

# AGREEMENT IN PRINCIPLE

September 5, 2007

## Introduction

1. The State of New York, City of New York, Crossroad Ventures, LLC, Catskill Center for Conservation and Development, Natural Resources Defense Council, New York Public Interest Research Group, Riverkeeper, Inc., Theodore Gordon Flyfishers, Inc., Trout Unlimited, and Zen Environmental Studies Institute (the non-governmental organizations collectively referred to as the “Non-Governmental Organization”) (and all the above entities collectively referred to as the “Parties”) agree conceptually as follows:
2. More than nine million New Yorkers rely on the watershed of the New York City water supply system to provide a safe and reliable source of drinking water. The majority of this extremely valuable drinking water supply originates in the Catskill and Delaware Watersheds in Delaware, Greene, Ulster, Schoharie, and Sullivan Counties. The Parties recognize that safeguarding the water supply is a paramount concern.
3. Portions of the Catskill and Delaware Watersheds are within the Catskill Park, which includes lands of the State that are part of the State Forest Preserve. Such Forest Preserve lands are of special significance and must be forever kept as wild forest lands in accordance with Article XIV of the New York Constitution for the enjoyment of future generations of New Yorkers. In particular, the Big Indian – Beaverkill Range Wilderness Area and Slide Mountain – Panther Mountain Wilderness Area, taken together, represent the largest contiguous tract of wilderness in the Catskill Park.
4. The Catskill and Delaware Watersheds are home to many people, businesses and communities. The Parties recognize that the goals of drinking water protection and economic vitality within the watersheds can be achieved through the pursuit of environmentally sustainable economic activity, undertaken in a manner to maintain and enhance surface water quality and preserve and protect natural resources and the environment. For the Central Catskills, tourism is an important component of the local economy and, for over 50 years, the New York State Belleayre Mountain Ski Center has been a major and appropriate focus for such tourism.
5. Crossroads Ventures, LLC (“Crossroads”) originally proposed a resort development project known as the Belleayre Resort at Catskill Park. A Draft Environmental Impact Statement (“DEIS”) was prepared for such project and accepted on December 10, 2003 by the New York State Department of Environmental Conservation (“NYSDEC”) as lead agency under the State Environmental Quality Review Act (“SEQRA”).

6. The original project analyzed by the DEIS consisted of one economically integrated resort, impacting two non-contiguous assemblages of parcels, Big Indian Plateau and Wildacres, situated on approximately 1,960 acres of land owned by Crossroads. Both are located just south of New York Route 28, within the Catskill Park and the Catskill and Delaware Watersheds of the New York City water supply system.

7. The Big Indian Plateau is east of the Belleayre Mountain Ski Center, on approximately 1,242 acres of land in the Town of Shandaken, Ulster County, in the watershed of the Ashokan Reservoir, a reservoir within the Catskill Watershed, and in close proximity to the Big Indian – Beaverkill Range and Slide Mountain – Panther Mountain Wilderness Areas which are part of the State Forest Preserve.

8. Wildacres is west of the Belleayre Mountain Ski Center, on approximately 718 acres of land, including the former Highmount Ski Center, in the Town of Shandaken, Ulster County, and the Town of Middletown, Delaware County, in the watershed of the Pepacton Reservoir, a reservoir within the Delaware Watershed.

9. Crossroads also applied to NYSDEC for the permits required for the originally proposed project by the New York Environmental Conservation Law (“ECL”). The NYSDEC prepared draft permits for such project which, along with the DEIS, were subject to public notice and comment. An Issues Conference was convened on the DEIS and draft permits, and an Interim Decision of the Commissioner was issued on December 29, 2006. An Administrative Law Judge of the NYSDEC has scheduled an administrative adjudication of certain issues consistent with the Interim Decision of the Commissioner (“NYSDEC Adjudication”). On January 29, 2007, the Non-Governmental Organization (“NGO”) filed a motion for reconsideration of the decision of the Commissioner with respect to issues ruling 15 on community character. The motion has not been ruled upon.

10. The Parties are also parties to the NYSDEC Adjudication, and have negotiated in good faith to resolve their outstanding issues related to the originally proposed project for the Belleayre Resort at Catskill Park as identified in the DEIS and NYSDEC draft permits. In order to avoid or mitigate the environmental impacts of the originally proposed project, while still recognizing Crossroads’ concern for the economic viability of the project, the Parties have discussed a modified project and have reached agreement that this lower impact alternative is preferable. The governmental parties cannot give final approval until completion of the SEQRA process. In addition, the Parties recognize that agreement on this lower impact alternative will eliminate the inherent uncertainty of continuing the NYSDEC Adjudication, and the inevitable expense of time and resources associated with further administrative and legal proceedings. Therefore, consistent with and subject to the requirements of SEQRA and the Interim Decision of the Commissioner, the Parties agree that the modified project represents a new, lower impact, alternative which minimizes or avoids the potential for significant adverse environmental impacts identified by several of the Parties and others during the public comment period and

Issues Conference, and which the State has determined will provide significant economic benefits to the Central Catskills region.

11. This new lower impact alternative will be the subject of a supplemental draft environmental impact statement (“SDEIS”) and undergo full opportunity for public review and comment.

12. The project is also subject to the regulatory jurisdiction and approval of the New York City Department of Environmental Protection (“NYCDEP”), the New York State Departments of Health and Transportation, the Ulster County Department of Health, the Towns of Shandaken and Middletown, the US Army Corps of Engineers and the Delaware River Basin Commission, among other agencies. The Parties are aware of no conflicts between the modified project, subject to the terms herein, and the regulatory standards, requirements and concerns of these other agencies. In particular, as explained further below, NYCDEP has reviewed the modified project attached hereto and has determined that a stormwater pollution prevention plan can be prepared for the modified project consistent with the Rules and Regulations for the Protection from Contamination, Degradation and Pollution of the New York City Water Supply and Its Sources (“Watershed Regulations”), 10 NYCRR Part 128, 15 RCNY Chapter 18. The Parties recognize that the State and local agencies referred to above are involved agencies pursuant to SEQRA and that, by operation of law, no agency can make a final decision on the modified project until NYSDEC, as lead agency, accepts the Final Environmental Impact Statement (“FEIS”) and the time period in 6 NYCRR § 617.11(a) has passed and the agency has made a written findings statement.

#### Modified Project/Lower Impact Alternative

13. Supplemental Environmental Impact Statement. Crossroads will prepare, and submit to NYSDEC and the Parties, an SDEIS for the modified project as described below. The modified project to be proposed consists of several integrated components as described below.

14. Big Indian Plateau Development. Crossroads has entered into an agreement to sell 1,216.5 acres of its Big Indian Plateau property. As a result, Crossroads has decided to end its efforts to pursue the Big Indian Plateau development which is adjacent to existing State Forest Preserve lands. In particular, the Big Indian Resort and Spa, 18-hole golf course, and Belleayre Highlands development, will not be pursued in the SDEIS.

15. Modifications to Wildacres. Wildacres, including its hotel, resort components, golf course and detached lodging units, is proposed to be modified to reflect the lower impact alternative concepts of the Parties to minimize land disturbance and steep slope disturbance to the extent practicable. The layout and location of the golf course and related facilities and the location of the Octoplex lodging units are proposed to be substantially modified from the layout presented in the DEIS in order to avoid and/or minimize steep slope construction on slopes greater than 20%, and in freshwater wetlands, water courses and buffer areas. Consistent with sound golf course design practices, Crossroads will incorporate into the final golf course design, to the maximum

extent practicable, different construction treatments aimed at reducing erosion during construction.<sup>1</sup> None of the lodging units (exclusive of their access ways) will be constructed on slopes greater than 20%. The Parties acknowledge that the commitment by Crossroads to build lodging units only on slopes less than or equal to 20% will provide significant stormwater management benefits for this project. This commitment by Crossroads is an enhancement beyond current NYSDEC and NYCDEP regulatory standards for steep slope construction. The modified project also eliminates the 21-lot residential subdivision, "Highmount Estates," on the western portion of the site. The final design will be substantially consistent with Exhibit A of this Agreement in Principle, dated August 24, 2007, and entitled "WILDACRES RESORT." In preparing the final design, nothing in this Agreement will preclude Crossroads from adjusting the octoplex lodging unit configurations or footprints, in accordance with the narrative criteria set forth as Exhibit B to this Agreement in Principle, to accommodate site conditions or avoid construction on slopes greater than 20%, so long as the total residential lodging unit count does not exceed 139 units and the total hotel unit count does not exceed 250 units.

16. Highmount Spa. The Highmount Spa, lodge buildings and detached lodging units are proposed as a ski-in, ski-out resort adjacent to the former Highmount Ski Center. The Highmount Spa facilities, including roads and access ways, are proposed to be located to avoid and/or minimize land disturbance and steep slope construction on slopes greater than 20%, to the extent practicable. None of the 52 structures for the 60 individual or duplex lodging units (exclusive of their access ways) will be constructed on slopes greater than 20%. The design for each individual lodging unit located upslope of the development envelope shown on Exhibit C will include an on-site stormwater management practice located on slopes less than or equal to 20%. The design also proposes a ski lift and ski trails to create a connection to the Belleayre Mountain Ski Center. Only one ski trail is preferred and a second ski trail will be allowed only if necessary to satisfy skier safety protocols to be set forth in the unit management plan for the Belleayre Mountain Ski Center. The final design will be substantially consistent with Exhibit C of this Agreement in Principle, dated August 24, 2007, and entitled "HIGHMOUNT SPA RESORT." The configuration (shape and placement) of the Highmount Spa Hotel and East and

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<sup>1</sup> These treatments include identifying areas of no vegetation or soil disturbance, areas of selective tree cutting and no soil disturbance, areas of tree clearing but not grubbing and filling with stone, areas of tree clearing, grubbing and grading, and areas of non-mechanized (hand) removal of trees without soil disturbance in and around permitted stream and wetland playover areas. In areas of concentrated play on the golf course such as tees, greens, fairways and inner roughs, essentially all of these areas will be cleared, grubbed and graded to varying degrees. The tee shot carries on many of the golf holes where there are steeper slopes between the tee boxes and the leading edge of the fairways and other flyover areas (e.g. holes 1, 10, 11, 12, 13, 17 and 18) will receive the treatment whereby (a) trees may be cut and, if so, stumps are not grubbed, but instead are left in place to stabilize soils, and (b) the areas are then seeded or sodded. For the outer roughs, underbrush and small trees may be removed. Many large areas between holes will remain undisturbed.

West Lodges, as shown on Exhibit C, is conceptual and is not intended to limit the final design, provided these structures remain within the development envelope identified on Exhibit C, and the total unit count for the Highmount Spa Resort does not exceed 240 units. The total number of above-ground structures within the building envelope will not exceed four, and the total number of structures for individual units will not exceed 52. The final design will also be prepared in accordance with the narrative criteria set forth in Exhibit B.

17. Highmount Spa Access Roadway.

a. As depicted in Exhibit C, the modified project proposal for the Highmount Spa includes an access roadway ("Access Roadway") for a series of single family lodging units in an area generally to the south of a structure identified as the "West Lodge." The determinations by NYSDEC and NYCDEP regarding the Access Roadway will be based, in part, on the criteria listed below and the SEQRA process. The overall goal is to optimize the location of the Access Roadway so as to limit construction excavations and best manage stormwater. Further limits on the total exposure of excavated soils to erosion are presented in the Phasing Plan set forth as Exhibit D to this Agreement in Principle. The criteria applicable to the ultimate location of any approved Access Roadway are as follows:

(i) limit construction and associated land disturbance to areas with slopes of 20% or less to the greatest possible extent, while balancing this attribute with the goals of minimizing the overall length of the Access Roadway and providing adequate space and appropriate locations for stormwater management practices;

(ii) design and construct the Access Roadway to meet safety considerations and to maintain a final Access Roadway grade not to exceed 15%;

(iii) design and implement the roadway so as to incorporate slope stabilization techniques, in both up-slope and down-slope areas, to limit the overall scope of necessary construction excavation and grading, focusing extensively on retaining walls (e.g., gabion walls, small or large block modular walls, bedrock retaining walls, and sta-walls) and to a lesser extent slope re-vegetation;

(iv) locate and design the roadway so as to minimize the extent of cuts and fills;

(v) design and implement stormwater and erosion and sediment controls so as to optimize the retention and treatment of stormwater at its source on the higher and flatter portions of the Highmount Spa site, without regard to the location of detached lodging units and so as to minimize the size and number of stormwater management facilities adjacent to the more steeply sloped portions of the roadway; and

(vi) conservatively allocate sufficient space on benches along the slope for stormwater management practices to treat runoff from all disturbed areas.

b. These criteria will not prevent Crossroads from constructing up to ten individual lodging units along this Access Roadway as long as there remains, after road design and stormwater management design in accordance with the above criteria, sufficient area with slopes of 20% or less to accommodate such units. Any such additional lodging units may be built, if at all, only after stormwater management practices have been functioning for one year and NYSDEC and NYCDEP determine that such practices are providing the detention and treatment of stormwater that they were designed to achieve and that they will continue to do so if such additional lodging units are built.

c. Crossroads will provide to the NGO a copy of the road design, stormwater management design, and supporting data and information, consistent with the above criteria, and copies of any modifications to those designs or related supplemental information, at the time they are submitted to NYSDEC. NYSDEC and NYCDEP will consider any comments submitted by a technical consultant of the NGO concerning the road design and stormwater management design in connection with their review of the designs.

d. NYSDEC will issue, to the Parties, a preliminary draft construction activity stormwater permit or a preliminary permit denial. In the event that Crossroads and/or the NGO disputes that NYSDEC's preliminary determination is consistent with the above criteria or applicable laws, regulations, or guidance, Crossroads or the NGO may provide written notice to all the Parties to this Agreement in Principle that it is seeking an expedited review from the Executive Deputy Commissioner of NYSDEC. Such notice, which will identify the substantive issues of concern, will be sent within 14 days after Crossroads and the NGO receive NYSDEC's preliminary draft permit determination. Within 30 days of receipt of such written notice, the Parties will submit papers to the Executive Deputy Commissioner, and all other Parties to this Agreement, setting forth their position and all supporting documentation. The Parties may submit reply papers within 7 days following the close of the 30-day period. The Executive Deputy Commissioner will issue a determination within 15 days following the close of the 7-day period. The Parties agree to be bound by such determination and agree that such determination will not be subject to further administrative proceedings or judicial review provided, however, that such determination will not affect or diminish the regulatory authority of NYCDEP or the NYSDEC Commissioner.

18. Green Building Design. Including green building design elements into the construction and design of the modified project/lower impact alternative will reduce consumption of fossil fuels that contribute to global warming, minimize air pollution discharges and water usage associated with the project and reduce building operating costs over the long term. Accordingly, the Wildacres Resort, Highmount Spa and two Highmount multi-unit lodge buildings and all detached lodging units will be designed and constructed to green building specifications set forth by the United States Green Buildings Council in order to obtain certification under the Leadership in Energy and Environmental Design ("LEED") program, and Crossroads will seek

to obtain a LEED silver or higher rating for the Wildacres Resort, Highmount Spa and two Highmount multi-unit lodge buildings.

19. Organic Golf Course. The golf course at Wildacres will be managed as organic. The parties agree to certain principles and criteria for the organic management plan for the SDEIS and golf course operation as set forth below:

a. For the purposes of this Agreement, “organic golf course management” means operating and maintaining a course by using biological, cultural and mechanical practices that foster soil health, maintain biodiversity and the watershed ecology while ensuring playable golf course turf, without the use of synthetic chemicals (except as provided for pursuant to Exhibit E of this Agreement in Principle).

b. Organic management of the Wildacres Golf Course will be achieved and maintained by implementing a management approach that places on the site the fewest inputs necessary to provide a sustainable, high quality and nationally recognized golf course operation. To assure organic golf course operation at Wildacres, an annual Organic Management Plan will be developed, implemented and revised as necessary; a dynamic list of approved and prohibited substances will be complied with; and an Organic Golf Course Technical Review Committee will be established to oversee implementation of this paragraph and Exhibit E. The Exhibit sets forth implementation details for this paragraph.

c. Provisions for implementing the organic golf course management approach set forth in this agreement and Exhibit E will be incorporated into the Crossroads SPDES permit to be issued by the NYSDEC in connection with this project. Unless modified as provided for in subparagraphs d. and e. below, the operator will adhere to the provisions of this paragraph 19.

d. Following five years of Wildacres Golf Course operation pursuant to this Agreement, the operator may seek approval from the NYSDEC to modify the conditions of its SPDES permit relating to organic golf course operation, provided that the State or federal government or an independent certifying entity adopts and implements an organic golf course program substantially similar to the one set forth in this Agreement and that the operator applies for and receives certification of the Wildacres Golf Course as organic under such a program. In this event, the SPDES permit for the Crossroads project will be modified to incorporate the operator’s commitment to continued participation in and compliance with the respective new State or federal or independent certifying program.

e. Following five years of Wildacres Golf Course operation pursuant to this Agreement, Crossroads may seek approval from the NYSDEC to discontinue organic golf course operation and to remove such requirement from its SPDES permit. Should such approval be sought, the NYSDEC will solicit the advice of the Organic Golf Course Technical Committee and will approve such request only if it finds that the operator has demonstrated to the NYSDEC’s satisfaction that the operation of the Wildacres Golf Course as a high quality nationally

recognized golf course through organic management is infeasible under this provision and that the concerns raised by the operator cannot be adequately addressed through adjustments or modifications to the Organic Management Plan, as provided for in this Agreement and Exhibit E. In the event that NYSDEC finds that the operator has satisfied the above-described conditions for discontinuance of organic golf course operation under this provision, the NYSDEC will modify its SPDES permit for the Crossroads project and include a requirement that the operator implement a state-of-the-art Integrated Pest Management system for the Wildacres Golf Course that utilizes the fewest inputs necessary to provide a sustainable, high quality, nationally recognized golf course operation.

## 20. Stormwater Protocol.

a. The modified project plan includes a conceptual layout for stormwater management practices for the Highmount Spa and associated lodging units. The Parties recognize that this conceptual stormwater plan will be significantly enhanced, and the stormwater pollution prevention plan for the Wildacres Resort will be revised to reflect the modifications to that plan embodied in the attached layout, for the SDEIS. In particular, the stormwater plans included in the SDEIS will include, for both the Wildacres Resort and the Highmount Spa, at a minimum:

(i) Detailed erosion and sediment control plans;

(ii) Detailed phasing plans limiting the amount of disturbance at each site at any time substantially in accordance with the Phasing Plan developed by the Parties and set forth as Exhibit D;

(iii) Plans for an independent monitor consistent with paragraph 21 of this Agreement in Principle.

(iv) Detailed designs for operational stormwater management practices, to accommodate stormwater runoff from all disturbed areas, including the potential disturbance from a second ski trail as noted in paragraph 16 of this Agreement in Principle. Such designs will include an analysis of pre- and post-construction pollutant loads;

(v) Plans and a schedule for maintenance of operational stormwater management practices.

b. In addition, the detailed plans for erosion and sediment controls and for operational stormwater management practices will follow the Stormwater Quantity and Quality Protocols developed by the Parties, dated August 24, 2007, and attached as Exhibit F to this Agreement in Principle. The design of the stormwater facilities at the Wildacres Resort will maximize the use of stormwater runoff for irrigation of the golf course, wherever practicable.



c. Prior to completing the analyses and modeling that will support the conclusions in the SDEIS concerning stormwater management (including, but not limited to, pre- and post-development pollutant loadings, and pre- and post-development stormwater quantities, and peak rates of runoff), Crossroads' consultant will meet with technical representatives of the City, the State, and a technical representative acting on behalf of the NGO to review and seek to agree upon the model assumptions and inputs.

d. In the event that the Crossroads' consultant and the technical representative of the NGO are unable to agree upon model assumptions and inputs, either Party may provide written notice to all the Parties to this Agreement that it is seeking an expedited review from the Executive Deputy Commissioner of NYSDEC. Such notice will be sent within 10 days after such consultation is concluded. Within 15 days of receipt of such written notice, the Parties will submit papers to the Executive Deputy Commissioner, and all other Parties to this Agreement, setting forth their position and all supporting documentation. The Parties may submit reply papers within 7 days following the close of the 15-day period. The Executive Deputy Commissioner will issue a determination within 15 days following the close of the 7-day period. The Parties agree to be bound by such determination and agree that such determination will not be subject to further administrative proceedings or judicial review provided, however, that such determination will not affect or diminish the regulatory authority of NYCDEP.

#### 21. Independent Stormwater Monitor.

a. Crossroads will select an independent stormwater monitor or monitors ("Independent Monitor"), subject to the approval of NYSDEC and NYCDEP, to review and supervise all aspects of the implementation and maintenance of management plans and controls with respect to stormwater and erosion and sediment control programs during construction of the modified project/lower impact alternative. Prior to approval, NYSDEC and NYCDEP will provide the NGO with a 30-day opportunity to comment on the qualifications of the proposed Independent Monitor, including training, experience and potential conflicts of interest. On request, the Independent Monitor will be made available to the NGO to conduct an interview during this period. The NGO may provide a recommendation to NYSDEC and NYCDEP on the proposed Independent Monitor within the 30-day period.

b. The role of the Independent Monitor will be to assure the effective implementation of all erosion and sediment control practices, all storm water control practices, all construction phasing practices, as well as related measures, pursuant to the Stormwater Pollution Prevention Plan ("SWPPP"), permits issued by NYSDEC and NYCDEP, and all other related requirements described in this Agreement in Principle or otherwise required as stormwater conditions adopted pursuant to SEQRA. The Independent Monitor will have the authority to direct that all work which is believed to not conform with the SWPPP or NYSDEC or NYCDEP permits cease immediately in the affected Project area and that any such portions of the Project be stabilized or properly maintained before work is allowed to proceed.

c. The Independent Monitor services will be conducted in accordance with an Independent Monitor Service Agreement (“I.M. Agreement”) that will be fully consistent with this Agreement in Principle. The Independent Monitor will be either (or both) a qualified professional engineer or a Certified Professional in Erosion and Sediment Control. The Independent Monitor will be retained as an independent contractor by Crossroads pursuant to the I.M. Agreement but will not be affiliated with Crossroads, the construction contractors for the Project, or the design professionals involved with developing and implementing the stormwater pollution prevention plans for the Project. The Independent Monitor will be responsible for conducting inspections, compiling information and drafting reports required to support the submissions which Crossroads is or may be obligated to make to NYSDEC and/or NYCDEP pursuant to NYSDEC and NYCDEP permits. Original copies of all Independent Monitor reports, and any information generated or relied upon by the Independent Monitor related to Crossroads’ report, will be submitted to NYSDEC and NYCDEP, in an unaltered manner, at the same time as Crossroads’ report. NYSDEC will send all Crossroads reports and all Independent Monitor reports or information to a representative designated by the NGO as soon as practicable but not later than 72 hours after such report or information is received.

d. The Independent Monitor will have all necessary staff available who possess the requisite educational background, certifications, licenses and/or experience necessary to perform the various tasks required. The Independent Monitor will have the right to access all locations of the Project site, at any time, to fulfill its responsibilities both during any clearing, grubbing, earth work or construction, and as part of any post-construction review or monitoring. The Independent Monitor will have access to any documents or information related to its duties that would otherwise be available to NYSDEC or NYCDEP staff in the normal course of their duties. Crossroads will provide the Independent Monitor with adequate office space at the Project site including, at a minimum lockable desks, chairs, lockable file cabinets, telephone, email and internet service, electricity, lights, heat, and air conditioning.

e. The Independent Monitor will be available to NYSDEC and NYCDEP staff at all times while on site, either by telephone, cell phone, e-mail, or other similar means. The Independent Monitor, in addition to its regular duties, will promptly inspect and submit reports on specific areas or attributes of the Project site when requested to do so by staff of NYSDEC and NYCDEP. Copies of all documentation, inspection reports, directives to construction staff, logs, photos, and records developed, collected or generated by the Independent Monitor in connection with the monitoring of the Project will be maintained in their original format and be available to NYSDEC and NYCDEP. The Independent Monitor will retain all monitoring materials or copies of the monitoring materials on the Project site.

f. In the event that an Independent Monitor finds any non-conformance with the approved SWPPP or related NYSDEC and NYCDEP permit conditions, the Independent Monitor will notify NYSDEC and NYCDEP by email and in writing as soon as reasonably possible but no later than within 24 hours of having notice of an event of non-conformance. The

Independent Monitor will provide all reasonable assistance requested by NYSDEC and NYCDEP.

22. Water Supply.

a. NYSDEC will determine whether to permit, and the New York State Department of Health (“NYSDOH”) will determine whether to approve, any source of potable water serving the modified project/lower impact alternative. Any water supply permit that NYSDEC may issue to Crossroads will contain the special conditions with respect to Rosenthal Wells Nos. 1 and 2, as well as applicable conditions related to any other approved source of potable water, as presented in Exhibit G and in accordance with this paragraph.

b. The pump test protocols, also presented in Exhibit G, will be applicable to any NYSDEC and NYSDOH authorization for any other potable water supply wells sought to be established by Crossroads and serving the modified project/lower impact alternative. Crossroads will provide to the Parties a “proposed pump test plan” on or before August 30, 2007 for testing any well other than Rosenthal Wells Nos. 1 and 2. These wells include four wells located near Todd Mountain Road in the Village of Fleischmanns, New York, described as K-1, K-2, K-3 and K-4. The Parties will provide Crossroads their comments on the proposed pump test plan on or before September 10, 2007. Following approval of the pump test protocol by NYSDEC and NYSDOH, Crossroads will commence the pump tests in accordance with the approved plan on or about September 24, 2007. Technical staff of the Parties or their consultants will have the opportunity to observe the pump tests. In the event that technical representatives of the NGO wish to observe the pump tests, they will be required to sign standard form liability releases in favor of the property owner. For any other potable water source to be tested, the Parties will be afforded a minimum of 15 days to comment on any proposed pump test plan and Crossroads will notify the Parties 10 days prior to the commencement of the pump test to provide the technical staff of the Parties or their consultants an opportunity to observe the pump tests, subject to the same requirement for a liability release.

c. Results from the pump tests and the proposed yield from each source will be provided to the Parties along with all supporting documentation. Within 30 days after receipt of the pump tests results and all supporting documentation, NYSDEC, in consultation with NYSDOH, will issue a preliminary draft permit to the Parties.

d. Within 15 days of receipt of the preliminary draft permit, Crossroads or the NGO may make written request to convene the Water Supply Technical Advisory Committee. Such written request will be made to NYSDEC, NYSDOH, and all the Parties to this Agreement in Principle, and will specify whether a disagreement exists regarding (1) the conclusions of NYSDEC and NYSDOH as to whether the data, information or analyses supports the agencies’ determination with respect to the application of the pump test protocols (applicable to all potable wells for the Belleayre Resort at Catskill Park, other than Rosenthal Wells Nos. 1 and 2), and/or (2) the preliminary draft permit. Within 14 days of receipt of such request, NYSDEC will convene the

Water Supply Technical Advisory Committee which will consist of one technical representative each from NYSDEC, NYSDOH, United States Geological Survey, Crossroads and the NGO. The NYSDEC technical representative, on the advice of the Advisory Committee, will provide a written recommendation to the Parties within 14 days after convening.

e. In the event that Crossroads and/or the NGO disagree with the recommendation of the NYSDEC technical representative regarding the application of the pump test protocol or preliminary draft permit, Crossroads or the NGO may provide written notice to all the Parties to this Agreement that it is seeking an expedited review from the Executive Deputy Commissioner of NYSDEC. Within 15 days of receipt of such written notice, any Party to this Agreement electing to participate in such expedited review will submit papers to the Executive Deputy Commissioner, and all other Parties to this Agreement, setting forth its position and all supporting documentation. The Parties may submit reply papers within 7 days following the close of the 15-day period. The Executive Deputy Commissioner will issue a determination within 15 days following close of the 7-day period. The Parties agree to be bound by such determination and agree that such determination will not be subject to further administrative proceedings or judicial review.

f. Crossroads recognizes the preference of the NGO for prioritization of the use of the K-wells or other potable water sources over the Rosenthal wells and will use its best efforts to do so, taking into account technical feasibility and constraints.

g. Nothing in this Agreement in Principle prevents Crossroads from seeking to obtain or obtaining potable water from the Village of Fleischmanns or any other source of potable water.

23. Wastewater. In the context of the unique agreement reflected herein, NYCDEP has agreed to accept at its Pine Hill Wastewater Treatment Plant ("WWTP") all the wastewater generated by the modified project, and by the Belleayre Mountain Ski Center, subject to SEQRA review and to agreements to be entered into (between Crossroads and NYCDEP and between NYSDEC and NYCDEP) before construction of any sewer collection system or line between the Crossroads Project and the WWTP may begin. Such agreements will not allow for any other connections to the WWTP from properties outside the former Village of Pine Hill, nor will they affect the rights of the residents of the former Village of Pine Hill under the Agreement between the City of New York and the Village of Pine Hill, dated August 28, 1925. Neither such agreements, nor NYCDEP's commitment to enter such agreements herein, is intended, nor can it be relied upon, to create any rights enforceable by any person or entity, whether or not a party to this Agreement, in any request for connection, application, adjudication, litigation or other proceeding with the NYCDEP. Neither such agreements, nor NYCDEP's commitment to enter such agreements herein, constitutes a change or interpretation of any policies, guidance, or requirements of NYCDEP with regard to out-of-district connections to Pine Hill or any other NYCDEP-owned WWTP in the watershed. The terms and conditions for NYCDEP's acceptance of such wastewater, which are to be incorporated into such agreements, are described in Exhibit H.

## Land Acquisition and Land Use

### 24. Big Indian Plateau Land Acquisition.

a. Crossroads has entered into an agreement with the Trust for Public Land (“TPL”), a 501(c)(3) not-for-profit land conservation organization, which intends to acquire approximately 1,216.5 acres in fee of the Big Indian Plateau property, so that it is preserved and used for public, open space and recreational purposes. The area to be acquired is labeled “Lands to be Acquired by New York State – 1216.5 Acres” on the map attached as Exhibit I. It is TPL’s intent to convey the Big Indian Plateau property to New York State, or a political subdivision thereof, so that it is preserved and used for public, open space and recreational purposes.

b. Crossroads will retain the portions of the Big Indian Plateau property labeled as “Brisbane Mansion +/- 30 Acres,” “Rosenthal Well Parcel +/- 7.5 Acres,” and “Lasher Road Parcel +/- 5.5 Acres” on the map attached as Exhibit I. Crossroads may offer for sale the Brisbane Mansion and approximately 30± acres surrounding it, subject to a conservation easement in favor of the State of New York or other qualified land conservation organization that precludes the further subdivision or commercial development of this parcel. The Rosenthal Well Parcel will be retained by Crossroads for water supply and wellhead protection purposes, and such parcel will be explicitly restricted to such use.

### 25. Former Highmount Ski Center Land Acquisition.

a. Crossroads has entered into an agreement with TPL, which intends to acquire approximately 78 acres in fee, comprising the majority of the former Highmount Ski Center (“Highmount Land”), so that it is preserved and used for public, open space and recreational purposes. The land to be conveyed to TPL is labeled as “Parcel C” and “Parcel B” on the map attached as Exhibit J.

b. It is TPL’s intent to convey the property it acquires from Crossroads to New York State, or a political subdivision thereof, for incorporation into the Belleayre Mountain Ski Center, which is managed and operated by NYSDEC under the exception for Belleayre Mountain contained in Section 1 of Article XIV of the State Constitution. The NYSDEC proposes to reuse as ski trails certain of the former ski trails on the property, and to count such ski trails as part of the 25-mile trail maximum set forth in the State Constitution.

26. Conservation Easement. Provided that Crossroads obtains all approvals required to begin construction of the modified project/lower impact alternative, Crossroads will convey, for fair market value, pursuant to the terms of the 1997 New York City Watershed Memorandum of Agreement, to the City of New York (“Grantee”), a Watershed Conservation Easement on the “Adelstein” property, Section 309, Block 1, Lot 56 in the Town of Middletown, approximately 203 acres to the west of the Highmount Spa, as depicted on Exhibit K. Subject to the terms of this paragraph, the Conservation Easement will be substantially similar to the Watershed Conservation Easement attached as Exhibit L. The Conservation Easement will allow for

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passive recreational uses associated with the Highmount Spa and Wildacres Resort, such as cross country skiing, snowshoe trails, hiking, horse riding, and accessory structures, and/or an outdoor amphitheater, but will provide that there will be no residential, overnight lodging, or industrial uses. All structures, including the amphitheater and associated improvements will be limited to no more than 43,560 square feet of impervious surface, to be sited within a Building Envelope that will not exceed a total of 10 acres. Subject to prior notice to the Grantee, up to a further 1,000 square feet of impervious area may be constructed on the Conservation Easement outside the Building Envelope. Subject to prior approval of the Grantee, the Conservation Easement will allow construction of ski trails or lifts, and associated improvements, on the Easement property for the purpose of providing ski access to the Village of Fleischmanns. Accessory structures associated with any such ski trails including, but not limited to, lifts, sheds, and utilities, are subject to such approval unless they are within the Building Envelope or under the 1,000 square foot limit outside the Building Envelope as described above. Nothing in the Conservation Easement will relieve Crossroads from the requirements of applicable permits or regulations in connection with any construction on the property including, without limitation, the Watershed Regulations. The location and shape of the Building Envelope may be fixed at the time the Conservation Easement is conveyed, or may be flexible, in either case subject to approval of the Grantee and to restrictions limiting but not preventing disturbance on slopes greater than 15% or within wetlands, watercourses and buffer areas.

27. Limitations on Future Development on Remaining Land Holdings. Crossroads will memorialize, through duly recorded covenants and/or deed restrictions in favor of the owner of the conservation easement on the Adelstein property, its commitment: (a) not to increase total lodging or residential density beyond that represented in the modified project/lower impact alternative, and (b) not to allow the operation of Class III gaming facilities pursuant to the Indian Gaming Regulatory Act of 1988, at the Highmount Spa Resort and Wildacres Resort.

#### Belleayre Mountain Ski Center

28. Proposed Improvements.

a. Subject to completion of required SEQRA reviews and approval of a new unit management plan, Crossroads and the NYSDEC will execute a memorandum of understanding that memorializes a collaboration in their respective improvements and future operations to maximize efficiencies and improve the visitor experience. NYSDEC proposes to make trail and lift improvements to the Belleayre Mountain Ski Center ("BMSC") as set forth in the NYSDEC drawing dated August 29, 2007, entitled "BELLEAYRE MOUNTAIN SKI CENTER EXISTING AND PROPOSED TRAILS," and attached hereto as Exhibit M, as modified by subparagraphs b. and c. below. In addition, Crossroads will convey, for valuable consideration, a permanent easement to the State of New York over approximately 21 acres on lands to be retained by Crossroads (which are separate from property being acquired by TPL referenced above) comprising the Highmount Spa and lands that were part of the former Highmount Ski

Center, to enable NYSDEC to construct and operate ski trails and a ski lift that will be available to all patrons of the BMSC. NYSDEC has no plans to allow for night skiing.

b. NYSDEC is authorized by Article XIV of the New York Constitution to operate not more than 25 miles of ski trails at the BMSC. Currently, NYSDEC operates approximately 14.5 miles of ski trails at the BMSC, and proposes to expand by approximately 9.0 miles of new trails in three areas of the mountain, including: (1) at the former Highmount Ski Center (approximately 2.5 miles); (2) in the western portion of the BMSC (approximately 2.0 miles); and (3) in the eastern portion of the BMSC (approximately 3.0 miles). The remainder of the approximately 9.0 mile expansion may be made at either the former Highmount Ski Center or in the western portion of the BMSC. With such expansions, NYSDEC would operate approximately 23.5 miles of ski trails, leaving approximately 1.5 miles in reserve. The proposed location of new trails and lifts set forth on Exhibit M are also approximate and subject to an Environmental Impact Statement and approval of a new unit management plan. Exhibit M shows approximately 4.5 miles of new trail options for the expansion on the eastern portion of the BMSC. Of these options, NYSDEC will select not more than approximately 3.0 miles of new trails for such expansion. If NYSDEC determines in its unit management plan that any additional trail segments are required to assure skier safety in the eastern portion of the BMSC, then the minimum additional segments necessary to specifically address such conditions may be added to such trails, subject to SEQRA review and the new unit management plan. Other than as provided for in the two preceding sentences, NYSDEC will advance no further trail expansions in the eastern portion of BMSC, which drains into the Ashokan basin, unless specifically authorized by the State Legislature and consistent with Article XIV.

c. In selecting the approximately 3.0 miles of new trails in the eastern portion of the BMSC, NYSDEC will, as part of its SEQRA reviews and final unit management plan, give highest priority to trail routes that minimize disturbance to the ecology of the Ashokan watershed and that limit possible runoff from the trails both during and after construction. Further, there will be a 500 foot buffer between the lands to be acquired by the State of New York, as set forth in paragraph 24, relating to the Big Indian Plateau acquisition, and the proposed ski trails that will be proposed in the eastern portion of the BMSC, except as may be required to assure skier safety and to provide for access to and from the proposed ski lift. Construction of the new trails in the eastern portion of the BMSC will not commence until the new trails in the western portion of the BMSC and at the former Highmount Ski Center have been completed, and are opened and operational.

29. Snow Making. NYSDEC also proposes to make improvements to its snowmaking system to accommodate the new trails without compromising current snowmaking operations or aquatic habitat. Consistent with this goal and subject to SEQRA, NYSDEC will establish in the unit management plan a new minimum stream flow of 8 cubic feet per second in Birch Creek at the location of the diversion weir for the Pine Hill Lake from October 15 through April 15, and 5 cubic feet per second during the remainder of the year.

30. Process and Timing. NYSDEC will immediately commence the preparation of a new unit management plan, and associated SEQRA documents, for the improvements to the ski center as described herein. The State of New York will seek funding necessary to design, construct and operate the trail and lift improvements identified in order to assure availability of these improvements to the modified Belleayre Resort at the time of its commercial operation.

31. Construction Standards. Construction of and improvements to trails, lifts, and other amenities will be implemented with the minimum land disturbance practicable, and will otherwise be performed in a manner consistent with applicable law, including the substantive standards of the City's Watershed Regulations, as provided in Executive Order No. 51, dated May 20, 1997.

#### SEQRA and Permit Processing

32. State Environmental Quality Review. The SDEIS described in this Agreement in Principle will include the items set forth in the Scoping Outline attached hereto as Exhibit N. The SDEIS will include, among other things, updated analyses on traffic, noise and visual impacts, water supply, stormwater management, erosion and sediment control, and an analysis of cumulative impacts related to the improvements to be made at the Belleayre Mountain Ski Center and the elements of the modified project/lower impact alternative. NYSDEC will hold a public scoping meeting as soon as is practicable. The SDEIS will undergo a full public review and 60-day comment period, including a SEQRA hearing. Upon NYSDEC's acceptance of the SDEIS, NYSDEC will make it available to the public on the DEC website and at the Middletown and Shandaken Town Halls, and at the Skene Memorial Library in Fleischmanns, Fairview Public Library in Margaretville, the Morton (Pine Hill) Library in Pine Hill, and the Phoenicia Library Association in Phoenicia. NYSDEC, as SEQRA lead agency, agrees to expedite its internal review of the SDEIS for completeness, and to actively facilitate the public review process. Accordingly, implementation of this Agreement in Principle by the governmental signatories will be subject to their review of the FEIS, and their final decision that applicable standards can be met and favorable SEQRA findings issued.

33. NYSDEC Permit Application Modifications. Crossroads will prepare and submit to NYSDEC and the Parties, modified or new permit applications for the modified project/lower impact alternative. NYSDEC agrees to promptly review and process the modified permit applications, consistent with its regulatory obligations.

34. NYSDEC Adjudication and Judicial Review. The Parties will seek suspension of the pending NYSDEC Adjudication, and motion for reconsideration, pending submission and review of the SDEIS and new or modified permit applications and any NYSDEC draft permits related to the modified project/lower impact alternative. The Parties may participate in the public process and comment period regarding the SDEIS and new or modified draft permits. The Parties agree not to submit comments in general opposition to the project or seek adjudication of issues provided that the SDEIS and new or modified draft permits are substantially consistent with the



modified project/lower impact alternative described in this Agreement in Principle. The Parties may also participate in the environmental review process for the new Belleayre Mountain Ski Center unit management plan and agree not to object to those portions of the unit management plan only to the extent that they are identified in and substantially consistent with this Agreement in Principle. The Parties agree not to seek judicial review of the FEIS, SEQRA findings statement or final permits for the modified project/lower impact alternative, or of the FEIS, SEQRA findings statement, or approved unit management plan for improvements to the Belleayre Mountain Ski Center, provided that they are substantially consistent with this Agreement in Principle. Conversely, the Parties reserve all rights to challenge the FEIS, SEQRA findings statement or final permits for the modified project/lower impact alternative, or of the FEIS, SEQRA findings statement, or approved unit management plan for improvements to the Belleayre Mountain Ski Center, to the extent that they are not substantially consistent with this Agreement in Principle.

35. NYCDEP Regulatory Review. The Parties acknowledge NYCDEP's regulatory authority over the stormwater pollution prevention plans and sewerage systems and connections associated with the project, and recognize that NYCDEP's regulatory review will be conducted after these plans are more fully developed and Crossroads has submitted complete applications to NYCDEP under the Watershed Regulations. Although NYCDEP cannot issue, nor commit or promise to issue, regulatory approvals in advance of reviewing such submissions for compliance with standards in the Watershed Regulations, assuming that the SDEIS and new or modified NYSDEC permit applications and draft NYSDEC permits are consistent with the modified project/lower impact alternative and this Agreement in Principle, and assuming further that the Stormwater Pollution Prevention Plan (SPPP) submitted to NYCDEP is likewise consistent with the modified project/lower impact alternative and this Agreement in Principle, including the protocols for the design and preparation of the SPPP specific herein, NYCDEP does not foresee any reason why an approval cannot be issued for an SPPP for the modified project plan under the Watershed Regulations.

36. Other Governmental Permit Applications and Approvals. In due course, Crossroads will prepare and submit permit, subdivision and/or site plan applications to the Towns of Shandaken and Middletown, New York City Department of Environmental Protection (as discussed more specifically above), New York State Departments of Health and Transportation, Ulster County Department of Health, US Army Corps of Engineers and Delaware River Basin Commission, among other agencies, in support of approval of elements of the modified project/lower impact alternative in accordance with each agency's respective jurisdiction. The Parties agree to not object to the issuance of any such approvals or seek adjudication of issues or judicial review of any approvals granted provided that the permit applications and permits are substantially consistent with the modified project/lower impact alternative and this Agreement in Principle.

## General Provisions

37. Financial Security. Prior to the commencement of any construction, and as security for the observance and performance by Crossroads of its obligations under the erosion and sediment control plans and stormwater control plans prepared for the modified project/lower impact alternative in conformance with this Agreement in Principle and the applicable provisions of NYSDEC and NYCDEP permits issued for the modified project/lower impact alternative, Crossroads will deliver to NYSDEC and NYCDEP the following:

a. A performance bond, letter of credit, or other form of security acceptable to NYSDEC and NYCDEP, issued by a bonding or surety company, bank, or other financial institution located and authorized to do business in the State of New York and otherwise approved by NYSDEC and NYCDEP (such approval not to be unreasonably withheld) (the "Issuer"), in a principal amount equal to the estimated cost of implementing and complying with the SWPPP prepared for the modified project/lower impact alternative, and the applicable provisions of NYSDEC and NYCDEP permits, during the period of construction of the modified project/lower impact alternative. Such estimated cost is to be provided by design professionals and contractors retained by Crossroads, subject to NYSDEC and NYCDEP approval which will not be unreasonably withheld. The performance bond, letter of credit or other form of security (i) will remain in full force and effect until completion of construction of the modified project/lower impact alternative, as certified by NYSDEC and NYCDEP; (ii) will provide that if NYSDEC and NYCDEP determine that Crossroads has failed to comply with the provisions of the SWPPP, and/or NYSDEC or NYCDEP permits, and deliver to the Issuer a certificate to that effect and also certifying the estimated cost of curing such failure, including compliance with such plans and/or permits, and restoration of the site as necessary, the Issuer will pay over to NYSDEC and NYCDEP such certified amount; and (iii) will otherwise be satisfactory in form and substance to NYSDEC and NYCDEP. NYSDEC and NYCDEP will, upon application by Crossroads, grant permission to reduce the principal amount of the performance bond, letter of credit or other security based upon completion of portions of the modified project/lower impact alternative and full compliance with those aspects of the SWPPP, and applicable provisions of NYSDEC and NYCDEP permits associated with such completed portions. Prior to delivering any certificate to the Issuer, certifying a failure by Crossroads to observe and perform its obligations under such plans and/or permits, NYSDEC and NYCDEP will provide Crossroads with written notice of such failure, allowing Crossroads a period of thirty (30) days from the date of such notice to cure such failure.

b. A performance bond, letter of credit, or other form of security acceptable to NYSDEC and NYCDEP, issued by a bonding or surety company, bank or other financial institution located and authorized to do business in the State of New York and otherwise approved by NYSDEC and NYCDEP (such approval not to be unreasonably withheld) (the "Issuer"), in a principal amount equal to the estimated cost of operating and maintaining all stormwater controls to be constructed or installed for the modified project/lower impact alternative in conformance with the SWPPP prepared for the modified project/lower impact alternative, and the applicable

provisions of NYSDEC and NYCDEP permits, for a period of five (5) years following completion of construction of the modified project/lower impact alternative. Such estimated cost is to be provided by design professionals and contractors retained by Crossroads, subject to NYSDEC and NYCDEP approval which will not be unreasonably withheld. The performance bond, letter of credit or other form of security (i) will remain in full force and effect for a period of five (5) years from completion of construction of the modified project/lower impact alternative, as certified by NYSDEC and NYCDEP; (ii) will provide that if NYSDEC and NYCDEP determine that Crossroads has failed to comply with the provisions of the SWPPP or NYSDEC or NYCDEP permits with respect to the operation and maintenance of such stormwater controls, and deliver to the Issuer a certificate to that effect and also certifying the estimated cost of curing such failure, including compliance with such plans and/or permits, and restoration of the site as necessary, the Issuer will pay over to NYSDEC and NYCDEP such certified amount; and (iii) will otherwise be satisfactory in form and substance to NYSDEC and NYCDEP. NYSDEC and NYCDEP will, upon application by Crossroads, grant permission to reduce the principal amount of the performance bond, letter of credit or other security based upon completion of portions of the modified project/lower impact alternative, and Crossroads satisfactorily operating and maintaining those stormwater controls associated with such completed portions for a period of five (5) years following completion of construction, in accordance with such plans and/or permits. Prior to delivering any certificate to the Issuer, certifying a failure by Crossroads to observe and perform its obligations with respect to the operation and maintenance of stormwater controls, NYSDEC and NYCDEP will provide Crossroads with written notice of such failure, allowing Crossroads a period of thirty (30) days from the date of such notice to cure such failure.

38. Central Catskill Mountains Smart Growth Program. NYSDEC will create and administer a \$500,000 Central Catskill Mountains Smart Growth Program, which will accept applications from and award grants to local groups and businesses and municipalities along the Route 28 Corridor, from the Town of Olive to the Town of Andes. Projects eligible for such grants include: pedestrian-oriented streetscape amenities (including but not limited to marked crosswalks, roadside park benches, traditional, pole-mounted traffic lights, and roadside plantings); Main Street façade improvements; in-fill construction in hamlets; retrofitting of existing buildings in hamlets including for affordable housing; monitoring and enforcement of sign regulations for the Catskill Park in order to create an enhanced visual appearance compatible with the location of these establishments within the historic Catskill Park; and landscaping and tree planting.

39. Public Lands Enhancements. NYSDEC will make improvements to trail head parking and information kiosks to enhance opportunities for hiking and fishing access on State lands along the Route 28 Corridor, from the Town of Olive to the Town of Andes, and seek the cooperation of NYCDEP in implementing a parallel program for city-owned lands along such Corridor.

#### 40. Traffic Impacts and Controls.

a. The project site is located along County Route 49A (CR 49A). In general, access to the site will be provided via New York State Route 28 to the north of the site with 95 percent of the traffic traveling to and from the east towards the interstate roadway system. Traffic impacts of the modified project/lower impact alternative will be addressed in a supplemental traffic analysis to be included in the SDEIS. This study will include a cumulative impact analysis which considers amendments to the unit management plan for the Belleayre Mountain Ski Center as well as the traffic volume, structural integrity and safety of CR 49A and that road's ability to accommodate expected traffic increases from the Crossroads development and from the expansion of the Belleayre Ski Center. The project site will be accessed with a maximum of 9 curb cuts to CR 49A each of which will provide stop signs for traffic exiting the resorts onto CR 49A. Pedestrian use of CR 49A will not be promoted due to the geometric conditions and the character of this roadway. No crossing of CR 49A by resort golf carts will be permitted. One pedestrian crossing of CR 49A will be provided adjacent to the proposed Wildacres Activities Center. Details concerning traffic patterns will be discussed in the SDEIS. Several mitigation measures were outlined in prior traffic analyses in the DEIS, which include the following:

(i) Realignment of CR 49A at the main driveway to Wildacres to improve sight distance;

(ii) Additional sight distance mitigation at the proposed site driveways along CR 49A to include clearing of vegetation, re-grading of side slopes, and signing; and

(iii) Construction of site access roadways with single lanes entering and exiting the site with stop sign control on the site driveway approaches to CR 49A.

b. The modified project/lower impact alternative coupled with the proposed expansion of the Belleayre Mountain Ski Center will provide ski in/ski out access for the Resort as well as the shuttle buses to the Ski Center to reduce the number of vehicular trips between the project site and the Belleayre Mountain Ski Center. Other than curb cuts at CR 49A, Crossroads will make best efforts to preserve the rural character of CR 49A, including preserving existing vegetation in accordance with Exhibits A and C. Additional project mitigation includes a fair share contribution towards improvements identified at the CR 49A/NY Route 28 intersection, to include the installation of a traffic signal and construction of a northbound right-turn lane and a westbound left-turn lane. The SDEIS will consider improvements to CR 49A as mitigation, if needed.

c. Crossroads commits to utilizing hybrid vans or similar clean-air vehicles to transport guests and visitors traveling between Crossroads hotels and lodging units and nearby recreational facilities, including the Belleayre Mountain Ski Center.

41. Public Transportation Improvements. The State of New York will use its best efforts to improve public transportation service along portions of the Route 28 Corridor and in the immediate vicinity of the modified project/lower impact alternative. To that end, the State will work, in conjunction with United States Senators, Congressional Representatives, and other federal, State and local officials, to secure federal funds for the acquisition of an expanded fleet of cleaner-burning diesel-electric hybrid buses to serve Ulster and Delaware County residents and visitors traveling the Route 28 Corridor. The State will also use its best efforts to provide needed matching funds for such acquisition. As part of the Route 28 Corridor management plan, the State will request that Ulster County Area Transit and Adirondack Trailways expand bus service using these buses and existing vehicles. The State will endeavor to seek financial support for the purchase of hybrid vans or similar clean-air vehicles, and work with appropriate localities to develop a plan for new jitney service between the Belleayre Ski Center, the Crossroads development and nearby hamlets, including Pine Hill, Phoenicia, Fleischmanns and Margaretville.

42. Invasive Species. The Parties agree that Crossroads will prepare, in consultation with the NYSDEC and the Catskill Regional Invasive Species Project, a program for the prevention of invasive species during construction and operation to be incorporated into the SDEIS. For all plantings, excluding golf course turf, preference will be given to native plant species. In those instances where non-native plant species are used for ornamental purposes, then all species and cultivars utilized will be non-invasive (non-spreading) by all propagative means.

43. Green Landscaping.

a. Other than with respect to the lands that comprise the Wildacres Golf Course (the turf management and landscape maintenance provisions for which are set forth in paragraph 19 and Exhibit E of this Agreement in Principle), Crossroads will make best efforts to manage the grass, shrubs, flowers, trees and all other plantings and greenery on the project site, including both the Wildacres Resort and Highmount Spa Resort, without the use of synthetic chemicals.

b. In the event that Crossroads concludes that treatment with synthetic chemicals is necessary for any portion of such landscape, Crossroads will apply such treatment in a way that covers the smallest area practicable and/or for the shortest time period necessary.

c. Crossroads will include a discussion of its landscaping program that is consistent with this paragraph in its forthcoming SDEIS.

d. Crossroads will keep records in the regular course of business documenting the application of synthetic chemicals to any grass, shrubs, flowers, trees or other plantings or greenery on the project site, and will make such records available on request to the NYSDEC.

#### 44. Building Footprints and Clustering.

a. Development of the modified project/lower impact alternative will be restricted to the general building locations identified in the site plans incorporated into this Agreement in Principle and identified in paragraphs 15 and 16 herein. This modified project/lower impact alternative provides for construction of the Wildacres Resort and Highmount Spa Resort with the following number of units:

(i) Wildacres Resort (total 389 units):

- a 250 unit (rooms/suites) Wildacres Hotel, and
- 139 lodging (2-bedroom) units in multi-unit buildings (initially planned as 21 eight unit Octoplexes); and

(ii) Highmount Spa Resort (total 240 units):

- a 120 unit (rooms/suites) Highmount Spa Hotel,
- 60 lodging (2-bedroom) units in two 30 multi-unit buildings, and
- 60 individual lodging (3-bedroom) units in either individual or duplex buildings.

b. The building concepts presented in the referenced site plans contemplate a maximum footprint for each building as noted below. However, in preparing layout designs for the SDEIS, the footprints of the lodge structures, Octoplex units and/or detached units may be increased where one or more of the units are consolidated with other lodging structures to accommodate site conditions or to avoid construction on slopes of greater than 20%, provided the combined number of hotel and lodging units for the Wildacres Resort does not exceed 389 units, and for the Highmount Spa Resort the combined number of hotel and lodging units does not exceed 240 units. The total footprint for any consolidated units should not be greater than the combined total footprint, or the reasonable proportion thereof, for such units as listed below. The final design will also be undertaken in accordance with the narrative criteria set forth as Exhibit B.

#### 1. Highmount Spa Resort<sup>2</sup>

- West Lodge = 32,000± square feet (sf)
- East Lodge = 32,000± sf
- Hotel = 60,000± sf
- Spa(underground) = 30,000± sf

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<sup>2</sup> The configuration (shape and placement) of the Highmount Spa Hotel and East and West Lodges as shown on Exhibit C is conceptual and is not intended to limit the final design, provided these structures remain within the development envelope identified on Exhibit C and the total unit count for the Highmount Spa Resort does not exceed 240 units. The total number of aboveground structures within the development envelope will not exceed four and the total number of structures for individual lodging units (including units in duplex structures) will not exceed 60 and the total number of individual detached lodging structures will not exceed 52.

- Conference Center = 12,000± sf
- Detached Single Units = 2,800± sf per building
- Detached Duplex Units = 4,500± sf per building

2. Wildacres Resort

- Hotel and Golf Clubhouse = 185,600± sf
- Detached Octoplex Units = 7,900± sf per building
- Parking Structure = 45,000± sf
- Fitness Structure/ Pool House = 10,000± sf
- Maintenance Buildings = 9,500± sf
- Driving Range Structure = 5,500± sf
- Water Treatment Plant and other minor accessory structures = 2,500± sf

45. Noise. Through the supplemental noise impact analysis which will be included in the SDEIS, Crossroads will seek to achieve the following goals consistent with the criteria for designation of wilderness and wild forest areas set forth in the Catskill Park State Land Master Plan:

a. Limit to the maximum extent practicable the audibility of new sources of noise from the operation of the modified project/lower impact alternative (exclusive of the operation of the expanded Belleayre Mountain Ski Center contemplated by this Agreement) in wilderness areas in the New York State Forest Preserve (designated as of the date of this Agreement but also including any additions to wilderness areas in the Forest Preserve which occur as a result of this Agreement in Principle) with the goal of preserving the qualities of wilderness areas set forth in the Catskill Park State Land Master Plan.

b. Limit to the maximum extent practicable the noise impacts of new sources of noise from the operation of the modified project/lower impact alternative (exclusive of the operation of the expanded Belleayre Mountain Ski Center contemplated by this Agreement) in wild forest areas in the New York State Forest Preserve (designated as of the date of this Agreement but also including any additions to wild forest areas in the Forest Preserve which occur as a result of this Agreement in Principle) with the goal of preserving the qualities of wild forest areas set forth in the Catskill Park State Land Master Plan.

c. Avoid or minimize to the maximum extent practicable construction noise in wilderness and wild forest areas in the New York State Forest Preserve (designated as of the date of this Agreement but also including any additions to wilderness and wild forest areas in the Forest Preserve which occur as a result of this Agreement in Principle) by using the appropriate best management practices such as those set forth in NYSDEC Policy DEP 00-1, entitled "Assessing and Mitigating Noise Impacts."

d. Through the SDEIS, Crossroads will evaluate and, as necessary, mitigate any potential significant adverse daytime and nighttime construction and operational noise impacts to neighboring residences and sensitive receptors.

e. In addition to application of the DEC Policy DEP 00-1, including best management practices, Crossroads will develop its modified project design (consistent with the site layout in Exhibits A and C), with consideration of the following:

(i) site layout;

(ii) architectural design considerations, such as the use of construction materials that lessen sound emitted from structures;

(iii) building layout; and

(iv) preservation of existing vegetative buffers.

#### 46. Visual Impacts.

a. The modified project/lower impact alternative will not be visible from wilderness areas in the New York State Forest Preserve (designated as of the date of this Agreement but also including any additions to wilderness areas in the Forest Preserve which occur as a result of this Agreement in Principle). The project's visibility from wild forest areas in the New York State Forest Preserve (designated as of the date of this Agreement but also including any additions to wild forest in the Forest Preserve which occur as a result of this Agreement in Principle) will be limited due to vegetation, topography, distance, and limitations on the height of detached lodging units under the existing Town of Shandaken zoning law. Through a supplemental visual impact analysis which will be included in the SDEIS, Crossroads will mitigate any potential significant adverse visual impacts through design considerations, consistent with the site layout in Exhibits A and C, including the following: (i) siting of individual detached housing units to limit visibility from wild forest areas; (ii) architectural design considerations (see paragraph c below); (iii) site design considerations; and (iv) preserving existing vegetative buffers to the maximum extent practicable which will be designated as no cut areas on the final site plan.

b. Night lighting of the Resort will be minimized to the maximum extent practicable consistent with security, safety and operational considerations.

c. Off site glare from lighting and buildings will be minimized through the use of lighting fixtures, and construction materials which visually blend with the natural surroundings, to reduce the Resort's visibility and related impacts. Specifically, roofing, siding and windows, which have the greatest potential for off-site impacts, will be constructed in a manner that minimizes off-site visibility to the greatest extent practicable, consistent with the modified project/lower impact alternative. Non-reflective glass will be installed in buildings. To the



extent practicable, exterior building materials will consist of materials such as wood, stone, stucco and concrete and exterior finishes, such as paint or stain, where used, will be earth tones (e.g. shades of browns, greens, tans, grays and reds).

47. Modifications to the Project. The Parties recognize that the modified project/lower impact alternative layout, design and concept may need to be modified further in response to issues raised by the regulatory and land use agencies having jurisdiction over the project, or due to site conditions, or due to hospitality market conditions, which are not reasonably ascertainable at the time of execution of this Agreement in Principle. For purposes of this Agreement in Principle, any project that may ultimately be approved will be closely in accord with the modified project layout, design and concept, and will not exceed the number of units described herein, and any specific environmental impact expected to result from construction or operation of any project that may be ultimately approved will not be greater in overall scope, intensity or significance than any corresponding environmental impact that would result from the modified project/lower impact alternative as described herein.

48. Reservation of Rights.

a. The Parties have negotiated this Agreement in Principle in good faith. The Parties agree to implement this Agreement in Principle cooperatively and constructively. The terms and conditions hereof will be binding on the Parties and upon their respective successors and assigns. Other than the undertakings specifically provided for in this Agreement in Principle, no Party has ceded or abandoned any right, obligation or duty recognized in law or equity.

b. Nothing herein is intended to diminish the right of the City or State to enforce all applicable provisions of law.

c. The Parties reserve all rights to seek modification of NYSDEC and NYCDEP permits issued for the modified project/lower impact alternative if construction or operation of the project results in violation of applicable standards, or to seek enforcement of such violations.

49. Resolution of Future Disputes. Except as otherwise provided in this Agreement in Principle, if two or more Parties to this Agreement in Principle are unable to resolve a disagreement regarding implementation of this Agreement, they will notify in writing all the other Parties. Within 7 days of receipt of such written notification, the State will convene a meeting or conference call of all the Parties to this Agreement, at which all the Parties agree to undertake good faith discussions to resolve such dispute prior to commencing litigation. The Office of Hearings and Mediation Services of NYSDEC will be available, upon the consent of the Parties in disagreement, to provide binding or non-binding dispute resolution. If the service of the Office of Hearings and Mediation Services is requested, all Parties to this Agreement in Principle may elect to participate, and the participating Parties will provide such papers and documentation, and pursuant to a schedule, as is deemed advisable by the Office of Hearings and Mediation to effectively mediate the dispute. The only Parties eligible to participate in dispute

resolution pursuant to this paragraph will be the Parties signing this Agreement in Principle, including Additional Parties pursuant to paragraph 52. If a dispute submitted for resolution under this paragraph is not resolved, the Parties reserve all rights and remedies under this Agreement in Principle.

50. Notices.

a. For purposes of implementation of this Agreement in Principle, any notices provided to the Parties will be sent to the representatives at their respective addresses below:

CROSSROADS:

Dean L. Gitter,  
Crossroads Ventures LLC  
P.O. Box 267  
Andrew Lane Road  
Mt. Tremper, NY 12457  
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Albany, New York 12260  
518-487-7619 (tel)  
518-487-7777 (fax)  
[druzow@woh.com](mailto:druzow@woh.com)

STATE OF NEW YORK:

Judith Enck  
Deputy Secretary to the Governor  
for the Environment  
Executive Chamber  
State Capitol  
Albany, NY 12224  
518-473-5442 (tel)  
518-473-2344 (fax)  
[Judith.enck@chamber.state.ny.us](mailto:Judith.enck@chamber.state.ny.us)

CITY OF NEW YORK:

David Warne, Assistant Commissioner  
New York City Department of Environmental Protection  
465 Columbus Avenue  
Valhalla, NY 10595  
914-742-2099 (tel)  
914-741-0348 (fax)  
[dwarne@dep.nyc.gov](mailto:dwarne@dep.nyc.gov)

General Counsel  
New York City Department of Environmental Protection  
59-17 Junction Blvd., 19th Floor  
Flushing, NY 11373  
718-595-6528 (tel)  
718-595-6543 (fax)  
[rlevine@dep.nyc.gov](mailto:rlevine@dep.nyc.gov)

Hilary Meltzer  
New York City Law Department  
100 Church Street  
New York, NY 10007  
212-788-1585 (tel)  
212-788-1619 (fax)  
[hmeltzer@law.nyc.gov](mailto:hmeltzer@law.nyc.gov)

NON-GOVERNMENTAL ORGANIZATION:

Marc S. Gerstman, Esq.  
Law Office of Marc Gerstman  
313 Hamilton Street  
Albany, NY 12210  
518-432-4100 (tel)  
518-432-4200 (fax)  
[mgerstman@aol.com](mailto:mgerstman@aol.com)

Eric A. Goldstein  
Natural Resources Defense Council  
40 West 20th Street, 11th Floor  
New York, NY 10011  
212-727-4452 (tel)  
212-727-1773 (fax)  
[egoldstein@nrdc.org](mailto:egoldstein@nrdc.org)

Tom Alworth  
Catskill Center for Conservation  
and Development  
P.O. Box 504, Route 28  
Arkville, NY 12406  
845-586-2611  
845-586-3044  
[talworth@catskillcenter.org](mailto:talworth@catskillcenter.org)

Alex Matthiessen  
Riverkeeper, Inc.  
828 South Broadway  
Tarrytown, NY 10591  
914-478-4501

b. The Parties may modify their respective contacts by sending written notice to all the Parties.

51. Counting of Days. When a period of days is set forth in this Agreement in Principle, it refers to calendar days, unless expressly provided otherwise.

52. Additional Parties. This Agreement in Principle may be signed by additional parties to the NYSDEC Adjudication. Such signing will become effective, and such party will be deemed "Additional Parties" under this Agreement in Principle, upon filing with the State (at the address set forth in paragraph 50) a duly executed and acknowledged original signature page in the applicable form set forth in Exhibit O. The State will forward a copy of all such executed signature pages to the other Parties and to any Additional Parties.

53. Authorization to Execute. The Parties signing this Agreement in Principle, and the Additional Parties who may elect to sign this Agreement, represent that they have been duly authorized to enter into this Agreement pursuant to their lawful authorities.

54. Signatures. This Agreement in Principle may be executed in counterparts. The individual signature pages of the Parties follow immediately below. The signature pages of Additional Parties may be added pursuant to paragraph 52.

[The remainder of this page is intentionally left blank.]

IN CONSIDERATION of the mutual promises and commitments set forth in this Agreement in Principle, and of the undertakings herein of each Party to the other Parties, the undersigned Party does hereby promise and agree to be bound by the terms and conditions thereof:

STATE OF NEW YORK

\_\_\_\_\_  
(Signature)

Eliot Spitzer

\_\_\_\_\_  
(Name)

Governor

\_\_\_\_\_  
(Title)

Date: September 5, 2007

[The remainder of this page is intentionally left blank.]

IN CONSIDERATION of the mutual promises and commitments set forth in this Agreement in Principle, and of the undertakings herein of each Party to the other Parties, the undersigned Party does hereby promise and agree to be bound by the terms and conditions thereof:

NEW YORK CITY  
DEPARTMENT OF ENVIRONMENTAL PROTECTION

\_\_\_\_\_  
(Signature)

Emily Lloyd

\_\_\_\_\_  
(Name)

Commissioner

\_\_\_\_\_  
(Title)

Date: September 5, 2007

[The remainder of this page is intentionally left blank.]

IN CONSIDERATION of the mutual promises and commitments set forth in this Agreement in Principle, and of the undertakings herein of each Party to the other Parties, the undersigned Party does hereby promise and agree to be bound by the terms and conditions thereof:

CROSSROADS VENTURES, LLC

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(Signature)

---

(Name)

---

(Title)

Date: September \_\_\_\_, 2007

[The remainder of this page is intentionally left blank.]

IN CONSIDERATION of the mutual promises and commitments set forth in this Agreement in Principle, and of the undertakings herein of each Party to the other Parties, the undersigned Party does hereby promise and agree to be bound by the terms and conditions thereof:

NATURAL RESOURCES DEFENSE COUNCIL

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Name)

\_\_\_\_\_  
(Title)

Date: September \_\_\_\_, 2007

[The remainder of this page is intentionally left blank.]



IN CONSIDERATION of the mutual promises and commitments set forth in this Agreement in Principle, and of the undertakings herein of each Party to the other Parties, the undersigned Party does hereby promise and agree to be bound by the terms and conditions thereof:

CATSKILL CENTER FOR  
CONSERVATION AND DEVELOPMENT

---

(Signature)

---

(Name)

---

(Title)

Date: September \_\_\_\_, 2007

[The remainder of this page is intentionally left blank.]

IN CONSIDERATION of the mutual promises and commitments set forth in this Agreement in Principle, and of the undertakings herein of each Party to the other Parties, the undersigned Party does hereby promise and agree to be bound by the terms and conditions thereof:

RIVERKEEPER, INC

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(Signature)

---

(Name)

---

(Title)

Date: September \_\_\_\_, 2007

[The remainder of this page is intentionally left blank.]

IN CONSIDERATION of the mutual promises and commitments set forth in this Agreement in Principle, and of the undertakings herein of each Party to the other Parties, the undersigned Party does hereby promise and agree to be bound by the terms and conditions thereof:

TROUT UNLIMITED

---

(Signature)

---

(Name)

---

(Title)

Date: September \_\_\_\_, 2007

[The remainder of this page is intentionally left blank.]

IN CONSIDERATION of the mutual promises and commitments set forth in this Agreement in Principle, and of the undertakings herein of each Party to the other Parties, the undersigned Party does hereby promise and agree to be bound by the terms and conditions thereof:

NEW YORK PUBLIC INTEREST RESEARCH GROUP

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(Signature)

---

(Name)

---

(Title)

Date: September \_\_\_\_, 2007

[The remainder of this page is intentionally left blank.]

IN CONSIDERATION of the mutual promises and commitments set forth in this Agreement in Principle, and of the undertakings herein of each Party to the other Parties, the undersigned Party does hereby promise and agree to be bound by the terms and conditions thereof:

THEODORE GORDON FLYFISHERS, INC

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Name)

\_\_\_\_\_  
(Title)

Date: September \_\_\_\_, 2007

[The remainder of this page is intentionally left blank.]

IN CONSIDERATION of the mutual promises and commitments set forth in this Agreement in Principle, and of the undertakings herein of each Party to the other Parties, the undersigned Party does hereby promise and agree to be bound by the terms and conditions thereof:

ZEN ENVIRONMENTAL STUDIES INSTITUTE

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(Signature)

---

(Name)

---

(Title)

Date: September \_\_\_\_, 2007

[The remainder of this page is intentionally left blank.]