

AGREEMENT

THIS AGREEMENT made and entered into on of the 6th day of November, 1975, by and between RONALD D. HOUSE, hereinafter referred to as "House" and WILLIAM J. LACY, hereinafter referred to as "Lacy", and both being residents of Gunnison County, Colorado,

W I T N E S S E T H :

1. It is agreed that House is interested in building an airstrip as described in Exhibit "A" which cannot occur without crossing the location of the ditch with the surface ditch known as the Varzuh-Young-Balfanz Ditch, hereinafter called "ditch" together with surface access in and along the ditch for the carriage of water, for maintenance, the placing of spoil from ditch cleaning and for general access for all farm uses between property owned by Lacy in the SW/4SW/4 and the SW/4SE/4 of Section 7 and the N/2E/4 of Section 13 all in Township 14 South, Range 85 West at the 6th P.M. and a public county road, since the proposed airstrip lies between the described land and the county road.

2. House agrees to construct and to maintain, in perpetuity, a concrete ditch installed in accordance with plans and specifications which are attached hereto and hereby made a part hereof as Exhibit "B", at the sole expense of House, and which cross an airstrip or runway proposed to be built by said House, such ditch to be for the carrying of any water now owned by Lacy and being an exercise of water rights which are the basis or diversion hereof and across the same general area in an open ditch being the same ditch as herein above referred to.

3. House grants to Lacy unlimited access along the line of the airstrip crossing for ditch maintenance purposes, and also access and around the runway constructed or to be

constructed by Rouse at points described on Exhibit "A" between the Lacy property heretofore referred to and the county road heretofore referred to.

4. Rouse agrees that as a part of the above mentioned concrete ditch he shall provide a readily removable cover for said ditch at his own sole cost and expense and that Lacy may remove said cover at any time the water way of said concrete ditch shall fail to adequately carry water which Lacy shall elect to run through the ditch in accordance with his present priorities and rights.

5. Rouse agrees to secure a right of way for and to construct at his own sole expense a bypass ditch equal to the present ditch to eliminate a curve described as the first curve in the existing ditch, which bypass is located and described on Exhibit "A" attached hereto and incorporated by reference herein. Rouse further agrees to construct another bypass ditch, described as the second curve on Exhibit "B" and to the same standards and at his own cost provided that any cost for said second bypass exceeding \$250.00 will be borne by Lacy. Rouse agrees to obtain an easement for a third bypass as described in exhibit "C" on which will be constructed a third bypass at the expense of Lacy.

6. Rouse agrees to convey to Lacy an unencumbered title to an easement and right of way for the running of all decreed water now owned by Lacy in, through and across the area occupied by the concrete ditch and the bypasses heretofore referred to together with the right of access and to exhibit to Lacy satisfactory evidence of the unencumbered status of such title, whereupon Lacy agrees to relinquish all of his right, title and interest in or to the original ditch and rights of access associated therewith and in the loops which will have been bypassed and made unnecessary by virtue of construction of the concrete runny crossing and bypasses. Lacy agrees to shut

and all ditches and remove equipment to facilitate the construction of the airport.

7. Lacy shall have no obligation with respect to injury which may be done to the proposed airstrip or runway which will cross the above mentioned concrete ditch, but Lacy agrees to confine his surface crossing of said runway as a concrete pad, if Rouse elects to construct such a pad parallel to and along side the concrete ditch, but without obligation on Lacy as to the effectiveness of such concrete pad to protect the surface of the runway, it being understood that Lacy may have occasion to cross said area with heavy steel tracked vehicles.

8. In order to expedite the installation of the airstrip proposed by Rouse, Rouse may, at his own sole risk, proceed with the above outlined work and the same shall not be considered as a trespass on or against rights of Lacy, provided however, that unless all action required to be performed in order to completely consummate this agreement shall have been completed by June 1, 1976, Lacy shall have the full right to completely restore conditions as they have heretofore existed and Rouse agrees to fully compensate Lacy for restoring the land to the condition in which it was prior to September 1, 1975.

9. Rouse further agrees to hold Lacy harmless from any damage arising to Lacy at any time hereafter as a result of the changes from the historical practices and usages by Lacy and his predecessor which are brought about as a result of the work to be done under this agreement. Lacy agrees to promptly notify Rouse of any damage claimed pursuant to this paragraph and it is mutually agreed that Rouse shall have the full obligation to adjust and settle such damage and failing to do so shall be in default of performance of this paragraph.

10. The performance of the terms of paragraph 9 above shall be and constitute a perpetual lien against the airstrip

and related property of House which are described in Exhibit "A" attached hereto and hereby made a part hereof to insure that the covenants and agreements contained in said paragraph 3 are fully performed.

11. It is mutually agreed that the airstrip area involved is as shown in Exhibit "B" attached hereto and hereby made a part hereof and that in the area depicted on said Exhibit Lacy will be confined to the use of any adequate roadway rather than along the ditch if the detailed area which is to contain office and hangar space should interfere with normal use along the ditch.

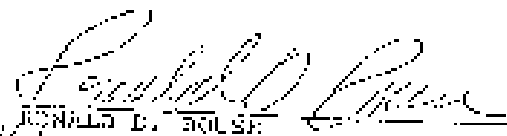
12. Not later than May 1, 1975, House agrees to pay reasonable attorney fees incurred by said Lacy in connection with this Agreement. This obligation shall only apply to attorney fees charged by the law firm of Saunders, Snyder & Ross.

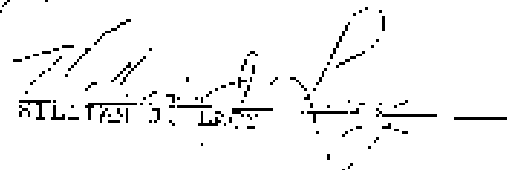
13. For a period not to exceed fifty (50) years, Lacy and/or his representative shall be entitled to free landing fees and free tie-down fees for one airplane, provided that no commercial use is made of said airplane. This provision may not be assigned.

14. Both parties agree to execute all documents necessary to effectuate this Agreement.

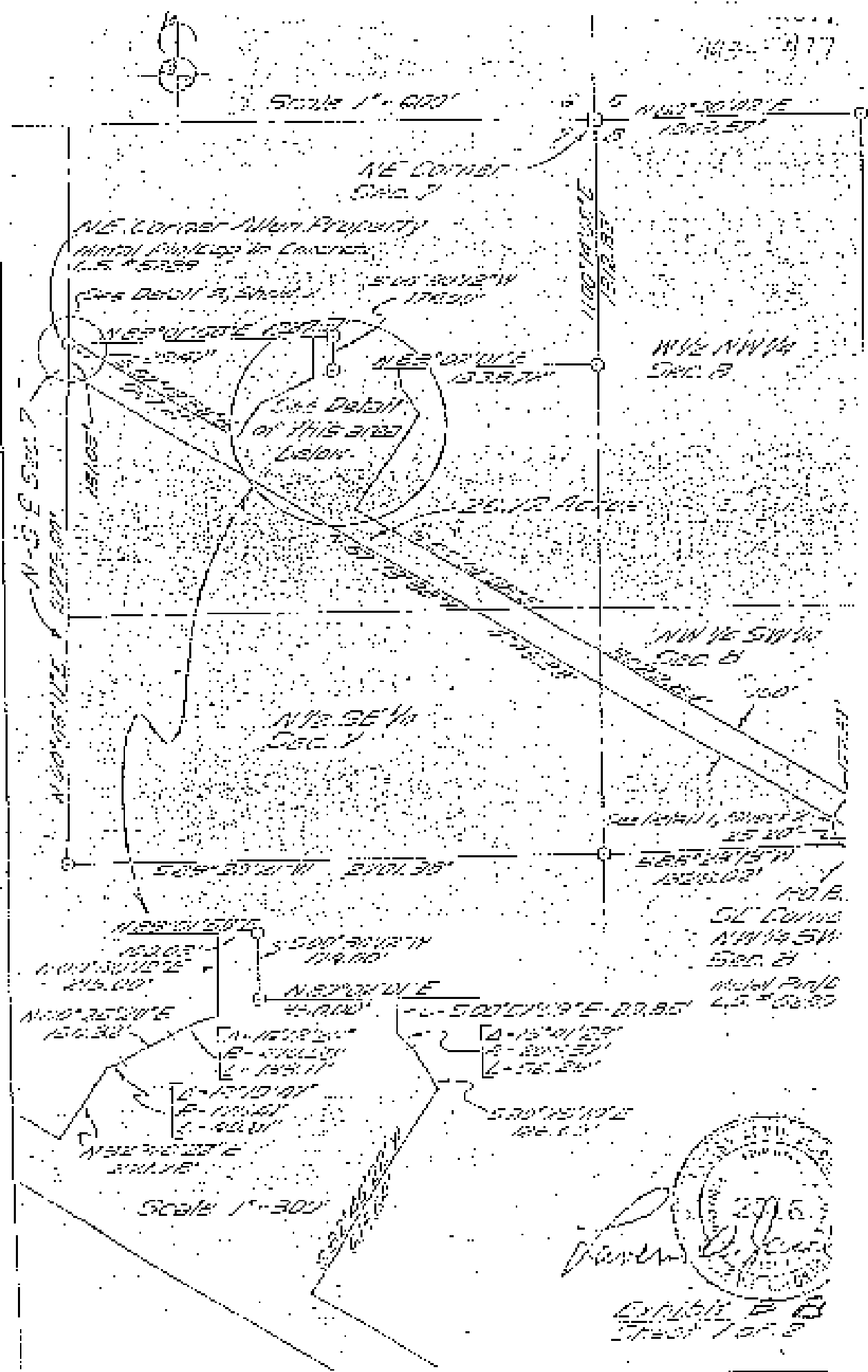
15. The benefits and burdens of this Agreement shall inure to and be binding upon the parties hereto, their heirs, executors, administrators, successors and assigns, except as above provided.

IN WITNESS WHEREOF the parties hereto have executed the within Agreement as of the day and year first above written.

  
RONALD D. HOUSE

  
WILLIAM S. LACY

Scale 1" = 600'



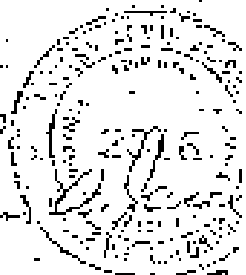
  
 [Signature]  
 SURVEYOR  
 STATE OF MISSOURI  
 EXPIRES 1915

EXHIBIT *R.S.P. 2*

A TRACT OF LAND IN THE NW 1/4 AND THE NE 1/4 OF SECTION 7 AND THE NW 1/4 OF SECTION 8, T11S., R13E., OF THE 6TH P.M., BARRINGTON TOWNSHIP, COLORADO, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SE CORNER OF SAID NW 1/4 OF SECTION 8; 1. BEAR S 10° AND CAP, I.S. 5229;

- 1) THENCE N 82° 51' 25" E 25.20' ALONG THE EAST LINE OF SAID NW 1/4
- 2) SIDE OF SECTION 8 TO THE TRUE POINT OF BEGINNING;
- 3) THENCE N 57° 13' 30" W 470.87' TO A POINT ON THE EAST LINE OF SAID NW 1/4 OF SECTION 7;
- 4) THENCE S 89° 40' 11" W 151.03' ALONG SAID EAST LINE TO THE NE CORNER OF THE ALLEN PROPERTY, A BEAR S 10° AND CAP S 10' IN COURSE, I.S. 5229;
- 5) THENCE N 09° 01' 50" E 29.47';
- 6) THENCE S 57° 13' 30" W 987.61';
- 7) THENCE N 32° 40' 27" W 261.78' TO A POINT ON CURVE;
- 8) THENCE N 09° 01' 50" E TO THE ARC OF A CURVE TO THE LEFT FROM A TANGENT BEARING OF N 73° 45' 00" W AND HAVING A DELTA OF 53° 19' 47" AND A RADIUS OF 375.61' TO A POINT OF TANGENCY;
- 9) THENCE S 60° 25' 20" W 258.38' TO A POINT OF CURVE;
- 10) THENCE S 33° 11' 11" W ALONG THE ARC OF A CURVE TO THE RIGHT HAVING A DELTA OF 16° 27' 26" AND RADIUS OF 400.50';
- 11) THENCE N 00° 20' 12" W 215.00';
- 12) THENCE N 85° 01' 50" W 100.00' TO A POINT ON THE WEST LINE OF THE NE 1/4 OF SAID SECTION 7;
- 13) THENCE S 00° 00' 12" W 174.00' ALONG SAID WEST LINE TO THE SW CORNER OF SAID SECTION 7;
- 14) THENCE N 09° 01' 50" E 150.00' ALONG THE SOUTH LINE OF SAID NW 1/4 NE 1/4;
- 15) THENCE S 00° 51' 50" W 59.43' TO A POINT OF CURVE;
- 16) THENCE S 62° 09' 10" W ALONG THE ARC OF A CURVE TO THE RIGHT FROM A TANGENT BEARING OF S 10° 01' 20" W AND HAVING A DELTA OF 15° 01' 23" AND A RADIUS OF 205.57' TO A POINT OF TANGENCY;
- 17) THENCE S 30° 49' 10" W 125.00';
- 18) THENCE S 32° 16' 27" W 610.64';
- 19) THENCE S 57° 13' 30" W 5229.84' TO A POINT ON THE EAST LINE OF SAID NW 1/4 OF SECTION 8;
- 20) THENCE S 10° 01' 20" W 177.31' ALONG SAID WEST LINE TO THE TRUE POINT OF BEGINNING.

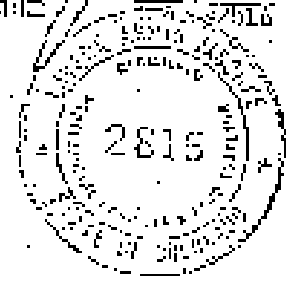
THE ABOVE DESCRIBED TRACT CONTAINS 26.72 ACRES, MORE OR LESS. MEASUREMENTS ARE BASED ON A SURVEY MADE BY DR. L. BERGER, L.L.S., NO. 5229.

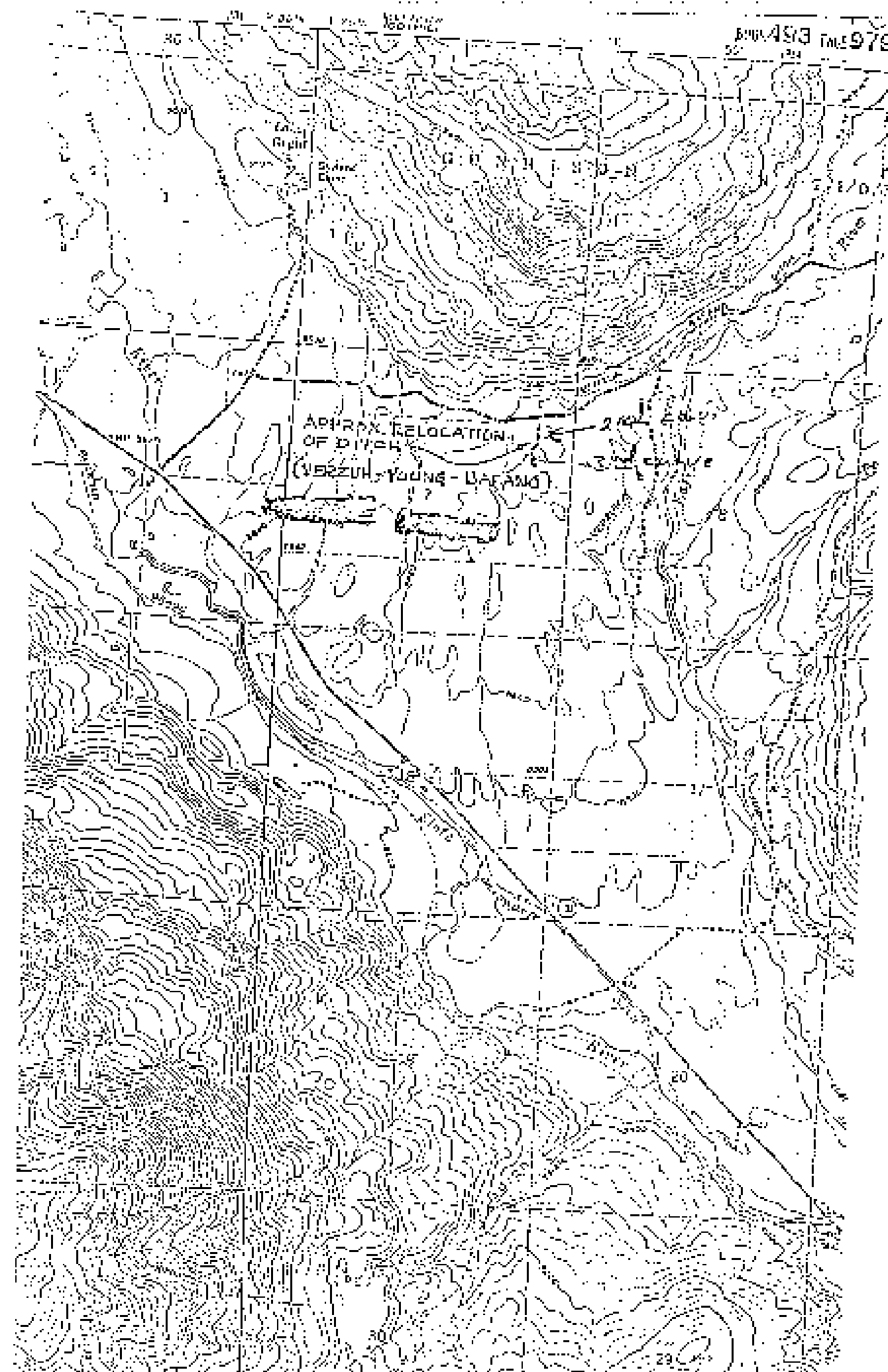
SUBSCRIBED AND SWORN TO:

I, LAWRENCE L. JOHNSON, A REGISTERED LAND SURVEYOR LICENSED TO PRACTICE IN THE STATE OF COLORADO, DO HEREBY CERTIFY THAT THE ABOVE AND DESCRIBED HEREON ARE PREPARED UNDER MY SUPERVISION, AND THAT ALL THAT IS TRUE AND ACCORDS TO THE BEST OF MY KNOWLEDGE.

DATED THIS 26th DAY OF SEPTEMBER, 1975.

*Lawrence L. Johnson*  
LAWRENCE L. JOHNSON





APPROX. RELOCATION  
 OF DITCH  
 (VERZUH-YOUNG-LAFANG)

2nd  
 2nd  
 3rd

E. G. M. H. S. D. - 11

Further receiving their Richard A. Landy for a period of ten (10) years from the date of this deed, the exclusive lease right and option to purchase all or any portion of the property described on Exhibit A, on the terms and conditions set forth in their certain Special Performance Contract dated July 1, 1974 between Ronald D. House as Purchaser and Richard A. Landy as Seller.

The undersigned, MARIONA M. LANDY, wife of the said Richard A. Landy, being fully advised, none hereby with this deed solely for the purpose of waiving, relinquishing, releasing and quietclaiming their Ronald D. House his heirs and assigns forever all of her right, title and interest in and to the above bargained premises, insofar as touching the generalty of the foregoing any rights, claims and interests arising under the provisions of the Colorado Probate Code, Colorado Homestead Exemption Law or any other law.

TOGETHER with all and singular the hereditaments and appurtenances thereto in anywise appertaining, and the accretions and reversions, remainders and remainders, rents, issues and profits thereof; and all the estate, right, title, claim and demand whatsoever, of the said party of the first part sitting in law or equity, of, in and to the above bargained premises, with the hereditaments and appurtenances.

TO HAVE AND TO HOLD the said premises above bargained and described, with the appurtenances therein to Ronald D. House

the said party of the second part, his heirs and assigns forever.

And the said

Richard A. Landy

Landy of the first part,

for her self, children, executors and administrators do hereby covenant, grant, bargain and agree to and with the said party of the second part, his heirs and assigns, that at the time of the executing and delivery of these presents that the said well seized of the premises above conveyed is of good, sure, perfect & lawful estate of inheritance in law, in fee simple, and has good right, full power and lawful authority to grant, bargain, sell and convey the same to said party and their heirs, and that the same are free and clear from all taxes and other public charges, sales, liens, claims, demands, claims and encumbrances of whatever kind or nature whatsoever.



reads the 15th year 1875 begins January 1, 1876 and except those conveyed, claims, encumbrances and other matters affecting it is described as follows contained and a part of this deed,

and the above herein set forth the quiet and peaceful possession of the said part of the second part, his heirs and assigns, against all and every person or persons lawfully claiming or to claim the whole or any part thereof, the said part of the first part shall and will WARRANT AND FOREVER HOLD.

IN WITNESS WHEREOF, The said part of the first part has hereunto set his hand and seal the day and year first above written.

Signed, sealed and delivered in presence of

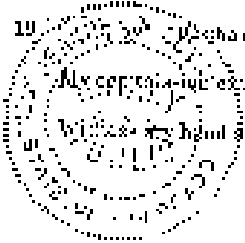
*[Signature]* [SEAL]  
Richard A. Landy  
[Signature] [SEAL]  
Elizabeth D. Landy  
[Signature] [SEAL]  
[Signature] [SEAL]

STATE OF COLORADO

County of *[Handwritten]*

The foregoing instrument was acknowledged before me this *10th* day of *April*

19*07* by *Richard A. Landy and Elizabeth D. Landy, husband and wife*



My commission expires *December 31, 1907*

Witness my hand and official seal

*[Signature]*  
Notary Public

NOTARY PUBLIC STATE OF COLORADO. My commission expires December 31, 1907. My office is at Denver, Colorado. My commission was issued by the State of Colorado, and I am a member of the Notary Public Association of the State of Colorado.

EXHIBIT A TO WARRANT DEED  
PLAT RECEIVED AT LANDY TO RONALD E. BOUSE

A TRACT OF LAND IN THE NE¼ AND THE NW¼ OF SECTION 7 AND THE NE¼ OF SECTION 8, T.12N., R.39E., OF THE 6TH P.M., HAMILTON COUNTY, COLORADO, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

EXCEPTING AT THE SE CORNER OF SAID NE¼ OF SECTION 8; A METAL PIN AND CAP, I.S. 35239;

- 1) THENCE N00°27'54"W 25.20' ALONG THE WEST LINE OF SAID NW¼ 81% OF SECTION 8 TO THE 2150' POINT OF BEGINNING;
- 2) THENCE S87°13'48"W 454.36' TO A POINT ON THE WEST LINE OF SAID NE¼ OF SECTION 7;
- 3) THENCE N00°46'11"E 152.03' ALONG SAID WEST LINE TO THE SE CORNER OF SAID ALLEN PROPERTY, A METAL PIN AND CAP SET IN CONCRETE, I.S. 35239;
- 4) THENCE N04°01'50"W 39.17';
- 5) THENCE S71°23'30"W 947.61';
- 6) THENCE N32°01'22"E 221.70' AS A POINT ON CURVE;
- 7) THENCE N2.51' ALONG THE ARC OF A CURVE TO THE POINT FROM A TANGENT BEARING OF N0°27'07"E AND HAVING A DELTA OF 137°07' AND A RADII OF 175.40' TO A POINT OF BEGINNING;
- 8) THENCE S89°20'W 135.32' TO A POINT ON CURVE;
- 9) THENCE N35.11' ALONG THE ARC OF A CURVE TO THE POINT FROM A TANGENT BEARING OF N0°22'50"W AND A RADII OF 140.58';
- 10) THENCE N00°30'12"E 215.33';
- 11) THENCE N09°01'50"W 100.91' TO A POINT ON THE WEST LINE OF THE NE¼ OF SAID SECTION 7;
- 12) THENCE S00°30'12"W 174.50' ALONG SAID WEST LINE TO THE SE CORNER OF SAID NE¼;
- 13) THENCE S89°27'01"E 360.60' ALONG THE SOUTH LINE OF SAID NE¼;
- 14) THENCE S00°30'12"W 89.65' TO A POINT ON CURVE;
- 15) THENCE S0.99' ALONG THE ARC OF A CURVE TO THE POINT FROM A TANGENT BEARING OF S06°00'30"W AND HAVING A DELTA OF 137°07' AND A RADII OF 200.57' TO A POINT OF BEGINNING;
- 16) THENCE S02°25'10"W 280.27';
- 17) THENCE N32°45'12"W 618.61';
- 18) THENCE S87°13'48"W 452.00' TO A POINT ON THE WEST LINE OF SAID NE¼ OF SECTION 8;
- 19) THENCE S00°30'12"W 174.51' ALONG SAID WEST LINE TO THE POINT OF BEGINNING.

EXHIBIT 1 TO WARRANTY DEED  
FROM RICHARD A. LANDS TO DONALD E. ROUSE

AN ACCESS ROAD EASEMENT IN THE NE1/4 SW1/4 OF SECTION 8, T.14S., R.8E W. OF THE SIXTH PRINCIPAL MERIDIAN, WASHINGTON COUNTY, COLORADO, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SW CORNER OF SAID NE1/4 SW1/4 OF SECTION 8, A METAL PIN AND CAP, L.S. 5209;

- 1) THENCE N 4° 31' 32" W 89.17' TO THE TRUE POINT OF BEGINNING, A METAL PIN AND CAP, L.S. 5209 AS AN EXISTING FENCE LINE;
- 2) THENCE S 85° 32' 27" W 124.92' ALONG AN EXISTING FENCE;
- 3) THENCE N 57° 13' 36" W 89.94';
- 4) THENCE N 38° 32' 27" E 75.00' TO A POINT OF CURVE;
- 5) THENCE 116.03' ALONG THE ARC OF A CURVE TO THE LEFT HAVING A RADIUS OF 65' 14' 55" AND A BEARING OF 77.62';
- 6) THENCE S 57° 13' 36" E 71.66' TO A POINT ON AN EXISTING FENCE;
- 7) THENCE S 90° 22' 23" E 85.58' ALONG SAID FENCE TO THE TRUE POINT OF BEGINNING.

AN ACCESS ROAD EASEMENT IN THE NE1/4 OF SECTION 7, T.14S., R.8E W. OF THE SIXTH PRINCIPAL MERIDIAN, WASHINGTON COUNTY, COLORADO, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SW CORNER OF THE ABOVE PROPERTY, A METAL PIN AND CAP SET IN CONCRETE, L.S. 5208;

- 1) THENCE S 01° 52' 15" E 64.51' TO THE TRUE POINT OF BEGINNING, A METAL PIN SET IN AN EXISTING FENCE CORNER;
- 2) THENCE N 85° 39' 14" E 124.17' ALONG AN EXISTING FENCE;
- 3) THENCE S 57° 13' 36" E 109.81';
- 4) THENCE S 38° 32' 14" W 111.91' TO A POINT OF CURVE;
- 5) THENCE 107.02' ALONG THE ARC OF A CURVE TO THE LEFT HAVING A RADIUS OF 59' 27' 13" AND A BEARING OF 62.35';
- 6) THENCE N 57° 13' 36" W 71.20' TO A POINT ON AN EXISTING FENCE;
- 7) THENCE N 00° 11' 57" E 89.00' ALONG SAID FENCE TO THE TRUE POINT OF BEGINNING.

AN ACCESS ROAD EASEMENT IN THE NE1/4 OF SECTION 7, T.14S., R.8E W. OF THE SIXTH PRINCIPAL MERIDIAN, WASHINGTON COUNTY, COLORADO, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SW CORNER OF THE NE1/4 SW1/4 OF SAID SECTION 7, A METAL PIN AND CAP, L.S. 5204;

- 1) THENCE N 39° 02' 01" E 350.00' ALONG THE SOUTH LINE OF SAID NE1/4 SW1/4;
- 2) THENCE S 60° 57' 52" E 89.00';
- 3) THENCE S 09° 02' 01" W 431.50';
- 4) THENCE N 00° 39' 22" E 91.65';
- 5) THENCE S 39° 02' 01" W 40.00';
- 6) THENCE N 65° 00' 12" E 60.01' TO A POINT ON AN EXISTING FENCE;
- 7) THENCE N 20° 39' 16" E 40.01' ALONG SAID FENCE;
- 8) THENCE N 30° 30' 23" E 36.33';
- 9) THENCE N 39° 01' 59" E 85.00' TO A POINT ON THE WEST LINE OF SAID NE1/4 SW1/4;
- 10) THENCE S 10° 12' 12" W 174.00' ALONG SAID WEST LINE TO THE POINT OF BEGINNING.

EXHIBIT C AND PARTIAL DEED  
FROM RICHARD A. LINDY TO RONALD E. ROUSE

Right of way for ditches or canals constructed by the authority of the United States, as appears in United States patents recorded April 14, 1946, in Book 101, at page 572, as to the southeast of the northeast (NE 1/4) and the northwest of the southeast (NW 1/4) of Section 7, recorded February 28, 1934, in Book 224 at page 348, as to the northeast of the southeast (SE 1/4) of Section 7, recorded January 29, 1947 in Book 278 at page 26, as to the northeast of the northwest (NW 1/4), Section 7, and recorded October 26, 1947, in Book 276 at page 532, as to the west half of the northeast (NE 1/2) and the northwest of the southeast (SW 1/4), Section 6, all of the above described property lying within Township 14 South of Range 31 East of the Sixth Principal Meridian.

Amount and right of way for road purposes as granted to County of Colorado, Colorado by Earl L. de Crespigny, Inc., in the instrument recorded May 16, 1964, in Book 371 at page 355, affecting the following described property:

The Northeast Quarter of the Northeast Quarter (NE 1/4),  
Section 6, Township 14 South, Range 35 East, Sixth  
Principal Meridian.

All existing roads, highways, ditches, canals, telegraph lines, power lines, pipelines, utilities, rights of way and easements hereunder.

## AGREEMENT

THIS AGREEMENT entered into this 11<sup>TH</sup> of Dec, 1995, by and between Brush Creek Airport Limited Liability Company (Brush Creek) and William J. Lacy, Jr. (Lacy).

WHEREAS, Ronald D. Rouse and William J. Lacy entered into an Agreement on November 6, 1975 (the 1975 Agreement), concerning certain matters recited herein; and,

WHEREAS, Brush Creek is the second successor in interest to the property owned by Rouse, which property is subject to the 1975 Agreement; and,

WHEREAS, Lacy is the successor in interest to the property owned by William J. Lacy, which property is subject to the 1975 Agreement; and,

WHEREAS, there is a question concerning the terms and conditions of the 1975 Agreement and the rights associated therewith; and,

WHEREAS, Brush Creek is in the process of developing its property and has received preliminary plan approval for Filing #1 of the Avion Club Subdivision by the Gunnison County Commissioners with the contingency that any obscurities in the 1975 Agreement be resolved between Brush Creek and Lacy prior to the final plan and plat approval; and

WHEREAS, an inaccurate version of this agreement was filed with the Gunnison County Recorder on April 4, 1994 at Bk. 743, Pgs. 239-234.

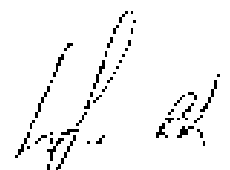
NOW THEREFORE, in consideration of the mutual terms, covenants and conditions contained herein, and in an effort to clarify the terms of the 1975 Agreement, the parties agree as follows:

### SECTION ONE

#### Access Easement

1.00 Brush Creek will define, delineate and label on the final plat of Filing #1 of the Avion Club Subdivision, a forty foot (40') wide easement across the portion of the Avion property which is located in the E1/2 of Section 7, Township 14 South, Range 85 West of the N.M.P.M. ("Avion Section 7 property"), with the easement beginning at the intersection of North Avion Drive and the northern border of the Avion Section 7 property, thence west to the northernmost end of the runway at the northwest point of the Avion Section 7 Property, thence south along the west fence line of the Avion property to the Lacy property located in the W1/2 NE1/4 of Section 78, Township 14 South, Range 85 West of the N.M.P.M. (Lacy property).

1.01 The easement described in paragraph 1.00 shall be, delineated on the final plat as for the benefit of Lacy, his heirs and assigns, shall be perpetual and non-exclusive, and shall not be restricted as to use in any manner.



1.02 Any and all ditch crossings necessary for the use of the easement by Lacy shall be installed, constructed and maintained at Lacy's expense.

## SECTION TWO

### Ditch Laterals

2.00 Brush Creek recognizes the historical existence of the three (3) lateral ditches of the Verzuh-Young-Bifano ditch near the most southern part of the Avion property and Lacy's right to utilize those lateral ditches for the irrigation of his property during the normal irrigation season.

2.01 Brush Creek will reserve a twenty-five foot (25') easement on either side of the ditch, and all lateral ditches thereto, for maintenance purposes. Said easement shall run the full course of the ditch and laterals as they course through the Avion property and the easement will be defined on the final plat of Filing #1 of the Avion Club Subdivision, and other filings subsequently submitted in which the ditch or laterals are located. Said easement shall be delineated on any recorded plat as for the benefit of Lacy, his heirs and assigns, and shall be perpetual and non-exclusive.

2.02 In the event that Brush Creek pursues other filings of the Avion Club Subdivision in which the ditch or laterals are located, the final plat of said filing shall reserve a thirty foot (30') easement on either side of the ditch, and a twenty-five foot (25') easement on all lateral ditches thereto, for maintenance purposes. Said easement shall be delineated on any recorded plat as for the benefit of Lacy, his heirs and assigns, and shall be perpetual and non-exclusive.

## SECTION THREE

### Dry-Up and Easement

3.00 Brush Creek agrees to grant to Lacy an easement and a covenant to dry-up covering approximately twenty (20) acres of Avion property located in Sections 7 and 8, Township 14 South, Range 65 West, 6th P.M. which has been irrigated by Lacy in accordance with paragraph 10 of the Settlement Stipulation in the District Court, Water Division No.4, State of Colorado, Case Nos. W-3517, W-3518, W-3519, W-3520, W-3521, W-3522 and W-3255, entitled in 'The Matter Of The Application For Water Rights Of Richard A. Landy In The Canonison River Or Its Tributaries.

3.01 The location of the 20 acre dry-up tract shall be designated by Brush Creek within thirty (30) days of a written request by Lacy for the location of said dry-up, and said location shall take into account the expense to Lacy and the impairment of use of the property by Brush Creek. However, Brush Creek does not warrant that 20 acres has been irrigated by Lacy or his successors and it is the responsibility of Lacy to demonstrate such irrigation. The designated 20 acre dry-up tract shall be surveyed at Lacy's expense and said survey shall conform in all respects with Colorado law.

*W. B.*

3.03 In addition to said dry-up grant, Brush Creek shall grant and convey to Lacy, across Brush Creek's property, a non-exclusive easement from an existing road nearest the 20 acre dry-up tract, of a width of not less than 15 feet, said easement to be surveyed concurrently with the 20 acre dry-up tract, also at Lacy's expense, which survey shall conform in all respects with Colorado law. Said easement is to be used only for access to the 20 acre dry-up tract and the performance of all activity needed on the 20 acre dry-up tract to complete said dry-up. Upon completion of said dry-up, said dry-up easement shall terminate.

3.04 Lacy shall have the right to perform all construction necessary, if any, on the 20 acre dry-up tract in order to effect the total dry-up of said 20 acre tract; however, any construction shall be limited to that needed to effect the dry-up, shall be completed promptly, in a workmanlike manner and at times and in a manner such that the construction shall, to the extent feasible, cause the least disruption to the activities of Brush Creek. Lacy shall obtain the prior approval of Brush Creek prior to the commencement of construction activities, which approval shall not be unreasonably withheld.

3.05 Brush Creek shall have the right to utilize the 20 acre dry-up tract for any purpose it sees fit, expressly including the construction of residential buildings, homesites and common avenues, so long as said usage does not adversely effect the dry-up process nor any construction or facilities installed to effect the dry-up.

3.06 Brush Creek and their successors shall have the right to relocate the 20 acre dry-up tract after the adjudication of a plan of augmentation by Lacy utilizing such dry-up so long as an amended plan of augmentation based upon the change in location of the 20 acre dry-up tract is approved by the Division 4 Water Court and that such relocation will be effective only upon entry of such Water Court Decree approving such amended plan of augmentation, and that such amended plan of augmentation will be adjudicated by Brush Creek, with all costs of every nature and description in obtaining a decree approving such amended plan of augmentation to be borne solely by Brush Creek, their successors and assigns.

3.07 Lacy shall provide to Brush Creek copies of all documents, including surveys, engineering reports and all proposed pleadings, ten (10) days prior to filing same with the Division 4 Water Court, for Brush Creek's comments, but not their veto.

3.08 It is expressly understood by the parties that Brush Creek makes no warranties regarding the suitability of any for a dry-up, and the obligation of Brush Creek in regard to the dry-up is strictly limited to providing land for the dry-up relocation and it is not the responsibility of Brush Creek, either financially or legally, to secure the dry-up relocation approval.



## SECTION FOUR

### Right to Pasture

4.00 Brush Creek and Lacy hereby expressly reaffirm and incorporate herein as part of this Agreement, the provisions of paragraph 10 of the Settlement Stipulation in the District Court, Water Division No.4, State of Colorado, Case Nos. W-3517, W-3518, W-3519, W-3620, W-3521, W-3232 and W-3233, entitled In The Matter Of The Application For Water Rights Of Richard A. Lacy In The Gunnison River Or Its Tributaries, and the 1981 Lease Agreement corresponding therewith. Specifically, without limitation, the parties hereto reaffirm Lacy's right to use the land lying south of the Crested Butte air strip for the purpose of pasturing in accordance with the terms of said stipulations, *until such time as the strip-up has been completed.*

## SECTION FIVE

### Revocation of Inaccurate Agreement

5.00 The parties hereby revoke the inaccurate version of this Agreement filed with the Gunnison County Recorder on April 4, 1994 at Bk. 743, Pgs. 230-234 as if it were never filed. This Agreement does not affect the letter filed at Bk. 743, Pg. 235, which is incorporated herein.

## SECTION SIX

### Miscellaneous Provisions

6.00 All other terms and conditions of the 1975 Agreement not addressed herein will remain in full force and effect.

6.01 Both parties agree to pay their own attorney fees incurred in the review of this Agreement.

6.02 The benefits and burdens of this Agreement, as well as the benefits and burdens of the 1975 Agreement, shall inure to, and be binding upon, the parties hereto, their heirs, executors, administrators, successors and assigns.

6.03 This Agreement shall be governed and construed in accordance with the laws of the State of Colorado, and jurisdiction for any action pertaining to the interpretation or enforcement of this Agreement shall be proper in the District Court, Gunnison County, Colorado.

6.04 The prevailing party in any action brought in a court of law as to the enforcement, interpretation or construction of this Agreement shall be entitled to reasonable attorneys' fees as well as all costs incurred in the prosecution or defense of such action.



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

*Brian Landy*  
Witness

*William J. Landy, Jr.*  
William J. Landy, Jr.


*Brian Landy*  
Witness

Brush Creek Airport, L.L.C.  
By: *Richard A. Landy*  
Richard A. Landy  
Managing Member

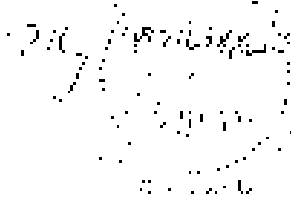
Pursuant to the requirements of the Final Plat Approval of Filing #1 of the Avion Club Subdivision by Gunnison County Commissioners, Brush Creek Airport Limited Liability Company ("Brush Creek"), developer of the subdivision hereby agrees to make available a 30' x 45' space available on Lot C-2 or in a location mutually agreeable to both Brush Creek and to the Gunnison County Fire District as a location for a satellite fire protection facility.

In the event that the Fire District chooses to construct such a facility, the architectural design will be subject to the approval of the Avion Club Architectural Design Committee, approval of which will not be unreasonably withheld. Building will conform to Avion Club Design Standards.

This statement will be recorded in the Office of Clerk and Recorders in Gunnison County.

  
\_\_\_\_\_  
Richard A. Landy      Date 4/21/94  
Managing Member,  
Brush Creek Airport  
Limited Liability Company

Subscribed and sworn before me on this 21st day of April, 1994.



  
De Juanita L. Bautner  
1155 Lakeshore Dr. Boulder, CO 80504

## AGREEMENT

THIS AGREEMENT entered into this 18th day of March, 1994, by and between Brush Creek Airpark Limited Liability Company (Brush Creek) and William J. Lacy, Jr. (Lacy).

WHEREAS, Ronald D. Rouse and William J. Lacy entered into an Agreement on November 6, 1975 (the 1975 Agreement), concerning certain matters recited herein; and,

WHEREAS, Brush Creek is the second successor in interest to the property owned by Rouse, which property is subject to the 1975 Agreement; and,

WHEREAS, Lacy is the successor in interest to the property owned by William J. Lacy, which property is subject to the 1975 Agreement; and,

WHEREAS, there is a question concerning the terms and conditions of the 1975 Agreement and the rights associated therewith; and,

WHEREAS, Brush Creek is in the process of developing its property and has received preliminary plan approval for Filing #1 of the Avion Club Subdivision by the Garrison County Commissioners with the contingency that any obscurities in the 1975 Agreement be resolved between Brush Creek and Lacy prior to the final plan and plat approval.

NOW THEREFORE, in consideration of the mutual terms, covenants and conditions contained herein, and in an effort to clarify the terms of the 1975 Agreement, the parties agree as follows:

### SECTION ONE

#### Access Easement

1.00 Brush Creek will define, delineate and label on the final plat of Filing #1 of the Avion Club Subdivision, a forty foot (40') wide easement across the Avion property located in the E1/2 of Section 7, Township 14 South, Range 85 West of the N.M.F.M. (Avion property), with the easement beginning at the intersection of Brush Creek Road and the Avion property, thence across the area that will later be defined as South Avion Road, thence west to the northernmost end of the runway at the northwest point of the Avion property in Section 7. At the point that the north end of the runway is crossed, the easement shall run along the west fence line of the Avion property from the northern most point of the runway, south to the Lacy property located in the W1/2 NE1/4 of Section 18, Township 14 South, Range 85 West of the N.M.F.M. (Lacy property)

1.01 The easement described in paragraph 1.00 shall be delineated on the final plat as for the benefit of Lacy, his heirs and assigns, shall be perpetual and non-exclusive, and shall not be restricted as to use in any manner.

1.02 Any and all ditch crossings necessary for the use of the easement by Lacy shall be installed, constructed and maintained at Lacy's expense.

## SECTION TWO

### Ditch Laterals

2.00 Brush Creek recognizes the historical existence of the three (3) lateral ditches of the Verzhil-Young-Bifano ditch near the most southern part of the Avion property and Lacy's right to utilize these lateral ditches for the irrigation of his property during the normal irrigation season.

2.01 Brush Creek will reserve a twenty-five foot (25') easement on either side of the ditch, and all lateral ditches thereto, for maintenance purposes. Said easement shall run the full course of the ditch and laterals as they course through the Avion property and the easement will be defined on the final plat of Filing #1 of the Avion Club Subdivision, and other filings subsequently submitted in which the ditch or laterals are located. Said easement shall be delineated on any recorded plat as for the benefit of Lacy, his heirs and assigns, and shall be perpetual and non-exclusive.

2.02 In the event that Brush Creek pursues other filings of the Avion Club Subdivision in which the ditch or laterals are located, the final plat of said filing shall reserve a thirty foot (30') easement on either side of the ditch, and a twenty-five foot (25') easement on all lateral ditches thereto, for maintenance purposes. Said easement shall be delineated on any recorded plat as for the benefit of Lacy, his heirs and assigns, and shall be perpetual and non-exclusive.

## SECTION THREE

### Dry-Up and Easement

3.00 Brush Creek agrees to grant to Lacy an easement and a covenant to dry-up covering approximately twenty (20) acres of Avion property located in Sections 7 and 8, Township 14 South, Range 85 West, 6th P.M. which has been irrigated by Lacy in accordance with paragraph 10 of the Settlement Stipulation in the District Court, Water Division No. 4, State of Colorado, Case Nos. W-3517, W-3518, W-3519, W-3520, W-3521, W-3232 and W-3233, entitled in The Matter Of The Application For Water Rights Of Richard A. Lacy In The Gunnison River Or Its Tributaries.

3.01 The location of the 20 acre dry-up tract shall be designated by Brush Creek within thirty (30) days of a written request by Lacy for the location of said dry-up, and said location shall take into account the expense to Lacy and the impairment of use of the property by Brush Creek. However, Brush Creek does not warrant that 20 acres has been irrigated by Lacy or his successors and it is the responsibility of Lacy to demonstrate such

irrigation. The designated 20 acre dry-up tract shall be surveyed at Lacy's expense and said survey shall conform in all respects with Colorado law.

3.02 In addition to said dry-up grant, Brush Creek shall grant and convey to Lacy, across Brush Creek's property, a non-exclusive easement from an existing road nearest the 20 acre dry-up tract, of a width of not less than 15 feet, said easement to be surveyed concurrently with the 20 acre dry-up tract, also at Lacy's expense, which survey shall conform in all respects with Colorado law. Said easement is to be used only for access to the 20 acre dry-up tract and the performance of all activity needed on the 20 acre dry-up tract to complete said dry-up. Upon completion of said dry-up, said dry-up easement shall terminate.

3.03 Lacy shall have the right to perform all construction necessary, if any, on the 20 acre dry-up tract in order to effect the total dry-up of said 20 acre tract; however, any construction shall be limited to that needed to effect the dry-up, shall be completed promptly, in a workmanlike manner and at times and in a manner such that the construction shall, to the extent feasible, cause the least disruption to the activities of Brush Creek. Lacy shall obtain the prior approval of Brush Creek prior to the commencement of construction activities, which approval shall not be unreasonably withheld.

3.04 Brush Creek shall have the right to utilize the 20 acre dry-up tract for any purpose it sees fit, expressly including the construction of residential buildings, homesites and common avenues, so long as said usage does not adversely effect the dry-up process nor any construction or facilities installed to effect the dry-up.

3.05 Brush Creek and their successors shall have the right to relocate the 20 acre dry-up tract after the adjudication of a plan of augmentation by Lacy utilizing such dry-up so long as an amended plan of augmentation based upon the change in location of the 20 acre dry-up tract is approved by the Division 4 Water Court and that such relocation will be effective only upon entry of such Water Court Decree approving such amended plan of augmentation, and that such amended plan of augmentation will be adjudicated by Brush Creek, with all costs of every nature and description in obtaining a decree approving such amended plan of augmentation to be borne solely by Brush Creek, their successors and assigns.

3.06 Lacy shall provide to Brush Creek copies of all documents, including surveys, engineering reports and all proposed pleadings, ten (10) days prior to filing same with the Division 4 Water Court, for Brush Creek's comments, but not their veto.

3.07 It is expressly understood by the parties that Brush Creek makes no warranties regarding the suitability of any for a dry-up, and the obligation of Brush Creek in regard to the dry-up is strictly limited to providing land for the dry-up relocation and it is not the responsibility of Brush Creek, either financially or legally, to secure the dry-up relocation approval.

11

## SECTION FOUR

### Right to Pasture

4.00 Brush Creek and Lacy hereby expressly reaffirm and incorporate herein as part of this Agreement, the provisions of paragraph 10 of the Settlement Stipulation in the District Court, Water Division No.4, State of Colorado, Case Nos. W-3517, W-3518, W-3519, W-3520, W-3521, W-3232 and W-3233, entitled In The Matter Of The Application For Water Rights Of Richard A. Landy in The Gunnison River Or Its Tributaries, and the 1981 Lease Agreement corresponding therewith. Specifically, without limitation, the parties reaffirm and agree that Lacy shall have the right to use the land lying south of the Crested Butte air strip for the purpose of pasturing in accordance with the terms of said stipulation until such time as the dry-up has been completed.

## SECTION FIVE

### Miscellaneous Provisions

5.00 All other terms and conditions of the 1975 Agreement not addressed herein will remain in full force and effect.

5.01 Both parties agree to pay their own attorney fees incurred in the review of this Agreement.

5.02 The benefits and burdens of this Agreement, as well as the benefits and burdens of the 1975 Agreement, shall inure to, and be binding upon, the parties hereto, their heirs, executors, administrators, successors and assigns.

5.03 This Agreement shall be governed and construed in accordance with the laws of the State of Colorado, and jurisdiction for any action pertaining to the interpretation or enforcement of this Agreement shall be proper in the District Court, Gunnison County, Colorado.

5.04 The prevailing party in any action brought in a court of law as to the enforcement, interpretation or construction of this Agreement shall be entitled to reasonable attorneys' fees as well as all costs incurred in the prosecution or defense of such action.

5.05 The parties shall accept as binding for purposes of execution of this Agreement facsimile signatures; however, original signatures shall be provided within fourteen (14) days of facsimile execution.

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

William J. Lacy, Jr.  
William J. Lacy, Jr.

Brush Creek Airport, L.L.C.

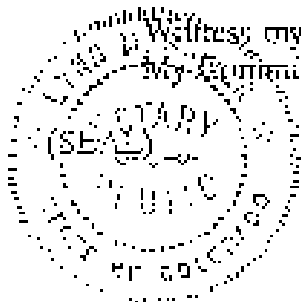
By: Richard A. Lundy  
Richard A. Lundy  
Managing Member

ATTEST: Alicia R. Rescher

STATE OF COLORADO        )  
  ) ss.  
COUNTY OF GUNNISON     )

The foregoing was acknowledged before me this 18th day of March, 1994, by William J. Lacy, Jr. ~~MANAGING MEMBER OF BRUSH CREEK AIRPORT, L.L.C.~~

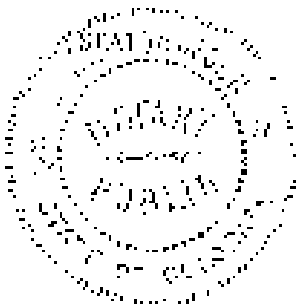
Witness my hand and official seal,  
My Commission expires: January 22, 1997



Richard M. Singer  
Notary Public

The foregoing was acknowledged before me this 4th day of April, 1994, by Richard A. Lundy as Managing Member of Brush Creek Airport, L.L.C.

Witness my hand and official seal,  
My Commission expires: January 22, 1997



Richard M. Singer  
Notary Public

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Landy

1994

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March 22, 1994

Mr. Richard A. Landy  
c/o Avion Club  
10765 East Bethany Drive  
Suite #210  
Aurora, Colorado 80014

Re: Lacy/Brush Creek

Dear Dick:

To confirm our previous telephone conversation concerning your installation of ditch cleaning facilities in the Verzun-Young-Bifano Ditch, please be advised that I do not intend to enforce paragraph 13 of the Settlement Stipulation in the District Court, Water Division No. 4, State of Colorado, Case Nos. W-3517, W-3518, W-3519, W-3520, W-3521, W-3232 and W-3233, entitled In The Matter Of The Application For Water Rights Of Richard A. Landy In The Gunnison River Or Its Tributaries (Stipulation) at the present time; however, I do reserve the right to enforce paragraph 13 of the above Stipulation should development of the Brush Creek Property result in debris from the Verzun-Young-Bifano Ditch flowing into my property. This letter should not be construed as a waiver of my right to enforce paragraph 13 of the Stipulation at any time in the future.

Sincerely,

*Billy Joe Lacy*  
Billy Joe Lacy