

**AMENDABLE LETTER OF UNDERSTANDING
(PBG FARM PROPERTY)**

THIS AMENDABLE LETTER OF UNDERSTANDING (PBG FARM PROPERTY) is entered into by and between the Town of Lyons, a Colorado municipal corporation, Planet Bluegrass Annex, LLC, a Colorado limited liability company, 500 West Main Street, P.O. Box 769, Lyons, CO 80540, and constitutes part of the Conceptual Plan and approved by the Board of Trustees for the Town of Lyons, Colorado, and is incorporated into the Annexation Agreement (Planet Bluegrass Farm Property) ("Annexation Agreement") as approved by the Town. Upon execution by the parties, the Amendable Letter shall remain effective and govern the use of the Property described in the Conceptual Plan until amended. This Amendable Letter is intended to serve as the "Amendable Letter of Understanding" contemplated by and referred to in Section 16-3-220(f) of the Lyons Municipal Code ("LMC"). This Amendable Letter is intended to be construed by reference to the Conceptual Plan and the Keynotes accompanying the Conceptual Plan.

References to "Property," "PBG Farm Property," "Event," "Major Event," "Minor Event," or "Conceptual Plan," are references to these terms as defined in the Keynotes to Conceptual Plan for Planet Bluegrass Farm Annexation ("Keynotes") and Conceptual Plan for the Planet Bluegrass Farm property ("Conceptual Plan"), which was approved by the Board of Trustees contemporaneously with the annexation of the Property. The Keynotes and Conceptual Plan are incorporated into this Amendable Letter for purposes of aiding the parties understanding of the terms and conditions of this Amendable Letter.

The Parties acknowledge that there is also an Amendable Letter of Understanding that governs the Planet Bluegrass Property, recorded on June 9, 2000 at Reception No. 2051651 in the real property records of Boulder County, Colorado. Nothing in this Amendable Letter of Understanding (PBG Farm Property) shall modify or amend the Amendable Letter that pertains to the Planet Bluegrass Property.

Reference to "Owner" in this Amendable Letter shall include the Owner of the Property and the Owner's designee, an event manager or production specialist with experience in the conduct of events similar to that contemplated in the Conceptual Plan. The Town shall not withhold its consent to the execution of this Amendable Letter by the Owner's designee provided that the Town is reasonably assured that the Owner's designee is both experienced in the conduct of similar Events, financially capable of meeting the responsibilities and obligations of this Amendable Letter and Conceptual Plan, and that the Owner also executes this Amendable Letter.

NOW, THEREFORE, in consideration of the mutual promises, covenants, and Amendable Letter of the Parties, conformance with the Conceptual Plan, and other good and valuable considerations, the sufficiency and adequacy of which are hereby acknowledged by the Parties, the Parties hereto agree as follows with respect to the conduct of an Event.

1. Notice of Events.

- (A) Major Events. The Owner shall provide the Town of Lyons with written notice of any proposed "Major Event." The notice shall be provided no less than 120 days prior to the date of commencement of the Major Event.

- (B) Minor Events. The Owner shall provide the Town of Lyons with written notice of any proposed "Minor Event." The notice shall be provided no less than 60 days prior to the date of commencement of the Minor Event.

2. Event Plans, Generally.

- (A) The Owner shall deliver a written and detailed event plan to the Town Administrator concurrently with the written notice provided pursuant to Paragraphs 1(A) and 1(B) above.
- (B) For Major and Minor Events, the event plan shall address the management of all on-site and off-site impacts reasonably anticipated as the result of the Major Event. The event plan shall specifically address the areas of crowd management and safety; parking and camping; transportation needs; infrastructure requirements including but not limited to portable water and portable sanitation facilities; dust, trash management, traffic control, and public safety (Boulder County Sheriff's Office and fire protection) services, and compliance with all applicable Boulder County Public Health regulations.
- (C) For any Major or Minor Event, the event plan shall address any off-site impacts as described in the above paragraph 2(B) as well as demonstrate that the event will have no off-site impacts not adequately addressed by the event plan.
- (D) All event plans submitted in anticipation of an Event must be evaluated and determined to be sufficient by the Town Administrator for the Town of Lyons and the Town's Chief Law Enforcement Administrator. The Town of Lyons shall make a reasonable effort to have the determination made within thirty (30) days of the date of the event plan's submittal to the Town and the event plan shall be deemed sufficient if no determination of insufficiency is provided to the Owner or the Owner's representative within forty-five (45) days of the date of submittal.
- (E) No camping fires or grills shall be allowed pursuant to any event plan, unless specifically reviewed by the Boulder County Sheriff's Office, the fire protection district, and the Town Administrator, and then only pursuant to specific terms and conditions as may be included in the event plan. As used herein, the term "grills" means portable BBQ grills, charcoal, propane, electric, portable fire pits, portable camping stoves, appliances. No camping fires or grills shall be allowed during a fire ban as established by the Town or the Boulder County Sheriff. If allowed in a specific event plan, the Town shall have the right to immediately revoke authorization for camping fires or grills based upon site conditions on the PBG Farm Property, if necessary to protect the public health, safety and welfare, even in the absence of an official fire ban.
- (F) Concurrently with the submittal of an event plan, the Owner shall provide proof of the ability to lawfully use any necessary off-site property for parking, camping, or other purposes related to the Event in the manner anticipated or proposed by the event plan.
- (G) In the event that a submitted event plan is deemed inadequate by the Town Administrator or the Town's Chief Law Enforcement Administrator, the Owner shall have fourteen (14) days in which to correct any deficiencies identified by the Town Administrator and Chief Law Enforcement

Administrator. In the event that the Owner is unable to correct the cited deficiencies to the satisfaction of the Town Administrator, then the anticipated Event shall be terminated and the Event shall not be held.

- (H) At its election, the Board of Trustees or a committee formally appointed by the Board of Trustees may act in the capacity of the Town Administrator and/or the Town's Chief Law Enforcement Administrator for the purposes of this Amendable Letter; this election shall occur only upon motion by any Trustee during a regular or special meeting, so long as the motion is approved by a majority of Trustees present and voting at the time of the making of the motion and so long as a quorum of Trustees is present at the meeting.
- (I) It is the intention of the provisions set forth above, that all events on the PBG Farm Property be generally conducted in the manner established by previous events conducted on the Planet Bluegrass Property in prior years and that the be conducted in a manner not detrimental to the health, safety and welfare of the citizens of the Town of Lyons.

3. Event plans; Content and Requirements.

Every event plan shall incorporate or include the following minimum requirements:

- (A) Time of Event. The event plan shall specifically identify the time(s) during which the Major Event or Minor Event will be conducted on the PBG Farm Property.
- (B) Crowd Size. For any Major Event, occupancy shall be limited to the restrictions on tent camping and camper/vehicle parking set forth in the Keynotes for the PBG Farm Property, but in no event shall exceed 1,200 people, unless otherwise approved by the Town in the Event Plan.
- (C) Parking. Any parking area(s) to be utilized for any Major Event or Minor Event shall be specifically identified, together with identification of emergency access corridors.
- (D) PBG Farm Property Security. On-site security and crowd management will be provided by the Owner's personnel at the PBG Farm Property. Illegal or criminal acts observed by the Owner personnel will be reported immediately to the BCSO personnel. The Owner shall arrange for and shall maintain and provide radio communication between its own security force and BCSO personnel and, if requested, the Town's Chief Law Enforcement Administrator. If available, the BCSO will provide at no cost to the Town a command center trailer to be used on or in the immediate vicinity of the PBG Farm Property. The Owner shall insure compliance with Colorado State Liquor Laws on the entire PBG Farm Property and report any violations to Boulder County Sheriff's Office (BCSO) personnel.
- (E) Medical Center. The Owner shall provide and maintain a staffed medical center at the PBG Farm Property or the Planet Bluegrass Property with a minimum of one (1) EMT on duty at all times during the hours of operation of the Event. The event plan shall detail the availability of medical staff at the medical center to respond to medical emergencies occurring on the PBG Farm Property.

- (F) State and Local Taxes. The Owner will be responsible for collection and remittance of all state and local taxes on all sales by its concessionaires occurring on the PBG Farm Property. An itemized written accounting for gross sales and sales taxes will be provided to the Town no later than 5:00 p.m. one week following the last day of the Event. All vendors for Major Events or Minor Events shall be required to obtain a Town business license in accordance with Chapter 6 of the LMC, as may be amended from time to time. The Owner shall notify all potential vendors for Major Events and Minor Events, in writing, of: (1) the requirement to obtain a Town business license; and (2) the process by which vendors should report their sales to the Colorado Department of Revenue.
- (G) Vendor/Concessionaire Report. The Owner shall provide the Town Administrator with a detailed listing of all vendors and concessionaries that provided services at any Major Event or Minor Event, no later than 5:00 p.m. one week following the last day of the Event.
- (H) Business License. The Owner shall obtain business licenses from the Town as required by local laws. Other individual concessionaires shall obtain all necessary and required business permits and licenses, including permits required by Boulder County Public Health.
- (I) Local Ordinance Conformance. The Owner shall manage the Event and the PBG Farm Property during the Event, and any other areas of the Town which may be used by the Owner for the Event (including areas leased to the Owner by the Town) in a manner that ensures conformance with all local ordinances and laws. The Owner may contact the Town Administrator prior to the Event to arrange a meeting to discuss the particular ordinances and laws that may be applicable to the Event and its activities.
- (J) Management – Identification. The Owner shall have all managers and management employees wear a similar shirt and hat identifying the wearer as a manager or employee of the Event. The Owner may provide an alternative identification system with the approval of the Town Administrator.
- (K) Crowd Management. The Owner shall arrange for and set-up crowd management systems at the PBG Farm Property and any off-site property used in connection with the Event no later than 8:00 p.m. on the date prior to any parking and camping on the PBG Farm Property is allowed pursuant to the occurrence of a Major Event, and said security and crowd management systems shall continue until all vehicles and campers have been removed from the Property.
- (L) Pedestrian Traffic. For a Major Event, the Owner, only with the approval and consent of and in conjunction with the Colorado State Department of Transportation (CDOT) and the Boulder County Sheriffs Department, may erect a continuous barricade along the east shoulder of northbound Colorado Highway 36 extending from the south edge of the side entrance driveway southward across the bridge up to and including the free right turn lane from High Street. This barricade will delineate and secure a six (6) foot-wide pedestrian walkway while maintaining the existing two traffic lanes on northbound 36. An additional barricade will be erected along the west edge of southbound Fifth Avenue to close off the free right turn lane at High Street. The Town shall not be responsible for maintaining and managing vehicular and pedestrian traffic along Colorado Highway 36. The Annexation Agreement requires the Owner to retain Felsburg Holt & Ullevig, Inc. or other traffic engineer acceptable to the Town Engineer to complete a traffic impact study ("TIS"). The TIS shall

include a traffic and pedestrian control plan ("Traffic Control Plan") that contains recommendations for maximizing pedestrian safety at Major Events and minimizes traffic congestion for travelers on Colorado Highway 36. The Owner shall implement the recommendations set forth in the Traffic Control Plan, following review and approval of the Traffic Control Plan by the Town Administrator and the Boulder County Sheriffs Department.

- (M) Vehicular Traffic. For a Major Event, the Owner, only with the approval and consent of and in conjunction with CDOT, will erect temporary signage and traffic control as necessary to allow access to the PBG Farm Property at the specific location approved by CDOT pursuant to permit #416017, authorizing 1,000 vehicles maximum per day. The Owner will install all temporary signage and traffic control in accordance with Town and CDOT requirements and a minimum of two (2) BCSO deputies will supervise and direct traffic at the PBG Farm Property entrance. All costs related to temporary signage and traffic control shall be borne by Owner. Additionally, the Owner shall implement the recommendations set forth in the Traffic Control Plan, following review and approval of the Traffic Control Plan by the Town Administrator and the Boulder County Sheriffs Department.
- (N) Parking Management at PBG Farm Property. The Owner shall manage all access, ingress, egress of vehicles at the PBG Farm Property and any other properties lawfully used for parking in associated with any Event and shall, in particular, manage traffic so as not to interfere with reasonable access to public roads for residents of the Town.
- (O) Shuttle System. The Owner will provide a shuttle bus system to and from the PBG Farm Property and all designated Event parking areas within the Town, including any property leased by the Owner from the Town. The actual connecting points in the Town will be determined by the Town Administrator or designee. The shuttle system will operate on an average headway of 30 minutes. The Owner will be responsible for informing Event patrons of the shuttle routes and stops and in providing signage approved by the Town Administrator for the shuttle stops.
- (P) Other Parking. The Owner shall submit any written agreement(s) and, if any agreement is not written shall provide a written description of the general terms and conditions any agreement, between the Owner and any third party which involves the provision of parking services for the Event. The Owner shall consult the Lyons Municipal Code and is encouraged to determine whether parking of automobiles is a lawfully permitted use of third party property prior to planning parking activities for any Event.
- (Q) Parking Supervision. The Owner agrees to provide sufficient personnel to manage and supervise all designated parking areas in order to meet the obligations of the Conceptual Plan and to protect the safety and welfare of the Owner's Event attendees.
- (R) Public Safety Assistance. The Town will make its Chief Law Enforcement Administrator available for any security needs or assistance requested by the Owner and will arrange its police scheduling to assist with the security needs of the Owner. Such availability shall be contingent upon the need for the Boulder County Sheriff's Office (BCSO) to respond to emergency situations elsewhere within the Town or its vicinity. For any Major Event, the Owner shall pay for and to contract separately with the Boulder County Sheriff's Office for at least two (2) deputies to assist full-time with traffic control and security associated with the Major Event on the Planet Bluegrass Farm Property. This shall be in addition to any BCSO assistance required by the Amendable Letter of Understanding for the Planet Bluegrass Property. The Town's Chief Law Enforcement Administrator will act as the supervisor for

the BCSO deputies. The Owner shall pay any invoice for police services associated with a Major Event promptly and without undue delay.

(S) Insurance Obligations.

- (1) The Owner or the Owner's representative shall procure and maintain a general liability insurance policy or policies in the amount and form acceptable to the Town Administrator, sufficient to insure itself, and in addition the Town and its officers, agents and employees against all liabilities, claims, demands, actions or other obligations assumed by the Owner or the Owner's representative pursuant to this Amendable Letter. The minimum limits of such insurance policy or policies shall be \$1,000,000.00 combined single limit and the general liability insurance policy shall expressly provide that its primary insurance and that its coverage will apply prior to utilization of Lyons' general liability coverage. Evidence of the insurance policies described above shall be provided the Town of Lyons no less than thirty (30) prior to the date of any anticipated event. All insurance policies shall be non-cancelable or non-terminable without 30 days' prior notice to the Town.
 - (2) If required by the Colorado State Department of Transportation, the Owner shall submit to the Department (and submit a copy to the Town) of a certificate of insurance as evidence of a general liability policy covering claims that might arise from the closure of the state highway. The minimum limits of the policy shall conform to that required by CDOT but shall not be less than \$400,000.00 for any injury to one person and at any single occurrence and \$1,000,000.00 for injury to two or more persons in any single occurrence. The insurance policy shall name the State of Colorado and its employees as additional insureds and this statement must appear on the certificate of insurance. Evidence of this coverage shall be provided to the Department and the Town no later than 30 days before the commencement of the Event.
 - (3) The Owner shall not be relieved of any liability, claims, demands or other obligations assumed pursuant to this Paragraph 3(R) by reason of its failure to procure or maintain insurance or by reason of its failure to procure to maintain insurance in sufficient amounts, duration or types.
 - (4) The Town reserves the right to request and receive a certified copy of any policy and any endorsement thereto required by this Amendable Letter.
- (S) The Owner shall abide by the Town Administrator's directions and requirements which are not inconsistent with this Amendable Letter and which are necessary to protect the health, safety, and welfare of the residents of the Town.
- (T) With respect to Event infrastructure requirements, and as a condition to the approval of any Event plan by the Town, the Owner shall provide the Town with details related to: (1) the source and amount of water sufficient to control dust during Major or Minor Events, parking, and the restoration of the PBG Property after the conclusion of any Major Event or Minor Event, including water sufficient to aid in vegetative re-establishment following camping, parking and other allowed uses of the Property; and (2) portable sanitation facilities, including but not limited to portable restrooms and portable kitchen/waste disposal facilities to be set up and utilized on the Property during any Major

Event or Minor Event. Every event plan shall document the source and amount of water sufficient to satisfy the requirements of this Paragraph 3(T), and shall include a map or diagram specifically designating the number and location of all portable sanitation facilities.

- (U) The Owner understands and agrees that it and the conduct of every Event shall be subject to all applicable laws of the state of Colorado and the Town of Lyons.

4. Additional Provisions.

- (A) The Owner shall be responsible for all expenses of implementing all event plans, unless otherwise agreed, specifically including all police expenses as said expenses are reasonably requested by the Town's Chief Law Enforcement Administrator. The Town shall, however, be responsible for the expenses of its Chief Law Enforcement Administrator in reviewing event plans and the usual and customary expenses associated with the provision of day-to-day police services within the Town.
- (B) The Owner and the Owner's representatives shall indemnify the Town of Lyons, its officers, agents, contractors, and employees and hold them harmless against any and all claims, actions, demands or liabilities, including attorney fees and court costs, for injury, death, damage or loss to person(s) or property arising out of or directly or indirectly resulting from the Owner or the Owner's representative's actions or omissions in connection with the conduct of any Event and, in particular, the Owner or the Owner's representatives' use of any public property.
- (C) The Town Administrator shall conduct a preliminary review of each Event at a date and time mutually agreed upon by the Administrator and the Owner within 20 days following the conclusion of an Event for the purpose of determining whether the Owner substantially performed the obligations under this Amendable Letter, the Town-approved event plan, the Conceptual Plan, and any lease agreement for public property associated with an Event. The Owner may attend the review by the Town Administrator. The Administrator shall forward his or her written or verbal report to the Town Board of Trustees.

5. Notice.

Notice made during the conduct of an Event shall be in verbal or written form personally delivered to the Owner, the Owner's designated representative, or the Town Administrator, or the Administrator's designated Event representative. All other notice contemplated by this Amendable Letter of Understanding shall be provided the respective parties at the following address and in the following manner:

To the Owner or Owner's Representative. Notice by mail may be provided by the receipt of mail by the Owner or Owner's designated representative at P.O. Box 769, Lyons, Colorado 80540.

To the Town of Lyons. Notice by mail may be provided by hand delivery to the Town Administrator at the Town's principal place of business in Lyons, Colorado.

6. Miscellaneous Provisions.

- (A) This Amendable Letter shall bind the parties and extend to their respective representatives, successors and assigns provided that the Owner shall not assign this Amendable Letter without the written consent of the Town which may be withheld for any reason.
- (B) No amendment or modification of this Amendable Letter shall be valid unless expressed in writing and executed by the parties in the same manner as the execution of this original Amendable Letter.
- (C) A waiver by any party to this Amendable Letter of the breach of any term or provision of this Amendable Letter shall not operate or be construed as a waiver of any subsequent breach by either party.
- (D) This Amendable Letter shall be governed by and interpreted according to the law of the State of Colorado. Venue for any action arising under this Amendable Letter shall be in the appropriate court for Boulder County, Colorado; provided that, at the discretion and election of the Town, the Town may seek venue for any such action in the appropriate court for either Boulder County, Colorado, or the City and County of Denver, Colorado, and, in the event of such election by the Town, the Owner hereby waives any objection to venue, consents and shall not object to venue, in either court.
- (E) Nothing contained in this Amendable Letter is intended to or shall create a contractual relationship with, cause of action in favor of, or claim for relief for, any third party. Absolutely no third-party beneficiaries are intended by this Amendable Letter. Any third-party receiving a benefit from this Amendable Letter is an incidental and unintended beneficiary only.
- (F) The parties understand and agree that the Town is relying on and does not waive or intend to waive by any provisions of this Amendable Letter, the monetary limitations provided by the Colorado Government Immunity Act, C.R.S. § 24-10- 101, et seq. as from time to time amended, or any other immunity that may be otherwise available to Town, its officers, agents or employees.
- (G) This Amendable Letter shall not be deemed or construed to create a any partnership, joint venture, employer/employee or other relationship by and between the Town and the Owner or the Owner's representatives. The Town shall not be obligated to secure and shall not provide any insurance coverage or employment, medical, dental, retirement benefits of any kind or type to or for the Owner or any Owner employee, agent, or representative, including but not limited to workers' compensation, health, medical, dental, personal injury, personal property, disability, or errors and omissions insurance, or any retirement fund contributions.

[signature page follows]

IN AGREEMENT WITH THE FOREGOING PROVISIONS, THE PARTIES HAVE EXECUTED THIS AMENDABLE LETTER OF UNDERSTANDING THIS 8TH DAY OF June, 2017.

PLANET BLUEGRASS ANNEX, LLC, a
Colorado limited liability company

By: Craig Ferguson MANAGING MEMBER
Craig Ferguson, Managing Member

TOWN OF LYONS:

By: Connie Sullivan
Connie Sullivan, Mayor