

AMENDED JOINT AGREEMENT FOR IMPROVEMENTS TO ANGEL FIRE  
COUNTRY CLUB

THIS AGREEMENT is made this 13<sup>th</sup> day of July, 2006 by and between ANGEL FIRE RESORT OPERATIONS, L.L.C., a New Mexico Limited Liability Company, ("the Resort") and the ASSOCIATION OF ANGEL FIRE PROPERTY OWNERS, INC., a New Mexico Corporation, ("AAFPO"), collectively referred to as "the Parties," and supersedes the Joint Agreement for Improvements to Angel Fire Country Club, executed by the Parties on March 15, 2006.

RECITALS

WHEREAS, the Resort is the owner and operator of Angel Fire Resort in Angel Fire, Colfax County, New Mexico, and is responsible for the upkeep, maintenance, operation, and improvement of the Resort's facilities, including certain amenities; and

WHEREAS, the Angel Fire Country Club ("Country Club") is one of the amenities owned, maintained, and operated by the Resort; and

WHEREAS, the members of AAFPO benefit from the use and enjoyment of the Resort's amenities, including the Country Club, pursuant to the terms and conditions of the Amended Joint Plan of Reorganization, approved by the United States Bankruptcy Court for the District of New Mexico in the bankruptcy case involving the Resort's predecessor, Angel Fire Corporation (United States Bankruptcy Court for the District of New Mexico Cause No. 11-93-12176 RA) ("the Plan") and in the Supplemental Declaration of Restrictive Covenants and Easements, Exhibit E, to the Plan ("Supplemental Declaration"); and

WHEREAS, the Parties agree that there is a need for a new Country Club; and

WHEREAS, the Resort and AAFPO desire to construct a new Country Club for the benefit of the Parties; and

WHEREAS, the Parties affirm and agree that the proposed new Country Club do not change the Parties' rights as set forth in the Plan; and

WHEREAS, AAFPO has discretion over the use of certain funds ("AAFPO's Discretionary Fund") as set forth in Paragraph 4.16 of the Plan; and

WHEREAS, AAFPO consents to assigning up to forty percent (40%) of its Discretionary Fund for construction of a new Country Club as a reimbursement to the Resort for new Country Club, said assignment to be made each year and every year beginning thirty (30) days from the

date of the Resort obtaining a Certificate of Occupancy from the Village of Angel Fire, for a maximum period of twelve (12) years, and

WHEREAS, AAFPO has agreed and consented to placement of a mortgage, lien, or encumbrance on the Country Club to secure the cost of the construction to be in addition to any existing mortgage, lien, or encumbrance; and

WHEREAS, AAFPO understands and agrees that this Agreement shall not grant, transfer, or devise any rights or interest in the Country Club to AAFPO not presently existing and that all duties and responsibilities of the Parties set forth in the Plan shall not be affected by this Agreement; and

WHEREAS, the Parties wish to enter into an agreement to clarify the roles and responsibilities of the Resort and AAFPO before, during, and after the construction of the new Country Club, as well as to establish terms for payment of the costs of the construction project;

**NOW, THEREFORE, THE PARTIES UNDERSTAND AND AGREE:**

#### DEFINITIONS

For the purposes of this Agreement, the Parties agree that the following terms shall have the meanings set forth below.

1. Bankruptcy Plan ("the Plan"): The Amended Joint Plan of Reorganization, approved by the United States Bankruptcy Court for the District of New Mexico in the bankruptcy case involving the Resort's predecessor, Angel Fire Corporation (United States Bankruptcy Court for the District of New Mexico Cause No. 11-93-12176 RA).
2. Change Orders: Any adjustments to the originally approved design concept and/or construction plan and/or budget that may become necessary due to unanticipated conditions affecting the completion of the Project or due to changes in general market conditions.
3. Construction Plan: Documents prepared by the designated architect consisting of drawings and specifications setting forth in detail the requirements for the completion of the Project. The construction plan shall be prepared following the designated architect's development, and the Parties' approval, of the design concept.
4. Discretionary Fund: An account established and defined in Paragraph 4.16 of the Bankruptcy Plan, comprised of one hundred thousand dollars (\$100,000) or four percent (4%) of the collected annual membership assessments each year, whichever is greater.

5. Project: The construction of the new Angel Fire Country Club as agreed upon by the Parties.

6. Project Management Plan: A proposal prepared by the architect or general contractor overseeing completion of the Project that sets forth the specific construction tasks necessary to complete the Project as outlined in the approved Design Concept, and includes estimated completion times for each task, specifications for quality control, and specified penalty payments for failure to timely complete the individual construction phases and/or the Project as a whole.

7. Supplemental Declaration: The Supplemental Declaration of Restrictive Covenants and Easements, Exhibit E, to the Bankruptcy Plan.

### AGREEMENT

1. Project Oversight, Control, and Conflict Resolution. The Parties agree that the Resort shall have sole responsibility for overseeing all aspects of the construction of the Project, including, but not limited to, reviewing and implementing the Project's Design Concept, Construction Plan, Project Management Plan, and budget, as well as all punch list items and change orders. The Resort shall also have sole responsibility for resolving any and all conflicts with engineers, architects, contractors, subcontractors, material suppliers, and other contracted professionals in a manner consistent with the Project Management Plan.

2. Financing Responsibilities.

- (a) The Resort shall obtain financing for completion of the entire Project. AAFPO agrees to consent by board resolution to a mortgage on the Country Club property to secure the costs of the new Country Club.
- (b) To reimburse the Resort for the total cost of the Project as set forth in the approved budget, including all approved financing costs secured by the Resort for the completion of the Project, AAFPO covenants and agrees to provide and make annual payments to the Resort from AAFPO's Discretionary Fund, beginning thirty (30) days from the date of the Resort obtaining a Certificate of Occupancy from the Village of Angel Fire, which payments shall constitute not less than, nor more than forty percent (40%) of said Discretionary Fund per year, for a maximum period of twelve (12) years. The Resort shall provide the Parties with an accounting of all costs incurred in the Project. The Resort shall advise AAFPO in writing of the amount being applied from AAFPO's Discretionary Fund to the Project's costs each year.

MISCELLANEOUS

3. The Parties agree that limited meeting and/or office space in the newly constructed Country Club shall be designated for AAFPO's use. Said use shall not interfere with the Resort's Country Club operations or with any health, safety, or licensing compliance.

4. The provisions herein shall be binding upon and inure to the benefit of the heirs, executors, administrators, assigns, and successors of the Parties.

5. If any provision of this Agreement is found to be invalid or unenforceable with respect to any party, the remainder of this Agreement shall not be affected, and each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

6. Any notice or demand required to be given herein shall be made by certified or registered mail, return receipt requested, or reliable overnight courier to the address of the respective parties set forth below:

**ANGEL FIRE RESORT OPERATIONS, L.L.C.:**

Dan Rakes, General Counsel  
Angel Fire Resort  
P.O. Box 130  
Angel Fire, NM 87710

**ASSOCIATION OF ANGEL FIRE PROPERTY OWNERS, INC.:**

P.O. Box 21  
Angel Fire, NM 87710

7. This Agreement shall be governed by the laws of the State of New Mexico.

8. This Agreement constitutes the entire agreement between the Parties and there is no representation, warranty, collateral agreement, or condition affecting this Agreement other than as expressed herein in writing. No changes shall be made in the terms or conditions of this Agreement without prior written consent of both Parties.

IN WITNESS WHEREOF, the Parties have hereunto affixed their signatures and executed this Agreement the day and year first above written.

ANGEL FIRE RESORT  
OPERATIONS, L.L.C.

By: \_\_\_\_\_

JON MAHANNA  
General Manager

ASSOCIATION OF ANGEL FIRE  
PROPERTY OWNERS, INC.

By: \_\_\_\_\_

CURTIS JONES  
President