



LAKE COUNTY FOREST PRESERVES  
www.LCFPD.org

Preservation, Restoration, Education and Recreation

**DATE:** April 30, 2018

**MEMO TO:** Craig Taylor, Chair  
Operations Committee

**Agenda Item#** 9.3

S. Michael Rummel, Chair  
Finance Committee

**FROM:** Nan Buckardt  
Director of Education

**RECOMMENDATION:** Approve an Ordinance approving a five-year License Agreement with Possibility Place Nursery to provide plants and support services for the annual Native Plant Sale at Independence Grove Forest Preserve.

**STRATEGIC DIRECTIONS SUPPORTED:** Communication, Education and Outreach; Conservation

**FINANCIAL DATA:** Annual revenue is estimated to be \$23,000.

**BACKGROUND:** The District has worked with Possibility Place Nursery, Monee, Illinois as their Native Plant Sale vendor since 2008. Possibility Place Nursery provides high quality products for Native Plant Sale customers through an annual sale that is economically advantageous to the District. The revenues to the District under the previous license agreement with Possibility Place exceeded \$20,000 annually.

The License Agreement requires Possibility Place Nursery to provide, set-up and maintain the stock for the Native Plant Sale in the Independence Grove North Bay Pavilion on Mother's Day Weekend each year of the agreement. The agreement calls for Possibility Place Nursery to handle the security and watering of the plants, accounting for the sale, provide inventory lists of stock supplied and left after the sale, accounting records for audit upon request, and staff to assist in the sale. Possibility Place will pay the District on a sliding scale based on the gross sales as follows:

Gross Sales	% of proceeds to the District	Anticipated District revenues
0 - \$15,000*	0	0
\$15,001 - \$27,000	95.8	\$11,500
\$27,001 - 42,000	46.6	\$7,000
Above \$42,001	40	\$4,500

\* Covers vendor's plant costs.

The new License Agreement would expire on December 31, 2022, but may be extended by Possibility Place for one five-year term beyond that.

District staff has reviewed the agreement and feels that it would be in the best interest of the District to continue in a License Agreement with Possibility Place Nursery.

**REVIEW BY OTHERS:** Chief Operations Officer, Director of Finance, Corporate Counsel

STATE OF ILLINOIS )  
 ) SS  
COUNTY OF LAKE )

**BOARD OF COMMISSIONERS  
LAKE COUNTY FOREST PRESERVE DISTRICT  
REGULAR MAY MEETING  
MAY 8, 2018**

MADAM PRESIDENT AND MEMBERS OF THE BOARD OF COMMISSIONERS:

Your **OPERATIONS COMMITTEE** and **FINANCE COMMITTEE** present herewith “an Ordinance Approving a License Agreement with Possibility Place Nursery for the Annual Native Plant Sale,” and request its approval.

**OPERATIONS COMMITTEE:**

Date: 4-30-2018  Roll Call Vote: Ayes: \_\_\_ Nays: \_\_\_  
 Voice Vote Majority Ayes; Nays: 0

**FINANCE COMMITTEE:**

Date: 4-30-2018  Roll Call Vote: Ayes: \_\_\_ Nays: \_\_\_  
 Voice Vote Majority Ayes; Nays: 0

**LAKE COUNTY FOREST PRESERVE DISTRICT  
LAKE COUNTY, ILLINOIS**

**AN ORDINANCE APPROVING A LICENSE AGREEMENT  
WITH POSSIBILITY PLACE NURSERY FOR THE ANNUAL NATIVE PLANT SALE**

**WHEREAS**, the Lake County Forest Preserve District (the "District") operates an annual Native Plant Sale at Independence Grove's North Bay Pavilion annually on Mother's Day Weekend; and

**WHEREAS**, the Native Plant Sale at Independence Grove has demonstrated success during the many years of its operation; and

**WHEREAS**, pursuant to Section 7b of the Downstate Forest Preserve District Act, 70 ILCS 805/7b, the District may by ordinance issue licenses for any activity reasonably connected with the purpose for which the District has been created; and

**WHEREAS**, making native plants available for sale to the public is an activity that is reasonably connected with the District's purposes; and

**WHEREAS**, it is in the best interests of the District, to enter into a license agreement with Possibility Place Nursery granting Possibility Place Nursery a license to conduct an annual native plant sale at Independence Grove Forest Preserve in substantially the form attached hereto;

**NOW, THEREFORE, BE IT ORDAINED** by the Board of Commissioners of the Lake County Forest Preserve District, Lake County, Illinois THAT:

Section 1. Recitals. The recitals set forth above are incorporated as part of this Ordinance by this reference.

Section 2. Approval of License Agreement. The License Agreement with Possibility Place Nursery, in substantially the form attached hereto, is hereby approved. The President and Secretary of the District are authorized and directed to execute and attest to, respectively, the License Agreement on behalf of the District.

Section 3. Effective Date. This Ordinance shall be in full force and effect from and after its passage and approval in the manner provided by law.

PASSED this \_\_\_\_\_ day of \_\_\_\_\_, 2018

AYES:

NAYS:

APPROVED this \_\_\_\_\_ day of \_\_\_\_\_, 2018

\_\_\_\_\_  
Ann B. Maine, President  
Lake County Forest Preserve District

ATTEST:

\_\_\_\_\_  
Julie Gragnani, Secretary  
Lake County Forest Preserve District

Exhibit No. \_\_\_\_\_

LAKE COUNTY FOREST PRESERVE DISTRICT  
NATIVE PLANT SALE AGREEMENT

This Agreement is made as of the 8<sup>th</sup> day of May, 2018 by and between the Lake County Forest Preserve District, an Illinois unit of local government and a political subdivision, with its principal office located at 1899 West Winchester Road, Libertyville, Illinois 60048-1199 ("District"), and Possibility Place Nursery, Incorporated, an Illinois Corporation ("Licensee").

WITNESSETH:

WHEREAS, District holds fee simple title to that certain parcel of land commonly known as Independence Grove Forest Preserve (the "Subject Property"); and

WHEREAS, the District desires to make available to the public, for their use, plants that have their origin within, or within 200 miles of, Lake County ("Native Plants"); and

WHEREAS, to effectuate such goal, the parties desire that Licensee sell Native Plants to the public through an annual District Native Plant Sale and provide related services related to such sale;

NOW, THEREFORE, in consideration of the recitals set forth above and the mutual covenants and agreements set forth below, the parties do hereby agree as follows:

SECTION 1. RECITALS. The recitals set forth above are by this reference incorporated into, and made a part of, this Agreement.

SECTION 2. TERM. The term of this Agreement shall commence on May 8, 2018, and end at 11:59 p.m. on December 31, 2022 unless sooner terminated or extended ("Term"). Provided that the District has not declared a "Default," as provided in Section 15, Licensee may extend the Term for one additional one-year period by sending a written notice of such extension to the District so that the District receives such notice not later than **August 31, 2022**.

SECTION 3. CONCESSION RIGHTS GRANTED. Licensee shall have the exclusive right to develop and operate a Native Plant Sale at the North Bay Pavilion, Independence Grove Forest Preserve and adjacent property, as depicted on Exhibit A attached hereto (the "Licensed Premises") as more fully described in this Agreement.

SECTION 4. CONCESSION AND LICENSE FEE.

A. License Fee. Licensee shall pay a percentage of "Gross Receipts" as defined in Section 4.C as outlined below:

Gross Receipts	% of Gross Receipts to the District
0 - \$15,000	0
\$15,001 - \$27,000	95.8
\$27,001 - 42,000	46.6
Above \$42,001	40

All payments under this section are due and payable on or before the TENTH (10<sup>th</sup>) day of June following the Native Plant sale.

B. Late Payment Penalties. If any payment due under Subsection A above is not paid when due and payable, Licensee shall pay to District an additional two hundred fifty and 00/100 dollars (\$250.00) each month or fraction thereof the payment is late as an administrative processing charge. The parties agree that this late charge represents a fair and reasonable estimate of the costs that District will incur by reason of late payment by Licensee. Acceptance of any late charge shall not constitute a waiver of

Licensee's default with respect to the overdue amount or prevent District from exercising any of the other rights and remedies available to District.

C. Gross Receipts. "Gross Receipts" means all money, cash, receipts, assets, including but not limited to gross charges, sales, fees and commissions made, or earned, and all gross sums received by Licensee, its assignees, or successors in interest, when collected or accrued, from any business, use or occupation, or any combination thereof, originating transacted or performed, in whole or in part, from the Native Plant Sale including, but not limited to, rentals, the rendition or supplying of services, the sale of Native Plants, goods, wares or merchandise, and revenue from coin machines or devices of any nature; less sales and excise taxes applicable thereto, required to be collected by Licensee, its assignees or successors in interest in connection with the rendering or supplying of services, goods, wares or merchandise.

(1) There shall be no deduction from Gross Receipts of any overhead or expense of operation, such as, but without limitation to, salaries, wages, cost of goods, advertising, interest, debt amortization, discount, collection, credit card and bad debt charges, insurance and taxes, except as specifically provided for herein.

(2) Gross Receipts shall include the amount of any manufacturer's or importer's excise tax included in the prices of any property or material sold, even though the manufacturer or importer is also the retailer thereof; and it is immaterial whether the amount of such excise tax is stated as a separate charge.

(3) Gross Receipts shall not include Federal, State, Municipal, or other taxes collected from the consumer (regardless of whether the amount thereof is stated to the consumer as a separate charge) and paid periodically by Licensee to a governmental agency, accompanied by a tax return or statement. However, the amount of such taxes shall be shown on the books and records elsewhere herein required to be maintained.

#### SECTION 5. IMPROVEMENTS AND ALTERATIONS.

A. The District shall be responsible for providing Licensee with the use of the North Bay Pavilion and providing the Licensee with the ability to access a water faucet for watering the Native Plants and electricity and communications (for credit card sales) as necessary for the operation of the Native Plant Sale.

B. The District shall provide directional signs and other signage as to location, availability and hours of the Native Plant Sale, as deemed necessary or desirable by the District.

#### SECTION 6. MANAGEMENT REQUIREMENT.

A. Licensee agrees that it will operate and manage the Native Plant Sale in a first quality professional, businesslike manner. Licensee shall require its employees and contractors to wear an easily identifiable visual uniform, T-shirt, vest, hat, or name tag, so the public can recognize such employee or contractor as associated with Licensee. Prior approval of the District of all such items must be obtained by Licensee.

B. Licensee Employees. Licensee will ensure that its employees and contractors shall at all times conduct themselves in a professional manner, and that they will conform to all applicable rules, regulations, and requirements now in force in the District, as well as all rules and regulations as hereafter may be promulgated or put into operation by the District. Licensee shall maintain a staff adequate to provide security for the Native Plants during non-sale hours, to operate the credit card machine during sale hours, plus other knowledgeable staff to assist with customer questions. Licensee agrees to replace personnel whenever demanded by District, upon due cause being shown. Licensee shall at all times retain day-to-day supervisory control over its employees and control over the operative details of its employees' work.

C. Hours of Operation. Licensee agrees that the Native Plant Sale hours on Mother's Day weekend will be 9 A.M. – 3 P.M. on Saturday and 10 A.M. – 3 P.M. on Sunday, unless otherwise mutually agreed upon and approved in writing by the Executive Director. Licensee may access and use the Licensed

Premises within a time before, and within a time after, the Native Plant Sale, as necessary to set up for the Native Plant Sale, vacate the Licensed Premises following the conclusion of the Native Plant Sale, and satisfy its other obligations under this Agreement, which times will be determined by the Executive Director in his discretion.

D. Merchandise and Equipment. Within the Licensed Premises, the District may sell, or allow others to sell, merchandise and equipment (but not Native Plants) that are related to the Native Plant Sale. The proceeds of these rentals and sales are not subject to revenue splitting with the Licensee. District retains the right to require Licensee to discontinue sale or use of those items the District feels are not of high standards.

E. Access to Prices and Rates. District shall have access to and the right to inspect the prices and rates for Native Plants and other goods sold or services rendered or performed by Licensee upon the Licensed Premises.

F. Approval of Prices and Rates. Licensee agrees that the Native Plants and other merchandise sold at the Native Plant Sale shall be at prices and rates mutually agreed upon in advance of the sale and in keeping with those generally charged for similar Native Plants and merchandise by commercial vendors in Lake County.

G. Electronic Credit Card Machine. Licensee agrees to provide an electronic credit card machine and operator for credit card sales.

H. The Licensee shall provide for the security of all property owned by the Licensee, taking such security measures to prevent damage or loss to such property.

I. Licensee shall restock depleted Native Plant supplies during the sale to maximize the sales.

J. Finalized Native Plant List. Licensee shall provide to the District a finalized projected Native Plant list for sale promotional pieces no later than May 8 (for the 2018 Native Plant Sale) or February 24 (for the Native Plant in each other year during the Term) including the following information for each species: Common name, Latin name, community type (prairie, savanna, woodland), mature height, moisture preference (dry, dry to mesic, mesic, moist, very wet), sun preference (full sun, part shade, shade) bloom months, and bloom color.

K. Native Plant Stock. Licensee guarantees that the Native Plants that it will provide for sale (i) are of the genus, species, and variety advertised and will have a normal habit of growth and (ii) have an original source of propagules (seeds, cuttings, etc.) within, or within a 200-mile radius of, Lake County, Illinois.

L. The Licensee shall provide the District (upon request) with a written description of the Native Plant materials provided by the Vendor. This description shall include any or all of the following:

- Original source of seed or other propagation materials (e.g., cuttings)
- Plant propagation records
- Name and location of Native Plant supplier or propagation location, if different from such supplier.

M. Inspections. The District reserves the right to inspect and approve Native Plant material for quality, size and variety at the place of growth and upon delivery to the Licensed Premises. Rejected plants shall be removed from the Licensed Premises immediately and replaced with Native Plants acceptable to the District at the Licensee's expense. Licensee shall provide to the District any certificates of inspection that are required by Federal, State, County or other authorities, to accompany shipments.

N. Inventory. Licensee shall provide upon delivery of the Native Plants, an inventory of Native Plants and sizes delivered to the Licensed Premises for the Native Plant Sale. After the conclusion of the Native Plant Sale and before Licensee vacates the Licensed Premises following such Native Plant Sale,

Licensee shall provide to the District an inventory of Native Plants and sizes that were delivered to the Licensed Premises, but unsold .

O. Care of Native Plants. Licensee is responsible for the care of the Native Plants while they are on the Subject Property. The District will provide a faucet for watering the Native Plants.

P. Site Safety. Licensee is responsible for maintaining the Licensed Premises in a clean and safe condition.

## SECTION 7. RECORDS AND ACCOUNTS.

A. Records and Accounts. Licensee covenants and agrees that it will, at all times during the term of this License, keep or cause to be kept at its principal place of business, true and complete books, records, and accounts of all financial transactions relating to the Gross Receipts of the Native Plant Sale. The records must be supported by documents from which the original entry of the transaction was made, including sales slips or cash register tapes, or both, and purchase invoices. Other than day to day records, all books shall be maintained at the office of Licensee's accountant. The Licensee shall provide the District with the name and address of its Accountant and any changes thereto.

B. Recording of Sales. All sales and charges shall be recorded by means of sales invoices, tickets or cash registers which display to the customer the amounts of the transactions and either physically or automatically issue receipts certifying the amounts recorded. The approved forms or devices used in the recording of cash or charge sale transactions are as follows:

(1) Cash registers: Cash registers shall be of a type that displays to the customer the amount of each transaction. The register shall be equipped with devices which lock in sales total, transaction records, and with counters which are not reset table and which record on tapes the transaction numbers and sales details. Cash register readings shall be recorded by Licensee at the beginning and end of each business day.

(2) Cash receipt and charge sales books: Cash receipt and charge sales books shall be of the type that are prenumbered by the manufacturer of said books; and the price for each size container available at the sale shall be printed on each ticket; and the amount of each transaction, to include the sales tax amount, shall be recorded on the original and all copies thereof. The customer shall be given the original copy of the sales receipt that clearly records the total amount of the transaction. Sales shall be recorded consecutively; one after the other, and the beginning and ending number of the receipt books shall be duly recorded at the end of each business day.

C. Reports. Licensee covenants and agrees to deliver to District, no later than the tenth (10th) day of June after a Native Plant sale, a true and correct sworn statement of all Gross Receipts for the Native Plant sale.

D. Inspection of Records. All books, records, and accounts of every kind or nature kept by Licensee, agents or employees, licensees, or concessionaires, relating to the Gross Receipts and license fees for the Native Plant Sale shall at all reasonable times be open and made available for inspection or audit by District, its agents or employees, upon request. Upon the District's request, Licensee shall direct its accountant to make such books, records, and accounts available for the District's review.

E. Audit. District shall have the right to audit, at no cost to Licensee except as hereinafter provided, any or all such books, records, and accounts for the purpose of verifying the payments required to be paid to District hereunder. In the event that such audit shows that the payment due to District is greater than the amount reported or paid by Licensee, District shall conduct a special audit, the cost of which audit shall be borne by Licensee if such special audit confirms that a greater payment is due to District than was paid or reported by Licensee for the period covered by the audit. This audit shall be conducted only if the amount in controversy exceeds \$500.00, otherwise Licensee shall merely be responsible to pay any such discrepancy. Within ten (10) days after the special audit report is furnished to Licensee, it shall pay to District the full amount of any underpayment demonstrated by such audit, together with interest on the amount of such underpayment at the rate of ten percent (10%) per annum.

District reserves the right to install any accounting machines, with or without personnel, for the purpose of accounting or audit. All books, records, and accounts of every kind or nature kept by the Licensee relating to the operation of the Native Plant Sale shall be maintained and safeguarded by Licensee for a period of three (3) years from and after the date of the latest entry into such book, record, or account.

#### SECTION 8. REPAIRS AND MAINTENANCE.

A. Licensee agrees to maintain the North Bay Pavilion during the term of the sale, from delivery of the Native Plants through Licensee's vacation of the Licensed Premises after the end of the sale, in a professional manner acceptable to District. Licensee also agrees to repair any damage to the Licensed Premises and Subject Property caused by the Licensee or any of its subcontractors or vendors.

B. The Licensee shall insure that all structures used by it within the Licensed Premises are kept neat and orderly, free from hazards.

#### SECTION 9. INSPECTION/EVALUATION.

District may make an inspection and evaluation at any time to ensure compliance with this Agreement by Licensee.

#### SECTION 10. CLEANING PREMISES.

Licensee shall furnish all labor, services, materials, supplies, and equipment necessary to maintain the Licensed Premises in a first quality clean, orderly, and inviting condition satisfactory to District, and insure that the floor of the sales area is kept clean and dry as practical during sales hours to minimize hazards to foot traffic. District shall provide or obtain sufficient and regular trash removal services for the removal of the public's trash on the Licensed Premises throughout the Term. Any extraordinary trash removal shall be the responsibility of Licensee if such trash is generated as a result of operation of the Native Plant Sale.

#### SECTION 11. INDEMNITY AND INSURANCE

A. District shall not be liable at any time for loss, damages, or injury to the person or property of any person whomsoever at any time, occasioned by or arising out of any act or omission of Licensee or of anyone holding under Licensee; nor the occupancy or use of the North Bay Pavilion during set up, operation of or clean-up of the Native Plant Sale or any part thereof by or under the Licensee.

B. Hold-Harmless Agreement. Notwithstanding anything to the contrary herein contained, and irrespective of any insurance carried by Licensee for the benefit of District, Licensee agrees to protect, indemnify, and hold harmless, and defend District and its commissioners, officers, agents, attorneys, volunteers, and employees from any and all losses, expenses, claims, costs, causes, and damages including, without limitation, litigation costs and attorneys' fees and items, (a) that may arise, or be alleged to have arisen, out of or in connection with Licensee's performance of, or failure to perform, its obligations under any of the terms or conditions of this Agreement or any part thereof.

C. Insurance. Contemporaneous with Licensee's execution of this Agreement, Licensee shall provide certificates and policies of insurance evidencing the minimum insurance coverages and limits set forth below, such policies shall be in a form, and from companies, acceptable to Licensee. Such insurance shall provide that no change, modification in, or cancellation of any insurance shall become effective until the expiration of 30 days after written notice thereof shall have been given by the insurance company to District. Licensee shall, at all times while providing, performing, or completing any work under this Agreement, maintain and keep in force, at Licensee's expense, the minimum insurance coverages and limits set forth below:

a. Worker's Compensation and Employer's Liability with limits not less than:

- (1) Worker's Compensation: Statutory;
- (2) Employer's Liability:  
\$500,000 injury-per occurrence



\$500,000 disease-per employee  
\$500,000 disease-policy limit  
Such insurance shall evidence that coverage applies in the State of Illinois.

b. Comprehensive Motor Vehicle Liability with limits for vehicles owned, non-owned, or rented not less than:

- (1) Bodily Injury:  
\$250,000 per person  
\$500,000 per occurrence.
- (2) Property Damage:  
\$500,000 per occurrence  
\$500,000 aggregate  
All employees shall be included as insureds.

c. Comprehensive General Liability with coverage written on an "occurrence" basis and with limits no less than:

- (1) General Aggregate:  
\$1,000,000
- (2) Bodily Injury:  
\$500,000  
\$500,000 per occurrence  
Property Damage:  
\$500,000 per occurrence, and  
\$500,000 aggregate.  
Coverages shall include:
  - Premises/Operations
  - Products /Completed Operations (to be maintained for two years following Final Payment)
  - Independent Contractors
  - Personal Injury (with-Employment Exclusion deleted)
  - Broad Form Property Damage Endorsement
  - Blanket Contractual Liability (must expressly cover the indemnity provisions of this Contract)
  - Bodily Injury and Property Damage
  - Breach of Warranty Claim

d. Umbrella Policy. The required coverages may be in any combination of primary, excess, and umbrella policies. Any excess or umbrella policy must provide excess coverage over underlying insurance on a following-form basis such that when any loss covered by the primary policy exceeds the limits under the primary policy, the excess or umbrella policy becomes effective to cover such loss.

e. Deductible. Each policy shall have a deductible or self-insured retention of not more than \$1,000.

f. District as Additional Insured. District shall be named as an Additional Insured on the following policies:

Comprehensive General Liability  
Comprehensive Motor Vehicle Liability  
Umbrella policies

The Additional Insured endorsement shall identify District as follows:

Lake County Forest Preserve District

g. All policies shall be produced from insurance companies holding at least an "A7" best rating.

SECTION 12. ASSIGNMENT OR SUBLETTING. Licensee shall not assign, sell, or encumber its interest in this Agreement.

SECTION 13. INCORPORATION OF PRIOR AGREEMENT. This Agreement contains all of the agreements of the parties hereto with respect to any matter covered or mentioned in this Agreement, and no prior agreement or understanding pertaining to any such matter shall be effective for any purpose.

SECTION 14. AMENDMENTS. No provision of this License may be amended or added to except by an amendment in writing properly approved and signed by the parties hereto expressing by its terms an intention to modify this Agreement.

SECTION 15. VIOLATION OF AGREEMENT.

A. Default. In the event that Licensee violates any of the terms and conditions of this Agreement, District may give Licensee a written notice identifying the specific violation and demanding correction.

B. Termination for Default. If, within thirty (30) days after such a written notice and demand for a violation of this Agreement (other than the failure to pay money due to District), Licensee has not commenced correction of this violation, then Licensee shall have committed a "Default" and District has the right to immediately terminate this Agreement and pursue any and all remedies provided by law or equity. If, within fifteen (15) days after such a written notice and demand for a failure to pay money due to District, Licensee has not paid such money to the District, then Licensee shall have committed a "Default," and District has the right to immediately terminate this Agreement and pursue any and all remedies provided by law or equity. If Licensee violates any term of this Agreement in a manner that creates an immediate and serious risk to public health, then Licensee shall have committed a "Default," and District (with no notice to Licensee) has the right to immediately terminate this Agreement and pursue any and all remedies provided by law or equity.

C. Liability for Breach. Termination for Default shall not excuse Licensee from any liability for breach of contract; such breach shall be deemed total.

SECTION 16. NOTICE.

Notice or communications required or permitted to be given under this Agreement shall be given to the respective parties in writing, by certified mail, postage prepaid; overnight delivery via a reputable overnight carrier; personal delivery; or email; to the following addresses :

(a) To District: Lake County Forest Preserve District  
1899 West Winchester Road  
Libertyville, Illinois 60048-1199  
ATTN: Executive Director  
Email: akovach@lcfpd.org

(b) To Licensee: Connor Shaw  
Possibility Place Nursery  
7548 W. Monee-Manhattan Rd.  
Monee, IL 60449  
Email: oakguy@possibilityplace.com

or at such other address or to such other persons as either of the parties may from time to time designate by written notice given as herein provided. Nothing in this Section is intended to invalidate a notice that is actually received.

SECTION 17. ENCUMBRANCES, INVALIDITY, RISK.

A. Existing Encumbrances. It is expressly understood and agreed that this Agreement and all rights and privileges hereunder granted are subject to all easements and rights-of-way now existing in, to, under, or over the Licensed Premises for any purposes whatsoever. It is further understood and agreed that this Agreement and any of the rights and privileges herein granted shall be subject to any and all grants,

reservations, conditions, leases, restrictions, and trusts under which the Licensed Premises are held by District, and Licensee covenants and agrees, any provision in this Agreement to the contrary notwithstanding, not to use or permit the Licensed Premises for any purpose inconsistent with any of the grants, reservations, conditions, leases, restrictions, and trusts under which said lands are held by District, the terms of which are hereby incorporated into this Agreement as if set forth in full.

B. **Invalidity.** In the event that this Agreement or any provision thereof shall be determined to be null and void by a court of competent jurisdiction, neither District nor any of its officers, agents, or employees, or members of the Lake County Forest Preserve District Board of Commissioners shall be liable to any person holding under or through Licensee for any claim, loss or damage of any nature whatsoever suffered or alleged to be suffered by Licensee or such person by reason of such determination.

C. **Assumption of Risk.** Licensee assumes all risks incident to the use or occupation of the Licensed Premises in its present condition or in any condition thereof which may prevail during the term of the Agreement, except that caused solely by a negligent act or omission of the District.

#### SECTION 18. MISCELLANEOUS.

A. **Use of Name.** All advertising, promotion, and notices related to the operation of the Native Plant Sale on Premises shall be subject to prior written approval by District's Executive Director or his designee. This provision includes but is not limited to, written and pictorial advertising in television, radio, live simulcasts, ticket printing, handbills, posters, flyers, and newspapers. Any and all advertising shall bear/display the phrase "Operated through Agreement with the Lake County Forest Preserve District," along with displaying the District logo and other identifying information as required by the District.

B. **No Partnership.** It is expressly understood and agreed that District does not, in any way nor for any purpose, become a partner, agent, principal of, or joint venture with Licensee by reason of any provision of this Agreement.

C. **Binding Effect.** Each and all of the covenants, conditions, and agreements herein contained shall, in accordance with the context, inure to the benefit of District and apply to and bind Licensee and, if the District expressly and in writing approves of the sale or assignment of Licensee's interest in this Agreement to such a person or entity, Licensee's heirs, legatees, devisees, executors, administrators, successors, agents, assignees, concessionaires and licensees.

D. **Captions.** The captions of articles and paragraphs of this Agreement are for convenience only and do not in any way limit or amplify terms and provisions hereof.

E. **No Waiver.** No waiver by District at any time of any of the terms and conditions of this Agreement shall be deemed to operate as a waiver at any time thereafter of the same or of any other terms or conditions contained herein or of the strict and timely performance of such terms and conditions.

F. **Regulations & Permits.** Licensee shall conform to and abide by all rules and regulations relating to the operation herein authorized and shall be subject at all times to applicable rules, regulations, resolutions, ordinances, and statutes of the District, County of Lake, State of Illinois, the United States of America, and all other governmental agencies with jurisdiction; and where permits are required for such operations, the same must first be had and obtained from the regulating body having jurisdiction thereof, before such operation is undertaken.

G. **Common Areas.** District, during the term of this Agreement and any extension or renewals thereof, agrees to operate, maintain, and manage all parking areas, roads, sidewalks, landscaping, drainage and lighting fixtures, restrooms, and common areas located on the Subject Property but outside the Licensed Premises in a first-class manner and to provide adequate security therefor. The manner in which such areas and facilities shall be maintained, and the expenditures therefore shall be at the sole discretion of District; and the use of such areas and facilities shall be subject to such reasonable regulations as District shall make from time to time.

H. Parking. During the published hours of operation, Licensee shall park vehicles for the operation of the Native Plant Sale or any employees only in parking lots included within the Licensed Premises. All vehicles on the Subject Property that are directed, controlled, driven or invited by Licensee shall travel, stop or park only on public roads or approved parking lots except for the purposes of merchandise delivery during the hours of operation.

I. No Discrimination. Neither Licensee nor any person claiming under it shall discriminate in its recruiting, hiring, promotion, demotion, or termination practices or in the use, operation, management or occupancy of the Licensed Premises on the basis of race, religious creed, color, national origin, ancestry, sex, age, physical handicap, medical condition or marital status with respect to the concession granted herein or the occupancy, use or enjoyment of the Licensed Premises, and Licensee shall comply with the applicable provisions of the Illinois Human Rights Act, the Americans with Disabilities Act of 1990 and all other acts and laws of whatever kind and all administrative rules and regulations issued pursuant to said Acts.

J. Invalidity. The invalidity of any provision in this Agreement as determined by a court of competent jurisdiction shall in no way affect the validity of any other provision hereof.

K. Time of Essence. Time is of the essence in each provision of this Agreement which specifies a time within which performance is to occur. In the absence of any specified time for performance, performance may be made within a reasonable time.

L. Exhibits. Exhibit A attached to this License Agreement is incorporated herein by reference.

IN WITNESS WHEREOF, the parties hereto have caused their respective names to be hereunto subscribed by their respective proper officers thereunto dully authorized.

WITNESS:

\_\_\_\_\_

LICENSEE:  
Possibility Place Nursery, Inc.

BY: \_\_\_\_\_

ITS: \_\_\_\_\_

ATTEST:

LAKE COUNTY FOREST PRESERVE  
DISTRICT:

BY: \_\_\_\_\_

BY: \_\_\_\_\_

ITS: President

**Exhibit A**

