

CLOSING ITEM NO.: A-6

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ONONDAGA COUNTY INDUSTRIAL DEVELOPMENT AGENCY

AND

245 COMMERCE LLC

AND

IMMEDIATE MAILING SERVICES, INC.

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PAYMENT IN LIEU OF TAX AGREEMENT

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DATED AS OF MAY 1, 2022

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and is for convenience of reference only.)

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## PAYMENT IN LIEU OF TAX AGREEMENT

THIS PAYMENT IN LIEU OF TAX AGREEMENT dated as of May 1, 2022 by and among the ONONDAGA COUNTY INDUSTRIAL DEVELOPMENT AGENCY, a corporate governmental agency constituting a body corporate and politic and a public benefit corporation organized and existing under the laws of the State of New York (hereinafter referred to as the “Agency”), having an office for the transaction of business located at 333 West Washington Street, Suite 130, Syracuse, New York 13202, 245 COMMERCE LLC, a limited liability company organized and existing under the laws of the State of New York, having an office for the transaction of business located at 245 Commerce Boulevard, Liverpool, New York 13088 (the “Company”) and IMMEDIATE MAILING SERVICES, INC., a corporation organized and existing under the laws of the State of New York, having an office for the transaction of business located at 245 Commerce Boulevard, Liverpool, New York 13088 (the “Operating Company”).

### WITNESSETH:

WHEREAS, the Agency is authorized and empowered by the provisions of Chapter 1030 of Laws of 1969 of New York, constituting Title 1 of Article 18-A of the General Municipal Law, Chapter 24 of the Consolidated Laws of New York, as amended (the “Enabling Act”) and Chapter 435 of the Laws of 1970 of the State of New York and Chapter 676 of the Laws of 1975 of the State of New York, as amended, as amended, constituting Section 895 of said General Municipal Law (said Chapter and the Enabling Act being hereinafter collectively referred to as the “Act”) to promote, develop, encourage and assist in the acquiring, constructing, renovating, improving, maintaining, equipping and furnishing of commercial facilities, among others, for the purpose of promoting, attracting and developing economically sound commerce and industry to advance the job opportunities, health, general prosperity and economic welfare of the people of the State of New York, to improve their prosperity and standard of living, and to prevent unemployment and economic deterioration; and

WHEREAS, the Enabling Act further authorizes each such agency to lease or sell its projects, to charge and collect rent therefor, to mortgage any and all of its facilities and to enter into an agreement which includes provisions such as those contained herein (this Payment in Lieu of Tax Agreement being hereinafter referred to as the “Agreement”); and

WHEREAS, the Company and the Operating Company, on behalf of themselves and entities formed or to be formed on behalf of the foregoing, submitted an application (the “Application”) to the Agency requesting the Agency’s assistance with respect to a certain project (the “Project”) consisting of: (A)(1) the acquisition of an interest in an approximately 2.22-acre parcel of land located at 4575 Buckley Road (tax map no. 095.-02-20.2) in the Town of Clay, Onondaga County, New York (the “Land”) and three existing buildings located thereon totaling approximately 15,900 square feet (collectively, the “Existing Buildings”); (2) the renovation of the Existing Buildings, together with related site improvements on the Land (the Existing Buildings as so renovated and such site improvements, collectively, the “Facility”); and (3) the acquisition and installation in and around the Facility and/or for use in connection with the Project of various fixtures, machinery, equipment and other tangible personal property (collectively, the “Facility Equipment”) (the Land,

the Facility and the Facility Equipment being collectively referred to as the “Company Project Facility”), such Company Project Facility to be leased and subleased by the Agency to the Company and further subleased by the Company to the Operating Company; and (4) the acquisition and installation therein and thereon of related fixtures, machinery, equipment and other tangible personal property (collectively the “Equipment,” and together with the Company Project Facility, the “Project Facility”), which Project Facility will be used by the Operating Company as warehousing and office space for its business as an integrated service provider for conversational artificial intelligence and omnichannel communications; (B) the granting of certain “financial assistance” (within the meaning of Section 854(14) of the Act) with respect to the foregoing, including potential exemptions from certain sales and use taxes, real property taxes, real estate transfer taxes and mortgage recording taxes (subject to certain statutory limitations) (the “Financial Assistance”); and (C) the lease (with an obligation to purchase) or sale of the Company Project Facility to the Company or such other person as may be designated by the Company and agreed upon by the Agency and the lease (with an obligation to purchase) or sale of the Equipment to the Operating Company or such other person as may be designated by the Operating Company and agreed upon by the Agency; and

WHEREAS, members of the Agency have determined that the Project constitutes a “project” within the meaning of the Act; and

WHEREAS, in connection with the Project, the Agency intends to acquire a leasehold interest in certain real property more particularly described in Exhibit “A” attached hereto and the improvements located thereon (the “Improvements”), pursuant to the terms and conditions of a lease to agency dated as of May 1, 2022 (the “Underlying Lease”) by and between the Company, as landlord, and the Agency, as tenant; and

WHEREAS, the Company has agreed to transfer title to the Facility Equipment to the Agency pursuant to a certain Bill of Sale to Agency, dated as of May 1, 2022 (the “Bill of Sale to Agency”); and

WHEREAS, the Agency proposes to sublease its interest in the Company Project Facility to the Company pursuant to the terms and conditions of a certain lease agreement dated as of May 1, 2022 (the “Lease Agreement”) by and between the Agency and the Company; and

WHEREAS, the Company has agreed to sub-sublease the Company Project Facility pursuant to the terms of a certain lease, dated as of May 1, 2022 (the “Sublease Agreement”), by and between the Company, as sublessor, and the Operating Company, as sublessee; and

WHEREAS, the Operating Company has agreed to transfer title to the Equipment to the Agency pursuant to a certain Equipment Bill of Sale, dated as of May 1, 2022 (the “Equipment Bill of Sale”); and

WHEREAS, the Agency has agreed to lease the Equipment to the Operating Company pursuant to the terms of a certain Equipment Lease Agreement, dated as of May 1, 2022 (the “Equipment Lease Agreement”), by and between the Agency and the Operating Company; and

**WHEREAS, said Project is to be used for any legal purpose under the Act; and**

**WHEREAS, the Project is located within the boundaries of the County of Onondaga; and**

**WHEREAS, under the present provisions of the Act and Section 412-a of the Real Property Tax Law of the State of New York (the "RPTL"), the Agency is not required to pay real estate taxes upon any of the property acquired by it or under its jurisdiction or supervision or control; and**

**WHEREAS, the Agency has expressed its reluctance to enter into the Underlying Lease unless the Company shall agree to make payments in lieu of real estate taxes ("PILOT Payments") pursuant to the this Agreement with respect to the Project; and**

**WHEREAS, the PILOT Payments contemplated by this Agreement are in lieu of real estate taxes that may be payable with respect to the Project during the term of this Agreement;**

**NOW, THEREFORE, in consideration of the matters above recited, for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the parties, the parties hereto formally covenant, agree and bind themselves as follows to wit:**

## ARTICLE I

### REPRESENTATIONS AND WARRANTIES

SECTION 1.01. REPRESENTATIONS AND WARRANTIES OF THE COMPANY. The Company does hereby represent and warrant to the Agency as follows:

(A) Power: The Company has full legal power and authority to own its properties and conduct its business.

(B) Authorization: The Company has the legal power under the laws of the State of New York to enter into this Agreement and the transactions contemplated hereby and to perform and carry out all covenants and obligations on its part to be performed under and pursuant to this Agreement. The Company has duly authorized the execution, delivery and performance of this Agreement and the consummation of the transactions herein contemplated. The Company is not prohibited from entering into this Agreement and discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Agreement by (and the execution, delivery and performance of this Agreement, the consummation of the transactions contemplated hereby and the fulfillment of the compliance with the provisions of this Agreement will not conflict with or violate or constitute a breach of or a default under) the terms, conditions or provision of any law, rule, regulation or order of any court or other agency or authority of government, or any contractual limitation, restriction or outstanding indenture, deed of trust, mortgage, loan agreement, other evidence of indebtedness or any other agreement or instrument to which the Company is a party or by which it or any of its property is bound, and neither the Company's entering into this Agreement nor the Company's performing all covenants and obligations on its part to be performed under and pursuant to this Agreement will be in conflict with or result in a breach of or constitute (with due notice and/or lapse of time) 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 of the foregoing. This Agreement is the legal, valid and binding obligation of the Company enforceable in accordance with its terms.

(C) Governmental Consent: No consent, approval or authorization of, or filing, registration or qualification with, any Governmental Authority on the part of the Company is required as a condition to the execution, delivery or performance of this Agreement by the Company or as a condition to the validity of this Agreement.

SECTION 1.02. REPRESENTATIONS AND WARRANTIES OF THE OPERATING COMPANY. The Operating Company does hereby represent and warrant to the Agency as follows:

(A) Power: The Operating Company has full legal power and authority to own its properties and conduct its business.

(B) Authorization: The Operating Company has the legal power under the laws of the State of New York to enter into this Agreement and the transactions contemplated hereby and to perform and carry out all covenants and obligations on its part to be performed under and pursuant to

this Agreement. The Operating Company has duly authorized the execution, delivery and performance of this Agreement and the consummation of the transactions herein contemplated. The Operating Company is not prohibited from entering into this Agreement and discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Agreement by (and the execution, delivery and performance of this Agreement, the consummation of the transactions contemplated hereby and the fulfillment of the compliance with the provisions of this Agreement will not conflict with or violate or constitute a breach of or a default under) the terms, conditions or provision of any law, rule, regulation or order of any court or other agency or authority of government, or any contractual limitation, restriction or outstanding indenture, deed of trust, mortgage, loan agreement, other evidence of indebtedness or any other agreement or instrument to which the Operating Company is a party or by which it or any of its property is bound, and neither the Operating Company's entering into this Agreement nor the Operating Company's performing all covenants and obligations on its part to be performed under and pursuant to this Agreement will be in conflict with or result in a breach of or constitute (with due notice and/or lapse of time) 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 Operating Company under the terms of any of the foregoing. This Agreement is the legal, valid and binding obligation of the Operating Company enforceable in accordance with its terms.

(C) Governmental Consent: No consent, approval or authorization of, or filing, registration or qualification with, any Governmental Authority on the part of the Operating Company is required as a condition to the execution, delivery or performance of this Agreement by the Operating Company or as a condition to the validity of this Agreement.



## ARTICLE II

### COVENANTS AND AGREEMENTS

#### SECTION 2.01. TAX-EXEMPT STATUS OF THE PROJECT FACILITY.

(A) **Assessment of the Project Facility:** Pursuant to Section 874 of the Act and Section 412-a of the Real Property Tax Law, the parties hereto understand that, upon acquisition of a leasehold interest in the Project Facility by the Agency and the filing by the Agency of a New York State Board of Real Property Services Form RP-412-a, and for so long thereafter as the Agency shall have a leasehold interest in the Project Facility, the Project Facility shall be assessed by the Town of Clay, Onondaga County, New York (hereinafter referred to as the “Town”) and by the various other taxing entities having jurisdiction over the Project Facility, including, without limitation, any county, school district, or other political unit or units wherein the Project Facility is located (the Town and such other taxing entities being sometimes collectively referred to as the “Taxing Entities”, and each of such Taxing Entities being sometimes individually referred to as a “Taxing Entity”) as exempt upon the assessment rolls of the respective Taxing Entities prepared subsequent to the acquisition by the Agency of the leasehold interest in the Project Facility. The Company and the Operating Company shall, promptly following acquisition by the Agency of the leasehold interest, take such action as may be necessary to ensure that the Project Facility shall be assessed as exempt upon the assessment rolls of the respective Taxing Entities prepared subsequent to such acquisition by the Agency and, for so long thereafter as the Agency shall have a leasehold interest in the Project Facility, the Company and the Operating Company shall take such further action as may be necessary to maintain such exempt assessment with respect to each Taxing Entity. The parties hereto understand that the Project Facility shall not be entitled to such exempt status on the tax rolls of any Taxing Entity until the first tax year of such Taxing Entity following the tax status date of such Taxing Entity occurring subsequent to the date upon which the Agency obtains of record a leasehold interest in the Project Facility. Pursuant to the provisions of the Lease Agreement and the Equipment Lease Agreement, the Company and the Operating Company, jointly and severally, will be required to pay all taxes and assessments lawfully levied and/or assessed against the Project Facility, including taxes and assessments levied for the current tax year and all subsequent tax years until the Project Facility shall be entitled to exempt status on the tax rolls of the respective Taxing Entities. Subject to Section 3.01 hereof, the Agency will reasonably cooperate with the Company and the Operating Company to preserve the tax-exempt status of the Project Facility and to achieve the purposes and effect of this Agreement.

(B) **Special Assessments:** The parties hereto understand that the tax exemption extended to the Agency by Section 874 of the Act and Section 412-a of the State Real Property Tax Law does not entitle the Agency to exemption from special assessments and special ad valorem levies. Pursuant to the Lease Agreement and the Equipment Lease Agreement, the Company and the Operating Company, jointly and severally, shall pay all special assessments and special ad valorem levies lawfully levied and/or assessed against the Project Facility.

**SECTION 2.02. PAYMENTS IN LIEU OF TAXES.**

(A) **Agreement to Make Payments:** The Company and the Operating Company agree that they shall make annual payments in lieu of property taxes in the amounts hereinafter provided, to the Agency pursuant to the provisions hereof (the “Total PILOT Payment”). The Company and the Operating Company also agree to give the assessor a copy of this Payment in Lieu of Tax Agreement. The Total PILOT Payment due hereunder shall be paid by the Company and the Operating Company to the Agency for distribution to the appropriate officer or officers of the respective Taxing Entities entitled to receive same pursuant to the provisions hereof. The Company and the Operating Company, jointly and severally, shall pay interest and late charges as required by Section 874 of the Act. The first year of this Agreement shall relate to the 2023-2024 School Tax and the 2024 Town and County tax years.

(B) **Total Amount of Payments in Lieu of Taxes:** The Total PILOT Payment to be paid by the Company to the Agency annually pursuant to the terms of this Payment in Lieu of Tax Agreement has been agreed upon by the parties and is set forth below. The amount to be distributed to the Taxing Entities pursuant to the terms of this Payment in Lieu of Tax Agreement is as follows:

<u>Roll Year</u>	<u>Town/County Calendar Year</u>	<u>School District Fiscal Year</u>	<u>County Pilot Amount</u>	<u>Town (Clay) Pilot Amount</u>	<u>School (Liverpool) Pilot Amount</u>	<u>Total Pilot Payment</u>
1	2024	7/1/23–6/30/24	\$2,161	\$1,119	\$11,769	\$15,049
2	2025	7/1/24–6/30/25	2,284	1,183	12,436	15,903
3	2026	7/1/25–6/30/26	2,410	1,248	13,126	16,784
4	2027	7/1/26–6/30/27	2,541	1,316	13,838	17,695
5	2028	7/1/27–6/30/28	2,676	1,386	14,573	18,635
6	2029	7/1/28–6/30/29	2,815	1,458	15,333	19,606
7	2030	7/1/29–6/30/30	2,959	1,533	16,116	20,609
8	2031	7/1/30–6/30/31	3,108	1,610	16,925	21,643
9	2032	7/1/31–6/30/32	3,261	1,689	17,760	22,711
10	2033	7/1/32–6/30/33	3,419	1,771	18,622	23,813

Notwithstanding the foregoing schedule, the Company and the Operating Company further covenant and agree that for any period that the Agency continues to hold a leasehold interest in the Land and Improvements after February 28, 2034, the Company and the Operating Agreement shall pay, jointly and severally, 100% of the taxes that would be imposed on the Project Facility if the Agency did not have a leasehold interest in the Project Facility. The Company and the Operating Company shall not be liable or responsible for double tax payments associated with this Agreement and the restoration of the Project Facility to the assessment roll under Section 520 of the Real Property Tax Law.

(C) **Additional Amounts in Lieu of Taxes:** Commencing on the first tax year following the date on which any material modification or any structural addition shall be made to the Project Facility or any portion thereof or any additional building or other structure shall be constructed on the Land that is not included in the definition of “Project Facility” (such structural additions and additional buildings and other structures being hereinafter referred to as “Additional Facilities”) the Company and the Operating Company agree, jointly and severally, to make additional annual

payments in lieu of property taxes with respect to such Additional Facilities (such additional payments being hereinafter collectively referred to as “Additional Payments”) to the Agency with respect to such Additional Facilities, such Additional Payments to be computed separately for each Taxing Entity as follows:

(1) Determine the amount of general taxes and general assessments (hereinafter referred to as the “Additional Normal Tax”) which would be payable to each Taxing Entity with respect to such Additional Facilities if such Additional Facilities were owned by the Company and the Agency did not have a leasehold interest therein as follows: (a) multiply the Additional Assessed Value (as hereinafter defined) of such Additional Facilities determined pursuant to subsection (D) of this Section 2.02 by (b) the tax rate or rates of such Taxing Entity that would be applicable to such Additional Facilities if such Additional Facilities were owned by the Company and the Agency did not have a leasehold interest therein, and (c) reduce the amount so determined by the amounts of any tax exemptions that would be afforded to the Company by such Taxing Entity if such Additional Facilities were owned by the Company and the Agency did not have a leasehold interest therein.

(2) In each fiscal tax year during the term of this Payment in Lieu of Tax Agreement (commencing in the fiscal tax year when such Additional Facilities would first appear on the assessment roll of any Taxing Entity, as if such Additional Facilities were owned by the Company and the Agency did not have a leasehold interest therein), the amount payable by the Company and the Operating Agreement to the Agency on behalf of each Taxing Entity as a payment in lieu of property tax with respect to such Additional Facilities pursuant to this Payment in Lieu of Tax Agreement shall be an amount equal to one hundred percent (100%) of the Additional Normal Tax due each Taxing Entity with respect to such Additional Facilities for such fiscal tax year (unless the Agency, the Company and the Operating Company shall enter into a separate written agreement regarding payments in lieu of property taxes with respect to such Additional Facilities, in which case the provisions of such separate written agreement regarding payments in lieu of property taxes with respect to such Additional Facilities shall control).

(D) Valuation of Additional Facilities:

(1) The value of Additional Facilities for purposes of determining payments in lieu of taxes due under Section 2.02(C) hereof shall be determined by the Assessor of each respective Taxing Entity. The parties hereto agree that the Assessors shall (a) appraise the Additional Facilities in the same manner as other similar properties in the general area of the Project Facility, and (b) place a value for assessment purposes (hereinafter referred to as the “Additional Assessed Value”) upon the Additional Facilities, equalized if necessary by using the appropriate equalization rates as apply in the assessment and levy of real property taxes. The Company and the Operating Company shall be entitled to written notice of the initial establishment of such Additional Assessed Value and of any change in such Additional Assessed Value.

(2) If the Company and the Operating Company are dissatisfied with the amount of the Additional Assessed Value of the Additional Facilities as initially established or as changed, the Company and the Operating Company shall have the right to contest the Additional Assessed Value of the Project Facility made for purposes of determining any payments due hereunder and to seek a refund of any such payments made hereunder. The Company's and the Operating Company's challenge to the Additional Assessed Value of the Project Facility and the determination of the Company and/or the Operating Company and to seek a refund of any payments made hereunder shall be made in accordance with State Real Property Tax Law.

(E) Statements: The Agency shall submit to the Company and the Operating Company annual statements specifying the amount and due date or dates of the payments due each Taxing Entity hereunder, such periodic statements to be submitted to the Company and the Operating Company annually on or about January 10.

(F) Time of Payments: Subject to Section 2.03(B) hereof, the Company and the Operating Company agree to pay the amounts due hereunder to the Agency by January 30 of each year. The Company shall be entitled to receive receipts for such payments.

(G) Method of Payment: All payments by the Company and/or the Operating Company hereunder shall be paid to the Agency by check in lawful money of the United States of America. The Agency shall in turn distribute the amounts so paid to the various Taxing Entities entitled to same.

(H) Transfer to Company: In the event the Agency no longer has a leasehold interest in the Project Facility, the Project Facility shall be immediately subject to taxation pursuant to Section 302 and Section 520 of the Real Property Tax Law, as amended. However, with the exception of the calendar year 2023, in no event shall the Company be required to pay both payments in lieu of taxes and real property taxes for a concurrent tax year or any portion thereof. Therefore, should the Company Project Facility be conveyed to the Company and thus become taxable pursuant to Real Property Tax Law Section 520, the Taxing Entities agree that any payments payable under this Agreement as payments in lieu of taxes shall be reduced by the amount of any taxes which are required to be paid under Real Property Tax Law Section 520 for any such concurrent tax year or any portion thereof, and should such payments in lieu of taxes already have been made, the Taxing Entities shall refund any such amounts owing to the Company.

SECTION 2.03. CREDIT FOR TAXES PAID. (A) Credits: The parties hereto acknowledge and agree that the obligation of the Company and the Operating Company, jointly and severally, to make the payments provided in Section 2.02 of this Agreement shall be in addition to any and all other taxes and governmental charges of any kind whatsoever which the Company and/or the Operating Company may be required to pay under the Lease Agreement and the Equipment Lease Agreement, respectively. It is understood and agreed, however, that should the Company or the Operating Company pay in any calendar year to the Agency or the Taxing Entity any amounts in the nature of general property taxes, general assessments, service charges or other governmental charges of a similar nature levied and/or assessed upon the Project Facility or the interest therein of the Company

or the Operating Company or the occupancy thereof by the Company or the Operating Company (but not including, by way of example, sales and use taxes, or special assessments and special ad valorem levies described in Section 2.01(B) above) then the Company's and the Operating Company's obligation to make payments in lieu of property taxes for such calendar year to the Agency hereunder shall be reduced by the amounts which the Company and the Operating Company shall have so paid to the Agency in such calendar year, but there shall be no cumulative or retroactive credit as to any payment in lieu of property taxes due to the Agency or as to any payment in lieu of property taxes due to the Agency in any other calendar year.

(B) Method of Claiming Credits: If the Company or the Operating Company desires to claim a credit against any particular payment in lieu of tax due hereunder, the Company or the Operating Company shall give the governing body of the affected Taxing Entity and the Agency prior written notice of its intention to claim any credit pursuant to the provisions of this Section 2.03, said notice to be given by the Company or the Operating Company (as applicable) at least thirty (30) days prior to the date on which such payment in lieu of tax is due pursuant to the provisions of Section 2.02(F) hereof. In the event that the governing body of the appropriate Taxing Entity desires to contest the Company's or the Operating Company's (as applicable) right to claim such credit, then said governing body, the Agency and the Company or the Operating Company's (as applicable) shall each select an arbitrator in accordance with the rules of the American Arbitration Association, which arbitrators shall, at the sole cost and expense of the Company or the Operating Company, determine whether the Company or the Operating Company (as applicable) is entitled to claim any credit pursuant to the provisions of this Section 2.03 and, if so, the amount of the credit to which the Company or the Operating Company (as applicable) is entitled. It is understood that the arbitrators are empowered to confirm the amount of the credit claimed by the Company or the Operating Company (as applicable) or to determine a lower or higher credit. When the Company or the Operating Company (as applicable) shall have given notice, as provided herein, that it claims a credit, the amount of any payment in lieu of property taxes due hereunder against which the credit may be claimed may be withheld (to the extent of the credit claimed by the Company or the Operating Company (as applicable), but only to the extent that such credit may be claimed against said payment in lieu of taxes pursuant to the provisions of this Section 2.03) until the decision of the arbitrators is rendered. After the decision of the arbitrators is rendered, the payment in lieu of taxes due with respect to any reduction or disallowance by the arbitrators in the amount of the credit claimed by the Company or the Operating Company (as applicable) shall, to the extent withheld as aforesaid, be immediately due and payable, together with interest thereon from the date such payment in lieu of tax was originally due, at the rate of eighteen percent (18%) per annum, and such amount and shall be paid by the Company or the Operating Company (as applicable) within thirty (30) days of said decision.

SECTION 2.04. INTEREST. If the Company and the Operating Company shall fail to make any payment required by this Agreement when due, their joint and several obligation to make the payment in default shall continue as an obligation of the Company and the Operating Company until such payment in default shall have been made in full, and the Company shall pay the same together with late charges and interest thereon, as required by Section 874 of the Act and as more fully described in Section 4.05 hereof.

## ARTICLE III

### LIMITED OBLIGATION OF THE AGENCY

SECTION 3.01. NO RECOURSE; LIMITED OBLIGATION OF THE AGENCY. Notwithstanding anything contained in this Agreement to the contrary:

(A) **No Recourse**: All covenants, stipulations, promises, agreements and obligations of the Agency contained in this Agreement shall be deemed to be the covenants, stipulations, promises, agreements and obligations of the Agency, and not of any member, officer, agent (other than the Company and the Operating Company), servant or employee of the Agency in his or her individual capacity, and no recourse under or upon any obligation, covenants or agreement contained in this Agreement, or otherwise based upon or in respect of this Agreement, or for any claim based thereon or otherwise in respect thereof, shall be had against any past, present or future member, officer, agent (other than the Company and the Operating Company), servant or employee, as such, of the Agency or any successor public benefit corporation or political subdivision or any person executing this Agreement on behalf of the Agency, either directly or through the Agency or any successor public benefit corporation or political subdivision or any person so executing this Agreement, it being expressly understood that this Agreement is a corporate obligation, and that no such personal liability whatever shall attach to, or is or shall be incurred by, any such member, officer, agent (other than the Company and the Operating Company), servant or employee of the Agency or of any successor public benefit corporation or political subdivision or any person so executing this Agreement under or by reason of the obligations, covenants or agreements contained in this Agreement or implied therefrom; and that any and all such personal liability of, and any and all such rights and claims against, every such member, officer, agent (other than the Company and the Operating Company), servant or employee under or by reason of the obligations, covenants or agreements contained in this Agreement or implied therefrom are, to the extent permitted by law, expressly waived and released as a condition of, and as a consideration for, the execution of this Agreement.

(B) **Limited Obligation**: The obligations and agreements of the Agency contained herein shall not constitute or give rise to an obligation of the State of New York or the County of Onondaga, New York, and neither the State of New York nor the County of Onondaga, New York shall be liable thereon, and further such obligations and agreements shall not constitute or give rise to a general obligation of the Agency, but rather shall constitute limited obligations of the Agency payable solely from the revenues of the Agency derived and to be derived from the lease, sale or other disposition of the Project Facility (except for revenues derived by the Agency with respect to the Unassigned Rights, as defined in the Lease Agreement).

(C) **Further Limitation**: Notwithstanding any provision of this Agreement to the contrary, the Agency shall not be obligated to take any action pursuant to any provision hereof unless (1) the Agency shall have been requested to do so in writing by the Company and/or the Operating Company, and (2) if compliance with such request is reasonably expected to result in the incurrence by the Agency (or any of its members, officers, agents, servants or employees) of any liability, fees, expenses (including, without limitation, reasonable attorneys' fees and expenses) or other costs, the Agency shall have received from the Company and/or the Operating Company security or indemnity

and an agreement from the Company and/or the Operating Company to defend and hold harmless the Agency satisfactory to the Agency for protection against all such liability, however remote, and for the reimbursement of all such fees, expenses and other costs.

## ARTICLE IV

### EVENTS OF DEFAULT

**SECTION 4.01. EVENTS OF DEFAULT.** Any one or more of the following events shall constitute an event of default under this Agreement, and the terms “Event of Default” or “Default” shall mean, whenever they are used in this Agreement, any one or more of the following events:

(A) Failure of the Company or the Operating Company to pay any amount due and payable by the Company or the Operating Company pursuant to this Agreement and continuance of said failure for a period of fifteen (15) days after written notice to the Company or the Operating Company stating that such payment is due and payable;

(B) Failure of the Company or the Operating Company to observe and perform any other covenant, condition or agreement on its part to be observed and performed hereunder (other than as referred to in subsection (A) above) and continuance of such failure for a period of thirty (30) days after written notice to the Company and the Operating Company specifying the nature of such failure and requesting that it be remedied; provided that if such default cannot reasonably be cured within such thirty (30) day period, the Company or the Operating Company shall have commenced action to cure the breach of covenant, condition or agreement within said thirty (30) day period and thereafter diligently and expeditiously proceeds to cure the same;

(C) Any warranty, representation or other statement by or on behalf of the Company or the Operating Company contained in this Agreement shall prove to have been false or incorrect in any material respect on the date when made or on the effective date of this Agreement; or

(D) The occurrence and continuance of an “Event of Default” under the Lease Agreement or the Equipment Lease Agreement, beyond any applicable cure period (if any).

**SECTION 4.02. REMEDIES ON DEFAULT.** Whenever any Event of Default shall have occurred with respect to this Agreement, the Agency (or if such Event of Default concerns a payment required to be made hereunder to any Taxing Entity, then with respect to such Event of Default such Taxing Entity) may take whatever action at law or in equity as may appear necessary or desirable to the Agency or such Taxing Entity, as the case may be, to collect the amount then in default or to enforce the performance and observance of the obligations, agreements and covenants of the Company and the Operating Company under this Agreement, including without limitation, terminating the Company’s and the Operating Company’s status as agent of the Agency and causing the surrender of Underlying Lease to be duly recorded. Each such Event of Default shall give rise to a separate cause of action hereunder and separate suits may be brought hereunder as each cause of action arises. The Company and the Operating Company irrevocably agree that any suit, action or other legal proceeding arising out of this Agreement may be brought in the courts of record of the State of New York, consent to the jurisdiction of each such court in any such suit, action or proceeding, and waive any objection which they may have to the laying of the venue of any such suit, action or proceeding in any of such courts.



**SECTION 4.03. PAYMENT OF ATTORNEY'S FEES AND EXPENSES.** If the Company or the Operating Company should default in performing any of their obligations, covenants or agreements under this Agreement and the Agency or any Taxing Entity should employ attorneys or incur other expenses for the collection of any amounts payable hereunder or for the enforcement of performance or observance of any obligation or Agreement on the part of the Company or the Operating Company herein contained, the Company and the Operating Company agree that they will, on demand therefor and jointly and severally, pay to the Agency or such Taxing Entity, as the case may be, the reasonable expenses so incurred, whether or not an action is commenced together with interest thereon at the maximum rate allowed by law.

**SECTION 4.04. REMEDIES; WAIVER AND NOTICE.** (A) No Remedy Exclusive: No remedy herein conferred upon or reserved to the Agency or any Taxing Entity is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity or by statute.

(B) Delay: No delay or omission in exercising any right or power accruing upon the occurrence of any Event of Default hereunder shall impair any such right or power or shall be construed to be a waiver thereof, but any such right or power may be exercised from time to time and as often as may be deemed expedient.

(C) Notice Not Required: In order to entitle the Agency or any Taxing Entity to exercise any remedy reserved to it in this Agreement, it shall not be necessary to give any notice, other than such notice as may be expressly required in this Agreement or the Act.

(D) No Waiver: In the event any provision contained in this Agreement should be breached by either party and thereafter duly waived by the other party so empowered to act, such waiver shall be limited to the particular breach so waived and shall not be deemed to be a waiver of any other breach hereunder. No waiver, amendment, release or modification of this Agreement shall be established by conduct, custom or course of dealing.

**SECTION 4.05. PAYMENT OF INTEREST AND PENALTIES.** Pursuant to Section 874(5) of the General Municipal Law of New York, as amended, if the Company shall fail to make or cause to be made any such payments in lieu of real estate taxes when due, the amount or amounts so in default shall continue as an obligation of the Company until fully paid, and the Company hereby agrees to pay or cause to be paid the same, together with a late payment penalty equal to five percent (5%) of the amount due. Additionally, if the Company shall fail to make any payment required by this Section 4.05 when due and such delinquency shall continue beyond the first month, the Company's obligation to make the payment so in default shall continue as an obligation of the Company to the affected Taxing Entity until such payment in default shall have been made in full, and the Company shall pay the same to the Agency together with (1) a late payment penalty of one percent (1%) per month for each month, or part thereof, that the payment due hereunder is delinquent beyond the first month, plus (2) interest thereon, to the extent permitted by law, at the same rate per annum which would be payable if such amounts were delinquent taxes, until so paid in full.

## ARTICLE V

### MISCELLANEOUS

SECTION 5.01. TERM OF AGREEMENT. General: This Agreement shall become effective and the obligations of the Company and the Operating Company shall arise absolutely and unconditionally upon the approval of this Agreement by resolution of the Agency and the execution and delivery of this Agreement by the Company and the Agency. Unless otherwise provided by amendment hereof, this Agreement shall continue to remain in effect until the earliest to occur of (1) the date on which the Agency's interest in the Project Facility pursuant to the Underlying Lease is terminated, or (2) the occurrence of an Event of Default hereunder.

SECTION 5.02. FORM OF PAYMENTS. The amounts payable under this Agreement shall be payable by check in such coin and currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts.

SECTION 5.03. COMPANY AND OPERATING COMPANY ACTS. Where the Agency is required to do or accomplish any act or thing hereunder, the Company or the Operating Company may, with the prior written consent of the Agency, cause the same to be done or accomplished with the same force and effect as if done or accomplished by the Agency. Where the Company or the Operating Company is required to do or accomplish any act or thing hereunder, the Company or the Operating Company may cause the same to be done or accomplished with the same force and effect as if done or accomplished by the Company or the Operating Company.

SECTION 5.04. AMENDMENT OF AGREEMENT. (A) This Agreement may not be amended, changed, modified, altered or terminated unless such amendment, change, modification, alteration or termination is in writing and, in the case of any amendment, change, modification or alteration of this Agreement, unless the Company, the Operating Company and their respective successors and assigns shall assume in writing the obligations of such amended, changed, modified or altered Agreement.

SECTION 5.05. NOTICES. (A) All notices, certificates or other communications hereunder shall be in writing and shall be sufficiently given and shall be deemed given when (1) received at the applicable address stated below by registered or certified mail, postage prepaid, return receipt requested, or by such other means as shall provide the sender with documentary evidence of such delivery, or (2) delivery is refused by the addressee, as evidenced by the affidavit of the person who attempted to effect such delivery. The addresses to which notices, certificates and other communications hereunder shall be delivered are as follows:

If to the Agency:

Onondaga County Industrial Development Agency  
333 West Washington Street, Suite 130  
Syracuse, New York 13202  
Attention: Executive Director

With a copy to:

Barclay Damon LLP  
Barclay Damon Tower  
125 East Jefferson Street  
Syracuse, New York 13202  
Attention: Jeffrey W. Davis, Esq.

If to the Company:

245 Commerce LLC  
245 Commerce Boulevard  
Liverpool, New York 13088  
Attention: Warren Lee Vanderpool, Jr., Member

With a copy to:

Bond, Schoeneck & King PLLC  
One Lincoln Center  
Syracuse, NY 13202-1355  
Attention: Paul W. Reichel, Esq.

If to the Operating Company:

Immediate Mailing Services, Inc.  
245 Commerce Boulevard  
Liverpool, New York 13088  
Attention: Warren Lee Vanderpool, Jr., Chief Executive Officer

With a copy to:

Bond, Schoeneck & King PLLC  
One Lincoln Center  
Syracuse, NY 13202-1355  
Attention: Paul W. Reichel, Esq.

(B) The Agency, the Company and the Operating Company may, with notice given hereunder to each other, designate any further of different addresses to which subsequent notices, certificates or other communications to them shall be sent.

**SECTION 5.06. BINDING EFFECT.** This Agreement shall inure to the benefit of, and shall be binding upon, the Agency, the Company, the Operating Company and their respective successors and assigns. The provisions of this Agreement are intended to be for the benefit of the Agency and the respective Taxing Entities.

**SECTION 5.07. SEVERABILITY.** If any article, section, subsection, subdivision, paragraph, sentence, clause, phrase, provision or portion of this Agreement shall for any reason be held or adjudged to be invalid or illegal or unenforceable by any court of competent jurisdiction, such article, section, subsection, subdivision, paragraph, sentence, clause, phrase, provision or portion so adjudged invalid, illegal or unenforceable shall be deemed separate, distinct and independent and the remainder of this Agreement shall be and remain in full force and effect and shall not be invalidated or rendered illegal or unenforceable or otherwise affected by such holding or adjudication.

**SECTION 5.08. COUNTERPARTS.** This Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

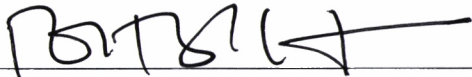
**SECTION 5.09. APPLICABLE LAW.** This Agreement shall be governed by and construed in accordance with the laws of the State of New York.

**SECTION 5.10 DEFINITIONS.** Capitalized terms used but not otherwise defined herein shall have the same meanings ascribed to them in the Lease Agreement unless the context requires otherwise.

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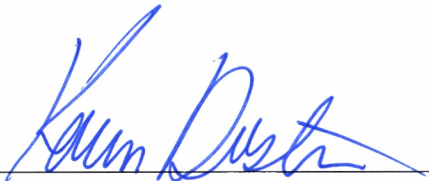
IN WITNESS WHEREOF, the Agency, the Company and the Operating Company have caused this Agreement to be executed in their respective names, by their duly authorized representatives, all being done as of the date first above written.

ONONDAGA COUNTY INDUSTRIAL  
DEVELOPMENT AGENCY

By:   
Robert M. Petrovich  
Executive Director

STATE OF NEW YORK            )  
  ) SS.:  
COUNTY OF ONONDAGA        )

On the 5<sup>th</sup> day of May in the year 2022 before me, the undersigned, a notary public in and for the State of New York, personally appeared Robert M. Petrovich, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

  
\_\_\_\_\_  
Notary Public



245 COMMERCE LLC

By: Warren Lee Vanderpool, Jr.  
Warren Lee Vanderpool, Jr.,  
Member

IMMEDIATE MAILING SERVICES, INC.

By: Warren Lee Vanderpool, Jr.  
Warren Lee Vanderpool, Jr.,  
Chief Executive Officer

STATE OF NEW YORK            )  
  ) SS.:  
COUNTY OF Onondaga        )

On the 6th day of May in the year 2022 before me, the undersigned, a notary public in and for the State of New York, personally appeared Warren Lee Vanderpool, Jr., personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Tara DeBois  
Notary Public

TARA DEBOIS  
NOTARY PUBLIC-STATE OF NEW YORK  
No. 01DE6318212  
Qualified in Cayuga County  
My Commission Expires 01-20-2023

## EXHIBIT "A"

### DESCRIPTION OF THE LAND

**ALL THAT TRACT OR PARCEL OF LAND**, situate in the Town of Clay, County of Onondaga and State of New York, being part of Farm Lot 76 in said Town being part of lands conveyed by the New York Central Railroad Company to Chapman Lumber Company, Inc. by deed dated March 24, 1958 and recorded in the Onondaga County Clerk's Office June 19, 1958 in Book 1907 of Deeds at Page 195, and being more particularly described as follows:

Beginning at the southeasterly corner of lands conveyed by the New York Central Railroad Company to Lipe-Rollway Corporation by deed dated October 7, 1957 and recorded in the Onondaga County Clerk's Office December 24, 1957 in Book 1889 of Deeds at Page 81; running thence N 07° 35' 10" E along the easterly boundary of said lands conveyed to Lipe-Rollway Corporation, a distance of 260.00 feet to a point therein; thence S 84° 32' 20" E parallel with the northerly boundary of lands conveyed by Ralph T. and Thelma I. Zogg to Lipe-Rollway Corporation by deed dated June 19, 1957 and recorded in Onondaga County Clerk's Office June 19, 1957 in Book 1862 of Deeds at Page 506, said northerly boundary also being the southerly boundary of said lands conveyed to Chapman Lumber Company, Inc., a distance of 372.19 feet to a point; thence S 07° 35' 10" W parallel with the first above described course, a distance of 260.0 feet to said southerly boundary of lands conveyed to Chapman Lumber Company Inc., thence N 84° 32' 20" W along said southerly boundary a distance of 372.19 feet to the point of beginning, containing 2.220 acres of land, more or less.

TOGETHER with the rights reserved to New York Central Railroad in deed to Lipe-Rollway corporation dated and recorded as aforesaid to use the parcel of land therein described for ingress and egress in common with Lipe-Rollway Corporation, its successors and assigns.

**Being more modernly described as follows:**

**ALL THAT TRACT OR PARCEL OF LAND**, situate in the Town of Clay, County of Onondaga and State of New York, as more particularly shown on a Map of Survey by Douglas R. Lehr, PLS 49223, dated December 20, 2017, being bounded and described as follows:

**BEGINNING** at a point and iron rod located in the south west corner of lands now or formerly owned by Buckley Clay, LLC (Book 5255/917), thence traveling the following courses and distances:

1. S 87° 21' 00" E, a distance of 372.19 feet to a point and iron rod;
2. S 04° 39' 30" W, a distance of 260.00 feet to a point and iron rod;
3. N 87° 21' 00" W, a distance of 372.19 feet to a point and iron rod;

N 04° 39' 30" E, a distance of 260.00 feet to the point and place of **BEGINNING**.