

PRELIMINARY DEVELOPMENT AGREEMENT

THIS PRELIMINARY DEVELOPMENT AGREEMENT is made and entered into this ___ day of June, 2023, by and between the West St. Paul Economic Development Authority, a public body corporate and politic (the “EDA”), with its principal office at 1616 Humboldt Avenue, West St. Paul, MN 55118, and Swervo Development Corporation, a Minnesota corporation, or its permitted assigns (the “Developer”), with its principal office at 510 North 1st Avenue, Suite 600, Minneapolis, Minnesota 55403.

WITNESSETH:

WHEREAS, the EDA is the owner of certain real property described in **Exhibit A** (the “Redevelopment Property”) located in the City of West St. Paul, Minnesota (the “City”); and

WHEREAS, the Developer proposes to acquire the Redevelopment Property from the EDA pursuant to a purchase agreement in order to facilitate the construction of a new mixed-use development with related improvements on the Redevelopment Property proposed by and to be developed by the Developer. The Developer has presented to the EDA a proposed development plan for the Redevelopment Property (the “Development Concept”), a copy of which is attached hereto as **Exhibit B**; and

WHEREAS, the EDA’s Board of Commissioners (the “Board”) has reviewed the Development Concept and, although neither the Developer nor the EDA have agreed to the Development Concept, the parties acknowledge that the Development Concept includes many elements desired by the Developer and the EDA as part of the development of the Redevelopment Property, and the parties, therefore, propose to enter into this Preliminary Development Agreement (this “Agreement”) to allow the Developer time to, among other things: (i) further refine its Development Concept to a final proposal, acceptable to the EDA, for the development of the Redevelopment Property (the “Development”); (ii) negotiate with the EDA regarding the sale of the Redevelopment Property; (iii) conduct public outreach and receive public feedback related to its Development Concept; (iv) explore the possibility and need for public subsidy for the Development, including the potential use of tax increment financing; and (v) seek approval from the EDA and the City of a final Development Concept; and

WHEREAS, the EDA and Developer intend to proceed with the Development if: (i) a design for the Development can be agreed upon by the EDA and the Developer, including without limitation, public amenities and improvements acceptable to the EDA; (ii) a satisfactory agreement can be reached regarding the purchase price to be paid by the Developer for the Redevelopment Property; (iii) a satisfactory agreement can be reached regarding the EDA’s commitment of public financial assistance necessary for the Development, if any; (iv) satisfactory financing for the Development can be secured; and (v) the economic feasibility and soundness of the Development and other necessary preconditions have been determined to the satisfaction of the parties.

NOW, THEREFORE, in consideration of the foregoing, the EDA and the Developer hereby agree as follows:

Section 1. Preliminary Nature of Agreement. The EDA and Developer agree that this Agreement is intended to be preliminary in nature. Before the EDA and Developer can decide on whether to proceed with the Development, it will be necessary to assemble and consider information relative to the uses, design, economics and other aspects of the Development. The purpose of this Agreement is to allow the Developer and EDA an opportunity to assemble such necessary information, to refine the concept for the Development, and to negotiate the execution of a purchase agreement and a development assistance agreement or similar agreement or combination of agreements (collectively, the “Definitive Contract”) which, if executed, will set forth the rights and responsibilities of the EDA and the Developer with respect to the Development.

During the term of this Agreement, the EDA agrees that it will not enter into or negotiate a similar agreement or any other agreement with any party other than the Developer to develop the Redevelopment Property.

Section 2. Present Intent of Parties. It is the intention of the parties that this Agreement document their present understanding and commitments and that if the following conditions can be fulfilled to the satisfaction of the EDA and Developer that the parties will proceed in an attempt to formulate a mutually satisfactory Definitive Contract:

- (a) a design for the Development, Public Amenities and Public Improvements (both as defined below) can be agreed upon by the EDA and the Developer;
- (b) a satisfactory agreement can be reached regarding the purchase price to be paid by the Developer for the Redevelopment Property;
- (c) a satisfactory agreement can be reached regarding the EDA’s commitment of public financial assistance necessary for the Development, if any;
- (d) satisfactory financing for the Development can be secured;
- (e) the Developer demonstrates the feasibility of the Development as refined pursuant to this Agreement;
- (f) the Developer provides such documentation regarding the economic feasibility of the Development as the EDA requests during the term of this Agreement;
- (g) the completion of all undertakings required by this Agreement in a satisfactory and timely manner;
- (h) the satisfaction of such other conditions as are determined to be necessary by either party; and
- (i) the Development is generally consistent with the proposal attached as **Exhibit B.**

The Definitive Contract (together with any other agreements entered into between the parties hereto contemporaneously therewith) when executed will supersede all understandings and obligations of the parties hereunder.

Section 3. Development Design. The Developer's concept for the Development on the Redevelopment Property is preliminary in nature and must be refined before implementation. The Development as proposed involves the construction of a mixed-use development together with public spaces, such as, but not limited to, surface parking, green space, an outdoor amphitheater, plaza and pavilion (the "Public Amenities") and any off-site public improvements expected or required to be completed as part of the Development and any on-site public improvements expected or required to be completed as part of the Development, including internal roadways (the "Public Improvements").

Section 4. Developer Undertakings. During the term of this Agreement, the Developer will do the following:

(a) Continue to refine the site plans, plans for the Public Amenities and the Public Improvements and building plans for the Development, all subject to available funding for the Development.

(b) Undertake preliminary engineering, soil testing/borings and geotechnical analysis of the Redevelopment Property. For this purpose, the Developer and its contractors shall have the right to enter upon the Redevelopment Property at reasonable times and conduct such tests and inspections of the Redevelopment Property as the Developer deems necessary including, without limitation, Phase I and Phase II environmental testing, geotechnical testing and wetland testing and delineations (the "Inspections"). The Developer shall give the EDA two (2) full business days' prior notice of any inspection or test. All Inspections shall be at the Developer's expense and the Developer shall repair any damage to the Redevelopment Property that the Developer or its agents cause as part of the Inspections. The Developer shall indemnify, defend and hold the EDA and the Redevelopment Property harmless from any liens, losses, costs, claims or expenses related to or arising out of the Developer's Inspections and shall repair any damage caused to the Redevelopment Property, which obligations shall survive the expiration or termination of this Agreement.

(c) Submit to the EDA a proposed schedule for the undertaking of the Development, including phasing and timing of closing and construction.

(d) Using any available title information and survey provided by the EDA, update evidence of title to the Redevelopment Property and provide to the EDA any objections to title.

(e) Seek to secure a commitment for equity and financing sufficient for construction of the Development or identify development partners able to obtain commitments for equity and financing sufficient for construction of applicable portions of the Development.

(f) Submit to the EDA a project pro forma detailing all costs of the Development and the sources and uses of all funds to be raised to finance the Development, including justification for the amount proposed to be paid by the Developer to acquire the Redevelopment Property and the request for public assistance.

(g) Seek to secure commercial tenants for the Development; provided that the Developer has no authority by virtue of this Agreement to lease or otherwise encumber the Redevelopment Property.

(h) Obtain environmental reports and studies provided by the EDA and such other studies and testing deemed necessary, to determine the acceptability of the environmental condition of the Redevelopment Property.

(i) Identify the Public Amenities and the Public Improvements.

(j) Conduct and participate in one or more community open house(s) to solicit public input regarding the proposed Development and such other neighborhood meetings as may reasonably be requested by the EDA.

(k) Work with the EDA or City to provide information necessary to apply for funding grants from governmental grant sources, if applicable.

(l) Obtain any market studies for the Development to assess overall feasibility and to refine the scope of the Development and complete a traffic study to assess the overall traffic impact resulting from the Development, if requested by the EDA.

(m) Make all required presentations to the City Council of the City (the "City Council"), the Board and the City Planning Commission in connection with approvals of the Development.

All of the information described above shall be prepared or collected at the sole expense of the Developer. The Developer agrees that it will provide the EDA with status reports on progress made with respect to its activities under this Agreement at least quarterly or as otherwise requested. Failure to provide said reports may result in termination of this Agreement.

Section 5. EDA Undertakings. During the term of this Agreement, the EDA will undertake the following:

(a) Coordinate meetings with the EDA, City Council, Planning Commission and the community to refine the Development plans.

(b) Assist in identifying the Public Amenities and the Public Improvements.

(c) Identify construction, permit, application, utility and any other fees and the amount of such fees that the Developer may be expected to pay in connection with the Development.

(d) Identify the approval process and timeframes for development approvals that may be expected for the Development.

(e) Identify the sources of public financial assistance that may be made available to the Developer in connection with the Development. If any such financial assistance is actually provided in connection with the Development, the amount, timing and terms of such assistance will be subject to approval in accordance with applicable law, including without limitation a public hearing as required by law and a final “but for” analysis, and will be set forth in the Definitive Contract. No commitment is being made in this Agreement at this time that any such assistance will be provided to the Developer.

(i) Within five (5) days after the execution of this Agreement, deliver to the Developer the following to the extent such materials are within Seller’s possession or reasonable control: copies of any surveys, environmental reports and studies, geotechnical testing reports, historical studies, reports and designations, architectural drawings and property/improvement inspection reports copies of all permits, and records of land use applications and proceedings affecting the Redevelopment Property (the “Due Diligence Documents”).

(j) Conduct a public hearing and consider approval of the sale of the Redevelopment Property prior to or at the same time as the approval of any Definitive Contract.

(k) Cause to be prepared drafts of the Definitive Contract upon satisfaction of the conditions in Section 2.

(l) The EDA will, at the Developer’s expense, cooperate with the Developer in pursuing any federal or State environmental approvals, permits, program enrollments or determinations requested by the Developer with respect to the Redevelopment Property.

(m) Analyze information provided by the Developer to determine if the conveyance of the Redevelopment Property for the Developer’s proposed purchase price is justified.

(n) Notwithstanding any provisions or understanding to the contrary, neither the City nor the EDA will exercise its condemnation powers to acquire any additional property or other real property in connection with the Development.

(o) Cooperate with the Developer, at the Developer’s expense, in completing the traffic study, if required.

Section 6. Contingencies. The parties acknowledge and agree that proceeding with the Development is subject to a number of contingencies, including, but not limited to, the following:

(a) The acquisition of all or part of the Redevelopment Property by direct purchase, on such terms and conditions as are acceptable to the EDA in its sole and absolute discretion.

(b) The acceptance by the Developer of its environmental and geotechnical assessments and all other environmental and wetland reports and surveys certified to the Developer and its lender, deemed necessary by the EDA and the Developer for all of the property to be encompassed by the Development, which reports and surveys must be satisfactory to the EDA and the Developer.

(c) The EDA and the Developer having obtained all necessary approvals for the Development from any participating governmental authority including, but not limited to, any necessary watershed district approvals.

(d) The Developer having obtained such zoning modifications, rezoning, planned unit development approvals, conditional use permits, variances, vacations and other land use approvals as are necessary to allow the Development to move forward.

(e) Title to the Redevelopment Property having been found acceptable to the Developer in its sole discretion.

(f) The Developer having conducted such soils, well, engineering, hazardous waste, environmental and other testing as it determines necessary.

(g) The Developer having obtained financing for the Development acceptable to Developer and satisfactory to the EDA.

Section 7. Negotiation of Definitive Contract. During the term of this Agreement, the EDA and the Developer will proceed with the negotiation of a Definitive Contract relative to the Development. The decision to enter into a Definitive Contract shall be in the sole discretion of each of the parties. If prior to execution of the Definitive Contract either party determines in its sole discretion that it is not in its best interest, for any reason, to proceed with the Development or the Definitive Contract, it shall so notify the other party, whereupon this Agreement shall terminate and neither party shall have any rights or obligations to the other or to any third party under or with respect to this Agreement, except as provided in Section 9 regarding EDA costs incurred prior to such termination and the indemnification provisions of Section 4. If the Developer determines during the term of this Agreement that undertaking the Development is not financially feasible, it will promptly notify the EDA of such determination and the parties will terminate this Agreement.

Section 8. Effect of Approvals. No approval given by the EDA hereunder or in connection herewith shall be deemed to constitute an approval of the Development for any purpose other than as stated herein and the process outlined in this Agreement shall not be deemed to supersede any concept review, conditional use permit, vacation, subdivision, or other zoning or planning approval process of the EDA or the City relative to the development of real estate.

Section 9. Payment of EDA Costs. In consideration of the EDA's covenants and agreements set forth herein, the Developer agrees that it will pay costs incurred by the EDA in connection with the preparation of this Agreement, financial analysis, the negotiation, preparation and implementation of the Definitive Contract, in the manner and to the extent provided in this Section 9, and any other costs identified in the Definitive Contract in the manner set forth therein. The Developer shall deposit \$25,000 with the EDA within 3 business days of execution of this

Agreement. The EDA shall have the right to draw upon such amounts to pay its costs. Upon request by the Developer, the EDA will provide an accounting of the use of any funds deposited with the EDA. If the amount on deposit becomes fully depleted or the EDA wishes to incur a cost that would cause the deposit to be fully depleted, the EDA shall have the right to request that the Developer replenish such funds. Upon such request, the Developer shall remit to the EDA additional funds to be held on deposit and used to pay costs. If the Developer fails to make such a deposit within 3 business days, the EDA may terminate this Agreement. If this Agreement is terminated in accordance with the terms hereof, any sums remaining on deposit with the EDA, after the EDA pays or reimburses itself for costs incurred to the date of termination, shall be returned to the Developer. No other financial obligations shall exist between the parties, other than those that may be negotiated and contained in the Definitive Contract.

Section 10. Conveyance Subject to Right of Re-entry. The EDA's conveyance of the Redevelopment Property to the Developer pursuant to the Definitive Contract will be subject to approval after a public hearing, will be on an "AS-IS" basis, and will be made in the form of a quit claim deed (the "Deed"). The Deed will include a right of re-entry for breach of a condition subsequent in favor of the EDA (the "Right of Re-entry") for the Development. The condition(s) subsequent will be determined by the EDA in accordance with Minnesota Statutes Section 469.105 and set forth in the Deed conveying the Redevelopment Property to the Developer in the form attached to the Definitive Contract. If the Developer breaches such condition(s) subsequent, the Developer shall re-convey the Redevelopment Property back to the EDA. If the Developer fails to re-convey the Redevelopment Property to the EDA, the EDA may elect to exercise its right of reentry by commencing an action in Anoka County District Court to establish the breach of the condition subsequent. If the EDA establishes a breach of the condition subsequent, title to and the right to possession of the Redevelopment Property and title to all improvements located thereon reverts to the EDA, and the Developer is not entitled to any compensation from the EDA for the Redevelopment Property or the value of any improvements the Developer has made to the Redevelopment Property. The Developer must record any certificate of completion or certificate of release of the Right of Re-entry in the proper County land records at its expense.

Section 11. Modifications; Assignment. This Agreement may be modified and the term hereof may be extended only through written amendments hereto signed by both of the parties to this Agreement. The parties acknowledge that Developer may assign its rights hereunder to an entity of which the Developer (or the entity controlling the Developer) is the controlling member.

Section 12. Exclusive Rights. In consideration of the time, effort and expenses to be incurred by Developer in pursuing the undertakings set forth herein and in further consideration of the funds paid to the EDA, the receipt of which is hereby acknowledged, the EDA hereby agrees that for the term of this agreement it will not provide or enter into an agreement for provision of financial assistance to any third party in connection with any proposed development of the Redevelopment Property. During such period the Developer shall have the exclusive right to work with the EDA in establishing a Definitive Contract for the Redevelopment Property. Said exclusive rights shall continue, unless earlier terminated as provided herein, for the period described within Section 13 of this agreement.

Section 13. Termination. This Agreement shall be effective until January 31, 2024, unless terminated earlier in accordance with Section 7. If for any reason a Definitive Contract has not been entered into by the parties by such date or any mutually approved extension thereof, this Agreement shall be null and void and neither party shall have any liability or obligations to the other, except as provided in Section 9 regarding EDA costs incurred prior to the termination of this Agreement.

Section 14. Severability. If any portion of this Agreement is held invalid by a court of competent jurisdiction, such decision shall not affect the validity of any remaining portion of this Agreement.

Section 15. Notices. Notice, demand, or other communication from one party to the other shall be deemed effective if sent by certified mail, postage prepaid, return receipt requested or delivered personally to a party at its address in the first paragraph of this Agreement, or at such other address as such party may designate in writing to the other party.

Section 16. Data Practices. This Agreement is subject to the Minnesota Government Data Practices Act, Minnesota Statutes Chapter 13.

Section 17. Nonbinding. The Developer acknowledges that, except for Section 9, Section 12 and the indemnification provisions of Section 4 above which shall all be binding upon the Developer, this Agreement shall not be deemed conclusive or legally binding upon either the Developer or the EDA, and neither the Developer nor the EDA shall have any obligations regarding the Redevelopment Property, the Development or any public assistance described herein, unless and until a Definitive Contract is approved by the Board and executed by both the Developer and the EDA.

Section 18. Interpretation; Concurrence. The language in this Agreement shall be construed simply according to its generally understood meaning, and not strictly for or against any party and no interpretation shall be affected by which party drafted any part of this Agreement. By executing this Agreement, the parties acknowledge that they (a) enter into and execute this Agreement knowingly, voluntarily and willingly of their own volition with such consultation with legal counsel as they deem appropriate; (b) have had a sufficient amount of time to consider this Agreement's terms and conditions, and to consult an attorney before signing this Agreement; (c) have read this Agreement, understand all of its terms, appreciate the significance of those terms and have made the decision to accept them as stated herein; and (d) have not relied upon any representation or statement not set forth herein.

IN WITNESS WHEREOF, the EDA has caused this Agreement to be duly executed in its name and behalf and the Developer has caused this Agreement to be duly executed in its name and behalf on or as of the date first above written

**WEST ST. PAUL ECONOMIC
DEVELOPMENT AUTHORITY**

By _____
Its President

By _____
Its Executive Director

SWERVO DEVELOPMENT CORPORATION

By _____
Its _____

EXHIBIT A
REDEVELOPMENT PROPERTY

EXHIBIT B
DEVELOPMENT CONCEPT