

SUPERIOR METROPOLITAN DISTRICT NO. 1
RESOLUTION NO. SMD#1-10
SERIES 2023

A RESOLUTION OF THE SUPERIOR METROPOLITAN DISTRICT NO. 1
BOARD OF DIRECTORS APPROVING A PRE-DEVELOPMENT AGREEMENT
WITH BIGSBY'S FOLLY WINERY & RESTAURANT

NOW, THEREFORE, BE IT RESOLVED BY THE SUPERIOR METROPOLITAN DISTRICT NO. 1 BOARD OF DIRECTORS, AS FOLLOWS:

Section 1. The Board of Directors hereby approves a Pre-Development Agreement between the Superior Metropolitan District No. 1 and Bigsby's Folly Winery & Restaurant is hereby approved in substantially the same form attached hereto, subject to final approval by the District's General Counsel.

ADOPTED this 13th day of November, 2023.



Mark Lacis, Mayor

ATTEST:



Lydia Yecke, Town Clerk



PRE-DEVELOPMENT AGREEMENT

THIS PRE-DEVELOPMENT AGREEMENT (this "Agreement") is made on the 13th day of November, 2023 (the "Effective Date"), by and between the Superior Metropolitan District No. 1, 124 East Coal Creek Drive, Superior, CO 80027, a quasi-municipal corporation of the State of Colorado (the "District"), and Ideaction Superior, LLC, a Colorado limited liability company with a principal place of business at 821 South High Street, Denver, CO 80209 ("Bigby") (each a "Party" and collectively the "Parties").

WHEREAS, Bigby owns certain real property more particularly described in **Exhibit A**, attached hereto and incorporated herein by this reference (the "Property");

WHEREAS, Bigby wishes to develop the the Property (the "Bigby Project");

WHEREAS, as part of the developing the Property, certain tap fees and system development fees will be due to the District;

WHEREAS, the Parties desire to enter into an agreement whereby the District agrees to rebate the tap and system development fees back to Bigby in the event the Bigby Project moves forward; and

WHEREAS, by this Agreement, the Parties wish to set forth their expectations regarding the rebate of the tap and system development fees.

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth herein, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. Purpose. The purpose of this Agreement is to establish the terms of the rebate of the tap and system development fees associated with the Property if the Bigby Project proceeds.
2. Term. This Agreement shall commence on the Effective Date. Should Bigby fail to meet the deadlines set forth in Section 3(b), this Agreement shall automatically terminate, without further action of the Parties, and neither Party shall have any further obligation to the other under this Agreement.
3. Bigby's Obligations.
 - a. Bigby shall file all necessary development applications for the Bigby Project and shall be responsible for all related costs and fees through final approval of such applications, including without limitation all tap and system development fees associated with the Bigby Project.
 - b. Bigby shall obtain a building permit for construction of the Bigby Project on or before 12/31/2024. Bigby shall obtain the final certificate of occupancy for the Bigby Project on or before 12/31/2026.

4. District's Obligations. Within 60 days of issuance of the final certificate of occupancy for the Bigsy Project, the District shall rebate to Bigsby the actual tap and system development fees paid by Bigsby to the District, in an amount not to exceed \$187,740.

5. Breach and Remedies.

a. *By the District.* If the District defaults on any obligation under this Agreement for any reason, Bigsby may seek actual damages, but Bigsby shall not be entitled to enforce this Agreement through an action for specific performance.

b. *By Bigsby.* If Bigsby defaults on any obligation under this Agreement, the District may: seek damages; or withhold issuance of building permits or certificates of occupancy not yet issued for any improvements on the Property until said default has been cured or waived. In addition to the specific remedies set forth herein, the District shall have all other remedies available at law or equity, and the exercise of one remedy shall not preclude the exercise of any other remedy.

6. Miscellaneous.

a. *Governing Law and Venue.* This Agreement shall be governed by the laws of the State of Colorado, and any legal action concerning the provisions hereof shall be brought in Boulder County, Colorado.

b. *No Waiver.* Delays in enforcement or the waiver of any one or more defaults or breaches of this Agreement by the District shall not constitute a waiver of any other terms or obligations of this Agreement.

c. *Integration.* This Agreement constitutes the entire agreement between the Parties, superseding all prior oral or written communications.

d. *Third Parties.* There are no intended third-party beneficiaries to this Agreement.

e. *Notice.* Any notice under this Agreement shall be in writing, and shall be deemed sufficient when directly presented or sent pre-paid, first class U.S. Mail to the Party at the address set forth on the first page of this Agreement.

f. *Severability.* If any provision of this Agreement is found by a court of competent jurisdiction to be unlawful or unenforceable for any reason, the remaining provisions hereof shall remain in full force and effect.

g. *Modification.* This Agreement may only be modified upon written agreement of the Parties.

h. *Assignment.* Neither this Agreement nor any of the rights or obligations of the Parties shall be assigned by either Party without the written consent of the other.

i. *Governmental Immunity.* The District and its officers, attorneys and employees, are relying on, and do not waive or intend to waive by any provision of this Agreement, the monetary limitations or any other rights, immunities, and protections provided by the Colorado

Governmental Immunity Act, C.R.S. § 24-10-101, *et seq.*, as amended, or otherwise available to the District and its officers, attorneys or employees.

j. *Rights and Remedies.* The rights and remedies of the District under this Agreement are in addition to any other rights and remedies provided by law. The expiration of this Agreement shall in no way limit the District's legal or equitable remedies, or the period in which such remedies may be asserted, for work negligently or defectively performed.

k. *Subject to Annual Appropriation.* Consistent with Article X, § 20 of the Colorado Constitution, any financial obligation of the District not performed during the current fiscal year is subject to annual appropriation, shall extend only to monies currently appropriated, and shall not constitute a mandatory charge, requirement, debt or liability beyond the current fiscal year.

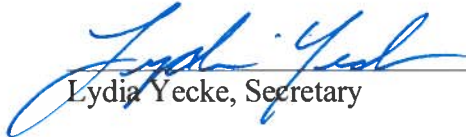
IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

**SUPERIOR METROPOLITAN
DISTRICT NO. 1**



Mark Lacis, President

ATTEST:



Lydia Yecke, Secretary



IDEACTION SUPERIOR, LLC, A COLORADO
LIMITED LIABILITY COMPANY,

By: Marla Syetka

STATE OF COLORADO)
) ss.
COUNTY OF Arapahoe)

The foregoing instrument was subscribed, sworn to and acknowledged before me this 1st
day of May, 2023, by Marla Syetka as CXO
of Ideaction Superior LLC, 2024 Atto
a Colorado limited liability company

My commission expires:

(S E A L)

April J Deroen
Notary Public

**APRIL J DEROUEN
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID 20054015652
MY COMMISSION EXPIRES 04/28/2025**

EXHIBIT A
Legal Descriptions