

JOB RETENTION AND RECAPTURE AGREEMENT

THIS AGREEMENT, dated as of February 1, 2020 is made by and between **THE INDIUM CORPORATION OF AMERICA**, a New York corporation having an address of 34 Robinson Road, Clinton, New York 13323 (the "Company") and **ONEIDA COUNTY INDUSTRIAL DEVELOPMENT AGENCY**, an industrial development agency and a public benefit corporation of the State of New York having its principal office at 584 Phoenix Drive, Rome, New York 13441 (the "Agency").

WITNESSETH:

WHEREAS, Title 1 of Article 18 A of the General Municipal Law of the State of New York (the "Act") was duly enacted into law as Chapter 1030 of the Laws of 1969 of the State of New York (the "State"); and

WHEREAS, the Act authorizes the creation of industrial development agencies for the benefit of the several counties, cities, villages and towns in the State and empowers such agencies, among other things, to acquire, construct, reconstruct, lease, improve, maintain, equip and sell land and any building or other improvement, and all real and personal properties, including, but not limited to, machinery and equipment deemed necessary in connection therewith, whether or not now in existence or under construction, which shall be suitable for manufacturing, warehousing, research, commercial or industrial facilities, including industrial pollution control facilities, in order to advance job opportunities, health, general prosperity and the economic welfare of the people of the State and to improve their standard of living; and

WHEREAS, the Act further authorizes each such industrial development agency to lease any or all of its facilities at such rentals and on such other terms and conditions as it deems advisable, to issue its bonds for the purpose of carrying out any of its corporate purposes and, as security for the payment of the principal and redemption price of, and interest on, any such bonds so issued and any agreements made in connection therewith, to mortgage any or all of its facilities and to pledge the revenues and receipts from the leasing of its facilities; and

WHEREAS, the Company has requested that the Agency undertake a project (the "Project") consisting of the following: (A) (i) construct a 12-inch water main to run 2,500± linear feet along Robinson Road (the "Water Main"), (ii) construct a 250± lineal foot lateral water line (the "Lateral Line") to connect the Water Main to the Company's existing 74,000± square foot manufacturing facility that is used for manufacturing electronic grade solders and associated products (collectively, the "Existing Improvements" and together with the Water Main and the Lateral Line, the "Improvements") situated on a 5± acre parcel of land located at 34-36 Robinson Road, Town of Kirkland, New York (the "Land"), (iii) perform renovations, improvements and other site development work on or to the Existing Improvements and (iv) acquire and install furniture, fixtures and equipment in the Existing Improvements, including but not limited to computers and software (the "Kirkland Equipment"), all to bring municipal water to the Existing Improvements to allow for future expansion of the Facility and the Company's workforce, to provide a safer work environment at the Existing Improvements, to provide municipal water to other properties on Robinson Road allowing for expansion of business, and to convert the Existing Improvements from offices to manufacturing space (the Land, the Water

Main, the Lateral Line, the Existing Improvements and the Kirkland Equipment are referred to collectively as the "Kirkland Facility" and the construction of the Water Main and Lateral Line, the renovations to the Existing Improvements and the equipping of the Kirkland Facility is referred to as the "Kirkland Project"); and (B) acquire and install furniture, fixtures and equipment, including, but not limited to computers and software (the "New Hartford Equipment") in the Company's new leased 40,000± square foot office facility located at 301 Woods Park Drive, Town of New Hartford, Oneida County, New York (the "New Hartford Facility" and together with the Kirkland Facility, the "Facility"); and (B) the granting of certain "financial assistance" (within the meaning of Section 854(14) of the General Municipal Law) with respect to the foregoing, including potential exemptions from sales tax and abatement of real property tax (collectively, the "Financial Assistance"); and (C) the lease to the Company or such other person as may be designated by the Company and agreed upon by the Agency; and

WHEREAS, in order to provide such Financial Assistance to the Company under the Act, the Agency requires, among other things, that the Company and the Agency enter into certain lease/leaseback transactions and other associated agreements, including that certain Payment-in-Lieu-of-Tax Agreement between the Agency and the Company dated of even date herewith (the "PILOT Agreement") (collectively, the "Transaction Documents"), and

WHEREAS, the Agency has appointed the Company and its agents and designees as its agent for the purposes of acquiring the Land and constructing, renovating and equipping the Facility; and

WHEREAS, pursuant to a Lease Agreement dated of even date herewith between the Company as Lessor and the Agency as Lessee (the "Lease Agreement"), the Company has agreed to lease the Kirkland Facility to the Agency for a period commencing February 1, 2020 and ending December 31, 2030 (the "Lease Term") and to lease the New Hartford Equipment to the Agency for the period commencing February 1, 2020 and ending two years thereafter (January 31, 2022); and

WHEREAS, pursuant to the leaseback agreement dated of even date herewith (the "Leaseback Agreement"), the Agency is leasing the Kirkland Facility back to the Company for the Lease Term and leasing the New Hartford Equipment back to the Company for the period commencing February 1, 2020 and ending two years thereafter; and

WHEREAS, the Agency wishes to condition the Financial Assistance upon the Company creating or causing to be created certain employment at the Facility.

NOW THEREFORE, for good and valuable consideration and in consideration of the Company entering into the Lease and Leaseback Agreement, the Company hereby covenants and agrees as follows:

1. Definitions.

"Agency" shall mean the Oneida County Industrial Development Agency.

"AER" shall mean the Company's annual report of employment required to be provided to the Agency.

“Benefit”	shall mean the amount the Company saved by making payments in lieu of real property taxes in a particular year. For example, if a Company’s PILOT payment is equal to 75% of normal real property taxes, then the Company’s Benefit for that year would be an amount equal to 25% of normal real property taxes.
“Company”	shall mean The Indium Corporation of America, and its successors and/or assigns.
“Cure Period”	shall mean the period ending June 30 th of the year following the Shortfall or Major Shortfall.
“Employment Obligation Term”	shall mean the period during which the Company is receiving a benefit in the form of lower payment in lieu of taxes than their real estate taxes would be.
“Employment Obligation”	shall mean the retention of 636 FTEs at the Company’s facilities in Oneida County, to be maintained for the full Lease Term, which is the number of FTEs employed by the Company in Oneida County and selected by the Agency as the Company’s obligation.
“FTE”	shall mean a full time employee that has a minimum of thirty-five (35) scheduled hours per week, or any combination of two or more part-time employees that work a minimum of fifteen (15) scheduled hours per week, when combined together, constitute the equivalent of a minimum of thirty-five (35) scheduled hours per week, and whose workplace location is at the Company’s facilities in Oneida County. For this purpose an employee shall include a leased employee regularly retained by the Company.
“Initial Benefit”	means the amount of savings the Company received through the Agency, in the form of exemptions from New York State Sales Tax.
“Major Shortfall”	means any number of FTEs that is less than 50% of the Employment Obligation.
“Minimum Standard”	shall mean a Company whose AER shows that they are short of meeting its Employment Obligation by 20%.
“Per Employee Amount”	shall mean an amount equal to the Benefit for the year after the year of the Shortfall divided by the Employment Obligation.
“Shortfall”	shall mean the difference between the Employment Obligation and the actual number of FTEs per the AER for the applicable year.

2. Representations and Covenants. The Company makes the following representations and covenants as the basis for the undertakings on its part herein contained:

(a) It has power to enter into and to execute and deliver this Agreement.

(b) Neither the execution and delivery of this Agreement, the consummation of the transactions contemplated hereby nor the fulfillment of or compliance with the provisions of this Agreement will conflict with or result in a breach of any of the terms, conditions or provisions of any corporate restriction or any agreement or instrument to which the Company is a party or by which it is bound, or will constitute a default under any of the foregoing, or result in the creation or imposition of any lien of any nature upon any of the property of the Company under the terms of any such instrument or agreement.

(c) The providing of the Facility by the Agency and the leasing thereof by the Agency to the Company will not result in the removal of an industrial or manufacturing plant, facility or other commercial activity of the Company from one area of the State to another area of the State, or result in the abandonment of one or more commercial or manufacturing plants or facilities of the Company located within the State.

(d) The operation of the Facility will conform with all applicable zoning, planning, building and environmental laws and regulations of governmental authorities having jurisdiction over the Facility, and the Company shall defend, indemnify and hold the Agency harmless from any liability or expenses resulting from any failure by the Company to comply with the provisions of this subsection (d).

(e) There is no litigation pending or, to the knowledge of the Company, threatened, in any court, either state or federal, to which the Company is a party, and in which an adverse result would in any way diminish or adversely impact on the ability of the Company to fulfill its obligations under this Agreement.

3. Job Retention Obligations. The Company's Employment Obligation shall mean retention of 636 FTEs at the Company's facilities in Oneida County, to be maintained for the full Lease Term, which is the number of FTEs employed by the Company in Oneida County and selected by the Agency as the Company's obligation. After the expiration of the Employment Obligation Term, the Company shall have no further obligation with respect to the Employment Obligation and shall not be liable for any of the payments described below.

4. Events of Default. An Event of Default shall mean either of the following events:

(a) The failure of the Company to meet the Employment Obligation shall constitute a default under this Agreement and shall subject the Company to the applicable remedies of the Agency set forth below. The Company shall be deemed to have failed to satisfy its Employment Obligation if, at such time the Company files its AER, the total number of FTEs shown on such AER for the applicable Lease Year is below the Minimum Standard. The AER shall be filed by the Company to the Agency on or before January 31 of each calendar year during the Employment Obligation Term; provided, however, the Company is not obligated to file its first AER with the Agency sooner than January 31, 2021.

(b) If the Company shall exercise its option to terminate early the Leaseback Agreement as set forth in Section 8.1 of the Leaseback Agreement it shall constitute a default

under this Agreement and shall subject the Company to the applicable remedies of the Agency set forth below.

5. Remedies.

(a) If the Company falls below the Minimum Standard, the Agency will notify the Company in writing of the Agency's intention to recapture Financial Assistance. The Company will have thirty (30) days to respond to the letter and may include a request to appear before the Agency. The Agency will determine, in its sole discretion, if a valid exemption exists and potentially pursue the remedies described below.

(b) Initial Shortfall and Shortfall Payments.

- (1) If, during the first five (5) years of the Employment Obligation Term a Company fails to achieve the Minimum Standard, then the Company shall pay to the Agency an amount equal to (a) the Per Employee Amount multiplied by (b) the Shortfall and then multiplied by (c) 1.5.
- (2) If, after the first five (5) years of the Employment Obligation Term a Company fails to achieve the Minimum Standard, then the Company shall pay to the Agency an amount equal to (a) the Per Employee Amount multiplied by (b) the Shortfall.
- (3) Notwithstanding any of the foregoing, the Company shall not be liable for paying a Shortfall Payment unless the number of FTEs remains a Shortfall after the expiration of a Cure Period.
- (4) Notwithstanding any of the foregoing, a Shortfall shall not apply where the Shortfall is as a result of a major casualty to or condemnation of the facility. In the event of such major casualty or condemnation, the Company shall have no obligation to pay the Shortfall Payment.

(c) Major Shortfall Payment.

- (1) If a Company shall incur a Major Shortfall, then the Company shall pay to the Agency as an additional one-time payment an amount as set forth in the schedule below.

<u>Major Shortfall Occurs:</u>	<u>Percentage of Initial Benefit</u>
Year 1	100%
Year 2	90%
Year 3	80%
Year 4	70%
Year 5	60%
Year 6	50%
Year 7	45%
Year 8	40%
Year 9	35%
Year 10	30%

- (2) Notwithstanding any of the foregoing, the Company shall not be liable for a Major Shortfall Payment unless the number of FTEs remains at less than 65% of the Employment Obligation at the expiration of a Cure Period. The Company shall have the opportunity at any time before the expiration of a Cure Period to provide additional information to the Agency regarding the Major Shortfall, and to request a waiver or amendment of this provision.
 - (3) Notwithstanding any of the foregoing, a Major Shortfall shall not apply where the Shortfall is as a result of a major casualty to or condemnation of the facility. In the event of such major casualty or condemnation, the Company shall have no obligation to pay the Major Shortfall Payment.
 - (4) Qualification for a waiver of either (2) or (3) above shall be at the sole discretion of the Agency.
- (d) If the Shortfall or Major Shortfall is as a result of the Company shifting employment away from Oneida County, then the Agency will require the value of the Benefit and the Initial Benefit utilized to date to be repaid, with interest (determined as the New York State legal interest rate).
 - (e) If the Agency recaptures Initial Benefits or Benefits from a Company, the Agency shall return the recaptured funds promptly to the affected taxing jurisdiction, unless otherwise agreed to by the taxing jurisdiction, in accordance with the General Municipal Law.

6. The Agency retains all rights to impose, delay or waive penalties and the right to deviate from these recapture provisions. Notwithstanding this right, the Agency is obligated to recapture New York State sales tax benefits where:

- a) The Project is not entitled to receive those benefits;
- b) The exemptions exceed the amount authorized, or are claimed for unauthorized property or services; or
- c) The Company fails to use property or services in the manner required by the Leaseback Agreement.

The Company acknowledges that the value of the sales tax exemption currently authorized by the Agency is limited to \$198,000.00.

7. Notices. All notices, certificates and other communications hereunder shall be in writing and shall be sufficiently given and shall be deemed given when delivered and, if delivered by mail, shall be sent by certified mail, postage prepaid, addressed as follows:

To the Agency:

ONEIDA COUNTY INDUSTRIAL DEVELOPMENT
AGENCY
584 Phoenix Drive

Rome, New York 13441
Attention: David Grow

With a Copy to: BOND, SCHOENECK & KING, PLLC
501 Main Street
Utica, New York 13501
Attention: Linda E. Romano, Esq.

To the Company: THE INDIUM CORPORATION OF AMERICA
34 Robinson Road
Clinton, New York 13323
Attention: Gregory P. Evans, Chief Executive
Officer

With a Copy to: THE MATT LAW FIRM, PLLC
1701 Genesee Street
Utica, New York 13501
Attention: F.X. Matt III, Esq.

8. Binding Effect. This Agreement shall inure to the benefit of and shall be binding upon the Agency and the Company and their respective successors and permitted assigns.

9. Severability. In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

10. Amendments, Changes and Modifications. This Agreement may not be amended, changed, modified, altered or terminated without the concurring written consent of the parties hereto.

11. Execution of Counterparts. This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

12. Applicable Law. This Agreement shall be governed exclusively by the applicable laws of the State of New York.

13. Survival of Obligations. This Agreement shall survive the performance of the obligations of the Company to make payments required by Section 2.6 of the Leaseback Agreement and all indemnities shall survive any termination or expiration of the Leaseback Agreement as to matters occurring during the period of the Company's occupancy of the Facility.

14. Section Headings Not Controlling. The headings of the several sections in this Agreement have been prepared for convenience of reference only and shall not control, affect the meaning or be taken as an interpretation of any provision of this Agreement.

15. Merger of the Agency.

(a) Nothing contained in this Agreement shall prevent the consolidation of the Agency with, or merger of the Agency into, or assignment by the Agency of its rights and

interests hereunder to, any other body corporate and politic and public instrumentality of the State of New York or political subdivision thereof which has the legal authority to perform the obligations of the Agency hereunder, provided that upon any such consolidation, merger or assignment, the due and punctual performance and observance of all the agreements and conditions of this Agreement to be kept and performed by the Agency shall be expressly assumed in writing by the public instrumentality or political subdivision resulting from such consolidation or surviving such merger or to which the Agency's rights and interests hereunder shall be assigned.

(b) As of the date of any such consolidation, merger or assignment, the Agency shall give notice thereof in reasonable detail to the Company. The Agency shall promptly furnish to the Company such additional information with respect to any such consolidation, merger or assignment as the Company reasonably may request.

16. No Assignment. This Agreement may not be assigned by the Company except with the written consent of the Agency, which consent shall not be unreasonably withheld. Notwithstanding the foregoing, no consent from the Agency shall be required if an assignment of this Agreement is made by the Company to the Company's parent, any direct or indirect subsidiary or affiliate of the Company, or a successor to the Company by way of merger, consolidation, corporate reorganization, or the purchase of all or substantially all of the Company's assets.

17. Agreement to Pay Attorneys' Fees and Expenses. In the event the Company should default under any of the provisions of this Agreement and the Agency should employ attorneys or incur other expenses for the collection of amounts payable hereunder or the enforcement of performance or observance of any obligations or agreements on the part of the Company herein contained, the Company shall, on demand therefor, pay to the Agency the reasonable fees of such attorneys and such other expenses so incurred.

18. No Additional Waiver Implied By One Waiver. In the event any agreement contained herein should be breached by any party and thereafter waived by any other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

19. Inducement Agreement. The Transaction Documents represent the entire agreements of the Agency and the Company and supersede the terms of the Inducement Agreement dated September 27, 2019 between the same parties.

20. Successors and Assigns. The rights and obligations of the Company hereunder shall be binding upon and inure to the benefit of its respective successors and assigns.

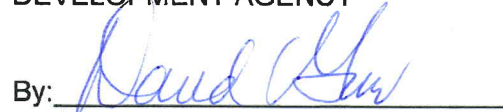
[signature page follows]

IN WITNESS WHEREOF, the Company has executed and delivered this Agreement as of the day and year first above written.

THE INDIUM CORPORATION OF
AMERICA

By: 
Name: Gregory P. Evans
Title: Chief Executive Officer

ONEIDA COUNTY INDUSTRIAL
DEVELOPMENT AGENCY

By: 
Name: David C. Grow
Title: Chairman