

DEVELOPER'S AGREEMENT

AGREEMENT made the _____ day of September 2015, by and between the TOWN OF CHATHAM, (hereinafter referred to as the "Town"), with its primary place of business being located at Town Hall, 488 Route 925, Chatham, NY 12037, and QUESTATERRA, LLC, and PS21, Inc., (hereinafter referred to as the "Developer" or "Applicant"), with its primary place of business located at _____,

1. Recitals

1.1 Questaterra, LLC previously submitted plans for a temporary outdoor facility and a permanent indoor recreational facility to be located on Route 66, just north of Crellin Park, which is on the northern Village line in the south central area of the Town of Chatham. Specifically, the site consists of approximately 107.2 acres of land located on two (2) contiguous parcels (Tax Parcel 56-1-22.11 and 56-1-21). The site is located along the west side of New York State Route 66, within the Town of Chatham, Columbia County, New York. The southern property line is located approximately 500 feet north of the Village of Chatham. The site is bound to the south by the Crellin Park, bound to the west by the Stony Kill Creek, and bound to the East by New York State Route 66. The entire project, including the real estate and any improvements thereon are intended to be conveyed to PS/21, Inc., a New York not-for-profit corporation.

1.2 Questaterra, LLC submitted the original Special Use Permit Application and Height Variance applications on August 16, 2001, for the proposed construction of a 36,000 square foot, 420-seat recreational/performing arts facility. Following several informational meetings and discussions with the Board and members of the public the final application proposed a reduced project. The project was divided into two stages to allow for the establishment of the effort and to raise capital for the construction of the main permanent building. Phase I includes the construction of the 300-seat seasonal outdoor recreation/performance space under a 4,800 square foot saddle span tent with chairs and stage; a 2,800 foot long 22 foot wide gravel driveway; construction of a NYSDOT approved site entrance; gravel parking for 170 vehicles; construction of walkways, installation of lighting and utilities; storm water management and drainage; entrance sign; grading and site restoration. Phase 2 of the project includes the construction of a 28,420 square foot permanent building with seating for 405 patrons; 4,650 foot interior paved driveways; 45 additional parking spaces; additional site lighting, utilities, walkways, water and septic systems; grading; seeding and landscaping of the site. The ZBA is expected to approve both the Area Variance for height and the Special Use Permit, with conditions, on April 28, 2005.

1.3 The applicant has also submitted a Site Plan Review application on September 24, 2001 for review by the Town of Chatham Planning Board. The Planning Board adopted the SEQRA Findings issued by the ZBA on May 10, 2005, and approved the Site Plan on May 10, 2005.

- 1.4 Thereafter the parties entered into Developer's Agreement setting forth the obligations and conditions with respect to the development, construction and maintenance of the project.
- 1.5 The applicant then requested a modification of the noise protocols in order to be relieved of the requirement to continue to be required to undergo the rigorous testing since no violations or legitimate complaints attributable to the project were noted. In or about January 2007, the ZBA granted a modification of the Sound/Noise Protocols.
- 1.6 The Applicant sought a further modification of the original 2005 Special Use Permit to obtain an extension of the time period during which the tent (under Phase 1 of the original approval) could be used. The applicant based such request upon the need to have further time to raise funds to commence and complete construction of the permanent building under Phase 2. The ZBA granted a modification of the Special Use Permit that included an increase in the hours of operation and the number of events, among other things, but denied an extension of the time to use the tent from the end of the 2010 season to the end of 2012 season.
- 1.7 The applicant filed an application in 2009 for a modification of the Special Use permit and certain of the conditions attached thereto, to wit: a modification of the Conditions of Approval to change the use of the tent from that of a temporary use through the end of the 2012 season, to a permanent use, without an end date. The request was based upon the applicant's inability to commence and complete construction of the permanent facility and based upon the allegation that there is little to no objectionable noise/sound generated by use of the tent. That application was approved in February 2010.
- 1.8 The applicant then filed an application for a modification of the Special Use Permit and the conditions attached thereto on or about December 15, 2014. The new Phase 2 building was proposed to be a 14,500 square foot partially enclosed pavilion (the "Pavilion") having an east/west orientation with seating for 300 people, a seasonal fully enclosed Black Box within the Pavilion seating 100, a permanent rest room, and locker room. The ZBA approved that application on May 28, 2015 utilizing the plans, renderings and models submitted as of December 2015, which would include a number of approval conditions and a sound testing protocol. See the ZBA approval resolution which is attached hereto and made a part hereof as Schedule "E".

1.9 The applicant filed a Site Plan Review Application associated with the proposed modified project which was approved June 16, 2015.

2. **Agreement**

2.1 The parties hereto desire to express by this Agreement their acceptance of the conditions, safeguards, and limitations under which the site improvements for the Developer's project will proceed, including the installation of the required site improvements subject to inspection by the Town of Chatham and subject to the terms and provisions of this Agreement.

2.2 In consideration of the mutual covenants, conditions, and promises contained herein, and in further consideration of the sum of One Dollar (\$1.00) and other valuable consideration, the receipt of which is hereby acknowledged and for the purpose of defining and specifying the obligations and enforcement of the Town of Chatham's land use regulations.

2.3 Obligations with respect to the construction of improvements hereunder shall accrue upon the commencement of site work for each of the respective Phases approved for the within project, but shall not be enforceable in the event Developer does not obtain all required permits, financing or other items and does not or cannot proceed with the project.

2.4 The terms and conditions of this Agreement shall apply and are enforceable only while, and for so long as, all or any portion of the subject premises is used as a recreational facility pursuant to the Special Use Permit identified in paragraph 1.2 above.

3. **Improvements**

3.1 The Developer, at its sole cost and expense, will make, build, construct, install, and perform all those improvements as are described in the Schedule of Improvements (Schedule A) attached hereto, and as have been presented to the Zoning Board of Appeals in the Developer's application for development, and as are shown by and in the Developer's exhibits, proofs, and representations made to the Board.

3.2 The Developer agrees to complete all improvements and comply with all specific conditions as identified above pursuant to Schedule A and as set forth in the documents submitted to the Zoning Board of Appeals and Planning Board.

3.3 The Developer will also perform any other improvement lawfully required by any governmental agency, board, department, bureau, or other governmental entity prior to the full completion of the entire project.

3.4 All the improvements referred to hereinabove, shall be made and installed in accordance with such state and federal laws as pertain thereto and in accordance with such specifications, ordinances, rules, and regulations which may be reasonably applicable to parts or aspects of the work adopted or reasonably approved by the Town of Chatham agencies, boards, officers, departments, or bureaus having jurisdiction at the time of approval of the entire project by the Town ZBA and Planning Boards. All structures and site improvements are subject to inspection by the Town.

3.5 The Developer further agrees to perform any and all additional requirements as are set forth hereinbelow. The Developer's specific obligations shall not be deemed to limit the Developer's general obligations hereunder or otherwise existing shall include the following:

A. The Developer shall be required to pay all fees of the Town of Chatham as set forth in this agreement.

B. The Developer shall not remove any soil from the site.

4. **Conditions of Performance**

4.1 The Developer covenants and agrees to furnish, provide, and supply (at the Developer's sole cost and expense) all of the engineering, architectural, planning, supervisory, and managerial services and all of the labor, materials, supplies, tools, equipment, and machinery required to perform and complete all of the improvements and development required hereunder, in a good, substantial, orderly, neat, and workmanlike manner, in full and strict compliance with applicable land development laws, ordinances, rules and regulations, and the terms and conditions of this Agreement.

4.2 All work performed hereunder shall be performed without causing undue annoyance to the public at large by reason of noise, dust, debris, air pollution, gas, smoke, or other annoyance resulting from construction, trucking, or other operations. The Developer agrees to take specific dust prevention measures, if necessary, and to take appropriate steps to prevent soil spillage on public streets, any such soil shall be removed by the Developer immediately.

4.3 The Developer agrees that grading work done pursuant to this Agreement must blend into the established grades of all adjoining property except and unless otherwise specified on the approved site plan or as specifically approved by the Town of Chatham Engineer. The Developer shall take such steps as shall insure proper drainage as required by the Site Plan Approval and as may be otherwise specifically required by the Town of Chatham Engineer, including, but not limited to, the use of swales, walls, underground piping, diverter, or interceptor drains. If surface contours are changed by the Developer so as to cause additional surface water runoff affecting the use of any adjacent lot, the Developer shall construct swales, drains, walls, or other drainage facilities so as to prevent such runoff.

4.4 The Developer hereby agrees with the Town of Chatham and the Town Board to hold the Town of Chatham and each of the Boards of the Town of Chatham harmless for any damage or liability that might arise due to the discharge of surface waters upon lands abutting the property being developed which is caused by the Developer, its agents, servants, or employees and further agrees to alleviate any and all conditions that may arise by reason of the discharge of water or soil upon abutting properties.

4.5 The Developer specifically agrees to provide all drainage facilities and said installation of facilities shall be performed in such a manner as shall meet the approval of the Town of Chatham engineer. Notwithstanding anything to the contrary contained herein, if during the course of development of the Site Plan, field conditions or sound engineering practices indicate that the improvements shown or described in the Site Plan and Site Plan Approval are inadequate to service the drainage requirements, or are inadequate to appropriately address subsurface water conditions affecting the site plan, or are inadequate to protect adjacent properties from surface or subsurface water drainage problems, the Developer agrees to take whatever remedial action to solve such drainage problems as may be necessary. Such remedial action shall be done in accordance with sound engineering practices, shall be done in accordance with engineering plans previously furnished to the Town of Chatham Engineer, and shall be subject to the inspection and approval of the Town of Chatham Engineer. The decision as to the necessity for such action shall lie within the sole discretion of the Town of Chatham Engineer, subject, however to an appeal to the Planning Board. The Developer shall make reasonable attempt to obtain all of the necessary Agreements or easements from adjoining property owners or other property owners, as the case may be, in order to perform the required remedial action, or in the event of the inability to procure such Agreements or easements relating to other lands, to reimburse the Town of Chatham for all rewards, costs, expenses, and reasonable legal and engineering fees incurred in such eminent domain proceedings as the Town of Chatham may undertake to obtain such Agreements or easements. Additionally, the parties agree that:

- a. The Developer shall maintain, clean, repair, replace and continue to maintain stormwater control measures depicted in Schedule A as necessary to ensure optimum performance of the measures to design specifications. The stormwater control measures shall include, but shall not be limited to, the following: drainage ditches, swales, dry wells, infiltrators, drop inlets, pipes, culverts, soil absorption devices and retention ponds.
- b. The Developer shall be responsible for all expenses related to the maintenance of the stormwater control measures.
- c. The Developer shall provide for the periodic inspection of the stormwater control measures, not less than once in every five-year period, to determine the condition and integrity of the measures. A Professional Engineer licensed by the State of New York shall perform such inspection. The inspecting engineer shall prepare and submit to the Town Building Inspector or his designee within 30 days of the inspection, a written report of the findings

including recommendations for those actions necessary for the continuation of the stormwater control measures.

- d. The Developer shall not authorize, undertake or permit alteration, abandonment, modification or discontinuation of the stormwater control measures except in accordance with written approval of the Town Building Inspector or his designee.
- e. The Developer shall undertake necessary repairs and replacement of the stormwater control measures at the direction of the Town Building Inspector or his designee or in accordance with the recommendations of the inspecting engineer.
- f. The Developer shall provide to the Attorney for the Town within 30 days of the date of this agreement, a security for the maintenance and continuation of the stormwater control measures in the form of a Bond, letter of credit or escrow account which shall be in a form acceptable to the Attorney for the Town.
- g. If ever the Town determines that the Developer has failed to construct or maintain the stormwater control measures in accordance with the project plan or has failed to undertake corrective action specified by the Town or by the inspecting engineer, the Town is authorized to undertake such steps as reasonably necessary for the preservation, continuation or maintenance of the stormwater control measures and to affix the expenses thereof as a lien against the property.
- h. The Developer shall construct Phase 2 in accordance with the plans, renderings and models submitted to the ZBA on December 15, 2014 and in accordance with the ZBA approval resolution dated May 28, 2015 and any resolutions, approvals and or conditions issued by the Planning Board in connection with site plan approval it may issue in the future in connection with this project.

4.6 The Developer shall provide all landscaping as set forth in the Site Plan Approval. Landscaping, in addition to anything therein provided, shall minimally be in accordance with the standards as set forth in the applicable laws and ordinances of the Town of Chatham. In addition, landscaping shall be in accordance with all documents and evidence submitted in connection with the Site Plan Approval, subject to such modifications as may be determined by the Town of Chatham Engineer. The Developer shall maintain said landscaping on all portions of the site it owns or controls, notwithstanding the expiration of any bonding covering required landscaping.

4.7 All signs to be placed on the premises shall be in accordance with §180-32 of the Town of Chatham Code and shall be in conformity with the application herein.

4.8 If, after the execution of this Agreement, and at any time during which work is being performed by the Developer, a condition shall develop adversely affecting or threatening public health or safety, or a condition develops inimical to the general welfare, or if any Federal, State, County, or municipal government agency, board, department, bureau, or other unit shall lawfully

require any improvement, work, or, installation not expressly shown on the improvement schedule, the Developer agrees to take all necessary reasonable action to abate such threat or condition or to meet such governmental requirement. If the Developer fails to correct such condition within such time as the Town of Chatham in its notice shall specify, the Town of Chatham may order the corrective work to be done, and, failing same, shall be permitted to utilize the security deposited for the purpose of completing such work referred to above in paragraph 4.5(f). The Developer agrees to allow the Town access for the purpose of making such completions

4.9 The Town of Chatham contemplates the inspection of all improvements required hereunder. The Developer shall notify appropriate Town of Chatham officials at least forty-eight (48) hours prior to the commencement of any improvements. In the event of temporary suspension of construction, the Town of Chatham shall be notified of the renewed starting date. Back filling of any improvement that the building inspector and/or Town Engineer deems of significant importance, shall be absolutely forbidden except after inspection and approval by the Town of Chatham.

The Developer shall deposit with the Town of Chatham such amounts as are required to cover the engineering, inspection, and legal fees or charges incurred by the Board and to the Town of Chatham by professionals pursuant to and in connection with this Agreement and in connection with the development application and improvements made pursuant to same. It is specifically agreed that if during the course of the development it appears that the amount of the deposit made is inadequate to meet such costs, the Town of Chatham may require such additional sums to be deposited with it as it may determine necessary and reasonable, and the Developer shall forthwith provide the same. The Town of Chatham shall be and is hereby authorized by the Developer to disburse the deposits in payment of such services are rendered upon proper vouchers therefore, duly sworn by the person or persons rendering the services, and any unused portion of such deposit shall be returned to the Developer by the Town of Chatham upon completion of such work and certification of such completion to the Town of Chatham by the Town of Chatham Engineer. The Town of Chatham professionals, including any part-time construction code officials retained by the Town under this Agreement, shall provide copies of invoices and vouchers to the Developer when the same are submitted to the Town. The Town shall provide an escrow analysis setting forth the deposits and expenditures contemplated hereunder upon the request of the Developer.

The developer shall establish an escrow account in the amount of \$1,500.00, to pay the Town Engineer for such inspection, testing and other actions necessary to accomplish and fulfill the terms of the sound testing protocol set forth hereinafter. The Town may periodically and at its discretion

require the replenishment of the escrow account in the event the balance of such account drops below \$100.00.

5. Time for Completion

5.1 Unless extended by the Town of Chatham ZBA, all improvements set forth as Phase 2 herein shall be completed within two (2) years of the date of the issuance of a building permit for Phase 2. Landscaping shall be installed and planted no later than the date that the last certificate of occupancy, subject to weather conditions, in which event the landscaping shall be installed and planted in the next appropriate planting season.

5.2 In the event the Developer shall apply for any extension of time to complete the project, the Board may recommend that the Town of Chatham grant such application on the condition that increased performance guarantees be provided should the then prevailing costs make such increase necessary to adequately secure the Town of Chatham.

5.3 Upon the issuance of a certificate of occupancy and/or certificate of compliance from the Town of Chatham Building Department, the tent shall be removed within 90 (ninety) days.

6. Performance and Maintenance Guarantees

6.1 As a condition precedent to the commencement of any work contemplated by this Agreement, the Developer shall be required to furnish performance, maintenance, and restoration guarantees in a form and in the amounts acceptable to the Town Engineer and Attorney for the Town in accordance with the approval of the modification of Phase 2 dated May 28, 2015. The guarantees shall comply with applicable statutes, codes and regulations of the Town of Chatham. The intent of such financial security is to ensure the performance if every obligation of the Developer pursuant to this Agreement and to guarantee and indemnify the Town of Chatham from and against any cost, expense, or loss arising, directly or indirectly, from the failure or default, in whole or in part, of the Developer to complete the then current phase of the work required under this Agreement. It is the intent of the parties that the guarantees referred to shall include (by way of example and not by way of limitation) the costs and expenses incurred by the Town of Chatham directly or indirectly attributable to the proposed development, the actual costs of constructing and installing the required improvements on a Phased basis, engineering and inspection fees, costs, advertising, filing, and recording costs, legal fees, costs, and expenses, (including reasonable attorney's fees), witness fees, and related costs and expenses, if any, which may be incurred in the enforcement of the obligations of the Developer. It is the further intent of the parties hereto that the guarantees set forth herein cover any claims arising out of any nuisance or negligence created by reason of the Developer's actions.

- 6.2 Maintenance Guarantee: After final acceptance of the improvements by the Town and release of the Performance Guarantee, the Developer shall provide a maintenance guarantee in favor of the Town of Chatham in a form and an amount acceptable to the Town Engineer and Attorney for the Town for a period that is not to exceed five years.
- 6.3 Restoration Guarantee: As referenced in paragraph 6.2 above, the Developer shall provide a restoration guarantee in favor of the Town of Chatham on the amount fixed in Schedule "B" attached hereto. That guarantee remains in full force and effect under this agreement.
- 6.4 The Town of Chatham Town Board, by resolution, shall, in its discretion, reduce the amount of guarantees: (1) when portions of the improvements have been certified by the Town Engineer to have been completed; or (2) when the same guarantees are required by other governmental authorities with jurisdiction over the Project.
- 6.5 If, after the commencement of construction but before the completion of the development, the Developer abandons the job, files a petition in bankruptcy or insolvency, or is declared bankrupt or insolvent, or suffers any type of receivership, insolvency, bankruptcy, or other similar proceeding to be filed against it, or ceases work for a period of (14) consecutive work days without the permission of the Town of Chatham Engineer, which shall not be unreasonably withheld, and fails to resume work within ten (10) days after the mailing of a notice directing the Developer immediately to undertake the completion of the then current phase of the development at the expense of the Developer, or to pay to the Town of Chatham the costs and the completion of the work, then the Town shall have right to draw upon the guarantees and/or security(ies) established hereunder. Also, the Developer agrees that said performance guarantee provided hereunder, upon reasonable notice to the Developer, may be used by the Town of Chatham at any time for the purpose of repairing damage done to any improvement made pursuant to the development of the work shown on said site plan, which charge shall include, but which shall not be limited to, the following:
- a. The removal of soil or siltage from the street in consequence of erosion or from any cause not directly chargeable to the Town of Chatham, the correction of any grading due to wash out, erosion, or other causes, including the necessity of changing the grades by adding or removing soil at the discretion of the Town of Chatham Engineer.
 - b. Damage or obstruction in the drainage system or any part thereof which may be attributable to the actions of the Developer;
 - c. The repair, replacement, or recondition of any item required to be installed or erected by the Developer under this Agreement; the Developer hereby authorizes the Town of Chatham to expend so much of the aforementioned

cash deposit or bond as may be necessary for any purposes incidental thereto, or for repairs occasioned by the actions of the Developer, without any further authorization by the Developer. Any balance remaining shall be returned to the Developer after final acceptance of all improvements required hereunder, and the posting of a maintenance guaranty, provided same are fully completed in accordance with the terms and conditions of this Agreement.

Delays attributable to normal weather or seasonal causes shall not activate the provisions of this paragraph.

6.6 Upon completion of any improvements, the Developer shall apply to the Town Engineer for a final inspection of the work and shall submit a set of as-built plans to the Town Engineer. The Town Engineer shall prepare a report within forty-five (45) days after the application for final inspection in which he shall certify whether the improvements have been completed in substantial conformance with the plans and in which he shall recommend that the performance guarantee either be released or reduced. The Town Engineer report shall be submitted to the Town Board and the Developer. The Town Board shall by resolution either release or reduce the performance guarantee pursuant to the recommendation of the Town Engineer.

6.7 In the Interpretation and administration of the provisions of this Agreement, reasonable construction standards as determined by the Town of Chatham Engineer shall apply.

6.8 No provision in the Article, or elsewhere in this Agreement, shall be construed to impose any duty or liability of maintenance, inspection, or repair on the part of the Town of Chatham in respect of any private facilities or improvements, whether hereunder or otherwise.

7. **Required Documents**

7.1 Upon completion of all of the improvements and work required under this Agreement, the Developer shall send written notice thereof to the Board and to the Town of Chatham Town Board. The notice shall be accompanied by “as built” plans prepared and certified by a licensed professional engineer or land surveyor. Said plans shall consist of the following:

- a. Plans showing the location, as built, of all improvements required by this Agreement, including, without limitation, the location of water mains, fire suppression system, and all of their appurtenances.

| b. Profiles, Cross-Sections, as built storm sewers
| and their respective appurtenances.

| c. Cross-sections, profiles, as built, of streets, roads, and drives.

7.2 No event shall occur at the site until the Developer has fully complied with all requirements established pursuant to this Agreement and pursuant to the Site Plan Approval, including, but not limited to the following items insofar as they are necessary for the applicable phase of the project:

- a. All storm and surface drainage requirements;
- b. All utilities installation requirements;
- c. All Building Code requirements;
- d. All street and road construction requirements;
- e. All Board of Health requirements;
- f. All applicable laws, ordinances, resolutions, rules, and regulations hereinafter set forth;
- g. All sanitary sewage disposal system requirements;
- h. All refuse collection and storage requirements;
- i. All landscaping requirements. In no case shall an event occur at the site if a breach or default in this Agreement has occurred and has not been cured.

7.3 No building permit shall be issued if the Developer is, at such time, in violation of any term of this Agreement. It is further understood that nothing in this Agreement shall exempt the Developer or any other person from complying with all ordinances, resolutions, regulations, and rules of any Board of the Town of Chatham, the County of Columbia, and the State of New York.

7.4 The Developer shall adhere to the requirements of the Code of the Town of Chatham with respect to the application for and issuance of building permits and certificates of occupancy required for the development of the Project. Notwithstanding the foregoing, the parties stipulate and agree that the Code Enforcement Officer or his designee shall complete his review of any application for a building permit and either approve or deny the application within thirty (30) days of receipt of such application. If a building permit is denied at any time, the Code Enforcement Officer or his designee shall provide the Developer, in writing, with the reasons for such denial. Upon the resubmission of any denied application for a building permit, the Code Enforcement Officer shall complete his review of the application and either approve or deny it within ten (10) days of receipt of the application.

7.5 The parties agree that the Town will retain a Town Engineer or a part-time construction code official, at the Developer's expense, to comply with the terms of this Agreement. This official shall be competent and experienced and properly licensed as a building inspector under New York State Law. The Developer agrees to reimburse the Town for its costs in retaining this part-time official. To effectuate this reimbursement, the town may draw upon the "cash deposit" in accordance with the

terms set forth herein and in the attached Schedule “D”. Notwithstanding the foregoing, nothing herein shall be construed or interpreted as giving rise to an employer/employee relationship between the Developer and such part-time construction code official.

7.6 The Parties agree that as an effort to mitigate certain sound impacts of the project, the Developer shall follow the Sound Testing Protocol set forth in Schedule “C” that is attached hereto and made a part hereof and agree to comply with the requirements of the escrow agreement as set forth in Schedule “D” that attached hereto and made a part hereof.

7.7 The Parties further agree that as an effort to further mitigate certain sound impacts of the project, the Developer shall follow an Enforcement Protocol which will be reviewed and prepared by the Town Attorney, in substantially the form set forth in Schedule “F” that is attached hereto. The final form of the Enforcement Protocol will be subject to the approval of the Town Attorney, in consultation with the Zoning Enforcement Officer and the Applicant and shall be binding upon all parties, unless and until the parties mutually agree to revise or amend such protocol.

8. General Regulations and Additional Conditions

8.1 It is agreed that any assignment hereof or transfer of sale of the Developer’s Approval or the land in question shall not operate to relieve the Developer from its obligations hereunder to complete the construction of all improvements required hereunder, nor will the same, without the consent of the Town, relieve the Developer from performing during said period all the obligations of this Agreement required to be performed during such a period. Notwithstanding the foregoing, nothing herein shall prevent, limit or restrict the Developer from selling, transferring or assigning its land or Approvals.

8.2 In the event that the subject matter property at some point receives an exemption for the payment of real property taxes due to the Developer’s tax-exempt status, the Parties agree that the Developer shall make certain payments to the Town, County and School District despite such exemption from the payment of real property and school taxes as follows:

8.2.1 On or before January 31 of each tax year for which all or any portion of the Property is shown as exempt on the Town tax assessment rolls, PS21 shall pay to the Town on behalf of the taxing authorities for which the Town collects taxes, an amount which, when added to the taxes of such taxing authorities actually assessed and levied against the Property for such tax years, totals a sum equal to the tax which would have been assessed and levied against the Property if (1) the Property were not exempt and (2) the use of and improvements upon the Property were as such use and improvements existed as of the date of the 2004 tax assessment.

8.2.2 On or before September 30 of each tax year for which all or any portion of the

Property is shown as exempt on the School District tax assessment rolls, PS21 shall pay to the School District on behalf of the taxing authorities for which the School collects taxes, an amount which, when added to the taxes of such taxing authorities actually assessed and levied against the Property for such tax years, totals a sum equal to the tax which would have been assessed and levied against the Property if (1) the Property were not exempt and (2) the improvements existed as of the date of the 2014 tax assessment.

8.2.3 The foregoing shall apply only with respect to tax years during which the Property is to be used for the uses approved pursuant to said Special Use Permit.

8.2.4 If within 14 days prior to the date upon which any payment by PS21 hereunder is due the Town or the School District has not provided PS21 with an assessment (made in good faith and consistent with comparable assessments made within its taxing jurisdiction) and a hypothetical tax levy (based upon such assessment and the then current tax rates) upon which PS21 is to calculate its payment hereunder, the payment due for such tax year shall be an amount equal to that made in the year immediately preceding or, if none, then that made in 2014.

8.3 It is agreed and understood that the Developer shall be responsible to secure at its expense any and all approvals required by state, county, federal, municipal, or other agencies having jurisdiction prior to any event held in the respective phases.

8.4 It is agreed that the granting of approval by the Planning Board of the Site Plan shall not be deemed to be a favorable recommendation and report by the Board to the Construction Code Official, and the same shall not be regarded as conclusive upon him in respect of matters within his jurisdiction.

8.5 The Developer agrees not to commit a public or private nuisance and further agrees to abate any such nuisance within (5) five days written notice from the Board or the Town of Chatham Engineer. Notwithstanding anything to the contrary herein, no provision of this Agreement shall be deemed a waiver of any rights or powers of the Board or any agency of the Town under any statute, ordinance, or other law.

8.6 The Developer will be responsible to correct and make safe any dangerous or unsafe condition created by the Developer or those acting for it affecting public safety or general welfare, or affecting the safety or welfare of other occupants of the project, in any such conditions develops.

8.7 The Developer shall, after completion of the work, remove all rubbish and debris, scaffolding, temporary construction tools, and surplus materials, and shall leave all work in a clean and new condition.

9. **Additional Requirements**

9.1 The Developer agrees to perform all conditions required by and under the Special Use Permit, Variance Approval, if required, and Site Plan Approval and any

subsequent Resolutions impacting upon the application.

- 9.2 The Developer shall secure all final approvals, if any, from the New York State Department of Conservation.
- 9.3 The Developer shall not remove nor replace any trees critical to maintaining existing screening or buffering of public viewsheds, except as specifically provided in the approval Resolutions of the ZBA and/or Planning Board or as specifically set forth on the Site Plan Approval or as may be agreed to by the Town Engineer. In the event removal or replacement of trees within these areas should be required, the Developer must secure advance approval for the removal or replacement of same from the Town of Chatham Engineer (who may consult with the Planning Board if deemed necessary). Such approval shall not be unreasonably withheld.
- 9.4 Nothing herein contained shall be construed as preventing the Town of Chatham or the Developer from exercising in any court or elsewhere any rights for duties, which may have, by statute, ordinance, or other law. Nothing herein contained shall be deemed a waiver by the Town of Chatham or any ordinance or State Statute or other law, or be construed as an abridgement, preemption, or waiver of the powers of any municipal board, agency, or public body. This clause shall not operate to confer upon any such body any powers, rights, or duties it does not now possess, nor abridge the rights of the Developer concerning any such public body.
- 9.5_ The covenants, undertakings, agreements, and other obligations mentioned in the Agreement shall not be construed as representations by the Town of Chatham, the Board, or by any Town of Chatham officer, board, or employee to have or to assume any contractual or other liability to or with any persons, firms, or corporations purchasing any land, buildings, or improvements from the Developer or otherwise using or having any interest in the same, nor shall this Agreement be construed to work any liability on the Town of Chatham or any Board of the Town Chatham.
- 9.6_ Nothing herein contained shall be construed to render the Town of Chatham or any of its officers, board, or employees liable for any charges, costs, or debts for material, labor, or other expenses incurred in the making of the improvements.
- 9.7 The Developer agrees that any time the Developer fails to comply with any of the terms of this Agreement or any part of the requirements herein mentioned, the Town of Chatham may forthwith stop all further work on said improvements until

the work has been corrected or otherwise made to comply with the terms of this Agreement. If the violation is not corrected within forty-eight (48) hours, or such other time as is reasonably practicable, then the completion of said work may be undertaken by the Town of Chatham and paid for with the cash guarantee.

9.8 Nothing contained in this Agreement shall be construed to give any person or legal entity, not a party to this Agreement, any claim against the Town of Chatham or any of its agents, or agencies, with respect to the matter or installation of improvements, or for any damages arising therefrom.

9.9 Should it become necessary for the Town of Chatham or the Board to institute any action to enforce the terms of this Agreement or of any ordinance or of any conditions of any approval heretofore or hereafter granted to the Developer in connection herewith, the Town of Chatham or the Board shall be entitled to recover reasonable counsel fees from the Developer, said Developer agreeing to pay same.

10. **Effective Date**

10.1 This agreement shall become effective as of the date set forth on the top of the first page of this Agreement.

11. **Notices**

11.1 Any notice or other communication from one party to another shall be in writing and sent by registered or certified mail in a postage paid envelope addressed to the other party at the address set forth above. The address above may be changed by notice to the other party.

12. **Execution in Counterparts**

12.1 This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, and all of which together shall constitute a single instrument.

13. **Headings/Interpretation of Syntax**

13.1 The headings contained in this Agreement are for reference purpose only and shall not affect the meaning or interpretation of this Agreement. All references made and pronouns used herein shall be construed in the singular or plural, and in such gender, as the sense and circumstances require.

14. **Further Assurances**

14.1 The parties shall take such further actions and execute and deliver such additional documents and instruments as may be reasonably requested by any other party in order to perfect and complete the transactions contemplated herein.

15. **Binding Agreement**

15.1 This Agreement shall insure to the benefit of and be binding upon the parties and their respective successors and permitted assigns.

16. **Waiver of Breach**

16.1 Waiver by any party of a breach or violation of any provisions of this Agreement shall not constitute a waiver of any subsequent breach or violation of the same or other provisions of this Agreement.

17. **Governing Law**

17.1 This Agreement shall be construed and interpreted in accordance with and governed by the laws of the State of New York.

18. **Partial Agreement**

18.1 This Agreement expresses only portions of the respective obligations of the parties. The Developer remains bound by all conditions of the land use approval which occasioned entry into this Agreement.

19. **No Oral Exchange**

19.1 This Agreement may not be changed or ended orally. This Agreement may not be changed or cancelled except in writing. Each of the parties hereby authorize their consultants to agree in writing to any changes in dates and time periods provided for in this Agreement.

20. **Multiple Parties**

20.1 If there is more than one Developer, the word "Developer" used in this contract includes them.

21. **Execution**

21.1 The parties have executed this Agreement as of the date at the top of the first page.

Town of Chatham Town Board

QUESTATERRA, LLC

PS21, Inc.

By: Jesse DeGroot, Supervisor

By:

By:

SCHEDULE "A"
SCHEDULE OF IMPROVEMENTS

SCHEDULE "B"
COMPLETION/MAINTENANCE/RESTORATION GUARANTEES

SCHEDULE “C” SOUND/NOISE PROTOCOL

Noise/Sound Testing Protocol

1. The Scope of the Noise Testing

The purpose of the noise testing and testing protocol is to ensure that the PS21 performance venue is in compliance with the noise limit parameter set forth within the review under the State Environmental Quality Review (“SEQRA”), its findings and the Special Use Permit issued for the project by the Town of Chatham Zoning Board of Appeals. In planning to undertake Noise Testing, a number of factors need to be considered. These include:

- Local environmental and acoustic conditions (e.g. localized or extraneous noise sources).
- Relevant changes at the facility (e.g. operational changes) since the last noise testing.

While the above list is by no means exhaustive, it does itemize some of the preliminary considerations.

In practice, the scope and the extent of the Noise Testing will need to reflect the site-specific conditions and the operating history of the site. The Town of Chatham will expect PS21 to especially consider, when conducting the Noise Testing, those areas where there has been noise concerns expressed in the past. Other factors which will influence the scope and duration of the Noise Testing include:

- The characteristics of the noise sources at the facility - e.g., is the noise typically broad-band, tonal and/or impulsive.
- The normal operating times of noise sources at the facility and any possible variations or irregular emissions, e.g., intermittent emissions even of short duration can cause annoyance and/or disturbance.

The testing work shall be undertaken as part of the commissioning of the sound system for the new facility. The testing shall be undertaken in a manner which can be predicted to be representative of typical or preferably worst-case operational conditions.

2. Competent Person:

The person who carries out the testing work must be a "competent person". It is important that the competent person is involved in determining the scope and extent of the noise testing as well as undertaking the fieldwork. All competent persons must possess a

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combination of technical knowledge, experience and skills, and must be able to demonstrate, at a minimum:

- Good comprehension of relevant acoustical standard.
- A clear understanding of the obligations with regard to noise.
- Familiarity with acoustical monitoring equipment and with a range of noise indices including: L10,L90,Lmax, Leq.
- An ability to analyze, interpret and explain results.
- An ability to perform necessary acoustic calculations and predictions, where appropriate.
- An ability to recognize when more specialized expertise may be needed.

A competent person needs to demonstrate both practical and theoretical competence and should participate in continual professional development.

3. Testing, Methodologies and Assessment Procedures:

Sampling will occur during the commission process as outlined below. As previously stated, it is important that the testing is undertaken during a period which is representative of typical or worst-case operational conditions. It has been decided that the most crucial time periods to test are therefore between 9:00 am and 930 am, and between 11:00 pm and 11:30 pm (on a Friday or Saturday): the transitional periods at the beginning and at the end of PS21’s hours of operation. Whether it requires multiple people or multiple days, 30 minute samples during these periods will be taken at each of three agreed upon monitoring locations.

The location of some of the monitoring positions shall be the same as those used for baseline noise studies included within the SEQRA findings for the project. These areas shall be agreed upon with the Town Engineer and Zoning Enforcement Officer prior to any testing. If additional measurement locations are required, a similar selection process as that used for the baseline noise studies should be followed.

The selection of monitoring positions is further addressed below; however, in practice these will generally include points along the site boundary (on the north, and east side), and 10 feet outside the roof line of the Pavilion. Significant variations from the prevailing conditions applicable during proceeding testing shall be noted. All other factors shall be as close as possible to being the same, at least over the representative sampling interval or period.

Measurement shall be attended by the Town Engineer or Town designated Competent Person in order that the numerical values obtained can be confirmed by the assessment personnel as being wholly attributable to the facility (activity) under investigation. Attended measurements will facilitate the identification of extraneous sources and tonal elements.

SCHEDULE “C”

Prior to any testing, PS21 shall designate the professional performing the testing on their behalf. PS21 shall also grant permission to the Town of Chatham to enter upon the site during the commissioning to observe and confirm the results of the commissioning process.

4. Commissioning Procedure:

When the pavilion is complete and the sound system and limiter have been installed, the designated professional performing testing on behalf of PS21 will commission the sound system limiter. PS21 shall coordinate the testing with the Town a minimum of 48 hours prior to initiating the testing. Pink noise shall be the signal used to commission the limiter. According to page 520 of Springer Handbook of Acoustics edited by Thomas D. Rossing (Springer 2007) pink noise is defined as follows:

Pink noise has a spectral density that decreases inversely with the frequency. Consequently, pink noise decreases at a rate of 6 dB per octave. On average, every octave band has the same amount of power.

Pink noise shall be played on all speakers of the venue sound system and the designated professional shall walk the perimeter of the pavilion at 10 feet outside of the roofline undertaking a series of short-term sound level measurements. The noisiest measurement position will be selected, and the designated professional will stand at this location and have the audio engineer controlling the sound system reduce the sound level of the pink noise until the reading measured by the designated professional at this particular location measures Leq 85 dBA, and set the limiter to not exceed the setting of the level of the sound system that resulted in that reading.

Once the limiter is set, the pink noise will be turned off and then the designated professional shall undertake a series of ambient sound level measurements at the specified and agreed upon monitoring positions at the PS21 property line. Several Noise Indices will be recorded, but the index that will be used for the ambient noise when testing compliance of the sound system with the New York State Department of Environmental Conservation (“DEC”) noise guideline shall be an A-weighted equivalent continuous level averaged over a 30 minute period (Leq).

After all ambient measurements have been taken; the pink noise will once again be turned on, with the limiter setting as discussed above in effect. The designated professional shall undertake a series of sound level measurements of the sound system at the same specified and agreed upon monitoring positions. Several Noise Indices will be recorded, but the index that will be used for the level of the sound system when testing compliance of the sound system with the DEC noise guideline shall be an A-weighted equivalent continuous level averaged over a minimum one minute period (Leq) or as long as necessary to legitimately measure the pink noise.

If after performing the above procedure it becomes apparent that the recommended limiter setting based on Leq 85 dBA results in a sound system level greater than 5 dB above the ambient level at any particular agreed upon monitoring location, then the limiter will be

SCHEDULE “C”

reset to a lower level such that the least compliant of the monitoring positions will measure exactly 5 dB above ambient. Though a compliance level, as described above, has been selected in the context of amplified sound, PS21 agrees, as part of the commissioning process, to ensure that both amplified and unamplified sound do not exceed said compliance level.

5. Monitoring Positions:

Measurement positions shall be similar to those evaluated in the analysis presented in the Acoustic Distinctions Letter Report dated December 15, 2015. If for any reason these positions are not accessible and/or are unsuitable; then alternative positions may need to be selected in consultation and approval with the Town Engineer and Code Enforcement Officer.

Given that the primary objective of the Noise Testing is to determine the level of compliance, the measurement positions shall include those positions which are most affected by the facility's emissions. The "worst-case" sampling positions shall always be selected for monitoring purposes. This can be achieved in practice by walking accessible portions of the site boundary and undertaking continuous monitoring of the sound level. The noisiest measurement positions can then be selected for monitoring purposes and appropriate and representative intervals can be sampled (typically 30 minute durations). Refer to Exhibit 1 for proposed monitoring positions.

In instances, where the measured boundary levels at the noisiest positions are clearly in compliance with license limits, there should be no onus to undertake extensive measurements along the site boundaries. If for some reason, however, the noisiest position is unrepresentative or atypical, a series of supplementary positions or tests can be selected to demonstrate this. In most situations, the monitoring positions shall be representative of different compass points along the boundary. Consideration should be given to extraneous noise occurrences which could affect the testing results and the testing should be adjusting accordingly to avoid such impacts.

The noise measurement shall be carried out at least 15 feet from any reflecting structure other than the ground. The preferred position for the microphone is 5 feet above ground level.

6. Measurement Equipment:

Noise emission levels generally have a maximum tolerance of 2 dB for short-term occasional exceedances as specified by the manufacturer and appropriate ASTM standard. It is therefore essential to ensure that the equipment used or monitoring can be guaranteed to perform within this tolerance.

A Type 1 Sound Level Meter (SLM) will be used for measurements. PS21 previously purchased for the benefit of the Town of Chatham, a noise meter, and appurtenances for use by the Town and its representatives. Since measurements will be undertaken by PS21's

SCHEDULE “C”

designated professional, that designated professional may use their own sound SLM so long as it meets all specifications described in this document. Otherwise, the designated professional will use the SLM belonging to the Town of Chatham. The SLM must have a recent (annual or, as a minimum, biennial) traceable calibration. It is equally important that the SLM is checked in the field before and after any measurements by the use of an acoustic calibrator with a recent (annual or, as a minimum, biennial) traceable calibration.

The principal noise index to be recorded shall be the Leq. The A-weighted equivalent continuous level averaged over a specified time period (Leq) shall be the metric used to measure both ambient levels with the sound system off and the levels with the sound system on that are being tested for compliance. Logging interval during testing events shall be a maximum of 3 seconds.

7. Noise Indices:

One of the fundamental requirements of the Noise Testing and commissioning process is to determine whether or not the licensed activity complies with the DEC Noise Policy.

The following is the relevant section from the DEC Noise Policy:

The goal for any permitted operation should be to minimize increases in sound pressure level above ambient levels at the chosen point of sound reception. Increases ranging from 0-3 dB should have no appreciable effect on receptors. Increases from 3-6 dB may have potential for adverse noise impact only in cases where the most sensitive of receptors are present. Sound pressure increases of more than 6 dB may require a closer analysis of impact potential depending on existing SPLs and the character of surrounding land use and receptors. SPL increases approaching 10 dB result in a perceived doubling of SPL. The perceived doubling of the SPL results from the fact that SPLs are measured on a logarithmic scale. An increase of 10 dB(A) deserves consideration of avoidance and mitigation measures in most cases. The above thresholds as indicators of impact potential should be viewed as guidelines subject to adjustment as appropriate for the specific circumstances one encounters.

Based upon the analysis conducted in preparation for the Project construction, the Noise testing and prior experience with the sound equipment that will be used, the level of amplified sound of the pavilion as measured at the agreed upon monitoring positions shall not be greater than 5 dB above the ambient level as measured at the respective monitoring positions, when both levels in question are measured as A-weighted equivalent continuous levels, the ambient averaged over 30 minutes, and the measurement of the facility averaged over 30 seconds.

All SLM instrumentation utilized shall permit the logging, recording, and printing of the A-Weighted Leq index. Minimum requirements on the content and layout of such reports is given in the form of a checklist which is presented in Appendix I.

SCHEDULE “C”

8. Interpretation of the Result:

The results of the Noise Testing for the sound system and limiter commissioning at the PS 21 facility must be presented to the Town Engineer within 15 business days upon completion of the commissioning. The sound system and limiter commissioning shall be repeated prior to the opening of each summer season (annually). During the first year, commissioning will occur as described above, by testing at the selected property line locations, as well as the pavilion locations at 10 feet outside of the roofline. In subsequent years, testing only the pavilion locations at 10 feet outside of the roofline will be required. The results of the annual commissioning shall be submitted by the Applicant to the Town of Chatham Zoning Enforcement Officer and Town Engineer. .

9. Weather Conditions:

Measurements shall be taken in 'neutral' weather conditions. This means in the absence of wind and precipitation, and in conditions of standard temperature and pressure. Clearly, these conditions very rarely apply. However, the potential errors in measurements are small if reasonable care is taken to avoid the worst excesses of the elements. The SLM must be fitted with a windshield under all circumstances. An average wind speed of less than 10 MPH is the preferred limit when noise measurements are being taken, with 15 MPH an upper limit. In all cases, care shall be taken to avoid measurements so close to objects as to give rise to wind-derived noises, e.g. trees, etc.

Wind speed and wind direction have the potential to affect the noise measurements. The prevailing weather conditions at the time of measurement shall be noted and recorded in the testing report. The on-site meteorological data shall be accessed and referred to in the noise measurement report.

Measurement shall generally be avoided in rainy or dense foggy conditions. The use of protective covers for SLMs can create noise from impacting raindrops. Common sense must be used at all times to protect the instrumentation and the prevailing conditions must be clearly stated to allow a qualitative judgment to be made on the validity of the measurements. Noise attributable to wind and or rain should be at least 10 dB below the noise source being measured; otherwise the measurements may be invalid.

SCHEDULE “D”

AGREEMENT FOR THE PAYMENT OF SOUND/NOISE PROTOCOL EXPENSES

This Agreement dated April , 2015 by and between the Town of Chatham, a municipal corporation with its principal office located at 488 Route 295, Chatham, NY 12307 (hereinafter referred to as the “Town”) and QUESTATERRA, LLC, and/or PS21, Inc., with its principal place of business located at PO Box 364 Chatham, NY 12037 (hereinafter referred to as the “Owner”).

WHEREAS, the Owner has received approval of an application to the Town of Chatham Planning Board and Zoning Board of Appeals (“ZBA”) for Site Plan approval and the issuance of a Special Use Permit, respectively, for a performing arts facility located on Route 66, Town of Chatham, New York; and

WHEREAS, the ZBA acted as Lead Agency for the SEQRA review of this project and the Owner, the ZBA and the Planning Board determined that potential impacts with regard to sound emission could occur and further determined that in order to mitigate such impacts a sound testing protocol must be established to ensure that the sounds created by the project do not exceed the approved levels; and

WHEREAS, the Owner recognizes that the Town will be required to expend funds relating to the implementation and maintenance of the sound testing protocol;

NOW THEREFORE, in consideration of the mutual promises herein, the Town and the Owner agree that the terms and conditions of this Agreement are the following:

1. Owner shall reimburse the Town in full for all reasonable and necessary costs associated with such sound testing protocol including but not limited to engineering, and other professional fees and overtime pay of town officials incurred in connection with the review of this project, including but not limited to compliance with SEQRA and all other approvals required from the Town of Chatham. QUESTATERRA, LLC shall not be required to reimburse the Town for any legal, engineering or other professional fees associated with any litigation related to the project.
2. Upon execution of this Agreement, QUESTATERRA, LLC shall deposit the sum of \$1,500.00 with the Chatham Town Clerk whom shall hold the funds in escrow to be used to pay the reasonable and necessary engineering, legal and other professional fees

incurred in the review of the project.

3. In accordance with the Town of Chatham Code, the Town shall submit an itemized bill to QUESTATERRA, LLC, through its attorneys, at least 5 days prior to any deduction of such amount billed from the escrow account.
4. The Town may periodically and at its discretion require the replenishment of the escrow account.
5. Upon completion of the application and review process, any balance remaining in the escrow account shall be refunded to QUESTATERRA, LLC within 30 days of the submission and payment of the final bill by the Town and payment in full of all application and approval fees.

SCHEDULE “E”

ZBA Approval Resolution May 28 2015

RESOLUTION

**TOWN OF CHATHAM ZONING BOARD OF APPEALS MODIFICATION OF SPECIAL
USE PERMIT APPLICATION**

**QUESTATERRA, LLC
NOT-FOR-PROFIT RECREATIONAL FACILITY**

May 28, 2015

I. WHEREAS, the Applicant Questaterra, LLC previously submitted an application for and received approval of a Special Use Permit for certain lands located in the Town of Chatham for a not-for-profit recreational facility in April of 2005, and

II. WHEREAS, the project at that time was more specifically described as follows:

The project was originally proposed to create a performing arts center to host professional, amateur and student music dance and other cultural and recreational performances. The proposed project was planned to disturb approximately 18.38 acres of the entire 107.2 acre site all but 4.71 acres (approximately 4.4% of the total project site) of which was to be reclaimed primarily as meadow landscape upon completion of construction. The applicant proposes to complete the project in two (2) construction phases. Phase 1 included the construction of the 300 seat performance space that will include the erection of a 4,800 square foot saddle span seasonal concert tent with chairs and stage, a 2,800 foot long, 22 foot wide gravel driveway, construction of a NYSDOT approved site entrance, gravel parking for 170 vehicles, construction of walkways, installation of lighting and utilities, stormwater management and drainage, entrance sign, grading and site restoration. Phase 2 of the project was proposed to include the construction of a 28,420 square foot PS/21 performance building seating 405 patrons, 4,650 foot interior paved driveways, 45 additional parking spaces, additional site lighting, utilities, walkways, water and septic systems,

grading, seeding and landscaping of the site. Upon completion of the construction of the permanent building in Phase 2 and in no event longer than 5 years from the date of the approvals herein, the temporary space will no longer be utilized.

The site is located on two (2) contiguous parcels (Tax Parcel 56-1-22.11 and 56-1-21) along the west side of New York State Route 66, within the Town of Chatham, Columbia County, New York. The southern property line is located approximately 500 feet north of the Village of Chatham. The site is bound to the south by the Crellin Park, bound to the west by the Stony Kill Creek, and bound to the East by New York State Route 66. The site is situated within a transitional area between the Village of Chatham to the south, an area with high density and mixed use, including recreational and industrial uses, and the Town of Chatham to the north, which is predominantly developed for rural residential and agricultural use. Additionally, a 200- foot wide NYS Electric and Gas easement traverses the site from east to west. Directly to the north of the site is a 90-acre parcel owned by a neighboring landowner. This parcel further separates the project site from Highbridge Road by an average of 1000-feet of presently undeveloped land. There are homes immediately across the Stony Kill and across Highbridge Road. To the northeast are open fields with a large pond, which the wetlands along NYS Route 66 drain into. There is a cluster of three houses immediately northeast of the site, on the western side of NYS Route 66, a distance of approximately 3,500-feet from the building site, and

III. WHEREAS, the site is located within the H-1 (Hamlet one) zone and also the RL-2 (Rural Lands two) zone. Other than the construction of the site entrance and driveway, there is no additional development within the H-1 zone; the parking, tent and proposed building structures are located within the RL-2 zone. The RL-2 zone allows, with a special use permit,

public and semi-public buildings and uses, and recreational facilities and recreational buildings. The H-1 zone allows accessory use and with a special use permit, non-profit recreational uses, and

IV. WHEREAS, the original Special Use Permit included 32 conditions of approval. Additionally a noise protocol was established under which the sounds generated from the tent would be monitored both by the Town and the Applicant.

The Applicant fulfilled each of the conditions of approval and constructed the tent and associated improvements. They also adhered to the noise protocols. During the period of active noise testing, no incidents of violation of the protocols were experienced.

After a period of time, the Applicant requested a modification of the noise protocols in order to be relieved of the requirement to continue to be required to undergo the rigorous testing since no violations or legitimate complaints attributable to the project were noted. In or about January 2007, the ZBA granted a modification of the Sound/Noise Protocols.

Thereafter, the Applicant sought a further modification of the original 2005 Special Use Permit to obtain an extension of the time period during which the tent (under Phase 1 of the original approval) could be used. The Applicant based such request upon the need to have further time to raise funds to commence and complete construction of the permanent building under Phase 2. The ZBA granted a modification of the Special Use Permit that included an increase in the hours of operation and the number of events, among other things, but denied an extension of the time to use the tent from the end of the 2010 season to the end of 2012 season, and

V. WHEREAS, the Applicant filed an application in 2009 for a modification of the Special Use permit and certain of the conditions attached thereto, to wit: a modification of the Conditions of Approval to change the use of the tent from that of a temporary use through the end of the 2012

season, to a permanent use, without an end date. The request was based upon the Applicant's inability to commence and complete construction of the permanent facility and based upon the allegation that there is little to no objectionable noise/sound generated by use of the tent. That application was approved in February 2010, confirming the lack of impacts from the facility, and

VI. WHEREAS, the Applicant filed the subject matter application for a modification of the Special Use Permit and the conditions attached thereto on or about December 15, 2014. The new Phase 2 building was proposed to be a 14,500 square foot partially enclosed permanent structure, having an east/west orientation with seating for 300 people, in addition to a "Black Box" area, within the pavilion which would become fully enclosed from approximately October 16 to May 14, with seating for 100 people, in addition to performance stage, adjunct stages, ticket booth, storage, restrooms, rehearsal rooms and mechanical rooms, and

VII. WHEREAS, The ZBA was the Lead Agency in the initial SEQRA review of the within project and continued in that role herein and conducted an extensive and exhaustive review of all potential environmental impacts, caused the creation of an EIS with regard to the initial approval, based upon numerous reports, analysis, studies, documents, discussions, proceedings and findings, all of which were reviewed and considered in conjunction with each of the ensuing modification and the within application for a permanent structure.

The ZBA declared itself Lead Agency for the within application without objection from any of the involved or interested agencies. As the Lead Agency herein, the ZBA reviewed all prior SEQRA determinations and findings, together with several further pieces of evidence including submissions and narratives from the Applicant and the Town Engineer concerning all relevant environmental issues, which are made a part of the examination and determination made herein and

thus the ZBA has taken the requisite “hard look” at all associated environmental issues herein and thus the ZBA determines that a further or amended SEQRA Findings Statement is not required herein.

Of special interest and focus, the issue of sound generation and its impacts by the proposed modification was examined in depth by the ZBA having received, considered, analyzed, and discussed multiple reports from the Applicant’s engineers and the Town engineer, all of which are part of the record; and

VIII. WHEREAS, the ZBA was guided by the standards contained in the Town of Chatham Zoning Law:

§180-44 B. states, “The Zoning Board of Appeals shall grant special use permits upon a finding by the Board that the granting this special use permit will be in harmony with this chapter and will not adversely affect the neighborhood in which the use will occur.” Additionally, the Town Code delineates the standards by which applications of special use permits shall be evaluated in §180-44 N. as follows:

“N. Standards applicable to all special uses.

1.) The location and size of the use, the nature and intensity of the operations involved, the size of the site in relation to it and the location of the site with respect to the existing or future streets giving access to it shall be such that it will be in harmony with the orderly development of the district, and the location, nature, and height of buildings, walls and fences will not discourage the appropriate development and use of adjacent land and buildings, walls and fences will not discourage the appropriate development and the use of adjacent kind and building or impair the value thereof.

2.) Operations in connection with any special use shall not be more objectionable to nearby properties, by reason of noise, fumes, vibration or flashing lights than would be the operations of any permitted use.”

Additionally the Town Code of the Town of Chatham §180-44 D. authorizes the ZBA to impose such reasonable conditions and restriction upon the granting of a special use permit as are directly related to and incidental to the proposed use.

IX. WHEREAS, the ZBA referred the application to the Columbia County Planning Board (CCPB) for review and comment pursuant to the General Municipal Law §§ 239-1 and 239-m, the CCPB found that the proposed action will likely result in no countywide or intercommunity impacts and recommended that the action be approved by letter dated May 21, 2015, and

X. WHEREAS, the ZBA duly published, noticed and held a public hearing on application on March 30, 2015, and ultimately closed the hearing that evening, and

XI. WHEREAS, during the Public Hearing the Applicant submitted among other things documentation dated December 15, 2014, February 12, 2015, March 30, 2015 relating to water supply, site lighting, fire suppression (including sprinkler system and water storage cistern), visual impacts and comparisons of impacts with the prior/current facility, architectural renderings of the proposed building, a sound generation study from Acoustic Dimensions dated December 15, 2014 which included calculations showing that the sound generated by events at the new building would significantly decrease at the property line due to modifications of the building, studies and information dated December, 2014, a preliminary Stormwater Pollution Prevention Plan (SWPPP)

dated December, 2014. Additionally, the ZBA took testimony from the Applicant, its engineers, architect, sound experts and from the Town's independent engineer. The Town engineer submitted comments regarding the material submitted by the Applicant dated January 21, 2015 and February 26, 2015.

Further, several members of the public testified both in favor of and against the application. Those testifying in favor of the project pointed to the benefits realized by the public, the Town and the community relating to the cultural, musical and other events held at the site. Those testifying against the project opined that the sound generated by the current tent usage negatively impacted their lives and that since the original Phase 2 was to be a fully enclosed building that would eliminate such impact, then the partially enclosed permanent building now being proffered could cause some aspects of the impact to continue.

After receiving the comments of the public at the March portions of the public hearing the ZBA carefully examined each document and the information contained therein and discussed the potential impacts. The great majority of the discussion focused on the sound impacts, how it should be measured, including a review of the NYSDEC sound protocol (which the ZBA acknowledged were created primarily with sounds emanating from gravel mines in mind), in what location(s) the sound should be measured (whether at the source, the property line and/or the various points from where it might heard). The ZBA also carefully examined the previous approvals and conditions thereof and requested that a new exhaustive list of conditions be created both for the within Resolution and to be inserted in a new Developer's Agreement.

NOW THEREFORE IT IS HEREBY DETERMINED AND FOUND THAT,

Modification of the project approval shall:

- A. Be in harmony with the orderly development in the district based upon its location and size of the use, the nature and intensity of the operations involved, the size of the site in relation to it and the location of the site with respect to the existing or future streets giving access to it;
- B. Not discourage the appropriate development and use of adjacent land due to the location, nature, and height of buildings;
- C. Not discourage the appropriate development and use of adjacent land and buildings due to walls and fences; and
- D. Not impair the value of adjacent land and property.

Based upon the below further factors it is further

DETERMINED AND FOUND THAT

1. The project is located on Route 66 near the edge of the Village of Chatham, immediately south of the project is located in the Crellin Park, operated by the Town of Chatham, which is the site of several playing fields, a pavilion and a swimming pond that obviously is thus utilized as a public not-for-profit recreational facility. Also, the Sonoco-Crellin Plastics plant and waste treatment facility are located within a tenth of a mile of the project. The project is surrounded on three other sides by primarily low-density residential uses due to the zone (RL-2 which has a minimum lot size of 5 acres) in which it is located. There are also other light commercial uses, such as a horse farm and riding academy. Additionally, the CSX (Conrail) railroad tracks run parallel to the west boundary of the site approximately 1,000 feet away, handling approximately 25-30 trains, daily. Further, the size of the use in relation to the site is minimal since the use is proposed to occupy only 4.71 acres of the overall parcel of 107.2 acres. Additionally, the site in relation to existing street location, has a minimal impact since actual project site is more than 1000

feet from Route 66 and the applicant has applied for and received a curb cut permit from NYSDOT which includes an acceleration/deceleration lane. All work required under the cash cut permit has been completed. The Town Board of the Town of Chatham also previously petitioned the NYSDOT and achieved a reduction of the speed limit at the junction of the access road with Route 66 from 55 mph to 45 mph. Since the modification of the Special Use Permit shall not cause a significant change to the project as it is currently configured, the operation shall continue to be in harmony with the orderly development in the district based upon its location and size of the use, the nature and intensity of the operations involved, the size of the site in relation to it and the location of the site with respect to the existing or future streets giving access to it.

2. There are no walls or fences that are proposed in conjunction with the modification of the project, thus the project does not discourage development with respect to that issue. There was no evidence submitted during the public hearing process or obtained by the ZBA that would contradict or negate the information submitted the applicant.

3. The Applicant requested modification of the Conditions of Approval to change Phase 2 from a permanent fully-enclosed building to a permanent partially enclosed building and for the use of the tent to be permanently terminated upon the issuance of a Certificate of Occupancy/Certificate of Compliance for the building. The ZBA finds that the modification of Phase 2 of the original approval as set forth herein would not make the entire project more objectionable than permitted uses in the zone. Indeed, one of the most logical alternative uses for the property, to wit, the construction of 20 or more homes, which would be permitted on a parcel of this size, would be far more objectionable based upon continuous sound, traffic generation, disturbance of the land, etc. The ZBA further finds that the proposed Phase 2 and the termination of the use of the tent (which has been approved for permanent use) will reduce existing noise impacts.

4. There is no evidence that the project has or shall in the future negatively impair the value of adjacent land and property. Indeed, a review of records kept in the office of the Town Assessor reveals that there has not been a decrease in value of the surrounding parcels.
5. The original and all subsequent approvals herein are hereby modified to reflect that Phase 2 shall be construction of a partially enclosed building and for the use of the tent to be permanently terminated upon the issuance of a Certificate of Occupancy/Certificate of Compliance based upon the attached list of Conditions of Approval. All other current conditions shall remain in full force and effect, except those which are inconsistent herewith. The Findings and Determinations herein shall control any such inconsistencies.
6. Attached hereto and made a part hereof as Schedule "A" is the complete list of conditions of approval.
7. Attached hereto and made a part hereof as Schedule "B" is the sound testing protocol to allow proof of compliance of the sound conditions set forth in Schedule "A".
8. The Applicant shall execute a new Developers' Agreement which is attached hereto and made a part hereof as Schedule "C".

VOTING: Motion made _____, seconded by _____, and carried 6 to 0, with one absent.

	A YE	N AY	ABSENT/OTHER
David Everett	_x_	_____	_____
Jeff Lick	_x_	_____	_____
JP Henkel	_x_	_____	_____
Mitch Khosrova	_x_	_____	_____
Robert G. Leary	_x_	_____	_____
Adrianus Ooms	_x_	_____	_____
Kary Jablonka	_____	_____	_x_

Dated: May 28, 2015

ZBA RESOLUTION SCHEDULE “A”

CONDITIONS OF APPROVAL

1. No event shall be held until the applicant and the Town Board of the Town of Chatham shall enter into a Developer’s Agreement, which shall memorialize the approval herein and delineate the duties and obligations of the parties with respect to this approval, including but not limited to, sound testing protocol as attached hereto.
2. The permanent building (Phase 2), shall be constructed in accordance with the plans, drawings, models and narrative submitted by the Applicant to the ZBA in December, 2014. The construction documents shall be substantially similar to the plans referred to above, particularly the areas which are planned to open to the outside during the summer season. Upon excavation for the new building, all spoils shall remain on the subject matter property and shall not be removed therefrom.
3. No event shall be held at the permanent facility until the applicants shall obtain any required permits or approvals from the NYSDEC and Columbia County Department of Health, where applicable, with respect to the proposed management of sewage and water on the premises. Additionally, no building permit shall be issued until all town consultants have been paid in full in accordance with the escrow agreement entered into between the applicant and the Town.
4. Any signs erected on the premises shall comply with the provisions of Section 180-32 of the Town of Chatham Zoning Code relating to signs. As required by Section 180-52 of the Town of Chatham Zoning Code, the applicants shall obtain a use permit from the Zoning Enforcement Officer before any signs are erected on the premises.
5. No event shall be held at the permanent structure until the applicants obtain site plan approval from the Town of Chatham Planning Board as required by Section 180-17 of the Town of Chatham Zoning Code.
6. As required by Section 180-44 of the Town of Chatham Zoning Code, if this special use ceases for more than six months for any reason, this permit shall expire and a new permit will be required from the ZBA to continue the use. The ZBA recognizes that Phase I is a seasonal use and thus lack of off-season performances shall not be deemed cessation of use as contemplated in this paragraph.
7. This special use permit is issued only for the particular use described in the application materials currently before the ZBA, to wit, a not-for-profit recreational facility. If this use changes in any material way from that described in the application materials or to the ZBA, this permit shall expire and a new permit may be required from the ZBA.
8. All parking on the premises shall be confined to the parking lot depicted on the site plan that will be approved by the Town Chatham Planning Board. In no event shall any vehicle be parked along Route 66, except in emergency situations.

9. To prevent dirt from being tracked onto public highways or sediment run-off from entering the adjacent drainage way, the entrance way shall be gravel or pavement. The applicant shall thoroughly clean and sweep Route 66 and the project's entrance as often as necessary (or as requested by the Town of Chatham) to prevent dust and dirt accumulation from the project during construction periods.
10. After consultation with the fire department and prior to any event being held at the site, the applicant shall install all reasonable requirements of the fire department, including maintaining the standpipe for the pond to provide a water source for fire protection, sprinklering and water storage cistern for the permanent building.
11. The light(s) should be turned-off when the facility is not in use with the exception of motion detection security lighting. The light should be down directed and, if possible, should face away from residential areas.
12. Provisions shall be made to remove trash on a regular basis.
13. Sufficient bottled water shall be on the premises for each event to allow for at least twenty four ounces per attendee, during Phase I. Following completion of the permanent facility water shall be provided in accordance with the plans submitted by the Applicant herein after obtaining DOH or other necessary approvals.
14. If any term or condition of this special use permit is annulled by a court of law, then the ZBA shall retain the right to reconsider whether this Special Use Permit continues to meet the requirements for the granting of a special use permit in accordance with the standards of the Chatham Town Code.
15. If any of the terms and conditions of this special use permit shall be violated, such violations shall be dealt with in accordance with the Town of Chatham Code including the possibility of termination of this Special Use Permit by the Court following an adjudication of the violation.
16. The applicant shall allow representatives from the Town of Chatham to access the site, at reasonable times and upon reasonable notice, to determine if the terms and conditions of this special use permit are being complied with.
17. The use shall be conducted in accordance with the site plan, all engineers report, and any other documents approved by the ZBA, including but not limited to, any and all plans submitted by the applicant.
18. As agreed to by the applicant, this special use permit as it relates to the use of the seasonal tent shall expire upon the issuance of a permanent certificate of occupancy and/or certificate of compliance for the new permanent structure on the site. Upon issuance of the Certificate of Occupancy/Compliance, the tent shall be permanently removed and any prior approvals for the tent shall terminate.

19. As agreed to by the applicant, no event will be held at the site from October 16 through May 14 (the “summer season”), except for events within The Black Box portion of the permanent structure.
20. As agreed to by the applicant, all events, including rehearsals, shall be held between 9:00 am and 11:00 pm on Sunday through Thursday and between 9:00 am and 11:30 pm on Fridays and Saturdays.
21. During use of the tent, all portable toilets on the site shall be cleaned and serviced after each event. The applicant shall continually maintain a service contract for these toilets throughout the term of this permit.
22. Prior to the use of the permanent structure, the applicant shall install and maintain the permanent septic system as depicted in the application materials following obtaining any county or state approvals.
23. After each event, the applicant shall police the entire site including, without limitation, the parking fields, access drive, and picnic grounds, etc., and promptly remove all litter, trash or other debris.
24. No event shall be held in the permanent structure until the following permits and approvals have been obtained for the applicable facility, if applicable: Town of Chatham Planning Board: site plan approval; NYSDEC: General SPDES Permit for Storm Water Discharges and Sanitary (sewer) discharge; Columbia County: Health Department approval of the water plans.
25. No event shall be held in in the permanent structure until all the site improvements identified on the approved site plans for that facility have been constructed in accordance with those plans for the applicable Phase.
26. No event shall be held in in the permanent structure until the Town of Chatham Building Department has issued a certificate of occupancy for that structure.
27. The applicant shall implement the Sound/Noise Testing Protocol, which is attached hereto and made a part hereof as Schedule “B”. No Certificate of Occupancy/Compliance shall be issued until the Protocol has been successfully performed and implemented.
28. The sound system utilized shall have a “limiter” which shall be set, in the first instance, such that sound produced shall not exceed that as set forth in paragraph 29. below. Following the testing set forth in the Sound/Noise Testing Protocol, the sound at the property line shall be confirmed to fall within the standard set forth in the Sound/Noise Testing Protocol. If the sound at the property line is greater than such standard the ambient level first established, then the limiter shall be reset to a lower level (whether 80 decibels or some other level to be determined by the Town Engineer) and the testing shall be performed again until a reliable result establishes that Sound/Noise Testing Protocol Standard ambient levels have been achieved at the property line. If the limiter must be lowered, then whatever level ultimately results in Testing Protocol compliant ambient levels at the property line shall be the final level set for the limiter as the condition of approval herein.

29. No sound, whether amplified or unamplified, generated by an event, rehearsal or contracted event shall exceed the level set following completion of the Sound/Noise Testing Protocol, as measured at ten (10) feet from the roof line of the permanent structure.

30. The limiter shall be recalibrated at least once per year or in accordance with the manufacturer's specifications, whichever is shorter.

31. All amplified events (whether a public performance, rehearsal or contracted event) shall occur inside the permanent structure and shall be conducted using the Applicant's sound system with the limiter used and in operation in accordance with the Sound Protocol (Schedule "B").

32. Prior to the issuance of a building permit for the permanent structure, deed restrictions shall be imposed in accordance with the Developer's Agreement and as follows:

SUBJECT TO the restrictions that, for so long as all or any portion of the premises are used as a recreational facility pursuant to a Special Use Permit under the zoning laws of the Town of Chatham (1) the property may be used only for the uses permitted in the Special Use Permit and as not more than two single family dwellings with their accessory buildings and for agricultural and public access /conservation purposes, (2) the property may not be subdivided except to create separate lots for each of the existing single family dwellings of the minimum acreage required by local zoning law but not less than 5 acres, to convey land to the Town of Chatham or as a boundary line adjustment to settle a legitimate boundary line title dispute and (3) additional structures and parking shall be constructed only within three building envelopes to be located in the general vicinity of those shown on the attached map which envelopes shall not collectively cover more than 25% of the total acreage of the premises, provided that the following non-inclusive list of incidental structures and other improvements may be constructed outside of such envelopes:

1. Small agricultural structures, 1,500 square feet in foot print or less.
2. Small structures, up to 600 square feet in foot print, unimproved by septic.
3. Small gravel parking area (10 cars) for public trail systems or similar public access use.
4. Trails, bridges, boardwalks, bird blinds, temporary parking on grass, tree houses, habitat improvement structures or similar like-purpose structures.
5. Gazebos, garden sheds, fences, pergolas or similar like-purpose structures.
6. Roadways and underground improvements such as stormwater and sewage systems.

These restrictions are intended to run with the land and are for the benefit of, and are enforceable by, the Town of Chatham which owns land contiguous to the premises.

33. As a condition of approval, the applicant agrees to be bound by the deed restrictions contained herein upon the issuance of this Special Use Permit.

34. A metes and bounds description of the development envelope(s) shall be provided to the Town Engineer prior to the issuance of any certificate of occupancy for the pavilion.

35. The two single family homes and one out-building may be utilized as temporary artists' and students' residences in connection with participation in events on the site, subject to Site Plan Approval review by the Chatham Planning Board.
36. The tent and the proposed permanent facility when built may be utilized as rental to third-parties for non-performing-arts events and for non-performing-arts community activities which are recreational, social or community based.
37. No performance or contracted event or amplified activity shall take place either partially or entirely outside of the permanent structure. All seating shall be inside the permanent structure. However, this limitation shall not apply to community-based events, meetings or nature-related activities such as bird watching, Girl/Boy Scout gatherings, hiking, apple picking or similar such occurrences.
38. The stage doors shall be closed during all events, performances and/or rehearsals.
39. The within approval and conditions replace and supersede any other prior approvals and/or conditions.
40. The siding for the permanent structure shall be wooden and brown or earth-tone in color and the roof shall have brown or gray shingles.

SCHEDULE “F”

AGREEMENT FOR THE ENFORCEMENT OF SOUND/NOISE PROTOCOL

This Agreement dated September , 2015 by and between the Town of Chatham, a municipal corporation with its principal office located at 488 Route 295, Chatham, NY 12307 (hereinafter referred to as the “Town”) and QUESTATERRA, LLC, and/or PS21, Inc., with its principal place of business located at PO Box 364 Chatham, NY 12037 (hereinafter referred to as the “Owner”).

WHEREAS, the Owner has received approval of an application to the Town of Chatham Planning Board and Zoning Board of Appeals (“ZBA”) for Site Plan approval and the issuance of a Special Use Permit, respectively, for a performing arts facility located on Route 66, Town of Chatham, New York; and

WHEREAS, the ZBA acted as Lead Agency for the SEQRA review of this project and the Owner, the ZBA and the Planning Board determined that potential impacts with regard to sound emission could occur and further determined that in order to mitigate such impacts a sound testing protocol must be established to ensure that the sounds created by the project do not exceed the approved levels; and

WHEREAS, the Owner recognizes that the Town will be required to enforce the terms and conditions of the approval of the Special Permit and Site Plan for the facility, particularly in regards to the implementation and maintenance of the sound testing protocol;

NOW THEREFORE, in consideration of the mutual promises herein, the Town and the Owner agree that the terms and conditions of this Agreement are the following:

1. Owner agrees to provide the telephone number of a contact person to be available during all hours when performances are conducted at the performing arts facility. The contact information shall be made available to the general public and shall be the first point of contact in the event of a complaint concerning alleged violations of the sound limits for the performing arts facility.
2. In the event of a complaint concerning an alleged violation of the sound protocol, the contact person shall be required to immediately measure the sound levels generated by the

performance at the point established pursuant to the sound testing protocol (10 feet outside the building footprint). The Contact person must report the results of such measurement to the Town Zoning Enforcement Officer by noon the following business day. If the results show that a violation occurred, the ZEO will take appropriate further action in accordance with the requirements of the Town Zoning Code. If the results do not show a violation occurred, the ZEO will note the results demonstrated compliance with the standards established under the performing arts facility approvals.

3. The equipment to be used by the contact person to take the measurements required herein, shall be tested for conformity with applicable standards at least once each calendar year and the results of the conformity testing will be provided to the Town ZEO within thirty (30) days of completion of such tests.

4. The parties acknowledge that the sound testing protocol provides for annual testing of the sound equipment to be used for performance to confirm compliance with the applicable standards for such equipment so that the equipment will function properly as specified under the noise protocol and ZBA and Planning Board approvals.

