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KING COUNTY SUPERIOR COURT  
STATE OF WASHINGTON

CREST A.E.R.O., Inc., a Washington Nonprofit corporation, as agent for Flying Acres real property owners; JEFFREY M. MONTGOMERY, in his individual capacity and as representative of the Class Action for Flying Acres; DAVID G. LEHMAN, in his individual capacity and as representative of the Class Action for Flying Acres; and THE FLYING ACRES CLASS.

Plaintiffs,

vs.

CREST AIRPARK, INC., a Washington corporation, Norman C. Grier and Jane Doe Grier and the marital community comprised thereof, All unknown heirs of Norman C. Grier and Jane Doe Grier, and All Persons Unknown, Claiming Any Legal or Equitable Right, Title, Estate, Lien, tenancy or Interest in the Property Described in the Complaint Herein, Grier Family Holdings. L.L.C., a Washington Limited Liability Company

Defendants.

No. 01-2-33022-5 KNT

**AGREED FINDINGS OF FACTS,  
CONCLUSIONS OF LAW  
AND ORDER GRANTING  
PARTIAL SUMMARY  
JUDGMENT**

COPY

1 THIS MATTER came on for hearing upon Plaintiffs' motion for Partial Summary  
2 Judgment (1) Pursuant to RCW 7.24.020 declaring that at least 60% of the property  
3 owners identified in the Complaint filed herein and benefited by an easement recorded  
4 under King County Auditor number 7512160233 on December 11, 1975 by Stanley N.  
5 Nesland and Virginia S. Nesland properly exercised the option contained within the  
6 easement to extend the easement created by the Neslands and that said easement is valid  
7 through December 31, 2025 subject to terms contained within the terms of the recorded  
8 easement that may legally terminate the easement The court has reviewed the parties'  
9 papers and the file herein. The Motion was considered with oral argument. Plaintiffs  
10 appeared by and through their attorney of record, Christopher A. Benson. Defendants  
11 CREST AIRPARK, INC., NORMAN GRIER and GRIER FAMILY HOLDINGS, L.L.C.  
12 appeared through their attorneys of record, Robert E. West and Paul A. Spencer. The Court  
13 being fully advised in the premises herein hereby makes the following Findings of Fact,  
14 Conclusions of Law and Orders.

15  
16 **EVIDENCE RELIED UPON**

- 17 1. Order Certifying Class 12/18/2002.  
18 2. Nesland Easement dated December 11, 1975.  
19 3. Plaintiffs' Amended Complaint.  
20 4. Grier Deed and Declarations concerning transfer to Grier Family Holdings, L.L.C.  
21 5. Secretary of State information concerning CREST A.E.R.O.  
22 6. Copies of Agency Appointments that existed between November 1994 and February  
23 1999.

24  
25 Order Granting Partial Summary Judgment - 2

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- 1 7. Declaration of Randy Crothers.
- 2 8. Declaration of Jeffrey M. Montgomery.
- 3 9. Declaration of Thomas Torchia.
- 4 10. Series of correspondence from Attorney on behalf of Defendants.
- 5 11. Stipulated Order Authorizing Publication to Unknown.
- 6 12. Affidavit of Publication by the Daily Journal of Commerce.
- 7 13. Supplemental Memorandum submitted by Plaintiffs.
- 8 14. Declaration of John Tomlinson with attachments A, B and C attached thereto.
- 9 15. Defendants Memorandum in Response to Plaintiffs' Motion for Partial Summary
- 10 Judgment.
- 11 16. Declaration of Norman Grier in Opposition to Plaintiffs' Motion for Partial Summary
- 12 Judgment dated September 8, 2003.
- 13 17. Declaration of Rikki Birge in Opposition to Plaintiffs' Motion for Partial Summary
- 14 Judgment dated September 8, 2003.
- 15

16 And the Parties having come to agreement as to the following Findings of  
17 Fact and Conclusions of Law:

#### 18 **FINDINGS OF FACT**

19 1. On or about December 11, 1975, Stanley N. Nesland and Virginia S. Nesland as  
20 owners of real property legally described below created an express easement (hereinafter  
21 Nesland Easement) to benefit numerous real property owners that was recorded on  
22 December 16, 1975 under King County Auditor Number 7512160233.

23 The legal description of the "burdened property" is as follows:  
24

25 Order Granting Partial Summary Judgment - 3

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1 DESIGNATED LANDING STRIP AND TAXIWAYS ONLY, LIVING WITHIN THE  
2 FOLLOWING DESCRIBED PROPERTY.

3 THAT PORTION OF THE EAST QUARTER OF SECTION 1, TOWNSHIP 21 NORTH, RANGE  
4 5 EAST, W.M., IN KING COUNTY, WASHINGTON AND OF GOVERNMENT LOTS 5 AND 6,  
5 SECTION 6, TOWNSHIP 21 NORTH, RANGE 6 EAST, W.M., IN KING COUNTY,  
6 WASHINGTON, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

7 BEGINNING AT A POINT ON THE WESTERLY MARGIN OF W. I. THOMAS COUNTY  
8 ROAD "181<sup>ST</sup> SE" IN SAID GOVERNMENT LOT 5 WHICH IS 170 FEET NORTHERLY,  
9 MEASURED ALONG SAID MARGIN, FROM THE NORTHEAST CORNER OF LOT 17,  
10 FLYING ACRE'S DIVISION NO. TWO, ACCORDING TO THE PLAT RECORDED IN  
11 VOLUME 87 OF PLATS, PAGE 94-95-96, IN KING COUNTY, WASHINGTON, THENCE  
12 SOUTHWESTERLY, ALONG A LINE PASSING THROUGH A POINT ON THE WEST LINE  
13 OF SAID SECTION 6 WHICH IS 2120 FEET SOUTHERLY OF THE NORTHWEST CORNER  
14 OF SAID SECTION, A DISTANCE OF 467 FEET TO THE EASTERLY MARGIN OF 179<sup>TH</sup>  
15 PLACE SE AS SHOWN ON SAID PLAT; THENCE SOUTH 9°03'14" EAST ALONG SAID  
16 EASTERLY MARGIN TO THE SOUTHWEST CORNER OF LOT 1 IN SAID PLAT; THENCE  
17 SOUTH 89°47'53" WEST 66.65 FEET TO THE NORTHEAST CORNER OF THE SOUTHEAST  
18 QUARTER OF THE SOUTHEAST QUARTER OF SAID SECTION 1; THENCE SOUTH  
19 00°04'50" EAST ALONG THE EAST LINE OF SAID SECTION 1 A DISTANCE OF 1269.51  
20 FEET TO THE NORTH LINE OF THE SOUTH 50 FEET OF SAID SECTION; THENCE NORTH  
21 89°12'12" WEST ALONG SAID NORTH LINE 600 FEET, MORE OR LESS, TO AN  
22 INTERSECTION WITH THE WESTERLY MARGIN OF PACIFIC NORTHWEST PIPELINE  
23 CORP. EASEMENT RECORDED UNDER FILE NUMBERS 4705906, 5491878 AND  
24 7108040394; THENCE NORTHEASTERLY ALONG SAID WESTERLY MARGIN 765 FEET,  
25 MORE OR LESS, TO AN INTERSECTION WITH A LINE BEARING SOUTH 9°03'14" EAST  
FROM THE SOUTHEAST CORNER OF LOT 23, FLYING ACRES DIVISION NO. 3,  
ACCORDING TO THE PLAT RECORDED IN VOLUME 98 OF PLATS, PAGE 99, IN KING  
COUNTY, WASHINGTON; THENCE NORTH 9°03'14" WEST TO AN ANGLE POINT IN THE  
EAST MARGIN OF LOT 45, FLYING ACRES, ACCORDING TO THE PLAT RECORDED IN  
VOLUME 92 OF PLATS, PAGE 83, IN KING COUNTY, WASHINGTON; THENCE NORTH  
00°04'55" EAST 442.92 FEET TO THE NORTH LINE OF SAID SECTION 1; THENCE SOUTH  
89°06'15" EAST ALONG SAID NORTH LINE 420.47 FEET TO A POINT 479.25 FEET FROM  
THE NORTHEAST CORNER OF SAID SECTION; THENCE SOUTH 0°53'45" WEST 210.00  
FEET TO THE SOUTH MARGIN OF SE 288<sup>TH</sup> PLACE AS DEDICATED IN THE SAID PLAT  
OF FLYING ACRES; THENCE EASTERLY ALONG SAID SOUTH MARGIN TO AN  
INTERSECTION WITH THE WEST LINE OF THE PLAT OF CEDAR TERRACE,  
ACCORDING TO THE PLAT RECORDED IN VOLUME 82 OF PLATS, PAGE 47, IN KING  
COUNTY, WASHINGTON; THENCE SOUTHERLY AND EASTERLY ALONG THE  
WESTERLY AND SOUTHERLY LINES OF SAID PLAT OF CEDAR TERRACE TO THE  
WEST MARGIN OF W. I. THOMAS ROAD NO. 1084; THENCE SOUTHERLY ALONG SAID  
WEST MARGIN TO AN INTERSECTION WITH THE WEST LINE OF SAID SECTION 6;  
THENCE SOUTHERLY ALONG THE WEST LINE OF SECTION 6 TO THE NORTHWEST  
CORNER OF GOVERNMENT LOT 5 IN SAID SECTION; THENCE EASTERLY ALONG THE  
NORTH LINE OF SAID GOVERNMENT LOT 5 TO THE WEST MARGIN OF W. I. THOMAS  
COUNTY ROAD; THENCE SOUTHERLY ALONG SAID WEST MARGIN TO THE POINT OF  
BEGINNING; EXCEPT THAT PORTION THEROF LYING WITHIN SE 288<sup>TH</sup> PLACE AS  
DEDICATED IN SAID PLAT OF FLYING ACRES AND AS CONVEYED TO KING COUNTY  
BY DEED RECORDED UNDER AUDITOR'S FILE NO. 6683389.

1           2. Pursuant to Court Order entered December 18, 2002, Judge Lum certified the  
2 group of real property owner benefited by the Nesland Easement as the "The Flying  
3 Acres Class" consisting of approximately 114 individual lot owners that own real  
4 property in the following Plats:

5                           Flying Acres recorded in Vol. 92, Plats, pages 83 and 84;

6                           Flying Acres #2 - recorded in Vol. 87, Plats, pages 94, 95 and 96;

7                           Flying Acres # 3 - recorded in Vol. 98, Plats, pages 99 and 100;

8                           Proposed Plat of Flying Acres # 4 - recorded in Vol. 99, Plats, pages  
9 22 and 23 all in King County, Washington

10                   Hereinafter, the benefited real property owners will be collectively referred to  
11 herein as "The Flying Acres Class."

12           3. Subsequent to December 16, 1975, The Flying Acres Class started utilizing  
13 the easement for the purpose of utilizing airplane landing strip and taxiway of the Crest  
14 Airpark Airport lying within the burdened property for the purpose of landing and  
15 taking off small private aircraft.

16           4. Subsequent to December 16, 1975, the Neslands conveyed their legal  
17 interests in the burdened real estate to Norman C. Grier in 1976 and currently defendant  
18 Grier Family Holdings, L.L.C. owns the burdened real property set forth in the Nesland  
19 Easement.

20           5. The Nesland Easement contains the following language:

21                   ...the right to use the airplane landing strip and taxiways of the Crest Airpark  
22 Airport located on the following described real property: SEE EXHIBIT A  
23 ATTACHED HERETO until December 31, 2000, for the purpose of landing  
and taking off small private aircraft.

24           Property Owners shall have the option to extend this agreement for an  
25 Order Granting Partial Summary Judgment - 5

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1 additional 25 years to December 31, 2025, under the following conditions:

- 2 1. That at least 60% of the then property owners agree to pay 50% of the  
3 cost of maintenance of the landing strip and taxiways and 50% of the  
4 taxes assessed or attributable to the landing strip and taxiways.
- 5 2. During the extended period from January 1, 2001 to December 31,  
6 2024, any Property Owner not contributing his share of the  
7 maintenance and taxes shall not have the right to use the landing strip  
8 and taxiways.
- 9 3. The right to use the landing strip and taxiways may be terminated  
10 during the extended period from January 1, 2001 to December 31,  
11 2025 by agreement of 2/3 of the Property Owners.

12 The rights granted herein shall not prevent the Airport Owner from using the  
13 aircraft tiedown areas or from construction of buildings so long as the use of  
14 the runways and adjoining taxiways are not impaired.

15 The right herein granted may be terminated at any time prior to December  
16 31, 2000 by agreement of 100% of the Property Owners.

17 This agreement shall be binding upon the heirs and assigns of the parties and  
18 shall run with the land.

19 6. As a mechanism to get organized to exercise the option to extend the Nesland  
20 Easement, a group of the property owners identified in The Flying Acres Class formed a non-  
21 profit corporation on November 6, 1992 entitled CREST A.E.R.O. for the purpose of  
22 grouping together the property owners benefited by the Nesland Easement so “that at least  
23 60% of the then property owners” could exercise the option to extend the Nesland Easement.  
24 The CREST A.E.R.O. UBI number was assigned as 601 424 829.

25 7. Beginning in November 1994, property owners in The Flying Acres Class started  
executing Agency Appointment Agreements authorizing CREST A.E.R.O. to act on the  
individual property owner’s behalf in conjunction with the exercise of the option contained in  
the Nesland Easement.

1 8. Over 95 Agency Appointment Agreements were executed between November 1994 and  
2 December 31, 2000. The executed Agency Appointment Agreements represented greater than 60 % of the  
3 Property Owners (Flying Acres Class) that are benefited by the Nesland Easement.

4 9. The Flying Acres Class has attempted to tender payments (or partial payments)  
5 to Defendants for years 2001 and 2002 and 2003 and such payments have been refused.

## 6 CONCLUSIONS OF LAW

7  
8 The Court concludes as a matter of law as follows:

9 1. On or about December 11, 1975, Stanley N. Nesland and Virginia S. Nesland as  
10 owners of real property legally described below created an express easement (hereinafter  
11 Nesland Easement) to benefit numerous real property owners that was recorded on  
12 December 16, 1975 under King County Auditor Number 7512160233.

13 2. The legal description of the "burdened property" is as follows:

14 DESIGNATED LANDING STRIP AND TAXIWAYS ONLY, LIVING WITHIN THE  
15 FOLLOWING DESCRIBED PROPERTY.

16 THAT PORTION OF THE EAST QUARTER OF SECTION 1, TOWNSHIP 21 NORTH, RANGE  
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DEDICATED IN SAID PLAT OF FLYING ACRES AND AS CONVEYED TO KING COUNTY  
BY DEED RECORDED UNDER AUDITOR'S FILE NO. 6683389.

3. The group of real property owner benefited by the Nesland Easement is  
identified as the "The Flying Acres Class" consisting of approximately 114 individual  
lot owners that own real property in the following Plats:

Flying Acres recorded in Vol. 92, Plats, pages 83 and 84;

Flying Acres #2 - recorded in Vol. 87, Plats, pages 94, 95 and 96;

Flying Acres # 3 - recorded in Vol. 98, Plats, pages 99 and 100;

Proposed Plat of Flying Acres # 4 - recorded in Vol. 99, Plats, pages  
22 and 23 all in King County, Washington



1 4. Pursuant to RCW 7.24.020, The Flying Acres Class is entitled to a Declaration  
2 of rights, status or other legal relation from this Court regarding the construction and  
3 including but not limited to the extension of the Nesland Easement

4 5. The Court concludes that The Flying Acres Class properly and adequately  
5 exercised the Option to Extend the Nesland Easement prior to the easement's expiration  
6 (December 31, 2000).

7 6. As a legal result of The Flying Acres Class exercise of the Option to extend the  
8 easement, the Nesland Easement is valid through December 31, 2025, subject to the terms  
9 and conditions contained in the plain language of the easement, including payment of such  
10 sums that are subsequently adjudicated to represent the proportionate share of costs for  
11 such usage.  
12

13 7. Based upon the tenders or partial tender of payment of the Flying Acres Class in  
14 2001, 2002 and 2003 the Class is not as of this date in default for non-payment, pending the  
15 subsequent adjudication of the underlying case.

16 It is hereby

17 ORDERED, ADJUDGED AND DECREED that THE FLYING ACRES CLASS'  
18 Motion for Partial Summary Judgment is hereby GRANTED in part and judgment shall be  
19 entered as follows:  
20

21 The Flying Acres Class exercised the Option to Extend the Nesland Easement prior  
22 to the easement's expiration (December 31, 2000) and the Nesland Easement is valid  
23 through December 31, 2025, subject to the terms and conditions contained in the easement ,  
24


1 including payment of such sums that are subsequently adjudicated to represent the  
2 proportionate share of costs for such usage.

3 FURTHER, it is hereby ORDERED, ADJUDGED AND DECREED that balance  
4 of THE FLYING ACRES CLASS' Motion for Partial Summary Judgment is hereby  
5 DENIED at this time without prejudice.

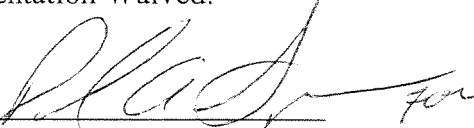
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8 DONE IN OPEN COURT this \_\_\_\_\_ day of \_\_\_\_\_, 2003

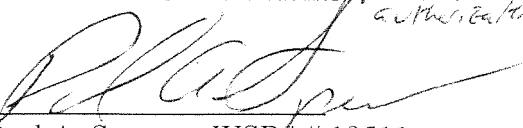
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10 \_\_\_\_\_  
11 JUDGE DEAN S. LUM

12 Presented By:  
13 Law Offices of Christopher A Benson

14   
15 By: \_\_\_\_\_  
16 Christopher A. Benson, WSBA# 21296  
17 Attorney for Plaintiffs

18 Approved as to Form; Notice of  
19 Presentation Waived:

20 By:  for  
21 Robert E. West, Jr., WSBA# 6054  
22 Co-Counsel for Defendants *per telephone  
communication 9-30-03*

23 By:   
24 Paul A. Spencer, WSBA# 19511  
25 Co-Counsel for Defendants

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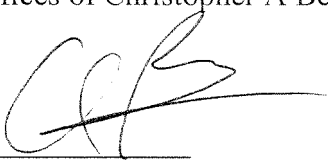
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5 DENIED at this time without prejudice.

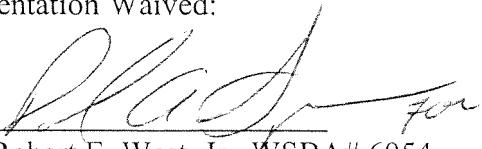
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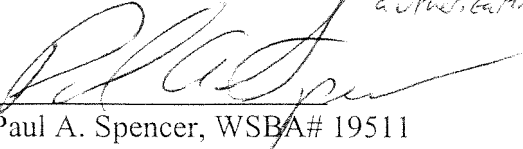
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13 Law Offices of Christopher A Benson

14  
15 By:   
16 Christopher A. Benson, WSBA# 21296  
17 Attorney for Plaintiffs

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21 Robert E. West, Jr., WSBA# 6054  
22 Co-Counsel for Defendants *per telephone authorized 9-30-03*

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24 Paul A. Spencer, WSBA# 19511  
25 Co-Counsel for Defendants

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