

**THIRD AMENDMENT
TO AMENDABLE LETTER OF UNDERSTANDING
(PBG FARM PROPERTY)**

THIS THIRD AMENDMENT TO AMENDABLE LETTER OF UNDERSTANDING (PBG FARM PROPERTY) (the "Third Amendment") is entered into by and between the Town of Lyons, a Colorado municipal corporation, ("Town") and Planet Bluegrass Annex, LLC, a Colorado limited liability company ("Owner"), 500 West Main Street, P.O. Box 769, Lyons, CO 80540 (together, the "Parties").

RECITALS

WHEREAS, the Parties entered into that certain Amendable Letter of Understanding dated June 8, 2017, a copy of which is recorded as Exhibit C to that certain Annexation Agreement recorded on September 19, 2017 at Reception No. 03615345 in the real property records of Boulder County ("Amendable Letter"); and

WHEREAS, the Parties have twice previously amended the Amendable Letter; and

WHEREAS, the Parties entered into that certain Release and Settlement Agreement to Amend Planet Bluegrass Keynotes and Amendable Letters of Understanding ("Settlement Agreement") attached hereto as **Exhibit 1**; and

WHEREAS, the pursuant to the Settlement Agreement the Parties have agreed to make certain amendments to the Amendable Letter.

WHEREAS, Paragraph 6(B) of the Amendable Letter requires that any amendment to the Amendable Letter be in writing; and

NOW, THEREFORE, in consideration of the mutual promises and covenants of the Parties, and Planet Bluegrass's continued 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:

1. Except as provided herein the Amendable Letter shall remain in full force effect. To the extent of any conflict between the Amendable Letter and this Third Amendment, the Parties intend that this Third Amendment shall control.
2. Section 1 of the Amendable Letter shall be amended to read as follows:
 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) Mid-Tier Events. Owner shall provide the Town of Lyons with written notice of any proposed "Mid-Tier Event." The notice shall be provided no less than seven (7) days prior to the date of commencement of the Mid-Tier event.
- (C) Minor Events. Owner is not required to provide advance written notice to the Town of Lyons of a Minor Event

3. Section 2(B) of the Amendable Letter shall be amended to read as follows:

For Major 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 Sheriffs Office and fire protection) services, and compliance with all applicable Boulder County Public Health regulations.

4. Section 2(C) of the Amendable Letter shall be amended to read as follows:

For any Major 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.

5. A new Section 2(D) is created to read as follows:

The Owner shall not be required to deliver an event plan for Mid-Tier and Minor Events. However, the Owner shall still be responsible for complying with the insurance, crowd management, parking management and supervision, and security (including coordination with Town law enforcement personnel) requirements for Major Events for all Mid-Tier and Minor Events. Medical Staffing shall not be required for Mid-Tier or Minor Events.

6. A new Section 2(E) of the Amendable Letter is Created to read as follows:

The Owner shall not be required to report taxes for each Minor and Mid-Tier Event. In lieu of such event-by-event reporting, Owner shall submit to the Town an annual written accounting of the total amount sales taxes

collected and remitted by Owner from vendors at Mid-Tier and Minor Events at the during the prior calendar year. Such written accounting shall be provided by the 20th day of January of the following year.

7. All subsequent subsections of Section 2 are re-lettered accordingly.
8. Part 3(F) of the Amendable Letter shall be amended to read as follows:

An itemized written accounting for gross sales and sales taxes will be provided to the Town no later than the 20th day of the month following the last day of the Event.

9. The following additional provision will be added to Part 3(F) of the Amendable Letter:

Reports of lodging tax due from camping shall include, in addition to any other information required pursuant to LMC Section 4-10-50(a), the prices charged for camping at each campground provided by PB or PB Farm, the number of passes or other forms of camping access sold at each campground, and the gross amount received from such sales.

10. Part 3(H) of the Amendable Letter shall be amended to read as follows:

Owner shall obtain businesses licenses from the Town as required under the LMC. Business licenses shall also be obtained by any vendor, concessionaire, or provider of taxable goods or services at any event at the Ranch or the Farm unless sales taxes due from such vendor, concessionaire, or provider of taxable goods or services for events at the Ranch or the Farm are collected and remitted by Owner, in which case no Town business license shall be required from such vendors, concessionaires, or providers of taxable goods or services. Within ten (10) days of a written request by the Town, Owner shall provide the Town with a list of all vendors and concessionaires providing services at any Event during the prior 90-day period for whom Owner was not responsible for collecting and remitting sales taxes.

For example, and by way of illustration of the above requirements, if Owner collects and remits sales taxes on behalf of food or other vendors at Rockygrass or Folk Fest, such vendors shall not be required to obtain a Town business license for their activities at such events. By way of further example, if a food caterer, florist or other provider of taxable goods or services at a wedding held at the Ranch or the Farm is responsible for collecting and paying its own sales taxes arising from the wedding and the Owner does not collect or remit those sales taxes, the food caterer, florist or other provider shall obtain a business license if required to do so by the LMC.

11. Part 3U of the Amendable Letter shall be amended to read as follows:

Lodging tax shall be paid on all camping at the Ranch or the Farm and all other camping related to Owner events in accordance with Chapter 4, Article 10 of Lyons Municipal Code (as such Code provisions may be amended from time to time; the ("LMC")) and any regulations promulgated pursuant to the authority granted in such Chapter and Article. Lodging tax shall be due for (i) any campsites for which specific charges are made, and (ii) for any campsites for which land use, goods, or services are provided for consideration relating to lodging, specifically including consideration for packages where the offering of lodging is part of the total package price, such as for Rockygrass Academy and Folk Fest Songschool events as those events have previously been conducted. Where the number of specific sites within a campground is not readily discernible, the definition of a campsite shall be interpreted so that the number of campsites within the campground is equal to the number of total occupants providing consideration for lodging (not counting children under 12 years of age) within the campground divided by five (5).

12. No Further Amendments. Nothing contained in this Third Amendment shall affect any other provisions of the Amendable Letter except as specifically set forth herein.

13. Successors and Assigns. The Town and Planet Bluegrass agree that this Third Amendment shall be binding on and inure to the benefit of the Parties and their permitted successors and assigns. This Third Amendment may only be altered, amended or repealed by a written instrument duly executed by the Parties.

THIS THIRD AMENDMENT is effective upon mutual execution of the Parties.

TOWN OF LYONS:

By: 
Nicholas Angelo, Mayor

Date: September 22, 2021

PLANET BLUEGRASS ANNEX, LLC, a
Colorado limited liability company

By: _____ Craig Ferguson, Managing Member

Date: _____, 2021

Exhibits:

Exhibit 1 – Amendable Letter (2017)

Exhibit 2 – Settlement Agreement to Amend Planet Bluegrass Keynotes and Amendable Letters of Understanding