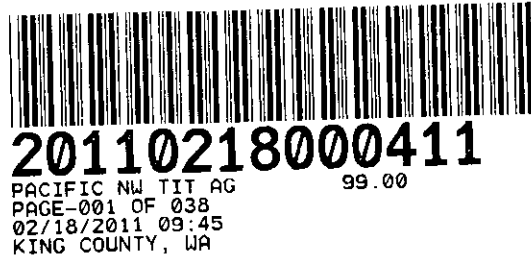


Please Return To:
 City of Redmond – 4NPW
 Attn: D.Wilson
 Public Works Department
 P.O. Box 97010
 Redmond, WA 98073-9710



WASHINGTON STATE COUNTY AUDITOR/RECORDER INDEXING FORM

Document Title(s) *(or transactions contained therein):*

DEVELOPMENT AGREEMENT

Reference Number(s) of Documents assigned or released:

Additional reference numbers on page ____ of document

PACIFIC NORTHWEST TITLE

Grantor(s): *(Last name first, then first name and initials)*

1. BT-OH, LLC
2. United Parcel Service, Inc.

☐ Additional names on page __ of document

Grantee(s): *(Last name first, then first name and initials)*

1. REDMOND, CITY OF
- 2.

☐ Additional names on page __ of document

Legal Description: *(abbreviated form i.e. lot, block, plat name, section-township-range)*

Ptns of S6, T25 N, R6E; S7, T25N, R6E; and S12, T25N, R5E, W.M., King County
 Washington

☐ Additional legal is on Exhibit A of document

Assessor's Property Tax Parcel Account Number(s):

062506-9012 and 062506-9141

City of Redmond Reference: *UPS Development Agreement*

Project Number:

Permit Number:

The Auditor/Recorder will rely on the information provided on the form. The staff will not read the document to verify the accuracy or completeness of the indexing information provided herein.

UNITED PARCEL SERVICE DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT ("Development Agreement" or "Agreement") is entered into this 20 day of January, 2010 by and between BT-OH, LLC, a Delaware limited liability company ("BT-OH"), United Parcel Service, Inc., an Ohio corporation ("UPS"), and the CITY OF REDMOND, a Washington optional municipal code city (the "City") (collectively, the "Parties"). UPS and BT-OH are at times collectively referred to herein as "UPS/BT".

RECITALS

A. BT-OH owns approximately 37.3 acres of real property in the Southeast Redmond subarea, King County tax parcel numbers 0625069012 and 0625069141, more particularly described on Exhibit A and depicted on Exhibit B attached hereto and incorporated herein by this reference (the "UPS Property"). The UPS Property is controlled and operated by UPS.

B. The UPS Property is located entirely in the City's Manufacturing Park ("MP") Zone. UPS currently owns and operates a warehouse and distribution facility and administrative offices located on the UPS Property.

C. The City proposes to construct an extension of 185th Avenue Northeast Street across the UPS Property. The City's facilities will include the roadway, stormwater retention/detention facilities, utilities, street lighting, landscaping buffers, sidewalks, curbs, traffic signal, and other appurtenant facilities (collectively, the "City Road Improvements").

D. The right-of-way necessary for construction and operation of the City Road Improvements, comprised of (i) a sixty-foot wide right-of-way corridor, (ii) a fifteen-foot wide retaining wall and slope easement located immediately west of such corridor, and (iii) a ten-foot wide road and utility easement located immediately east of such corridor (collectively, the "ROW") will be transferred to the City by BT-OH pursuant to the terms and conditions of the Mitigation Agreement between the City, BT-OH, and UPS (the "Mitigation Agreement"), a copy of which is attached hereto as Exhibit C. The ROW bisects the UPS Property in a north-south direction as depicted in attached Exhibit B.

E. UPS/BT anticipates the need to redevelop the UPS Property at some point in the future to meet long-term commercial demand. For purposes of this Development Agreement, future UPS/BT development contemplated herein shall be referred to as the "UPS Development"—i.e., future UPS/BT redevelopment located on the UPS Property, less the ROW.

F. The City and UPS/BT understand that dedication of the ROW and construction of the City Road Improvements bisecting the UPS Property could impede UPS business operations and adversely impact the UPS Development.

G. The City and UPS/BT agree that UPS's presence in the community provides economic and community benefit to the City and its residents. The UPS Development will further such public benefit. In addition, the dedication of UPS/BT land to the City and access to the UPS Property for purposes of construction of the same will further public transportation and land use goals and provide the City with in-kind mitigation benefits that reduce total City expenses for development of the City Road Improvements.

H. Through this Development Agreement, the City and UPS/BT desire to establish provisions for the UPS Development as outlined herein.

I. The City and UPS/BT recognize the benefits that each will derive from long-term facilities planning and coordinated development of the UPS Property.

J. The City and UPS/BT desire to utilize the provisions of RCW 36.70B that provide for cities to enter into development agreements with property owners to govern the future development of real property. The City has a notable history of success of utilizing such agreements, including previous agreements with Microsoft, Legacy Riverpark LLC, and Safeco.

K. Additionally, execution of this Development Agreement is a condition precedent to obligations arising under the Mitigation Agreement between the Parties regarding the transfer of ROW for development of the City Road Improvements.

L. A development agreement between UPS/BT and the City is a collaboration that will provide mutual benefit for the parties as well as the region.

M. All Exhibits referenced in this Development Agreement are herein incorporated by reference and shall be considered as material terms of this Agreement.

Accordingly, the Parties agree:

AGREEMENT

1. Vesting and Term of Development Agreement. The City's Land Use Regulations in effect and applicable to project applications as of the recording date of this Development Agreement shall govern (a) the continued use and operation of the UPS Property for warehouse and distribution purposes and (b) any UPS Development applications submitted to the City within twenty (20) years from the recording date of this Development Agreement, so long as such applications are for warehousing and distribution or another use permitted under the current Redmond Community

Development Guide ("RCDG") and Redmond Municipal Code ("RMC") requirements for the MP zone. Except for revisions to plan review and permit fees, impact fee and building and fire codes, any subsequent amendments or additions made during the term of this Development Agreement to zoning or development regulations, transportation concurrency regulations, SEPA regulations and substantive SEPA policies or other laws, ordinances, comprehensive plan policies or other policies governing land development which may be applicable to the UPS Development shall not apply to or affect the conditions of the UPS Development.

2. Land Use Regulations. For purposes of this Development Agreement, "Land Use Regulations" means Comprehensive Plan policies and zoning and land use standards under the RCDG and RMC in effect as of the recording date of this Agreement. For purposes of this Development Agreement, the current Comprehensive Plan designation for the UPS Property is Manufacturing Park and the zoning designation is also Manufacturing Park pursuant to the RCDG, RMC and the zoning map adopted by the Redmond City Council as of March 15, 2010.

3. Approval of Allowed UPS Development. UPS/BT shall have the right to develop the UPS Property consistent with the Land Use Regulations. The UPS Development shall be approved through the site plan entitlement or applicable process as provided in the Land Use Regulations. The City shall not impose any condition on the UPS Development that is inconsistent with any provision of this Development Agreement except as provided herein.

- a. Public Health and Safety Conditions; Preemption by State/Federal Mandates.

Notwithstanding the foregoing, the City reserves the authority under RCW 36.70B.170(4) to impose new or different regulations to the extent (i) required by a serious threat to public health and safety, as determined by the Redmond City Council after notice and an opportunity to be heard has been provided to UPS/BT, or (ii) required by state or federally mandated laws preempting the City's authority to vest regulations for the UPS Development.

- b. UPS/BT Request for Application of Subsequent Amendments to Land Use Regulations.

UPS/BT may jointly request to be bound by future amendments to the RCDG and RMC, and such requests shall be reviewed by the City Council as a proposed amendment to this Development Agreement. Nothing in this Development Agreement requires the City Council to approve any proposed amendment and the Council shall review the same under the provisions of RCW 36.70B.170, *et seq.*, and Redmond's land use ordinances in effect at the time of application in the same manner and with the same discretion as other

such applications. The UPS Development shall not be subject to any development moratoria the City may adopt subsequent to the date of this Development Agreement unless necessitated by a serious threat to the public health and safety.

4. State Environmental Policy Act. State Environmental Policy Act ("SEPA") review for the UPS Development shall occur in accordance with the provisions of this paragraph.

a. Application of SEPA.

Pursuant to RCW 36.70B.170(3)(c), the rights and obligations under this Development Agreement address "development conditions, and other requirements under 43.21C RCW" for the UPS Development pursuant to paragraph 4 herein. This Development Agreement is related to construction of the City Road Improvements and is addressed in the City's June 17, 2010 SEPA Addendum to the City's Determination of Nonsignificance issued on February 23, 2010 for the City Road Improvements.

b. Adequacy of Mitigation; Additional SEPA Review.

Pursuant to RCW 43.21C.240(2) & (3), the City finds that the adequacy of the mitigation measures proposed in this Development Agreement to address specific adverse environmental impacts of the UPS Development cannot be determined at this time. Further SEPA review will be required in connection with review of each entitlement application for the UPS Development. Additional mitigation conditions or environmental analysis may be imposed on the UPS Development during the term of this Development Agreement, provided, however, that such conditions are otherwise consistent with this Agreement.

5. Allocation of Development Agreement Benefits and Obligations. UPS/BT may sell, subdivide, lease, or otherwise transfer ownership of the UPS Property, or other portions of the UPS Property, to other entities. The benefits and obligations of this Development Agreement shall run with the land and continue following the sale, subdivision, leasing, or other transfer of ownership, as set forth herein.

6. Extension of Term. The City and UPS/BT may agree to extend the Term of this Development Agreement, provided that such extension is approved by the City Council.

7. Amendment of Development Agreement. Any amendment to this Agreement shall require review and approval by the City Council, provided, however, that clerical or scrivener's errors may be administratively approved.

8. Recording. This Development Agreement shall be recorded in the records of King County, Washington.

9. Binding Effect; Assignability. This Development Agreement shall bind and inure to the benefit of the Parties hereto and their respective successors, heirs, legatees, representatives, receivers, trustees, successors, transferees and assigns.

10. Representations and Warranties. Each signatory to this Development Agreement represents and warrants that he or she has full power and authority to execute and deliver this Agreement on behalf of the Party for which he or she is signing, and that he or she will defend and hold harmless the other Parties and signatories from any claim that he or she was not fully authorized to execute this Agreement on behalf of the person or entity for whom he or she signed. Upon proper execution and delivery, this Development Agreement will have been duly entered into by the Parties, will constitute as against each Party a valid, legal and binding obligation that shall run with the land, and will be enforceable against each Party in accordance with the terms herein.

11. Specific Performance and Enforcement. The Parties specifically agree that damages are not an adequate remedy for breach of this Development Agreement and that the Parties are entitled to compel specific performance of all terms of this Agreement by any Party in default hereof. All terms and provisions of this Development Agreement are material.

12. Governing Law and Venue. This Development Agreement shall be governed by and construed in accordance with the laws of the State of Washington. Venue for any action arising out of or relating to this Agreement shall lie in King County Superior Court.

13. Notice of Default and Enforcement. In the event any Party, acting in good faith, believes that the other Party has violated the terms of this Development Agreement, the aggrieved Party shall give the believed offending Party notice of the alleged violation by sending a detailed written statement of the same to the offending Party by first-class mail. This notice is intended to invite a resolution by the Parties of any dispute prior to the institution of litigation. This Development Agreement may be filed with a court to enforce its terms only upon the expiration of twenty (20) days after said notice is posted, at which time the aggrieved Party may file and serve an action for appropriate relief. For purposes of this paragraph, the identities and addresses of the Parties are as set out in the following paragraph. The identity or address of any Party may be changed for purposes of this paragraph by written notice to the representative for the other Party.

14. Notices. All notices, requests, demands, and other communications called for or contemplated by this Development Agreement shall be in writing and shall be deemed to have been duly given by UPS Next Day Air or by United States certified mail,

return receipt requested to the following addresses, or to such other addresses as the Parties may designate by written notice in the manner aforesaid, provided that communications that are given by UPS Next Day Air shall be deemed effective one (1) business day after dispatch and those given by United States mail shall be deemed effective three (3) business days after mailing:

If to BT-OH:

United Parcel Service, Inc.
Attn: Real Estate Department
55 Glenlake Parkway NE
Atlanta, GA 30328

If to UPS:

United Parcel Service, Inc.
Attn: Legal Department
55 Glenlake Parkway NE
Atlanta, GA 30328

United Parcel Service, Inc.
Attn: West Region – Plant Engineering Department
25201 Paseo de Alicia, Suite 200
Laguna Hills, CA 92653

United Parcel Service, Inc.
Attn: Plant Engineering Manager
4455 – 7th Avenue South
Seattle, WA 98108

And to:
Perkins Coie LLP
Attn: Laura Whitaker
1201 Third Avenue, Suite 4800
Seattle, WA 98101-3099

If to City:

City of Redmond:
c/o Assistant Planning Director Jim Roberts
P.O. Box 97010
Redmond, WA 98073-9710

15. Understanding. The Parties each acknowledge, represent and agree that they have read this Development Agreement; that they fully understand the terms thereof; that they have had the opportunity to be fully advised by their legal counsel and any other advisors with respect thereto, and that they are executing this Agreement after sufficient review and understanding of its contents.

16. Attorneys' Fees. Should it be necessary for any Party to this Development Agreement to initiate legal proceedings to adjudicate any issues arising hereunder, the Party or Parties to such legal proceedings who substantially prevail shall be entitled to reimbursement of their attorneys' fees, costs, expenses, and disbursements (including the fees and expenses of expert and fact witnesses) reasonably incurred or made by the substantially prevailing Parties in preparing to participate in mediation or arbitration, to bring suit, during suit, on appeal, on petition for review, and in enforcing any judgment or award, from the other Party or Parties.

17. Severability. This Development Agreement does not violate any federal or state statute, rule, regulation or common law known, but any provision which is found to be invalid or in violation of any statute, rule, regulation or common law shall be considered null and void, with the remaining provisions remaining viable and in effect.

18. Cooperation in Execution of Documents. The Parties agree to properly and promptly execute and deliver any and all additional documents that may be necessary to render this Development Agreement practically effective. This paragraph shall not require the execution of any document that expands, alters or in any way changes the terms of this Agreement.

19. Equal Opportunity to Participate in Drafting. The Parties have participated and had an equal opportunity to participate in the drafting of this Development Agreement. No ambiguity shall be construed against any Party based upon a claim that that Party drafted the ambiguous language.

20. Exhibits. This Development Agreement includes the following exhibits:

- a. Exhibit A – Legal Description of UPS Property
- b. Exhibit B – Depiction of UPS Property
- c. Exhibit C – Mitigation Agreement
- d. Exhibit D – Depiction of ROW Bisection

21. Final and Complete Agreement. This Development Agreement constitutes the final and complete expression of the Parties on all subjects relating to the development of the UPS Property. This Agreement may not be modified, interpreted, amended, waived or revoked orally, but only by a writing signed by all Parties. This Agreement supersedes and replaces all prior agreements, discussions and representations

on all subjects discussed herein, without limitation. No Party is entering into this Agreement in reliance on any oral or written promises, inducements, representations, understandings, interpretations or agreements other than those contained in this Agreement and the exhibits hereto.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties have executed this Development Agreement on the date first set forth above.

BT-OH:

BT-OH, LLC,
a Delaware limited liability company

By: 

Name: P.C. Mahan

Its: VP.

UPS:

United Parcel Service, Inc.,
an Ohio corporation

By: 

Name: Scott Wicker

Its: VP Plant Engineering

CITY:

City of Redmond,
a Washington optional municipal code city

By: 

Name: JANE CHRISTENSEN

Its: DEPUTY CITY ADMINISTRATOR

STATE OF GEORGIA)
) ss.
COUNTY OF FULTON)

Before me, the undersigned, a Notary Public in and for the State of Georgia, duly commissioned and sworn, personally appeared P.C. Altamari, who being duly sworn, according to law, says that he or ~~she~~ is the Vice President of BT-OH, LLC, the limited liability company that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said limited liability company for the uses and purposes therein mentioned, and on oath stated that he or she was duly authorized to execute said instrument on behalf of said limited liability company.

Subscribed and sworn to before me this 22nd day of December, 2010.



[Signature]
(Signature of Notary)

(Print or stamp name of Notary)

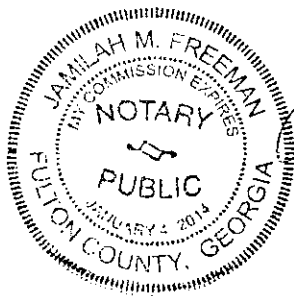
NOTARY PUBLIC in and for the State
of Georgia, residing at Atlanta

My commission expires: January 4, 2014

STATE OF GEORGIA)
) ss.
COUNTY OF FULTON)

Before me, the undersigned, a Notary Public in and for the State of Georgia, duly commissioned and sworn, personally appeared Scott Wicker, who being duly sworn, according to law, says that he or she is the VP of Plant Engineering of UNITED PARCEL SERVICE, INC., the corporation that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said corporation for the uses and purposes therein mentioned, and on oath stated that he or she was duly authorized to execute said instrument on behalf of said corporation.

Subscribed and sworn to before me this 21st day of December, 2010.



[Signature]
(Signature of Notary)

(Print or stamp name of Notary)
NOTARY PUBLIC in and for the State
of Georgia, residing at Atlanta.
My commission expires: January 4, 2014.

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

On this 20 day of January, 2011, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared Jane Christerson, to me known to be the person who signed as Deputy City Administrator of the CITY OF REDMOND, the Washington optional municipal code city that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said optional municipal code city for the uses and purposes therein mentioned, and on oath stated that he or she was duly authorized to execute said instrument on behalf of said optional municipal code city.

IN WITNESS WHEREOF I have hereunto set my hand and official seal the day and year first above written.



Michelle M. McGhee
(Signature of Notary)
Michelle M. McGhee
(Print or stamp name of Notary)
NOTARY PUBLIC in and for the State
of Washington, residing at Redmond City.
My appointment expires: 01/08/2012.

EXHIBIT A

Legal Description of UPS Property

PARCEL A:

That portion of Government Lot 1 in the Northwest quarter and that portion of the West half of the East half of said Northwest quarter, in Section 7, Township 25 North, Range 6 East, W.M., in King County, Washington, lying Northerly of a line running Northeasterly from a point on the West line of said Government Lot which is 742.60 feet South, as measured along said line, from the Northwest corner of said Government Lot, to a point on the North line of said Northwest quarter, 1980.00 feet East, as measured along said line, from the said Northwest corner;

EXCEPT any portion thereof lying within the plat of Eastside Industrial Center Div. 1, according to the plat recorded in Volume 100 of Plats, pages 19 through 21, inclusive, in King County, Washington.

PARCEL B:

That portion of Section 6, Township 25 North, Range 6 East, W.M., in King County, Washington, described as follows:

BEGINNING at the Southwest corner of the Southwest quarter of the Southwest quarter of said Section 6;
thence North $89^{\circ}27'29''$ East to the East line of the Southwest quarter of the Southwest quarter;
thence North along said line to the Southerly margin of Northeast Union Hill Road (Redmond-Snoqualmie County Road);
thence Southwesterly along said Southerly margin to the West line of the Southwest quarter of the Southwest quarter;
thence South to the POINT OF BEGINNING.

PARCEL C:

Lot 2 as delineated on City of Redmond Short Plat No. SS-82-17 (Qestar Short Plat One), recorded under King County Recording No. 8208240404, being a portion of the Southeast quarter of the Southwest quarter of Section 6, Township 25 North, Range 6 East, W.M., in King County, Washington.

PARCEL D:

The East 30 feet of the Southeast quarter of Section 1, Township 25 North, Range 5 East, W.M., in King County, Washington, lying Southerly of the Southerly margin of Northeast Union Hill Road (Redmond-Snoqualmie County Road).

PARCEL E:

The East 30 feet of the Northeast quarter of the Northeast quarter of Section 12, Township 25 North, Range 5 East, W.M., in King County, Washington, lying Northerly of the Northerly margin of 178th Place Northeast (Ed Botsford Road No. 180).

PARCEL F:

That portion of the Northeast quarter of the Northeast quarter of Section 12, Township 25 North, Range 5 East, W.M., in King County, Washington, described as follows:

COMMENCING at the Northeast corner of said section;
thence South $1^{\circ}26'28''$ West along the East line of said subdivision 813.89 feet;
thence North $88^{\circ}33'32''$ West 30.00 feet to the TRUE POINT OF BEGINNING;
thence North $1^{\circ}26'28''$ East 167.97 feet;
thence North $88^{\circ}33'32''$ West 236.10 feet to a Northeasterly margin of Ed Botsford County Road No. 180 (178th Place Northeast);
thence South $29^{\circ}38'47''$ East 388.70 feet along said Northeasterly margin;
thence North $12^{\circ}50'00''$ East 168.75 feet more or less, to the TRUE POINT OF BEGINNING.

EXHIBIT B

Depiction of UPS Property

**See Depiction Graphic as found in the records of:
Redmond City Hall
15670 NE 85th Street
Redmond, Washington 98052**

**Project File: 185th Ave NE Extension Phase II
Project No: 101197**

EXHIBIT C

MITIGATION AGREEMENT BETWEEN BT-OH, UNITED PARCEL SERVICE, AND CITY OF REDMOND FOR CONVEYANCE OF RIGHT-OF-WAY AND EASEMENTS FOR THE 185TH AVENUE NE EXTENSION PROJECT

THIS MITIGATION AGREEMENT ("Mitigation Agreement" or "Agreement") is entered into this ____ day of _____, 2010 by and between BT-OH, LLC, a Delaware limited liability company, United Parcel Service, Inc., an Ohio corporation ("UPS"), and the City of Redmond, a Washington municipal corporation ("the City") for the purpose of establishing the terms and conditions under which BT-OH will convey certain right-of-way and easements to the City for the completion of the City's 185th Avenue NE Extension Project on property occupied by UPS.

RECITALS

A. The City intends to construct an extension of 185th Avenue NE from NE 80th Street to NE Union Hill Road ("the 185th Avenue NE Extension Project"). The improvements to be constructed include two twenty-foot wide travel lanes (one in each direction), left turn lanes at intersections, retaining walls, curb, gutter, and sidewalks, storm drainage and utility improvements, street lighting, street trees, landscaping, a traffic signal at the intersection of NE Union Hill Road and 185th Avenue NE, and other features needed to complete the improvement in accordance with City standards.

B. BT-OH is the owner of real property located at 18001 NE Union Hill Road ("the UPS Property"). The UPS Property is the site of a UPS warehouse and distribution facility. The 185th Avenue Extension Project will bisect the UPS Property.

C. The UPS package distribution facility was granted site plan approval by the City in 1986 under City File No. SPR-86-1, subject to a condition requiring dedication of right-of-way for and payment of a proportionate share of the construction cost of a proposed extension of 185th Avenue NE through the UPS Property, contingent upon the completion of a corridor re-alignment study which was then underway.

D. Design and construction of the 185th Avenue NE Extension has been delayed since 1986 and the parties differ over whether the condition in the 1986 site plan approval is currently enforceable. The parties have agreed, however, to resolve any differences they have by entering into this Mitigation Agreement, under which BT-OH has agreed to convey the necessary right-of-way and easements for the 185th Avenue NE Extension to the City in exchange for certain terms and conditions.

AGREEMENT

FOR AND IN CONSIDERATION OF the terms and conditions set forth below, BT-OH, UPS, and the City agree as follows:

1. **Scope of Project.** The City shall construct and complete the 185th Avenue NE Extension Project at no cost to BT-OH or UPS substantially as depicted in the primary construction drawings attached hereto as Exhibit 1 and incorporated herein by this reference ("the Primary Construction Drawings"). In the event that the City proposes to substantially change, substantially add to, or otherwise substantially amend the Primary Construction Drawings, the City shall notify BT-OH and UPS, provide copies of the amended drawings to BT-OH and UPS, and provide BT-OH and UPS with the opportunity to review and comment on such changes, additions or amendments within a reasonable period of time following receipt. Minor changes in the field may proceed without such prior notice, review and comment. Changes, additions, or amendments to the following construction drawing elements shall be deemed substantial: the site preparation plans; the landscaping and tree removal plans; the curb cut for a driveway entrance from 185th Avenue NE to the future parking area; the replacement parking lot configuration and number of parking stalls; and, the stormwater drainage plan. BT-OH's and/or UPS's review or comment, or its failure to review or comment, shall in no way relieve or release the City of any of its obligations arising under this Mitigation Agreement, nor shall BT-OH's and/or UPS's review or comment, or its failure to review or comment, subject BT-OH and/or UPS to any liability with respect thereto. Except with respect to UPS-approved plans and specifications for the rough grading work as provided in Section 3(B) of the Mitigation Agreement, BT-OH and UPS expressly disclaims any representation or warranty that the City's plans and specifications for the 185th Avenue NE Extension are suited for the City's intended use or purpose. In the event of a conflict between the Primary Construction Drawings and this Mitigation Agreement, the terms of the Mitigation Agreement shall control.

2. **Conveyance of Right-of-Way and Easements.** Within thirty (30) days of the date this Mitigation Agreement is signed by both parties, BT-OH agrees to convey the following property rights to the City:

A. BT-OH will dedicate a sixty-foot wide right-of-way corridor to the City. The sixty-foot right-of-way corridor ("ROW Corridor") is legally described on the Deeds of Dedication attached as Exhibit 2 and depicted on the aerial photo overlays attached as Exhibits 3 and 4 and incorporated herein by this reference as if set forth in full.

B. BT-OH will convey a fifteen-foot wide slope and retaining wall easement to the City immediately west of the right-of-way corridor. The slope and retaining wall easement is legally described on the parcel-specific easements attached as Exhibit 5 and depicted on the aerial photo overlays attached as Exhibits 3 and 4 and incorporated herein by this reference as if set forth in full. The easement will accommodate a retaining wall, wall footings, drains, tiebacks, fencing, landscaping, and other features associated with permanent retaining walls.

C. BT-OH will convey a ten-foot wide road and utility easement to the City immediately east of the right-of-way corridor. The road and utility easement is legally described on the parcel-specific easements attached as Exhibit 6 and depicted on the aerial photos attached as Exhibits 3 and 4 and incorporated herein by this reference as if set forth in full. The easement will accommodate sidewalks, street lights, underground utilities, landscaping, and other road-related features.

D. BT-OH will convey a water utility and fire hydrant easement to the City to the west of the southern portion of the right-of-way corridor. The water utility and fire hydrant easement is legally described on the Easement attached as Exhibit 7 and depicted on the aerial photos attached as Exhibit 4 and incorporated herein by this reference as if set forth in full. The easement will accommodate public water line, water metering utility, and fire hydrant facilities.

E. Pursuant to the terms and conditions of the Construction and Access Agreement between the City, BT-OH, and UPS attached as Exhibit 8 and incorporated herein by this reference as if set forth in full, BT-OH grants permission to the City to (i) rough grade that portion of the UPS Property lying east of the 185th Avenue NE Extension Project to the approximate grade of the new roadway, (ii) plant replacement trees within the setback area along the north boundary of the rough graded property or in locations elsewhere on the UPS Property to be mutually agreed upon in order to mitigate the removal of significant trees during the rough grading process, and (iii) temporarily access certain UPS Property adjacent to the ROW Corridor and Easements for the purpose of constructing the roadway, retaining walls, slopes, grading, utilities, drainage, parking lot revisions, and other improvements necessary to complete the 185th Avenue NE Extension Project and the City's obligations under Section 3 of this Agreement.

3. **Consideration - Obligations of City.** As consideration for conveyance of the property rights described in Section 2 and for the other commitments of BT-OH and UPS in this Agreement, the City agrees as follows:

A. **Construction of Project.** The City will construct and complete the 185th Avenue NE Extension Project at no further cost to BT-OH or UPS, including the construction of the roadway section, retaining walls, curbs, gutters, sidewalks, storm sewers and street lighting, landscaping, street trees, a traffic signal at the intersection of Union Hill Road and 185th Avenue NE, and such other appurtenances as are necessary to provide completed roadway improvements that meet City standards. The signalized intersection will include crosswalks and traffic signal functions for pedestrians. Landscaping and irrigation will be provided in the easement areas where required for streetscape and parking lot landscape buffers.

B. **Grading of Eastern UPS Property.** As part of the 185th Avenue NE Extension Project, the City will rough grade that portion of the UPS Property located east of the roadway extension to the approximate grade of the new roadway at no cost to BT-OH or UPS. The City shall develop the plans and specifications for such rough grading work, which shall be reviewed and approved by UPS. UPS approval of rough grading plans and specifications shall be deemed a finding that such plans and specifications are suited for UPS's intended use or purpose. Except as provided in subsection (G) below, the City will be solely responsible for disposing of all

excess soil and all vegetation removed from the area graded and will be entitled to sell or otherwise transfer any gravel, soil, timber or other vegetation removed from the site to any third party of the City's choice and to retain any proceeds thereof without claim by BT-OH or UPS. Upon completion of the rough grading, the City will cause the graded area to be hydro-seeded to prevent erosion.

C. Replacement Trees.

- i. The City will plant replacement trees on that portion of the UPS Property lying east of the 185th Avenue NE Extension Project in order to mitigate the removal of trees during grading. All replacement trees shall be planted within the area of the site required to be maintained in landscaped setbacks under the City's development regulations or within other setback areas on the UPS Property to be mutually agreed by the City and UPS. The actual number of replacement trees required will be determined by the City and UPS according to the City's tree preservation regulations. In the event that the City and UPS determine that there is insufficient room in such areas to allow the planting of all the necessary replacement trees, the City will make a monetary contribution in lieu of replacement to the City's tree mitigation fund as allowed by such regulations. All tree replacement or contributions in lieu of replacement shall be made at the City's sole cost and expense.
- ii. The City will install and maintain a temporary irrigation system along the boundaries of the UPS Property lying east of the 185th Avenue Extension Project in order to maintain the newly planted replacement trees. Any replacement trees that fail to survive within the first year after planting shall be replaced by the City at the City's expense and UPS and BT-OH hereby grant the City the right to enter upon the UPS Property during this one year maintenance period in order to perform such maintenance and replacement upon reasonable notice to UPS. After one-year has passed from the date of planting, the City shall remove the temporary irrigation system and all maintenance of replacement trees thereafter shall be the sole responsibility of UPS.

D. Curb Cut for Driveway Entrance. As part of the 185th Avenue NE Extension Project, the City will install a curb cut consistent with City standards for a driveway entrance from 185th Avenue NE to the future parking area on that UPS Property lying east of the Project. The location of the curb cut will be mutually agreed upon by UPS and the City.

E. Replacement of Parking Stalls. As part of the 185th Avenue Extension Project the City will replace any parking stalls eliminated from the UPS Property as the result of the Project as follows:

- i. The parking stalls will be replaced by reconfiguring or expanding the existing parking areas on that portion of the UPS Property lying west of the Project.

- ii. All construction, reconfiguration and expansion of parking areas by the City pursuant to this subsection (3)(E) shall be accomplished in accordance with the construction plans attached as Exhibit 1 and the UPS Parking Lot Construction and Lighting Standards attached as Exhibit 9 and incorporated herein by this reference as if set forth in full.
- iii. In the event that any temporary replacement of eliminated stalls is required before new permanent parking is constructed, all temporary parking will have a suitable all-weather surface. Upon completion of permanent replacement stalls, any temporary parking areas will be restored, as nearly as practicable, to the condition they were in prior to construction.
- iv. All temporary and permanent replacement parking will be provided at the City's sole cost and expense.
- v. Parking lot reconfiguration and replacement will proceed according to the phased construction plan included in Exhibit 1. Prior to commencing construction of any phase, the City will erect construction fencing around its work area. The City will keep UPS representatives apprised of the schedule for each phase of parking lot construction as construction proceeds.
- vi. As part of the parking lot reconfiguration and replacement, the City will make such modifications to the current parking area irrigation system as are necessary to extend the system to and accommodate the new parking lot plantings and any plantings between the parking lots and the retaining wall to be constructed on the west side of the ROW Corridor. Upon completion of construction, irrigation and maintenance of the planting shall become the responsibility of UPS and BT-OH.

F. UPS Detention Pond. A stormwater detention pond serving the UPS Property is currently located on that portion of the UPS Property lying east of the 185th Avenue NE Extension Project. The detention pond will not be altered by the 185th Avenue NE Extension Project. The detention pond will not be altered by the 185th Avenue NE Extension Project but utility lines leading to and from the detention pond will be relocated by the City so as to avoid conflicts with the Project. The City agrees to provide any necessary temporary lines or facilities to maintain UPS Property site drainage during construction and to relocate and construct the utility lines in compliance with applicable City standards. The City shall promptly restore, repair, and/or remediate the UPS Property with respect to disruption of soils and vegetation impacted by such utility line relocation. All cost of relocating such utility lines shall be at the City's sole cost and expense.

G. Unsuitable Soils. Except as provided in this subsection, the City will remove all unsuitable soils (e.g., saturated/wet soils, native or fill materials not suitable for construction) excavated from the UPS Property at its sole cost and expense. In the event that any hazardous waste or contamination requiring remediation is discovered during any of the City's excavation or construction on the UPS Property, UPS and BT-OH shall be responsible for any and all costs associated with clean-up, remediation, and disposal of any such waste or contamination that was

generated by UPS or BT-OH or that otherwise originated on the UPS Property, provided, however, that the City shall be responsible for any hazardous waste or contamination located in the ROW Corridor.

H. Release. The City agrees that conveyance of the property interests described in Section 2 will constitute the complete and total fulfillment of any and all obligations of UPS or BT-OH, or their successors and assigns, to convey right-of-way or pay a proportionate share of the cost of constructing the 185th Avenue NE Extension Project under the 1986 UPS site plan approval conditions, City File No. SPR-86-1. Upon conveyance of the property interests specified in Section 2, all such obligations shall be fully released and the City agrees to indemnify, hold harmless and defend UPS and BT-OH, and their respective successors and assigns as to the UPS Property, from any claim by any person claiming by, through or under the City that such obligations have not been fulfilled.

I. Payments. The City agrees to make the following payments to UPS:

- i. The City agrees to pay UPS the sum of TEN THOUSAND AND NO/100THS DOLLARS (\$10,000.00) in order to defray the potential cost of UPS extending a sidewalk or walking path from Union Hill Road to the UPS guard shack on that portion of the UPS Property lying west of the 185th Avenue NE Extension Project in order to provide a safe walking route for UPS employees to the guard shack from that portion of the UPS Property lying east of the 185th Avenue NE Extension Project. The City agrees to make the payment upon conveyance of the property interests specified in Section 2.
- ii. The City agrees to reimburse UPS for third party inspections and other consulting work performed on behalf of UPS in connection with the 185th Avenue NE Extension Project, in an amount not to exceed TEN THOUSAND AND NO/100THS DOLLARS (\$10,000.00). UPS may submit invoices to the City for such reimbursement no more frequently than once per month during the construction of the 185th Avenue NE Extension. Invoices shall be accompanied by such documentation as is reasonably necessary to establish that the work performed was directly related to the 185th Avenue NE Extension Project, including a description of the nature of the work performed, the time expended, the rate or cost of the work, and the relation of the work to the Project.
- iii. Except as specified above, the City will not be required to make any other payments to UPS or BT-OH in connection with the 185th Avenue NE Extension Project, including but not limited to, payments that might otherwise be required or authorized under RCW 8.25 or 8.26.

4. Development Agreement. UPS, BT-OH and the City are also parties to that certain United Parcel Service Development Agreement dated _____, 2010, attached as Exhibit 10 and incorporated herein by this reference as if set forth in full. Execution of this

Development Agreement is a condition precedent to the rights and obligations of the City, BT-OH, and UPS under this Mitigation Agreement.

5. **Full Compensation.** BT-OH and UPS each agree that the City's obligations under this Mitigation Agreement provide full and complete compensation to BT-OH and UPS for all property interests acquired by the City under Section 2. Neither BT-OH nor UPS shall make any claim against the City for additional compensation arising out of the acquisition of the property interests described in Section 2 and BT-OH and UPS, jointly and severally, agree to indemnify, defend, and hold the City harmless from any such additional claims by any person, firm or corporation having any ownership interest in the UPS Property or claiming by, through, or under BT-OH or UPS.

6. **Costs.** Except as expressly provided in this Mitigation Agreement, each party shall pay its own costs and expenses relating to the performance of its responsibilities hereunder, including but not limited to, staff salaries, overhead, attorney's fees, and other such expenses.

7. **Remedies - Attorney's Fees.** In the event of default or material breach of this Mitigation Agreement by either party, the other party shall have all remedies available to it, including but not limited to, specific performance. If any party shall bring any action for any relief against any other party, declaratory or otherwise, arising out of this Agreement, the prevailing party shall be entitled to recover its costs and reasonable attorney's fees from the losing party.

8. **Governing Law.** This Mitigation Agreement shall be construed and enforced in accordance with the laws of the State of Washington.

9. **Captions and Exhibits.**

A. **Captions.** The captions of the Sections of this Mitigation Agreement are for convenience only and shall not be deemed to be relevant in resolving any question of interpretation or construction of any Section of this Agreement.

B. **Exhibits.** The following Exhibits attached hereto are deemed by attachment to constitute part of this Agreement and are incorporated herein:

- Exhibit 1: Primary Construction Drawings
- Exhibit 2: Deeds of Dedication for 185th Avenue NE Extension Corridor
- Exhibit 3: Aerial Photo - Conceptual Design of Right-of-Way, Temporary Parking and Area of Grading Work
- Exhibit 4: Aerial Photo - Graphic Depiction of Easements and Dedications
- Exhibit 5: Slope and Retaining Wall Easements
- Exhibit 6: Road and Utility Easements
- Exhibit 7: Water Utility and Fire Hydrant Easement
- Exhibit 8: Construction and Access Agreement
- Exhibit 9: UPS Parking Lot Construction and Lighting Standards
- Exhibit 10: Development Agreement

10. **Entire Agreement.** This Mitigation Agreement along with any exhibits and attachments hereto constitutes the entire agreement between the parties relative to its subject matter. Except as to the minor changes to the Exhibit 1 Primary Construction Drawings authorized under Section 1 herein, this Mitigation Agreement and the Exhibits hereto may be altered, amended or revoked only by an instrument in writing signed by all parties. The parties agree hereby that all prior or contemporaneous oral agreements between and among themselves and their agents or representatives relative to the subject of this Mitigation Agreement are merged in or revoked by this Agreement.

11. **Severability.** If any term or provision of this Mitigation Agreement shall, to any extent, be determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement shall not be affected thereby, and each term and provision of this Agreement shall be valid and be enforceable to the fullest extent permitted by law.

12. **Dispute Resolution.** In the event of a dispute between the parties arising under this Mitigation Agreement, the City and BT-OH/UPS shall meet to attempt to resolve the dispute within thirty (30) days notice from the other party of the existence of a dispute. In the event the City and BT-OH/UPS are unable to resolve the dispute within sixty (60) days notice of the dispute, the parties shall submit the dispute to a mutually agreed upon private arbitrator for a binding resolution, or, if both parties agree, to a private mediator for mediation. In the event the parties cannot agree on an arbitrator, one will be appointed by the Presiding Judge of the King County Superior Court, with costs of arbitration borne equally. The prevailing party shall be entitled to recover reasonable attorneys' fees and costs related to said arbitration.

13. **Waiver.** No covenant, term or condition of this Mitigation Agreement or the breach thereof shall be deemed waived, except by written consent of the party against whom the waiver is claimed, and any waiver or the breach of any covenant, term or condition shall not be deemed to be a waiver of any preceding or succeeding breach of the same or any other covenant, term or condition. Acceptance by either party of any performance by the other after the time the same shall have become due shall not constitute a waiver by the first party of the breach or default of any covenant, term or condition unless otherwise expressly agreed to by said party in writing.

14. **No Partnership or Joint Venture.** The parties shall not, in any way or for any purpose, become or be deemed to be a partners in the conduct of their respective activities or joint venturers or members of a joint enterprise.

15. **Corporate Authority.** Each individual executing this Mitigation Agreement on behalf of said party represents and warrants that he or she is duly authorized to execute and deliver this Agreement on behalf of said party.

16. **Notices.** All notices, requests, demands, and other communications called for or contemplated by this Mitigation Agreement shall be in writing and shall be deemed to have been duly given by UPS Next Day Air or by United States certified mail, return receipt requested to the following addresses, or such other addresses as the Parties may designate by written notice in

the manner aforesaid, provided that communications that are given by UPS Next Day Air shall be deemed effective one (1) business day after dispatch and those given by United States Mail shall be deemed effective three (3) business days after mailing:

If to BT-OH:

United Parcel Service, Inc.
Attn: Real Estate Department
55 Glenlake Parkway NE
Atlanta, GA 30328

If to UPS:

United Parcel Service Inc.
Attn: Legal Department
55 Glenlake Parkway NE
Atlanta, GA 30328

United Parcel Service, Inc.
Attn: West Region – Plant Engineering Department
25201 Paseo de Alicia, Suite 200
Laguna Hills, CA 92653

United Parcel Service, Inc.
Attn: Plant Engineering Manager
4455 – 7th Avenue South
Seattle, WA 98108

With Copy to:
Perkins Coie LLP
Attn: Laura Whitaker
1201 Third Avenue, Suite 4800
Seattle, WA 98101-3099

If to the City:

Mayor John Marchione
City of Redmond
P.O. Box 97010
Mail Stop 4NEX
Redmond, WA 98073-9710

With Copy to:
Ogden Murphy Wallace, PLLC
Attn: James E. Hancy
1601 Fifth Avenue, Suite 2100
Seattle, WA 98101-1686

17. **Counterparts.** This Mitigation Agreement may be executed in counterparts, and each counterpart constitutes an original document. Signatures transmitted by facsimile shall be deemed valid execution of this Agreement, binding on the parties.

18. **Assignment.** Neither party may assign any portion of this Mitigation Agreement without the express written consent of the other.

[Signatures on following page]

IN WITNESS WHEREOF, UPS, BT-OH, and the City have executed this Mitigation Agreement as of the date and year first above written.

BT-OH, LLC

CITY OF REDMOND

(Signature)
By: _____
(Print Name)
Title: _____
Date: _____

John Marchione, Mayor
Date: _____

UNITED PARCEL SERVICE, INC.

(Signature)
By: _____
(Print Name)
Title: _____
Date: _____

EXHIBIT 1

Primary Construction Drawings

[RESERVED]

EXHIBIT 2

Deeds of Dedication for 185th Avenue NE Extension Corridor

[RESERVED]

EXHIBIT 3

**Aerial Photo - Conceptual Design of Right-of-Way,
Temporary Parking and Area of Grading Work**

[RESERVED]

EXHIBIT 4

Aerial Photo - Graphic Depiction of Easements and Dedications

[RESERVED]

EXHIBIT 5

Slope and Retaining Wall Easements

[RESERVED]

EXHIBIT 6

Road and Utility Easements

[RESERVED]

EXHIBIT 7

Water Utility and Fire Hydrant Easement

[RESERVED]

EXHIBIT 8

Construction and Access Agreement

[RESERVED]

EXHIBIT 9

UPS Parking Lot Construction and Lighting Standards

[RESERVED]

EXHIBIT 10

Development Agreement

[RESERVED]

EXHIBIT D

Depiction of ROW Bisection

See Depiction Graphic as found in the records of:

**Redmond City Hall
15670 NE 85th Street
Redmond, Washington 98052**

**Project File: 185th Ave NE Extension Phase II
Project No: 101197**