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DEVELOPMENT IMPROVEMENTS AGREEMENT

THIS Development Improvements Agreement is entered into this 3rd day of May, 2001, between the Board of County Commissioners of Gunnison County, Colorado (the "County"), and BRUSH CREEK AIRPORT, L.L.C., a Colorado limited liability company (the "Developer") as follows:

1. PURPOSE. The Developer has submitted to the County the Developer's application for Land Use Change Permit No. 1978-02 regarding BUCKHORN RANCH FILING NO. 2a, formerly known as the AVION CLUB (the "Project"). The legal description of the Project is attached hereto and incorporated herein as Exhibit A. As valuable and sufficient consideration for this Agreement, the County and the Developer agree that approval of such application by the County is expressly conditioned on completion of the improvements described in paragraph 7 below (the "Improvements") to the specifications described herein and by the times specified herein. The County and the Developer further agree that such improvements are appropriate and necessary requirements to be required by the County, and to be performed by the Developer and which Developer shall perform. The County and Developer further agree that an agreement guaranteeing the Developer's performance secured by suitable security, to protect the interest of the County and the public, in the amount set forth herein is an appropriate condition to the County's approval of such Land Use Change Permit. The parties have entered into this Agreement to memorialize such understandings and agreements. The relationship of the parties to this Agreement is contractual; Developer is an independent contractor and not an agent of the County.

2. DEVELOPERS BOUND. The Developer agrees to accept and be bound by the terms and conditions of the County's issuance of its approval of Land Use Change Permit No. 1978-02 for Filing No. 2a, and the terms and conditions of this Agreement. Developer accepts the County's review and permitting authority, process and performance of same in connection with Land Use Change Permit No. 1978-02 for Filing 2a as legal and valid and waives any defect therein.

3. CONSTRUCTION.

A. The Developer agrees to complete construction of the Improvements within the Project in the location set forth on the plans attached hereto as Exhibit B, and in accordance with the specifications thereof by not later than November 30, 2002, acts of God and any cause beyond the reasonable control of the Developer excepted, including without limitation labor disputes, laws, regulations, or orders of any governmental entity, orders of court, inability to obtain any required authorization, act of war or conditions arising out of or attributable to war, riot, civil strike, insurrection or rebellion, fire, explosion, earthquake, storm, flood or other adverse weather condition, delay or failure by suppliers or materialmen, contractors, or subcontractors, shortage of or inability to obtain labor, supplies or materials.



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B. The completion deadline set forth in this paragraph 3 may be extended by the County in its reasonable discretion upon written request of Developer if the County determines that: (1) such extension of time will not operate to the detriment of the County, the public or the owners of property within the Project; and (2) the County's security is adequate to ensure full performance by Developer by the extended completion date; and (3) that such an extension would not be in conflict with the conditions of the approved Land Use Change Permit. The County may require Developer to provide, at Developer's cost, supplemental estimates by Developer's engineer of the costs of completion and to provide additional security as a prerequisite to its extension of any completion date. Any extended completion date granted by the County hereunder may be further extended in like manner.

C. Each contract entered into by Developer for construction of the Improvements shall provide that the County is a third party beneficiary with all rights to enforce such contracts in place of Developer in the event of a default by Developer. Developer shall provide to County a copy of each such contract upon its execution.

D. The County reserves the right not to permit construction of any building on a Lot in the Project unless the necessary improvements to serve that Lot have been completed and installed.

4. ESTIMATED COST. The total cost of the Improvements to be constructed by the Developer is estimated currently to be \$221,053.00.

5. SECURITY. In order to secure all obligations of the Developer herein, the Developer and the County agree that the Developer shall, at Developer's sole cost, and before starting work on any phase of the Project or Improvements, and before conveying any portion of the Project, obtain and provide to the County an irrevocable letter of credit issued by Compass Bank dated April 04, 2001 naming the County as beneficiary thereof in the amount of \$266,300.00 which is 120 percent or more of the currently estimated cost of the Improvements.

If the contract(s) provided to the County pursuant to paragraph 3.C above indicate a substantially different total cost than estimated in paragraph 4 above, the amount of security may be increased or decreased. For the purposes of this paragraph 5, substantial is defined as 10 percent or more.

Pending full performance of all of the terms and conditions hereof by the Developer, the County shall retain said security and shall remain the beneficiary of such security. In the event of any uncured default hereunder the County in its sole discretion, and without any other authority required, may draw upon said security up to the full amount of \$266,300.00, upon presentation by the County to the Developer and the issuer of the irrevocable letter of credit of a written statement by the County that such uncured default exists and that the County is entitled to payment pursuant to this Agreement. Upon timely



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performance of all terms and conditions hereof, the irrevocable letter of credit shall be tendered and returned by the County to the Developer

6. CERTIFICATION

A. Not later than November 30, 2002, a registered Colorado engineer retained by the Developer at its expense shall certify to the County whether the Developer's construction obligations regarding Improvements under this Agreement have been fully and faithfully performed according to the plans and specifications attached as Exhibit B. Upon receipt of such certification the County shall review the same and shall make an independent judgment whether to accept the same in the reasonable discretion of the County. Developer agrees not to cover or otherwise prevent inspection of the Improvements constructed hereunder until Developer's engineer and the County's representative have had reasonable opportunity to inspect such Improvements.

B. Not later than November 30, 2002, Developer shall provide to the County Attorney a sworn affidavit, signed by the Developer's authorized representative, that the Improvements completed have been paid for, in full, by or on behalf of the Developer. The Developer shall be responsible for the information so provided. Said written certification will be reviewed by the County, but the County shall have no responsibility or liability to any party regarding the veracity of the information so provided.

7. SCOPE OF WORK

A. The scope of the work to be done by the Developer shall include, but not be limited to: As set forth on attached Exhibit B

B. The conditions of this Agreement and Land Use Change Permit No. 1978-02 are such that if the obligations hereunder of the Developer are well, truly, faithfully and timely performed by Developer, inspected and certified to by the Developer's engineer, and such performance is accepted by the County in the County's discretion, the Developer's obligations to the County under this Agreement except as set forth in paragraph 7.C below shall be at an end; otherwise such conditions and obligations shall remain in full force and effect.

C. For a period of one year from and after the acceptance of all of the work described in paragraph 7.A above, Developer shall, at its own expense, make all needed repairs and replacements to such work as shall, in the County's reasonable opinion, become necessary. The County shall have the right to retain up to \$33,278.00 of the security for up to one year following the acceptance of all of the work described in paragraph 7.A above, as security to ensure such repair and replacement.



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B. PARTIAL RELEASE OF SECURITY.

A. The County recognizes that as work proceeds upon the improvements, the County's need for security shall be reduced. Accordingly, the County agrees to a reasonable partial release of the security to be delivered to the County pursuant to paragraph 5 hereof upon receipt of a written certification, by Developer's engineer, stating the estimated cost of remaining completion, in which event the County shall retain security equal to 120 percent of such estimated cost of remaining completion plus 20 percent of the original estimated cost of the improvements and shall release the balance of all security held by the County.

B. Upon Developer entering into a contract or contracts for construction of improvements hereunder, Developer and County may negotiate an addendum to this Agreement setting forth such reasonable schedule for partial releases of the security in accordance with the anticipated construction schedule. In such circumstance, the County shall designate and authorize the County Manager to make the partial release(s) hereunder after consultation with appropriate County staff.

B. DEVELOPER'S DEFAULT. In the event of any default hereunder by the Developer, the County shall give notice to the Developer specifying the nature of such default, which notice shall be given by certified mail with return receipt required addressed to the Developer at 10700 East Bethany Drive Suite 210, Aurora, Colorado 80014, with a copy thereof to the attorney for the Developer, Wilderson O'Hayre & Dawson, P.C., 120 North Taylor Street, Post Office Box 179, Gunnison, Colorado 81230. In the event the Developer does not remedy such default to the satisfaction of the County within 14 business days following such notice, the County may elect, in its discretion:

9.1 To specifically enforce the terms and conditions of this Agreement.

9.2 To draw upon or otherwise obtain the benefit of the security.

9.3 To exercise any other rights and obtain any other remedies provided by law.

9.4 To obtain from the Developer either an extension of the County's security hereunder to guarantee the completion of the improvements only on the condition that (1) suitable additional security is provided the County to guarantee the construction of said improvements within the new time period determined by the County, and (2) the County determines that it would not be detrimental to the interest of the County, the public or the owners of property within the Project to allow such extension, and (3) the County determines that it would not be in conflict with the conditions of the approved Land Use Change Permit No. 1995-36



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10. RECORDING OF AGREEMENT. Upon its execution, this Agreement shall be recorded by County and shall be a covenant running with the property herein described in order to put prospective purchasers or other interested parties on notice as to the terms and provisions hereof. Upon the reasonable request of the Developer, the County agrees to deliver to the Developer a certification of the County that (1) the Developer has complied with its obligations under paragraph 5 of this Agreement, and (2) to the County's knowledge, no default by the Developer exists under the Agreement. Upon completion of the construction of the Improvements within the Project, the required certification by the Developer, and the final inspection of such Improvements by the County, and the expiration of the one year period described in paragraph 7.C above, the County shall execute appropriate documents certifying to the compliance by the Developer of the terms and conditions of this Agreement and releasing the Agreement of record.

11. RETENTION OF POLICE POWERS. The County retains the power and right to impose additional requirements upon Developer with regard to the Project if the failure to do so would place the public or owners of property within the Project in a perilous condition, or in the event of substantially changed conditions, that is, nothing in this Agreement is or shall be construed to be a bargaining away of the County's police power.

12. TRANSFER OR ASSIGNMENT. No transfer or assignment of any of the rights or obligations of the Developer under this Agreement shall be permitted without prior written approval of the County which approval shall not unreasonably be withheld.

13. TITLE AND AUTHORITY. The Developer expressly warrants and represents to the County that it is the record owner of the real property constituting the Project, and further represents and warrants, together with the undersigned individual, that the undersigned individual has full power and authority to enter into this Agreement. The Developer and the undersigned individual understand that the County is relying on such representations and warranties in entering into this Agreement.

14. LITIGATION. Nothing contained herein shall prevent either party from obtaining a judicial determination of the violation of its rights hereunder, provided however, that written notice to the other party advising the other party of the alleged violation, and advising that in the event the matter is not resolved by the parties within 14 business days thereafter, shall be a condition precedent to the commencement of any litigation.

15. TIME OF ESSENCE. It is mutually agreed that time of performance is an essential part of this Agreement and that all terms, covenants and conditions herein shall extend to and become obligatory upon the successors and assigns of the respective parties hereto.

16. VENUE AND CHOICE OF LAW. This Agreement is entered into in Gunnison County, Colorado, and it is agreed that the exclusive jurisdiction and venue of any action pertaining to the interpretation or enforcement of this Agreement shall be in the District Court of Gunnison County, Colorado. The exclusive choice of law pertaining to this



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transaction shall be that of the State of Colorado without giving effect to Colorado choice of law principles.

17. SEVERABILITY. If any term or provision of this Agreement shall be invalid or unenforceable, the remainder of this Agreement and the terms and provisions hereof shall not be affected thereby and all other terms and provisions of this Agreement shall be valid and enforceable to the full extent permitted by law.

18. ATTORNEYS' FEES. If any action is brought in a court of law by either party to this Agreement as to the enforcement, interpretation or construction of this Agreement or any document provided for herein, the prevailing party in such action shall be entitled to reasonable attorneys' fees as well as all costs incurred in the prosecution or defense of such action.

19. HOLD HARMLESS CLAUSE. The Developer shall indemnify, defend and hold harmless the County, its officials, employees, and agents from and against liability for damages, injury or death which may arise from the direct or indirect operations of the owner, Developer, contractors or subcontractors, which relate to the Project.

20. ENTIRE AGREEMENT. This Agreement contains the entire and only agreement between the parties regarding development improvements, and no oral statements or representations not contained in this Agreement shall be of any force and effect between the parties. This Agreement shall not be modified or amended in any manner except by written instrument executed by the parties.

21. BINDING AGREEMENT. This Agreement shall be binding upon and inure to the benefit of the heirs, personal representatives, successors and assigns of the parties hereto.

22. NOTICES. All notices and other communications required or permitted under this Agreement shall be in writing and shall be, as determined by the person giving such notice, either hand delivered, mailed by registered or certified mail, return receipt requested, or by telecopier or telegraphic communication to the required party at the following addressees:

COUNTY: Board of County Commissioners
200 East Virginia
Gunnison, Colorado 81230
Telecopier: (970) 641-3061

DEVELOPER: Brush Creek Airport, LLC
10700 East Bethany Drive Suite 210
Aurora, Colorado 80014
Telecopier: (303) 745-2312

with a copy to:

Wilderson, O'Hay & Dawson, P.C.
120 North Taylor Street
Post Office Box 170
Gunnison, Colorado 81230
Telecopier: (970) 641-3094

IN WITNESS WHEREOF the parties have executed this Agreement the date first above written.

BOARD OF COUNTY COMMISSIONERS OF
GUNNISON COUNTY, COLORADO

ATTEST:

[Signature]
County Clerk

By *[Signature]* _____
Chairperson

BRUSH CREEK AIRPORT, L.L.C.,
a Colorado limited liability company

By *[Signature]* _____
Richard A. Landy, Managing Member

APPROVED AS TO FORM:

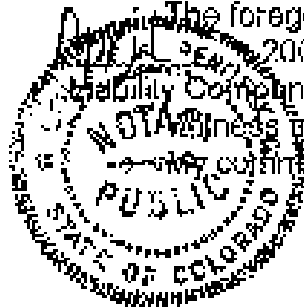
[Signature]
David Baumgarten
Gunnison County Attorney

[Signature]
Michael C. Dawson, attorney for Developer

BRUSH CREEK AIRPORT, L.L.C.,
a Colorado limited liability company
120 North Taylor Street
Post Office Box 170
Gunnison, Colorado 81230
Telecopier: (970) 641-3094

STATE OF COLORADO }
County of Gunnison } ss.

The foregoing instrument was acknowledged before me this 4th day of _____, 2001, by Richard A. Landy as Managing Member of Brush Creek Limited Liability Company, L.L.C., a Colorado limited liability company
in my hand and official seal.
My commission expires: 8/29/03



[Signature]
Notary Public

EXHIBIT A

DEVELOPMENT IMPROVEMENTS AGREEMENT

Plat of BUCKHORN RANCH FILING NO. 2a, according to the plat thereof
filed May 3, 2001, 2001 and bearing Reception No.
177440 of the records of Gunnison County, Colorado,

County of Gunnison,
State of Colorado.


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EXHIBIT B

DEVELOPMENT IMPROVEMENTS AGREEMENT

The Plans and Specifications for the construction of roads and utilities within the Plat of Buckhorn Ranch Filing No. 2a as prepared by Henkels and McCoy Inc. on file in the office of the Planning Department of Gunnison County, Colorado. These include but are not limited to:

<u>Sheet No.</u>	<u>Description</u>
C1 - C2	Road Plan and Profile
C3 - C4	Utility Plan
C5	Utility Details

The engineer's cost of the construction of the Improvements is attached as Exhibit B-1.

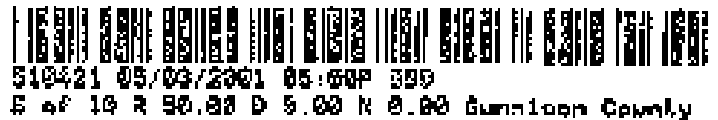


EXHIBIT 3-1

DEVELOPMENT IMPROVEMENTS AGREEMENT

Improvement	Cost
Roads, Sewer Lines, and Water System	\$153,015.00
Water & Sewer service to each Lot(\$500.00 per Lot)	\$7,000.00
Electrical Service	\$42,123.00
Phone Service (\$402.50 per Lot)	\$5,635.00
Gas Service	\$10,080.00
Runway Paving	<i>completed</i>
Lake Improvements	\$4,000.00
TOTAL	\$221,853.00

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