should benefit as capacity utilization of existing facilities continues to improve globally and as new demand develops, particularly in Asia. Global manufacturing growth, along with new technology applications should continue to increase demand which will drive the loading of facilities.
- Tonnage Gases is expected to benefit from the full-year loading of the 2010 new plant start-ups, along with several investments due to come onstream in 2011.
- In Electronics, the Company projects silicon growth of 5%–10% and slow, steady growth of the business with the newer photovoltaic (PV) and light-emitting diode (LED) businesses growing at higher rates. In the integrated circuit business, the Company is well positioned with the industry leaders that are starting up new fabrication plants and expanding capacity. The electronics equipment business should also grow in 2011 due to anticipated continued electronics industry capital spending. Growth is expected in Performance Materials as the Company leverages low cost production facilities in Asia. Additionally, Performance Materials continues to benefit from new product, market and application successes.
- Equipment and Energy results are expected to be comparable to 2010 levels. Two to three liquefied natural gas (LNG) orders are expected to be signed in 2011.

## RESULTS OF OPERATIONS

### Discussion of Consolidated Results

	2010	2009	2008
Sales	\$9,026.0	\$8,256.2	\$10,414.5
Operating income—GAAP Basis	1,389.0	846.3	1,495.8
Operating income—Non-GAAP Basis	1,485.0	1,184.6	1,522.1
Equity affiliates' income	126.9	112.2	145.0

### Sales

	% Change from Prior Year	
	2010	2009
Underlying business		
Volume	9%	(9)%
Price	(1)%	1%
Currency	1%	(6)%
Energy and raw material cost pass-through	—	(7)%
<b>Total Consolidated Sales Change</b>	<b>9%</b>	<b>(21)%</b>

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### **2010 vs. 2009**

Sales of \$9,026.0 increased 9%, or \$769.8. Underlying business increased 8%, driven by volume increases in the Electronics and Performance Materials and Tonnage Gases segments, as the economic environment improved. These results were driven by a significant recovery in the Electronics and Performance Materials segment and new investments and contracts in the Tonnage Gases segment.

### **2009 vs. 2008**

Sales of \$8,256.2 decreased 21%, or \$2,158.3. Underlying business declined 8%, due to lower volumes primarily in Electronics and Performance Materials, Merchant Gases, and Tonnage Gases. Volumes were impacted by the severity of the worldwide manufacturing downturn and a significant decline in silicon processed. Currency unfavorably impacted sales by 6%, due primarily to the strengthening of the U.S. dollar against key European and Asian currencies. Lower energy and raw material contractual cost pass-through to customers reduced sales by 7%.

### **Operating Income**

#### **2010 vs. 2009**

Operating income of \$1,389.0 increased 64%, or \$542.7. On a non-GAAP basis, operating income of \$1,485.0 increased 25%, or \$300.4.

- Underlying business increased \$275, primarily from higher volumes in the Electronics and Performance Materials and Tonnage Gases segments and lower costs, partially offset by reduced pricing.
- Favorable currency translation and foreign exchange impacts increased operating income by \$25.

#### **2009 vs. 2008**

Operating income of \$846.3 decreased 43%, or \$649.5. On a non-GAAP basis, operating income of \$1,184.6 decreased 22%, or \$337.5.

- Underlying business declined \$254, due primarily to lower volumes in the Merchant Gases, Electronics and Performance Materials, and Tonnage Gases segments. The volume declines of \$490 were partially offset by favorable cost performance of \$157 and improved pricing of \$79.
- Unfavorable currency impacts lowered operating income by \$113, reflecting the strengthening of the U.S. dollar against key European and Asian currencies.
- Operating income in 2008 included unfavorable impacts of \$28 due to hurricanes and a fire at a production facility.

### **Equity Affiliates' Income**

#### **2010 vs. 2009**

Income from equity affiliates of \$126.9 increased \$14.7, or 13%, primarily due to higher volumes.

#### **2009 vs. 2008**

Income from equity affiliates of \$112.2 decreased \$32.8, or 23%, primarily as a result of lower overall volumes and unfavorable currency. Additionally, 2008 results included favorable adjustments made to certain affiliates in Asia and the reversal of an antitrust fine.

### **Selling and Administrative Expense (S&A)**

#### **2010 vs. 2009**

S&A expense of \$956.9 increased \$13.5, or 1%, primarily due to higher incentive compensation costs, partially offset by improved productivity and the impact of the global cost reduction plan. S&A as a percent of sales decreased to 10.6% from 11.4%.

#### **2009 vs. 2008**

S&A expense of \$943.4 decreased \$147.0, or 13%. Underlying costs decreased 8%, primarily due to improved productivity as well as the impact of the global cost reduction plan, lower incentive compensation costs, and lower discretionary spending. This decrease was partially offset by inflation and higher bad debt expense. Favorable currency impacts, primarily the strengthening of the dollar against the Euro and Pound Sterling, decreased S&A by 6%. The acquisition of CryoService Limited in the third quarter of 2008 increased S&A by 1%. S&A as a percent of sales, increased to 11.4% from 10.5%, due principally to the impact of lower energy and raw material cost pass-through on sales.



### **2011 Outlook**

S&A expense will increase in 2011 due to additional costs to support volume growth and the impacts of cost inflation. These increases will be partially offset by ongoing productivity initiatives.

### **Research and Development (R&D)**

#### **2010 vs. 2009**

R&D expense of \$114.7 decreased 1%, or \$1.6, primarily due to the impact of cost reduction actions. R&D as a percent of sales decreased to 1.3% from 1.4%.

#### **2009 vs. 2008**

R&D expense of \$116.3 decreased \$14.4, primarily due to the impact of cost reduction actions. R&D as a percent of sales increased to 1.4% from 1.3%.

### **2011 Outlook**

R&D expense is expected to be moderately higher in 2011.

### **Global Cost Reduction Plan**

The 2009 results from continuing operations included a total charge of \$298.2 (\$200.3 after-tax, or \$.94 per share) for the global cost reduction plan. In the first quarter of 2009, the Company announced the global cost reduction plan, designed to lower its cost structure and better align its businesses to reflect rapidly declining economic conditions around the world. The 2009 first-quarter results included a charge of \$174.2 (\$116.1 after-tax, or \$.55 per share). In the third quarter 2009, due to the continuing slow economic recovery, the Company committed to additional actions associated with its global cost reduction plan that resulted in a charge of \$124.0 (\$84.2 after-tax, or \$.39 per share). The total 2009 charge included \$210.0 for severance and other benefits, including pension-related costs, associated with the elimination of approximately 2,550 positions from the Company's global workforce. The remainder of this charge, \$88.2, was for business exits and asset management actions.

During 2010, the Company revised its estimate of the costs associated with the 2009 global cost reduction plan. The unfavorable impact of additional severance and other benefits was primarily offset by favorable variances related to completed business exits and asset management actions. These adjustments to the charge were excluded from segment operating profit and did not have a material impact on any individual segment.

As of 30 September 2010, the planned actions associated with the global cost reduction plan were substantially completed, with the exception of certain benefit payments associated with a small number of position eliminations. In addition, as part of the asset management actions included in the plan, the Company anticipates completing the sale of a facility by the end of calendar year 2010. Refer to Note 5, Global Cost Reduction Plan, to the consolidated financial statements for additional details on this charge.

Cost savings of approximately \$155 were achieved through 2010. Beyond 2010, the Company expects annualized, ongoing savings of approximately \$180, of which the majority is related to personnel costs.

### **Acquisition-Related Costs**

In 2010, \$96.0 (\$60.1 after-tax, or \$.28 per share) in expense was recognized related to the Airgas transaction and is included within acquisition-related costs on the consolidated income statement. Refer to Note 3, Airgas Transaction, to the consolidated financial statements for details of these costs.

### **Customer Bankruptcy and Asset Actions**

On 6 January 2009, a customer of the Company who principally receives product from the Tonnage Gases segment began operating under Chapter 11 bankruptcy protection. As a result, the Company recognized a \$22.2 (\$13.9 after-tax, or \$.07 per share) charge primarily for the write-off of certain receivables during the third quarter of 2009. Sales and operating income associated with this customer are not material to the Tonnage Gases segment's results.

In April 2010, the customer emerged from bankruptcy proceedings. The Company received a final settlement in the amount of \$22.4, of which \$16.0 was applied against the remaining outstanding receivables. Income of \$6.4 (\$4.0 after-tax, or \$.02 per share) was recognized for the recovery of certain receivables that had been previously written off. This amount was recorded as a gain and is reflected within customer bankruptcy on the consolidated income statement.

In the third quarter of 2009, the Company recorded a charge of \$9.9 (\$7.1 after-tax, or \$.03 per share) for other asset actions which consisted of the closure of certain manufacturing facilities. This charge was reflected in cost of sales on the consolidated income statement. The 2009 customer bankruptcy charge combined with this asset write-down resulted in a total charge of \$32.1 (\$21.0 after-tax, or \$.10 per share).

**Pension Settlement**

The Company's U.S. supplemental pension plan provides for a lump sum benefit payment option at the time of retirement, or for corporate officers, six months after the participant's retirement date. The Company recognizes pension settlements when payments exceed the sum of the service and interest cost components of net periodic pension cost of the plan for the fiscal year. A settlement loss is recognized when the pension obligation is settled. The Company recognized \$11.5, \$10.7, and \$30.3 of settlement charges in 2010, 2009, and 2008, respectively. Refer to Note 16, Retirement Benefits, to the consolidated financial statements for additional information.

**Other Income, Net**

Items recorded to other income arise from transactions and events not directly related to the principal income earning activities of the Company. The detail of other income is presented in Note 23, Supplemental Information, to the consolidated financial statements.

**2010 vs. 2009**

Other income of \$38.7 increased \$15.7, primarily due to a net gain on the sale of assets and favorable foreign exchange. Otherwise, no individual items were significant in comparison to the prior year.

**2009 vs. 2008**

Other income of \$23.0 decreased by \$2.8. Other income declined due to losses from asset sales in 2009 and unfavorable foreign exchange. Other income in 2008 included a loss related to fire damage at a production facility. No other items were individually significant in comparison to the prior year.

**Interest Expense**

	2010	2009	2008
Interest incurred	\$136.2	\$143.8	\$184.1
Less: Capitalized interest	14.3	21.9	22.1
<b>Interest Expense</b>	<b>\$121.9</b>	<b>\$121.9</b>	<b>\$162.0</b>

**2010 vs. 2009**

Interest incurred decreased \$7.6. The decrease was driven by lower average interest rates on variable rate debt, partially offset by a higher average debt balance and the impact of a weaker dollar on the translation of foreign currency interest. The change in capitalized interest is driven by a decrease in project spending which qualified for capitalization.

**2009 vs. 2008**

Interest incurred decreased by \$40.3. This decrease was primarily driven by lower average interest rates on variable rate debt. The impact of a stronger dollar on the translation of foreign currency interest was offset by a higher average debt balance. Capitalized interest was comparable to 2008 due to slightly higher project levels offset by lower average interest rates.

**2011 Outlook**

The Company expects interest incurred to be modestly higher. This increase is expected to result from a higher average debt balance, higher fees on the Company's committed credit facility, and slightly higher interest rates on variable rate debt.

**Effective Tax Rate**

The effective tax rate equals the income tax provision divided by income from continuing operations before taxes. Refer to Note 22, Income Taxes, to the consolidated financial statements for details on factors affecting the effective tax rate.

**2010 vs. 2009**

On a GAAP basis, the effective tax rate was 24.4% and 22.1% in 2010 and 2009, respectively. On a non-GAAP basis, the effective tax rate was 25.2% and 25.3% in 2010 and 2009, respectively.

**2009 vs. 2008**

On a GAAP basis, the effective tax rate was 22.1% and 24.7% in 2009 and 2008, respectively. On a non-GAAP basis, the effective tax rate was 25.3% and 24.9% in 2009 and 2008, respectively. The effective tax rate was higher in 2009 due to lower tax credits and adjustments.

### **2011 Outlook**

The Company expects the effective tax rate in 2011 to be approximately 25.0% to 26.0%.

### **Discontinued Operations**

The U.S. Healthcare business, Polymer Emulsions business, and High Purity Process Chemicals (HPPC) business have been accounted for as discontinued operations. The results of operations of these businesses have been removed from the results of continuing operations for all periods presented. Refer to Note 6, Discontinued Operations, to the consolidated financial statements for additional details.

### **U.S. Healthcare**

In July 2008, the Board of Directors authorized management to pursue the sale of the U.S. Healthcare business. In 2008, the Company recorded a total charge of \$329.2 (\$246.2 after-tax, or \$1.12 per share) related to the impairment/write-down of the net carrying value of U.S. Healthcare business.

In the first half of 2009, based on additional facts, the Company recorded an impairment charge of \$48.7 (\$30.9 after-tax, or \$.15 per share), reflecting a revision in the estimated net realizable value of the business. Also, tax benefits of \$25.5, or \$.12 per share, were recorded to revise the estimated tax benefit associated with the total impairment charges recorded.

During the third quarter of 2009, the Company sold more than half of its remaining U.S. Healthcare business for cash proceeds of \$38.1. The Company recognized an after-tax gain of \$.3 resulting from the sales combined with adjustments to net realizable value of the remaining businesses.

During the fourth quarter of 2009, through a series of transactions, the Company sold its remaining U.S. Healthcare business for cash proceeds of \$12.1. A net after-tax loss of \$.7 was recognized. These transactions completed the disposal of the U.S. Healthcare business.

The U.S. Healthcare business generated sales of \$125.2 and \$239.8, and a loss from operations, net of tax, of \$3.4 and \$259.4 in 2009 and 2008, respectively. The loss from operations in 2008 included an after-tax impairment charge of \$237.0.

### **Polymer Emulsions Business**

On 31 January 2008, the Company closed on the sale of its interest in its vinyl acetate ethylene (VAE) polymers joint ventures to Wacker Chemie AG, its long-time joint venture partner. As part of that agreement, the Company received Wacker Chemie AG's interest in the Elkton, Md. and Piedmont, S.C. production facilities and their related businesses plus cash proceeds of \$258.2. The Company recognized a gain on the sale of \$89.5 (\$57.7 after-tax, or \$.26 per share).

On 30 June 2008, the Company sold its Elkton, Md. and Piedmont, S.C. production facilities and the related North American atmospheric emulsions and global pressure sensitive adhesives businesses to Ashland, Inc. The Company recorded a gain of \$30.5 (\$18.5 after-tax, or \$.08 per share) in connection with the sale, which included the recording of a retained environmental obligation associated with the Piedmont site. The sale of the Elkton and Piedmont facilities completed the disposal of the Company's Polymer Emulsions business.

The Polymer Emulsion business generated sales of \$261.4 and income from operations, net of tax, of \$16.7 in 2008.

### **HPPC Business**

In 2008, the Company sold its HPPC business to KMG Chemicals, Inc. The sale closed on 31 December 2007, and a loss on the sale was recorded of \$.5 (\$.3 after-tax) in 2008. The HPPC business generated sales of \$22.9 and income from operations, net of tax, of \$.1 in 2008.

### **Net Income**

#### **2010 vs. 2009**

Net income was \$1,029.1 compared to \$631.3, and diluted earnings per share was \$4.74 compared to \$2.96. On a non-GAAP basis, net income was \$1,089.2 compared to \$857.6, and diluted earnings per share was \$5.02 compared to \$4.02.

#### **2009 vs. 2008**

Net income was \$631.3 compared to \$909.7, and diluted earnings per share was \$2.96 compared to \$4.15. On a non-GAAP basis, net income was \$857.6 compared to \$926.2, and diluted earnings per share was \$4.02 compared to \$4.23.

**Segment Analysis****Merchant Gases**

	2010	2009	2008
Sales	\$3,718.3	\$3,610.6	\$4,192.7
Operating income	729.4	661.2	789.5
Equity affiliates' income	104.3	98.3	131.8

**Merchant Gases Sales**

	% Change from Prior Year	
	2010	2009
Underlying business		
Volume	2%	(9)%
Price	(1)%	4%
Currency	2%	(9)%
<b>Total Merchant Gases Sales Change</b>	<b>3%</b>	<b>(14)%</b>

**2010 vs. 2009**

Sales of \$3,718.3 increased by 3%, or \$107.7. Sales increased 2% from favorable currency effects, due to a weaker U.S. dollar against key European and Asian currencies in the first half of the year. Underlying business increased 1% as volume increases, primarily in Asia, were partially offset by a decrease in pricing due to liquid hydrogen natural gas cost pass-through and unfavorable customer mix.

In North America, sales were flat, as volume increases were offset by lower pricing and unfavorable customer mix. In Europe, sales were flat as favorable currency impacts were offset by lower pricing and unfavorable customer mix. In Asia, sales increased 20%, with volumes up 16% and a favorable currency impact of 4%. Volume increases were driven by steel, electronics and bulk hydrogen customers.

**Merchant Gases Operating Income**

Operating income of \$729.4 increased 10%, or \$68.2. The increase was primarily due to lower costs of \$50, higher volumes of \$32 and favorable currency of \$8, partially offset by lower pricing and unfavorable customer mix of \$22. The improved costs resulted from improved plant operating costs, distribution efficiency, and organizational restructuring benefits.

**Merchant Gases Equity Affiliates' Income**

Merchant Gases equity affiliates' income of \$104.3 increased 6%, or \$6.0. The increase was a result of higher volumes.

**2009 vs. 2008****Merchant Gases Sales**

Sales of \$3,610.6 decreased by 14%, or \$582.1. Sales decreased 9% from unfavorable currency effects, driven primarily by the strengthening of the U.S. dollar against key European and Asian currencies. Underlying sales declined 5%, with volumes down 9% and pricing up 4%. Volumes were weak across manufacturing end markets globally. Price increases implemented early in the year were effective, partially offsetting the decline in volume.

The global recession significantly impacted manufacturing-related demand for Merchant industrial gases in every region. In North America, sales decreased 10%, with volumes down 14%. Higher pricing of 4% partially offset the decline in volumes. In Europe, sales decreased 17%, primarily due to unfavorable currency impacts of 13%. Underlying sales declined 4%, with volumes down 8% and pricing adding 4%. Stronger healthcare volumes partially offset the total volume decline. In Asia, sales declined 13%. Underlying sales were lower by 6%, with volumes declining 8% and pricing adding 2%. Currency unfavorably impacted sales by 7%.

**Merchant Gases Operating Income**

Operating income of \$661.2 decreased 16%, or \$128.3. The decline was due to reduced volumes of \$234 and unfavorable currency impacts of \$74. These declines were partially offset by improved pricing, net of variable costs, of \$102 and improved cost performance of \$78, primarily due to cost reduction efforts.

**Merchant Gases Equity Affiliates' Income**

Merchant Gases equity affiliates' income of \$98.3 decreased 25%, or \$33.5. The decline was a result of lower overall volumes and unfavorable currency. Additionally, 2008 results included favorable adjustments made to certain affiliates in Asia and the reversal of an antitrust fine.

**Tonnage Gases**

	2010	2009	2008
Sales	\$2,930.8	\$2,573.6	\$3,574.4
Operating income	444.2	399.6	482.6

**Tonnage Gases Sales**

	% Change from Prior Year	
	2010	2009
Underlying business		
Volume	11%	(5)%
Currency	2%	(4)%
Energy and raw material cost pass-through	1%	(19)%
<b>Total Tonnage Gases Sales Change</b>	<b>14%</b>	<b>(28)%</b>

**2010 vs. 2009**

Sales of \$2,930.8 increased 14%, or \$357.2. Volumes increased 11% due to continued improvement in steel and chemical end markets and new plant onstreams. Currency favorably impacted sales by 2%, driven primarily by the weaker U.S. dollar, in the first half of 2010. Energy and raw material contractual cost pass-through to customers increased sales by 1%.

**Tonnage Gases Operating Income**

Operating income of \$444.2 increased 11%, or \$44.6. The increase was a result of higher volumes of \$79 and favorable currency impacts of \$7, partially offset by higher costs of \$41, primarily due to planned maintenance costs and operating inefficiencies.

**2009 vs. 2008****Tonnage Gases Sales**

Sales of \$2,573.6 decreased 28%, or \$1,000.8. Lower energy and raw material contractual cost pass-through to customers reduced sales by 19%. Volumes were down 5%. While refinery hydrogen volumes were higher, overall volumes declined from reduced demand from steel and chemical customers. Currency unfavorably impacted sales by 4%.

**Tonnage Gases Operating Income**

Operating income of \$399.6 decreased 17%, or \$83.0. Underlying business declined \$70, primarily from decreased volumes and lower operating efficiencies. Currency unfavorably impacted operating income by \$24. Results in 2008 included unfavorable hurricane related impacts of \$11.

**Electronics and Performance Materials**

	2010	2009	2008
Sales	\$1,904.7	\$1,582.2	\$2,209.3
Operating income	251.8	101.6	245.9

**Electronics and Performance Materials Sales**

	% Change from Prior Year	
	2010	2009
Underlying business		
Volume	22%	(24)%
Price	(3)%	(2)%
Currency	1%	(2)%
<b>Total Electronics and Performance Materials Sales Change</b>	<b>20%</b>	<b>(28)%</b>

**2010 vs. 2009**

Sales of \$1,904.7 increased 20%, or \$322.5. Underlying business increased due to higher volumes of 22% across all markets, partially offset by unfavorable pricing of 3%. Electronics sales increased 17% due to higher volumes in specialty materials and equipment sales in support of fabrication plant expansions, partially offset by lower pricing. Performance Materials sales increased 25%, reflecting volume growth across end markets globally, partially offset by lower pricing.

**Electronics and Performance Materials Operating Income**

Operating income of \$251.8 increased \$150.2, primarily due to higher volumes of \$160 and lower costs of \$40, partially offset by lower pricing of \$50. The reduced costs were a result of restructuring and productivity initiatives.

**2009 vs. 2008**
**Electronics and Performance Materials Sales**

Sales of \$1,582.2 declined 28%, or \$627.1, as volumes declined 24%. Sales volumes declined significantly in the first half of 2009 and recovered sequentially in the second half. In Electronics, sales were down 35%, reflecting a significant global downturn in semiconductor and flat-panel capacity utilization and capital investment. In Performance Materials, sales were down 19% due to weaker demand across all end markets, partially offset by improved pricing.

**Electronics and Performance Materials Operating Income**

Operating income of \$101.6 declined by 59%, or \$144.3. Operating income declined from lower volumes of \$202 as well as unfavorable pricing of \$37. Lower pricing in Electronics was partially offset by higher pricing in Performance Materials. Favorable cost performance added \$82, primarily due to cost reduction efforts. Results in 2008 included \$15 of unfavorable impacts associated with a fire at a production facility.

**Equipment and Energy**

	2010	2009	2008
Sales	\$472.2	\$489.8	\$438.1
Operating income	67.3	42.2	38.9

**2010 vs. 2009**

Sales of \$472.2 decreased 4%, or \$17.6, due to lower air separation unit (ASU) sales. Operating income of \$67.3 increased 59%, due to higher LNG heat exchanger activity, a gain on the sale of an asset, and lower project costs.

The sales backlog for the Equipment business at 30 September 2010 was \$274, compared to \$239 at 30 September 2009. It is expected that approximately \$250 of the backlog will be completed during 2011.

**2009 vs. 2008**

Sales of \$489.8 increased by 12%, or \$51.7, due to higher ASU activity. Operating income improved \$3.3 from favorable cost performance and higher ASU sales, partially offset by lower LNG heat exchanger activity and unfavorable currency.

The sales backlog for the Equipment business at 30 September 2009 was \$239, compared to \$399 at 30 September 2008.

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### Other

Other operating income (loss) includes other expense and income that cannot be directly associated with the business segments, including foreign exchange gains and losses, interest income, and costs previously allocated to businesses now reported as discontinued operations. Also included are LIFO inventory adjustments, as the business segments use FIFO and the LIFO pool adjustments are not allocated to the business segments. Corporate general and administrative costs and research and development costs are fully allocated to the business segments.

### 2010 vs. 2009

Operating loss was \$2.6 compared to \$17.3, primarily due to favorable foreign exchange in the current year. No other individual items were significant in comparison to the prior year.

### 2009 vs. 2008

Operating loss of \$17.3 decreased by \$13.5. The decrease was primarily due to favorable LIFO inventory adjustments versus 2008. Unfavorable currency partially offset this decline. No other items were individually significant in comparison to the prior year.

## RECONCILIATION OF NON-GAAP FINANCIAL MEASURES

The presentation of non-GAAP measures is intended to enhance the usefulness of financial information by providing measures which the Company's management uses internally to evaluate the Company's baseline performance on a comparable basis. Presented below are reconciliations of the reported GAAP results to the non-GAAP measures.

### Consolidated Results

	Operating Income	Income from Continuing Operations	Diluted EPS	Net Income	Diluted EPS
2010 GAAP	\$1,389.0	\$1,029.1	\$4.74	\$1,029.1	\$4.74
2009 GAAP	846.3	639.9	3.00	631.3	2.96
Change GAAP	\$542.7	\$389.2	\$1.74	\$397.8	\$1.78
% Change GAAP	64%	61%	58%	63%	60%
2010 GAAP	\$1,389.0	\$1,029.1	\$4.74	\$1,029.1	\$4.74
Acquisition-related costs (tax impact \$35.9) <sup>(a)</sup>	96.0	60.1	.28	60.1	.28
2010 Non-GAAP Measure	\$1,485.0	\$1,089.2	\$5.02	\$1,089.2	\$5.02
2009 GAAP	\$846.3	\$639.9	\$3.00	\$631.3	\$2.96
Global cost reduction plan (tax impact \$97.9) <sup>(b)</sup>	298.2	200.3	.94	200.3	.94
Customer bankruptcy and asset actions (tax impact \$11.1) <sup>(c)</sup>	32.1	21.0	.10	21.0	.10
Pension settlement (tax impact \$3.0) <sup>(d)</sup>	8.0	5.0	.02	5.0	.02
2009 Non-GAAP Measure	\$1,184.6	\$866.2	\$4.06	\$857.6	\$4.02
Change Non-GAAP Measure	\$300.4	\$223.0	\$ .96		
% Change Non-GAAP Measure	25%	26%	24%		

(a) Based on statutory tax rate of 37.4%

(b) Based on average statutory tax rate of 32.8%

(c) Based on average statutory tax rate of 34.6%

(d) Based on average statutory tax rate of 37.5%



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	Operating Income	Income from Continuing Operations	Diluted EPS	Net Income	Diluted EPS
2009 GAAP	\$846.3	\$639.9	\$3.00	\$631.3	\$2.96
2008 GAAP	1,495.8	1,090.5	4.97	909.7	4.15
Change GAAP	\$(649.5)	\$(450.6)	\$(1.97)	\$(278.4)	\$(1.19)
% Change GAAP	(43)%	(41)%	(40)%	(31)%	(29)%
2009 GAAP	\$846.3	\$639.9	\$3.00	\$631.3	\$2.96
Global cost reduction plan (tax impact \$97.9) <sup>(b)</sup>	298.2	200.3	.94	200.3	.94
Customer bankruptcy and asset actions (tax impact \$11.1) <sup>(c)</sup>	32.1	21.0	.10	21.0	.10
Pension settlement (tax impact \$3.0) <sup>(d)</sup>	8.0	5.0	.02	5.0	.02
2009 Non-GAAP Measure	\$1,184.6	\$866.2	\$4.06	\$857.6	\$4.02
2008 GAAP	\$1,495.8	\$1,090.5	\$4.97	\$909.7	\$4.15
Pension settlement (tax impact \$9.8) <sup>(e)</sup>	26.3	16.5	.08	16.5	.08
2008 Non-GAAP Measure	\$1,522.1	\$1,107.0	\$5.05	\$926.2	\$4.23
Change Non-GAAP Measure	\$(337.5)	\$(240.8)	\$(.99)		
% Change Non-GAAP Measure	(22)%	(22)%	(20)%		

- (a) Based on statutory tax rate of 37.4%  
(b) Based on average statutory tax rate of 32.8%  
(c) Based on average statutory tax rate of 34.6%  
(d) Based on average statutory tax rate of 37.5%  
(e) Based on statutory tax rate of 37.3%

	Effective Tax Rate		
	2010	2009	2008
Income Tax Provision—GAAP	\$339.5	\$185.3	\$365.3
Income from Continuing Operations Before Taxes—GAAP	\$1,394.0	\$836.6	\$1,478.8
Effective Tax Rate—GAAP	24.4%	22.1%	24.7%
Income tax provision—GAAP	\$339.5	\$185.3	\$365.3
Acquisition-related costs tax impact	35.9	—	—
Global cost reduction plan tax impact	—	97.9	—
Customer bankruptcy and asset actions tax impact	—	11.1	—
Pension settlement tax impact	—	3.0	9.8
Income Tax Provision—Non-GAAP Measure	\$375.4	\$297.3	\$375.1
Income from continuing operations before taxes—GAAP	\$1,394.0	\$836.6	\$1,478.8
Acquisition-related costs	96.0	—	—
Global cost reduction plan	—	298.2	—
Customer bankruptcy and asset actions	—	32.1	—
Pension settlement	—	8.0	26.3
Income from Continuing Operations Before Taxes—Non-GAAP Measure	\$1,490.0	\$1,174.9	\$1,505.1
Effective Tax Rate—Non-GAAP Measure	25.2%	25.3%	24.9%

## LIQUIDITY AND CAPITAL RESOURCES

The Company maintained a solid financial position throughout 2010. Cash flow from operations provided funding for the Company's capital spending and dividend payments. The Company retained consistent access to commercial paper markets throughout the year.

The Company's cash flows from operating, investing, and financing activities, as reflected in the consolidated statements of cash flows, are summarized in the following table:

	2010	2009	2008
<b>Cash provided by (used for)</b>			
Operating activities	\$1,522.4	\$1,329.4	\$1,658.8
Investing activities	(1,056.5)	(1,040.4)	(919.8)
Financing activities	(579.7)	95.0	(677.7)

### Operating Activities

#### 2010 vs. 2009

Net cash provided by operating activities increased \$193.0, or 15%. The increase resulted from higher net income of \$397.8 combined with the favorable impact of noncash adjustments to income of \$191.2, partially offset by unfavorable changes in working capital of \$396.0.

Noncash adjustments include depreciation and amortization, impairment charges, deferred taxes, certain acquisition-related costs and share-based compensation cost. These adjustments also include changes in operating assets, such as noncurrent capital lease receivables, and liabilities which reflect timing differences between the receipt or disbursement of cash and their recognition in earnings.

Favorable noncash adjustments to net income in 2010 primarily included the following:

- An increase in deferred income taxes of \$148.5 due to pension funding and the utilization of foreign tax credits.
- Expense of \$84.0 for the amortization of financing costs associated with the Airgas tender offer.
- A decrease in noncurrent capital lease receivables of \$101.1.

These favorable adjustments were partially offset by the impact of 2009 noncash impairment charges of \$118.7 related to the global cost reduction plan and the discontinued U.S. Healthcare business.

Changes in working capital increased cash used (negative cash flow variance) by \$396.0 and included:

- A \$301.5 negative cash flow variance due to higher trade receivables. The current year reflected a negative cash flow of \$142.5 caused by rising sales, while the prior year reflected a positive cash flow of \$159.0 resulting from a significant drop in sales.
- A \$94.6 negative cash flow variance from inventories and contracts in progress primarily due to increased spending for inventory and projects to support higher business activity.

#### 2009 vs. 2008

Net cash provided by operating activities decreased \$329.4, or 20%. The decrease resulted from the reduction in net income of \$278.4 combined with the unfavorable impact of noncash adjustments to income of \$143.4, partially offset by favorable changes in working capital of \$92.4. Net income in 2009 included noncash impairment charges of \$118.7 related to the global cost reduction plan and the discontinued U.S. Healthcare business. In 2008, U.S. Healthcare noncash impairment charges totaling \$314.8 were partially offset by gains of \$105.9 on the sale of discontinued operations. Proceeds from the sale of assets and businesses are reflected as an investing activity.

Changes in working capital decreased cash used (positive cash flow variance) by \$92.4 and included:

- A \$256.4 positive cash flow variance due to lower trade receivables as a result of lower sales.
- A \$108.7 positive cash flow variance from other receivables due primarily to the recognition of a deferred tax asset in 2008 related to the U.S. Healthcare impairment charge. The recognition of this asset represented a use of cash in 2008.
- A \$319.0 negative cash flow variance due to a higher use of cash for payables and accrued liabilities. This variance was due to a lower level of activity and the timing of payments.

## Investing Activities

### 2010 vs. 2009

Cash used for investing increased \$16.1, primarily due to:

- Capital expenditures for plant and equipment decreased by \$148.2, consistent with the Company's capital spending plan.
- The Company purchased approximately 1.5 million shares of Airgas stock for \$69.6 prior to a tender offer as discussed in Note 3, Airgas Transaction, to the consolidated financial statements.
- Changes in restricted cash, due to lower project spending, resulted in a reduced source of cash of \$53.4. The proceeds from the issuance of certain Industrial Revenue Bonds must be held in escrow until related project spending occurs and are classified as noncurrent assets in the consolidated balance sheet.
- The prior year included proceeds of \$51.0 from the sale of the U.S. Healthcare business.

### 2009 vs. 2008

Cash used for investing increased \$120.6, primarily from lower proceeds from the sale of discontinued operations of \$372.0, partially offset by changes in restricted cash of \$270.6.

- During 2009, the Company completed the sale of its U.S. Healthcare business, which generated proceeds of \$51.0. In 2008, proceeds of \$423.0 included the sales of the Polymer Emulsions and HPPC businesses.
- Decreases in the restricted cash balances, caused by project spending exceeding new bond proceeds, resulted in a source of cash of \$87.0 in 2009. Activity in 2008 resulted in a use of cash of \$183.6.

## Capital Expenditures

Capital expenditures are detailed in the following table:

	2010	2009	2008
Additions to plant and equipment	\$1,030.9	\$1,179.1	\$1,085.1
Acquisitions, less cash acquired	37.2	32.7	72.0
Short-term borrowings associated with SAGA acquisition <sup>(A)</sup>	60.9	—	—
Investments in and advances to unconsolidated affiliates	4.8	24.5	2.2
<b>Capital Expenditures on a GAAP Basis</b>	<b>\$1,133.8</b>	<b>\$1,236.3</b>	<b>\$1,159.3</b>
Capital lease expenditures <sup>(B)</sup>	122.6	238.6	195.7
Noncurrent liability related to purchase of shares from noncontrolling interests <sup>(B)</sup>	42.0	—	—
<b>Capital Expenditures on a Non-GAAP Basis</b>	<b>\$1,298.4</b>	<b>\$1,474.9</b>	<b>\$1,355.0</b>

(A) Noncash transaction.

(B) The Company utilizes a non-GAAP measure in the computation of capital expenditures and includes spending associated with facilities accounted for as capital leases and purchases of noncontrolling interests.

- Certain contracts associated with facilities that are built to provide product to a specific customer are required to be accounted for as leases, and such spending is reflected as a use of cash within cash provided by operating activities.
- Additionally, the purchase of noncontrolling interests in a subsidiary is accounted for as an equity transaction and will be reflected as a financing activity in the consolidated statement of cash flows.

Capital expenditures on a GAAP basis in 2010 totaled \$1,133.8, compared to \$1,236.3 in 2009, resulting in a reduction of \$102.5. Additions to plant and equipment were largely in support of the Merchant Gases and Tonnage Gases businesses during both 2010 and 2009. Additions to plant and equipment also included support capital of a routine, ongoing nature, including expenditures for distribution equipment and facility improvements.

Capital expenditures on a non-GAAP basis in 2010 totaled \$1,298.4, compared to \$1,474.9 in 2009. Capital lease expenditures of \$122.6 decreased by \$116.0, reflecting lower project spending. In 2009, capital lease expenditures of \$238.6 increased \$42.9 from 2008, reflecting higher project spending, primarily in North America Tonnage Gases.

### 2011 Outlook

Excluding acquisitions, capital expenditures for new plant and equipment in 2011 on a GAAP basis are expected to be between \$1,400 and \$1,500, and on a non-GAAP basis are expected to be between \$1,500 and \$1,700. The non-GAAP capital expenditures include spending associated with facilities accounted for as capital leases which are expected to be between \$100 and \$200. The majority of spending is expected in the Tonnage Gases segment, with

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approximately \$1,000 associated with new plants. It is anticipated that capital expenditures will be funded principally with cash from continuing operations. In addition, the Company intends to continue to evaluate acquisition opportunities and investments in equity affiliates.

### **Financing Activities**

#### **2010 vs. 2009**

Cash used by financing activities increased \$674.7, primarily due to:

- A decrease in long-term proceeds of \$384.3. The prior year included proceeds of \$400.0 from the issuance of a fixed-rate 4.375% 10-year senior note.
- An increase in payments on long-term debt of \$353.5, resulting primarily from the repayment of a €250 Eurobond (\$306.8).

#### **2009 vs. 2008**

Cash provided by financing activities increased \$772.7, primarily as a result of share repurchases of \$793.4 in 2008. In 2009, the Company did not purchase any of its outstanding shares.

### **Financing and Capital Structure**

Capital needs in 2010 were satisfied primarily with cash from operations. At the end of 2010, total debt outstanding was \$4.1 billion compared to \$4.5 billion, and cash and cash items were \$4 billion compared to \$5 billion. Total debt at 30 September 2010 and 2009, expressed as a percentage of the sum of total debt and total equity, was 42.0% and 47.7%, respectively.

Long-term debt proceeds of \$226.2 included \$85.0 from the issuance of Industrial Revenue Bonds. Refer to Note 15, Debt, to the consolidated financial statements for additional information.

In February 2010, the Company commenced a tender offer to acquire all outstanding common stock of Airgas as further discussed in Note 3, Airgas Transaction, to the consolidated financial statements. In connection with this tender offer, the Company has secured committed financing in the form of a \$6.7 billion term loan credit facility. Borrowings under this credit facility will be available beginning on the date of the consummation of the tender offer, which must occur no later than 4 February 2011. All borrowings under this credit facility will mature on the date that is one year from the consummation of the tender offer. The credit facility agreement contains one financial covenant, a maximum leverage ratio, and other affirmative and negative covenants, including restrictions on liens and certain subsidiary indebtedness. It also requires mandatory commitment reduction/prepayment for certain capital market transactions and asset dispositions. Fees incurred to secure this credit facility have been deferred and are being amortized over the term of the arrangement.

The Company has obtained the commitment of a number of commercial banks to lend money at market rates whenever needed. At 30 September 2009, the Company's total multicurrency committed credit facility amounted to \$1,450. On 8 July 2010, the Company replaced this facility with a new \$2,000 multicurrency committed credit facility maturing on 8 July 2013. Facility fees were modified to reflect current market rates. The Company has one financial covenant associated with this new credit facility. The covenant indicates that the ratio of total debt to earnings before interest, taxes, depreciation, and amortization (EBITDA) shall not exceed 3.0. This credit facility provides a source of liquidity and is used to support the issuance of commercial paper. No borrowings were outstanding under this commitment at the end of 2010. Additional commitments totaling \$518.7 are maintained by the Company's foreign subsidiaries, of which \$345.2 was borrowed and outstanding at 30 September 2010.

In 2007, the Board of Directors authorized the repurchase of up to \$1,000 of the Company's outstanding common stock. During 2010, the Company did not purchase any shares under this authorization. At 30 September 2010, \$649.2 in share repurchase authorization remained.

#### **2011 Outlook**

Exclusive of the potential Airgas transaction described above, the Company projects a limited need to access the long-term debt markets in 2011 due to its projected operating cash flows, modest debt maturities and available cash balance at the end of 2010. Should the Airgas transaction occur, the Company expects to fund this acquisition primarily with new debt financing. The Company expects that it will continue to be in compliance with all of its financial covenants. Also, the Company anticipates that it will continue to be able to access the commercial paper and other short-term debt markets.

**Dividends**

On 18 March 2010, the Board of Directors increased the quarterly cash dividend from \$.45 per share to \$.49 per share. Dividends are declared by the Board of Directors and are usually paid during the sixth week after the close of the fiscal quarter.

**CONTRACTUAL OBLIGATIONS**

The Company is obligated to make future payments under various contracts, such as debt agreements, lease agreements, unconditional purchase obligations, and other long-term obligations. The following table summarizes these obligations of the Company as of 30 September 2010:

	Total	Payments Due By Period					Thereafter
		2011	2012	2013	2014	2015	
Long-term debt obligations							
Debt maturities	\$3,842	\$182	\$453	\$335	\$488	\$444	\$1,940
Contractual interest	698	122	109	93	72	58	244
Capital leases	11	2	2	2	1	1	3
Operating leases	190	50	38	28	18	13	43
Pension obligations	1,042	247	104	136	90	92	373
Unconditional purchase obligations	1,466	482	100	103	112	118	551
Other liabilities	103	61	42	—	—	—	—
<b>Total Contractual Obligations</b>	<b>\$7,352</b>	<b>\$1,146</b>	<b>\$848</b>	<b>\$697</b>	<b>\$781</b>	<b>\$726</b>	<b>\$3,154</b>

**Long-Term Debt Obligations**

The long-term debt obligations include the maturity payments of long-term debt, including current portion, and the related contractual interest obligations. Refer to Note 15, Debt, to the consolidated financial statements for additional information on long-term debt.

Contractual interest is the interest the Company is contracted to pay on the long-term debt obligations without taking into account the interest impact of interest rate swaps related to any of this debt, which at current interest rates would slightly decrease contractual interest. The Company had \$1,240 of long-term debt subject to variable interest rates at 30 September 2010, excluding fixed-rate debt that has been swapped to variable-rate debt. The rate assumed for the variable interest component of the contractual interest obligation was the rate in effect at 30 September 2010. Variable interest rates are primarily determined by interbank offer rates and by U.S. short-term tax-exempt interest rates.

**Leases**

Refer to Note 12, Leases, to the consolidated financial statements for additional information on capital and operating leases.

**Pension Obligations**

The amounts in the table above represent the current estimated cash payments to be made by the Company that in total equal the recognized pension liabilities. Refer to Note 16, Retirement Benefits, to the consolidated financial statements. These payments are based upon the current valuation assumptions and regulatory environment.

The total accrued liability for pension benefits is impacted by interest rates, plan demographics, actual return on plan assets, continuation or modification of benefits, and other factors. Such factors can significantly impact the amount of the liability and related contributions.

**Unconditional Purchase Obligations**

Most of the Company's long-term unconditional purchase obligations relate to feedstock supply for numerous HyCO (hydrogen, carbon monoxide, and syngas) facilities. The price of feedstock supply is principally related to the price of natural gas. However, long-term take-or-pay sales contracts to HyCO customers are generally matched to the term of the feedstock supply obligations and provide recovery of price increases in the feedstock supply. Due to the matching of most long-term feedstock supply obligations to customer sales contracts, the Company does not believe these purchase obligations would have a material effect on its financial condition or results of operations. Refer to Note 17, Commitments and Contingencies, to the consolidated financial statements.

The above unconditional purchase obligations include other product supply commitments and also electric power and natural gas supply purchase obligations. In addition, purchase commitments to spend approximately \$330 for additional plant and equipment are included in the unconditional purchase obligations in 2011.

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The Company also purchases materials, energy, capital equipment, supplies, and services as part of the ordinary course of business under arrangements that are not unconditional purchase obligations. The majority of such purchases are for raw materials and energy, which are obtained under requirements-type contracts at market prices. In total, purchases by the Company approximate \$6.3 billion annually, including the unconditional purchase obligations in the table above.

### **Other Liabilities**

Other liabilities includes the obligation to purchase the remaining outstanding shares of the French SAGA group (SAGA) for a fixed price of €44.8, or approximately \$61, and the obligation to purchase 25% of the remaining shares of CryoService Limited (CSL) for \$42.0.

In the second quarter of 2010, the Company entered into agreements that will enable it to acquire 100% of the outstanding shares of SAGA. Under the terms of these agreements, the Company purchased 51.47% of the shares in March 2010. The remaining shares are expected to be purchased by the end of calendar year 2010 for a fixed price of €44.8, or approximately \$61, under a put and call option structure. At 30 September 2010, this structure was accounted for as a financing of the purchase of the remaining shares and reported within short-term borrowings on the consolidated balance sheet. Refer to Note 4, Business Combinations, to the consolidated financial statements for additional information.

Additionally, in June 2010, the Company entered into agreements obligating it to purchase 25% of the remaining shares of CSL. The agreements require the consideration, which is based on a multiple of earnings formula, to be remitted in January 2012. At 30 September 2010, the liability amounted to \$42.0 and has been reported in other noncurrent liabilities on the consolidated balance sheet. Refer to Note 20, Noncontrolling Interests, to the consolidated financial statements for additional information.

### **Income Tax Liabilities**

Noncurrent deferred income tax liabilities as of 30 September 2010 were \$335.1. Refer to Note 22, Income Taxes, to the consolidated financial statements. Tax liabilities related to uncertain tax positions as of 30 September 2010 were \$233.7. These tax liabilities were not included in the Contractual Obligations table, as it is impractical to determine a cash impact by year.

### **PENSION BENEFITS**

The Company and certain of its subsidiaries sponsor defined benefit pension plans that cover a substantial portion of its worldwide employees. The principal defined benefit pension plans—the U.S. salaried pension plan and the U.K. pension plan—were closed to new participants in 2005 and were replaced with defined contribution plans. The move to defined contribution plans has not had a material impact on retirement program cost levels or funding. Over the long run, however, the defined contribution plans are expected to reduce volatility of both expense and contributions.

For 2010, the fair market value of pension plan assets for the Company's defined benefit plans as of the measurement date increased to \$2,711.6 from \$2,251.0 in 2009. The projected benefit obligation for these plans as of the measurement date was \$3,753.6 and \$3,386.0 in 2010 and 2009, respectively. The increase in the obligation was due principally to a decrease in the weighted average discount rate used to measure future benefit obligations to 5.0% from 5.6%. Refer to Note 16, Retirement Benefits, to the consolidated financial statements for comprehensive and detailed disclosures on the Company's postretirement benefits.

### **Pension Expense**

	2010	2009	2008
Pension expense	\$109.0	\$110.0	\$127.0
Special terminations, settlements, and curtailments (included above)	14.8	43.8	31.5
Weighted average discount rate	5.6%	7.1%	6.1%
Weighted average expected rate of return on plan assets	8.2%	8.3%	8.8%
Weighted average expected rate of compensation increase	4.1%	4.3%	4.2%

### **2010 vs. 2009**

The increase in pension expense, net of special items, was primarily attributable to the 150 basis point decrease in the weighted average discount rate, resulting in higher amortization of actuarial losses. The increase was partially offset by a higher expected return on plan assets due to higher contributions. Expense in 2010 included \$14.8 of special termination and settlement charges, of which \$2.8 was related to the global cost reduction plan.

**2009 vs. 2008**

The decrease in pension expense was primarily attributable to the 100 basis point increase in the weighted average discount rate. Expense in 2009 included \$43.8 of special termination, settlement, and curtailment charges, of which \$32.3 was related to the global cost reduction plan.

**2011 Outlook**

Pension expense is estimated to be approximately \$122 in 2011, an increase of \$27.8 from 2010, net of special terminations and settlements. In 2011, pension expense will include approximately \$94 for amortization of actuarial losses versus \$66.8 in 2010. Actuarial losses of \$294.8 were incurred in 2010, resulting primarily from lower discount rates. Actuarial gains/losses, in excess of certain thresholds, are amortized into pension expense over the average remaining service lives of the employees to the extent they are not offset by future gains or losses. Future changes in the discount rate and actual returns on plan assets, different from expected returns, would impact the actuarial gains/losses and resulting amortization in years beyond 2011.

**Pension Funding**

Pension funding includes both contributions to funded plans and benefit payments under unfunded plans. With respect to funded plans, the Company's funding policy is that contributions, combined with appreciation and earnings, will be sufficient to pay benefits without creating unnecessary surpluses.

In addition, the Company makes contributions to satisfy all legal funding requirements while managing its capacity to benefit from tax deductions attributable to plan contributions. The Company analyzes the liabilities and demographics of each plan, which help guide the level of contributions. During 2010 and 2009, the Company's cash contributions to funded plans and benefit payments under unfunded plans were \$406.6 and \$184.8, respectively. The majority of the cash contributions were voluntary.

Cash contributions to defined benefit plans, including benefit payments for unfunded plans, are estimated to be approximately \$247 in 2011. Of this amount, \$200 was contributed in October 2010. Actual future contributions will depend on future funding legislation, discount rates, investment performance, plan design, and various other factors. Refer to the Contractual Obligations discussion on page 33 for a projection of future contributions.

**ENVIRONMENTAL MATTERS**

The Company is subject to various environmental laws and regulations in the countries in which it has operations. Compliance with these laws and regulations results in higher capital expenditures and costs. From time to time, the Company is involved in proceedings under the Comprehensive Environmental Response, Compensation and Liability Act (the federal Superfund law), similar state laws, and the Resource Conservation and Recovery Act (RCRA) relating to the designation of certain sites for investigation and possible cleanup. The Company's accounting policy for environmental expenditures is discussed in Note 1, Major Accounting Policies, to the consolidated financial statements, and environmental loss contingencies are discussed in Note 17, Commitments and Contingencies, to the consolidated financial statements.

The amounts charged to income from continuing operations related to environmental matters totaled \$31.6, \$52.5, and \$49.9 in 2010, 2009, and 2008, respectively. These amounts represent an estimate of expenses for compliance with environmental laws, remedial activities, and activities undertaken to meet internal Company standards. Future costs are not expected to be materially different from these amounts. The 2009 amount included a charge of \$16.0 for the Paulsboro site. Refer to Note 17, Commitments and Contingencies, to the consolidated financial statements for additional information on this charge. The 2008 amount included revised cost estimates for several existing sites.

Although precise amounts are difficult to determine, the Company estimates that in both 2010 and 2009, it spent approximately \$6 on capital projects to control pollution. Capital expenditures to control pollution in future years are estimated to be approximately \$6 in both 2011 and 2012.

The Company accrues environmental investigatory and remediation costs for identified sites when it is probable that a liability has been incurred and the amount of loss can be reasonably estimated. The potential exposure for such costs is estimated to range from \$87 to a reasonably possible upper exposure of \$101. The consolidated balance sheets at 30 September 2010 and 2009 included an accrual of \$87.0 and \$95.0, respectively. The accrual for the environmental obligations relating to the Pace, Florida; Piedmont, South Carolina; and the Paulsboro, New Jersey facilities is included in these amounts. Refer to Note 17, Commitments and Contingencies, to the consolidated financial statements for further details on these facilities.



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Actual costs to be incurred at identified sites in future periods may vary from the estimates, given inherent uncertainties in evaluating environmental exposures. Subject to the imprecision in estimating future environmental costs, the Company does not expect that any sum it may have to pay in connection with environmental matters in excess of the amounts recorded or disclosed above would have a materially adverse impact on its financial position or results of operations in any one year.

Some of the Company's operations are within jurisdictions that have, or are developing, regulations governing emissions of greenhouse gases (GHG). These include existing and expanding coverage under the European Union Emissions Trading Scheme; mandatory reporting and reductions at manufacturing facilities in Alberta, Canada; and mandatory reporting and anticipated constraints on GHG emissions in California and Ontario. In the U.S., regional initiatives have been implemented that will regulate GHG emissions from fossil fuel-driven power plants, and some federal legislative proposals also focus on such power plants. As a large consumer of electric power, the Company could be impacted by increased costs that may arise from such regulatory controls. In addition, federal legislation has been introduced in the U.S. that would regulate GHG emissions from the Company's hydrogen facilities and other operations, such as production of fluorinated gases manufactured by the Company. In addition, the U.S. Environmental Protection Agency has taken preliminary actions towards regulating GHG emissions. Increased public awareness and concern may result in more international, U.S. federal, and/or regional requirements to reduce or mitigate the effects of GHG.

The Company may incur costs related to GHG emissions from its hydrogen facilities and other operations such as fluorinated gases production. The Company believes it will be able to mitigate some of the potential costs through its contractual terms, but the lack of definitive legislation or regulatory requirements prevents accurate prediction of the long-term impact on the Company. Any legislation that limits or taxes GHG emissions from Company facilities could impact the Company's growth by increasing its operating costs or reducing demand for certain of its products.

Regulation of GHG may also produce new opportunities for the Company. The Company continues to develop technologies to help its facilities and its customers lower energy consumption, improve efficiency, and lower emissions. The Company is also developing a portfolio of technologies that capture carbon dioxide from power and chemical plants before it reaches the atmosphere, enable cleaner transportation fuels, and facilitate alternate fuel source development. In addition, the potential demand for clean coal and the Company's carbon capture solutions could increase demand for oxygen, one of the Company's main products, and the Company's proprietary technology for delivering low-cost oxygen.

### **OFF-BALANCE SHEET ARRANGEMENTS**

The Company has entered into certain guarantee agreements as discussed in Note 17, Commitments and Contingencies, to the consolidated financial statements. The Company is not a primary beneficiary in any material variable interest entity. The Company does not have any derivative instruments indexed to its own stock. The Company's off-balance sheet arrangements are not reasonably likely to have a material impact on financial condition, changes in financial condition, results of operations, or liquidity.

### **RELATED PARTY TRANSACTIONS**

The Company's principal related parties are equity affiliates operating primarily in the industrial gas business. The Company did not engage in any material transactions involving related parties that included terms or other aspects that differ from those which would be negotiated at arm's length with clearly independent parties.

### **INFLATION**

The consolidated financial statements are presented in accordance with U.S. GAAP and do not fully reflect the impact of prior years' inflation. While the U.S. inflation rate has been modest for several years, the Company operates in many countries that experience volatility in inflation and foreign exchange rates. The ability to pass on inflationary cost increases is an uncertainty due to general economic conditions and competitive situations. It is estimated that the cost of replacing the Company's plant and equipment today is greater than its historical cost. Accordingly, depreciation expense would be greater if the expense were stated on a current cost basis.

### **CRITICAL ACCOUNTING POLICIES AND ESTIMATES**

Note 1, Major Accounting Policies, to the consolidated financial statements describes the Company's major accounting policies. Judgments and estimates of uncertainties are required in applying the Company's accounting policies in many areas. However, application of the critical accounting policies discussed below requires

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management's significant judgments, often as the result of the need to make estimates of matters that are inherently uncertain. If actual results were to differ materially from the estimates made, the reported results could be materially affected. The Company's management has reviewed these critical accounting policies and estimates and related disclosures with its audit committee.

### **Depreciable Lives of Plant and Equipment**

Net plant and equipment at 30 September 2010 totaled \$7,051.3, and depreciation expense totaled \$837.7 during 2010. Plant and equipment is recorded at cost and depreciated using the straight-line method, which deducts equal amounts of the cost of each asset from earnings every year over its estimated economic useful life.

Economic useful life is the duration of time an asset is expected to be productively employed by the Company, which may be less than its physical life. Assumptions on the following factors, among others, affect the determination of estimated economic useful life: wear and tear, obsolescence, technical standards, contract life, market demand, competitive position, raw material availability, and geographic location.

The estimated economic useful life of an asset is monitored to determine its appropriateness, especially in light of changed business circumstances. For example, changes in technology, changes in the estimated future demand for products, or excessive wear and tear may result in a shorter estimated useful life than originally anticipated. In these cases, the Company would depreciate the remaining net book value over the new estimated remaining life, thereby increasing depreciation expense per year on a prospective basis. Likewise, if the estimated useful life is increased, the adjustment to the useful life decreases depreciation expense per year on a prospective basis.

The Company has numerous long-term customer supply contracts, particularly in the gases on-site business within the Tonnage Gases segment. These contracts principally have initial contract terms of 15 to 20 years. There are also long-term customer supply contracts associated with the tonnage gases business within the Electronics and Performance Materials segment. These contracts principally have initial terms of 10 to 15 years. Depreciable lives of the production assets related to long-term contracts are matched to the contract lives. Extensions to the contract term of supply frequently occur prior to the expiration of the initial term. As contract terms are extended, the depreciable life of the remaining net book value of the production assets is adjusted to match the new contract term.

The depreciable lives of production facilities within the Merchant Gases segment are principally 15 years. Customer contracts associated with products produced at these types of facilities typically have a much shorter term. The depreciable lives of production facilities within the Electronics and Performance Materials segment, where there is not an associated long-term supply agreement, range from 10 to 15 years. These depreciable lives have been determined based on historical experience combined with judgment on future assumptions such as technological advances, potential obsolescence, competitors' actions, etc. Management monitors its assumptions and may potentially need to adjust depreciable life as circumstances change.

A change in the depreciable life by one year for production facilities within the Merchant Gases and Electronics and Performance Materials segments for which there is not an associated long-term customer supply agreement would impact annual depreciation expense as summarized below:

	Decrease Life By 1 Year	Increase Life By 1 Year
Merchant Gases	\$19	\$(14)
Electronics and Performance Materials	\$15	\$(12)

### **Impairment of Long-Lived Assets**

#### **Plant and Equipment**

Plant and equipment held for use is grouped for impairment testing at the lowest level for which there is identifiable cash flows. Impairment testing of the asset group occurs whenever events or changes in circumstances indicate that the carrying amount of the assets may not be recoverable. Such circumstances would include a significant decrease in the market value of a long-lived asset grouping, a significant adverse change in the manner in which the asset grouping is being used or in its physical condition, a history of operating or cash flow losses associated with the use of the asset grouping, or changes in the expected useful life of the long-lived assets. There were no such events or changes in circumstances that occurred during the reporting periods.

If such circumstances are determined to exist, an estimate of undiscounted future cash flows produced by that asset group is compared to the carrying value to determine whether impairment exists. If an asset group is determined to be

impaired, the loss is measured based on the difference between the asset group's fair value and its carrying value. An estimate of the asset group's fair value is based on the discounted value of its estimated cash flows. Assets to be disposed of by sale are reported at the lower of carrying amount or fair value less cost to sell.

The assumptions underlying cash flow projections represent management's best estimates at the time of the impairment review. Factors that management must estimate include industry and market conditions, sales volume and prices, costs to produce, inflation, etc. Changes in key assumptions or actual conditions that differ from estimates could result in an impairment charge. The Company uses reasonable and supportable assumptions when performing impairment reviews and cannot predict the occurrence of future events and circumstances that could result in impairment charges.

#### **Goodwill**

The acquisition method of accounting for business combinations currently requires the Company to make use of estimates and judgments to allocate the purchase price paid for acquisitions to the fair value of the net tangible and identifiable intangible assets. Goodwill represents the excess of the aggregate purchase price over the fair value of net assets of an acquired entity. Goodwill, including goodwill associated with equity affiliates of \$60.2, was \$974.8 as of 30 September 2010. The majority of the Company's goodwill is assigned to reporting units within the Merchant Gases and Electronics and Performance Materials segments. Disclosures related to goodwill are included in Note 10, Goodwill, to the consolidated financial statements.

The Company performs an impairment test annually in the fourth quarter of the fiscal year. In addition, goodwill would be tested more frequently if changes in circumstances or the occurrence of events indicated that potential impairment exists. The impairment test requires the Company to compare the fair value of business reporting units to carrying value, including assigned goodwill. The Company has designated its reporting units for goodwill impairment testing as one level below the operating segment for which discrete financial information is available and whose operating results are reviewed by segment managers regularly. Currently, the Company has four business segments and fifteen reporting units. Reporting units are primarily based on products and geographic locations within each business segment.

In the fourth quarter of 2010, the Company conducted the required annual test of goodwill for impairment. The Company determined that the fair value of each of the reporting units substantially exceeded its carrying value, and therefore there were no indications of impairment.

The Company primarily uses an income approach valuation model, representing the present value of future cash flows, to determine fair value of a reporting unit. The Company's valuation model uses a five-year growth period for the business and an estimated exit trading multiple. Management has determined the income approach valuation model represents the most appropriate valuation methodology due to the capital intensive nature of the business, long-term contractual nature of the business, relatively consistent cash flows generated by the Company's reporting units, and limited comparables within the industry. The principal assumptions utilized in the Company's income approach valuation model include revenue growth rate, operating profit margins, discount rate, and exit multiple. Revenue growth rate and operating profit assumptions are consistent with those utilized in the Company's operating plan and long-term financial planning process. The discount rate assumption is calculated based upon an estimated weighted-average cost of capital which includes factors such as the risk-free rate of return, cost of debt, and expected equity premiums. The exit multiple is determined from comparable industry transactions. Also, the expected cash flows consider the customer attrition rate assumption, which is based on historical experience and current and future expected market conditions. Management judgment is required in the determination of each assumption utilized in the valuation model, and actual results could differ from the estimates.

#### **Intangible Assets**

Intangible assets at 30 September 2010 totaled \$285.7 and consisted primarily of customer relationships, purchased patents, and technology. The Company has no acquired intangible assets with indefinite lives. Intangible assets are tested for impairment as part of the long-lived asset grouping impairment tests. Impairment testing of the asset group occurs whenever events or changes in circumstances indicate that the carrying amount of the assets may not be recoverable. See impairment discussion above under Plant and Equipment for a description of how impairment losses are determined.

#### **Equity Investments**

Investments in and advances to equity affiliates totaled \$912.8 at 30 September 2010. The majority of the Company's investments are non-publicly traded ventures with other companies in the industrial gas business. Summarized

financial information of equity affiliates is included in Note 8, Summarized Financial Information of Equity Affiliates, to the consolidated financial statements. Equity investments are reviewed for impairment whenever events or changes in circumstances indicate that the carrying amount of the investment may not be recoverable.

In the event that a decline in fair value of an investment occurs, and the decline in value is considered to be other than temporary, an impairment loss would be recognized. Management's estimate of fair value of an investment is based on estimated discounted future cash flows expected to be generated by the investee. Changes in key assumptions about the financial condition of an investee or actual conditions that differ from estimates could result in an impairment charge.

#### **Income Taxes**

The Company accounts for income taxes under the liability method. Under this method, deferred tax assets and liabilities are recognized for the tax effects of temporary differences between the financial reporting and tax bases of assets and liabilities measured using the enacted tax rate. At 30 September 2010, accrued income taxes and deferred tax liabilities amounted to \$73.6 and \$335.1, respectively. Tax liabilities related to uncertain tax positions as of 30 September 2010 were \$233.7. Current and noncurrent deferred tax assets equaled \$209.6 at 30 September 2010. Income tax expense was \$339.5 for the year ended 30 September 2010. Management judgment is required in determining income tax expense and the related balance sheet amounts. Judgments are required concerning the ultimate outcome of tax contingencies and the realization of deferred tax assets.

Actual income taxes paid may vary from estimates, depending upon changes in income tax laws, actual results of operations, and the final audit of tax returns by taxing authorities. Tax assessments may arise several years after tax returns have been filed. The Company believes that its recorded tax liabilities adequately provide for the probable outcome of these assessments.

Deferred tax assets are recorded for operating losses and tax credit carryforwards. However, when there are not sufficient sources of future taxable income to realize the benefit of the operating losses or tax credit carryforwards, these deferred tax assets are reduced by a valuation allowance. A valuation allowance is recognized if, based on the weight of available evidence, it is considered more likely than not that some portion or all of the deferred tax asset will not be realized. The factors used to assess the likelihood of realization include forecasted future taxable income and available tax planning strategies that could be implemented to realize or renew net deferred tax assets in order to avoid the potential loss of future tax benefits. The effect of a change in the valuation allowance is reported in the current period tax expense.

A 1% point increase/decrease in the Company's effective tax rate would have decreased/increased net income by approximately \$14.

#### **Pension Benefits**

The amounts recognized in the consolidated financial statements for pension benefits under the defined benefit plans are determined on an actuarial basis utilizing numerous assumptions. The discussion that follows provides information on the significant assumptions and expense associated with the defined benefit plans.

Actuarial models are used in calculating the pension expense and liability related to the various defined benefit plans. These models have an underlying assumption that the employees render service over their service lives on a relatively consistent basis; therefore, the expense of benefits earned should follow a similar pattern.

Several assumptions and statistical variables are used in the models to calculate the expense and liability related to the plans. The Company determines assumptions about the discount rate, the expected rate of return on plan assets, and the rate of compensation increase. Note 16, Retirement Benefits, to the consolidated financial statements includes disclosure of these rates on a weighted-average basis for both the domestic and international plans. The actuarial models also use assumptions about demographic factors such as retirement age, mortality, and turnover rates. The Company believes the actuarial assumptions are reasonable. However, actual results could vary materially from these actuarial assumptions due to economic events and different rates of retirement, mortality, and turnover.

One of the critical assumptions used in the actuarial models is the discount rate. This rate reflects the prevailing market rate for high-quality, fixed-income debt instruments with maturities corresponding to the expected duration of the benefit obligations on the annual measurement date for each of the various plans. The rate is used to discount the future cash flows of benefit obligations back to the measurement date. For the U.S. plans, the timing and amount of expected benefit cash flows are matched with an interest rate curve applicable to the returns of high quality corporate bonds over the expected benefit payment period to determine an overall effective discount rate. In making this

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determination, the Company considers the yields on the Citigroup Pension Discount Curve and the Citigroup Above Median Pension Discount Curve, the general movement of interest rates, and the changes in those rates from one period to the next. This rate can change from year-to-year based on market conditions that affect corporate bond yields. A higher discount rate decreases the present value of the benefit obligations and results in lower pension expense. A 50 basis point increase/decrease in the discount rate decreases/increases pension expense by approximately \$23 per year.

The expected rate of return on plan assets represents the average rate of return to be earned by plan assets over the period that the benefits included in the benefit obligation are to be paid. The expected return on plan assets assumption is based on an estimated weighted average of long-term returns of major asset classes. In determining asset class returns, the Company takes into account long-term returns of major asset classes, historical performance of plan assets, and related value of active management, as well as the current interest rate environment. Asset allocation is determined by an asset/liability study that takes into account plan demographics, asset returns, and acceptable levels of risk. Lower returns on the plan assets result in higher pension expense. A 50 basis point increase/decrease in the estimated rate of return on plan assets decreases/increases pension expense by approximately \$14 per year.

The Company uses a market-related valuation method for recognizing investment gains or losses. Investment gains or losses are the difference between the expected and actual return based on the market-related value of assets. This method recognizes investment gains or losses over a five-year period from the year in which they occur, which reduces year-to-year volatility. Expense in future periods will be impacted as gains or losses are recognized in the market-related value of assets over the five-year period.

The expected rate of compensation increase is another key assumption. The Company determines this rate based on review of the underlying long-term salary increase trend characteristic of labor markets and historical experience, as well as comparison to peer companies. A 50 basis point increase/decrease in the expected rate of compensation increases/decreases pension expense by approximately \$12 per year.

### **Loss Contingencies**

In the normal course of business the Company encounters contingencies, i.e., situations involving varying degrees of uncertainty as to the outcome and effect on the Company. The Company accrues a liability for loss contingencies when it is considered probable that a liability has been incurred and the amount of loss can be reasonably estimated. When only a range of possible loss can be established, the most probable amount in the range is accrued. If no amount within this range is a better estimate than any other amount within the range, the minimum amount in the range is accrued.

Contingencies include those associated with litigation and environmental matters for which the Company's accounting policy is discussed in Note 1, Major Accounting Policies, to the consolidated financial statements, and particulars are provided in Note 17, Commitments and Contingencies, to the consolidated financial statements. Significant judgment is required in both determining probability and whether the amount of loss associated with a contingency can be reasonably estimated. These determinations are made based on the best available information at the time. As additional information becomes available, the Company reassesses probability and estimates of loss contingencies. Revisions in the estimates associated with loss contingencies could have a significant impact on the Company's results of operations in the period in which an accrual for loss contingencies is recorded or adjusted. For example, due to the inherent uncertainties related to environmental exposures, a significant increase to environmental liabilities could occur if a new site is designated, the scope of remediation is increased, or the Company's proportionate share is increased. Similarly, a future charge for regulatory fines or damage awards associated with litigation could have a significant impact on the Company's net income in the period in which it is recorded.

### **NEW ACCOUNTING GUIDANCE**

See Note 2, New Accounting Guidance, to the consolidated financial statements for information concerning the Company's implementation and impact of new accounting guidance.

## **FORWARD-LOOKING STATEMENTS**

This Management's Discussion and Analysis contains "forward-looking statements" within the safe harbor provisions of the Private Securities Litigation Reform Act of 1995, including projections, plans, estimates and expectations regarding future operations, financial performance, costs and capital expenditures, projects, and applications and technologies. These forward-looking statements are based on management's reasonable expectations and assumptions as of the date this Report is filed regarding important risk factors. Actual performance and financial results may differ materially from projections and estimates expressed in the forward-looking statements because of many factors not anticipated by management, including, without limitation, the Company's acquisition of Airgas Inc. pursuant to the Company's pending tender offer; slowing of global economic recovery; renewed deterioration in economic and business conditions; weakening demand for the Company's products; future financial and operating performance of major customers and industries served by the Company; unanticipated contract terminations or customer cancellations or postponement of projects and sales; asset impairments due to economic conditions or specific product or customer events; the success of commercial negotiations; the impact of competitive products and pricing; interruption in ordinary sources of supply of raw materials; the ability to recover unanticipated increased energy and raw material costs from customers; costs and outcomes of litigation or regulatory activities; successful development and market acceptance of new products and applications; the ability to attract, hire and retain qualified personnel in all regions of the world where the Company operates; consequences of acts of war or terrorism; the effects of a natural disaster; the success of cost reduction and productivity programs; the timing, impact, and other uncertainties of future acquisitions or divestitures, including achieving anticipated acquisition synergies; significant fluctuations in interest rates and foreign currencies from that currently anticipated; the continued availability of capital funding sources in all of the Company's foreign operations; the impact of environmental, healthcare, tax or other legislation and regulations in jurisdictions in which the Company and its affiliates operate; the impact of new or changed financial accounting guidance; the timing and rate at which tax credits can be utilized; and other risk factors described in Section 1A. The Company disclaims any obligation or undertaking to disseminate any updates or revisions to any forward-looking statements contained in this document to reflect any change in the Company's assumptions, beliefs or expectations or any change in events, conditions, or circumstances upon which any such forward-looking statements are based.

## **ITEM 7A. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK**

The Company's earnings, cash flows, and financial position are exposed to market risks relating to fluctuations in interest rates and foreign currency exchange rates. It is the Company's policy to minimize its cash flow exposure to adverse changes in currency exchange rates and to manage the financial risks inherent in funding with debt capital.

The Company mitigates adverse energy price impacts through its cost pass-through contracts with customers, as well as price increases. The Company has also entered into a limited number of commodity swap contracts in order to reduce the cash flow exposure to changes in the price of natural gas relative to certain oil-based feedstocks. There were no commodity swap contracts outstanding at 30 September 2010.

The Company addresses these financial exposures through a controlled program of risk management that includes the use of derivative financial instruments. Counterparties to all derivative contracts are major financial institutions, thereby minimizing the risk of credit loss. All instruments are entered into for other than trading purposes. For details on the types and use of these derivative instruments and the major accounting policies, see Note 1, Major Accounting Policies, and Note 13, Financial Instruments, to the consolidated financial statements for additional information.

The Company's derivative and other financial instruments consist of long-term debt (including current portion), interest rate swaps, cross currency interest rate swaps, foreign exchange-forward contracts, foreign exchange-option contracts, and commodity swaps. The net market value of these financial instruments combined is referred to below as the net financial instrument position. The net financial instrument position does not include available-for-sale securities of \$103.6 at 30 September 2010 and \$19.4 at 30 September 2009 as disclosed in Note 14, Fair Value Measurements, to the consolidated financial statements. The available-for-sale securities in 2010 primarily included the investment in Airgas stock of \$102.5.

At 30 September 2010 and 2009, the net financial instrument position was a liability of \$4,086 and \$4,510, respectively. The decrease in the net financial instrument position was due primarily to a reduction in long-term debt and the impact of a stronger U.S. dollar on the translation of foreign currency long-term debt.

The analysis below presents the sensitivity of the market value of the Company's financial instruments to selected changes in market rates and prices. The range of changes chosen reflects the Company's view of changes that are



reasonably possible over a one-year period. Market values are the present value of projected future cash flows based on the market rates and prices chosen. The market values for interest rate risk and foreign currency risk are calculated by the Company using a third-party software model that utilizes standard pricing models to determine the present value of the instruments based on market conditions (interest rates, spot and forward exchange rates, and implied volatilities) as of the valuation date.

#### **Interest Rate Risk**

The Company's debt portfolio, including swap agreements, as of 30 September 2010 primarily comprised debt denominated in Euros (42%) and U.S. dollars (44%), including the effect of currency swaps. This debt portfolio is composed of 48% fixed-rate debt and 52% variable-rate debt. Changes in interest rates have different impacts on the fixed- and variable-rate portions of the Company's debt portfolio. A change in interest rates on the fixed portion of the debt portfolio impacts the net financial instrument position but has no impact on interest incurred or cash flows. A change in interest rates on the variable portion of the debt portfolio impacts the interest incurred and cash flows but does not impact the net financial instrument position.

The sensitivity analysis related to the fixed portion of the Company's debt portfolio assumes an instantaneous 100 basis point move in interest rates from the level at 30 September 2010, with all other variables held constant. A 100 basis point increase in market interest rates would result in a decrease of \$87 and \$92 in the net liability position of financial instruments at 30 September 2010 and 2009, respectively. A 100 basis point decrease in market interest rates would result in an increase of \$95 and \$92 in the net liability position of financial instruments at 30 September 2010 and 2009, respectively.

Based on the variable-rate debt included in the Company's debt portfolio, including the interest rate swap agreements, a 100 basis point increase in interest rates would result in an additional \$22 and \$20 of interest incurred per year at the end of 30 September 2010 and 2009, respectively. A 100 basis point decline in interest rates would lower interest incurred by \$22 and \$20 per year at 30 September 2010 and 2009, respectively.

#### **Foreign Currency Exchange Rate Risk**

The sensitivity analysis assumes an instantaneous 10% change in the foreign currency exchange rates from their levels at 30 September 2010 and 2009, with all other variables held constant. A 10% strengthening or weakening of the functional currency of an entity versus all other currencies would result in a decrease or increase, respectively, of \$345 and \$369 in the net liability position of financial instruments at 30 September 2010 and 2009, respectively.

The primary currencies for which the Company has exchange rate exposure are the U.S. dollar versus the Euro and the U.S. dollar versus the Pound Sterling. Foreign currency debt, cross currency interest rate swaps, and foreign exchange-forward contracts are used in countries where the Company does business, thereby reducing its net asset exposure. Foreign exchange-forward contracts are also used to hedge the Company's firm and highly anticipated foreign currency cash flows, along with foreign exchange-option contracts. Thus, there is either an asset/liability or cash flow exposure related to all of the financial instruments in the above sensitivity analysis for which the impact of a movement in exchange rates would be in the opposite direction and materially equal (or more favorable in the case of purchased foreign exchange-option contracts) to the impact on the instruments in the analysis.



**ITEM 8. FINANCIAL STATEMENTS AND SUPPLEMENTARY DATA**

**MANAGEMENT'S REPORT ON INTERNAL CONTROL OVER FINANCIAL REPORTING**

Air Products' management is responsible for establishing and maintaining adequate internal control over financial reporting. Our internal control over financial reporting, which is defined in the following sentences, is a process designed to provide reasonable assurance regarding the reliability of our financial reporting and the preparation of financial statements for external purposes in accordance with U.S. generally accepted accounting principles and includes those policies and procedures that:

- (i) pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the Company;
- (ii) provide reasonable assurance that the transactions are recorded as necessary to permit preparation of financial statements in accordance with U.S. generally accepted accounting principles, and that receipts and expenditures of the Company are being made only in accordance with authorizations of management and directors of the Company; and
- (iii) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use or disposition of the Company's assets that could have a material effect on the financial statements.

Because of inherent limitations, internal control over financial reporting can only provide reasonable assurance and may not prevent or detect misstatements. Further, because of changes in conditions, the effectiveness of our internal control over financial reporting may vary over time. Our processes contain self-monitoring mechanisms, and actions are taken to correct deficiencies as they are identified.

Management has evaluated the effectiveness of its internal control over financial reporting based on the framework in Internal Control—Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO). Based on this evaluation, management concluded that, as of 30 September 2010, the Company's internal control over financial reporting was effective.

KPMG LLP, an independent registered public accounting firm, has issued their opinion on the Company's internal control over financial reporting as of 30 September 2010 as stated in their report which appears herein.

/s/ John E. McGlade

John E. McGlade  
Chairman, President, and  
Chief Executive Officer  
23 November 2010

/s/ Paul E. Huck

Paul E. Huck  
Senior Vice President and  
Chief Financial Officer  
23 November 2010

**REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM**

The Board of Directors and Shareholders of Air Products and Chemicals, Inc.:

We have audited the accompanying consolidated balance sheets of Air Products and Chemicals, Inc. and Subsidiaries (the Company) as of 30 September 2010 and 2009, and the related consolidated income statements and consolidated statements of equity and cash flows for each of the years in the three-year period ended 30 September 2010. In connection with our audits of the consolidated financial statements, we also have audited the financial statement schedule referred to in item 15(a)(2) in this Form 10-K. We also have audited the Company's internal control over financial reporting as of 30 September 2010, based on criteria established in Internal Control—Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission. The Company's management is responsible for these consolidated financial statements and financial statement schedule, for maintaining effective internal control over financial reporting, and for its assessment of the effectiveness of internal control over financial reporting, included in the accompanying "Management's Report on Internal Control over Financial Reporting." Our responsibility is to express an opinion on these consolidated financial statements and financial statement schedule and an opinion on the Company's internal control over financial reporting based on our audits.

We conducted our audits in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audits to obtain reasonable assurance about whether the financial statements are free of material misstatement and whether effective internal control over financial reporting was maintained in all material respects. Our audits of the consolidated financial statements included examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements, assessing the accounting principles used and significant estimates made by management, and evaluating the overall financial statement presentation. Our audit of internal control over financial reporting included obtaining an understanding of internal control over financial reporting, assessing the risk that a material weakness exists, and testing and evaluating the design and operating effectiveness of internal control based on the assessed risk. Our audits also included performing such other procedures as we considered necessary in the circumstances. We believe that our audits provide a reasonable basis for our opinions.

A company's internal control over financial reporting is a process designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles. A company's internal control over financial reporting includes those policies and procedures that (1) pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the company; (2) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that receipts and expenditures of the company are being made only in accordance with authorizations of management and directors of the company; and (3) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use, or disposition of the company's assets that could have a material effect on the financial statements.

Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Also, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

In our opinion, the consolidated financial statements referred to above present fairly, in all material respects, the financial position of Air Products and Chemicals, Inc. and Subsidiaries as of 30 September 2010 and 2009, and the results of their operations and their cash flows for each of the years in the three-year period ended 30 September 2010, in conformity with U.S. generally accepted accounting principles. Also in our opinion, the related financial statement schedule, when considered in relation to the basic consolidated financial statements taken as a whole, presents fairly, in all material respects, the information set forth therein. Also in our opinion, Air Products and Chemicals, Inc. and Subsidiaries maintained, in all material respects, effective internal control over financial reporting as of 30 September 2010, based on criteria established in Internal Control—Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission.

/s/ KPMG LLP  
Philadelphia, Pennsylvania  
23 November 2010

**The Consolidated Financial Statements**

Air Products and Chemicals, Inc. and Subsidiaries

**CONSOLIDATED INCOME STATEMENTS**

Year ended 30 September (Millions of dollars, except for share data)

	2010	2009	2008
<b>Sales</b>	<b>\$9,026.0</b>	<b>\$8,256.2</b>	<b>\$10,414.5</b>
Cost of sales	6,503.0	6,042.1	7,693.1
Selling and administrative	956.9	943.4	1,090.4
Research and development	114.7	116.3	130.7
Global cost reduction plan	—	298.2	—
Acquisition-related costs	96.0	—	—
Customer bankruptcy	(6.4)	22.2	—
Pension settlement	11.5	10.7	30.3
Other income, net	(38.7)	(23.0)	(25.8)
<b>Operating Income</b>	<b>1,389.0</b>	<b>846.3</b>	<b>1,495.8</b>
Equity affiliates' income	126.9	112.2	145.0
Interest expense	121.9	121.9	162.0
<b>Income from Continuing Operations before Taxes</b>	<b>1,394.0</b>	<b>836.6</b>	<b>1,478.8</b>
Income tax provision	339.5	185.3	365.3
<b>Income from Continuing Operations</b>	<b>1,054.5</b>	<b>651.3</b>	<b>1,113.5</b>
<b>Loss from Discontinued Operations, net of tax</b>	<b>—</b>	<b>(8.6)</b>	<b>(175.4)</b>
<b>Net Income</b>	<b>\$1,054.5</b>	<b>\$642.7</b>	<b>\$938.1</b>
<b>Less: Net Income Attributable to Noncontrolling Interests</b>	<b>25.4</b>	<b>11.4</b>	<b>28.4</b>
<b>Net Income Attributable to Air Products</b>	<b>\$1,029.1</b>	<b>\$631.3</b>	<b>\$909.7</b>
<b>Net Income Attributable to Air Products</b>			
Income from continuing operations	\$1,029.1	\$639.9	\$1,090.5
Loss from discontinued operations	—	(8.6)	(180.8)
<b>Net Income Attributable to Air Products</b>	<b>\$1,029.1</b>	<b>\$631.3</b>	<b>\$909.7</b>
<b>Weighted Average of Common Shares Outstanding (in millions)</b>	<b>212.2</b>	<b>209.9</b>	<b>212.2</b>
<b>Weighted Average of Common Shares Outstanding Assuming Dilution (in millions)</b>	<b>217.1</b>	<b>213.5</b>	<b>219.2</b>
<b>Basic Earnings per Common Share Attributable to Air Products</b>			
Income from continuing operations	\$4.85	\$3.05	\$5.14
Loss from discontinued operations	—	(.04)	(.85)
<b>Net Income Attributable to Air Products</b>	<b>\$4.85</b>	<b>\$3.01</b>	<b>\$4.29</b>
<b>Diluted Earnings per Common Share Attributable to Air Products</b>			
Income from continuing operations	\$4.74	\$3.00	\$4.97
Loss from discontinued operations	—	(.04)	(.82)
<b>Net Income Attributable to Air Products</b>	<b>\$4.74</b>	<b>\$2.96</b>	<b>\$4.15</b>

The accompanying notes are an integral part of these statements.

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Air Products and Chemicals, Inc. and Subsidiaries  
**CONSOLIDATED BALANCE SHEETS**

30 September (Millions of dollars, except for share data)	2010	2009
<b>Assets</b>		
<b>Current Assets</b>		
Cash and cash items	\$374.3	\$488.2
Trade receivables, less allowances for doubtful accounts of \$99.3 in 2010 and \$65.0 in 2009	1,481.9	1,363.2
Inventories	571.6	509.6
Contracts in progress, less progress billings	163.6	132.3
Prepaid expenses	70.3	99.7
Other receivables and current assets	372.1	404.8
<b>Total Current Assets</b>	<b>3,033.8</b>	<b>2,997.8</b>
<b>Investment in Net Assets of and Advances to Equity Affiliates</b>		
Plant and Equipment, at cost	16,309.7	15,751.3
Less: Accumulated depreciation	9,258.4	8,891.7
<b>Plant and Equipment, net</b>	<b>7,051.3</b>	<b>6,859.6</b>
<b>Goodwill</b>	<b>914.6</b>	<b>916.0</b>
<b>Intangible Assets, net</b>	<b>285.7</b>	<b>262.6</b>
<b>Noncurrent Capital Lease Receivables</b>	<b>770.4</b>	<b>687.0</b>
<b>Other Noncurrent Assets</b>	<b>537.3</b>	<b>438.0</b>
<b>Total Noncurrent Assets</b>	<b>10,472.1</b>	<b>10,031.3</b>
<b>Total Assets</b>	<b>\$13,505.9</b>	<b>\$13,029.1</b>
<b>Liabilities and Equity</b>		
<b>Current Liabilities</b>		
Payables and accrued liabilities	\$1,702.0	\$1,674.8
Accrued income taxes	73.6	42.9
Short-term borrowings	286.0	333.8
Current portion of long-term debt	182.5	452.1
<b>Total Current Liabilities</b>	<b>2,244.1</b>	<b>2,503.6</b>
<b>Long-Term Debt</b>	<b>3,659.8</b>	<b>3,715.6</b>
<b>Other Noncurrent Liabilities</b>	<b>1,569.3</b>	<b>1,522.0</b>
<b>Deferred Income Taxes</b>	<b>335.1</b>	<b>357.9</b>
<b>Total Noncurrent Liabilities</b>	<b>5,564.2</b>	<b>5,595.5</b>
<b>Total Liabilities</b>	<b>7,808.3</b>	<b>8,099.1</b>
<b>Commitments and Contingencies—See Note 17</b>		
<b>Air Products Shareholders' Equity</b>		
Common stock (par value \$1 per share; issued 2010 and 2009—249,455,584 shares)	249.4	249.4
Capital in excess of par value	802.2	822.9
Retained earnings	7,852.2	7,234.6
Accumulated other comprehensive income (loss)	(1,159.4)	(1,161.8)
Treasury stock, at cost (2010—35,652,719 shares; 2009—38,195,320 shares)	(2,197.5)	(2,353.2)
<b>Total Air Products Shareholders' Equity</b>	<b>5,546.9</b>	<b>4,791.9</b>
<b>Noncontrolling Interests</b>	<b>150.7</b>	<b>138.1</b>
<b>Total Equity</b>	<b>5,697.6</b>	<b>4,930.0</b>
<b>Total Liabilities and Equity</b>	<b>\$13,505.9</b>	<b>\$13,029.1</b>

The accompanying notes are an integral part of these statements.

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Air Products and Chemicals, Inc. and Subsidiaries

**CONSOLIDATED STATEMENTS OF CASH FLOWS**

Year ended 30 September (Millions of dollars)	2010	2009	2008
<b>Operating Activities</b>			
Net income	\$1,054.5	\$642.7	\$938.1
Less: Net income attributable to noncontrolling interests	25.4	11.4	28.4
Net income attributable to Air Products	\$1,029.1	\$631.3	\$909.7
Adjustments to reconcile income to cash provided by operating activities:			
Depreciation and amortization	863.4	840.3	869.0
Impairment of assets of continuing operations	3.8	69.2	—
Impairment of assets of discontinued operations	—	49.5	314.8
Gain on sale of discontinued operations	—	(2.1)	(105.9)
Deferred income taxes	96.2	(52.3)	36.9
Undistributed earnings of unconsolidated affiliates	(50.6)	(58.0)	(77.8)
(Gain) loss on sale of assets and investments	(14.8)	3.6	.3
Share-based compensation	48.6	60.4	61.4
Noncurrent capital lease receivables	(85.6)	(186.7)	(192.6)
Acquisition-related costs	84.0	—	—
Customer bankruptcy	—	22.2	—
Other adjustments	(9.0)	(1.3)	(17.9)
Working capital changes that provided (used) cash, excluding effects of acquisitions and divestitures:			
Trade receivables	(142.5)	159.0	(97.4)
Inventories	(65.9)	(17.7)	(34.9)
Contracts in progress	(33.9)	12.5	95.2
Other receivables	41.5	(11.9)	(120.6)
Payables and accrued liabilities	(293.6)	(282.8)	36.2
Other working capital	51.7	94.2	(17.6)
<b>Cash Provided by Operating Activities</b>	<b>1,522.4</b>	<b>1,329.4</b>	<b>1,658.8</b>
<b>Investing Activities</b>			
Additions to plant and equipment	(1,030.9)	(1,179.1)	(1,085.1)
Acquisitions, less cash acquired	(37.2)	(32.7)	(72.0)
Investment in and advances to unconsolidated affiliates	(4.8)	(24.5)	(2.2)
Investment in Airgas stock	(69.6)	—	—
Proceeds from sale of assets and investments	52.4	57.9	19.6
Proceeds from sale of discontinued operations	—	51.0	423.0
Change in restricted cash	33.6	87.0	(183.6)
Other investing activities	—	—	(19.5)
<b>Cash Used for Investing Activities</b>	<b>(1,056.5)</b>	<b>(1,040.4)</b>	<b>(919.8)</b>
<b>Financing Activities</b>			
Long-term debt proceeds	226.2	610.5	580.1
Payments on long-term debt	(436.4)	(82.9)	(95.7)
Net decrease in short-term borrowings	(74.6)	(122.7)	(178.9)
Dividends paid to shareholders	(398.7)	(373.3)	(349.3)
Purchase of treasury stock	—	—	(793.4)
Proceeds from stock option exercises	88.1	54.4	87.4
Excess tax benefit from share-based compensation	23.9	15.5	52.1
Other financing activities	(8.2)	(6.5)	20.0
<b>Cash (Used for) Provided by Financing Activities</b>	<b>(579.7)</b>	<b>95.0</b>	<b>(677.7)</b>

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Air Products and Chemicals, Inc. and Subsidiaries

**CONSOLIDATED STATEMENTS OF CASH FLOWS (continued)**

Year ended 30 September (Millions of dollars)	2010	2009	2008
<b>Effect of Exchange Rate Changes on Cash</b>	<b>(.1)</b>	<b>.7</b>	<b>1.7</b>
<b>(Decrease) Increase in Cash and Cash Items</b>	<b>(113.9)</b>	<b>384.7</b>	<b>63.0</b>
<b>Cash and Cash Items—Beginning of Year</b>	<b>488.2</b>	<b>103.5</b>	<b>40.5</b>
<b>Cash and Cash Items—End of Year</b>	<b>\$374.3</b>	<b>\$488.2</b>	<b>\$103.5</b>
<b>Supplemental Cash Flow Information</b>			
Significant noncash transactions			
Short-term borrowings associated with SAGA acquisition	\$60.9	\$—	\$—
Noncurrent liability related to the purchase of shares from noncontrolling interests	42.0	—	—
Cash paid for interest and taxes			
Interest (net of amounts capitalized)	126.9	127.6	159.5
Taxes (net of refunds)	192.0	124.5	237.2

The accompanying notes are an integral part of these statements.

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Air Products and Chemicals, Inc. and Subsidiaries

**CONSOLIDATED STATEMENTS OF EQUITY**

Year ended 30 September (Millions of dollars, except for share data)	2010	2009	2008
<b>Number of Common Shares Outstanding</b>			
Balance, beginning of year	211,260,264	209,334,627	215,355,685
Purchase of treasury shares	—	—	(8,676,029)
Issuance of treasury shares for stock option and award plans	2,542,601	1,925,637	2,654,971
Balance, end of year	213,802,865	211,260,264	209,334,627
<b>Common Stock</b>			
Balance, beginning and end of year	\$249.4	\$249.4	\$249.4
<b>Capital in Excess of Par Value</b>			
Balance, beginning of year	\$822.9	\$811.7	\$759.5
Share-based compensation expense	48.6	59.3	62.5
Issuance of treasury shares for stock option and award plans	(76.0)	(71.9)	(74.2)
Purchase of noncontrolling interests	(28.3)	—	—
Tax benefit of stock option and award plans	35.0	23.8	63.9
Balance, end of year	\$802.2	\$822.9	\$811.7
<b>Retained Earnings</b>			
Balance, beginning of year	\$7,234.6	\$6,990.2	\$6,458.5
Defined benefit plans measurement date change	—	(8.1)	—
Initial recording of accounting for uncertain tax positions	—	—	(13.3)
Adjusted balance, beginning of year	\$7,234.6	\$6,982.1	\$6,445.2
Net income attributable to Air Products	1,029.1	631.3	909.7
Dividends on common stock (per share \$1.92, \$1.79, \$1.70)	(408.4)	(376.3)	(359.6)
Other	(3.1)	(2.5)	(5.1)
Balance, end of year	\$7,852.2	\$7,234.6	\$6,990.2
<b>Accumulated Other Comprehensive Income (Loss)</b>			
Balance, beginning of year	\$(1,161.8)	\$(549.3)	\$(142.9)
Defined benefit plans measurement date change, net of tax of \$14.0	—	35.8	—
Adjusted balance, beginning of year	\$(1,161.8)	\$(513.5)	\$(142.9)
Other Comprehensive Income (Loss), net of tax:			
Translation adjustments, net of tax (benefit) of \$69.4, \$(35.2), \$7.9	136.4	(148.3)	(186.3)
Net loss on derivatives, net of tax (benefit) of \$(5.5), \$(1.8), \$(30.2)	(11.6)	(4.5)	(74.4)
Unrealized holding gain (loss) on available-for-sale securities, net of tax (benefit) of \$12.1, \$1.4, \$(2.4)	20.2	2.4	(4.5)
Pension and postretirement benefits, net of tax (benefit) of \$(103.0), \$(287.4), \$(92.0)	(201.7)	(518.3)	(185.5)
Reclassification adjustments:			
Currency translation adjustment	(.7)	(3.2)	(53.7)
Derivatives, net of tax (benefit) of \$7.0, \$(.8), \$19.2	14.8	(.7)	50.7
Available-for-sale securities, net of tax (benefit) of \$(5.8)	(10.0)	—	—
Pension and postretirement benefits, net of tax of \$29.5, \$9.8, \$24.5	55.0	24.3	47.3
Other comprehensive income (loss)	\$2.4	\$(648.3)	\$(406.4)
Balance, end of year	\$(1,159.4)	\$(1,161.8)	\$(549.3)
<b>Treasury Stock</b>			
Balance, beginning of year	\$(2,353.2)	\$(2,471.3)	\$(1,828.9)
Purchase of treasury shares	—	—	(787.4)
Issuance of treasury shares for stock option and award plans	155.7	118.1	145.0
Balance, end of year	\$(2,197.5)	\$(2,353.2)	\$(2,471.3)
<b>Total Air Products Shareholders' Equity</b>	<b>\$5,546.9</b>	<b>\$4,791.9</b>	<b>\$5,030.7</b>

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Air Products and Chemicals, Inc. and Subsidiaries

**CONSOLIDATED STATEMENTS OF EQUITY (continued)**

Year ended 30 September (Millions of dollars, except for share data)	2010	2009	2008
<b>Noncontrolling Interests</b>			
Balance, beginning of year	\$138.1	\$136.2	\$177.3
Net income attributable to noncontrolling interests	25.4	11.4	28.4
Other Comprehensive Income (Loss), net of tax:			
Translation adjustments, net of tax (benefit) of \$.1 in 2010, \$(.1) in 2009	2.0	(.8)	(.3)
Net loss on derivatives, net of tax (benefit)	—	(.2)	—
Pension and postretirement benefits, net of tax (benefit) of \$(.3) in 2009	(.2)	(1.6)	—
Other comprehensive income (loss)	1.8	(2.6)	(.3)
Dividends to noncontrolling interests	(18.7)	(8.9)	(5.8)
Purchase of noncontrolling interests	(10.8)	(.4)	(6.7)
Contribution from noncontrolling interests	14.7	2.4	32.9
Other equity transactions	.2	—	(.2)
Noncontrolling interests of discontinued operations	—	—	(89.4)
Balance, end of year	\$150.7	\$138.1	\$136.2
<b>Total Equity</b>	<b>\$5,697.6</b>	<b>\$4,930.0</b>	<b>\$5,166.9</b>
<b>Comprehensive Income (Loss)</b>			
Net Income	\$1,054.5	\$642.7	\$938.1
Other Comprehensive Income (Loss), net of tax:			
Translation adjustments, net of tax (benefit) of \$69.5, \$(35.3), \$7.9	138.4	(149.1)	(186.6)
Net loss on derivatives, net of tax (benefit) of \$(5.5), \$(1.8), \$(30.2)	(11.6)	(4.7)	(74.4)
Unrealized holding gain (loss) on available-for-sale securities, net of tax of \$12.1, \$1.4, \$(2.4)	20.2	2.4	(4.5)
Pension and postretirement benefits, net of tax (benefit) of \$(103.0), \$(287.7), \$(92.0)	(201.9)	(519.9)	(185.5)
Reclassification adjustments:			
Currency translation adjustment	(.7)	(3.2)	(53.7)
Derivatives, net of tax (benefit) of \$7.0, \$(.8), \$19.2	14.8	(.7)	50.7
Available-for-sale securities, net of tax (benefit) of \$(5.8)	(10.0)	—	—
Pension and postretirement benefits, net of tax of \$29.5, \$9.8, \$24.5	55.0	24.3	47.3
Other comprehensive income (loss)	4.2	(650.9)	(406.7)
<b>Comprehensive Income (Loss)</b>	<b>1,058.7</b>	<b>(8.2)</b>	<b>531.4</b>
<b>Comprehensive Income Attributable to Noncontrolling Interests</b>	<b>27.2</b>	<b>8.8</b>	<b>28.1</b>
<b>Comprehensive Income (Loss) Attributable to Air Products</b>	<b>\$1,031.5</b>	<b>\$(17.0)</b>	<b>\$503.3</b>

The accompanying notes are an integral part of these statements.

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### Notes to the Consolidated Financial Statements

(Millions of dollars, except for share data)

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#### 1. Major Accounting Policies

##### Consolidation Principles

The consolidated financial statements include the accounts of Air Products and Chemicals, Inc. and those of its controlled subsidiaries (the Company or Air Products), which are generally majority owned. Intercompany transactions and balances are eliminated in consolidation.

The Company consolidates all entities that it controls. The general condition for control is ownership of a majority of the voting interests of an entity. Control may also exist in arrangements where the Company is the primary beneficiary of a variable interest entity. An entity that will absorb the majority of a variable interest entity's expected losses or expected residual returns is considered a primary beneficiary of that entity. The Company has determined that it is not a primary beneficiary in any material variable interest entity.

##### Estimates and Assumptions

The preparation of the financial statements in accordance with U.S. generally accepted accounting principles requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the consolidated financial statements and the reported amounts of revenues and expenses during the reporting period. Actual results could differ from those estimates.

##### Revenue Recognition

Revenue from product sales is recognized as risk and title to the product transfers to the customer (which generally occurs at the time shipment is made), the sales price is fixed or determinable, and collectibility is reasonably assured. Sales returns and allowances are not a business practice in the industry.

Revenues from equipment sale contracts are recorded primarily using the percentage-of-completion method. Under this method, revenues from the sale of major equipment, such as liquefied natural gas (LNG) heat exchangers and large air separation units, are recognized primarily based on labor hours incurred to date compared with total

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estimated labor hours. Changes to total estimated labor hours and anticipated losses, if any, are recognized in the period determined.

Amounts billed for shipping and handling fees are classified as sales in the consolidated income statements.

Amounts billed for sales and use taxes, value-added taxes, and certain excise and other specific transactional taxes imposed on revenue-producing transactions are presented on a net basis and excluded from sales in the consolidated income statements. The Company records a liability until remitted to the respective taxing authority.

Certain contracts associated with facilities that are built to provide product to a specific customer are required to be accounted for as leases. In cases where operating lease treatment is necessary, there is no difference in revenue recognition over the life of the contract as compared to accounting for the contract as product sales. In cases where capital lease treatment is necessary, the timing of revenue and expense recognition is impacted. Revenue and expense are recognized up front for the sale of equipment component of the contract as compared to revenue recognition over the life of the arrangement under contracts not qualifying as capital leases. Additionally, a portion of the revenue representing interest income from the financing component of the lease receivable is reflected as sales over the life of the contract.

If an arrangement involves multiple deliverables, the delivered items are considered separate units of accounting if the items have value on a stand-alone basis and there is objective and reliable evidence of their fair values. Revenues from the arrangement are allocated to the separate units of accounting based on their relative fair values.

### **Cost of Sales**

Cost of sales predominantly represents the cost of tangible products sold. These costs include labor, raw materials, plant engineering, power, depreciation, production supplies and materials packaging costs, and maintenance costs. Costs incurred for shipping and handling are also included in cost of sales.

### **Depreciation**

Depreciation is recorded using the straight-line method, which deducts equal amounts of the cost of each asset from earnings every year over its expected economic useful life. The principal lives for major classes of plant and equipment are summarized in the table below:

	Principal Estimated Useful Lives
Buildings	30 years
Production facilities <sup>(A)</sup>	
Merchant Gases	15 years
Tonnage Gases	15 to 20 years
Electronics and Performance Materials	10 to 15 years
Equipment and Energy	5 to 20 years
Distribution equipment <sup>(B)</sup>	5 to 25 years
Other machinery and equipment	10 to 25 years

<sup>(A)</sup> Depreciable lives of production facilities related to long-term customer supply contracts associated with the tonnage gases business are matched to the contract lives.

<sup>(B)</sup> The depreciable lives for various types of distribution equipment are 10 to 25 years for cylinders, depending on the nature and properties of the product; 20 years for tanks; 7.5 years for customer stations; 5 to 15 years for tractors and trailers.

### **Selling and Administrative**

The principal components of selling and administrative expenses are salaries, advertising, and promotional costs.

### **Postemployment Benefits**

The Company has substantive ongoing severance arrangements. Termination benefits provided to employees as part of the global cost reduction plan (discussed in Note 5, Global Cost Reduction Plan) are consistent with termination benefits in previous, similar arrangements. Because the Company's plan met the definition of an ongoing benefit arrangement, a liability was recognized for termination benefits when probable and estimable. These criteria are met when management, with the appropriate level of authority, approves and commits to its plan of action for termination; the plan identifies the employees to be terminated and their related benefits; and the plan is to be completed within one year. During periods of operations where terminations are made on an as-needed basis, absent a detailed committed plan, terminations are accounted for on an individual basis and a liability is recognized when probable and estimable.

## **Financial Instruments**

The Company addresses certain financial exposures through a controlled program of risk management that includes the use of derivative financial instruments. Refer to Note 13, Financial Instruments, for further detail on the types and use of derivative instruments that the Company enters into. The types of derivative financial instruments permitted for such risk management programs are specified in policies set by management.

Major financial institutions are counterparties to all of these derivative contracts. The Company has established counterparty credit guidelines and only enters into transactions with financial institutions of investment grade or better. Management believes the risk of incurring losses related to credit risk is remote, and any losses would be immaterial to the consolidated financial results, financial condition, or liquidity.

The Company recognizes these derivatives on the balance sheet at fair value. On the date the derivative instrument is entered into, the Company generally designates the derivative as either (1) a hedge of a forecasted transaction or of the variability of cash flows to be received or paid related to a recognized asset or liability (cash flow hedge), (2) a hedge of a net investment in a foreign operation (net investment hedge), or (3) a hedge of the fair value of a recognized asset or liability or of an unrecognized firm commitment (fair value hedge).

The following details the accounting treatment of the Company's cash flow, fair value, net investment, and non-designated hedges:

- Changes in the fair value of a derivative that is designated as and meets all the required criteria for a cash flow hedge are recorded in Accumulated Other Comprehensive Income (AOCI) and then recognized in earnings when the hedged items affect earnings.
- Changes in the fair value of a derivative that is designated as and meets all the required criteria for a fair value hedge, along with the gain or loss on the hedged asset or liability that is attributable to the hedged risk, are recorded in current period earnings.
- Changes in the fair value of a derivative and foreign currency debt that are designated as and meet all the required criteria for a hedge of a net investment are recorded as translation adjustments in AOCI.
- Changes in the fair value of a derivative that is not designated as a hedge are recorded immediately in earnings.

The Company formally documents the relationships between hedging instruments and hedged items, as well as its risk management objective and strategy for undertaking various hedge transactions. This process includes relating derivatives that are designated as fair value or cash flow hedges to specific assets and liabilities on the balance sheet or to specific firm commitments or forecasted transactions. The Company also formally assesses, at the inception of the hedge and on an ongoing basis, whether each derivative is highly effective in offsetting changes in fair values or cash flows of the hedged item. If it is determined that a derivative is not highly effective as a hedge, or if a derivative ceases to be a highly effective hedge, the Company will discontinue hedge accounting with respect to that derivative prospectively.

## **Foreign Currency**

Since the Company does business in many foreign countries, fluctuations in currency exchange rates affect the Company's financial position and results of operations.

In most of the Company's foreign operations, local currency is considered the functional currency. Generally, foreign subsidiaries translate their assets and liabilities into U.S. dollars at current exchange rates—that is, the rates in effect at the end of the fiscal period. The gains or losses that result from this process are shown in AOCI in the equity section of the consolidated balance sheet.

The revenue and expense accounts of foreign subsidiaries are translated into U.S. dollars at the average exchange rates that prevailed during the period. Therefore, the U.S. dollar value of these items on the consolidated income statement fluctuates from period to period, depending on the value of the dollar against foreign currencies. Some transactions are made in currencies different from an entity's functional currency. Gains and losses from these foreign currency transactions are generally included in earnings as they occur.

## **Environmental Expenditures**

Accruals for environmental loss contingencies are recorded when it is probable that a liability has been incurred and the amount of loss can be reasonably estimated. Remediation costs are capitalized if the costs improve the Company's property as compared with the condition of the property when originally constructed or acquired, or if the costs prevent environmental contamination from future operations. The Company expenses environmental costs

related to existing conditions resulting from past or current operations and from which no current or future benefit is discernible.

The measurement of environmental liabilities is based on an evaluation of currently available information with respect to each individual site and considers factors such as existing technology, presently enacted laws and regulations, and prior experience in remediation of contaminated sites. An environmental liability related to cleanup of a contaminated site might include, for example, a provision for one or more of the following types of costs: site investigation and testing costs, cleanup costs, costs related to soil and water contamination resulting from tank ruptures, post-remediation monitoring costs, and outside legal fees. These liabilities include costs related to other potentially responsible parties to the extent that the Company has reason to believe such parties will not fully pay their proportionate share. They do not take into account any claims for recoveries from insurance or other parties and are not discounted.

As assessments and remediation progress at individual sites, the amount of projected cost is reviewed periodically, and the liability is adjusted to reflect additional technical and legal information that becomes available. Management has a well-established process in place to identify and monitor the Company's environmental exposures. An environmental accrual analysis is prepared and maintained that lists all environmental loss contingencies, even where an accrual has not been established. This analysis assists in monitoring the Company's overall environmental exposure and serves as a tool to facilitate ongoing communication among the Company's technical experts, environmental managers, environmental lawyers, and financial management to ensure that required accruals are recorded and potential exposures disclosed.

Actual costs to be incurred at identified sites in future periods may vary from the estimates, given inherent uncertainties in evaluating environmental exposures. Refer to Note 17, Commitments and Contingencies, for additional information on the Company's environmental loss contingencies.

The accruals for environmental liabilities are reflected in the consolidated balance sheets, primarily as part of other noncurrent liabilities, and will be paid over a period of up to 30 years.

#### **Litigation**

In the normal course of business, the Company is involved in legal proceedings. The Company accrues a liability for such matters when it is probable that a liability has been incurred and the amount can be reasonably estimated. When only a range of possible loss can be established, the most probable amount in the range is accrued. If no amount within this range is a better estimate than any other amount within the range, the minimum amount in the range is accrued. The accrual for a litigation loss contingency includes estimates of potential damages and other directly related costs expected to be incurred.

#### **Share-Based Compensation**

The Company has various share-based compensation programs, which include stock options, deferred stock units, and restricted stock. Refer to Note 19, Share-Based Compensation, for further detail. The Company expenses the grant-date fair value of these awards over the vesting period during which employees perform related services.

#### **Income Taxes**

The Company accounts for income taxes under the liability method. Under this method, deferred tax assets and liabilities are recognized for the tax effects of temporary differences between the financial reporting and tax bases of assets and liabilities using enacted tax rates. A principal temporary difference results from the excess of tax depreciation over book depreciation because accelerated methods of depreciation and shorter useful lives are used for income tax purposes. The cumulative impact of a change in tax rates or regulations is included in income tax expense in the period that includes the enactment date.

A tax benefit for an uncertain tax position is recognized when it is more likely than not that the position will be sustained upon examination based on its technical merits. This position is measured as the largest amount of tax benefit that is greater than 50% likely of being realized. Interest and penalties related to unrecognized tax benefits are recognized as a component of income tax expense.

#### **Cash and Cash Items**

Cash and cash items include cash, time deposits, and certificates of deposit acquired with an original maturity of three months or less.

### **Trade Receivables, Less Allowances for Doubtful Accounts**

Trade receivables primarily comprise amounts owed to the Company through its operating activities and are presented net of allowances for doubtful accounts. The allowances for doubtful accounts represent estimated uncollectible receivables associated with potential customer defaults on contractual obligations. A provision for customer defaults is made on a general formula basis when it is determined that the risk of some default is probable and estimable but cannot yet be associated with specific customers. The assessment of the likelihood of customer defaults is based on various factors, including the length of time the receivables are past due, historical experience, and existing economic conditions. The allowances also include amounts for certain customers where a risk of default has been specifically identified considering factors such as the financial condition of the customer and customer disputes over contractual terms and conditions. Provisions to the allowances for doubtful accounts charged against income were \$29.5, \$37.8, and \$14.4 in 2010, 2009, and 2008, respectively.

### **Inventories**

Inventories are stated at the lower of cost or market. The Company writes down its inventories for estimated obsolescence or unmarketable inventory based upon assumptions about future demand and market conditions.

The Company utilizes the last-in, first-out (LIFO) method for determining the cost of inventories in the Merchant Gases, Tonnage Gases, and Electronics and Performance Materials segments in the United States. Inventories for these segments outside of the United States are accounted for on the first-in, first-out (FIFO) method, as the LIFO method is not generally permitted in the foreign jurisdictions where these segments operate. The inventories of the Equipment and Energy segment on a worldwide basis, as well as all other inventories, are accounted for on the FIFO basis.

At the business segment level, inventories are recorded at FIFO and the LIFO pool adjustments are not allocated to the business segments.

### **Equity Investments**

The equity method of accounting is used when the Company has a 20% or greater interest in other companies and exercises significant influence but does not have operating control. Under the equity method, original investments are recorded at cost and adjusted by the Company's share of undistributed earnings or losses of these companies. Equity investments are reviewed for impairment whenever events or changes in circumstances indicate that the carrying amount of the investment may not be recoverable.

### **Plant and Equipment**

Plant and equipment is stated at cost less accumulated depreciation. Construction costs, labor, and applicable overhead related to installations are capitalized. Expenditures for additions and improvements that extend the lives or increase the capacity of plant assets are capitalized. The costs of maintenance and repairs of plant and equipment are charged to expense as incurred.

Fully depreciated assets are retained in the gross plant and equipment and accumulated depreciation accounts until they are removed from service. In the case of disposals, assets and related depreciation are removed from the accounts, and the net amounts, less proceeds from disposal, are included in income.

### **Restricted Cash**

Restricted cash includes the proceeds from the issuance of certain industrial revenue bonds that must be held in escrow until related project spending occurs. Restricted cash is classified as noncurrent assets in the consolidated balance sheets.

### **Capitalized Interest**

As the Company builds new plant and equipment, it includes in the cost of these assets a portion of the interest payments it makes during the year. The amount of capitalized interest was \$14.3, \$21.9, and \$22.1 in 2010, 2009, and 2008, respectively.

### **Asset Retirement Obligations**

The fair value of a liability for an asset retirement obligation is recognized in the period in which it is incurred. The liability is measured at discounted fair value and is adjusted to its present value in subsequent periods as accretion expense is recorded. The corresponding asset retirement costs are capitalized as part of the carrying amount of the related long-lived asset and depreciated over the asset's useful life. The Company's asset retirement obligations are primarily associated with Tonnage Gases on-site long-term supply contracts, under which the Company has built a facility on land leased from the customer and is obligated to remove the facility at the end of the contract term. The Company's asset retirement obligations totaled \$57.6 and \$43.5 at 30 September 2010 and 2009, respectively.

### **Computer Software**

The Company capitalizes costs incurred to purchase or develop software for internal use. Capitalized costs include purchased computer software packages, payments to vendors/consultants for development and implementation or modification to a purchased package to meet Company requirements, payroll and related costs for employees directly involved in development, and interest incurred while software is being developed. Capitalized computer software costs are included in the balance sheet classification plant and equipment and depreciated over the estimated useful life of the software, generally a period of three to ten years. The Company's SAP system is being depreciated over a ten-year life.

### **Impairment of Long-Lived Assets**

Long-lived assets are evaluated for impairment whenever events or changes in circumstances indicate that the carrying amount of an asset may not be recoverable. The Company assesses recoverability by comparing the carrying amount of the asset to estimated undiscounted future cash flows expected to be generated by the asset. If an asset is considered impaired, the impairment loss to be recognized is measured as the amount by which the asset's carrying amount exceeds its fair value. Long-lived assets to be disposed of are reported at the lower of carrying amount or fair value less cost to sell.

### **Goodwill**

Acquisitions are accounted for using the acquisition method. The purchase price is allocated to the assets acquired and liabilities assumed based on their estimated fair market values. Any excess purchase price over the fair market value of the net assets acquired, including identified intangibles, is recorded as goodwill. Preliminary purchase price allocations are made at the date of acquisition and finalized when information needed to affirm underlying estimates is obtained, within a maximum allocation period of one year.

Goodwill is subject to impairment testing at least annually. In addition, goodwill is tested more frequently if a change in circumstances or the occurrence of events indicates that potential impairment exists.

### **Intangible Assets**

Intangible assets with determinable lives primarily consist of customer relationships and purchased patents and technology. The Company has no acquired intangible assets with indefinite lives. The cost of intangible assets with determinable lives is amortized on a straight-line basis over the estimated period of economic benefit. No residual value is estimated for these intangible assets.

Customer relationships are generally amortized over periods of five to twenty-five years. Purchased patents and technology and other intangibles are amortized based on contractual terms, ranging generally from five to twenty years. Amortizable lives are adjusted whenever there is a change in the estimated period of economic benefit.

### **Retirement Benefits**

The cost of retiree benefits is recognized over the employees' service period. The Company is required to use actuarial methods and assumptions in the valuation of defined benefit obligations and the determination of expense. Differences between actual and expected results or changes in the value of obligations and plan assets are not recognized in earnings as they occur but, rather, systematically and gradually over subsequent periods. Refer to Note 16, Retirement Benefits, for disclosures related to the Company's pension and other postretirement benefits.

## **2. New Accounting Guidance**

### **New Accounting Guidance to be Implemented**

#### **CONSOLIDATION OF VARIABLE INTEREST ENTITIES**

In June 2009, the Financial Accounting Standards Board (FASB) issued authoritative guidance that amends previous guidance for determining whether an entity is a variable interest entity (VIE). It requires an enterprise to perform an analysis to determine whether the Company's variable interests give it a controlling financial interest in a VIE. A company would be required to assess whether it has an implicit financial responsibility to ensure that a VIE operates as designed when determining whether it has the power to direct the activities of the VIE that most significantly impact the entity's economic performance. In addition, ongoing reassessments of whether an enterprise is the primary beneficiary of a VIE are required. This guidance is effective for the Company for fiscal year 2011. The adoption of this guidance will not have a material impact on the Company's consolidated financial statements.



#### **MULTIPLE-DELIVERABLE REVENUE ARRANGEMENTS**

In October 2009, the FASB issued authoritative guidance on multiple-deliverable revenue arrangements. This new guidance amends the existing criteria for separating consideration received in multiple-deliverable arrangements and requires that arrangement consideration be allocated at the inception of the arrangement to all deliverables based on their relative selling price. The guidance establishes a hierarchy for determining the selling price of a deliverable which is based on vendor-specific objective evidence, third-party evidence, or management estimates. Expanded disclosures related to multiple-deliverable revenue arrangements are also required. This guidance is effective for the Company for fiscal year 2011. Upon adoption, the guidance may be applied either prospectively from the beginning of the fiscal year for new or materially modified arrangements, or it may be applied retrospectively. The adoption of this guidance will not have a material impact on the Company's consolidated financial statements.

#### **Accounting Guidance Implemented**

##### **BUSINESS COMBINATIONS**

In December 2007, the FASB issued authoritative guidance to affirm that the acquisition method of accounting (previously referred to as the purchase method) be used for all business combinations and for an acquirer to be identified for each business combination. This guidance defines the acquirer as the entity that obtains control of one or more businesses in the business combination and establishes the acquisition date as the date that the acquirer achieves control. Among other requirements, the guidance requires the acquiring entity in a business combination to recognize at full fair value all the assets acquired and liabilities assumed in the transaction. If a business combination is achieved in stages, the previously-held ownership interest is adjusted to fair value at the acquisition date, and any resulting gain or loss is recognized in earnings. Contingent consideration is recognized at fair value at the acquisition date, and restructuring and acquisition-related costs are expensed as incurred. The fair value of assets and liabilities acquired, including uncertain tax positions, can be adjusted during the measurement period. Any adjustments after the measurement period, which cannot exceed one year, will be recognized in earnings. This guidance was effective for the Company beginning on 1 October 2009 and was applied prospectively. The adoption of this guidance did not have a material impact on the Company's 2010 consolidated financial statements.

##### **NONCONTROLLING INTERESTS**

In December 2007, the FASB issued authoritative guidance that establishes the accounting and reporting standards for the noncontrolling interests in a subsidiary and for the deconsolidation of a subsidiary. It requires entities to report noncontrolling interests in subsidiaries separately within equity in the consolidated balance sheets. It also requires disclosure, on the face of the consolidated income statement, of the amounts of consolidated net income attributable to the parent and noncontrolling interests. Changes in a parent's ownership interests while the parent retains control are treated as equity transactions. If a parent loses control of a subsidiary, any retained noncontrolling interests would be measured at fair value, with any gain or loss recognized in earnings. This guidance was effective for the Company on 1 October 2009 and was applied prospectively, except for the presentation and disclosure requirements related to noncontrolling interests, which were applied retrospectively for all periods presented. The Company's consolidated financial statements have been updated to reflect the new presentation.

##### **FAIR VALUE MEASUREMENTS**

In September 2006, the FASB issued authoritative guidance that defines fair value, establishes a framework for measuring fair value, and expands disclosures about fair value measurements. Effective 1 October 2008, the Company adopted this guidance for financial assets and liabilities and any other assets and liabilities that are recognized and disclosed at fair value on a recurring basis. The requirement for other nonfinancial assets and liabilities was effective on 1 October 2009 for the Company. This guidance did not impact the Company's consolidated financial statements upon adoption.

In January 2010, the FASB issued authoritative guidance on improving disclosures about fair value measurements. This guidance requires new disclosures about transfers in and out of Level 1 and 2 measurements and separate disclosures about activity relating to Level 3 measurements. In addition, this guidance clarifies existing fair value disclosures about the level of disaggregation and the input and valuation techniques used to measure fair value. The guidance only relates to disclosure and does not impact the Company's consolidated financial statements. The Company adopted this guidance in the second quarter of fiscal year 2010. There was no significant impact to the Company's disclosures upon adoption.

### **EMPLOYERS' DISCLOSURES ABOUT POSTRETIREMENT BENEFIT PLAN ASSETS**

In December 2008, the FASB issued authoritative guidance to require employers to provide additional disclosures about plan assets of a defined benefit or other postretirement plan. Disclosures include information about investment policies and strategies, major categories of plan assets, the inputs and valuation techniques used to measure the fair value of plan assets, and significant concentrations of risk. This guidance was effective for the Company beginning with its fiscal year-end 2010. Upon adoption, this guidance was not required to be applied to earlier periods that are presented for comparative purposes. This guidance only requires additional disclosure and did not have an impact on the Company's consolidated financial statements upon adoption. Refer to Note 16, Retirement Benefits, for the required disclosures.

### **3. Airgas Transaction**

In February 2010, the Company commenced a tender offer to acquire all the outstanding common stock of Airgas, Inc. (Airgas), including the associated preferred stock purchase rights, for \$60.00 per share in cash, less any required withholding tax, and subject to the terms and conditions set forth in the Offer to Purchase, dated 11 February 2010, as amended. Airgas, a Delaware company, is the largest U.S. distributor of industrial, medical, and specialty gases, and hard goods. On 6 September 2010, the Company increased the value of its tender offer to \$65.50 per share. At this price, the total value of the transaction would be approximately \$7.4 billion, including \$5.7 billion of equity and \$1.7 billion of assumed debt. The offer and withdrawal rights are scheduled to expire on 3 December 2010, unless further extended.

At the Airgas' Annual Meeting of Shareholders on 15 September 2010, Airgas shareholders elected three directors nominated by Air Products and also voted in favor of Air Products' three by-law amendment proposals. Following the Annual Meeting, Airgas filed suit in the Delaware Chancery Court to invalidate the by-law amendment that would move Airgas' next annual meeting to January 2011. On 8 October 2010, the Delaware Chancery Court ruled that the by-law amendment was properly adopted at the Airgas Annual Meeting on 15 September 2010 and that it is valid under Delaware law. Airgas has appealed the Court's ruling.

Further, in October 2010, the U.S. Federal Trade Commission approved the terms of a Consent Decree for the proposed acquisition of Airgas. The Consent Decree would permit the Company to acquire Airgas subject to the divestiture of certain assets within a period of time after the closing of the acquisition. The assets to be divested relate primarily to Airgas' liquid bulk and on-site supply of atmospheric gases, including production and related assets.

Prior to the tender offer, the Company purchased approximately 1.5 million shares of Airgas stock for \$69.6. This amount was recorded as an available-for-sale investment within other noncurrent assets on the consolidated balance sheet. For the year ended 30 September 2010, an after-tax unrealized holding gain of \$20.6 was recorded in other comprehensive income within total equity on the consolidated balance sheet.

In connection with this tender offer, the Company has secured committed financing in the form of a \$6.7 billion term loan credit facility. Refer to Note 15, Debt, for additional information on this credit facility.

For the year ended 30 September 2010, \$96.0 (\$60.1 after-tax, or \$.28 per share) in expense was recognized related to this transaction and is included within acquisition-related costs on the consolidated income statement. This includes amortization of the fees related to the term loan credit facility and other acquisition-related costs. Total costs of this transaction are expected to be approximately \$150 to \$200.

### **4. Business Combinations**

In the second quarter of 2010, the Company entered into agreements that will enable it to acquire 100% of the outstanding shares of the French SAGA group (SAGA), which consists of SAGA, SAGA Medical, and SAGA Technologies. SAGA is an independent industrial gas provider in France with packaged gases, liquid bulk, and medical businesses. The acquisition of SAGA supports the Merchant Gases segment's integration strategy by enhancing market position in southwest and central France. SAGA revenues for calendar year 2009 were approximately €25, or \$35.

Under the terms of these agreements, the Company purchased 51.47% of the shares of SAGA on 1 March 2010 for €34.5 or \$47.2 (\$25.0 net of cash acquired of \$22.2). The remaining shares are expected to be purchased by the end of calendar year 2010 for a fixed price of €44.8, or approximately \$61, under a put and call option structure. At 30 September 2010, this structure was accounted for as a financing of the purchase of the remaining shares and reported within short-term borrowings on the consolidated balance sheet.

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The acquisition of SAGA was accounted for as a business combination, and its results of operations were included in the Company's consolidated income statement after the acquisition date. The purchase price has been allocated to the assets acquired and the liabilities assumed based on their fair values as of the acquisition date, with the amount exceeding the fair value recorded as goodwill. During the fourth quarter of 2010, the Company finalized the purchase price allocation with no material adjustments made to the preliminary valuation. The final purchase price allocation included identified intangibles of \$42.5, plant and equipment of \$40.8, goodwill of \$35.0 (which is deductible for tax purposes), and other net assets of \$12.7. Additionally, deferred tax liabilities of \$23.0 were recognized. The identified intangibles primarily relate to customer relationships and are being amortized over 23 years.

Goodwill, which was assigned to the Merchant Gases segment, largely consisted of expected revenue and cost synergies resulting from the business combination. Revenue synergies will result primarily from the sale of differentiated offerings and cost synergies from combining supply chains and optimization of the combined logistics. The fair value of plant and equipment was quantified primarily using a cost approach, by estimating reproduction/replacement cost consistent with assumptions market participants would use. Intangible assets consisted primarily of customer relationships for which fair value was determined using a discounted cash flow analysis under the income approach. The income approach required estimating a number of factors, including projected revenue growth, customer attrition rates, profit margin, and the discount rate. The remaining identifiable assets and liabilities were primarily cash, accounts receivable, and payables and accrued liabilities, for which book value approximated fair value.

### **Prior Year Acquisitions**

Acquisitions in 2009, totaling \$32.7, included principally the purchase of S.I.Q. — Beteiligungs GmbH, a manufacturer of epoxy additives. In 2008, acquisitions totaled \$72.0 and included the purchase of an additional interest in CryoService Limited, a cryogenic and specialty gases company in the U.K. See Note 20, Noncontrolling Interests, for a discussion on a related put option agreement.

## **5. Global Cost Reduction Plan**

### **2009 Plan**

The 2009 results from continuing operations included a total charge of \$298.2 (\$200.3 after-tax, or \$.94 per share) for the global cost reduction plan. In the first quarter of 2009, the Company announced the global cost reduction plan designed to lower its cost structure and better align its businesses to reflect rapidly declining economic conditions around the world. The 2009 first-quarter results included a charge of \$174.2 (\$116.1 after-tax, or \$.55 per share). In the third quarter 2009, due to the continuing slow economic recovery, the Company committed to additional actions associated with its global cost reduction plan that resulted in a charge of \$124.0 (\$84.2 after-tax, or \$.39 per share).

The total 2009 charge included \$210.0 for severance and other benefits, including pension-related costs, associated with the elimination of approximately 2,550 positions from the Company's global workforce. The reductions were targeted at reducing overhead and infrastructure costs, reducing and refocusing elements of the Company's technology and business development spending, lowering its plant operating costs, and the closure of certain manufacturing facilities. The remainder of this charge, \$88.2, was for business exits and asset management actions. Assets held for sale were written down to net realizable value, and an environmental liability of \$16.0 was recognized. This environmental liability resulted from a decision to sell a production facility.

### **Business Segments**

The global cost reduction plan charge recorded in 2009 was excluded from segment operating profit. The table below displays how this charge related to the businesses at the segment level:

	Severance and Other Benefits	Asset Impairments/ Other Costs	Total
Merchant Gases	\$127.5	\$7.2	\$134.7
Tonnage Gases	14.2	—	14.2
Electronics and Performance Materials	30.6	58.9	89.5
Equipment and Energy	37.7	22.1	59.8
2009 Charge	\$210.0	\$88.2	\$298.2

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During 2010, the Company revised its estimate of the costs associated with the 2009 global cost reduction plan. The unfavorable impact of additional severance and other benefits was primarily offset by favorable variances related to completed business exits and asset management actions. These adjustments to the charge were excluded from segment operating profit and did not have a material impact on any individual segment.

As of 30 September 2010, the planned actions associated with the global cost reduction plan were substantially completed with the exception of certain benefit payments associated with a small number of position eliminations. In addition, as part of the asset management actions included in the plan, the Company anticipates completing the sale of a facility by the end of calendar year 2010.

### Accrual Balance

The following table summarizes changes to the carrying amount of the accrual for the global cost reduction plan:

	Severance and Other Benefits	Asset Impairments/ Other Costs	Total
First quarter 2009 charge	\$120.0	\$54.2	\$174.2
Third quarter 2009 charge	90.0	34.0	124.0
Environmental charge <sup>(A)</sup>	—	(16.0)	(16.0)
Noncash items	(33.8) <sup>(B)</sup>	(66.1)	(99.9)
Cash expenditures	(75.3)	(.9)	(76.2)
Currency translation adjustment	4.3	—	4.3
<b>30 September 2009</b>	<b>\$105.2</b>	<b>\$5.2</b>	<b>\$110.4</b>
Adjustment to charge	7.6	(6.6)	1.0
Environmental charge <sup>(A)</sup>	—	1.5	1.5
Noncash items	(2.8) <sup>(B)</sup>	.1	(2.7)
Cash expenditures	(102.8)	(.2)	(103.0)
Currency translation adjustment	(5.3)	—	(5.3)
<b>30 September 2010</b>	<b>\$1.9</b>	<b>\$—</b>	<b>\$1.9</b>

<sup>(A)</sup> Reflected in accrual for environmental obligations. See Note 17, Commitments and Contingencies.

<sup>(B)</sup> Primarily pension-related costs, which are reflected in the accrual for pension benefits.

### 6. Discontinued Operations

The U.S. Healthcare business, Polymer Emulsions business, and High Purity Process Chemicals (HPPC) business have been accounted for as discontinued operations. The results of operations of these businesses have been removed from the results of continuing operations for all periods presented. The assets and liabilities of discontinued operations have been reclassified and are segregated in the consolidated balance sheets.

#### U.S. Healthcare

In 2007, the Company implemented several changes to improve performance in its U.S. Healthcare business, including management changes, product and service offering simplification, and other measures. However, market and competitive conditions were more challenging than anticipated and financial results did not meet expectations. In response to the disappointing financial results, during the third quarter of 2008, management conducted an evaluation of the strategic alternatives for the business. In July 2008, the Board of Directors authorized management to pursue the sale of this business. Accordingly, beginning in the fourth quarter of 2008, the U.S. Healthcare business was accounted for as discontinued operations.

In 2008, the Company recorded a total charge of \$329.2 (\$246.2 after-tax, or \$1.12 per share) related to the impairment/write-down of the net carrying value of this business as follows:

- In the third quarter of 2008, the Company determined that an interim test for goodwill impairment and other long-lived assets was required for its U.S. Healthcare reporting unit. The Company reforecast its cash flows and utilized the expected present value of the future cash flows to calculate fair value of the U.S. Healthcare reporting unit in completing its impairment test. A charge of \$314.8 (\$237.0 after-tax, or \$1.09 per share) consisted of the impairment of goodwill for \$294.3, intangible assets for \$11.7, plant and equipment for \$7.8, and other assets for \$1.0. The impairment reduced the carrying amount of the U.S. Healthcare reporting unit goodwill and intangible assets to zero.

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- In the fourth quarter of 2008, the Company recorded a charge of \$14.4 (\$9.2 after-tax, or \$.04 per share), reflecting an estimate of net realizable value.

In the first quarter of 2009, based on additional facts, the Company recorded an impairment charge of \$48.7 (\$30.9 after-tax, or \$.15 per share), reflecting a revision in the estimated net realizable value of the U.S. Healthcare business. Also, a tax benefit of \$8.8, or \$.04 per share, was recorded to revise the estimated tax benefit related to previously recognized impairment charges.

As a result of events that occurred during the second quarter of 2009, which increased the Company's ability to realize tax benefits associated with the impairment charges recorded in 2008, the Company recognized a one-time tax benefit of \$16.7, or \$.08 per share.

During the third quarter of 2009, the Company sold more than half of its remaining U.S. Healthcare business to OptionCare Enterprises, Inc., a subsidiary of Walgreen Co., and Landauer-Metropolitan, Inc. (LMI) for combined cash proceeds of \$38.1. The Company recognized an after-tax gain of \$.3 resulting from these sales combined with adjustments to the net realizable value of the remaining businesses.

During the fourth quarter of 2009, through a series of transactions with Rotech Healthcare, Inc. and with LMI, the Company sold its remaining U.S. Healthcare business for cash proceeds of \$12.1. A net after-tax loss of \$.7 was recognized. These transactions completed the disposal of the U.S. Healthcare business.

The operating results of the U.S. Healthcare business classified as discontinued operations are summarized below:

	2010	2009	2008
Sales	\$—	\$125.2	\$239.8
Loss before taxes	\$—	\$(5.5)	\$(350.6)
Income tax benefit	—	(2.1)	(91.2)
Loss from operations of discontinued operations	—	(3.4)	(259.4)
Loss on sale of businesses and impairment/write-down to estimated net realizable value, net of tax	—	(5.5)	(8.7)
<b>Loss from Discontinued Operations, net of tax</b>	<b>\$—</b>	<b>\$(8.9)</b>	<b>\$(268.1)</b>

The assets and liabilities classified as discontinued operations for the U.S. Healthcare business at 30 September 2009 were \$5.0 and \$14.4, respectively. Remaining assets and liabilities associated with the U.S. Healthcare divestiture at 30 September 2010 are not material and have been classified in continuing operations.

### **Polymer Emulsions Business**

On 31 January 2008, the Company closed on the sale of its interest in its vinyl acetate ethylene (VAE) polymers joint ventures to Wacker Chemie AG, its long-time joint venture partner. As part of that agreement, the Company received Wacker Chemie AG's interest in the Elkton, Md. and Piedmont, S.C. production facilities and their related businesses plus cash proceeds of \$258.2. The Company recognized a gain of \$89.5 (\$57.7 after-tax, or \$.26 per share) in the second quarter of 2008 for this sale, which consisted of the global VAE polymers operations, including production facilities located in Calvert City, Ky.; South Brunswick, N.J.; Cologne, Germany; and Ulsan, Korea; and commercial and research capabilities in Allentown, Pa. and Burghausen, Germany. The business produces VAE for use in adhesives, paints and coatings, paper, and carpet applications.

On 30 June 2008, the Company sold its Elkton, Md. and Piedmont, S.C. production facilities and the related North American atmospheric emulsions and global pressure sensitive adhesives businesses to Ashland, Inc. for \$92.0. The Company recorded a gain of \$30.5 (\$18.5 after-tax, or \$.08 per share) in connection with the sale, which included the recording of a retained environmental obligation of \$24.0 (\$14.5 after-tax, or \$.07 per share) associated with the Piedmont site. Refer to Note 17, Commitments and Contingencies, for additional information on this charge. The sale of the Elkton and Piedmont facilities completed the disposal of the Company's Polymer Emulsions business.

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The operating results of the Polymer Emulsions business classified as discontinued operations are summarized below:

	2010	2009	2008
Sales	\$—	\$—	\$261.4
Income before taxes	\$—	\$—	\$26.3
Income tax provision	—	—	9.6
Income from operations of discontinued operations	—	—	16.7
Gain on sale of business, net of tax	—	.3	76.2
Income from discontinued operations, net of tax	—	.3	92.9
Less: Income from discontinued operations attributable to noncontrolling interests, net of tax	—	—	5.4
<b>Income from Discontinued Operations Attributable to Air Products</b> , net of tax	<b>\$—</b>	<b>\$ .3</b>	<b>\$87.5</b>

There were no assets and liabilities classified as discontinued operations for the Polymer Emulsions business at 30 September 2010 and 2009.

#### HPPC Business

In October 2007, the Company executed an agreement of sale with KMG Chemicals, Inc. for its HPPC business. This business consisted of the development, manufacture, and supply of high-purity process chemicals used in the fabrication of integrated circuits in the United States and Europe. The sale closed on 31 December 2007 for cash proceeds of \$69.3.

The operating results of the HPPC business classified as discontinued operations are summarized below:

	2010	2009	2008
Sales	\$—	\$—	\$22.9
Income before taxes	\$—	\$—	\$ .1
Income tax provision	—	—	—
Income from operations of discontinued operations	—	—	.1
Loss on sale of business, net of tax	—	—	(.3)
<b>Loss from Discontinued Operations</b> , net of tax	<b>\$—</b>	<b>\$—</b>	<b>\$(.2)</b>

There were no assets and liabilities classified as discontinued operations for the HPPC business at 30 September 2010 and 2009.

#### Total Discontinued Operations

The operating results on a combined basis of the U.S. Healthcare, Polymers Emulsions, and HPPC businesses classified as discontinued operations are summarized below:

	2010	2009	2008
Sales	\$—	\$125.2	\$524.1
Loss before taxes	\$—	\$(5.5)	\$(324.2)
Income tax benefit	—	(2.1)	(81.6)
Loss from operations of discontinued operations	—	(3.4)	(242.6)
Gain (loss) on sale of businesses and impairment/write-down to estimated net realizable value, net of tax	—	(5.2)	67.2
Loss from discontinued operations, net of tax	—	(8.6)	(175.4)
Less: Income from discontinued operations attributable to noncontrolling interests, net of tax	—	—	5.4
<b>Loss from Discontinued Operations Attributable to Air Products</b> , net of tax	<b>\$—</b>	<b>\$(8.6)</b>	<b>\$(180.8)</b>

## 7. Inventories

The components of inventories are as follows:

<b>30 September</b>	<b>2010</b>	<b>2009</b>
Inventories at FIFO cost		
Finished goods	<b>\$405.3</b>	\$405.5
Work in process	<b>29.3</b>	20.9
Raw materials and supplies	<b>208.2</b>	151.1
	<b>642.8</b>	577.5
Less: Excess of FIFO cost over LIFO cost	<b>(71.2)</b>	(67.9)
	<b>\$571.6</b>	\$509.6

Inventories valued using the LIFO method comprised 40.5% of consolidated inventories before LIFO adjustment at both 30 September 2010 and 2009. Liquidation of LIFO inventory layers in 2010 and 2008 did not materially affect results of operations in those years. During 2009, there was no liquidation of prior years' LIFO inventory layers.

FIFO cost approximates replacement cost. The Company's inventories have a high turnover, and as a result, there is little difference between the original cost of an item and its current replacement cost.

## 8. Summarized Financial Information of Equity Affiliates

The following table presents summarized financial information on a combined 100% basis of the principal companies accounted for by the equity method. Amounts presented include the accounts of the following equity affiliates:

Air Products South Africa (50%);	INOX Air Products Limited (INOX) (50%);
Bangkok Cogeneration Company Limited (49%);	Kulim Industrial Gases Sdn. Bhd (50%);
Bangkok Industrial Gases Company Ltd. (49%);	Sapio Produzione Idrogeno Ossigeno S.r.l. (49%);
Chengdu Air & Gas Products Ltd. (50%);	SembCorp Air Products (HyCO) Pte. Ltd. (40%);
Daido Air Products Electronics, Inc. (20%);	Tecnologia en Nitrogeno S. de R.L. de C.V. (50%);
DuPont Air Products Nanomaterials, LLC (50%);	Tyczka Industrie-Gases GmbH (50%);
Helap S.A. (50%);	WuXi Hi-Tech Gas Co., Ltd. (50%);
High-Tech Gases (Beijing) Co., Ltd. (50%);	and principally, other industrial gas producers.
INFRA Group (40%);	

	<b>2010</b>	<b>2009</b>
Current assets	<b>\$1,133.4</b>	\$1,185.2
Noncurrent assets	<b>2,071.6</b>	1,916.9
Current liabilities	<b>788.9</b>	714.5
Noncurrent liabilities	<b>559.9</b>	677.3
Net sales	<b>2,293.4</b>	2,129.7
Sales less cost of sales	<b>964.4</b>	874.4
Net income	<b>293.0</b>	257.7

Dividends received from equity affiliates were \$75.4, \$52.9, and \$65.3 in 2010, 2009, and 2008, respectively.

The investment in net assets of and advances to equity affiliates as of 30 September 2010 and 2009 included investment in foreign affiliates of \$877.7 and \$834.7, respectively.

As of 30 September 2010 and 2009, the amount of investment in companies accounted for by the equity method included goodwill in the amount of \$60.2 and \$56.1, respectively.



## 9. Plant and Equipment

The major classes of plant and equipment, at cost, are as follows:

<b>30 September</b>	<b>2010</b>	<b>2009</b>
Land	<b>\$172.3</b>	\$169.4
Buildings	<b>886.2</b>	875.5
Production facilities		
Merchant Gases	<b>3,346.3</b>	3,071.0
Tonnage Gases	<b>5,691.4</b>	5,441.7
Electronics and Performance Materials	<b>2,061.2</b>	1,907.6
Equipment and Energy	<b>296.5</b>	286.8
Total production facilities	<b>11,395.4</b>	10,707.1
Distribution equipment	<b>2,918.6</b>	2,802.5
Other machinery and equipment	<b>248.0</b>	273.1
Construction in progress	<b>689.2</b>	923.7
	<b>\$16,309.7</b>	\$15,751.3

Depreciation expense was \$837.7, \$815.9, and \$848.0, in 2010, 2009, and 2008, respectively.

## 10. Goodwill

Changes to the carrying amount of consolidated goodwill by segment are as follows:

<b>30 September</b>	2009	Acquisitions and Adjustments	Currency Translation and Other	<b>2010</b>
Merchant Gases	\$601.3	\$19.1	\$(24.7)	<b>\$595.7</b>
Tonnage Gases	16.3	(.9)	.1	<b>15.5</b>
Electronics and Performance Materials	298.4	.3	4.7	<b>303.4</b>
	<b>\$916.0</b>	<b>\$18.5</b>	<b>\$(19.9)</b>	<b>\$914.6</b>

<b>30 September</b>	2008	Acquisitions and Adjustments	Currency Translation and Other	2009
Merchant Gases	\$626.5	\$1.9	\$(27.1)	\$601.3
Tonnage Gases	18.0	—	(1.7)	16.3
Electronics and Performance Materials	283.6	10.0	4.8	298.4
	<b>\$928.1</b>	<b>\$11.9</b>	<b>\$(24.0)</b>	<b>\$916.0</b>

Acquisitions and adjustments related to the Merchant Gases segment in 2010 included \$35.0 associated with the SAGA acquisition, offset by a reduction in goodwill for an adjustment related to a previous acquisition of \$16.9. Refer to Note 4, Business Combinations, for further detail on the SAGA acquisition.

In the fourth quarter of 2010, the Company conducted the required annual test of goodwill for impairment. The Company determined that the fair value of each of the reporting units substantially exceeded its carrying value, and therefore there were no indications of impairment.

## 11. Intangible Assets

The table below provides details of acquired intangible assets at 30 September 2010 and 2009:

	30 September 2010			30 September 2009		
	Gross	Accumulated Amortization	Net	Gross	Accumulated Amortization	Net
Customer relationships	\$283.3	\$(62.7)	\$220.6	\$250.0	\$(51.4)	\$198.6
Patents and technology	99.0	(73.6)	25.4	107.3	(69.0)	38.3
Other	73.3	(33.6)	39.7	49.5	(23.8)	25.7
	\$455.6	\$(169.9)	\$285.7	\$406.8	\$(144.2)	\$262.6

Amortization expense for intangible assets was \$25.7, \$24.4, and \$21.0 in 2010, 2009, and 2008, respectively.

Projected annual amortization expense for intangible assets as of 30 September 2010 is as follows:

2011	\$21.1
2012	18.9
2013	18.4
2014	17.7
2015	17.3
Thereafter	192.3
	\$285.7

## 12. Leases

### Lessee Accounting

Capital leases, primarily for the right to use machinery and equipment, are included with owned plant and equipment on the consolidated balance sheet in the amount of \$18.2 and \$27.3 at 30 September 2010 and 2009, respectively. Related amounts of accumulated depreciation are \$12.1 and \$17.5, respectively.

Operating leases principally relate to real estate and also include aircraft, distribution equipment, and vehicles. Certain leases include escalation clauses, renewal, and/or purchase options. Rent expense is recognized on a straight-line basis over the minimum lease term. Rent expense under operating leases, including month-to-month agreements, was \$93.0 in 2010, \$89.9 in 2009, and \$97.2 in 2008.

At 30 September 2010, minimum payments due under leases are as follows:

	Capital Leases	Operating Leases
2011	\$1.8	\$50.1
2012	1.8	38.3
2013	1.7	27.6
2014	1.5	17.7
2015	1.5	13.5
Thereafter	2.8	42.7
	\$11.1	\$189.9

The present value of the above future capital lease payments is included in the liability section of the consolidated balance sheet. At 30 September 2010, \$1.4 was classified as current and \$8.4 as long-term. At 30 September 2009, the present value of the future capital lease payments was \$8.9, of which \$2.7 was classified as current and \$6.2 as long-term.

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### **Lessor Accounting**

As discussed under Revenue Recognition in Note 1, Major Accounting Policies, certain contracts associated with facilities that are built to provide product to a specific customer are required to be accounted for as leases. Lease receivables, net, were included principally in noncurrent capital lease receivables on the Company's consolidated balance sheets. The components of lease receivables were as follows:

<b>30 September</b>	<b>2010</b>	<b>2009</b>
Gross minimum lease payments receivable	<b>\$1,195.5</b>	\$1,068.9
Unearned interest income	<b>(386.0)</b>	(349.3)
<b>Net Lease Receivable</b>	<b>\$809.5</b>	\$719.6

Lease payments collected in 2010, 2009, and 2008 were \$68.0, \$53.6, and \$33.7, respectively.

At 30 September 2010, minimum lease payments to be collected are as follows:

2011	\$93.2
2012	95.6
2013	93.9
2014	92.3
2015	90.0
Thereafter	730.5
	<b>\$1,195.5</b>

### **13. Financial Instruments**

#### **Currency Price Risk Management**

The Company's earnings, cash flows, and financial position are exposed to foreign currency risk from foreign currency denominated transactions and net investments in foreign operations. It is the policy of the Company to minimize its cash flow volatility to changes in currency exchange rates. This is accomplished by identifying and evaluating the risk that the Company's cash flows will change in value due to changes in exchange rates and by executing the appropriate strategies necessary to manage such exposures. The Company's objective is to maintain economically balanced currency risk management strategies that provide adequate downside protection.

#### **Forward Exchange Contracts**

The Company enters into forward exchange contracts to reduce the cash flow exposure to foreign currency fluctuations associated with highly anticipated cash flows and certain firm commitments such as the purchase of plant and equipment. Forward exchange contracts are also used to hedge the value of investments in certain foreign subsidiaries and affiliates by creating a liability in a currency in which the Company has a net equity position. The primary currency pair in this portfolio of forward contracts is the Euro/U.S. Dollar.

In addition to the foreign exchange contracts that are designated as hedges, the Company also hedges foreign currency exposures utilizing forward exchange contracts that are not designated as hedges. These contracts are used to hedge foreign currency-denominated monetary assets and liabilities, primarily working capital. The primary objective of these forward contracts is to protect the value of foreign currency-denominated monetary assets and liabilities from the effects of volatility in foreign exchange rates that might occur prior to their receipt or settlement. This portfolio of forward exchange contracts comprise many different foreign currency pairs, with a profile that changes from time to time depending on business activity and sourcing decisions.

#### **Option Contracts**

In certain limited situations, the Company enters into option contracts to manage cash flow exposures to foreign currency fluctuations. Similar to forward contracts, these instruments are evaluated for hedge accounting treatment and are recognized on the consolidated balance sheet at fair value. As of 30 September 2010 and 2009, there were no outstanding option contracts.

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The table below summarizes the Company's outstanding currency price risk management instruments:

	2010		2009	
30 September	US\$ Notional	Years Average Maturity	US\$ Notional	Years Average Maturity
<b>Forward Exchange Contracts</b>				
Cash flow hedges	\$1,605.5	.5	\$1,620.7	.8
Net investment hedges	648.5	3.0	873.6	3.5
Fair value hedges	—	—	2.7	.4
Hedges not designated	373.6	.2	508.9	.6
<b>Total Forward Exchange Contracts</b>	<b>\$2,627.6</b>	<b>1.1</b>	<b>\$3,005.9</b>	<b>1.6</b>

In addition to the above, the Company uses foreign currency denominated debt and qualifying intercompany loans to hedge the foreign currency exposures of the Company's net investment in certain foreign affiliates. The designated foreign currency denominated debt at 30 September 2010 includes €782.1 and NT\$967.0, and at 30 September 2009 includes €1,013.0 and NT\$965.0. The designated intercompany loans include €437.0 at both 30 September 2010 and 2009.

### **Debt Portfolio Management**

It is the policy of the Company to identify on a continuing basis the need for debt capital and evaluate the financial risks inherent in funding the Company with debt capital. Reflecting the result of this ongoing review, the debt portfolio and hedging program of the Company are managed with the objectives and intent to (1) reduce funding risk with respect to borrowings made by the Company to preserve the Company's access to debt capital and provide debt capital as required for funding and liquidity purposes, and (2) manage the aggregate interest rate risk and the debt portfolio in accordance with certain debt management parameters.

### **Interest Rate Swap Contracts**

The Company enters into interest rate swap contracts to change the fixed/variable interest rate mix of its debt portfolio in order to maintain the percentage of fixed- and variable-rate debt within the parameters set by management. In accordance with these parameters, the agreements are used to optimize interest rate risks and costs inherent in the Company's debt portfolio. The current interest rate swap portfolio consists of fixed-to-floating swaps denominated in U.S. dollars and in Euros. In addition, the Company uses interest rate swap agreements to hedge the interest rate on anticipated fixed-rate debt issuance. The notional amount of the interest rate swap agreements are equal to or less than the designated debt instrument being hedged. When interest rate swaps are used, the indices of the swap instruments and the debt to which they are designated are the same. It is the Company's policy not to enter into any interest rate swap contracts which lever a move in interest rates on a greater than one-to-one basis.

### **Cross Currency Interest Rate Swap Contracts**

The Company enters into cross currency interest rate swap contracts when the Company deems necessary. These contracts may entail both the exchange of fixed- and floating-rate interest payments periodically over the life of the agreement and the exchange of one currency for another currency at inception and at a specified future date. These contracts effectively convert the currency denomination of a debt instrument into another currency in which the Company has a net equity position while changing the interest rate characteristics of the instrument. The contracts are used to hedge long-term intercompany and third-party borrowing transactions and certain net investments in foreign operations. The current cross currency swap portfolio consists of a single fixed-to-fixed swap between U.S. dollars and British Pound Sterling.

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The following table summarizes the Company's outstanding interest rate swaps and cross currency interest rate swaps:

	30 September 2010				30 September 2009			
	US\$ Notional	Pay %	Average Receive %	Years Average Maturity	US\$ Notional	Pay %	Average Receive %	Years Average Maturity
Interest rate swaps (fair value hedge)	\$617.0	LIBOR	3.66%	3.8	\$327.2	LIBOR	4.47%	1.7
Cross currency interest rate swaps (net investment hedge)	\$32.2	5.54%	5.48%	3.5	\$32.2	5.54%	5.48%	4.5

**Commodity Price Risk Management**

The Company has entered into a limited number of commodity swap contracts in order to reduce the cash flow exposure to changes in the price of natural gas relative to certain oil-based feedstocks. As of 30 September 2010, the Company did not have outstanding commodity swap contracts. At 30 September 2009, the Company had outstanding energy contracts with a notional value of \$18.5 and an average maturity of .2 years.

The table below summarizes the fair value and balance sheet location of the Company's outstanding derivatives:

	Balance Sheet Location	30 September 2010	30 September 2009	Balance Sheet Location	30 September 2010	30 September 2009
		Fair Value	Fair Value		Fair Value	Fair Value
<b>Derivatives Designated as Hedging Instruments</b>						
Foreign exchange contracts	Other receivables	\$29.8	\$37.5	Accrued liabilities	\$22.3	\$43.8
Interest rate swap contracts	Other receivables	6.6	—	Accrued liabilities	1.3	.4
Commodity swap contracts	Other receivables	—	4.3	Accrued liabilities	—	2.4
Foreign exchange contracts	Other noncurrent assets	38.7	6.8	Other noncurrent liabilities	19.9	42.2
Interest rate swap contracts	Other noncurrent assets	33.1	15.1	Other noncurrent liabilities	2.4	3.0
<b>Total Derivatives Designated as Hedging Instruments</b>		<b>\$108.2</b>	<b>\$63.7</b>		<b>\$45.9</b>	<b>\$91.8</b>
<b>Derivatives Not Designated as Hedging Instruments</b>						
Foreign exchange contracts	Other receivables	\$6.2	\$12.3	Accrued liabilities	\$8.3	\$14.7
Foreign exchange contracts	Other noncurrent assets	—	3.2	Other noncurrent liabilities	—	3.2
<b>Derivatives Not Designated as Hedging Instruments</b>		<b>\$6.2</b>	<b>\$15.5</b>		<b>\$8.3</b>	<b>\$17.9</b>
<b>Total Derivatives</b>		<b>\$114.4</b>	<b>\$79.2</b>		<b>\$54.2</b>	<b>\$109.7</b>

Refer to Note 14, Fair Value Measurements, which defines fair value, describes the method for measuring fair value, and provides additional disclosures regarding fair value measurements.

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The table below summarizes the gain or loss related to the Company's cash flow, net investment, and non-designated hedges. The amounts of gain or loss associated with the outstanding fair value hedges are not material.

	Year Ended 30 September							
	Forward Exchange Contracts		Foreign Currency Debt		Other <sup>(A)</sup>		Total	
	2010	2009	2010	2009	2010	2009	2010	2009
<b>Cash Flow Hedges</b>								
Net (gain) loss recognized in OCI (effective portion)	\$11.3	\$7.2	\$—	\$—	\$3	\$(2.7)	\$11.6	\$4.5
Net gain (loss) reclassified from OCI to sales/cost of sales (effective portion)	(10.8)	(4.1)	—	—	2.0	5.3	(8.8)	1.2
Net gain (loss) reclassified from OCI to other (income) expense (effective portion)	(6.2)	(1.0)	—	—	—	—	(6.2)	(1.0)
Net gain (loss) reclassified from OCI to other (income) expense (ineffective portion)	.2	.5	—	—	—	—	.2	.5
<b>Net Investment Hedges</b>								
Net (gain) loss recognized in OCI	\$(58.4)	\$27.1	\$(109.8)	\$52.0	\$(4)	\$(2.4)	\$(168.6)	\$76.7
<b>Derivatives Not Designated as Hedging Instruments</b>								
Net (gain) loss recognized in other (income) expense <sup>(B)</sup>	\$24.7	14.5	\$—	\$—	\$—	\$—	\$24.7	\$14.5

<sup>(A)</sup> Other includes the impact on other comprehensive income (OCI) and earnings related to commodity swap contracts and interest rate swaps.

<sup>(B)</sup> The impact of the non-designated hedges noted above was largely offset by gains and losses, respectively, resulting from the impact of changes in exchange rates on recognized assets and liabilities denominated in nonfunctional currencies.

### Credit Risk-Related Contingent Features

Certain derivative instruments are executed under agreements that require the Company to maintain a minimum credit rating opinion from a third party. If the Company's credit rating falls below this threshold, the counterparty to the derivative instruments has the right to request full collateralization on the derivatives' net liability position. The net liability position of derivatives with credit risk-related contingent features was \$4.2 as of 30 September 2010 and \$35.0 as of 30 September 2009. Because the Company's current credit rating is above the various pre-established thresholds, no collateral has been posted on these liability positions.

### Counterparty Credit Risk Management

The Company executes all derivative transactions with counterparties that are highly rated financial institutions, all of which are investment grade at this time. Some of the Company's underlying derivative agreements give the Company the right to require the institution to post collateral if its credit rating falls below the pre-established thresholds. These are the same agreements referenced in Credit Risk-Related Contingent Features above. The collateral that the counterparties would be required to post was \$52.2 as of 30 September 2010 and \$14.7 as of 30 September 2009. No financial institution is required to post collateral at this time, as all have credit ratings at or above the threshold.

## 14. Fair Value Measurements

Fair value is defined as an exit price (i.e., the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date). The methods and assumptions used to measure the fair value of financial instruments are as follows:

### Derivatives

The fair value of the Company's interest rate swap agreements and foreign exchange contracts are quantified using the income approach and are based on estimates using standard pricing models. These models take into account the value of future cash flows as of the balance sheet date, discounted to a present value using discount factors that match both the time to maturity and currency of the underlying instruments. The computation of the fair values of these instruments is generally performed by the Company. These standard pricing models utilize inputs which are derived from or corroborated by observable market data such as interest rate yield curves and currency spot and forward rates. In addition, on an ongoing basis, the Company randomly tests a subset of its valuations against

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valuations received from the transaction's counterparty to validate the accuracy of its standard pricing models. The fair value of commodity swaps is based on current market price as provided by the financial institutions with which the commodity swaps have been executed. Counterparties to these derivative contracts are highly rated financial institutions.

Refer to Note 13, Financial Instruments, for a description of derivative instruments, including details on the balance sheet line classifications.

### **Available-for-Sale Securities**

The fair value of available-for-sale securities is based on a market approach, specifically quoted market prices in publicly traded companies from the New York Stock Exchange, NASDAQ, and Tokyo Stock Exchange. These investments are reported within other noncurrent assets on the consolidated balance sheet, with holding gains and losses recorded to OCI, net of tax.

The available-for-sale securities primarily include the investment in Airgas stock of \$102.5. At 30 September 2010, the change in unrealized appreciation of this investment carried at fair value was \$32.9 (\$20.6 after-tax). Refer to Note 3, Airgas Transaction, for further detail.

Other investments primarily included an investment in a publicly traded foreign company. In July 2010, the Company donated 92% of this investment to a tax-exempt charitable organization and sold 8% of its investment for cash. The carrying value of this investment at the time of the transactions was \$17.2. The Company will deduct the fair value of the donation in its fiscal 2010 income tax returns. As a result of the donation, the Company recognized a tax benefit of \$5.8 in the fourth quarter of 2010. The combined donation and sale had an immaterial impact on operating income.

### **Long-term Debt**

The fair value of the Company's debt is based on estimates using standard pricing models that take into account the value of future cash flows as of the balance sheet date, discounted to a present value using discount factors that match both the time to maturity and currency of the underlying instruments. These standard valuation models utilize observable market data such as interest rate yield curves and currency spot rates. The computation of the fair value of these instruments is generally performed by the Company.

The carrying values and fair values of financial instruments were as follows:

30 September	2010		2009	
	Carrying Value	Fair Value	Carrying Value	Fair Value
<b>Assets</b>				
Derivatives				
Foreign exchange contracts	\$74.7	\$74.7	\$59.8	\$59.8
Interest rate swap contracts	39.7	39.7	15.1	15.1
Commodity swap contracts	—	—	4.3	4.3
Available-for-sale securities				
Airgas investment	102.5	102.5	—	—
Other investments	1.1	1.1	19.4	19.4
<b>Liabilities</b>				
Derivatives				
Foreign exchange contracts	\$50.5	\$50.5	\$103.9	\$103.9
Interest rate swap contracts	3.7	3.7	3.4	3.4
Commodity swap contracts	—	—	2.4	2.4
Long-term debt, including current portion	3,842.3	4,146.4	4,167.7	4,479.5

The carrying amounts reported in the balance sheet for cash and cash items, trade receivables, payables and accrued liabilities, accrued income taxes, and short-term borrowings approximate fair value due to the short-term nature of these instruments. Accordingly, these items have been excluded from the above table.



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The fair value hierarchy prioritizes the inputs to valuation techniques used to measure fair value into three broad levels as follows:

Level 1—Quoted prices (unadjusted) in active markets for identical assets or liabilities.

Level 2—Inputs that are observable for the asset or liability, either directly or indirectly through market corroboration, for substantially the full term of the asset or liability.

Level 3—Inputs that are unobservable for the asset or liability based on the Company's own assumptions (about the assumptions market participants would use in pricing the asset or liability).

The following table summarizes assets and liabilities measured at fair value on a recurring basis in the consolidated balance sheets:

	30 September 2010				30 September 2009			
	Total	Level 1	Level 2	Level 3	Total	Level 1	Level 2	Level 3
<b>Assets at Fair Value</b>								
Derivatives								
Foreign exchange contracts	\$74.7	\$—	\$74.7	\$—	\$59.8	\$—	\$59.8	\$—
Interest rate swap contracts	39.7	—	39.7	—	15.1	—	15.1	—
Commodity swap contracts	—	—	—	—	4.3	—	4.3	—
Available-for-sale securities								
Airgas investment	102.5	102.5	—	—	—	—	—	—
Other investments	1.1	1.1	—	—	19.4	19.4	—	—
<b>Total Assets at Fair Value</b>	<b>\$218.0</b>	<b>\$103.6</b>	<b>\$114.4</b>	<b>\$—</b>	<b>\$98.6</b>	<b>\$19.4</b>	<b>\$79.2</b>	<b>\$—</b>
<b>Liabilities at Fair Value</b>								
Derivatives								
Foreign exchange contracts	\$50.5	\$—	\$50.5	\$—	\$103.9	\$—	\$103.9	\$—
Interest rate swap contracts	3.7	—	3.7	—	3.4	—	3.4	—
Commodity swap contracts	—	—	—	—	2.4	—	2.4	—
<b>Total Liabilities at Fair Value</b>	<b>\$54.2</b>	<b>\$—</b>	<b>\$54.2</b>	<b>\$—</b>	<b>\$109.7</b>	<b>\$—</b>	<b>\$109.7</b>	<b>\$—</b>

## 15. Debt

The tables below summarize the Company's outstanding debt at 30 September 2010 and 2009:

### Total Debt

30 September	2010	2009
Short-term borrowings	\$286.0	\$333.8
Current portion of long-term debt	182.5	452.1
Long-term debt	3,659.8	3,715.6
<b>Total Debt</b>	<b>\$4,128.3</b>	<b>\$4,501.5</b>

### Short-term Borrowings

30 September	2010	2009
Bank obligations	\$225.1	\$333.8
Short-term borrowings associated with SAGA acquisition	60.9	—
<b>Total Short-term Borrowings</b>	<b>\$286.0</b>	<b>\$333.8</b>

The weighted average interest rate of short-term borrowings outstanding at 30 September 2010 and 2009 was 3.2% and 3.9%, respectively.

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**Long-term Debt**

30 September	Maturities	2010	2009
<b>Payable in U.S. Dollars</b>			
<b>Debentures</b>			
8.75%	2021	<b>\$18.4</b>	\$18.4
<b>Medium-term Notes</b>			
Weighted average rate			
Series D 6.8%	2011 to 2016	<b>63.1</b>	63.1
Series E 7.6%	2026	<b>17.2</b>	17.2
Series F 6.2%	2010	—	50.0
Series G 4.1%	2011	<b>125.0</b>	125.0
<b>Senior Notes</b>			
Note 4.15%	2013	<b>300.0</b>	300.0
Note 4.375%	2019	<b>400.0</b>	400.0
<b>Other</b>			
Weighted average rate			
Variable-rate industrial revenue bonds 0.5%	2016 to 2050	<b>975.1</b>	902.1
Other 2.3%	2013 to 2019	<b>55.1</b>	70.7
<b>Payable in Other Currencies</b>			
Eurobonds 1.2% (floating rate)	2010	—	365.5
Eurobonds 4.25%	2012	<b>408.1</b>	438.5
Eurobonds 3.75%	2014	<b>408.1</b>	438.5
Eurobonds 3.875%	2015	<b>408.1</b>	438.5
Eurobonds 4.625%	2017	<b>408.1</b>	438.5
Other 5.0%	2011 to 2018	<b>255.3</b>	105.5
<b>Capital Lease Obligations</b>			
United States 5.0%	2011 to 2018	<b>5.5</b>	6.1
Foreign 5.1%	2011 to 2013	<b>4.3</b>	2.8
Less: Unamortized Discount		<b>(9.1)</b>	(12.7)
		<b>3,842.3</b>	4,167.7
Less: Current Portion		<b>(182.5)</b>	(452.1)
<b>Total Long-term Debt</b>		<b>\$3,659.8</b>	\$3,715.6

Maturities of long-term debt in each of the next five years and beyond are as follows: \$182.5 in 2011, \$452.8 in 2012, \$334.7 in 2013, \$488.3 in 2014, \$444.3 in 2015, and \$1,939.7 thereafter.

During 2010, the Company issued Industrial Revenue Bonds totaling \$85.0, the proceeds of which must be held in escrow until related project spending occurs. As of 30 September 2010, proceeds of \$51.2 were held in escrow and classified as a noncurrent asset.

In February 2010, the Company commenced a tender offer to acquire all outstanding common stock of Airgas as further discussed in Note 3, Airgas Transaction. In connection with this tender offer, the Company has secured committed financing in the form of a \$6.7 billion term loan credit facility. Borrowings under this credit facility will be available beginning on the date of the consummation of the tender offer, which must occur no later than 4 February 2011. All borrowings under this credit facility will mature on the date that is one year from the consummation of the tender offer. The credit facility agreement contains one financial covenant, a maximum leverage ratio, and other affirmative and negative covenants, including restrictions on liens and certain subsidiary indebtedness. It also requires mandatory commitment reduction/prepayment for certain capital market transactions and asset dispositions. Fees incurred to secure this credit facility have been deferred and are being amortized over the term of the arrangement.

The Company has obtained the commitment of a number of commercial banks to lend money at market rates whenever needed. At 30 September 2009, the Company's total multicurrency committed credit facility amounted to \$1,450.0. On 8 July 2010, the Company replaced this facility with a new \$2,000.0 multicurrency committed credit facility maturing on 8 July 2013. Facility fees were modified to reflect current market rates. The Company has one financial covenant associated with this new credit facility. The covenant indicates that the ratio of total debt to earnings before interest, taxes, depreciation, and amortization (EBITDA) shall not exceed 3.0. This credit facility provides a

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source of liquidity and is used to support the issuance of commercial paper. No borrowings were outstanding under this commitment at the end of 2010. Additional commitments totaling \$518.7 are maintained by the Company's foreign subsidiaries, of which \$345.2 was borrowed and outstanding at 30 September 2010.

Various debt agreements to which the Company is a party also include financial covenants and other restrictions, including restrictions pertaining to the ability to create property liens and enter into certain sale and leaseback transactions. The Company is in compliance with all of its financial debt covenants.

**16. Retirement Benefits**

The Company and certain of its subsidiaries sponsor defined benefit pension plans and defined contribution plans that cover a substantial portion of its worldwide employees. The principal defined benefit pension plans are the U.S. salaried pension plan and the U.K. pension plan. These plans were closed to new participants in 2005 and were replaced with defined contribution plans. The principal defined contribution plan is the Retirement Savings Plan, in which a substantial portion of the U.S. employees participate; a similar plan is offered to U.K. employees. The Company also provides other postretirement benefits consisting primarily of healthcare benefits to U.S. retirees who meet age and service requirements.

**Defined Benefit Pension Plans**

Pension benefits earned are generally based on years of service and compensation during active employment. The cost of the Company's defined benefit pension plans included the following components:

	2010		2009		2008	
	U.S.	International	U.S.	International	U.S.	International
Service cost	\$42.5	\$24.2	\$33.9	\$26.6	\$42.3	\$35.4
Interest cost	123.4	60.2	124.0	60.9	117.6	63.3
Expected return on plan assets	(164.3)	(64.3)	(146.5)	(55.3)	(143.2)	(63.6)
Amortization						
Prior service cost	2.7	.7	2.6	1.3	1.9	1.3
Transition	—	—	—	—	—	.1
Actuarial loss	46.9	19.9	6.2	10.8	19.6	18.3
Settlements and curtailments	10.7	.8	9.7	4.8	29.9	.4
Special termination benefits	(.9)	4.2	7.2	22.1	.1	1.1
Other	—	2.3	—	1.7	—	2.5
<b>Net Periodic Pension Cost</b>	<b>\$61.0</b>	<b>\$48.0</b>	<b>\$37.1</b>	<b>\$72.9</b>	<b>\$68.2</b>	<b>\$58.8</b>

The Company calculated net periodic pension cost for a given fiscal year based on assumptions developed at the end of the previous fiscal year. The following table sets forth the weighted average assumptions used in the calculation of net periodic pension cost:

	2010		2009		2008	
	U.S.	International	U.S.	International	U.S.	International
Discount rate	5.7%	5.5%	7.6%	6.5%	6.4%	5.7%
Expected return on plan assets	8.8%	7.3%	8.8%	7.4%	9.5%	7.5%
Rate of compensation increase	4.3%	3.7%	4.3%	4.4%	4.5%	3.8%

The Company's U.S. supplemental pension plan provides for a lump sum benefit payment option at the time of retirement, or for corporate officers, six months after the participant's retirement date. The Company recognizes pension settlements when payments exceed the sum of the service and interest cost components of net periodic pension cost of the plan for the fiscal year. A settlement loss is recognized when the pension obligation is settled. The Company recognized \$11.5, \$10.7, and \$30.3 of settlement charges in 2010, 2009, and 2008, respectively.

Special termination benefits for fiscal year 2010 included \$2.8 for the global cost reduction plan. Special termination benefits for fiscal year 2009 included \$28.5 for the global cost reduction plan. The global cost reduction charge for fiscal year 2009 also included \$3.8 for curtailment losses related to the U.K. pension plans.

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The projected benefit obligation (PBO) is the actuarial present value of benefits attributable to employee service rendered to date, including the effects of estimated future salary increases. The following table sets forth the weighted average assumptions used in the calculation of the PBO:

	2010		2009	
	U.S.	International	U.S.	International
Discount rate	5.1%	4.9%	5.7%	5.5%
Rate of compensation increase	4.0%	3.8%	4.3%	3.7%

The following table reflects the change in the PBO and the change in the fair value of plan assets based on the plan year measurement date, as well as the amounts recognized in the consolidated balance sheets.

	2010		2009	
	U.S.	International	U.S.	International
<b>Change in Pension Benefit Obligation</b>				
Obligation at beginning of year	\$2,210.5	\$1,175.5	\$1,638.7	\$1,093.0
Measurement date change	—	—	—	(78.5)
Service cost	42.5	24.2	33.9	26.6
Interest cost	123.4	60.2	124.0	60.9
Amendments	1.3	1.0	.9	.6
Actuarial loss	176.9	115.0	498.0	173.4
Special termination benefits, settlements, and curtailments	3.1	3.0	12.8	23.5
Participant contributions	—	4.1	—	4.6
Benefits paid	(111.5)	(48.0)	(97.8)	(60.9)
Currency translation/other	—	(27.6)	—	(67.7)
<b>Obligation at End of Year</b>	<b>\$2,446.2</b>	<b>\$1,307.4</b>	<b>\$2,210.5</b>	<b>\$1,175.5</b>
<b>Change in Plan Assets</b>				
Fair value at beginning of year	\$1,457.7	\$793.3	\$1,424.7	\$793.5
Actual return on plan assets	153.5	77.7	9.4	41.6
Company contributions	227.5	179.1	121.4	63.4
Participant contributions	—	4.1	—	4.6
Benefits paid	(111.5)	(48.0)	(97.8)	(60.9)
Currency translation/other	—	(21.8)	—	(48.9)
<b>Fair Value at End of Year</b>	<b>\$1,727.2</b>	<b>\$984.4</b>	<b>\$1,457.7</b>	<b>\$793.3</b>
<b>Funded Status at End of Year</b>	<b>\$(719.0)</b>	<b>\$(323.0)</b>	<b>\$(752.8)</b>	<b>\$(382.2)</b>
<b>Amounts Recognized</b>				
Noncurrent assets	\$—	\$—	\$—	\$8.4
Accrued liabilities	(178.2)	(60.6)	(210.5)	(137.4)
Noncurrent liabilities	(540.8)	(262.4)	(542.3)	(253.2)
<b>Net Amount Recognized</b>	<b>\$(719.0)</b>	<b>\$(323.0)</b>	<b>\$(752.8)</b>	<b>\$(382.2)</b>

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The changes in plan assets and benefit obligation that have been recognized in AOCI on a pretax basis during 2010 and 2009 consist of the following:

	2010		2009	
	U.S.	International	U.S.	International
Net actuarial loss arising during the period	\$191.6	\$103.2	\$640.8	\$148.2
Measurement date change	—	—	—	(49.8)
Amortization of net actuarial loss	(57.6)	(20.7)	(15.9)	(15.6)
Prior service cost arising during the period	1.3	1.0	.8	.6
Amortization of prior service cost	(2.7)	(.7)	(2.6)	(1.3)
<b>Total Recognized in AOCI</b>	<b>\$132.6</b>	<b>\$82.8</b>	<b>\$623.1</b>	<b>\$82.1</b>

The net actuarial loss represents the actual changes in the estimated obligation and plan assets that have not yet been recognized in the consolidated income statement and are included in AOCI. Actuarial losses arising during 2010 and 2009 are primarily attributable to lower discount rates. In 2009, actual asset returns were also below expected returns. Actuarial gains and losses are not recognized immediately, but instead are accumulated as a part of the unrecognized net loss balance and amortized into net periodic pension cost over the average remaining service period of participating employees as certain thresholds are met.

The components recognized in AOCI on a pretax basis at 30 September consisted of:

	2010		2009	
	U.S.	International	U.S.	International
Net actuarial loss	\$1,110.9	\$533.4	\$976.9	\$450.9
Prior service cost	16.9	7.1	18.3	6.8
Net transition liability	—	.4	—	.4
<b>Total Recognized in AOCI</b>	<b>\$1,127.8</b>	<b>\$540.9</b>	<b>\$995.2</b>	<b>\$458.1</b>

The amount of AOCI at 30 September 2010 that is expected to be recognized as a component of net periodic pension cost during fiscal year 2011 is as follows:

	U.S.	International
Net actuarial loss	\$64.9	\$29.4
Prior service cost	2.5	.6

The assets of the Company's defined benefit pension plans consist primarily of equity and fixed-income securities. Except where the Company's equity is a component of an index fund, the defined benefit plans are prohibited by Company policy from holding shares of Company stock.

Asset allocation targets are established based on the long-term return and volatility characteristics of the investment classes and recognize the benefit of diversification and the profiles of the plans' liabilities. The actual and target allocations at the measurement date are as follows:

Asset Category	2010 Target Allocation		2010 Actual Allocation		2009 Actual Allocation	
	U.S.	International	U.S.	International	U.S.	International
Equity securities	60-80%	53-62%	70%	55%	68%	56%
Debt securities	20-30%	36-45%	25%	38%	26%	39%
Real estate/other	0-10%	1-3%	4%	2%	5%	3%
Cash	—	—	1%	5%	1%	2%
<b>Total</b>			<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>

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The following table summarizes pension plan assets measured at fair value by asset class at 30 September 2010 (see Note 14, Fair Value Measurements, for definition of the levels):

	Fair Value			
	Total	Level 1	Level 2	Level 3
<b>U.S. Qualified Pension Plans</b>				
Cash and cash equivalents	\$8.3	\$8.3	\$—	\$—
Equity securities	551.1	551.1	—	—
Equity mutual funds	87.4	87.4	—	—
Equity pooled funds	573.1	—	573.1	—
Fixed Income				
Bonds (government and corporate)	17.8	—	17.8	—
Mortgage and asset-backed securities	31.7	—	31.7	—
Mutual funds	50.6	50.6	—	—
Pooled funds	330.2	—	330.2	—
Real estate pooled funds	77.0	—	—	77.0
<b>Total U.S. Qualified Pension Plans</b>	<b>\$1,727.2</b>	<b>\$697.4</b>	<b>\$952.8</b>	<b>\$77.0</b>
<b>International Pension Plans</b>				
Cash and cash equivalents	\$46.5	\$46.5	\$—	\$—
Equity pooled funds	538.3	—	538.3	—
Fixed income pooled funds	297.6	—	297.6	—
Other pooled funds	25.9	—	8.0	17.9
Insurance contracts	76.1	—	—	76.1
<b>Total International Pension Plans</b>	<b>\$984.4</b>	<b>\$46.5</b>	<b>\$843.9</b>	<b>\$94.0</b>

The following table summarizes changes in fair value of the pension plan assets classified as Level 3, by asset class, for the period ended 30 September 2010:

	Fair Value Beginning of Year	Actual Return On Plan Assets		Purchases, Sales, and Settlements, Net	Fair Value End of Year
		Assets Held End of year	Assets Sold During Period		
<b>U.S. Qualified Pension Plans</b>					
Real estate pooled funds	\$72.7	\$4.3	\$—	\$—	\$77.0
<b>Total U.S. Qualified Pension Plans</b>	<b>\$72.7</b>	<b>\$4.3</b>	<b>\$—</b>	<b>\$—</b>	<b>\$77.0</b>
<b>International Pension Plans</b>					
Other pooled funds	\$13.0	\$5	\$2	\$4.2	\$17.9
Insurance contracts	66.7	5.1	—	4.3	76.1
<b>Total International Pension Plans</b>	<b>\$79.7</b>	<b>\$5.6</b>	<b>\$2</b>	<b>\$8.5</b>	<b>\$94.0</b>

The descriptions and fair value methodologies for the U.S. and International pension plan assets are as follows:

**Cash and Cash Equivalents**

The carrying amounts of cash and cash equivalents approximate fair value due to the short-term maturity.

**Equity Securities**

Equity securities are valued at the closing market price reported on a U.S. exchange where the security is actively traded and are therefore classified as Level 1 assets.

**Mutual Funds**

Shares of mutual funds are valued at the net asset value (NAV) quoted on the exchange where the fund is traded and are classified as Level 1 assets. NAV is used as a practical expedient for fair value.

**Pooled Funds**

Units of pooled funds are valued at the per unit NAV determined by the fund manager and are classified as Level 2 assets. NAV is used as a practical expedient for fair value.

**Corporate and Government Bonds**

Corporate and government bonds are classified as Level 2 assets, as they are either valued at quoted market prices from observable pricing sources at the reporting date or valued based upon comparable securities with similar yields and credit ratings.

**Mortgage and Asset-Backed Securities**

Securities are classified as Level 2 assets, as they are either valued at quoted market prices from observable pricing sources at the reporting date or valued based upon comparable securities with similar yields, credit ratings, and purpose of the underlying loan.

**Real Estate Pooled Funds**

Funds are classified as Level 3 assets, as they are carried at the estimated fair value of the underlying properties. Estimated fair value is calculated utilizing a combination of key inputs such as revenue and expense growth rates, terminal capitalization rates, and discount rates. These key inputs are consistent with practices prevailing within the real estate investment management industry.

**Other Pooled Funds**

Securities classified as Level 2 assets are valued at the NAV of the shares held at year end, which is based on the fair value of the underlying investments. Securities and interests classified as Level 3 are carried at the estimated fair value. The estimated fair value is based on the fair value of the underlying investment values, which includes estimated bids from brokers or other third-party vendor sources that utilize expected cash flow streams and other un-corroborated data, including counterparty credit quality, default risk, discount rates and the overall capital market liquidity.

**Insurance Contracts**

Interests are classified as Level 3 assets, as they are carried at contract value, which approximates the estimated fair value. The estimated fair value is based on the fair value of the underlying investment of the insurance company.

The Company employs a mix of active and passive investment strategies. Over a full market cycle, the total return on plan assets is expected to exceed that of a passive strategy tracking index returns in each asset category.

The expected return on plan assets assumption is based on an estimated weighted average of long-term returns of major asset classes. In determining asset class returns, the Company takes into account long-term returns of major asset classes, historical performance of plan assets, and related value of active management, as well as the current interest rate environment.

The Company anticipates contributing approximately \$247 to the defined benefit pension plans in 2011.

Projected benefit payments, which reflect expected future service, are as follows:

	U.S.	International
2011	\$95.6	\$43.3
2012	103.9	45.2
2013	110.4	48.7
2014	117.7	50.7
2015	125.7	52.3
2016–2020	760.6	285.8

These estimated benefit payments are based on assumptions about future events. Actual benefit payments may vary significantly from these estimates.

The accumulated benefit obligation (ABO) is the actuarial present value of benefits attributed to employee service rendered to a particular date, based on current salaries. The ABO for all defined benefit pension plans was \$3,327.6 and \$2,970.8 at the end of 2010 and 2009, respectively.



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The following table provides information on pension plans where the PBO exceeds the value of plan assets at 30 September:

	2010		2009	
	U.S.	International	U.S.	International
PBO	\$2,446.2	\$1,294.8	\$2,210.5	\$1,036.3
ABO	2,121.5	1,196.5	1,885.0	973.5
Plan assets	1,727.2	971.2	1,457.7	645.0

The following table provides information on pension plans where the ABO exceeds the value of plan assets at 30 September:

	2010		2009	
	U.S.	International	U.S.	International
PBO	\$2,446.2	\$1,263.4	\$2,210.5	\$1,008.4
ABO	2,121.5	1,170.4	1,885.0	955.8
Plan assets	1,727.2	944.5	1,457.7	620.2

Included in the tables above are several pension arrangements that are not funded because of jurisdictional practice. The ABO and PBO related to these plans for 2010 were \$118.0 and \$159.3, respectively.

### Defined Contribution Plans

The Company maintains a nonleveraged employee stock ownership plan (ESOP) which forms part of the Air Products and Chemicals, Inc. Retirement Savings Plan (RSP). The ESOP was established in May of 2002. The balance of the RSP is a qualified defined contribution plan including a 401(k) elective deferral component. A substantial portion of U.S. employees are eligible and participate.

Dividends paid on ESOP shares are treated as ordinary dividends by the Company. Under existing tax law, the Company may deduct dividends which are paid with respect to shares held by the plan. Shares of the Company's common stock in the ESOP totaled 5,276,922 as of 30 September 2010.

The Company matches a portion of the participants' contributions to the RSP and other various worldwide defined contribution plans. The Company's contributions to the RSP include a Company core contribution for certain eligible employees who do not receive their primary retirement benefit from the defined benefit pension plans, with the core contribution based on a percentage of pay that is dependent on years of service. For the RSP, the Company also makes matching contributions on overall employee contributions as a percentage of the employee contribution and includes an enhanced contribution for certain eligible employees (not participating in the defined benefit pension plans). Worldwide contributions expensed to income in 2010, 2009, and 2008 were \$30.8, \$30.6, and \$30.1, respectively.

### Other Postretirement Benefits

The Company provides other postretirement benefits consisting primarily of healthcare benefits to certain U.S. retirees who meet age and service requirements. The healthcare benefit is a continued medical benefit until the retiree reaches age 65. Healthcare benefits are contributory, with contribution percentages adjusted periodically. The retiree medical costs are capped at a specified dollar amount, with the retiree contributing the remainder.

The cost of the Company's other postretirement benefit plans included the following components:

	2010	2009	2008
Service cost	\$4.7	\$4.0	\$5.9
Interest cost	4.6	6.5	5.8
Amortization			
Prior service credit	(.1)	(1.4)	(1.4)
Actuarial loss	2.9	.1	1.7
<b>Net Periodic Postretirement Cost</b>	<b>\$12.1</b>	<b>\$9.2</b>	<b>\$12.0</b>

The Company calculates net periodic postretirement cost for a given fiscal year based on assumptions developed at the end of the previous fiscal year. The discount rate assumption used in the calculation of net periodic postretirement cost for 2010, 2009, and 2008 was 4.2%, 7.4%, and 5.7%, respectively.

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The Company measures the other postretirement benefits as of 30 September. The discount rate assumption used in the calculation of the accumulated postretirement benefit obligation was 2.8% and 4.2% for 2010 and 2009, respectively.

The following table reflects the change in the accumulated postretirement benefit obligation and the amounts recognized in the consolidated balance sheets:

	2010	2009
<b>Obligation at beginning of year</b>	<b>\$116.0</b>	<b>\$98.8</b>
Service cost	4.7	4.0
Interest cost	4.6	6.5
Actuarial loss	7.8	18.7
Benefits paid	(12.2)	(12.0)
<b>Obligation at End of Year</b>	<b>\$120.9</b>	<b>\$116.0</b>
<b>Amounts Recognized</b>		
Accrued liabilities	\$13.7	\$13.5
Noncurrent liabilities	107.2	102.5

The changes in benefit obligation that have been recognized in AOCI on a pretax basis during 2010 and 2009 for the Company's other postretirement benefit plans consist of the following:

	2010	2009
Net actuarial loss arising during the period	\$7.8	\$18.7
Amortization of net actuarial loss	(2.9)	(.1)
Amortization of prior service credit	.1	1.4
<b>Total Recognized in AOCI</b>	<b>\$5.0</b>	<b>\$20.0</b>

The components recognized in AOCI on a pretax basis at 30 September consisted of:

	2010	2009
Net actuarial loss	\$35.5	\$30.6
Prior service credit	—	(.1)
<b>Amount Recognized in AOCI</b>	<b>\$35.5</b>	<b>\$30.5</b>

Of the 30 September 2010 actuarial loss, it is estimated that \$3.6 will be amortized into net periodic postretirement cost over fiscal year 2011.

The assumed healthcare trend rates are as follows:

	2010	2009
Healthcare trend rate	8.0%	9.5%
Ultimate trend rate	5.0%	5.0%
Year the ultimate trend rate is reached	2014	2014

The effect of a change in the healthcare trend rate is slightly tempered by a cap on the average retiree medical cost. The impact of a one percentage point change in the assumed healthcare cost trend rate on net periodic postretirement cost and the obligation is not material.

Projected benefit payments are as follows:

2011	\$13.9
2012	13.6
2013	13.2
2014	12.9
2015	12.5
2016–2020	55.8

These estimated benefit payments are based on assumptions about future events. Actual benefit payments may vary significantly from these estimates.

## **17. Commitments and Contingencies**

### **Litigation**

The Company is involved in various legal proceedings, including competition, environmental, health, safety, product liability, and insurance matters. In September 2010, the Brazilian Administrative Council for Economic Defense (CADE) issued a decision against the Company's Brazilian subsidiary, Air Products Brasil Ltda., and several other Brazilian industrial gas companies for alleged anticompetitive activities. CADE imposed a civil fine of R\$179.2 on Air Products Brasil Ltda. This fine was based on a recommendation by a unit of the Brazilian Ministry of Justice whose investigation began in 2003 alleging violation of competition laws with respect to the sale of industrial and medical gases. The fines are based on a percentage of the Company's total revenue in Brazil in 2003.

The Company has denied the allegations made by the authorities and filed an appeal in October 2010 to the Brazilian courts. Certain of the Company's defenses, if successful, could result in the matter being dismissed with no fine against the Company. The Company, with advice of its outside legal counsel, has assessed the status of this matter and has concluded that although an adverse final judgment after exhausting all appeals is reasonably possible, such a judgment is not probable. As a result, no provision has been made in the consolidated financial statements.

The Company is required to provide security in order to suspend execution of the judgment during the appeal process, during which time interest will accrue on the fine. The security could be in the form of a bank guarantee or in other forms which the courts deem acceptable. The security is only collectible by the courts in the event the Company is not successful in its appeal and does not timely pay the fine. The form of security to be provided by the Company has not been finally determined.

While the Company does not expect that any sums it may have to pay in connection with this or any other legal proceeding would have a materially adverse effect on its consolidated financial position or net cash flows, a future charge for regulatory fines or damage awards could have a significant impact on the Company's net income in the period in which it is recorded.

### **Environmental**

In the normal course of business, the Company is involved in legal proceedings under the federal Superfund law, similar state environmental laws, and RCRA relating to the designation of certain sites for investigation or remediation. Presently, there are approximately 30 sites on which a final settlement has not been reached where the Company, along with others, has been designated a potentially responsible party by the Environmental Protection Agency or is otherwise engaged in investigation or remediation. In addition, the Company is also involved in cleanup activities at certain of its current and former manufacturing sites. The Company continually monitors these sites for which it has environmental exposure.

Accruals for environmental loss contingencies are recorded when it is probable that a liability has been incurred and the amount of loss can be reasonably estimated consistent with the policy set forth in Note 1, Major Accounting Policies. The consolidated balance sheets at 30 September 2010 and 2009 included an accrual of \$87.0 and \$95.0, respectively, primarily as part of other noncurrent liabilities. The environmental liabilities will be paid over a period of up to 30 years. The Company estimates the exposure for environmental loss contingencies to range from \$87 to a reasonably possible upper exposure of \$101 as of 30 September 2010.

Actual costs to be incurred at identified sites in future periods may vary from the estimates, given inherent uncertainties in evaluating environmental exposures. Using reasonably possible alternative assumptions of the exposure level could result in an increase to the environmental accrual. Due to the inherent uncertainties related to environmental exposures, a significant increase to the reasonably possible upper exposure level could occur if a new site is designated, the scope of remediation is increased, a different remediation alternative is identified, or a significant increase in the Company's proportionate share occurs. The Company does not expect that any sum it may have to pay in connection with environmental matters in excess of the amounts recorded or disclosed above would have a material adverse impact on its financial position or results of operations in any one year.

### **PACE**

At 30 September 2010, \$36.5 of the environmental accrual was related to the Pace facility.

In 2006, the Company sold its Amines business, which included operations at Pace, Florida and recognized a liability for retained environmental obligations associated with remediation activities at Pace. The Company is required by the

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Florida Department of Environmental Protection (FDEP) and the United States Environmental Protection Agency (USEPA) to continue its remediation efforts. The Company estimated that it would take about 20 years to complete the groundwater remediation, and the costs through completion were estimated to range from \$42 to \$50. As no amount within the range was a better estimate than another, the Company recognized a pretax expense in fiscal 2006 of \$42.0 as a component of income from discontinued operations and recorded an environmental accrual of \$42.0 in continuing operations on the consolidated balance sheets. There has been no change to the estimated exposure range related to the Pace facility.

The Company has implemented many of the remedial corrective measures at the Pace, Florida facility required under 1995 Consent Orders issued by the FDEP and the USEPA. Contaminated soils have been bioremediated, and the treated soils have been secured in a lined on-site disposal cell. Several groundwater recovery systems have been installed to contain and remove contamination from groundwater. The Company completed an extensive assessment of the site to determine how well existing measures are working, what additional corrective measures may be needed, and whether newer remediation technologies that were not available in the 1990s might be suitable to more quickly and effectively remove groundwater contaminants. Based on assessment results, the Company completed a focused feasibility study that identified new and alternative approaches which should more effectively remove contaminants and achieve the targeted remediation goals. The Company is reviewing the new approaches with the FDEP.

### **PIEDMONT**

At 30 September 2010, \$21.5 of the environmental accrual was related to the Piedmont site.

On 30 June 2008, the Company sold its Elkton, Maryland and Piedmont, South Carolina production facilities and the related North American atmospheric emulsions and global pressure sensitive adhesives businesses. In connection with the sale, the Company recognized a liability for retained environmental obligations associated with remediation activities at the Piedmont site. This site is under active remediation for contamination caused by an insolvent prior owner. The sale of the site triggered expense recognition. Prior to the sale, remediation costs had been capitalized since they improved the property as compared to its condition when originally acquired. The Company is required by the South Carolina Department of Health and Environmental Control to address both contaminated soil and groundwater. Numerous areas of soil contamination have been addressed, and contaminated groundwater is being recovered and treated. The Company estimated that it would take until 2015 to complete source area remediation and another 15 years thereafter to complete groundwater recovery, with costs through completion estimated to be \$24.0. The Company recognized a pretax expense in 2008 of \$24.0 as a component of income from discontinued operations and recorded an environmental liability of \$24.0 in continuing operations on the consolidated balance sheets. There has been no change to the estimated exposure.

### **PAULSBORO**

At 30 September 2010, \$14.0 of the environmental accrual was related to the Paulsboro site.

During the first quarter of 2009, management committed to a plan to sell the production facility in Paulsboro, New Jersey and recognized a \$16.0 environmental liability associated with this site. In December 2009, the Company completed the sale of this facility. The Company is required by the New Jersey state law to investigate and, if contaminated, remediate a site upon its sale. The Company estimates that it will take at least several years to complete the investigation/remediation efforts at this site.

### **Guarantees and Warranties**

The Company is a party to certain guarantee agreements, including debt guarantees of equity affiliates and equity support agreements. These guarantees are contingent commitments that are related to activities of the Company's primary businesses.

The Company has guaranteed repayment of some additional borrowings of certain unconsolidated equity affiliates. At 30 September 2010, these guarantees have terms in the range of two to eight years, with maximum potential payments of \$28.7.

The Company has entered into an equity support agreement and operations guarantee related to an air separation facility constructed in Trinidad for a venture in which the Company owns 50%. At 30 September 2010, maximum potential payments under joint and several guarantees were \$68.0. Exposures under the guarantee decline over time and are completely extinguished by 2024.

To date, no equity contributions or payments have been required since the inception of these guarantees. The fair value of the above guarantees is not material.

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The Company, in the normal course of business operations, has issued product warranties in its Equipment business. Also, contracts often contain standard terms and conditions which typically include a warranty and indemnification to the buyer that the goods and services purchased do not infringe on third-party intellectual property rights. The provision for estimated future costs relating to warranties is not material to the consolidated financial statements.

The Company does not expect that any sum it may have to pay in connection with guarantees and warranties will have a materially adverse effect on its consolidated financial condition, liquidity, or results of operations.

### **Put Option Agreements**

The Company has entered into put option agreements with certain affiliated companies as discussed below. The Company accounts for the put options as contingent liabilities to purchase an asset. Since the inception of these agreements and through 30 September 2010, the Company determined that it was not certain that these options would be exercised by the other shareholders.

In 2002, the Company entered into a put option agreement as part of the purchase of an additional interest in San Fu Gas Company, Ltd., renamed Air Products San Fu Company, Ltd. (San Fu), an industrial gas company in Taiwan. Currently, the Company has an ownership interest of 74% in San Fu. Put options were issued which give other shareholders the right to sell San Fu stock to the Company at market price when exercised. The options are effective through January 2015 and allow for the sale of all stock owned by other shareholders to the Company. The estimated U.S. dollar price of purchasing the stock owned by other shareholders based on the exchange rate at 30 September 2010 would be approximately \$240.

In 1999, the Company made an investment in INOX, an Indian industrial gases company. As part of that transaction, put options were issued which gave the other (joint 50%) shareholders the right to require the Company to purchase their shares (approximately 5.1 million) of INOX (renamed INOXAP) at a predefined price. The other shareholders may give notice to exercise the put option between October and December 2010. The option, if exercised, would be effective on 31 July 2011. The option may also be exercised within six months of the death or permanent incapacity of the current Managing Director of INOXAP. The option price is based on a multiple of earnings formula, but not less than 630 Rupees per share. The U.S. dollar price of purchasing all 5.1 million shares based on the multiple of earnings formula at the 30 September 2010 exchange rate would be approximately \$190.

### **Purchase Obligations**

The Company is obligated to make future payments under unconditional purchase obligations as summarized below:

2011	\$482
2012	100
2013	103
2014	112
2015	118
Thereafter	551
<b>Total</b>	<b>\$1,466</b>

Most of the Company's long-term unconditional purchase obligations relate to feedstock supply for numerous HyCO (hydrogen, carbon monoxide, and syngas) facilities. The price of feedstock supply is principally related to the price of natural gas. However, long-term take-or-pay sales contracts to HyCO customers are generally matched to the term of the feedstock supply obligations and provide recovery of price increases in the feedstock supply. Due to the matching of most feedstock supply obligations to customer sales contracts, the Company does not believe these purchase obligations would have a material effect on its financial condition or results of operations.

The above unconditional purchase obligations also include other product supply commitments and also electric power and natural gas supply purchase obligations. In addition, purchase commitments to spend approximately \$330 for additional plant and equipment are included in the unconditional purchase obligations in 2011.

## 18. Capital Stock

Authorized capital stock consists of 25 million preferred shares with a par value of \$1 per share, none of which was outstanding at 30 September 2010, and 300 million shares of common stock with a par value of \$1 per share.

In 2007, the Board of Directors authorized the repurchase of up to \$1,000 of the Company's outstanding common stock. The Company repurchases shares pursuant to Rules 10b5-1 and 10b-18 under the Securities Exchange Act of 1934, as amended, through a 10b5-1 written repurchase plan established with several brokers. At 30 September 2010, \$649.2 in share repurchase authorization remained.

## 19. Share-Based Compensation

The Company has various share-based compensation programs, which include stock options, deferred stock units, and restricted stock. Under all programs, the terms of the awards are fixed at the grant date. The Company issues shares from treasury stock upon the exercise of stock options, the payout of deferred stock units, and the issuance of restricted stock awards. As of 30 September 2010, there were 6,381,410 shares available for future grant under the Company's Long-Term Incentive Plan, which is shareholder approved.

Share-based compensation cost recognized in the consolidated income statement is summarized below:

	2010	2009	2008
Cost of sales	\$4.0	\$7.9	\$8.7
Selling and administrative	42.5	46.9	47.0
Research and development	2.1	4.1	5.7
Global cost reduction plan	—	1.5	—
<b>Before-Tax Share-Based Compensation Cost</b>	<b>48.6</b>	<b>60.4</b>	<b>61.4</b>
Income tax benefit	(18.3)	(23.3)	(23.6)
<b>After-Tax Share-Based Compensation Cost</b>	<b>\$30.3</b>	<b>\$37.1</b>	<b>\$37.8</b>

The amount of share-based compensation cost capitalized in 2010, 2009, and 2008 was not material.

Total before-tax share-based compensation cost by type of program was as follows:

	2010	2009	2008
Stock options	\$25.0	\$38.3	\$36.5
Deferred stock units	21.5	19.2	22.6
Restricted stock	2.1	2.9	2.3
<b>Before-Tax Share-Based Compensation Cost</b>	<b>\$48.6</b>	<b>\$60.4</b>	<b>\$61.4</b>

### Stock Options

The Company has granted awards of options to purchase common stock to executives, selected employees, and outside directors. The exercise price of stock options equals the market price of the Company's stock on the date of the grant. Options generally vest incrementally over three years, and remain exercisable for ten years from the date of grant. Options have not been issued to directors since 2005.

The fair value of options granted was estimated using a lattice-based option valuation model that used the assumptions noted in the table below. Expected volatility and expected dividend yield are based on actual historical experience of the Company's stock and dividends over the historical period equal to the option term. The expected life represents the period of time that options granted are expected to be outstanding based on an analysis of Company-specific historical exercise data. The range given below results from certain groups of employees exhibiting different behavior. Groups of employees that have similar historical exercise behavior were considered separately for valuation purposes. The risk-free rate is based on the U.S. Treasury Strips with terms equal to the expected time of exercise as of the grant date.

	2010	2009	2008
Expected volatility	32.6%	31.2%	30.4%
Expected dividend yield	2.1%	2.1%	2.1%
Expected life (in years)	6.8-8.0	6.8-8.0	6.8-8.0
Risk-free interest rate	2.9%–3.3%	3.5%–3.9%	4.5%–4.6%

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The weighted average grant-date fair value of options granted during 2010, 2009, and 2008 was \$25.94, \$20.86, and \$31.84 per option, respectively.

A summary of stock option activity is presented below:

<b>Stock Options</b>	<b>Shares (000)</b>	<b>Weighted Average Exercise Price</b>
Outstanding at 30 September 2009	17,747	\$52.79
Granted	1,018	83.60
Exercised	(2,261)	38.71
Forfeited	(69)	71.86
<b>Outstanding at 30 September 2010</b>	<b>16,435</b>	<b>\$56.56</b>
<b>Exercisable at 30 September 2010</b>	<b>13,799</b>	<b>\$52.51</b>

<b>Stock Options</b>	<b>Weighted Average Remaining Contractual Terms (in years)</b>	<b>Aggregate Intrinsic Value</b>
<b>Outstanding at 30 September 2010</b>	<b>4.4</b>	<b>\$451</b>
<b>Exercisable at 30 September 2010</b>	<b>3.6</b>	<b>\$431</b>

The aggregate intrinsic value represents the amount by which the Company's closing stock price of \$82.82 as of 30 September 2010 exceeds the exercise price multiplied by the number of in-the-money options outstanding or exercisable as of that date.

The total intrinsic value of stock options exercised during 2010, 2009, and 2008 was \$92.4, \$62.1, and \$138.0, respectively.

Compensation cost is generally recognized over the stated vesting period consistent with the terms of the arrangement (i.e., either on a straight-line or graded-vesting basis). Expense recognition is accelerated for retirement-eligible individuals who would meet the requirements for vesting of awards upon their retirement. As of 30 September 2010, there was \$11.5 of unrecognized compensation cost related to nonvested stock options, which is expected to be recognized over a weighted average period of 1.2 years.

Cash received from option exercises during 2010 was \$88.1. The total tax benefit realized from stock option exercises in 2010 was \$33.7, of which \$21.8 was the excess tax benefit.

### **Deferred Stock Units and Restricted Stock**

The grant-date fair value of deferred stock units and restricted stock is estimated on the date of grant based on the market price of the stock, and compensation cost is generally amortized to expense on a straight-line basis over the vesting period during which employees perform related services. Expense recognition is accelerated for retirement-eligible individuals who would meet the requirements for vesting of awards upon their retirement.

### **Deferred Stock Units**

The Company has granted deferred stock units to executives, selected employees, and outside directors. These deferred stock units entitle the recipient to one share of common stock upon vesting, which is conditioned on continued employment during the deferral period and may also be conditioned on earn-out against certain performance targets. The deferral period for some units ends after death, disability, or retirement. The deferral period for other performance-based deferred stock units ends at the end of the performance period (one to three years). Additionally, the Company has granted deferred stock units, subject to a three-, four-, or five-year deferral period, to selected employees. Deferred stock units issued to directors are paid after service on the Board of Directors ends at the time elected by the director (not to exceed 10 years after service ends).

<b>Deferred Stock Units</b>	<b>Shares (000)</b>	<b>Weighted Average Grant-Date Fair Value</b>
Outstanding at 30 September 2009	1,602	\$58.13
Granted	310	83.08
Paid out	(361)	51.31
Forfeited/adjustments	(24)	66.13
<b>Outstanding at 30 September 2010</b>	<b>1,527</b>	<b>\$64.67</b>



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Cash payments made for deferred stock units were \$1.4, \$5.2, and \$8.3 in 2010, 2009, and 2008, respectively. As of 30 September 2010, there was \$26.7 of unrecognized compensation cost related to deferred stock units. The cost is expected to be recognized over a weighted average period of 2.5 years. The total fair value of deferred stock units paid out during 2010, 2009, and 2008, including shares vested in prior periods, was \$26.2, \$22.1, and \$51.5, respectively.

### Restricted Stock

The Company has issued shares of restricted stock to certain officers. Participants are entitled to cash dividends and to vote their respective shares. Shares granted prior to 2007 are subject to forfeiture if employment is terminated other than due to death, disability, or retirement. Shares granted since 2007 vest in four years or upon earlier retirement, death, or disability. The shares are nontransferable while subject to forfeiture.

Restricted Stock	Shares (000)	Weighted Average Grant-Date Fair Value
Outstanding at 30 September 2009	125	\$68.16
Granted	31	83.60
Vested	(13)	73.12
Forfeited	(2)	83.60
<b>Outstanding at 30 September 2010</b>	<b>141</b>	<b>\$70.87</b>

As of 30 September 2010, there was \$1.8 of unrecognized compensation cost related to restricted stock awards. The cost is expected to be recognized over a weighted average period of 3.2 years. The total fair value of restricted stock vested during 2010 and 2008 was \$1.0 and \$10.8, respectively. During 2009, no restricted stock vested.

### 20. Noncontrolling Interests

In 2008, the Company entered into a put option agreement to purchase the remaining noncontrolling interest in CryoService Limited (CSL), a cryogenic and specialty gases company in the U.K. The Company increased its ownership at that time from 25% to 72%. Put options were issued which gave the noncontrolling shareholders the right to require the Company to purchase their shares in CSL. The options were effective beginning January 2010 and are exercisable only within a 20-day option period each year. The option price is based on a multiple of earnings formula.

In June 2010, the Company entered into agreements obligating it to purchase 25% of the remaining shares of CSL. The agreements require the consideration, which is based on a multiple of earnings formula, to be remitted in January 2012. The share sale agreements effectively terminate the option agreements. The carrying value of the 25% noncontrolling interest at the time the sale share agreements were entered into was \$10.8. As a result of this arrangement, the Company reduced the noncontrolling interest for the 25% purchase obligation and recorded an estimated liability based on the earnings formula. As the purchase of the noncontrolling interest does not result in a change of control, the difference between the carrying value of the 25% noncontrolling interest and the liability recognized has been recorded as a \$28.3 reduction in capital in excess of par value. At 30 September 2010, the liability amounted to \$42.0 and has been reported in other noncurrent liabilities on the consolidated balance sheet.

The following table presents the effect of changes in ownership interests in subsidiaries on Air Products shareholder's equity:

	2010	2009	2008
Net income attributable to Air Products	\$1,029.1	\$631.3	\$909.7
Transfers to noncontrolling interests			
Decrease in Air Products capital in excess of par value for purchase of noncontrolling interests	(28.3)	—	—
<b>Changes from Net Income Attributable to Air Products and Transfers to Noncontrolling Interests</b>	<b>\$1,000.8</b>	<b>\$631.3</b>	<b>\$909.7</b>

## 21. Earnings per Share

The calculation of basic and diluted earnings per share (EPS) is as follows:

30 September	2010	2009	2008
<b>Numerator</b>			
Net Income Attributable to Air Products (used in basic and diluted EPS)			
Income from continuing operations	\$1,029.1	\$639.9	\$1,090.5
Loss from discontinued operations, net of tax	—	(8.6)	(180.8)
<b>Net Income Attributable to Air Products</b>	<b>\$1,029.1</b>	<b>\$631.3</b>	<b>\$909.7</b>
<b>Denominator (in millions)</b>			
Weighted average number of common shares used in basic EPS			
	212.2	209.9	212.2
Effect of dilutive securities			
Employee stock options	3.9	2.6	5.9
Other award plans	1.0	1.0	1.1
	4.9	3.6	7.0
Weighted average number of common shares and dilutive potential common shares used in diluted EPS			
	217.1	213.5	219.2
<b>Basic EPS Attributable to Air Products</b>			
Income from continuing operations			
	\$4.85	\$3.05	\$5.14
Loss from discontinued operations			
	—	(.04)	(.85)
<b>Net Income Attributable to Air Products</b>	<b>\$4.85</b>	<b>\$3.01</b>	<b>\$4.29</b>
<b>Diluted EPS Attributable to Air Products</b>			
Income from continuing operations			
	\$4.74	\$3.00	\$4.97
Loss from discontinued operations			
	—	(.04)	(.82)
<b>Net Income Attributable to Air Products</b>	<b>\$4.74</b>	<b>\$2.96</b>	<b>\$4.15</b>

Diluted EPS attributable to Air Products reflects the potential dilution that could occur if stock options or other share-based awards were exercised or converted into common stock. The dilutive effect is computed using the treasury stock method, which assumes all share-based awards are exercised and the hypothetical proceeds from exercise are used by the Company to purchase common stock at the average market price during the period. The incremental shares (difference between shares assumed to be issued versus purchased), to the extent they would have been dilutive, are included in the denominator of the diluted EPS calculation. Options on 2.2 million shares, 5.8 million shares, and 1.2 million shares were antidilutive and therefore excluded from the computation of diluted EPS for 2010, 2009, and 2008, respectively.

## 22. Income Taxes

The following table shows the components of the provision for income taxes:

	2010	2009	2008
<b>Federal</b>			
Current	\$100.5	\$88.1	\$131.7
Deferred	47.4	18.1	3.1
	147.9	106.2	134.8
<b>State</b>			
Current	2.7	35.8	2.8
Deferred	4.3	(20.9)	11.0
	7.0	14.9	13.8
<b>Foreign</b>			
Current	140.1	113.7	193.9
Deferred	44.5	(49.5)	22.8
	184.6	64.2	216.7
	<b>\$339.5</b>	<b>\$185.3</b>	<b>\$365.3</b>

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The significant components of deferred tax assets and liabilities are as follows:

<b>30 September</b>	<b>2010</b>	<b>2009</b>
<b>Gross Deferred Tax Assets</b>		
Retirement benefits and compensation accruals	<b>\$491.0</b>	\$508.9
Tax loss carryforwards	<b>62.2</b>	78.7
Tax credits	<b>67.4</b>	74.5
Reserves and accruals	<b>75.4</b>	66.6
Acquisition-related costs	<b>35.9</b>	—
Unremitted earnings of foreign entities	<b>.8</b>	—
Asset impairment	<b>6.7</b>	26.9
Currency losses	<b>29.5</b>	80.4
Other	<b>152.4</b>	167.1
Valuation allowance	<b>(55.4)</b>	(31.9)
<b>Deferred Tax Assets</b>	<b>865.9</b>	971.2
<b>Gross Deferred Tax Liabilities</b>		
Plant and equipment	<b>840.9</b>	896.2
Investment in partnerships	<b>5.6</b>	10.5
Unrealized gain on cost investments	<b>11.8</b>	5.8
Unremitted earnings of foreign entities	<b>—</b>	2.6
Intangible assets	<b>57.0</b>	26.1
Other	<b>76.5</b>	111.3
<b>Deferred Tax Liabilities</b>	<b>991.8</b>	1,052.5
<b>Net Deferred Income Tax Liability</b>	<b>\$125.9</b>	\$81.3

Net current deferred tax assets of \$124.1 and net noncurrent deferred tax assets of \$85.5 were included in other receivables and current assets and other noncurrent assets at 30 September 2010, respectively. Net current deferred tax assets of \$206.6 and net noncurrent deferred tax assets of \$71.5 were included in other receivables and current assets and other noncurrent assets at 30 September 2009, respectively.

Foreign and state loss carryforwards as of 30 September 2010 were \$161.3 and \$306.3, respectively. The foreign losses have expiration periods beginning in 2011. Some of the foreign operations operate in jurisdictions with unlimited carryforward periods. State operating loss carryforwards have expiration periods that range between 2011 and 2030.

The valuation allowance as of 30 September 2010 primarily relates to the tax loss carryforwards referenced above. If events warrant the reversal of the \$55.4 valuation allowance, it would result in a reduction of tax expense. The Company believes it is more likely than not that future earnings will be sufficient to utilize the Company's deferred tax asset, net of existing valuation allowance, at 30 September 2010.

Major differences between the United States federal statutory tax rate and the effective tax rate are:

(Percent of income before taxes)	<b>2010</b>	<b>2009</b>	<b>2008</b>
U.S. federal statutory tax rate	<b>35.0%</b>	35.0%	35.0%
State taxes, net of federal benefit	<b>.3</b>	1.1	.8
Income from equity affiliates	<b>(3.0)</b>	(4.7)	(3.3)
Foreign taxes and credits	<b>(8.3)</b>	(7.3)	(6.1)
Domestic production activities	<b>(.6)</b>	(1.1)	(.6)
Tax audit settlements and adjustments	<b>—</b>	(.8)	—
Donation of investments	<b>(.4)</b>	—	—
Other	<b>1.4</b>	(.1)	(1.1)
<b>Effective Tax Rate</b>	<b>24.4%</b>	22.1%	24.7%

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The following table summarizes the income of U.S. and foreign operations, before taxes:

	2010	2009	2008
<b>Income from Continuing Operations</b>			
United States	\$464.5	\$374.3	\$479.5
Foreign	802.6	350.1	854.3
Income from equity affiliates	126.9	112.2	145.0
<b>Total</b>	<b>\$1,394.0</b>	<b>\$836.6</b>	<b>\$1,478.8</b>

The Company does not pay or record U.S. income taxes on the undistributed earnings of its foreign subsidiaries and corporate joint ventures as long as those earnings are permanently reinvested in the companies that produced them. These cumulative undistributed earnings are included in retained earnings on the consolidated balance sheets and amounted to \$3,442.6 at the end of 2010. An estimated \$824.0 in U.S. income and foreign withholding taxes would be due if these earnings were remitted as dividends after payment of all deferred taxes.

At 30 September 2010 and 2009, the Company had \$233.7 and \$194.9 of unrecognized tax benefits, of which \$137.5 and \$101.6, respectively, would impact the effective tax rate if recognized. Interest and penalties related to unrecognized tax benefits are recorded as a component of income tax expense and totaled \$5.5 in 2010, \$2.5 in 2009, and \$3.1 in 2008. The Company's balance of unrecognized tax benefits included an accrual for interest and penalties of \$36.0 and \$31.8 in 2010 and 2009, respectively.

The Company believes that it is possible that the U.S. Internal Revenue Service may complete its audit of the tax years 2007 and 2008 within the next twelve months. The Company is currently under examination in a number of other tax jurisdictions, some of which may be resolved in the next twelve months. As a result, it is reasonably possible that a change in the unrecognized tax benefits may occur during the next twelve months. However, quantification of an estimated range cannot be made at this time. A reconciliation of the beginning and ending amount of the unrecognized tax benefits is as follows:

<b>Unrecognized Tax Benefits</b>	2010	2009	2008
<b>Balance at beginning of year</b>	<b>\$194.9</b>	<b>\$184.1</b>	<b>\$116.5</b>
Additions for tax positions of the current year	37.3	25.6	58.3
Additions for tax positions of prior years	13.1	39.0	20.1
Reductions for tax positions of prior years	(1.1)	(45.2)	(5.2)
Settlements	—	(5.4)	(4.6)
Statute of limitations expiration	(6.3)	(5.4)	(3.4)
Foreign currency translation	(4.2)	2.2	2.4
<b>Balance at End of Year</b>	<b>\$233.7</b>	<b>\$194.9</b>	<b>\$184.1</b>

The Company generally remains subject to examination in the following major tax jurisdictions for the years indicated below:

<b>Major Tax Jurisdiction</b>	Open Tax Years
<b>North America</b>	
United States	2007–2010
Canada	2006–2010
<b>Europe</b>	
United Kingdom	2007–2010
Germany	2006–2010
Netherlands	2005–2010
Poland	2004–2010
Spain	2005–2010
<b>Asia</b>	
China	2005–2010
Taiwan	2005–2010
Korea	2005–2010

**23. Supplemental Information****Other Receivables and Current Assets**

<b>30 September</b>	<b>2010</b>	<b>2009</b>
Deferred tax assets	\$124.1	\$206.6
Derivative instruments	42.6	54.1
Other receivables	120.7	89.9
Current capital lease receivables	39.1	32.6
Other	45.6	21.6
	<b>\$372.1</b>	<b>\$404.8</b>

**Other Noncurrent Assets**

<b>30 September</b>	<b>2010</b>	<b>2009</b>
Restricted cash	\$95.7	\$129.0
Derivative instruments	71.8	25.1
Other long-term receivables	61.6	72.6
Airgas investment	102.5	—
Other investments	1.1	19.4
Deferred tax assets	85.5	71.5
Prepaid pension benefit cost	—	8.4
Other deferred charges	119.1	112.0
	<b>\$537.3</b>	<b>\$438.0</b>

**Payables and Accrued Liabilities**

<b>30 September</b>	<b>2010</b>	<b>2009</b>
Trade creditors	\$662.2	\$577.6
Customer advances	80.7	72.6
Accrued payroll and employee benefits	207.5	138.8
Pension benefits	238.8	347.9
Dividends payable	104.8	95.1
Outstanding payments in excess of certain cash balances	31.4	25.2
Accrued interest expense	52.9	59.2
Derivative instruments	31.9	61.3
Global cost reduction plan accrual	1.9	110.4
Acquisition-related accrual	117.7	—
Miscellaneous	171.2	172.3
Current liabilities of discontinued operations	1.0	14.4
	<b>\$1,702.0</b>	<b>\$1,674.8</b>

**Other Noncurrent Liabilities**

<b>30 September</b>	<b>2010</b>	<b>2009</b>
Pension benefits	\$803.2	\$795.5
Postretirement benefits	107.2	102.5
Other employee benefits	103.5	105.1
Contingencies related to uncertain tax positions	228.8	193.5
Advance payments	69.6	90.5
Environmental liabilities	79.9	93.4
Liability related to purchase of shares from noncontrolling interests	42.0	—
Derivative instruments	22.3	48.4
Miscellaneous	112.8	93.1
	<b>\$1,569.3</b>	<b>\$1,522.0</b>

**Accumulated Other Comprehensive Income (Loss)**

<b>30 September</b>	<b>2010</b>	<b>2009</b>
Net unrealized holding gain on investments	\$20.7	\$10.5
Net unrecognized (loss) on derivatives qualifying as hedges	(21.9)	(25.1)
Foreign currency translation adjustments	(44.1)	(179.8)
Pension and postretirement benefits	(1,114.1)	(967.4)
	<b>\$(1,159.4)</b>	<b>\$(1,161.8)</b>

**Other Income (Expenses), Net**

	<b>2010</b>	<b>2009</b>	<b>2008</b>
Technology and royalty income	\$19.0	\$19.5	\$18.6
Interest income	3.4	7.4	8.2
Foreign exchange	4.0	(3.8)	3.6
Sale of assets and investments	13.2	(3.0)	6.5
Amortization of intangibles	(8.4)	(10.1)	(9.8)
Property damage and related expenses, net of insurance recoveries	4.1	4.9	(13.5)
Miscellaneous	3.4	8.1	12.2
	<b>\$38.7</b>	<b>\$23.0</b>	<b>\$25.8</b>

**Loss from Property Damage**

In fiscal 2008, a fire at the Company's Ulsan, Korea nitrogen trifluoride (NF<sub>3</sub>) production facility required the plant to be temporarily shut down. Other income (expense) for fiscal 2008 included a net loss of \$14.7 (\$10.7 after-tax, or \$.05 per share) related to property damage. The net book value of the damaged property was written off and a receivable was recorded for expected property damage insurance recoveries. In fiscal 2009, the Company received \$3.7 of insurance recoveries representing interim payments on the claim. Additionally, the Company recorded other income of \$4.9 (\$3.1 after-tax, or \$.01 per share), comprising \$2.3 for the receipt of additional proceeds from a business interruption claim and a \$2.6 adjustment to the book value of the damaged property. In the first quarter of 2010, the Company received \$4.1 (\$2.6 after-tax, or \$.01 per share) of additional insurance proceeds in final settlement of its claim. The production facility resumed operations in April 2010.

**Customer Bankruptcy and Asset Actions**

On 6 January 2009 a customer of the Company, who principally receives product from the Tonnage Gases segment, began operating under Chapter 11 bankruptcy protection. As a result, the Company recognized a \$22.2 (\$13.9 after-tax, or \$.07 per share) charge, primarily for the write-off of certain receivables during the third quarter of 2009. Sales and operating income associated with this customer are not material to the Tonnage Gases segment's results.

In April 2010, the customer emerged from bankruptcy proceedings. The Company received a final settlement in the amount of \$22.4, of which \$16.0 was applied against the remaining outstanding receivables. Income of \$6.4 (\$4.0 after-tax, or \$.02 per share) was recognized for the recovery of certain receivables which had been previously written off. This amount was recorded as a gain and is reflected within customer bankruptcy on the consolidated income statement.

In the third quarter of 2009, the Company recorded a charge of \$9.9 (\$7.1 after-tax, or \$.03 per share) for other asset actions which consisted of the closure of certain manufacturing facilities. This charge was reflected in cost of sales on the consolidated income statement.

## 24. Summary by Quarter (Unaudited)

These tables summarize the unaudited results of operations for each quarter of 2010 and 2009:

2010		First	Second	Third	Fourth	Total
Sales		\$2,173.5	\$2,249.0	\$2,252.3	\$2,351.2	\$9,026.0
Gross profit		604.9	620.3	641.2	656.6	2,523.0
Acquisition-related costs		—	23.4	37.9	34.7	96.0
Customer bankruptcy		—	—	(1.8)	(4.6)	(6.4)
Pension settlement		—	—	6.3	5.2	11.5
Operating income		345.0	340.6	336.4	367.0	1,389.0
Net income		256.8	258.4	261.3	278.0	1,054.5
Net income attributable to Air Products		251.8	252.0	253.2	272.1	1,029.1
Basic EPS attributable to Air Products						
Net income per common share		1.19	1.19	1.19	1.28	4.85
Diluted EPS attributable to Air Products						
Net income per common share		1.16	1.16	1.17	1.25	4.74
Dividends declared per common share		.45	.49	.49	.49	1.92
Market price per common share:	High	85.44	83.80	80.24	84.43	
	Low	73.76	65.05	64.47	64.13	

2009		First	Second	Third	Fourth	Total
Sales		\$2,195.3	\$1,955.4	\$1,976.2	\$2,129.3	\$8,256.2
Gross profit		565.5	515.6	548.7	584.3	2,214.1
Global cost reduction plan		174.2	—	124.0	—	298.2
Customer bankruptcy		—	—	22.2	—	22.2
Pension settlement		—	—	8.0	2.7	10.7
Operating income		114.1	260.4	143.8	328.0	846.3
Income from continuing operations- attributable to Air Products		90.0	189.3	114.6	246.0	639.9
Income (loss) from discontinued operations- attributable to Air Products		(21.4)	16.3	(1.4)	(2.1)	(8.6)
Net income		73.6	207.2	118.0	243.9	642.7
Net income attributable to Air Products		68.6	205.6	113.2	243.9	631.3
Basic EPS attributable to Air Products						
Income from continuing operations		.43	.90	.55	1.17	3.05
Income (loss) from discontinued operations		(.10)	.08	(.01)	(.01)	(.04)
Net income per common share		.33	.98	.54	1.16	3.01
Diluted EPS attributable to Air Products						
Income from continuing operations		.42	.89	.54	1.14	3.00
Income (loss) from discontinued operations		(.10)	.08	(.01)	(.01)	(.04)
Net income per common share		.32	.97	.53	1.13	2.96
Dividends declared per common share		.44	.45	.45	.45	1.79
Market price per common share:	High	68.51	60.20	69.93	80.60	
	Low	41.46	43.44	54.73	60.52	



## **25. Business Segment and Geographic Information**

The Company's segments are organized based on differences in product and/or type of customer. The Company has four business segments consisting of Merchant Gases, Tonnage Gases, Electronics and Performance Materials, and Equipment and Energy.

### **Merchant Gases**

The Merchant Gases segment sells atmospheric gases such as oxygen, nitrogen, and argon (primarily recovered by the cryogenic distillation of air); process gases such as hydrogen and helium (purchased or refined from crude helium); and medical and specialty gases, along with certain services and equipment, throughout the world to customers in many industries, including those in metals, glass, chemical processing, food processing, healthcare, steel, general manufacturing, and petroleum and natural gas industries. There are four principal types of products: liquid bulk, packaged gases, small on-site plants, and healthcare products. Most merchant product is delivered via bulk supply, in liquid or gaseous form, by tanker or tube trailer. Smaller quantities of industrial, specialty, and medical gases are delivered in cylinders and dewars as "packaged gases," or through small on-sites (cryogenic or noncryogenic generators). Through its healthcare business, the Company offers respiratory therapies, home medical equipment, and infusion services, primarily in Europe. Electricity is the largest cost component in the production of atmospheric gases. Natural gas is also an energy source at a number of the Company's Merchant Gases facilities. The Company mitigates energy and natural gas prices through pricing formulas and surcharges. Merchant Gases competes worldwide against global industrial gas companies and several regional sellers. Competition in industrial gases is based primarily on price, reliability of supply, and the development of industrial gas applications. Competition in the healthcare business involves price, quality, service, and reliability of supply.

### **Tonnage Gases**

Tonnage Gases provides hydrogen, carbon monoxide, nitrogen, oxygen, and syngas principally to the energy production and refining, chemical, and metallurgical industries worldwide. The Tonnage Gases segment also includes the Company's Polyurethane Intermediates (PUI) business. The PUI business markets toluene diamine to customers under long-term contracts. For large-volume, or "tonnage" industrial gas users, the Company either constructs a gas plant adjacent to or near the customer's facility—hence the term "on-site"—or delivers product through a pipeline from a nearby location. The Company is the world's largest provider of hydrogen, which is used by refiners to lower the sulfur content of gasoline and diesel fuels to reduce smog and ozone depletion. Electricity is the largest cost component in the production of atmospheric gases, and natural gas is the principal raw material for hydrogen, carbon monoxide, and syngas production. The Company mitigates energy and natural gas price changes through its long-term cost pass-through type contracts. Tonnage Gases competes against global industrial gas companies, as well as regional competitors. Competition is based primarily on price, reliability of supply, the development of applications that use industrial gases and, in some cases, provision of other services or products such as power and steam generation. The Company also derives a competitive advantage from its pipeline networks which enable it to provide reliable and economic supply of products to customers.

### **Electronics and Performance Materials**

The Electronics and Performance Materials segment employs applications technology to provide solutions to a broad range of global industries through expertise in chemical synthesis, analytical technology, process engineering, and surface science. This segment provides specialty and tonnage gases, specialty chemicals, services, and equipment to the electronics industry for the manufacture of silicon and compound semiconductors, LCD and other displays, and photovoltaic devices. The segment also provides performance chemical solutions for the coatings, inks, adhesives, civil engineering, personal care, institutional and industrial cleaning, mining, oil field, polyurethane, and other industries. The Electronics and Performance Materials segment faces competition on a product-by-product basis against competitors ranging from niche suppliers with a single product to larger and more vertically integrated companies. Competition is principally conducted on the basis of price, quality, product performance, reliability of product supply, technical innovation, service, and global infrastructure.

### **Equipment and Energy**

The Equipment and Energy segment designs and manufactures cryogenic and gas processing equipment for air separation, hydrocarbon recovery and purification, natural gas liquefaction (LNG), and helium distribution, and serves energy markets in a variety of ways. Equipment is sold worldwide to customers in a variety of industries, including chemical and petrochemical manufacturing, oil and gas recovery and processing, and steel and primary metals processing. Energy markets are served through the Company's operation and partial ownership of cogeneration and flue gas desulfurization facilities, its development of hydrogen as an energy carrier, and oxygen-based technologies to

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serve energy markets in the future. Equipment and Energy competes with a great number of firms for all of its offerings except LNG heat exchangers, for which there are fewer competitors due to the limited market size and proprietary technologies. Competition is based primarily on technological performance, service, technical know-how, price, and performance guarantees.

### Other

Other operating income (loss) includes other expense and income that cannot be directly associated with the business segments, including foreign exchange gains and losses, interest income, and costs previously allocated to businesses now reported as discontinued operations. Also included are LIFO inventory adjustments, as the business segments use FIFO and the LIFO pool adjustments are not allocated to the business segments. Corporate general and administrative costs and research and development costs are fully allocated to the business segments.

Other assets include cash, restricted cash, deferred tax assets, pension assets, financial instruments, and corporate assets previously allocated to businesses now reported as discontinued operations.

### Customers

The Company has a large number of customers, and no single customer accounts for a significant portion of annual sales.

### Accounting Policies

The accounting policies of the segments are the same as those described in Note 1, Major Accounting Policies. The Company evaluates the performance of segments based upon reported segment operating income. Operating income of the business segments includes general corporate expenses. Intersegment sales are not material and are recorded at selling prices that approximate market prices. Equipment manufactured for the Company's industrial gas business is generally transferred at cost and not reflected as an intersegment sale. Long-lived assets include investment in net assets of and advances to equity affiliates, net plant and equipment, goodwill, and net intangible assets.

### Business Segments

Business segment information is shown below:

<b>Revenue from External Customers</b>	<b>2010</b>	<b>2009</b>	<b>2008</b>
Merchant Gases	\$3,718.3	\$3,610.6	\$4,192.7
Tonnage Gases	2,930.8	2,573.6	3,574.4
Electronics and Performance Materials	1,904.7	1,582.2	2,209.3
Equipment and Energy	472.2	489.8	438.1
<b>Segment and Consolidated Totals</b>	<b>\$9,026.0</b>	<b>\$8,256.2</b>	<b>\$10,414.5</b>
<b>Operating Income</b>	<b>2010</b>	<b>2009</b>	<b>2008</b>
Merchant Gases	\$729.4	\$661.2	\$789.5
Tonnage Gases	444.2	399.6	482.6
Electronics and Performance Materials	251.8	101.6	245.9
Equipment and Energy	67.3	42.2	38.9
Segment Total	\$1,492.7	\$1,204.6	\$1,556.9
Global cost reduction plan <sup>(A)</sup>	—	(298.2)	—
Acquisition-related costs	(96.0)	—	—
Customer bankruptcy and asset actions	6.4	(32.1)	—
Pension settlement	(11.5)	(10.7)	(30.3)
Other	(2.6)	(17.3)	(30.8)
<b>Consolidated Total</b>	<b>\$1,389.0</b>	<b>\$846.3</b>	<b>\$1,495.8</b>

<sup>(A)</sup> Information about how this charge related to the businesses at the segment level is discussed in Note 5, Global Cost Reduction Plan.

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<b>Depreciation and Amortization</b>	<b>2010</b>	<b>2009</b>	<b>2008</b>
Merchant Gases	\$377.9	\$372.3	\$370.2
Tonnage Gases	303.0	272.2	278.9
Electronics and Performance Materials	169.0	178.2	208.0
Equipment and Energy	12.7	15.9	11.8
Segment Total	\$862.6	\$838.6	\$868.9
Other	.8	1.7	.1
<b>Consolidated Total</b>	<b>\$863.4</b>	<b>\$840.3</b>	<b>\$869.0</b>
<b>Equity Affiliates' Income</b>	<b>2010</b>	<b>2009</b>	<b>2008</b>
Merchant Gases	\$104.3	\$98.3	\$131.8
Other segments	22.6	13.9	13.2
<b>Segment and Consolidated Totals</b>	<b>\$126.9</b>	<b>\$112.2</b>	<b>\$145.0</b>
<b>Total Assets</b>	<b>2010</b>	<b>2009</b>	<b>2008</b>
Merchant Gases	\$5,824.7	\$5,630.8	\$5,565.9
Tonnage Gases	3,958.1	3,672.0	3,397.8
Electronics and Performance Materials	2,336.1	2,299.1	2,388.8
Equipment and Energy	362.7	333.8	328.3
Segment Total	\$12,481.6	\$11,935.7	\$11,680.8
Other	1,022.3	1,088.4	775.2
Discontinued Operations	2.0	5.0	115.3
<b>Consolidated Total</b>	<b>\$13,505.9</b>	<b>\$13,029.1</b>	<b>\$12,571.3</b>
<b>Investment in and Advances to Equity Affiliates</b>	<b>2010</b>	<b>2009</b>	<b>2008</b>
Merchant Gases	\$749.4	\$713.8	\$684.3
Other segments	163.4	154.3	138.3
<b>Segment and Consolidated Totals</b>	<b>\$912.8</b>	<b>\$868.1</b>	<b>\$822.6</b>
<b>Identifiable Assets</b>	<b>2010</b>	<b>2009</b>	<b>2008</b>
Merchant Gases	\$5,075.3	\$4,917.0	\$4,881.6
Tonnage Gases	3,876.4	3,597.8	3,335.4
Electronics and Performance Materials	2,275.8	2,249.5	2,341.0
Equipment and Energy	341.3	303.3	300.2
Segment Total	\$11,568.8	\$11,067.6	\$10,858.2
Other	1,022.3	1,088.4	775.2
Discontinued Operations	2.0	5.0	115.3
<b>Consolidated Total</b>	<b>\$12,593.1</b>	<b>\$12,161.0</b>	<b>\$11,748.7</b>
<b>Expenditures for Long-Lived Assets</b>	<b>2010</b>	<b>2009</b>	<b>2008</b>
Merchant Gases	\$447.1	\$515.4	\$593.0
Tonnage Gases	557.2	556.5	387.9
Electronics and Performance Materials	139.4	165.2	198.8
Equipment and Energy	22.8	9.8	2.3
Segment Total	\$1,166.5	\$1,246.9	\$1,182.0
Other	.8	1.1	1.7
<b>Consolidated Total</b>	<b>\$1,167.3</b>	<b>\$1,248.0</b>	<b>\$1,183.7</b>

[Table of Contents](#)**Geographic Information**

Geographic information is presented below:

<b>Revenues from External Customers</b>	<b>2010</b>	<b>2009</b>	<b>2008</b>
United States	\$4,110.2	\$3,779.8	\$4,845.1
Canada	260.3	238.6	241.2
Europe	2,819.7	2,765.1	3,448.0
Asia	1,621.0	1,294.2	1,661.3
Latin America/other	214.8	178.5	218.9
	<b>\$9,026.0</b>	<b>\$8,256.2</b>	<b>\$10,414.5</b>

<b>Long-Lived Assets</b>	<b>2010</b>	<b>2009</b>	<b>2008</b>
United States	\$3,184.2	\$3,180.7	\$3,017.0
Canada	608.8	535.2	441.9
Europe	2,779.7	2,873.3	3,048.6
Asia	2,221.0	1,973.0	1,815.3
Latin America	272.1	261.1	255.0
All other	98.6	83.0	77.3
	<b>\$9,164.4</b>	<b>\$8,906.3</b>	<b>\$8,655.1</b>

Geographic information is based on country of origin. Included in United States revenues are export sales to unconsolidated customers of \$570.5 in 2010, \$510.2 in 2009, and \$629.1 in 2008. The Europe segment operates principally in Belgium, France, Germany, the Netherlands, Poland, the U.K., and Spain. The Asia segment operates principally in China, Japan, Korea, and Taiwan.

**ITEM 9. CHANGES IN AND DISAGREEMENTS WITH ACCOUNTANTS ON ACCOUNTING AND FINANCIAL DISCLOSURE**

Not applicable.

**ITEM 9A. CONTROLS AND PROCEDURES**

Under the supervision of the Chief Executive Officer and Chief Financial Officer, the Company's management conducted an evaluation of the effectiveness of the design and operation of the Company's disclosure controls and procedures as of 30 September 2010. Based on that evaluation, the Chief Executive Officer and Chief Financial Officer concluded that the design and operation of its disclosure controls and procedures have been effective. There has been no change in the Company's internal control over financial reporting (as that term is defined in Rules 13a-15(f) and 15d-15(f) under the Exchange Act) as of 30 September 2010 that has materially affected, or is reasonably likely to materially affect, the Company's internal control over financial reporting.

Management's Report on Internal Control over Financial Reporting is provided under Item 8 appearing above. The report of KPMG LLP, the Company's independent registered public accounting firm, regarding the Company's internal control over financial reporting, is also provided under Item 8 appearing above.

**ITEM 9B. OTHER INFORMATION**

Not applicable.

**PART III****ITEM 10. DIRECTORS, EXECUTIVE OFFICERS AND CORPORATE GOVERNANCE**

The biographical information relating to the Company's directors, appearing in the Proxy Statement relating to the Company's 2011 Annual Meeting of Shareholders (the 2011 Proxy Statement) under the section "The Board of

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Directors,” is incorporated herein by reference. Biographical information relating to the Company’s executive officers is set forth in Item 1 of Part I of this Report.

Information on Section 16(a) Beneficial Ownership Reporting Compliance, appearing in the 2011 Proxy Statement under the section “Air Products Stock Beneficially Owned by Officers and Directors,” is incorporated herein by reference.

The Company has adopted a Code of Conduct that applies to all employees, including the Chief Executive Officer, the Chief Financial Officer, and the Controller. The Code of Conduct can be found at the Company’s Internet website at [www.airproducts.com/codeofconduct](http://www.airproducts.com/codeofconduct).

Information on the Company’s procedures regarding its consideration of candidates recommended by shareholders and a procedure for submission of such candidates, appearing in the 2011 Proxy Statement under the section “Selection of Directors,” is incorporated by reference. Information on the Company’s Audit Committee and its Audit Committee Financial Expert, appearing in the 2011 Proxy Statement under the section “Audit Committee,” is incorporated by reference.

### **ITEM 11. EXECUTIVE COMPENSATION**

The information under “Compensation of Executive Officers” which includes “Report of the Management Development and Compensation Committee,” “Compensation Discussion and Analysis,” “Executive Compensation Tables,” “Potential Payments Upon Termination or Change in Control,” and “Information About Stock Ownership,” appearing in the 2011 Proxy Statement, is incorporated herein by reference.

### **ITEM 12. SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT AND RELATED STOCKHOLDER MATTERS**

The information set forth in the sections headed “Persons Owning More than 5% of Air Products Stock as of September 30, 2010,” “Air Products Stock Beneficially Owned by Officers and Directors as of November 1, 2010,” and “Equity Compensation Plan Information,” appearing in the Proxy Statement relating to the Company’s 2011 Annual Meeting of Shareholders, is incorporated herein by reference.

### **ITEM 13. CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS, AND DIRECTOR INDEPENDENCE**

The information appearing in the 2011 Proxy Statement under the sections “Director Independence” and “Transactions with Related Persons” is incorporated by reference.

### **ITEM 14. PRINCIPAL ACCOUNTANT FEES AND SERVICES**

The information appearing in the 2011 Proxy Statement under the section “Fees of Independent Registered Public Accountant,” is incorporated herein by reference.

## **PART IV**

### **ITEM 15. EXHIBITS AND FINANCIAL STATEMENT SCHEDULES**

(a) The following documents are filed as a part of this report:

- (1) The Company’s 2010 consolidated financial statements and the Report of the Independent Registered Public Accounting Firm are included in Part II, Item 8.
- (2) Financial Statement Schedules—the following additional information should be read in conjunction with the consolidated financial statements in the Company’s 2010 consolidated financial statements.

Schedule II Valuation and Qualifying Accounts for the three fiscal years ended 30 September 2010

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All other schedules are omitted because the required matter or conditions are not present or because the information required by the Schedules is submitted as part of the consolidated financial statements and notes thereto.

- (3) Exhibits—The exhibits filed as a part of this Annual Report on Form 10-K are listed in the Index to Exhibits located on page 101 of this Report.





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* _____ (Edward E. Hagenlocker) Director	23 November 2010
* _____ (Evert Henkes) Director	23 November 2010
* _____ (Margaret G. McGlynn) Director	23 November 2010
* _____ (Lawrence S. Smith) Director	23 November 2010

\* Mary T. Afflerbach, Corporate Secretary and Chief Governance Officer, by signing her name hereto, does sign this document on behalf of the above noted individuals, pursuant to a power of attorney duly executed by such individuals, which is filed with the Securities and Exchange Commission herewith.

\_\_\_\_\_  
/s/ Mary T. Afflerbach  
Mary T. Afflerbach  
Attorney-in-Fact

Date: 23 November 2010

AIR PRODUCTS AND CHEMICALS, INC. AND SUBSIDIARIES  
**SCHEDULE II—VALUATION AND QUALIFYING ACCOUNTS**  
For the Years Ended 30 September 2010, 2009, and 2008

	Balance at Beginning of Period	Additions Charged to Expense	Charged to Other Accounts	Other Changes Increase (Decrease) Cumulative Translation Adjustment	Other <sup>(A)</sup>	Balance at End of Period
(in millions of dollars)						
<b>Year Ended 30 September 2010</b>						
Allowance for doubtful accounts	\$65	\$4	\$25	\$—	\$5	\$99
Allowance for deferred tax assets	32	26	(2)	(1)	—	55
<b>Year Ended 30 September 2009</b>						
Allowance for doubtful accounts	\$36	\$24	\$14	\$1	\$(10)	\$65
Allowance for deferred tax assets	61	(30)	—	1	—	32
<b>Year Ended 30 September 2008</b>						
Allowance for doubtful accounts	\$33	\$10	\$4	\$—	\$(11)	\$36
Allowance for deferred tax assets	33	36	—	—	(8)	61

## Note:

<sup>(A)</sup> Primarily write-offs of uncollectible trade receivable accounts and tax valuation allowances.

INDEX TO EXHIBITS

Exhibit No.	Description
(3)	Articles of Incorporation and By-Laws.
3.1	Amended and Restated By-Laws of the Company. (Filed as Exhibit 3 to the Company's Form 8-K Report dated 24 November 2008.)*
3.2	Restated Certificate of Incorporation of the Company. (Filed as Exhibit 3.2 to the Company's Form 10-K Report for the fiscal year ended 30 September 1987.)*
3.3	Amendment to the Restated Certificate of Incorporation of the Company dated 25 January 1996. (Filed as Exhibit 3.3 to the Company's Form 10-K Report for the fiscal year ended 30 September 1996.)*
(4)	Instruments defining the rights of security holders, including indentures. Upon request of the Securities and Exchange Commission, the Company hereby undertakes to furnish copies of the instruments with respect to its long-term debt.
4.1	Indenture, dated as of January 18, 1985, between the Company and The Chase Manhattan Bank (National Association), as Trustee. (Filed as Exhibit 4(a) to the Company's Registration Statement No. 33-36974.)*
4.2	Indenture, dated as of January 10, 1995, between the Company and The Bank of New York Trust Company, N.A. (formerly Wachovia Bank, National Association and initially First Fidelity Bank Company, National Association), as Trustee. (Filed as Exhibit 4(a) to the Company's Registration Statement No. 33-57357.)*
(10)	Material Contracts
10.1	1990 Deferred Stock Plan of the Company, as amended and restated effective 1 October 1989. (Filed as Exhibit 10.1 to the Company's Form 10-K Report for the fiscal year ended 30 September 1989.)*
10.2	Stock Option Program for Directors of the Company, formerly known as the Stock Option Plan for Directors. Effective 23 January 2003, this Plan was combined with the Long-Term Incentive Plan and offered as a program thereunder. (Filed as Exhibit 10.5 to the Company's Form 10-K Report for the fiscal year ended 30 September 2004.)*
10.3	Amended and Restated Trust Agreement by and between the Company and PNC Bank, N.A. relating to the Defined Benefit Pension Plans dated as of 1 August 1999. (Filed as Exhibit 10.13 to the Company's Form 10-K Report for the fiscal year ended 30 September 1999.)*
10.3(a)	Amendment No. 1 to the Amended and Restated Trust Agreement by and between the Company and PNC Bank, N.A. relating to the Defined Benefit Pension Plans, adopted 1 January 2000. (Filed as Exhibit 10.13(a) to the Company's Form 10-K Report for the fiscal year ended 30 September 2000.)*
10.3(b)	Amendment No. 2 to the Amended and Restated Trust Agreement by and between the Company and PNC Bank, N.A. relating to the Defined Benefit Pension Plans, adopted 11 April 2007. (Filed as Exhibit 10.7(b) to the Company's Form 10-K Report for the fiscal year ended 30 September 2007.)*
10.4	Amended and Restated Trust Agreement by and between the Company and PNC Bank, N.A. relating to the Supplementary Savings Plan dated as of 1 August 1999. (Filed as Exhibit 10.14 to the Company's Form 10-K Report for the fiscal year ended 30 September 1999.)*
10.4(a)	Amendment No. 1 to the Amended and Restated Trust Agreement by and between the Company and PNC Bank, N.A. relating to the Supplementary Savings Plan, adopted 1 January 2000. (Filed as Exhibit 10.14(a) to the Company's Form 10-K Report for the fiscal year ended 30 September 2000.)*

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<b>Exhibit No.</b>	<b>Description</b>
10.4(b)	Amendment No. 2 to the Amended and Restated Trust Agreement by and between the Company and PNC Bank, N.A. relating to the Defined Contribution Plans, adopted 11 April 2007. (Filed as Exhibit 10.8(b) to the Company's Form 10-K Report for the fiscal year ended 30 September 2007.)*
10.5	Form of Award Agreement under the Long-Term Incentive Plan of the Company, used for the FY 2004 awards. (Filed as Exhibit 10.2 to the Company's Form 10-Q Report for the quarter ended 31 December 2003.)*
10.6	Annual Incentive Plan as Amended and Restated Effective 1 October 2008. (Filed as Exhibit 10.7 to the Company's Form 10-Q Report for the quarter ended 31 March 2009.)*
10.7	Stock Incentive Program of the Company effective 1 October 1996. (Filed as Exhibit 10.21 to the Company's Form 10-K Report for the fiscal year ended 30 September 2002.)*
10.8	Form of Award Agreement under the Long-Term Incentive Plan of the Company used for the FY 2005 awards. (Filed as Exhibit 10.1 to the Company's Form 10-Q Report for the quarter ended 31 December 2004.)*
10.9	Amended and Restated Deferred Compensation Program for Directors, effective 1 October 2005. (Filed as Exhibit 10.26 to the Company's Form 10-K Report for the fiscal year ended 30 September 2005.)*
10.10	Form of Award Agreement under the Long-Term Incentive Plan of the Company, used for FY 2006 awards. (Filed as Exhibit 10.1 to the Company's Form 10-Q Report for the quarter ended 31 December 2005.)*
10.11	Amended and Restated Long-Term Incentive Plan of the Company effective 28 January 2010. (Filed as Exhibit 10.1 to the Company's Form 10-Q Report for the quarter ended 30 June 2010.)*
10.12	Compensation Program for Directors effective 1 October 2008. (Filed as Exhibit 10.20 to the Company's Form 10-K Report for the fiscal year ended 30 September 2008.)*
10.13	Form of Award Agreement under the Long-Term Incentive Plan of the Company, used for FY 2007 awards. (Filed as Exhibit 10.1 to the Company's Form 10-Q Report for the quarter ended 31 December 2006.)*
10.14	Air Products and Chemicals, Inc. Retirement Savings Plan as amended and restated effective October 1, 2009 including amendments through September 30, 2010.
10.15	Form of Award Agreement under the Long-Term Incentive Plan of the Company, used for FY 2008 awards. (Filed as Exhibit 10.1 to the Company's Form 10-Q Report for the quarter ended 31 December 2007.)*
10.16	Form of Change in Control Severance Agreement for Corporate Executive Committee. (Filed as Exhibit 10.1 to the Company's Form 8-K Report filed on 20 December 2007.)*
10.17	Form of Award Agreement under the Long-Term Incentive Plan of the Company, used for FY 2009 Awards. (Filed as Exhibit 10.1 to the Company's Form 10-Q Report for the quarter ended 31 December 2008.)*
10.18	Supplementary Pension Plan of Air Products and Chemicals, Inc. as Amended and Restated Effective January 1, 2008. (Filed as Exhibit 10.2 to the Company's Form 10-Q Report for the quarter ended 31 March 2009.)*
10.18(a)	Amendment No. 1 to the Supplementary Pension Plan of Air Products and Chemicals, Inc., as Amended and Restated Effective January 1, 2008. (Filed as Exhibit 10.3 to the Company's Form 10-Q Report for the quarter ended 31 March 2009.)*
10.18(b)	Amendment No. 2 to the Supplementary Pension Plan of Air Products and Chemicals, Inc., as Amended and Restated Effective January 1, 2008. (Filed as Exhibit 10.4 to the Company's Form 10-Q Report for the quarter ended 31 March 2009.)*

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<b>Exhibit No.</b>	<b>Description</b>
10.18(c)	Amendment No. 3 to the Supplementary Pension Plan of Air Products and Chemicals, Inc., as Amended and Restated Effective January 1, 2008. (Filed as Exhibit 10.5 to the Company's Form 10-Q Report for the quarter ended 31 March 2009.)*
10.19	Corporate Executive Committee Separation Program as Amended Effective as of March 18, 2009. (Filed as Exhibit 10.19 to the Company's Form 10-K Report for the fiscal year ended 30 September 2009.)*
10.20	Deferred Compensation Plan as Amended and Restated January 1, 2009. (Filed as Exhibit 10.20 to the Company's Form 10-K Report for fiscal year ended 30 September 2009.)*
10.21	Form of Award Agreement under the Long-Term Incentive Plan of the Company, used for FY2010 awards. (Filed as Exhibit 10.1 to the Company's Form 10-Q Report for the quarter ended 31 December 2009.)*
10.22	Amended and Restated Commitment Letter dated March 3, 2010 among Air Products and Chemicals, Inc., JPMorgan Chase Bank, N.A. and J.P. Morgan Securities Inc. (Filed as Exhibit 10.1 to Form 8-K filed on 5 March 2010 and incorporated herein by reference.)*
10.23	Accession Letter dated March 3, 2010 among Air Products and Chemicals, Inc., The Royal Bank of Scotland plc and RBS Securities Inc. (Filed as Exhibit 10.2 to Form 8-K filed on 5 March 2010 and incorporated herein by reference.)*
10.24	Accession Letter dated March 3, 2010 among Air Products and Chemicals, Inc., Deutsche Bank AG Cayman Island Branch and Deutsche Bank Securities Inc. (Filed as Exhibit 10.3 to Form 8-K filed on 5 March 2010 and incorporated herein by reference.)*
10.25	Accession Letter dated March 3, 2010 among Air Products and Chemicals, Inc., BNP Paribas and BNP Paribas Securities Corp. (Filed as Exhibit 10.4 to Form 8-K filed on 5 March 2010 and incorporated herein by reference.)*
10.26	Accession Letter dated March 3, 2010 among Air Products and Chemicals, Inc., HSBC Securities (USA) Inc. and HSBC Bank USA, N.A. (Filed as Exhibit 10.5 to Form 8-K filed on 5 March 2010 and incorporated herein by reference.)*
10.27	Accession Letter dated March 3, 2010 between Air Products and Chemicals, Inc. and The Bank of Tokyo-Mitsubishi UFJ, Ltd. (Filed as Exhibit 10.6 to Form 8-K filed on 5 March 2010 and incorporated herein by reference.)*
10.28	Credit Agreement dated March 31, 2010 among Air Products and Chemicals, Inc., the lenders parties thereto and JPMorgan Chase Bank, N.A., as administrative agent. (Filed as Exhibit 10.7 to the Company's Form 10-Q Report for the quarter ended 31 March 2010.)*
10.29	Revolving Credit Facility dated as of July 8, 2010 for \$2,000,000,000.
12	Computation of Ratios of Earnings to Fixed Charges.
14	Code of Conduct. (Filed as Exhibit 14 to the Company's Form 10-K Report for the fiscal year ended 30 September 2005.)*
21	Subsidiaries of the registrant.
(23)	Consents of Experts and Counsel.
23.1	Consent of Independent Registered Public Accounting Firm.
24	Power of Attorney.
(31)	Rule 13a-14(a)/15d-14(a) Certifications.
31.1	Certification by the Principal Executive Officer pursuant to Rule 13a-14(a) or Rule 15d-14(a) of the Securities Exchange Act of 1934, as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.

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<b>Exhibit No.</b>	<b>Description</b>
31.2	Certification by the Principal Financial Officer pursuant to Rule 13a-14(a) or Rule 15d-14(a) of the Securities Exchange Act of 1934, as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
(32)	Section 1350 Certifications.
32.1	Certification by the Principal Executive Officer and Principal Financial Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002. †
101.INS	XBRL Instance Document††
101.SCH	XBRL Taxonomy Extension Schema††
101.CAL	XBRL Taxonomy Extension Calculation Linkbase††
101.LAB	XBRL Taxonomy Extension Label Linkbase††
101.PRE	XBRL Taxonomy Extension Presentation Linkbase††
101.DEF	XBRL Taxonomy Extension Definition Linkbase††
*	Previously filed as indicated and incorporated herein by reference. Exhibits incorporated by reference are located in SEC File No. 1-4534.
†	The certification attached as Exhibit 32.1 that accompanies this Annual Report on Form 10-K, is not deemed filed with the Securities and Exchange Commission and is not to be incorporated by reference into any filing of Air Products and Chemicals, Inc. under the Securities Act of 1933, as amended, or the Securities Exchange Act of 1934, as amended, whether made before or after the date of this Form 10-K, irrespective of any general incorporation language contained in such filing.
††	In accordance with Rule 402 of Regulation S-T, the information in these exhibits shall not be deemed to be “filed” for purposes of Section 18 of the Exchange Act, or otherwise subject to the liability of that section, and shall not be incorporated by reference into any registration statement or other document filed under the Securities Act, or the Exchange Act, except as shall be expressly set forth by specific reference in such filing.

**AIR PRODUCTS AND CHEMICALS, INC.**

**RETIREMENT SAVINGS PLAN**

**AS AMENDED AND RESTATED**

**EFFECTIVE OCTOBER 1, 2009**

**Including amendments through September 30, 2010**



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**AIR PRODUCTS AND CHEMICALS, INC.  
RETIREMENT SAVINGS PLAN**

**ARTICLE I**

**PURPOSES**

1.01 **Purposes.** This Plan is established to facilitate the accumulation and investment of retirement and other savings for eligible employees and to provide such employees with an opportunity to acquire a stock interest in Air Products and Chemicals, Inc. (the "Company"), and is intended to be a profit-sharing plan described in Code Section 401(a) with a cash or deferred arrangement described in Code Section 401(k) and an employee stock ownership plan component as defined in Code Section 4975(e), all in accordance with the terms and conditions hereinafter set forth. Unless otherwise stated or required by applicable law, the effective date of the current amendment and restatement shall be October 1, 2009, including amendments implemented through September 30, 2010, and shall not be applicable to persons retiring or otherwise terminating employment with the Company and its Affiliated Companies prior to October 1, 2009, except as otherwise provided herein.

**ARTICLE II**

**DEFINITIONS**

As used in this Plan, the terms listed below shall have the meanings assigned below; provided, however, that special definitions for purposes of Sections 3.07, 3.14, and 3.15 are contained in Paragraphs 3.07(a), 3.14(a), and 3.15(a), respectively.

2.01 **Affiliated Company** means each trade or business (whether or not incorporated) while it, together with the Company, is treated as a controlled group of corporations (as defined in Code Section 414(b)), as under common control (as defined in Code Section 414(c)), or as an affiliated service group (as defined in Code Section 414(m)), or is required to be aggregated with the Company pursuant to the

regulations under Code Section 414(o); provided, however, that for purposes of Section 3.15 of the Plan and where otherwise applicable, the modification provided for in Code Section 415(h) shall be taken into account.

2.02 **After-Tax Contributions** mean contributions made by a Participant under Paragraph 3.02(b).

2.03 **Annual Salary** means the total annual salary of a Participant, as determined by the Employer based solely on its records, including elective contributions made by an Employer on behalf of the Employee that are not includible in federal taxable income under Code Section 125 or Code Section 402(e) (3), excluding:

(a) Discretionary bonuses or grants, including, without limitation, income howsoever derived from any stock options or other equity-based awards, scholastic aid, payments and awards for suggestions and patentable inventions, other merit awards or variable compensation, expense allowances, and noncash compensation (including imputed income);

(b) Payments of Company Matching Contributions under Section 3.03 and Company Core Contributions under Section 3.04 of this Plan, accruals or distributions under this Plan, or payments, accruals, or distributions under any severance, incentive, or welfare plan or other retirement, pension, or profit-sharing plan of an Employer;

(c) Overtime, commissions, mileage, shift premiums, and payments in lieu of vacation; and

(d) All supplemental compensation for domestic and overseas assignments, including without limitation, premium pay, cost of living and relocation allowances, mortgage interest allowances and forgiveness, tax-equalization payments, and other emoluments for such service.

In the case of a Participant who is a full-time hourly or a weekly salaried production and maintenance employee, Annual Salary shall be determined by



multiplying his base hourly pay rate by 2,080 hours. In the case of a Participant who is a part-time hourly employee or a part time non exempt salaried employee, Annual Salary shall be determined by multiplying his base hourly pay by his scheduled annual hours. Notwithstanding the above, Annual Salary means 125% of the amount determined in accordance with the preceding two sentences for any Participant who is employed as an over-the-road truck driver by an Employer, is paid on a mileage and hourly basis, and whose employment is based at a liquid bulk distribution terminal from time to time designated by the Vice President - Human Resources and identified as a "Designated Terminal" on Exhibit I.

Notwithstanding the above, "Annual Salary" shall not exceed the limitation provided under Code Section 401(a)(17) as adjusted pursuant to Code Section 401(a)(17)(B) for any Plan Year.

2.04 **Before-Tax Contributions** mean contributions made by the Employer on behalf of a Participant pursuant to the Participant's Deferral Election under Paragraph 3.02(a) or Deemed Election under Paragraph 3.02(d).

2.05 **Beneficiary** or **Beneficiaries** mean the person(s), trust(s), or other recipient(s) as determined under the provisions of Section 5.02, who or which shall receive all amounts credited to the Participant's Plan accounts following the death of the Participant.

2.06 **Board** means the board of directors of the Company or any Committee thereof acting on behalf of the Board pursuant to its charter or other delegation of power from the Board, or the Chairman of the Board acting pursuant to a delegation of authority from the Board.

2.07 **Business Day** means any day the New York Stock Exchange is open for business.

2.08 **Catch-up Contributions** mean contributions made by the Employer on behalf of a Participant pursuant to the Participant's Deferral Election under Paragraph 3.02(c).

2.09 **Claims Committee** means the committee appointed by the Vice President-Human Resources to review and determine appeals of claims arising under the Plan in accordance with Section 6.05.

2.10 **Code** means the Internal Revenue Code of 1986, as amended from time to time, and regulations thereunder.

2.11 **Company** means Air Products and Chemicals, Inc., or any successor in interest thereto.

2.12 **Company Core Contributions** mean contributions made by the Employer under Section 3.04.

2.13 **Company Matching Contributions** mean contributions made by the Employer under Section 3.03.

2.14 **Company Stock** means common stock of the Company.

2.15 **Core Contribution Participant** shall mean an Electing Employee or a salaried Employee whose Employment Commencement Date or Reemployment Commencement date occurs after October 31, 2004, or who otherwise becomes a salaried Employee after such date.

2.16 **Credited Service** means credited service as defined in the Salaried Pension Plan or Hourly Pension Plan, as applicable.

2.17 **Deemed Election** means a passive election to make Before-Tax Contributions to the Plan pursuant to Section 3.02(d).

2.18 **Deferral Election** means the election made by a Participant in accordance with Section 3.02.

2.19 **Defined Benefit Plan** means any Retirement Plan which does not meet the definition of a Defined Contribution Plan.

2.20 **Defined Contribution Plan** means a Retirement Plan which provides for an individual account for each participant and for benefits based solely on the amount contributed to the participant's account and on any income, expenses, gains, and losses, and any forfeitures of accounts of other participants, which may be allocated to such participant's account. For this purpose, any Participant's contributions made pursuant to a Defined Benefit Plan maintained by the Company or an Affiliated Company shall be treated as a separate Defined Contribution Plan.

2.21 **Distribution Event** means: (a) a Participant's severance from employment with the Company and all Affiliated Companies, death or disability, in each case as defined by Code Section 401(k)(2)(B)(i).

2.22 **Electing Employee** means an Employee who voluntarily elects to cease accruing years of Credited Service under the Salaried Pension Plan as of the Retirement Program Change Effective Date in order to receive Company Core Contributions and increased Company Matching Contributions.

2.23 **Employee** means (a) any salaried employee of an Employer or (b) any non-union hourly paid employee who is employed by an Employer at one of the locations from time to time designated by the Vice President - Human Resources and listed on Exhibit I attached hereto and made a part hereof, as said Exhibit I is updated from time to time; provided however, that no person shall be an Employee if such person is a leased employee (as defined below) of an Employer, a participant in the Supplemental Employment Program, a foreign national on a temporary assignment to an Employer, or an employee working under a Summer Internship Program, a Cooperative Education Program, or other temporary or supplemental employment program of an Employer. An employee of an Employer who is covered by a collective bargaining agreement shall not be an Employee unless the terms of such collective bargaining agreement provide for participation in the Plan. Notwithstanding the foregoing, if a leased employee or an employee of an Affiliated Company becomes an Employee, his service with the Company and Affiliated Companies prior to becoming an Employee shall be taken into account for eligibility and vesting purposes under the Plan.

The term “employee” as used herein shall mean any common law employee of the Company or an Affiliated Company but shall exclude any person classified by the Company as an independent contractor even if such individual is subsequently reclassified as a common law employee by the Internal Revenue Service or any other agency, entity, or person.

For purposes of the preceding paragraph, a “leased employee” is any person (other than an employee of the Employer) who pursuant to an agreement between the Employer and any other person (leasing organization) has performed services for the Employer (or for the Employer and related persons determined in accordance with Code Section 414(n)(6)) on a substantially full-time basis for a period of at least one year, and such services are performed under primary direction or control by the Employer.

2.24 **Employer** means the Company and/or any Participating Employer, either collectively or separately as the context requires.

2.25 **Employment Commencement Date** means the date on which the Employee first performs an Hour of Service under Section 2.28 for an Employer or an Affiliated Company.

2.26 **ERISA** means the Employee Retirement Income Security Act of 1974, as amended from time to time.

2.27 **Fair Market Value**, as of any Business Day with respect to Company Stock, means the closing sale price for Company Stock for such date on the New York Stock Exchange, or, if no such sale occurred, the average of the closing bid and asked prices for such date on the New York Stock Exchange.

2.28 **Hour of Service** means:

(a) each hour for which an employee (whether or not as an Employee) is directly or indirectly paid, or entitled to payment, for the performance of duties for the Company or an Affiliated Company during the applicable computation period;

(b) each hour for which an employee (whether or not as an Employee) is directly or indirectly paid, or entitled to payment, by the Company or an Affiliated Company on account of a period of time during which no duties are performed (irrespective of whether the employment relationship has terminated) due to vacation, holiday, illness, incapacity (including short-term disability for salaried Employees), layoff, jury duty, military duty, or leave of absence;

(c) each hour for which back pay, irrespective of mitigation of damages, is either awarded or agreed to by the Company or an Affiliated Company, with respect to an employee (whether or not an Employee), provided such hours have not previously been credited under either Paragraphs (a) or (b) above; and

(d) In the case of an employee who is reemployed by the Company or an Affiliated Company in accordance with the requirements of applicable federal law following an authorized leave of absence due to service in the Armed Forces of the United States, each hour during which such employee (whether or not as an Employee) is not performing duties for the Company or an Affiliated Company due to such military leave whether or not such employee is paid, or entitled to payment, by the Company or an Affiliated Company.

For purposes of this Section, a payment shall be deemed to be made by or due from the Company or an Affiliated Company whether such payment is directly made by or due from the Company or Affiliated Company, or indirectly made through, among other sources, a trust fund or insurer to which the Company or Affiliated Company contributes or pays premium (e.g., for group term life insurance).

For purposes of Paragraphs (b) and (c) above, the following rules shall apply:

(i) No more than five hundred and one (501) Hours of Service shall be credited on account of any single continuous period during which the employee performs no duties for the Company or an Affiliated Company (whether or not such period occurs in a single computation period) except for short term disability salary continuation;

(ii) No Hours of Service shall be credited for a payment made or due under a plan maintained solely for the purpose of complying with applicable workers' compensation, unemployment compensation, or disability insurance laws; and

(iii) No Hours of Service shall be credited for a payment which solely reimburses an employee for medical or medically related expenses incurred by the employee.

In the case of a payment which is made or due on account of a period during which an employee performs no duties for the Company or an Affiliated Company, and which results in the crediting of Hours of Service under Paragraphs (b) or (c) above, the number of hours and the period to which such hours are to be credited shall be determined in accordance with the rules promulgated by the United States Department of Labor in paragraphs (b), (c), and (d) of the regulations at 29 CFR § 2530.200b-2 or any future regulations which change, amend, or supersede such regulations, which regulations are incorporated by reference herein.

2.29 **Hourly Pension Plan** means the Pension Plan for Hourly Rated Employees of Air Products and Chemicals, Inc., as amended from time to time.

2.30 **IGS Savings Plan** means the Industrial Gas and Supply Company Retirement Savings Plan which was merged into the Plan effective as of March 31, 2000.

2.31 **Investment Committee** means the Pension Investment Committee of the Company, consisting of persons appointed by the Finance Committee of the Board and authorized, directed and empowered to supervise, monitor and review the management, custody, control and investment performance of the assets of the Plan.

2.32 **Investment Vehicle** means any security or other investment in which the Trustee is authorized to invest Participant Contributions transferred to a particular

Participant Investment Fund, other than cash or interest-bearing investments of a short-term nature in which such Participant Contributions may be temporarily invested pending investment in such security or other investment.

2.33 **Matched Contributions** mean Before-Tax Contributions and After-Tax Contributions that are matched by the Employer in accordance with Section 3.03.

2.34 **Matured Company Matching Contributions** mean the amount, including earnings, credited to a Participant's Company Matching Contributions account for at least two full Plan Years.

2.35 **Normal Retirement Age** means age 65.

2.36 **Participant** means: (a) any Employee who is eligible to participate in the Plan in accordance with Section 3.01, or (b) any former Employee by whom or for whom contributions have been made under Sections 3.02, 3.03, 3.04, 3.12, or 3.13, and (c) any participant in the IGS Savings Plan on March 30, 2002, until such time as all such contributions and earnings thereon have been withdrawn by or distributed to such Employee, former Employee or IGS Savings Plan Participant.

2.37 **Participant Contributions** mean, collectively, funds held and invested by the Trustee under the Trust Agreement which were, when first transferred to the Trustee, Matched Contributions, Unmatched Contributions, rollover contributions as described in Section 3.12, or assets received in plan-to-plan transfers or mergers as described in Section 3.13, together with earnings thereon.

2.38 **Participant Investment Funds** mean the funds described in Appendix A, as amended from time to time, which other than the Company Stock Fund, are chosen by the Investment Committee, in which Participant Contributions and Company Core Contributions are held for investment.

2.39 **Participating Employer** means those Affiliated Companies listed as Participating Employers on Schedule I hereto, while such designation is in effect, and any Affiliated Company which is later designated by the Board or pursuant to authority



delegated by the Board as a Participating Employer under the Plan, whose designation has not been revoked. An Affiliated Company's status as a Participating Employer shall be automatically revoked upon its ceasing to be an Affiliated Company. A Participating Employer or the Board or person acting pursuant to authority delegated by the Board may revoke such designation at any time, but until such acceptance has been revoked, all of the provisions of the Plan and amendments thereto shall apply to the Employees and former Employees of the Participating Employer. In the event the designation of a Participating Employer is revoked, the Plan shall be deemed discontinued only as to such Participating Employer.

2.40 **Party in Interest** has the meaning provided in ERISA Section 3(14), or regulations promulgated thereunder or any future regulations which change, amend, or supersede such regulations.

2.41 **Period of Severance** means a 12-consecutive-month period beginning on an individual's Severance from Service Date or any anniversary thereof and ending on the next succeeding anniversary of such date during which the individual is not credited with at least one Hour of Service.

2.42 **Plan** means the "Air Products and Chemicals, Inc. Retirement Savings Plan" as set forth herein and as amended from time to time.

2.43 **Plan Administrator** means the Vice President – Human Resources, or such other person or entity as he or she shall appoint to fill such role.

2.44 **Plan Year** means the annual period beginning on October 1 and ending on September 30 of the following calendar year. A Plan Year shall be designated according to the calendar year in which such Plan Year ends. The Plan Year shall also be the limitation year for purposes of applying the limitation of Code Section 415.

2.45 **Qualified Default Investment Alternative** means the Participant Investment Fund chosen by the Investment Committee, as designated in Appendix A, to meet the requirements of ERISA Section 404(c)(5) and the regulations thereunder.

2.46 **Qualified Domestic Relations Order** means: (a) any qualified domestic relations order as defined in Code Section 414(p) and ERISA Section 206(d), or (b) any other domestic relations order permitted to be treated as a qualified domestic relations order by the Plan Administrator under the provisions of the Retirement Equity Act of 1984 and which the Plan Administrator determines to treat as a qualified domestic relations order.

2.47 **Reemployment Commencement Date** means the first day on which an individual performs an Hour of Service under Section 2.28 after incurring a Period of Severance.

2.48 **Retirement Plan** means: (a) any profit-sharing, pension, or stock bonus plan described in Code Sections 401(a) and 501(a), (b) any annuity plan or annuity contract described in Code Sections 403(a) or 403(b) of the Code, or (c) any individual retirement account or individual retirement annuity described in Code Sections 408(a) or 408(b).

2.49 **Retirement Program Change Effective Date** means January 1, 2005, except that (a) for Employees at the South Brunswick, New Jersey facility who were hourly-rated instrument and electrical technicians, warehouse technicians, laboratory technicians, maintenance technicians, operation technicians, or production technicians as of January 1, 2005, the Retirement Program Change Effective Date shall be January 1, 2006, and (b) for salaried Employees who were on military leave on January 1, 2005, the Retirement Program Change Effective Date shall be the first of the month following 30 days after returning from military leave.

2.50 **Salaried Pension Plan** means the Air Products and Chemicals, Inc. Pension Plan for Salaried Employees, as amended from time to time.

2.51 **Severance from Service Date** occurs on the earlier of (i) the date on which an employee retires, voluntarily terminates, or is discharged from employment with an Employer and all Affiliated Companies or dies; or (ii) the first anniversary of the first date of a period in which an Employee remains absent from service (with or without

pay) with the Employer and all Affiliated Companies for any reason other than voluntary termination, retirement, discharge, or death, such as vacation, holiday, sickness, disability, leave of absence, or layoff; provided that, in the case of an individual who is absent from work for maternity or paternity reasons, a Severance from Service Date shall not occur until the second anniversary of the date the individual begins such maternity or paternity leave. For purposes of the foregoing, an Employee's absence from work for maternity or paternity reasons means an absence (a) by reason of the pregnancy of the Employee, (b) by reason of the birth of a child of the Employee, (c) by reason of the placement of a child with the Employee in connection with the adoption of such child by such Employee, or (d) for purposes of caring for such child for a period beginning immediately following such birth or placement; provided that the Employee has provided to the Plan Administrator, in the form and manner prescribed by the Plan Administrator, information establishing (a) that the absence from work is for maternity or paternity reasons and (b) the number of days for which there was such an absence. Nothing in this Section shall be construed as expanding or amending any maternity or paternity leave policy of the Employer. Notwithstanding the above, an individual who is absent from work due to a leave of absence, whether or not for maternity or paternity reasons, who returns to work immediately following the leave of absence shall be deemed not to have a Severance from Service date.

2.52 **Trust Agreement** means the trust agreement referred to in Article IV, as the same may be amended from time to time.

2.53 **Trust Fund** means the assets held in trust for purposes of the Plan.

2.54 **Trustee** means such trustee or trustees as shall be appointed by the Investment Committee under the Trust Agreement.

2.55 **Unmatched Contributions** mean any After-Tax Contributions which are not Matched Contributions, Before-Tax Contributions which are not Matched Contributions or Catch-up Contributions.

2.56 **Unmatured Company Matching Contributions** mean the amount, including earnings, credited to a Participant's Company Matching Contributions account for less than two full Plan Years.

2.57 **Vice President-Human Resources** shall mean the Senior Vice President – Human Resources and Communications of the Company, or any successor to that position or any similar position within Human Resources.

2.58 **Years of Service** mean the service credited to a Participant for purposes of determining the amount of Company Core Contributions allocated to the Participant's account under Section 3.4. The following rules shall apply in calculating Years of Service under this Plan:

(a) An Employee shall be credited with a Year of Service for each 12 consecutive month period during the period beginning on the Employee's Employment Commencement Date and ending on the Employee's Severance from Service Date.

(b) If an Employee has a Severance from Service Date and after January 1, 2005 is rehired by the Employer, Years of Service prior to the Employee's Severance from Service Date shall not be taken into account as Years of Service. The Employee's date of reemployment shall be the Employee's Employment Commencement Date for purposes of (a) above.

(c) Notwithstanding the foregoing, for periods of service prior to January 1, 2005, an Employee who was a Core Contribution Participant as of January 1, 2005, or an hourly employee participating in the Hourly Pension Plan as of January 1, 2005 who becomes a salaried Employee thereafter, will be credited with Years of Service beginning with the date he or she first earned Credited Service under the Salaried Pension Plan or the Hourly Pension Plan, but excluding any period when he or she was not employed by the Company or an Affiliated Company, and any period with respect to which service is not taken into account in calculating his or her Accrued Benefit under such Plan as of January 1, 2005.

2.59 **Years of Vesting Service** mean the service credited to an Employee for purposes of determining the Employee's vested interest in the portion of his account attributable to Company Core Contributions and related investment earnings and losses. The following rules shall apply in calculating Years of Vesting Service under this Plan:

(a) An Employee shall be credited with full and partial Years of Vesting Service for the period from the Employee's Employment Commencement Date to the Employee's Severance from Service Date and, if applicable, from the Employee's Reemployment Commencement Date to the Employee's subsequent Severance from Service Date; provided that, an Employee who is absent from work due to maternity or paternity leave as defined in subsection 2.51 shall not be credited with Vesting Service for any period of such maternity or paternity leave that extends beyond the one year anniversary of the date the individual begins such maternity or paternity leave. Years of Vesting Service shall be calculated on the basis that 12 consecutive months of employment equal one year. For this purpose, partial Years of Vesting Service shall be aggregated.

(b) If an Employee retires, voluntarily terminates, or is discharged from employment with the Employer and all Affiliated Companies and is subsequently reemployed, the period commencing on the Employee's Severance from Service Date and ending on the reemployment date shall be taken into account, if such period is 12 months or less in duration; provided that, if an Employee retires, voluntarily terminates, or is discharged from employment with the Employer and all Affiliated Companies during a period when the Employee was absent for another reason and is subsequently reemployed, the period commencing on the Employee's Severance from Service Date and ending on the reemployment date shall be taken into account, but only if the reemployment date occurs within 12 months of the first date of absence.

(c) If an Employee is reemployed after incurring five consecutive Periods of Severance, and the Employee had never previously earned any vested benefits under the Plan, including Company Matching Contributions, Years of Vesting

Service after such Periods of Severance shall not be taken into account for purposes of determining the vested interest in the portion of his account attributable to Company Core Contributions made before such Periods of Severance, and Years of Vesting Service before such Periods of Severance shall not be taken into account for the purpose of determining the vested interest in the portion of his account attributable to Company Core Contributions made after such Periods of Severance.

(d) Years of Vesting Service shall include all periods described in paragraphs (a), and (b) above (including those periods during which the Employee was a leased employee within the meaning of section 414(n) or 414(o) of the Code) whether or not the Employee qualified as an Employee during those periods.

### ARTICLE III

#### ELIGIBILITY, CONTRIBUTIONS, WITHDRAWALS, DISTRIBUTIONS, ROLLOVERS, AND PLAN-TO-PLAN TRANSFERS

##### 3.01 Eligibility and Commencement of Participation.

(a) An Employee shall be eligible to participate in the Plan upon meeting the requirements of (i) or (ii) as follows:

(i) An Employee shall be eligible to participate in the Plan upon completion of thirty (30) days of service after the date as of which the Employee is first scheduled or expected to be credited with one thousand (1,000) Hours of Service as an Employee during the next twelve (12)-month period. Such Employee will begin his participation as of the first complete pay period following the completion of such thirty (30) days of service if such Employee shall make an affirmative election to participate in accordance with procedures adopted by the Plan Administrator under Paragraph 3.02(a), (b), or (c) , or a Deemed Election pursuant to Paragraph 3.02(d). Notwithstanding the foregoing, a Core Contribution Participant shall be eligible to participate in benefits under Section 3.04 of the Plan on the later of the Retirement Program Change Effective Date or the date he becomes a Core Contribution Participant, provided that he is scheduled or expected to be credited with one thousand (1,000) Hours of Service during the next twelve (12)-month period.

(ii) An Employee who has not satisfied the service requirements of the preceding paragraph shall be eligible to participate in the Plan, upon such Employee's completion of 1,000 Hours of Service during an eligibility computation period. An eligibility computation period is the twelve (12) month period beginning on the Employee's Employment Commencement Date, or, in the event such Employee does not complete 1,000 Hours of Service in such twelve (12) month period, all Plan Years beginning after the first day of such twelve (12) month period. Such an Employee may begin his participation as of the first full pay period which includes the earlier of (i) the first day of the Plan Year which follows his satisfaction of the eligibility requirements in the preceding sentence, or (ii) the date which is six months after the date on which he satisfied such eligibility requirements, if such Employee makes an affirmative election to participate in accordance with Paragraph 3.01(a)(i). A Core Contribution Participant who has not satisfied the service requirements of the preceding paragraph shall be eligible to participate in benefits under Section 3.04 of the Plan upon such Participant's completion of 1,000 Hours of Service during an eligibility computation period.

(iii) Employees who were former participants of the IGS Savings Plan shall be eligible to participate upon their becoming an Employee provided they make an affirmative election to participate in accordance with the procedures adopted by the Plan Administrator under subsection 3.02(a), (b), or (c) or a Deemed Election pursuant to subsection 3.02(d).

(b) An Employee eligible to participate in the Plan shall remain eligible to participate (subject to the applicable suspension provisions of Sections 3.02, 3.07, and 3.08) for so long as he is an Employee. An Employee who terminates his employment with the Company and all Affiliated Companies after becoming eligible to participate in the Plan, or an Employee who otherwise ceases to be employed as an Employee, shall, upon reemployment by an Employer as an Employee, be eligible to

participate in the Plan and may begin his participation as soon as administratively possible so long as an election is properly made as provided in Paragraph 3.02; except that such reemployed Core Contribution Participant shall be eligible to participate in Company Core Contributions as of the later of the Retirement Program Change Date or his Reemployment Commencement Date (or, if no Severance from Service has occurred, the later of the Retirement Program Change Date or the date he once again meets the definition of Employee). An Employee who becomes represented by a collective bargaining agent will remain eligible to participate in the Plan until a collective bargaining agreement is executed by the Employer by which the Employee is employed and the bargaining agent and, subsequent thereto, will only remain eligible to participate in the Plan if the collective bargaining agreement so provides. An Employee who terminates employment with the Company and all Affiliated Companies prior to becoming eligible to participate in the Plan shall be treated as a new Employee for purposes of this Section 3.01 upon reemployment by an Employer.

(c) Notwithstanding any other provision of this Plan, the availability of Before-Tax Contributions, After-Tax Contributions, Catch-up Contributions, Company Core Contributions and Company Matching Contributions shall not discriminate in favor of Highly Compensated Employees.

3.02 **Before-Tax, After-Tax and Catch-up Contributions.** Each Employee shall commence participation in the Plan by making an election to make contributions to the Plan as described in (a), (b), (c), or (d) below (the "Deferral Election").

(a) **Before-Tax Contributions.** An Employee may make an election to reduce periodic installments of his Annual Salary otherwise payable for each succeeding pay period and direct the Employer to make a contribution to the Plan on his behalf in an amount equal to a whole number from 3 to 50 percent of such periodic installment of his Annual Salary (subject to the provisions of Section 3.07).

(b) **After-Tax Contributions.** An Employee may make an election to contribute an amount equal to 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, or 16 percent of each such periodic installment of his Annual Salary (subject to the provisions of Section 3.07) to the Plan.



(c) **Catch-up Contributions.** Effective October 1, 2002, a Participant who attains age 50 by the end of the applicable calendar year and who has made Before-Tax Contributions for the calendar year or Plan Year, as applicable, up to the lesser of the statutory limit described in Section 3.07(c)(i), the Plan limit described in Section 3.02(a), or, if such Participant is a Highly Compensated Employee, the highest amount of Before Tax Contributions that can be retained in the Plan with respect to such Participant without violating the Average Deferral Percentage Test described in Section 3.07(b)(1), shall be eligible to make additional Before-Tax Contributions to the Plan in the amount of \$5,000, which amount shall be adjusted pursuant to cost of living adjustments described in Code Section 414(v)(2)(c).

(d) **Deemed Election.** (i) Each salaried Employee who becomes eligible to participate in the Plan on or after the Retirement Program Change Effective Date, and (ii) each hourly Employee who becomes eligible to participate in the Plan on and after October 1, 2007, shall be considered to have directed the Employer to reduce his salary in order to make a Before-Tax Contribution in an amount equal to six (6) percent of each periodic installment of his Annual Salary (subject to the provisions of Section 3.07) on his behalf to the trust for the Plan established under the Trust Agreement unless such Employee files (or has filed) a Deferral Election with the Employer. Such Deemed Election shall be effective in accordance with procedures established by the Plan Administrator after written notice has been provided to the Employee.

(e) **Limits on Contributions.** Notwithstanding the foregoing, the maximum combined total of After-Tax Contributions and Before-Tax Contributions being made by or on behalf of a Participant at any time may not exceed 50 percent of the Participant's installments of Annual Salary payable at the time, and After-Tax Contributions and Before-Tax Contributions may be made only to the extent that such Contributions to a Participant's account for any Plan Year do not cause the limitations on Annual Additions to a Participant's account as set forth in Section 3.14 to be exceeded.

(f) **Election Changes.** An Employee may, by giving notice to the Plan Administrator, change his Deferral Election, including a Deemed Election, and direct the Employer to reduce or contribute, as the case may be, different permitted percentages of his periodic installments of Annual Salary, effective as soon as administratively practicable thereafter. In the event of a change in Annual Salary, the Employee's then current contribution percentage shall automatically be applied to the new Annual Salary, as soon as administratively practicable thereafter.

(g) **Suspension of Elections.** An Employee may, by notice to the Plan Administrator, initiate a suspension of his Deferral Election beginning as soon as administratively practicable thereafter. In addition, suspension shall be automatic as of the first pay in which a Participant ceases to be an Employee. In the event the participant initiates the suspension, the Participant may elect to resume his Deferral Election in accordance with the provisions of Section 3.01 effective as soon as administratively practicable thereafter, provided that he is an Employee as of the date when the Deferral Election resumes.

(h) **Termination of Elections.** Subsequent to a Distribution Event, the Participant shall have no right to continue making contributions to the Plan, but shall have the right to redirect the investment of the amounts in his accounts in accordance with Section 4.03 and to change or revoke his written designation of Beneficiary in accordance with Section 5.02.

(i) **Administrative Rules.** The Plan Administrator may from time to time establish such rules and procedures for determining and adjusting the percentages of Annual Salary subject to Deferral Elections as the Plan Administrator shall in his sole discretion deem to be necessary or desirable for the administration of the Plan in accordance with the Code and ERISA, including, without limitation, rules and procedures establishing limitations on the frequency with which all or certain Participants may alter the percentages of their Annual Salary which are subject to Deferral Elections and rules and procedures allowing for the contribution of a specified dollar amount of Before-Tax Contributions, After-Tax Contributions or Catch-up Contributions in lieu of a fixed whole percentage.

(j) **Vesting.** A Participant shall have a fully vested, nonforfeitable right to any benefits derived from Before-Tax Contributions, After-Tax Contributions and Catch-up Contributions made under this Section 3.02.

3.03 **Company Matching Contributions.** The Employer shall make Company Matching Contributions to the Plan on behalf of each Employee who participates in the Plan in accordance with the following provisions:

(a) **Enhanced Formula.** Effective as of the later of the Retirement Program Change Effective Date or the date he becomes a Core Contribution Participant, each Core Contribution Participant shall receive Company Matching Contributions as soon as administratively practicable after each pay date from the Employer equal to the sum of (i) and (ii) below:

(i) 75 percent of the first (4) percent of the Participant's Annual Salary that is deferred by the Participant each pay period to the Plan as Before-Tax Contributions provided that the Participant has elected to contribute at least three (3) percent as Before-Tax Contributions, excluding Catch-up Contributions, and

(ii) 50 percent of the next two (2) percent of the Participant's Annual Salary that is deferred by the Participant each pay period to the Plan as Before-Tax Contributions, excluding Catch-up Contributions.

(b) **Regular Formula.** Each Participant who is not eligible to receive Company Matching Contributions in accordance with (a) above, shall receive Company Matching Contributions as of the end of each pay period from the Employer equal to the sum of (i) and (ii) below:

(i) 75 percent of the first (3) percent of the Participant's Annual Salary that is deferred by the Participant each pay period to the Plan provided that the Participant has elected to contribute at least three (3) percent as Before-Tax Contributions, excluding Catch-up Contributions, and

(ii) 25 percent of the next three (3) percent of the Participant's Annual Salary that is deferred by the Participant each pay period to the Plan as Before-Tax Contributions , excluding Catch-up Contributions, or contributed to the Plan as After-Tax Contributions.

(c) **Form of Company Matching Contribution.** A Company Matching Contribution will be made to the Trustee at least annually, but (unless the Company determines otherwise) only out of the Employer's current or accumulated earnings and profits, and may be made in whole or in part in cash or Company Stock. Company Matching Contributions to be made in Company Stock shall be valued for such purpose at the Fair Market Value on the last Business Day of the period for which the Company Matching Contribution is made. If the Company shall not have taken action to discontinue the Plan in accordance with the provisions of Section 7.01 prior to the end of any Plan Year, the Employer's Company Matching Contribution for such Plan Year shall become a fixed obligation as of the end of such Plan Year to the extent of the Employer's current or accumulated earnings and profits.

(d) **Limits on Company Matching Contributions.** Notwithstanding the foregoing, no Company Matching Contribution shall be made for the account of any Participant to the extent that such Company Matching Contribution, after the adjustments provided for in the following sentence, would violate the Actual Contribution Percentage Test , as described in Section 3.07. Any corrective actions taken to avoid such violations shall be performed in accordance with Section 3.07.

(e) **Vesting.** A Participant shall have a fully vested, nonforfeitable right to any benefits derived from Company Matching Contributions, subject to the forfeiture provisions of Section 3.07 and Paragraph 3.14(c).

3.04 **Company Core Contributions.** Effective as of the Retirement Program Change Effective Date, each Core Contribution Participant shall receive Company Core Contributions from the Employer in accordance with the following provisions:

(a) **Formula.** The Employer shall allocate a Company Core Contribution at least annually to the account of each eligible Participant at any time during the Plan Year in accordance with the following schedule:

<u>Years of Service</u>	<u>Amount of Company Core Contributions</u>
Less than 10 Years of Service	4% of Annual Salary
10-19 Years of Service	5% of Annual Salary
20 or more Years of Service	6% of Annual Salary

(b) Notwithstanding the foregoing, Annual Salary for purposes of determining the amount of Company Core Contributions under (a), above, shall not include any Annual Salary earned by a Participant before the Participant became eligible to receive Company Core Contributions.

3.05 **Company Core Contribution Vesting Rules.** A Participant's Company Core Contributions and related investment earnings and losses shall be subject to the following vesting rules:

(a) **Vesting Schedule.** Effective on and after October 1, 2007, a Participant who is an Employee shall have a vested, nonforfeitable right to the portion of a Participant's account attributable to Company Core Contributions, including any related investment earnings and losses, according to the following vesting schedule, or, if earlier, after attaining Normal Retirement Age while employed by the Employer or an Affiliated Company:

<u>Years of Vesting Service</u>	<u>Percent Vested</u>
Less than 1	0%
1	20%
2	40%
3	60%
4	80%
5	100%

Prior to October 1, 2007, a Participant who is an Employee would have a fully vested, nonforfeitable right to the portion of a Participant's account attributable to Company Core Contributions, including any related investment earnings and losses, after completing at least 5 Years of Vesting Service, or, if earlier, after attaining Normal Retirement Age while employed by the Employer or an Affiliated Company.

(b) **Forfeitures.**

(i) If a Participant is not fully vested in Company Core Contributions as described in (a) above at the time he incurs a Severance from Service Date, the unvested portion of the Participant's account attributable to Company Core Contributions and related investment earnings and losses shall be forfeited as of the earlier of:

(A) the date on which he receives a distribution of his entire vested interest in his account; or

(B) the date on which he incurs five consecutive Periods of Severance.

(ii) A Participant who has no portion of his account attributable to Company Matching Contributions or Participant Before-Tax Contributions and whose vested interest in the portion of his account attributable to Company Core Contributions is zero shall be deemed to have received a distribution of his account as of his Severance from Service Date.

(iii) If a Participant is rehired by the Employer or an Affiliated Company before incurring five consecutive Periods of Severance, any amount forfeited under subsections (i) or (ii) shall be restored to his account as soon as administratively

practicable. Such restoration shall be made from currently forfeited amounts in accordance with subsection (iv), or from additional contributions by the Employer and shall be invested in the Qualified Default Investment Alternative.

(iv) Amounts forfeited shall be used to first restore future amounts required to be restored in accordance with subsection (iii) with respect to the Plan Year. After such restoration, if any, is made, such amounts shall be used to reduce future Company Core Contributions and Company Matching Contributions made by the Employer by which the former Participant was employed, or to defray administrative costs of the Plan as determined by the Company.

3.06 **Timing of Contributions.** Before-Tax, After-Tax and Catch-up Contributions shall be transferred to the Trustee as soon as practicable following the date on which the Participant's pay is reduced by the amount of the contribution. Company Matching Contributions and Company Core Contributions shall be transferred to the Trustee at least annually, but in all cases no later than the last date on which amounts so paid may be deducted for federal income tax purposes for the taxable year of the Employer in which the Plan Year ends.

3.07 **Nondiscrimination Limitations and Corrective Measures.**

(a) For purposes of this Section 3.07, the following terms shall have the meanings indicated below:

(i) **Actual Contribution Percentage.** The Actual Contribution Percentages for a Plan Year for the group of all Highly Compensated Employees and for the group of all Nonhighly Compensated Employees respectively are the averages, calculated to the nearest one-hundredth of a percentage point (.01%), of the ratios, calculated separately to the nearest one-hundredth of a percentage point (.01%) for each Employee in the respective group, of the amount of Company Matching Contributions and After-Tax Contributions (and any Qualified Non-Elective Contribution made under Paragraph 3.07(c)(x) for purposes of satisfying the Actual Contribution Percentage Test) made to the Plan on behalf of each such Employee for such Plan

Year, to the Employee's Compensation for such Plan Year, whether or not the Employee was a Participant for the entire Plan Year. The Actual Contribution Percentage calculation may include Before-Tax Contributions, excluding Catch-up Contributions, so long as: (A) the Actual Deferral Percentage Test is met before such Before-Tax Contributions are used in the Actual Contribution Percentage Test, and continues to be met following the exclusion of those Before-Tax Contributions that are used to meet the Actual Contribution Percentage Test and (B) the requirements of Treasury Regulation §1.401(m)-1(b)(5) are satisfied. For purposes of determining the Actual Contribution Percentage, only those Employees who are eligible to elect After-Tax Contributions or to receive Company Matching Contributions for all or a portion of the applicable Plan Year, or who would be so eligible absent a suspension in accordance with the terms of the Plan, are taken into account; any such Employee who would be a Participant if such Employee made an After-Tax Contribution or had a Before-Tax Contribution made on his behalf shall be treated as an eligible Employee on behalf of whom no After-Tax Contributions or Company Matching Contributions are made.

For purposes of this Section, and except as otherwise provided in Treasury regulations, if the Plan and any other plan are aggregated for purposes of Code Section 410(b) (other than for purposes of the average benefit percentage test), such plans (including the Plan) shall be treated as one (1) plan for purposes of calculating the Actual Contribution Percentage. Except as otherwise provided in Treasury regulations, if any Highly Compensated Employee who is a Participant in this Plan also participates in any other plan of the Employer to which employee or matching contributions are made, all such plans (including the Plan) shall be treated as one (1) plan with respect to such Participant.

(ii) **Actual Contribution Percentage Test** means the test described in Paragraph 3.07(b)(ii).

(iii) **Actual Deferral Percentage**. The Actual Deferral Percentages for a Plan Year for the group of all Highly Compensated Employees and



for the group of all Nonhighly Compensated Employees respectively are the averages, calculated to the nearest one-hundredth of a percentage point (.01%), of the ratios, calculated separately to the nearest one-hundredth of a percentage point (.01%) for each Employee in the respective group, of the amount of Before-Tax Contributions, excluding Catch-up Contributions (and Qualified Non-Elective Contributions made under Paragraph 3.07(c)(x) for purposes of satisfying the Actual Deferral Percentage Test), paid under the Plan on behalf of each such Employee for such Plan Year, including Excess Deferrals, to the Employee's Compensation for such Plan Year (whether or not the Employee was a Participant for the entire Plan Year) but excluding Before-Tax Contributions that are taken into account in the Actual Contribution Percentage Test. Only those Employees who are eligible to elect Before-Tax Contributions for all or a portion of the applicable Plan Year, or who would be so eligible absent a suspension in accordance with the terms of the Plan, are taken into account; any such Employee who would be a Participant but for the failure to have Before-Tax Contributions made on his behalf shall be treated as an eligible Employee on whose behalf no Before-Tax Contributions are made.

For purposes of this Section and except as otherwise provided in Treasury regulations, if the Plan and any other plan which includes a cash or deferred arrangement (within the meaning of Code Section 401(k)) are aggregated for purposes of Code Section 410(b) (other than for purposes of the average benefit percentage test), the cash or deferred arrangements in such plans (including the Plan) shall be treated as one (1) plan for purposes of calculating the Actual Deferral Percentage. Except as otherwise provided in Treasury regulations, if any Highly Compensated Employee who is a Participant in this Plan also participates in any other cash or deferred arrangement (within the meaning of Code Section 401(k)) of the Company or an Affiliated Company, all such cash or deferred arrangements (including under the Plan) shall be treated as one (1) cash or deferred arrangement with respect to such Participant.

(iv) **Actual Deferral Percentage Test** means the test described in Paragraph 3.07(b)(i).

(v) **Compensation** shall mean, except as otherwise provided in the definition of “Highly Compensated Employee”, a definition of compensation which satisfies Code Section 414(s) and regulations thereunder, and which is consistently used in any one Plan Year for purposes of this Section 3.07.

(vi) **Excess Aggregate Contributions** mean, with respect to any Highly Compensated Employee for a Plan Year, the excess of:

(A) The total After-Tax Contributions and Company Matching Contributions (and, where applicable, Before-Tax Contributions, taken into account under the Actual Contribution Percentage Test) made on behalf of such Highly Compensated Employee taken into account in computing the Actual Contribution Percentage for such Plan Year, over

(B) The maximum amount of After-Tax Contributions and Company Matching Contributions (and, where applicable, Before-Tax Contributions, taken into account under the Actual Contribution Percentage Test) on behalf of such Highly Compensated Employee which are permitted by the Actual Contribution Percentage Test.

(vii) **Excess Contributions** mean, with respect to any Highly Compensated Employee for a Plan Year, the excess of:

(A) The total Before-Tax Contributions made on behalf of such Highly Compensated Employee taken into account in computing the Actual Deferral Percentage of Highly Compensated Employees for such Plan Year, over

(B) The maximum amount of such Before-Tax Contributions, excluding Catch-up Contributions, on behalf of such Highly Compensated Employee which are permitted by the Actual Deferral Percentage Test.

(viii) **Excess Deferrals** mean the Before-Tax Contributions that are includible in a Participant’s gross income because they have exceeded the dollar limitation contained in Code Section 402(g).

(ix) **Highly Compensated Employee** means any Employee who performs service for the Company or an Affiliated Company during the determination year (as defined below) and who was: (A) a Five-Percent Owner at any time during the current or preceding Plan Year, or (B) for the preceding Plan Year had Compensation from the Employer or an Affiliated Company in excess of \$80,000 (as adjusted pursuant to Code Section 414(q)). At the election of the Plan Administrator and, as provided for in Exhibit III, in a manner consistent with Code Section 414(q) and any regulations or other IRS pronouncements thereunder, clause (B) in the preceding sentence can be limited to those Employees who are in the top twenty percent (20%) of Employees ranked on the basis of compensation for such look-back year. At the election of the Plan Administrator, as provided for in Exhibit III, Compensation for the purpose of this Paragraph 3.07(a)(ix) may be determined on the basis of a calendar year, rather than the Plan Year.

(x) To the extent required by applicable law “Highly Compensated Employee” shall also include a highly compensated former employee, which is any employee who separated from service prior to the current Plan Year and who was either a Highly Compensated Employee in any determination year ending on or after the Employee’s attainment of age fifty five (55).

For purposes of this definition, Compensation is as defined in Code Section 415(c)(3).

(xi) **Nonhighly Compensated Employee** means any employee who is not a Highly Compensated Employee.

(xii) **Qualified Non-Elective Contributions** mean contributions made by the Company described in Paragraph 3.07(c)(x).

(xiii) **Five Percent Owner** means an Employee who shall be considered to be a Five Percent Owner for any Plan Year if at any time during such year such Employee was a five percent owner of the Employer, determined in accordance with the rules of Code Section 416(i)(1).

(b) **Nondiscrimination Tests.**

(i) **Actual Deferral Percentage Test.** Notwithstanding any provision herein to the contrary, the Actual Deferral Percentage for the group of all eligible Highly Compensated Employees for each Plan Year must not exceed the greater of:

(A) the Actual Deferral Percentage for the previous Plan Year for the group of all eligible Nonhighly Compensated Employees multiplied by 1.25; or

(B) the Actual Deferral Percentage for the previous Plan Year of such group of Nonhighly Compensated Employees multiplied by 2.0, but in no event more than two (2) percentage points greater than the Actual Deferral Percentage for the previous Plan Year of such group of Nonhighly Compensated Employees.

The Vice President - Human Resources, by written notice to the Plan Administrator may elect to entirely exclude from the Actual Deferral Percentage test those Employees who could be excluded from participation under the minimum age and service requirements of Code Section 410(a)(1)(A) ("early participation employees"), other than those early participation employees who are Highly Compensated Employees, to the extent permitted under Code Section 401(k)(3)(F). Any such election shall be reflected in Exhibit III.

The Actual Deferral Percentage test set forth in this Paragraph 3.07(b)(i) shall be performed in accordance with Code Section 401(k), the regulations thereunder, and any related IRS pronouncements, including IRS Notice 98-1 to the extent applicable. The Actual Deferral Percentage test set forth in this Paragraph 3.07(b)(i) may be performed with current year Non-Highly Compensated Employee data, rather than prior year data, if so elected by the Employer. Any such election shall be made by the Vice-President - Human Resources and shall be reflected in Exhibit III.

(ii) **Actual Contribution Percentage Test.** Notwithstanding any provision herein to the contrary, the Actual Contribution Percentage for the group of all eligible Highly Compensated Employees for each Plan Year must not exceed the greater of:

(A) The Actual Contribution Percentage for the previous Plan Year for the group of all eligible Nonhighly Compensated Employees multiplied by 1.25; or

(B) The Actual Contribution Percentage for the previous Plan Year of such group of Nonhighly Compensated Employees multiplied by 2.0, but in no event more than two (2) percentage points greater than the Actual Contribution Percentage for the previous Plan Year of such group of Nonhighly Compensated Employees.

The Vice President - Human Resources, by written notice to the Plan Administrator may elect to entirely exclude from the Actual Contribution Percentage Test those Employees who could be excluded from participation under the minimum age and service requirements of Code Section 410(a)(1)(A) ("early participation employees"), other than those early participation employees who are Highly Compensated Employees, to the extent permitted under Code Section 401(m)(5)(C). Any such election shall be reflected in Exhibit III.

The Actual Contribution Percentage test set forth in this Paragraph 3.07(b)(ii) shall be performed in accordance with Code Section 401(m), the regulations thereunder, and any related IRS pronouncements, including IRS Notice 98-1 to the extent applicable. The Actual Contribution Percentage test set forth in this Paragraph 3.07(b)(ii) may be performed with current year Non-Highly Compensated Employee data, rather than prior year data, if so elected by the Employer. Any such election shall be made by the Vice President - Human Resources and shall be reflected in Exhibit III.

(iii) For purposes of Paragraph 3.07(b), a Participant is a Highly Compensated Employee for a particular Plan Year if he or she satisfies the definition of a Highly Compensated Employee in effect for that Plan Year. Similarly, a Participant is a Nonhighly Compensated Employee for a particular Plan Year if he or she does not satisfy the definition of a Highly Compensated Employee in effect for that Plan Year.

(c) Notwithstanding any other provision of the Plan to the contrary, the percentages of Annual Salary specified by a Participant in his Deferral Election shall be subject to adjustment or other corrective measures by the Plan Administrator at any time and from time to time as follows:

(i) Before-Tax Contributions, excluding Catch-up Contributions, shall not be accepted with respect to any Participant for a calendar year to the extent such Before-Tax Contributions, together with any other elective contributions of the Participant to a plan maintained by the Company or an Affiliated Company, exceed \$9,500 (as adjusted in accordance with Code Section 402(g)); accordingly, the Plan Administrator shall adjust downward the percentage of Annual Salary specified by a Participant in his Deferral Election to be contributed to the Plan as Before-Tax Contributions, as may be necessary to prevent such Excess Deferrals.

(ii) Before-Tax Contributions, excluding Catch-up Contributions, for any Plan Year must satisfy the Actual Deferral Percentage Test; accordingly, the Plan Administrator shall adjust downward the percentage of Annual Salary specified by a Participant in his Deferral Election, to the extent which the Plan Administrator in his sole discretion determines is necessary to maintain the Plan's compliance with the Average Deferral Percentage Test.

(iii) After-Tax Contributions and Company Matching Contributions for any Plan Year must satisfy the Actual Contribution Percentage Test (after taking into account any Before-Tax Contributions included in such test pursuant to Paragraph 3.07(a)(i)); accordingly, the Plan Administrator shall adjust downward the percentage of Annual Salary specified by a Participant in his Deferral Election to be contributed under Paragraph 3.02(b), to the extent which the Plan Administrator in his sole discretion determines is necessary to maintain the Plan's compliance with the Actual Contribution Percentage Test.

(iv) When a downward adjustment has been made pursuant to Paragraph (i), (ii), or (iii) above, the Plan Administrator may thereafter adjust any such percentage upward to bring it up to or closer to the percentage specified in the Participant's most recent Deferral Election whenever the Plan Administrator determines that such an upward adjustment can be made without exceeding the limits described in Paragraph (i), (ii), or (iii). In the event of such upward adjustment, each affected Participant shall be given the opportunity to affirmatively elect to have such higher percentage apply to him.

(v) Any downward or upward adjustment in the percentage of Annual Salary specified by a Participant in his Deferral Election to be contributed to the Plan as Before-Tax Contributions other than Catch-up Contributions shall, with the Participant's consent and unless the Plan Administrator directs otherwise, result in a corresponding increase or decrease, respectively, in After-Tax Contributions to be contributed to the Plan to the extent permitted under Paragraph (iii) or, if the Participant is eligible, Catch-up Contributions.

(vi) If, after application of the above provisions of Paragraph 3.07(c), Excess Deferrals are made to the Plan, such Excess Deferrals shall be re-characterized as Catch-up Contributions to the extent that a Participant who is eligible to make Catch-up Contributions has not reached the applicable Catch-up Contribution limit for the calendar year described in Section 3.02(c). Any Excess Deferrals remaining after application of the preceding sentence shall be returned to the Participant with earnings through the end of the calendar year in accordance with Treasury Regulation §1.402(g)-1, no later than April 15 following the close of the calendar year in which such contributions were made. Distributions shall first be made from Unmatched Contributions, excluding Catch-up Contributions, then from Matched Contributions. The return of any Matched Contributions shall be accompanied by a forfeiture of the related Company Matching Contributions and any income attributable thereto. Such forfeited amounts shall be held by the Trustee in a suspense account and applied towards subsequent Company Matching Contributions.

(vii) After the close of a calendar year, but no later than the last Business Day before April 15 (or such earlier date required by Treasury regulations) following such calendar year, a Participant who was also a participant in another plan to which the limitation on deferrals described in Code Section 402(g) applies may notify the Plan Administrator that the Participant has had deferrals contributed to the Plan and such other plan in excess of such limitation for such preceding calendar year and shall inform the Plan Administrator of the amount of such Excess Deferrals. Such Participant may request a distribution of such Excess Deferrals. Such Excess Deferrals shall first be re-characterized as Catch-up Contributions to the extent that a Participant who is eligible to make Catch-up Contributions has not reached the applicable Catch-up Contribution limit for the calendar year described in Section 3.02(c). Any Excess Deferrals remaining after application of the preceding sentence shall be distributed with the earnings attributable thereto through the end of the calendar year in accordance with Treasury Regulation §1.402(g)-1 no later than the April 15 following such notification. Distributions shall first be made from Unmatched Contributions, excluding Catch-up Contributions, and the return of any Matched Contributions shall be accompanied by a forfeiture of the related Company Matching Contributions and any income attributable thereto. Such forfeited amounts shall be held by the Trustee in a suspense account and applied towards subsequent Company Matching Contributions.

(viii) If, after application of the above provisions of Paragraph 3.07(c), Excess Contributions are made to the Plan, such Excess Contributions shall be re-characterized as Catch-up Contributions to the extent that a Participant who is eligible to make Catch-up Contributions has not reached the applicable Catch-up Contribution limit for the calendar year described in Section 3.02(c). Any Excess Contributions and the earnings attributable thereto through the end of the calendar year remaining after application of the preceding sentence shall be distributed to Highly Compensated Employees making such Excess Contributions no later than December 15 following the close of such Plan Year. The Highly Compensated Employee with the largest amounts of Before-Tax Contributions shall have his Before-Tax Contributions, excluding Catch-up Contributions, reduced to the greater of: (A) the highest dollar amount of Before-Tax Contributions, excluding Catch-up Contributions,



that can be made without violating the limit of Paragraph 3.07(b)(i), or (B) the next highest dollar amount of Before-Tax Contributions, excluding Catch-up Contributions, of any other Highly Compensated Employee. Such process is repeated until Paragraph 3.07 (b)(i) is satisfied in accordance with Treasury Regulation §1.401(k)-1(f)(4)(ii). Distributions shall first be made from Unmatched Contributions, excluding Catch-up Contributions, then from Matched Contributions. The return of any Matched Contributions shall be accompanied by a forfeiture of the related Company Matching Contributions and any income attributable thereto. Such forfeited amounts shall be held by the Trustee in a suspense account and applied towards subsequent Company Matching Contributions.

(ix) If, after application of the above provisions of Paragraph 3.07(b)(ii), Excess Aggregate Contributions are made to the Plan, such Excess Aggregate Contributions shall be re-characterized as Catch-up Contributions to the extent that a Participant who is eligible to make Catch-up Contributions has not reached the applicable Catch-up Contribution limit for the calendar year described in Section 3.02(c). Any Excess Aggregate Contributions and the earnings attributable thereto through the end of the calendar year remaining after application of the preceding sentence shall be distributed to Highly Compensated Employees making such Excess Aggregate Contributions no later than December 15 following the close of the Plan Year. The Highly Compensated Employee with the largest amounts of contributions taken into account in computing the Actual Contribution Percentage Test (“ACP contributions”) shall have his ACP contributions reduced to the greater of: (A) the highest dollar amount of ACP contributions that can be made without violating the limit of Paragraph 3.07(b)(ii), or (B) the next highest dollar amount of ACP contributions of any other Highly Compensated Employee. Such process is repeated until Paragraph 3.07(b)(ii) is satisfied in accordance with Treasury Regulation §1.401(m)-1(e)(3)(iv). To the extent permitted by such regulation, After-Tax Contributions and any Company Matching Contributions attributable thereto shall be distributed first.

(x) Notwithstanding any other provision of this Section 3.07 or of the Plan to the contrary, the Employer may, by action of the Company, determine to

make a special Employer contribution (a "Qualified Non-Elective Contribution") to the Plan for the account of certain Participants who are Nonhighly Compensated Employees in order to maintain the Plan's compliance with the non-discrimination requirements of Code Sections 401(k) and 401(m) and in lieu of (or in combination with) making the adjustment in the percentage of Annual Salary specified by Participants in their Deferral Elections or returning Contributions as provided in this Section 3.07. Any such Qualified Non-Elective Contribution shall be in such amount as is determined by the Company and will be allocated as determined by the Company to the individual accounts of Participants who are Nonhighly Compensated Employees and who actively contributed to the Plan during, and are Employees at the end of, the Plan Year for which such contribution is made. Any such Qualified Non-Elective Contribution shall be nonforfeitable and shall be treated for all purposes as a Before-Tax Contribution under the Plan, including for purposes of the limitations on distribution described in this Article 3, except that such contribution shall not be applied against or counted for purposes of determining compliance with the percent limitation on Before-Tax Contributions in Section 3.02, the combined percent limitation on Before-Tax Contributions and After-Tax Contributions contained in Section 3.02, or the limitation on Before-Tax Contributions contained in this Section 3.07. Any such Qualified Non-Elective Contribution shall be made to the Trustee no later than the last day of the Plan Year next succeeding the Plan Year for which the contribution is made, and may be made in whole or in part in cash or in shares of Company Stock. Payment of any such Qualified Non-Elective Contribution (whether in the form of cash or Company Stock) for a Plan Year which is made by the Employer after the close of such Plan Year shall be treated by the Plan in the same manner as if it were received on or before the last day of such Plan Year.

3.08 **Withdrawals by Participants of After-Tax Contributions, Rollover Contributions, Company Matching Contributions, Before-Tax and Catch-up Contributions.**

(a) **After-Tax Contributions.** Upon application to the Trustee at any time no sooner than twelve (12) months after any earlier withdrawal by such Participant

of After-Tax Contributions under this Paragraph 3.08(a), Rollover Contributions under Paragraph 3.08(b), Before-Tax Contributions under Paragraph 3.08(d)(ii)(A), or Company Matching Contributions under Paragraph 3.08(c), a Participant may withdraw all or a portion of the amounts then credited to his After-Tax Contributions account.

There shall be no suspension of the withdrawing Participant's right to make After-Tax Contributions following a withdrawal under this Paragraph 3.08(a).

(b) **Rollover Contributions.** Upon application to the Trustee at any time no sooner than twelve (12) months after any earlier withdrawal by him under this Paragraph 3.08(b), After-Tax Contributions under Paragraph 3.08(a), Company Matching Contributions under Paragraph 3.08(c) or Before-Tax Contributions under Paragraph 3.08(d)(ii)(A), a Participant may withdraw all or a portion of the amounts then credited to his Rollover Contributions account; provided, however, that such Participant shall first have withdrawn, or shall have applied to make a concurrent withdrawal of all amounts credited to his After-Tax Contributions account.

(c) **Company Matching Contributions.** Effective on and after October 1, 2007, upon application to the Trustee at any time no sooner than twelve (12) months after any earlier withdrawal by him under this Paragraph 3.08(c), After-Tax Contributions under Paragraph 3.08(a), Rollover Contributions under Paragraph 3.08(b), or Before-Tax Contributions under Paragraph 3.08(d)(ii)(A), a Participant may withdraw all or a portion of the amounts then credited to his Company Matching Contributions account; provided, however, that such Participant shall first have withdrawn, or shall have applied to make a concurrent withdrawal of all amounts credited to his After-Tax Contributions account and his Rollover Contributions account. Prior to October 1, 2007, a Participant may withdraw under this paragraph only amounts then credited to his Matured Company Matching Contributions account and will have no right to withdraw amounts credited to his Unmatured Company Matching Contributions account.

(d) **Before-Tax Contributions.** A Participant cannot withdraw amounts credited to his Before-Tax Contribution accounts, except that a Participant may withdraw all or a portion of such amounts if:

(i) The Participant has no, or is concurrently applying to withdraw all, available amounts credited to any After-Tax Contributions account, to any Rollover Contributions account, or to any Company Matching Contributions account; and

(ii) The Participant has (A) attained age fifty-nine and one-half (59 1/2), or (B) provided evidence satisfactory to the Plan Administrator that the Participant's withdrawal qualifies as a hardship withdrawal which satisfies the standards of subsection (e) below, or (C) provided evidence that the Participant's withdrawal meets the requirements of a qualified reservist distribution under Code Section 72(t)(2)(G)(iii); and

(iii) In the case of a withdrawal under Paragraph 3.08(d)(ii)(A), no withdrawal has been made in the preceding twelve (12) months of After-Tax Contributions under Paragraph 3.08(a), Rollover Contributions under Paragraph 3.08(b), Before-Tax Contributions under this Paragraph 3.08(d), or Company Matching Contributions under Paragraph 3.08(c).

If a Participant shall make application to withdraw any Before-Tax Contributions as a qualified reservist distribution or due to attainment of age fifty-nine and one-half (59 1/2), his election to make Before-Tax Contributions, including Catch-up Contributions, or After-Tax Contributions shall not be affected by such withdrawal. If a Participant shall make application to withdraw any Before-Tax Contribution due to hardship, future contributions shall be suspended in accordance with Paragraph 3.08(e)(C).

The Plan Administrator shall establish administrative procedures for obtaining withdrawals.

(e) **Hardship Withdrawal Standards.** A withdrawal will be deemed to constitute a hardship withdrawal if: (1) the Participant has an immediate and heavy financial need; and (2) a distribution from the Plan is necessary to meet that need. A Participant will be treated as having an immediate and heavy financial need only if the funds are required to cover one of the following:

(i) Expenses for medical care described in Code Section 213(d) previously incurred by the Participant or the Participant's spouse or dependents (as defined in Code Section 152) or necessary for these persons to obtain such medical care, or, effective October 1, 2007, expenses for medical care previously incurred by a primary Beneficiary of the Participant or expenses necessary for a primary Beneficiary to obtain such medical care;

(ii) Costs directly related to the purchase (excluding mortgage payments) of a principal residence for the Participant;

(iii) Post-secondary education tuition, related educational fees, and room and board expenses for the Participant or the Participant's spouse, children, or other dependents (as defined in Code Section 152) for the next twelve (12) months, or, effective October 1, 2007, such fees and expenses for a primary Beneficiary of the Participant for the next twelve (12) months;

(iv) Payment of amounts necessary to prevent the eviction of the Participant from his principal residence or foreclosure on the mortgage of the Participant's principal residence;

(v) Effective October 1, 2006, payments for funeral or burial expenses for a deceased parent, spouse, child or dependent, and effective October 1, 2007, such payments for a primary Beneficiary of the Participant;

(vi) Effective October 1, 2006, repair to a principal residence for damage that would qualify for the casualty deduction under Code Section 165 (determined without regard to whether the loss exceeds 10 percent of adjusted gross income); or

(vii) Any other purposes for which the Internal Revenue Service specifically determines, under the authority given to it under Treasury Regulation §1.401(k)-1(d)(3)(v), that such circumstances constitute an immediate and heavy financial need.

For the purposes of this section, a “primary Beneficiary” is an individual who is named as a Beneficiary under the Plan and has an unconditional right to all or a portion of the Participant’s account balance under the Plan upon the death of the Participant.

If an immediate and heavy financial need is deemed to exist, a distribution from the Plan will be deemed necessary to meet such need if, and only if, the following conditions are met:

(A) the distribution is not in excess of the amount of the immediate and heavy financial need of the Participant, including amounts necessary to pay any federal, state, or local income taxes or penalties reasonably anticipated to result from the distribution;

(B) the Participant has obtained all distributions, other than hardship distributions, and has applied for all nontaxable (at the time of the loan) loans currently available under all plans maintained by the Company or an Affiliated Company; and

(C) the Participant will be prohibited from making elective contributions (as defined in Treas. Reg. §1.401(k)-6) or employer contributions (as defined in Treas. Reg. §1.401(m)-1(f)(6)) to any qualified or non-qualified deferred compensation plans maintained by the Company or an Affiliated Company (as determined in accordance with Treas. Reg. §1.401(k)-1(d)(3)(iv)(E)(2)) for six (6) months commencing as soon as administratively possible following the hardship withdrawal.

In the case of a distribution which is made on account of an immediate and heavy financial need due to the payment of post-secondary education tuition for the

Participant or the Participant's spouse, children, Beneficiary or other dependents ("educational hardship"), any such educational hardship withdrawals within a Plan Year shall be aggregated and treated as having been received as of the date of the initial educational hardship withdrawal during such Plan Year for purposes of applying the restriction on subsequent contributions provided for in Paragraph 3.08(e)(vii)(C).

No hardship withdrawal of earnings on Before-Tax or Catch-up Contributions shall be permitted to the extent that such earnings are attributable to periods after December 31, 1988.

3.09 **Loans to Participants.** Upon application to the Trustee by a Participant or Beneficiary who is not a Party in Interest, the Plan Administrator may authorize the Trustee to make a loan or loans to such Participant or Beneficiary. Any such loans shall be subject to at least the following requirements:

(a) Loans shall be made available on a uniform and nondiscriminatory basis.

(b) Loans must bear a reasonable interest rate which will be determined by the Plan Administrator and which will be fixed for the term of the loan. All loans will be secured by up to fifty percent (50%) of the borrower's vested Plan accounts (determined as of the time of the loan).

(c) The minimum loan amount is \$1,000.

(d) No loan can be made to the extent that such loan, when added to the outstanding balance of all other loans to the borrower under this Plan and any other plan of the Company or an Affiliated Company, would exceed the lesser of: (i) fifty thousand dollars (\$50,000), reduced by the excess of (A) the highest outstanding balance of loans to the borrower from the Plan and such other plans during the one-year period ending on the day before the date the loan is made over (B) the outstanding loan balance on the date the loan is made, or (ii) one-half of the vested value of the borrower's accounts under this Plan and such other plan(s). In addition, no loan under this Plan, when added to any existing loans hereunder, shall exceed the

value of the amounts credited to the borrower's After-Tax Contributions, Before-Tax Contributions, and Company Matching Contributions accounts, plus the borrower's vested Company Core Contribution account.

(e) Any loan shall, by its terms, require repayment within five (5) years unless such loan is used to acquire a dwelling unit which, within a reasonable time (determined at the time the loan is made), will be used as the principal residence, within the meaning of Code Section 121, of the borrower, in which case the loan shall be repaid within such period as may be established by the Vice President – Human Resources. Notwithstanding the above, all loans shall be immediately due and payable upon the Participant's severance from employment with the Company and all Affiliated Companies, unless, at the discretion of the Investment Committee, such loan is directly rolled over to a qualified plan of a subsequent employer of the Participant pursuant to an agreement between the Company and the subsequent employer. The maximum number of loans which a borrower may have outstanding at one time is one residential and one non-residential loan.

(f) Certain fees apply when obtaining a loan through the Plan. Such fees, as they are in effect from time to time, will be set forth in the Summary Plan Description or in loan documentation provided to the borrower.

(g) Repayment of Participant loans shall be by payroll deduction or other method approved by the Plan Administrator on a level amortized basis with repayments made as specified in the loan documentation, but, in all cases, at least quarterly; except that a borrower may prepay in full the outstanding balance of his loan at any time in accordance with procedures established by the Plan Administrator. Loan repayments may be suspended for one year during a Participant's authorized unpaid leave of absence, or during such other period permitted by applicable law. Loan repayments may be suspended as permitted under Code Section 414(u)(4) for any period in which the Participant is on a qualified military leave.

(h) Loans must be evidenced by a written promissory note. In the event that a borrower fails to make a required payment when due, the loan shall be in



default if the borrower fails to become current in his payments within ninety (90) days of such missed payment, or, if earlier, the default date as indicated in the loan documentation. Upon default, the outstanding principal balance of the loan and all accrued interest thereon will be immediately due and payable, and will be satisfied from the borrower's Plan accounts (at such time(s) as permitted by applicable law) upon the occurrence of a Distribution Event or upon the Participant's attainment of age fifty-nine and one-half (59 1/2).

(i) Each loan shall be a separate investment of the borrower's Plan accounts. The amount of the loan will first reduce the borrower's Before-Tax and Catch-up Contributions accounts, then the borrower's After-Tax Contributions account, then the borrower's Rollover Contributions account, then the borrower's Company Matching Contributions account (to the extent of Matured Company Matching Contributions for loans prior to October 1, 2007), and then the borrower's vested Company Core Contributions account. Amounts within the Plan accounts allocated to each Participant Investment Fund also shall be reduced ratably.

(j) Loan repayments, including both principal and interest, will be credited first to the borrower's Company Core Contributions account, if any. After repayments which are equal to the amount by which the borrower's Company Core Contributions account, if any, was reduced to make a loan are credited to the Participant's Company Core Contributions account, loan repayments will be credited to the borrower's Company Matching Contributions account, next to the borrower's Rollover Contributions account, next to the borrower's After-Tax Contributions account, next to the borrower's Catch-Up Contributions account and next to the borrower's Before-Tax Contributions account. All payments shall be allocated among the Participant Investment Funds in accordance with the borrower's most recent investment direction election for new contributions.

Notwithstanding the foregoing, loans made pursuant to this Section 3.09 may be subject to such additional uniform and nondiscriminatory rules as may from time to time be adopted by the Board, the Investment Committee or the Plan Administrator,

which rules shall comply with the Code, ERISA, and other applicable law and may impose limitations on, or requirements for obtaining Plan loans which are in addition to or more restrictive than those limitations and requirements set forth above in this Section 3.09.

**3.10 Distributions Following Distribution Events.**

(a) Except as otherwise provided for in Paragraph 3.10(d) herein, after a Distribution Event other than death occurs as to the Participant, the following will apply:

(i) All amounts credited to such Participant's accounts shall be retained in the Plan until the earliest of the Participant's death, the Participant's consent to and application for the Trustee to distribute the aggregate amounts in all of Participant's Plan Accounts to him in a lump sum or the Participant's consent to and application for the Trustee to commence distribution of installment payments of his account to him in accordance with Section 5.01. Notwithstanding the preceding sentence, distributions of a Participant's Plan accounts shall commence no later than April 1 of the calendar year following his attainment of age 70 1/2. Participants who attain age 70 1/2 on or after January 1, 2003, and continue employment with the Employer beyond age 70 1/2 may defer commencement of distribution under this Section until no later than April 1<sup>st</sup> of the calendar year following the calendar year in which the Participant retires. Notwithstanding the above, any required distributions after age 70 1/2 that are due to be paid in calendar year 2009 shall be waived unless an affirmative election to receive the distribution has been made by the Participant.

(ii) In the event that the Participant consents to a lump sum distribution of the aggregate amounts in all of his Plan accounts, by filing an election with the Trustee effective on or after the date of (A) the Participant's termination of employment with the Company or an Affiliated Company, or (B) a Distribution Event as to the Participant, the Participant shall receive a distribution of all amounts credited to such Participant's Plan accounts, in the manner described in Section 5.01. In addition, a second distribution of any amount subsequently credited to a Participant's Company

Matching Contributions account in accordance with Section 3.03 or to a Participant's Company Core Contributions account in accordance with Section 3.04 shall be made as soon as practicable after actual receipt by the Trustee of the Company Stock or cash contribution.

(b) In the event of the Participant's death, the Participant's Beneficiary shall receive a distribution of all amounts credited to the Participant's Plan accounts according to the distribution elections provided in Section 5.01. Subject to Paragraph 3.10(d), such distribution shall be made as soon as practicable after the Participant's death.

(c) Notwithstanding the previous paragraphs of this Section 3.10, if the aggregate amount credited to the Participant's Plan accounts does not exceed \$1,000, such amount will, subject to Paragraph (d) below, be distributed to the Participant (or, in the case of the Participant's death, the Participant's Beneficiary or Beneficiaries) in the manner provided in Section 5.01.

(d) At least thirty (30) days, but no more than one hundred eighty (180) days, before a distribution is made to a Participant, a Participant shall be given notice of: (1) his ability to delay distribution in accordance with Paragraph 3.10(a)(i) above (if applicable), (2) his ability to elect a direct rollover in accordance with Section 5.03, and (3) for former participants of the IGS Savings Plan, the ability to elect the optional forms of payment as provided in Exhibit II. At least thirty (30) days, but no more than one hundred eighty (180) days, before benefits begin to a Beneficiary (including an alternate payee under a Qualified Domestic Relations Order), such Beneficiary must be given notice of his ability to elect a direct rollover under Section 5.03. A distribution may be made less than thirty (30) days after receipt of the notice required by this Paragraph 3.10(d); provided that: (i) the notice clearly informs the Participant or Beneficiary of the right to consider the decision regarding distribution or direct rollover for a period of thirty (30) days after the notice is provided, and (ii) after receiving the notice, the Participant or Beneficiary waives the thirty (30) day period by electing a distribution.

**3.11 Distributions Pursuant to a Qualified Domestic Relations Order.** Notwithstanding any other provisions of the Plan, following the Plan Administrator's determination that a domestic relations order received by the Plan Administrator and applicable to a Participant and any of such Participant's Plan accounts is a Qualified Domestic Relations Order, such distribution or distributions shall be made from such Participant's Plan account or accounts, in accordance with such Qualified Domestic Relations Order and the Plan's Qualified Domestic Relations Order procedures, and in the manner described in Section 5.01, to the alternate payee or payees specified in such Qualified Domestic Relations Order. If so specified in a Qualified Domestic Relations Order, a distribution to an alternate payee may be made prior to the date on which the Participant attains his "earliest retirement age" (as defined in Code Section 414(p)(4) and ERISA Section 206(d)(3)(E)).

**3.12 Rollovers into the Plan.** Each Employee who is eligible pursuant to Paragraph 3.01(a) to participate in the Plan, and any other Employee who is expected to become eligible to participate in the Plan who has received an eligible rollover distribution described in Code Section 402(c)(4), may make a cash contribution to the Plan (a "Rollover Contribution") of all or a portion of any such rollover distribution, provided that: (a) the acceptance of such Rollover Contribution will not adversely affect the continued qualified status of the Plan, and (b) the Plan Administrator in due course receives all the documentation and other relevant information pertaining to such Rollover Contribution deemed necessary by the Plan Administrator for the proper administration of the Plan. Notwithstanding the above, the Plan does not accept After-Tax Contributions that are a part of an eligible rollover distribution. Any such Rollover Contribution shall not be taken into account for purposes of determining: (i) the limitations set forth in Sections 3.02, 3.07, and 3.14; (ii) whether the Plan is "top-heavy" (as such term is defined in Code Section 416(g), unless the Rollover Contribution originates from the plan of the Company or an Affiliated Company); or (iii) the Company Matching Contributions under Section 3.03. For the period during which an Employee is not otherwise a Participant, such Employee shall be treated as a Participant solely for the purpose of and with respect to such Rollover Contribution.

**3.13 Plan-to-Plan Transfers; Plan Mergers.** At the discretion of the Investment Committee, the Trustee may accept directly from a trustee or custodian any or all of the assets, including outstanding participant loans, held under another plan which is qualified under Code Section 401(a) for the benefit of Participants or any other Employees who are expected to become Participants, either as a part of a transfer of assets from the trust for such other plan or a merger of such other plan with the Plan, provided that: (a) the acceptance of such transferred assets will not adversely affect the continued qualified status of the Plan, (b) the Plan Administrator in due course receives all the documentation and other relevant information pertaining to such transferred assets deemed necessary by the Plan Administrator for the proper administration of the Plan, and (c) any other conditions or requirements which may be established by the Investment Committee or the Plan Administrator are satisfied. Any assets which were held by the transferor plan under a qualified cash or deferred arrangement, as such term is defined in Code Section 401(k), shall be treated as Before-Tax Contributions. Any assets which were held by the transferor plan pursuant to an election to make employee Catch-up Contributions shall be treated as Catch-up Contributions. Any assets which were held by the transferor plan pursuant to an election to make employee after-tax contributions shall be treated as After-Tax Contributions. Any other transferred assets shall be treated as Rollover Contributions for all purposes under the Plan, except that such transferred assets shall not be taken into account for purposes of determining: (i) the limitations set forth in Section 3.02, 3.07, and 3.14; (ii) whether the Plan is “top-heavy” (as such term is defined in Code Section 416(g), unless the transferor plan is a plan of the Company or an Affiliated Company); or (iii) the Company Matching Contributions under Section 3.03.

Notwithstanding any contrary provisions of Section 3.08, the withdrawal by a Participant of any or all of such transferred assets or any other assets derived from the investment thereof shall not result in a suspension of such Participant’s right to make contributions to the Plan or to have contributions made on his behalf under the Plan. Alternate forms of benefits, and other benefits, rights, and features under the transferor or merged plan (including those identified in Section 5.05) shall be continued to the extent required to comply with ERISA and the Code. For the period during which

an Employee is not otherwise a Participant, such Employee shall be treated as a Participant solely for the purpose of and with respect to the portion of such transferred assets allocated to his Plan account.

3.14 **Limitation on Annual Additions to Participants' Accounts.**

(a) **Definitions.** For purposes of this Section 3.14, the following definitions shall apply:

(i) **Annual Additions** mean, in the case of this Plan and any other Defined Contribution Plan maintained by the Company or an Affiliated Company, the aggregate of: (A) the amount of Company and Affiliated Company contributions including, but not limited to, Before-Tax Contributions, excluding Catch-up Contributions, and Company Matching Contributions, Company Core Contributions, Qualified Non-Elective Contributions (as defined in Paragraph 3.07(a)(xiii)), and any forfeitures allocated to a Participant's account during the Plan Year but excluding any amounts returned to a Participant under Treasury Regulation §1.402(g)-1(e)(2) or (3), (B) the amount of a Participant's After-Tax Contributions and any other after-tax contributions to a plan of the Company or an Affiliated Company, (C) amounts described in Code Sections 415(l)(1) and 419A(d)(2).

(ii) **Participant's Compensation** means compensation which is paid to the Participant by the Company or an Affiliated Company for the Plan Year and which is required to be reported as wages for Federal income tax purposes on the Participant's Form W-2. Participant's Compensation shall also include any Before-Tax Contributions, and any amount which is contributed or deferred by the Employer at the election of the Participant and which is not includible in the gross income of the Participant under Code Sections 125 or 457. Notwithstanding the above, effective October 1, 2007, "Participant's Compensation" shall not exceed the limitation provided under Code Section 401(a)(17) as adjusted pursuant to Code Section 401(a)(17)(B) for any Plan Year.

(b) **Basic Limitation.** Notwithstanding anything to the contrary contained in this Plan, the Annual Additions allocated to a Participant under the Plan and any other Defined Contribution Plan maintained by the Company or an Affiliated

Company in respect of any Plan Year (which shall be the limitation year) shall not exceed in the aggregate the lesser of \$40,000 (as adjusted by Code Section 415(d)) or 100% of the Participant's Compensation for such Plan Year.

(c) **Additional Rules.** Notwithstanding the foregoing, effective for plan years beginning before October 1, 2007, if the Participant's Annual Addition to this Plan for any Plan Year would exceed the limitations of this Section 3.14 because of the allocation of forfeitures, a reasonable error in estimating a Participant's Compensation, a reasonable error in estimating the amount of Before-Tax Contributions, or for other reasons as permitted by the Commissioner of Internal Revenue, the excess of such Annual Addition over the amount which is permissible under this Section 3.14 shall be disposed of as follows: After-Tax Contributions and, if necessary, Before-Tax Contributions (in that order), and gains or other earnings allocable thereto, to the extent they would reduce the excess amount, will be returned to the Participant, while any Company Matching Contributions attributable thereto and any earnings on such Company Matching Contributions shall be forfeited, placed in a suspense account, and applied towards subsequent Company Matching Contributions. For plan years beginning on and after October 1, 2007, any correction of excess contributions will be made pursuant to Section 7.04.

3.15 **Application of Top-Heavy Provisions.** The Plan will be a top-heavy plan if: (a) the Plan is not required to be aggregated with any other plan under Paragraph 3.15(b)(i), and if the sum of the accounts of Participants who are "Key Employees" exceeds 60 percent of the sum of the accounts of all employees (subject to adjustment below), or (b) if the Plan must be aggregated with one or more other plans under Paragraph 3.15(b)(ii), and if the Plan is part of a top-heavy group; provided, however, that the Plan will not be a top-heavy plan if it is a member of a group of plans described in Paragraph (b)(iii) below which is not a top-heavy group. In the event that the Plan becomes top-heavy, the minimum benefit requirement of Paragraph 3.15(e) shall become applicable.

The date for determining the applicability of this Section 3.15 for any Plan Year is the last day of the preceding Plan Year ("determination date").

The date for determining the value of the employees' accounts ("valuation date") shall be the determination date.

(a) **Key Employees.** For purposes of this Section 3.15, the term "Key Employee" means any employee or former employee (or a beneficiary of either in the event that such employee or former employee is deceased) who at any time during a Plan Year or any of the four preceding Plan Years is:

(i) An officer of the Company or an Affiliated Company having annual compensation greater than \$130,000 (as adjusted by Code Section 416(i)(1)(A)); provided, however, that no more than the lesser of (A) fifty (50) employees, or (B) the greater of three (3) employees or 10 percent of all employees are to be treated as officers;

(ii) A 5 percent owner of the Company or an Affiliated Company; or

(iii) A 1 percent owner of the Company or an Affiliated Company having an annual compensation of more than one hundred fifty thousand dollars (\$150,000).

For purposes of this Paragraph 3.15(a), an employee's compensation shall mean compensation as determined under Code Section 414(q)(4).

An employee shall be considered to own more than a 5 percent interest if the employee owns more than 5 percent of the Company's or an Affiliated Company's outstanding stock or stock possessing 5 percent of the total combined voting power of all of the stock of the Company or an Affiliated Company. An employee shall also be treated as owning stock owned by certain members of the employee's family as provided in Code Section 318, as modified by Code Section 416(i)(1)(B). The same rules shall apply to determine whether an employee is a 1 percent owner. If an employee ceases to be a Key Employee, such employee's account shall be disregarded as an account of a Participant who is a Key Employee under the top-heavy plan computation for any Plan Year following the last Plan Year for which such employee was treated as a Key Employee.



(b) **Top-Heavy Group.** For purposes of determining whether the Plan is part of a top-heavy group as referred to above in this Section 3.15, the following rules shall apply:

(i) All plans maintained by the Company or an Affiliated Company which cover a Key Employee and any other plan which enables a plan covering a Key Employee to meet the requirements of Code Sections 401(a)(4) or 410 shall be aggregated to determine whether the plans, as a group, constitute a top-heavy group.

(ii) An aggregation group shall be a top-heavy group if, as of the determination date, the sum of (A) the accounts of Key Employees under all defined contribution plans included in the group and (B) the present value of the accumulated accrued benefits for Key Employees under all defined benefit plans in the group, exceeds 60 percent of the sum of such accounts and present values for all employees under all such plans in the group. If the aggregation group is not a top-heavy group, no plan in the aggregation group shall be a top-heavy plan.

(iii) In any Plan Year, in testing for top-heaviness under this Paragraph 3.15(b), the Employer may in its discretion expand the aggregation group to take into account any other plan maintained by it or an Affiliated Company, so long as such expanded aggregation group continues to meet the requirements of Paragraphs 401(a)(4) and 410 of the Code. If the expanded aggregation group is not a top-heavy group (as determined in accordance with the preceding paragraph), no plan in such expanded aggregation group shall be a top-heavy plan.

(c) **Additional Rules.** In determining the present value of the accumulated accrued benefits under a Defined Benefit Plan and the sum of the account balances under a Defined Contribution Plan, both Company and Affiliated Company contributions and employee contributions shall be taken into account. The present

value of the accrued benefit in a Defined Benefit Plan or the account balance in a Defined Contribution Plan shall include any amount distributed to an employee within the one-year period ending on the determination date for the Plan Year, except for in-service withdrawals. The present value of the accrued benefit in a Defined Benefit Plan shall be calculated for any employee other than a Key Employee under (a) the method, if any, that uniformly applies for accrual purposes under all plans maintained by the Company or an Affiliated Company, or (b) if there is no such method, an accrual rule rate which is not more rapid than the slowest accrual rate allowed under the fractional accrual rate of Code Section 411(b)(1)(C). If there is more than one Defined Benefit Plan in an aggregation group, the actuarial assumptions used for such Defined Benefit Plans must be the same. If an employee has not performed services for the Company or an Affiliated Company during the one-year period ending on the determination date for the Plan Year, any accrued benefit or account balance for such individual shall not be taken into account.

(d) **Vesting Requirements.** If this Plan is determined to be top-heavy in any Plan Year under the provisions of this Section 3.15, account balances will be or become fully vested in accordance with the vesting schedules under Sections 3.02, 3.03, and 3.05, or, if earlier, after a Participant completes at least three (3) Years of Vesting Service.

(e) **Minimum Benefit.** If this Plan is determined to be top-heavy in any Plan Year under the provisions of this Section 3.15, then the Employer's contribution for such Plan Year to be allocated to each Participant who is not a Key Employee and is not covered by a collective bargaining agreement in such Plan Year shall not be less than three (3) percent of such Participant's compensation (as defined in Treasury Regulation §1.415(c)-2) or such lesser percentage (taking into account Before-Tax Contributions, excluding Catch-up Contributions, and Company Matching Contributions and Company Core Contributions) as may be made with respect to the Key Employee who had the highest such percentage in such Plan Year.

ARTICLE IV

TRUST FUND AND PARTICIPANT INVESTMENT FUNDS

4.01 **Trust Agreement.** The Company has entered into a Trust Agreement for the Plan establishing the Trust Fund and the Participant Investment Funds. The Trustee under such Trust Agreement shall hold, invest, distribute, and administer the Trust Fund in accordance with the terms of the Plan and the Trust Agreement and shall hold the contributions to each Participant Investment Fund, including income therefrom, as a unit. Any portion of a Participant Investment Fund may, pending its permanent investment in an Investment Vehicle or distribution, be invested in interest-bearing investments of a short-term nature, even though the same may not be legal investments for trust funds under the laws applicable thereto. Any portion of a Participant Investment Fund may be maintained in cash. The Trustee shall be responsible for making the final decision as to managing, acquiring, or disposing of that portion of any of the Participant Investment Funds described below, if any, not subject to the management of investment manager or managers or to directions of the Investment Committee given pursuant to Paragraphs 6.04(a)(ii) or 6.04(b) respectively.

(a) **Participant Investment Funds.** All Participant Contributions transferred to the Trustee pursuant to Sections 3.02, 3.12, or 3.13 and Company Core Contributions transferred to the Trustee pursuant to Section 3.04 shall be held and invested by the Trustee in the Participant Investment Funds in accordance with the directions of Participants given as hereinafter provided. The Company, by resolution of the Board or the Investment Committee, shall have the right, in its discretion, to amend the Plan to establish additional Participant Investment Funds in which Participant Contributions may be invested in accordance with the directions of Participants or to discontinue existing Participant Investment Funds.

(b) **Investment of Company Matching Contributions.** All Company Matching Contributions shall be invested in the Company Stock Fund, except as otherwise provided in Section 4.04.

**4.02 Investment of Contributions in the Participant Investment Funds.** Subject to the provisions of Section 4.03, each Participant in the Plan, in accordance with procedures established by the Plan Administrator, will direct that the Trustee hold and invest in one or more Participant Investment Funds all amounts credited to such Participant's Plan accounts in respect of that Participant's Matched Contributions and Unmatched Contributions thereafter deducted from his Annual Salary and in respect of any Company Core Contributions under Section 3.04, Rollover Contributions under Section 3.12, or plan-to-plan asset transfers or mergers under Section 3.13, credited to his Plan accounts. A Participant shall allocate his Participant Contributions and Company Core Contributions among the available Participant Investment Funds in multiples of one percent (1%); provided, however, that the total of such allocations must equal one hundred percent (100%). No Participant shall have the right to give separate investment directions for amounts in respect of his Matched Contributions and Unmatched Contributions or in respect of his Company Core Contributions, Before-Tax Contributions, Catch-up Contributions and After-Tax Contributions. Notwithstanding the above, if the Trustee does not receive direction from the Participant regarding amounts credited to such Participant's Plan accounts, such amounts shall be held and invested in the Qualified Default Investment Alternative. The Plan is intended to be a Participant-directed "Section 404(c) Plan" under ERISA Section 404(c) and the regulations thereunder, and the provisions of the Plan are to be interpreted so as to effectuate such intent.

Each of the Participant Investment Funds is currently invested in the particular Investment Vehicle specified in Appendix A, although the Investment Committee may from time to time replace, add to, or discontinue such Investment Vehicles, excluding the Company Stock Fund, without amending the Plan, upon notice to Participants.

(a) **Company Stock Fund.** All Participant Contributions to the Company Stock Fund and Company Matching Contributions made on or after October 1, 2002 and before October 1, 2007, shall be held in the Company Stock Fund – Current Year until the end of the Plan Year in which such Contributions are

made. Throughout this Plan, prior to October 1, 2007, "Company Stock Fund" will refer collectively to The Company Stock Fund – ESOP and Company Stock Fund – Current Year unless otherwise specified. On and after October 1, 2007, the Company Stock Fund will no longer be split into the two funds mentioned above, and "Company Stock Fund" will refer to a single fund. Contributions to the Company Stock Fund shall be invested by the Trustee primarily in Company Stock, although a cash position is maintained to provide a liquidity level necessary for daily transactions. All Participant Contributions and Company Matching Contributions shall both be invested in the Company Stock Fund by the Trustee as liquidity and investment manager; provided, however, that separate subaccounts shall be maintained for amounts attributable to Participant Contributions and Company Matching Contributions. For Plan Years prior to October 1, 2007, all Participant Contributions and Company Matching Contributions held in the Company Stock Fund – Current Year as of the close of the New York Stock Exchange on the last Business Day of each Plan Year will be transferred to the Company Stock Fund – ESOP prior to the start of business on the first Business Day of the following Plan Year.

4.03 **Redirection of Investments of Participant Contributions.** Each Participant may from time to time change his last prior investment direction pursuant to Section 4.02 or this Section 4.03 to any other investment direction then permitted pursuant to Section 4.02, in accordance with procedures established by the Plan Administrator. Each such change of investment direction pursuant to this Section 4.03 shall apply, at the Participant's election, to (a) all amounts then credited to the Participant's accounts (except as provided in Section 4.04 below) and/or (b) all contributions thereafter made by or on the Participant's behalf (except as provided in Section 4.04 below); provided, however, that the Plan Administrator may from time to time impose restrictions on the right to change prior investment directions as to Participant Contributions to one or more other particular Participant Investment Funds, if the Plan Administrator determines that such restrictions on redirections are necessary to comply with the terms of the Investment Vehicles held in any Participant Investment Fund in which any amounts then credited to Participants' accounts are held. Notwithstanding the above, prior to October 1, 2007, Participants may not redirect

Participant Contributions or Company Core Contributions from the Company Stock Fund – Current Year to the Company Stock Fund – ESOP and may not redirect Participant Contributions or Company Core Contributions from the Company Stock Fund ESOP to the Company Stock Fund – Current Year.

Any change in investment direction by a Participant for all or any portion of the Participant Contributions and Company Core Contributions, including related investment earnings or losses, then credited to the Participant's accounts will generally be effective as of the same Business Day on which notice is received, provided that notice is given prior to the close of the New York Stock Exchange on such day, and will be effective as of the following Business Day if such notice is given after the close of the New York Stock Exchange. Any change in investment direction for future contributions will be effective as soon as administratively possible.

4.04 **Investment of Company Matching Contributions.** All amounts in each Participant's Company Matching Contributions account shall be invested in the Company Stock Fund in accordance with Section 4.02(a); provided, however, that Participant Contributions, Company Core Contributions and Company Matching Contributions which are commingled in the Company Stock Fund shall be accounted for in separate subaccounts and shall remain subject to the separate Plan provisions which relate to each type of contribution.

Prior to October 1, 2007, a Participant shall be eligible to redirect the investment of Matured Company Matching Contributions from the Company Stock Fund-ESOP to another Participant Investment Fund other than the Company Stock Fund — Current Year. Effective October 1, 2007, a Participant shall be eligible to redirect the investment of all Company Matching Contributions from the Company Stock Fund to another Participant Investment Fund.

4.05 **Participants' Accounts.** The Plan Administrator shall cause to be established and maintained for each Participant an account for all amounts in respect of (a) Before-Tax Contributions made on his behalf, (b) his After-Tax Contributions, (c) Catch-up Contributions, (d) Rollover Contributions, (e) Company Core Contributions,

and (f) Company Matching Contributions attributable to his Matched Contributions made during each Plan Year. Effective October 1, 2006, for purposes of this Section 4.05, transferred assets described in Section 3.13 shall be credited to a Participant's Rollover Contributions account (except as otherwise provided in Section 3.13 in the case of certain assets which are treated as Before-Tax Contributions or Catch-up Contributions). Prior to October 1, 2006, transferred assets described in Section 3.13 were credited as earnings to a Participant's After-Tax Contributions account (except as otherwise provided in Section 3.13 in the case of certain assets which were treated as Before-Tax Contributions or Catch-Up Contributions). Credits to Participants' accounts for amounts invested pursuant to Section 4.02 in each of the Participant Investment Funds shall be allocated to the Participant's Before-Tax Contributions, After-Tax Contributions, Catch-up Contributions, Company Core Contributions and Company Matching Contributions accounts in proportion to the amounts credited to such accounts during the period for which such allocation is made.

Credits to Participants' accounts for amounts held and invested pursuant to Section 4.02 in the Participant Investment Funds, including the Company Stock Fund shall be expressed in terms of their dollar value. Shares of Company Stock which are purchased from time to time during any Plan Year out of cash funds held by the Trustee under the Trust Agreement shall be valued for purposes of the Plan at the average of the actual cost thereof, including transfer taxes, brokerage commissions, etc., if any, incident to the purchase thereof. Shares of Company Stock which are made available through Participant cash distributions, loans, or investment changes shall be valued for purposes of the Plan at the Fair Market Value thereof at the close of the Business Day that the Participant's application or direction to the Trustee is received for such transaction, provided such application or direction is received prior to the close of that Business Day, and at the Fair Market Value thereof at the close of the following Business Day if the application or direction is received after the close of the Business Day. Each Participant Investment Fund shall be valued daily by the Trustee.

Beginning with the last prior valuation made, amounts credited to each Participant's accounts maintained hereunder shall be adjusted to reflect the effect of

income collected and accrued, realized and unrealized profits and losses, expenses, and all other transactions affecting the Participant Investment Funds since the prior valuation of the Participant Investment Funds. Such valuations and such adjustments of the amounts credited to Participants' accounts shall be made so as to preserve for each Participant that Participant's proportional beneficial interest in each Participant Investment Fund, based upon contributions made by or on his behalf and invested in each such Participant Investment Fund.

The fact that credits shall be made to a Participant's account in respect of Company Matching Contributions shall not vest in such Participant any right, title, or interest in the assets of the Company Stock Fund, except at the time or times and upon the terms and conditions provided in the Plan. Except as provided in Section 4.07, a Participant shall have no right of request, direction, or demand upon the Trustee to exercise in the Participant's behalf any rights to purchase or sell securities which may be granted to the Trustee. The Trustee, in its discretion, may exercise or sell any rights to purchase other securities appertaining to securities held by the Trustee, whether or not allocated to individual accounts. The accounts of Participants shall be appropriately credited.

No person shall have any right to, or interest in, any assets of the Participant Investment Funds upon termination of employment or otherwise, except as provided from time to time under this Plan, and then only to the extent of the benefits payable to such person under the Plan. All payments of benefits as provided for in this Plan shall be made solely out of the assets of the Participant Investment Funds and no fiduciary shall be liable therefor in any manner. No fiduciary or other person or entity guarantees the Participant Investment Funds in any manner against investment loss or depreciation in asset value.

4.06 **Account Statements; Investment Information.** At such times as required by law or as the Plan Administrator deems necessary or desirable for the purpose of administering the Plan, each Participant will be furnished with a statement showing the status of his or her Plan accounts as of such dates as are selected by the



Plan Administrator. In addition, sufficient information shall be available to Participants to permit informed investment decisions as to the Participant Investment Funds and Investment Vehicles in which Participant Contributions and Company Core Contributions may be invested.

Information relating to Participants' purchase, holding, and sale of units of interest in Company Stock and exercise of voting, tender, and similar rights shall be maintained in accordance with procedures which shall be adopted and amended from time to time in writing by the Plan Administrator (the "Confidentiality Procedures") that are designed to safeguard the confidentiality of such information (except as necessary to comply with federal or applicable state law, such as securities law reporting rules for insiders). The Confidentiality Procedures shall incorporate at least the safeguards of confidentiality as to exercising voting, tendering, and similar rights as are set forth in Section 4.07; and name a fiduciary to be responsible for receiving and acting on investment directions and/or monitoring compliance with the Confidentiality Procedures and who shall be empowered to determine when an independent fiduciary should be designated to carry out such activities as to Company Stock relating to situations which such responsible fiduciary determines will have a potential for undue influence (such as tender offers, exchange offers, and contested Board elections) all as contemplated by ERISA Section 404(c).

**4.07 Voting, Tendering, and Similar Rights as to Company Stock.** Before each annual or special meeting of the stockholders of the Company, the Trustee or its agent shall furnish or cause to be furnished to each Participant for whom an account is established and maintained under the Plan and to which units of interest in Company Stock are allocated a copy of the proxy solicitation material for such meeting, which is provided to stockholders of the Company who are not Plan Participants, together with a request for the Participant's confidential directions to the Trustee as to how the full shares of Company Stock then represented by the units of interest allocated to such Participant's account should be voted. Upon timely receipt of such directions, the Trustee shall vote such full shares as directed. Any such shares held by the Trustee as to which it receives no voting directions and fractional shares shall be voted by the Trustee in the same proportions as shares to which voting directions have been received.

Each Participant shall have the right, to the extent of the number of shares of Company Stock represented by the units of interest allocated to his account, to confidentially direct the Trustee in writing as to the manner in which to respond to a tender or exchange offer with respect to shares of Company Stock. The Trustee shall use its best efforts to timely distribute or cause to be distributed to each Participant the information distributed to stockholders of the Company who are not Plan Participants in connection with any such tender or exchange offer. Upon timely receipt of such directions, the Trustee shall respond as directed with respect to such shares of Company Stock. If the Trustee shall not receive timely direction from a Participant as to the manner in which to respond to such a tender or exchange offer, the Trustee shall not tender or exchange any shares of Company Stock with respect to which such Participant has the right of direction. The Trustee shall respond as to fractional shares in the same proportions as the shares as to which Participant directions have been received.

Each Participant is, for purposes of this Section 4.07, hereby designated a “named fiduciary” within the meaning of ERISA Section 403(a)(1) with respect to voting and responding to tender and exchange offers with respect to full shares of Company Stock as to which units of interest are allocated to his account, except to the extent otherwise permitted by ERISA Section 404(c) because such Participant has exercised independent control over assets in his or her individual account in the manner described in Department of Labor Reg. §2550.404c-1 promulgated thereunder. “Participant” as used in this Section 4.07 shall include in the event of the death of a Participant, his Beneficiary, and in the event a Qualified Domestic Relations Order is applicable to an account, each alternate payee under such Qualified Domestic Relations Order. Directions received by the Trustee from individual Participants as provided in this Section 4.07 shall be held by the Trustee in confidence and shall not be divulged or released to any person, including directors, officers, or employees of the Company or any Affiliated Company, except as permitted by the Confidentiality Procedures.

The Trustee is hereby empowered to set such deadlines for Participant returns of proxy, tender, exchange, or similar directions as are necessary to assure the proper tally of such returns and timely action based on such response, consistent with the Confidentiality Procedures and the directions of any independent fiduciary appointed as contemplated by the Confidentiality Procedures.

#### **ARTICLE IV-A**

##### **ESTABLISHMENT OF AN EMPLOYEE STOCK OWNERSHIP PLAN**

4.01-A Effective May 15, 2002, the Company Stock Fund described in Section 4.02(a) is converted to an employee stock ownership plan (“ESOP”) as defined in Section 4975(e) of the Code and the regulations thereunder. The ESOP is intended to form a portion of the Plan, the balance of which includes a qualified profit-sharing plan described in Section 401(a) of the Code which is not an ESOP. The ESOP shall hold Participant Contributions pursuant to Deferral Elections described in Section 3.02, Company Core Contributions described in Section 3.04, and Company Matching Contributions described in Section 3.03. Prior to October 1, 2007, the ESOP shall be the Participant Investment Fund described as the Air Products Company Stock Fund—ESOP. On and after October 1, 2007, the ESOP shall be the Participant Investment Fund described in Appendix A of the Plan as the Air Products Company Stock Fund.

4.02-A The ESOP shall be primarily invested in Company Stock as described in Section 4.02(a). Company Stock as defined herein is traded publicly on the New York Stock Exchange. A Participant may direct the Trustee to vote the Company Stock allocated to his account as described in Section 4.07. A Participant may elect a distribution of his account balance in the Company Stock Fund to be paid in Company Stock or in cash as described in Section 5.01. A Participant may elect to diversify his account in the Company Stock Fund to the extent described in Section 4.03 and 4.04. A Participant may begin receiving distributions of his accounts, including the Company Stock Fund, as provided in Section 3.08 or upon the occurrence of a Distribution Event as described in Section 2.21.

Allocations of Participant Contributions

and Company Matching Contributions to the ESOP are made in proportion to the compensation of each Participant based on his or her Deferral Elections as described in Section 3.02.

4.03-A Participants having all or a portion of their Participant accounts invested in Company Stock in the ESOP may elect to receive a distribution of dividends paid on Company Stock that are allocated to their Participant accounts or to reinvest such dividends in the ESOP pursuant to Section 404(k)(2)(A) of the Code, and the regulations thereunder. Dividends paid on the portion of a Participant's account attributable to Company Core Contributions, including any related investment earnings and losses, may only be reinvested to the extent Company Core Contributions and related earnings and losses are vested under Section 3.05(a) of the Plan. A participant who does not make an affirmative election under this Section 4.03-A shall be deemed to have elected to reinvest such dividends in the ESOP. The Plan Administrator shall determine the procedure for making such election available to eligible Participants.

4.04-A Participants who are employees of Affiliates of the Company that are subject to taxation as partnerships are permitted to participate in the ESOP and invest their Participant accounts in Company Stock, but are excluded from receiving dividends paid on Company Stock to the Company Stock Fund – ESOP, or after October 1, 2007, the Company Stock Fund.

## **ARTICLE V**

### **MANNER OF DISTRIBUTION OF PARTICIPANT ACCOUNTS**

5.01 **General.** Subject to Sections 5.03 and 5.05, distribution to any person entitled to receive any amounts then held by the Trustee in the Participant Investment Funds described in Article IV shall be made by the Trustee in a lump sum or, at the election of such person, in up to, but not exceeding, ten substantially equal annual installments, in the manner described in (a) and (b) below. If installments are elected, the election may be rescinded at a later date, at which time the remaining balance in the Participant's accounts shall be paid in a lump sum.

(a) **Cash Distributions.** Amounts credited to a Participant's accounts which are held by the Trustee in any Participant Investment Fund other than the Company Stock Fund shall be distributed in cash.

(b) **Company Stock Distributions.** Amounts credited to a Participant's accounts which are held by the Trustee in the Company Stock Fund shall be distributed in cash. Notwithstanding the foregoing, amounts credited to a Participant's account in the Company Stock Fund may be distributed in the form of shares of Company Stock at the election of the Participant or the Participant's Beneficiary or alternate payee, as the case may be. Distribution of a Participant's interest in a fractional share of Company Stock shall be made in cash. Notwithstanding the above, for persons electing installment distributions commencing on or after October 1, 2006, distributions of amounts credited to the Company Stock Fund must be made in cash.

The amount to be withdrawn or distributed from a Participant's account or accounts under Section 3.08 or 3.10, or pursuant to a Qualified Domestic Relations Order, shall be the amount or specified portion thereof credited to such Trustee account or accounts as of: (i) the Business Day on which the account distribution or withdrawal request is received by the Plan Administrator; provided, however, that valuation shall take place as of the following Business Day if the request is received after the close of the New York Stock Exchange; or (ii) if no request is received, the first Business Day in March of the calendar year following the year in which the Participant attains age seventy and one-half (70 1/2) or, if later, the calendar year in which the Participant retires if the Participant attained age seventy and one-half (70 1/2) on or after January 1, 2003. In the case of a Qualified Domestic Relations Order, if so provided in the Qualified Domestic Relations Order, the amount to be withdrawn or distributed shall be the amount specified in such Order.

Payment or delivery of an amount to be withdrawn or distributed shall be made as soon as practicable after the applicable date determined under the preceding paragraph, but in any event by the April 1 which follows the year in which the Participant

attains age seventy and one-half (70 1/2), or if later, the April 1 which follows the year the Participant retires if the Participant attains age seventy and one-half (70 1/2) after January 1, 2003. The payment of benefits under the Plan to a Participant (or to his Beneficiary or Beneficiaries) who has a severance from employment with the Company and all Affiliated Companies with amounts credited to his Plan accounts of \$1,000 or less, or upon the Participant's death, will begin as soon as administratively practicable after the Participant makes his last contribution.

Any distributions made pursuant to this Article V shall be subject to the requirements of Code Section 401(a)(9) and the regulations thereunder, including the minimum distribution incidental benefit requirement of Q&A-1(d) of section 1.401(a)(9)-5 of the final regulations effective January 1, 2003.

**5.02 Designation of Beneficiaries; Spousal Consents.** Unless otherwise designated as provided in the next paragraph of this Section 5.02, each Participant's Beneficiary shall be the Participant's spouse. If the Participant dies with no surviving spouse, or so designates a Beneficiary other than his spouse in accordance with the provisions of the next paragraph, the Beneficiary or Beneficiaries to receive the Plan benefits hereunder shall be as designated by the Participant in accordance with procedures specified by the Plan Administrator and filed with the Plan Administrator during the Participant's lifetime. Any such designation may be revoked or changed by the Participant at any time and from time to time, without the consent of any prior Beneficiary (other than the Participant's spouse, whose consent shall be required as provided in the next paragraph) in the same manner as the original designation. If either no such designation is made or, if made, none of the designated Beneficiaries, whether primary or contingent, is living at the time of payment, Plan benefits shall be paid to the Participant's surviving spouse, if any, and otherwise to the Participant's estate.

The designation of a Beneficiary other than the Participant's spouse shall be ineffective unless either: (i) the Participant's spouse consents in writing to such designation, the spouse's consent specifically identifies the nonspouse Beneficiary, the

Participant's spouse acknowledges the effect of such designation, and such consent is witnessed by a notary public; or (ii) it is established to the satisfaction of the Plan Administrator or a representative of the Plan Administrator that no such consent may be obtained because there is no spouse of the Participant, the spouse cannot be located, or because of such other circumstances as may be prescribed in regulations issued by the Secretary of the United States Treasury. Any consent by a spouse required by any provision of the Plan shall be irrevocable by the spouse and any such consent by the spouse (or establishment that the consent of the spouse may not be obtained) shall only be effective with respect to such spouse. No Beneficiary designation shall be effective prior to the time it is received by the Plan Administrator.

Notwithstanding the foregoing, for former Participants in the IGS Savings Plan the terms of Exhibit II shall apply.

### 5.03 **Direct Rollovers**

(a) Any Participant, any spouse of a Participant (including a former spouse who is an alternate payee under any Qualified Domestic Relations Order) or, effective April 1, 2007, any Beneficiary of a Participant (each referred to herein as a "distributee") who is entitled to receive an "eligible rollover distribution" (as defined below) from the Plan may make a special election to avoid the imposition of automatic withholding of Federal income taxes from the distribution. The special election is to have all or part of the distribution paid by the Trustee directly to an eligible retirement plan (as defined below) in lieu of receiving the distribution from the Plan. In order for such direct rollover to be made, the special election must be made in accordance with the procedures established by the Plan Administrator, the eligible retirement plan must be clearly specified, and the specified plan must be willing to accept the rollover. Any eligible rollover distribution described in Section 5.03(d)(i) that includes After-Tax Contributions which a distributee elects to rollover to a qualified defined contribution plan described in Section 401(a) or an annuity plan described in Code Section 4.03(b) must be directly rolled over to such plan pursuant to the special election in this Section 5.03(a) and must be separately accounted for as required by Code Section 402(c)(2)(A).

(b) Notwithstanding the foregoing, a direct rollover shall not be permitted if the distributee's eligible rollover distributions during the calendar year are reasonably expected to total less than \$200, and a partial direct rollover may not be made in an amount which is less than \$500. Each eligible rollover distribution may be directly rolled over to only one eligible retirement plan.

(c) The limits set forth in this Section may be modified by the Plan Administrator to the extent permitted by Code Sections 401(a)(31), 402, and 3405 and regulations or rulings issued thereunder. Moreover, the provisions of this Section shall be interpreted and applied consistently with Sections 521 through 523 of the Unemployment Compensation Amendments of 1992, and shall be deemed to be automatically amended, without the necessity of adopting a specific amendment, to the extent that applicable law, regulations, or rulings modify, amend, supersede, eliminate, clarify, or otherwise change the requirements of said Sections 521 through 523.

(d) An "eligible rollover distribution" hereunder is any distribution to or withdrawal by a distributee, except that an eligible rollover distribution does not include any portion of a distribution to the extent it is: (i) not included in gross income (without regard to the exclusion for net unrealized appreciation with respect to employer securities) provided, however, that eligible rollover distributions on or after January 1, 2002, shall include the portion of a distribution not otherwise included in gross income (i.e., After-Tax Contributions), if any, (ii) required under Code Section 401(a)(9), (iii) a deemed distribution of a defaulted loan which is unaccompanied by an actual distribution, (iv) any distribution that is one in a series of substantially equal periodic payments (not less frequently than annually) made for one or more lives or for a specified period of ten (10) years or more; (v) any hardship distribution described in Code Section 401(k)(2)(B) (i)(iv); (vi) any dividends paid on employer securities held by an ESOP which are paid directly to the Participant and not reinvested in the ESOP or (vii) any other amount which is excluded under the Code or Treasury Regulations. An



“eligible retirement plan” is an individual retirement account or annuity described in Code Sections 408(a) and 408(b) (collectively, an “IRA”), an annuity plan described in Code Section 403(a) which accepts rollover distributions, a qualified plan described in Code Section 401(a) which accepts rollover distributions, or an annuity plan described in Code Section 403(b) which accepts rollover distributions, or a Code Section 457 governmental plan which accepts rollover distributions; provided, however, that with respect to a non-spouse Beneficiary, “eligible retirement plan” shall mean only an inherited IRA within the meaning of Code Section 408(d)(3)(c) and in accordance with Code Section 402(c)(11) and Code Section 401(a)(9)(B)(ii).

5.04 **Trustee-to-Trustee Transfer.** Upon the direction of the Plan Administrator, the Trustee may transfer all amounts credited to a Participant’s accounts held by the Trustee to another retirement benefit plan qualified under Code Section 401(a) in connection with or following a Distribution Event with respect to such Participant.

5.05 **Protected Distribution Forms for Certain Transferred Balances.**

(a) In the case of a Participant who had funds transferred to the Plan from the GSF Energy Inc. Retirement Savings Plan (the “GSF Plan”) during 1989, a term annuity may be purchased with all or part of that portion of the Participant’s distribution which is attributable to funds transferred in 1986 from the former Getty savings plan to the GSF Plan. The fixed payment period cannot exceed 240 months and the amount of payments must be greater than \$25 per month.

(b) In the case of a Participant employed by Pacific Anchor Chemical Corporation who had funds transferred from the Pacific Anchor Chemical Corporation 401(k) Plan (the “Pacific Anchor Plan”) to the Plan as of July 1, 1989, such a Participant may elect to receive the amount credited to his account as of the date of such transfer in installment payments over a period not to exceed the life expectancy of the Participant or the joint life expectancy of the Participant and the Participant’s spouse, if any.

(c) In the case of a Participant employed by Industrial Gas and Supply Company (“IGS”) who had funds transferred from the IGS Savings Plan due to the merger of the IGS Savings Plan into the Plan as of March 31, 2000, such a Participant may elect to receive the amount credited to his account as of the date of such transfer, in installment payments over a period not to exceed the life expectancy of the Participant or the joint life expectancy of the Participant and the Participant’s spouse, if any. The applicable provisions are set forth in Exhibit II.

## ARTICLE VI

### ADMINISTRATION

6.01 **Plan Administrator.** The Plan Administrator shall be responsible for the administration of the Plan to the extent provided herein and except to the extent that some other person or entity shall be expressly authorized by the Board. The Plan Administrator shall not receive any compensation from the Plan for his services as such, but may be reimbursed for reasonable expenses actually incurred in the administration of the Plan.

6.02 **Expenses of Administration.** The reasonable expenses incident to the administration, management, and operation of the Plan, including (but not limited to) the compensation of legal counsel, auditors, accountants, actuaries, the Trustee, and investment managers, if any, and other costs such as recordkeeping fees, proxy voting fees, communication costs, and the cost of clerical and technical assistance which may be required, shall be payable from the Participants’ accounts as a basis point charge to the unit value of the Participant Investment Funds in which the accounts are invested. The Investment Committee may provide that certain Plan expenses, other than those payable as a basis point charge, shall be charged to a Participant’s accounts. Notwithstanding the foregoing, the Employer, in its absolute discretion, may elect at any time to pay part or all thereof directly, and any such election shall not bind the Employer as to its right to elect with respect to the same or other expenses at any other time to have such expenses paid from the Participants’ accounts.

**6.03 Powers and Duties of the Plan Administrator.** In addition to any implied powers and duties which may be necessary to carry out the provisions of the Plan and any explicit powers and duties set forth elsewhere in the Plan, the Plan Administrator shall have the following specific discretionary powers and duties:

(a) To make and enforce such rules and regulations and adopt such procedures as he shall deem necessary or proper for the efficient administration of the Plan which are not inconsistent with the Code, ERISA, or any grant of authority to another person hereunder, including without limitation rules to be followed by Participants filing notices, elections, directions, and designations under the Plan and for the furnishing and verification of evidence and proofs necessary to establish the rights of any person to benefits under the Plan;

(b) Subject to and consistent with the Code and ERISA, discretionary authority and power to construe and interpret the Plan and to decide any and all matters arising thereunder, including the right to (i) decide all questions of eligibility for benefits; (ii) determine the amount, time, and manner of payment; (iii) authorize the payment of benefits; (iv) remedy possible ambiguities, inconsistencies, or omissions; provided, however, that all such interpretations and decisions shall be applied in a uniform manner to all Participants who are similarly situated; and (v) to determine all questions of fact;

(c) Subject to the provisions of Section 6.05, to make findings of fact and determinations as to the rights of any person applying for benefits and to afford any such person dissatisfied with any such findings or determinations the right to a hearing thereof;

(d) To obtain from the Employer and from the Participants, and provide to the Trustee such information as shall be necessary for proper administration of the Plan;

(e) To authorize disbursements from the Participant Investment Funds and to obtain from the Trustee such information concerning such disbursements as shall be necessary for the proper administration of the Plan;

(f) To supervise generally the administration of the Plan in accordance with ERISA, including, without limitation, compliance with reporting and disclosure requirements and the final review of claims and appeals by Participants and their Beneficiaries;

(g) To appoint or employ other persons or fiduciaries to carry out various specific responsibilities concerning the administration of the Plan and any other agents he deems advisable, including without limitation legal counsel, auditors, and accountants, and to enter agreements for the performance of services on behalf of the Plan; and

(h) To allocate and delegate among or to any one or more person or persons (including corporate persons) named by the Plan Administrator in accordance with the provisions hereinafter, any of his powers, duties, and fiduciary responsibilities, such allocation or delegation to be effected as follows:

(i) Fiduciary responsibilities may be allocated or delegated by the Plan Administrator by naming in writing the named fiduciary to whom the responsibility is allocated or delegated, with a description of the responsibility and an outline of the duties involved;

(ii) Such of his other powers, authority, and duties as he deems proper and desirable for the efficient administration of the Plan may be delegated to any officer or other administrative employee of the Employer.

6.04 **Powers and Duties of the Investment Committee.** In addition to any implied powers and duties which may be necessary to carry out the provisions of the Plan and any explicit powers and duties set forth elsewhere in the Plan, the Investment Committee shall have the following specific discretionary powers and duties:

(a) To appoint or employ, and to enter agreements with:

(i) the Trustee;

(ii) an investment manager or managers with power to direct the investment, reinvestment, and other management of the acquisition and disposition by the Trustee of all or a portion of any of the Participant Investment Funds described in Section 4.02 (other than the Company Stock Fund), if the Investment Committee determines in its sole discretion that an investment manager or managers is necessary or desirable for management of all or any portion of any such Participant Investment Fund; provided, however, that each such investment manager shall acknowledge in writing that such investment manager is a fiduciary with respect to the Plan, and:

(A) shall be registered as an investment advisor under the Investment Advisors Act of 1940; or

(B) shall be a bank, as defined in the Investment Advisors Act of 1940; or

(C) shall be an insurance company qualified to perform services with power to manage, acquire, or dispose of assets of the Plan under the laws of more than one State; or

(D) if not registered as an investment advisor under the Act by reason of paragraph (1) of section 203A(a) of the Investment Advisors Act of 1940, shall be registered as an investment advisor under the law of the State (referred to in such paragraph (1)) in which it maintains its principal office and place of business, and, at the time the investment advisor last filed the registration form most recently filed by the investment advisor with such State in order to maintain the investment advisor's registration under the laws of such State, shall also have filed a copy of such form with the Secretary of Labor.

(iii) an investment advisor who does not meet the qualifications for an investment manager set forth in Paragraph (ii) above, provided that such investment advisor may offer investment advisory services and recommendations to the Trustee but shall have no power to cause the Trustee to act on such advice.

(b) To direct the Trustee to invest and reinvest all or any portion or portions of any of the Participant Investment Funds described in Section 4.02 held under the Trust Agreement as specified by the Investment Committee, in interests in collective investment funds, group trusts, or other entities or in other investments directed by the Investment Committee, and to exercise ownership rights with respect to such interests or investments, all as specified by the Investment Committee;

(c) To perform any and all duties allocated to it by the Board or required of it by the provisions of this Plan, the Code, or ERISA;

(d) To allocate and delegate among or to any one or more of its members or officers, any subcommittees of the Investment Committee, and any other person or persons (including corporate persons) named by it in accordance with the provisions hereinafter, any of its powers, duties, and fiduciary responsibilities (other than trustee responsibilities), such allocation or delegation to be effected as follows:

(i) Fiduciary responsibilities may be allocated or delegated by the Investment Committee by naming in writing, including by recording in the minutes of the Investment Committee's meetings the named fiduciary to whom the responsibility is allocated or delegated, with a description of the responsibility and an outline of the duties involved;

(ii) Except where a member of the Investment Committee, the fiduciary so named shall indicate acceptance of the responsibility by executing the written instrument naming such fiduciary, whereupon such executed instrument shall be incorporated by this reference in the Plan;

(iii) For the purpose of this Section 6.04(d), a trustee responsibility is a responsibility to manage or control the assets of the Plan other than the power to appoint an investment manager in accordance with Section 6.04(a)(ii). The power to allocate or delegate responsibility to manage the Participant Investment Funds (other than the Company Stock Fund) described in Paragraph 4.02 may only be made in accordance with such Section 6.04(a)(ii); and

(iv) Such of its other powers, authority, and duties as it deems proper and desirable may be delegated to any one of its members or officers or to any officer or other administrative employee of the Employer, provided that such delegation shall be noted in the minutes of the proceedings of the Investment Committee or other writing;

(e) To take all actions necessary to transfer Plan assets and liabilities to another qualified plan subject to, and in accordance with the provisions of applicable laws and Section 7.03, where such transfer is required in connection with any transaction or event or series of events or transactions which may from time to time be approved by the Board or approved pursuant to a delegation of authority by the Board;

(f) To take all actions necessary to amend the Plan to assume liabilities, and to direct the Trustee to accept assets, of another qualified plan subject to, and in accordance with the provisions of applicable law and Section 7.03, required in connection with any transaction or event or series of similar transactions or of similar events which may from time to time be approved by the Board or approved pursuant to a delegation of authority from the Board; and

(g) To take such further action as the Investment Committee deems appropriate, in regard to establishing and reviewing programs, guidelines, policies, and objectives for investment of Plan assets, and reviewing investment performance in terms of such programs, guidelines, policies, and objectives.

6.05 **Benefit Claims Procedure.** The claim and appeal procedure herein provided is intended to meet the requirements of ERISA and the regulations thereunder. By virtue of such requirements, the procedure provided in this Section 6.05 shall be the sole and exclusive procedure for claiming benefits or appealing any denial of a claim for benefits under the Plan. This procedure shall, in respect of all claims arising under the Plan, supersede and preempt any and all procedures for settlement of disputes or resolution of grievances under any other agreements or plans.

(a) **Claim.** In the event of a claim by a Participant or a Participant's Beneficiary for or in respect of any benefit under the Plan or the method of payment thereof, such Participant or Beneficiary shall present the reason for his claim in writing to the Plan Administrator. The Plan Administrator shall, within ninety (90) days after the receipt of such written claim, send written notification to the Participant or Beneficiary as to its disposition, unless special circumstances require an extension of time for processing the claim. If such an extension of time for processing is required, written notice of the extension shall be furnished to the claimant prior to the termination of the initial ninety (90) day period. In no event shall such extension exceed a period of ninety (90) days from the end of such initial period. The extension notice shall indicate the special circumstances requiring an extension of time and the date by which the Plan Administrator expects to render the final decision.

(b) **Denial.** In the event the claim is wholly or partially denied, the Plan Administrator's written notification shall: (a) state the specific reason or reasons for the denial, (b) contain specific references to pertinent Plan provisions on which the denial is based, (c) provide a description of any additional material or information necessary for the Participant or Beneficiary to perfect the claim and an explanation of why such material or information is necessary, and (d) set forth the procedure by which the Participant or Beneficiary may appeal the denial of his claim. If no notice of denial is provided within the time period set forth above, the claim shall be deemed to be denied and the Participant or Beneficiary may proceed to appeal in accordance with Paragraph (c) below.

(c) **Appeal.** In the event a Participant or Beneficiary wishes to appeal the denial of his claim, he may request a review of such denial by making written application to the Claims Committee within sixty (60) days after receipt of such written claim denial (or the date on which such claim is deemed denied if notice is not received within the applicable time periods pursuant to Paragraph (b) above). Such Participant



or Beneficiary (or his duly authorized representative) may, upon written request to the Claims Committee, review any records of the Plan Administrator or other persons to whom fiduciary responsibilities have been allocated or delegated hereunder which the Claims Committee determines are pertinent to such claim, and submit in writing issues and comments in support of his position.

The Claims Committee shall notify the Participant or Beneficiary of the Claims Committee's final decision within 60 days after receipt of the written appeal unless an extension of time is necessary due to special circumstances. If an extension is required, the Claims Committee shall notify the Participant, Beneficiary or authorized representative of the extension within the initial review period and shall explain the special circumstances requiring the extension within such initial 60-day period.

The final decision shall be in writing and shall include specific reasons for the decision, written in a manner calculated to be understood by the claimant, and specific references to the pertinent Plan provisions on which the decision is based. In addition the notice shall provide that the claimant is entitled to receive, upon request and free of charge, reasonable access to, and copies of, all documents, records, and other information relevant to the claimant's claim for benefits, and shall contain a statement of the claimant's right to bring an action under Section 502(a) of ERISA. If the claim has not been granted and the notice is not furnished within the period of time specified above, the claim shall be deemed denied. The decision on appeal shall be binding on all parties.

(d) **Qualified Domestic Relations Order.** Since separate procedures have been adopted with respect to domestic relations orders, the service of a domestic relations order on the Plan shall not be treated as a claim for benefits as contemplated by this Section 6.05 and the foregoing procedure shall not be followed in determining whether such an order constitutes a Qualified Domestic Relations Order.

6.06 **Fiduciaries.** Persons and entities named or referred to in the Plan, including without limitation, members of the Investment Committee, members of the Claims Committee, and the Plan Administrator may from time to time act in respect of

the Plan and/or the Trust Fund in a fiduciary capacity as to the operation and administration of the Plan and/or the Trust Fund, as well as in a non-fiduciary capacity on behalf of an Employer as a sponsor of the Plan and/or settlor of the Trust Fund. Except as expressly provided in the Plan, no reference in the Plan to any particular act, duty, or responsibility by any person or entity is intended to ascribe a fiduciary or non-fiduciary role thereto.

For purposes of ERISA Section 402(a), "named fiduciaries" for the Plan shall include: the Finance Committee of the Board, insofar as it appoints the persons to serve on the Investment Committee and has oversight responsibility for review of certain actions taken by the Investment Committee; the Plan Administrator with respect to the control and management of the operation and administration of the Plan and compliance with the reporting and disclosure requirements of ERISA and the Code; the Investment Committee with respect to control and management of the Trust Fund; and the Claims Committee with respect to adjudication of claim appeals. In addition, the Trustee shall be the named fiduciary or named fiduciaries with respect to the management, control, custody, and investment of the Trust Fund or specified portions thereof, except to the extent: (a) an investment manager has been appointed to manage and/or acquire and dispose of investments as contemplated by Paragraph 6.05(h)(2), in which case such investment manager shall be the named fiduciary with respect to the management, acquisition, and disposition of such investments; or (b) the Trustee has been directed by the Investment Committee to invest or reinvest, and exercise ownership rights with respect to, interests in collective investment funds, trusts, or other entities or other investments as contemplated by Paragraph 6.05(i), in which case the Investment Committee shall be the named fiduciary with respect to the management, acquisition, and disposition of such interests and investments.

6.07 **Adequacy of Communications; Reliance on Reports and Certificates**. All notices, elections, applications, directions, or other communications given, made, filed, delivered, or transmitted by or for an Employee or Participant in pursuance of the provisions of this Plan shall not be deemed to have been duly given,

made, filed, delivered, transmitted, or received unless the same shall be in writing on such form as is made available by the Plan Administrator or the Trustee for that purpose and until the same shall actually be received at the locations specified on such form.

Any person acting upon notices, directions, or other communications given, made, delivered, or transmitted by the Investment Committee may rely on any documents signed by the chairman or secretary of the Investment Committee or by any one or more of its members or Company officers or employees authorized by the Committee to certify its actions.

The Investment Committee, the Claims Committee or any of their members will be entitled to rely conclusively upon any information, including without limitation, all tables, valuations, certificates, opinions, and reports, which is furnished by the Trustee, any auditor, accountant, legal counsel, or other person who is employed or engaged for the purpose of assisting such Committees in the performance of their responsibilities hereunder and as to whom the members of the applicable Committee have no reason to doubt the competence, integrity, or responsibility.

6.08 **Indemnification.** The Company agrees to indemnify each member of the Investment Committee or the Claims Committee who is its employee or the employee of an Affiliated Company against any and all claims, loss, damage, expense, and liability from any act or failure to act unless the same is judicially determined to be the result of such member's gross negligence or willful misconduct, except as otherwise prohibited by applicable law.

6.09 **Member's Own Participation.** No member of the Investment Committee or the Claims Committee may act, vote, or otherwise influence a decision of the Committee relating solely to his own participation under the Plan.

6.10 **Elections.** Exhibit III attached hereto, entitled "Plan Elections", sets forth elections under the Plan made by the Company or its delegates or officers, including the Vice-President Human Resources, the Plan Administrator or his delegates, or others (but not Participants, spouses, beneficiaries, alternate payees or other

Participants or payees) in regard to elections made under the Plan or applicable law, whether or not specifically referenced in the Plan, and is designed to include only those elections required by applicable law to be specified in the Plan, but may include other elections as well.

## ARTICLE VII

### AMENDMENT, CORRECTION AND DISCONTINUANCE

#### 7.01 **Right to Amend or Terminate.**

(a) The Company intends and expects to continue the Plan indefinitely. Nevertheless, (i) the Company reserves the right to terminate the Plan or amend or modify it from time to time and (ii) each Employer reserves the right to suspend, terminate, or completely discontinue contributions under the Plan with respect to itself and its Employees and their Beneficiaries. Action to terminate the Plan may be taken only by the Board, by its resolutions, duly adopted. The Investment Committee may act on behalf of the Company and without action by or approval of the Board, to add or discontinue Participant Investment Funds. Any other action referred to in this subsection and not determined by the Company's general counsel to be in contravention of law may be taken on behalf of the Company by the Chairman of the Board evidenced by a resolution, certificate, new or revised Plan text, or other writing; provided that, only the Board may approve a Plan amendment which (A) would materially increase aggregate accrued benefits under, materially change the benefit formula provided by, or materially increase the cost of the Plan, so long as persons designated by the Board as "Executive Officers" for purposes of the U.S. Securities laws are Participants in the Plan; or (B) would freeze benefit accruals, materially reduce benefit accruals, or otherwise materially change the benefits under the Plan; or (C) would constitute the exercise of power or function herein assigned to the Finance Committee of the Board, the Investment Committee, the Plan Administrator, or the Claims Committee. The Chairman may delegate the authority described in the preceding sentence in writing.

(b) Notwithstanding Paragraph (a), no action to terminate, amend, or modify the Plan described therein shall adversely affect Participants who shall have retired under the Plan prior to such action, nor shall any amendment have the effect of decreasing the nonforfeitable percentage or the amount of a Participant's accounts except as permitted by Code Section 411(d)(6) and the regulations thereunder. No amendment shall be made to this Plan which eliminates a subsidy or an optional form of benefit available to a Participant except as permitted by Code Section 411(d)(6) and the regulations thereunder.

(c) Notwithstanding any of the foregoing provisions of this Section, any modification or amendment of the Plan may be made retroactively, if necessary or appropriate to qualify or maintain the Plan and/or the Trust Fund as a plan and/or trust meeting the requirements of the Code and ERISA, or any other provision of law, as now in effect or hereafter amended or adopted, and any regulation issued thereunder. If the Plan is terminated by the Company, all amounts credited to each of such Participant's accounts in respect of Before-Tax Contributions, After-Tax Contributions, Catch-up Contributions, Company Core Contributions, and Company Matching Contributions shall be distributed by the Trustee to any such Participant so affected by such discontinuance or to his or her designated Beneficiary as soon as practicable (to the extent permitted under applicable law), with distributions to be made in accordance with the directions of the Plan Administrator.

(d) Upon the Plan's termination or partial termination, the rights of all affected Participants to benefits accrued to the date of such termination or partial termination, to the extent not yet vested, shall be nonforfeitable.

7.02 **Corpus and Income Not to be Diverted.** Notwithstanding any power of discontinuance or amendment reserved in the Plan or Trust Agreement, it shall be impossible at any time for any part of the corpus and income of the Trust Fund held for the benefit of Participants and their Beneficiaries to be used for, or diverted to, purposes other than for the exclusive benefit of such Participants or their Beneficiaries and defraying reasonable expenses of administering the Plan. Notwithstanding the foregoing:

(a) All contributions made to the Plan are conditioned upon their deductibility in full under Code Section 404, or any statute of similar import. If all or any portion of a contribution is determined to be not deductible, the amount so determined to be non-deductible shall be returned to the Employer, if the Employer so directs the Trustee, within one (1) year of the determination of the disallowance of the deduction.

(b) A contribution made by a mistake of fact shall be returned to the Employer within one (1) year after the payment of the contribution, if the Employer so directs the Trustee.

7.03 **Merger or Consolidation of Plan.**

(a) The Plan shall not be terminated automatically by the Company's acquisition by or merger into any other company, but the Plan shall be continued after such merger if the successor company agrees to continue the Plan. All rights to amend, modify, suspend, or terminate the Plan shall be transferred to the successor company, effective as of the date of the merger, without the need for a specific Plan amendment.

(b) The Plan shall not merge or consolidate with, or transfer its assets or liabilities to, any other plan unless each Participant would (if the Plan then terminated) be entitled to receive a benefit after the merger, consolidation, or transfer which is equal to or greater than the benefit he would have been entitled to receive immediately before the merger, consolidation, or transfer (if the Plan had been terminated).

7.04 **Correction.** Any operational or qualification defect or failure of this Plan of any kind whatsoever may be corrected pursuant to any program of voluntary correction sponsored by the Internal Revenue Service or the Department of Labor, or any other agency of the Federal government or pursuant to applicable law, regulations or rulings, to the extent determined by, and at the sole discretion of, the Chairman of the Board.

## ARTICLE VIII

### GENERAL PROVISIONS

8.01 **Nonalienation of Benefits**. Except as may be otherwise required by law, no benefit payable under the Plan or any interest of any Participant arising out of or created by this Plan, either before or after retirement, shall be subject, either voluntarily or involuntarily, to anticipation, assignment, pledge, execution, attachment, garnishment, or alienation. Any attempt to assign or alienate a benefit payable under the Plan shall be void. Also, except as may otherwise be required by law, no such benefit or interest will in any manner be liable for or subject to the debts, liabilities, contract, engagements, or torts of any Participant. This Section 8.01 also shall apply to the creation, assignment, or recognition of a right to any benefit payable with respect to a Participant pursuant to a domestic relations order, unless such order is determined by the Plan Administrator to be a Qualified Domestic Relations Order. In the case of a Qualified Domestic Relations Order, distributions shall be made in accordance with and shall be governed by procedures adopted by the Plan Administrator. Notwithstanding any other provisions of the Plan, to the extent permitted under the provisions of Code Sections 401(a)(13)(C) and (D), or under other applicable law, a Participant or Beneficiary may have his benefits reduced in the event of his willful breach of fiduciary duty to the Plan or his criminal act against the Plan.

8.02 **Payments to Minors, Incompetents, and Related Situations**. If a Participant or Beneficiary entitled to receive any benefits hereunder is a minor, is adjudged to be legally incapable of giving valid receipt and discharge for such benefits, or is unable to care for his affairs because of illness, accident, mental disability, or similar circumstances, such benefits shall be paid to such person as the Plan Administrator shall designate or to the duly appointed guardian. Such payment shall be deemed a complete discharge of any liability for such benefits under the Plan.

8.03 **Unclaimed Accounts - Trust Funds**. No interest shall accrue to or for the account of Participants or their Beneficiaries during any period that any

distribution hereunder shall remain unclaimed. If any distribution made by the Trustee from any of the Participant Investment Funds remains unclaimed for a period of six (6) months, the Trustee shall notify the Plan Administrator, who will promptly attempt to locate the person entitled to receive such distribution.

8.04 **No Guarantee of Employment.** The Plan shall not be deemed to be in consideration of, or an inducement for, the employment of any person by the Company or any Affiliated Company. Nothing contained in the Plan shall be deemed to give any employee the right to be retained in the service of the Company or any Affiliated Company or to interfere with the right of the Company or any Affiliated Company to discharge or to terminate the service of any employee at any time without regard to the effect such discharge or termination may have on any rights under the Plan.

8.05 **Governing Law.** The Plan, the Trust Agreement, and all amendments thereto shall be construed, whenever possible, to be in conformity with the requirements of the Code and ERISA, and according to the laws of the Commonwealth of Pennsylvania (including its statute of limitations provisions, but excluding its choice of law provisions) to the extent not preempted by applicable federal law.

8.06 **Gender, Number, and Headings.**

(a) As used herein, the pronouns “he”, “him”, or “his”, referring to an Employee, Participant, Beneficiary, or any other person, shall also be deemed to refer to and include the feminine gender.

(b) Whenever any words are used herein in the singular or plural, they shall be construed as if they were also used in the plural or singular, respectively, in all cases where applicable.

(c) Headings of Articles and Sections of the Plan are inserted for convenience of reference only and as such they constitute no part of the Plan and are not to be considered in the meaning or construction thereof.



(d) Any reference to the Code or ERISA or a section thereunder or a regulation thereunder shall also refer to any successor statute, successor section, or successor regulation.

8.07 **Severability.** Each provision of the Plan shall be independent of each other provision of the Plan and if any provision of the Plan proves to be, or is held by any court, tribunal, board, or authority of competent jurisdiction to be, void or invalid as to any Participant or group of Participants, such provision shall be disregarded and deemed to be null and void and not part of the Plan; but such invalidation of any such provision shall not otherwise impair or affect this Plan or any of the other provisions or terms hereof.

8.08 **Obligations of the Employer.** No Employer shall have any liability with respect to payments of benefits under the Plan and each Participant and Beneficiary shall look solely to the Trust Fund for any payments or benefits under the Plan. Upon total or partial termination of the Plan, no Employer shall have any further liability either to provide benefits to those employees affected by such total or partial termination (whether or not such benefits are then in pay status) or to make any further contributions to or under the Plan in respect of such employees.

8.09 **Effective Date.** The amended and restated Plan as herein set forth is effective as of October 1, 2009, except for provisions which indicate a later effective date.

8.10 **Uniformed Services Employment and Reemployment Rights Act.** Notwithstanding any provision of this Plan to the contrary, contributions, benefits and service credit with respect to qualified military service will be provided in accordance with Code Section 414(u).

8.11 **Use of Electronic Media; Adjustment of Certain Time Periods.** Notwithstanding any provision herein which requires notices, consents, elections, or other actions under the Plan to be effectuated through a writing, such notices, consents, elections, or other actions may be effectuated through the use of electronic media, if so

provided in procedures established by the Plan Administrator consistent with Department of Labor or Internal Revenue Service pronouncements or other applicable law. Moreover, any time periods set forth herein for providing notices, making elections, granting consents, or taking other actions which are based upon time limits established under applicable law shall be deemed to be automatically amended, without the necessity of a formal amendment, to reflect any subsequent modification of those deadlines through Department of Labor or Internal Revenue Service pronouncements or other changes in applicable law.

**IN WITNESS WHEREOF**, this Air Products and Chemicals, Inc. Retirement Savings Plan, as amended and restated effective October 1, 2009, with amendments through September 30, 2010, has been duly executed on behalf of Air Products and Chemicals, Inc.

**AIR PRODUCTS AND CHEMICALS, INC.**

By: /s/ Lynn C. Minella  
Senior Vice President – Human Resources and  
Communications

ATTEST:

/s/ Lynn German Long  
Assistant Secretary

APPENDIX A

PARTICIPANT INVESTMENT FUNDS  
Effective as of September 30, 2010

**Tier 1 – Life Cycle Investment Options**

- *SSgA Target Retirement Income Securities Lending Series Fund Class II*
- *SSgA Target Retirement 2010 Securities Lending Series Fund Class II*
- *SSgA Target Retirement 2015 Securities Lending Series Fund Class II*
- *SSgA Target Retirement 2020 Securities Lending Series Fund Class II*
- *SSgA Target Retirement 2025 Securities Lending Series Fund Class II*
- *SSgA Target Retirement 2030 Securities Lending Series Fund Class II*
- *SSgA Target Retirement 2035 Securities Lending Series Fund Class II*
- *SSgA Target Retirement 2040 Securities Lending Series Fund Class II*
- *SSgA Target Retirement 2045 Securities Lending Series Fund Class II*
- *SSgA Target Retirement 2050 Securities Lending Series Fund Class II*

**Tier 2 – Core Investment Options**

- *SSgA Stable Value Fund*
- *Western Asset Core Plus Bond – Institutional Class (Ticker Symbol: WACPX)*
- *Dodge & Cox Balanced Fund (Ticker Symbol: DODBX)*
- *Vanguard Windsor II Fund – Admiral Shares (Ticker Symbol: VWNAX)*
- *SSgA S&P 500® Index Securities Lending Series Fund Class II*
- *Pyramis Small Capitalization Core Commingled Pool*
- *American Funds® Growth Fund of America® - Class R5 (Ticker Symbol: RGAFX)*
- *Fidelity International Discovery Fund Class K (Ticker Symbol: FIDKX)*
- *Air Products Company Stock Fund*

**Tier 3 – Self-Directed Brokerage**

- *Fidelity Money Market Trust Retirement Government Money Market Portfolio*
- *Fidelity BrokerageLink®*

The Qualified Default Investment Alternative is the Tier 1 – Life Cycle Investment Option. Contributions will be invested in a particular fund within that Tier based on the Participant's age in accordance with procedures determined by the Plan Administrator.

EXHIBIT I

ELIGIBLE NONUNION HOURLY LOCATIONS DESIGNATED  
BY VICE PRESIDENT - HUMAN RESOURCES

EFFECTIVE AS OF SEPTEMBER 30, 2010:

	<u>Designated Terminal For 125% of Base Salary</u>
ASHLAND, KY	YES
BETHLEHEM, PA	YES
BOUNTIFUL, UT	YES
BURNS HARBOR, IN	NO
BUTLER, IN	YES
CAMDEN, SC	YES
CHANDLER, AZ	YES
CONVENT, LA	NO
CONVENT, LA (Drivers)	YES
CONYERS, GA	YES
CREIGHTON, PA	YES
DECATUR, AL	YES
DEER PARK, TX	NO
GLENMONT, NY	YES
GRAY, TN	YES
LANCASTER, PA	YES
LANCASTER, PA (Express Services)	NO
LAPORTE, TX	YES
LASALLE, IL	YES
LIBERAL, KS	YES
MANALAPAN, NJ	NO
MIDLOTHIAN, TX	YES
NIAGARA FALLS, NY	YES
OAK CREEK, WI	YES
ORLANDO, FL	YES
PACE, FL	YES
PARKERSBURG, WV	YES
PRYOR, OK	YES
PUYALLUP, WA	YES
REIDSVILLE, NC	YES
SHAKOPEE, MN	YES
SMITHVILLE, MO	NO
SPARROWS POINT, MD (Drivers)	YES

**EXHIBIT II**  
**FORMS OF DISTRIBUTION AVAILABLE TO PARTICIPANTS WHO HAD AMOUNTS**  
**TRANSFERRED TO THE PLAN FROM THE IGS SAVINGS PLAN**

(i) **Forms of Payments to Participants.** Participants who were previously participants in the IGS Savings Plan shall continue to have available under the Plan the forms of payment which were available under the IGS Savings Plan, in addition to the forms of benefit provided for in Article V of the Plan; provided, however, that distribution shall automatically be made in the form of a lump sum if the value of the aggregate amounts credited to the Participant's Plan accounts does not exceed the amount set forth in Paragraph 3.10(c) of the Plan. Such forms of payment shall be available with respect to the balance of the Participant's account which was transferred from the IGS Savings Plan to the Plan in connection with the merger of the IGS Savings Plan effective March 31, 2000.

Any distributions made pursuant to this Exhibit II or under Article V must satisfy the requirements of Code Section 401(a)(9) and the regulations thereunder, including the minimum distribution incidental benefit requirement. The former IGS Savings Plan Participant shall have the ability to recalculate annually the life expectancy of the Participant and the Participant's Spouse. Any recalculation of life expectancy shall be done in accordance with Code Section 401(a)(9) and the regulations thereunder.

(1) **Normal Form of Payment.** Unless the Participant elects otherwise the aggregate amount credited to the Participant's Plan accounts shall be made in a lump sum. The normal form of payment shall be automatic, unless the Participant files a written request with the Administrator prior to the date on which the aggregate amounts credited to the Participant's Plan accounts are automatically payable, electing an optional form of payment.

**(2) Optional Forms of Payment.**

(a) The Participant shall have the right to receive the aggregate amounts credited to his or her Participant Plan accounts in monthly, quarterly, semi-annual or annual payments from the Plan over any period not extending beyond the life expectancy of the Participant and his or her Beneficiary.

(b) A direct rollover will be available to the Participant and/or the Spouse under the terms of Section 5.03.

**(ii) Forms of Death Benefit Distributions.**

(1) **Spousal Death Benefit.** On the death of a Participant, the aggregate amounts credited to the Participant's Plan accounts will be paid to the Participant's Surviving Spouse, or if the Surviving Spouse has consented in a manner conforming to a Qualified Election, then to the Participant's Designated Beneficiary.

The Surviving Spouse may elect to have distribution of the aggregate amounts credited to the Participant's Plan Accounts commence within the 90-day period following the date of the Participant's death. The aggregate amount credited to the Participant's Plan Accounts shall be adjusted for gains or losses occurring after the Participant's death in accordance with the provisions of the Plan governing the adjustment of account balances for other types of distributions.

The Participant may waive the spousal death benefit described in this Section B(1) of this Exhibit II at any time provided that no such waiver shall be effective unless it is a Qualified Election.

(2) **Qualified Election.** Any election to waive the spousal death benefit of Section B(2) of this Exhibit II shall not be effective unless:

(a) the Participant's Spouse consents in writing to the election;

(b) the election designates a specific beneficiary, including any class of beneficiaries or any contingent beneficiaries, which may not be changed without spousal consent (or the Spouse expressly permits designations by the Participant without any further spousal consent);

(c) the Spouse's consent acknowledges the effect of the election.

If it is established to the satisfaction of the Administrator that there is no Spouse or that the Spouse cannot be located, a waiver will be deemed a Qualified Election. Any consent by a Spouse obtained under this provision (or establishment that the consent of a Spouse may not be obtained) shall be effective only with respect to such Spouse. A consent that permits designations by the Participant without any requirement of further consent by such Spouse has the right to limit consent to a specific beneficiary, and a specific form of benefit where applicable, and that the Spouse voluntarily elects to relinquish either or both of such rights. A revocation of a prior waiver may be made by a Participant without the consent of the Spouse at any time before the commencement of benefits. The number of revocations shall not be limited.

**(iii) Other Distribution Provisions.**

**(1) Participant Dies After Distribution Has Begun.** In the event a Participant dies after the distribution of the aggregate amounts credited to the Participant's Plan accounts pursuant to Code Section 401(a)(9) has begun, the distribution of the such aggregate amounts will continue to be distributed at least as rapidly as under the method of distribution being used prior to the Participant's death.

**(2) Participant Dies Before Distribution Has Begun.** In the event a Participant dies before the distribution of the aggregate amounts credited to the Participant's Plan accounts pursuant to Code Section 401(a)(9) has begun, the distribution of the such aggregate amounts will be completed by December 31 of the calendar year containing the fifth anniversary of the Participant's death except to the extent that an election is made to receive distributions in accordance with (a) or (b) below.

(a) If any portion of the aggregate amounts credited to the Participant's Plan accounts is payable to a Designated Beneficiary, distributions may be made over the life or over a period certain not greater than the life expectancy of the Designated Beneficiary commencing on or before December 31 of the calendar year immediately following the calendar year in which the Participant died;

(b) If the Designated Beneficiary is the Participant's Surviving Spouse, the date distributions are required to begin in accordance with (a) above shall not be earlier than the later of (1) December 31 of the calendar year immediately following the calendar year in which the Participant died or (2) December 31 of the calendar year in which the Participant would have attained age 70 1/2.

If the Participant has not made an election pursuant to this Section C(2) of this Exhibit II by the time of his or her death, the Participant's Designated Beneficiary must elect the method of distributions no later than the earlier of: (1) December 31 of the calendar year in which distributions would be required to begin under this section, or (2) December 31 of the calendar year which contains the fifth anniversary of the date of death of the Participant. If the Participant has no Designated Beneficiary, or if the Designated Beneficiary does not elect a method of distribution, then distributions of the aggregate amounts credited to the Participant's Plan accounts must be completed by December 31 of the calendar year containing the fifth anniversary of the Participant's death.

For purposes of this Section C(2) of this Exhibit II, if the Surviving Spouse dies after the Participant, but before the payments to such Spouse begin, the provisions of this Section C(2) of this Exhibit II with the exception of paragraph (b) therein, shall be applied as if the Surviving Spouse were the Participant. For the purposes of Sections C(1) and C(2) of this Exhibit II, distribution of the aggregate amounts credited to the Participant's Plan accounts is considered to begin on the last Business Day of March of the calendar year, which follows the calendar year in which the Participant would have attained age 70 1/2 (or, if the preceding sentence is applicable, the date distribution is required to begin to the Surviving Spouse).



(3) **Payment to Minor.** For purposes of this Exhibit II, if an amount is payable to either a minor or an individual who has been declared incompetent, the benefits shall be paid to the legally appointed guardian for the benefit of said minor or incompetent individual, unless the court which appointed the guardian has ordered otherwise.

(4) **Definitions.** For purposes of this Exhibit II, the following definitions shall apply:

(a) **Designated Beneficiary** - The individual who is designated as the beneficiary under the Plan in accordance with Code Section 401(a)(9) and the regulations thereunder.

(b) **Spouse or Surviving Spouse** - The Spouse or Surviving Spouse of the Participant, provided that a former Spouse will be treated as the Spouse or Surviving Spouse and a current Spouse will not be treated as the Spouse or Surviving Spouse to the extent provided under a Qualified Domestic Relations Order as described in Code Section 414(p).

**EXHIBIT III**

**PLAN ELECTIONS**

The following elections have been made in accordance with various sections of the Plan and are applicable only with respect to the Plan Years specifically indicated below, except as otherwise required by applicable law:

<u>Year Election Applies</u>	<u>Applicable Plan Section</u>	<u>Election</u>
1997	3.07(b)(i),(ii), and (iii) (pages 30-33)	Current year data used to perform ADP, ACP, and multiple use testing.

This Exhibit III may be revised from time to time by the Vice President - Human Resources without amendment to the Plan, provided his/her signature appears below along with the Signature Date.

**SCHEDULE I  
PARTICIPATING EMPLOYERS  
AS OF 1 OCTOBER 2009**

<u>Name of Affiliated Company</u>	<u>Participating Employer Since Date</u>	<u>Revocation Date</u>
Air Products Energy Enterprising, Inc.	Continuing	N/A
Air Products Helium, Inc.	Continuing	N/A
Air Products Manufacturing Co., Inc.	Continuing	N/A
Air Products LLC	1 June 2007	N/A
Air Products Performance Manufacturing, Inc. (formerly known as “Tomah Products, Inc.” and “Tomah Reserve, Inc.”)	1 April 2006	N/A

**\$2,000,000,000**

**REVOLVING CREDIT AGREEMENT**

**by and among**

**AIR PRODUCTS AND CHEMICALS, INC.,**

**The Other Borrowers parties hereto from time to time,**

**The Lenders parties hereto from time to time,**

**and**

**THE ROYAL BANK OF SCOTLAND PLC,**

**as Administrative Agent**

**Dated as of**

**July 8, 2010**

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**BNP PARIBAS SECURITIES CORP., HSBC SECURITIES (USA) INC.**

**and RBS SECURITIES INC.,**

**as Joint Lead Arrangers and Book Runners**

**BNP PARIBAS**

**and**

**HSBC BANK USA, N.A.,**

**as Co-Syndication Agents**

**and**

**THE BANK OF TOKYO-MITSUBISHI UFJ, LTD., BARCLAYS BANK PLC,**

**DEUTSCHE BANK AG, NEW YORK BRANCH, INTESA SANPAOLO S.P.A.**

**NEW YORK BRANCH**

**and JPMORGAN CHASE BANK N.A.,**

**as Co-Documentation Agents**

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REVOLVING CREDIT AGREEMENT, dated as of July 8, 2010, by and among AIR PRODUCTS AND CHEMICALS, INC., a Delaware corporation (the "Parent"), the other borrowers parties hereto from time to time (the "Other Borrowers", as defined further below), the lenders parties hereto from time to time (the "Lenders", as defined further below) and THE ROYAL BANK OF SCOTLAND PLC, as Administrative Agent for the Lenders hereunder.

R E C I T A L S:

A. The Parent has requested the Lenders to make financial accommodations to it and certain of its Subsidiaries in the aggregate Dollar Equivalent Amount of \$2,000,000,000, the proceeds of which will be used for the general corporate purposes of the Parent and its Subsidiaries.

B. The Lenders are willing to extend such financial accommodations on the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual covenants and undertakings herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

ARTICLE I

Definitions; Construction

SECTION 1.01. Certain Definitions. In addition to other words and terms defined elsewhere in this Agreement, as used herein the following words and terms shall have the following meanings, respectively, unless the context hereof otherwise clearly requires:

"Absolute Rate" shall have the meaning set forth in Section 3.02(c)(ii)(D) hereof.

"Absolute Rate Auction" shall mean a solicitation of Competitive Bid Loan Quotes setting forth Absolute Rates pursuant to Article III hereof.

"Absolute Rate Loan" or "Absolute Rate Loans" shall mean any or all Competitive Bid Loans the interest rates of which are determined on the basis of Absolute Rates pursuant to an Absolute Rate Auction.

"Acquisition Transactions" shall mean, collectively (a) the borrowing of loans under the Bridge Agreement and the use of the proceeds thereof, (b) the consummation of the tender offer by a wholly owned subsidiary of the Parent to purchase all of the common stock of Airgas, (c) the consummation of the merger of a wholly owned subsidiary of the Parent with Airgas, and (d) the Target Refinancing.

"Administrative Agent" shall mean RBS and any successor Administrative Agent hereunder appointed in accordance with Section 11.10.

“Administrative Agent’s Office” or “Office” shall mean as set forth in Schedule III.

“Affected Lender” shall have the meaning set forth in Section 2.05(d)(ii) hereof.

“Affiliate” of a specified Person shall mean any Person which directly or indirectly controls, or is controlled by, or is under common control with, such specified Person. For purposes of the preceding sentence, “control” of a Person means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of such Person, whether through the ownership of voting securities, by contract or otherwise.

“Agents” shall mean the Administrative Agent and the Co-Syndication Agents.

“Agreement” means this credit agreement, as it may be amended or modified and in effect from time to time.

“Airgas” shall mean Airgas, Inc., a Delaware corporation.

“Applicable Margin” shall mean (a) for Base Rate Loans, a rate per annum that is 100 basis points less than the rate per annum determined pursuant to clause (b) of this definition (but not less than zero percent) and (b) for Euro-Rate Loans, a rate per annum equal to the applicable Market Rate Spread.

“Approved Fund” shall mean any Fund that is administered or managed by (i) a Lender, (ii) an Affiliate of a Lender or (iii) an entity or an Affiliate of an entity that administers or manages a Lender; provided, however, that no Fund shall be an “Approved Fund” with respect to any proposed assignment hereunder unless at the time of such assignment either (a) its senior unsecured long-term debt securities without third-party credit enhancement are rated at least BBB by S&P or Baa2 by Moody’s or (b) its senior unsecured short-term debt securities without third-party credit enhancement are rated at least A-2 by S&P or P-2 by Moody’s.

“Assignee Lender” shall have the meaning set forth in Section 12.14(c) hereof.

“Assignment Agreement” shall have the meaning set forth in Section 12.14(c) hereof.

“Assignor Lender” shall have the meaning set forth in Section 12.14(c) hereof.

“Bankruptcy Event” shall mean, with respect to any Person, such Person becomes the subject of a bankruptcy or insolvency proceeding, or has had a receiver, conservator, trustee, administrator, custodian, assignee for the benefit of creditors or similar Person charged with the reorganization or liquidation of its business appointed for it, or, in the good faith determination of the Administrative Agent, has taken any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any such proceeding or appointment, provided that a Bankruptcy Event shall not result solely by virtue of any ownership interest, or the acquisition of any ownership interest, in such Person by a Governmental Authority or instrumentality thereof, provided, further, that such ownership interest does not result in or provide such Person with immunity from the jurisdiction of courts within the United States or from the enforcement of

judgments or writs of attachment on its assets or permit such Person (or such Governmental Authority or instrumentality) to reject, repudiate, disavow or disaffirm any contracts or agreements (such as this Agreement) made by such Person.

“Base Rate” shall mean for any day the greater of (i) the Prime Rate in effect on such day, (ii) 0.50% plus the Federal Funds Effective Rate in effect on such day and (iii) the Euro-Rate for a one month Funding Period commencing on such day plus 1.0% per annum, provided that, for the avoidance of doubt, the Euro-Rate used in determining the Base Rate for any day shall be as of 11:00 a.m. (London time) on such day (or if such day is not a Business Day, the immediately preceding Business Day). If for any reason the Administrative Agent shall have determined (which determination shall be conclusive absent manifest error) that it is unable after due inquiry to ascertain the Federal Funds Effective Rate or the Euro-Rate for any reason, including the inability of the Administrative Agent to obtain sufficient quotations in accordance with the terms hereof, the Base Rate shall be determined without regard to clause (ii) or (iii), as the case may be, of the first sentence of this definition until the circumstances giving rise to such inability no longer exist. Any change in the Base Rate due to a change in the Prime Rate, the Federal Funds Effective Rate or the Euro-Rate shall be effective on the effective date of such change in the Prime Rate, the Federal Funds Effective Rate or the Euro-Rate, respectively.

“Base Rate Option” shall have the meaning set forth in Section 2.05(a)(i) hereof.

“Base Rate Portion” of any Loan or Loans shall mean at any time the portion, including the whole, of such Loan or Loans bearing interest at such time (i) under the Base Rate Option or (ii) in accordance with 4.05(b)(ii)(A) hereof. If no Loan or Loans is specified, “Base Rate Portion” shall refer to the Base Rate Portion of all Loans outstanding at such time.

“Borrower Accession Instrument” shall mean a Borrower Accession Instrument in the form of Exhibit F hereto, as amended, modified or supplemented from time to time.

“Borrowers” shall mean the Parent and the Other Borrowers and “Borrower” shall mean one of them.

“Bridge Agreement” shall mean the credit agreement dated as of March 31, 2010, as the same may heretofore and may hereafter be amended or supplemented, between the Parent and JPMorgan Chase Bank, N.A.

“Business Day” shall mean a day of the year on which banks are not required or authorized to close in New York, New York, and, in the case of matters relating to the Euro-Rate Portion of Revolving Credit Loans, to LIBOR-based Loans or to Absolute Rate Loans denominated in a currency other than Dollars, “Business Day” shall also include days on which dealings are carried on in the London interbank market (or, with respect to any Revolving Credit Loans which are denominated in Euro, a day upon which such clearing system as is determined by the Administrative Agent to be suitable for clearing or settlement of the Euro is open for business) and banks are open for business in London and in the country of issue of the relevant currency.

“Capital Lease Obligations” of any Person shall mean the obligations of such Person to pay rent or other amounts under any lease of (or other arrangement conveying the right

to use) real or personal property, or a combination thereof, which obligations are required to be classified and accounted for as capital leases on a balance sheet of such Person under GAAP, and the amount of such obligations shall be the capitalized amount thereof determined in accordance with GAAP.

“Change of Control” shall mean the occurrence of either of the following:

(a) any “person” (as such term is used in Sections 13(d) and 14(d)(2) of the Securities and Exchange Act of 1934, as in effect on the date hereof) or group of persons (as so used), other than the Parent, any company a majority of whose outstanding stock entitled to vote is owned directly or indirectly by the Parent (a “Controlled Subsidiary”), or a trustee of an employee benefit plan sponsored solely by the Parent and/or a Controlled Subsidiary, is or becomes the “beneficial owner” (as determined pursuant to Rule 13d-3 under the Securities and Exchange Act of 1934), directly or indirectly, of equity interests of the Parent representing more than 40% of the aggregate ordinary voting power of the Parent’s then-outstanding voting equity interests; or

(b) during any period of two consecutive years, the occupation of a majority of the seats (other than vacant seats) on the board of directors of the Parent by directors who were not (i) directors of the Parent at the beginning of such period, (ii) appointed by directors who were directors at the beginning of such period or by directors so appointed or (iii) nominated or approved for election to the board of directors of the Parent by directors described in the preceding clause (i) or (ii).

“Closing Date” shall mean the date on which the last of the conditions set forth in Section 6.01 hereof has been satisfied.

“Commitment” of a Lender shall mean the Revolving Credit Commitment of such Lender.

“Commitment Fee” shall have the meaning set forth in Section 2.04(a) hereof.

“Commitment Percentage” shall mean, with respect to any Lender, the percentage of the Total Revolving Credit Commitment represented by such Lender’s Revolving Credit Committed Amount; provided that for purposes of Section 4.12 when a Defaulting Lender shall exist, “Commitment Percentage” shall mean the percentage of the Total Revolving Credit Commitment (disregarding any Defaulting Lender’s Revolving Credit Commitment) represented by such Lender’s Revolving Credit Committed Amount. If the Revolving Credit Commitments have terminated or expired, the Commitment Percentage of any Lender shall be the percentage of the Total Revolving Credit Exposure (disregarding any Defaulting Lender’s Revolving Credit Exposure, for purposes of Section 4.12) represented by such Lender’s Revolving Credit Exposure.

“Competitive Bid Borrowing” shall have the meaning set forth in Section 3.02(a) hereof.

“Competitive Bid Expiration Date” shall mean July 8, 2013, or such later date as may be established as the Competitive Bid Expiration Date pursuant to Section 4.01 hereof.

“Competitive Bid Loan” or “Competitive Bid Loans” shall mean any or all loans provided for by Article III hereof.

“Competitive Bid Loan Maturity Date” shall have the meaning set forth in 3.03 hereof.

“Competitive Bid Loan Quote” shall mean an offer in accordance with 3.02(c) hereof by a Lender to make a Competitive Bid Loan.

“Competitive Bid Loan Quote Request” shall have the meaning set forth in Section 3.02(a) hereof.

“Competitive Bid Notes” shall mean the promissory notes of each Borrower executed and delivered pursuant to Section 2.02 and any promissory note issued in substitution therefor pursuant to Sections 4.10(b) or 12.14(c) hereof, together with all extensions, renewals, refinancings or refundings thereof in whole or part.

“Competitive Bid Register” shall have the meaning set forth in Section 3.06 hereof.

“Consolidated EBITDA” shall mean, for any period, Consolidated Net Income for such period plus, without duplication and to the extent deducted in determining such Consolidated Net Income, the sum of (a) income tax provision, (b) interest expense, amortization, writedown or writeoff of debt discount and debt issuance costs, commissions, discounts and other fees and charges (including prepayment premiums, penalties or similar charges incurred in connection with Target Refinancing) associated with Indebtedness (including the Loans) and discount on securitization of receivables, (c) depreciation and amortization expense, (d) amortization, writedown or writeoff of intangibles (including, but not limited to, goodwill) and organization costs, (e) any unusual or non-recurring non-cash expenses or losses (including losses on sales of assets outside of the ordinary course of business), (f) transaction fees and expenses directly related to the Acquisition Transactions and (g) non-cash charges incurred in respect of restructurings, plant closings, headcount reductions, cost reductions or other similar actions, and minus, to the extent included in determining such Consolidated Net Income, the sum of (i) income tax credits (to the extent not netted from income tax provision) and (ii) any unusual or non-recurring non-cash income or gains (including gains on the sales of assets outside of the ordinary course of business). For the purposes of calculating Consolidated EBITDA for any Test Period pursuant to any determination of the Leverage Ratio, (i) if at any time during such Test Period the Parent or any Subsidiary shall have made any Material Disposition, the Consolidated EBITDA for such Test Period shall be reduced by an amount equal to the Consolidated EBITDA (if positive) attributable to the property that is the subject of such Material Disposition for such Test Period or increased by an amount equal to the Consolidated EBITDA (if negative) attributable thereto for such Test Period and (ii) if during such Test Period the Parent or any Subsidiary shall have made a Material Acquisition, Consolidated EBITDA for such Test Period shall be calculated after giving pro forma effect thereto as if such Material Acquisition occurred on the first day of such Test Period. As used in this definition, “Material Acquisition” shall mean any acquisition of property or series of related acquisitions of property that (a) constitutes assets comprising all or substantially all of an operating unit of a business or

constitutes all or substantially all of the equity interests of a Person (any such property, a “Business Unit”) and (b) the aggregate consideration for which (including Indebtedness assumed in connection therewith) exceeds \$100,000,000; and “Material Disposition” shall mean any disposition of property or series of related dispositions of property that (a) constitutes a Business Unit and (b) the aggregate consideration for which (including Indebtedness assumed in connection therewith) exceeds \$100,000,000.

“Consolidated Net Income” shall mean, for any period, the consolidated net income (or loss) of the Parent and its Subsidiaries, determined on a consolidated basis in accordance with GAAP; provided that there shall be excluded the income (or deficit) of any Project Finance Subsidiary having Limited Recourse Debt outstanding at any time during such period.

“Consolidated Total Debt” shall mean, at any date, the aggregate principal amount of all Indebtedness that would be reflected at such date as short-term borrowings, current portion of long-term debt or long-term debt on a consolidated balance sheet of the Parent and its Subsidiaries prepared in accordance with GAAP, excluding Limited Recourse Debt of any Project Finance Subsidiary.

“Contractual Currency” shall have the meaning set forth in Section 12.15(a) hereof.

“Co-Syndication Agents” means BNP Paribas and HSBC Bank USA, N.A. each in its capacity as syndication agent for the credit facility provided for in this Agreement.

“Credit Event” shall mean and include each of the making of a Loan, the issuance of a Letter of Credit and the Modification of a Letter of Credit.

“Defaulting Lender” shall mean any Lender that has (a) failed, within three Business Days of the date required to be funded or paid, to (i) fund any portion of its Loans or (ii) fund any portion of its participations in Letters of Credit, unless, in the case of clause (i) above, such Lender notifies the Administrative Agent in writing that such failure is the result of such Lender’s reasonable determination that a condition precedent to funding (specifically identified and including the particular default, if any) has not been satisfied, (b) notified the Parent, the Administrative Agent or any Lender in writing that it does not intend to comply with any of its funding obligations under this Agreement or has made a public statement to the effect that it does not intend to comply with its funding obligations under this Agreement or generally under other agreements in which it commits to extend credit, (c) failed, within three Business Days after request by the Administrative Agent (which request has been made based on the Administrative Agent’s reasonable belief that such Lender may not fulfill its funding obligation and a copy of which request has been sent to the Parent), to confirm that it will comply with the terms of this Agreement relating to its obligations to fund prospective Loans and participations in then outstanding Letters of Credit, provided that any such Lender shall cease to be a Defaulting Lender under this clause (c) upon receipt of such confirmation by the Administrative Agent, (d) otherwise failed to pay over to the Administrative Agent or any other Lender any other amount required to be paid by it hereunder within three Business Days of the date when due, unless the subject of a good faith dispute, or (e) (i) been adjudicated as, or has been determined by any

Governmental Authority having regulatory authority over such Person or its assets to be, insolvent or has a parent company that has been adjudicated as, or has been determined by any Governmental Authority having regulatory authority over such Person or its assets to be, insolvent or (ii) become the subject of a bankruptcy or insolvency proceeding, or has had a receiver, conservator, trustee or custodian appointed for it, or has taken any action in furtherance of, or indicating its consent to, approval of or acquiescence in any such proceeding or appointment or has a parent company that has become the subject of a bankruptcy or insolvency proceeding, or has had a receiver, conservator, trustee or custodian appointed for it, or has taken any action in furtherance of, or indicating its consent to, approval of or acquiescence in any such proceeding or appointment (unless in the case of any Lender referred to in this clause (e), the Parent and the Administrative Agent shall be satisfied that such Lender intends, and has all approvals required to enable it, to continue to perform its obligations as a Lender hereunder). Notwithstanding the foregoing, no Lender shall be a Defaulting Lender solely by virtue of the ownership or acquisition of any equity interest in such Lender or a parent company thereof by a Governmental Authority or an instrumentality thereof or the exercise of control over such lender or person controlling such lender by a governmental authority or instrumentality thereof.

“Designated Currencies” shall mean Dollars, Canadian dollars, United Kingdom pounds sterling, Euros and any other available and freely tradable eurocurrency which has been proposed as a Designated Currency by the Parent and is approved in writing as a Designated Currency by all of the Lenders from time to time.

“Dollar”, “Dollars” and the symbol “\$” shall mean lawful money of the United States of America.

“Dollar Equivalent Amount” of any Loan, Letter of Credit (or the undrawn face amount thereof) or LC Disbursement shall mean (i) with respect to a Loan, Letter of Credit or LC Disbursement denominated in a currency other than Dollars, the equivalent in Dollars of the principal amount of such Loan or LC Disbursement or the undrawn face amount of such Letter of Credit in such currency based upon the arithmetic mean of the buy and sell spot rates of exchange of the Administrative Agent for such currency at 11:00 a.m., local time, on the date of determination and (ii) with respect to a Loan, Letter of Credit or LC Disbursement denominated in Dollars, the principal amount of such Loan or LC Disbursement or the undrawn face amount of such Letter of Credit.

“Employee Benefit Plan” shall mean an employee benefit plan as defined in Section 3 of ERISA.

“Environmental Laws” shall mean all laws, rules, regulations, codes, ordinances, orders, decrees, judgments, injunctions, binding notices or binding agreements issued, promulgated or entered into by any Governmental Authority, relating in any way to the environment, preservation or reclamation of natural resources, the management, release or threatened release of any Hazardous Material or to health and safety matters as they relate to exposure to Hazardous Materials.

“ERISA” shall mean the Employee Retirement Income Security Act of 1974, as amended from time to time, and any successor statute.

“ERISA Affiliate” shall mean any trade or business (whether or not incorporated) that, together with the Parent, is treated as a single employer under Section 414(b) or (c) of the Internal Revenue Code, or, solely for purposes of Section 302 of ERISA and Section 412 of the Internal Revenue Code, is treated as a single employer under Section 414 of the Internal Revenue Code.

“ERISA Event” shall mean (a) any “reportable event”, as defined in Section 4043 of ERISA or the regulations issued thereunder with respect to a Plan (other than an event for which the 30-day notice period referred to in Section 4043(c) of ERISA is waived); (b) any failure by any Plan to satisfy the minimum funding standards (within the meaning of Sections 412 or 430 of the Internal Revenue Code or Section 302 of ERISA) applicable to such Plan, whether or not waived; (c) the filing pursuant to Section 412(c) of the Internal Revenue Code or Section 302(c) of ERISA of an application for a waiver of the minimum funding standard with respect to any Plan, the failure to make by its due date a required installment under Section 430(j) of the Internal Revenue Code with respect to any Plan or the failure by the Parent or any of its ERISA Affiliates to make any required contribution to a Multiemployer Plan; (d) the incurrence by the Parent or any of its ERISA Affiliates of any liability under Title IV of ERISA with respect to the termination of any Plan, including but not limited to the imposition of any Lien in favor of the PBGC or any Plan; (e) a determination that any Plan is, or is expected to be, in “at risk” status (within the meaning of Section 430 of the Internal Revenue Code or Section 303 of ERISA); (f) the receipt by the Parent or any ERISA Affiliate from the PBGC or a plan administrator of any notice relating to an intention to terminate any Plan or Plans or to appoint a trustee to administer any Plan under Section 4042 of ERISA; (g) the incurrence by the Parent or any of its ERISA Affiliates of any liability with respect to the withdrawal or partial withdrawal from any Plan or Multiemployer Plan; or (h) the receipt by the Parent or any ERISA Affiliate of any notice, or the receipt by any Multiemployer Plan from the Parent or any ERISA Affiliate of any notice, concerning the imposition of Withdrawal Liability or a determination that a Multiemployer Plan is, or is expected to be, insolvent (within the meaning of Section 4245 of ERISA) or in reorganization (within the meaning of Section 4241 of ERISA) or in endangered or critical status (within the meaning of Section 432 of the Internal Revenue Code or Section 305 or Title IV of ERISA).

“Euro” shall mean the euro referred to in Council Regulation (EC) No. 1103/97 dated June 17, 1997 passed by the Council of the European Union, or, if different, then the lawful currency of the member states of the European Union that participate in the third stage of Economic and Monetary Union.

“Eurocurrency Liabilities” shall have the meaning set forth in the definition of Euro-Rate Reserve Percentage set forth in Section 1.01 hereof.

“Euro-Rate” shall mean, for any day for each Funding Segment of the Euro-Rate Portion corresponding to a proposed or existing Euro-Rate Funding Period, the applicable British Bankers’ Association Interest Settlement Rate for deposits in the applicable Designated Currency appearing on an internationally recognized service selected by the Administrative Agent, such as Reuters, for such Designated Currency as of 11:00 a.m. (London time) two Business Days prior to the first day of such Euro-Rate Funding Period, and having a maturity equal to such Euro-Rate Funding Period, provided that, (i) if no such service or for such Designated Currency is available



to the Administrative Agent for any reason, the applicable Euro-Rate for the relevant Euro-Rate Funding Period shall instead be the rate determined by the Administrative Agent to be the rate at which RBS offers to place deposits in the applicable Designated Currency with first-class banks in the London interbank market at approximately 11:00 a.m. (London time) two Business Days prior to the first day of such Euro-Rate Funding Period, in the approximate amount of RBS's relevant Euro-Rate Portion and having a maturity equal to such Euro-Rate Funding Period.

"Euro-Rate Funding Period" shall have the meaning set forth in Section 2.05(b) hereof.

"Euro-Rate Option" shall have the meaning set forth in Section 2.05(a)(ii) hereof.

"Euro-Rate Portion" of any Loan or Loans shall mean at any time the portion, including the whole, of such Loan or Loans bearing interest at any time under the Euro-Rate Option or at a rate calculated by reference to the Euro-Rate under Section 4.05(b)(i) hereof. If no Loan or Loans is specified, "Euro-Rate Portion" shall refer to the Euro-Rate Portion of all Loans outstanding at such time.

"Euro-Rate Reserve Percentage" shall mean for any day the percentage (expressed as a decimal fraction, rounded upward to the nearest  $\frac{1}{100}$  of 1%), as determined in good faith by the Administrative Agent (which determination shall be conclusive absent manifest error), which is in effect on such day as prescribed by the Board of Governors of the Federal Reserve System (or any successor) for determining the maximum reserve requirements (including, without limitation, supplemental, marginal and emergency reserve requirements) with respect to liabilities or assets consisting of or including Eurocurrency funding (currently referred to as "Eurocurrency Liabilities") of a member bank in such System. The Euro-Rate shall be adjusted automatically with respect to any Revolving Credit Loans bearing interest with reference to the Euro-Rate Option outstanding on the effective date of any change in the Euro-Rate Reserve Percentage, as of such effective date.

"Event of Default" shall mean any of the Events of Default described in Section 9.01 hereof.

"Existing Agreement" shall mean the Parent's existing \$1,450,000,000 Revolving Credit Agreement dated as of May 23, 2006, as amended.

"Extension Request" shall have the meaning set forth in Section 4.01(a) hereof.

"FATCA" means (i) Sections 1471 through 1474 of the Code, as in effect at the time a Lender (other than a Lender that became a Lender as a result of an assignment made or other action taken at the request of the Parent ) (1) becomes a Lender with respect to its applicable ownership interest in a Commitment or Loan or (2) designates a new lending office, and (ii) any current or future regulations or official interpretations thereof.

"Federal Funds Effective Rate" for any day shall mean the rate per annum (rounded upward to the nearest  $\frac{1}{100}$  of 1%) determined by the Administrative Agent (which determination shall be conclusive absent manifest error) to be the rate per annum announced by the Federal Reserve Bank of New York (or any successor) on such day as being the weighted

average of the rates on overnight Federal funds transactions arranged by Federal funds brokers on the previous trading day, as computed and announced by such Federal Reserve Bank (or any successor); provided, that if such Federal Reserve Bank (or its successor) does not announce such rate on any day, the “Federal Funds Effective Rate” for such day shall be the weighted average of the quotations received on such day for such transactions by the Administrative Agent from three Federal Funds brokers of recognized standing selected by the Administrative Agent.

“Fee Letter” shall mean the Fee Letter dated June 17, 2010 among the Parent, BNP Paribas Securities Corp., BNP Paribas, HSBC Securities (USA) Inc., HSBC Bank USA, N.A., RBS Securities Inc. and RBS.

“Fund” means any Person (other than a natural person) that is (or will be) engaged in making, purchasing, holding or otherwise investing in commercial loans and similar extensions of credit in the ordinary course of its business.

“Funding Periods” shall have the meaning set forth in Section 2.05(b) hereof.

“Funding Segment” of the Euro-Rate Portion of the Revolving Credit Loans at any time shall mean the entire principal amount of such Portion to which at the time in question there is applicable a particular Funding Period beginning on a particular day and ending on a particular day. (By definition, each such Portion is at all times composed of an integral number of discrete Funding Segments and the sum of the principal amounts of all Funding Segments of any such Portion at any time equals the principal amount of such Portion at such time.)

“GAAP” shall mean generally accepted accounting principles in the United States as in effect from time to time (including principles of consolidation where appropriate), applied on a basis consistent with the principles used in preparing the Parent’s financial statements referred to in Section 7.01(c) (ii) hereof.

“Governmental Authority” shall mean the government of the United States of America, any other nation or any political subdivision thereof, whether state or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government.

“Guarantee” of or by any Person (the “guarantor”) shall mean any obligation, contingent or otherwise, of the guarantor guaranteeing or having the economic effect of guaranteeing any Indebtedness of any other Person (the “primary obligor”) in any manner, whether directly or indirectly, and including any obligation of the guarantor, direct or indirect, (a) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness or to purchase (or to advance or supply funds for the purchase of) any security for the payment thereof, (b) to purchase or lease property, securities or services for the purpose of assuring the owner of such Indebtedness of the payment thereof, (c) to maintain working capital, equity capital or any other financial statement condition or liquidity of the primary obligor so as to enable the primary obligor to pay such Indebtedness or (d) as an account party in respect of any letter of credit or letter of guaranty issued to support such Indebtedness; provided, that the term Guarantee shall not include endorsements for collection or deposit in the ordinary course of business.

“Guaranteed Obligations” shall mean all Obligations from time to time of the Other Borrowers to the Administrative Agent and the Lenders.

“Hazardous Materials” shall mean all explosive or radioactive substances or wastes and all hazardous or toxic substances, wastes or other pollutants, including petroleum or petroleum distillates, asbestos or asbestos containing materials, polychlorinated biphenyls, radon gas, infectious or medical wastes and all other substances or wastes of any nature that in relevant form or concentration are regulated pursuant to any Environmental Law.

“Indebtedness” of any Person shall mean, without duplication, (a) all obligations of such Person for borrowed money or with respect to deposits or advances of any kind, other than deposits or advances in the ordinary course of business, (b) all obligations of such Person evidenced by bonds, debentures, notes or similar instruments, (c) all obligations of such Person under conditional sale or other title retention agreements relating to property acquired by such Person (other than current accounts payable and trade accounts and accrued expenses incurred in the ordinary course of business and other than customary reservations or retentions of title under agreements with suppliers entered in the ordinary course of business), (d) all obligations of such Person in respect of the deferred purchase price of property or services having the effect of a borrowing (other than (i) current accounts payable and trade accounts and accrued expenses incurred in the ordinary course of business and (ii) any noncompete agreement, purchase price adjustment, earnout or deferred payment of a similar nature), (e) all Indebtedness of others secured by (or for which the holder of such Indebtedness has an existing right, contingent or otherwise, to be secured by) any Lien on property owned or acquired by such Person, whether or not the Indebtedness secured thereby has been assumed, but limited to the book value of such property when recourse is limited to such property, (f) all Guarantees by such Person in respect of Indebtedness of others, (g) all Capital Lease Obligations of such Person, (h) all obligations, contingent or otherwise, of such Person as an account party in respect of letters of credit and letters of guaranty and (i) all obligations, contingent or otherwise, of such Person in respect of bankers’ acceptances. The Indebtedness of any Person shall include the Indebtedness of any other entity (including any partnership in which such Person is a general partner) to the extent such Person is liable therefor as a result of such Person’s ownership interest in or other relationship with such entity, except to the extent the terms of such Indebtedness provide that such Person is not liable therefor.

“Indemnified Parties” shall mean the Agents, the Issuers, the Lenders, their respective Affiliates, and the directors, officers, employees, attorneys and agents of each of the foregoing.

“Indenture” shall mean the Indenture dated as of January 10, 1995, as the same may heretofore and may hereafter be amended or supplemented, between the Parent and Wachovia Bank, National Association (formerly known as First Fidelity Bank, National Association), whether or not the same shall be discharged or remains in full force and effect.

“Initial Other Borrowers” shall mean the Subsidiaries of the Parent listed on Schedule II hereto.

“Initial Revolving Credit Committed Amount” shall have the meaning set forth in Section 2.01(a) hereof.

“Interest Period” shall mean with respect to any Competitive Bid Loan, the period commencing on the date such Competitive Bid Loan is made and ending on a date not less than seven days thereafter (with respect to any Absolute Rate Loan) or one, two, three or six months thereafter (with respect to any LIBO-Rate Loan), as the Parent may specify in the related Standard Notice or Competitive Bid Loan Quote Request as provided in Section 3.02(a) hereof, provided:

(i) No Interest Period may end after the Revolving Credit Maturity Date or Competitive Bid Expiration Date;

(ii) Each Interest Period that would otherwise end on a day that is not a Business Day shall end on the next succeeding Business Day or, in the case of an Interest Period for a LIBOR-based Loan, the term “month” shall be construed in accordance with prevailing practices in the interbank eurocurrency market at the commencement of such Interest Period; and

(iii) Notwithstanding clauses (i) and (ii) above, no Interest Period for any Competitive Bid Loan shall have a duration of less than seven days and, if the Interest Period for any Competitive Bid Loan would otherwise be a shorter period, such Competitive Bid Loan shall not be available hereunder.

“Issuer” shall mean each of RBS, HSBC Bank USA, N.A. and BNP Paribas and any replacement issuer of Letters of Credit named hereunder pursuant to Section 2.10(h). With respect to any Letter of Credit or requested Letter of Credit or any amounts payable relating thereto, “Issuer” means the issuer thereof. An Issuer may, in its discretion, arrange for one or more Letters of Credit to be issued by its Affiliates (so long as the applicable Affiliate has been approved by the Parent, which approval will not be unreasonably withheld), in which case the term “Issuer” shall include any such Affiliate with respect to Letters of Credit issued by such Affiliate.

“Issuer Commitment” shall mean, with respect to each Issuer, \$333,333,333, or such other amount as is separately agreed between the Parent and such Issuer, of which amount notice has been given to the Administrative Agent by the Parent and such Issuer.

“Issuer Exposure” shall mean, at any time with respect to any Issuer, the sum of (i) the aggregate undrawn amount at such time of all outstanding Letters of Credit issued by such Issuer plus (ii) the aggregate amount at such time of all LC Disbursements relating to Letters of Credit issued by such Issuer that have not yet been reimbursed by or on behalf of the Parent or the Relevant Borrower.

“Judgment Currency” shall have the meaning set forth in Section 12.15(a) hereof.

“Law” shall mean any law (including common law), constitution, statute, treaty, convention, regulation, rule, ordinance, order, injunction, writ, decree or award of any Governmental Authority.

“LC Disbursement” shall mean a payment made by any Issuer pursuant to a Letter of Credit.

“LC Exposure” shall mean, at any time, the sum of (i) the aggregate undrawn amount of all outstanding Letters of Credit at such time plus (ii) the aggregate amount of all LC Disbursements that have not yet been reimbursed by or on behalf of the Parent or Relevant Borrower at such time. The LC Exposure of any Lender at any time shall be its Commitment Percentage of the total LC Exposure at such time.

“Lender” shall mean any of the Lenders listed on the signature pages hereof, subject to the provisions of Sections 4.10 and 12.14 hereof pertaining to Persons becoming or ceasing to be Lenders.

“Letter of Credit” shall mean a standby letter of credit issued pursuant to Section 2.10 hereof.

“Letter of Credit Fee” shall have the meaning set forth in Section 2.04(b) hereof.

“Letter of Credit Maturity Date” shall mean as defined in Section 2.10.

“Leverage Ratio” shall mean, as of the last day of any Test Period, the ratio of (a) Consolidated Total Debt at such time to (b) Consolidated EBITDA for such period.

“LIBO-Rate” for any day, as used herein, shall mean with respect to each proposed LIBOR-based Loan a rate per annum determined by the Administrative Agent with reference to an internationally recognized service selected by it, such as Telerate page 3750, to be the rate of interest to be the average of the rates per annum for deposits in the relevant currency offered to the leading banks in the London interbank market at approximately 11:00 a.m., London time, two Business Days prior to the day such Loan is to be made for delivery on the day such Loan is to be made for maturities comparable to such Loan.

“LIBOR Auction” shall mean a solicitation of Competitive Bid Loan Quotes setting forth LIBOR-based Margins based on the LIBO-Rate pursuant to Article III hereof.

“LIBOR-based Loans” shall mean Competitive Bid Loans the interest rates of which are determined on the basis of the LIBO-Rate pursuant to a LIBOR Auction.

“LIBOR-based Margin” shall have the meaning set forth in Section 3.02(c)(ii)(C).

“Lien” shall mean, with respect to any asset, (a) any mortgage, deed of trust, lien, pledge, hypothecation, encumbrance, charge or security interest in, on or of such asset, (b) the interest of a vendor or a lessor under any conditional sale agreement, capital lease or title retention agreement (or any financing lease having substantially the same economic effect as any of the foregoing) relating to such asset and (c) in the case of securities, any purchase option, call or similar right of a third party with respect to such securities.

“Limited Recourse Debt” means indebtedness of a Project Finance Subsidiary as to which, at the time a determination is being made, the holder of such indebtedness has recourse, with respect to such indebtedness, solely against the assets it has financed or the cash flows therefrom and does not have direct or indirect recourse (through a guarantee, keepwell or otherwise) against the Parent, any other Subsidiary or any of their assets other than the stock (or similar equity interest) of such Project Finance Subsidiary.

“Liquidation Currency” shall have the meaning set forth in Section 12.15(b)(i) hereof.

“Loan” shall mean any loan by a Lender under this Agreement, whether a Revolving Credit Loan or a Competitive Bid Loan and “Loans” shall mean all Revolving Credit Loans and Competitive Bid Loans made by Lenders under this Agreement.

“Loan Documents” shall mean this Agreement, the Notes, the Borrower Accession Instruments, the Assignment Agreements, Notices of Assignment, and all other agreements and instruments evidencing, extending or renewing any indebtedness, obligation or liability arising under any of the foregoing, and any certificate or instrument delivered by any Borrower in connection herewith or therewith, in each case as the same may be amended, modified or supplemented from time to time hereafter.

“Market Rate Spread” shall mean, for any day for each (i) Funding Segment of the Euro-Rate Portion corresponding to a proposed or existing Euro-Rate Funding Period or (ii) a Letter of Credit, a rate per annum equal to the Parent’s credit default swap spread based on the end-of-day mid-rate spread provided by Markit Group Limited for the three-year period beginning on the most recent Spread Determination Date for such Euro-Rate Funding Period or Letter of Credit, as applicable, and obtained by the Administrative Agent on such Spread Determination Date, subject to the minimum and maximum Market Rate Spreads set forth on Schedule I. “Spread Determination Date” shall mean (a) for each Euro-Rate Funding Period, the date two Business Days before the commencement of such Euro-Rate Funding Period and (b) for each Letter of Credit, the date such Letter of Credit is issued or most recent date of any Modification thereof. If any such day is not a Business Day, then the Spread Determination Date shall be the immediately preceding Business Day.

“Material Adverse Effect” shall mean a material adverse effect on (a) the business, property, operations or financial condition of the Parent and its Subsidiaries, taken as a whole, (b) the ability of the Parent to perform its payment obligations under this Agreement and the other Loan Documents or (c) the validity or enforceability of this Agreement or any of the other Loan Documents or the rights and remedies of the Administrative Agent or the Lenders hereunder or thereunder.

“Modify” and “Modification” shall have the meaning set forth in Section 2.10(a).

“Moody’s” shall have the meaning set forth in Schedule I hereto.

“Multiemployer Plan” shall mean a multiemployer plan as defined in Section 4001(a)(3) of ERISA.

“National Currency Unit” means the unit of currency (other than a Euro unit) of each member of the European Union that participates in the third stage of Economic and Monetary Union.

“Nonextending Lender” shall have the meaning set forth in Section 4.01(b) hereof.

“Note” or “Notes” shall mean the Revolving Credit Note(s) or the Competitive Bid Note(s), as the case may be.

“Notional Funding Office” shall have the meaning given to that term in Section 4.10(a) hereof.

“Obligations” shall mean all indebtedness, obligations and liabilities of each of the Borrowers to any Lender or the Administrative Agent from time to time arising under or in connection with or related to or evidenced by or secured by this Agreement or any other Loan Document, and all extensions or renewals thereof, whether such indebtedness, obligations or liabilities are direct or indirect, joint or several, absolute or contingent, due or to become due, now existing or hereafter arising. Without limitation of the foregoing, such indebtedness, obligations and liabilities include the principal amount of Loans, reimbursement obligations with respect to Letters of Credit, interest, fees, indemnities or expenses under or in connection with this Agreement or any other Loan Document, and all extensions or renewals thereof, whether or not such Loans were made in compliance with the terms and conditions of this Agreement or in excess of the obligation of the Lenders to lend. Obligations shall remain Obligations notwithstanding any assignment or transfer or any subsequent assignment or transfer of any of the Obligations or any interest therein.

“Option” shall mean the Base Rate Option or the Euro-Rate Option, as the case may be.

“Other Borrower Removal Notice” shall mean an Other Borrower Removal Notice in the form of Exhibit G hereto, as amended, modified or supplemented from time to time.

“Other Borrowers” shall mean the Initial Other Borrowers and each other Subsidiary of the Parent which becomes a party to this Agreement by the execution and delivery by such Subsidiary and the Parent to the Administrative Agent of a Borrower Accession Instrument and the other documentation referred to in such Borrower Accession Instrument, but shall not include any Subsidiary of the Parent that (a) the Administrative Agent reasonably determines would violate any law, regulation or order of any Governmental Authority (to include, without limitation, the USA PATRIOT Act) or any internal regulation or policy of the Administrative Agent or (b) ceases to be a party to this Agreement upon (i) the execution and delivery by such Subsidiary and the Parent to the Administrative Agent of an Other Borrower Removal Notice, (ii) the repayment in full of all Obligations owed by such Subsidiary and (iii) the expiry or cancellation of all Letters of Credit issued for its account.

“Other Taxes” shall have the meaning set forth in Section 4.09(b).

“Parent” shall mean Air Products and Chemicals, Inc., a Delaware corporation.

“Participants” shall have the meaning set forth in Section 12.14(b) hereof.

“PBGC” shall mean the Pension Benefit Guaranty Corporation referred to and defined in ERISA and any successor entity performing similar functions.

“Pension Plan” shall mean a pension plan as defined in Section 3 of ERISA.

“Person” shall mean an individual, corporation, partnership, limited liability company, trust, unincorporated association, joint venture, joint-stock company, Governmental Authority or any other entity.

“Plan” shall mean any employee pension benefit plan (other than a Multiemployer Plan) subject to the provisions of Title IV of ERISA or Section 412 of the Internal Revenue Code or Section 302 of ERISA, and in respect of which the Parent or any ERISA Affiliate is (or, if such plan were terminated, would under Section 4069 of ERISA be deemed to be) an “employer” as defined in Section 3(5) of ERISA.

“Portion” shall mean the Base Rate Portion or the Euro-Rate Portion, as the case may be.

“Potential Event of Default” shall mean any event or circumstance which with giving of notice or lapse of time, or any combination of the foregoing, would constitute an Event of Default.

“Prime Rate” shall mean a rate per annum equal to the prime rate of interest announced from time to time by RBS at its offices in Stamford, Connecticut (which is not necessarily the lowest rate charged to any customer), changing when and as such prime rate changes.

“Project Finance Subsidiary” means any Subsidiary of the Parent formed or utilized for the primary purpose of owning or operating specific assets, the acquisition of which, to the extent financed, is financed solely by Limited Recourse Debt.

“Pro Rata” means, with respect to each Lender: (i) in the case of payments of Commitment Fees, participation fees with respect to Letters of Credit, participations in Letters of Credit and unreimbursed LC Disbursements, reductions pursuant to Section 2.04(c) hereof of the Revolving Credit Committed Amounts and indemnification payments under Section 11.07 hereof, ratably in accordance with such Lender’s Commitment Percentage and (ii) in the case of payments and prepayments of principal of and interest on, and conversions and renewals of interest rate Options with respect to, any particular Revolving Credit Loans, ratably in accordance with such Lender’s percentage share of such Revolving Credit Loans.

“RBS” shall mean The Royal Bank of Scotland plc, in its individual capacity, and its successors.



“Register” shall have the meaning set forth in Section 12.14(d) hereof.

“Regular Payment Date” shall mean the last Business Day of each March, June, September and December.

“Related Litigation” shall have the meaning set forth in Section 12.16(b) hereof.

“Relevant Borrower” shall mean (i) with respect to a Loan or a proposed Loan, the Borrower to which such Loan was made or is proposed to be made, as the case may be and (ii) with respect to a Letter of Credit or a requested Letter of Credit, the Borrower which has requested the issuance of such Letter of Credit and for whose account such Letter of Credit is issued or requested to be issued, as the case may be.

“Replacement Lender” shall have the meaning set forth in Section 4.01(b) hereof.

“Required Lenders” shall mean, at any time prior to the termination or expiration of the Commitments, Lenders which have Revolving Credit Committed Amounts constituting, in the aggregate, at least 51% of the Total Revolving Credit Commitment at such time and shall mean, at any time thereafter, Lenders which have outstanding Loans and LC Exposure constituting, in the aggregate, at least 51% of all Loans and LC Exposure outstanding at such time.

“Requisite Extending Lenders” shall mean at any time Lenders having Revolving Credit Committed Amounts constituting at least 80% of the Revolving Credit Committed Amounts of all Lenders at such time.

“Revolving Credit Committed Amount” shall have the meaning set forth in Section 2.01(a) hereof.

“Revolving Credit Commitment” shall mean the commitment of such Lender to make Revolving Credit Loans and to acquire participations in Letters of Credit in accordance with the terms hereof.

“Revolving Credit Exposure” shall mean, with respect to any Lender at any time, the sum of the outstanding principal amount of such Lender’s Revolving Credit Loans and its LC Exposure at such time.

“Revolving Credit Loans” shall have the meaning set forth in Section 2.01(a) hereof.

“Revolving Credit Maturity Date” shall mean July 8, 2013, as such date may be extended (solely with respect to Lenders consenting thereto) pursuant to Section 4.01 hereof.

“Revolving Credit Notes” shall mean the promissory notes of each Borrower executed and delivered pursuant to Section 4.10(b), the promissory notes of each Borrower executed and delivered pursuant to Section 2.02, and any promissory note issued in substitution therefor pursuant to Sections 4.10(b) or 12.14(c) hereof, together with all extensions or renewals thereof in whole or part.

“S&P” shall have the meaning set forth in Schedule I hereto.

“Standard Notice” shall mean an irrevocable notice in the form of Exhibit I hereto, provided to the Administrative Agent on a Business Day which is:

- (i) At least three Business Days in advance in the case of selection of, conversion to or renewal of the Euro-Rate Option or prepayment of any Euro-Rate Portion that is denominated in Dollars;
- (ii) At least four Business Days in advance in the case of selection of, conversion to or renewal of the Euro-Rate Option or prepayment of any Euro-Rate Portion that is denominated in a currency other than Dollars; and
- (iii) On the same Business Day in the case of selection of, conversion to or renewal of the Base Rate Option or prepayment of Base Rate Portion.

Standard Notice must be provided no later than 11:00 a.m., New York time, on the last day permitted for such notice.

“Subsidiary” of a Person means (i) any corporation more than 50% of the outstanding securities having ordinary voting power of which shall at the time be owned or controlled, directly or indirectly, by such Person or by one or more of its Subsidiaries or by such Person and one or more of its Subsidiaries, or (ii) any partnership, limited liability company, association, joint venture or similar business organization more than 50% of the ownership interests having ordinary voting power of which shall at the time be so owned or controlled. Unless otherwise expressly provided, all references herein to a “Subsidiary” shall mean a Subsidiary of the Parent.

“Target Refinancing” shall mean the assistance by the Parent to Airgas in effecting timely prepayments of certain existing indebtedness of Airgas as required under the terms thereof as a consequence of the consummation of (a) the tender offer by a wholly owned subsidiary of the Parent to purchase all of the common stock of Airgas or (b) the merger of a wholly owned subsidiary of the Parent with Airgas.

“Taxes” shall have the meaning set forth in Section 4.09(a) hereof.

“Test Period” shall mean, at any date of determination, the most recently completed four consecutive fiscal quarters of the Parent ending on or prior to such date.

“Total Revolving Credit Commitment” shall mean, at any time, the aggregate Revolving Credit Committed Amounts of all Lenders at such time.

“Total Revolving Credit Exposure” shall mean, at any time, the aggregate Revolving Credit Exposure of all Lenders at such time.

“Withdrawal Liability” shall mean liability to a Multiemployer Plan as a result of a complete or partial withdrawal from such Multiemployer Plan, as such terms are defined in Title IV of ERISA.

SECTION 1.02. Construction. Unless the context of this Agreement otherwise clearly requires, references to the plural include the singular, the singular the plural and the part the whole; “or” has the inclusive meaning represented by the phrase “and/or”; and “property” includes all properties and assets of any kind or nature, tangible or intangible, real, personal or mixed. References in this Agreement to “determination” (and similar terms) by the Administrative Agent or by any Lender include reasonable and good faith estimates by the Administrative Agent or by such Lender (in the case of quantitative determinations) and good faith beliefs by the Administrative Agent or by such Lender (in the case of qualitative determinations). The words “hereof,” “herein,” “hereunder” and similar terms in this Agreement refer to this Agreement as a whole and not to any particular provision of this Agreement. The section and other headings contained in this Agreement and the Table of Contents preceding this Agreement are for reference purposes only and shall not control or affect the construction of this Agreement or the interpretation thereof in any respect. Section, subsection and exhibit references are to this Agreement unless otherwise specified.

SECTION 1.03. Accounting Principles. All computations and determinations as to accounting or financial matters shall be made, and all financial statements to be delivered pursuant to this Agreement shall be prepared, in accordance with, and all accounting or financial terms shall have the meanings ascribed to such terms by, GAAP as in effect from time to time; provided that if the Parent notifies the Administrative Agent that the Parent requests an amendment to any provision hereof to eliminate the effect of any change occurring after the date hereof in GAAP or in the application thereof on the operation of such provision (or if the Administrative Agent notifies the Parent that the Required Lenders request an amendment to any provision hereof for such purpose), regardless of whether any such notice is given before or after such change in GAAP or in the application thereof, then such provision shall be interpreted on the basis of GAAP as in effect and applied immediately before such change shall have become effective until such notice shall have been withdrawn or such provision amended in accordance herewith. Notwithstanding any other provision contained herein, all computations of amounts and ratios referred to in this Agreement shall be made without giving effect to any election under FASB ASC Topic 825 “Financial Instruments” (or any other financial accounting standard having a similar result or effect) to value any Indebtedness of the Parent at “fair value” as defined therein.

## ARTICLE II

### The Revolving Credit Loans

SECTION 2.01. Revolving Credit Commitments. (a) Revolving Credit Commitments. Subject to the terms and conditions and relying upon the representations and warranties herein set forth, each Lender, severally and not jointly, agrees to make loans in Designated Currencies (the “Revolving Credit Loans”) to the Parent or to an Other Borrower from time to time on or after the date hereof and to but not including the Revolving Credit Maturity Date; provided,

- (i) A Lender shall have no obligation to make any Revolving Credit Loan to the extent that, upon the making of such Loan, the aggregate Dollar Equivalent Amount of such Lender’s Revolving Credit Exposure would exceed such Lender’s Revolving Credit Committed Amount; and

- (ii) No Revolving Credit Loans shall be made hereunder to the extent that such Revolving Credit Loans would cause the Dollar Equivalent Amount of the Total Revolving Credit Exposure to exceed the Total Revolving Credit Commitment.

Each Lender's "Revolving Credit Committed Amount" at any time shall be equal to the amount set forth as its "Initial Revolving Credit Committed Amount" on Schedule IV, as such amount may have been reduced pursuant to Section 2.04(c) or increased pursuant to Section 2.09 hereof at such time, and subject to transfer to or from another Lender as provided in Section 12.14 hereof.

(b) Nature of Credit. Within the limits of time and amount set forth in this Section 2.01, and subject to the provisions of this Agreement, the Borrowers may borrow, repay and reborrow Revolving Credit Loans hereunder. Each Revolving Credit Loan shall be made to a single Borrower and shall be made in one of the Designated Currencies selected by the Parent in accordance with this Article II.

(c) Maturity. To the extent not due and payable earlier, the Revolving Credit Loans shall be due and payable on the Revolving Credit Maturity Date.

SECTION 2.02. Noteless Agreement; Evidence of Indebtedness. (a) Each Lender shall maintain in accordance with its usual practice an account or accounts evidencing the indebtedness of each Borrower to such Lender resulting from each Revolving Loan and Competitive Bid Loan made by such Lender from time to time, including the amounts of principal and interest payable and paid to such Lender from time to time hereunder.

(b) The Administrative Agent shall also maintain accounts in which it will record (i) the amount of each Loan made hereunder, and the Funding Period or Interest Period with respect thereto, (ii) the amount of any principal or interest due and payable or to become due and payable from each Borrower to each Lender hereunder and (iii) the amount of any sum received by the Administrative Agent hereunder from any Borrower and each Lender's share thereof.

(c) The entries maintained in the accounts maintained pursuant to paragraphs (a) and (b) above shall be prima facie evidence of the existence and amounts of the Obligations therein recorded (absent manifest error); provided, however, that the failure of the Administrative Agent or any Lender to maintain such accounts or any error therein shall not in any manner affect the obligation of the Borrowers to repay the Obligations in accordance with their terms. In the event of any conflict between the accounts and records maintained by any Lender and the accounts and records of the Administrative Agent in respect of such matters, the accounts and records of the Administrative Agent shall control in the absence of manifest error.

(d) Any Lender may request that its Revolving Credit Loans be evidenced by a promissory note in substantially the form of Exhibit A and that its Competitive Bid Loans be evidenced by a promissory note in substantially the form set forth in Exhibit B. In such event,

the Borrowers shall prepare, execute and deliver to such Lender such Notes payable to the order of such Lender. Thereafter, the Loans evidenced by such Notes and interest thereon shall at all times (including after any assignment pursuant to Section 12.14) be represented by one or more Notes payable to the order of the payee named therein or any assignee pursuant to Section 12.14, except to the extent that any such Lender or assignee subsequently returns any such Note for cancellation and requests that such Loans once again be evidenced as described in paragraphs (a) and (b) above.

SECTION 2.03. Making of Revolving Credit Loans. (a) Procedures. Whenever the Parent desires that the Lenders make Revolving Credit Loans, the Parent shall provide Standard Notice to the Administrative Agent setting forth the following information:

- (i) the identity of the Relevant Borrower;
- (ii) the date, which shall be a Business Day, on which such proposed Loans are to be made;
- (iii) the Designated Currency in which such proposed Loans are to be made and the aggregate principal amount of such proposed Loans, which shall be the sum of the principal amounts selected pursuant to clause (iv) of this Section 2.03(a) and which (A) in the case of Loans denominated in Dollars shall be an integral multiple of \$1,000,000 and not less than \$5,000,000 and (B) in the case of Loans denominated in a Designated Currency shall have an aggregate Dollar Equivalent Amount not less than \$5,000,000 and shall be an integral multiple of the amount determined by the Administrative Agent from time to time to be the basic unit in which such currency is traded in the eurocurrency market; provided that in the case of Loans made to refinance the reimbursement of an LC Disbursement as contemplated by Section 2.10(d), such Loans may be in the amount of such LC Disbursement;
- (iv) the interest rate Option or Options selected in accordance with Section 2.05(a) hereof and the principal amounts selected in accordance with Section 2.05(c) hereof of the Base Rate Portion and each Funding Segment of the Euro-Rate Portion of such proposed Loans; and
- (v) with respect to each such Funding Segment of such proposed Loans, the Funding Period to apply to such Funding Segment, selected in accordance with Section 2.05(b) hereof.

Standard Notice having been so provided, the Administrative Agent shall promptly notify each Lender of the information contained therein and of the amount of such Lender's Loan, calculated in accordance with Section 2.03(b). Unless any applicable condition specified in Article VI hereof has not been satisfied, on the date specified in such Standard Notice each Lender shall

make the proceeds of its Loan available to the Administrative Agent at the Administrative Agent's Office, no later than 12:00 o'clock Noon, New York time, in funds immediately available. The Administrative Agent will make the funds so received available to the Relevant Borrower at the Administrative Agent's Office in funds immediately available; provided that the Administrative Agent shall pay the proceeds of Loans made to finance the reimbursement of an LC Disbursement as contemplated by Section 2.10(d) directly to the applicable Issuer.

(b) Making of Revolving Credit Loans Ratably. Revolving Credit Loans shall be made by the Lenders ratably in accordance with their respective Commitment Percentages.

(c) Revolving Loans to be Made in Euro. If any Revolving Credit Loan would, but for the provisions of this Section 2.03(c), be capable of being made in either the Euro or in a National Currency Unit, such Revolving Credit Loan shall be made in the Euro.

SECTION 2.04. Fees; Reduction of the Revolving Credit Committed Amounts. (a) Commitment Fee. The Parent shall pay to the Administrative Agent for the account of each Lender a fee (the "Commitment Fee") for each day from and including the Closing Date and to but not including the date that such Lender's Commitment is terminated. Such fee shall be payable on the unused amount of such Lender's Revolving Credit Committed Amount on such day and shall accrue at the applicable rate per annum for such day set forth on Schedule I under the caption "Commitment Fee". Commitment Fees shall be due and payable for the preceding period for which such fees have not been paid on each Regular Payment Date and on the date on which the Commitments terminate. All Commitment Fees shall be computed on the basis of a year of 360 days and shall be payable for the actual number of days elapsed.

(b) Letter of Credit Fees. The Parent agrees to pay (i) to the Administrative Agent for the account of each Lender a participation fee with respect to its participations in each Letter of Credit, which shall accrue at a rate per annum equal to the Market Rate Spread applicable to such Letter of Credit on the daily amount of such Lender's LC Exposure (excluding any portion thereof attributable to unreimbursed LC Disbursements) in respect of such Letter of Credit during the period from and including the Closing Date to but excluding the later of the date on which such Lender's Commitment terminates and the date on which such Lender ceases to have any LC Exposure, and (ii) to each Issuer a fronting fee, which shall accrue at a rate per annum separately agreed between the Parent and such Issuer (or such Issuer's Affiliate, if applicable) on the average daily amount of the LC Exposure associated with Letters of Credit issued by such Issuer (excluding any portion thereof attributable to unreimbursed LC Disbursements) during the period from and including the Closing Date to but excluding the later of the date of termination of the Commitments and the date on which there ceases to be any LC Exposure, as well as such Issuer's standard fees with respect to the issuance, amendment, renewal or extension of any Letter of Credit or processing of drawings thereunder. Participation fees and fronting fees (together, "Letter of Credit Fees") shall be payable in arrears on each Regular Payment Date, the date on which the Commitments terminate and thereafter on demand. Any other fees payable to the Issuer pursuant to this paragraph shall be payable within 10 days after demand. All Letter of Credit Fees shall be computed on the basis of a year of 360 days and shall be payable for the actual number of days elapsed.

(c) Optional Reduction of the Revolving Credit Committed Amounts. The Parent may at any time or from time to time reduce Pro Rata the Revolving Credit Committed Amounts of the Lenders to an aggregate amount (which may be zero) not less than the sum of the aggregate Dollar Equivalent Amounts of the Revolving Credit Exposures and Competitive Bid Loans then outstanding plus the aggregate Dollar Equivalent Amount of all Revolving Credit Loans, Letters of Credit and Competitive Bid Loans not yet made as to which notice has been given by the Parent under Section 2.03, 2.10(b) or 3.02 hereof, as the case may be. Any reduction of the Revolving Credit Committed Amounts shall be in an aggregate amount which is an integral multiple of \$20,000,000 or the Total Revolving Credit Commitment. Reduction of the Revolving Credit Committed Amounts shall be made by providing not less than five Business Days' notice to such effect to the Administrative Agent. Such notice of reduction shall be irrevocable; provided that such a notice delivered by the Parent may state that such notice is conditioned upon the effectiveness of other credit facilities, in which case such notice may be revoked by the Parent (by notice to the Administrative Agent on or prior to the specified effective date) if such condition is not satisfied. After the date specified in such notice which is not so revoked the Commitment Fee shall be calculated upon the Revolving Credit Committed Amounts as so reduced. The Administrative Agent will promptly send copies of such notice to the Lenders.

SECTION 2.05. Interest Rates. (a) Optional Bases of Borrowing. The unpaid principal amount of the Revolving Credit Loans shall bear interest for each day from and including the date on which funds are made available to the Relevant Borrower by the Administrative Agent and to but excluding the date of repayment on one or more bases selected by the Parent from among the interest rate Options set forth below; provided, however, that the Base Rate Option may not be selected to apply to Revolving Credit Loans which are denominated in a currency other than Dollars. Subject to the provisions of this Agreement the Parent may select different Options to apply simultaneously to different Portions of the Revolving Credit Loans and may select different Funding Segments to apply simultaneously to different parts of the Euro-Rate Portion of the Revolving Credit Loans. The aggregate number of Funding Segments applicable to the Euro-Rate Portion of the Revolving Credit Loans at any time shall not exceed six unless otherwise permitted by the Administrative Agent.

- (i) Base Rate Option: A rate per annum (computed on the basis of a year of 360 days and actual days elapsed) for each day equal to (x) the Base Rate for such day plus (y) the Applicable Margin for such day.
- (ii) Euro-Rate Option: A rate per annum (computed on the basis of a year of 360 days and actual days elapsed or, in the case of Loans denominated in U.K. pounds sterling, computed on the basis of a year of 365 or 366 days, as the case may be) for each day equal to (x) the rate per annum determined in good faith by the Administrative Agent in accordance with its usual procedures (which determination shall be conclusive absent manifest error) by dividing (the resulting quotient to be rounded upward to the nearest  $\frac{1}{100}$  of 1%) (1) the Euro-Rate for such day by (2) a number equal to 1.00 minus the Euro-Rate Reserve Percentage, if any, for such day plus (y) the Applicable Margin for such day.

The Administrative Agent shall give prompt notice to the Parent and to the Lenders of the Euro-Rate so determined.

(b) Funding Periods. At any time when the Parent shall select, convert to or renew the Euro-Rate Option to apply to any part of the Revolving Credit Loans, the Parent shall specify one or more periods (the "Funding Periods") during which each such Option shall apply, such Funding Periods being one, two, three or six months; provided, that (i) each Euro-Rate Funding Period shall begin on a Business Day, and the term "month", when used in connection with a Euro-Rate Funding Period, shall be construed in accordance with prevailing practices in the interbank eurocurrency market at the commencement of such Euro-Rate Funding Period, as determined in good faith by the Administrative Agent (which determination shall be conclusive); and (ii) the Parent may not select a Funding Period that would end after the Revolving Credit Maturity Date.

(c) Transactional Amounts. Every selection of, conversion from, conversion to or renewal of an interest rate Option and every payment or prepayment of any Revolving Credit Loans shall be either

- (i) in a principal amount such that after giving effect thereto the aggregate principal amount of the Base Rate Portion of the Revolving Credit Loans, or the aggregate principal amount of each Funding Segment of the Euro-Rate Portion of the Revolving Credit Loans, shall be (A) in the case of Revolving Credit Loans denominated in Dollars, \$5,000,000 or a higher integral multiple of \$1,000,000 and (B) in the case of Revolving Credit Loans denominated in a currency other than Dollars, an amount the Dollar Equivalent Amount of which is greater than \$5,000,000 and which is an integral multiple of the amount determined by the Administrative Agent from time to time to be the basic unit in which such currency is funded in the eurocurrency market; or
- (ii) in the case of a prepayment by any Borrower, if the principal amount of the Base Rate Portion of the Revolving Credit Loans or the aggregate principal amount of a Funding Segment of the Euro-Rate Portion of the Revolving Credit Loans is a Dollar Equivalent Amount of less than \$5,000,000, in a principal amount equal to such principal amount.

(d) Euro-Rate or Market Rate Spread Unascertainable; Impracticability.

- (i) If (A) on any date on which a Euro-Rate would otherwise be set the Administrative Agent shall have determined in good faith (which determination shall be conclusive absent manifest error) that:
  - (1) adequate and reasonable means do not exist for ascertaining such Euro-Rate, or



- (2) a contingency has occurred which materially and adversely affects the interbank eurocurrency market for the relevant currency, or
  - (3) the effective cost to the Required Lenders of funding a proposed Funding Segment of the Euro-Rate Portion shall exceed the Euro-Rate applicable to such Funding Segment, or
- (B) at any time any Lender shall have determined in good faith (which determination shall be conclusive absent manifest error) that the making, maintenance or funding of any part of the Euro-Rate Portion has been made impracticable or unlawful by compliance by such Lender or a Notional Funding Office in good faith with any Law or guideline or interpretation or administration thereof by any Governmental Authority charged with the interpretation or administration thereof or with any request or directive of any such Governmental Authority (whether or not having the force of law); then, and in any such event, the Administrative Agent or such Lender, as the case may be, may notify the Parent of such determination (and any Lender giving such notice shall notify the Administrative Agent). Upon such date as shall be specified in such notice (which shall not be earlier than the date such notice is given), the obligation of each of the Lenders to allow the Parent to select, convert to or renew the Euro-Rate Option with respect to the relevant currency or currencies shall be suspended until the Administrative Agent or such Lender, as the case may be, shall have later notified the Parent (and any Lender giving such notice shall notify the Administrative Agent) of the Administrative Agent's or such Lender's determination in good faith (which determination shall be conclusive absent manifest error) that the circumstance giving rise to such previous determination no longer exist.
- (ii) If any Lender notifies the Parent of a determination under subsection (B) of Section 2.05(d)(i), the Euro-Rate Portion of the Loans of such Lender (the "Affected Lender") shall, subject to Section 4.08(c) hereof, (i) be automatically converted to the Base Rate Option, in the case of Revolving Credit Loans denominated in Dollars, or (ii) be repaid by the Relevant Borrower, in the case of Revolving Credit Loans denominated in a currency other than Dollars, on the last day of the then current Funding Period with respect to such Loans (in the case of a determination that the making, maintenance or funding of any Euro-Rate Portion of such

Loans is impracticable) and the last day on which the making, maintenance or funding of any Euro-Rate Portion of such Loans is not unlawful (in the case of a determination that the making, maintenance or funding of any Euro-Rate Portion of such Loans is unlawful) and accrued interest thereon shall be due and payable on such date.

- (iii) If at the time the Administrative Agent or a Lender makes a determination under subsection (A) or (B) of Section 2.05(d)(i) the Parent previously has notified the Administrative Agent that it wishes to select, convert to or renew the Euro-Rate Option with respect to any proposed Revolving Credit Loans but such Loans have not yet been made, (A) such notification shall be deemed to provide for selection of, conversion to or renewal of the Base Rate Option instead of the Euro-Rate Option with respect to any such Loans denominated in Dollars or, in the case of a determination by a Lender, any such Loans denominated in Dollars of such Lender or (B) subject to Section 4.08(c), such notification shall be deemed to be revoked in the case of a selection of the Euro-Rate Option or shall be deemed to be a notice of prepayment in the case of a conversion or renewal, with respect to any such Loans denominated in a currency other than Dollars or, in the case of a determination by a Lender, any such Loans denominated in a currency other than Dollars of such Lender.
- (iv) An Affected Lender shall take actions of the type referred to in Section 4.10, if such actions would avoid the application of clause (B) of Section 2.05(d)(i) and would not, in the good faith judgment of such Lender, be disadvantageous in any way to such Lender or its Affiliates at such time or in the future.
- (v) If on any date on which a Market Rate Spread would be set the Administrative Agent shall have determined in good faith (which determination shall be conclusive absent manifest error) that adequate and reasonable means do not exist for ascertaining the Market Rate Spread, then, and in any such event, the Administrative Agent shall notify the Parent and the Lenders of such determination and, until the Administrative Agent determines that the Market Rate Spread can be ascertained, the applicable Market Rate Spread to be so set shall be the applicable maximum Market Rate Spread set forth on Schedule I.

SECTION 2.06. Conversion or Renewal of Interest Rate Options. (a) Conversion or Renewal. Subject to the provisions of Section 2.07 hereof, the Parent may convert any part of the Revolving Credit Loans denominated in any Designated Currency from any interest rate Option or Options to one or more different interest rate Options available for such Designated Currency and may renew the Euro-Rate Option as to any Funding Segment of the Euro-Rate Portion:

- (i) at any time with respect to conversion from the Base Rate Option; or

- (ii) at the expiration of any Funding Period with respect to conversions from or renewals of the Euro-Rate Option as to the Funding Segment corresponding to such expiring Funding Period;

provided, that at any time when an Event of Default has occurred and is continuing or exists, (x) the Borrower may not select, convert to or renew the Euro-Rate Option with respect to any Revolving Credit Loans denominated in Dollars, (y) the Borrower may not convert any Revolving Credit Loans to any Designated Currency other than Dollars, and (z) the Borrower may not select a Funding Period longer than one month with respect to Revolving Credit Loans denominated in a currency other than Dollars.

Whenever the Parent desires to convert or renew any interest rate Option or Options, the Parent shall provide to the Administrative Agent Standard Notice setting forth the following information:

- (i) the date, which shall be a Business Day, on which the proposed conversion or renewal is to be made;
- (ii) the principal amounts selected in accordance with Section 2.05(c) hereof of the Base Rate Portion and each Funding Segment of the Euro-Rate Portion to be converted from or renewed;
- (iii) the interest rate Option or Options selected in accordance with Section 2.05(a) hereof and the principal amounts selected in accordance with Section 2.05(c) hereof of the Base Rate Portion and each Funding Segment of the Euro-Rate Portion to be converted to; and
- (iv) with respect to each Funding Segment to be converted to or renewed, the Funding Period selected in accordance with Section 2.05(b) hereof to apply to such Funding Segment.

Standard Notice having been so provided, after the date specified in such Standard Notice, interest shall be calculated upon the principal amount of the Loans as so converted or renewed.

(b) Failure to Convert or Renew. Absent due notice from the Parent of conversion or renewal in the circumstances described in Section 2.06(a)(ii) hereof, any part of the Euro-Rate Portion for which such notice is not received (i) shall be converted automatically to the Base Rate Option, in the case of Revolving Credit Loans denominated in Dollars or (ii) the Euro-Rate Option shall be automatically renewed for a Funding Period of one month, in the case of Revolving Credit Loans denominated in a currency other than Dollars, on the last day of the expiring Funding Period.

SECTION 2.07. Optional Prepayments. The Relevant Borrower shall have the right at its option at any time and from time to time to prepay its Revolving Credit Loans in whole or part without premium or penalty (subject, however, to Sections 2.05(c), 4.04 and 4.08(c) hereof).

SECTION 2.08. Interest Payment Dates. Interest on the Base Rate Portion of the Revolving Credit Loans shall be due and payable on the date of any conversion of all or part of the Base Rate Portion to a different interest rate Option on the amount converted, any prepayment of any part of the Base Rate Portion on the amount prepaid, and on each Regular Payment Date. Interest on each Funding Segment of the Euro-Rate Portion of the Revolving Credit Loans shall be due and payable on the last day of the corresponding Euro-Rate Funding Period and, if such Euro-Rate Funding Period is longer than three months, also on the last day of every third month during such Funding Period. After maturity of any part of the Loans (by acceleration or otherwise), interest on such part of the Loans shall be due and payable on demand.

SECTION 2.09. Increase in Total Revolving Credit Commitment. The Parent may, at its option, on one or more occasions, seek to increase the Total Revolving Credit Commitment by up to \$500,000,000 in the aggregate for all such occasions (i.e., the maximum Total Revolving Credit Commitment is \$2,500,000,000) upon at least three (3) Business Days' prior notice to the Administrative Agent, which notice shall specify the amount of any such requested increase and shall state that, and be delivered at a time when, no Event of Default or Potential Event of Default has occurred and is continuing or exists. The Parent may, after giving such notice, offer the increase in the Total Revolving Credit Commitment to any of the existing Lenders approved by the Issuers and/or to other banks, financial institutions or other entities reasonably acceptable to the Administrative Agent and the Issuers on a non pro-rata basis in such amounts as determined by the Parent and reasonably agreed to by the Administrative Agent. The Parent may elect to accept on any such occasion an increase in the Total Revolving Credit Commitment in an amount up to the aggregate increased commitments offered to the Parent. No increase in the Total Revolving Credit Commitment shall become effective until the existing or new Lender extending such incremental commitment amount and the Parent shall have executed and delivered to the Administrative Agent an agreement in writing in the form of Exhibit H attached hereto pursuant to which such Lender states its Revolving Credit Committed Amount and agrees to assume and accept the obligations and rights of a Lender hereunder. No Lender shall have any obligation to increase its Commitment hereunder. The Lenders (new or existing) shall accept an assignment from the existing Lenders, and the existing Lenders shall make an assignment to the new or existing Lender accepting a new or increased Revolving Credit Committed Amount, of an interest in all then outstanding Revolving Credit Loans and a participation interest in all then outstanding Letters of Credit and LC Disbursements such that, after giving effect thereto, all Revolving Credit Exposure is held ratably by the Lenders in proportion to their respective Revolving Credit Committed Amounts. Assignments pursuant to the preceding sentence shall be made in exchange for the principal amount assigned plus accrued and unpaid interest and Commitment Fees. The Parent shall make any payments under Section 4.08(c) resulting from such assignments. Any such increase in the Total Revolving Credit Commitment shall be in a minimum amount of \$10,000,000 or a higher integral multiple of \$5,000,000 and shall be subject to receipt by the Administrative Agent from the Parent of such supplemental opinions, resolutions, certificates and other documents as the Administrative Agent may reasonably request.

SECTION 2.10. Letters of Credit. (a) Issuance. Each Issuer hereby agrees, on the terms and conditions set forth in this Agreement, to issue Letters of Credit and to renew, extend, increase, decrease or otherwise modify Letters of Credit (“Modify,” and each such action a “Modification”), from time to time from and including the date of this Agreement and prior to the Letter of Credit Maturity Date upon the request of the Parent and for the account of any Borrower; provided that a Letter of Credit shall be issued or Modified only if (and upon each issuance or Modification the Relevant Borrower shall be deemed to represent and warrant that) after giving effect to such issuance or Modification (i) the LC Exposure shall not exceed \$1,000,000,000, (ii) the Revolving Credit Exposure shall not exceed the Total Revolving Credit Commitment (either as in effect on the date of such issuance or Modification or, if the Revolving Credit Maturity Date has been extended pursuant to Section 4.01 and the expiration of such Letter of Credit (as Modified, if applicable) would occur after the Revolving Credit Maturity Date without giving effect to such extension, as the Total Revolving Credit Commitment is scheduled to be in effect immediately following the expiry of the Commitment of any Lender which is a Nonextending Lender relative to such extension) and (iii) the Issuer Exposure of the applicable Issuer shall not exceed its Issuer Commitment. Each Letter of Credit shall be denominated in a Designated Currency and shall be in a form satisfactory to the Issuer. No Letter of Credit shall have an expiry date later than the fifth Business Day prior to the Revolving Credit Maturity Date (such day, “the Letter of Credit Maturity Date”). Notwithstanding the foregoing, no Issuer shall be under any obligation to issue any Letter of Credit if any order, judgment or decree of any governmental authority or other regulatory body with jurisdiction over such Issuer shall purport by its terms to enjoin or restrain such Issuer from issuing such Letter of Credit, or any law or governmental rule, regulation, policy, guideline or directive (whether or not having the force of law) from any governmental authority or other regulatory body with jurisdiction over such Issuer shall prohibit, or request that such Issuer refrain from, the issuance of such Letter of Credit in particular or shall impose upon such Issuer with respect to any Letter of Credit any restriction or reserve or capital requirement (for which such Issuer is not otherwise compensated) or any unreimbursed loss, cost or expense which was not applicable, in effect and known to such Issuer as of the date of this Agreement and which such Issuer in good faith deems material to it.

(b) Notice of Issuance or Modification; Certain Conditions. The Parent shall give the Issuer and the Administrative Agent notice prior to 10:00 a.m., New York time, at least five Business Days (or such shorter period agreed to by the Issuer) prior to the proposed date of issuance or Modification of each Letter of Credit, specifying the beneficiary, the proposed date of issuance (or Modification), the expiry date of such Letter of Credit, the amount and currency of such Letter of Credit and such other information as the Issuer may reasonably request to facilitate the requested issuance or Modification. Such notice shall be by hand delivery, facsimile or, if arrangements for doing so have been agreed upon by the Parent, the Issuer and the Administrative Agent, by electronic communication. Upon request of a Lender, the Administrative Agent agrees to provide the information contained in such notice to such Lender. If requested by the Issuer, the Relevant Borrower also shall submit a letter of credit application on the Issuer’s standard form in connection with any request for a Letter of Credit. In the event of any inconsistency between the terms and conditions of this Agreement and the terms and

conditions of any form of letter of credit application or other agreement submitted by the Relevant Borrower to, or entered into by the Relevant Borrower with, the Issuer relating to any Letter of Credit, the terms and conditions of this Agreement shall control.

(c) Participations. By the issuance of a Letter of Credit (or an amendment to a Letter of Credit increasing the amount thereof) and without any further action on the part of the Issuer or the Lenders, the Issuer hereby grants to each Lender, and each Lender hereby acquires from the Issuer, a participation in such Letter of Credit equal to such Lender's Commitment Percentage of the aggregate amount available to be drawn under such Letter of Credit. In consideration and in furtherance of the foregoing, each Lender hereby absolutely and unconditionally agrees to pay to the Administrative Agent, for the account of the Issuer, such Lender's Commitment Percentage of each LC Disbursement made by the Issuer and not reimbursed by the Relevant Borrower on the date due as provided in paragraph (d) of this Section, or of any reimbursement payment required to be refunded to the Relevant Borrower for any reason. Each Lender acknowledges and agrees that its obligation to acquire participations pursuant to this paragraph in respect of Letters of Credit is absolute and unconditional and shall not be affected by any circumstance whatsoever, including any amendment, renewal or extension of any Letter of Credit or the occurrence and continuance of an Event of Default or Potential Event of Default or reduction or termination of the Commitments, and that each such payment shall be made without any offset, abatement, withholding or reduction whatsoever.

(d) Reimbursement. If the Issuer shall make any LC Disbursement in respect of a Letter of Credit, the Relevant Borrower shall reimburse such LC Disbursement by paying to the Administrative Agent at its Office an amount in the applicable Designated Currency equal to such LC Disbursement not later than 12:00 o'clock Noon, New York time, on the date that such LC Disbursement is made, if the Parent or Relevant Borrower shall have received notice of such LC Disbursement prior to 10:00 a.m., New York time, on such date, or, if such notice has not been received by the Parent or Relevant Borrower prior to such time on such date, then not later than 12:00 o'clock Noon, New York time, on (i) the Business Day that the Parent or Relevant Borrower receives such notice, if such notice is received prior to 10:00 a.m., New York time, on the day of receipt, or (ii) the Business Day immediately following the day that the Parent or Relevant Borrower receives such notice, if such notice is not received prior to such time on the day of receipt; provided that if the amount to be reimbursed is denominated in Dollars, the Parent or Relevant Borrower may, subject to the conditions to borrowing set forth herein, request in accordance with Section 2.03 that such payment be financed with Base Rate Option Revolving Credit Loans in an equivalent amount and, to the extent so financed, the Relevant Borrower's obligation to make such payment shall be discharged and replaced by the resulting Revolving Credit Loans. If the Relevant Borrower fails to make such payment when due, the Administrative Agent shall notify each Lender of the applicable LC Disbursement, the payment then due from the Relevant Borrower in respect thereof and such Lender's Commitment Percentage thereof. Promptly (and in any event within one Business Day) following receipt of such notice, each Lender shall pay to the Administrative Agent its Commitment Percentage of the payment then due from the Relevant Borrower in the same manner as provided in Section 2.03(a) with respect to Revolving Credit Loans made by such Lender, and the Administrative Agent shall promptly pay to the Issuer the amounts so received by it from the Lenders. Any amount due from a Lender pursuant to the preceding sentence but not timely paid shall accrue interest for the account of the Issuer at a rate per annum equal to the Federal Funds

Effective Rate for the first three days and thereafter at a rate of interest equal to the rate applicable to the Base Rate Portion. Promptly following receipt by the Administrative Agent of any payment from the Relevant Borrower pursuant to this paragraph, the Administrative Agent shall distribute such payment to the Issuer or, to the extent that Lenders have made payments pursuant to this paragraph to reimburse the Issuer, then to such Lenders and the Issuer as their interests may appear. Any payment made by a Lender pursuant to this paragraph to reimburse the Issuer for any LC Disbursement (other than the funding of Revolving Credit Loans as contemplated above) shall not constitute a Revolving Credit Loan and shall not relieve the Relevant Borrower of its obligation to reimburse such LC Disbursement.

(e) Obligations Absolute. The Relevant Borrower's obligation to reimburse LC Disbursements as provided in paragraph (d) of this Section shall be absolute, unconditional and irrevocable, and shall be performed strictly in accordance with the terms of this Agreement under any and all circumstances whatsoever and irrespective of (i) any lack of validity or enforceability of any Letter of Credit or this Agreement, or any term or provision therein, (ii) any draft or other document presented under a Letter of Credit proving to be forged, fraudulent or invalid in any respect or any statement therein being untrue or inaccurate in any respect, (iii) payment by the Issuer under a Letter of Credit against presentation of a draft or other document that does not comply with the terms of such Letter of Credit, or (iv) any other event or circumstance whatsoever, whether or not similar to any of the foregoing, that might, but for the provisions of this Section, constitute a legal or equitable discharge of, or provide a right of setoff against, the Relevant Borrower's obligations hereunder. Neither the Administrative Agent, the Lenders nor the Issuer, nor any of their respective Affiliates, directors, officers, employees, attorneys or agents, shall have any liability or responsibility by reason of or in connection with the issuance or transfer of any Letter of Credit or any payment or failure to make any payment thereunder (irrespective of any of the circumstances referred to in the preceding sentence), or any error, omission, interruption, loss or delay in transmission or delivery of any draft, notice or other communication under or relating to any Letter of Credit (including any document required to make a drawing thereunder), any error in interpretation of technical terms or any consequence arising from causes beyond the control of the Issuer; provided that the foregoing shall not be construed to excuse the Issuer from liability to the Relevant Borrower to the extent of any direct damages (as opposed to consequential damages, claims in respect of which are hereby waived by the Relevant Borrower to the extent permitted by applicable law) suffered by the Relevant Borrower that are caused by the Issuer's failure to exercise care when determining whether drafts and other documents presented under a Letter of Credit comply with the terms thereof. The parties hereto expressly agree that, in the absence of gross negligence or willful misconduct (including willful failure to pay under any Letter of Credit after the presentation to it by the beneficiary of documents strictly complying with the terms and conditions of the Letter of Credit and payment in bad faith of a drawing under a Letter of Credit after the presentation to it by the beneficiary of documents not substantially or reasonably complying with the terms and conditions of the Letter of Credit) on the part of the Issuer (as determined by a non appealable judgment of a court of competent jurisdiction), the Issuer shall be deemed to have exercised care in each such determination. In furtherance of the foregoing and without limiting the generality thereof, the parties agree that, with respect to documents presented which appear on their face to be in substantial compliance with the terms of a Letter of Credit, the Issuer may, in its sole discretion, either accept and make payment upon such documents without responsibility for further investigation, regardless of any notice or information to the contrary, or refuse to accept and make payment upon such documents if such documents are not in strict compliance with the terms of such Letter of Credit.

(f) Disbursement Procedures. The Issuer shall, promptly following its receipt thereof, examine all documents purporting to represent a demand for payment under a Letter of Credit. The Issuer shall promptly notify the Administrative Agent and the Parent or Relevant Borrower by telephone (confirmed by electronic or facsimile transmission) of such demand for payment and whether the Issuer has made or will make an LC Disbursement thereunder; provided that any failure to give or delay in giving such notice shall not relieve the Relevant Borrower of its obligation to reimburse the Issuer and the Lenders with respect to any such LC Disbursement.

(g) Interim Interest. If the Issuer shall make any LC Disbursement, then, unless the Relevant Borrower shall reimburse such LC Disbursement in full on the date such LC Disbursement is made, the unpaid amount thereof shall bear interest, for each day from and including the date such LC Disbursement is made to but excluding the date that the Relevant Borrower reimburses such LC Disbursement, at the rate per annum set forth in Section 4.05(b) (except that interest on amounts timely paid pursuant to Section 2.10(d) shall bear interest at such rate minus two percent (2%) per annum). Interest accrued pursuant to this paragraph shall be for the account of the Issuer, except that interest accrued on and after the date of payment by any Lender pursuant to paragraph (e) of this Section to reimburse the Issuer shall be for the account of such Lender to the extent of such payment.

(h) Replacement of the Issuer. Any Issuer may be replaced at any time by written agreement among the Parent, the Administrative Agent and the successor Issuer. The Administrative Agent shall notify the Lenders of any such replacement of an Issuer. At the time any such replacement shall become effective, the Parent shall pay all unpaid fees accrued for the account of the replaced Issuer pursuant to Section 2.04(b). From and after the effective date of any such replacement, (i) the successor Issuer shall have all the rights and obligations of the Issuer under this Agreement with respect to Letters of Credit to be issued thereafter and (ii) references herein to the term "Issuer" shall be deemed to refer to such successor or to any previous Issuer, or to such successor and all previous Issuers, as the context shall require. After the replacement of an Issuer hereunder, the replaced Issuer shall remain a party hereto and shall continue to have all the rights and obligations of an Issuer under this Agreement with respect to Letters of Credit issued by it prior to such replacement, but shall not be required to issue additional Letters of Credit.

(i) Cash Collateralization. If any Event of Default which requires cash collateralization as specified in Section 9.02 shall occur and be continuing, on the Business Day that the Parent receives notice from the Administrative Agent or the Required Lenders demanding the deposit of cash collateral pursuant to this paragraph, the Parent shall deposit in an account with the Administrative Agent, in the name of the Administrative Agent and for the benefit of the Lenders and Issuers, an amount in cash equal to the LC Exposure as of such date plus any accrued and unpaid interest thereon; provided that the obligation to deposit such cash collateral shall become effective immediately, and such deposit shall become immediately due and payable, without demand or other notice of any kind, upon the occurrence of any Event of Default with respect to the Parent or Relevant Borrower described in clause (i) or (j) of



Section 9.01. Such deposit shall be held by the Administrative Agent as collateral for the payment and performance of the Obligations. Subject to the express provisions of this Section 2.10(i), the Administrative Agent shall have exclusive dominion and control, including the exclusive right of withdrawal, over such account. Other than any interest earned on the investment of such deposits, which investments shall be made at the option and sole discretion of the Administrative Agent and at the Parent's risk and expense, such deposits shall not bear interest; provided, however, that any deposits so invested shall be invested only in certificates of deposit of the Administrative Agent, direct obligations of, or obligations unconditionally guaranteed by, the United States of America, money market funds rated AAA by S&P or similar investments, in each case having a maturity of no more than thirty (30) days. Interest or profits, if any, on such investments shall accumulate in such account. Moneys in such account shall be applied by the Administrative Agent to reimburse the Issuer for LC Disbursements for which it has not been reimbursed and, to the extent not so applied, shall be held first for the satisfaction of the reimbursement obligations of the Parent and Relevant Borrower for the LC Exposure at such time or, if the maturity of the Loans has been accelerated, shall be held for application to other Obligations held ratably (relative to Commitment Percentage) by the Lenders and thereafter, if the LC Exposure is zero, shall be applied to satisfy other Obligations. If the Parent has provided an amount of cash collateral hereunder as a result of the occurrence of an Event of Default, such amount (to the extent not applied as aforesaid) shall be returned to the Parent within three Business Days after all Events of Default have been cured or waived.

### ARTICLE III

#### The Competitive Bid Loans

SECTION 3.01. Competitive Bid Loans. In addition to Revolving Credit Loans, the Parent may, as set forth in this Article III request the Lenders to make offers to make one or more Competitive Bid Loans to the Parent or to an Other Borrower. Each Lender may, but shall have no obligation to, make one or more such offers and, subject to the terms and provisions hereof, the Parent may, but shall have no obligation to, accept any such offers in the manner set forth in this Article III; provided, that no Competitive Bid Loan shall be made or requested if the making of such Loan would cause the aggregate Dollar Equivalent Amount of all Loans and LC Exposure outstanding hereunder to exceed the Total Revolving Credit Commitment. Competitive Bid Loans may be Absolute Rate Loans or LIBOR-based Loans (each a "type" of Competitive Bid Loan) and, subject to Section 4.07 hereof, may be in any Designated Currency. Competitive Bid Loans shall be due and payable on the earlier of the Competitive Bid Expiration Date and the applicable Competitive Bid Loan Maturity Date.

SECTION 3.02. Competitive Bid Loan Procedures. (a) Competitive Bid Loan Quote Requests. When the Parent wishes to request offers to make Competitive Bid Loans under this Article III, it shall transmit to the Administrative Agent by facsimile transmission, at its Office, a notice (a "Competitive Bid Loan Quote Request") so as to be received no later than 11:00 a.m. New York time on (x) the fourth Business Day prior to the date of borrowing proposed therein, in the case of a LIBOR Auction or (y) the Business Day next preceding the date of borrowing proposed therein, in the case of an Absolute Rate Auction (or, in any case, such other time as the Parent and Administrative Agent may agree). The Parent may request offers to make Competitive Bid Loans for different Interest Periods in a single notice; provided,

the request for each separate Interest Period shall be deemed to be a separate Competitive Bid Loan Quote Request for a separate Competitive Bid Loan (all Competitive Bid Loans proposed to be made at one time herein collectively referred to as a “Competitive Bid Borrowing”). Each such notice shall be substantially in the form of Exhibit C hereto and in any case shall specify as to each Competitive Bid Borrowing:

- (i) the identity of the Relevant Borrower for such Competitive Bid Borrowing;
- (ii) the proposed date of such Competitive Bid Borrowing, which shall be a Business Day;
- (iii) the currency or currencies in which such Competitive Bid Borrowing is to be made;
- (iv) the aggregate amount of such Competitive Bid Borrowing which shall be a Dollar Equivalent Amount of at least \$5,000,000 (or a higher integral multiple of \$1,000,000) (but only to the extent practical in the case of Competitive Bid Loans denominated in a currency other than Dollars), but shall not cause the limits specified in Section 3.01 hereof to be violated;
- (v) the duration of the initial Interest Period or Periods applicable thereto, subject to the provisions of the definition of “Interest Period” (including without limitation that no such Interest Period shall end after the Competitive Bid Expiration Date); and
- (vi) whether the Competitive Bid Loan Quotes requested are to set forth a LIBOR-based Margin or an Absolute Rate.

No Competitive Bid Loan Request shall be given if such request could result in more than six Competitive Bid Loans being outstanding at any one time unless otherwise permitted by the Administrative Agent.

(b) Invitation for Competitive Bid Loan Quotes. Promptly after receipt of a Competitive Bid Loan Quote Request, the Administrative Agent shall transmit to the Lenders by facsimile transmission notice of such Competitive Bid Loan Request, which notice shall constitute an invitation by the Parent to each Lender to submit Competitive Bid Loan Quotes offering to make Competitive Bid Loans in accordance with such Competitive Bid Loan Quote Request.

(c) Submission and Contents of Competitive Bid Loan Quotes.

- (i) Each Lender may submit one or more Competitive Bid Loan Quotes, each containing an offer to make a Competitive Bid Loan in response to any Competitive Bid Loan Quote Request; provided, if the Parent’s request under Section 3.02(a) hereof specifies more than one Interest Period, such Lender may make a single

submission containing one or more Competitive Bid Loan Quotes for each such Interest Period. Each Competitive Bid Loan Quote must comply with the requirements of this Section 3.02(c) and must be submitted to the Administrative Agent by facsimile transmission at its Office not later than (x) 10:00 a.m. New York time on the third Business Day prior to the proposed date of borrowing, in the case of a LIBOR Auction or (y) 10:00 a.m. New York time on the proposed date of borrowing, in the case of an Absolute Rate Auction (or, in either case upon reasonable notice to the Lenders, such other time and date as the Parent and the Administrative Agent may agree in writing); provided that any Competitive Bid Loan Quote submitted by the Administrative Agent (or an Affiliate of the Administrative Agent) in the capacity of a Lender may be submitted, and may only be submitted, if the Administrative Agent (or such Affiliate) notifies the Parent of the terms of the offer or offers contained therein not later than (x) 9:30 a.m. New York time on the third Business Day prior to the proposed date of borrowing, in the case of a LIBOR Auction or (y) 9:30 a.m. New York time on the proposed date of borrowing, in the case of an Absolute Rate Auction. Subject to Sections 4.07 and 6.01 hereof, any Competitive Bid Loan Quote so made shall be irrevocable except with the written consent of the Administrative Agent given on the written instructions of the Parent.

- (ii) Each Competitive Bid Loan Quote shall be substantially in the form of Exhibit D hereto and shall in any case specify:
  - (A) the proposed date of borrowing, the proposed currency and the Interest Period therefor;
  - (B) the principal amount of the Competitive Bid Loan for which each such offer is being made, which principal amount shall be a Dollar Equivalent Amount of at least \$5,000,000 or a higher integral multiple of \$1,000,000 (but only to the extent practical in the case of Competitive Bid Loans denominated in a currency other than Dollars); provided, the aggregate principal amount of all Competitive Bid Loans for which a Lender submits Competitive Bid Loan Quotes (x) may be greater than, less than or equal to the Revolving Credit Committed Amount of such Lender but (y) may not exceed the principal amount of the Competitive Bid Borrowing for which offers were requested in the related Competitive Bid Loan Quote Request;
  - (C) in the case of a LIBOR Auction, the margin above (or, if a negative margin is offered, below) the applicable LIBO-Rate (the “LIBOR-based Margin”) offered for each such Competitive Bid Loan, expressed as a percentage (rounded upwards, if necessary, to the nearest  $\frac{1}{10,000}$ th of 1%) to be added to the applicable LIBO-Rate;

- (D) in the case of an Absolute Rate Auction, the rate of interest per annum, calculated on the basis of a 360-day year (rounded upwards, if necessary, to the nearest  $\frac{1}{10,000}$ th of 1%) (the "Absolute Rate") offered for each such Competitive Bid Loan; and
- (E) the identity of the quoting Lender.
- (iii) No Competitive Bid Loan Quote shall contain qualifying, conditional or similar language or propose terms other than or in addition to those set forth in the applicable Competitive Bid Loan Quote Request and, in particular, no Competitive Bid Loan Quote may be conditioned upon acceptance by the Parent of all (or some specified minimum) of the principal amount of the Competitive Bid Loan for which such Competitive Bid Loan Quote is being made, and the Administrative Agent shall disregard any Competitive Bid Loan Quote that contains such language or terms or conditions or that arrives at the Administrative Agent's Office after the time set forth for submission of Competitive Bid Loan Quotes in Section 3.02(c)(i) hereof.

(d) Notice to the Parent. The Administrative Agent shall promptly after 10:00 a.m., New York time, on the last day on which Competitive Bid Loan Quote may be submitted pursuant to Section 3.02(c), notify the Parent by facsimile transmission of the terms (i) of any Competitive Bid Loan Quote submitted by a Lender that is in accordance with Section 3.02(c) hereof and (ii) of any Competitive Bid Loan Quote that amends, modifies or is otherwise inconsistent with a previous Competitive Bid Loan Quote submitted by such Lender with respect to the same Competitive Bid Loan Quote Request. Any such subsequent Competitive Bid Loan Quote shall be disregarded by the Administrative Agent unless such subsequent Competitive Bid Loan Quote is submitted solely to correct a manifest error in such former Competitive Bid Loan Quote. The Administrative Agent's notice to the Parent shall specify (A) the aggregate principal amount of each Competitive Bid Loan for which Competitive Bid Loan Quotes have been received for each Interest Period specified in the related Competitive Bid Loan Quote Request, and (B) the respective principal amounts and LIBOR-based Margins or Absolute Rates, as the case may be, so offered by each Lender, identifying the Lender that made each Competitive Bid Loan Quote.

(e) Acceptance and Notice by the Parent. Not later than one hour after receipt of notice from the Administrative Agent of Competitive Bid Loan Quotes pursuant to Section 3.02(d) (or, in either case upon reasonable prior notice to the Lenders, such other time and date as the Parent and the Administrative Agent may agree), the Parent shall notify the Administrative Agent by facsimile transmission at its Office of its acceptance or nonacceptance of the Competitive Bid Loan Quotes so notified to it pursuant to Section 3.02(d) hereof (and the failure of the Parent to give such notice by such time shall constitute nonacceptance) and the Administrative Agent shall promptly notify each affected Lender in accordance with

Section 3.02(g) hereof. In the case of acceptance, such notice shall specify the aggregate principal amount of Competitive Bid Loan Quotes for each Interest Period that are accepted. The Parent may accept one or more Competitive Bid Loan Quotes in whole or in part (provided that any Competitive Bid Loan Quote accepted in part shall be a Dollar Equivalent Amount of at least \$5,000,000 or a higher integral multiple of \$1,000,000 (but only to the extent practical in the case of Competitive Bid Loans denominated in a currency other than Dollars)); provided that:

- (i) the aggregate principal amount of each Competitive Bid Borrowing may not exceed the applicable amount set forth in the related Competitive Bid Loan Quote Request;
- (ii) the aggregate principal amount of each Competitive Bid Borrowing shall be a Dollar Equivalent Amount of at least \$5,000,000 (or a higher integral multiple of \$1,000,000) (but only to the extent practical in the case of Competitive Bid Loans denominated in a currency other than Dollars);
- (iii) acceptance of offers may be made only in ascending yield order of LIBOR-based Margins or Absolute Rates, as the case may be; and
- (iv) the Parent shall not accept any offer where the Administrative Agent has advised the Parent that such offer fails to comply with Section 3.02(c)(ii) hereof or otherwise fails to comply with the requirements of this Agreement.

(f) Allocation by the Administrative Agent. If Competitive Bid Loan Quotes are made by two or more Lenders with the same LIBOR-based Margins or Absolute Rates, as the case may be, for a greater aggregate principal amount than the amount in respect of which Competitive Bid Loan Quotes are accepted for the related Interest Period, the principal amount of Competitive Bid Loans in respect of which such Competitive Bid Loan Quotes are accepted shall be allocated by the Administrative Agent among such Lenders as nearly as possible (in such multiples, not less than \$500,000, as the Administrative Agent may deem appropriate) in proportion to the aggregate principal amount of such offers. If two or more such Competitive Bid Loan Quotes cannot be allocated evenly within the limits set forth in the immediately preceding sentence, the Administrative Agent shall have discretion to allocate a larger share of such Competitive Bid Loans to one or more of the successful Lenders and in making such allocation shall use reasonable efforts to take into account previous allocations of unequal shares to one or more of such Lenders in connection with other Competitive Bid Loans. Determinations by the Administrative Agent of the amounts of Competitive Bid Loans to be allocated to each such Lender shall be conclusive absent manifest error.

(g) Notice to Lenders. On the date the Parent notifies the Administrative Agent of its acceptance of one or more of the offers made by any Lender or Lenders pursuant to Section 3.02(e) hereof, the Administrative Agent shall (x) not later than 3:00 p.m. New York time on such date, in the case of a LIBOR Auction or (y) as promptly as practicable on such date (but in no event later than 3:00 p.m. New York time), in the case of an Absolute Rate Auction notify each Lender which has made an offer (i) of the aggregate amount of each Competitive Bid

Borrowing with respect to which the Parent accepted one or more Competitive Bid Loan Quotes and such Lender's share of such Competitive Bid Borrowing or (ii) that the Parent accepted no offers, such notice to be by facsimile transmission.

(h) Funding of Competitive Bid Loans. Any Lender whose offer to make any Competitive Bid Loan has been accepted shall on the date specified in the related Competitive Bid Loan Quote Request make the proceeds of such Loan available to the Administrative Agent at the Administrative Agent's Office, no later than 12:00 o'clock Noon, New York time, in the case of a LIBOR Auction, and 3:00 p.m. New York City time, in the case of an Absolute Rate Auction, in funds immediately available at such Office. The Administrative Agent will make the funds so received available to the Relevant Borrower in funds immediately available.

SECTION 3.03. Competitive Bid Loan Maturity Dates. The principal amount of each Competitive Bid Loan shall be due and payable on the last day of the applicable Interest Period specified in the related Competitive Bid Loan Quote Request (the "Competitive Bid Loan Maturity Date") and no prepayments of Competitive Bid Loans shall be permitted.

SECTION 3.04. Interest Rates for Competitive Bid Loans. The outstanding principal amount of each Competitive Bid Loan shall bear interest for each day until due at the following rate or rates per annum:

- (i) for each LIBOR-based Loan, a rate per annum (computed on the basis of a year of 360 days and actual days elapsed or, in the case of Loans denominated in U.K. pounds sterling computed on the basis of a year of 365 or 366 days, as the case may be) equal to the LIBOR Rate applicable to the Interest Period therefor plus the LIBOR-based Margin quoted by the Lender making such Loan in the related Competitive Bid Loan Quote submitted in accordance with Section 3.02(c) hereof; and
- (ii) for each Absolute Rate Loan, a rate per annum (computed on the basis of a year of 360 days and actual days elapsed) equal to the Absolute Rate quoted by the Lender making such Loan in the related Competitive Bid Loan Quote submitted in accordance with Section 3.02(c) hereof.

SECTION 3.05. Competitive Bid Loan Interest Payment Dates. Interest on each Competitive Bid Loan shall be due and payable on the Competitive Bid Loan Maturity Date thereof, and if any Interest Period is longer than three months, also on each third month of such Interest Period. After maturity of any Competitive Bid Loan (by acceleration or otherwise), interest on such Competitive Bid Loan shall be due and payable on demand.

SECTION 3.06. Competitive Bid Register. The Administrative Agent shall maintain a register for the recordation of the names and addresses of Lenders that have made Competitive Bid Loans and the principal amount of the Competitive Bid Loans owing to each Lender from time to time together with the Competitive Bid Loan Maturity Dates and interest rates applicable to each such Competitive Bid Loan, and other terms applicable thereto (the

“Competitive Bid Register”). The Competitive Bid Register shall be available for inspection by the Parent or any Lender, as to its bid only, at any reasonable time and from time to time upon reasonable prior notice.

#### ARTICLE IV

##### Provisions Applicable to Loans

SECTION 4.01. Extension of Revolving Credit Maturity Date and Competitive Bid Expiration Date. The Revolving Credit Maturity Date and the Competitive Bid Expiration Date may be extended at any time for any period at the request of the Parent with the express consent of the Lenders as provided below.

(a) Request for Extension. The Parent may, in a written notice to the Administrative Agent, request (an “Extension Request”) that the Revolving Credit Maturity Date be extended for a period of 364 days. The Parent may only submit a total of two Extension Requests to the Administrative Agent, one of which may be made only during the period prior to the first anniversary of the Closing Date and the other may be made only during the period after the first anniversary and prior to the second anniversary of the Closing Date. The Administrative Agent shall promptly inform the Lenders of such Extension Request. Each Lender that agrees with such Extension Request shall deliver to the Administrative Agent its express written consent thereto no later than 30 days after the date of such Extension Request. Each Lender shall have the right to withhold such consent in its sole discretion.

(b) Replacement Lenders. If the Requisite Extending Lenders have expressly consented in writing to any such Extension Request as provided in Section 4.01(a), then the Administrative Agent shall so notify the Parent and the Parent, at its option, may replace any Lender which has not agreed to such Extension Request (a “Nonextending Lender”) with another commercial lending institution (which may be a Lender) which agrees to such extension and is reasonably satisfactory to the Administrative Agent and the Issuers (a “Replacement Lender”) by giving (not later than 90 days after the date of the Extension Request) notice of the name of such Replacement Lender to the Administrative Agent and the Issuers. Unless the Administrative Agent or an Issuer shall object to the identity of such proposed Replacement Lender prior to the date 100 days after the date of the Extension Request, upon notice from the Administrative Agent, each Nonextending Lender shall, upon indefeasible payment in full to it of all amounts owed to it hereunder and under the other Loan Documents, including all amounts owed under Section 4.08(c) hereof, assign all of its interests hereunder and under the other Loan Documents to such Replacement Lender and such Replacement Lender shall assume all of such Nonextending Lender’s obligations hereunder and under the other Loan Documents in accordance with the provisions of Section 12.14(c) hereof.

(c) Extension. If the Requisite Extending Lenders shall have consented to any such Extension Request, then as of 5:00 p.m. New York time on the date which is 30 days after the date of such Extension Request the Revolving Credit Maturity Date shall be deemed to have been extended until, and shall be, the date specified in the Extension Request, and if the Revolving Credit Maturity Date is so extended, the Competitive Bid Expiration Date and the Letter of Credit Maturity Date (as such dates may have been previously extended pursuant to this

Section) shall be deemed to have been extended for the same period. Under all other circumstances neither the Revolving Credit Maturity Date, the Competitive Bid Expiration Date nor the Letter of Credit Maturity Date shall be extended. Notwithstanding anything herein to the contrary, in no event shall any such extension of the Revolving Credit Maturity Date be effective as to any Nonextending Lender. To the extent that any Nonextending Lender has not theretofore been replaced as described above, then on the Revolving Credit Maturity Date which is applicable to such Nonextending Lender (i.e., the Revolving Credit Maturity Date determined without giving effect to any extension thereof to which such Nonextending Lender has not consented), (i) the Parent (or, as applicable, Other Borrowers) shall make indefeasible payment in full to such Nonextending Lender of all amounts owed to it hereunder and under the other Loan Documents, including all amounts owed under Section 4.08(c) hereof, (ii) if the conditions set forth in Section 6.02 are then satisfied, the participation of such Nonextending Lender in all Letters of Credit shall terminate and each extending Lender shall be deemed to have acquired its pro rata (relative to Commitment Percentage) share of such participation and shall thereafter be liable to the Issuer in respect thereof and (iii) if the conditions set forth in Section 6.02 are not then satisfied, the Parent shall deposit with the Administrative Agent for the account of the Nonextending Lender cash in the amount of such Nonextending Lender's LC Exposure, which shall be held on the terms of Section 2.10(i); provided that (A) amounts so deposited and interest thereon shall be applied exclusively to amounts for which such Nonextending Lender is or becomes liable to an Issuer pursuant to Section 2.10(d) and (B) at such time as the LC Exposure of the Nonextending Lender is zero, all such amounts shall be refunded to the Parent.

SECTION 4.02. Calculation of Dollar Equivalent Amounts. (a) Calculation Upon Making and Repayment of Loans. Upon each issuance of a Letter of Credit, Modification of a Letter of Credit which changes the undrawn face amount thereof and each making and repayment of a Revolving Credit Loan or a Competitive Bid Loan, in each case denominated in a currency other than Dollars, the Administrative Agent shall calculate the Dollar Equivalent Amount of the applicable LC Exposure or Loan.

(b) Recalculation of Dollar Equivalent Amounts. In determining the aggregate Dollar Equivalent Amount of all LC Exposure and Loans outstanding and proposed to be outstanding, the Administrative Agent may use the respective Dollar Equivalent Amounts for LC Exposure and Loans calculated by it pursuant to paragraph (a) of this Section, unless such aggregate Dollar Equivalent Amount so calculated exceeds 90% of the Total Revolving Credit Commitment, in which case the Administrative Agent shall recalculate the Dollar Equivalent Amount of the LC Exposure and each Loan outstanding no less frequently than once each week. The Administrative Agent may recalculate the Dollar Equivalent Amounts of the LC Exposure and each outstanding Loan as frequently as it determines to do so in its discretion, provided, that such recalculation shall be made for the LC Exposure and all Loans no less frequently than once each week during any period when the aggregate Dollar Equivalent Amount of the LC Exposure and Loans outstanding exceeds 90% of the Total Revolving Credit Commitment. The Administrative Agent shall recalculate the Dollar Equivalent Amount of the LC Exposure and each outstanding Revolving Credit Loan and Competitive Bid Loan at the Parent's request made not earlier than one month after the Parent's most recent such request.

SECTION 4.03. Mandatory Prepayments. In the event that for any reason other than fluctuations in currency exchange rates the aggregate Dollar Equivalent Amount of



the outstanding Loans and LC Exposure exceeds at any time 100% of the Total Revolving Credit Commitment as then in effect, the Borrowers shall prepay outstanding Loans (subject to Section 4.08(c) hereof) and/or cash collateralize Letters of Credit (in the manner set forth in Section 2.10(i)) as selected by the Parent in an amount necessary to reduce the aggregate Dollar Equivalent Amount of the outstanding Loans and Letters of Credit which are not cash-collateralized to an amount which does not exceed the Total Revolving Credit Commitment. If the Parent elects to prepay, or cause the prepayment of, Revolving Credit Loans in order to comply with the requirements of this Section 4.03, such prepayment shall be made to the Lenders Pro Rata.

In the event that for any reason (including fluctuations in currency exchange rates) the aggregate Dollar Equivalent Amount of the outstanding Loans and LC Exposure at any time exceeds 105% of the Total Revolving Credit Commitment as then in effect, the Borrowers shall prepay outstanding Loans (subject to Section 4.08(c) hereof) and/or cash collateralize Letters of Credit (in the manner set forth in Section 2.10(i)) as selected by the Parent in an amount necessary to reduce the aggregate Dollar Equivalent Amount of the outstanding Loans and Letters of Credit which are not cash-collateralized to an amount which does not exceed the Total Revolving Credit Commitment. If the Parent elects to prepay, or cause the prepayment of, Revolving Credit Loans in order to comply with the requirements of this Section 4.03, such prepayment shall be made to the Lenders Pro Rata.

SECTION 4.04. Prepayment Procedures. Whenever any Borrower desires or is required to prepay any part of its Loans, the Parent shall provide not less than one Business Day's prior written notice to the Administrative Agent at its Office setting forth the following information:

- (a) the identity of the Relevant Borrower;
- (b) the type of Loans to be prepaid and the identity of the portions of such Loans to be prepaid; and
- (c) the date, which shall be a Business Day, on which the proposed prepayment is to be made.

SECTION 4.05. Payments Generally; Interest on Overdue Amounts. (a) Payments Generally. All payments and prepayments to be made by the Parent or any Other Borrower in respect of principal, interest, fees, reimbursement of LC Disbursements, indemnity, expenses or other amounts due from the Parent or any Other Borrower hereunder or under any Loan Document in Dollars shall be payable by 12:00 o'clock Noon, New York time, on the day when due without presentment, demand, protest or notice of any kind (other than notice of acceleration as required by Section 9.02 hereof), all of which are hereby expressly waived, without set-off, counterclaim, withholding or other deduction of any kind or nature, except for payments to a Lender subject to a withholding deduction under Section 4.09 hereof. Except for payments to be made directly to an Issuer as expressly provided herein and payments under Sections 4.08, 4.09 and 12.06 hereof, such payments shall be made to the Administrative Agent at its Office in Dollars in funds immediately available at such Office, and payments under Sections 4.08, 4.09 and 12.06 hereof shall be made to the applicable Lender at such domestic account as it shall specify to the Parent from time to time in funds immediately available at such account.

All payments and prepayments to be made by the Parent or any Other Borrower in respect of principal, interest, reimbursement of LC Disbursements or other amounts due from any Borrower hereunder or under any Loan Document in a currency other than Dollars shall be made by payment in that currency in freely transferable funds by 12:00 Noon, New York time, for value on the applicable payment date and such payment shall be due without presentment, demand, protest or notice of any kind (other than notice of acceleration as required by Section 9.02 hereof), all of which are hereby expressly waived, without set-off, counterclaim, withholding or other deduction of any kind or nature, except for payments to a Lender subject to a withholding deduction under Section 4.09 hereof. Except for payments to be made directly to an Issuer as expressly provided herein and payments under Sections 4.08, 4.09 and 12.06 hereof, such payments shall be made to the Administrative Agent at the Administrative Agent's Office. Any payment or prepayment received by the Administrative Agent after 12:00 o'clock Noon, New York time on any day shall be deemed to have been received on the next succeeding Business Day.

All payments hereunder of (i) principal or interest in respect of any Loan shall be made in the currency in which such Loan is denominated, (ii) reimbursement obligations (and interest in respect of reimbursement obligations) shall be made in the currency in which the Letter of Credit in respect of which such reimbursement obligation exists was denominated or (iii) any other amount due hereunder or under another Loan Document shall be made in Dollars. The Administrative Agent shall distribute to the Lenders all payments received by it for the account of the Lenders from any Borrower as promptly as practicable after receipt by the Administrative Agent. Except as expressly contemplated by Section 4.01(c), all payments on account of Revolving Credit Loans shall be distributed to the Lenders Pro Rata. If and to the extent that the Administrative Agent has not forwarded to any Lender such Lender's share of any such payment on the same Business Day as such payment is received (or deemed received) from such Borrower, the Administrative Agent shall pay to such Lender interest on such amount at the Federal Funds Effective Rate for each day until such payment is made.

Upon termination of this Agreement and the expiration or cancellation of all Letters of Credit and payment in full of all principal, interest, reimbursement amounts, fees, expenses and other amounts due from the Borrowers hereunder or under any other Loan Document, each Lender will promptly mark any Notes "cancelled" and forward them to the Administrative Agent for delivery to the Parent.

(b) Interest on Overdue Amounts. To the extent permitted by Law, after there shall have become due (by acceleration or otherwise) principal, interest, fees, obligations with respect to LC Disbursements, indemnity, expenses or any other amounts due from any Borrower hereunder or under any other Loan Document, such amounts shall bear interest for each day until paid (before and after judgment), payable on demand, at a rate per annum based on a year of 360 days and actual days elapsed which for each day shall be equal to the following:

- (i) in the case of any part of the Euro-Rate Portion of any Revolving Credit Loans or of Competitive Bid Loans, (A) until the end of the

applicable then-current Funding Period or until regularly scheduled maturity, as the case may be, at a rate per annum 2% above the rate otherwise applicable to such part, and (B) thereafter in accordance with the following clause (ii); and

- (ii) in the case of any other amount due from any Borrower hereunder or under any Loan Document, (A) 2% above the then current Base Rate, in the case of Loans or other amounts denominated in Dollars or (B) 2% above the rate then borne by overnight deposit in the applicable currency in the eurocurrency market as determined by the Administrative Agent, in the case of Revolving Credit Loans, Competitive Bid Loans or other amounts denominated in a currency other than Dollars.

SECTION 4.06. Availability of Currencies. (a) Unavailability. If, in the reasonable judgment of the Administrative Agent, a Designated Currency ceases to be available and freely tradable in the eurocurrency market then such currency shall cease to be a Designated Currency hereunder. The Administrative Agent shall give prompt notice to the Parent and the Lenders of any such determination.

(b) Repayment in Dollars. In the event that (i) pursuant to Section 4.06(a), the Administrative Agent has determined that a Designated Currency has ceased to be available and freely tradable in the eurocurrency market and (ii) the Administrative Agent has determined in good faith that such Designated Currency is not otherwise available to the Parent or any Other Borrower, then, on the date any Loans or amounts in respect of a Letter of Credit denominated in such Designated Currency would become due under the terms of this Agreement (other than as a result of an optional prepayment or of the acceleration of the Loans under Section 9.02), the Relevant Borrower may repay such Loans (or other amounts) by paying to each Lender an amount in Dollars equal to the amount determined in good faith by such Lender (which determination shall be conclusive absent manifest error) to be the amount in Dollars necessary to compensate such Lender for the principal of and accrued interest on such Loans (or other amounts) and any additional cost, expense or loss incurred by such Lender as a result of such Loans or other amounts being repaid in Dollars (rather than in their denominated currency).

SECTION 4.07. Changes in Law Rendering Certain Loans Unlawful. In the event that any Law or guideline or interpretation or application thereof shall at any time make it unlawful for any Lender to make, maintain or fund its Loans or its Letter of Credit participations, such Lender shall promptly notify the Parent and the Administrative Agent thereof. Thereupon, the Relevant Borrower shall, subject to Section 4.08(c), if such Lender so requests, on such date as may be required by the relevant Law, guideline, interpretation or application, prepay such Loans. Each Lender shall take actions of the type referred to in Section 4.10, if such actions would avoid such circumstances and would not in the good faith judgment of such Lender be disadvantageous in any way to such Lender or its Affiliates at such time or in the future. No Lender shall be obligated to make any extension of credit hereunder in violation of any applicable law.

SECTION 4.08. Additional Compensation in Certain Circumstances. (a) Increased Costs or Reduced Return Resulting From Taxes, Reserves, Capital Adequacy Requirements, Expenses, Etc. If any Law or change therein or interpretation or application thereof by any Governmental Authority charged with the interpretation or administration thereof or compliance with any request or directive of any Governmental Authority (whether or not having the force of Law), in each case adopted or made after the date hereof (or, with respect to any Other Borrower, adopted or made at any time):

- (i) subjects any Lender or Issuer or any Notional Funding Office to any tax or changes the basis of taxation with respect to this Agreement, the Notes, the Loans, the Letters of Credit or payments by any Borrower of principal, interest, Commitment Fees or other amounts due from any Borrower hereunder or under the Notes (except for taxes on the overall net income or overall gross receipts of such Lender, such Issuer or such Notional Funding Office imposed by the jurisdictions (federal, state and local) in which the Lender's or Issuer's principal office or Notional Funding Office is located),
- (ii) imposes, modifies or deems applicable any reserve, special deposit or similar requirement or imposes any other condition adversely affecting the cost to a Lender or Issuer or Notional Funding Office of making, maintaining or funding any Loan or issuing any Letter of Credit or acquiring or maintaining a participation in any Letter of Credit hereunder (other than requirements expressly included herein in the determination of interest under the Euro-Rate Option), or
- (iii) imposes, modifies or deems applicable any capital adequacy or similar requirement (A) against assets (funded or contingent) of, or credits or commitments to extend credit extended by, any Lender, any Issuer or any Notional Funding Office hereunder, or any Person controlling a Lender or an Issuer, or (B) otherwise applicable to the obligations of any Lender, any Issuer or any Notional Funding Office under this Agreement, or any Person controlling a Lender or an Issuer.

and the result of any of the foregoing is reasonably determined by any Lender or Issuer to increase the cost to, reduce the income receivable by, or impose any expense (including loss of margin) upon such Lender or Issuer, any Notional Funding Office or, in the case of clause (iii) hereof, any Person controlling a Lender or Issuer, with respect to this Agreement, the Notes or the making, maintenance or funding of any Loan or the issuing of any Letter of Credit or the acquiring or maintaining of a participation in any Letter of Credit (or, in the case of any capital adequacy or similar requirement, to have the effect of reducing the rate of return on such Lender's, Issuer's or controlling Person's capital, taking into consideration such Lender's, Issuer's or controlling Person's policies with respect to capital adequacy) by an amount which such Lender or Issuer reasonably deems to be material, such Lender or Issuer may from time to

time promptly notify the Parent of the amount determined in good faith (using any reasonable averaging and attribution methods) by such Lender or Issuer (which determination shall be conclusive absent manifest error) to be necessary to compensate such Lender or Issuer or such Notional Funding Office or controlling Person for such increase, reduction or imposition. Each Lender and Issuer will furnish the Parent and the Administrative Agent with a statement setting forth in reasonable detail the basis, the manner of calculation and the amount of each request by such Lender or Issuer for compensation from the Parent under this Section 4.08. Such amount shall be due and payable by the Parent to such Lender or Issuer five Business Days after such notice is given. Notwithstanding the foregoing, the Parent will not be required to reimburse any Lender or Issuer for any such increase, reduction or imposition under this Section 4.08(a) that (i) arises prior to 120 days preceding the date of such Lender's or Issuer's request for compensation under this Section 4.08(a), unless the applicable Law, guideline, change, interpretation or application is imposed retroactively or (ii) if the applicable Law, guideline, change, interpretation or application is imposed retroactively, arises prior to 120 days preceding the later of the date the Lender or Issuer reasonably should have learned of such Law, guideline, change, interpretation or application and the date of such Lender's or Issuer's request.

Each Lender will take actions of the type referred to in Section 4.10, if such actions would avoid the conditions referred to in subsections (i), (ii) and (iii) of this Section 4.08(a) and would not in the good faith judgment of such Lender be disadvantageous in any way to such Lender or its Affiliates at such time or in the future.

If a Lender requests reimbursement under this Section 4.08(a), so long as the circumstances giving rise to such request continue to exist, the Parent at its option, may replace such Lender with another commercial lending institution (which may be a Lender) reasonably satisfactory to the Administrative Agent by giving notice of such replacement Lender to such Lender and the Administrative Agent. Unless the Administrative Agent or any Issuer shall object to the identity of such proposed replacement Lender within 10 days after receipt of such notice, the Lender being so replaced shall, upon indefeasible payment in full to it of all amounts owed to it hereunder and under the other Loan Documents, including all amounts owed under Section 4.08(c) hereof, assign all of its interests hereunder and under the other Loan Documents to such replacement Lender and such replacement Lender shall assume all of such other Lender's obligations hereunder and under the other Loan Documents in accordance with the provisions of Section 12.14(c) hereof.

(b) Additional Reserve Costs. For so long as any Lender is required to make special deposits with the European Central Bank, the Bank of England and/or The Financial Services Authority (or, in either case, any other authority which replaces all or any of its functions) or comply with reserve assets, liquidity, cash margin or other requirements of the European Central Bank, the Bank of England and/or The Financial Services Authority (or, in any case, any other authority which replaces all or any of its functions), to maintain reserve asset ratios or to pay fees, in each case in respect of the Euro-Rate Portion of such Lender's Revolving Loans, such Lender shall be entitled to require the Relevant Borrower to pay, contemporaneously with each payment of interest on each of such Revolving Loans, additional interest on such Revolving Loan at a rate per annum equal to the Mandatory Costs Rate calculated in accordance with the formula and in the manner set forth in Schedule V hereto. Any additional interest owed pursuant to this subsection 4.08(b) shall be determined in reasonable detail by the applicable

Lender, which determination shall be conclusive and binding absent manifest error, and notified to the Relevant Borrower (with a copy to the Administrative Agent) at least five Business Days before each date on which interest is payable for the applicable Loan, and such additional interest so notified to the Relevant Borrower by such Lender shall be payable to the Administrative Agent for the account of such Lender on each date on which interest is payable for such Loan.

(c) Funding Breakage. If any repayment of principal with respect to any part of any Funding Segment of any Euro-Rate Portion of the Loans is made on a day other than on the last day of the corresponding Funding Period, or any prepayment of principal with respect to any Competitive Bid Loan is made, as a result of an acceleration of the maturity thereof pursuant to Section 9.02 or for any other reason, or if any Borrower fails to borrow after giving notice of borrowing, the Parent shall reimburse each Lender on demand for any loss incurred by such Lender as a result of the timing of such payment, prepayment or failure, including (without limitation) any loss incurred in liquidating or employing deposits from third parties but excluding loss of margin for the period after such payment, prepayment or failure, provided that such Lender shall have delivered to the Parent a certificate setting forth the basis for determining such loss, which certificate shall be conclusive in the absence of manifest error.

SECTION 4.09. Taxes. (a) Payments Net of Taxes. All payments made by the Borrowers under this Agreement or any other Loan Document shall be made free and clear of and without deduction for any and all taxes, levies, imposts, deductions, charges or withholdings, and all liabilities with respect thereto, excluding (x) in the case of each Lender, each Issuer and the Administrative Agent, net income taxes imposed on such Lender, such Issuer or the Administrative Agent, as the case may be, by the United States or a political subdivision thereof, and net income taxes and franchise taxes imposed on such Lender, such Issuer or the Administrative Agent, as the case may be, by the jurisdiction under the laws of which such Lender or the Administrative Agent, as the case may be, is organized or by any political subdivision thereof, and (y) in the case of each Lender, net income taxes and franchise taxes imposed on such Lender by the jurisdiction in which is located the Lender's lending office which makes or books a particular extension of credit hereunder or any political subdivision thereof (all such non-excluded taxes, levies, imposts, deduction, charges, withholdings and liabilities being referred to as "Taxes"). If any Borrower shall be required by Law to deduct any Taxes from or in respect of any sum payable under this Agreement or any other Loan Document to any Lender, any Issuer or the Administrative Agent, (i) the sum payable shall be increased as may be necessary so that after making all required deductions (including deductions applicable to additional sums payable under this Section 4.09) such Lender, such Issuer or the Administrative Agent, as the case may be, receives an amount equal to the sum it would have received had no such deductions been made, (ii) such Borrower shall make such deductions, and (iii) such Borrower shall pay the full amount deducted to the relevant taxation authority or other authority in accordance with applicable Law.

(b) Other Taxes. In addition, each Borrower agrees to pay any present or future stamp or documentary taxes or any other excise or property taxes, charges or similar levies which arise from any payment made under this Agreement or any other Loan Document or from the execution, delivery or registration of, or otherwise with respect to, this Agreement or any other Loan Document (hereinafter referred to as "Other Taxes").

(c) Indemnity by the Parent. The Parent will indemnify each Lender and Issuer and the Administrative Agent for the full amount of Taxes and Other Taxes (including, without limitation, any Taxes and Other Taxes imposed by any jurisdiction on amounts payable under this Section 4.09) paid by such Lender or Issuer or Administrative Agent, as the case may be, and any liability (including, without limitation, penalties, interest and expenses) arising therefrom or with respect thereto, whether or not such Taxes or Other Taxes were correctly or legally asserted. The Administrative Agent and each Issuer and Lender agree to give notice to the Parent of the assertion of any claim against the Administrative Agent or such Issuer or Lender relating to such Taxes or Other Taxes as promptly as is practicable after being notified of such assertion; provided, that the Administrative Agent's or such Issuer's or Lender's failure to notify the Parent promptly of such assertion shall not relieve the Parent of its obligations under this Section 4.09 except to the extent that the Parent is actually prejudiced thereby. Payments by the Parent pursuant to this indemnification shall be made within 30 days from the date the Administrative Agent or such Issuer or Lender makes written demand therefor (submitted through the Administrative Agent), which demand shall be accompanied by a certificate describing in reasonable detail the basis therefor.

(d) Lender Indemnity. Each Lender shall severally indemnify the Administrative Agent for any Taxes (but only to the extent that the Parent has not already indemnified the Administrative Agent for such Taxes and without limiting the obligation of the Parent to do so) attributable to such Lender that are paid or payable by the Administrative Agent to such Lender in connection with any Loan Document and any reasonable expenses arising therefrom or with respect thereto, whether or not such Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. The indemnity under this Section 4.09(d) shall be paid within 10 days after the Administrative Agent delivers to the applicable Lender a certificate stating the amount of Taxes so paid or payable by the Administrative Agent. Such certificate shall be conclusive of the amount so paid or payable absent manifest error.

(e) Receipts, etc. Within 30 days after the date of any payment of Taxes or Other Taxes, the Parent will furnish to the Administrative Agent the original or a certified copy of a receipt evidencing payment thereof.

(f) Other. Nothing in this Section 4.09 or otherwise in this Agreement shall require any Lender to disclose to any other party to this Agreement any of its tax returns (or any other information that it deems to be confidential or proprietary).

(g) Withholding Tax Exemption. (i) Each Lender organized under the Laws of a jurisdiction outside the United States shall, on the date such Lender becomes party to this Agreement, and from time to time thereafter if requested in writing by the Parent or the Administrative Agent, provide the Administrative Agent and the Parent with the forms prescribed by the United States Internal Revenue Service certifying as to such Lender's status for purposes of determining exemption from, or reduced rate applicable to, United States withholding taxes with respect to payments to be made to such Lender under this Agreement and the other Loan Documents and (ii) if a payment made to a Lender under this Agreement would be subject to United States Federal withholding tax imposed by FATCA if such Lender fails to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Code, as applicable), such Lender shall deliver to the

Administrative Agent and the Parent, at the time or times prescribed by law and at such time or times reasonably requested by the Administrative Agent or the Parent, such documentation prescribed by applicable law (including as prescribed by Section 1471(b)(3)(C)(i) of the Code) and such additional documentation reasonably requested by the Administrative Agent or the Parent as may be necessary for such party to comply with its obligations under FATCA, to determine that such Lender has complied with such Lender's obligations under FATCA or to determine the amount to deduct and withhold from such payment.; provided, that a Lender shall not be obligated to provide any such form specified in clause (i) or (ii) after the date such Lender becomes party to this Agreement if such Lender is not legally able to do so.

(h) Relief from Indemnity Obligations. The Borrowers shall not be required to indemnify any Lender, or to pay any additional amounts to any Lender, in respect of United States Taxes (or any Taxes imposed by a state of the United States that applies only when such United States Taxes are imposed), pursuant to Sections 4.09(a) or 4.09(c), to the extent that:

- (i) the obligation to pay amounts with respect to United States Taxes existed on the date such Lender became a party to this Agreement (including FATCA); provided, that this clause (i) shall not apply (A) to a Lender that became a Lender as a result of an assignment made or other action taken at the request of the Parent, or (B) to United States Taxes that arise solely as a result of the jurisdiction of incorporation or place of business of any Other Borrower, or
- (ii) the obligation to make such indemnification or to pay such additional amounts would not have arisen but for gross negligence, willful misconduct or bad faith of such Lender or the failure of such Lender to comply with the provisions of Section 4.09(g).

(i) Refunds. If a Lender receives a refund in respect of any Taxes or Other Taxes as to which it has been indemnified by a Borrower, or with respect to which a Borrower has paid additional amounts, pursuant to this Section 4.09, such Lender shall promptly after the date of such receipt pay over the amount of such refund to the Parent (but only to the extent of indemnity payments made, or additional amounts paid, by a Borrower under this Section 4.09 with respect to the Taxes or Other Taxes giving rise to such refund and only to the extent that such Lender has determined that the amount of any such refund is directly attributable to payments made under this Agreement), net of all reasonable expenses of such Lender (including additional Taxes and Other Taxes attributable to such refund, as determined by such Lender) and without interest (other than interest, if any, paid by the relevant Governmental Authority with respect to such refund). The Parent shall, upon demand, pay to such Lender any amount paid over to the Parent by such Lender (plus penalties, interest or other charges) in the event such Lender is required to repay any portion of such refund to such Governmental Authority.

(j) Cure Action. Each Lender agrees to take actions of the type referred to in Section 4.10, if such actions would avoid or reduce payments under this Section 4.09 and would not, in the good faith judgment of such Lender, be disadvantageous in any way to such Lender or its Affiliates at such time or in the future.



SECTION 4.10. Funding by Branch, Subsidiary or Affiliate. (a) Notional Funding. Each Lender shall have the right from time to time, prospectively or retrospectively, without notice to any Borrower, to deem any branch, subsidiary or Affiliate of such Lender to have made, maintained or funded any part of the Loans at any time; provided, that if a Lender exercises such right as a matter of administrative convenience and not as required by Law or by this Agreement, then the Parent shall not be required to reimburse the Lender for any increased amounts payable under Section 4.08(a) or 4.09 hereof that result from the exercise of such right. Any branch, subsidiary or Affiliate so deemed shall be known as a "Notional Funding Office." Such Lender shall deem any part of its Loans or the funding therefor to have been transferred to a different Notional Funding Office if such transfer would avoid or cure an event or condition described in Section 2.05(d)(i)(B) hereof or would lessen compensation payable by any Borrower under Sections 4.08(a) or 4.09 hereof, and would not, in the good faith judgment of such Lender, be disadvantageous in any way to such Lender or its Affiliates at such time or in the future (it being assumed for purposes of such determination that the Loans are actually made or maintained by or funded through the corresponding Notional Funding Office). Notional Funding Offices may be selected by such Lender without regard to such Lender's actual methods of making, maintaining or funding Loans or any sources of funding actually used by or available to such Lender.

(b) Actual Funding. Each Lender shall have the right from time to time to make or maintain any part of the Loans by arranging for a branch, subsidiary or Affiliate of such Lender to make or maintain such part of the Loans; provided, that if a Lender exercises such right as a matter of administrative convenience and not as required by Law or by this Agreement, then the Parent shall not be required to reimburse the Lender for any increased amounts payable under Section 4.08(a) or 4.09 hereof that result from the exercise of such right. Such Lender shall have the right to (i) hold any applicable Note payable to its order for the benefit and account of such branch, subsidiary or Affiliate or (ii) request any Borrower to issue one or more promissory notes in the principal amount of such part, in substantially the form attached hereto as Exhibit A or B, as the case may be, with the blanks appropriately filled, payable to such branch, subsidiary or Affiliate and with appropriate changes reflecting that the holder thereof is not obligated to make any additional Loans to any Borrower. Each Borrower agrees to comply promptly with any request under subsection (ii) of this Section 4.10(b). If any Lender causes a branch, subsidiary or Affiliate to make or maintain any part of Loans hereunder, all terms and conditions of this Agreement shall, except where the context clearly requires otherwise, be applicable to such part of the Loans and to any note payable to the order of such branch, subsidiary or Affiliate to the same extent as if such part of the Loans were made or maintained and such note were a Note payable to such Lender's order.

SECTION 4.11. Several Obligations. The failure of any Lender to make a Revolving Credit Loan shall not relieve any other Lender of its obligation to lend hereunder, but neither the Administrative Agent nor any Lender shall be responsible for the failure of any other Lender to make a Revolving Credit Loan.

SECTION 4.12. Defaulting Lenders. Notwithstanding any provision of this Agreement to the contrary, if any Lender becomes a Defaulting Lender, then the following provisions shall apply for so long as such Lender is a Defaulting Lender :

(a) Commitment Fees shall cease to accrue on the Commitment of such Defaulting Lender pursuant to Section 2.04(a).

(b) The Revolving Credit Committed Amount, Loans and LC Exposure of such Defaulting Lender shall not be included in determining whether the Lenders or the Required Lenders have taken or may take any action hereunder (including any consent to any amendment, waiver or other modification pursuant to Section 12.03); provided, this clause (b) shall not apply for purposes of any amendment, modification or waiver that (i) increases such Defaulting Lender's Revolving Credit Committed Amount or extends the maturity of such Defaulting Lender's Commitment or (ii) requires the consent of all Lenders or each Lender affected thereby and treats such Defaulting Lender differently than the other respective Lenders.

(c) If any LC Exposure exists at the time such Lender becomes a Defaulting Lender then:

(i) all or any part of the LC Exposure of such Defaulting Lender shall be reallocated among the non-Defaulting Lenders in accordance with their respective Commitment Percentages but only to the extent (A) no Event of Default has occurred and is continuing at such time and (B) the sum of all non-Defaulting Lenders' Revolving Credit Exposures plus such Defaulting Lender's LC Exposure does not exceed the total of all non-Defaulting Lenders' Commitments;

(ii) if the reallocation described in clause (i) above cannot, or can only partially, be effected, the Parent shall within one Business Day following notice by the Administrative Agent cash collateralize for the benefit of the Issuers only the Relevant Borrower's obligations corresponding to such Defaulting Lender's LC Exposure (after giving effect to any partial reallocation pursuant to clause (i) above) in accordance with the procedures set forth in Section 2.10(i) for so long as such LC Exposure is outstanding;

(iii) if the Parent cash collateralizes any portion of such Defaulting Lender's LC Exposure pursuant to clause (ii) above, the Parent shall not be required to pay any participation fees to such Defaulting Lender pursuant to Section 2.04(b), and such fees shall not accrue, with respect to such Defaulting Lender's LC Exposure during the period such Defaulting Lender's LC Exposure is cash collateralized;

(iv) if any LC Exposure of such non-Defaulting Lender is reallocated pursuant to clause (i) above, then the participation fees payable to the Lenders pursuant to Section 2.04(b) shall be adjusted in accordance with such non-Defaulting Lenders' Commitment Percentages; and

(v) if all or any portion of such Defaulting Lender's LC Exposure is neither reallocated nor cash collateralized pursuant to clause (i) or (ii) above, then, without prejudice to any rights or remedies of the Issuers or any other Lender hereunder, all participation fees payable under Section 2.04(b) with respect to such Defaulting Lender's LC Exposure (to the extent neither so reallocated nor cash collateralized) shall be payable to the applicable Issuer or Issuers in respect of the Letters of Credit included in such LC Exposure, pro rata until and to the extent that such LC Exposure is so reallocated and/or cash collateralized.

(d) So long as such Lender is a Defaulting Lender, no Issuers shall be required to issue, amend or increase any Letter of Credit, unless it is satisfied that the related exposure and the Defaulting Lender's then outstanding LC Exposure will be 100% covered by the Commitments and the obligations to participate in Letters of Credit of the non-Defaulting Lenders and/or cash collateral will be provided by the Parent in accordance with clauses (c)(i) and (ii) above.

(e) If (i) a Bankruptcy Event with respect to a parent entity of which any Lender is a subsidiary shall occur following the date hereof and for so long as such event shall continue or (ii) an Issuer has a good faith belief that any Lender has defaulted in fulfilling its obligations under one or more other agreements in which such Lender commits to extend credit, such Issuer shall not be required to issue, amend or increase any Letter of Credit, unless such Issuer shall have entered into arrangements with the Parent or such Lender, satisfactory to such Issuer to defease any risk to it in respect of such Lender hereunder.

(f) Any principal, interest, fees or any other amounts payable to or for the account of any Defaulting Lender in its capacity as a Lender hereunder shall, in lieu of being distributed to such Defaulting Lender, be retained by the Administrative Agent in a segregated account and, subject to any applicable requirements of law, (A) be applied, at such time or times as may be determined by the Administrative Agent, (1) first, to the payment of any amounts owing by such Defaulting Lender to the Administrative Agent hereunder, (2) second, pro rata, to the payment of any amounts owing by such Defaulting Lender to the Issuers in respect of such Defaulting Lender's participations in Letters of Credit, (3) third, to the funding of such Defaulting Lender's Commitment Percentage of any borrowing in respect of which such Defaulting Lender shall have failed to fund such share as required hereunder, (4) fourth, to cash collateralize participation obligations of such Defaulting Lender in respect of outstanding Letters of Credit and (B) to the extent not applied as aforesaid, be held, if so determined by the Administrative Agent, as cash collateral for funding obligations of such Defaulting Lender in respect of future Revolving Loans hereunder, (C) to the extent not applied or held as aforesaid, be applied, pro rata, to the payment of any amounts owing to the Parent or the non- Defaulting Lenders as a result of any judgment of a court of competent jurisdiction obtained by the Parent or any non-Defaulting Lender against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations hereunder and (D) to the extent not applied or held as aforesaid, be distributed to such Defaulting Lender or as otherwise directed by a court of competent jurisdiction.

(g) In the event that the Administrative Agent, the Parent and the Issuers each agrees that a Defaulting Lender has adequately remedied all matters that caused such Lender to be a Defaulting Lender, then the LC Exposure of the Lenders shall be readjusted to reflect the inclusion of such Lender's Commitment and on such date such Lender shall purchase at par such of the Revolving Credit Loans of the other Lenders as the Administrative Agent shall determine may be necessary in order for such Lender to hold such Loans in accordance with its Commitment Percentage.

(h) So long as such Lender is a Defaulting Lender, the Parent may, at its option, replace such Defaulting Lender with another commercial lending institution (which may be a Lender) reasonably satisfactory to the Administrative Agent by giving notice of such replacement Lender to such Defaulting Lender and the Administrative Agent. Unless the Administrative Agent or any Issuer shall object to the identity of such proposed replacement Lender within 10 days after receipt of such notice, the Defaulting Lender being so replaced shall, upon indefeasible payment in full to it of all amounts owed to it hereunder and under the other Loan Documents assign all of its interests hereunder and under the Loan Documents to such replacement Lender and such replacement Lender shall assume all of such Defaulting Lender's obligations hereunder and under the other Loan Documents in accordance with the provisions of 12.14(c).

(i) So long as such Lender is a Defaulting Lender and no Event of Default or Potential Event of Default has occurred or exists, the Parent may, at its option, reduce the unused portion of such Defaulting Lender's Commitment without being required to reduce any other Lender's Commitment. Any such reduction shall be effective upon written notice by the Parent to the Administrative Agent.

## ARTICLE V

### Representations and Warranties

As of the date hereof, the Parent hereby represents and warrants to the Administrative Agent and each Lender as follows:

SECTION 5.01. Financial Statements; No Material Adverse Change. The Parent's audited consolidated balance sheet as of September 30, 2009, and the related statement of consolidated income for the year then ended (copies of which have been furnished to each Lender) are complete and correct in all material respects and present fairly the financial condition of the Parent and its Subsidiaries as of such date and the results of its operations for such year and since such date to the date hereof there has been no material adverse change in such financial condition or operations on a consolidated basis. The Parent's unaudited consolidated balance sheet as of March 31, 2010, and the related statement of consolidated income for the six-month period ended on such date (copies of which have been furnished to each Lender) are complete and correct in all material respects and present fairly the financial condition of the Parent and its Subsidiaries as of such date and the results of its operations for such period (subject to normal year-end audit adjustments and the absence of certain footnotes).

SECTION 5.02. Litigation. There is no action, suit or administrative proceeding, to the knowledge of the Parent after due inquiry, pending or threatened against the Parent or any of its Subsidiaries as of the date hereof which, in the opinion of the Parent, involves any substantial risk of any material adverse effect on the financial condition or business of the Parent and its Subsidiaries on a consolidated basis.

SECTION 5.03. Due Organization. The Parent is a corporation and each Initial Other Borrower is (and as of the date it becomes an Other Borrower hereunder, each additional Other Borrower will be) a legal entity, in each case duly organized, validly existing and in good standing under the laws of its jurisdiction of organization.

SECTION 5.04. Consents and Approvals. The Parent and each Initial Other Borrower has (and as of the date it becomes an Other Borrower hereunder, each additional Other Borrower will have) obtained the necessary material consents and approvals, governmental or otherwise, for its execution and performance under this Agreement.

SECTION 5.05. Corporate Power, Authorization and Enforceability. The Parent and each Initial Other Borrower has (and as of the date it becomes an Other Borrower hereunder, each additional Other Borrower will have) taken all necessary corporate or other organizational action to authorize its execution and performance under this Agreement such that this Agreement, the Notes and, as applicable, the other Loan Documents constitute valid and legally binding obligations of the Parent and each Other Borrower, subject to applicable bankruptcy, reorganization, insolvency, moratorium or similar laws affecting creditors' rights generally and equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or at law).

SECTION 5.06. ERISA. Parent and each Other Borrower is in compliance in all material respects with all applicable provisions and requirements of ERISA with respect to any Employee Benefit Plan for which Parent or such Other Borrower is the plan sponsor or a contributing employer, and Parent is not subject to any material liability, penalty, excise tax or lien arising under ERISA or under the Internal Revenue Code with respect to any Pension Plan which is sponsored by the Parent or any Subsidiary (or to which the Parent or any Subsidiary is obligated to contribute), except to the extent such noncompliance, liability, penalty, excise tax or lien would not have a material adverse effect on the financial condition or business of the Parent and its Subsidiaries on a consolidated basis.

SECTION 5.07. No Conflict. Neither the execution and delivery by the Parent or, as applicable, the Other Borrowers of the Loan Documents, nor the consummation of the transactions therein contemplated, nor compliance by the Parent or, as applicable, the Other Borrowers with the provisions thereof will violate (a) to the best of the Parent's knowledge after due inquiry, any material law, rule, regulation, order, writ, judgment, injunction, decree or award binding on the Parent or any of its Subsidiaries or (b) the Parent's or any Subsidiary's articles or certificate of incorporation, partnership agreement, certificate of partnership, articles or certificate of organization, by-laws, or operating or other management agreement, as the case may be, or (c) to the best of the Parent's knowledge after due inquiry, the provisions of any material indenture, instrument or agreement to which the Parent or any of its Subsidiaries is a party or is subject, or by which it, or its property, is bound, or conflict with or constitute a default thereunder, or result in, or require, the creation or imposition of any lien in, of or on the property of the Parent or a Subsidiary pursuant to the terms of any such indenture, instrument or agreement, except to the extent such violation would not have a material adverse effect on the financial condition or business of the Parent and its Subsidiaries on a consolidated basis.

SECTION 5.08. No Default. Each of the Parent and its Subsidiaries is in compliance with all laws, regulations and orders of any Governmental Authority applicable to it or its property and all indentures, agreements and other instruments binding upon it or its

property (other than any indenture, agreement or other instrument of Airgas or any of its Subsidiaries in effect as of the Closing Date), except where the failure to do so, individually or in the aggregate, would not reasonably be expected to result in a Material Adverse Effect. No Event of Default or Potential Event of Default has occurred and is continuing.

## ARTICLE VI

### Conditions of Credit

SECTION 6.01. Conditions to Initial Credit Events. The obligation of each Lender to make its initial Loan and of each Issuer to issue its initial Letter of Credit is subject to the execution and delivery of this Agreement by all parties hereto and the following conditions precedent:

(a) Officer's Certificate. The Administrative Agent shall have received a certificate dated the Closing Date and signed by the Treasurer or a Vice President of the Parent to the effect that each of the representations and warranties made by the Parent in Article V hereof is true and correct on and as of the Closing Date as if made on and as of such date, both before and after giving effect to the Credit Events requested to be made on the Closing Date.

(b) Legal Opinion. The Parent shall provide to the Administrative Agent a legal opinion dated the Closing Date in form and substance reasonably satisfactory to the Administrative Agent as to the matters set forth in Sections 5.03, 5.04, 5.05 and 5.07 of this Agreement.

(c) Corporate Action. The Administrative Agent shall have received on or before the Closing Date certified copies of all corporate action taken by the Parent and each Initial Other Borrower to authorize the execution and delivery of this Agreement and, if required, the Notes and such other papers as the Administrative Agent or any Lender shall reasonably require, including specimen signatures of the officers executing this Agreement, the Notes and such documents, including any notices of borrowing.

(d) Patriot Act Information. The Administrative Agent shall have received copies of the articles or certificate of incorporation of the Parent and each Initial Other Borrower, together with all amendments, and a certificate of good standing, each certified as of a recent date by the appropriate governmental officer in its jurisdiction of incorporation, as well as any other information required by Section 326 of the USA PATRIOT ACT or necessary for the Administrative Agent or any Lender to verify the identity of the Parent and each Initial Other Borrower as required by Section 326 of the USA PATRIOT Act.

(e) Indenture. The Administrative Agent shall have received a copy of the Indenture and any amendments or supplements thereto certified as of the Closing Date as true, complete and correct by an officer of the Parent.

(f) Fees and Expenses. The Parent shall have paid all fees and expenses required to be paid by it on or before the Closing Date in connection with this Agreement.

(g) Termination of Existing Agreement. The Existing Agreement, and all commitments thereunder, shall have been terminated and the Borrowers shall have paid all “Obligations” owing thereunder, including but not limited to all accrued and unpaid fees, costs and expenses.

SECTION 6.02. Conditions to All Credit Events. The obligation of each Lender to make each Loan to be made by it hereunder and of each Issuer to issue or Modify Letters of Credit is subject to the following conditions precedent:

(a) No Default. No Event of Default and (except in the case of a Loan to a Borrower to be made by a Lender the principal amount of which is not in excess of the principal amount of a Loan repaid by such Borrower to such Lender on the same day) no Potential Event of Default, has occurred and is continuing on and as of the date of such Credit Event, both immediately before and immediately after giving effect to such Credit Event.

(b) Representations and Warranties. Each of the representations and warranties made by the Parent in Sections 5.03, 5.04, 5.05 and 5.07 hereof shall be true and correct in all material respects on and as of the date of such Credit Event as if made on and as of such date, both immediately before and immediately after giving effect to such Credit Event. It is further understood and agreed that notice by the Parent requesting any Credit Event pursuant to Section 2.03, 2.10(b) or 3.02 hereof shall constitute a certification by the Parent that (a) the conditions precedent required by this Section 6.02 are satisfied at the date of such Credit Event, and (b) that the proceeds of such Loans will be used by the Borrowers for, and such Letters of Credit will be issued to support, general corporate purposes and no part of such proceeds will be used either directly or indirectly to purchase or carry margin stock in violation of Regulation U of the Board of Governors of the Federal Reserve System.

SECTION 6.03. Additional Conditions to Initial Credit Events of Other Borrowers. The obligations of each Lender to make each Loan to be made by it hereunder to an Other Borrower and of each Issuer to issue Letters of Credit for the account of an Other Borrower shall be subject to the following conditions precedent, in addition to those conditions stated in Section 6.02:

(a) Either (i) such Other Borrower is an Initial Other Borrower with respect to which the documents referred to in Sections 6.01(a), 6.01(b), 6.01(c) and 6.01(d) were delivered to the Administrative Agent on the Closing Date or (ii) such Other Borrower and the Parent have executed and delivered to the Administrative Agent a Borrower Accession Instrument, together with the documents listed therein, and such documents are in form and substance reasonably satisfactory to the Administrative Agent, as evidenced by its signature on such Borrower Accession Instrument, and at least five Business Days have elapsed since the delivery of such Borrower Accession Agreement to the Administrative Agent (of which delivery the Administrative Agent shall give prompt notice to the Lenders).

(b) No event or circumstance of the type described in Section 9.01(c), (d), (e), (g), (i), or (j) with respect to such Other Borrower has occurred and is continuing on and as of the date of such Loans or Letter of Credit issuance.

ARTICLE VII

Affirmative Covenants

SECTION 7.01. Affirmative Covenants. Until payment in full of all of the Obligations and so long as any Commitment shall be in effect or any Loan or Letter of Credit or unreimbursed LC Disbursement shall be outstanding hereunder, the Parent agrees that it will, unless the Required Lenders shall otherwise consent in writing:

(a) Maintain, and cause each Subsidiary to maintain, insurance against risks of fire and other casualties with good and responsible insurance companies upon its properties of an insurable nature which are owned and acquired by it from time to time, in accordance with its normal insurance policies and practices.

(b) Duly pay and discharge, and cause each Subsidiary to pay and discharge, all taxes, assessments and governmental charges upon it or against its properties prior to the date on which penalties attach thereto, unless and to the extent only that the same shall be contested in good faith and by proper proceedings.

(c) Furnish to the Administrative Agent, with a copy for each Lender (i) within 60 days after the close of each quarter, except the last quarter, of each fiscal year, an unaudited consolidated balance sheet of the Parent and its Subsidiaries as of the end of such quarter, an unaudited consolidated income statement of the Parent and its Subsidiaries for the period commencing at the end of the Parent's previous fiscal year and ending with the end of such quarter and an unaudited consolidated cash flow statement of the Parent and its Subsidiaries for the period commencing at the end of the Parent's previous fiscal year and ending with the end of such quarter, as such are filed with the Securities and Exchange Commission, (ii) within 120 days after the close of each fiscal year financial statements filed with the Securities and Exchange Commission consisting of a consolidated balance sheet of the Parent and its Subsidiaries as of the end of such fiscal year and a consolidated income statement of the Parent and its Subsidiaries for such fiscal year and a consolidated cash flow statement of the Parent and its Subsidiaries for such fiscal year which will be certified by independent certified public accountants of recognized standing, (iii) as soon as possible and in any event within five days after having knowledge of the occurrence of any Event of Default or Potential Event of Default which in either case is continuing on the date of such statement, a statement of the Chief Financial Officer of the Parent setting forth details of such Event of Default or Potential Event of Default and the action which the Parent has taken and proposes to take with respect thereto and (iv) such other information in confidence respecting the financial condition and affairs of the Parent and its Subsidiaries as the Administrative Agent or any Lender may from time to time reasonably request. Any financial statement or other material required to be delivered pursuant to this clause (c) shall be deemed to have been furnished to each of the Administrative Agent and the Lenders on the date that such financial statement or other material is publicly accessible on the Securities and Exchange Commission's website at [www.sec.gov](http://www.sec.gov); provided that the Parent will furnish paper copies of such financial statements and other materials to any Lender that requests, by notice to the Parent, that the Parent do so, until the Parent receives notice from such Lender to cease delivering such paper copies.



(d) Furnish to the Administrative Agent, with a copy for each Lender, a certificate duly completed and signed by the Treasurer or the Chief Financial Officer of the Parent concurrently with the delivery of the financial statements referred to in Section 7.01(c)(i) and (ii) (i) stating that, to the knowledge of such officer (after due inquiry), as of the date thereof no Event of Default or Potential Event of Default has occurred and is continuing or exists (or if an Event of Default or Potential Event of Default has occurred and is continuing or exists, specifying in detail the nature and period of the existence thereof and any action with respect thereto taken or contemplated to be taken by the Parent) and (ii) stating in reasonable detail the information and calculations necessary to establish compliance with Section 8.01 hereof.

(e) Comply, and cause each of its Subsidiaries to comply, with all laws (including ERISA and Environmental Laws), rules, regulations and orders of any Governmental Authority applicable to it or its property, except where the failure to do so, individually or in the aggregate, would not reasonably be expected to result in a Material Adverse Effect.

## ARTICLE VIII

### Negative Covenants

Until payment in full of all of the Obligations, and so long as any Commitment shall be in effect or any Loan or Letter of Credit or unreimbursed LC Disbursement be outstanding hereunder, the Parent agrees that it will not, unless the Required Lenders shall otherwise consent in writing:

SECTION 8.01. Leverage Ratio. Permit the Leverage Ratio as of the last day of any Test Period, commencing with the Test Period ending with the first fiscal quarter that ends after the Closing Date, to exceed the applicable ratio set forth below:

<u>Period</u>	<u>Ratio</u>
Prior to the acquisition of Airgas	3.00 to 1.00
Upon or after the consummation of the tender offer for the common stock of Airgas or the merger of Airgas into a wholly owned subsidiary of the Parent	4.80 to 1.00
Upon or after the date 364-days after the consummation of the tender offer for the common stock of Airgas or the merger of Airgas into a wholly owned subsidiary of the Parent	4.00 to 1.00

SECTION 8.02. Disposal of Assets. Sell, lease, assign, transfer or otherwise dispose of all or substantially all of its consolidated assets or permit its percentage ownership interest in any Other Borrower to be less than 75% (so long as such Other Borrower remains an Other Borrower hereunder).

SECTION 8.03. Liens. Create, assume or suffer to exist, nor cause or permit any Subsidiary to create, assume or suffer to exist, any mortgage, lien, pledge or security interest on any Principal Property (as defined in the Indenture) or shares of capital stock or indebtedness of any Restricted Subsidiary (as defined in the Indenture), whether now owned or

hereafter acquired, except in the manner and to the extent permitted by the Indenture; provided, that if the Parent creates, assumes or suffers to exist or causes or permits any Subsidiary to create, assume or suffer to exist any mortgage, lien, pledge or security interest on any Principal Property or any such shares or indebtedness and if the Indenture requires the Parent to make or cause to be made effective provision whereby the securities outstanding under the Indenture are secured by any such mortgage, lien, pledge or security interest equally and ratably with any and all other indebtedness and obligations secured thereby, then the Parent shall also make or cause to be made effective provision whereby the Obligations shall be secured by such mortgage, lien, pledge or security interest equally and ratably with any and all other indebtedness or obligations secured thereby (including the outstanding securities under the Indenture, if any).

## ARTICLE IX

### Events of Default

SECTION 9.01. Events of Default. Events of Default. An “Event of Default” shall mean the occurrence or existence of one or more of the following events or conditions:

- (a) Default in payment of principal on any Loan or Note or reimbursement obligation with respect to any Letter of Credit when due; or
- (b) Default in payment of interest, any Commitment Fee, Letter of Credit Fee or any other amount provided for herein, and such default shall continue unremedied for five Business Days after written notice thereof shall have been received by the Parent from the Administrative Agent or any Lender; or
- (c) Any representation made by the Parent or any Other Borrower herein or in any certificate, statement or report, or any financial statement, furnished by the Parent or any Other Borrower hereunder shall prove at any time to be erroneous in any material respect, provided, however, the Parent or such Other Borrower shall have twenty days after the Parent or such Other Borrower has knowledge of such fact to remedy the underlying facts resulting in such certificate, statement or report being erroneous as above described; or
- (d) Default in any material respect by the Parent or any Other Borrower in the performance of any term, covenant or agreement contained in this Agreement, other than those set forth in clauses (a) through (c) above and (i) such default (other than a default in the performance of Section 7.01(c)(iii) hereof) shall continue unremedied for twenty days after written notice thereof shall have been received by the Parent from the Administrative Agent or (ii) in the case of a default in the performance of Section 7.01(c)(iii) hereof, such default shall have continued unremedied for five days; or
- (e) Failure by the Parent or any Subsidiary to pay when due (whether at maturity, upon acceleration or otherwise, giving effect to any applicable grace period) obligations for borrowed money (other than Limited Recourse Debt) in excess of \$125,000,000 in the aggregate at any time; or

(f) If the Parent dissolves or merges or is merged with another entity (unless the Parent is the surviving entity and no Event of Default and no Potential Event of Default has occurred and is continuing); or

(g) A judgment or order for the payment of money in excess of \$50,000,000 shall be rendered against the Parent or any Other Borrower and such judgment shall continued unsatisfied and unstayed for a period of 45 days after the time period for appeal has expired; or

(h) The Parent shall purport to terminate, revoke, declare voidable or void all or any part of its obligations under Article X hereof and such termination, revocation or declaration shall not have been rescinded in writing within three Business Days after written notice thereof by the Administrative Agent to the Parent; or

(i) The Parent or any Other Borrower makes, or takes corporate or other organizational action for a general assignment for the benefit of creditors, or files a voluntary petition in bankruptcy or a petition or answer seeking its reorganization or the readjustment of its indebtedness or consents to or petitions for the appointment of a receiver, trustee or liquidator of all or substantially all of its property; or

(j) The commencement of a case or other proceeding, without the application or consent of the Parent or any Other Borrower, in any court of competent jurisdiction, seeking the liquidation, reorganization, dissolution, winding up, or composition or readjustment of debts, of the Parent or such Other Borrower, the appointment of a trustee, receiver, custodian, liquidator or the like for the Parent or any Other Borrower, or any similar action with respect to the Parent or any Other Borrower, under any laws relating to bankruptcy, insolvency, reorganization, winding up or composition or adjustment of debts, and such case or proceeding shall continue undismissed, or unstayed and in effect for a period of 90 consecutive days or an order for relief in respect of the Parent or any Other Borrower, shall be entered in an involuntary case under the Federal bankruptcy laws (as now or hereafter in effect) and such order shall not be dismissed, discharged, stayed or restrained prior to the end of such 90 day period or within 30 days of its entry, whichever is later; or

(k) A Change of Control shall have occurred; or

(l) (i) An ERISA Event shall have occurred, (ii) a trustee shall be appointed by a United States district court to administer any Plan, (iii) the PBGC shall institute proceedings to terminate any Plan, (iv) the Parent or any of its ERISA Affiliates shall have been notified by the sponsor of a Multiemployer Plan that it has incurred or will be assessed Withdrawal Liability to such Multiemployer Plan and such entity does not have reasonable grounds for contesting such Withdrawal Liability or is not contesting such Withdrawal Liability in a timely and appropriate manner; or (v) any other event or condition shall occur or exist with respect to a Plan; and in each case in clauses (i) through (v) above, such event or condition, together with all other such events or conditions, if any, would reasonably be expected to result in a Material Adverse Effect;

provided, that notwithstanding the foregoing, no Event of Default or Potential Event of Default shall be deemed to have occurred or to exist as a result of an event or circumstance of the type described in subsection (c), (d), (g), (i) or (j) with respect to an Other Borrower for a period of five Business Days after notice of such event or circumstance is given by the Administrative Agent to the Parent, if, within such five Business Day period (i) the principal of, and interest on, all outstanding Loans made to such Other Borrower are repaid in full and (ii) such Other Borrower and the Parent execute and deliver to the Administrative Agent an Other Borrower Removal Notice.

SECTION 9.02. Consequences of an Event of Default. (a) If an Event of Default specified in subsections (a) through (h), (k) and (l) of Section 9.01 hereof shall occur or exist, then, in addition to all other rights and remedies which the Administrative Agent or any Lender may have hereunder or under any other Loan Document, at law or in equity, the Lenders shall be under no further obligation to make Loans, the Issuers shall be under no further obligation to issue or Modify Letters of Credit, and the Administrative Agent may, and upon the written request of the Required Lenders shall, by notice to the Parent, from time to time do any or all of the following:

- (i) declare the Commitments terminated, whereupon the Commitments will terminate;
- (ii) declare the unpaid principal amount of the Loans, interest accrued thereon and all other Obligations to be immediately due and payable without presentment, demand, protest or further notice of any kind, all of which are hereby waived and require any outstanding Letters of Credit to be cash collateralized in accordance with Section 2.10(i).

(b) If an Event of Default specified in subsection (i) or (j) of Section 9.01 hereof shall occur or exist, then, in addition to all other rights and remedies which the Administrative Agent or any Lender may have hereunder or under any other Loan Document, at law or in equity, the Commitments shall automatically terminate, the Lenders shall be under no further obligation to make Loans, the Issuers shall be under no further obligation to issue or Modify Letters of Credit, the unpaid principal amount of the Loans, interest accrued thereon and all other Obligations shall become immediately due and payable without presentment, demand, protest or notice of any kind, all of which are hereby waived, and any outstanding Letters of Credit shall be cash collateralized in accordance with Section 2.10(i).

## ARTICLE X

### Parent Guaranty.

SECTION 10.01. Guaranty and Suretyship. The Parent hereby absolutely, unconditionally and irrevocably guarantees and becomes surety for the full and punctual payment of the Guaranteed Obligations as and when such payment shall become due (at scheduled maturity, by acceleration or otherwise) in accordance with the terms of the Loan Documents. The provisions of this Article X are an agreement of suretyship as well as of

guaranty, are a guarantee of payment and not merely of collectibility, and are in no way conditioned upon any attempt to collect from or proceed against any Other Borrower or any other Person or any other event or circumstance. The obligations of the Parent under this Article X are direct and primary obligations of the Parent and are independent of the Guaranteed Obligations, and a separate action or actions may be brought against the Parent regardless of whether action is brought against any Other Borrower or any other Person or whether any Other Borrower or any other Person is joined in any such action or actions. The provisions of this Article X shall not apply unless and until an Other Borrower is party to this Agreement or a Borrower Accession Instrument and shall apply for so long as any Loan to an Other Borrower or the related Guaranteed Obligations are outstanding or any Commitment remains in effect.

SECTION 10.02. Obligations Absolute. To the fullest extent permitted by Law, the Parent agrees that the Guaranteed Obligations will be paid strictly in accordance with the terms of the Loan Documents, regardless of any Law now or hereafter in effect in any jurisdiction affecting the Guaranteed Obligations, any of the terms of the Loan Documents or the rights of the Administrative Agent, any Lender or any other Person with respect thereto. To the fullest extent permitted by Law, the obligations of the Parent under this Article X shall be absolute, unconditional and irrevocable, irrespective of any of the following:

- (a) any lack of legality, validity, enforceability or allowability (in a bankruptcy, insolvency, reorganization, dissolution or similar proceeding, or otherwise), or any avoidance or subordination, in whole or in part, of any Loan Document or any of the Guaranteed Obligations;
- (b) any increase, decrease or change in the amount, nature, type or purpose of any of the Guaranteed Obligations (whether or not contemplated by the Loan Documents as presently constituted); any change in the time, manner, method or place of payment of, or in any other term of, any of the Guaranteed Obligations; any execution or delivery of any additional Loan Documents; or any amendment to, or refinancing or refunding of, any Loan Document or any of the Guaranteed Obligations;
- (c) any impairment by the Administrative Agent, any Lender or any other Person of any recourse of the Parent against any Other Borrower or any other Person; any failure to assert any breach of or default under any Loan Document or any of the Guaranteed Obligations; any extensions of credit in excess of the amount committed under or contemplated by the Loan Documents, or in circumstances in which any condition to such extensions of credit has not been satisfied; any other exercise or non-exercise, or any other failure, omission, breach, default, delay or wrongful action in connection with any exercise or non-exercise, of any right or remedy against any Other Borrower or any other Person under or in connection with any Loan Document or any of the Guaranteed Obligations; any refusal of payment of any of the Guaranteed

- Obligations, whether or not with any reservation of rights against the Parent; or any application of collections (including collections resulting from realization upon any direct or indirect security for the Guaranteed Obligations) to other obligations, if any, not entitled to the benefits of this Agreement, in preference to Guaranteed Obligations entitled to the benefits of this Agreement, or if any collections are applied to Guaranteed Obligations, any application to particular Guaranteed Obligations;
- (d) any taking, amendment, subordination, release, loss or impairment of, or any failure to protect, perfect, or preserve the value of, or any other action or inaction by the Administrative Agent, any Lender or any other Person in respect of, any direct or indirect security for any of the Guaranteed Obligations;
  - (e) any merger, consolidation, liquidation, dissolution, winding-up, charter revocation or forfeiture, or other change in, restructuring or termination of the corporate structure or existence of, any Other Borrower or any other Person; any bankruptcy, insolvency, reorganization, dissolution or similar proceeding with respect to any Other Borrower or any other Person; or any action taken or election made by the Administrative Agent, any Lender (including any election under Section 1111(b)(2) of the United States Bankruptcy Code), any Other Borrower or any other Person in connection with any such proceeding;
  - (f) the failure of any Other Borrower to be properly organized under the Laws of its jurisdiction of organization, to take proper actions to authorize the incurrence of its Guaranteed Obligations or to comply in any respect with Laws applicable to it relating to its Guaranteed Obligations;
  - (g) any defense, set-off or counterclaim (including any defense of failure of consideration, breach of warranty, statute of frauds, bankruptcy, lack of legal capacity, statute of limitations, lender liability, accord and satisfaction or usury, and excluding only the defense of full, strict and indefeasible payment or performance), which may at any time be available to any Other Borrower or any other Person with respect to any Loan Document or any of the Guaranteed Obligations; or any discharge by operation of law or release of any Other Borrower or any other Person from the performance or observance of any Loan Document or any of the Guaranteed Obligations; or
  - (h) any other event or circumstance, whether similar or dissimilar to the foregoing, and whether known or unknown, which might otherwise constitute a legal or equitable defense available to, or limit the

liability of, any Other Borrower, the Parent, a guarantor or a surety, excepting only full, strict and indefeasible payment and performance of the Guaranteed Obligations.

SECTION 10.03. Waivers, etc. To the fullest extent permitted by Law, the Parent hereby waives any defense to or limitation on its obligations under this Article X arising out of or based on any event or circumstance referred to in Section 10.02. Without limitation, to the fullest extent permitted by Law, the Parent waives each of the following for purposes of this Article X:

- (a) all notices, disclosures and demands of any nature which otherwise might be required from time to time to preserve intact any rights against the Parent, including (i) any notice of any event or circumstance described in Section 10.02, (ii) any notice required by any Law now or hereafter in effect in any jurisdiction, (iii) any notice of nonpayment, nonperformance, dishonor, or protest under any Loan Document or any of the Guaranteed Obligations, (iv) any notice of the incurrence of any Guaranteed Obligation, (v) any notice of any default (other than notices expressly required under Article IX hereof) or any failure on the part of any Other Borrower or any other Person to comply with any Loan Document or any of the Guaranteed Obligations or any direct or indirect security for any of the Guaranteed Obligations, and (vi) any notice of any information pertaining to the business, operations, condition (financial or otherwise) or prospects of any Other Borrower or any other Person;
- (b) any right to any marshalling of assets, to the filing of any claim against any Other Borrower or any other Person in the event of any bankruptcy, insolvency, reorganization, dissolution or similar proceeding, or to the exercise against any Other Borrower or any other Person of any other right or remedy under or in connection with any Loan Document or any of the Guaranteed Obligations or any direct or indirect security for any of the Guaranteed Obligations; any requirement of promptness or diligence on the part of the Administrative Agent, any Lender or any other Person; any requirement to exhaust any remedies under or in connection with, or to mitigate the damages resulting from default under, any Loan Document or any of the Guaranteed Obligations or any direct or indirect security for any of the Guaranteed Obligations; and any requirement of acceptance of this Agreement, and any requirement that the Parent receive notice of such acceptance; and
- (c) any defense or other right arising by reason of any Law now or hereafter in effect in any jurisdiction pertaining to election of remedies (including anti-deficiency laws, "one action" laws or similar laws), or by reason of any election of remedies or other

action or inaction by the Administrative Agent or any Lender (including commencement or completion of any judicial proceeding or nonjudicial sale or other action in respect of collateral security for any of the Guaranteed Obligations), which results in denial or impairment of the right of the Administrative Agent or Lenders to seek a deficiency against any Other Borrower or any other Person, or which otherwise discharges or impairs any of the Guaranteed Obligations or any recourse of the Parent against any Other Borrower or any other Person.

SECTION 10.04. Reinstatement. The obligations of the Parent under this Article X shall continue to be effective, or be automatically reinstated, as the case may be, if at any time payment of any of the Guaranteed Obligations is avoided, rescinded or must otherwise be returned by the Administrative Agent or any Lender for any reason, all as though such payment had not been made.

SECTION 10.05. No Stay. Without limitation of any other provision of this Agreement, if any acceleration of the time for payment of any Guaranteed Obligation, or any condition to any such acceleration, shall at any time be stayed, enjoined or prevented for any reason (including stay or injunction resulting from the pendency against any Other Borrower or any other Person of a bankruptcy, insolvency, reorganization, dissolution or similar proceeding), the Parent agrees that, for purposes of this Article X and its obligations hereunder, such Guaranteed Obligation shall be deemed to have been accelerated, and such condition to acceleration shall be deemed to have been met.

SECTION 10.06. Payments. All payments to be made by the Parent pursuant to this Article X shall be made at the times, in the manner and in the currency prescribed for payments in Section 4.05 of this Agreement, without set-off, counterclaim, withholding or other deduction of any nature, except for payments and deductions permitted by Section 4.05.

SECTION 10.07. Subrogation, etc. Any rights which the Parent may have or acquire by way of subrogation, reimbursement, exoneration, contribution or indemnity, and any similar rights (whether arising by operation of law, by agreement or otherwise), against each Other Borrower, arising from the existence, payment, performance or enforcement of any of the obligations of the Parent under or in connection with this Agreement, shall be subordinate in right of payment to the Guaranteed Obligations, and the Parent shall not exercise any such rights until the earlier of the time when all Guaranteed Obligations and all other obligations under this Agreement have been paid in full and all Commitments shall have terminated or the time when such Other Borrower ceases to be an Other Borrower hereunder. If, notwithstanding the foregoing, any amount shall be received by the Parent on account of any such rights at any time prior to the earlier of the time when all Guaranteed Obligations under this Agreement shall have been paid in full and all Commitments shall have terminated or the time when such Other Borrower shall have ceased to be an Other Borrower hereunder, such amount shall be held by the Parent in trust for the benefit of the Lenders, segregated from other funds held by the Parent, and shall be forthwith delivered to the Administrative Agent on behalf of the Lenders in the exact form received by the Parent (with any necessary endorsement), to be applied to the Guaranteed Obligations, whether matured or unmatured, in accordance with this Agreement, or to be held by



the Administrative Agent on behalf of the Lenders as security for the Guaranteed Obligations and disposed of by the Administrative Agent in any lawful manner, all as the Administrative Agent may elect in accordance with this Agreement.

SECTION 10.08. Continuing Agreement. The provisions of this Article X are a continuing guaranty and shall continue in full force and effect until all Guaranteed Obligations have been paid in full, and all Commitments have terminated, subject in any event to reinstatement in accordance with Section 10.04.

## ARTICLE XI

### The Administrative Agent

SECTION 11.01. Appointment. Each Lender and Issuer hereby appoints RBS to act as Administrative Agent for such Lender or Issuer under this Agreement and the other Loan Documents. Each Lender and Issuer hereby irrevocably authorizes RBS as Administrative Agent to take such action on behalf of such Lender or Issuer under the provisions of this Agreement and the other Loan Documents, and to exercise such powers and to perform such duties, as are expressly delegated to or required of the Administrative Agent by the terms hereof or thereof, together with such powers as are reasonably incidental thereto. RBS hereby agrees to act as Administrative Agent on behalf of the Lenders and Issuers on the terms and conditions set forth in this Agreement and the other Loan Documents, subject to its right to resign as provided in Section 11.10 hereof. Each Lender and Issuer hereby irrevocably authorizes the Administrative Agent to execute and deliver each of the Loan Documents and to accept delivery of such of the other Loan Documents as may not require execution by the Administrative Agent. Each Lender and Issuer agrees that the rights and remedies granted to the Administrative Agent under the Loan Documents shall be exercised exclusively by the Administrative Agent, and that no Lender or Issuer shall have any right individually to exercise any such right or remedy, except to the extent expressly provided herein or therein.

SECTION 11.02. General Nature of the Administrative Agent's Duties. Notwithstanding anything to the contrary elsewhere in this Agreement or in any other Loan Document:

- (a) The Administrative Agent shall not have any duties or responsibilities except those expressly set forth in this Agreement and the other Loan Documents, and no implied duties or responsibilities on the part of the Administrative Agent shall be read into this Agreement or any Loan Document or shall otherwise exist.
- (b) The duties and responsibilities of the Administrative Agent under this Agreement and the other Loan Documents shall be mechanical and administrative in nature, and the Administrative Agent shall not have a fiduciary relationship in respect of any Lender or Issuer.

- (c) The Administrative Agent is and shall be solely the agent of the Lenders and Issuers. The Administrative Agent does not assume, and shall not at any time be deemed to have, any relationship of agency or trust with or for, or any other duty or responsibility to, any Borrower or any other Person (except only for its relationship as agent for, and its express duties and responsibilities to, the Lenders and Issuers as provided in this Agreement and the other Loan Documents).
- (d) The Administrative Agent shall not be under any obligation to take any action hereunder or under any other Loan Document if the Administrative Agent believes in good faith that taking such action may conflict with any Law or any provision of this Agreement or any other Loan Document, or may require the Administrative Agent to qualify to do business in any jurisdiction where it is not then so qualified.

SECTION 11.03. Exercise of Powers. The Administrative Agent shall take any action of the type specified in this Agreement or any other Loan Document as being within the Administrative Agent's rights, powers or discretion in accordance with directions from the Required Lenders (or, to the extent this Agreement or such Loan Document expressly requires the direction or consent of some other Person or set of Persons, then instead in accordance with the directions of such other Person or set of Persons). In the absence of such directions, the Administrative Agent shall have the authority (but under no circumstances shall be obligated), in its sole discretion, to take any such action, except to the extent this Agreement or such Loan Document expressly requires the direction or consent of the Required Lenders or all Lenders (or some other Person or set of Persons), in which case the Administrative Agent shall not take such action absent such direction or consent. Any action or inaction pursuant to such direction, discretion or consent shall be binding on all the Lenders. The Administrative Agent shall not have any liability to any Person as a result of (x) the Administrative Agent acting or refraining from acting in accordance with the directions of the Required Lenders (except where such direction directly contravenes an express provision hereof under which the Administrative Agent is required to give notice or apply funds), (y) the Administrative Agent refraining from acting in the absence of instructions to act from the Required Lenders (or other applicable Person or set of Persons), whether or not the Administrative Agent has discretionary power to take such action (except where such instruction directly contravenes an express provision hereof under which the Administrative Agent is required to give notice or apply funds), or (z) the Administrative Agent taking discretionary action it is authorized to take under this Section (subject, in the case of this clause (z), to the provisions of Section 12.04(a) hereof).

SECTION 11.04. General Exculpatory Provisions. Notwithstanding anything to the contrary elsewhere in this Agreement or any other Loan Document:

- (a) The Administrative Agent shall not be liable for any action taken or omitted to be taken by it under or in connection with this Agreement or any other Loan Document, unless caused by its own gross negligence or willful misconduct.

- (b) The Administrative Agent shall not be responsible to any Lender or Issuer for (i) the execution, delivery, effectiveness, enforceability, genuineness, validity or adequacy of this Agreement or any other Loan Document, (ii) any recital, representation, warranty, document, certificate, report or statement in, provided for in, or received under or in connection with, this Agreement or any other Loan Document, (iii) any failure of any Borrower or Lender to perform any of their respective obligations under this Agreement or any other Loan Document, (iv) the existence, validity, enforceability, perfection, recordation, priority, adequacy or value, now or hereafter, of any lien or other direct or indirect security afforded or purported to be afforded by any of the Loan Documents or otherwise from time to time, or (v) caring for, protecting, insuring, or paying any taxes, charges or assessments with respect to any collateral.
- (c) The Administrative Agent shall not be under any obligation to ascertain, inquire or give any notice to any Lender or Issuer relating to (i) the performance or observance of any of the terms or conditions of this Agreement or any other Loan Document on the part of any Borrower, (ii) the business, operations, condition (financial or otherwise) or prospects of any Borrower or any other Person, or (iii) except to the extent set forth in Section 11.05(f) hereof, the existence of any Event of Default or Potential Event of Default.
- (d) The Administrative Agent shall not be under any obligation, either initially or on a continuing basis, to provide any Lender or Issuer with any notices, reports or information of any nature, whether in its possession presently or hereafter, except for such notices, reports and other information expressly required by this Agreement or any other Loan Document to be furnished by the Administrative Agent to such Lender or Issuer.

SECTION 11.05. Administration by the Administrative Agent. (a) The Administrative Agent may rely upon any notice or other communication of any nature (written or oral, including but not limited to telephone conversations, whether or not such notice or other communication is made in a manner permitted or required by this Agreement or any Loan Document) purportedly made by or on behalf of the proper party or parties, and the Administrative Agent shall not have any duty to verify the identity or authority of any Person giving such notice or other communication.

(b) The Administrative Agent may consult with legal counsel (including, without limitation, in-house counsel for the Administrative Agent or in-house or other counsel for any Borrower), independent public accountants and any other experts selected by it from time to time, and the Administrative Agent shall not be liable for any action taken or omitted to be taken in good faith by it in accordance with the advice of such counsel, accountants or experts.

(c) The Administrative Agent may conclusively rely upon the truth of the statements and the correctness of the opinions expressed in any certificates or opinions furnished to the Administrative Agent in accordance with the requirements of this Agreement or any other Loan Document. Whenever the Administrative Agent shall deem it necessary or desirable that a matter be proved or established with respect to any Borrower or Lender, such matter may be established by a certificate of such Borrower or Lender, as the case may be, and the Administrative Agent may conclusively rely upon such certificate (unless other evidence with respect to such matter is specifically prescribed in this Agreement or another Loan Document).

(d) The Administrative Agent may fail or refuse to take any action unless it shall be indemnified to its satisfaction from time to time against any and all amounts, liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind or nature which may be imposed on, incurred by or asserted against the Administrative Agent by reason of taking or continuing to take any such action.

(e) The Administrative Agent may perform any of its duties under this Agreement or any other Loan Document by or through agents or attorneys-in-fact. The Administrative Agent shall not be responsible for the negligence or misconduct of any agents or attorneys-in fact selected by it with reasonable care.

(f) The Administrative Agent shall not be deemed to have any knowledge or notice of the occurrence of any Event of Default or Potential Event of Default unless the Administrative Agent has received notice from a Lender or any Borrower referring to this Agreement, describing such Event of Default or Potential Event of Default, and stating that such notice is a "notice of default". If the Administrative Agent receives such a notice, it shall give prompt notice thereof to each Lender and Issuer.

SECTION 11.06. Lender Not Relying on the Administrative Agent or Other Lenders. Each Lender acknowledges as follows: (a) Neither the Administrative Agent nor any other Lender has made any representations or warranties to it, and no act taken hereafter by the Administrative Agent or any other Lender shall be deemed to constitute any representation or warranty by the Administrative Agent or such other Lender to it. (b) It has, independently and without reliance upon the Administrative Agent or any other Lender, and based upon such documents and information as it has deemed appropriate, made its own credit and legal analysis and decision to enter into this Agreement and the other Loan Documents. (c) It will, independently and without reliance upon the Administrative Agent or any other Lender, and based upon such documents and information as it shall deem appropriate at the time, make its own decisions to take or not take action under or in connection with this Agreement and the other Loan Documents.

SECTION 11.07. Indemnification. Each Lender agrees to reimburse and indemnify the Administrative Agent, each Issuer and their respective directors, officers, employees and agents (to the extent not reimbursed by a Borrower as set forth herein and without limitation of the obligations of the Borrowers to do so as set forth herein), Pro Rata, from and against any and all amounts, losses, liabilities, claims, damages, expenses, obligations, penalties, actions, judgments, suits, costs or disbursements of any kind or nature (including, without limitation, the reasonable fees and disbursements of counsel for the Administrative Agent or

such other Person in connection with any investigative, administrative or judicial proceeding commenced or threatened, whether or not the Administrative Agent or such other Person shall be designated a party thereto) that may at any time be imposed on, incurred by or asserted against the Administrative Agent or such other Person as a result of, or arising out of, or in any way related to or by reason of, this Agreement, any other Loan Document, any transaction from time to time contemplated hereby or thereby, or any transaction financed in whole or in part or directly or indirectly with the proceeds of any Loan, provided that no Lender or Issuer shall be liable for any portion of such amounts, losses, liabilities, claims, damages, expenses, obligations, penalties, actions, judgments, suits, costs or disbursements resulting from the gross negligence or willful misconduct of the Administrative Agent or such other Person, as finally determined in a non appealable judgment by a court of competent jurisdiction.

SECTION 11.08. The Administrative Agent in its Individual Capacity. With respect to its Commitments and the Obligations owing to it, the Administrative Agent shall have the same rights and powers under this Agreement and each other Loan Document as any other Lender and may exercise the same as though it were not the Administrative Agent, and the terms “Lenders,” “holders of Notes” and like terms shall include the Administrative Agent in its individual capacity as such. The Administrative Agent and its Affiliates may, without liability to account, make loans to, accept deposits from, acquire debt or equity interests in, act as trustee under indentures of, and engage in any other business with, any Borrower and any stockholder, subsidiary or Affiliate of any Borrower, as though the Administrative Agent were not an Administrative Agent hereunder.

SECTION 11.09. Lenders. The Administrative Agent may deem and treat each Lender signatory hereto as a Lender hereunder for all purposes hereof unless and until such Person assigns all of its interests hereunder pursuant to Section 12.14(c) hereof. Any authority, direction or consent of any Person who at the time of giving such authority, direction or consent is shown in the Register as being a Lender shall be conclusive and binding on each present and subsequent transferee or assignee.

SECTION 11.10. Successor Administrative Agent. The Administrative Agent may resign at any time by giving 10 days’ prior written notice thereof to the Lenders, the Issuers and the Parent. The Administrative Agent may be removed by the Required Lenders at any time by giving 10 days’ prior written notice thereof to the Administrative Agent, the Issuers, the other Lenders and the Parent. Upon any such resignation or removal, the Required Lenders shall have the right to appoint a successor Administrative Agent, subject to the consent of the Parent (which consent shall not be unreasonably withheld and shall not be required if an Event of Default has occurred and is continuing). If no successor Administrative Agent shall have been so appointed and consented to, and shall have accepted such appointment, within 30 days after such notice of resignation or removal, then the retiring Administrative Agent may, on behalf of the Lenders and Issuers, appoint a successor Administrative Agent; provided, that if the Administrative Agent is resigning, the retiring Administrative Agent’s resignation shall nevertheless become effective on the date that is 40 days after its initial notice of resignation and the Lenders shall assume and perform all of the duties of the Administrative Agent hereunder until such time, if any, as the Required Lenders appoint a successor agent as provided for above. Each successor Administrative Agent shall be a commercial bank or trust company organized under the laws of the United States of America or any State thereof and having a combined

capital and surplus of at least \$1,000,000,000. Upon the acceptance by a successor Administrative Agent of its appointment as Administrative Agent hereunder, such successor Administrative Agent shall thereupon succeed to and become vested with all the properties, rights, powers, privileges and duties of the former Administrative Agent, without further act, deed or conveyance. Upon the effective date of resignation or removal of a retiring Administrative Agent, such Administrative Agent shall be discharged from its duties under this Agreement and the other Loan Documents, but the provisions of this Agreement shall inure to its benefit as to any actions taken or omitted by it while it was the Administrative Agent under this Agreement.

SECTION 11.11. Calculations. The Administrative Agent shall not be liable for any calculation, apportionment or distribution of payments made by it in good faith. If such calculation, apportionment or distribution is subsequently determined to have been made in error, the sole recourse of any Lender to whom payment was due but not made shall be to recover from the other Lenders any payment in excess of the amount to which they are determined to be entitled or, if the amount due was not paid by the appropriate Borrower, to recover such amount from the appropriate Borrower.

SECTION 11.12. The Administrative Agent's Fees. The Parent agrees to pay to the Administrative Agent, for its individual account, a nonrefundable Administrative Agent's fee in an amount and at such time or times as specified in the Fee Letter.

SECTION 11.13. Funding by the Administrative Agent. Unless the Administrative Agent shall have been notified in writing by any Lender not later than the time such Revolving Credit Loan is proposed to be made that such Lender will not make its ratable share of such Revolving Credit Loans, the Administrative Agent may assume that such Lender will make its ratable share of such Loans, and in reliance upon such assumption the Administrative Agent may (but in no circumstances shall be required to) make available to such Borrower a corresponding amount. If and to the extent that any Lender fails to make such payment to the Administrative Agent on such date, such Lender shall pay such amount on demand (or, if such Lender fails to pay such amount on demand, such Borrower shall pay such amount on demand), together with interest, for the Administrative Agent's own account, for each day from and including the date of the Administrative Agent's payment to and including the date of repayment to the Administrative Agent (before and after judgment) at the rate or rates per annum applicable to such Loans. All payments to the Administrative Agent under this Section shall be made to the Administrative Agent at its Office without set-off, withholding, counterclaim or other deduction of any nature.

SECTION 11.14. Co-Syndication Agents; Co-Documentation Agents. None of the Lenders identified in this Agreement as a "Co-Syndication Agent" or "Co-Documentation Agent" shall have any right, power, obligation, liability, responsibility or duty under this Agreement in such identified capacity other than those applicable to all Lenders as such. Without limiting the foregoing, none of such Lenders shall have or be deemed to have a fiduciary relationship with any Lender. Each Lender hereby makes the same acknowledgements with respect to such Lenders as it makes with respect to the Administrative Agent in Section 11.06.

ARTICLE XII

Miscellaneous

SECTION 12.01. Holidays. Whenever any payment or action to be made or taken hereunder or under any other Loan Document shall be stated to be due on a day which is not a Business Day, such payment or action shall be made or taken on the next following Business Day and such extension of time shall be included in computing interest or fees, if any, in connection with such payment or action.

SECTION 12.02. Records. The unpaid principal amount of the Loans owing to each Lender, the unpaid interest accrued thereon, the interest rate or rates applicable to such unpaid principal amount, the duration of such applicability, each Lender's Revolving Credit Committed Amount shall at all times be ascertained from the records of the Administrative Agent, which shall be conclusive absent manifest error.

SECTION 12.03. Amendments and Waivers. Neither this Agreement nor any Loan Document may be amended, modified or supplemented except in accordance with the provisions of this Section. The Administrative Agent, the Required Lenders and the Borrowers may from time to time amend, modify or supplement the provisions of this Agreement or any other Loan Document for the purpose of amending, adding to, or waiving any provisions, or changing in any manner the rights and duties of any Borrower, the Administrative Agent or any Lender; provided, however, that, notwithstanding the foregoing, any amendment, modification or supplement of the provisions of this Agreement or any other Loan Document of the kind described in clauses (a) and (b) of this Section 12.03 may be entered into from time to time by the Administrative Agent, each Lender affected thereby and the Parent. Any such amendment, modification or supplement made by the Borrowers (or the Parent, as the case may be), the Required Lenders and the Administrative Agent in accordance with the provisions of this Section shall be binding upon the Borrowers, each Lender and the Administrative Agent; provided, that no amendment, modification or supplement shall be effective which will:

- (a) Increase the Revolving Credit Committed Amount of any Lender over the amount thereof then in effect, or extend the Revolving Credit Maturity Date or the Competitive Bid Expiration Date (except in each case in accordance with Section 4.01) or extend the expiration date of any Letter of Credit beyond the Revolving Credit Maturity Date, unless executed by each Lender affected thereby (and, with respect to Letters of Credit, the applicable Issuer);
- (b) Reduce the principal amount of or extend (except in accordance with Section 4.01) the scheduled final maturity of any Loan, or reduce the amount of any LC Disbursement, or extend any scheduled payment date or prepayment date of any Loan or LC Disbursement, or reduce the rate of interest or extend the time for payment of interest borne by any Loan, or extend the time for payment of or reduce the amount of any Commitment Fee or reduce or postpone the date for payment of any other fees, expenses,

indemnities or amounts payable under any Loan Document, unless executed by each Lender affected thereby (and, with respect to LC Disbursements, the applicable Issuer);

- (c) Change the definition of “Required Lenders”, the definition of “Defaulting Lender” or the definition of “Designated Currency” or any provision of this Agreement that states a requirement for the consent of all the Lenders or amend Section 4.12(b) or this Section 12.03, unless executed by all the Lenders;
- (d) Amend the third sentence of the third paragraph of Section 4.05(a) or Section 12.13, unless executed by all the Lenders; or
- (e) Amend or waive any of the provisions of Article XI hereof, or impose additional duties upon the Administrative Agent or any Issuer or otherwise adversely affect the rights, interests or obligations of the Administrative Agent or any Issuer, unless executed by the Administrative Agent or such Issuer, as the case may be; or
- (f) Release the Parent from any of its obligations under Article X hereof, unless executed by all Lenders;

and provided further, that (i) Assignment Agreements may be entered into in the manner provided in Section 12.14 hereof and (ii) any fees payable to the Administrative Agent for its own account may be waived by the Administrative Agent in its sole discretion. Any such amendment, modification or supplement must be in writing and shall be effective only to the extent set forth in such writing. Any Event of Default or Potential Event of Default waived or consented to in any such amendment, modification or supplement shall be deemed to be cured and not continuing to the extent and for the period set forth in such waiver or consent, but no such waiver or consent shall extend to any other or subsequent Event of Default or Potential Event of Default or impair any right consequent thereto. Notwithstanding the foregoing, upon the execution and delivery of all documentation and receipt of all consents required by Section 2.09 to be delivered in connection with an increase in the Total Revolving Credit Commitment, this Agreement shall be deemed amended without further action by any party to reflect, as applicable, the new Lenders and their new Revolving Credit Committed Amounts and any increase in the Revolving Credit Committed Amounts of any existing Lender.

SECTION 12.04. No Implied Waiver; Cumulative Remedies. No course of dealing and no delay or failure of the Administrative Agent or any Issuer or Lender in exercising any right, power or privilege under this Agreement or any other Loan Document shall affect any other or future exercise thereof or exercise of any other right, power or privilege; nor shall any single or partial exercise of any such right, power or privilege or any abandonment or discontinuance of steps to enforce such a right, power or privilege preclude any further exercise thereof or of any other right, power or privilege. The rights and remedies under this Agreement and any other Loan Document are cumulative and not exclusive of any rights or remedies which would otherwise be available at law or in equity.



SECTION 12.05. Notices. (a) Except in the case of notices and other communications expressly permitted to be given by telephone (and except as provided in paragraph (b) below), all notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by facsimile as follows:

- (i) if to the Parent or any Other Borrower, at its address or facsimile number set forth on the signature page hereof;
- (ii) if to the Administrative Agent, at its address or facsimile number set forth on the signature page hereof;
- (iii) if to a Lender, to it at its address or facsimile number set forth in its Administrative Questionnaire; and
- (iv) if to an Issuer, at its address set forth in its Administrative Questionnaire or its signature page hereof, as applicable.

Notices sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when received; notices sent by facsimile shall be deemed to have been given when sent (except that, if not given during normal business hours for the recipient, shall be deemed to have been given at the opening of business on the next Business Day for the recipient). Notices delivered through electronic communications to the extent provided in paragraph (b) below, shall be effective as provided in said paragraph (b).

(b) Notices and other communications to the Lenders may be delivered or furnished by electronic communication (including e-mail and internet or intranet websites) pursuant to procedures approved by the Administrative Agent or as otherwise determined by the Administrative Agent, provided that the foregoing shall not apply to notices to any Lender pursuant to Article II if such Lender has notified the Administrative Agent that it is incapable of receiving notices under such Article by electronic communication. The Administrative Agent or the Parent may, in its respective discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it or as it otherwise determines, provided that such determination or approval may be limited to particular notices or communications. Unless the Administrative Agent otherwise prescribes, (i) notices and other communications sent to an e-mail address shall be deemed received upon the sender's receipt of an acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgement), provided that if such notice or other communication is not given during the normal business hours of the recipient, such notice or communication shall be deemed to have been given at the opening of business on the next Business Day for the recipient, and (ii) notices or communications posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient at its e-mail address as described in the foregoing clause (i) of notification that such notice or communication is available and identifying the website address therefor.

(c) Any party hereto may change its address or facsimile number for notices and other communications hereunder by written notice to (i) the Administrative Agent and the

Parent in the case of a change by a Lender or an Issuer, (ii) the Administrative Agent and each Lender in the case of a change by any of the Borrowers or (iii) all other parties hereto in the case of a change by the Administrative Agent.

(d) Any Lender giving any notice to the Borrowers or any other party to a Loan Document shall simultaneously send a copy thereof to the Administrative Agent, and the Administrative Agent shall promptly notify the other Lenders of the receipt by it of any such notice.

(e) The Administrative Agent and each Lender may rely on any notice (whether or not such notice is made in a manner permitted or required by this Agreement or any Loan Document) purportedly made by or on behalf of the Borrowers, and neither the Administrative Agent nor Lender shall have any duty to verify the identity or authority of any Person giving such notice.

SECTION 12.06. Expenses; Indemnity; No Consequential Damages. (a) The Parent agrees to pay or cause to be paid and to save the Agents harmless against liability for the payment of all reasonable out-of-pocket costs and expenses (including but not limited to reasonable fees and expenses of one outside counsel) incurred by the Agents from time to time arising from or relating to (i) the negotiation, preparation, execution and delivery of this Agreement and the other Loan Documents and (ii) the negotiation, preparation, execution and delivery of any requested amendments, modifications, supplements, waivers or consents (whether or not ultimately entered into or granted) to this Agreement or any Loan Document. The Parent agrees to pay or cause to be paid and to save each Issuer harmless against liability for the payment of all reasonable out-of-pocket expenses incurred by such Issuer in connection with its issuance, amendment, renewal or extension of any Letter of Credit or any demand for payment thereunder. The Parent agrees to pay or cause to be paid and to save the Agents, each Issuer and each Lender harmless against liability for the payment of all reasonable out-of-pocket expenses (including but not limited to reasonable fees and expenses of one outside counsel for the Administrative Agent, each Issuer and each Lender, and of in-house counsel and local counsel, and auditors, and all other professional, accounting, evaluation and consulting costs) reasonably incurred after the occurrence of an Event of Default by the Administrative Agent, any Issuer or any Lender from time to time arising from or relating to the enforcement or preservation of rights under this Agreement or any Loan Document.

(b) The Parent hereby agrees to reimburse and indemnify each of the Indemnified Parties from and against any and all losses, liabilities, claims, damages, expenses, obligations, penalties, actions, judgments, suits, costs or disbursements of any kind or nature whatsoever (including, without limitation, the fees and disbursements of one counsel and of in-house and local counsel for such Indemnified Party in connection with any investigative, administrative or judicial proceeding commenced or threatened, whether or not such Indemnified Party shall be designated a party thereto) that may at any time be imposed on, asserted against or incurred by such Indemnified Party as a result of, or arising out of, or in any way related to or by reason of, this Agreement or any other Loan Document, any transaction from time to time contemplated hereby or thereby, any transaction supported by any Letter of Credit or financed in whole or in part or directly or indirectly with the proceeds of any Loan or Letter of Credit or any refusal by an Issuer to honor a demand for payment under a Letter of Credit if the documents

presented in connection with such demand do not strictly comply with the terms of such Letter of Credit, but excluding any such losses, liabilities, claims, damages, expenses, obligations, penalties, actions, judgments, suits, costs or disbursements to the extent they result from the gross negligence or willful misconduct of such Indemnified Party. If and to the extent that the foregoing obligations of the Parent under this subsection (b), or any other indemnification obligation of the Parent hereunder or under any other Loan Document, are unenforceable for any reason, the Parent hereby agrees to make the maximum contribution to the payment and satisfaction of such obligations which is permissible under applicable Law.

(c) Without limiting the provisions of Section 12.06(b), in no event will any party hereto be liable to any other party hereto for any punitive, special, indirect or consequential damages for any matters arising out of the transactions contemplated hereby; provided, however, that the foregoing limitation shall not be deemed to impair or affect the obligations of the Parent under Section 12.06(b).

SECTION 12.07. Severability. The provisions of this Agreement are intended to be severable. If any provision of this Agreement shall be held invalid or unenforceable in whole or in part in any jurisdiction such provision shall, as to such jurisdiction, be ineffective to the extent of such invalidity or unenforceability without in any manner affecting the validity or enforceability thereof in any other jurisdiction or the remaining provisions hereof in any jurisdiction.

SECTION 12.08. Prior Understandings. This Agreement and the other Loan Documents supersede all prior and contemporaneous understandings and agreements, whether written or oral, among the parties hereto relating to the transactions provided for herein and therein except for the Fee Letter.

SECTION 12.09. Duration; Survival. All representations and warranties of each Borrower contained herein or in any other Loan Document or made in connection herewith or therewith shall survive the making of, and shall not be waived by the execution and delivery of this Agreement or any other Loan Document, any investigation by or knowledge of the Administrative Agent or any Issuer or Lender, the making of any Loan or issuance or Modification of any Letter of Credit, or any other event or condition whatever. All covenants and agreements of each Borrower contained herein or in any other Loan Document shall continue in full force and effect from and after the date hereof so long as any Borrower may borrow hereunder and until payment in full of all Obligations. Without limitation, all obligations of the Borrowers hereunder or under any other Loan Document to make payments to or indemnify the Administrative Agent or any Lender shall survive the payment in full of all other Obligations, termination of the Borrowers' right to borrow hereunder, and all other events and conditions whatever, including without limitation the assignment of a Lender's Commitments and Loans and LC Exposure hereunder. In addition, all obligations of each Lender to make payments to or indemnify the Administrative Agent shall survive the payment in full by the Borrowers of all Obligations, termination of the Borrowers' right to borrow hereunder, and all other events or conditions whatever.

SECTION 12.10. Counterparts. This Agreement may be executed in any number of counterparts and by the different parties hereto on separate counterparts each of which, when so executed, shall be deemed an original, but all such counterparts shall constitute but one and the same instrument.

SECTION 12.11. Limitation on Payments. The parties hereto intend to conform to all applicable Laws in effect from time to time limiting the maximum rate of interest that may be charged or collected. Accordingly, notwithstanding any other provision hereof or of any other Loan Document, the Borrowers shall not be required to make any payment to or for the account of any Lender, and each Lender shall refund any payment made by the Borrowers, to the extent that such requirement or such failure to refund would violate or conflict with nonwaivable provisions of applicable Laws limiting the maximum amount of interest which may be charged or collected by such Lender.

SECTION 12.12. Set-Off. Each Borrower hereby agrees that if an Event of Default has occurred and is continuing, each Lender and Issuer shall have the right, without notice to such Borrower, to set-off against and to appropriate and apply to such Obligation any matured indebtedness or other fixed liability or matured obligation of any nature owing to such Borrower by such Lender or Issuer, including but not limited to all deposits (whether time or demand, general or special, provisionally credited or finally credited, whether or not evidenced by a certificate of deposit) now or hereafter maintained by such Borrower with such Lender or Issuer. Such right shall be absolute and unconditional in all circumstances and, without limitation, shall exist whether or not such Lender, such Issuer or any other Person shall have given notice or made any demand to such Borrower or any other Person, and regardless of the existence or adequacy of any collateral, guaranty or any other security, right or remedy available to any Lender, Issuer or any other Person. Each Borrower hereby agrees that any Participant and any branch, subsidiary or Affiliate of any Lender or Issuer or any Participant shall have the same rights of set-off as a Lender or Issuer as provided in this Section (regardless of whether such Participant, branch, subsidiary or Affiliate would otherwise be deemed in privity with or a direct creditor of such Borrower). The rights provided by this Section are in addition to all other rights of set-off and banker's lien and all other rights and remedies which any Lender or Issuer (or any such Participant, branch, subsidiary or Affiliate) may otherwise have under this Agreement, any other Loan Document, at law or in equity, or otherwise, and nothing in this Agreement or any Loan Document shall be deemed a waiver or prohibition of or restriction on the rights of set-off or bankers' lien of any such Person.

SECTION 12.13. Sharing of Collections. The Lenders hereby agree among themselves that if any Lender shall receive (by voluntary payment, realization upon security, set-off or from any other source) any amount on account of the Revolving Credit Loans and interest thereon or participations in unreimbursed LC Disbursements in greater proportion (determined by reference to the aggregate Revolving Credit Exposures at such time) than any such amount received by any other Lender, then the Lender receiving such proportionately greater payment shall notify each other Lender and the Administrative Agent of such receipt, and equitable adjustment will be made in the manner stated in this Section so that, in effect, all such excess amounts will be shared ratably among all of the Lenders. The Lender receiving such excess amount shall purchase (which it shall be deemed to have done simultaneously upon the receipt of such excess amount) for cash from the other Lenders a participation in the applicable Revolving Credit Loans and interest thereon and participations in unreimbursed LC Disbursements owed to such other Lenders in such amount as shall result in a ratable sharing

by all Lenders of such excess amount (and to such extent the receiving Lender shall be a Participant). If all or any portion of such excess amount is thereafter recovered from the Lender making such purchase, such purchase shall be rescinded and the purchase price restored to the extent of such recovery, together with interest or other amounts, if any, required by Law to be paid by the Lender making such purchase. Each Borrower hereby consents to and confirms the foregoing arrangements. Each Participant shall be bound by this Section as fully as if it were a Lender hereunder.

SECTION 12.14. Successors and Assigns; Participations; Assignments. (a) Successors and Assigns. The terms and provisions of the Loan Documents shall be binding upon and inure to the benefit of the Borrowers, the Administrative Agent, the Issuers and the Lenders and their respective successors and assigns permitted hereby, except that (i) the Borrowers shall not have the right to assign their respective rights or obligations under the Loan Documents without the prior written consent of each Lender, (ii) any assignment by any Lender must be made in compliance with Section 12.14(c), and (iii) any transfer by participation must be made in compliance with Section 12.14(b). Any attempted assignment or transfer by any party not made in compliance with this Section 12.14 shall, subject to Section 12.14(c)(iii), be null and void. The parties to this Agreement acknowledge that clause (ii) of this Section 12.14 relates only to absolute assignments and this Section 12.14 does not prohibit assignments creating security interests, including, without limitation, (x) any pledge or assignment by any Lender of all or any portion of its rights under this Agreement and any Note to a Federal Reserve Bank or (y) in the case of a Lender which is a Fund, any pledge or assignment of all or any portion of its rights under this Agreement and any Note to its trustee in support of its obligations to its trustee; provided, however, that no such pledge or assignment creating a security interest shall release the Assignor Lender from its obligations hereunder unless and until the parties thereto have complied with the provisions of Section 12.14(c). The Administrative Agent may treat the Person which made any Loan or which holds any Note as the owner thereof for all purposes hereof unless and until such Person complies with Section 12.14(c); provided, however, that the Administrative Agent may in its discretion (but shall not be required to) follow instructions from the Person which made any Loan or which holds any Note to direct payments relating to such Loan or Note to another Person. Any assignee of the rights to any Loan or any Note agrees by acceptance of such assignment to be bound by all the terms and provisions of the Loan Documents. Any request, authority or consent of any Person, who at the time of making such request or giving such authority or consent is the owner of the rights to any Loan (whether or not a Note has been issued in evidence thereof), shall be conclusive and binding on any subsequent holder or assignee of the rights to such Loan.

(b) Participations.

- (i) Permitted Participants; Effect. Any Lender may at any time sell to one or more banks or other entities (“Participants”) participating interests in any Loan owing to such Lender, any Note held by such Lender, any Commitment of such Lender or any other interest of such Lender under the Loan Documents. In the event of any such sale by a Lender of participating interests to a Participant, such Lender’s obligations under the Loan Documents shall remain unchanged, such Lender shall remain solely responsible to the

other parties hereto for the performance of such obligations, such Lender shall remain the owner of its Loans and the holder of any Note issued to it in evidence thereof for all purposes under the Loan Documents, all amounts payable by the Borrowers under this Agreement shall be determined as if such Lender had not sold such participating interests, and the Borrowers, the Issuers and the Administrative Agent shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under the Loan Documents.

- (ii) Voting Rights. Each Lender shall retain the sole right to approve, without the consent of any Participant, any amendment, modification or waiver of any provision of the Loan Documents other than any amendment, modification or waiver with respect to any Loan or Commitment in which such Participant has an interest which would require consent of all of the Lenders pursuant to the terms of Section 12.03(a), (b), (c), (d) or (f).
- (iii) Benefit of Certain Provisions. The Parent agrees that each Participant shall be entitled to the benefits of Sections 4.07, 4.08 and 4.09 to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to Section 12.14(c), provided that (i) a Participant shall not be entitled to receive any greater payment under Section 4.07, 4.08 or 4.09 than the Lender who sold the participating interest to such Participant would have received had it retained such interest for its own account, unless the sale of such interest to such Participant is made with the prior written consent of the Parent, and (ii) any Participant not incorporated under the laws of the United States of America or any State thereof agrees to comply with the provisions of Section 4.09 to the same extent as if it were a Lender.
- (iv) Participant Register. Each Lender that sells a participation shall, acting solely for this purpose as an agent of the Parent, maintain a register on which it enters the name and address of each Participant and the principal amounts (and stated interest) of each Participant's interest in the Loans or other obligations under this Agreement (the "Participant Register"). The entries in the Participant Register shall be conclusive absent manifest error, and such Lender shall treat each person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary; provided that no Lender shall have any obligation to disclose all or any portion of the Participant Register to the Parent or any other Person (including the identity of any Participant or any information relating to a Participant's interest under the Loan Documents) except to the extent that such disclosure is necessary to establish

that the Loans or other obligations under the Loan Documents are in registered form under Section 5f-103-1(c) of the United States Treasury Regulations.

(c) Assignments.

- (i) Permitted Assignments. Any Lender (each an “Assignor Lender”) may at any time assign to one or more banks or other entities (each an “Assignee Lender”) all or any part of its rights and obligations under the Loan Documents. Such assignment shall be substantially in the form of Exhibit E or in such other form as may be agreed to by the parties thereto (an “Assignment Agreement”). Each such assignment with respect to an Assignee Lender which is not a Lender, an Affiliate of a Lender or an Approved Fund shall either be in an amount equal to the entire applicable Commitment and Loans of the Assignor Lender or (unless each of the Parent and the Administrative Agent otherwise consents) be in an aggregate amount not less than \$5,000,000. The amount of the assignment shall be based on the Commitment or outstanding Loans (if the Commitment has been terminated) subject to the assignment, determined as of the date of such assignment or as of the “Trade Date,” if the “Trade Date” is specified in the assignment. After giving effect to any assignment, the remaining Commitment of the assigning Lender (or, if the Commitments have been terminated, then the aggregate principal amount of Loans held by the assigning Lender) shall either be zero or be at least \$10,000,000. Unless such assignment is consented to by the Parent or is required by applicable law, no assignment may be made to an Affiliate of the assigning Lender if such assignment would increase the amounts payable by any Borrower hereunder. No assignment may be made hereunder if such assignment violates applicable law.
- (ii) Consents. The consent of the Parent shall be required prior to an assignment becoming effective unless the Assignee Lender is a Lender, an Affiliate of a Lender or an Approved Fund, provided that the consent of the Parent shall not be required if an Event of Default has occurred and is continuing. The consent of the Administrative Agent and each Issuer shall be required prior to an assignment becoming effective. Any consent required under this Section 12.14(c) shall not be unreasonably withheld or delayed.
- (iii) Effect; Effective Date. Upon (i) delivery to the Administrative Agent of an assignment, together with any consents required by Section 12.14(c)(ii), and (ii) payment of a \$3,500 fee to the Administrative Agent for processing such assignment (unless such fee is waived by the Administrative Agent), such assignment shall become effective on the effective date specified in such

assignment. The assignment shall contain a representation by the Assignee Lender to the effect that none of the consideration used to make the purchase of the Commitment and Loans under the applicable assignment agreement constitutes “plan assets” as defined under ERISA and that the rights and interests of the Assignee Lender in and under the Loan Documents will not be “plan assets” under ERISA. On and after the effective date of such assignment, such Assignee Lender shall for all purposes be a Lender party to this Agreement and any other Loan Document executed by or on behalf of the Lenders and shall have all the rights and obligations of a Lender under the Loan Documents, to the same extent as if it were an original party thereto, and the Assignor Lender shall be released with respect to the Commitment and Loans and LC Exposure assigned to such Assignee Lender without any further consent or action by the Borrowers, the Lenders or the Administrative Agent. In the case of an assignment covering all of the Assignor Lender’s rights and obligations under this Agreement, such Lender shall cease to be a Lender hereunder but shall continue to be entitled to the benefits of, and subject to, those provisions of this Agreement and the other Loan Documents which survive payment of the Obligations and termination of the applicable agreement. Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this Section 12.14(c) shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with Section 12.14(b). Upon the consummation of any assignment to an Assignee Lender pursuant to this Section 12.14(c), the Assignor Lender, the Administrative Agent and the Borrowers shall, if the Assignor Lender or the Assignee Lender desires that its Loans be evidenced by Notes, make appropriate arrangements so that new Notes or, as appropriate, replacement Notes are issued to such Assignor Lender and new Notes or, as appropriate, replacement Notes, are issued to such Assignee Lender, in each case in principal amounts reflecting their respective Commitments, as adjusted pursuant to such assignment.

(d) Register. The Administrative Agent shall maintain at its office a copy of each assignment hereunder delivered to it and a register (the “Register”) for the recordation of the names and addresses of the Lenders and the Commitments of, and principal amount of the Loans and LC Disbursements owing to, each Lender from time to time. The entries in the Register shall be conclusive absent manifest error and the Borrowers, the Administrative Agent, the Issuers and the Lenders may treat each person whose name is recorded in the Register as a Lender hereunder for all purposes of the Agreement. The Register shall be available for inspection by the Borrowers or any Issuer or Lender, as to its commitment only, at any reasonable time and from time to time upon reasonable prior notice.



(e) Financial and Other Information. Each Borrower authorizes the Administrative Agent and each Issuer and Lender to disclose to any Participant, Assignee Lender or any Affiliate of such Lender (each, a “transferee”) and any prospective transferee any and all financial and other information in such Person’s possession concerning any Borrower and their respective Subsidiaries and Affiliates which has been or may be delivered to such Person by or on behalf of any Borrower in connection with this Agreement or any other Loan Document or such Person’s credit evaluation of any Borrower and their respective Subsidiaries and Affiliates; provided, that such transferee or prospective transferee agrees in writing to maintain the confidentiality of any such information provided by the Parent pursuant to Section 7.01(c)(iv) hereof. At the request of any Lender, the Parent, at the Parent’s expense, shall provide to each prospective transferee the conformed copies of documents referred to in Section 7 of the form of Assignment Agreement.

SECTION 12.15. Judgment Currency. (a) Judgment Currency. The specification in this Agreement and in the Notes of payment in a particular currency at the Administrative Agent’s Office is of the essence hereof and thereof. If any court or tribunal shall render a judgment or order for the payment of any amounts owing by any Borrower to any Issuer or Lender or the Administrative Agent under this Agreement or any Note or for the payment by any Borrower of damages in respect of any breach of this Agreement or any Note or under or in respect of a judgment or order of another court or tribunal for payment of such amounts or damages, and if such judgment or order is expressed in a currency (the “Judgment Currency”) other than the currency payable hereunder (the “Contractual Currency”), the Relevant Borrower shall indemnify and hold harmless such Issuer or Lender or the Administrative Agent against any deficiency in terms of the Contractual Currency in the amounts received by such Issuer or Lender or the Administrative Agent arising or resulting from any variation as between (i) the rate of exchange at which the Contractual Currency is converted into the Judgment Currency for the purposes of such judgment or order and (ii) the rate of exchange at which such Issuer or Lender or the Administrative Agent would, in accordance with normal banking procedures, purchase the Contractual Currency with the amount of the Judgment Currency actually received by such Issuer or Lender or the Administrative Agent on the Business Day following such receipt by such Issuer or Lender or the Administrative Agent.

(b) Liquidation Currency. If any Borrower shall wind up, liquidate, dissolve or become bankrupt while there remains outstanding any amounts owing by such Borrower to any Issuer or Lender or the Administrative Agent under this Agreement or any Note or any damages owing by such Borrower to any Issuer or Lender or the Administrative Agent in respect of a breach of this Agreement or any Note or any judgment or order rendered against such Borrower in respect of such amounts or damages, such Borrower shall indemnify and hold such Issuer or Lender or the Administrative Agent harmless against any deficiency in terms of the Contractual Currency in the amounts received by such Issuer or Lender or the Administrative Agent arising or resulting from any variation as between (i) the rate of exchange at which the Contractual Currency is converted into another currency (the “Liquidation Currency”) for purposes of such winding-up, liquidation, dissolution or bankruptcy with regard to the amount in the Contractual Currency due under this Agreement or any Note (other than this Section 12.15(b)) or under any judgment or order into which the relevant obligations under this Agreement or any Note shall have been merged and (ii) the rate of exchange at which such Issuer or Lender or the Administrative Agent would, in accordance with normal banking procedures, be

able to purchase the Contractual Currency with the Liquidation Currency at the earlier of (A) the date of payment of such amounts or damages and (B) the final date or dates for the filing of proofs of a claim in such winding-up, liquidation, dissolution or bankruptcy. As used in the preceding sentence, the "final date or dates for the filing of proofs of a claim in a winding-up, liquidation, dissolution or bankruptcy" shall be the date fixed by the liquidator or other appropriate person or otherwise applicable under applicable Law as being the last practicable date as of which the liabilities of the Borrower may be ascertained for such winding-up, liquidation, dissolution or bankruptcy before payment by the liquidator or other appropriate person in respect thereof.

(c) Independent Obligations. The indemnities provided by 12.15(a) and (b) hereof shall constitute obligations of each Borrower separate and independent from its other obligations under this Agreement and the Notes, shall give rise to separate and independent causes of action against each Borrower, shall apply irrespective of any indulgence granted by any Issuer or Lender or the Administrative Agent from time to time and shall continue in full force and effect notwithstanding any judgment or order or the filing of any proof or proofs in the winding-up, liquidation, dissolution or bankruptcy of any Borrower for a liquidated sum or sums in respect of other amounts due under this Agreement or any Note or any damages owing to any Issuer or Lender or the Administrative Agent in respect of a breach of this Agreement or any Note or any judgment rendered in respect of such amounts or damages.

SECTION 12.16. Governing Law; Submission to Jurisdiction; Waiver of Jury Trial. (a) Governing Law. THIS AGREEMENT AND ALL OTHER LOAN DOCUMENTS (EXCEPT TO THE EXTENT, IF ANY, OTHERWISE EXPRESSLY STATED IN SUCH OTHER LOAN DOCUMENTS) SHALL BE GOVERNED BY, CONSTRUED AND ENFORCED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, WITHOUT REGARD TO CHOICE OF LAW PRINCIPLES.

(b) Certain Waivers. EACH BORROWER, LENDER, ISSUER AND THE ADMINISTRATIVE AGENT WAIVES THE RIGHT TO TRIAL BY JURY IN ANY ACTION, SUIT OR PROCEEDING BY ANY PERSON ARISING FROM OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENTS OR ANY STATEMENT, COURSE OF CONDUCT, ACT, OMISSION OR EVENT OCCURRING IN CONNECTION HEREWITH OR THEREWITH (COLLECTIVELY, "RELATED LITIGATION"). IN ADDITION, EACH BORROWER HEREBY IRREVOCABLY AND UNCONDITIONALLY:

- (i) AGREES THAT ANY RELATED LITIGATION BY ANY ISSUER OR LENDER OR THE ADMINISTRATIVE AGENT MAY BE BROUGHT IN ANY STATE OR FEDERAL COURT OF COMPETENT JURISDICTION SITTING IN NEW YORK COUNTY, NEW YORK, AND SUBMITS TO THE JURISDICTION OF SUCH COURTS (BUT NOTHING HEREIN SHALL AFFECT THE RIGHT OF THE ADMINISTRATIVE AGENT OR ANY ISSUER, LENDER OR BORROWER TO BRING ANY ACTION, SUIT OR PROCEEDING IN ANY OTHER FORUM);

- (ii) WAIVES ANY OBJECTION WHICH IT MAY HAVE AT ANY TIME TO THE LAYING OF VENUE OF ANY RELATED LITIGATION BROUGHT IN ANY SUCH COURT, WAIVES ANY CLAIM THAT ANY SUCH RELATED LITIGATION HAS BEEN BROUGHT IN AN INCONVENIENT FORUM, AND WAIVES ANY RIGHT TO OBJECT, WITH RESPECT TO ANY RELATED LITIGATION BROUGHT IN ANY SUCH COURT, THAT SUCH COURT DOES NOT HAVE JURISDICTION OVER SUCH BORROWER; AND
- (iii) CONSENTS AND AGREES TO SERVICE OF ANY SUMMONS, COMPLAINT OR OTHER LEGAL PROCESS IN ANY RELATED LITIGATION BY REGISTERED OR CERTIFIED U.S. MAIL, POSTAGE PREPAID, TO SUCH BORROWER AT THE ADDRESS FOR NOTICES DESCRIBED IN SECTION 12.05 HEREOF, AND CONSENTS AND AGREES THAT SUCH SERVICE SHALL CONSTITUTE IN EVERY RESPECT VALID AND EFFECTIVE SERVICE (BUT NOTHING HEREIN SHALL AFFECT THE VALIDITY OR EFFECTIVENESS OF PROCESS SERVED IN ANY OTHER MANNER PERMITTED BY LAW).

SECTION 12.17. USA PATRIOT Act Notification. The following notification is provided to the Borrowers pursuant to Section 326 of the USA PATRIOT Act of 2001, 31 U.S.C. Section 5318:

IMPORTANT INFORMATION ABOUT PROCEDURES FOR OPENING A NEW ACCOUNT. To help the government fight the funding of terrorism and money laundering activities, Federal law requires all financial institutions to obtain, verify, and record information that identifies each person or entity that opens an account, including any deposit account, treasury management account, loan, other extension of credit, or other financial services product. What this means for the Borrowers: When the Borrower opens an account, if the Borrower is an individual, the Administrative Agent and the Lenders will ask for the Borrower's name, residential address, tax identification number, date of birth, and other information that will allow the Administrative Agent and the Lenders to identify the Borrower, and, if the Borrower is not an individual, the Administrative Agent and the Lenders will ask for the Borrower's name, tax identification number, business address, and other information that will allow the Administrative Agent and the Lenders to identify the Borrower. The Administrative Agent and the Lenders may also ask, if the Borrower is an individual, to see the Borrower's driver's license or other identifying documents, and, if the Borrower is not an individual, to see the Borrower's legal organizational documents or other identifying documents.

SECTION 12.18. Confidentiality. The Administrative Agent and each Issuer and Lender agrees to hold any confidential information which it may receive from the Borrowers

in connection with this Agreement in confidence, except for disclosure (i) to its Affiliates and any agents engaged in connection with this Agreement and to the Administrative Agent and any Issuer or other Lender and their respective Affiliates and any agents engaged in connection with this Agreement, (ii) to legal counsel, accountants, and other professional advisors to such Person, (iii) to regulatory officials and agencies or self-regulatory body, (iv) to any Person as required by law, regulation, or legal process, (v) to any Person in connection with any legal proceeding to which it is a party to the extent such disclosure is required by law and (vi) to its direct or indirect contractual counterparties in swap agreements involving this Agreement or to legal counsel, accountants and other professional advisors to such counterparties. The Borrowers agree that the terms of this Section 12.18 shall set forth the entire agreement between the Borrowers and each Issuer and Lender (including the Administrative Agent) with respect to any confidential information previously or hereafter received by such Issuer or Lender in connection with this Agreement, and this Section 12.18 shall supersede any and all prior confidentiality agreements entered into by such Issuer or Lender with respect to such confidential information. In connection with any disclosure of confidential information pursuant to item (i), (ii) or (vi) above, the disclosing party shall inform the Persons to whom such disclosure is made of the confidential nature of such information and instruct them to keep such information confidential.

SECTION 12.19. Termination of Existing Credit Agreement. Each Lender that is a party to the Existing Agreement hereby waives the requirement set forth in Section 2.04(d) of the Existing Agreement that the Parent give at least five Business Days' notice of termination of the "Total Revolving Credit Commitment" as defined in the Existing Agreement.

[signature pages follow]

IN WITNESS WHEREOF, the parties hereto, by their officers thereunto duly authorized, have executed and delivered this Agreement as of the date first above written.

**PARENT**

AIR PRODUCTS AND CHEMICALS, INC.,

BY /S/ GEORGE G. BITTO

NAME: GEORGE G. BITTO

TITLE: VICE PRESIDENT AND TREASURER

Address for Notices:

Air Products and Chemicals, Inc.

7201 Hamilton Boulevard

Allentown, PA 18195-1501

Attn: Assistant Treasurer, Corporate Finance

Telephone: 610-481-4015

Facsimile: 610-481-4165

*Signature Page to Air Products Credit Agreement*

**ADMINISTRATIVE AGENT**

THE ROYAL BANK OF SCOTLAND PLC,  
individually and as Administrative Agent

BY /S/ PAUL CHÍSHOLM

NAME: PAUL CHÍSHOLM

TITLE: VICE PRESIDENT

Address for Notices:

The Royal Bank of Scotland plc  
Agency Team, North America  
600 Washington Boulevard  
Stamford, CT 06901  
Attn: Juan Zuniga, Head of Loans

Email: Juan.Zuniga@rbs.com

Telephone: (203) 897-7665

Facsimile: (203) 873-5300

*Signature Page to Air Products Credit Agreement*

**CO-SYNDICATION AGENTS**

BNP PARIBAS,  
individually and as Co-Syndication Agent

BY /S/ CHRISTOPHER SKED

NAME: CHRISTOPHER SKED  
TITLE: DIRECTOR

BY /S/ NICOLE MITCHELL

NAME: NICOLE MITCHELL  
TITLE: VICE PRESIDENT

HSBC BANK USA, N.A.,  
individually and as Co-Syndication Agent

BY /S/ DAVID A. MANDELL

NAME: DAVID A. MANDELL  
TITLE: MANAGING DIRECTOR

*Signature Page to Air Products Credit Agreement*

Name of Lender:

DEUTSCHE BANK AG,  
New York Branch

BY /S/ OLIVER SCHWARZ

NAME: OLIVER SCHWARZ  
TITLE: DIRECTOR

BY /S/ STEFAN FRECKMANN

NAME: STEFAN FRECKMANN  
TITLE: VICE PRESIDENT



Name of Lender:

SUMITOMO MITSUI BANKING  
CORPORATION

BY /S/ YASUHIKO IMAI

NAME: YASUHIKO IMAI  
TITLE: GROUP HEAD

Name of Lender:

BARCLAYS BANK PLC

BY /S/ NICHOLAS BELL

NAME: NICHOLAS BELL

TITLE: DIRECTOR

Name of Lender:

INTESA SANPAOLO S.p.A

BY /S/ ROBERT WURSTER

NAME: ROBERT WURSTER  
TITLE: SENIOR VICE PRESIDENT

BY /S/ FRANCO DI MARIO

NAME: FRANCO DI MARIO  
TITLE: FIRST VICE PRESIDENT & CREDIT  
MANAGER

SIGNATURE PAGE TO THE  
AIR PRODUCTS AND CHEMICALS, INC.  
CREDIT AGREEMENT DATED  
AS OF THE DATE FIRST WRITTEN ABOVE

Name of Lender:

THE BANK OF TOKYO-MITSUBISHI UFJ, LTD.

BY /S/ ALAN REITER

NAME: ALAN REITER  
TITLE: AUTHORIZED SIGNATORY

SIGNATURE PAGE TO THE  
AIR PRODUCTS AND CHEMICALS, INC.  
CREDIT AGREEMENT DATED  
AS OF THE DATE FIRST WRITTEN ABOVE

Name of Lender

JPMORGAN CHASE BANK, N.A.

BY /S/ MICHAEL DEFORGE

NAME: MICHAEL DEFORGE  
TITLE: MANAGING DIRECTOR

Name of Lender:

UBS LOAN FINANCE LLC

BY /S/ MARY E. EVANS

NAME: MARY E. EVANS  
TITLE: ASSOCIATE DIRECTOR

BY /S/ MICHAEL CERNIGILA

NAME: MICHAEL CERNIGILA  
TITLE: DIRECTOR

SIGNATURE PAGE TO THE  
AIR PRODUCTS AND CHEMICALS, INC.  
CREDIT AGREEMENT DATED  
AS OF THE DATE FIRST WRITTEN ABOVE

Name of Lender:

MIZUHO CORPORATE BANK, LTD.

BY /S/ RAYMOND VENTURA

NAME: RAYMOND VENTURA

TITLE: DEPUTY GENERAL MANAGER

Name of Lender:

MORGAN STANLEY BANK, N.A.

BY /S/ SHERRESE CLARKE

NAME: SHERRESE CLARKE  
TITLE: AUTHORIZED SIGNATORY



SIGNATURE PAGE TO THE  
AIR PRODUCTS AND CHEMICALS, INC.  
CREDIT AGREEMENT DATED  
AS OF THE DATE FIRST WRITTEN ABOVE

Name of Lender:

BANCO SANTANDER S.A., New York Branch

BY /S/ JORGE SAAVEDRA

NAME: JORGE SAAVEDRA  
TITLE: EXECUTIVE DIRECTOR

BY /S/ JESUS LOPEZ

NAME: JESUS LOPEZ  
TITLE: SENIOR VICE PRESIDENT

SIGNATURE PAGE TO THE  
AIR PRODUCTS AND CHEMICALS, INC.  
CREDIT AGREEMENT DATED  
AS OF THE DATE FIRST WRITTEN ABOVE

Name of Lender:

WELLS FARGO BANK, NATIONAL ASSOCIATION

BY /S/ MICHAEL J. GIGLER

NAME: MICHAEL J. GIGLER

TITLE: SENIOR VICE PRESIDENT

SIGNATURE PAGE TO THE  
AIR PRODUCTS AND CHEMICALS, INC.  
CREDIT AGREEMENT DATED  
AS OF THE DATE FIRST WRITTEN ABOVE

Name of Lender:

THE BANK OF NOVA SCOTIA

BY /S/ TODD S. MELLER

NAME: TODD S. MELLER  
TITLE: MANAGING DIRECTOR

SCHEDULE I

PRICING SCHEDULE

“Applicable Amount” means any percentage per annum set forth below opposite the Public Debt Ratings in effect at the time:

<u>Public Debt Ratings</u>	<u>Market Rate Spread</u>		<u>Commitment</u>
	<u>Minimum</u>	<u>Maximum</u>	<u>Fee</u>
A+ or A1	0.375%	1.250%	0.125%
A or A2	0.500%	1.500%	0.150%
A- or A3	0.750%	1.750%	0.200%
BBB+ or Baa1	1.000%	2.000%	0.250%
Other	1.250%	2.500%	0.300%

For purposes of the foregoing, (a) if the Public Debt Ratings established or deemed to have been established by Standard & Poor’s Ratings Services, a division of The McGraw-Hill Companies, Inc. (“S&P”), and Moody’s Investors Service, Inc. (“Moody’s”) shall be changed (other than as a result of a change in the rating system of S&P or Moody’s), such change shall be effective as of the date on which it is first announced by the applicable rating agency; (b) if the Public Debt Ratings established or deemed to have been established by S&P and Moody’s shall fall within different levels, the Applicable Amount shall be based on the higher of the two ratings unless one of the two ratings is two or more levels lower than the other, in which case the Applicable Amount shall be determined by reference to the level next below that of the higher of the two ratings; and (c) if either S&P or Moody’s shall not have in effect a Public Debt Rating (other than by reason of the circumstances referred to in the last sentence of this paragraph), then such rating agency shall be deemed to have established a rating below BBB+/Baa1. Each change in the Applicable Amount shall apply during the period commencing on the effective date of such change and ending on the date immediately preceding the effective date of the next such change. If the rating system of S&P or Moody’s shall change, the Parent and the Lenders shall negotiate in good faith to amend this paragraph to reflect such changed rating system and, pending the effectiveness of any such amendment, the Applicable Amount shall be determined by reference to the rating most recently in effect prior to such change.

“Public Debt Rating” means, as of any date, the rating that has been most recently announced by either S&P or Moody’s, as the case may be, for any class of non-credit enhanced long-term senior unsecured debt issued by the Parent.

SCHEDULE II

INITIAL OTHER BORROWERS

None.

SCHEDULE III

CONNECTICUT OFFICE

The Royal Bank of Scotland plc  
Agency Team, North America  
600 Washington Boulevard  
Stamford, CT 06901  
Attn: Juan Zuniga, Head of Loans  
Email: Juan.Zuniga@rbs.com  
Telephone: (203) 897-7665  
Facsimile: (203) 873-5300\*

\* or such other address and/or contact information as may be designated by the Administrative Agent with respect to any Designated Currency. In case of any such designation, the times specified in this Agreement shall, where relevant, be adjusted to the appropriate local times.

## SCHEDULE IV

REVOLVING CREDIT COMMITTED AMOUNTS

The Royal Bank of Scotland plc	\$ 185,000,000
BNP Paribas	\$ 185,000,000
HSBC Bank USA, N.A.	\$ 185,000,000
The Bank of Tokyo-Mitsubishi UFJ, Ltd., New York Branch	\$ 170,000,000
Barclays Bank PLC	\$ 170,000,000
Deutsche Bank AG, New York Branch	\$ 170,000,000
JPMorgan Chase Bank N.A.	\$ 170,000,000
Intesa SanPaolo S.p.A. New York Branch	\$ 170,000,000
The Bank of Nova Scotia	\$ 85,000,000
Sumitomo Mitsui Banking Corporation	\$ 85,000,000
Mizuho Corporate Bank, Ltd.	\$ 85,000,000
Banco Santander, SA, New York Branch	\$ 85,000,000
UBS Loan Finance LLC	\$ 85,000,000
Wells Fargo Bank, N.A.	\$ 85,000,000
Morgan Stanley Bank, N.A.	\$ 85,000,000
<b>TOTAL</b>	<b>\$2,000,000,000</b>

SCHEDULE V

MANDATORY COSTS RATE FORMULA

1. Amounts payable by reference to the Mandatory Costs Rate are additions to the interest rate to compensate Lenders for the cost of compliance with (a) the requirements of the Bank of England and/or the Financial Services Authority (or, in either case, any other authority which replaces all or any of its functions) or (b) the requirements of the European Central Bank.
2. The Mandatory Costs Rate for any Lender lending from a lending office in a participating member state of the European Community relating to Economic and Monetary Union (other than the United Kingdom) that has adopted the Euro as its lawful currency will be the percentage reasonably determined by such Lender to be the cost (expressed as a percentage of that Lender's participation in all Revolving Credit Loans made from such office) of complying with the minimum reserve requirements of the European Central Bank in respect of loans made from such office.
3. The Mandatory Costs Rate for any Lender lending from a lending office in the United Kingdom will be calculated by such Lender as follows:

(a) in relation to a sterling Loan:

$$\frac{AB + C(B - D) + E \times 0.01}{100 - (A + C)} \quad \text{percent per annum}$$

(b) in relation to a Loan in any currency other than sterling:

$$\frac{E \times 0.01}{300} \quad \text{percent per annum.}$$

Where:

A is the percentage of Eligible Liabilities (assuming these to be in excess of any stated minimum) which such Lender is from time to time required to maintain as an interest free cash ratio deposit with the Bank of England to comply with cash ratio requirements.

B is the percentage rate of interest (excluding the Applicable Margin and the Mandatory Costs Rate and, if applicable, the additional rate of interest specified in Section 4.05(b) (*Default interest*)) payable for the relevant Funding Segment on the applicable Loan.

C is the percentage (if any) of Eligible Liabilities which such Lender is required from time to time to maintain as interest bearing Special Deposits with the Bank of England.



D is the percentage rate per annum payable by the Bank of England to such Lender on interest bearing Special Deposits.

E is designed to compensate Lenders for amounts payable under the Fees Rules and is calculated by the applicable Lender as being the rate of charge payable by such Lender to the Financial Services Authority pursuant to the Fees Rules in respect of the relevant financial year of the Financial Services Authority (calculated for this purpose by such Lender as being the average of the Fee Tariffs applicable to such Lender for that financial year) and expressed in pounds per £1,000,000 of the Tariff Base of such Lender.

4. For the purposes of this Schedule:
  - (a) “**Eligible Liabilities**” and “**Special Deposits**” have the meanings given to them from time to time under or pursuant to the Bank of England Act 1998 or (as may be appropriate) by the Bank of England;
  - (b) “**Fees Rules**” means the rules on periodic fees contained in the FSA Supervision Manual or such other law or regulation as may be in force from time to time in respect of the payment of fees for the acceptance of deposits;
  - (c) “**Fee Tariffs**” means the fee tariffs specified in the Fees Rules under the activity group A.1 Deposit acceptors (ignoring any minimum fee or zero rated fee required pursuant to the Fees Rules but taking into account any applicable discount rate); and
  - (d) “**Tariff Base**” has the meaning given to it in, and will be calculated in accordance with, the Fees Rules.
5. In application of the above formulae, A, B, C and D will be included in the formulae as percentages (i.e. 5 percent will be included in the formula as 5 and not as 0.05). A negative result obtained by subtracting D from B shall be taken as zero. The resulting figures shall be rounded to four decimal places.
6. The Administrative Agent may from time to time, after consultation with the Parent and the Lenders, determine and notify to all parties to the Agreement any amendments which are required to be made to this Schedule in order to comply with any change in law, regulation or any requirements from time to time imposed by the Bank of England, the Financial Services Authority or the European Central Bank (or, in any case, any other authority which replaces all or any of its functions) and any such determination shall, in the absence of manifest error, be conclusive and binding on all parties to the Agreement.

[Form of Revolving Credit Note]

Stamford, Connecticut  
\_\_\_\_\_, 2010

FOR VALUE RECEIVED, the undersigned, *[NAME OF PARENT or ADDITIONAL OTHER BORROWER]* [a \_\_\_\_\_ corporation] (the "Borrower"), promises to pay to the order of *[NAME OF LENDER]* (the "Lender") on or before the Revolving Credit Maturity Date, and at such earlier dates as may be required by the Agreement (as defined below), the aggregate unpaid principal amount of all Revolving Credit Loans made by the Lender to the Borrower from time to time pursuant to the Agreement. The Borrower further promises to pay to the order of the Lender interest on the unpaid principal amount of such Revolving Credit Loans from time to time outstanding at the rate or rates per annum determined pursuant to the Agreement, payable on the dates set forth in the Agreement.

This Note is one of the "Revolving Credit Notes" as referred to in, and is entitled to the benefits of, the Revolving Credit Agreement, dated as of July 8, 2010, by and among Air Products and Chemicals, Inc., the Other Borrowers parties thereto from time to time, the Lenders parties thereto from time to time and The Royal Bank of Scotland plc, as Administrative Agent (as the same may be amended, restated, modified or supplemented from time to time, the "Agreement"), which among other things provides for the acceleration of the maturity hereof upon the occurrence of certain events and for prepayments in certain circumstances and upon certain terms and conditions. Terms defined in the Agreement have the same meanings herein.

The Borrower hereby expressly waives presentment, demand, notice, protest and all other demands and notices in connection with the delivery, acceptance, performance, default or enforcement of this Note and the Agreement (other than notice of acceleration as required by Section 9.02 of the Agreement).

This Note shall be governed by, construed and enforced in accordance with the laws of the State of New York, without regard to principles of choice of law.

*[NAME OF BORROWER]*

By \_\_\_\_\_  
Title: \_\_\_\_\_

[Form of Competitive Bid Note]

Stamford, Connecticut  
\_\_\_\_\_, 2010

FOR VALUE RECEIVED, the undersigned, [*NAME OF PARENT or ADDITIONAL OTHER BORROWER*], [a \_\_\_\_\_ corporation] (the "Borrower"), promises to pay to the order of [*NAME OF LENDER*] (the "Lender") on or before the applicable Competitive Bid Loan Maturity Date, and at such earlier dates as may be required by the Agreement (as defined below), the aggregate unpaid principal amount of each Competitive Bid Loan made by the Lender to the Borrower from time to time pursuant to the Agreement. The Borrower further promises to pay to the order of the Lender interest on the unpaid principal amount of such Competitive Bid Loans from time to time outstanding at the rate or rates per annum determined pursuant to the Agreement, payable on the dates set forth in the Agreement.

This Note is one of the "Competitive Bid Notes" as referred to in, and is entitled to the benefits of, the Revolving Credit Agreement, dated as of July 8, 2010, by and among Air Products and Chemicals, Inc., the Other Borrowers parties thereto from time to time, the Lenders parties thereto from time to time and The Royal Bank of Scotland plc, as Administrative Agent (as the same may be amended, restated, modified or supplemented from time to time, the "Agreement"), which among other things provides for the acceleration of the maturity hereof upon the occurrence of certain events and for prepayments in certain circumstances and upon certain terms and conditions. Terms defined in the Agreement have the same meanings herein.

The Borrower hereby expressly waives presentment, demand, notice, protest and all other demands and notices in connection with the delivery, acceptance, performance, default or enforcement of this Note and the Agreement (other than notice of acceleration as required by Section 9.02 of the Agreement.)

This Note shall be governed by, construed and enforced in accordance with the laws of the State of New York, without regard to principles of choice of law.

[*NAME OF BORROWER*]

By \_\_\_\_\_  
Title: \_\_\_\_\_

[Form of Competitive Bid Loan Quote Request]

\_\_\_\_\_, 20\_\_

To: The Royal Bank of Scotland plc,  
as Administrative Agent  
From: Air Products and Chemicals, Inc.  
Re: Competitive Bid Loan Quote Request

Pursuant to Section 3.02(a) of the Revolving Credit Agreement dated as of July 8, 2010, by and among Air Products and Chemicals, Inc., the Other Borrowers parties thereto from time to time, the Lenders parties thereto from time to time and The Royal Bank of Scotland plc, as Administrative Agent (as the same may from time to time be amended, restated, modified or supplemented, the "Agreement"), we hereby give notice that we request Competitive Bid Loan Quotes for the following proposed Competitive Bid Borrowing(s):

<u>Borrowing Date</u>	<u>Borrower</u>	<u>Principal Amount</u> <sup>1</sup>	<u>Type</u> <sup>2</sup>	<u>Interest Period</u> <sup>3</sup>	<u>Currency</u>
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Terms used herein have the meanings assigned to them in the Agreement.

AIR PRODUCTS AND CHEMICALS, INC.

By: \_\_\_\_\_  
Title: \_\_\_\_\_

<sup>1</sup> Each amount must be a Dollar Equivalent Amount of \$5,000,000 or a higher integral multiple of \$1,000,000.

<sup>2</sup> Insert either "LIBOR-based Margin" (in the case of LIBOR-based Loans) or "Absolute Rate" (in the case of Absolute Rate Loans).

<sup>3</sup> Each Interest Period must be not less than seven days.

[Form of Competitive Bid Loan Quote]

\_\_\_\_\_, 20\_\_

The Royal Bank of Scotland plc,  
as Administrative Agent  
600 Washington Boulevard  
Stamford, CT 06901

Attention: \_\_\_\_\_

Re: Competitive Bid Loan Quote to Air Products and Chemicals, Inc. (the "Parent")

This Competitive Bid Loan Quote is given in accordance with Section 3.02(c) of the Revolving Credit Agreement dated as of July 8, 2010, by and among the Parent, the Other Borrowers parties thereto from time to time, the Lenders parties thereto from time to time and The Royal Bank of Scotland plc, as Administrative Agent (as the same may from time to time be amended, restated, modified or supplemented, the "Agreement"). Terms defined in the Agreement are used herein as defined therein.

In response to the Parent's Competitive Bid Loan Quote Request dated \_\_\_\_\_, 20\_\_, we hereby make the following Competitive Bid Loan Quote(s) on the following terms:

1. Quoting Bank:
2. Person to contact at Quoting Bank:
3. we hereby offer to make Competitive Bid Loan(s) in the following principal amounts, for the following Interest Periods and at the following rates:

Borrowing  
Date<sup>1</sup>

Borrower

Principal  
Amount<sup>2</sup>

Type<sup>3</sup>

Interest  
Period<sup>4</sup>

Rate<sup>5</sup>

Currency

We understand and agree that the offer(s) set forth above, subject to the satisfaction of the applicable conditions set forth in the Agreement, irrevocably obligate(s) us to make the Competitive Bid Loan(s) for which any offer(s) [is] [are] accepted, in whole or in part (subject to Section 3.02(f) of the Agreement).

Very truly yours,

[LENDER]

By: \_\_\_\_\_  
Authorized Officer

<sup>1</sup> As specified in the related Competitive Bid Loan Quote Request.

<sup>2</sup> The principal amount bid for each Interest Period may not exceed the principal amount of Competitive Bid Loans requested. Bids must be made for a Dollar Equivalent Amount of at least \$5,000,000 or a higher integral multiple of \$1,000,000.

<sup>3</sup> Indicate "LIBOR-based Margin" (in the case of LIBOR-based Loans) or "Absolute Rate" (in the case of Absolute Rate Loans).

<sup>4</sup> Must be not less than seven days, as specified in the related Competitive Bid Loan Quote Request.

<sup>5</sup> For a LIBOR-based Loan, specify margin over or under the LIBO-Rate determined for the applicable Interest Period (as percentage rounded to the nearest <sup>1</sup>/<sub>10,000</sub> of 1% and specify whether "PLUS" or "MINUS". For an Absolute Rate Loan, specify rate of interest per annum (rounded to the nearest <sup>1</sup>/<sub>10,000</sub> of 1%).

[Form of Assignment and Assumption Agreement]

This Assignment and Assumption (the "Assignment and Assumption") is dated as of the Effective Date set forth below and is entered into by and between [Insert name of Assignor] (the "Assignor") and [Insert name of Assignee] (the "Assignee"). Capitalized terms used but not defined herein shall have the meanings given to them in the Credit Agreement identified below (as amended, the "Credit Agreement"), receipt of a copy of which is hereby acknowledged by the Assignee. The Terms and Conditions set forth in Annex 1 attached hereto are hereby agreed to and incorporated herein by reference and made a part of this Assignment and Assumption as if set forth herein in full.

For an agreed consideration, the Assignor hereby irrevocably sells and assigns to the Assignee, and the Assignee hereby irrevocably purchases and assumes from the Assignor, subject to and in accordance with the Terms and Conditions and the Credit Agreement, as of the Effective Date inserted by the Administrative Agent as contemplated below (i) all of the Assignor's rights and obligations in its capacity as a Lender under the Credit Agreement and any other documents or instruments delivered pursuant thereto to the extent related to the amount and percentage interest identified below of all of such outstanding rights and obligations of the Assignor under the respective facilities identified below (including any letters of credit and guarantees included in such facilities) and (ii) to the extent permitted to be assigned under applicable law, all claims, suits, causes of action and any other right of the Assignor (in its capacity as a Lender) against any Person, whether known or unknown, arising under or in connection with the Credit Agreement, any other documents or instruments delivered pursuant thereto or the loan transactions governed thereby or in any way based on or related to any of the foregoing, including contract claims, tort claims, malpractice claims, statutory claims and all other claims at law or in equity related to the rights and obligations sold and assigned pursuant to clause (i) above (the rights and obligations sold and assigned pursuant to clauses (i) and (ii) above being referred to herein collectively as the "Assigned Interest"). Such sale and assignment is without recourse to the Assignor and, except as expressly provided in this Assignment and Assumption, without representation or warranty by the Assignor.

1. Assignor: \_\_\_\_\_
2. Assignee: \_\_\_\_\_ [and is an Affiliate/Approved Fund of [identify Lender]]<sup>1</sup>
3. Borrower(s): Air Products and Chemicals, Inc. [add any Other Borrowers]

<sup>1</sup> Select as applicable.

4. Administrative Agent: The Royal Bank of Scotland plc, as the administrative agent under the Credit Agreement.
5. Credit Agreement: The \$2,000,000,000 Revolving Credit Agreement dated as of July 8, 2010 among Air Products and Chemicals, Inc., the Other Borrowers parties thereto, the Lenders parties thereto and The Royal Bank of Scotland plc, as Administrative Agent.
6. Assigned Interest:

Aggregate Amount of Commitment/Loans for all Lenders	Amount of Commitment/Loans Assigned	Percentage of Commitment/Loans Assigned <sup>2</sup>
\$ _____	\$ _____	_____%
\$ _____	\$ _____	_____%
\$ _____	\$ _____	_____%

7. Trade Date: \_\_\_\_\_

Effective Date: \_\_\_\_\_, 20\_\_ [TO BE INSERTED BY ADMINISTRATIVE AGENT AND WHICH SHALL BE THE EFFECTIVE DATE OF RECORDATION OF TRANSFER BY THE ADMINISTRATIVE AGENT.]

The terms set forth in this Assignment and Assumption are hereby agreed to:

ASSIGNOR  
[NAME OF ASSIGNOR]

By: \_\_\_\_\_  
Title:

ASSIGNEE  
[NAME OF ASSIGNEE]

By: \_\_\_\_\_  
Title:

Consented to and Accepted:

THE ROYAL BANK OF SCOTLAND PLC, as Administrative Agent

By: \_\_\_\_\_  
Title:

<sup>2</sup> Set forth, to at least 9 decimals, as a percentage of the Commitment/Loans of all Lenders thereunder.



Consented to:

THE ROYAL BANK OF SCOTLAND PLC, as Issuer<sup>3</sup>

By: \_\_\_\_\_  
Title:

HSBC BANK USA, N.A., as Issuer<sup>3</sup>

By: \_\_\_\_\_  
Title:

BNP PARIBAS, as Issuer<sup>3</sup>

By: \_\_\_\_\_  
Title:

By: \_\_\_\_\_  
Title:

[AIR PRODUCTS AND CHEMICALS, INC.

By: \_\_\_\_\_  
Title:]<sup>4</sup>

<sup>3</sup> To be changed to the successor Issuer if such Issuer above is replaced pursuant to Section 2.10(h) of the Credit Agreement

<sup>4</sup> To be added only if the consent of the Parent is required by the terms of the Credit Agreement.

**ANNEX 1**  
**TERMS AND CONDITIONS FOR**  
**ASSIGNMENT AND ASSUMPTION**

1. Representations and Warranties.

1.1 Assignor. The Assignor (a) represents and warrants that (i) it is the legal and beneficial owner of the Assigned Interest, (ii) the Assigned Interest is free and clear of any lien, encumbrance or other adverse claim and (iii) it has full power and authority, and has taken all action necessary, to execute and deliver this Assignment and Assumption and to consummate the transactions contemplated hereby; and (b) assumes no responsibility with respect to (i) any statements, warranties or representations made in or in connection with the Credit Agreement or any other Loan Document, (ii) the execution, legality, validity, enforceability, genuineness, sufficiency or value of the Loan Documents or any collateral thereunder, (iii) the financial condition of the Parent, any of its Subsidiaries or Affiliates or any other Person obligated in respect of any Loan Document or (iv) the performance or observance by the Parent, any of its Subsidiaries or Affiliates or any other Person of any of their respective obligations under any Loan Document.

1.2. Assignee. The Assignee (a) represents and warrants that (i) it has full power and authority, and has taken all action necessary, to execute and deliver this Assignment and Assumption and to consummate the transactions contemplated hereby and to become a Lender under the Credit Agreement, (ii) it satisfies the requirements, if any, specified in the Credit Agreement that are required to be satisfied by it in order to acquire the Assigned Interest and become a Lender, (iii) from and after the Effective Date, it shall be bound by the provisions of the Credit Agreement as a Lender thereunder and, to the extent of the Assigned Interest, shall have the obligations of a Lender thereunder, (iv) it has received a copy of the Credit Agreement, together with copies of the most recent financial statements delivered pursuant to Section 7.01(c) thereof, as applicable, and such other documents and information as it has deemed appropriate to make its own credit analysis and decision to enter into this Assignment and Assumption and to purchase the Assigned Interest on the basis of which it has made such analysis and decision independently and without reliance on the Administrative Agent or any other Lender, (v) it is sophisticated with respect to decisions to acquire assets of the type represented by the Assigned Interest and either it, or the person exercising discretion in making its decision to acquire the Assigned Interest, is experienced in acquiring assets of such type, and (vi) if it is organized under the Laws of a jurisdiction outside the United States, attached to the Assignment and Assumption is any documentation required to be delivered by it pursuant to the terms of the Credit Agreement, duly completed and executed by the Assignee; and (b) agrees that (i) it will, independently and without reliance on the Administrative Agent, the Assignor or any other Lender, and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under the Loan Documents, and (ii) it will perform in accordance with their terms all of the obligations which by the terms of the Loan Documents are required to be performed by it as a Lender.

2. Payments. From and after the Effective Date, the Administrative Agent shall make all payments in respect of the Assigned Interest (including payments of principal, interest,

fees and other amounts) to the Assignor for amounts which have accrued to but excluding the Effective Date and to the Assignee for amounts which have accrued from and after the Effective Date.

3. General Provisions. This Assignment and Assumption shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors and assigns. This Assignment and Assumption may be executed in any number of counterparts, which together shall constitute one instrument. Delivery of an executed counterpart of a signature page of this Assignment and Assumption by telecopy shall be effective as delivery of a manually executed counterpart of this Assignment and Assumption. This Assignment and Assumption shall be governed by, and construed in accordance with, the law of the State of New York without regard to choice of law principles.

[Form of Borrower Accession Instrument]

TO: The Royal Bank of Scotland plc,  
as Administrative Agent

FROM: [Name of additional Other Borrower]  
Air Products and Chemicals, Inc.

DATE: \_\_\_\_\_

Reference is made to the Revolving Credit Agreement dated as of July 8, 2010 among Air Products and Chemicals, Inc., the Other Borrowers parties thereto from time to time, the Lenders parties thereto from time to time and The Royal Bank of Scotland plc, as Administrative Agent (as amended, restated, modified or supplemented from time to time, the "Credit Agreement").

[NAME OF ADDITIONAL OTHER BORROWER], a \_\_\_\_\_ corporation (the "Additional Other Borrower"), agrees to become an Other Borrower and to be bound by the terms of the Credit Agreement as an Other Borrower.

Attached to this Borrower Accession Instrument are the following documents:

- (a) A certificate dated the date hereof and signed by a Vice President of the Parent, together with an executed copy for each Lender, to the effect that each of the representations and warranties made by the Parent in Sections 5.03, 5.04, 5.05, 5.07 and 5.08 of the Credit Agreement with respect to the Additional Other Borrower is true and correct on and as of the date hereof as if made on and as of the date hereof;
- (b) Certified copies of all corporate action taken by the Additional Other Borrower to authorize the execution and delivery of this Borrower Accession Instrument, the Credit Agreement and the Notes;
- (c) Copies of the articles or certificate of incorporation of the Additional Other Borrower, together with all amendments, and a certificate of good standing, each certified by the appropriate governmental officer in its jurisdiction of incorporation, as well as any other information required by Section 326 of the USA PATRIOT ACT or necessary for the Administrative Agent or any Lender to verify the identity of the Additional Other Borrower as required by Section 326 of the USA PATRIOT Act; and
- (d) If requested, Notes duly executed by the Additional Other Borrower conforming to the requirements of Section 2.02 of the Credit Agreement.

This Borrower Accession Instrument shall be governed by, construed and enforced in accordance with the laws of the State of New York, without regard to choice of law principles.

[signature page follows]

IN WITNESS WHEREOF, the parties hereto, by their officers thereunto duly authorized, have executed and delivered this Borrower Accession Instrument as of the date first above written.

[NAME OF ADDITIONAL OTHER BORROWER]

By: \_\_\_\_\_

Title: \_\_\_\_\_

AIR PRODUCTS AND CHEMICALS, INC.

By: \_\_\_\_\_

Title: \_\_\_\_\_

ACCEPTED:

THE ROYAL BANK OF SCOTLAND PLC, as Administrative Agent

By: \_\_\_\_\_

Title: \_\_\_\_\_

[Form of Other Borrower Removal Notice]

TO: The Royal Bank of Scotland plc,  
as Administrative Agent

FROM: [Name of Other Borrower]  
Air Products and Chemicals, Inc.

Date: \_\_\_\_\_

Reference is made to the Revolving Credit Agreement dated as of July 8, 2010 among Air Products and Chemicals, Inc., the Other Borrowers parties thereto from time to time, the Lenders parties thereto from time to time and The Royal Bank of Scotland plc, as Administrative Agent (as amended, restated, modified or supplemented from time to time, the "Credit Agreement").

Notice is hereby given that:

(1) [NAME OF OTHER BORROWER], a \_\_\_\_\_ corporation, shall cease to be an Other Borrower under the Credit Agreement effective on [date]  
and

(2) all Obligations (as defined in the Credit Agreement) of [NAME OF OTHER BORROWER] shall be repaid in full on or before such effective date.

IN WITNESS WHEREOF, the undersigned, by their officers thereunto duly authorized, have executed and delivered this Other Borrower Removal Notice as of the date first above written.

[NAME OF OTHER BORROWER]

By: \_\_\_\_\_

Title: \_\_\_\_\_

AIR PRODUCTS AND CHEMICALS, INC.

By: \_\_\_\_\_

Title: \_\_\_\_\_

[Form of Amendment for an Increased or New Commitment]

This AMENDMENT is made as of the \_\_\_ day of \_\_\_\_\_, 20\_\_ by and among Air Products and Chemicals, Inc., a Delaware corporation, the other borrowers party to the Credit Agreement (as defined below) (collectively, the "Borrowers"), The Royal Bank of Scotland plc, as administrative agent under the Credit Agreement (the "Administrative Agent") and \_\_\_\_\_ (the "Supplemental Lender").

The Borrowers, the Administrative Agent and certain other Lenders, as described therein, are parties to the Revolving Credit Agreement dated as of July 8, 2010 (as amended, restated, modified or supplemented from time to time, the "Credit Agreement"). All terms used herein and not otherwise defined shall have the same meaning given to them in the Credit Agreement.

Pursuant to Section 2.09 of the Credit Agreement, the Borrowers may, at their option, seek to increase the Total Revolving Credit Commitment by obtaining additional Commitments upon satisfaction of certain conditions.

The Supplemental Lender is either (a) an existing Lender which is increasing its Commitment or (b) a new Lender which is a lending institution whose identity the Administrative Agent will approve by its signature below.

In consideration of the foregoing, such Supplemental Lender from and after the date hereof shall have a Revolving Credit Committed Amount of \$ \_\_\_\_\_ as of the date hereof, and if it is a new Lender, the Supplemental Lender hereby assumes all of the rights and obligations of a Lender under the Credit Agreement.

The Borrowers have executed and delivered to the Supplemental Lender as of the date hereof, if requested by the Supplemental Lender, new or amended and restated Notes in the form attached to the Credit Agreement as Exhibit A to evidence the new or increased Commitment of the Supplemental Lender.

[signature page follows]



IN WITNESS WHEREOF, the Administrative Agent, the Borrowers and the Supplemental Lender have executed this Amendment as of the date shown above.

AIR PRODUCTS AND CHEMICALS, INC.

By: \_\_\_\_\_  
Its: \_\_\_\_\_

[OTHER BORROWERS]

By: \_\_\_\_\_  
Its: \_\_\_\_\_

[SUPPLEMENTAL LENDER]

By: \_\_\_\_\_  
Its: \_\_\_\_\_

THE ROYAL BANK OF SCOTLAND PLC, as Administrative Agent

By: \_\_\_\_\_  
Its: \_\_\_\_\_

Consented to:

THE ROYAL BANK OF SCOTLAND PLC, as Issuer<sup>1</sup>

By: \_\_\_\_\_  
Title: \_\_\_\_\_

HSBC BANK USA, N.A., as Issuer<sup>1</sup>

By: \_\_\_\_\_  
Title: \_\_\_\_\_

<sup>1</sup> To be changed to the successor Issuer if such Issuer above is replaced pursuant to Section 2.10(h) of the Credit Agreement

By: \_\_\_\_\_  
Title:

By: \_\_\_\_\_  
Title:

[Form of Standard Notice]

**[FORM OF NOTICE OF BORROWING]<sup>2</sup>**

Pursuant to that certain Revolving Credit Agreement dated as of July 8, 2010 (as amended, amended and restated, supplemented or otherwise modified from time to time) (the "**Credit Agreement**"), by and among Air Products and Chemicals, Inc., the Other Borrowers parties thereto from time to time, the Lenders parties thereto from time to time and The Royal Bank of Scotland plc, as administrative agent (in such capacity, the "**Administrative Agent**"), this notice represents the request of [Borrower name] (the "**Borrower**") to borrow as follows. Capitalized terms used but not defined herein shall have the meanings given to them in the Credit Agreement.

1. Identity of Borrower:
2. Designated Currency of borrowing:
3. Date of borrowing: \_\_\_\_\_, 20\_\_
4. Interest rate Option(s) and principal amount(s) of borrowing:<sup>3</sup>  
[ ] a. Base Rate Portion \$\_\_\_\_\_

<sup>2</sup> Form of Notice of Borrowing to be used for borrowings made pursuant to Section 2.03 of the Credit Agreement.

<sup>3</sup> In the case of borrowings denominated in Dollars, the principal amount of borrowing shall be an integral multiple of \$1,000,000 and not less than \$5,000,000. In the case of borrowings denominated in a Designated Currency, the principal amount of borrowing shall have an aggregate Dollar Equivalent Amount not less than \$5,000,000 and shall be an integral multiple of the amount determined by the Administrative Agent from time to time to be the basic unit in which such currency is traded in the eurocurrency market; provided that in the case of borrowings made to refinance the reimbursement of an LC Disbursement as contemplated by Section 2.10(d) of the Credit Agreement, such borrowings may be in the amount of such LC Disbursement.

[ ] b. Funding Segment of Euro-Rate Portion \$\_\_\_\_\_ with a Funding Period of \_\_ month(s)

5. Type of Loans: Revolving Credit Loan

[The proceeds of such Loans are to be deposited in the Borrower's account at the Administrative Agent.]

The undersigned officer (to the best of his or her knowledge and in his or her capacity as an officer, and not individually) and the Borrower certify that as of the date of the borrowing requested hereby:

- (i) No Event of Default and no Potential Event of Default has occurred and is continuing on and as such date, both immediately before and immediately after giving effect to the borrowing requested hereby; and
- (ii) Each of the representations and warranties contained in Sections 5.03, 5.04, 5.05 and 5.07 of the Credit Agreement are true and correct in all material respects on and as of such date, both immediately before and immediately after giving effect to the borrowing requested hereby.

DATED: \_\_\_\_\_, 20\_\_

**[BORROWER NAME]**

By: \_\_\_\_\_

Title: \_\_\_\_\_

[FORM OF NOTICE OF CONVERSION/CONTINUATION]<sup>1</sup>

Pursuant to that certain Revolving Credit Agreement dated as of July 8, 2010 (as amended, amended and restated, supplemented or otherwise modified from time to time) (the “**Credit Agreement**”), by and among Air Products and Chemicals, Inc., the Other Borrowers parties thereto from time to time, the Lenders parties thereto from time to time and The Royal Bank of Scotland plc, as administrative agent (in such capacity, the “**Administrative Agent**”), this represents the request of [Borrower name] (the “**Borrower**”) to convert or continue Loans as follows. Capitalized terms used but not defined herein shall have the meanings given to them in the Credit Agreement.

1. Date of conversion/continuation: \_\_\_\_\_, 20\_\_
2. Interest rate Option(s) and principal amount(s) of Loans being converted/continued:<sup>2</sup>
  - [ ] a. Base Rate Portion \$\_\_\_\_\_
  - [ ] b. Funding Segment of Euro-Rate Portion \$\_\_\_\_\_ with a Funding Period of \_\_ month(s)
3. Type of Loans being converted/continued: Revolving Credit Loans
4. Nature of conversion/continuation:
  - [ ] a. Conversion of Base Rate Portion to Euro-Rate Loans with a new Funding Period of \_\_ month(s) that commences on the conversion date.

<sup>1</sup> Form of Notice of Conversion/Continuation to be used for conversion or continuation of any interest rate Option made pursuant to Section 2.06 of the Credit Agreement.

<sup>2</sup> In the case of Loans denominated in Dollars, the amount to be converted or continued shall be an integral multiple of \$1,000,000 and not less than \$5,000,000. In the case of Loans denominated in a Designated Currency, the amount to be converted or continued shall have an aggregate Dollar Equivalent Amount not less than \$5,000,000 and shall be an integral multiple of the amount determined by the Administrative Agent from time to time to be the basic unit in which such currency is traded in the eurocurrency market.

b. Conversion of Funding Segment of Euro-Rate Portion to Base Rate Loans<sup>3</sup>

c. Continuation of Funding Segment of Euro-Rate Portion with a new Funding Period of \_\_\_ month(s).<sup>4</sup>

If this notice (a) converts or continues the Euro-Rate Option with respect to any Revolving Credit Loans denominated in Dollars, (b) converts any Revolving Credit Loans to any Designated Currency other than Dollars or (c) selects a Funding Period longer than one month with respect to Revolving Credit Loans denominated in a currency other than Dollars, then the Borrower represents that no Event of Default has occurred and is continuing.

DATED: \_\_\_\_\_, 20\_\_

**[BORROWER NAME]**

By: \_\_\_\_\_

Title: \_\_\_\_\_

<sup>3</sup> \_\_\_\_\_  
Conversions from Euro-Rate Option will take place at the expiration of the respective Funding Period.

<sup>4</sup> \_\_\_\_\_  
Continuations of Euro-Rate Option will take place at the expiration of the respective Funding Period.

**AIR PRODUCTS AND CHEMICALS, INC., AND SUBSIDIARIES**  
**COMPUTATION OF RATIOS OF EARNINGS TO FIXED CHARGES**  
(Unaudited)

(Millions of dollars)	Year Ended 30 September				
	2010	2009	2008	2007	2006
<b>Earnings:</b>					
Income from continuing operations <sup>(1)</sup>	\$1,054.5	\$651.3	\$1,113.5	\$1,040.4	\$ 753.0
<b>Add (deduct):</b>					
Provision for income taxes	354.9	196.2	381.7	289.0	271.9
Fixed charges, excluding capitalized interest	147.9	149.2	188.8	190.9	146.7
Capitalized interest amortized during the period	8.7	7.7	6.6	6.4	6.5
Undistributed earnings of less-than-fifty-percent-owned affiliates	(29.2)	(44.2)	(72.7)	(61.2)	(29.2)
Earnings, as adjusted	<u>\$1,536.8</u>	<u>\$960.2</u>	<u>\$1,617.9</u>	<u>\$1,465.5</u>	<u>\$1,148.9</u>
<b>Fixed Charges:</b>					
Interest on indebtedness, including capital lease obligations	\$ 121.8	\$125.1	\$ 164.4	\$ 163.7	\$ 119.8
Capitalized interest	14.5	22.2	27.3	14.6	18.8
Amortization of debt discount premium and expense	5.6	4.7	4.0	4.1	4.8
Portion of rents under operating leases representative of the interest factor	20.5	19.4	20.4	23.1	22.1
Fixed charges	<u>\$ 162.4</u>	<u>\$171.4</u>	<u>\$ 216.1</u>	<u>\$ 205.5</u>	<u>\$ 165.5</u>
<b>Ratio of Earnings to Fixed Charges <sup>(2)</sup>:</b>	<u>9.5</u>	<u>5.6</u>	<u>7.5</u>	<u>7.1</u>	<u>6.9</u>

<sup>(1)</sup> During the twelve months ended 30 September 2009, income from continuing operations included a charge of \$298.2 (\$200.3 after-tax) for the global cost reduction plan.

<sup>(2)</sup> The ratio of earnings to fixed charges is determined by dividing earnings, which includes income from continuing operations before taxes, undistributed earnings of less-than-fifty-percent-owned affiliates, and fixed charges, by fixed charges. Fixed charges consist of interest on all indebtedness plus that portion of operating lease rentals representative of the interest factor (deemed to be 21% of operating lease rentals).

**Subsidiaries of Air Products and Chemicals, Inc.**

The following is a list of the Company's consolidating subsidiaries, as of 30 September 2010, except for certain subsidiaries of the Registrant which do not in the aggregate constitute a significant subsidiary as that term is defined in Rule 12b-2 under the Securities Exchange Act of 1934. This list does not include equity affiliate investments and cost investments.

**UNITED STATES**

All companies are incorporated in the State of Delaware unless otherwise indicated.

Registrant — Air Products and Chemicals, Inc.  
 APMTG Helium LLC  
 Air Products (Rozenburg), Inc.  
 Air Products Asia, Inc.  
 Air Products Caribbean Holdings, Inc.  
 Air Products China, Inc.  
 Air Products Distribution, Inc.  
 Air Products Electronics, LLC  
 Air Products Energy Enterprises, L.P.  
 Air Products Energy Holdings, Inc.  
 Air Products Europe, Inc.  
 Air Products Helium, Inc.  
 Air Products Hydrogen Company, Inc.  
 Air Products International Corporation  
 Air Products LLC  
 Air Products Manufacturing Corporation  
 Air Products Performance Manufacturing, Inc.  
 Air Products Trinidad Services, Inc.  
 APCI (U.K.), Inc.  
 Electron Transfer Technologies, Inc. (New Jersey)  
 Goar, Allison and Associates, Inc. (Texas)  
 Middletown Oxygen Company, Inc.  
 Prodair Corporation  
 Pure Air Holdings Corp.  
 Pure Air on the Lake (I), Inc.  
 Pure Air on the Lake (IV), Inc.  
 Pure Air on the Lake, Limited Partnership  
 SCWC Corp.  
 Stockton CoGen (I), Inc.

**ARGENTINA**

Terapias Medicas Domiciliarias, S.A.

**AUSTRIA**

Air Products Gesellschaft mbH

**BELGIUM**

Air Products S.A.  
 Air Products Management S.A.  
 Napro S.A.  
 Medigaz, S.A.

**BERMUDA**

Asia Industrial Gas Company Ltd.

**BRAZIL**

Air Products Brasil Ltda.

**CANADA**

Air Products Canada Ltd./Prodair Canada Ltee



## CHINA

Air Products and Chemicals (Beijing) Distribution Co., Ltd.  
Air Products and Chemicals (Changxing) Co., Ltd.  
Air Products and Chemicals (Changzhou) Co., Ltd.  
Air Products and Chemicals (Chengdu) Co., Ltd.  
Air Products and Chemicals (Chongqing) Co., Ltd.  
Air Products and Chemicals (China) Investment Co. Ltd.  
Air Products and Chemicals (Dalian) Co., Ltd.  
Air Products and Chemicals (Fujian) Co., Ltd.  
Air Products and Chemicals (Guangzhou) Co., Ltd.  
Air Products and Chemicals (Fuzhou) Co., Ltd.  
Air Products and Chemicals (Nanjing) Co., Ltd.  
Air Products and Chemicals (Putian) Co., Ltd.  
Air Products and Chemicals (Shanghai) Co. Ltd.  
Air Products and Chemicals (Tangshan) Co., Ltd.  
Air Products and Chemicals (Tianjin) Co., Ltd.  
Air Products and Chemicals (Zhuhai) Co., Ltd.  
Air Products and Chemicals (Zibo) Co., Ltd.  
Air Products (Kunshan) Gases Co., Ltd.  
Air Products and Chemicals (Nanjing) Gases Co., Ltd.  
Air Products and Chemicals (Shenzhen) Gases Co., Ltd.  
Air Products and Chemicals (Zhengzhou) Hi-Tech Co., Ltd.  
Air Products and Chemicals (Nanjing) Specialty Amines Co., Ltd.  
Air Products and Chemicals (Shaanxi) Co., Ltd.  
Air Products and Chemicals (Shanghai) Electronics Gases Co., Ltd.  
Air Products and Chemicals (Shanghai) Gases Co., Ltd.  
Air Products and Chemicals (Shanghai) On-Site Gases Co., Ltd.  
Air Products and Chemicals (Shanghai) Systems Co. Ltd.  
Air Products and Chemicals (Shenzhen) Co., Ltd.  
Air Products and Chemicals (Tongxiang) Co., Ltd.  
Air Products and Chemicals (Xingtai) Co., Ltd.  
Air Products and Chemicals (Zhangjiagang) Co., Ltd.  
Air Products (Changsha) Co., Ltd.  
Air Products (Hong Kong) Co., Ltd.  
Air Products Huadong (Longkou) Co., Ltd.  
Air Products (Jiangxi) Co., Ltd.  
Air Products (Ningbo) Hi-Tech Gases Co., Ltd.  
Air Products (Shenyang) Gases Co., Ltd.  
Beijing AP BAIF Gas Industry Co., Ltd.  
CNOOC Air Products and Chemicals (Fujian) Co., Ltd.  
Permea China, Ltd.

## CZECH REPUBLIC

Air Products spol s.r.o.

## FRANCE

Air Products SAS  
Henno Oxygene S.A.S.  
Hold'Air SAS  
Prodair et Cie S.C.S.  
Prodair S.A.S.  
Saga SAS  
Union Mobiliere Industrielle S.A.R.L.

## GERMANY

Air Products GmbH  
Air Products Medical GmbH  
Air Products Performance Materials GmbH  
S. I. Q. Beteiligungs GmbH

## INDIA

Prodair Air Products India Private Limited

**INDONESIA**

PT Air Products Indonesia

**IRELAND**

Air Products Ireland Limited

**ITALY**

Air Products Italia S.r.l.

**JAPAN**

Air Products Japan, Inc.

**KOREA**

Air Products ACT Korea Limited  
Air Products Electronics Materials Inc.  
Air Products Korea Inc.  
Air Products HYT Inc.  
Air Products Korea Electronics, Inc.  
Shinil Cryogenic Materials, Ltd.

**MALAYSIA**

Air Products Malaysia Sdn Bhd  
Air Products Shared Services Sdn. Bhd  
Air Products Specialized Process Equipment SDN

**MEXICO**

Air Products and Chemicals de Mexico, S.A. de C.V.

**THE NETHERLANDS**

Air Products Chemicals Europe B.V.  
Air Products Holdings B.V.  
Air Products Investments B.V.  
Air Products Leasing B.V.  
Air Products Nederland B.V.  
Air Products Utilities B.V.

**NIGERIA**

Prodair Escravos Limited

**NORWAY**

Air Products A/S

**PERU**

Air Products Peru S.A.C.

**POLAND**

Air Products Polska Sp. z o.o.  
Air Products Sp. z.o.o.  
Roboprojekt Sp. z.o.o

**PORTUGAL**

Gasin - Gases Industriais, S.A.R.L.

**ROMANIA**

Air Products Hidrogen S.R.L.

**RUSSIA**

Air Products O.O.O.

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**SINGAPORE**

Air Products and Chemicals (S) Pte. Ltd.  
Air Products Singapore Pte. Ltd.

**SLOVAKIA**

Air Products Slovakia s.r.o.

**SPAIN**

Air Products Iberica, S.L.  
Air Products Investments Espana, S.L.  
Air Products Services Europe, S.A.  
Air Products Sud Europa, S.L.  
Matgas 2000 A.I.E.  
Oxigenol, S.A.  
Oxygeno y Carbogenos, S.A.  
Sociedad Espanola de Carburos Metalicos S.A.

**SWITZERLAND**

Air Products Switzerland Sàrl

**TAIWAN**

Air Products San Fu Co., Ltd.  
Air Products Taiwan Holdings, LLC

**THAILAND**

Air Products Asia (Technology Center) Ltd.

**UNITED KINGDOM**

Air Products (BR) Limited  
Air Products (Chemicals) Public Limited Company  
Air Products (GB) Limited  
Air Products Group Limited  
Air Products PLC  
Air Products Yanbu Limited  
Anchor Chemical (UK) Limited  
Anchor Chemical International Limited  
Cryoservice Limited  
Prodair Services Limited  
Protexeon Limited  
Air Products (Chemicals) Teesside Limited

**Consent of Independent Registered Public Accounting Firm**

The Board of Directors  
Air Products and Chemicals, Inc.:

We consent to the incorporation by reference in the registration statements (Nos. 333-56292, 333-81358, 333-100210, 333-103809, 333-113882, 333-123477, 333-132599, 333-141336, 333-141337, 333-141338, 333-149813, 333-158101, 333-158102 and 333-165563) on Form S-8 and registration statement (No. 333-155725) on Form S-3 of Air Products and Chemicals, Inc. of our report dated 23 November 2010, with respect to the consolidated balance sheets of Air Products and Chemicals, Inc. and Subsidiaries as of 30 September 2010 and 2009, and the related consolidated income statements and consolidated statements of equity and cash flows for each of the years in the three-year period ended 30 September 2010, the effectiveness of internal control over financial reporting as of 30 September 2010, and the related financial statement schedule which report appears in the 30 September 2010 Annual Report on Form 10-K of Air Products and Chemicals, Inc.

/s/ KPMG LLP  
Philadelphia, Pennsylvania

23 November 2010

**POWER OF ATTORNEY**

KNOW ALL MEN BY THESE PRESENTS, that each person whose signature appears below constitutes and appoints JOHN E. MCGLADE or PAUL E. HUCK or MARY T. AFFLERBACH, acting severally, his/her true and lawful attorney-in-fact and agent, with full power of substitution and resubstitution, for him/her and in his/her name, place and stead, in any and all capacities, to sign the Form 10-K Annual Report for the fiscal year ended 30 September 2010 and all amendments thereto and to file the same, with all exhibits thereto and other documents in connection therewith, with the Securities and Exchange Commission, granting unto said attorney-in-fact and agent full power and authority to do and perform each and every act and thing requisite and necessary to be done in and about the premises, as fully to all intents and purposes as he/she might or could do in person, hereby ratifying and confirming all that said attorney-in-fact and agent, or substitute or substitutes, may lawfully do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities and Exchange Act of 1934, this Power of Attorney has been signed below by the following persons in the capacities and on the dates indicated.

Signature	Title	Date
<hr/> /s/ Mario L. Baeza Mario L. Baeza	Director	18 November 2010
<hr/> /s/ William L. Davis, III William L. Davis, III	Director	18 November 2010
<hr/> /s/ Chad C. Deaton Chad C. Deaton	Director	18 November 2010
<hr/> /s/ Michael J. Donahue Michael J. Donahue	Director	18 November 2010
<hr/> /s/ Ursula O. Fairbairn Ursula O. Fairbairn	Director	18 November 2010
<hr/> /s/ W. Douglas Ford W. Douglas Ford	Director	18 November 2010
<hr/> /s/ Edward E. Hagenlocker Edward E. Hagenlocker	Director	18 November 2010

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/s/ Evert Henkes

Evert Henkes

Director

18 November 2010

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/s/ John E. McGlade

John E. McGlade

Director and Chairman

18 November 2010

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/s/ Margaret G. McGlynn

Margaret G. McGlynn

Director

18 November 2010

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/s/ Lawrence S. Smith

Lawrence S. Smith

Director

18 November 2010

**PRINCIPAL EXECUTIVE OFFICER'S CERTIFICATION**

I, John E. McGlade, certify that:

1. I have reviewed this Annual Report on Form 10-K of Air Products and Chemicals, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: 23 November 2010

/s/ John E. McGlade

John E. McGlade  
Chairman, President, and  
Chief Executive Officer

**PRINCIPAL FINANCIAL OFFICER'S CERTIFICATION**

I, Paul E. Huck, certify that:

1. I have reviewed this Annual Report on Form 10-K of Air Products and Chemicals, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: 23 November 2010

/s/ Paul E. Huck

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Paul E. Huck  
Senior Vice President  
and Chief Financial Officer



CERTIFICATION PURSUANT TO 18 U.S.C. SECTION 1350,  
AS ADOPTED PURSUANT TO SECTION 906 OF THE  
SARBANES-OXLEY ACT OF 2002

In connection with the Annual Report on Form 10-K of Air Products and Chemicals, Inc. (the "Company") for the year ending 30 September 2010, as filed with the Securities and Exchange Commission on the date hereof (the "Report"), we, John E. McGlade, Chairman, President, and Chief Executive Officer of the Company, and Paul E. Huck, Senior Vice President and Chief Financial Officer of the Company, certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that:

1. The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
2. The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Dated: 23 November 2010

/s/ John E. McGlade

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John E. McGlade  
Chairman, President, and  
Chief Executive Officer

/s/ Paul E. Huck

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Paul E. Huck  
Senior Vice President  
and Chief Financial Officer

November 23, 2010

Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549

RE: Air Products and Chemicals, Inc. (the "Company")  
Annual Report on Form 10-K—File No. 1-4534

Ladies and Gentlemen:

Filed herewith, on behalf of Air Products and Chemicals, Inc., is the Company's Annual Report on Form 10-K for the fiscal year ended September 30, 2010.

The Company adopted new authoritative accounting guidance during fiscal year 2010, the impacts of which are discussed in Note 2 of the financial statements. Other than this new authoritative accounting guidance, no material changes in accounting principles or practices or the methods of applying such principles or practices have been made from the preceding year.

Sincerely,

Mary T. Afflerbach  
Corporate Secretary and  
Chief Governance Officer

Enclosure