

**COPY**

**CITY OF HORNELL INDUSTRIAL DEVELOPMENT AGENCY**

**AND**

**INDUS 36 LLC**

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**PAYMENT-IN-LIEU-OF-TAX AGREEMENT**

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**Street Address:**

1060 State Route 36  
City of Hornell  
Steuben County, New York

**Tax Map Number:**

Part of 136.03-01-001.011

**Affected Tax Jurisdictions:**

Hornell City School District  
City of Hornell  
Steuben County

**Dated as of January 1, 2022**

## PAYMENT-IN-LIEU-OF-TAX AGREEMENT

**THIS PAYMENT-IN-LIEU-OF-TAX AGREEMENT** (the "Agreement"), dated as of the January 1, 2022, by and between the **CITY OF HORNELL INDUSTRIAL DEVELOPMENT AGENCY**, a public benefit corporation duly existing under the laws of the State of New York, with offices located at 40 Main Street, Hornell, New York 14843 (the "Agency"), and **INDUS 36 LLC**, a limited liability company duly organized and validly existing under the laws of the State of New York, with offices located at 950 Panorama Trail South, Rochester, New York 14625 (the "Company").

### WITNESSETH:

WHEREAS, the Agency was created by Chapter 670 of the Laws of 1974 of the State of New York pursuant to Title I of Article 18-A of the General Municipal Law of the State of New York (collectively, the "Act") as a body corporate and politic and as a public benefit corporation of the State of New York; and

WHEREAS, the Company has submitted an application (the "Application") to the Agency requesting the Agency's assistance with respect to a certain project, being undertaken in multiple phases (the "Project"), consisting of: (i) the acquisition by the Agency of a leasehold or other interest in certain land located at 1060 State Route 36, City of Hornell, Steuben County, New York (the "Land"); (ii) the construction on the Land of an approximately 80-room square foot business class hotel under the national brand Hampton by Hilton with certain amenities including but not limited to, a cocktail lounge, outdoor seating, a fitness center and pool (the "Improvements"); and (iii) the acquisition and installation in and around the Improvements of certain items of equipment, machinery and other tangible personal property (the "Equipment"; and, collectively with the Land, and the Improvements, the "Facility");and

WHEREAS, in order to induce the Company to undertake the Project and to acquire, renovate, construct and equip the Facility, the Agency is willing to take a leasehold interest in the Land, the Improvements, and the Equipment and the personal property constituting the Facility pursuant to a certain Lease Agreement, January 1, 2022 (the "Lease Agreement") by and between the Company, as lessor, and the Agency, as lessee; and thereafter to lease said Land, Improvements and Equipment pursuant to the terms and conditions of a certain Leaseback Agreement, dated as of January 1, 2022 (the "Leaseback Agreement"), by and from the Agency, as sub-lessor, to the Company, as sub-lessee; and

WHEREAS, pursuant to Section 874(1) of the Act, the Agency is exempt from the payment of taxes imposed upon real property and improvements owned by it or under its jurisdiction, control or supervision, other than special ad valorem levies, special assessments and service charges against real property, which are or may be imposed for special improvements or special district improvements; and

WHEREAS, the Agency and the Company deem it necessary and proper to enter into an agreement making provisions for payments in lieu of taxes by the Company to the Agency for the benefit of Steuben County, New York (the "County"), the City of Hornell, New York (the

"City"), and the Hornell City School District (the "School District"; and, collectively with the County and the City, the "Affected Tax Jurisdictions").

NOW, THEREFORE, in consideration of the covenants herein contained and other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, it is mutually agreed as follows:

Section 1 - Payment in lieu of Ad Valorem Taxes:

Section 1.1 A. Subject to the completion and filing by the Agency by the taxable status date **January 1, 2023** (the "Taxable Status Date") of New York State Form RP-412-a "Application For Real Property Tax Exemption" (the "Exemption Application") under Section 412-a of the New York State Real Property Tax Law (the "RPTL") and Section 874 of the Act and the approval of the Exemption Application by the appropriate assessors or Board of Assessment Review, the Facility shall be exempt from Real Estate Taxes (as defined below) commencing with the **2024** County tax year, the **2023-2024** City tax year and the **2023-2024** School District tax year. For purposes of the foregoing, "Real Estate Taxes" means all general levy real estate taxes levied against the Facility by the County, the City and the School District. The Company shall provide to the Agency with the information necessary for the completion and filing of the Exemption Application and shall provide such additional information and take such actions as are required by the appropriate assessors or Board of Assessment Review to process and approve the Exemption Application. Notwithstanding anything contained herein or in the Lease Agreement to the contrary, in the event the exemption from Real Estate Taxes is denied for any reason, the Company shall pay (and hereby agrees to pay) all Real Estate Taxes levied upon the Facility as they become due. After giving written notice to the Agency, the Company may in good faith contest the denial of the Exemption Application, provided that (i) the overall operating efficiency of the Facility is not impaired and the Facility continues to qualify as a "project" under the Act; (ii) neither the Facility nor any part of or interest in it would be in any danger of being sold, forfeited or lost; and (iii) neither the Company nor the Agency, as a result of such contest, shall be in any danger of any civil or criminal liability. The Company hereby waives any claim or cause of action against the Agency, and releases the Agency from any liability to the Company, arising from the denial of an exemption from Real Estate Taxes.

B. Payee. As long as the Facility is owned by the Agency, or under the Agency's jurisdiction, control or supervision, the Company shall pay, or cause to be paid, on or before January 1 of each calendar year (the "Payment Date"), an amount equal to the Total PILOT Payment, as described on Schedule A attached hereto (the "Total PILOT Payment"), to the Agency at 40 Main Street, Hornell, New York 14843, or at such other address as shall be designated from time to time by the Agency, on behalf of the Affected Tax Jurisdictions, commencing on or before January 1, 2024. The Company shall make all such payments on or before the Payment Date regardless of whether the Agency, the Affected Tax Jurisdictions or any other party invoices the Company therefor.

The parties agree and acknowledge that payments made hereunder are to obtain revenues for public purposes, and to provide a revenue source that the Affected Tax Jurisdictions would otherwise lose because the subject parcels are not on the tax rolls.

1.2 Allocation. The Agency shall remit to the Affected Tax Jurisdictions amounts received hereunder within thirty (30) days of receipt of said payment and shall allocate said payments among the Affected Tax Jurisdictions in the same proportion as ad valorem taxes would have been allocated but for the Agency's involvement, unless the Affected Tax Jurisdictions have consented in writing to a specific allocation.

1.3 Tax Rates. For purposes of determining the allocation of the Total PILOT Payment among the Affected Tax Jurisdictions, the Agency shall use the last tax rate utilized for levy of taxes by each such jurisdiction. For County and special district purposes, the tax rates used to determine the allocation of the Total PILOT Payment shall be the tax rates relating to the calendar year which includes the Payment Date. For City and School District purposes, the tax rates used to determine the Total PILOT Payment shall be the rate relating to the City budget and the School District tax year which includes the Payment Date.

1.4 Valuation of Future Additions to the Facility: If there shall be a future addition to the Facility constructed or added in any manner after the date of this Agreement, the Company shall notify the Agency of such future additions (the "Future Addition"), and it is agreed that no work or improvements comprising the Project (or any replacements thereof) will comprise a "Future Addition", notwithstanding the fact the same is performed, constructed or installed after the date of this Agreement. The notice to the Agency shall contain a copy of the application for a building permit, plans and specifications, and any other relevant information that the Agency may thereafter request. Upon the earlier of substantial completion, or the issuance of a certificate of occupancy for any such Future Addition to the Facility, the Company shall become liable for the payment of an increase in the Total PILOT Payment (the "Increased PILOT Payment"). The Agency shall notify the Company of any proposed increase in the Total PILOT Payment related to such Future Addition. If the Company shall disagree with the determination of assessed value for any Future Additions made by the Agency, then and in that event that valuation shall be fixed by a court of competent jurisdiction. Notwithstanding any disagreement between the Company and the Agency, the Company shall pay the Increased PILOT Payment until a different Total PILOT Payment shall be established. If a lesser Total PILOT Payment is determined in any proceeding or by subsequent agreement of the parties, the Total PILOT Payment shall be re-computed and any excess payment shall be refunded to the Company or, in the Agency's sole discretion, such excess payment shall be applied as a credit against the next succeeding PILOT payment(s).

1.5 Period of Benefits. The tax benefits provided for herein shall be deemed to include (i) the 2024 County tax year through the 2042 County tax year, (ii) the 2023-2024 City tax year through the 2041-2042 City tax year and (iii) the 2023-2024 School District tax year through the 2041-2042 School District tax year. This Agreement shall expire on **December 31, 2042**; *provided, however*, the Company shall pay (i) the 2043 County tax bill, (ii) the 2042-2043 City tax bill, and (iii) the 2042-2043 School District tax bill on the dates and in the amounts as if the Agency were not in title on the tax status date with respect to said tax years. In no event shall the Company be entitled to receive tax benefits relative to the Facility for more than the periods provided for herein, unless the period is extended by amendment to this Agreement executed by

both parties after any applicable public hearings. The Company agrees that it will not seek any tax exemption for the Facility which could provide benefits for more than the periods provided for herein and specifically agrees that the exemptions provided for herein, to the extent actually received (based on the number of lease years elapsed), supersede and are in substitution of the exemptions provided by Section 485-b of the RPTL. It is hereby agreed and understood that the Affected Tax Jurisdictions can rely upon and enforce the above waiver to the same extent as if they were signatories hereto.

## Section 2 - Special District Charges, Special Assessments and Other Charges.

Special district charges, special assessments, and special ad valorem levies (specifically including but not limited to any fire district charges), and pure water charges and sewer charges are to be paid in full by the Company in accordance with normal billing practices.

## Section 3 - Transfer of Facility.

In the event that the Facility is transferred from the Agency to the Company, and the Company is ineligible for a continued tax exempt under some other tax incentive program, or the exemption results in a payment to the Affected Tax Jurisdictions in excess of the payment described in Section 1 herein, or this Agreement terminates and the property is not timely transferred back to the Company, the Company agrees to pay no later than the next tax lien date (plus any applicable grace period), to each of the Affected Tax Jurisdictions, an amount equal to the taxes and assessments which would have been levied on the Facility if the Facility had been classified as fully taxable as of the date of transfer or loss of eligibility of all or a portion of the exemption described herein or date of termination.

## Section 4 - Assessment Challenges.

4.1 The Company shall have all of the rights and remedies of a taxpayer as if and to the same extent as if the Company were the owner of the Facility, with respect to any proposed assessment or change in assessment with respect to the Facility by any of the Affected Tax Jurisdictions and likewise shall be entitled to protest before and be heard by the appropriate assessors or Board of Assessment Review, and shall be entitled to take any and all appropriate appeals or initiate any proceedings to review the validity or amount of any assessment or the validity or amount of any tax equivalent provided for herein.

4.2 The Company shall have all of the rights and remedies of a taxpayer with respect to any tax, service charge, special benefit, ad valorem levy, assessment or special assessment, or service charge in lieu of which the Company is obligated to make a payment pursuant to this Agreement, as if and to the same extent as if the Company were the owner of the Facility.

4.3 The Company shall cause the appropriate real estate tax assessment office and tax levy officers to assess the Facility and apply tax rates to the respective assessments as if the Facility were owned by the Company and shall file any accounts or tax returns required by the appropriate real estate tax assessment office and tax levy officers.

## Section 5 - Changes in Law.

To the extent the Facility is declared to be subject to taxation or assessment by an amendment to the Act, other legislative change, or by final judgment of a Court of competent jurisdiction, the obligations of the Company hereunder shall, to such extent, be null and void.

## Section 6 - Events of Default.

6.1 The following shall constitute "Events of Default" hereunder. The failure by the Company to: (i) make the payments described in Section 1 hereof within thirty (30) days of the Payment Date (the "Delinquency Date"); (ii) make any other payments described herein on or before the last day of any applicable cure period within which said payment can be made without penalty; (iii) the occurrence and continuance of any events of default under the Lease Agreements after the expiration of any applicable cure periods. Upon the occurrence of any Event of Default hereunder, in addition to any other right or remedy the Agency and/or the Affected Tax Jurisdictions may have at law or in equity, the Agency and/or Affected Tax Jurisdictions may, immediately and without further notice to the Company (but with notice to the Agency with respect to actions maintained by the Affected Tax Jurisdictions), pursue any action in the courts to enforce payment or to otherwise recover directly from the Company any amounts so in default. The Agency and the Company hereby acknowledge the right of the Affected Tax Jurisdictions to recover directly from the Company any amounts so in default pursuant to Section 874(6) of the Act and the Company shall immediately notify the Agency of any action brought, or other measure taken, by any Affected Tax Jurisdiction to recover any such amount.

6.2 If payments pursuant to Section 1 and Section 2 herein are not made by the Delinquency Dates, or if any other payment required to be made hereunder is not made by the last day of any applicable cure period within which said payment can be made without penalty, the Company shall pay penalties and interest as follows. With respect to payments to be made pursuant to Section 1 herein, if said payment is not received by the Delinquency Date, the Company shall pay, in addition to said payment, (i) a late payment penalty equal to five percent (5%) of the amount due and (ii) for each month, or any part thereof, that any such payment is delinquent beyond the first month, interest on the total amount due plus the late payment penalty, in an amount equal to one percent (1%) per month. With respect to all other payments due hereunder, if said payment is not paid within any applicable cure period, the Company shall pay, in addition to said payment, the greater of the applicable penalties and interest incurred hereunder or penalties and interest which would have been incurred had payments made hereunder been tax payments to the Affected Tax Jurisdictions.

## Section 7 - Assignment.

No portion of any interest in this Agreement may be assigned by the Company, nor shall any person other than the Company be entitled to succeed to or otherwise obtain any benefits of the Company hereunder without the prior written consent of the Agency, which shall not be unreasonably withheld or delayed.

Section 8 - Miscellaneous.

8.1 This Agreement may be executed in any number of counterparts each of which shall be deemed an original but which together shall constitute a single instrument.

8.2 All notices, claims and other communications hereunder shall be in writing and shall be deemed to be duly given if personally delivered or mailed first class, postage prepaid, or by nationally-recognized overnight courier, as follows:

To the Agency: City of Hornell Industrial Development Agency  
40 Main Street  
Hornell, New York 14843  
Attn: James W. Griffin, Executive Director

With a copy to: Harris Beach PLLC  
99 Garnsey Road  
Pittsford, New York 14534  
Attn: Shawn M. Griffin, Esq.

To the Company: Indus 36 LLC  
950 Panorama Trail South  
Rochester, New York 14625  
Attn: Goonjit S. Mehta

With a copy to: Stephen E. Hall, Esq.  
36 West Main Street, Suite 400  
Rochester, New York 14614

or at such other address as any party may from time to time furnish to the other party by notice given in accordance with the provisions of this Section. All notices shall be deemed given when mailed or personally delivered in the manner provided in this Section.

8.3 This Agreement shall be governed by, and all matters in connection herewith shall be construed and enforced in accordance with, the laws of the State of New York applicable to agreements executed and to be wholly performed therein and the parties hereto hereby agree to submit to the personal jurisdiction of the federal or state courts located in Steuben County, New York.

8.4 Notwithstanding any other term or condition contained herein, all obligations of the Agency hereunder shall constitute a special obligation payable solely from the revenues and other monies, if any, derived from the Facility and paid to the Agency by the Company. Neither any member, officer, employee, agent (other than the Company) or servant of the Agency nor any person executing this Agreement on its behalf shall be liable personally under this

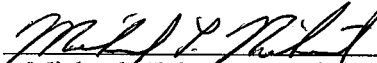
Agreement. No recourse shall be had for the payment of the principal or interest on amounts due hereunder or for any claim based upon or in respect of any modification of or supplement hereto against any past, present or future member, officer, agent (other than the Company), servant, or employee, as such, of the Agency, or of any successor or political subdivision, either directly or through the Agency or any such successor, all such liability of such members, officer, agents (other than the Company), servants and employees being, to the extent permitted by law, expressly waived and released by the acceptance hereof and as part of the consideration for the execution of this Agreement.

*[Remainder of Page Intentionally Left Blank]*

*[Signature Page to Payment-in-Lieu-of-Tax Agreement]*

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

**CITY OF HORNELL INDUSTRIAL  
DEVELOPMENT AGENCY**

By:   
Michael Nisbet, Executive Director

**INDUS 36 LLC**

By: \_\_\_\_\_  
Name: Goonjit S. Mehta  
Title: Managing Member

*[Signature Page to Payment-in-Lieu-of-Tax Agreement]*

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

**CITY OF HORNELL INDUSTRIAL  
DEVELOPMENT AGENCY**

By: \_\_\_\_\_  
Michael Nisbet, Executive Director

**INDUS 36 LLC**

By: \_\_\_\_\_  
Name: Goonjit S. Mehta  
Title: Managing Member

**SCHEDULE A**

TO  
PAYMENT-IN-LIEU-OF-TAX AGREEMENT  
DATED AS OF JANUARY 1, 2022  
BY AND BETWEEN  
THE CITY OF HORNELL INDUSTRIAL DEVELOPMENT AGENCY  
AND  
INDUS 36 LLC

"Total PILOT Payment" shall mean an amount equal to the Assessed Value of the Facility (as such term is defined below) *multiplied by* the then existing tax rate for the applicable Affected Tax Jurisdiction (after application of any applicable equalization rate) *reduced by* the Percentage Abatement set forth in the table below, plus (B) the assessed value of all Future Additions (as determined in accordance with Section 1.4 of this Agreement), *multiplied by* the then then existing tax rate for the applicable Affected Tax Jurisdiction (after application of any applicable equalization rate).

During the term of this Agreement, the "Assessed Value of the Facility" shall mean such value as assigned by the applicable assessor as of January 1, 2023 and shall be frozen throughout the term of this Agreement.

The below abatement schedule shall allow for a fixed Total PILOT Payment of \$1,000.00 in the first (1<sup>st</sup>) PILOT Year through and including the tenth (10<sup>th</sup>) PILOT Year and a ninety percent (90%) exemption from taxation for the Facility in the eleventh (11<sup>th</sup>) PILOT Year, with such exemption thereafter being eliminated annually in a ten percent (10%) increment, such that the Facility shall be subject to full taxation by the Affected Tax Jurisdictions after the nineteenth (19<sup>th</sup>) PILOT Year.

<b><u>PILOT Year</u></b>	<b><u>County Tax Year</u></b>	<b><u>City and School District Tax Year</u></b>	<b><u>Total PILOT Payment/Percentage Abatement</u></b>
Year 1	2024	2023-2024	\$1,000.00
Year 2	2025	2024-2025	\$1,000.00
Year 3	2026	2025-2026	\$1,000.00
Year 4	2027	2026-2027	\$1,000.00
Year 5	2028	2027-2028	\$1,000.00
Year 6	2029	2028-2029	\$1,000.00
Year 7	2030	2029-2030	\$1,000.00
Year 8	2031	2030-2031	\$1,000.00
Year 9	2032	2031-2032	\$1,000.00
Year 10	2033	2032-2033	\$1,000.00
Year 11	2034	2033-2034	90%
Year 12	2035	2034-2035	80%
Year 13	2036	2035-2036	70%

Year 14	2037	2036-2037	60%
Year 15	2038	2037-2038	50%
Year 16	2039	2038-2039	40%
Year 17	2040	2039-2040	30%
Year 18	2041	2040-2041	20%
Year 19	2042	2041-2042	10%
Year 20 and Thereafter ... Full Taxes			