

**VILLAGE OF ANGEL FIRE
Angel Fire NM 87710
(575) 377-3232
PUBLIC NOTICE**

Special Council Meeting

Wednesday December 17th, 2014 at 4:00pm at Village Hall

**Call to Order
Pledge of Allegiance
Roll Call
Approval of Agenda**

New Business

- A. Discussion / Approval of Mobile Home Estates Water Well and Tank Lease Agreement Between the Village of Angel Fire and Angel Fire Resort Operations, LLC**

Terry Cordova, Village Clerk

Barbara Cottam, Mayor

Post: 12/11/2014

THE PUBLIC IS INVITED TO ATTEND

Next Regular Council meeting will be: January 13th at 5:30 pm

Subject to Change Until: Friday December 12th, 2014 at 5:30pm

AGENDA MAY BE PICKED UP AT THE VILLAGE HALL

3388 MOUNTAIN VIEW BLVD., ANGEL FIRE, NM 87710

AGENDA MAY ALSO BE VIEWED AT OUR WEBSITE: ANGELFIRENM.GOV

IF YOU ARE AN INDIVIDUAL WHO IS IN NEED OF ANY AUXILIARY AID OR SERVICE TO ATTEND THE MEETING, PLEASE CONTACT THE VILLAGE CLERKS OFFICE 48 HOURS PRIOR TO THE MEETING .

**MOBILE HOME ESTATES WATER WELL & TANK LEASE AGREEMENT
BETWEEN THE VILLAGE OF ANGEL FIRE AND ANGEL FIRE RESORT
OPERATIONS L.L.C.**

This Lease Agreement (hereinafter referred to as the "Lease") is made and effective October 1, 2014, by and between the Village of Angel Fire, a New Mexico a municipal corporation (hereinafter referred to as the "Village") whose address is PO Box 610, Angel Fire, New Mexico 87710 and Angel Fire Resort Operations LLC (hereinafter referred to as "Resort") whose address is PO Box 130, Angel Fire, New Mexico 87710 to lease the Mobile Home Estate water well and tank (Mobile Homes Estate No. 1 , CR-440-S-10 (S-4) located as set forth in Exhibit "A", attached hereto and incorporated herein, in Angel Fire, New Mexico (hereinafter referred to as the "Water Well and Tank" or the "Premises") upon the terms and conditions set forth herein.

WHEREAS, the Village is the owner and holds the water well permit for the Water Well and Tank located in Mobile Homes Estate Subdivision located in the Village of Angel Fire, New Mexico and owns water rights as set forth and subject to the terms and conditions set forth in the Agreement for Transfer of Water and Wastewater Systems and Facilities dated September 11, 1997 recorded in Book 9, pages 7926-7992, July 10, 1998, Colfax County Real Estate Records and amended in the First Modification and Amendment One to: Agreement for Transfer of water and Wastewater Systems and Facilities and Annexation and Development Agreement recorded in Book 13, pages 4368-4379, March 20, 2002, Colfax County Real Estate Records (collectively hereinafter referred to as the "Water Transfer Agreement");

WHEREAS, the Village desires to lease the Water Well and Tank to the Resort, and the Resort desires to lease the Water Well and Tank for some of its irrigation and recreational water needs from the Village for the term of sixty – eight (68) years based upon the covenants, conditions and previsions stated herein;

WHEREAS, the Village and Resort agree the water use from the Well and Tank shall be classified and qualify as "recreation or other irrigation" water use as set forth in Paragraph 9 D of the Water Transfer Agreement and the Resort shall pay \$1 per acre foot of water per year for water from the Water Well and Tank for irrigation use for the Resort's RV Resort.

THEREFORE, in consideration of the mutual promises herein, contained and other good and valuable consideration, it is agreed:

1. Premise and Term.

1.1 Premise. Subject to the following terms and conditions, the Village leases to the Resort, the Water Well and Tank as described herein together with the land on which the Water Well and Tank are located and all necessary space and easements for access.

1.2 Term. The term of this Lease is sixty-eight years (68) years, commencing October 1, 2014 and ending July 1, 2082 ("Term") to correspond with the term of the Water Transfer Agreement, unless earlier terminated as provided herein and subject to the renewal provision herein.

1.3 Renewal. This Lease may be renewed at the end of its Term upon the written consent of both parties, which consent shall be executed thirty (30) days prior to the end of the Term. The Renewal Term shall not be subject to additional terms and increase in rental.

1.4 Termination. This Lease may be terminated by the Resort upon thirty (30) days written notice to the Village.

2. **Rent.** The Resort shall pay the Village the sum of One (1) dollar per year for the rent and exclusive use of the Water Well and Tank, due on the first day of each year, for the duration of the lease.
3. **Use.** The Resort intends to, and will only, use the Well and the water from the Well for the purposes of recreation and other irrigation as defined and stated in Paragraph 9 D of the Water Transfer Agreement for its RV Resort. It is understood and agreed the Well may not provide adequate water for the RV Resort's recreation and other irrigation water needs as required by the Water Transfer Agreement. The Village elects to provide the Resort supplemental water for its irrigation needs at the RV Resort from the Village's main water line under the terms of the Water Transfer Agreement subject to applicable laws, water regulations and the constitution of the State of New Mexico. The Village retains the option to drill an additional water well to enable it to provide the RV Resort with the necessary and required water its entitled to pursuant to the Water Transfer Agreement. Although not obligated by the terms of the Water Transfer Agreement, the Resort will use best practices to minimize the use of Village water by water conservation methods and its prior use of the Well water before supplementation from the Village's main water line.
4. **Successor and Assigns.** This lease shall run with the Property and shall be binding upon and inure to the benefit of the Resort, and its assignee(s) "Successor Owners" as defined in Article 10.1 of the Annexation and Development Agreement (December 30, 1997) (as amended) with the Lessor Village of Angel Fire.
5. **Repairs and Maintenance.** The Resort shall be responsible for all the maintenance, improvements and developments in order that the Water Well and Tank remain, or become fully operational and properly maintained. The Village agrees to cooperate with the Resort's improvements of the Water Well and Tank including but not limited to installing and running water lines to and from the RV Resort. The Parties agree and understand the Village intended to abandon the Water Well and Tank and therefore, the Resort may in its sole discretion and at any time, discontinue use and maintenance of the Water Well and Tank and is under no obligation to return the Water Well and Tank to the Village in working order.

6. Alterations and Improvements.

6.1. The Resort, at its expense, shall have the right but, shall have no obligation, to improve the Water Well and Tank including, but not limited to new pumps, lines and tank and other improvements. The Village agrees to cooperate and provide the Resort with necessary easements to enable the Resort to install and run water line(s) to desired location(s).

7. Well Permit and Metering. The Village agrees to maintain and keep the Water Well and Tank permit current and updated with the New Mexico State Engineer's Office and/or other applicable State or Federal agencies. The Village, in cooperation and in coordination with the Resort, shall meter all water pumped from the Water Well and Tank for reporting such water usage pursuant to any reporting requirements imposed upon the Village by the New Mexico State Engineer's Office.

8. Insurance.

8.1. The Resort shall be responsible, at its expense, fire, property and extended coverage insurance on all of the Water Well and Tank premise.

8.2. The Resort shall at its own expense, maintain a policy or policies of comprehensive general liability insurance with respect to the respective activities at the Leased Premises with the premiums thereon fully paid on or before due date, issued by and binding upon some insurance company approved by the Village, such insurance to afford minimum protection of not less than \$1,000,000 for each occurrence and \$2,000,000 in the aggregate for bodily injury and property damage liability for the benefit of both the Village and Resort to be adjusted annually at current CPI adjusted value dollars over the 68 year terms of the Lease. The Village shall be named as an additional insured on said policy. The Resort shall provide the Village with current Certificates of Insurance evidencing the Resort's compliance with this Paragraph. The Resort shall obtain the agreement of the Resort's insurers to notify the Village that a policy is due to expire at least (10) days prior to such expiration.

9. Utilities. The Resort shall pay and be responsible for the electricity and other utility costs associated with the use of the Water Well and Tank.

10. Notice. Any notice required or permitted under this Lease shall be deemed sufficiently given or served if by United States certified mail, return receipt requested, addressed as follows: If to Resort to: Angel Fire Resort Operations LLC, Attention Dan Rakes, Attorney at law, PO Box 130, Angel Fire, New Mexico 87710; If to the Village: The Village of Angel Fire, PO Box 610, Angel Fire, New Mexico, 87710. The Village and Resort shall each have the right from time to time to change the place notice is given under this paragraph by written notice thereof to the other party.

11. **Waiver.** No waiver of any default of the Resort or Village hereunder shall be implied from any omission to take any action on account of such default if such default persists or is repeated and no express waiver shall affect any default other than the default specified in the express waiver only for the time and to the extent therein stated. One or more waivers by the Village or Resort shall not be construed as a waiver of a subsequent breach of the same covenant, term or condition.

12. **Heading.** The headings used in this Lease are for the convenience of the parties only and shall not be considered in interpreting the meaning of any provisions of this Lease.

13. **Consent.** The Village shall not unreasonably withhold or delay its consent with respect to any matter for which Village's consent is required or desirable under this Lease.

14. **Compliance with Law.** The Village and Resort shall comply with all laws, orders, ordinances and other public requirements now or hereafter pertaining to the Resort's use of water and Water Well and Tank.

15. **Final Agreement.** This Agreement terminates and supersedes all prior understanding or agreements on the subject matter hereof.

15.1. **Binding Effect.** This Lease shall be binding upon the parties, their heirs, successors-in-interests and assigns.

15.2. **Severability.** In the event that a court of competent jurisdiction finds that any term or provision of this Lease is unenforceable, all other terms and provisions shall remain intact and enforceable where not otherwise inconsistent with Court's findings.

15.3. **Amendment.** This Lease shall not be altered, changed, modified or amended, except by instrument, in writing, executed by both parties.

15.4. **Merger.** This Agreement incorporates all the Agreements, covenants, and understanding between the parties hereto concerning the subject matter hereof, and all such covenants, agreements and understandings have been merged and made a part of this written Agreement. No prior agreements or understandings, oral or otherwise, of the parties or their agents shall be valid or enforceable unless embodied herein this Agreement.

16. **Jurisdiction.** In the event of a dispute regarding this agreement, the parties agree that New Mexico law and exclusive jurisdiction shall apply and the proper venue shall be Eighth Judicial District Court, Colfax County New Mexico.

IN WITNESS WHEREOF, the parties have executed this Lease as of the day and year first above written.

For the Lessor:
The Village of Angel Fire:

By: _____
Barbara Cottam
Its Mayor

Date: _____

Approved by Action of the
Village Council at its Meeting
Held the day of , 2014

Approved as to Form and Legal
Sufficiency:

Joseph F. Canepa
Village Attorney

For the Lessee:

Angel Fire Resort Operations LLC:

By: _____
Daniel Rakes, General Counsel

Date: _____

1040-1107 on 22 July 1997, and being more particularly described as follows:

Beginning at the northwest corner, a point from which NGS brass cap "Lebus"
 N.31°09'41"E. a distance of 26,046.60 feet,

Thence S.65°07'11"E. a distance of 100.00 feet to the northeast corner;

Thence S.24°52'49"W. a distance of 100.00 feet to the southeast corner;

Thence N.65°07'11"W. a distance of 100.00 feet to the southwest corner;

Thence N.24°52'49"E. a distance of 100.00 feet to the northwest corner and
 point of beginning.

Containing 0.230 acre, more or less

LEGAL DESCRIPTION
Mobile Home Estates Well Site

Being a portion of Lots 500 and 501 of Mobile Home Estates Subdivision, lying north of the Village of Angel Fire, within the Beaubain-Miranda (or Maxwell) grant, Colfax County, New Mexico, as shown on plat of survey entitled "Easement Survey for the Village of Angel Fire Exhibit T . . .", filed in the records of Colfax County in Book 1, pages 1173-1228 on 12 November 1997, and being more particularly described as follows

Beginning at the northeast corner, a point from which a 3/8" rebar found at the westerly corner common to Lots 502 and 503 bears N.36°31'43"W. a distance of 139.06 feet;

Thence S.19°33'22"E. a distance of 50.00 feet to the southeast corner;

Thence S.68°58'43"W. a distance of 50.00 feet to the southwest corner;

Thence N. 19°33'22"W. a distance of 50.00 feet to the northwest corner;

Thence N.68°58'43"E. a distance of 50.00 feet to the northeast corner and
 point of beginning.

Containing 0.057 acre, more or less.

LIST OF AFSC WELLS AND WELL SITES QUITCLAIMED TO THE STATE HEREIN PAGE 7061

	Name	State Engineer File No. Old No./(renumbered after capping)	New Mexico Coordinate System East Zone		Comments
			X Coordinate	Y Coordinate	
1	Coffey No. 2*	CR-440	219,700	1,954,600	Domestic
2	Country Club No. 1	CR-440-S	218,800	1,956,600	Not In Use**
3	Country Club No. 2	CR-440-S-2	219,200	1,954,800	Not In Use**
4	Country Club No. 3	CR-440-S-3	218,450	1,956,000	Not In Use**
5	Angel Fire No. 1	CR-440-S-4	222,000	1,961,500	Not In Use**
6	Angel Fire No. 2	CR-440-S-5	223,800	1,964,100	Not In Use**
7	Coffey No. 1*	CR-440-S-6 (S)	221,000	1,962,700	Domestic
8	Coffey No. 3	CR-440-S-7 (S-2)	219,600	1,958,600	Golf Course/L
9	Coffey No. 4*	CR-440-S-8 (S-3)	220,750	1,966,750	Domestic and AFSC Offices
10	Monte Verde (No. 1)	CR-440-S-9	218,000	1,948,000	Domestic
11	Mobile Home Estates No. 1*	CR-440-S-10 (S-4)	210,500	1,974,450	Domestic/Mobile Home Estates Tank
12	Snow Well	CR-440-S-4 X = 471,811.87 m, Y = 4,030,888.27 m	950	1,961,375	Snow Making/L
13	Country Club No. 3A	Mobile Home Estates 1 Well	462	1,956,000	Not In Use/Test Well/Sealed
14	Peralta*	CR-440-EX-33/S-15 (S-6)	213,200	1,953,260	Domestic
15	Monte Verde V	CR-441/440-S-16 (S-7)	218,100	1,991,990	Domestic
16	Old A-Frame	No Permit/Test Well (CR-405)	236,500	1,961,600	Not In Use**
17	New A-Frame	CR-406	237,200	1,961,600	Not In Use**/Ski Lift Facility
18	Aqua Fria No. 1	CR-440-EX-34/S-18 (S-8)	236,500	1,961,600	Snow Making/L
19	Aqua Fria No. 2	CR-440-EX-35/S-19 (S-9)	237,000	1,964,200	Not Equipped/L

* Legal Description of Well Site Described Hereinafter

** Proposed for Capping and Abandonment as Condition of Permit for Well No. 28

"L" Well Subject to Future Lease-Back to AFSC by Village

For Record 6-19-98 at 4:58 PM Barbara Castillo, Recorder

QUITCLAIM DEED OF WATER RIGHTS AND WELLS

ANGEL FIRE SERVICES CORPORATION, a New Mexico corporation ("AFSC"), ANGEL PROJECTS I, LTD., a Texas limited partnership, and ANGEL FIRE RESORT OPERATIONS, LLC, a New Mexico limited liability company (hereinafter "Grantors"), for consideration paid, quitclaim to the Grantee, THE VILLAGE OF ANGEL FIRE, New Mexico, a municipal corporation (hereafter "Village" or "Grantee"), whose address is P.O. Box 610, Angel Fire, New Mexico 87710, all of the Grantors' following described water rights and associated underground wells and well sites therefor as identified in New Mexico State Engineer Files Nos. 0279- A, B, C, D, E, G, H, I, J and K and File No. CR-440, et al., in Colfax County, New Mexico:

Those water rights and wells and associated well sites of Angel Fire Services Corporation (AFSC), a subsidiary/affiliate of Angel Projects I, Ltd., consisting of 724.672 acre feet of ground water rights all as further and more particularly described on attached Exhibit A hereto including the right to pursue approval of return flow credits and associated diversionary rights from the New Mexico State Engineer relating thereto.

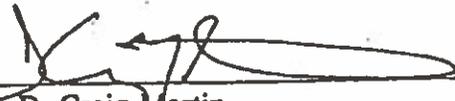
WITNESS our hands and seals this 18th day of June, 1998.

ANGEL FIRE SERVICES CORPORATION,
A New Mexico Corporation

By: 
D. Craig Martin
Its President

ANGEL PROJECTS I, LTD.,
A Texas Limited Partnership

By: Angel Projects, Inc., a Texas Corporation,
Its General Partner

By: 
D. Craig Martin
Its President