

TAX ABATEMENT AGREEMENT BETWEEN HIDALGO COUNTY, TEXAS

AND

UNITED PARCEL SERVICE, INC.

This Tax Abatement Agreement (“**Agreement**”) is entered into effective as of December ___, 2018, by and between Hidalgo County, a political subdivision of the State of Texas (“**County**”) duly acting herein by and through its duly authorized representatives, pursuant to an order dated December 18, 2018, by the Hidalgo County Commissioners Court (“**Commissioners Court**”), United Parcel Service, Inc., an Ohio corporation (“**UPS**”) and BT-OH, LLC, a Delaware limited liability company (“**BT**”, and together with UPS, “**Owner**”).

WITNESSETH:

WHEREAS, on the 18th day of December, 2018, the County adopted Guidelines and Criteria for Granting Tax Abatements in Hidalgo County, Texas, which are attached hereto as **Exhibit “A”** and incorporated herein for all purposes (the “**Guidelines and Criteria**”); and

WHEREAS, the Land (as defined below) is within an area designated as an Enterprise Zone pursuant to the Texas Enterprise Zone Act, Subchapter C, V.A.T.C., Texas Government Code §2303 et seq., as amended, which area is therefore designated as a reinvestment zone (“**Zone**”), as authorized by the Property Redevelopment and Tax Abatement Act, Subchapter C, V.A.T.C., Texas Tax Code §312 et seq., as amended (“**Act**”); and

WHEREAS, the Guidelines and Criteria govern tax abatement agreements to be entered into by the County under the Act; and

WHEREAS, in order to maintain and enhance the commercial and industrial economic and employment base of the County, it is in the best interest of the County to enter into this Agreement in accordance with said Act; and

WHEREAS, as evidenced by the tax abatement application Owner submitted to the County, the Owner intends to expand the footprint of its package distribute center (the “**Project**”), on the property designated on the map included in **Exhibit “C”**; and

WHEREAS, based on the information presented by the Owner, Commissioners Court finds that the contemplated use of the Land, the contemplated improvements Owner will construct on the Land, which will require expenditures by Owner in the minimum amount as set forth in this Agreement and projected expenditures by Owner in the County in excess of Twenty-Five Million Dollars (\$25,000,000.00), and the other terms hereof are consistent with encouraging development of the Zone in accordance with the purposes for its creation and are in compliance with the Act; and

WHEREAS, Owner has submitted evidence to the County that the economic life of the Facility (as defined below) and eligible property exceeds the duration of the proposed tax abatement, and based on such evidence and the representations contained herein Commissioners

Court has determined, in accordance with the Guidelines and Criteria that the economic life of the Facility and eligible property exceeds the duration of the tax abatement granted herein; and

WHEREAS, Commissioners Court has determined that it would be in the best interest of County to enter into an agreement with Owner, pursuant to the Act, to abate a portion of the value of the Property (as defined herein) and the proposed improvements Owner constructs on the Land, as well as a portion of the value of all personal property located on the Land and used in connection with operations on the Land that is eligible for abatement under the Guidelines and Criteria, excluding the Land itself (such improvements and personal property eligible for abatement hereunder are hereafter referred to as the “**Facility**,” as described more specifically in **Exhibit “D”**).

NOW, THEREFORE, the County for good and valuable consideration, the adequacy and receipt of which is hereby acknowledged (which consideration includes the attraction of major investment in the Zone and the expansion of primary employment that contributes to the economic development of County and the enhancement of the tax base in the County, and Owner for good and valuable consideration, the adequacy and receipt of which is hereby acknowledged (which consideration includes the tax abatement set forth herein, as authorized by the Act), do hereby contract, covenant and agree as follows:

ARTICLE I

GENERAL PROVISIONS

1.01 As used in this Agreement, the following terms shall have the meanings set out below:

- (a) “Abatement Period” has the meaning set forth in section 3.03 below.
- (b) “Act” has the meaning set forth in the second recital above.
- (c) “Agreement” has the meaning set forth in the introductory paragraph above.
- (d) “BT” has the meaning set forth in the introductory paragraph above.
- (e) “Commissioners Court” has the meaning set forth in the introductory paragraph above.
- (f) “County” has the meaning set forth in the introductory paragraph above.
- (g) “Cure Period” has the meaning set forth in section 5.03 below.
- (h) “Estimated value of the abatement” has the meaning set forth in section 3.04 below.
- (i) “Facility” has the meaning set forth in the eighth recital above.
- (j) “Guidelines and Criteria” has the meaning set forth in the first recital above.
- (k) “Land” has the meaning set forth in section 1.02 below.

- (l) “McAllen Agreement” has the meaning set forth in Section 1.08 below.
- (m) “Owner” has the meaning set forth in the introductory paragraph above.
- (n) “Project” has the meaning set forth in the fifth recital above.
- (o) “Tax Abatement Percentage” has the meaning set forth in section 3.04 below.
- (p) “UPS” has the meaning set forth in the introductory paragraph above.
- (q) “Zone” has the meaning set forth in the second recital above.

Terms defined in the Guidelines and Criteria and used herein shall have the meaning given such terms in the Guidelines and Criteria unless otherwise defined herein.

- 1.02 Owner represents and warrants that (i) UPS is an Ohio corporation; (ii) BT is a Delaware limited liability company and a wholly-owned subsidiary of UPS; (iii) Owner is the fee owner of the land on which the Facility is located (“**Land**”), which is legally described in **Exhibit “B”**, which is attached hereto and is made a part hereof for all purposes, and will be the owner of all Improvements, including the expansion of the Facility, to be built on the Land as part of the Project.
- 1.03 Notwithstanding anything to the contrary contained herein, the abatement granted in this Agreement only applies to the abatement of newly created value (as defined in the Guidelines and Criteria) resulting from improvements and modernization (as such terms are defined in the Guidelines and Criteria) after the date hereof that Owner makes to the Land and eligible personal property Owner purchases and installs or builds upon the Land in constructing the Facility in accordance with the terms hereof, and excludes the value of the Land. Any increase in value from a reclassification or change in use of the Property or resulting from a roll-back will not be considered for abatement but will be included as part of the base value, and any other artificial increase in tax revenue or value will also be excluded from abatement. The Project, the Facility and the Land are located within the Zone and are within County’s taxing jurisdiction.
- 1.04 Owner understands that, in accordance with the Guidelines and Criteria, the applicable Tax Abatement Percentage (as defined below) will be determined based on Section 2.C of Exhibit A of the Guidelines and Criteria, and will not be granted unless Owner meets the requirements for a city Project therein and complies with the terms of this Agreement, including that the Capital Cost of the improvements made as part of the Project on or after the date of execution of this Agreement by the Owner meets the minimum set forth therein and herein. The actual amount of tax abated pursuant to this Agreement will be determined by applying the Tax Abatement Percentage to the newly created value (as defined in the Guidelines), as such newly created value may be reasonably determined by the Hidalgo County Appraisal District and the County.
- 1.05 Owner represents and warrants that the Land is not included in an improvement project financed either in whole or in part with tax increment bonds or notes.

- 1.06 This Agreement is entered into subject to the rights of holders of outstanding County bonds.
- 1.07 Owner represents and warrants that no interest in the Land or the Facility is presently owned or leased by a member of Commissioners Court, and Owner agrees that it shall not sell or lease an interest in the Land or the Facility to any County officer or employee, or any member of the governing body of any taxing unit joining in or adopting this Agreement, until the earlier of the expiration of the Abatement Period or the termination of this Agreement.
- 1.08 Owner represents and warrants as follows:
- (a) with respect to the Land and the Project, Owner has not executed or received, as of the date of this Agreement, a tax abatement or other economic development incentive or agreement with or from any government body other than the County and the City of McAllen (the 2018 economic development agreement between Owner and the City of McAllen, “**McAllen Agreement**”);
 - (b) Owner filed the application for tax abatement with County prior to commencement of construction as defined in Section IV.A.(1)(a)-(f) of the Guidelines, and completion of the construction and improvements is currently anticipated to occur in 2020;
 - (c) UPS and BT are duly qualified to conduct business in Texas, including, without limitation, building the improvements and modernizations and operating the Facility;
 - (d) this Agreement constitutes the valid and enforceable obligation of Owner in accordance with its terms; and
 - (e) Owner has all necessary right, title, license and authority to enter into this Agreement and the execution and performance of this Agreement by Owner have been duly authorized by all necessary laws, resolutions and corporate or other entity action.
- 1.09 Owner has provided tax certificates verifying that no taxes are past due with respect to all property owned by Owner within the Zone and agrees not to allow any taxes on property it owns within the Zone to become past due, subject only to timely appeals during the pendency of such appeal, during the term hereof.
- 1.10 Owner acknowledges that the Base Year Value (as defined in the Guidelines and Criteria) is determined by the year in which this Agreement is executed, and not the year in which it is approved by Commissioners Court, and that if this Agreement is not executed by all parties hereto and delivered to the County no later than December 31, 2018, then 2018 will not be the base year for determining the Base Year Value.
- 1.11 The following exhibits are attached hereto and made a part hereof:

Exhibit A Guidelines and Criteria

- Exhibit B Legal Description of Land
- Exhibit C Map of Project
- Exhibit D List of Property Improvements

ARTICLE II

IMPROVEMENTS; JOBS

2.01 (a) Owner agrees to improve an Eligible Facility (as defined in the Guidelines and Criteria) on the Land, and to acquire, construct, or cause to be constructed real property improvements, machinery, and equipment necessary to operate the Facility as set forth herein.

(b) Owner agrees to make real and personal property improvements on the Land that are eligible for abatement in accordance with the Guidelines and Criteria (which real and personal property is described in the definition of the Facility in Exhibit D hereto), and that the cost of such improvements shall be approximately Twenty-Seven Million Dollars (\$27,000,000), at least Twenty--Seven Million Dollars (\$27,000,000) of which is expected to be listed on Hidalgo County Appraisal District's tax rolls. The approximate location of the Facility on the Land is reflected on a preliminary site plan attached hereto as Exhibit "C" and made a part hereof for all purposes. Owner reserves the right to revise the attached preliminary site plan as Owner deems necessary and appropriate, and all such revisions shall be submitted to the County.

(c) Owner represents and warrants that the Facility is expected to create ten (10) new Jobs (as defined in Article II of the Guidelines and Criteria) by December 31, 2025. Owner currently offers, and agrees to maintain during the Abatement Period, a competitive compensation and benefits package with respect to all jobs at the Facility.

2.02 Owner shall submit, which may be through use of an agent, reports to the County in accordance with Section IX.B. of the Guidelines and Criteria.

2.03 Owner covenants and agrees that the Facility is, and shall continue to be, a package distribution center throughout the Abatement Period. Attached hereto as **Exhibit "D"** is a schedule of improvements, equipment, machinery, and eligible personal property that Owner will construct or purchase and install to expand the Facility, subject to non-substantive changes as Owner may determine in its sole discretion are necessary during the course of construction of the Facility on the Land. Owner agrees to continuously operate the Facility on the Land during the Abatement Period.

2.04 Owner represents that it will began constructing the improvements to the Facility in the Zone on or before June 2019, covenants and agrees to continue such construction and improvements to the Facility during the term hereof, and projects to complete construction no later than December 31, 2020, Owner shall notify the County of any updates to the construction schedule.

2.05 Owner represents that (i) the weighted average economic life of the Facility and eligible property will exceed ten years, and (ii) the economic life of the eligible property on which the Owner is being granted abatement hereunder exceeds the Abatement Period. Based on such representation and evidence submitted by Owner to the County, the County determines in accordance with the Guidelines and Criteria that the economic life of the Facility and eligible property exceeds five years.

ARTICLE III

PROPERTY SUBJECT TO TAX ABATEMENT

RATE OF TAX ABATEMENT

TERM OF TAX ABATEMENT AND RELATED PROVISIONS

3.01 Subject to the terms of this Agreement, the County shall abate the Owner's County ad valorem taxes in each year of the Abatement Period in an amount equal to the Tax Abatement Percentage (as defined below) multiplied by the Facility's newly created value determined in accordance with the Guidelines and Criteria, but only to the extent that such newly created value is reflected on County's tax rolls in each such year.

3.02 The applicable Tax Abatement Percentage under this Agreement shall be determined in accordance with section 3.04 below.

3.03 The abatement of ad valorem taxes shall be for a period (the "**Abatement Period**") that shall

(a) commence on the commencement of the first ad valorem tax year after each of the following events have occurred:

- (i) Owner has executed this Agreement and delivered the executed Agreement to the County;
- (ii) the County has executed this Agreement (it being agreed that the Base Year Value, as defined in the Guidelines and Criteria, is determined based on the year the Agreement has been executed by both parties);
- (iii) Owner has commenced the construction of the improvements and expansion of the Facility after execution of this Agreement;
- (iv) Owner has provided adequate documentation confirming the Capital Cost expended in the construction of the Project;
- (v) the Capital Cost (as documented above) exceeds Ten Million Dollars (\$10,000,000.00);
- (vi) the newly created value may be ascertained from the tax rolls of the Hidalgo County Appraisal District, and

ARTICLE IV

FILING OF PLANS, CERTIFICATION OF COSTS, COUNTY ACCESS TO PREMISES AND USE OF PREMISES AND IMPROVEMENTS

4.01 Owner shall provide documentation to the County concerning the commencement of construction of the Project and agrees to continue to provide such documentation as required by the County concerning the continuation of the construction and expansion of improvements pursuant to this Agreement. Without limiting the generality of the foregoing, Owner shall file with the County construction plans for the improvements by June 1, 2019. The construction plans as filed shall be deemed to be incorporated herein by reference and made a part hereof for all purposes, and the improvements to the Facility shall be completed in substantial conformity to said plans. Owner may elect to amend or modify the construction plans, provided the amendments or modifications comply with all applicable codes, rules and ordinances, and are not otherwise contrary to this Agreement.

4.02 Upon completion of the Facility, Owner shall file (i) “as built” construction plans with County, which plans shall detail improvements (which shall be certified by the architect if Owner uses an architect) on the Land, including purchases of personal property and related expenditures made to construct the Facility and (ii) the general contractor’s certification as to the completion of construction of the Facility (including the detail specified above). At the time of filing the as built construction plans, Owner shall also provide County with reports as required by Section IX.B. of the Guidelines and Criteria. On or before January 31, of each year of the Abatement Period (and the year immediately following the end thereof), Owner shall provide County with reports supporting job creation as of December 31 of each year of the Abatement Period, as required by Section IX.B. of the Guidelines and Criteria. On an annual basis, Owner shall also provide County a detailed list of Owner’s eligible personal property at the Facility and the estimated value of each item. For the avoidance of doubt, Owner understands and agrees, that (x) in the event, in accordance with Section III above, the Abatement Period begins prior to completion of the Facility, the Owner will provide such additional documentation as and when requested by the County for the County to determine Capital Cost, Jobs created and compliance with this Agreement and (y) taxes are not abated unless documentation is provided to the County’s satisfaction on a timely basis.

4.04 Owner agrees to supply audited reports to the County and the Hidalgo County Appraisal District to establish the construction cost of improvements constructed pursuant to this Agreement and the jobs created; provided, however, that, so long as Owner provides documentation required by County for County to determine compliance with this Agreement and to determine Capital Cost expended during the Agreement (which documentation would include, without limitation, invoices and proof of payment), audited reports need not be provided until the earlier of (i) completion of the Facility and (ii) June 30, 2021 (provided such report covers the period at least through December 31, 2020).

4.05 Owner agrees to provide County employees and/or designated representatives of the County access to the Facility during the term of this Agreement, including the Abatement Period,

to inspect the Facility and the Land to determine if Owner is in compliance with the terms and conditions of the Agreement. Upon completion of construction, County has the right to annually evaluate the Facility to ensure compliance with the Agreement. Owner shall provide County with an escort for all such inspections.

ARTICLE V

BREACH

5.01 Owner understands that the continuation and completion of the contemplated improvements and construction of the Facility after the date hereof is part of the consideration to the County for entering into this Agreement. In the event Owner fails to continue with expansion of the Facility in the Zone in accordance with this Agreement on or before June 30, 2019, this Agreement shall terminate effective as of the original date of this Agreement and the County shall be entitled to recapture and collect payment of all ad valorem taxes, if any, abated under this Agreement by any and all means allowed by law, and as provided herein.

5.02 In the event the Facility is completed and begins operation, and Owner:

1. voluntarily ceases to operate the Facility for a continuous period of eighteen (18) months;
2. allows ad valorem taxes owed to County to become delinquent;
3. relocates the Facility or the job creating activity outside the Zone;
4. breaches or fails to comply with any material term, condition, or representation contained in this Agreement; or
5. uses or allows the use of the Facility for any purpose not related to the juice processing operation for a period greater than 30 days in any calendar year of the Abatement Period;

County may elect to terminate this Agreement and recapture abated taxes in accordance with Section 5.05 of this Agreement and the Guidelines and Criteria, unless such breach is cured within the Cure Period, as defined in Section 5.03. Owner shall pay recaptured taxes to County within sixty (60) days from the date the Agreement terminates.

5.03 Should County determine that Owner has breached this Agreement or the Guidelines and Criteria, County shall notify Owner in writing via certified or registered mail to the following address:

United Parcel Service, Inc. and BT OH, LLC
1131 s Vernon St
Anaheim, California 92805
Attention: Shane Simpson, Region Tax Manager
Email: shanesimpson@ups.com

or to such other address, or to the attention of such person, as Owner may, from time to time, designate in writing. If such breach is not cured within thirty (30) days from the date of such notice (the “**Cure Period**”), then this Agreement may be terminated by order of the Commissioners Court.

5.04 If Owner and the County disagree as to whether a breach has occurred or been timely cured, venue for an action to determine Owner’s and County’s rights will lie in Hidalgo County, Texas. The period for Owner to cure any breach of this Agreement shall be tolled from the filing of any official action to resolve questions arising from an attempt at cure to the final resolution of any such action.

5.05 If County terminates this Agreement in accordance with the terms hereof or otherwise as allowed by applicable law, County shall have the right to recapture a percentage of the total taxes previously abated in accordance with the recapture schedule in Section VIII of the Guidelines and Criteria.

ARTICLE VI

SALE, ASSIGNMENT OR LEASE OF PROPERTY

6.01 It is contemplated by the parties hereto that the Owner’s purpose for making the improvements set forth in Article II is for the expansion of Owner’s package distribution center at 1201 E. Upas Ave., McAllen, Texas.

6.02 In accordance with Section IX.C. of the Guidelines and Criteria, Owner shall not have the right, without the written consent of County, to assign all or part of its interest in the Land, the Project, or this Agreement and maintain the tax abatement hereunder. Without limiting the generality of the foregoing, Owner acknowledges that consent will not be granted with respect to any assignment or transfer to any party that is delinquent in the payment of any taxes to County or any jurisdiction within the county.

ARTICLE VII

COMMISSIONERS COURT AUTHORIZATION

7.01 This Agreement was authorized by order of the Commissioners Court dated the 18th day of December, 2018, authorizing the County Judge to execute this Agreement on behalf of the County.

ARTICLE VIII

SEVERABILITY

8.01 In the event any section, subsection, paragraph, subparagraph, sentence, phrase or word herein is held invalid, illegal, or unenforceable, the balance of this Agreement shall stand, shall be enforceable and shall be read as if the parties intended at all times to delete said invalid section, subsection, paragraph, subparagraph, sentence, phrase, and word. In such event there

shall be substituted for such deleted provision as similar in terms and in effect to such deleted provision as may be valid, legal, and enforceable.

ARTICLE IX

APPLICABLE LAW

9.01 This Agreement shall be construed under the laws of the State of Texas and is performable in Hidalgo County, Texas. Venue for any action related to this Agreement shall be in Hidalgo County, Texas.

ARTICLE X

COUNTERPART EXECUTION

10.01 This Agreement may be executed in multiple counterparts, each of which shall constitute an original, but all of which in the aggregate shall constitute one agreement.

[SIGNATURE PAGE FOLLOWS]

EXECUTED and made effective as of this the ___th day of December, 2018.

HIDALGO COUNTY, TEXAS

ATTEST:

By: _____
Name: Ramon Garcia
Title: Hidalgo County Judge

Arturo Guajardo, Jr.
County Clerk

UNITED PARCEL SERVICE, INC.

By: _____
Name: _____
Title: _____

BT-OH, LLC

By: _____
Name: _____
Title: _____

Exhibit A

TAX ABATEMENT GUIDELINES AND CRITERIA

Exhibit B

Legal Description

Northeast Industrial Lots 12-16.

Exhibit C

Map depicting land parcels and project infrastructure

Exhibit D

Schedule of Building, Improvements, and Eligible Personal Property for the Facility