

**TOWN OF LYONS
COLORADO**

ORDINANCE 1118

**AN ORDINANCE OF THE TOWN OF LYONS, COLORADO AMENDING AN
ANNEXATION AGREEMENT WITH PLANET BLUEGRASS FARM, LLC FOR THE
PLANET BLUEGRASS FARM PROPERTY**

WHEREAS, Planet Bluegrass Farm, LLC, a Colorado limited liability company (the "Owner"), owns a property commonly referred to as the Planet Bluegrass Farm property (the "Property"); and

WHEREAS, the Owner is the successor in interest to Planet Bluegrass Annex, LLC; and

WHEREAS, the Property has been annexed into the Town of Lyons (the "Town") pursuant to Ordinance No. 1014, which was approved by the registered electors of the Town; and

WHEREAS, pursuant to Lyons Municipal Code ("LMC") § 15-1-160, the Town is required to present an Annexation agreement to a petitioner for annexation outlining the responsibilities of the petitioner and the Town regarding the provision and extension of streets and utilities, the dedication of water rights and the applicability of Town regulations; and

WHEREAS, also pursuant to LMC § 15-160, the annexation agreement must be executed by the petitioner and the Town not less than two (2) weeks before the date of the public hearing on the annexation; and

WHEREAS, the Town and the Owner negotiated an annexation agreement for the Property (the "Annexation Agreement") which was approved executed by the Town and Owner and approved via Ordinance 1015; and

WHEREAS, the Owner has submitted an application requesting certain changes to the Annexation Agreement as well as the Site Plan and Keynotes and Amendable Letter of Understanding ("ALU") which are attachments to the Annexation Agreement; and

WHEREAS, the changes to the Annexation Agreement have been proposed in a redline of the Annexation Agreement approved by Ordinance 1015 (the "Amendment"), attached hereto as **Exhibit A**, and incorporated by reference, and a clean copy accepting all changes as **Exhibit B** also attached hereto and incorporated by reference; and

WHEREAS, amendments to the Site Plan and Keynotes and ALU must be approved via separate approval processes before the Town; and

WHEREAS, the Town of Lyons Board of Trustees finds it is in the best interest of the Town to approve the Amendment as substantially reflected in **Exhibit A**.

NOW THEREFORE, BE IT ORDAINED BY THE BOARD OF TRUSTEES OF THE TOWN OF LYONS, COLORADO:

Section 1. Recitals Incorporated. The recitals set forth above are hereby incorporated by reference and are adopted as findings and determinations of the Board of Trustees.

Section 2. Annexation Agreement Amendments Approved. The Board of Trustees hereby:

- a. Approves the Amendments to the amendment to the Annexation Agreement in substantially the form of the attached **Exhibit A**.
- b. Authorizes the Mayor, or Mayor Pro Tem in their Absence, to execute the Amendment and Town Clerk to attest to their signature
- c. Authorizes the Town Administrator, in consultation with the Town Attorney and the Mayor to make corrections and other non-material changes in the Amendment which do not increase the financial obligations of the Town.

Section 3. Direction to Town Staff. The Board of Trustees hereby directs Staff to Complete all necessary procedures necessary for the effectiveness of the amendment including:

- a. Recording a copy of the fully executed Amendment in the real property records of Boulder County Colorado.
- b. Carrying out the provisions of the Amendment, as applicable.

Section 4. Severability. Should any one or more sections or provisions of this Ordinance be judicially determined invalid or unenforceable, such judgment shall not affect, impair or invalidate the remaining provisions of this Ordinance, the intention being that the various sections and provisions are severable.

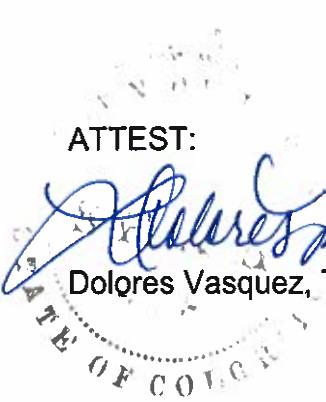
Section 5. Repeal. All other ordinances or resolutions or parts of ordinances or resolutions in conflict with the provisions of this Ordinance are hereby repealed, provided that such repeal shall not repeal any repealer clauses in such ordinances nor revive any ordinance thereby.

Section 6. Effective Date. This Ordinance shall become effective thirty (30) days after publication following final passage in accordance with Section 2-2-160 of the Lyons Municipal Code.

INTRODUCED AND PASSED ON FIRST READING THIS 1st DAY OF
February, 2022.

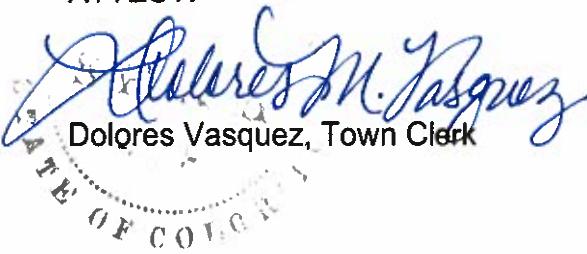
INTRODUCED, PASSED, ADOPTED AND ORDERED PUBLISHED THIS 4th DAY
OF April, 2022.

TOWN OF LYONS, COLORADO



Nicholas Angelo
Nicholas Angelo, Mayor

ATTEST:



Dolores M. Vasquez
Dolores Vasquez, Town Clerk

EXHIBITS:

Exhibit A: Annexation Agreement Amendment - Redline
Exhibit B: Annexation Agreement Amendment - Clean

BLUE TEXT refers to changes approved in the 2021 Agreement

RED TEXT refers to new changes requested in this Conditional Use Review

GREEN TEXT refers to new changes conditioned by the PCDC

PURPLE TEXT refers to new changes after 2/23 BOT Hearing

ORANGE TEXT refers to new changes after the 3/28 Utility Discussions

ANNEXATION AGREEMENT Planet Bluegrass Farm Annexation

THIS ANNEXATION AGREEMENT ("Agreement") is made and entered into this 8th day of June, 2017 by and between Planet Bluegrass Farm LLC, a Colorado limited liability company, 500 West Main Street, P.O. Box 769, Lyons, CO 80540 (the "Annexor") and the Town of Lyons, a municipal corporation of the State of Colorado (the "Town").

WITNESSETH:

WHEREAS, the Annexor desires to annex to the Town of Lyons the property more particularly described on Exhibit A which is attached hereto, incorporated herein, and made a part hereof (the "Property"); and

WHEREAS, the Annexor has executed a petition to annex the Property, a copy of which petition is on file with the Town Clerk; and

WHEREAS, the Annexor wishes to use the Property for uses compatible with its objectives and those of the Town; and

WHEREAS, the Annexor acknowledges that upon annexation, the Property will be subject to all ordinances, resolutions, and other regulations of the Town, as they may be amended from time to time; and

WHEREAS, the parties mutually recognize and agree that it is necessary and desirable for orderly development that the Town be the source of necessary urban services for the Property to be developed, such as police protection, and local government administration; and

WHEREAS, the Annexor requests annexation of the Property to the Town subject to the terms, conditions, and obligations set forth in this Agreement; and

WHEREAS, the Property is currently included within boundaries designated as an area for growth and development for the Town as shown in the Lyons Comprehensive Plan, as amended; and

WHEREAS, the parties agree that it is in the public interest of the parties hereto to enter into a written Agreement as to the overall plan of development, including location and future dedication or

conveyance of public ways and public areas, initial zoning, and dedication of water rights; and

WHEREAS, the Annexor acknowledges that the need for conveyances and dedication of certain property, including but not limited to property for streets, rights-of-way and easements, parks and open space, utility facilities and other public improvements, to the Town as contemplated in this Agreement are directly related to and generated by the development intended to occur within the Property and that no taking thereby will occur requiring any compensation;

NOW, THEREFORE, IN CONSIDERATION OF THE ABOVE PREMISES AND THE COVENANTS AS HEREINAFTER SET FORTH, IT IS AGREED BY AND BETWEEN THE PARTIES AS FOLLOWS:

1. **Incorporation of Recitals.** The parties confirm and incorporate the foregoing recitals into this Agreement
2. **Purpose.** The purpose of this Agreement is to set forth the terms and conditions of the annexation of the Property to the Town. Except as expressly provided for herein to the contrary, all terms and conditions herein are in addition to any requirements concerning annexation contained in the Lyons Municipal Code "LMC", Lyons Comprehensive Plan including the Lyons Primary Planning Area Master Plan, and the Municipal Annexation Act of 1965, as amended, C.R.S. § 31-12-101 et .
3. **Further Acts.** The Annexor agrees to execute, promptly upon request of the Town, any and all other documents necessary to affect the annexation of the Property and the other provisions of this Agreement
4. **Annexation Documents.** The Annexor agrees to provide legal documents, surveys, engineering work, newspaper publication, maps, and reports determined by the Town to be necessary to accomplish the annexation.
5. **Annexation Election.** The Annexor agrees that the Town Ordinance annexing the Property into the Town shall not be effective unless and until the ordinance is referred to the registered electors of the Town of Lyons at a regular or special election and such ordinance is approved by a majority of the Town electors voting thereon. The Annexor further agrees that the Town shall take all reasonable steps to schedule a special mail ballot election ("Special Mail Ballot Election") on Tuesday, August 8, 2017, to refer the annexation ordinance to the registered electors of the Town. In accordance with Section 15-1-340(c) of the LMC, the Annexor shall pay all costs associated with the Special Mail Ballot Election.
6. **Initial Zoning and Development.** The parties recognize that it is the intent and desire of the Annexor to develop the Property in a manner generally consistent with the Commercial Entertainment (CE-1) zoning of the Town of Lyons. The Annexor shall take all action necessary to permit zoning by the Town of the annexed Property within the time prescribed by state statutes. The parties acknowledge and agree that the zoning of the Property at the time of annexation is Rural Residential (in unincorporated Boulder County). Subject to the Board of Trustees approval of the initial zoning of the Property following annexation, the Parties agree that the Property shall be zoned as Commercial Entertainment (CE-1) under Sec. 16-3-220 of

the LMC, as more particularly depicted in the KEYNOTES TO CONCEPTUAL PLAN FOR PLANET BLUEGRASS FARM ANNEXATION attached hereto as Exhibit B (the Keynotes), which Keynotes include the preliminary Conceptual Plan for the Property and are incorporated herein by reference. Future development of the Property shall be subject to the standards and regulations in the LMC, unless specifically modified by this Agreement. The Parties agree that the Annexor shall execute the Amendable Letter of Understanding (PBG Farm Property) attached hereto as Exhibit C prior to the Effective Date (as that term is defined below), and as required by Sec. 16-3-220(f) of the LMC. Nothing in this Agreement shall preclude the Annexor from seeking a rezoning of all or any part of the Property to another zone district classification under the LMC at a future date. Because the zoning and rezoning of property in Colorado constitutes legislative action by a municipality, nothing in this Agreement shall be construed to be an agreement, commitment, or contract binding the Town to approval of any specific zone district.

7. **Dedications.** The Annexor agrees to grant and convey to the Town, by appropriate instrument of conveyance acceptable to the Town and without any compensation due to Annexor, permanent easements and rights-of-way for public streets, water, sanitary sewer, pedestrian and bike trail access, emergency access, and other public ways as generally shown in Exhibit D attached hereto (collectively, the "Required Dedications"). The Required Dedications shall be dedicated by Annexor to the Town by plat, if a plat of the Property is processed following the Effective Date but prior to the deadline set forth in this Paragraph 7 or shall be granted to the Town via duly executed special warranty deed, easement agreement, or other instrument of conveyance acceptance in a form acceptable to the Town Attorney. Such dedication or grant of the Required Dedications shall occur on or before December 31, 2017. The Town Administrator shall have the authority to grant one (1) six-month extension of the timeframe to complete the Required Dedications, if necessary. No additional extensions shall be granted unless the Board of Trustees approves an amendment to this Agreement. The Town Administrator shall be authorized to accept all of the Required Dedications on behalf of the Town, following review and approval as to form by the Town Attorney. All Required Dedications, following execution by the Annexor and acceptance by the Town Administrator, shall be recorded in the real property records of Boulder County, Colorado.
8. **Existing Water Easement.** The Annexor agrees that the Town has a twenty foot (20') wide permanent easement for an underground water pipeline crossing the Property as described in that certain grant of right of way dated September 23, 1970 and recorded on December 22, 1970 at Reception No. 963204 in the real property records of Boulder County, Colorado ("1970 Easement). Annexor agrees to continue cooperating with the Town to allow the Town to locate the existing underground pipeline and agrees to convey a twenty foot (20') wide permanent easement (New Water Easement) for underground water pipeline purposes to the Town, and without any compensation due to Annexor, once the pipeline may be located and accurately surveyed. Once the New Water Easement has been granted to the Town, the Town agrees to vacate the 1970 Easement. The Town Administrator shall be authorized to accept the New Water Easement on behalf of the Town and quitclaim the 1970 Easement to the Annexor, following review and approval as to form by the Town Attorney.
9. **Public Improvements.** The Annexor agrees to design, improve, and provide Signage, lighting,

and signalization for all public streets and other public ways within or adjacent to the Property in accordance with Town ordinances and resolutions and other applicable standards, subject to any reimbursement which may be provided for in such ordinances, resolutions, and standards, and to make such other improvements as required by Town ordinances and resolutions, to guarantee construction of all required improvements, and, if requested by the Town, to dedicate to the Town any or all other required improvements. If requested by the Town, the Annexor agrees to enter into an agreement pertaining to such improvements and other matters prior to any development of the Property. Improvements required to be completed by the Annexor to Apple Valley Road and the Apple Valley Road/US-36 intersection (AVR intersection will be determined by the Town Engineer based on impacts associated with the added traffic from the Property. Within ninety (90) days of the Effective Date of this Agreement, Annexor shall submit a traffic impact study (TIS) to the Town Engineer complying with applicable CDOT and American Association of State Highway and Transportation Officials (MSHTO). The TIS shall be completed by Felsburg Holt & Ullevig, Inc. or other traffic engineer acceptable to the Town Engineer. The TIS shall include mid-clay, Saturday and Sunday, traffic figures during peak hours during a typical Major Event day in addition to all other typical data collected. In addition, the TIS will include and analyze multi-modal transportation options in a form acceptable to the Town Engineer. Additional right-of-way, if needed to accommodate CDOT requirements related to ingress/egress to the Property from US-36, shall be dedicated by Annexor to CDOT or the Town at no cost to either CDOT or the Town. No public access to the Property from Apple Valley Road shall be permitted ~~except for that related to year round year rental or service, or a future accessory dwelling.~~

10. **CDOT Access Permits.** The Annexor shall not be permitted to conduct any Major Events or Minor Events, as those terms are defined in the Keynotes, on the Property until such time as CDOT has approved access permits for the Property sufficient to allow for ingress and egress for Major and Mid Tier Events. Event ingress and egress shall be permitted as allowed by the CDOT access permits obtained by the Annexor, but may not exceed 29 days per year—~~of 1,000 1400 vehicles daily (up to a maximum of ten twenty two days per year), and sufficient to allow for ingress and egress for Minor Events, and Annexor has completed all highway improvements required by CDOT.~~ Annexor agrees to comply with all CDOT requirements pertaining to submitting a traffic impact study, if required, and shall also complete all access construction permitted by CDOT within the applicable timeframes established in the CDOT permits. Annexor agrees to provide a copy of the CDOT access permits to the Town Engineer within ten (10) business days following the date on which the CDOT access permits have been issued by CDOT.
11. **Limited Impact Special Use Review** {Boulder County Docket LU-16-0009} and Floodplain Development Permit. The Parties acknowledge and agree that Annexor is currently working toward completion and compance with all conditions set forth in Boulder County Board of County Commissioners Resolution 2016-81 ("A resolution conditionally approving Boulder County Land Use Docket LU-16-0009: Ferguson Property Restoration (the "BOCC Resolution") The BOCC Resolution is attached to this Agreement as Exhibit E. The Parties also acknowledge that the Boulder County Staff Report prepared for the June 28, 2016 Board of County Commissioners hearing on Docket LU-16-0009, consisting of fifty-one (51) pages and a copy of which is on file with the Town Clerk, shall be incorporated into this Agreement by

reference. Annexor agrees to complete all conditions set forth in the BOCC Resolution prior to the Effective Date, as that term is defined below. If Annexor has not completed all conditions set forth in the BOCC Resolution by the Effective Date, Annexor agrees that the Town shall hire and retain the services of qualified consultant selected by the Town Floodplain Consultant; to oversee Annexor's compliance with all conditions set forth in the BOCC Resolution, including but not limited to ensuring that all revegetation is inspected and approved. The Parties agree that if condition #4 set forth on page three of the BOCC Resolution has not been satisfied prior to the Effective Date, the Town will waive the requirement for an Engineer Report indicating compliance with Boulder County Multimodal Transportation Standards, and the Town will require the TIS referenced in Paragraph 9 above to be completed by Annexor in lieu of the Engineer Report referenced in condition #4 of the BOCC Resolution. The Annexor shall also be required to submit an application for a Floodplain Development Permit to the Town, and the Floodplain Consultant shall assist Town Staff with the review of said application. No Major Events or Minor Events shall be held on the Property until such time as all conditions set forth in the BOCC Resolution have been satisfied and the Town has issued a Floodplain Development Permit for the Property. The Annexor shall reimburse the Town for all fees billed to the Town by the Floodplain Consultant. The Annexor shall make payment to the Town within thirty (30) days following the date on which the Town presents an invoice or billing statement to Annexor. If Annexor fails to reimburse the Town for fees of the Floodplain Consultant, the Annexor shall be prohibited from conducting any Major Event or Minor Event on the Property. Annexor agrees to participate in the river restoration project being administered by the St. Vrain Creek Coalition rsVCC1 and further agrees to make a financial commitment to SVCC in the amount determined by SVCC utilizing applicable SVCC criteria. The Parties agree that Annexor's participation with SVCC will satisfy condition'116 set forth in the BOCC Resolution.

12. Property Noise Restrictions. Any Major Event, Mid-Tier, or Minor Event occurring on the Property shall be subject to the following noise conditions:

- a. Outdoor music performed by live entertainment at events shall not include amplified instruments. Homs or percussion are not allowed. Woodwinds (e.g clarinets, flutes, etc.) are allowed. One vocalist may use a microphone with amplification.
- b. Outdoor Disc Jockey (DJ) style performance of amplified recorded music is not allowed.
- c. Outdoor weddings:
 - i. During wedding ceremonies: the officiant and other members of wedding parties may use a microphone with amplification for readings, vows. Low level amplified recorded music or unamplified acoustic instruments only are allowed during the ceremony with one vocalist using a microphone with amplification.
 - ii. Wedding ceremonies are to be concluded no later than 5:30 pm.
 - iii. During cocktail hour and dinner. unamplified acoustic only instrumental music is allowed. The officiant and other members of wedding parties may use a microphone with amplification for toasts and announcements.
 - iv. After dinner music: unamplified acoustic only instruments are allowed with one vocalist using a microphone with amplification.
 - v. All music shall end by 10:00 pm.
 - vi. Outdoor low level amplified recorded music, vocals, and public address system

announcements, or any other noise generated at any wedding or other Major Event or Minor Event conducted on the Property shall be carefully limited to the minimum functional sound level. All uses conducted on the Property shall also comply with the noise restrictions set forth in Sec. 10-11-10 of the Lyons Municipal Code, as it may be amended from time to time. The Annexor or any person or entity holding a function on the Property shall immediately reduce or eliminate any amplified or other sounds when instructed to do so by a member of the Boulder County Sheriff's Office, other law enforcement or emergency services personnel or member of Town Staff.

13. **Improvement Districts.** If requested by the Town, the Annexor agrees to include the Property in one or more special improvement districts or other mechanisms established by the Town for making improvements to streets and other public ways, or for making other public improvements authorized by law.
14. **Conformity with Laws.** The Annexor agrees that the design, improvement, construction, development and use of the Property shall be in conformance with, and that the Annexor shall comply with, all Town ordinances and resolutions including, without limitation, ordinances and resolutions pertaining to annexation, subdivision, zoning, storm drainage, utilities, access to Town Streets and flood control. The Annexor further agrees that use of the Property shall at all times strictly conform to the Keynotes attached hereto as Exhibit B and the Amendable Letter of Understanding (PBG Farm Property) attached hereto as Exhibit C.
15. **No Repeal of Laws.** Nothing contained in this Agreement shall constitute or be interpreted as a repeal of the Town's ordinances or resolutions, or as a waiver of the Town's legislative, governmental, or police powers to promote and protect the health, safety, and welfare of the Town and its inhabitants; nor shall this Agreement prohibit the enactment or increase by the Town of any tax or fee.
16. **Disconnection.** No right or remedy of disconnection of the Property from the Town shall accrue from this Agreement other than that provided by applicable state laws. In the event the Property or any portion thereof is disconnected at the Annexor's request, the Town shall have no obligation to serve the disconnected Property or portion thereof and this Agreement shall be void and of no further force and effect as to such Property or portion thereof.
17. **Severability.** The parties agree that if any part, term, portion, or provision of this Agreement is held by a court of competent jurisdiction to be illegal or in conflict with any law of the State of Colorado, the validity of the remaining parts, terms, portions, or provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular part, term, portion, or provision held to be invalid.
18. **Municipal Services.** The Town agrees to make available to the Property all of the usual municipal services in accordance with the ordinances and policies of the Town. The Property is currently not served by the Town Electric Department. If electric services become available to the Property, the Annexor shall be responsible for payment of all fees, rates and other applicable charges in accordance with the ordinances and policies of the Town. Police services shall be

provided to the Property by the Boulder County Sheriffs Office ("BCSO"), pursuant to and in accordance with the intergovernmental agreement between the Town and BCSO. Wastewater services will be provided to the Property subject to the utility service extension policies set forth in Chapter 13 of the LMC. The Property shall, at the Annexor's cost and expense, subject to applicable terms and conditions set forth in that certain Easement Agreement recorded on January 27, 2017 at Reception No. 03571839 (Easement Agreement) connect to the Town's public wastewater line or main upon the earlier of (a) when a new building or improvement is constructed on the Property that will generate wastewater or effluent in excess of the existing residential use of the Farm House, or (b) when the Town constructs a public wastewater line or main through the easement described in the Easement Agreement. ~~whenever such line or main is located within four hundred feet (400') of the Property, in accordance with the provisions of Section 13-4-50(b) of the LMC.~~ Annexor will be responsible for all necessary service line extensions to the Property, together with all related costs and expenses. No connection to the Town's wastewater line or main shall be authorized until such time as Annexor has obtained a Town-issued license for connection in accordance with Chapter 13 of the LMC and Annexor has paid all connection or tap fees to the Town as required by the LMC. Annexor acknowledges that Town services do not include, as of the date of the execution of this Agreement, fire protection or emergency medical services, but the Property is presently included within the boundaries of and is entitled to receive fire services from the Lyons Fire Protection District. Notwithstanding the foregoing, Annexor and the Town acknowledge and agree that pursuant to the Easement Agreement, Annexor is entitled to one connection of a four-inch (4") sewer line into the Town's sanitary sewer line without paying a wastewater connect fee for the same as set forth in Section 13-4-100(c); provided, however, that all additional wastewater connections shall require payment of standard wastewater connection fees unless otherwise waived by the Town under the applicable provisions of the Lyons Municipal Code.

19. **Water Rights Dedication.** Annexor has requested that dedication of water rights be postponed until the earlier to occur of: (a) future subdivision of the Property; or (b) the Conceptual Plan for the Property is amended in a way that is likely to cause the usage of water on the Property to exceed the 270,000 gallon per year allowance currently permitted, in accordance with the procedures set forth in Section 16-3-220(h) and Article 7 of Chapter 16 of the LMC. Water dedication requirements for the Property shall be calculated in Effective April 4th, 2022, Annexor agrees to dedicate to the Town two shares of capital stock in the Lake McIntosh Reservoir Company ("Lake McIntosh Shares") at a time of Annexor's choosing, but no later than within 90 days after written request from the Town Administrator. This request and subsequent dedication will fulfill all base water dedication requirements for annexation in accordance with Sections 17-14-10 and 17-14-20 of the LMC ("Town Water Dedication Requirements"). If the property is subsequently subdivided, additional Town Water Dedication Requirements will be necessary pursuant to Section 17-14-20 of the LMC. The Annexor shall convey, transfer or assign to the Town, free and clear of all liens and encumbrances, units of Colorado Big Thompson water (C-BT Units) or other water acceptable to the Town per the LMC as required by the Town Water Dedication Requirements. This dedication will also fulfill the Town Water Dedication Requirements in accordance with Section 13-3-90(A) of the LMC for one additional $\frac{3}{4}$ " tap on the Farm Property (or increase in the existing tap size from $\frac{3}{4}$ " to 1") for the bath house that the Annexor intends to request in accordance with the Site Plan. Notwithstanding the foregoing, Annexor and the Town acknowledge and agree that pursuant to

the Easement Agreement, Annexor is entitled to connection of one ¾" water tap without paying a water connection fee for the same as set forth in Section 13-3-90(b); provided, however, that all additional water tap connections shall require payment of standard water connection fees and associated Town Water Dedication Requirements unless otherwise waived by the Town under the applicable provisions of the Lyons Municipal Code. Any additional ~~The dedication requirements for the Property, upon any subdivision of the Property or future Site Plan submitted in accordance with Section 16-3-220(h) and Article 7 of Chapter 16 of the LMC shall be determined by calculating the water use demands for such subdivision or development that is in strict accordance with the Town Water Dedication Requirements, as reviewed and approved by the Town Engineer and Town Administrator. In lieu of the C-BT Units or other water acceptable to the Town per the LMC required in this Paragraph, at the sole and absolute discretion of the Board of Trustees, the Annexor may be required to pay cash-in-lieu at the current rate established by the Town at the time the C-BT Units or other water acceptable to the Town per LMC requirements would otherwise be due. In addition to Town Water Dedication Requirements, the Annexor shall, as a condition of the Town's approval of any Event plan for any Major Event or Minor Event, as those terms are defined in the Amendable Letter of Understanding attached hereto as Exhibit C, provide the Town with details related to the source and amount of water sufficient to control dust during events, parking, and the restoration of the Property after the conclusion of any Major Event or Minor Event, in order to encourage vegetative re-establishment following camping, parking and other allowed uses of the Property.~~

20. **Special Districts.** Within ten (10) days after written request by the Town, the Annexor shall apply for inclusion of the Property within any special districts as determined by the Town. Within ten (10) days after written request by the Town, the Annexor shall petition for exclusion of the Property from any special districts as determined by the Town.
21. **Future Cooperation.** The parties agree that they will cooperate with one another in accomplishing the terms, conditions, and provisions of the Agreement, and will execute such additional documents as necessary to effectuate the same.
22. **Amendment.** This Agreement may be amended by the Town and the Annexor. Such amendments shall be in writing, shall be recorded with the County Clerk of Boulder County, Colorado, shall be covenants running with the land, and shall be binding upon all persons or entities having an interest in the Property unless otherwise specified in the amendment. Except as otherwise provided herein, this Agreement shall not be amended unless approved in writing by all parties hereto.
23. **Entire Agreement.** This Agreement embodies the entire agreement of the parties. There are no promises, terms, conditions, or obligations other than those contained herein; and this Agreement supersedes all previous communications, representations, or agreements, either verbal or written, between the parties.
24. **Indemnification.** The Annexor agrees to indemnify and hold harmless the Town and the Town's officers, employees, agents, and contractors, from and against all liability, claims, and demands, including attorney fees and court costs, which arise out of or are in any manner connected with the annexation of the Property, or with any other annexation or other action determined

necessary or desirable by the Town in order to effectuate the annexation of the Property, or which are in any manner connected with Lyons's enforcement of this Agreement. The Annexor further agrees to investigate, handle, respond to, and to provide defense for and defend against or at the Town's option to pay the attorney fees for defense counsel of the Town's choice for any such liability, claims, or demands.

25. **Annexor.** As used in this Agreement the term "Annexor" shall include any of the heirs, transferees, successors, or assigns of the Annexor, and all such parties shall have the right to enforce this Agreement and shall be subject to the terms of this Agreement as if they were the original parties thereto.
26. **Amendments to Law.** As used in this Agreement, unless otherwise specifically provided herein, any reference to any provision of any Town ordinance, resolution, or policy is intended to refer to any subsequent amendments or revisions to such ordinance, resolution, or policy, and the parties agree that such amendments or revisions shall be binding upon the Annexor.
27. **Binding Effect.** Following the Effective Date (as defined below), this Agreement shall be binding upon and inure to the benefit of the heirs, transferees, successors, and assigns hereof, and shall constitute covenants running with the land. Following the Effective Date of this Agreement, this Agreement shall be recorded with the County Clerk of Boulder County, Colorado, at the Annexor's expense.
28. **Failure to Annex.** This Agreement shall be null and void if for any reason the annexation does not become effective, including but not limited to the registered electors of the Town rejecting the annexation of the Property at the Special Mail Ballot Election.
29. **Breach by the Annexor.** Town's Remedies. In the event of any default or breach by the Annexor of any term, condition, covenant or obligation under this Agreement, the Town Board of Trustees shall be notified immediately. The Town may take such action as it deems necessary to protect the public health, safety, and welfare. The Town's remedies include:
 - a. The refusal to issue to the Annexor any development permit, event permit, building permit, or certificate of occupancy; provided, however, that this remedy shall not be available to the Town until after the affidavit described in Paragraph 29.b, below, has been recorded;
 - b. The recording with the Boulder County Clerk and Recorder of an affidavit, approved in writing by the Town Attorney and signed by the Mayor or his/her designee, stating that the terms and conditions of this Agreement have been breached by the Annexor. At the next regularly scheduled Town Board meeting, the Town Board shall either approve the filing of said affidavit or direct the Mayor or his designee to file an affidavit stating that the default has been cured. Upon the recording of such an affidavit, no further Major Events, Mid-Tier Events or Minor Events (as those terms are defined in the Keynotes) shall be authorized on the Property until the default has been cured. The execution of an affidavit by the Mayor or his designee and approved by the Town Board of Trustees stating that the default has been cured shall remove this restriction;
 - c. The refusal to process any pending Site Plan application for the Property or any

proposed subdivision of the Property; and/or

- d. Any other remedy available at law.

Unless necessary to protect the immediate health, safety, and welfare of the Town or Town residents, the Town shall provide the Annexor ten (10) days' written notice of its intent to take any action under this Paragraph 29 during which ten-day period the Annexor may cure the breach described in said notice and prevent further action by the Town.

30. **Notice.** All notices required under this Agreement shall be in writing and shall be hand- delivered or sent by facsimile transmission or registered or certified mail, return receipt requested, postage prepaid, to the addresses of the parties herein set forth. All notices by hand delivery shall be effective upon receipt. All facsimile transmissions shall be effective upon transmission receipt. All notices by mail shall be considered effective 72 hours after deposit in the United States mail with the proper address as set forth below. Either party by notice so given may change the address to which future notices shall be sent.

Notice to Town:
Town of Lyons
ATTN: Town Administrator 4325thAve.
P.O. Box 49
Lyons, CO 80540

With a copy to: Notice to Annexor.
Town Attorney
c/o Kissinger & Fellman, P.C.
3773 Cherry Creek N Dr Ste 900
Denver CO 80209

Planet Bluegrass Farm, LLC
500 West Main Street
P.O. Box 769
Lyons, CO 80540

31. **Legislative Discretion.** The Annexor acknowledges that the annexation of the Property is subject to the legislative discretion of the Board of Trustees of the Town and ultimately subject to the approval of the Town voters at the Special Mail Ballot Election. No assurances of annexation have been made or relied upon by the Annexor. If, in the exercise of its legislative dissection by the Board of Trustees or through the exercise of the powers of initiative or referendum, any action with respect to the Property herein contemplated is not taken, then the sole and exclusive right of the Annexor with respect to such exercise of discretion shall be the withdrawal of the petition for annexation by the Annexor.
32. **No Third-Party Rights.** This Agreement is made solely for the benefit of the parties hereto, and is not intended to nor shall it be deemed to confer rights to any persons or entities not named as parties hereto.

33. **Governing Law.** The laws of the State of Colorado shall govern the validity, performance, and enforcement of this Agreement. Should either party institute legal suit or action for enforcement of any obligation contained herein, it is agreed that the venue of such suit or action shall be in Boulder County, Colorado.
34. **Headings.** The paragraph headings in this Agreement shall not be used in the construction or interpretation hereof as they have no substantive effect and are for convenience only.
35. **No Warranties by Town.** The Town is entering into this Agreement in good faith and with the present intention, on the part of the present Town Board of Trustees, that this Agreement will be complied with. However, because some of the provisions of this Agreement may involve areas of legal uncertainty, the Town makes no representation as to the validity or enforceability of this Agreement against the Town, and by entering into this Agreement the Annexor acknowledges and accepts that no such warranty is made on the part of the Town.
36. **Sustainable Design and Development Principles.** The Annexor agrees to use and develop the Property in a manner that is consistent with the Town's Sustainable Design and Development Principles in the Lyons Comprehensive Plan (the "Principles"). The intent of the Principles is to ensure that new development enhances Lyons' character through deliberate consideration of building materials, architectural details, landscaping, etc. and that development helps to conserve natural resources and is sensitive to environmental constraints such as wildlife habitat, steep slopes and floodplains.
37. **Town Codes.** Except as otherwise provided in this Agreement, all Town ordinances, regulations, codes, policies and procedures now in existence, and as the same may be adopted or changed from time to time, shall be applicable to the use and development of the Property. Nothing contained in this Agreement shall constitute or be interpreted as a repeal of existing codes or ordinances or as a waiver or abrogation of the Town's legislative, governmental or police powers to promote and protect the health, safety, or general welfare of the Town or its inhabitants; nor shall this Agreement prohibit the enactment by the Town of any rate, fee, toll, charge or tax which is uniform or of general application.
38. **Recording.** The Annexor and the Town agree and acknowledge that this Agreement shall be recorded by the Town Clerk in the office of the Boulder County Clerk and Recorder following the Effective Date (as defined below), and that the provisions of this Agreement shall be binding upon and shall inure to the benefit of the beneficiaries, successors and assigns of the Parties as provided by this Agreement. Such recordation shall not occur prior to the Effective Date.
39. **Effective Date.** This Agreement shall not be effective until the annexation of the Property has been approved by the Town electorate, as required by Sec. 15-1-340(a) of the LMC. The term "Effective Date" shall be the tenth (10) day following certification by the Town Clerk of the election results of the Special Mail Ballot Election. If the Town electorate fails to approve the annexation of the Property, then this Agreement shall be null and void.

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PLANET BLUEGRASS FARM, LLC,
a Colorado limited liability company

By: 

Craig Ferguson, Managing Member

Date: Apr 6, 2022

TOWN OF LYONS, COLORADO

By: 

Nicholas Angelo, Mayor

Date: 4/8/22

ATTEST:

Dolores M. Vasquez

Dolores Vasquez, Town Clerk

Ord 1118

Final Audit Report

2022-04-06

Created:	2022-04-05
By:	Marissa Davis (mdavis@townoflyons.com)
Status:	Signed
Transaction ID:	CBJCHBCAABAAGXivQ_75L_l5sm0le_WWWUg-4wOMimyD

"Ord 1118" History

- ✉ Document created by Marissa Davis (mdavis@townoflyons.com)
2022-04-05 - 3:18:16 PM GMT
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2022-04-05 - 3:19:07 PM GMT
- ✉ Email viewed by Craig Ferguson (ferg@bluegrass.com)
2022-04-05 - 3:53:44 PM GMT
- ✍ Document e-signed by Craig Ferguson (ferg@bluegrass.com)
Signature Date: 2022-04-06 - 10:49:29 PM GMT - Time Source: server
- 🕒 Agreement completed.
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