

## AMENDABLE LETTER OF UNDERSTANDING

**THIS AMENDABLE LETTER OF UNDERSTANDING** is part of the Site Plan approved by the Board of Trustees for the Town of Lyons, Colorado. Upon execution by the parties, the Amendable Letter shall remain effective and govern the use of the Property described in the Site Plan until amended. This Amendable Letter is intended to serve as the "Amendable Letter of Understanding" contemplated by and referred to in Section 9-11A-6 of the Lyons Municipal Code. This Amendable Letter is intended to be construed by reference to the Site Plan and the Keynotes accompanying the Site Plan.

References to "Site," Site Plan," "Event," "Major Event," "Minor Event," and "Property" are references to these terms as defined in the Site Plan for Planet Bluegrass (Site Plan"), a site plan for property zoned CE-1, which was approved by the Board of Trustees contemporaneously with the original version of this Amendable Letter and which is of record with the Town Clerk for the Town of Lyons, Colorado. The Site Plan is incorporated into this Amendable Letter for purposes of aiding the parties understanding of the terms and conditions of this Amendable Letter.

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 by the Site plan and the production plan submitted in accordance with this Amendable Letter. The Town shall not withhold its consent to the execution of this Amendable Letter by an 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 Site Plan, and that the Owner also executes this Amendable Letter.

**NOW, THEREFORE**, in consideration of the mutual promises, covenants, and Amendable Letters of the Parties, conformance with the Site 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. Production Plans, Generally.**

- (A) The Owner shall deliver a written and detailed production plan to the Town Administrator concurrently with the written notice provided pursuant to Paragraphs 1(A) and 1(B) above.
- (B) For a Major Event, the production plan shall address the management of all off-site impacts reasonably anticipated as the result of the Major Event. The production plan shall specifically address the areas of crowd management and safety; parking and camping; transportation needs; infrastructure requirements; dust, trash management, traffic control, and police services.
- (C) For a Minor Event, the production 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 addressed by that Event's production plan.
- (D) All production 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 Chief of Police. The Town of Lyons shall make a reasonable effort to have the determination made within thirty (30) days of the date of the plan's submittal to the Town and the production 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) Concurrently with the submittal of a production 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 production plan.
- (F) In the event that a submitted production plan is deemed inadequate by the Town Administrator or the Chief of Police, the Owner shall have fourteen (14) days in which to correct any deficiencies identified by the Town Administrator and Chief of Police. 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.
- (G) 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 Chief of Police 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.

(H) It is the intention of the provisions set forth above, that all events on the Site be generally conducted in the manner established by previous events conducted on the Site during 1997 and 1998 and that the Events be conducted in a manner not detrimental to the health, safety and welfare of the citizens of the Town of Lyons.

**3. Production Plans; Content and Requirements.**

Every Production plan shall incorporate or include the following requirements:

(A) Time of Event. The Owner shall end and terminate the amplification associated with any performance at all Major Events no later than 10:30 p.m. on any Friday or Saturday and at 10:00 p.m. on any other day of the week. The parties recognize that there may be unusual circumstances beyond the control of the Owner that may require an extension of these closing hours by not more than 30 minutes. Such an extension shall require the prior explicit approval of the Town Administrator.

(B) Crowd Size. For any Major Event, the Owner shall limit the daily crowd size for the Event and attendance at the Event Site to a maximum of 3,500 people, unless otherwise approved by the Town in the Production Plan.

(C) Site Security. On-site security and crowd management will be provided by the Owner's personnel at the Site. Illegal or criminal acts observed by the Owner personnel will be reported immediately to the Boulder County Sheriff personnel. The Owner shall arrange for and shall maintain and provide radio communication between its own security force and the Boulder County Sheriff's Department. If available, the Boulder County Sheriff's Department will provide at no cost to the Town a command center trailer to be used at the entrance of the Site. The Owner shall monitor all beverage containers brought on to the Site and shall take all reasonable actions necessary to insure that no alcoholic beverages are brought on to the Event Site by Event participants.

(D) Medical Center. The Owner shall provide and maintain a staffed medical center at the Event Site with a minimum of one (1) EMT on duty at all times during the hours of operation of the Event.

(E) Beer Sales. The Owner shall provide fermented malt beverages sales (beer) at the Site only and may act through an agent or contractor to the Owner. The Owner shall obtain or shall ensure and verify that any the Owner agent or contractor has secured and obtained all necessary liquor licenses or special events permits from the local Liquor Licensing Authority and all necessary business license(s) from the Town of Lyons. It is agreed that fermented malt beverages (beer) will be the only alcoholic beverage sold at the Site. No other concessionaire, business, or organization shall provide or serve alcoholic beverages at the Site. The Owner understands and agrees that the provision

and service of alcoholic beverages is subject to all local and state laws and the Owner shall conform and comply with all such laws.

- (F) **Taxes.** The Owner will be responsible for collection and remittance of all state and local taxes on all sales by its concessionaires. 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.
- (G) **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 except that individual businesses need not obtain a business license from the Town if their revenues are accounted for and reported under the Owner's sales tax number.
- (H) **Local Ordinance Conformance.** The Owner shall manage the Event and the Site 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.
- (I) **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.
- (J) **Crowd Management.** The Owner shall arrange for and set-up crowd management systems at the Site and any off-site property used in connection with the Event no later than 8:00 p.m. on the date prior to the date of commencement of the Event.
- (K) **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 Sheriff's 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.

(L) Vehicular Traffic. For a Major Event, the Owner, only with the approval and consent of and in conjunction with CDOT, will erect two temporary "THRU TRAFFIC STAY LEFT" signs on the islands at the intersection of Colorado Highway 7 and 36 to encourage northbound through traffic to use the left-most lane and allow the right lane to develop into a deceleration and stacking lane for right turns into the Event Site. The Owner will place cones and temporary "NO PARKING" signage along the east and west shoulders of Highway 36 which front on the Site and two Boulder County Sheriff's officers will supervise and direct traffic at the site entrance pursuant to the Town's internal operational plan.

(M) Parking Management at Sites. The Owner shall manage all access, ingress, egress of vehicles at the Site and any other properties lawfully used for parking in associated with the Event and shall, in particular, manage traffic so as not to interfere with reasonable access to public roads for residents of the Town.

(N) Shuttle System. The Owner will provide a shuttle bus system to and from the Site 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's Director of Parks and Recreation. 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.

(O) 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.

(P) 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 Site Plan and to protect the safety and welfare of the Owner's Event attendees.

(Q) Police Assistance. The Town will make its Chief of Police 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 Chief 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 Department for at least two (2) deputies to assist full-time with traffic control and security associated with the Major Event. The Town's Chief of Police will act as the supervisor for the deputies from the Sheriff's Department. The Owner shall pay

any invoice for police services associated with a Major Event promptly and without undue delay.

(R) 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 Agreement. 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.
- (2) The Owner shall insure that any fermented malt beverage (beer) concessionaire prior to such concessionaire being allowed to operate at the Event, shall have acquired an alcohol liability insurance policy providing coverage limits equivalent to that set forth in the this Amendable Letter for general liability insurance and also naming Town and its officers, agents and employees as additional insureds. Evidence of such general liability and alcohol liability policies coverage shall be provided to the Town Administrator no later than 5:00 p.m. on the thirtieth day prior to the date of commencement of the Event. All insurance policies shall be non-cancelable or non-terminable without 30 days prior notice to Town.
- (3) 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.
- (4) 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 \$150,000.00 for any injury to one person and at any single occurrence and \$600,000.00 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.

- (5) The Owner shall not be relieved of any liability, claims, demands or other obligations assumed pursuant to this section 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.
- (6) The Town reserves the right to request and receive a certified copy of any policy and any endorsement thereto required by this Agreement.
- (S) The Owner shall abide by the Town Administrator's directions and requirements which are not inconsistent with this Agreement and which are necessary to protect the health, safety, and welfare of the residents of the Town
- (T) 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 production plans, unless otherwise agreed, specifically including all police expenses as said expenses are reasonably requested by the Chief of Police. The Town shall, however, be responsible for the expenses of its Chief of Police in reviewing production 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 production plan, the Site 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 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.

IN AGREEMENT WITH THE FOREGOING PROVISIONS, THE PARTIES HEREBY EXECUTE THIS AMENDABLE LETTER OF UNDERSTANDING THIS 17<sup>th</sup> DAY OF May, 1999.

TELLURIDE BLUEGRASS FESTIVAL, INC.  
D/B/A PLANET BLUEGRASS

OWNER

By: Craig Ferguson  
Craig Ferguson, President

By: Craig Ferguson  
Craig Ferguson, an Individual

TOWN OF LYONS

By: Nicholas Angelo  
Nicholas Angelo, Mayor

ATTEST:

Teresa G. Andrews  
Teresa G. Andrews, Town Clerk/Treasurer