RESOLUTION

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

That the City Manager be authorized to execute a Chapter 380 Economic Development Program Agreement by and between the City of El Paso and RUSA Texas, LLC (the "Applicant") in relation to the Applicant's retention of full-time and part-time jobs at the facility located at 500 S. Mesa Hill, El Paso Texas.

APPROVED AND ADOPTED this _____ day of _____ 2011.

CITY OF EL PASO

_____
John F. Cook
Mayor

ATTEST:

_____
Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:

_____
Marie A. Taylor
Assistant City Attorney

APPROVED AS TO CONTENT:

_____
Kathryn B. Dodson, Ph.D., Director
Planning & Economic Development

ECO/11/Reso/Chapter 380/ RUSA Texas LLC
Document: 61477/MTAY

STATE OF TEXAS)
)
COUNTY OF EL PASO)

CHAPTER 380 ECONOMIC DEVELOPMENT PROGRAM AGREEMENT

This Chapter 380 Economic Development Program Agreement ("Agreement") is made and entered into by and between the **CITY OF EL PASO, TEXAS**, a Texas home rule municipal corporation, ("***CITY***"), and **RUSA TEXAS, LLC** (the "***APPLICANT***"), a Delaware limited liability company, doing business in the State of Texas, for the purposes and considerations stated below:

WHEREAS, the ***APPLICANT*** desires to enter into this Agreement pursuant to Chapter 380 of the Texas Local Government Code (hereinafter referred to as "Chapter 380"); and

WHEREAS, the ***CITY*** desires to provide, pursuant to Chapter 380, an incentive to ***APPLICANT*** to retain jobs at the **DEVELOPMENT** as more fully described below; and

WHEREAS, the ***CITY*** has the authority under Chapter 380 to make loans or grants of public funds for the purposes of promoting local economic development and stimulating business and commercial activity within the City of El Paso; and

WHEREAS, the ***CITY*** determines that a grant of funds to ***APPLICANT*** will serve the public purpose of promoting local economic development and enhancing business and commercial activity within the City of El Paso; and

WHEREAS, the ***CITY*** and ***APPLICANT*** desire the retention of existing jobs at the **DEVELOPMENT** and;

WHEREAS, the anticipated job retention in the manner more fully described in this Agreement will encourage increased economic development in the ***CITY***, provide significant increases in the ***CITY'S*** sales tax revenues, and improve the ***CITY'S*** ability to provide for the health, safety and welfare of the citizens of El Paso; and

WHEREAS, the ***CITY*** has concluded and hereby finds that this Agreement embodies an eligible "program" and clearly promotes economic development in the City of El Paso and, as such, meets the requisites under Chapter 380 of the Texas Local Government Code and further, is in the best interests of the ***CITY*** and ***APPLICANT***.

NOW, THEREFORE, in consideration of the mutual benefits and promises contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

SECTION 1. TERM.

Except as otherwise provided herein, the term of this Agreement shall commence on the Effective Date (as hereinafter defined) and shall terminate on the first to occur of: (i) the date when the **GRANT** amount is fully paid; (ii) subject to the provisions of Section 3(d) below, five (5) years from the commencement of the Grant Period (as hereinafter defined), plus such additional time thereafter as may be necessary to process the final annual **GRANT** payment pursuant to the procedures described in Sections 3 and 4 below; (iii) seven (7) years from the Effective Date; or (iv) the proper termination of this Agreement in accordance with the applicable provisions contained herein. ***APPLICANT'S*** eligibility for **GRANT** payments, however, shall be limited to five (5) consecutive years (the "Grant Period") within the term of this Agreement.

SECTION 2. DEFINITIONS.

The following words shall have the following meanings when used in this Agreement.

(a) **Agreement.** The word "Agreement" means this Chapter 380 Economic Development Program Agreement, together with all exhibits and schedules attached to this Agreement and incorporated herein by reference.

(b) ***APPLICANT.*** The word "***APPLICANT***" means RUSA Texas, LLC, a Delaware limited liability company, operating and doing business in the State of Texas.

(c) ***CITY.*** The word "***CITY***" means the City of El Paso, Texas.

(d) **Development.** The word "**DEVELOPMENT**" means the customer contact and fulfillment center located at 500 S. Mesa Hills Drive, El Paso, Texas, more fully described in ***Exhibit "A"*** attached hereto and fully incorporated herein by reference.

(e) **Full-Time Employment.** The words "Full-Time Employment" mean a job requiring a minimum of two thousand and eighty (2,080) hours of work averaged over a twelve (12) month period, including allowance for vacation and sick leave, with full company benefits, including company paid health insurance (employee must not be required to pay more than fifty percent (50%) of the premium) with such jobs being located at the **DEVELOPMENT**, within the City of El Paso, Texas.

(f) **GRANT.** The word "**GRANT**" means payments to ***APPLICANT*** under the terms of this Agreement computed with reference to sales and use taxes revenue generated and paid by the **DEVELOPMENT**, remitted from the Texas Comptroller of Public Accounts ("State Comptroller") to the ***CITY*** and payable from the ***CITY'S*** general revenue fund.

(g) **Grant Submittal Package.** The words "Grant Submittal Package" mean the documentation required to be supplied to ***CITY*** on a yearly basis as a condition of receipt of any **GRANT** payment, accompanied by the submittal form, which is attached as ***Exhibit "B"*** to this Agreement.

(h) **Part-Time Employment.** The words "Part-Time Employment" mean a job requiring less than 2,080 hours of work averaged over a twelve (12) month period, including allowance for vacation and sick leave regardless of whether or not it includes company paid insurance, with such jobs being located at the **DEVELOPMENT**, within the City of El Paso, Texas.

SECTION 3. OBLIGATIONS OF *APPLICANT*.

During the term of this Agreement, ***APPLICANT*** shall comply with the following terms and conditions:

(a) **DEVELOPMENT.** ***APPLICANT*** agrees to maintain and operate the **DEVELOPMENT**, at its sole cost and expense, at 500 S. Mesa Hills, El Paso, Texas and specifically, to perform the following obligations with respect to operation of the **DEVELOPMENT**:

(i) ***APPLICANT*** will operate a customer contact and fulfillment center as the retailer's single place of business in Texas, as defined under Texas Tax Code §§151.008 and 321.002;

(ii) ***APPLICANT'S*** employees at the **DEVELOPMENT** will receive all sales orders from ***APPLICANT'S*** Texas resident customers for purchase of taxable tangible personal property and those orders must be fulfilled by direct shipping or delivery from either an out-of-state third party supplier (traditional "drop ship" arrangement) or an out-of-state, related company provided the related company holds a separate legal entity status from ***APPLICANT***;

(iii) ***APPLICANT*** will direct or cause to be directed to the **DEVELOPMENT** all incoming telephone, internet, and catalog sales orders that are originating from Texas residents;

(iv) ***APPLICANT*** will continue to operate its internet sales website through Redcats USA, LP, an out-of-state third party servicer, or any out-of-state, related company provided the related company holds a separate legal entity status from ***APPLICANT***; and

(v) ***APPLICANT*** will take all reasonable commercial efforts necessary to accomplish the parties' intent that all Texas local sales taxes generated by operation of the **DEVELOPMENT** through its sales to Texas resident customers will be collected by the State Comptroller with the City's portion

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being remitted to the ***CITY*** and the **DEVELOPMENT** being treated as the retailer's single place of business in Texas wherein all Texas resident customer orders are received by ***APPLICANT***.

(b) **JOB RETENTION.** ***APPLICANT*** agrees that during the term of this Agreement, ***APPLICANT*** will retain a minimum of four hundred thirty (430) filled Full-Time Employment positions at the **DEVELOPMENT** and two hundred forty-four (244) filled Part-Time Positions at the **DEVELOPMENT**. The foregoing are the minimum job retention requirements under this Agreement and in no way limit the ***APPLICANT*** from retaining additional employment positions at the **DEVELOPMENT**.

(c) **AMOUNT OF GRANT.** The total amount of the **GRANT** payable by the ***CITY*** under this Agreement shall not exceed One Million Two Hundred Fifty Thousand and NO/100 Dollars ($1,250,000.00).

(d) **DISBURSEMENT OF GRANT.**

During the term of this Agreement and beginning as of the commencement of the Grant Period, which must occur no later than the first full calendar quarter following twelve (12) months from the Effective Date, and subject to the conditions contained herein, the ***APPLICANT*** shall be entitled to receive a yearly GRANT disbursement equal to Fifty Percent (50%) of the ***CITY'S*** one percent (1%) of sales and use tax revenue generated by and attributed solely to the ***APPLICANT'S*** sales at the **DEVELOPMENT** in the immediately prior year and which has been remitted from the State Comptroller to ***CITY*** *less* an amount equal to $10,124.65, which will be retained by the ***CITY***. In any given year, the maximum amount of the **GRANT** payment disbursed to the ***APPLICANT*** for that year shall be limited to $250,000.00.

APPLICANT'S eligibility for any payment is expressly contingent upon ***APPLICANT'S*** satisfaction of the requirements of Section 3 of this Agreement.

GRANT payments will continue until the earlier of the expiration or termination of this Agreement or the date that the total aggregate of all **GRANT** payments made shall reach $1,250,000.00. Under no circumstance shall the ***CITY*** be required to disburse more than $1,250,000.00 as the total amount of the **GRANT** nor shall ***APPLICANT*** be entitled to receive the **GRANT** unless it satisfies all the requirements of this Agreement.

(e) **GRANT SUBMITTAL PACKAGE.** Unless otherwise agreed by the ***CITY*** and ***APPLICANT***, each Grant Submittal Package shall be in the form attached hereto as ***Exhibit "B"***, together with the requisite documentation. No later than fourteen (14) months following the Effective Date, ***APPLICANT*** shall submit to the ***CITY*** an initial Grant Submittal Package, to commence the Grant Period. Thereafter, the ***APPLICANT'S*** annual

Grant Submittal Package must be submitted no later than the 1st of April of each year. If ***APPLICANT*** shall fail to timely submit a Grant Submittal Package for a particular year, then the ***CITY*** may give ***APPLICANT*** written notice of ***APPLICANT'S*** failure to timely submit such Grant Submittal Package, and ***APPLICANT*** shall have sixty (60) calendar days calculated from the date on which such written notice is given in which to submit such Grant Submittal Package. The ***CITY'S*** determination of the amount of the **GRANT** payment due to ***APPLICANT*** is final; provided, however ***APPLICANT*** may appeal to the City Council within thirty (30) days of payment, the City Council shall hear the appeal within thirty (30) days and the City Council's determination of the amount of the **GRANT** payment shall be final; provided, however, nothing herein shall limit (or be construed to limit) ***APPLICANT'S*** rights and remedies as described in Sections 5 and 6 of this Agreement.

APPLICANT will be responsible for submitting a Waiver of Confidentiality form, attached hereto as ***Exhibit "C"***, as applicable. ***CITY*** will use the information provided by the State Comptroller and submitted by ***APPLICANT*** to the ***CITY*** in determining the amount of **GRANT** disbursement that ***APPLICANT*** is eligible to receive. The ***CITY*** will verify all such information, but the ***CITY*** shall not have an obligation to otherwise collect sales tax information and will have no obligation to make payments under this Agreement without such sales and use tax payment confirmation from the State Comptroller.

(f) **PAYMENT OF TAXES.** ***APPLICANT*** shall pay or caused to be paid by January 31 of each year all of the real and business personal ad valorem property taxes assessed for the previous tax year on the **DEVELOPMENT** referenced in ***Exhibit "A"***. Provided, however ***APPLICANT*** or any affiliated company shall have the right to contest the appraised value of the property in the **DEVELOPMENT** as provided by law.

SECTION 4. OBLIGATIONS OF *CITY*.

During the Term of this Agreement and so long as an event of default has not occurred and is not continuing as set forth in Section 5 of this Agreement (provided, however, an event of default hereunder shall not be deemed to have occurred until after the expiration of the applicable notice and cure period), ***CITY*** shall comply with the following terms and conditions:

(a) The ***CITY*** agrees to process any **GRANT** payments to ***APPLICANT*** within sixty (60) days after receipt of the ***APPLICANT'S*** Grant Submittal Package.

(b) During the term of this Agreement and beginning as of the commencement of the Grant Period, which must occur no later than the first full calendar quarter following twelve (12) months from the Effective Date, an amount equal to Fifty Percent (50%) of the ***CITY'S*** one percent (1%) sales and use tax revenue generated by and attributed solely to the ***APPLICANT'S*** sales at the **DEVELOPMENT** in the immediately prior year and which has been remitted from the State Comptroller to ***CITY*** *less* an amount equal to $10,124.65, shall be tendered from the ***CITY'S*** general fund as a **GRANT** payment by the ***CITY*** to ***APPLICANT*** on a annual basis (upon ***APPLICANT'S*** satisfaction of the requirements of Section 3 of this Agreement). In any given year, the maximum amount of the **GRANT** payment disbursed to the ***APPLICANT*** for that year shall be limited to $250,000.00.

Such **GRANT** Payments will continue until the earlier of the expiration or termination of this Agreement or the total aggregate of all payments made reaches One Million Two Hundred Fifty Thousand and No/100 Dollars ($1,250,000.00). Payments for any given year will not exceed Two Hundred Fifty Thousand Dollars ($250,000.00).

SECTION 5. EVENTS OF DEFAULT.

Each of the following shall constitute an Event of Default under this Agreement:

(a) **Failure to Operate the Development.** Failure to continuously operate the **DEVELOPMENT** for the term of this Agreement, and ***APPLICANT*** fails to cure such failure within thirty (30) days after written notice from the ***CITY*** describing such failure, or if such failure cannot be cured within such thirty (30) day period in the exercise of all due diligence, then if ***APPLICANT*** fails to commence such cure within such thirty (30) day period or fails to continuously thereafter diligently prosecute the cure of such failure.

(b) **Loss of Single Texas Location Status.** Failure to maintain the **DEVELOPMENT** as ***APPLICANT'S*** single place of business in Texas such that all its Texas local sales taxes collection is attributed to El Paso, Texas, and ***APPLICANT*** fails to cure such failure within thirty (30) days after written notice from the ***CITY*** describing such failure, or if such failure cannot be cured within such thirty (30) day period in the exercise of all due diligence, then if ***APPLICANT*** fails to commence such cure within such thirty (30) day period or fails to continuously thereafter diligently prosecute the cure of such failure.

(c) **False Statements.** Any written warranty, representation or statement made or furnished to the ***CITY*** by ***APPLICANT*** under this Agreement or any document(s) related hereto furnished to the ***CITY*** by ***APPLICANT*** that

is/are false or misleading in any material respect, either now or at the time made or furnished, and ***APPLICANT*** fails to cure same within thirty (30) days after written notice from the ***CITY*** describing the violation, or if such violation cannot be cured within such thirty (30) day period in the exercise of all due diligence, then if ***APPLICANT*** fails to commence such cure within such thirty (30) day period or fails to continuously thereafter diligently prosecute the cure of such violation, or if ***APPLICANT*** obtains actual knowledge that any such warranty, representation or statement has become false or misleading after the time that it was made, and ***APPLICANT*** fails to provide written notice to the ***CITY*** of the false or misleading nature of such warranty, representation or statement within ten (10) days after ***APPLICANT*** learns of its false or misleading nature.

(d) **Insolvency.** The dissolution or termination of ***APPLICANT'S*** existence as a going business or concern, ***APPLICANT'S*** insolvency, appointment of receiver for any part of ***APPLICANT'S*** portion of the Property, any assignment of all or substantially all of the assets of ***APPLICANT*** for the benefit of creditors of ***APPLICANT***, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against ***APPLICANT*** unless, in the case of involuntary proceedings, such proceedings are discharged within sixty (60) days after filing.

(e) **Property Taxes.** If ***APPLICANT*** allows its property taxes owed to the ***CITY*** to become delinquent and fails to timely and properly follow the legal procedures for protest and/or contest of such taxes and to cure such failure or post a satisfactory bond within thirty (30) days after written notice thereof from the ***CITY*** and/or El Paso Central Appraisal District.

(f) **Other Defaults.** Failure of ***APPLICANT*** or ***CITY*** to comply with or to perform any other term, obligation, covenant or condition contained in this Agreement or in any related documents, or failure of ***APPLICANT*** or ***CITY*** to comply with or to perform any other term, obligation, covenant or condition contained in any other agreement between the ***CITY*** and ***APPLICANT***, and ***APPLICANT*** or ***CITY*** fails to cure such failure within thirty (30) days after written notice from the ***CITY*** or ***APPLICANT***, as the case may be, describing such failure, or if such failure cannot be cured within such thirty (30) day period in the exercise of all due diligence, then if ***APPLICANT*** or ***CITY*** fails to commence such cure within such thirty (30) day period or fails to continuously thereafter diligently prosecute the cure of such failure.

(g) **Failure to Cure.** If any Event of Default by ***APPLICANT*** shall occur, and after ***APPLICANT*** fails to cure same in accordance herewith, then this Agreement is terminated and the ***CITY'S*** obligations end at that time. If a default has not been cured within the time frame stated herein, the non-defaulting party shall have all rights and remedies under the law or in equity.

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SECTION 6. RECAPTURE

Should the ***APPLICANT*** default under Section 5(c) of this Agreement and provided that the cure period for such default has expired, the ***CITY*** reserves the right to recapture any and all previously awarded grants.

SECTION 7. TERMINATION OF AGREEMENT BY *CITY* WITHOUT DEFAULT.

CITY may terminate this Agreement without an event of default by ***APPLICANT*** and effective immediately if any state or federal statute, regulation, case law, or other law renders this Agreement ineffectual, impractical or illegal, including case law holding that a Chapter 380 Economic Development Agreement such as this Agreement is an unconstitutional debt.

SECTION 8. MISCELLANEOUS PROVISIONS.

The following miscellaneous provisions are a part of this Agreement:

(a) **Amendments.** This Agreement constitutes the entire understanding and agreement of the parties as to the matters set forth in this Agreement. No alteration of or amendment to this Agreement shall be effective unless given in writing and signed by the party or parties sought to be charged or bound by the alteration or amendment.

(b) **Applicable Law and Venue.** This Agreement shall be governed by and construed in accordance with the laws of the State of Texas, and all obligations of the parties created hereunder are performable in El Paso County, Texas. Venue for any action arising under this Agreement shall lie in the state district courts of El Paso County, Texas.

(c) **Applicant's Sale or Transfer of the Development.** Prior to any sale or other transfer of ownership rights in the **DEVELOPMENT**, ***APPLICANT*** shall notify the ***CITY*** in writing of such sale or transfer within thirty (30) business days of the effectiveness of such sale or transfer. This provision is a material term of this Agreement and the failure to notify the ***CITY*** of such sale or transfer within the applicable period shall constitute an event of default.

(d) **Assignment.** ***APPLICANT*** understands and agrees that the ***CITY*** expressly prohibits ***APPLICANT*** from selling, transferring, assigning or conveying in any way any rights to receive the **GRANT** proceeds or this Agreement without the ***CITY'S*** *prior written* consent. Any such attempt to sell, transfer, assign or convey without the ***CITY'S*** prior written consent shall result in the immediate termination of this Agreement, with no ability for ***APPLICANT*** to cure.

(e) **Binding Obligation.** This Agreement shall become a binding obligation on the signatories upon execution by all signatories hereto. ***CITY*** warrants and represents that the individual executing this Agreement on behalf of ***CITY*** has full authority to execute this Agreement and bind ***CITY*** to the same. ***APPLICANT*** warrants and represents that the individual executing this Agreement on its behalf has full authority to execute this Agreement and bind ***APPLICANT*** to the same.

(f) **Confidentiality Obligations.** The confidentiality of records related to the ***CITY'S*** economic development considerations and incentives provided herein will be maintained in accordance with and subject to all applicable laws, including the Public Information Act, Chapter 552, Texas Government Code. To the extent permitted by state or federal law, the ***CITY*** shall maintain the confidentiality of any proprietary information and shall not copy any such information except as necessary for dissemination to the ***CITY'S*** agents or employees and agrees that, as required by the Public Information Act, it will notify Applicant if a request relating to such proprietary information is received. ***APPLICANT*** represents that it understands that the Public Information Act excepts disclosure of trade secret and confidential commercial information and that it will need to assert the proprietary interest of ***APPLICANT*** as a basis for nondisclosure.

(g) **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which shall constitute one and the same document.

(h) **Employment of Undocumented Workers.** During the term of this Agreement, ***APPLICANT*** agrees not to knowingly employ any undocumented workers as defined in Texas Government Code Section 2264.001. If convicted of a violation under 8 U.S.C. Section 1324a(f), ***APPLICANT*** shall repay the amount of the Grant payments received by ***APPLICANT*** from the ***CITY*** as of the date of such violation not later than one hundred twenty (120) days after the date ***APPLICANT*** is notified by ***CITY*** of a violation of this section, plus interest from the date the Grant payment(s) was paid to ***APPLICANT***, at the rate of seven percent (7%) per annum. The interest will accrue from the date the Grant payment(s) were paid to ***APPLICANT*** until the date the reimbursement payments are repaid to ***CITY***. ***CITY*** may also recover court costs and reasonable attorney's fees incurred in an action to recover the Grant payment(s) subject to repayment under this section. ***APPLICANT*** is not liable for a violation by its subsidiary, affiliate, or franchisee, or by a person which whom ***APPLICANT*** contracts.

(i) **Execution of Agreement.** City Council has authorized the City Manager to execute this Agreement on behalf of ***CITY***.

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(j) **Filing.** If ***APPLICANT*** so requests, this Agreement shall be filed in the deed records of El Paso County, Texas. The provisions of this Agreement shall be deemed to run with the land and shall be binding on heirs, successors and assigns of ***APPLICANT***. ***APPLICANT*** will be responsible for any recording costs, which will be paid directly by ***APPLICANT***.

(k) **Force Majeure.** It is expressly understood and agreed by the parties to this Agreement that if the performance of any obligations hereunder is delayed by reason of war, civil commotion, acts of God, inclement weather, fire or other casualty, or court injunction, the party so obligated or permitted shall be excused from doing or performing the same during such period of delay, so that the time period applicable to such obligation or requirement shall be extended for a period of time equal to the period such party was delayed.

(l) **Notices.** All notices required to be given under this Agreement shall be given in writing and shall be effective when actually delivered or when deposited in the United States mail, first class, postage prepaid, delivered personally, sent by a nationally recognized overnight courier, or sent by facsimile with an original sent by United States first class mail, postage prepared on the same date addressed to the party to whom the notice is to be given at the addresses shown below. Any party may change its address for notices under this Agreement by giving formal written notice to the other parties, specifying that the purpose of the notice is to change the party's address. For notice purposes, each party agrees to keep the other informed at all times of its current address.

APPLICANT: RUSA Texas, LLC

_____

Attention: _____

Facsimile: _____

_____

With a copy to:

_____

Attention: _____

Facsimile: _____

_____

_____

CITY:	City of El Paso 2 Civic Center Plaza El Paso, Texas 79901-1196 Attention: City Manager
With a copy to:	City of El Paso Planning & Economic Development, Director 2 Civic Center Plaza, 2nd Floor El Paso, Texas 79901-1196

Or such other address(es) with respect to either party as that party may, from time to time, designate in writing and forward to the other as provided in this paragraph.

(m) **Ordinance Applicability.** The signatories hereto shall be subject to all ordinances of the ***CITY***, whether now existing or in the future arising; provided however no ordinance shall reduce or diminish the contractual obligations contained herein. This Agreement shall confer no vested rights on the **DEVELOPMENT** unless specifically enumerated herein.

(n) **Severability.** In the event any provision of this Agreement shall be determined by any court of competent jurisdiction to be invalid or unenforceable, the Agreement shall, to the extent reasonably possible, remain in force as to the balance of its provisions as if such invalid provision were not a part hereof.

(o) **Event of Casualty.** In the event of total destruction or damage to the existing ***DEVELOPMENT*** by fire or other casualty, during construction or thereafter so long as the **GRANT** has not been fully paid, the ***APPLICANT*** shall determine and advise the ***CITY*** in writing within one year of such destruction or damage whether to restore, reconstruct and repair any such destruction or damage so that the ***DEVELOPMENT*** will be completed or rebuilt. During any period of restoration, reconstruction or repair, if no sales and use taxes for sales on the **DEVELOPMENT** are being collected, the term of this Agreement shall be automatically extended for a period equal to the period of interruption of operations on the **DEVELOPMENT** due to such damage or destruction. Should the ***APPLICANT*** determine not to restore, reconstruct and repair such damage or destruction, the **GRANT** shall immediately terminate.

(p) **Headings.** The Section headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

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(q) **No Third Party Beneficiaries.** This Agreement is not intended to confer any, rights, privileges, or causes of action upon any third party.

(r) **Revenue Sharing Agreement.** The ***CITY*** designates this Agreement as a revenue sharing agreement, thereby entitling the ***CITY*** to request Sales and Use Tax information from the State Comptroller, pursuant to Section 321.3022 of the Texas Tax Code, as amended.

(s) **No Joint Venture.** It is acknowledged and agreed by the parties that the terms hereof are not intended to and shall not be deemed to create any partnership or joint venture among the parties. The ***CITY***, its past, present and future officers, elected officials, employees and agents of the ***CITY***, do not assume any responsibilities or liabilities to any third party in connection with the operation of the **DEVELOPMENT**.

IN WITNESS WHEREOF, the parties have executed this Agreement on this 5th day of JANUARY, 2011 (the "Effective Date").

APPLICANT: RUSA TEXAS, LLC
A Delaware limited liability company

By: _____
Catherine Doucet, CFO

ACKNOWLEDGMENT

STATE OF INDIANA §
§
COUNTY OF MARION §

This instrument was acknowledged before me on the 5th day of JANUARY, 2011, by Catherine Doucet, CFO, on behalf of ***APPLICANT***, RUSA Texas LLC, a Delaware limited liability company, organized and existing under the laws of the State of Texas.

Sally E. Unverzagt
Notary Public, State of INDIANA

My Commission Expires:

10-19-15

CITY:

By: _____
Joyce A. Wilson
City Manager

APPROVED AS TO FORM:

Marie A. Taylor
Assistant City Attorney

APPROVED AS TO CONTENT:

Kathryn Dodson, Director
Planning & Economic Development

ACKNOWLEDGMENT

STATE OF TEXAS §
§
COUNTY OF EL PASO §

This instrument was acknowledged before me on the ____ day of , 20__, by Joyce A. Wilson, City Manager of the City of El Paso, Texas, on behalf of the City of El Paso, Texas.

Notary Public, State of Texas

My Commission Expires:

_____

ECO/10/K/Chapter 380 Agreement/RUSA Texas, LLC
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EXHIBIT "A"

[Development]

Maintenance and operation of the catalog sales order fulfillment facility at certain real property, legally described as follows:

> Lots 2 and 3, Block 2, MESA HILLS PLAZA, an addition to the City of El Paso, El Paso County, Texas, according to the plat thereof, recorded in Volume 68, Page 37, Real Property Records, El Paso County, Texas; also known and numbered as 500 S. Mesa Hills Drive, El Paso, Texas.

EXHIBIT "B"

Grant Submittal Package Form

RUSA Texas, LLC believes that it has substantially met its obligations under the Chapter 380 Agreement executed on (date). Pursuant to the agreement, RUSA Texas, LLC submits this Grant Submittal Package Form in compliance with said Agreement and in anticipation of receiving the grant in consideration for its obligations met under the Agreement.

As required by the Agreement, the following information is submitted.

1. Documentation to evidence the amount of sales taxes paid as a result of the sales at the DEVELOPMENT;

2. Documentation to evidence property taxes have been paid on the Property.

2. Waiver of Sales Tax Confidentiality Form for RUSA Texas, LLC.

It is understood by RUSA Texas, LLC that the City of El Paso has up to 60 days to process this request and reserves the right to deny the Grant claim if the terms of the Agreement have not been complied with.

Signature: _____

EXHIBIT "C"

Waiver of Sales Tax Confidentiality

Date

I authorize the Comptroller of Public Accounts to release sales tax Information pertaining to RUSA Texas, LLC, a Delaware limited liability company, its successors, assigns or nominees, and the City of El Paso, Texas. I understand that this waiver applies only to our catalog sales facility located at 500 S. Mesa Hills El Paso, El Paso County, Texas.

Please print or type the following information as shown on your Texas Sales and Use Tax permit:

Name of Taxpayer Listed on Texas Sales Tax Permit:

_____

Name Under Which Taxpayer is Doing Business (d/b/a or Store Name):

Taxpayer Mailing Address: _____

_____

Physical Location of Business Permitted for Sales Tax in El Paso, Texas:

_____

Texas Taxpayer ID Number _____
Tax Outlet Number _____
(As shown of Texas Sales Tax Permit)

_____

Authorized Signature

Printed Name:
Title:
Phone:

_____

_____

_____

_____

Redcats USA
Sales Tax Recapture Overview

February 1, 2011

Sales Tax Rebate

- The Chapter 380 tax rebate being proposed is not a typical “jobs to investment” rebate. In this case the business will change its method of business in order to make El Paso the point of sale for ALL Texas Sales. To entice the company to make this change, a five year, 50% Chapter 380 tax rebate of the new sales is being proposed, capped at $250,000 per year rebated to REDCATS.

Redcats USA, El Paso

- Current employer of 430 full time employees and 240 part-time employees
- Annual Payroll in excess of $14 million (Avg. wage $10.36/hr)
- Company benefits provided to all employees (italics apply to PT)
  - *Employee Assistance Program, 401K*, Medical Plan, Dental Plan, Group Term Life Insurance, Short Term Disability, Long Term Disability, *Vacation time tied to years of service, 11 paid holidays*.
- Committed to providing job specific skills training that is beneficial to the employee no matter where they work.

Benefits to El Paso, TX

- Opportunity to significantly increase sales tax revenue on an annual basis
- Strengthens retention of 430 full-time employees and 240 part-time employees
- Further embeds Redcats USA, within El Paso, TX and optimizes opportunities for future company expansion and retention of jobs
- Provides an economic development win for the city of El Paso, TX without any expense to the city

Sales Tax Recapture Comparison

- Actual sales tax revenue collected by the City of El Paso from Redcats - June 2009 – July 2010
  - $10,124 (city receives 100%)
- Projected sales tax revenue based upon actual sales June 2009 – July 2010 had recapture agreement been in place:
  - $ 471,386
  - City receives the original base plus 50% of the increase i.e. $245,817 for five years. After 5 years 100% of increase flows to the city
  - Agreement caps rebate to $250,000 per year or $1.25M regardless of sales volume (We retain 100% of excess Sales Tax).