

RESOLUTION
TOWN OF SHANDAKEN PLANNING BOARD

PROJECT NAME: BELLEAYRE RESORT AT CATSKILL PARK

PROJECT LOCATION: +/- 742.24 ACRES LOCATED IN TOWNS OF SHANDAKEN AND MIDDLETOWN, ADJACENT TO BELLEAYRE MOUNTAIN SKI CENTER, ULSTER COUNTY ROUTE 49A

PARCELS IDENTIFIED AS: ELEVEN PARCELS IN TOWN OF SHANDAKEN: (1) TAX MAP SBL#3.1-10.100, 104.46 ACRES; (2) TAX MAP SBL#3.-1-1, 100.81 ACRES; (3) TAX MAP SBL#3.-1-7.100, 47.57 ACRES; (4) TAX MAP SBL#3.-1-8, 22.13 ACRES; (5) TAX MAP SBL#4.-2-1, 16.95 ACRES; (6) TAX MAP SBL#4.-2-2.100, 2.86 ACRES; (7) TAX MAP SBL#4.-2-2.200, 15.35 ACRES; (8) TAX MAP SBL#4.-2-65, 0.88 ACRES; (9) TAX MAP SBL#4.-2-66, 2.27 ACRES; (10) TAX MAP SBL#4.-2-67.200, 16.75 ACRES; (11) TAX MAP SBL#4.-2-68, 1.29 ACRES, AS SHOWN ON THE MAP PREPARED BY ROBERT ALLISON, LS, OF CATSKILL REGION SURVEYING SERVICES DATED MARCH 27, 2015

SEQR TYPE: TYPE I

APPLICATION DESCRIPTION: RESORT PROJECT SEEKING A SPECIAL USE PERMIT AND SITE PLAN APPROVAL WITH CONDITIONS

At a meeting of the Town of Shandaken Planning Board held at the Town of Shandaken Town Hall, Route 28, Shandaken, NY 12480 on March 13, 2017 at 7:00 p.m., there were Board members:

	Present	Absent
Don Brewer, Chair	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Art Christie	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Joanne Kalb	<input checked="" type="checkbox"/>	<input type="checkbox"/>
John Horn	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Cliff Rabuffo	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Allen Shiner	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Kathy Jordan	<input checked="" type="checkbox"/>	<input type="checkbox"/>

The following resolution was moved by: John Horn

Seconded by: Kathy Jordan

WHEREAS, Crossroads Ventures, LLC (“Applicant” or “Crossroads”) applied to the Town of Shandaken Planning Board (“Planning Board”) pursuant to the Town of Shandaken Zoning Law for a special use permit and site plan approval of a +/- 742.24-acre vacation resort development including hotels, lodges and integral accessory uses to be known as the Belleayre Resort at Catskill Park (the “Project”);

WHEREAS, the Project includes approximately 333.56 acres in the Town of Shandaken and Ulster County, made up of the following eleven Town of Shandaken tax map parcels as shown on the map prepared by Robert Allison, LS, of Catskill Region Surveying Services dated March 27, 2015: (1) TAX MAP SBL#3.1-10.100, 104.46 ACRES; (2) TAX MAP SBL#3.-1-1, 100.81 ACRES; (3) TAX MAP SBL#3.-1-7.100, 47.57 ACRES; (4) TAX MAP SBL#3.-1-8, 22.13 ACRES; (5) TAX MAP SBL#4.-2-1, 16.95 ACRES; (6) TAX MAP SBL#4.-2-2.100, 2.86 ACRES; (7) TAX MAP SBL#4.-2-2.200, 15.35 ACRES; (8) TAX MAP SBL#4.-2-65, 0.88 ACRES; (9) TAX MAP SBL#4.-2-66, 2.27 ACRES; (10) TAX MAP SBL#4.-2-67.200, 16.75 ACRES; (11) TAX MAP SBL#4.-2-68, 1.29 ACRES;

WHEREAS, the Project is subject to the State Environmental Quality Review Act (SEQRA), and is classified as a Type I Action;

WHEREAS, the New York State Department of Environmental Conservation (“NYSDEC”) served as lead agency for purposes of SEQRA review and the Planning Board was an involved agency;

WHEREAS, the NYSDEC as lead agency conducted a coordinated review of the Project including the following steps:

1. established itself as lead agency on March 20, 2000 after a decision in its favor by the NYSDEC Commissioner;
2. issued a Positive Declaration, requiring the Applicant to prepare a Draft Environmental Impact Statement (“DEIS”);
3. accepted the DEIS as complete on December 10, 2003;
4. held numerous public hearings and accepted written public comments on the DEIS;
5. held an issues conference resulting in a determination by the NYSDEC Commissioner on issues to be adjudicated;
6. stayed the adjudicatory hearing in order to allow settlement discussions to proceed;
7. after the development of the Agreement in Principle (AIP), required the preparation of a Supplemental DEIS (SDEIS) on the revised project set forth in the AIP;
8. accepted the SDEIS as complete on April 17, 2013;
9. held numerous public hearings and accepted written public comments on the SDEIS;
10. NYSDEC staff made a motion to the NYSDEC Commissioner asking that the stay be lifted and a determination be made that no issues remain for adjudication;
11. after a determination granting NYSDEC staff’s request was issued by the NYSDEC Commissioner dated July 10, 2015, NYSDEC accepted the FEIS as complete on September 2, 2015, and published the notice of completion of the FEIS;
12. lastly, the NYSDEC staff issued a SEQRA Finding Statement and the NYSDEC permits for the project on December 2, 2015, and directed that the SEQRA Finding Statement be

provided to all involved and interested agencies, including the Town of Shandaken Planning Board; and

WHEREAS, the Planning Board participated in review of the EIS and has carefully reviewed the SEQRA documentation, including the NYSDEC SEQRA Findings Statement; and

WHEREAS, the Planning Board referred the Proposed Action to the Ulster County Planning Board, which reviewed a full statement of the Proposed Action on January 7, 2015, including the following materials:

1. Full set of site plans dated October 2013;
2. Special permit and Site Plan Review Application dated October 28, 2013;
3. Letter to Joanne Kalb, Chair and Shandaken Planning Board members from the Applicant, dated October 28, 2013;
4. Special Use Permit Parcel List;
5. Shandaken Application Addendum;
6. Shandaken Site Plan Application Check List, dated May 5, 2014; and
7. The Ulster County Planning Board also had the DEIS and SDEIS as the Board was treated as an involved or interested agency by NYSDEC; and

WHEREAS, Ulster County Planning Board supported the Proposed Action while including advisory comments and requiring twelve modifications; and

WHEREAS, the Applicant addressed many of the modifications and advisory comments either through project changes or agreed to project conditions as detailed in a letter to the Planning Board from the Applicant, dated March 4, 2015; and

WHEREAS, the Planning Board has considered the County's recommendations and comments and, as indicated in the Table attached as Appendix B to this resolution, and includes as conditions to this resolution those noted as "Accepted" and overrides those comments with explanation as set forth therein; and

WHEREAS, Town Zoning Law §§ 116-39 and 116-40 (O) contain the general and specific special use permit standards applicable to the Project; and

WHEREAS, in addition to the general and specific conditions required for approval, Town Zoning Law § 116-39 provides that "[i]n authorizing any special permit use, the Planning Board shall take into consideration the public health, safety and general welfare, the comfort and convenience of the public in general and that of the immediate neighborhood in particular;" and

WHEREAS, Town Zoning Law § 116-50 provides the considerations the Planning Board's review of a site plan should include; and

WHEREAS, the Applicant has provided detailed information about its compliance with the standards, conditions, and considerations for special use permits and site plan approvals as detailed in an "Application Addendum" submitted with its application in October 2013; and

WHEREAS, the Applicant will consolidate the numerous parcels involved by merging them into two parcels, one for the Wildacres portion and the other for the Highmount portion of the Resort as shown on the map prepared by Robert Allison, LS, of Catskill Region Surveying Services dated March 27, 2015; and

WHEREAS, the Planning Board has reviewed an interpretation of “vacation resort” issued by the Town of Shandaken Zoning Board of Appeals (“ZBA”) issued in the year 2000 in connection with the Project that provided examples of the various uses permissible as integral parts of a vacation resort and concluded that all uses should be addressed as a single item on one special permit, not by individual special permits, an approach consistent with the Ulster County Planning Department’s GML § 239-m recommendations in 2015, which were also reviewed by the Planning Board; and

WHEREAS, the Town of Shandaken Building Inspector/Code Enforcement Officer has determined that the density of the Project complies with the Zoning Law, as detailed in a letter dated November 10, 2015; and

WHEREAS, on January 12, 2015 the Planning Board held a duly noticed public hearing on the application for a special permit and site plan approval; and

WHEREAS, the Planning Board and Applicant reviewed the plans further in light of comments raised at the public hearing, including a letter from the Applicant to the Planning Board, dated March 4, 2015, providing written responses to key points raised by PUA Associates, LLC; and

WHEREAS, all public comments were heard by the Planning Board members and written responses to all substantive public comments were reviewed by the Planning Board, and the Project design was revised to address public comments; and

WHEREAS, the Planning Board and its consultants conducted a comprehensive review of the application, plans, comments, and responses in consultation with fire and emergency services providers, among others; and

WHEREAS, on January 13, 2016, the Planning Board approved the site plan and special permit subject to conditions; and

WHEREAS, on February 11, 2016, Catskill Heritage Alliance commenced a CPLR Article 78 proceeding challenging the Planning Board special permit and site plan approvals in Supreme Court Ulster County, Catskill Heritage Alliance, Inc. v. Crossroads Ventures, LLC and Town of Shandaken Planning Board, Ulster County Index No. 16-0385; and

WHEREAS, by Decision and Order dated October 6, 2016 (the “Decision”), attached hereto as Appendix C, Supreme Court, Ulster County (Mott, J.) rejected the majority of Petitioner’s claims, but “remitted the matter to the [Planning] Board, with the directive that it request that the ZBA determine whether the proposed lodges and duplexes are permitted under the [Shandaken Zoning Code];” and

WHEREAS, on November 14, 2016, the Planning Board complied with the directive in Supreme Court's Decision and adopted a resolution referring a request to the ZBA; and

WHEREAS, on December 21, 2016, the ZBA held a public hearing on the Planning Board's request; and

WHEREAS, on February 15, 2017, the ZBA adopted a resolution, attached hereto as Appendix D, determining that the detached lodging units proposed for the resort are permitted under the Shandaken Zoning Code; and

WHEREAS, Supreme Court's Decision further specified that "[w]ithin thirty days thereafter [the ZBA's determination], the [Planning] Board is directed to rule on Respondent's special permit based thereon [the ZBA's interpretation]"; and

WHEREAS, the Planning Board has reviewed the proposed uses and plans for the Project as well as its prior decisions and findings in light of the ZBA's interpretation and determination to assess whether the Project continues to meet the site plan and special permit standards in the Shandaken Zoning Code, as directed by Supreme Court's Decision; and

WHEREAS, on December 14, 2016, the Delaware River Basin Commission approved the inter-basin transfer of water required for the Project's water supply, satisfying Condition 4.e.vi of the Planning Board's original January 13, 2016 special permit and site plan approval;

NOW, THEREFORE, BE IT RESOLVED as follows:

1. The Planning Board reaffirms its prior findings and resolutions made in the resolution dated January 13, 2016, except as modified herein.
2. The Planning Board, as a SEQRA involved agency, hereby readopts the SEQRA findings of NYSDEC made pursuant to NYSDEC's role as lead agency during SEQRA review and issued on December 2, 2015, as supplemented by the additional SEQRA Findings of this Planning Board, attached hereto as Appendix A.
3. The Planning Board reaffirms its prior finding that the required modifications detailed in the Recommendation of the Ulster County Planning Board, dated January 7, 2015, have been or will be met to the extent possible and necessary to meet the special permit and site plan approval standards in the Town Zoning Law by the project changes and conditions set forth herein, and to the extent such modifications are not included in project changes or conditions, the Planning Board hereby affirms its override of the Recommendation of the Ulster County Planning Board as unnecessary to meet the special permit and site plan approval standards as set forth individually in Appendix B to this resolution.
4. The Planning Board finds that the Applicant has met the general and specific standards for a special use permit under Town of Shandaken Zoning Law §§ 116-39 and 116-40

(O), including that all uses integral to the hotel and lodge development are either “clearly accessory” to the hotel or lodge development or are permitted and/or special permit uses within the zoning district where the hotel and lodge development is proposed, based on the Applicant’s Application Addendum, the Applicant’s responses to public comments, the Planning Board’s own review, Supreme Court’s decision as set forth in Appendix C, and the interpretation and determination of the ZBA with respect to the proposed lodging units as set forth in Appendix D, and therefore re-issues a special permit for the Project.

5. The Planning Board reaffirms its prior findings that the site plan meets the standards set forth in Town Zoning Law § 116-50, and therefore, pursuant to Town Zoning Law § 116-51 (A) continues and reissues its prior approval of the site plan submitted by the Applicant, subject to the following conditions and modifications:
 - a. The proposed stormwater system shall comply with the New York State Department of Environmental Conservation (“NYSDEC”) SPDES permit and New York City Department of Environmental Protection (“NYCDEP”) permit.
 - b. At its own cost and expense, the Applicant will engage an independent storm water monitor or monitors (the “Independent Monitor”), subject to the approval of the NYSDEC and NYCDEP, to review and supervise all aspects of the implementation and maintenance of management plans and controls with respect to storm water and erosion and sediment control programs during construction of the Project or as otherwise required by NYSDEC or NYCDEP in connection with permits issued by NYSDEC or NYCDEP. The Independent Monitor shall conduct services in accordance with an Independent Monitor Service Agreement entered into between the Applicant and the Independent Monitor. The Independent Monitor shall 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”) and any permits issued by NYSDEC and NYCDEP. The Independent Monitor shall have the authority to direct that all work which is believed not to 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. Copies of written reports from the Independent Monitor submitted to NYSDEC and NYCDEP shall also be simultaneously provided to the Town.
 - c. At its cost and expense, the Applicant shall appoint an Erosion Control Superintendent (the “ECS”) to serve as the primary point of contact for the Independent Monitor with respect to all issues related to on-site erosion and sediment control. The ECS will be employed by the Applicant and report directly to Crossroad’s on-site representative. The ECS and its staff shall have the following responsibilities. There will be a dedicated erosion control team of 4 to 6 people whose primary role will be repairing, maintaining and upgrading structural erosion control devices such as silt fence, construction fence and wattles. The ECS will be a Certified Professional Erosion Control Specialist and

shall supervise the erosion control teams. Along with the Independent Monitor, the ECS will also have complete stop-work authority of all site earthwork contractors and will have the authority to utilize whatever construction equipment and manpower necessary to implement and repair erosion controls in a timely manner;

- d. The Applicant shall pay for the Town to hire or contract with a "Clerk of the Works" for the sole purpose of monitoring and management of the Project on behalf of the Town. The compensation of such Clerk of the Works shall be mutually agreed to by the Applicant and the Town. The Clerk of the Works shall have the right to examine or have examined all reports submitted by the Applicant to governmental agencies or authorities to ascertain and verify the construction and to perform inspections at reasonable intervals during and after the construction. The Applicant shall file with the Town copies of all reports, including certifications, from the Applicant's engineer or other professionals, such as electricians concerning construction of the Project.
- e. No building permits for structures will be issued for the Project until the Applicant provides the Town with a copy of NYSDOT and/or UCDPW approved design plans and agreement has been reached as to the funding and scheduling of the following proposed improvements to County Road 49A and Route 28:
 - i. The Applicant shall make a fair share contribution toward the construction of a westbound left-turn lane on NY Route 28 at the NY Route 28/CR 49A intersection and a northbound right-turn lane on CR 49A and installation of a traffic signal.
 - ii. The Applicant shall make a fair share contribution to the costs of realigning and regrading of CR 49A at the proposed Wildacres Main Site Driveway/ Belleayre Mountain Ski Center Upper Driveway intersection to mitigate sight distance limitations and construction of left-turn lanes on CR 49A in both directions at the intersection.
 - iii. The Applicant shall provide for clearing of vegetation and embankment grading at the Highmount Spa Resort Driveway on CR 49A and at the Wildacres Upper Access Driveway. Clearing of vegetation, embankment grading and the installation of an intersection warning sign on CR 49A at the Wildacres Front 9 Village Driveway shall also be provided.
 - iv. The Applicant shall relocate the Wilderness Activity Center Driveway approximately 300-feet to the south on CR 49A or implement access restrictions to this driveway to eliminate movements with less than desirable sight distance.
 - v. The Applicant shall make a fair share contribution to the improvement of the section of CR 49A from the Belleayre Mountain Ski Center Upper

Driveway to the Highmount Spa Resort to mitigate the existing non-standard vertical and horizontal features along the roadway. The improvements will widen the roadway to provide two 11-foot wide travel lanes and 2-foot shoulders to better accommodate the increased traffic expected with the project development. The Applicant shall seek the permission of the County DPW to undertake regular inspections of roadside ditches, catch basins and culverts, and shall notify the County when repairs or maintenance are necessary.

vi The Applicant will obtain necessary approvals from the Ulster County Department of Health, and New York State Department of Health for the water supply and necessary infrastructure, having already obtained on December 14, 2016 Delaware River Basin Commission approval for the inter-basin transfer of water for the water supply, as required under the Planning Board's original January 13, 2016 approval.

vii The Applicant will obtain necessary approvals from the NYCDEP, New York State Department of Health, and Ulster County Department of Health for the wastewater collection system, and will enter an Agreement for sewage treatment with the NYCDEP. The design and installation of sanitary sewers, force mains, and manholes will comply with relevant State regulations and Town Code provisions. Design calculations for the sanitary sewer pump stations shall be provided for review and approval to NYCDEP, and details of all design calculations provided to the Town of Shandaken Building Inspector.

viii Responses to all outstanding department and engineering issues being satisfactorily resolved.

- f. The Applicant shall utilize hybrid vans or similar clean-air vehicles to transport guests and visitors traveling between the Highmount and Wildacres hotels and lodging units and nearby recreational facilities, including the Belleayre Mountain Ski Center.
- g. The crosswalk to the Belleayre Mountain Ski Center will be adjusted in the future consistent with any BMSC improvements.
- h. The Applicant will provide locations for future UCAT stops when UCAT requests that such stops be added to current service.
- i. The Applicant will provide appropriate wayfinding signage, including at the Wildacres entrance off of CR-49A.
- j. Prior to issuance of a certificate of occupancy, the Applicant will provide appropriate and reasonable emergency equipment upgrades and training to local fire companies including an additional ambulance vehicle, a garage with crew

quarters in Highmount and an annual stipend starting at commencement of Project construction and running until the first year following the issuance of the resort's first major occupancy permit as agreed between the Applicant, Shandaken Code Enforcement Officer, and Chiefs of the respective fire companies.

- k. The Applicant will support employees volunteering for service with fire and emergency service providers.
- l. The Applicant will obtain a final SWPPP that contains details of swale bottom treatments, the use of check dams, and areas where rock faces are anticipated to be encountered.
- m. The design of the improvements to CR-49A shall to the extent feasible ensure that CR-49A remains passable during all phases of construction.
- n. The Applicant shall inspect, repair and maintain Gunnison Road, as reasonably necessary, in order to keep Gunnison Road open during the construction of the Project, and shall restore Gunnison Road to the reasonable satisfaction of the Town after construction of the Project is completed. Gunnison Road shall, at all times, remain a Town road, and The Applicant shall coordinate any inspection, repair and maintenance of the road with the Town.
- o. The Applicant will seek to use the best available lighting technology during each stage of the Project. Outdoor light pole heights will not exceed 20 feet, and all outdoor lighting will meet the "fully shielded" definition adopted by the International Dark Sky Association or other comparable standard.
- p. The Applicant will complete parking garage construction before opening the hotel to guests.
- q. The Applicant will provide Belleayre Mountain Ski Center will notification of its construction schedule and will coordinate with the Ski Center to avoid disrupting large public events.
- r. The Applicant will adhere to the following limits on blasting and construction activity:
 - i. The construction of the Project by the Applicant will involve blasting operations. Prior to commencing any blasting operations, the Applicant will require its blasting contractor to give written notice by regular mail to all residents (owners or occupants) within ¼ mile of the blasting locations within the site of the opportunity to have a pre-blast survey of structures and potable water wells on their property at the Applicant's expense. If a property owner does not respond in writing that it will allow a pre-blast

survey to be done, the Applicant will not have any further obligations to undertake a survey with respect to that property owner's land. If a property owner gives such permission, they will be supplied with a copy of the report of the survey of their lands. Such property owners shall notify the Applicant of their desire for eligibility by providing the Applicant with written notice. The Applicant shall have a period of 90 days from notification to collect baseline data, which data it will share with property owners upon request. Blasting shall be conducted only between the hours of 9:00 a.m. to 5:00 p.m. on weekdays only. Explosives will not be detonated on weekends or the following holidays: New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day.

- ii. All blasting at the Project area shall be done by a person licensed to blast in New York State, and all blasting shall be conducted in a manner that prevents injury to persons and damage to public or private property outside the Project area, and shall be conducted in a manner that complies with all applicable State and federal laws governing the use of explosives.
- iii. Blasting shall be controlled so the vibrations (Peak Particle Velocity) satisfy the particle velocities v. frequency limits recommended by the U.S. Bureau of Mines Report-8507 (November 1980). If measurements are made at other than the nearest residential structure, the measurements shall be interpreted in accordance with U.S. Bureau of Mines 8507 report entitled "Structure Response and Damage Produced by Ground Vibration from Surface Mine Blasting". Maximum peak particle velocity shall not exceed limits as set by U.S. Bureau of Mines 8507 Report at the location of any dwelling, public building, school, church or community or institutional building outside the blast area, and all blasting will be done with small charges and with the following protective best management practices, whenever feasible:
 - 1. Two to four feet of rippable material will be left over the solid material to be blasted to serve as a cover to prevent excessive fly rock. Blasting mats may be used if overburden is not available. The blasting mats must be of suitable size and material to dampen noise and contain blasted materials.
 - 2. The size of the shot will be limited by sound and vibration control levels and amount of area that can be blasted with good results.
 - 3. Small diameter drilling with high speed equipment will be used to reduce the amount of explosives used in each hole.

4. The use of delay blasting techniques will be used to reduce vibrations associated with the blast.
5. Material stockpiles will be placed to help block blasting and material processing noise transmission off-site.
6. Blasting shots will be designed to minimize ground vibration and air blast.

iv. Blasting Notification

1. Following the issuance of this permit, the Applicant shall provide written notice to all identified owners (occupants) of property within a ¼ mile of the proposed blasting location of their right to be notified in advance of blasting events. The Applicant's obligation to provide notice shall be deemed satisfied if a good faith attempt is made to mail, by regular mail, notice to all persons appearing on the then-current tax rolls of the Town of Shandaken as owners of record of lands within that radius.
 2. If a property owner does not respond, in writing, that he or she wishes to be notified, he or she shall be deemed to have waived his or her right to notice until he or she indicates otherwise in writing.
 3. Residents within a ¼ mile radius of blasting locations within the site who choose to be notified in advance of blasting events will be phoned one (1) hour prior to the blast.
 4. Any eligible owner or successor to an eligible owner who does not receive notice, may request in writing that he or she be put on the Blast Notice Phone List of The Applicant.
- v. A record of each blast shall be made, retained by the operator for at least three (3) years and made available for inspection by the NYSDEC and the Town on demand. The record is to be completed by the end of the work day during which the blast occurred, including the seismograph reading, if available, and shall contain the following:
1. Name of operator conducting the blast.
 2. The location, date and time of the blast.
 3. Name, signature and license number of the licensed blaster.
 4. Type of material blasted.
 5. Number of holes, burden and spacing.
 6. Diameter and depth of holes.
 7. Type of explosives used.

8. Total weight of explosives used.
 9. Weight of explosives per hole.
 10. Maximum weight of explosives detonated within any eight (8) millisecond period.
 11. Maximum number of holes or decks detonated within any eight (8) millisecond period.
 12. Initiation system, including number of circuits and the time interval, if sequential timber is used.
 13. Type and length of stemming (deck and top).
 14. Type and detonator and delay periods used, in milliseconds.
 15. Distance and scaled distance to the closest protected structure.
- vi. Blasting will not occur during adverse weather conditions such as high winds unless a loaded charge must be detonated before the end of the day for safety reasons. Blasted and other excavated material will be used on site. Shot design will be reevaluated if ground vibration or air blast thresholds are approached. Air blast values shall be limited to those set forth in US Bureau of Mines RI 8485 or other similar standard.
- vii. The Applicant shall participate in an arbitration proceeding brought by any eligible property owner located within a radius of 1/4 mile of the blasting locations who alleges that his or her well, including commercial wells, or structures have been damaged by the Applicant's blasting activity. Such arbitration shall be held in Kingston, New York in accordance with the commercial rules of the American Arbitration Association, subject to this paragraph. Arbitration proceedings shall be conducted by a panel of three qualified hydrogeologists in the case of an allegedly damaged well or, in the case of an allegedly damaged structure, NYS licensed structural engineers selected as follows: the party initiating arbitration shall select one arbitrator and the other party shall select a second arbitrator. Each party shall provide prompt written notice of the arbitrator selected by it in accordance with these terms. The two arbitrators shall select a third arbitrator as soon as possible. No arbitrator shall have or previously have had any significant relationship with any of the parties. The decision of any two of the arbitrators on any submitted matter shall be final. Notwithstanding the foregoing, if the controversy or claim in question is not resolved by the arbitrators as provided herein within 180 days after selection of the first arbitrator, either party may pursue any remedy with respect hereto providing by law.

The format of the arbitration remedy shall be as follows:

1. Any property owner who desires to be eligible to participate in the arbitration procedure shall allow their well and structures to be inspected by the Applicant for the collection of baseline data in accordance with the pre-blast survey procedure outlined above.

2. Any aggrieved owner may initiate arbitration proceedings by serving the Applicant with a letter by registered or certified mail notifying the Applicant of their desire to arbitrate a well or structure issue.
3. Within seven days of receipt of said letter initiating arbitration, the Applicant shall inspect and test the owner's well or structure to determine the extent and cause of the problem. For example, if water quantity in the well has fallen below the baseline level established in the pre-blast survey to a production level less than the amount necessary for existing use; or, in the case of residential use only, if water quality has fallen below the baseline level to a level no longer in compliance with Department of Health potable water quality standards, then in either event, the Applicant shall immediately provide potable water to the owner in the amount necessary for existing use until responsibility for the problem has been determined, pursuant to paragraph "h." In the case of structures, any necessary repair shall be determined by the arbitrators.
4. The Applicant may within a period of sixty (60) days, attempt to cure the well problem by, for example, drilling the owner's well deeper.
5. If the problem is not cured to baseline level the arbitration shall commence as soon after the initial sixty (60) day period as is possible.
6. The arbitrator shall investigate and determine the cause of the well problem and damage to structures. Both parties shall allow access to their respective property to the arbitrator. Unless the arbitrator determines that the Project is not a contributing cause to such problem, the arbitrator shall require the Applicant to cure the problem and, in the case of damaged wells, the Applicant will provide potable water until the problem is cured.
7. If the Applicant is found to be only partially at fault, it shall be required only to pay its percentage of fault.
8. The Applicant will pay all costs of arbitration, unless the arbitrator determines that the Applicant's activities are not the cause of the problem, in which case each party will pay one-half of the cost of the arbitration.

9. This arbitration shall be available to owners of property, whose wells or structures are located within ¼ mile radius of the blasting location(s).
 10. This arbitration remedy shall be available through the construction phase of the Project, and shall apply to new wells developed during the construction phase, provided such wells are registered with the Applicant.
- s. The Applicant will provide the Town with a sufficient performance guaranty prior to commencing construction in accordance with Section 116-53 of the Town's zoning law. Such funds shall secure, among other things, the repair/improvement of Gunnison Road, completion of landscaping elements, and construction of utility infrastructure in accordance with the approved site plan.
 - t. The Applicant, in accordance with Section 116-52 of the Town's Zoning Law to reimburse the Town for the reasonable cost of the Town's Clerk of the Work's review and attendance at inspections conducted by NYSDEC and/or a professional engineer retained by the Applicant and reimbursement of the fees and costs imposed by the other consultants not listed herein but retained by the Town upon the written consent of the Applicant. Reimbursement to the Town shall be made within thirty (30) days of the presentation of approved town vouchers to the Applicant.
 - u. The Applicant shall perform the Work during its normal working hours of 7 a.m. to 7 p.m. on Monday through Saturday, unless otherwise approved by the Town Code Enforcement Officer for unique circumstances including but not limited to continuous concrete pours and similar activities. The Applicant shall perform the Project work in accordance with applicable law, code, rule or regulation.
 - v. The Applicant shall be responsible for any portion of the Project work performed by any subcontractor of the Applicant. The Applicant shall have no responsibility, duty or authority to direct, supervise or oversee any contractor of Town or such contractor's work, or to provide the means, methods or sequence of such work or to stop work by such contractor. The Applicant's work and/or presence at the Project site shall not relieve others of their responsibility to Town or to others.
 - w. The Town shall be given notice of all construction inspections and shall be provided copies of all reports resulting from any such inspection during and after construction of the Project. Additionally, the Applicant shall file with the Town copies of all reports, including certifications, from the Applicant's engineer or other professionals, such as electricians for example, concerning construction of the Project improvements.

- x. The construction of the Project shall be governed by these conditions. Notwithstanding the foregoing, the Town's Code Enforcement Officer in consultation with the Town consulting engineer is authorized to permit minor site changes without requiring the Applicant to submit such changes for additional site plan review by the Planning Board, including, without limitation, changes pursuant to signoffs from Independent Monitor and NYSDEC/NYCDEP, permitting shifting of buildings or road placement to avoid additional blasting, and changes in lighting, signage, or landscaping locations, consistent with the overall scheme of the Project.
- y. Payment of all fees and expenses in relation to the aforesaid approval.

Roll Call Vote:

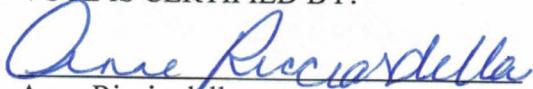
Roll call vote:

Don Brewer, Chair
 Art Christie
 Joanne Kalb
 John Horn
 Cliff Rabuffo
 Allen Shiner
 Kathy Jordan

<u>Yes</u>	<u>No</u>	<u>Abstain</u>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

RESULTS OF THE VOTE ON THE ABOVE RESOLUTION WERE:

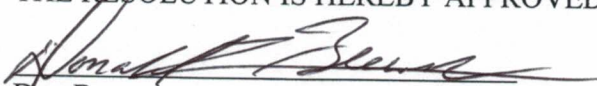
VOTE IS CERTIFIED BY:


 Anne Ricciardella
 Secretary, Town of Shandaken Planning Board

3-13-17
 Date



THE RESOLUTION IS HEREBY APPROVED AND ORDERED TO THE RECORD BY


 Don Brewer
 Chair, Town of Shandaken Planning Board
 4842-2211-6421, v. 2

3/13/17
 Date