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September 8, 2020

To: Daniel Rakes
Executive General Counsel
Angel Fire Resort Operations
By e-mail to danr@angelfireresort.com

Re: The Association of Angel Fire Property Owners, Inc. (“AAFPO”)

Dear Mr. Rakes:

This Firm has been retained to represent the Board of Directors of AAFPO. I have reviewed some correspondence regarding the issue of whether the Board is legally constituted, as Board members were appointed by the Board after several Board members had resigned, and at a time when there were only four Directors remaining. I understand that your position, on behalf of Angel Fire Resort Operations, LLC, is that the Board could not appoint new members because it only had four Directors, the Bylaws call for nine Directors, and the four Directors did not constitute a quorum under N.M.S.A. 1978, § 53-8-20 (1975).

We respectfully disagree with your legal position. § 53-8-20 states, in pertinent part:

A. A majority of the number of directors fixed by the bylaws, or in the absence of a bylaw fixing the number of directors, then of the number stated in the articles of incorporation, shall constitute a quorum for the transaction of business, unless otherwise provided in the articles of incorporation or the bylaws; but in no event shall a quorum consist of less than one-third of the number of directors so fixed or stated. The act of the majority of the directors present at a meeting at which a quorum is present shall be the act of the board of directors, unless the act of a greater number is required by the Nonprofit Corporation Act, the articles of incorporation or the bylaws

AAFPO’s Bylaws, Article VI, Section 1 state that “the Association shall be managed by a Board of nine (9) Directors” This Section does not define or alter the statutory definition of quorum.

Article VII, Section 3, however, states that a “majority of the number of directors shall constitute a quorum for the transaction of business.” With four Directors, a quorum is three. This is permitted under § 53-8-20, as it is not less than one-third of the number of directors so fixed or stated in the Bylaws.

Additionally, at the August 13, 2020 meeting of the Board, the four remaining Directors immediately appointed four new Directors before taking any other actions. This action was consistent with Bylaws, Article VI, Section 5:

Vacancies. In the event of death, resignation or removal of an elected director, his successor **shall be selected by the remaining elected directors** and shall serve until the next election of directors.

(Emphasis added). This is consistent with N.M.S.A.1978, § 53-8-19 (1975), which states in pertinent part:

A. Any vacancy occurring in the board of directors and any directorship to be filled by reason of an increase in the number of directors may be filled **by the affirmative vote of a majority of the remaining directors, though less than a quorum of the board of directors**, unless the articles of incorporation or the bylaws provide that a vacancy or directorship so created shall be filled in some other manner, in which case such provision shall control.

(Emphasis added). The four remaining Directors unanimously appointed the four replacement Directors, who were immediately seated to the Board. After the new Directors were appointed, the Board has operated with eight Directors, which is clearly a quorum by any definition. All of this was done consistent with the Bylaws and statutory law.

Obviously, it is preferable for all concerned that the Board be legally constituted and capable of acting on behalf of the members of AAFPO. We understand your concerns about this, but we assure you that the Board is legally constituted and capable of acting on behalf of its members.

We look forward to working with you on these and other important matters regarding AAFPO and Angel Fire Resort Operations in the future.

Sincerely,

/s/

Donald A. Walcott
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