

## **FRISCO BAY MARINA CONCESSIONAIRE AGREEMENT**

This Frisco Bay Marina Concessionaire Agreement and License (this "Agreement"), is made this 9<sup>th</sup> day of May 2023, between Frisco Gardeners, LLC, a Colorado limited liability corporation ("Concessionaire"), and the Town of Frisco, a Colorado home rule municipal corporation, hereinafter referred to as ("Frisco" or the "Town").

WHEREAS, the Town and Concessionaire desire to enter into a license agreement for Lot B-1 of the Marina Square Subdivision, located at the southeast corner of Summit Boulevard and Main Street in the Town of Frisco, for the purpose of the Concessionaire operating a flower stand from June 8, 2023 to June 18, 2023; and

WHEREAS, the Concessionaire desires to operate an outdoor flower stand on property owned or controlled by Frisco pursuant to the terms and conditions and this Agreement; and

WHEREAS, said flower stand operation on Lot B-1 of the Marina Square Subdivision, will consist of no more than one (1) temporary structure at approximately the locations depicted in Exhibit A hereto, which structure shall be and remain in compliance with the Town of Frisco Building Construction and Housing Standards, the Town of Frisco Zoning Ordinance, and Summit Fire & EMS tent requirements as they may be amended from time to time. The footprint of the operation shall not exceed 30' x 30', as also depicted in Exhibit A hereto, and hereinafter referred to as the "Licensed Premises"; and

NOW THEREFORE, in consideration of the mutual promises, covenants and agreements set forth below, Concessionaire and Frisco hereby agree as follows:

### **GENERAL CONDITIONS**

1. Service Standards. Concessionaire shall provide, and shall have the non-exclusive right to operate an outdoor flower stand (with sales to the public) (the "Operations") at the Licensed Premises. Concessionaire shall operate out of one location that is described in Section 2 below and depicted in Exhibit A to this Agreement. The operations shall be located on Town-owned land. The Frisco Town Council ("Council") has adopted the following Service Standards, which shall be the operative goals of service to be provided by the Concessionaire. The Concessionaire agrees to:
  - a. Provide a high quality and professional operation. Ensure that its operations are conducted in a timely manner, including being open for business during posted or advertised hours; and
  - b. Maintain all equipment and structures in good condition; and
  - c. Operate its flower stand in accordance with all applicable state and local laws and regulations; and
  - d. Ensure that courteous and friendly service will be provided to all guests without regard to age, sex, race, disability, national origin or any other status

protected by state or local law; and

- e. Work cooperatively with Town staff as it relates to parking and daily operations; and
  - f. Provide a clean and orderly operation inside the premises as depicted in Exhibit A; and
  - g. Uphold and support applicable programs and policies of Frisco, and other Town adopted plans while serving as a good will ambassador of Frisco; and
  - h. Work, in a cooperative and supportive manner, with other concessionaires or operations within the Frisco Bay Marina.
2. Location. Concessionaire shall operate an outdoor flower stand on a portion of the Town-owned Lot B-1 of the Marina Square Subdivision, which lot is located at the southeast corner of Summit Boulevard and Main Street in the Town of Frisco.
- a. Concessionaire shall provide not more than one (1) temporary structure, at approximately the locations depicted in Exhibit A hereto, which structures shall be kept by Concessionaire in compliance with the Town of Frisco Building Construction and Housing Standards, the Town of Frisco Zoning Ordinance, and Summit Fire & EMS tent requirements as they may be amended from time to time.
  - b. The footprint of such structure shall not exceed 10 feet by 10 feet.
  - c. The footprint of the Concessionaire operation shall not exceed 30 feet by 30 feet, as depicted in Exhibit A.
  - d. The parking of vehicles by guests of the Concessionaire is allowed on the premises and parking regulations are enforced by a third party parking company. All parking rules, regulations and enforcements apply. Concessionaire shall not allow vehicles to enter the premises from Highway 9. Concessionaire understands and agrees that, Frisco will use the Lot B-1 for paid parking during the summer months. Concessionaire further agrees that no part of this Agreement shall be construed to limit or prevent the Town's use of the premises for said purposes, or any other purpose; provided, however, that during any such times of use by Frisco.
  - e. Frisco shall have the right to review, comment on, and approve or disapprove of Concessionaire's temporary structure in accordance with applicable laws.
  - f. Frisco shall also have the right, as owner of the premises, to review, comment on, and approve of the aesthetics of Concessionaire's temporary structure, which approval shall not be unreasonably withheld.

- g. Concessionaire shall maintain its structure, and surrounding portions of the premises so as to be in compliance with the Code of the Town of Frisco, as amended, and Summit Fire & EMS regulations.
  - h. Any part of the foregoing or any other provision of this Agreement notwithstanding, the Town has the right, in its sole discretion, to substitute any area within the Frisco Bay Marina in place of any or all of the locations described in this Section 2, so long as the substituted area is substantially similar in size and usefulness for the purposes set forth herein with respect to each area. In the event of such substitution, the Town shall use reasonable efforts to minimize the impact of the substitution on the Concessionaire's operations, but Concessionaire agrees that in the event of substitution, Concessionaire shall be solely responsible for the costs of relocating any temporary or other improvements, as well as any other costs attendant thereto.
- 3. Master Planning. Concessionaire agrees to cooperate with Frisco regarding the Master Planning and/or construction of the amenities within the Frisco Bay Marina.
- 4. Term, Possession, and Interest. The term of this Agreement (the "Term of this Agreement") shall be from the date set forth above to June 18, 2023. Concessionaire understands, acknowledges and agrees that this Agreement does not create an interest or estate in Concessionaire's favor in any real property. The Town retains legal possession of the full boundaries of all the real property described or depicted in this Agreement, and this Agreement merely grants to the Concessionaire the personal privilege to use such property in strict accordance with the terms of this Agreement. This Agreement shall in no event be construed to create an assignment coupled with an interest in favor of the Concessionaire. Concessionaire shall expend any time, money or labor upon the property at Concessionaire's own risk and peril.
- 5. Compensation. Concessionaire shall pay to Frisco:
  - a. One Hundred Dollars (\$100.00) to compensate Frisco for the right to use the premises for the duration of this Agreement.
- 6. Concessionaire Responsibilities. Concessionaire agrees to operate in accordance with the following General Plan of Operation and in compliance with the Service Standards.
  - a. Concessionaire must keep any and all portions of the premises that it uses in good appearance, keeping it clean, tidy and free of debris in order to project a professional image at all times.
  - b. Signage. Concessionaire shall provide on-site signage for its

Operation at the premises, which signage shall be subject to Frisco's review, comment and approval or disapproval in accordance with Frisco's sign code provisions. Frisco shall also have the right, as owner of the property, to review, comment and approve of the aesthetics of Concessionaire's signage, which approval shall not be unreasonably withheld.

- c. **Trash Removal, Recycling and Sustainable Practices.** Concessionaire shall provide, at its sole cost and expense, regular trash and recycling removal for waste and recycling created in connection with its Operations. Concessionaire shall not use Styrofoam packaging in connection with the delivery of its good to its customers. Concessionaire shall encourage its customers to bring their own bags, and shall comply with Frisco's bag fees and policies.
  - d. **Procurement and Maintenance of Licenses.** Prior to commencement of its Operations, Concessionaire shall procure, and maintain, at its sole cost and expense, a Frisco business license, and any other license, certificate or approval required by applicable laws from time to time, including but not limited to those required by the Summit County Public Health Department.
  - e. **Marketing.** Concessionaire will be responsible for all marketing, advertising and promotion of their general operations.
  - f. **Maintenance.** Concessionaire agrees to maintain in good and neat condition all areas, improvements and equipment used in connection with Concessionaire's operations under this Agreement. In addition, Concessionaire agrees to keep well maintained temporary structure and agrees to clean up the surrounding area from any storage or clutter in order to allow provided snow removal at any given time.
  - g. **Concessionaire will relay all pertinent information regarding the general operation of its business to the Marina General Manager and the Recreation Director. Additional administrative decisions outside the purview of this contract must first be approved by Frisco in writing.**
7. **Insurance.** During the Term of this Agreement, Concessionaire shall procure and maintain, at its own expense, the following policy or policies of insurance:
- a. **Commercial General Liability insurance with minimum combined single limits of ONE MILLION DOLLARS (\$1,000,000) each occurrence and TWO MILLION DOLLARS (\$2,000,000) aggregate. The policy shall be applicable to all premises and operations. The policy shall include coverage for bodily injury, broad form property damage (including completed operations),**

personal injury (including coverage for contractual and employee acts), blanket contractual, independent contractors, products, and completed operations. The policy shall name FRISCO, its employees and agents as additional insureds and shall include the following provisions: (i) severability of interest; (ii) waiver of subrogation; and (iii) cross liability endorsement.

- b. Workers' Compensation insurance to cover obligations imposed by applicable laws for any employee engaged in the performance of work under this Agreement, and Employers' Liability insurance with minimum limits of six hundred thousand dollars (\$600,000) disease policy limit, and six hundred thousand dollars (\$600,000) disease - each employee.
- c. Comprehensive Automobile Liability insurance with minimum combined single limits for bodily injury and property damage of not less than ONE MILLION DOLLARS (\$1,000,000) each occurrence and TWO MILLION DOLLARS (\$2,000,000) aggregate with respect to each of Concessionaire's owned, hired and non-owned vehicles assigned to or used in performance of the services. The policy shall name Frisco, its employees and agents as additional insureds and shall include severability of interests, waiver of subrogation and cross-liability endorsement provisions.
- d. Every policy required under this Section 7 shall be primary insurance and any insurance carried by Frisco, its officers or its employees or carried by or provided through any insurance pool of Frisco, shall be excess and not contributory insurance to that provided by Concessionaire. Concessionaire shall be solely responsible for any deductible losses under any policy required above. Any insured policy required under this Agreement shall be written by a responsible company.
- e. Prior to commencement of this Agreement, Concessionaire shall provide Frisco with a certificate of insurance completed by Concessionaire's insurer as evidence that policies providing the required coverage, conditions and minimum limits are in full force and effect. The certificate shall identify this Agreement and shall provide that the coverage afforded under the policies shall not be canceled, terminated or materially changed until at least thirty (30) days prior written notice has been given to Frisco.
- f. Concessionaire shall not be relieved of any liability, claims, demands or other obligations assumed pursuant to this Section 7 or any other provision of this Agreement by reason of Concessionaire's failure to procure or maintain insurance, or by reason of its failure to procure or maintain insurance in sufficient amount, duration or type. Failure on the part of Concessionaire to procure or maintain policies providing the required coverage, conditions and minimum limits shall constitute a material breach

of contract upon which Frisco may immediately terminate this Agreement or, at its discretion, Frisco may procure or renew any such policy or any extended reporting period thereto and may pay any and all premiums in connection therewith. and all monies so paid by Frisco shall be repaid by Concessionaire to Frisco upon demand.

- g. Concessionaire will notify Frisco of any accident, claim or potential claim involving Concessionaire or its operations within twenty-four(24) hours of such accident or of learning of such claim or potential claim.
8. Indemnification. Concessionaire agrees to indemnify and hold harmless Frisco, its officers, employees, and insurers. from and against all liability, claims, and demands, on account of injury, loss, or damage, including without limitation claims arising from bodily damage, or any other loss of any kind whatsoever, which arise out of or are in any manner connected with this Agreement, if such injury, loss, or damage is caused in whole or in part by, or is claimed to be caused in whole or in part by, the act, omission, error, mistake, negligence, or other fault of the Concessionaire, any subcontractor of the Concessionaire, or any officer, employee, representative, or agent of the Concessionaire or of any subcontractor of the Concessionaire, or which arise out of any workmen's compensation claim of any employee of the Concessionaire or of any employee of any subcontractor of the Concessionaire. The Concessionaire agrees to investigate, handle, respond to, and to provide defense for and defend against, any such liability, claims or demands at the sole expense of Concessionaire or, at the option of Frisco, agrees to pay Frisco or reimburse Frisco for the defense costs incurred by Frisco in connection with any such liability, claims, or demands. Concessionaire also agrees to bear all other costs and expenses related thereto. including court costs and reasonable attorney fees, whether or not any such liability, claims, or demands alleged are groundless, false or fraudulent. The obligations of this subsection (i) shall not extend to any injury, loss, or damage that is caused solely by the act, omission, or other fault of Frisco, its officers, or its employees. Nothing herein shall constitute a waiver by Frisco of its rights under the Colorado Governmental Immunity Act.
9. Employees. Concessionaire shall provide such employees for its operations as it deems necessary. All employee benefits, including FICA and worker's compensation insurance, shall be provided and paid for by Concessionaire.
10. Cooperation with other Concessionaires and Operations. During the summer season, Concessionaire agrees to operate cooperatively with the operators and staff of the Frisco Bay Marina. Concessionaire agrees to work in a cooperative and supportive manner with other concessionaires or recreational operations, including the Town, within the Frisco Bay Marina.
11. Clean Up. Concessionaire is responsible for the end of season clean-up of the areas within which its operations are conducted.

12. Town Events. Concessionaire shall work and cooperate with Town event organizers in coordinating Town sponsored or Town approved activities and events at the Frisco Bay Marina.
13. Frisco's Responsibilities. Frisco agrees to provide the following services to the Concessionaire:
  - a. Provision of land, as set forth herein, upon which to operate a flower stand, utilizing Concessionaire provided temporary structure.
14. Evaluation. The Concessionaire will be evaluated at the end of each completed season. A conference will be scheduled within 60 days at the end of the season, with the Marina General Manager, to discuss the previous season with respect to the Service Standards outlined herein. Further, following each summer season, Concessionaire and Town agree to meet and discuss recreation and operational changes and discuss whether this Agreement is serving the best needs of the Concessionaire, Town, community, and visiting guests.
15. Termination and Provision of Operating Information. Either party may terminate this Agreement by written notice to the other in the event that the other party is in breach of its obligations hereunder. A party shall be deemed to be in breach if it fails to remedy any default, or failure to perform hereunder within fifteen (15) days after written notice from the other party of such default or failure, or in the event such default or failure is non-monetary and cannot reasonably be cured within fifteen (15) days, if the party in breach fails to initiate such cure within fifteen (15) days of the notice and to diligently pursue such cure to its conclusion thereafter.
16. Remedies. Nothing contained herein shall preclude the pursuit of any other remedies herein provided or any remedies provided by law, nor shall any remedy herein provided constitute a forfeiture or waiver of any fees due to Frisco by reason of the violation of any of the terms or provisions herein contained.
17. Assignment. Concessionaire shall not voluntarily, by operation of law or otherwise, assign, encumber or otherwise transfer its rights under this agreement or any interest herein without prior written consent of Frisco in each instance. Frisco may withhold such consent in its reasonable discretion, if, after reviewing a proposed assignee's qualifications and financial ability to perform under this Agreement, Frisco reasonably determines that such assignee may not operate the concession at least as well as Concessionaire. Any transfer without Frisco's prior written consent shall constitute a default of this Agreement and shall be void and shall confer no rights upon any third person. Without limiting the generality of the foregoing, if Concessionaire is not a natural person, any change in the parties controlling

Concessionaire on the date hereof, whether by sale of stock or other ownership interests, or otherwise, and any merger, dissolution, consolidation or other reorganization of Concessionaire, shall be deemed a transfer. Every assignment of this agreement to which Frisco consents shall be by an instrument in writing pursuant to which the assignee expressly agrees for the benefit of the Town to assume, perform and observe all of Concessionaire's obligations under this agreement. If any transfer shall occur, with or without the Town's prior consent, Frisco may, after default by Concessionaire, collect payments from the assignee or other transferee, and apply the net amount collected to the payments herein reserved; but no such collection shall be deemed a waiver of this Section 16, or the acceptance of the assignee or other transferee as the Concessionaire hereof, or a release of the Concessionaire from continuing liability to perform pursuant to this Agreement. The consent by the Town to a transfer shall not relieve Concessionaire from primary liability hereunder (which shall be joint and several with any assignees or other transferees) or from the obligation to obtain the express consent in writing of Frisco to any further transfer.

18. Notice Provision. All notice requirements under this contract shall be satisfied by written notice delivered by registered mail to the addresses below.

TOWN:  
Town Manager  
Town of Frisco  
PO Box 4100  
Frisco CO 80443-4100

CONCESSIONAIRE:  
Frisco Gardeners  
Graciela Ledesma  
PO Box 1356  
Frisco, CO 80443

19. Entire Agreement, Amendments. Except as otherwise expressly provided in this Agreement, this Agreement sets forth the entire agreement of the parties, supersedes all prior negotiations and understandings, and shall govern any services by the Concessionaire. Except as otherwise expressly provided in this Agreement, this Agreement may be modified or amended only upon the signed written agreement of both parties.

20. Disclaimer. Town has not made and does not hereby make any representations or warranties to Concessionaire that the property is suitable or adequate in any respect for the activities or uses that Concessionaire intends to conduct or may conduct thereon. All express and implied warranties are hereby disclaimed. Concessionaire acknowledges and agrees that there are no promises, representations, agreements, warranties (whether express or implied), conditions or understanding, whether



oral or written, between the parties related to the property, or the use thereof other than those expressly stated in this agreement.

21. Relationship of the Parties. Town and Concessionaire agree that it is their mutual intent that Concessionaire shall act as an independent contractor to the Town under this Agreement, and Concessionaire and the Town agree that nothing in this Agreement shall be deemed, held or construed as creating any relationship between them other than that of principal and independent contractor.
22. No third party beneficiaries. It is the intent of the Town and Concessionaire that they are and shall remain the sole parties that are entitled to the benefits of this Agreement, and that there are no third or other party that is intended to be benefitted hereby, or who shall have any right to enforce any provision of this Agreement.

ENTERED INTO TO BE EFFECTIVE AS OF THE DATE FIRST SET FORTH ABOVE.

TOWN OF FRISCO, COLORADO

\_\_\_\_\_  
Hunter Mortensen, Mayor

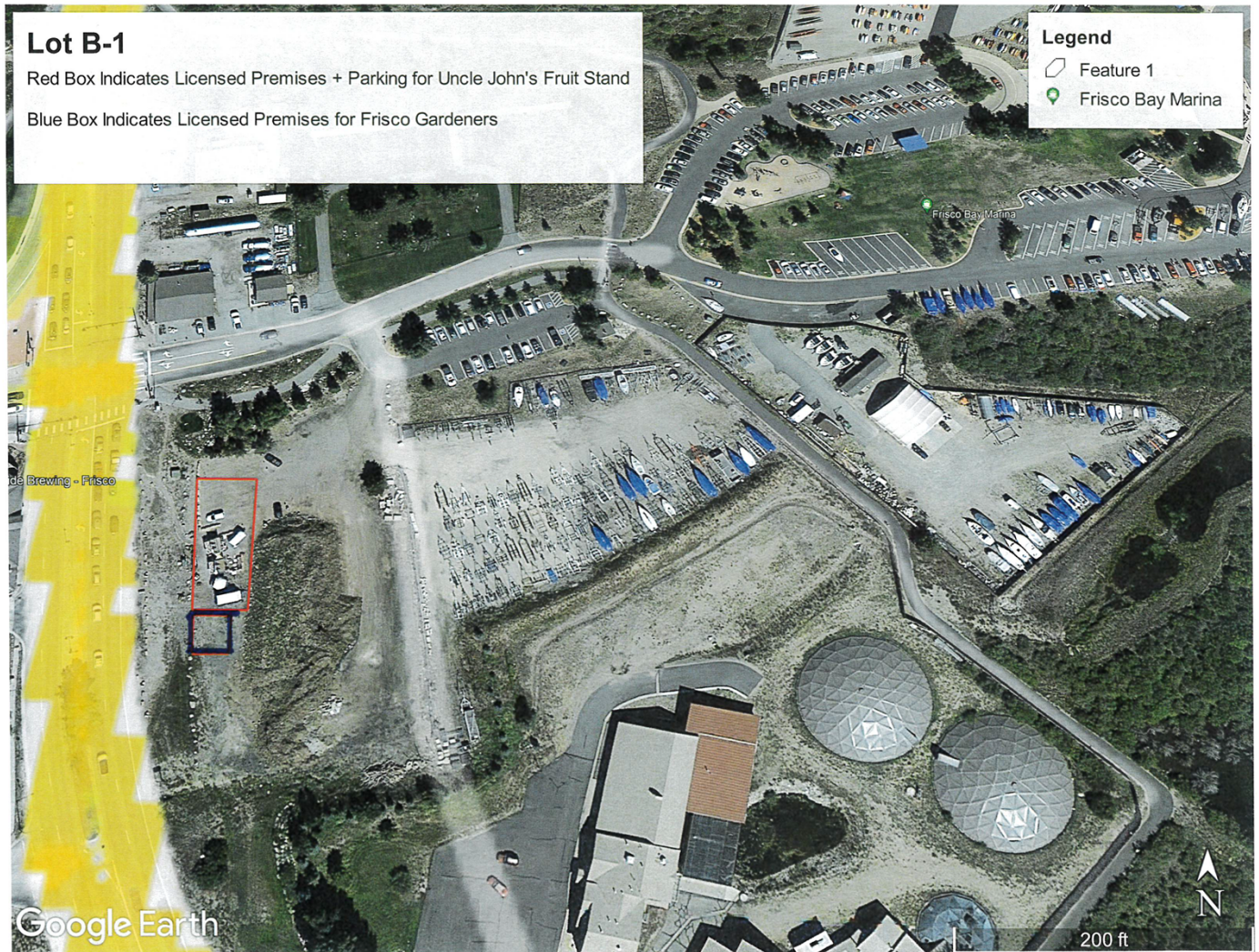
ATTEST:

\_\_\_\_\_  
Stacey Nell, Town Clerk

CONCESSIONAIRE:  
Frisco Gardeners

By: \_\_\_\_\_

## EXHIBIT A



### B-1-Frisco Bay Marina

Blue Box Indicates Licensed Premises for Frisco Gardeners

Red Box Indicates Licensed Premises and Parking for Concessionaire Agreement with Uncle John's Fruit Stand.