DEVELOPMENT AGREEMENT
FOR THE LIBERTY CIVIL DEVELOPMENT

This Development Agreement for the Liberty Civil Development (the “Agreement”) is made and entered into, effective as of the ___ day of _______, 2019, by and between the City of Leander, Texas, a Texas home rule municipal corporation (the “City”), Liberty Civil Construction, LLC, a Texas Limited Liability company (Liberty Civil”) and Prelude Ventures, L.L.C., a Texas limited liability company (the “Developer”). The City and the Developer are sometimes referred to herein as the “Parties.”

RECITALS:

WHEREAS, the Developer is the owner of that certain 6-acre tract located in Williamson County, Texas, being more particularly described in Exhibit “A” attached hereto and incorporated herein for all purposes (the “Property”);

WHEREAS, in contemplation of the purchase of the Property, the Company and the City entered into that certain 380 Agreement, dated ______________, 20__ (the “380 Agreement”) to develop the Property with facilities and improvements necessary to operate a construction office and shop (the “Project”);

WHEREAS, the Developer desires to use the short form final platting process to cause the Property to be legally platted, and to address other subdivision, fee, masonry standards and site plan requirements for the development of the Property;

WHEREAS, the City is agreeable to allowing the Property to be platted using the short form final platting process under the terms and conditions set forth in this Agreement, and addressing the Developer’s obligations related to other subdivision, fee, masonry standards and site plan requirements to promote development of the Project;

WHEREAS, Developer desires to provide for the construction of certain water and wastewater improvements as described herein, and the City desires that Developer oversize the water and wastewater facilities described herein so that such facilities may serve customers located outside the Property; and

WHEREAS, Developer will benefit from simplifying the platting process, from establishing Developer’s obligations related to other subdivision, fee, and site plan requirements.

AGREEMENT:

NOW, THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Developer and the City agree as follows:
Article I. Recitals Incorporated; Term; Termination.

1.01 Recitals Incorporated. The above and foregoing recitals are incorporated herein and made a part of this Agreement for all purposes.

1.02. Term. The term of this Agreement shall be ten (10) years from the Effective Date hereof, subject to earlier termination as provided in this Agreement.

1.03. Termination. The Parties further mutually agree that this Agreement shall be in full force and effect upon the date above first written, provided that the City may terminate this Agreement if Developer fails to comply with this Agreement or fails to meet any deadlines imposed by this Agreement or the City’s ordinances, after expiration of the cure period set forth in Section 10.01.

Article II. Subdivision of the Property.

2.01. Subdivision of the Property. The Developer may cause the Property to be a legally platted lot or lots using the short form final platting process set forth in Chapter 10, City Code of Ordinances (the “Subdivision Ordinance”), modified as provided in this Agreement. The Developer shall submit the construction plans identifying the infrastructure and improvements (the “Improvements”) that are required for the Project with the short form final plat application as required by the Subdivision Ordinance, as well as any other infrastructure and improvements required by the City’s ordinances. The Developer may also submit a site development plan application for development of the Property at the same time that the Developer submits the short form final plat application and construction plans. It shall be a condition of approval of the short form final plat that the Developer has either (a) constructed and obtained City acceptance of the Improvements; or (b) submitted a letter of credit, performance bond, or cash escrow deposit guaranteeing the construction of the Improvements that complies with the Subdivision Ordinance.

2.02. Perimeter Block length. The City agrees that the perimeter block length requirement shall be met when the future extension of Raider Way occurs.

2.03. Sidewalk construction. The Developer shall construct, complete and obtain City acceptance of a sidewalk along the tracts fronting on Hero Way within ninety (90) days of the Hero Way expansion opening to the public for traffic in accordance with construction plans approved by the City and applicable local, state, and federal regulations (the “Sidewalk”). Developer will not be required to pay a fee in-lieu of constructing the Sidewalk.

2.04. Tree Mitigation. The City’s ordinances governing mitigation for tree removal shall not apply to trees removed in connection with the Hero Way expansion.

Article III. Roadway Adequacy Fee.

3.01. Roadway Adequacy Fee. Section 10.03.003(c) of the City’s Code of Ordinances (the “Code”) requires the Developer to make right-of-way dedications and improvements for streets located adjacent to the proposed development (the “Boundary Street Improvements”). In lieu of
performing the Boundary Street Improvements for Hero Way, the Developer may elect to pay (and the City shall accept) a fee in lieu of performing the Boundary Street Improvements in the amount of $500.00 per peak hour trip as determined by the Trip Generation Manual, by The Institute of Transportation Engineers (“ITE Manual”) with each proposed site development permit (collectively, the “Roadway Adequacy Fee”) to satisfy the Developer’s obligation to make Boundary Street Improvements to Hero Way as required by Section 10.03.003(c) of the Code. The number of trips used to calculate the Roadway Adequacy Fee shall be based upon the number of trips generated by the development shown in each proposed site development permit for the Property approved by City staff. The Roadway Adequacy Fee shall be paid prior to the issuance of the site development permit for the Property, or portion thereof, to the City. It shall be a condition of approval of the site development permit for the Property that the Roadway Adequacy Fee has been paid. Further, the following condition must be met in order for the City to accept the Roadway Adequacy Fee in satisfaction of the Boundary Street Improvements. In addition to the Roadway Adequacy fee, the Developer shall dedicate right-of-way for Hero Way, as generally shown in the TxDOT Approved Schematic and shown Exhibit B. The right-of-way shall be dedicated at the short form final plat stage.

Article IV. Development of the Project and Property.

4.01. Development. Except as modified by this Agreement, the Project and the Property will be developed in accordance with all applicable local, state, and federal regulations, including but not limited to the City’s ordinances. The Property and the Project shall be developed in accordance with this Agreement, the approved development applications submitted hereunder, all applicable local regulations as modified by this Agreement, all applicable state and federal regulations, as amended from time to time, and good engineering practices. In the event of a conflict between the timing of events required by City ordinances and this Agreement, this Agreement shall control.

Article V. Assignment of Commitments and Obligations; Binding Agreement.

5.01. Assignment. The Developer’s rights and obligations under this Agreement may be assigned in whole or part, to persons purchasing all of the Property or a part of the Property but not to an individual purchaser of lots within a recorded final plat. In the event Developer(s) assign all of their respective rights under this Agreement in conjunction with the conveyance of any unplatted portion of the Property, a written assignment of developer status must be filed of record in the Official Public Records of Williamson County, Texas in order to be effective. Any assignment of Developer’s rights and obligations hereunder will not release Developer(s) of their respective obligations under this Agreement for the assigned portion of the Property until the City has approved the written assignment; provided, however, the City shall not unreasonably deny, delay, or condition its approval of the assignment. Notwithstanding the foregoing, the Developer may assign to a third party or otherwise encumber its rights to receive the City Cost Participation Amount, Water Impact Fee Rebates and Wastewater Impact Fee Rebates without the approval of the City; provided Developer must notify the City of the assignment and any change in the name and addressee of the payee.

5.02. Binding Obligations. This Agreement shall be binding upon and inure to the benefit of
the parties, their successors, and assigns. A fully executed copy of this Agreement shall be recorded in the Official Public Records of Williamson County, Texas within ninety (90) days after the Effective Date. Nothing in this Agreement is intended to impose the Developer’s obligations on individual owners that purchase lots for their personal use.

Article VI. Default and Related Provisions

6.01. Default. Notwithstanding anything herein to the contrary, no party shall be deemed to be in default hereunder until the passage of thirty (30) business days after receipt by such party of notice of default from the other party. Upon the passage of thirty (30) business days without cure of the default, such party shall be deemed to have defaulted for purposes of this Agreement; provided that if the nature of the default is that it cannot reasonably be cured within the thirty (30) business day period, the defaulting party shall have a longer period of time as may be reasonably necessary to cure the default in question; but in no event more than sixty (60) days. In the event of default, the non-defaulting party to this Agreement may pursue the remedy of specific performance or other equitable or legal remedy not inconsistent with this Agreement or applicable state law. All remedies will be cumulative and the pursuit of one authorized remedy will not constitute an election of remedies or a waiver of the right to pursue any other authorized remedy.

6.02. Reservation of Rights. To the extent not inconsistent with this Agreement, each party reserves all rights, privileges, and immunities under applicable laws, and neither party waives any legal right or defense available under law or in equity.

6.03. Attorney’s Fees. A party shall not be liable to the other party for attorney fees or costs incurred in connection with any litigation between the parties, in which a party seeks to obtain a remedy from the other party, including appeals and post judgment awards.

6.04. Waiver. Any failure by a party to insist upon strict performance by the other party of any provision of this Agreement will not, regardless of length of time during which that failure continues, be deemed a waiver of that party’s right to insist upon strict compliance with all terms of this Agreement. In order to be effective as to a party, any waiver of default under this Agreement must be in writing, and a written waiver will only be effective as to the specific default and as to the specific period of time set forth in the written waiver. A written waiver will not constitute a waiver of any subsequent default, or of the right to require performance of the same or any other provision of this Agreement in the future.

6.05. Force Majeure.
   (a) The term "force majeure" as employed herein shall mean and refer to acts of God; strikes, lockouts, or other industrial disturbances: acts of public enemies, orders of any kind of the government of the United States, the State of Texas, Williamson County, the City of Leander or any civil or military authority; insurrections; riots; epidemic; landslides; lightning, earthquakes; fires, hurricanes; storms, floods; washouts; droughts; arrests; restraint of government and people; civil disturbances; explosions; breakage or accidents to machinery, pipelines, or canals; or other causes not reasonably within the control of the party claiming such inability.
(b) If, by reason of force majeure, any party hereto shall be rendered wholly or partially unable to carry out its obligations under this Agreement, then such party shall give written notice of the full particulars of such force majeure to the other party within ten (10) days after the occurrence thereof. The obligations of the party giving such notice, to the extent effected by the force majeure, shall be suspended during the continuance of the inability claimed, except as hereinafter provided, but for no longer period, and the party shall endeavor to remove or overcome such inability with all reasonable dispatch. Any force majeure attributable to the City shall extend the term of this Agreement one day for each day of the force majeure delay.

(c) It is understood and agreed that the settlement of strikes and lockouts shall be entirely within the discretion of the party having the difficulty, and that the above requirement that any Force Majeure shall be remedied with all reasonable dispatch shall not require that the settlement be unfavorable in the judgment of the party having the difficulty.

Article VII. Notices

7.01. Notice. Any notice to be given hereunder by any party to another party shall be in writing and may be affected by personal delivery or by sending said notices by registered or certified mail, return receipt requested, to the address set forth below. Notice shall be deemed given when deposited with the United States Postal Service with sufficient postage affixed.

Any notice mailed to the City shall be addressed:

City of Leander  
Attn: City Manager  
200 West Willis  
P.O. Box 319  
Leander, Texas 78646-0319

with copy to:

The Knight Law Firm, LLP  
Attn: Paige H. Saenz  
223 W. Anderson Lane, Suite A105  
Austin, Texas 78752

Any notice mailed to the Developer shall be addressed:

Prelude Ventures, L.L.C.  
Attn: Michael Ehrhardt  
315 CR 205  
Liberty Hill, Tx 78642
Any party may change the address for notice to it by giving notice of such change in accordance with the provisions of this section.

**Article VIII. Miscellaneous Provisions**

8.01. The Parties acknowledge the mutual promises and obligations of the Parties expressed herein are good, valuable and sufficient consideration for this Agreement. The Parties further acknowledge the City and Developer voluntarily elected the benefits and obligations of this Agreement, as opposed to the benefits available were Developer to have elected to develop the Property without the benefits and obligations of this Agreement, pursuant to and in compliance with the applicable City ordinances. Therefore, save and except the right to enforce the obligations of the City to perform each and all of the City’s duties and obligations under this Agreement, Developer hereby waives any and all claims or causes of action against the City Developer may have for or with respect to any duty or obligation undertaken by Developer pursuant to this Agreement, including any benefits that may have been otherwise available to Developer but for this Agreement.

8.02. This Agreement, together with any exhibits attached hereto, constitutes the entire agreement between Parties and may not be amended except by a writing approved by the City Council of the City that is signed by all Parties and dated subsequent to the date hereof.

8.03. The terms of this Agreement 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, do not assume any responsibilities or liabilities to any third party in connection with the development of the Property. The City enters into this Agreement in the exercise of its public duties and authority to provide for development of property within the City pursuant to its police powers and for the benefit and protection of the public health, safety, and welfare.

8.04. This Agreement is not intended, nor will it be construed, to create any third-party beneficiary rights in any person or entity who is not a party, unless expressly provided otherwise herein, or in a written instrument executed by both the City and the third party. Absent a written agreement between the City and third party providing otherwise, if a default occurs with respect to an obligation of the City under this Agreement, any notice of default or action seeking a remedy for such default must be made by the Developer.

8.05. The Effective Date of this Agreement is the defined date set forth in the first paragraph.
8.06. A fully executed copy of this Agreement shall be recorded in the Official Public Records of Williamson County, Texas.

8.07. This Agreement shall be governed by and construed in accordance with the laws of the State of Texas and shall be performable in Williamson County, Texas. Venue shall lie exclusively in Williamson County, Texas.

8.08. It is acknowledged and agreed by the Parties that time is of the essence in the performance of this Agreement.

8.09. Exhibits. The following exhibits are attached to this Agreement, and made a part hereof for all purposes:

   Exhibit A – Property Description
   Exhibit B – TxDOT Schematic for Hero Way

[Signature Pages Follow]
EXECUTED in multiple originals this the ____ day of ________________, 2019.

CITY:
City of Leander, Texas
a Texas home-rule municipal corporation

By:______________________________
Name: Troy Hill
Title: Mayor

Attest:

By:______________________________
Name: Dara Crabtree
Title: City Secretary

THE STATE OF TEXAS §
COUNTY OF WILLIAMSON §

This instrument was acknowledged before me on this ____ day of ________________, 2019, by Troy Hill, Mayor of the City of Leander, Texas, a Texas home-rule municipal corporation, on behalf of said corporation.

(SEAL)  Notary Public, State of Texas
DEVELOPER:
Prelude Ventures L.L.C.,
a Texas limited liability company

By: ____________________________
Name: ___________________________
Title: ___________________________

THE STATE OF TEXAS §
COUNTY OF ___________ §

This instrument was acknowledged before me on this ____ day of ____________, 2019, by
____________________, _______________ of Prelude Ventures, L.L.C., a Texas limited liability
company, on behalf of said company.

(SEAL)

Notary Public, State of Texas
EXHIBIT “A”
Description of Property
EXHIBIT “B”
TxDOT Schematic for Hero Way