

**PETITION FOR APPROVAL OF PUBLIC IMPROVEMENT DISTRICT
BY THE VILLAGE OF ANGEL FIRE**

A. Introduction

This petition (this “Petition”) is submitted by Angel Fire Resort Operations, LLC, a New Mexico limited liability company (“Petitioner”), pursuant to the Public Improvement District Act, Sections 5-11-1 through 5-11-27, NMSA 1978 (the “Act”) and Village Resolution 2001-17 (the “Resolution”). Petitioner asks the Village of Angel Fire, New Mexico (the “Village”) to approve the formation of a public improvement district within the Village to be known as Angel Fire Public Improvement District No. 1 (the “District”).

The purpose of this Petition, and the proposed District, is to comply with the requirement, contained in the April 20, 1995 Amended Joint Plan of Reorganization of Angel Fire Corporation et al. (Case No. 11-93-12176 RA) (the “Bankruptcy Plan”), to create an assessment district that will complete infrastructure for the benefit of certain lots in Angel Fire. Numerous claimants in that bankruptcy (including their successors, the “Infrastructure Claimants”) asserted that the debtor in bankruptcy had variously promised to provide road, water and other infrastructure to induce the Infrastructure Claimants to purchase their lots. The bankruptcy court recognized these claims (the “Infrastructure Claims”), and provided a mechanism in the Bankruptcy Plan for their satisfaction. In brief, the Bankruptcy Plan requires Petitioner, as the successor-in-interest to the purchaser of the bankruptcy estate, to establish a fund of \$2,000,000 (the “Infrastructure Improvement Fund”), which Petitioner has done. Because the Bankruptcy Plan recognized that the cost of satisfying the Infrastructure Claims would be considerably more than the \$2,000,000 Infrastructure Improvement Fund balance, the plan conditioned the expenditure of any of the Infrastructure Improvement Fund monies on the formation of a special assessment district, with the required infrastructure being financed by special assessments to the extent that its cost exceeded the amount in the Infrastructure Improvement Fund.

Since 1995 attempts have been made by the Village and Petitioner to establish special assessment districts pursuant to the Bankruptcy Plan, but for various reasons these efforts have not succeeded. Accordingly, the Infrastructure Claims remain unsatisfied, and the \$2,000,000 balance in the Infrastructure Improvement Fund remains unspent.

The New Mexico legislature adopted the Public Improvement District Act in 2001. Although similar in many respects to the special assessment district statute (Chapter 3, Article 33 NMSA 1978), the Act includes a variety of features that provide flexibility and more economical financing, including an exemption of the acquisition and construction of PID improvements from the state Procurement Code. Petitioner believes that a public improvement district organized under the Act is the functional equivalent of a special assessment district, and therefore will comply with the Bankruptcy Plan. Petitioner further believes that use of a PID offers the best chance of the successful satisfaction of the Infrastructure Claims, once and for all.

The properties of the Infrastructure Claimants that are to benefit from infrastructure under the Bankruptcy Plan comprise, following lot consolidations since the adoption of the Bankruptcy Plan, 829 lots (the “Infrastructure Claimant Lots”). However, the proposed District does not

correspond precisely to these 830 lots, but instead excludes 14 of the Infrastructure Claimant Lots and includes 32 other lots (the “Additional Lots”) that are not Infrastructure Claimant Lots. The Infrastructure Claimant Lots that are excluded are those that, since 1995, have obtained the infrastructure services that they were to receive under the Bankruptcy Plan. Clearly, it would be illogical to attempt to retain those lots in the District, thereby imposing on them a special levy for the cost of improvements that they already enjoy. (Several Infrastructure Claimant Lots have obtained some, but not all, of the infrastructure services that they are due under the Bankruptcy Plan. Such lots are included in the District, but will be assessed only for the types of improvements that they do not currently have.)

The 32 Additional Lots, on the other hand, are proposed to be included in the District because the District will unavoidably provide them benefits that they do not now have, and it would be inequitable not to require them to share the cost. All of the Additional Lots are located along Back Basin Road, in the Angel Fire Village North subdivision. Several Infrastructure Claimant Lots within this subdivision also are located along Back Basin Road, and, moreover, over 150 other Infrastructure Claimant Lots are located on subdivision side roads but use Back Basin Road as a primary access route. The Bankruptcy Plan provides that all of the Infrastructure Claimant Lots in the subdivision are to receive road improvements. This implies that all of the length of Back Basin Road through the subdivision, which is in poor condition, should be improved. It would make little sense to improve isolated road segments only in front of Infrastructure Claimant Lots and to leave adjacent and intervening segments, which front the Additional Lots, unimproved. Therefore, this Petition proposes that the Additional Lots be included in the District to the extent of road improvements, and be levied for road improvements on a pro rata basis along with the neighboring Infrastructure Claimant Lots.

Including such exclusions and inclusion of lots, the District is proposed to contain a total of 847 lots (the “District Lots”), of which 314 are owned by Petitioner. The remaining District Lots have over 400 separate owners.

Under Section 5-11-3(A) of the Act, a petition to form a PID must be signed by “the owners of at least twenty-five percent of the real property by assessed valuation proposed to be included in the district”. According to the records of the Colfax County Assessor (for the 2005 tax year), the total assessed valuation of the District Lots is \$19,493,513, and the total assessed valuation of the 314 District Lots owned by Petitioner is \$9,172,869, or 47.06% of the larger total. Petitioner’s execution of this Petition, by itself, therefore satisfies the Section 5-11-3(A) requirement.

The individual District Lots will receive infrastructure improvements that will consist of various combinations of road improvements, water lines, sewer lines, and underground electrical and telephone lines (collectively, the “District Improvements”). Except for the Additional Lots, the particular improvements to be received by each of the District Lots corresponds to the specific requirements of the Bankruptcy Plan, with the addition of sewer lines for certain lots in Angel Fire West Village and Country Club 1&2 Amended/Reamended, which have been included at the request of the Village.

A listing of the District Lots, the names and addresses of the owners of record and the District Infrastructure proposed to be installed for the benefit of each lot is set forth in Exhibits B through D to the General Plan (discussed below).

The estimated total cost of the District Improvements (excluding financing costs and the Additional Project Contingency discussed below) is \$21,370,435.87, of which \$2,000,000 will be paid from the Infrastructure Improvement Fund. (See Part III of the Feasibility Study.) The remaining \$19,370,435.87 of the estimated improvement costs, together with estimated financing costs of \$3,851,735 (including capitalized interest, a debt service reserve fund, and issuance costs) and an “Additional Project Contingency” of \$4,156,465,¹ will be financed through the issuance of District special levy bonds, payable through the imposition of a special levy on each District Lot, as permitted by Section 5-11-20 of the Act. (See Table 3 in the Feasibility Study.) The amount of the special levy shall be apportioned according to the allocated cost of the District Improvements that benefit each District Lot, as described in the General Plan and in Exhibit F to the Feasibility Study.

Pursuant to Section 5-11-8(B) of the Act, the total principal amount of bonds issued by the District shall not exceed “sixty percent of the market value of the real property and improvements in the district after the public infrastructure improvements of the district are completed plus the value of the public infrastructure owned or to be acquired by the district with the proceeds of the bonds.” As explained in the Appraisal Report included as Exhibit 5 to this Petition, the summation of the individual lots/tracts prospective market values of the District Lots with the District Improvements in place will be \$74,935,578. The bond principal amount (\$24,978,000) corresponds to 33.3% of this amount, which is well below the 60% statutory limitation.

Because the District Lots are owned by different parties, formation of the District will require approval of three-quarters of the votes cast in a formation election, pursuant to Sections 5-11-7 and 5-11-8 of the Act.

Pursuant to Section C(8) of the Resolution, a form of proposed Development Agreement among the Village, Petitioner, the District and the Association of Angel Fire Property Owners, Incorporated, is attached as Exhibit 7 (the “Development Agreement”). The Development Agreement, which would become effective only upon the successful formation of the District, provides for the use of the Infrastructure Improvement Fund to partially finance the District, for the issuance of District bonds to finance the remainder of the costs, for the implementation of the special levy to pay debt service on the bonds and other District expenses, and related matters pertaining to the District and its administration.

¹ Under the Act, the maximum funds available to the District are limited to the District’s estimated costs. The Village has requested that District funds be maximized in order to avoid any possibility that the cost of the acquisition and construction of the District Improvements will exceed the District’s available resources, thereby either leaving some District Improvements incomplete or requiring additional funds from third parties. Since the maximum amount of District bonds that Petitioner’s financial advisor believes can be sold is one-third of the estimated total market value of the District Lots following installation of the District Improvements, the Additional Project Contingency as been added in order to increase the total District estimated costs to sum that, less the amount of the Bankruptcy Fund, equals the maximum bondable amount.

Under the Act, the indebtedness of the District cannot be, or become, an obligation of the Village. Nevertheless, the District will affect numerous property owners within the Village, and its proper functioning is a matter of significant interest to the Village. Accordingly, the Development Agreement contemplates that the District board will be indirectly controlled by the Village, with all initial members of the District Board being appointed by the Village. The Development Agreement further proposes that within six years following the date of formation of the District, the District shall either hold an election of District Board members or that governance of the District shall revert to the Village Council.

B. Required Information

The Act and the Resolution require a PID application to include specific information. Such information is discussed below.

- (a) Pursuant to Section 5-11-3(A)(3) of the Act and Section C(1) of the Resolution, a General Plan is included as Exhibit 1. The General Plan includes maps depicting the boundaries of the District (General Plan Exhibit A); a parcel map depicting the tracts of the real property to be included in the District and their legal descriptions (General Plan Exhibits A and B); a general description of the proposed PID improvements and their approximate locations (General Plan Exhibits C and E); estimated total costs of all improvements (General Plan Exhibit D), and the proposed financing method.
- (b) Pursuant to Section 5-11-3(A)(4) & B of the Act and Sections B & C(2) of the Resolution, a Rate and Method of Apportionment of Special Levy (the “Rate and Method”) is included as Exhibit 2, and a Feasibility Study is included as Exhibit 3.
- (c) Pursuant to Sections B(5) and C(5) of the Resolution, Petitioner and the Village have entered into a Reimbursement Agreement, which is attached as Exhibit 4. Based on prior discussions between the Village Administrator and Petitioner, a check for \$60,000 was tendered with an earlier version of this Petition, for paying the initial costs of the Village in processing this Petition. Pursuant to the terms of the Reimbursement Agreement, Petitioner has since supplemented this initial amount.
- (d) Pursuant to Section C(3) of the Resolution, an Appraisal Report describing the economic effect of the District Improvements and the special levy is attached as Exhibit 5. (Section C(3) of the Resolution also calls for an “absorption analysis”. The Appraisal Report does not include such an analysis, as such, because unlike PIDs that are used to furnish infrastructure to a large tract that is owned by a single developer, the District here consists of lots that have already been conveyed to individual owners. In a sense, the District Lots have already been “absorbed”.)
- (e) Section C(4) of the Resolution requires a PID Operating and Maintenance Plan outlining operating and maintenance costs. The General Plan contemplates that the District Improvements will be dedicated to the Village immediately after inspection and testing, and that the District itself will not operate or maintain the improvements, or collect any special levy for operations and maintenance. According, this particular

- requirement is not applicable. On the other hand, a report discussing the capacity of the City's current sewer treatment plan and the estimated annual expense of operating the District Improvements is included as Exhibit 6.
- (f) Pursuant to Section C(8) of the Resolution, the form of a proposed Development Agreement is attached as Exhibit 7.
- (g) Although not required to be part of this Petition, the form of a proposed initial PID resolution (under which the Village would declare its intent to form the District pursuant to Section 5-11-3 of the Act) is attached as Exhibit 8.

C. Other Requirements

In addition to the items listed above, the Resolution contains certain other requirements, which are discussed below in the order they occur in the Resolution.

Section A(1): This subsection states that the Village will consider PIDs for certain purposes, including "utility line extensions", "roadways", "drainage facilities" and "other facilities the Village deems necessary". The District Improvements include the first three categories of purposes. In addition, the District will (1) enable the full development of hundreds of existing lots, (2) benefit hundreds of different landowners, and (3) finally satisfy a longstanding, divisive legal claim.

Section A(2): The Village policy expressed in this subsection is to limit the number of active PIDs to three. If approved and formed, the District will be the first PID to exist in the Village. To Petitioner's knowledge, there are no other PIDs contemplated or in the planning stage involving any property within the Village.

Section B(1): This requirement sets a minimum project valuation of \$1.5 minimum. The District, which will involve an investment of over \$21 million (excluding financing costs), far exceeds this amount.

Section B(2): Under this subsection, the petitioner "must provide sufficient proof of his/her ability to successfully carry out the proposed improvements. This may include past projects of similar scope of prior assessment district experience." This requirement appears to contemplate a PID in which a single landowner proposes to subdivide and develop a large tract. This was the case with the 2004 Ventana Ranch PID in Albuquerque, and the 2005 Cabezon PID in Rio Rancho. In such a situation, the Act is utilized merely as a means of facilitating a conventional residential development, with the single landowner acting as the developer. In the present case, however, Petitioner, which owns only 37% of the total number of lots to be included in the PID, does not wish or propose to be the "PID developer". Instead, this Petition anticipates that the District itself will oversee and contract for the construction of the District Improvements. As such, the requirement in Section B(2) of the Resolution is not applicable.

Section B(3): This subsection requires that the petitioner demonstrate that the PID will be self-supporting. The best evidence of the economic viability of the District will be the ability of the District to sell its bonds. In order for the bonds to be salable, the purchaser(s) must be

persuaded that the underlying economic fundamentals of the real estate market will make it worthwhile for a large majority of the landowners to continue to pay their special levies, rather than defaulting and risking losing their properties in foreclosure. The underwriter for the bonds (RBC Dain Rauscher, Inc., an investment banking firm with extensive experience in evaluating and structuring PID financings) is confident that the District bonds will be salable, based on the underlying economics of the District.

Section B(4): This subsection requires that the proposed PID project be consistent with the goals and objectives of the Village's Master Plan, and that all improvements will meet the current development standards and regulations. Since the District Lots are all already platted, the District will be consistent with the Master Plan. All of the District Improvements will comply with the Village's building code requirements (as applicable) and development standards and regulations.

Section B(6): As provided in Section 11 of the Development Agreement, the District Improvements will meet all required tests, inspections and certifications prior to acceptance by the Village.

Section C(6): This subsection requires evidence, for proposed public improvement districts that have multiple ownership, that the costs of the improvements are comparable with similar projects in the current market.

Petitioner has retained JM Consulting ("JMC") of Albuquerque, whose principal is Joe P. Moore, to perform the cost estimates for the District Improvements. Until mid-2006, Mr. Moore was a Vice President and Civil Engineering Department Head with Molzen-Corbin & Associates, a large and experienced Albuquerque-based engineering firm. Mr. Moore is familiar with the cost differentials that exist between construction in Albuquerque or Santa Fe and more rural parts of the state, and has taken such differentials into account in preparing the estimates. In addition to other information, JMC took into account the cost of recent area construction projects. JMC's explanation of its methodology is as follows:

The engineer's estimates of probable construction costs were developed utilizing the unit cost method of cost estimating. Quantities utilized in the estimates were calculated based on mapping provided by Petitioner, which in turn were obtained from field subdivision plats. Centerline distances of all included streets were scaled from the provided mapping utilizing AutoCAD programs.

Water and sanitary sewer pipe quantities were tabulated based on the scaled street centerline distances. Appurtenances such as sanitary sewer manholes and water fire hydrants were spaced at 400 ft. intervals. Waterline valving was included at all street intersections. One sanitary sewer service and one water service connection including meter, meter can, service line, valving, and main line tap were included for those lots receiving the service.

Electrical and telephone quantities, utilizing a common trench, were based on centerline of street lengths.

Street quantities were calculated using a square yard area method for subgrade preparation and base course. The estimated square yard quantity is the product of the street centerline length and street width based on a design typical street section of 24 ft.

Unit costs for water, sanitary sewer, and street construction were based on a comparison of costs from recent area construction projects, Mean's Construction Cost Data Annual Edition (published by McGraw-Hill), New Mexico Department of Transportation (NMDOT) projects, and the engineer's experience and judgment. Electrical and telephone construction costs were provided by Petitioner personnel from their experience with recent construction projects.

All constructions costs were increased with an approximately 38.74% contingency for unknown factors and cost escalation, an 15% factor for engineering, testing, and construction observation, and applicable New Mexico gross receipts tax.

Section C(7): As provided in Section 1 of the Reimbursement Agreement, the Application Expenses to be initially paid by Petitioner (but subject to reimbursement of Petitioner as provided in Section 5 of the Development Agreement) include the expense of retaining an independent engineer or other professional to verify the cost estimates shown in this Petition.

D. Summary

Based upon the foregoing and the information in the exhibits to this Petition, Petitioner respectfully requests that the Village schedule a hearing on the formation of the District, as provided in Sections 5-11-4 and 5-11-5 of the Act, as soon as practicable.

Respectfully submitted,

ANGEL FIRE RESORT OPERATIONS, LLC

By: _____
Daniel E. Rakes
President

LIST OF EXHIBITS

- Exhibit 1: General Plan
- Exhibit 2: Rate and Method of Apportionment of Special Levy
- Exhibit 3: Feasibility Study
- Exhibit 4: Form of Reimbursement Agreement
- Exhibit 5: Appraisal Report
- Exhibit 6: Report on Capacity of Village Sewer System and Estimated Operational Expenses
of PID Improvements
- Exhibit 7: Form of Development Agreement
- Exhibit 8: Form of Hearing Notice