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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

**MOTION FOR PARTIAL  
SUMMARY JUDGMENT**

1 **I. RELIEF REQUESTED**

2 Plaintiffs move the court for an Order and Judgment

3 1. Pursuant to RCW 7.24.020 declaring that at least 60% of the property  
4 owners identified in the Complaint filed herein and benefited by an  
5 easement recorded under King County Auditor number 7512160233 on  
6 December 11, 1975 by Stanley N. Nesland and Virginia S. Nesland  
7 properly exercised the option contained within the easement to extend the  
8 easement created by the Neslands and that said easement is valid through  
9 December 31, 2025 subject to subsequent events that may legally  
10 terminate the easement.

11 2. Pursuant to RCW §7.28.010, that plaintiffs are entitled have judgment  
12 entered establishing an easement for ingress and egress against any  
13 person claiming the title or some interest in the property identified in the  
14 Complaint filed herein, against unknown heirs of a person known to be  
15 dead, or against unknown heirs of any person where it is not known  
16 whether such person is dead or not, and title to the easement recorded  
17 under King County Auditor number 7512160233 on December 11, 1975  
18 by Stanley N. Nesland and Virginia S. Nesland should be quieted in the  
19 plaintiffs concerning all claims of title, estate, lien, or interest in the  
20 easement.

21 **II. Procedural History**

22 On December 31, 2001, the initial Complaint was filed herein.

23 On December 18, 2002, Judge Lum entered an order certifying the “The Flying  
24 Acres Class” which consisted of 114 real property owners concerning certain common  
25 causes of action identified in Sections 3.1, 3.2, 3.3, 3.6, 3.7 and 3.8 of Plaintiffs’  
Amended Complaint. Ex. 1 Paragraphs 3.2, 3.3 and 3.7 provide in relevant part:

3.2 DECLARATORY ACTION: RCW 7.24.020 A person interested  
under a deed, will, written contract or other writings constituting a contract,  
or whose rights, status or other legal relations are affected by a statute,  
municipal ordinance, contract or franchise, may have determined any  
question of construction or validity arising under the instrument, statute,

1 ordinance, contract or franchise and obtain a declaration of rights, status or  
2 other legal relations there under. Pursuant to RCW 7.24.030 A contract  
3 may be construed either before or after there has been a breach thereof.

4 3.3 QUIET TITLE: Pursuant to RCW §7.28.010, plaintiffs are entitled  
5 to bring this action against any person claiming the title or some interest  
6 in the said property, against unknown heirs of a person known to be  
7 dead, or against unknown heirs of any person where it is not known  
8 whether such person is dead or not, and title to the said property should  
9 be quieted in the plaintiff concerning all claims of title, estate, lien, or  
10 interest in the said property to have judgment entered establishing an  
11 easement for ingress, egress and defining “50% of the cost of  
12 maintenance of the landing strip and taxiways and 50% of the taxes  
13 assessed or attributable to the landing strip and taxiways.

14 3.7 PERMANENT INJUNCTION. Plaintiffs are entitled to a permanent  
15 injunction against the defendants to prevent encroachment and interference  
16 with the right of use created in the easement holder.

17 The current Motion for Partial Summary Judgment is limited to an Order and  
18 Judgment concerning Paragraphs 3.2, 3.3 and 3.7 of Plaintiffs’ Amended Complaint.

19 Trial is currently set for October 6, 2003.

### 20 **III. STATEMENT OF FACTS**

21 On or about December 11, 1975, Stanley N. Nesland and Virginia S. Nesland as  
22 owners of real property legally described in Exhibit 2 attached hereto and incorporated  
23 herein, created an easement to benefit numerous real property owners (hereinafter  
24 “Nesland Easement” for ease of reference). Ex. 2 The Easement was recorded under  
25 King County Auditor Number 7512160233 on December 15, 1975. Ex. 2 Hereinafter,  
the benefited real property owners will be collectively referred to herein as “The Flying  
Acres Class” pursuant to the December 18, 2002 Court Order and Plaintiffs’ Amended  
Complaint. Ex. 1 and 3

1 "The Flying Acres Class" of property owners consists of approximately 114  
2 individual lot owners that own real property in the following Plats:

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

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

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

6 Proposed Plat of Flying Acres # 4 - recorded in Vol. 99, Plats, pages  
7 22 and 23 all in King County, Washington

8 Exhibit 2

9  
10 Due to the poor quality of the photocopy of the recorded Nesland Easement, the  
11 following is a re-typed legal description from the last page of the Nesland Easement:

12 EXHIBIT A

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

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

20 BEGINNING AT A POINT ON THE WESTERLY MARGIN OF W. I. THOMAS  
21 COUNTY ROAD "181<sup>ST</sup> SE" IN SAID GOVERNMENT LOT 5 WHICH IS 170 FEET  
22 NORTHERLY, MEASURED ALONG SAID MARGIN, FROM THE NORTHEAST  
23 CORNER OF LOT 17, FLYING ACRE'S DIVISION NO. TWO, ACCORDING TO THE  
24 PLAT RECORDED IN VOLUME 87 OF PLATS, PAGE 94-95-96, IN KING COUNTY,  
WASHINGTON, THENCE SOUTHWESTERLY, ALONG A LINE PASSING  
THROUGH A POINT ON THE WEST LINE OF SAID SECTION 6 WHICH IS 2120  
FEET SOUTHERLY OF THE NORTHWEST CORNER OF SAID SECTION, A  
DISTANCE OF 467 FEET TO THE EASTERLY MARGIN OF 179<sup>TH</sup> PLACE SE AS  
SHOWN ON SAID PLAT; THENCE SOUTH 9°03'14" EAST ALONG SAID EASTERLY  
MARGIN TO THE SOUTHWEST CORNER OF LOT 1 IN SAID PLAT; THENCE  
SOUTH 89°47'53" WEST 66.65 FEET TO THE NORTHEAST CORNER OF THE  
SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SAID SECTION 1;  
THENCE SOUTH 00°04'50" EAST ALONG THE EAST LINE OF SAID SECTION 1 A  
DISTANCE OF 1269.51 FEET TO THE NORTH LINE OF THE SOUTH 50 FEET OF  
SAID SECTION; THENCE NORTH 89°12'12" WEST ALONG SAID NORTH LINE 600

25 Motion Re: Partial Summary Judgment - 4

Christopher A. Benson  
Law Offices of Christopher A. Benson  
1814 South 324<sup>th</sup> Place, Ste. B  
Federal Way, WA 98003  
(253) 815-6940

1 FEET, MORE OR LESS, TO AN INTERSECTION WITH THE WESTERLY MARGIN  
2 OF PACIFIC NORTHWEST PIPELINE CORP. EASEMENT RECORDED UNDER FILE  
3 NUMBERS 4705906, 5491878 AND 7108040394; THENCE NORTHEASTERLY  
4 ALONG SAID WESTERLY MARGIN 765 FEET, MORE OR LESS, TO AN  
5 INTERSECTION WITH A LINE BEARING SOUTH 9°03'14" EAST FROM THE  
6 SOUTHEAST CORNER OF LOT 23, FLYING ACRES DIVISION NO. 3, ACCORDING  
7 TO THE PLAT RECORDED IN VOLUME 98 OF PLATS, PAGE 99, IN KING  
8 COUNTY, WASHINGTON; THENCE NORTH 9°03'14" WEST TO AN ANGLE POINT  
9 IN THE EAST MARGIN OF LOT 45, FLYING ACRES, ACCORDING TO THE PLAT  
10 RECORDED IN VOLUME 92 OF PLATS, PAGE 83, IN KING COUNTY,  
11 WASHINGTON; THENCE NORTH 00°04'55" EAST 442.92 FEET TO THE NORTH  
12 LINE OF SAID SECTION 1; THENCE SOUTH 89°06'15" EAST ALONG SAID NORTH  
13 LINE 420.47 FEET TO A POINT 479.25 FEET FROM THE NORTHEAST CORNER OF  
14 SAID SECTION; THENCE SOUTH 0°53'45" WEST 210.00 FEET TO THE SOUTH  
15 MARGIN OF SE 288<sup>TH</sup> PLACE AS DEDICATED IN THE SAID PLAT OF FLYING  
16 ACRES; THENCE EASTERLY ALONG SAID SOUTH MARGIN TO AN  
17 INTERSECTION WITH THE WEST LINE OF THE PLAT OF CEDAR TERRACE,  
18 ACCORDING TO THE PLAT RECORDED IN VOLUME 82 OF PLATS, PAGE 47, IN  
19 KING COUNTY, WASHINGTON; THENCE SOUTHERLY AND EASTERLY ALONG  
20 THE WESTERLY AND SOUTHERLY LINES OF SAID PLAT OF CEDAR TERRACE  
21 TO THE WEST MARGIN OF W. I. THOMAS ROAD NO. 1084; THENCE  
22 SOUTHERLY ALONG SAID WEST MARGIN TO AN INTERSECTION WITH THE  
23 WEST LINE OF SAID SECTION 6; THENCE SOUTHERLY ALONG THE WEST LINE  
24 OF SECTION 6 TO THE NORTHWEST CORNER OF GOVERNMENT LOT 5 IN SAID  
25 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.

Ex. 2

Subsequent to December 16, 1975, The Flying Acres Class started utilizing the  
easement for the purpose of accessing and utilizing the adjoining property as an  
“airport” i.e. accessing the runway from their respective parcels for both take-offs and  
landings or airplanes.

Subsequent to December 16, 1975, the Neslands conveyed their legal interests  
in the real estate described in Exhibit 2 to Norman Grier in 1976. Ex. 13 Declaration of  
Norman Grier.

1 On April 22, 2002, after the case at bar was filed, Defendant Norman C. Grier  
2 deeded his interest in the burdened real property to his Family Limited Liability  
3 Company entitled Grier Family Holdings, L.L.C., a Washington Limited Liability  
4 Company. Ex. 4

5 Thereafter, the pleadings were amended to add Grier Family Holdings, L.L.C.  
6 as an additional defendant.

7 The Nesland Easement grants property owners now identifies as THE FLYING  
8 ACRES CLASS the following legal rights and contains the following relevant  
9 language:  
10

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

15 Property Owners shall have the option to extend this agreement for an  
16 additional 25 years to December 31, 2025, under the following conditions:

- 17 1. That at least 60% of the then property owners agree to pay 50% of the  
18 cost of maintenance of the landing strip and taxiways and 50% of the  
19 taxes assessed or attributable to the landing strip and taxiways.
- 20 2. During the extended period from January 1, 2001 to December 31,  
21 2024, any Property Owner not contributing his share of the  
22 maintenance and taxes shall not have the right to use the landing strip  
23 and taxiways.
- 24 3. The right to use the landing strip and taxiways may be terminated  
25 during the extended period from January 1, 2001 to December 31,  
2025 by agreement of 2/3 of the Property Owners.

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

29 The right herein granted may be terminated at any time prior to December  
30 31, 2000 by agreement of 100% of the Property Owners.

1 This agreement shall be binding upon the heirs and assigns of the parties and  
2 shall run with the land. Ex. 2

3 As a mechanism to get organized to exercise the option to extend the Nesland  
4 Easement, a group of the property owners identified in The Flying Acres Class  
5 formed a non-profit corporation on November 6, 1992 entitled CREST A.E.R.O. for  
6 the purpose of grouping together the property owners benefited by the Nesland  
7 Easement so “that at least 60% of the then property owners” could exercise the  
8 option to extend the Nesland Easement. Ex. 5 The CREST A.E.R.O. UBI number  
9 was assigned as 601 424 829. Ex. 5  
10

11 Beginning in November 1994, property owners in The Flying Acres Class  
12 started executing Agency Appointment Agreements authorizing CREST A.E.R.O. to  
13 act on the individual property owner’s behalf in conjunction with the exercise of the  
14 option contained in the Nesland Easement. Ex. 6 Attached hereto and incorporated  
15 herein are copies of the 90 Agency Appointment Agreements that existed between  
16 November 1994 and February 1999. Ex. 6, Ex. 7  
17

18 **Although not required under the Nesland Easement, the Property Owners**  
19 **provided written notice of each Property Owner’s commitment to pay for 50% of the**  
20 **maintenance of the landing strip and taxiways and 50% of the taxes assessed or**  
21 **attributable to the land strip and taxiways at least 22 months prior to the expiration**  
22 **of the Nesland Easement and continually worked with Defendants on the logistics of**  
23 **calculating, collecting and pay for the maintenance and taxes.**

24 Attached hereto and incorporated herein as Exhibit 7 is the Declaration of Randy  
25 Crothers, who is a member of the Flying Acres Class. Ex. 7 In relevant part, Mr. Crothers’  
Declaration provides as follows:

- 1 4. Sometime between January 24, 1999 and February 10, 1999, Rikki Birge  
2 requested copies of all the Agency Agreements that were signed by all  
3 of the property owners who are the subject of this lawsuit.
- 4 5. Elizabeth Jogtich (now known as Lundin) was the President of the  
5 CREST AERO homeowners' association in January and February of  
6 1999. Ms. Jogtich (Lundin) made copies of the 90 Agency  
7 Appointments that existed from 1994 through February 1999. Attached  
8 hereto and incorporated here are copies of the Agency Appointments  
9 that Ms. Jogtich (Lundin) made and handed to me to deliver personally  
10 to Rikki Birge.
- 11 6. At the time I handed the Agency Appointments to Ms. Birge, she was  
12 the airport manager, daughter of Mr. Grier and openly acted the agent of  
13 Mr. Grier and Crest Airpark.
- 14 7. In my numerous contacts with Mr. Grier, Crest Airpark and Ms. Birge,  
15 Mr. Grier openly represented to me and others that Ms. Birge had  
16 authority to receive things and conduct business matters on behalf of Mr.  
17 Grier and Crest Airpark, Inc.
- 18 8. Likewise, in my numerous contacts with Ms. Birge, she openly held  
19 herself out as an agent of her father, Mr. Grier, and as the agent airport  
20 manager of Crest Airpark, Inc.
- 21 9. Prior to February 10, 1999, I personally handed all 90 copies of the  
22 Agency Appointments to directly to Ms. Birge while she was conducting  
23 business at the Crest Airpark office. The reason I handed her the 90  
24 Agency Appointments was for the purpose of the homeowners extending  
25 the easement that is the subject of this lawsuit and was attached to the  
Complaint filed herein as Exhibit 2 to the Complaint.
10. Prior to February 10, 1999, it was my understanding the Crest Airpark,  
Mr. Grier and Ms. Birge had received copies of the Agency  
Appointments as the Agency Appointment were executed over time.
11. However, prior to February 10, 1999, I personally handed Ms. Birge in  
the Crest Airpark, Inc. office a copy of all the attached 90 Agency  
Appointments.
12. I then attended a CREST AERO Board meeting on February 10, 1999  
and reported to the Board that I handed all of the Agency Appointments  
to Ms. Birge.
13. The 90 Agency Appointments represented 78.94% of the property  
owners that benefit from the easement at issue.
14. The easement that is the subject of the lawsuit required that prior to  
December 31, 2000, "That at least 60% of the then property owners  
agree to pay 50% of the cost of maintenance of the landing strip and  
taxiways and 50% of the taxes assessed or attributable to the landing  
strip and taxiways." Ex. 2 to Complaint.



- 1 15. Therefore, I knew that the easement was successfully extended almost 2  
2 years in advance of the December 31, 2000 deadline because as of  
3 February 10, 1999, we had more than enough property owners agree to  
4 pay 50% of the cost of maintenance of the landing strip and taxiways  
5 and 50% of the taxes assessed or attributable to the landing strip and  
6 taxiways. Ex. 2  
7 16. In my many meetings and conversations with Ms. Birge, Ms. Birge  
8 acknowledged that the property owners had extended the easement. Ms.  
9 Birge provided the CREST AERO Board with the actual costs of the  
10 taxes and maintenance for CREST Airpark so that the property owners  
11 could calculate 50% of the taxes and 50% of the maintenance costs.  
12 17. In December of 1999, the CREST AERO Board of Directors prepared  
13 and sent out the attached 2-page letter dated December 15, 1999 to all  
14 114-property owners. The letter reports the financial information  
15 provided to the Board by Ms. Birge on behalf of Crest Airpark, Inc.

16 Declaration of Randy Crothers, Ex. 7

17 Ms. Birge acknowledges that she is Mr. Grier's daughter and that she is the  
18 manager of Crest Airpark, Inc. Ex. 14

19 Attached hereto and incorporated herein as Exhibit 8 is the Declaration of  
20 Jeffrey Montgomery who is a named Plaintiff, a member of The Flying Acres Class  
21 and was a member of the Board of Directors for CREST A.E.R.O. from 1998  
22 through 2002. Ex. 8 Mr. Montgomery's Declaration outlines the multiple meetings  
23 and discussion that he had with Mr. Grier and Ms. Birge over the years leading up to  
24 December 31, 2000. Ex. 8 In order to avoid duplication of facts, the Plaintiffs  
25 respectfully request the Court to read Mr. Montgomery's Declaration in full at this  
time because the Declaration identifies important timelines and meetings regarding  
the case at bar. Ex. 8

1 Attached hereto and incorporated herein as Exhibit 9 is the Declaration of  
2 Thomas Torchia who is a member of The Flying Acres Class and is a member of the  
3 Board of Directors for CREST A.E.R.O. from 1999 through present. Ex. 9

4 **December 1999 meeting at Shari's Restaurant.**

5 In December 1999, CREST A.E.R.O., Inc., President Jeffrey Montgomery,  
6 corporate officer Janet Gundlach, corporate officer Tom Torchia, Defendant Norman  
7 C. Grier and Mr. Grier's daughter and airport manager Rikki Birge, met at Shari's  
8 restaurant to discuss how THE FLYING ACRES CLASS as identified in the  
9 Complaint filed herein, would exercise the option, how THE FLYING ACRES  
10 CLASS would collect funds and how those members of THE FLYING ACRES  
11 CLASS would pay money to exercise the option. Ex. 8 and 9

12 As set forth in Mr. Montgomery's Declaration (Exhibit 8)

13  
14 23. A few days after the meeting, Ms. Birge provided the  
15 maintenance costs for the 1999 so that the home owners could estimate the  
16 costs and determine how much to collect from each homeowner.

17 24. On or about December 14, 1999, I met with Rikki Birge at the  
18 Crest Airpark Office to discuss the maintenance costs. Attached hereto as  
19 exhibit 16 are my handwritten notes taken contemporaneously with my  
20 meeting with Ms. Birge concerning airport expenses. Ms. Birge told me the  
21 individual expense categories by looking at printed documents in her office.

22 25. I took my handwritten information and typed the top sheet on  
23 Exhibit 16.  
24 I then prepared a newsletter dated December 15, 1999 and sent it out to all  
25 of the homeowners. Exhibit. 17 On the second page of Ex. 17, the  
26 maintenance costs that I received from Ms. Birge the day before are  
27 reflected. Compare Ex. 16 to 17.

28 26. Therefore, CREST A.E.R.O. started performing its part by  
29 billing the homeowners through the accounting firm of Oliveira CPAs, the

1 sum of \$128.50 per lot in 2000. This would create a 1-year reserve account.  
2 The first payment for one-fourth of 2001 expenses and taxes would not be  
3 due and payable till March 30, 2001 and each succeeding calendar quarter  
4 after that.

5 27. Therefore, starting in 2000, the homeowners that had signed the  
6 Agency Appointment Agreements were billed, and paid, the \$128.50 each  
7 for the year 2000.

8 28. Between December of 1999 and March of 2000, CREST  
9 A.E.R.O. started implementing the agreed plan and a separate electric meter  
10 was installed for runway light and rotating beacon so that costs could be  
11 more easily segregated. CREST A.E.R.O. paid  
12 for the installation of the meter and Mr. Grier was present during the  
13 installation and called Jeffrey Montgomery to be present and supervise the  
14 installation which Mr. Montgomery did. The bill for the electric meter was  
15 from SCG Electric (Exhibit 18)  
16 and was paid by Crest Aero via check number 2154 in the sum of \$409.97.  
17 (Exhibit 18)

18 29. Prior to November of 2000, Ms. Birge provided an excerpt from  
19 a proposed plan that the Defendants "were working on.". A copy of the  
20 excerpt is attached. There is no title of the document other than at the top of  
21 the pages it starts with "V. Procedures. A. Annual Estimate and  
22 Accounting"

23 30. On December 15, 2000, I delivered to Rikki Birge a proposed  
24 Letter of Understanding for Mr. Grier to sign. The "Letter" set out items that  
25 CREST A.E.R.O. and Mr. Grier had previously discussed and agreed to. I  
said "look this over with your dad (Mr. Grier) and let me know what you  
think."

31. In December of 2000, prior to the airpark Christmas party, I met  
as President of CREST A.E.R.O. with Mr. Grier at my house to discuss the  
Letter of Understanding dated December 15, 2000. I walked around the  
airport with Mr. Grier at that time. Mr. Grier identified various issues and  
concerns such as: (a) east side private road; (b) trash dumping; (c)  
vandalism; (d) holes in the ground on the northwest side of the airport; (e)  
other easement and non-easement issues.

32. There are numerous monthly meetings referenced in the CREST  
A.E.R.O. meeting book in the form of Board of Director Meeting minutes.  
The documents speak for themselves and have been provided.

1  
2 33. In March of 2000, CREST A.E.R.O. requested that Crest Airpark  
3 provide bills for the first calendar quarter of 2000 for maintenance and taxes  
4 as the agreed to " test" of the system. However, Crest Airpark failed to  
5 provide the test billings. Ms. Birge indicated that "she was too busy" to  
6 provide the test billings at that time. Since this was simply a test of the  
7 process, CREST A.E.R.O. did not press the issue.

8 34. Attached to the Summary Judgment Motion as exhibit 15, is a  
9 true and accurate copy of the business record of the Board of Director  
10 Meeting held for February, 1999. I was part of the discussion at that  
11 meeting and the impromptu meeting with Rikki Birge was discussed. (Ex.  
12 15 p. 2) During the meeting with Ms. Birge, Elizabeth Jogtich (now know  
13 as Elizabeth Lundin) on behalf CREST AERO Board of Directors delivered  
14 all signed Agency Agreements at that time.

15 35. Attached as Exhibit 6 are true and accurate copies of all Agency  
16 Appointments that were signed, notarized and recorded regarding the  
17 individual parcels between 1994 and February 1999. A meeting was  
18 scheduled to meet with Ms. Birge on December 20, 2000. However, Ms.  
19 Birge contacted Janet Gundlach on December 19, 2000 and canceled the  
20 meeting.

21 36. In reliance on the meetings and the information provided  
22 by the Defendants, THE FLYING ACRES CLASS, CREST  
23 A.E.R.O., Inc. on behalf of its members and the Defendants jointly  
24 installed a new power meter in the airport office to separate out the  
25 electrical for the runway lights and rotating beacon. Mr. Grier even  
called me over to the airport office to monitor the installation of the  
power meter.

Ex. 8

As set forth in Exhibit 10, THE FLYING ACRES CLASS tendered payment  
to Defendants Crest Airpark, Inc. and Mr. Grief via a December 28, 2000 letter and  
check dated December 19, 2000 in the sum of \$3,000 for its estimated 50% share of  
maintenance and taxes. Ex. 10 The December 29, 2000 letter was received by Crest

1 Airpark, Inc. on December 29, 2000. Ex. 10 However, Crest Airpark and Mr. Grier  
2 did not accept the payment and returned the check. Ex. 10

3 Since the December 28, 2000 letter from CREST A.E.R.O. with payment to  
4 Crest Airpark and Mr. Grier, CREST A.E.R.O. has tendered payment every calendar  
5 quarter in the sum of \$3,000 for THE FLYING ACRES CLASS' estimated share of  
6 50% payment of maintenance and real estate taxes as set forth in the easement. Ex.  
7 10 However, each tender of payment has been rejected by Crest Airpark and Mr.  
8 Grier. Ex. 10

9  
10 In January 2001, the Defendants have expressed allegations that the Nesland  
11 Easement was no longer valid and the Defendants have refused to accept payments  
12 tendered from Plaintiffs to pay for 50% of the maintenance and 50% of the assessed  
13 taxes attributable to the landing strip and taxiways. Ex. 19

#### 14 **IV. EVIDENCE RELIED UPON**

15 This motion is based on the following exhibits:

- 16 1. Order Certifying Class 12/18/2002.
- 17 2. Nesland Easement dated December 11, 1975.
- 18 3. Plaintiffs Amended Complaint.
- 19 4. Grier Deed and Declarations concerning transfer to Grier Family Holdings,  
20 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  
23 February 1999.
- 24 7. Declaration of Randy Crothers.

1 8. Declaration of Jeffrey M. Montgomery.

2 9. Declaration of Thomas Torchia.

3 10. The Flying Acres Class tender of payment of taxes and maintenance 12/28/00;  
4 4/3/01; 7/13/01; 9/30/01; 3/25/02; 6/20/02; 9/24/02; 12/27/02; 3/31/03; 7/1/03 and  
5 rejection letters from Defendant dated 4/3/01; 7/13/01; 10/10/01; 3/28/02; 6/27/02;  
9/26/02; 12/30/02; 4/3/03; 7/10/03.

6 11. Stipulated Order Authorizing Publication to Unknown.

7 12. Affidavit of Publication by the Daily Journal of Commerce.

8 13. Declaration of Norman C. Grier dated June 27, 2002.

9 14. Declaration of Rikki Birge dated June 27, 2002.

10 15. Minutes of February 10, 1999 CREST A.E.R.O Board Meeting.

11 16. Handwritten and typed meeting notes of Jeffrey Montgomery taken December  
12 14, 1999 contemporaneous with meeting with Ms. Birge.

13 17. December 15, 1999 Newsletter prepared by Jeffrey Montgomery based on  
14 December 14, 1999 meeting with Ms. Birge and mailed to all members of The  
Flying Acres Class.

15 18. Billing for installation of separate electrical meter dated 2/10/2000 and copy of  
16 payment for installation by CREST A.E.R.O. in the sum of \$409.97.

17 19. January 8, 2001 from attorney for Crest Airpark and Mr. Grier regarding  
18 extension of easement.

## 19 **V. AUTHORITY AND ARGUMENT**

20 The following argument will address the issues presented in the following order: A.  
21 Standard of Law for Summary Judgment; B. Creation of Express Easement by Nesland; C.  
22 Exercising the Nesland Easement Option to Extend; D. Declaratory Action under RCW  
23 7.24.020; E. Quiet Title: Pursuant to RCW §7.28.010; and F. Granting an Injunction until  
24 January 1, 2026.

25 Motion Re: Partial Summary Judgment - 14

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1 **A. STANDARD OF LAW**

2 Plaintiffs are entitled to a summary judgment on each of the plaintiffs’  
3 claims identified herein because the pleadings, depositions, and affidavits on file in  
4 this case present no genuine issue of material fact and the Plaintiffs are entitled to a  
5 judgment as a matter of law. A material issue involves factual disputes that have  
6 the potential of affecting outcome. Anderson v. Liberty Lobby, Inc., 477 U.S. 242,  
7 248 (1986). “Genuine” issues of fact involve issues where reasonable jurors could  
8 return a verdict in favor of the non-moving party. Id., at 248. The standard is  
9 actually akin to that of a directed verdict. Celotex Corp. v. Carter, 477 U.S. 317  
10 (1986). Accordingly, it is no longer sufficient for a party to simply point to any  
11 scintilla of probative evidence in order to resist a motion for summary judgment.  
12 Anderson, 477 U.S. at 248. The non-moving party must now be able to persuade  
13 the judge that the “evidence presents a sufficient disagreement to require  
14 submission to a jury.” Carey v. United States Postal Services, 812 F.2d 621, 623  
15 (10<sup>th</sup> Cir. 1987). Without a prima facie showing with respect to each of the  
16 elements concerning the alleged claims, there are no genuine issues of fact and the  
17 court must grant summary judgment. Ertl v. Parks and Recreation, 76 Wn. App.  
18 110, 115 (1994).

21 **B. CREATION OF EXPRESS EASEMENT BY NESLAND DECEMBER 16, 1975.**

22 An easement is a non-possessory use that one may hold in land owned by another.  
23 The land that is benefited by the easement is called the “dominant estate”, and the land that is  
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1 used for the easement is called the “burdened land” or the “servient estate”. The owner of the  
2 burdened land continues to have the right of use, possession, and enjoyment subject only to  
3 the limitation that he/she cannot interfere with the right created in the easement holder.

4 3 Ed. WASHINGTON REAL PROPERTY DESKBOOK §10.2(1)-(2); *Meresse v. Stelma*,  
5 100 Wn. App. 857, 868, 999 P.2d 1267 (2000).

6 As set forth in *Beebe v. Swerda*, 58 Wn. App. 375, 379, 793 P.2d 442 (1990)

7  
8 An express conveyance of an easement, by grant or reservation, must be made by  
9 written deed. RCW 64.04.010. No particular words are necessary to constitute a  
10 grant, and any words which clearly show the intention to give an easement, which is  
11 by law grantable, are sufficient to effect that purpose, providing the language is  
12 sufficiently definite and certain in its terms. 28 C.J.S. Easements SS 24 (1941); 25  
13 Am. Jur. 2d Easements and Licenses SS 20 (1966); 2 G. Thompson, Real Property  
14 SS 320, at 47 (1980 repl.).

15  
16 A covenant or agreement may operate as a grant of an easement if, to carry out  
17 the intention of the parties thereto, it is necessary to give it that effect.  
18 2 G. Thompson, Real Property SS 320, at 53 (1980 repl.).

19  
20 In construing a deed, the court is required to carry out the intentions of the parties  
21 and, if the deed admits of more than one construction, it must be construed most  
22 strictly against the grantor and most favorably to the grantee. *Hodgins v. State*, 9  
23 Wn. App. 486, 513 P.2d 304 (1973).

24  
25 RCW 64.04.010 provides as follows:

RCW 64.04.010 Conveyances and encumbrances to be by deed.

Every conveyance of real estate, or any interest therein, and every contract  
creating or evidencing any encumbrance upon real estate, shall be by deed:  
PROVIDED, That when real estate, or any interest therein, is held in trust, the terms  
and conditions of which trust are of record, and the instrument creating such trust  
authorizes the issuance of certificates or written evidence of any interest in said real  
estate under said trust, and authorizes the transfer of such certificates or evidence of  
interest by assignment by the holder thereof by a simple writing or by endorsement  
on the back of such certificate or evidence of interest or delivery thereof to the  
vendee, such transfer shall be valid, and all such assignments or transfers hereby



1 authorized and heretofore made in accordance with the provisions of this section are  
2 hereby declared to be legal and valid.

3 RCW 64.04.020 provides as follows:

4 RCW 64.04.020 Requisites of a deed

5 Every deed shall be in writing, signed by the party bound thereby, and  
6 acknowledged by the party before some person authorized by this act to take  
7 acknowledgments of deeds.

8 In the case at bar, the written Nesland Easement recorded under King County  
9 Auditor number 7512160233 on December 16, 1975 complies with the statutory and case  
10 law concerning creation of an Express Easement: It is in writing, sound by the party to the  
11 bound (i.e. owners of burdened land), it is acknowledged, it was recorded, it contains  
12 “grant” language, it identifies a right of use, it specifically states that the easement “shall be  
13 binding upon the heirs and assigns of the parties and shall run with the land.” Ex. 2

14 In the case at bar, after December 16, 1975, Mr. Grier and/or Crest Airpark, Inc.  
15 and/or Grier Family Holdings, L.L.C. acquired title to the burdened property identified in  
16 the Nesland Easement; therefore, Mr. Grier and Crest Airpark, Inc. and as April 22, 2002,  
17 Grier Family Holdings, L.L.C. are bound by the Nesland Express Easement.

18 **C. EXERCISING THE NESLAND EASEMENT OPTION TO EXTEND**

19 In the case at bar, the Nesland Easement initially granted use rights to the benefited  
20 property owners until December 31, 2000. Ex. 2 However, the Nesland Easement  
21 provided the Property Owners with an option to extend the easement until December 31,  
22 2025. Ex. 2

1           However, the Nesland Easement language is silent as to the mechanism to notify  
2 burdened party of benefited landowners' intent to exercise option to extend easement until  
3 December 31, 2025. Ex. 2 Therefore, the Court is allowed to examine the surrounding  
4 circumstances.

5           In *Lowe v. Double L Properties, Inc.*, 105 Wn. App. 888, 894, the Court held  
6 "Similarly, if the easement is ambiguous or even silent on some points, the rules of  
7 construction call for examination of the situation of the property, the parties, and  
8 surrounding circumstances." *Rupert*, 31 Wn. App. at 31 (citing *City of Seattle v.*  
9 *Nazarenius*, 60 Wn.2d 657, 374 P.2d 1014 (1962)).  
10

11           In Washington, the Court takes a very flexible view concerning the "exercise of  
12 options" and allows even an "oral" exercise of an option concerning the purchase of real  
13 estate. *Ban-co Investment Co. v. Loveless*, 22 Wn. App. 122, 132-133, 587 P.2d 567  
14 (1978). The Ban-co Court held in relevant part:

15           " Neither is the oral agreement to exercise the options rendered unenforceable  
16 because of the statute of frauds requiring that certain agreements be in writing. See  
17 RCW 19.36.010; RCW 64.04.010. In this jurisdiction, it is settled that the  
18 acceptance of a written option to purchase real estate is not invalid because it is  
19 oral. *Duprey v. Donahoe*, 52 Wn.2d 129, 133, 323 P.2d 903 (1958); *Spake v. Elder*,  
20 1 Wn. App. 116, 121-22, 459 P.2d 820 (1969). The rationale is that the statute of  
frauds is sufficiently complied with in that situation since the detailed terms of the  
contract to sell are supplied by the writing signed by the parties to be held. See  
Annot., 30 A.L.R.2d 976 (1962).

21           The Court in *Smith v. Hamilton*, 26 Wn. App. 633, 637, 613 P.2d 567 (1980). 2d  
567 (1978) held in relevant part

22           **In the absence of any provision in the option contract with reference to**  
23 **the manner by which an option can be exercised, it is the general rule**  
24 **that any manifestation, either oral or written, indicating an acceptance**  
**on the part of the optionee is sufficient.**

1  
2 See also *Spake v. Elder*, 1 Wn. App. 116, 122, 459 P.2d 820 (1969). Cf.  
3 *Ban-Co Inv. Co. v. Loveless*, 22 Wn. App. 122, 587 P.2d 567 (1978).  
(emphasis added)

4 In the case at bar, the Nesland Easement is silent as to the mechanism as “to the  
5 manner by which” the option could be exercised. Ex. 2 Therefore, the Property Owners  
6 could use “any manifestation, either oral or written, indicating as acceptance on the part of  
7 the optionee.”

8 As set forth in the Declaration of Randy Crothers (Ex. 7), he personally delivered  
9 90 signed Agency Agreements on behalf of the Property Owners benefited by the Nesland  
10 Easement to the Defendants on or before February 10, 1999 which is 22 months prior to the  
11 expiration of the Nesland Easement. Ex. 7

12 As set forth in the Declaration of Mr. Montgomery and Mr. Torchia a specific  
13 meeting was held at Shari’s Restaurant on December 13, 1999 with Mr. Grier and his  
14 daughter Rikki Birge. Ex. 8 and 9 The purpose of the meeting was to exercise the option  
15 and work out the logistics of how payments would be made regarding the airport. Id.  
16

17 “Between December of 1999 and March of 2000, CREST A.E.R.O. started  
18 implementing the agreed plan and a separate electric meter was installed for runway light  
19 and rotating beacon so that costs could be more easily segregated. CREST A.E.R.O. paid  
20 for the installation of the meter and Mr. Grier was present during the installation.” Ex. 8  
21 Mr. Grier called Jeffrey Montgomery to be present and supervise the installation which Mr.  
22 Montgomery did. The bill for the electric meter was from SCG Electric and was paid by  
23 Crest A.E.R.O. via check number 2154 in the sum of \$409.97. Ex. 8  
24

1           Therefore, there is no genuine issue of material fact as to whether the benefited  
2 Property Owners identified in the Nesland Easement timely exercised the option to extend  
3 the easement until December 31, 2025. In accordance with the clear terms of the Nesland  
4 Easement, at least 60% of the then property owners agreed to pay “50% of the cost of  
5 maintenance of the landing strip and taxiways and 50% of the taxes assessed or attributable  
6 to the landing strip and taxiways.” Ex. 2, 6, and 7 Hence, the Plaintiffs are entitled to an  
7 Order and Judgment under RCW 7.24.020 as will be addressed below.  
8

9 **D. DECLARATORY ACTION UNDER RCW 7.24.020**

10           RCW 7.24.010 provides as follows:

11                   Courts of record within their respective jurisdictions shall have power to  
12 declare rights, status and other legal relations whether or not further relief is  
13 or could be claimed. An action or proceeding shall not be open to objection  
14 on the ground that a declaratory judgment or decree is prayed for. The  
15 declaration may be either affirmative or negative in form and effect; and  
16 such declarations shall have the force and effect of a final judgment or  
17 decree.

18           RCW 7.24.020 provides as follows:

19                   A person interested under a deed, will, written contract or other writings  
20 constituting a contract, or whose rights, status or other legal relations are  
21 affected by a statute, municipal ordinance, contract or franchise, may have  
22 determined any question of construction or validity arising under the  
23 instrument, statute, ordinance, contract or franchise and obtain a declaration  
24 of rights, status or other legal relations thereunder.

25           In the case at bar, the Superior Court has jurisdiction over rights and legal relations  
herein and the present Motion for Partial Summary Judgment requests that an Order and  
Judgment be entered concerning the status and legal relationship of parties regarding the  
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1 express written Nesland Easement. Therefore, this Court may enter an Order and Judgment  
2 determining the validity of the Nesland Easement.

3 **E. QUIET TITLE: PURSUANT TO RCW §7.28.010**

4 RCW 7.28.010 provides as follows:

5 Any person having a valid subsisting interest in real property, and a right to  
6 the possession thereof, may recover the same by action in the superior court  
7 of the proper county, to be brought against the tenant in possession; if there  
8 is no such tenant, then against the person claiming the title or some interest  
9 therein, and may have judgment in such action quieting or removing a cloud  
10 from plaintiff's title; an action to quiet title may be brought by the known  
11 heirs of any deceased person, or of any person presumed in law to be  
12 deceased, or by the successors in interest of such known heirs against the  
13 unknown heirs of such deceased person or against such person presumed to  
14 be deceased and his unknown heirs, and if it shall be made to appear in such  
15 action that the plaintiffs are heirs of the deceased person, or the person  
16 presumed in law to be deceased, or the successors in interest of such heirs,  
17 and have been in possession of the real property involved in such action for  
18 ten years preceding the time of the commencement of such action, and that  
19 during said time no person other than the plaintiff in the action or his  
20 grantors has claimed or asserted any right or title or interest in said property,  
21 the court may adjudge and decree the plaintiff or plaintiffs in such action to  
22 be the owners of such real property, free from all claims of any unknown  
23 heirs of such deceased person, or person presumed in law to be deceased;  
24 and an action to quiet title may be maintained by any person in the actual  
25 possession of real property against the unknown heirs of a person known to  
be dead, or against any person where it is not known whether such person is  
dead or not, and against the unknown heirs of such person, and if it shall  
thereafter transpire that such person was at the time of commencing such  
action dead the judgment or decree in such action shall be as binding and  
conclusive on the heirs of such person as though they had been known and  
named; and in all actions, under this section, to quiet or remove a cloud  
from the title to real property, if the defendant be absent or a nonresident of  
this state, or cannot, after due diligence, be found within the state, or  
conceals himself to avoid the service of summons, service may be made

upon such defendant by publication of summons as provided by law; and the  
court may appoint a trustee for such absent or nonresident defendant, to  
make or cancel any deed or conveyance of whatsoever nature, or do any  
other act to carry into effect the judgment or the decree of the court.

1  
2 In the case at bar, the Court entered an Order on October 2, 2002 Authorizing  
3 Service by Publication on the defendants “All Persons Unknown, Claiming Any Legal or  
4 Equitable Right, Title, Estate, Lien, or Interest in the Property Described in the Complaint  
5 Herein” by publication in a newspaper of general circulation in King County once a week  
6 for six consecutive weeks pursuant to RCW §4.28.150. Ex. 11 Attached hereto and  
7 incorporated herein is a copy of the Affidavit of Publication filed by The Daily Journal of  
8 Commerce evidencing the publication dates for six consecutive weeks as follows:  
9 November 5, 2002, November 12, 2002, November 19, 2002, November 26, 2002,  
10 December 3, 2002 and December 10, 2002. Ex. 12 Therefore, Plaintiffs are entitled to an  
11 Order and Judgment to be entered against “All Persons Unknown, Claiming Any Legal or  
12 Equitable Right, Title, Estate, Lien, or Interest in the Property Described in the Complaint  
13 Herein.”

14 **F. GRANTING INJUNCTION UNTIL JANUARY 1, 2026.**

15 As set forth in *Lowe v. Double L Properties, Inc.*, 105 Wn. App. 888, 893 (2001),  
16 the Trial Court is afforded considerable deference in granting Injunctions concerning use of  
17 easements by property owners. In relevant part, the Lowe Court held

18 "A suit for an injunction is an equitable proceeding addressed to the sound  
19 discretion of the trial court, to be exercised according to the circumstances  
20 of each case." *Steury v. Johnson*, 90 Wn. App. 401, 405, 957 P.2d 772  
21 (1998) (citing *Fed. Way Family Physicians, Inc. v. Tacoma Stands Up For*  
22 *Life*, 106 Wn.2d 261, 264, 721 P.2d 946 (1986); *Rupert v. Gunter*, 31 Wn.  
23 App. 27, 30, 640 P.2d 36 (1982)). "**Appellate courts must give great**  
24 **weight to the trial court's decision, interfering only if it is based on**  
25 **untenable grounds, is manifestly unreasonable or is arbitrary."** *Steury*,  
90 Wn. App. at 405 (citing *Fed. Way*, 106 Wn.2d at 264; *Rupert*, 31 Wn.  
App. at 30). Emphasis added.

1 In the case at bar, the Plaintiffs are entitled to an Injunction preventing the burdened  
2 property owner(s) from interfering with the rights of use created in The Flying Acres Class  
3 under the terms of the 1975 Nesland Easement.  
4

5 **VI. CONCLUSION**

6 Plaintiffs' Motion for Partial Summary Judgment should be granted on the issues  
7 presented herein because there are no genuine issues of material fact concerning the  
8 existence of the Nesland Easement as well as the fact that the Property Owners identified in  
9 the Nesland Easement exercised the option to extend the Nesland Easement until December  
10 31, 2025. By the Court Granting Plaintiffs' Motion, the issues at trial vis a vis The Flying  
11 Acres Class will be narrowed to simply determining, in reality, what are the costs of the  
12 maintenance of the landing strip and taxiways as well as determining, in reality, what are  
13 the taxes assessed or attributable to the landing strip and taxiways. Therefore, the number  
14 of witnesses can be reduced dramatically thus saving litigation costs and Court time.  
15

16 DATED this \_\_\_\_\_ day of July, 2003

17 Law Offices of Christopher A. Benson

18 By: \_\_\_\_\_  
19 Christopher A. Benson, WSBA# 21296  
20 Attorney for Plaintiffs  
21  
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24