

RESOLUTION NO. 2021-09-79

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LANCASTER, TEXAS, APPROVING A CHAPTER 380 ECONOMIC DEVELOPMENT AGREEMENT BY AND BETWEEN THE CITY OF LANCASTER, TEXAS AND PROJECT REX (THREDUP, INC.) AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, Project Rex (ThredUp, Inc.) seeks to lease a six hundred thousand (600,000) square foot distribution/warehouse facility where a minimum of one thousand, five hundred (1,500) people will be employed within three years of completion; and

**WHEREAS**, the City of Lancaster ("City") recognizes the importance of business and community development to the vitality and growth of Lancaster; and

**WHEREAS**, the City desires to grant certain economic development incentives to Project Rex (ThredUp, Inc.) for the purpose of constructing the distribution facility within the City of Lancaster; and

**WHEREAS**, the City has adopted programs for promoting economic development, and an Economic Development Agreement and the economic development incentives set forth herein are given and provided by the City pursuant to and in accordance with those programs; and

**WHEREAS**, the City is authorized by Chapter 380 of the Texas Local Government Code to issue grants in order to promote local economic development by stimulating the local economy; and

**WHEREAS**, the Agreement containing the terms of the grant of incentives from the City is appropriate.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF LANCASTER, TEXAS:**

**SECTION 1.** The City Council of the City of Lancaster, Texas approves a Chapter 380 Economic Development Incentive Agreement by and between the City of Lancaster and Project Rex (ThredUp, Inc.), attached as Exhibit "A" and incorporated herein.

**SECTION 2.** The City Council authorizes the City Manager to execute the Chapter 380 Economic Development Program and Agreement between the City of Lancaster and Project Rex (ThredUp, Inc.).

**SECTION 3.** This Resolution shall take effect immediately from and after the date of passage and is provided by law.

**DULY PASSED** and approved by the City Council of the City of Lancaster, Texas, on this the 13th day of September, 2021.

**ATTEST:**

  
\_\_\_\_\_  
Sorangel O. Arenas, City Secretary

**APPROVED:**

  
\_\_\_\_\_  
Clyde C. Hairston, Mayor

**APPROVED AS TO FORM:**

  
\_\_\_\_\_  
David T. Ritter, City Attorney

EXHIBIT A

**CITY OF LANCASTER, TEXAS  
AND  
THREDUP, INC.**

**CHAPTER 380 ECONOMIC DEVELOPMENT  
PROGRAM AND AGREEMENT**

This **CHAPTER 380 ECONOMIC DEVELOPMENT PROGRAM AND AGREEMENT** (hereinafter referred to as the "Agreement") is made and entered into by and between the **CITY OF LANCASTER, TEXAS**, a Texas home-rule municipality (hereinafter referred to as the "City"), and **THREDUP, INC.**, a Delaware Corporation (hereinafter referred to as the "Developer"), for the purposes and considerations stated below:

**WHEREAS**, the Developer desires to enter into this Agreement pursuant to Chapter 380 of the Texas Local Government Code; and

**WHEREAS**, the City desires to provide, pursuant to Chapter 380 of the Texas Local Government Code an incentive to Developer to develop the Property as defined below; and

**WHEREAS**, the City possesses the legal and statutory authority under Chapter 380 of the Texas Local Government Code to expend public funds for the purposes of promoting local economic development and stimulating business and commercial activity within the City of Lancaster, Texas; and

**WHEREAS**, the City has determined that a grant of funds to the Developer will serve the public purpose of promoting local economic development, with the development and diversification of the economy of the State and City, will eliminate unemployment and underemployment in the State and City, and will enhance business and commercial activity within the City of Lancaster, Texas; and

**WHEREAS**, the City has concluded and hereby finds that this Agreement clearly promotes economic development in the City of Lancaster, Texas, 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 the Developer; and

**WHEREAS**, the City has concluded and hereby finds that this Agreement clearly promotes economic development in the City of Lancaster, Texas, and, as such, meets the requirements of Article III, Section 52-a of the Texas Constitution by assisting in the development and diversification of the economy of the State, by eliminating unemployment or underemployment in the State, and by the development or expansion of commerce within the State.

**NOW, THEREFORE**, for and in consideration of the agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and Developer agree as follows:

## **SECTION 1. FINDINGS INCORPORATED.**

The foregoing recitals are hereby incorporated into the body of this Agreement and shall be considered part of the mutual covenants, consideration and promises that bind the parties.

## **SECTION 2. TERM.**

This Agreement shall be effective as of the Effective Date of this Agreement, as defined herein, and shall continue thereafter until December 31, 2034, unless otherwise terminated pursuant to the terms of this Agreement.

## **SECTION 3. 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 and Agreement, authorized by Chapter 380 of the Texas Local Government Code, together with all exhibits and schedules attached to this Agreement from time to time, if any.
- (b) **Certificate of Occupancy.** The words “Certificate of Occupancy” mean a certificate of occupancy (or its local equivalent) for the Facility.
- (c) **City.** The word “City” means the City of Lancaster, Texas, a Texas home-rule municipality. For the purposes of this Agreement, City’s address is P.O. Box 940, Lancaster, Texas 75146.
- (d) **Developer.** The word “Developer” means Thredup, Inc. whose address for the purposes of this Agreement is 969 Broadway, Suite 200, Oakland, CA 94607.
- (e) **Effective Date.** The words “Effective Date” mean the date that the City Council approves this agreement.
- (f) **Event of Default.** The words “Event of Default” mean and include any of the Events of Default set forth in the section entitled “Events of Default” in this Agreement.
- (g) **Facility.** The word “Facility” means Developer’s leased facilities constructed on the Property. In order to qualify as the “Facility” under this Agreement, the facility must meet all of the following criteria: (1) be located within the City; and (2) obtain a Certificate of Occupancy by January 1, 2023 and maintain it throughout the Term of this Agreement.
- (h) **Program Payment.** The words “Program Payment” mean the economic development funds provided by the City to Developer in accordance with this Agreement. Program Payments will be made in the form of tax rebates as described in more detail in Section

5(a) of this Agreement.

- (i) **Property.** The word “Property” means the tract of land located in the City of Lancaster, Dallas County, Texas, commonly known as 3800 North I-35E, and more particularly described and or depicted in *Exhibit A* of this Agreement, which is attached hereto and incorporated herein for all purposes. For purposes of this Agreement, the tract does not need to be owned by Developer, but may instead be leased.
- (j) **Term.** The word “Term” means the term of this Agreement as specified in Section 2 of this Agreement.

#### **SECTION 4. AFFIRMATIVE OBLIGATIONS OF DEVELOPER.**

The Developer covenants and agrees with City that, while this Agreement is in effect, it shall comply with the following terms and conditions:

- (a) **Occupation of Facility.** Developer covenants and agrees to continue occupying the Facility during the term of this Agreement.
- (b) **Certificate of Occupancy.** Developer covenants and agrees to obtain or maintain a City Certificate of Occupancy for the Facility located on the Property on or before January 1, 2023, and to maintain the Certificate of Occupancy throughout the Term of this Agreement.
- (c) **Operation of Facility.** Developer covenants and agrees to maintain and actively operate the Facility located on the Property during the Term of this Agreement.
- (d) **Performance.** Developer covenants and agrees to perform and comply with all terms, conditions and provisions set forth in this Agreement, and any other agreements by and between the City and Developer.
- (e) **Provision of Records.** Developer covenants and agrees to provide to City all receipts, purchase orders, funds transfers, checks, charges, and all other supporting documentation that City may request to demonstrate the costs incurred and paid by Developer related to the investment in equipment, machinery and other Business Personal Property, verification of employment and salary, payment of taxes and valuation information related to this Agreement. Developer shall supply to City all information related to employment requirements upon initial hiring and annually thereafter. Developer will provide all receipts and supporting documentation to City within ninety (30) days of payment of taxes, and within thirty (30) days of a written request by the City for information regarding valuation.
- (f) **Investment Threshold.** Developer covenants and agrees to show evidence of expenditure of a minimum of fifty million dollars (\$50,000,000) for equipment, machinery and other Business Personal Property located at the Facility.

- (g) **Place of Business for Tax Purposes.** Developer covenants and agrees that its Facility will be designated as a “place of business” so that sales tax on goods and/or services will be sourced to the City of Lancaster, Texas for the purposes of Texas sales tax law. If a legislative change to Texas law occurs after the commencement of the Term of this Agreement that renders this affirmative obligation impossible for Developer to meet, the Parties agree that Developer is not required to comply with this subsection for the duration of the legislatively-created conditions, but the Program Payment set forth in Section 5(a)(3) will not be available to Developer.
- (h) **Job Creation Requirement.** Developer is required to create, within the first three years following the Effective Date, and thereafter maintain a workforce of a minimum of one thousand five hundred (1,500) employees on site.
- (i) **Community Investment.** Developer covenants and agrees to invest an amount equivalent to one half of one percent of total gross annual City property taxes paid (calculated prior to any rebate or reduction available under this or any other economic development incentive Agreement) to sponsor community events and activities during the term of this Agreement. The amount shall be calculated and spent annually, and records and receipts provided to the City. The selection of a specific event or events is at the sole discretion of the Developer but requires a determination of eligibility by the Economic Development Director.
- (j) **Future Store Location.** Developer covenants and agrees to make best efforts to locate any future retail/outlet store within one of the City’s targeted redevelopment areas: West Pleasant Run Road corridor; I-35E corridor; Town Square area; or Campus District.
- (k) **Site Visit.** Developer covenants and agrees to grant a tour of the facility once every four years of the term of the Agreement to a delegation from the City.

**SECTION 5. AFFIRMATIVE OBLIGATIONS OF THE CITY.**

City covenants and agrees with Developer that, while this Agreement is in effect, it shall comply with the following terms and conditions:

- (a) **Program Payments.**
  - (1) **Business Personal Property Tax.** Provided that: (1) the Developer has obtained a Certificate of Occupancy for the Facility by January 1, 2023; (2) the investment threshold set forth herein are met; and (3) all other Affirmative Obligations set out in Section 4 have been satisfied, the City shall make Program Payments to Developer for a portion (as set forth below) of ad valorem taxes paid by the Developer to the City for Business Personal Property Taxes for a period of ten (10) years. Developer shall provide the City records of ad valorem taxes paid in a format approved by the City as soon as possible after the payment, and City shall

provide the Program Payment within thirty (30) business days after receipt of the tax records.

The first year of eligibility for the Program Payment shall be the tax year starting the earlier of: (1) the tax year when the Investment Threshold is met; or (2) January 1, 2024.

These Program Payments shall be based upon the following percentages and terms:

<b>Tax Years 1-10</b>	<b>Percentage of City Business Personal Property Taxes Reimbursed</b>
<b>1<sup>st</sup> through 10<sup>th</sup> tax year</b>	<b>65%</b>

(2) **Sales Tax on Equipment and Construction Material.** Provided that: (1) the Developer has obtained a Certificate of Occupancy for the Facility by January 1, 2023; (2) the valuation thresholds set forth herein are met; and (3) all other Affirmative Obligations set out in Section 4 have been satisfied, the City shall reimburse fifty percent (50%) of the City’s 1% sales tax collected on: (1) materials handling and operations equipment; and (2) construction materials for the Facility for purchases that are sourced to the City of Lancaster. All such expenditures must be made by January 1, 2023 and all receipts and accounting reports must be received by the City no later than May 1, 2023.

(3) **Sales Tax on Consumer Goods Sold.** Provided that: (1) the Developer has obtained a Certificate of Occupancy for the Facility by January 1, 2023; (2) the valuation thresholds set forth herein are met; and (3) all other Affirmative Obligations set out in Section 4 have been satisfied, the City shall reimburse fifty percent (50%) of the City’s 1% sales tax collected on consumer goods sold from the Facility for a period of ten (10) years, starting with the tax year starting on January 1, 2022 (billed October 1, 2022). All receipts and accounting reports must be received by the City no later than May 1 of the year following the tax year.

(c) **Valuation of Real Property and Business Personal Property.** The Real Property valuations in this Section 5 are Dallas Central Appraisal District (“DCAD”) taxable values, including the values assigned by constituent taxing authorities. For purposes of these Program Payments, payment to the City’s authorized tax collection agent (currently the Dallas County Tax Assessor/Collector (the “Dallas County Tax Office”) shall be considered ad valorem taxes “paid to the City.”

## SECTION 6. CESSATION OF ADVANCES.

If City has made any commitment to provide any Program Payment to Developer, whether under this Agreement or under any other agreement, the City shall have no obligation to advance or disburse future Program Payment after: (a) Developer becomes insolvent, files a petition in bankruptcy or similar proceedings, or is adjudged bankrupt; or (b) an Event of Default occurs and is not cured within the time period provided in Section 8.

## SECTION 7. EVENTS OF DEFAULT.

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

- (a) **General Event of Default.** Failure of Developer or City to comply with or to perform any other term, obligation, covenant or condition contained in this Agreement, or failure of Developer or City to comply with or to perform any other term, obligation, covenant or condition contained in any other agreement by and between Developer and City is an Event of Default.
- (b) **False Statements.** Any warranty, representation, or statement made or furnished to the City by or on behalf of Developer under this Agreement that is false or misleading in any material respect, as of the time made or furnished is an Event of Default.
- (c) **Insolvency.** Developer's insolvency, appointment of receiver for any part of Developer's property, any assignment for the benefit of creditors of Developer, any type of creditor workout for Developer, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against Developer is an Event of Default.
- (d) **Ad Valorem Taxes.** Developer allows its ad valorem 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 within thirty (30) days after written notice thereof from City and/or Dallas County Central Appraisal District is an Event of Default.

## SECTION 8. EFFECT OF AN EVENT OF DEFAULT.

In the event of default under Section 7 of this Agreement, the non-defaulting party shall give written notice to the other party of any default, and the defaulting party shall have thirty (30) days to cure a monetary default and ninety (90) days to cure a non-monetary default. Should said default remain uncured as of the last day of the applicable cure period, the non-defaulting party shall have the right to terminate this Agreement, enforce specific performance as appropriate, or maintain a cause of action for damages caused by the event(s) of default. In the event the Developer defaults and is unable or unwilling to cure said default within the prescribed time period, the Program Payments provided by the City to Developer pursuant to Section 5(a) of this Agreement, shall become immediately due and payable by the Developer to the City.

**SECTION 9. INDEMNITY.**

**TO THE EXTENT ALLOWED BY TEXAS LAW, EACH PARTY AGREES TO RELEASE, DEFEND, INDEMNIFY, AND HOLD HARMLESS THE OTHER (AND ITS OFFICERS, AGENTS, AND EMPLOYEES) FROM AND AGAINST ALL CLAIMS OR CAUSES OF ACTION FOR INJURIES (INCLUDING DEATH), PROPERTY DAMAGES (INCLUDING LOSS OF USE), AND ANY OTHER LOSSES, DEMAND, SUITS, JUDGMENTS AND COSTS, INCLUDING REASONABLE ATTORNEYS' FEES AND EXPENSES, IN ANY WAY ARISING OUT OF, RELATED TO OR RESULTING FROM ITS PERFORMANCE UNDER THIS AGREEMENT, OR CAUSED BY ITS NEGLIGENT ACTS OR OMISSIONS (OR THOSE OF ITS RESPECTIVE OFFICERS, AGENTS, EMPLOYEES, OR ANY OTHER THIRD PARTIES FOR WHOM IT IS LEGALLY RESPONSIBLE) IN CONNECTION WITH PERFORMING THIS AGREEMENT. NOTHING HEREIN SHALL BE INTERPRETED AS A WAIVER OF CITY'S GOVERNMENTAL IMMUNITY FROM SUIT OR DAMAGES.**

**SECTION 10. 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 Dallas County, Texas. Venue for any action arising under this Agreement shall lie in the state district courts of Dallas County, Texas.
- (c) **Assignment.** This Agreement may not be assigned without the express written consent of the other party, which shall not be unreasonably withheld, conditioned or delayed. Any restrictions herein on the transfer or assignment of Developer's interest in this Agreement shall not apply to and shall not prevent the assignment of this Agreement to a subsidiary or affiliate of Developer, an acquirer of substantially all of Developer's assets, or any corporation or other entity with which Developer may merge or consolidate or that may succeed to a controlling interest in the business of Developer or in which Developer owns more than a twenty percent (20%) equity interest.
- (d) **Attorneys' Fees and Costs.** In the event of any action at law or in equity between the parties to enforce any of the provisions hereof, to the extent allowed by law any unsuccessful party to such litigation shall pay to the successful party all costs and expenses, including reasonable attorneys' fees (including costs and expenses incurred in

connection with all appeals) incurred by the successful party, and these costs, expenses and attorneys' fees may be included in and as part of the judgment. A successful party shall be any party who is entitled to recover its costs of suit, whether or not the suit proceeds to final judgment.

- (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. Developer warrants and represents that the individual executing this Agreement on its behalf has full authority to execute this Agreement and bind it to the same.
- (f) **Caption Headings.** Caption headings in this Agreement are for convenience purposes only and are not to be used to interpret or define the provisions of the Agreement.
- (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) **Entire Agreement.** This written agreement represents the final agreement between the parties and may not be contradicted by evidence of prior, contemporaneous, or subsequent oral agreements of the parties. There are no unwritten oral agreements between the parties.
- (i) **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, pandemic or wide-spread disease, 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.
- (j) **No Interpretation Against Drafter.** Developer and City have participated in negotiating and drafting this Agreement, and agree that the Agreement is to be construed as if drafted jointly. The parties agree that the Agreement will not be interpreted or construed against either party should a need for interpretation or resolution of any ambiguity arise.
- (k) **Notices.** Any notice or other communication required or permitted by this Agreement (hereinafter referred to as the "Notice") is effective when in writing and (i) personally delivered by nationally recognized next business day delivery service or by hand or (ii) three (3) days after notice is deposited with the U.S. Postal Service, postage prepaid, certified with return receipt requested. The parties agree to keep the other party or parties informed of their address at all times during the Term of this Agreement. The Notices shall be addressed as follows:

If to the City: City of Lancaster, Texas  
Attn: Opal Mauldin-Jones, City Manager  
P.O. Box 940  
Lancaster, Texas 75146  
Telephone: (972) 218-1300

If to the Developer: Thredup, Inc.  
969 Broadway, Suite 200  
Oakland, California 94607

With a copy  
by the same means to: Thredup, Inc.  
969 Broadway, Suite 200  
Oakland, CA 94607  
Attn: Legal Department  
Telephone: \_\_\_\_\_

- (l) **Severability.** The provisions of this Agreement are severable. If any paragraph, section, subdivision, sentence, clause, or phrase of this Agreement is for any reason held by a court of competent jurisdiction to be contrary to law or contrary to any rule or regulation have the force and effect of the law, the remaining portions of the Agreement shall be enforced as if the invalid provision had never been included.
- (m) **Sovereign Immunity.** No party hereto waives any statutory or common law right to sovereign immunity by virtue of its execution hereof.
- (n) **Survival.** All warranties, representations, and covenants made by Developer in this Agreement or in any certificate or other instrument delivered by Developer to City under this Agreement shall be considered to have been relied upon by the City and will survive the payment of any Program Payments under this Agreement regardless of any investigation made by the City or on City's behalf.
- (o) **Time is of the Essence.** Time is of the essence in the performance of this Agreement.
- (p) **Undocumented Workers.** The Developer certifies that Developer does not and will not knowingly employ an undocumented worker in accordance with Chapter 2264 of the Texas Government Code, as amended. If during the Term of this Agreement, Developer is convicted of a violation under 8 U.S.C. § 1324a(f), Developer shall repay the amount of any public subsidy provided under this Agreement to Developer plus six percent (6.0%), not later than the 120<sup>th</sup> day after the date the City notifies Developer of the violation.

- (q) In accordance with Section 2270.002 of the Texas Government Code (as added by Tex. H.B. 89, 85<sup>th</sup> Leg., R.S. (2017)), the Developer verifies that it does not boycott Israel and will not boycott Israel during the Term of this Agreement.
- (r) In accordance with Section 2252.152 of the Texas Government Code (as added by Tex. S. B. 252, 85<sup>th</sup> Leg., R.S. (2017)), the Parties covenant and agree that Developer is not on a list maintained by the State Comptroller's office prepared and maintained pursuant to Section 806.051, 807.051, or 2252.153 of the Texas Government Code.
- (s) **Estoppel Certificate.** Upon written request by Developer to City, City will provide Developer with a certificate stating, as of the date of the certificate, (i) whether this Agreement is in full force and effect and, if Developer is in breach of this Agreement, the nature of the breach, and (ii) a statement as to whether this Agreement has been amended and, if so, the identity and substance of each amendment.

**[The Remainder of this Page Intentionally Left Blank]**

**THE INCENTIVES IN THIS AGREEMENT SHALL BE NULL AND VOID IF NOT SIGNED BY DEVELOPER AND RETURNED TO THE CITY BY DECEMBER 31, 2021.**

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be duly executed.

**CITY:**

**CITY OF LANCASTER, TEXAS,**  
a Texas home-rule municipality

By: Opal Mauldin-Jones  
Opal Mauldin-Jones, City Manager

Date: 9-17-21

**ATTEST:**

Sorangel O. Arenas  
Sorangel O. Arenas, City Secretary

**APPROVED AS TO FORM:**

David T. Ritter  
David T. Ritter, City Attorney

STATE OF TEXAS §  
  §  
COUNTY OF DALLAS §

This instrument was acknowledged before me on the 17 day of September 2021 by Opal Mauldin-Jones, City Manager of the City of Lancaster, Texas, a Texas home-rule municipality, on behalf of said municipality.

Deborah Shelby Bunton  
Notary Public, State of Texas  
DEBORAH SHELBY BUNTON  
My Notary ID # 126844824  
Expires April 16, 2025

**DEVELOPER:**

**THREDUP, INC.**  
a Delaware Corporation

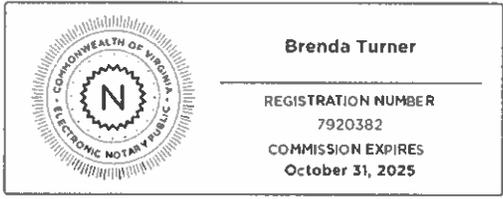
Name:  Alon Rotem

Title: Chief Legal Officer

Date Signed: 09/17/2021

<sup>pt</sup>  
~~STATE OF TEXAS~~ Virginia      §  
   §  
COUNTY OF Chesapeake     §

This instrument was acknowledged before me on the 17th day of September 2021 by Alon Rotem of Thredup, Inc., a Delaware corporation, on behalf of said corporation.



 Brenda Turner  
Electronic Notary Public  
Notary Public, County of Chesapeake ~~Texas~~ ~~Virginia~~

Notarized online using audio-video communication

*Exhibit A*

Legal Description and/or Depiction  
of the Property