

## PAYMENT IN LIEU OF TAX AGREEMENT

THIS PAYMENT IN LIEU OF TAX AGREEMENT (this "Agreement") is entered into as of this 22<sup>nd</sup> day of December, 2015 ("Effective Date") by and between FOXMAN LLC, a Delaware limited liability company ("Company"), and THE INDUSTRIAL DEVELOPMENT BOARD OF THE COUNTY OF MONTGOMERY, TENNESSEE, a public, not-for-profit corporation organized under the laws of the State of Tennessee (the "Board").

In consideration of the premises set forth in Section 1 of this Agreement, the mutual covenants set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. Preliminary Statements. Among the matters of mutual inducement which have resulted in the execution of this Agreement are the following:

(a) The Board is authorized by the laws of the State of Tennessee, specifically, inter alia, Tennessee Code Annotated Section 7-53-305, being a provision of the Tennessee Industrial Development Corporations Act (the "Act"), to (i) acquire title to real and personal property; (ii) enter into leases to others with respect to such real and personal property; (iii) issue its industrial development revenue bonds or notes to finance a portion of the costs of acquisition of such real and personal property; and (iv) negotiate and accept payments in lieu of ad valorem taxes from lessees with respect to such real and personal property.

(b) Pursuant to such authority, the Board has heretofore (i) acquired title to the land located in Montgomery County, Tennessee more particularly described on Exhibit A-1 (the "Complete Tract"); (ii) leased the Complete Tract to HSCPC, L.L.C. ("HSCPC") pursuant to that certain Ground Lease Agreement dated as of January 30, 2009 (the "Existing Ground Lease"); (iii) leased a facility constructed on the Complete Tract (the "Existing Facility") to Hemlock Semiconductor, L.L.C. ("Hemlock") pursuant to that certain Facility Lease Agreement dated as of January 30, 2009 (the "Existing Facility Lease"); (iv) issued to HSCPC its Industrial Development Revenue Note, Series A (HSCPC Project) in the principal amount not exceeding \$155,000,000 (the "Existing Series A Note") to finance the acquisition of the Complete Tract; (v) issued to Hemlock its Industrial Development Revenue Note, Series C (Hemlock Project) in the principal amount not exceeding \$700,000,000 (the "Existing Series C Note") to finance the construction and acquisition of the Existing Facility, (vi) acquired title to certain personal property used in connection with the facility subject to the Existing Ground Lease and the Existing Facility Lease; (vii) leased such personal property to Hemlock pursuant to that certain Equipment Lease Agreement dated as of January 30, 2009 (the "Existing Equipment Lease"); and (viii) issued to Hemlock its Industrial Development Revenue Note, Series B (Hemlock Project) in the principal amount not exceeding \$3,800,000,000 (the Existing Series B Note and, with the Existing Series A Note and the Existing Series C Note, the "Existing IDB Notes") to finance the acquisition of such equipment)).

(c) Pursuant to such authority and in order to induce the Company to purchase and acquire from HSCPC and Hemlock their entire interest in the portion of the Complete Tract more particularly described on Exhibit A-2 (the "Initial Tract") and other real and personal property subject to the Existing Ground Lease and the Existing Facility Lease located on the Initial Tract and their interest in certain of the personal property subject to the Existing Equipment Lease and to construct, equip and operate the Initial Facility (as hereinafter defined), the Board, HSCPC and Hemlock have agreed to terminate the Existing Ground Lease, the Existing Facility Lease, the Existing Equipment Lease, and the Existing IDB Notes, and the Board has agreed to (i) enter into a Real Estate Lease Agreement with the

Company (or an affiliate of the Company designated by the Company) (the "New Real Estate Lease") with respect to the Initial Tract and real property currently subject to the Existing Ground Lease and the Existing Facility Lease located on the Initial Tract; (ii) issue to the Company (or to an affiliate of the Company designated by the Company) its Industrial Development Note, Series 2015A (Foxman LLC Project) in the aggregate principal amount specified by the Company (the "New Series A Note") to improve the Initial Tract and finance the construction and acquisition of the Initial Facility and Additional Facility; (iii) acquire from time to time the Equipment (as hereinafter defined) and lease such equipment to the Company pursuant to an Equipment Lease Agreement (the "New Equipment Lease"); (iv) issue to the Company (or to an affiliate of the Company designated by the Company) its Industrial Development Note, Series 2015B (Foxman LLC Project) in the aggregate amount specified by the Company (the "New Series B Note") and, with the New Series A Note, the "New IDB Notes") to finance the acquisition of the Equipment; and (v) enter into this Agreement.

(d) Pursuant to Resolution No. 88-9-9, as amended (the "Resolution"), the Board of County Commissioners of Montgomery County, Tennessee (the "County") has delegated to the Board the authority to negotiate and accept payments in lieu of ad valorem taxes from lessees such as the Company; and

(e) The Board is an instrumentality of the County and is performing a public purpose on its behalf; and

(f) The Board has found, based upon information and factors deemed relevant by it, that the Board's agreement to accept payments in lieu of taxes from the Company with respect to the Project will be in furtherance of the Board's public purposes of maintaining and increasing employment opportunities (as set forth in Tenn. Code Ann. § 7-53-102) and other public purposes of the Board set forth in the Act and described in the Resolution; and

(g) The Board hereby acknowledges that the execution and delivery of this Agreement has been and is an essential and material inducement to the Company in its determination to acquire and operate the Project in the County.

2. Definitions. In addition to the terms defined in the first paragraph of this Agreement and in Section 1, the terms set forth below will have the following meanings for purposes of this Agreement:

(a) "Abatement Year" means (i) with respect to the Land and the Initial Facility, each full calendar year after the earlier of (a) the year in which the Commencement of Operations Date occurs and (b) the third anniversary of the Effective Date; (ii) with respect to any Additional Facility, each full calendar year following the year in which such Additional Facility becomes fully operational; and (iii) with respect to each Equipment Tranche, each full calendar year following the year in which the Board obtains title to the Equipment included in such Equipment Tranche. Anything elsewhere in this Agreement to the contrary notwithstanding, no calendar year after 2038 will be an Abatement Year.

(b) "Additional Facility" means any newly-constructed building and other new real property improvements to be constructed on the Land or any significant expansion of the Initial Facility or any other Additional Facility and including any replacement of the Initial Facility or any Additional Facility. For these purposes, a significant expansion shall mean an expansion that increases the square footage of the Initial Facility or any Additional Facility by more than 10% or entails expenditures in excess of \$20,000,000 (Twenty Million).

(c) "Airgas" means Airgas Merchant Gases, LLC, a Delaware limited liability company and its successors and assigns.

(d) "Airgas Purchase" means the Company's purchase of the interest of Airgas and/or Hemlock in the Airgas Tract pursuant to the Airgas ROFO or otherwise.

(e) "Airgas Tract" means the Complete Tract, less the Initial Tract.

(f) "Airgas ROFO" means the Company's right of first opportunity to acquire the interest of Hemlock or Airgas in the Airgas Tract under that certain Utility Services Agreement dated as of December 22, 2015, among Hemlock, Airgas Merchant Gases, LLC and the Company.

(g) "Commencement of Operations Date" means the date designated by the Company in a written notice delivered to the Board after which the Initial Facility has become fully operational.

(h) "Direct-hire Target" means 34 direct-hire employees working a minimum of thirty-seven and one half (37 1/2) hours per week.

(i) "Employment Target" means seventy (70) FTEs at the Project.

(j) "Equipment" means the equipment and other personal property acquired by the Board from time to time in connection with the Project and leased to the Company under the New Equipment Lease, including equipment and other personal property acquired in replacement or addition to such previously acquired equipment and personal property.

(k) "Equipment Tranche" means all Equipment acquired by the Board for lease to the Company pursuant to the New Equipment Lease in a particular calendar year.

(l) "FTEs" means full-time equivalent employees, including direct-hire employees, contract, leased, or temporary workers, and part-time employees. Any contract, leased or temporary workers will be counted on the same basis as direct-hire employees, and part-time employees will be counted based on the fraction equal to the number of hours per week divided by forty (40). The number of FTEs shall be calculated as of December 31 of each Abatement Year.

(m) "IDB/Hemlock Airgas Lease" means that certain Amended and Restated Ground Lease Agreement of even date herewith between the Board and Hemlock providing for the lease by the Board to Hemlock of the Airgas Tract.

(n) "Initial Facility" means the first operational building or buildings and other real property improvements to be constructed on the Initial Tract for use in connection with the Company's information technology operations, including any demolition and reconstruction or other re-use of the Existing Facility and including replacements thereof and improvements thereto (other than any Additional Facility), including, without limitation, after the Airgas Purchase, any real property improvements located on the Airgas Tract.

(o) "Investment Target" means Project Expenditures of \$600,000,000.00.

(p) "Land" means (i) prior to the Airgas Purchase, the Initial Tract, and (ii) after the Airgas Purchase, the Complete Tract.

(q) "PILOTs" has the meaning ascribed thereto in Section 4.

(r) "Project" means the Land, the Initial Facility, any Additional Facility and each Equipment Tranche.

(s) "Project Expenditures" means capital expenditures made by or on behalf of the Company with respect to the acquisition, construction and equipping of the Project, including, without limitation, all amounts paid to or for the benefit of Hemlock or HSCPC in connection with the acquisition of their interests in the Existing Ground Lease, the Existing Facility Lease and the Existing Project.

(t) "Real Property" means the Land, the Initial Facility and any Additional Facility.

(u) "Standard County Tax" means, with respect to any portion of the Project, the amount of ad valorem tax that the Company would be required to pay to the County with respect to the Project if the Company owned such property rather than the Board.

3. Nature of the PILOTs. The PILOTs provided for herein shall be paid by the Company in lieu of all ad valorem taxes, both on real and personal property, whether presently in effect or hereafter imposed on any portion of the Project or any component thereof (including, without limitation, any tax on the real property, enhancements, additions, expansions, improvements, buildings, equipment, replacement equipment, and any other tangible real or personal property from time to time subject to the Lease) during the term of this Agreement, by or on behalf of the County, any school district located within the County, or any subdivision or instrumentality of any of them or any of their respective successors. The PILOTs will relate to the Project in its scope and configuration as of the effective date of the Lease, and to all replacements, expansions, additions, enhancements and improvements subjected to the Lease during the term thereof, including, without limitation, the Complete Tract and any related real property, following the Airgas Purchase. The Board will cooperate with the Company to allow the Company to obtain any applicable investment tax or other credits available under federal and state tax laws.

4. Amount of PILOTs.

(a) Subject to the provisions of Sections 4(d) through (g), and Section 5 below, the Company agrees to make payments in lieu of all ad valorem taxes (the "PILOTs") to the County in an amount equal to the sum of the separate amounts determined by reference to the following chart for each of the Land, the Initial Facility, each Additional Facility and each Equipment Tranche:



Applicable Year	Standard County Tax multiplied by:		
	With respect to the Initial Facility and any Additional Facility:	With respect to each Equipment Tranche:	With respect to Land
Prior to Abatement Year 1	0%	0%	0%
Abatement Year 1	0%	0%	0%
Abatement Year 2	0%	0%	0%
Abatement Year 3	0%	0%	0%
Abatement Year 4	0%	0%	0%
Abatement Year 5	50%	20%	0%
Abatement Year 6	50%	20%	0%
Abatement Year 7	50%	20%	0%
Abatement Year 8	50%	20%	0%
Abatement Year 9	50%	20%	0%
Abatement Year 10	60%	20%	0%
Abatement Year 11	60%	20%	0%
Abatement Year 12	60%	20%	0%
Abatement Year 13	70%	20%	0%
Abatement Year 14	70%	20%	0%
Abatement Year 15	80%	20%	0%
Abatement Year 16	80%	20%	0%
Abatement Year 17	80%	20%	0%
Abatement Year 18	90%	20%	0%
Abatement Year 19	90%	20%	0%
Abatement Year 20 and thereafter	100%	100%	100%

(b) [Intentionally omitted.]

(c) In furtherance of the agreements in this Section 4, the Company and the Board agree that the Board, in cooperation with the Company, shall cause the Land, the Initial Facility, each Additional Facility and the Equipment to be valued and assessed separately by the assessor or other official or officials charged with the responsibility of assessing privately owned commercial property in the area where the Project is located at the time such privately owned property is valued or assessed. The Company, in cooperation with the Board, shall cause to be applied to the appropriate taxable value of the Land, the Initial Facility, each Additional Facility and the Equipment the tax rate or rates that would be applicable for state and local tax purposes if such property were then privately owned, and shall cause the county trustee or other official or officials charged with the responsibility of collecting taxes to submit annually to the Company a statement of the taxes which would otherwise then be chargeable to each of the Land, the Initial Facility, each Additional Facility and the Equipment as permitted under applicable law.

(d) The amount of any PILOTs with respect to the Land, the Initial Facility, each Additional Facility and the Equipment shall be prorated on a daily basis for any year in which this Agreement is in effect (or otherwise applicable) for less than the entire year with respect to each such portion of the Project. The parties acknowledge that under present law there is no occasion to prorate the Standard County Tax as it relates to Equipment, but in the event of a change in law or the interpretation thereof such that proration would be applicable to Equipment, the amount of PILOTs for the Equipment shall be prorated in the same manner as PILOTs for the Real Property as permitted under applicable law.

(e) Any disputes with respect to the determination of the amount of the PILOTs to be made hereunder for a given year shall be resolved in accordance with the procedures for resolving disputes regarding property taxes then in effect as though the Company were the holder of the legal title to the Project and the Project were subject to taxation. It is specifically understood and agreed that the Company and the Board shall have recourse to the State Board of Equalization with respect to any determination of the amount of the PILOTs to be made hereunder and/or the Company or the Board may file a declaratory judgment action or other action in the Chancery Court of Montgomery County, Tennessee, or in other courts of competent jurisdiction in Montgomery County, Tennessee, with respect to such matters or other matters arising under this Agreement. The parties acknowledge and agree that the preceding sentence is subject to the jurisdictional limitations of the State Board of Equalization and the Chancery Court and other courts sitting in Montgomery County, Tennessee, and that this Agreement does not obligate such Board or any such court to accept jurisdiction over matters as to which it has no lawful jurisdiction. The Company agrees to provide a copy of any such written determination from the State Board of Equalization to the Montgomery County Office of Accounts and Budget.

(f) In the event that the leasehold interest of the Company in the Project or any part thereof is subject to ad valorem taxation, the amount of such tax shall be a credit against the PILOTs due from the Company with respect to the year for which such tax is payable and, to the extent that the amount of tax exceeds the PILOTs for such Abatement Year, shall be carried forward in future Abatement Years. The Board agrees to cooperate with the Company to minimize the likelihood that any such tax on the leasehold interest of the Company will be imposed, which cooperation will include increasing the principal amount of the New IDB Notes and the payments to be made with respect thereto at the request of the Company in connection with the undertaking of any Additional Facility or the acquisition of additional Equipment.

(g) In the event the Company makes a public announcement prior to the occurrence of the Commencement of Operations Date that it will not develop the Initial Facility, the Company agrees to make PILOTs to the County in an amount equal to 100% of the Standard County Tax for the Land and any improvements for the period beginning with the date of such announcement.

5. Additional Adjustments to PILOTs.

(a) The PILOTs are subject to adjustment as set forth in clauses (b) and (c) below. The Investment Target will represent one half of the weighted value in determining any adjustment, and the Employment Target will represent the remaining one half of the weighted value in determining any adjustment, all as set forth and in accordance with clauses (b) and (c) below.

(b) If, as of the end of each Abatement Year beginning with and following the Abatement Year 5 with respect to the Land and the Initial Facility, the Company has not made aggregate Project Expenditures in an amount equal to or greater than the Investment Target, then:

(i) the PILOTs payable with respect to each such Abatement Year will be calculated by increasing the percentages (but in no case to above 100%) for each such Abatement Year in the chart in Section 4(a) by a number of percentage points equal to 50% of the product of (x) one minus each percentage shown in the chart for such Abatement Year, multiplied by (y) a fraction equal to (A) the difference between the Investment Target and the amount of cumulative Project Expenditures made as of the end of such year, divided by (B) the Investment Target; and

(ii) each of the PILOTs for Abatement Years 5, 6, 7, 8, and 9 with respect to the Land and the Initial Facility (but not for any subsequent Abatement Years), shall be increased by an amount equal to one-fifth of the difference between (x) the sum of the PILOTs that would have been payable by the Company hereunder prior to the Abatement Year 5 with respect to the Land and the Initial Facility if the percentages shown in the chart in Section 4(a) were increased as described in Section 5(b)(i) above and (y) the sum of the PILOTs previously paid with respect to such years.

(c) If, as of the end of each Abatement Year beginning with and following the Abatement Year 5 with respect to the Land and the Initial Facility, the Company has not achieved or maintained both the Direct-hire target and 70% or more of the Employment Target, then:

(i) the PILOTs payable with respect to each such Abatement Year will be calculated by increasing the percentages (but in no case to above 100%) for each such Abatement Year in the chart in Section 4(a) by a number of percentage points equal to 50% of greater of i) the product of (x) one minus each percentage shown in the chart for such Abatement Year, multiplied by (y) a fraction equal to (A) the difference between the Direct-hire Target and the number of direct-hire employees at the Project as of the end of such Abatement Year, divided by (B) the Direct-hire Target; or ii) the product of (z) one minus each percentage shown in the chart for such Abatement Year, multiplied by (w) a fraction equal to (A) the difference between the Employment Target and the number of FTEs at the Project as of the end of such Abatement Year, divided by (B) the Employment Target (provided, however, that the amount determined in this subsection ii) shall be deemed to be zero if the Company has achieved 70% of the Employment Target for the relevant period); and

(ii) each of the PILOTs for Abatement Years 5, 6, 7, 8, and 9 with respect to the Land and the Initial Facility (but not for any subsequent Abatement Years), shall be increased by an amount equal to one-fifth of the difference between (x) the sum of the PILOTs that would have been payable by the Company hereunder prior to the Abatement Year 5 with respect to the Land and the Initial Facility if the percentages shown in the chart in Section 4(a) were increased as described in 5(c)(i) above and (y) the sum of the PILOTs previously paid with respect to such years.

(d) No later than February 28th, of each year commencing with February 28th following the Abatement Year 5 with respect to the Land and the Initial Facility through and including the year in which the Company has made Project Expenditures in an amount equal to or greater than the Investment Target, the Company shall file with the Board and Montgomery County Office of Accounts and Budget, written notice of the amount of Project Expenditures that have been made by the Company through the end of the prior year. No later than February 28th, of each year commencing with February 28th following the year in which the fifth anniversary of the Commencement of Operations Date occurs, the Company shall file with the Board written notice of the number of FTEs and direct-hire employees as of the end of such year.

(e) Set forth on Exhibit C for illustrative purposes only are examples of the manner in which the adjustments under this Section 5 will apply. Nothing in the examples on Exhibit C is intended to change any of the provisions of this Section 5.

6. Term. This Agreement shall become effective and its term shall begin as of the date hereof and shall expire upon the earlier to occur of either (a) the Company or its assignee taking legal title to the Project by the exercise of its purchase options under the New Real Estate Lease and the New Equipment Lease or (b) the New Real Estate Lease and the New Equipment Lease otherwise having expired and not been renewed or replaced.

7. Application of PILOTs. All PILOTs due hereunder with respect to any calendar year or portion thereof shall be paid to the Montgomery County Office of Accounts and Budget on or before February 28 of the following calendar year.

8. Representations and Warranties.

(a) The Company hereby represents and warrants that (i) it is a limited liability company duly organized and validly existing under the laws of Delaware and has all requisite power and authority to enter into this Agreement, (ii) this Agreement and the transactions contemplated hereby have been duly and validly authorized by all necessary action on the part of the Company, and (iii) this Agreement constitutes the valid and binding obligation of the Company, enforceable against the Company in accordance with the terms hereof.

(b) The Board hereby represents and warrants that (i) it is a public, not-for-profit corporation organized under the laws of the State of Tennessee, and has all requisite corporate power and authority to enter into this Agreement, (ii) this Agreement and the transactions contemplated hereby have been duly and validly authorized by all necessary corporate, governmental or other action on its part, and (iii) this Agreement constitutes the valid and binding obligation of the Board, enforceable against the Board in accordance with the terms hereof.

9. Further Acts; Enforceability. To the extent permissible by law, the parties hereto agree to take such actions, adopt such resolutions and enter into such further agreements as may be necessary, or reasonably requested by any party to this Agreement, to effect the intent of this Agreement. The parties recognize and acknowledge that it is their intention that the provisions of this Agreement shall be enforced to the fullest extent permissible under the laws and public policies of the State of Tennessee, but that the unenforceability (or the modification to conform with such laws or public policies) of any provisions hereof shall not render unenforceable or impair the remainder of this Agreement. Accordingly, if any provision of this Agreement shall be determined to be invalid or unenforceable, either in whole or in part, this Agreement shall be deemed amended to delete or modify, as necessary, the offending

provisions and to alter the balance of this Agreement in order to render the same valid and enforceable to the fullest extent permissible as aforesaid.

10. Assignment and Use. The Company, at its election, may, assign its interest in this Agreement or the benefits hereunder, in whole or in part, to any affiliate of the Company, its successor and assigns or to any entity to which it assigns the New Real Estate Lease or the New Equipment Lease or sublets any portion of the Project. Additionally, the parties agree that any entity that leases, subleases or otherwise holds an interest in any portion of the Project, including as a mortgagee of the Board's or the Company's interest in the Project, shall be a third party beneficiary of this Agreement.

11. Operation of Project. The parties acknowledge and agree that by entering into this Agreement, the Company is not agreeing to continuously operate the Project during the Term and that the Company may discontinue operations at the Project at any time. Notwithstanding the foregoing, the Company acknowledges that the amount of the annual PILOTs that it or its successors or assigns shall be required to make with respect to a given year is subject to the provisions of Section 5 hereof.

12. No Obligation to Develop Project. The Board acknowledges and agrees that the Company's decision to acquire, construct or equip any portion of the Project shall be based on the Company's sole discretion. Notwithstanding the foregoing, the Company acknowledges that the amount of the annual PILOTs that it or its successors or assigns shall be required to make with respect to a given year is subject to the provisions of Section 5 hereof.

13. Economic Development Agreement Report. The Company shall within ten days of the date hereof cause a copy of this Agreement to be filed with the County Executive of the County and with the Comptroller of the Treasury, together with the cost-benefit analysis attached hereto as Exhibit B, as required by Tennessee Code Annotated Section 7-53-305(b).

14. Annual Reports. The Company shall on or before October 1 of each year submit to the State Board of Equalization the annual report required by T.C.A. Section 7-53-305(e)(1) and shall on or before October 15 of each year file such report with the Tax Assessor of the County as required by T.C.A. Section 7-53-305(e)(2).

15. Confidentiality; Non-disclosure.

(a) Trade Secret Protection. Both parties to this Agreement acknowledge and agree that the Company has advised the Board, and that the Board understands and agrees, that any and all information contained in this Agreement, and/or any related agreement, exhibit, schedule or other writing in whatsoever way related to the Project, including, without limitation, the number of employees projected to be hired or actually hired to operate the Project, capital investment by the Company in the Project, the relative proportion of real versus personal property invested (or any subcomponents thereof), and the assessed value of either real or personal property as a component of the total assessed value of the Project, are, will be and were submitted in confidence voluntarily by the Company to the Board, are competitively sensitive in nature and as such are, and shall be, to the maximum extent provided by law, considered to be "trade secrets" ("Trade Secrets") under the Uniform Trade Secrets Act, Tennessee Code Annotated Sections 47-25-1701 et seq. (the "Trade Secrets Act") and exempt by statute from disclosure by the Board under any public records or similar law, including, without limitation, the provisions of Title 10, Chapter 7 of Tennessee Code Annotated (the "Public Records Act"), in that all such information referenced herein is commercially valuable to the Company and constitute a design, plan, formula, process or device used for the making, preparing or processing of valuable proprietary products resulting from regular and ongoing innovation by the Company. Without limiting the foregoing, both parties agree



that the items contained in reports provided pursuant to Section 5(d) have been identified by the Company as its Trade Secrets and, therefore, such reports shall not be released to a third party under any circumstances without the prior written approval of the Company except pursuant to a valid and enforceable order of a court of competent jurisdiction, the issuance of which the Board agrees to use its best efforts legally permissible in order to assist the Company in opposing. The Board understands and agrees that the Trade Secrets Act shall be liberally construed in favor of non-disclosure of any Trade Secret by the Board to the maximum extent allowed under Tennessee law. The Board further understands and agrees that the Public Records Act shall likewise be construed in favor of non-disclosure of any Trade Secret by the Board to the maximum extent allowed under Tennessee law.

Without limiting the foregoing portions of this Section 15, the Board further understands and agrees that in addition to being a Trade Secret, any and all information contained in this Agreement, or any related agreement, exhibit, schedule or other writing, contain and are comprised of proprietary commercial or financial information obtained directly from the Company, which are privileged or confidential in nature, the disclosure of which would be detrimental to the ability of the Company to compete and maintain its place in the industry and as such are further exempt from disclosure under the Public Records Act. Furthermore, the disclosure of this information would be detrimental to the Board, and to the best interest of the public, in efforts to negotiate agreements regarding future economic development projects. For these reasons, the information contained in this Agreement, or any related agreement, exhibit, schedule or other writing, has been provided and exchanged with the express expectation that it will be maintained by the Board in a confidential manner.

Accordingly, each Party hereto agrees to treat, and to cause its respective officers, directors, employees and agents to treat, as strictly confidential and to limit, to the fullest extent permitted by law, any release of information related to or pertaining to this Agreement or any related agreement, exhibit, schedule, or other writing, its or their terms, and the Parties hereto or thereto. Furthermore, the Board agrees that it shall not attach a copy of this Agreement to any public notice or present this Agreement for review in any public forum or provide a copy or disclose the terms or conditions of this Agreement to any third party, except (i) as and when the same may be required by law or by the order of a court of competent jurisdiction (the Board agreeing to use its best efforts legally permissible in order to assist the Company in opposing the issuance of such an order), (ii) as may be necessary for the Board to perform its obligations under this Agreement, or (iii) as part of a press release or announcement issued as agreed upon by the Company and the Board in an advance writing, which agreement, the Company may, in its absolute and sole discretion, withhold. Before any disclosure is made by the Board pursuant to clauses (i), (ii) or (iii) above, the Board, as appropriate, shall provide reasonable advance written notice to the Company and the Company may, to the extent permitted by law, require any third party to which the disclosure will be made to enter into a confidentiality agreement (obligating the third party to keep the terms, conditions and existence of this Agreement confidential).

Specifically, and without limiting the foregoing, the Board shall provide to the Company, within forty-eight (48) hours of receipt of any public records request for documents relating to this Agreement or the Project, written notice of such public records request and shall indicate in such notice whether or not it intends to comply with such public records request. If the Board indicates that it does intend to provide any documents in response to such public records request, it shall (i) first give the Company thirty (30) days within which to seek a judicial injunction or restraining order before delivering such documents; (ii) delete or otherwise redact any Trade Secrets identified by the Company in written notice provided to the Board and shall do so with the assistance and/or consultation of the Company, and with the Company's pre-approval of the actual content to be disclosed, and (iii) provide to the Company a copy of any material subsequently disclosed to a third party.



(b) Disclosure of Information in Civil Actions. If the Board is named as a defendant in any civil action commenced to compel the production or disclosure of information related in any way to this Agreement or the Project at any time and (i) the Board is entitled or required by law to postpone the delivery or disclosure of such information, or (ii) the information sought in the action has been identified by the Company as a Trade Secret of the Company or otherwise privileged or confidential, with any such civil actions hereafter referred to as an "Action," the Board shall immediately notify the Company of the commencement of such Action. For purposes of clarity, to qualify as an Action hereunder, the complaint naming the Board as a defendant must include a request or demand for the Board to disclose information that has been identified by the Company as a Trade Secret or otherwise privileged or confidential or that the Board is otherwise prohibited from disclosing under Tennessee law.

The Company agrees to indemnify and hold the Board, its directors, officers and employees, harmless from and against any and all expenses or damages incurred by the Board arising from any Action filed in a court of competent jurisdiction. In the event of any such Action, the Board shall (i) at the cost of the Company, including reasonable attorney fees, vigorously defend the same in consultation with the Company and, upon Company's request, turn over the defense of such Claim to the Company, (ii) keep the Company informed of developments in such litigation and (iii) consult with the Company before taking any position or making any decision that might materially affect the Company's interests in such matter, so long as there is a reasonable basis in law and fact for defending such action. In determining whether there is a reasonable basis in law and fact for refusing to deliver any record in response to request therefor, the Board may rely conclusively on the advice of counsel. The Company, at its option and sole discretion, has the right, in lieu of providing indemnification, to choose counsel for the defense of such Action against the Board, and if the Company chooses to do so, the Company shall be directly responsible for paying the selected counsel's fees. The Company's indemnity obligation hereunder shall not apply in the event of any breach of confidentiality of the Board's obligations pursuant to Section 15(a).

(c) Identification of Documentation. Company shall mark or clearly stamp for identification all documents delivered to the Board, the Board's attorney, the Montgomery County Trustee, the Montgomery County Assessor of Property, or the Director of the Montgomery County Office of Accounts and Budgets, related to the Project or this Agreement deemed by Company to contain Trade Secrets, or to otherwise be treated as confidential, in order for such documents or information to be eligible for the protection set forth herein for Trade Secrets.

(d) Non-Disclosure Agreements. The provisions of this Section 15 are in addition to and not in lieu of the obligations of the Board under any non-disclosure agreements entered into by the Company or by any affiliate of the Company with the Board, its officers, employees or agents (the "Non-Disclosure Agreements"). The Board covenants, reaffirms and agrees that the terms of such Non-Disclosure Agreements remain in full force and effect during the term of this Agreement.

(e) Survivability and Applicability. The provisions of this Section 15 shall survive the termination or expiration of this Agreement and shall apply to any other agreement, exhibit, schedule or other writing related in any way to the Project exchanged or entered into by the parties to this Agreement.

16. Headings. The headings herein are for convenience of reference only and shall not be deemed to be part of the substance of this Agreement.

17. Governing Law. This Agreement shall be governed by, and construed in accordance with, the laws of the State of Tennessee.

18. Counterparts. This Agreement may be executed in two or more counterparts which together shall constitute a single instrument.

19. Entire Agreement; Amendment. This Agreement sets forth the entire agreement among the parties with respect to the subject matter hereof. This Agreement may be changed or supplemented only by a written agreement signed by all parties hereto.

20. Notices. All notices, certificates, demands, requests, consents, approvals and other similar instruments under this Agreement shall be in writing, and shall be deemed to have been properly given and received if sent by United States certified or registered mail, postage prepaid, when delivered at the address specified (a) if to the Company addressed to the Company, at c/o Corporation Services Company, 2711 Centerville Road, Suite 300, Wilmington, Delaware 19808, Attention: General Counsel, or at such other address as the Company from time to time may have designated by written notice to Board, with a copy to Bass, Berry & Sims PLC, 150 Third Avenue South, Suite 2800, Nashville, Tennessee 37201, Attention: Stephen J. Jasper; (b) if to the Board addressed to the Board at 25 Jefferson Street, Suite 300, Clarksville, Tennessee 37040, Attention: Chairman, or at such other address as the Board may have designated from time to time by written notice to the Company; and (c) if to the Montgomery County Office of Accounts and Budget at 1 Millennium Plaza, Suite 201, 199 2<sup>nd</sup> Street, Clarksville, Tennessee 37040, Attention: Director, or at such other address as the Board or the Montgomery County Office of Accounts and Budget may have designated from time to time by written notice to the Company.

21. Filing Controlling Documents. The Company shall provide a fully executed copy of the Facility Lease, Equipment Lease and this Agreement promptly to the Board, the Montgomery County Trustee, the Montgomery County Assessor of Property and the Office of Accounts and Budgets of Montgomery County, Tennessee.

22. Cooperation In Connection with Exercise of Airgas Purchase. Upon the consummation of the Airgas Purchase, the Board agrees to cooperate with the Company in taking all steps necessary to make the Airgas Tract and any related real property subject to this Agreement and to the New Real Estate Lease, including, without limitation, executing amendments to this Agreement and/or the New Real Estate Lease necessary to effect such addition.

*(signature page follows)*

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

FOXMAN LLC

By: 

Name: Todd Carpenter

Title: Manager

THE INDUSTRIAL DEVELOPMENT BOARD  
OF THE COUNTY OF MONTGOMERY,  
TENNESSEE

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

FOXMAN LLC

By: \_\_\_\_\_

Name: Todd Carpenter

Title: Manager

THE INDUSTRIAL DEVELOPMENT BOARD  
OF THE COUNTY OF MONTGOMERY,  
TENNESSEE

By: David W. Chesney

Name: David Chesney

Title: Chairman

RHB